

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

IN THE MATTER OF PERMIT 35232, )  
CERTIFICATE 12920, FILED TO )  
APPROPRIATE INDUSTRIAL EFFLUENT )  
WITHIN THE TRACY SEGMENT )  
HYDROGRAPHIC BASIN (083), STOREY )  
COUNTY, NEVADA. )

RULING

**#5814**

GENERAL

I.

Application 35232 was filed on March 30, 1978, by Westcoast Oil and Gas Corp. to appropriate 0.2785 cubic feet per second (125 gallons per minute) of the industrial effluent from the Sierra Pacific Power Company Tracy Power Plant located within Storey County, Nevada. The water was to be pumped to the Gooseberry Mine where it was to be used for milling, mining and domestic purposes. The proposed place of use was described as being located within the E½ of Section 26, Section 25, and the N½ of Section 36, T.19N., R.22E., M.D.B.&M. The proposed point of diversion was described as being located within the NE¼ NW¼ of Section 33, T.20N., R.22E., M.D.B.&M.<sup>1</sup>

FINDINGS OF FACT

I.

Application 35232 indicated that the Applicant and Sierra Pacific Power Company would enter into an agreement for the purchase of the effluent. On July 11, 1978, the Applicant filed an agreement dated June 19, 1978, that allowed the Applicant to use the industrial effluent. However, the original agreement indicated that its term was for a period of five years from the date Westcoast completed the installation of referenced equipment, including the installation of the piping, pump and motor to monitor the diversion and consumptive use of the effluent. An additional five-year extension was possible.<sup>1</sup>

<sup>1</sup> File No. 35232, official records in the Office of the State Engineer.

A permit was issued under Application 35232 on August 24, 1978, and indicated that the granting of the permit carried with it no provision or guarantee for the continuous use or availability of the water since the source was industrial effluent.<sup>1</sup> Proof of completion of the works for diversion of the water was filed in the Office of the State Engineer on February 7, 1980.<sup>1</sup> There is no evidence in the file that the agreement was extended past the original five-year period of time.

The State Engineer finds that the five-year period under the agreement for use of the industrial effluent would have run from February 7, 1980, to February 7, 1985.

## II.

Permit 35232 was assigned on April 13, 1983, in the records of the Office of the State Engineer to Asamera Minerals (US), Inc.<sup>1</sup>

After multiple extensions of time for filing proof of beneficial use of the water, on March 23, 1987, the permit holder filed its Proof of Application of Water to Beneficial Use.<sup>1</sup> The filing indicated water use from March 1983 through February 1984, but did not indicate any use of water past that timeframe. Certificate 12920 was issued under Permit 35232 on August 5, 1991, and indicated that it was issued solely for industrial effluent that would otherwise be evaporated, that the certificate carried with it no provision or guarantee for the continuous use or availability of the water, and that the certificate was issued subject to the terms and conditions of the agreement between Sierra Pacific Power Company and Westcoast Oil and Gas Corp.<sup>1</sup> There is no indication in the file that the agreement between Westcoast Oil and Gas Corp. and Sierra Pacific Power Company was ever extended past the five-year term of the original agreement.

On August 30, 1994, Permit 35232, Certificate 12920 was assigned to Pallas Resource Corporation.

The State Engineer finds there is no evidence that the original agreement entered into between Westcoast Oil and Gas Corp. and Sierra Pacific Power Company was ever extended past the original five-year term of the agreement. The State Engineer finds the issuance of the permit and certificate were conditioned on the

agreement as to the use of the industrial effluent and both the permit and certificate indicate there was no provision or guarantee for the continuous use or availability of water since the source was industrial effluent. The State Engineer finds there is no evidence that water was ever used past February 1984. The State Engineer finds since there is no evidence of continuation of any agreement for continued use of the industrial effluent, there is no water source that supports the continued existence of either the permit or certificate. The State Engineer finds the failure of the water right holder to extend the agreement indicates an intent to abandon the permit and certificate.

### III.

By letter dated August 29, 2007, to Pallas Resource Corporation the State Engineer informed the water right holder that it appeared that the terms of the agreement to use the water had expired and requested Pallas to provide within 30 days of the date of the letter evidence of an agreement to use the water. The State Engineer's letter indicated that if no response was received within the 30 day period it would be assumed that Pallas has no further interest in pursuing the right to use the water and the right would become subject to further administrative action by the State Engineer. The certified letter to Pallas Resource Corporation was returned by the United States Postal Service to the Office of the State Engineer with an indication of "Attempted Not Known." The State Engineer finds it is the responsibility of a water right holder to keep the Office of the State Engineer informed as to a current address. The State Engineer finds based on the fact that no current agreement is in place to use the water and the water right holder has not kept the Office of the State Engineer informed as to a current address that there is sufficient evidence to find that the water right holder has abandoned the right to use the water under Permit 35232.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>2</sup>

II.

Nevada Revised Statute § 533.035 provides that beneficial use is the basis, the measure and the limit of the right to use water. Nevada Revised Statute § 533.045 provides that no person shall be permitted to divert or use the waters of this state except at such times as the water is required for a beneficial purpose. There is no evidence that the permit holder has any right by agreement to use of the effluent water originally permitted for use under Permit 35232; therefore, the water cannot be placed to beneficial use as authorized by the permit. A water-right holder's non-use of a water right is some evidence of an intent to abandon the right and the longer the period of non-use, the greater the likelihood of abandonment and a prolonged period of non-use raises an inference of an intent to abandon the water right.<sup>3</sup>

The State Engineer concludes on the grounds that there is no evidence of an agreement providing for use of the water since 1985, and there is no evidence of water use past February 1984, and since the permit and certificate were entirely dependent upon the agreement to use the industrial effluent as the source of water, there is no right to divert or beneficially use the water and the permit and certificate should be declared abandoned.

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<sup>2</sup> NRS chapter 533 and 534.

<sup>3</sup> *U.S. v. Alpine*, 27 F.Supp.2d 1230 (D.Nev. 1998), 291 F.3d 1062 (9<sup>th</sup> Cir. 2002), 340 F.3d 903 (9<sup>th</sup> Cir.2003).

RULING

Permit 35232, Certificate 12920 is hereby declared abandoned.

Respectfully submitted,

*TTT, P.E.*

TRACY TAYLOR, P.E.  
State Engineer

TT/SJT/jm

Dated this 10th day of  
January, 2008.