

IN THE OFFICE OF THE STATE ENGINEER  
OF THE STATE OF NEVADA

IN THE MATTER OF FORFEITURE OF WATER )  
RIGHTS AND APPLICATION FOR EXTENSION )  
OF TIME TO PREVENT A FORFEITURE UNDER )  
PERMIT 21164, CERTIFICATE 6981 FROM )  
AN UNDERGROUND SOURCE IN THE TRUCKEE )  
MEADOWS BASIN, WASHOE COUNTY, NEVADA.)

RULING

#4115

GENERAL

I.

Application 21164 was originally filed by Tahoe Timber Company of Nevada, Inc., on March 26, 1963 to appropriate the underground waters of the State of Nevada. An amended application was filed on June 14, 1963. Permit 21164 was approved on March 26, 1965 for 0.25 cubic feet per second (cfs) for manufacturing and domestic purposes. Proof of beneficial use was filed on March 17, 1969 for 0.16 cfs, to produce steam for drying lumber in kilns. Certificate 6981 under Permit 21164 was issued on April 10, 1969 for this purpose. The point of diversion is located in the SW $\frac{1}{4}$  SW $\frac{1}{4}$  Section 18, T.19N., R.19E., M.D.B.&M., and the place of use is within the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 18, T.19N., R.19E., M.D.B.&M.<sup>1</sup>

II.

Application for an extension of time to prevent a forfeiture of Permit 21164, Certificate 6981 was filed on April 2, 1991.<sup>1</sup>

III.

Tahoe Timber Company of Nevada, Inc. assigned ownership of Permit 21164, Certificate 6981, to Reno West Business Park on January 13, 1982. The deed transferring ownership was filed with the Division of Water Resources on September 1, 1983.<sup>1</sup> Reno West Business Park was bought by Jackson Properties in 1982 although the title transfer was never recorded with the office of the State Engineer.<sup>2</sup>

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<sup>1</sup> File 21164, official records in the office of the State Engineer.

<sup>2</sup> Transcript, p. 16, Public Administrative Hearing before the State Engineer, February 12, 1992.

FINDINGS OF FACT

I.

A hearing to consider the possible forfeiture and the application for extension of time submitted to prevent a forfeiture of Permit 21164, Certificate 6981 was held on February 12, 1992.<sup>3</sup>

II.

Water from a well at a different location from that described as the point of diversion under Permit 21164, Certificate 6981, was used by certain businesses for domestic, fire-protection and irrigation use and the well was the sole supply of water.<sup>4</sup> Jackson Properties sent a letter to Morrey Distributing Company indicating that they would continue to provide water to the users in the Reno West Business Park and that within twelve (12) months, either the private water system would be improved or water from Sierra Pacific Power Company, a water purveyor for the west Reno area, would be brought into the development.<sup>5</sup> On behalf of Jackson Properties, Roy Hibdon, Civil Engineering Consultant, quantified Sierra Pacific Power Company hook-up costs for the Truckee Meadows Fire Station, EPCO and Morrey Distributing and letters were subsequently sent out to Jackson Properties on May 9, 1986.<sup>5</sup> The State Engineer finds that Jackson Properties was supplying water from an unpermitted point of diversion. The State Engineer further finds that Jackson Properties was selling and providing water for an illegal use, because the manner of use under Certificate 6981 is to produce steam for drying lumber.<sup>6</sup>

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<sup>3</sup> Public Administrative Hearing before the State Engineer, February 12, 1992.

<sup>4</sup> Transcript, p. 16, and Exhibit No. 6, Public Administrative Hearing before the State Engineer, February 12, 1992.

<sup>5</sup> Transcript, pp. 19-21, and Exhibit No. 7, Public Administrative Hearing before the State Engineer, February 12, 1992.

<sup>6</sup> NRS 533.325 and 533.345 provide the exclusive statutory mechanism to change the manner of use of an existing water appropriation.

III.

EPCO, located at 130 Woodland Avenue, Truckee Meadows Fire Station, located at 100 Woodland Avenue, and Mission Oaks Joint Venture, located at 120 Woodland Avenue, are not located within the place of use of Permit 21164, Certificate 6981.<sup>1</sup> The State Engineer finds that Jackson Properties was selling and providing water to locations that are outside the place of use of Permit 21164, Certificate 6981.

IV.

The State Engineer began a formal program of monitoring the groundwater pumping in the Truckee Meadows in 1985. The records show that no water was pumped from the point of diversion under Permit 21164, Certificate 6981 during the years 1985, 1986, 1987, 1988, 1989 and 1990.<sup>7</sup> Division of Water Resources staff engineers testified that they visited the point of diversion and place of use in 1986, 1987, 1988, 1989 and 1990 and observed that the point of diversion under Permit 21164, Certificate 6981 was not equipped with a pump, nor did it have any visible power running to it. Testimony also indicated that no water was put to beneficial use for those years mentioned.<sup>8</sup> The State Engineer finds that a continuous period of non-use, greater than 5 years, for Permit 21164, Certificate 6981, began in 1985 according to the Truckee Meadows Monitoring Program, and continues to the present time.

V.

Westpac Utilities, a subsidiary of Sierra Pacific Power Company, provided water to EPCO, Truckee Meadows Fire Station and Mission Oaks Joint Venture on April 28, 1986.<sup>9</sup> The State Engineer finds that even if the permittee felt that serving these locations with water qualified for use under Permit 21164, Certificate 6981,

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<sup>7</sup> Exhibit No. 5, Public Administrative Hearing before the State Engineer, February 12, 1992.

<sup>8</sup> Transcript pp. 7-15, testimony by Stephen Walmsley and Tony Greene.

<sup>9</sup> Transcript, pp. 16-17, Public Administrative Hearing before the State Engineer, February 12, 1992.

he ceased water service in 1986, when Westpac Utilities began service.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the subject matter of this action.<sup>10</sup>

II.

The State Engineer, since 1905, has issued permits from a specific point, for a specific use at a specific location.<sup>11</sup> Nevada water law provides for the exclusive method by which to change the point of diversion, place of use and/or manner of use can be accomplished.<sup>12</sup>

III.

Failure for a period of five consecutive years to use beneficially the underground water for the purpose for which it is acquired works a forfeiture of the water right.<sup>13</sup>

IV.

NRS 534.090(2) allows the State Engineer to extend the time necessary to work a forfeiture provided a request is made before the expiration of the time necessary to work a forfeiture.

V.

Jackson Properties was providing water from a point of diversion different from that described under Permit 21164, Certificate 6981, to a location outside the place of use under Permit 21164, Certificate 6981, and for a purpose different than that allowed under Permit 21164, Certificate 6981. An application to change the point of diversion, place and manner of use was not filed with the State Engineer. The State Engineer concludes that

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<sup>10</sup> NRS Chapters 533 and 534.

<sup>11</sup> NRS 533.335.

<sup>12</sup> NRS 533.040.

<sup>13</sup> NRS 534.090.

the service of water by Jackson Properties cannot be considered use under Permit 21164, Certificate 6981.

VI.

Water was not used under Permit 21164, Certificate 6981 for the years 1985, 1986, 1987, 1988, 1989 and 1990. The State Engineer concludes that a continuous period of non-use, greater than five years, has occurred and the use of water under Permit 21164, Certificate 6981 should be forfeited.

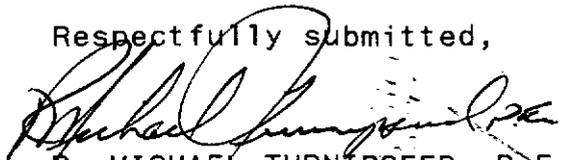
VII.

The application for extension of time to prevent a forfeiture was filed in 1991, after the period of non-use had occurred. The State Engineer concludes that the application for extension of time should be denied.

RULING

The Application for Extension of Time to Prevent a Forfeiture is herewith Denied and the right to beneficially use the water under Permit 21164, Certificate 6981 is hereby declared Forfeited.

Respectfully submitted,

  
R. MICHAEL TURNIPSEED, P.E.  
State Engineer

RMT/JHK/pm

Dated this 25th day of  
May, 1994.