



WASHOE COUNTY

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STAFF REPORT

BOARD MEETING DATE: December 12, 2023

DATE: November 21, 2023

TO: Board of County Commissioners

FROM: Dwayne Smith, P.E., Division Director, Engineering and Capital Projects
Community Services Dept., 328-2043, desmith@washoecounty.gov

THROUGH: Dave Solaro, Arch., P.E., Assistant County Manager

SUBJECT: Recommendation to approve the Protest to Water Rights Application No. 93079, filed in the Office of the State Engineer, pursuant to Nevada Revised Statute 534.270.3(g)(1), requesting a change in the approved place of use of temporary surface (flood) waters of White Lake in the Cold Springs Hydrographic Basin, to preserve Washoe County's ability to protect and manage the water resources of Washoe County as prescribed under Washoe County Code Article 422. [Fiscal impact of \$30 for Protest filing fees]. (Commission District 5.)

SUMMARY

The Washoe County Community Services Department (CSD) is requesting that the Board of County Commissioners (Board) approve and authorize the attached Protest to Water Rights Application Number 93073, filed in the Office of the State Engineer, which is seeking to change the Place of Use of Water Right Permit 31321. This protest is in accordance with Nevada Revised Statute (NRS) 534.270.3(g)(1). CSD staff routinely files protests against the potential approval of water rights applications, as required by Article 422 of Washoe County Development Code. Nevada Revised Statute (NRS) 534.270.3(g)(1) requires staff recommended protests to be signed by the Board Chair.

CSD provides this recommendation in accordance with Washoe County Code Article 422, which is intended to protect and manage the water resources of Washoe County for the benefit of the residents.

Staff has determined that approval of this application is detrimental to the public interest for the following reasons:

- Due to the temporary nature of stormwater, this appropriation is not suitable for permanent or sustainable use as it is unreliable and inconsistent.
- Approval of the application will result in limitations or constraints for Washoe County to effectively manage stormwater/floodwater in the event there is negative impact to residents, businesses or public infrastructure.

AGENDA ITEM # _____

- The applicant has not provided infrastructure plans or approaches that would allow for an effective change in the place of use, specifically during regional flooding events or other similar conditions.
- The applicant has not provided verifiable data or studies that address the negative impacts of stormwater quality to the underlying potable water aquifer.
- The applicant has not secured the required permits, approvals or authorizations to allow for possible artificial recharge into the underlying Cold Springs Hydrographic Basin (Basin #100) that currently is relied upon by a municipal water purveyor and domestic (residential) well owners.
- The applicant has not provided concrete evidence that an agreement exists between the applicant and the Great Basin Water Company for the proposed place of use.

State approval of this application is detrimental to the public interest for these reasons and staff recommends the Board authorize the protest and direct staff to submit to the State of Nevada Engineer's office.

Washoe County Strategic Objective supported by this item: Fiscal Sustainability, Long-term sustainability.

PREVIOUS ACTION

There is no previous Board action.

BACKGROUND

NRS 533.370 (2) states that:

The State Engineer is prohibited by law from granting an application to appropriate the public waters of State of Nevada where:

- A. There is no unappropriated water at the proposed source;*
- B. The proposed use or change conflicts with existing rights;*
- C. The proposed use or change conflicts with protectable interests in the existing domestic wells as set forth in NRS 533.024; or*
- D. The proposed use or change threatens to prove detrimental to the public interest.*

Water Right Application 31321 was filed with the Nevada State Engineer on April 13, 1977 by Cold Springs Development Corporation, to appropriate waters of White Lake for "ground water recharge, quasi-municipal and domestic" uses. This application specifies it is requesting to appropriate surface water which flows into White Lake. Water would then be collected and recharged into the ground water basin which will be comingled with existing underground water, with intention to file an application from an underground source in the future. This application was not protested by any individual or entity and became ready for action by the Nevada State Engineer on September 9, 1977. Water right application 31321 was quitclaimed by Cold Springs Development

Corporation to Michael DeMartini and Renate DeMartini on May 17, 2007. Water right application 31321 was approved by the Nevada State Engineer on August 15, 2012, for quasi-municipal purposes, converting this to Water Right Permit 31321.

Water Right Application 92752 was filed by Michael DeMartini and Renate DeMartini on June 20, 2023, to change the place of use of Water Right Permit 31321. The miscellaneous remarks of the application that the place of use is being adjusted to match the current place of use of water rights for Great Basin Water Company, indicating that is the service area for Great Basin Water Company. The remarks specified on Item 15 of Water Right Application 92752 include the following:

“a). The project has two folds as follows:

i. Put water to better beneficial use for water lost to evaporation as stated in accepted 1981 USGS open file report.

ii. Reduce the flow of water into recognized flood prone area of the closed basin thereby alleviating the flooding threat.

b). Has two benefits: providing 2,000 AFA max of usable water, and controlling 2 feet of flood level for peak flood events associated with migrating or intercepted surface waters derived from precipitation.”

Great Basin Water Company filed a formal protest against this water right application on August 18, 2023, on the following grounds:

“1. The applicant has not informed nor reached agreement with GBWC to utilize the subject water rights within the Public Utilities Commission of Nevada defined service area and water rights place of use. Without further understanding of the applicants proposed use, especially considering permit terms contained in the base right, Permit No. 31321, this application may conflict with existing GBWC water rights and may be detrimental to the public interest.

2. The applicant has not provided a measurement and reporting plan approved by the Nevada State Engineer, nor reporting data to support the amount of water proposed to be changed under this application. Without additional information GBWC cannot further contemplate the amount of water available at the source.

3. The applicant must demonstrate the financial capability to construct and maintain the necessary works of diversion to manage the project proposed under Permit No. 31321 and Application No. 92752. GBWC has no agreement with the applicant to contribute financial support or infrastructure and implicating the public utility in the project is detrimental to the public interest.

4. The applicant has not provided GBWC with water quality data to allow the utility the opportunity to evaluate potential impacts to water quality in Cold Springs Valley and existing GBWC groundwater production wells. Without the ability to evaluate that data the proposed application is detrimental to the public interest.

5. The applicant has not provided GBWC with a Nevada State Engineer issued permit for a "Project for recharge, storage and recovery of water..." that meets requirements detailed

under NRS 534.250 through 534.290 (also subject to permit terms under the base right) for carryover credit. Permit No. 31321 is issued as the "primary permit" for an artificial storage and recovery project, but additional permitting and approval by the Nevada State Engineer is required. Without additional information provided by the applicant, the utility cannot determine if the proposed project would impact existing water rights and distribution systems, as such the application is detrimental to the public interest.

6. The applicant must show land control to construct and maintain works of diversion and infrastructure to support the project. GBWC has no agreement with the applicant to contribute to or facilitate land control for his purpose and implicating the public utility in the project is detrimental to the public interest.”

CSD filed an informal protest to Water Right Application 92752 to the Nevada State Engineer on August 2, 2023. In addition to presenting that Water Right Application 92752 does not comply with Parts A and D of NRS 533.370(2), CSD finds the application is deficient on the following grounds:

“1. This source of water under this application is surface water resulting from severe precipitation events. This is not a consistent source of water as storms are infrequent and not predictable long-term. The place of use under this application reflects the Great Basin Water Company service area and is therefore presumed that the water under this application is intended to serve existing and planned permanent subdivisions. More often than not, water is not available at the source during drought years. Therefore, this is not a suitable nor a sustainable source for quasi-municipal water.

2. The granting of a permit under this application would prohibit or severely limit Washoe County’s ability to mitigate regional flooding by removing the flood waters from flood prone areas. Washoe County would be forced to leave floodwaters in place, adversely impacting Washoe County citizens, since the flood waters would be appropriated by this applicant. The manner of use, point of diversion and place of use of this permit may be contrary to the local government’s mitigation methods, who are ultimately responsible for flood mitigation efforts. This application would be detrimental to public interest for this reason.

3. The applicant’s proposal to use this water for recharge purposes is not feasible and may very well be impossible to achieve. It is doubtful that it is possible to recharge at a rate of 3.0 cfs at the locations identified by the applicant, as the target recharge area will also be saturated during precipitation events large enough to generate floodwaters. The canals, ditches, ponds/pits or pipes identified in the application will also likely be flooded or compromised during flood-producing precipitation events, severely limiting the potential for conveyance of water under this application.

4. Water Quality concerns and Great Basin Water Company source water protection by appropriate regulating agencies, such as NDEP, may prohibit permitting and any recharge of these very poor-quality flood waters. The discharge of this water would need to comply with NRS 445A, NAC 445A, and the Safe Drinking Water Act of 1977.

5. [The] Application contains flawed assertion in item #15. The point of diversion under this application is along the banks of White Lake. Therefore, granting of this permit will

not “reduce the flow of water into flood prone area...”. In fact, granting of this permit will force local governments to perpetuate flood flows into White Lake without the ability to intercept flood water upstream of White Lake. Furthermore, waters in White Lake are not “usable” as asserted by the applicant due to its poor water quality and will require high levels of treatment before they may be used for any manner of recharge or potable use. These flood waters are nuisance to the public interest at best.”

Water Right Application 93079 was filed to the Nevada State Engineer by Michael DeMartini and Renate DeMartini on October 23, 2023, to change the place of use of Water Right Permit 31321. The contents of this application appear to be similar to those presented in water right application 92752, with an expanded place of use to include additional areas within the Great Basin Water Company service area. The remarks specified on Item 15 of Water Right Application 93079 include the following:

“a). The project has two folds as follows:

i. Put water to better beneficial use for water lost to evaporation as stated in the accepted 1981 USGS open file report.

ii. Reduce the flow of water into recognized flood prone area of the closed basin thereby alleviating the flooding threat.

b) Has two benefits: providing 2,000 AFA max of usable water- and controlling 2 feet of flood level for peak flood events associated with migrating or intercepted surface waters derived from precipitation

c). Great Basin Water Company is augmenting its service territory by over 1000 acres. This is triggered partially by that.”

CSD finds that Water Right Application 93079 does not remedy the issues presented in Water Right Application 92752, and therefore does not comply with Parts A and D of NRS 533.370(2). CSD requests the Board to consider filing a formal protest to the Nevada State Engineer to deny Water Right Application 93079.

FISCAL IMPACT

FY24 has sufficient budget authority for the \$30 Protest filing fee in CSD Planning (C105401), Water/Sewer (711020).

RECOMMENDATION

It is recommended the Board of County Commissioners approve the Protest to Water Rights Application No. 93079, filed in the Office of the State Engineer, pursuant to Nevada Revised Statute 534.270.3(g)(1), requesting a change in the approved place of use of temporary surface (flood) waters of White Lake in the Cold Springs Hydrographic Basin, to preserve Washoe County’s ability to protect and manage the water resources of Washoe County as prescribed under Washoe County Code Article 422. [Fiscal impact of \$30 for Protest filing fees].

POSSIBLE MOTION

Should the Board agree with staff’s recommendation, a possible motion would be: “Move to approve the Protest to Water Rights Application No. 93079, filed in the Office of the State Engineer, pursuant to Nevada Revised Statute 534.270.3(g)(1), requesting a

change in the approved place of use of temporary surface (flood) waters of White Lake in the Cold Springs Hydrographic Basin, to preserve Washoe County's ability to protect and manage the water resources of Washoe County as prescribed under Washoe County Code Article 422. [Fiscal impact of \$30 for Protest filing fees]."