

IN THE OFFICE OF THE STATE ENGINEER

IN THE MATTERS OF APPLICATIONS FOR)
EXTENSION OF TIME UNDER WATER RIGHT)
PERMITS 39999 AND 40000, AND OF)
APPLICATIONS 52403 AND 52404 TO)
APPROPRIATE WATER FROM AN)
UNDERGROUND SOURCE IN TRUCKEE)
MEADOWS GROUNDWATER BASIN (BASIN)
87), WASHOE COUNTY, NEVADA.)

RULING

GENERAL

I.

Permit 39999 was approved June 30, 1983, to appropriate 0.668 CFS, but not to exceed 25.76 MGA, of water from an underground source for quasi-municipal purposes to serve 160 single family townhouse residences and other related purposes within the place of use described by the permit. The total combined duty of water under Permits 39999 and 40000 must not exceed 25.76 MGA. Trandec, Inc. is current owner-of-record.¹

Permit 40000 was approved June 30, 1983, to appropriate 0.668 cubic feet per second (CFS), but not to exceed 25.76 million gallons annually (MGA), of water from an underground source for quasi-municipal purposes to serve 160 single family townhouse residences and other related purposes within the place of use described by the permit. The combined duty of water under Permits 39999 and 40000 must not exceed 25.76 million gallons annually (MGA). Trandec, Inc. is current owner-of-record.¹

Permit 42713 was approved June 30, 1983, to change the point of diversion of 1.13 CFS, but not to exceed 303 acre-feet annually (AFA), 98.733 MGA, of water from the Truckee River, previously appropriated under Permit 31939, to be used for quasi-municipal purposes to serve 160 single family residences and other related purposes within the place of use described by Permit 42713. Trandec, Inc. is current owner-of-record.¹

Permit 31939 was approved August 1, 1980, to change the manner of use and place of use of 1.13 CFS, but not to exceed 303 AFA (98.733 MGA), of water from the Truckee

¹ Public record in the office of the State Engineer, Nevada Division of Water Resources, Carson City, Nevada.

River, previously appropriated under Claim 52 of the Truckee River Decree,² to be used for quasi-municipal purposes to serve 160 single family residences and other related purposes within the place of use described by Permit 31939.¹ Trandec, Inc. is the current owner of record.

Application 52403 was filed on August 10, 1988, by Westpac Utilities to change the point of diversion, manner of use and place of use of 0.668 CFS, not to exceed 25.76 MGA, of water from an underground source, previously appropriated under Permit 39999, to be used for municipal purposes within the place of use specified by the application. Application 52403 was ready-for-action November 30, 1988.¹

Application 52404 was filed on August 10, 1988, by Westpac Utilities to change the point of diversion, manner of use and place of use of 0.668 CFS, not to exceed 25.76 MGA, of water from an underground source, previously appropriated under Permit 40000, to be used for municipal purposes within the place of use specified by the application. Application 52404 was ready-for-action November 30, 1988.¹

II.

An administrative hearing was conducted in the matter of Applications for Extension of Time under Permits 39999 and 40000 to acquire additional information and to provide permittee the opportunity to better explain the circumstances affecting progress to comply with permit requirements and to complete the project to be served under Permits 39999 and 40000.³

The entire official record files for Permits 39999 and 40000 were incorporated as part of the hearing record by administrative notice of the Hearing Officer.⁴

² Truckee River Decree, aka Orr Ditch Decree: In the District Court of the United States in and for the District of Nevada; In Equity, Docket No. A3; the United States of America vs. Orr Water Ditch Company, et al.; Final Decree, September 8, 1944. Copy of this decree is on file as public record in the office of the State Engineer.

³ Administrative hearing conducted Tuesday, February 21, 1989, 9:30 A.M., at Reno City Hall Council Chamber, 490 S. Center Street, Reno, Nevada, in the matter of Applications for Extension of Time under Permits 39999 and 40000. Transcript of this hearing is on file as public record in the office of the State Engineer.

⁴ Transcript of Administrative Hearing, Page 7; Refer to Footnote 3 of this Ruling.

III.

Proofs of Completion of Work were filed July 7, 1987, under Permit 39999, and July 13, 1987, under Permit 40000.¹

Proof of Beneficial Use and PBU Map were required to be filed on or before the due date of July 30, 1988, under each Permit 39999 and 40000.¹

Applications for Extension of Time to submit Proof of Beneficial Use under Permits 39999 and 40000 were received in the State Engineer's office on August 25, 1988.¹

IV.

Permits 39999, 40000 and 42713 were approved by the State Engineer pursuant to the Stipulation, dated May 12, 1983, and the Order of Dismissal, dated May 26, 1983, approved by the Second Judicial District Court, Washoe County, Nevada, Department No. 4, Case No. 79-9057.¹

V.

Permits 39999, 40000, and 42713 specify the same place of use and the same manner of use.¹

FINDINGS OF FACT

I.

The proposed beneficial use under Permit 39999 and 40000 is described in the tentative map for the Trandec project which was approved about November 1986, and originally provided for approximately 325 single-family units. The project later was reduced to 168 units. This reduction resulted in Trandec having water rights in excess of that needed for the project. The final subdivision map has not been recorded with the county recorder.⁵

II.

There is an option agreement between Trandec and Westpac Utilities, to the effect that Westpac will purchase the water rights under Permits 39999 and 40000. This

⁵ Transcript of Administrative Hearing; Pages 17, 20, 30, 31, 51; Footnote 3.

purchase is not associated with the subdivision and is subject to the water rights being transferred to Westpac and to adequate extensions of time to allow the transfer to take place.⁶

Westpac intends that the groundwater rights will be removed from the project and will serve the Westpac total system, as municipal use.⁷

Westpac intends to offer these groundwater rights to developers. Any new development would have access to allocation of the groundwater source.⁸

The Trandec project will not utilize these groundwater rights, because surface water rights will be transferred to the project. Westpac will have adequate water to serve the Trandec project after dedication of the surface water rights.⁹

Applications 52403 and 52404 propose to remove the water rights under Permits 39999 and 40000 from serving the project area to serving the entire service territory of Westpac for municipal supply purposes.¹⁰

Westpac is obligated to serve the subdivision whether or not Applications 52403 and 52404 are approved.¹¹

III.

Water for the project will be appropriated from the Truckee River under Permit 42713, originally decreed under Claim 52, Truckee River Decree.² Trandec allocated approximately 212 acre-feet, 69.08 million gallons, of this water to supply the project.¹²

There is an agreement attached to the service area expansion which allocates this water for the project. The service area expansion is the annexation agreement approved by the Public Service Commission. The annexation approval includes a will-serve

⁶ Transcript of Administrative Hearing; Pages 13, 33, 43; Footnote 3.

⁷ Transcript of Administrative Hearing; Pages 45, 47, 50; Footnote 3.

⁸ Transcript of Administrative Hearing, Page 56; Footnote 3.

⁹ Transcript of Administrative Hearing, Pages 46, 47, 55; Footnote 3.

¹⁰ Transcript of Administrative Hearing, Pages 44, 45; Footnote 3.

¹¹ Transcript of Administrative Hearing, pages 49, 50, 51; Footnote 3.

¹² Transcript of Administrative Hearing, Pages 46, 47, 51, 55; Footnote 3.

commitment for the project. The water rights to serve the project will be dedicated to the City of Reno at the time the final map is recorded. The City will lease the rights to Westpac, and Westpac will serve the project from Westpac water rights as appropriate. Westpac will not issue a will-serve letter for the subdivision until the surface rights are dedicated.¹²

IV.

No houses (single-family units) have been built for the project.¹³

V.

Existing valid permitted and certificated water rights approved to appropriate underground water from Truckee Meadows Groundwater Basin for municipal, wildlife, commercial, irrigation and other purposes total approximately 68,000 acre-feet annually, which exceeds the estimated perennial yield of the basin of 25,000 acre-feet annually.¹

VI.

Nevada Revised Statutes provides that Proof of Beneficial Use must be filed with the State Engineer by the due date specified by the Permit, that the State Engineer may grant an extension of time for good cause shown, upon application properly submitted for the extension of time, and that the Permit must be cancelled upon failure to comply.¹⁴

Applications for Extension of Time for submitting the Proofs of Beneficial Use under Permits 39999 and 40000 have been submitted. The concepts of reasonable diligence and good faith as set forth under the provisions of NRS 533.395(1) and related case law mandates discussion in the context of the original intent manifested under the subject permits in this matter. The principles or guidelines respecting diligence may necessarily vary, depending on what beneficial use of the water is intended by the permittee; the intent being expressed in the application to appropriate. Reasonable

¹³ Transcript of Administrative Hearing, Page 58; Footnote 3.

¹⁴ NRS 533.410. NRS 533.395(1). The Nevada Supreme Court in Engleman v. Westergard, 98 Nev. 348, 647 P.2d 385 (1982), reaffirmed the necessity of an applicant exercising reasonable diligence in putting water to beneficial use as required by statute. See also, Vol. I, W. A. Hutchins, Water Rights Laws in the Nineteen Western States, pp. 373-389 (1971).

diligence and good faith are important public policy concepts, in view of the limited and finite nature of the water resource, and it is imperative that the statutory appropriation process not be abused through monopoly of a public resource. The record does not support progressive and diligent development of the resource consistent with the permittee's original intent. Rather, the record demonstrates an intent of monopolizing or reserving the right indefinitely through extensions of time to the detriment of both other applicants for appropriations and the general public. Accordingly, the State Engineer finds that the permittee is no longer proceeding toward placing the water to a beneficial use as originally intended in its applications, that the permittee has violated the established prerequisite guideline for a finding of due diligence and good faith. The State Engineer further finds that, to grant extensions of time for the filing of beneficial use to a permittee in the face of evidence that the permittee is not proceeding in good faith and reasonable diligence to carry out the original intent of the appropriations, would not be in the public interest.

VII.

Applications to appropriate underground water from the Truckee Meadows Groundwater Basin for quasi-municipal, commercial, mining and milling, industrial, irrigation and stockwatering purposes have been denied by the State Engineer.¹⁵

CONCLUSIONS

I.

The State Engineer has jurisdiction of the subject matter of this action.¹⁶

¹⁵ Refer to denied Applications 29430, 29442, 30923, 30924, 30925, 31503, 31504, 31505, 31823, 31824, 32539, 33124, 33125, 33126, 33289, 33357, 34548, 34549, 34550, 34551, 34552, 34553, 34554, 34555, 34556, 34641, 34642, 34683, 34684, 34717, 34718, 34719, 34723, 34756, 34895, 34896, 34943, 34972, 35034, 35035, 35036, 35037, 35071, 35076, 35132, 35205, 35485, 35514, 35635, 36184, 38037, 38038, 39399, 39878, 40988, 40989, 40990, 40991, 41034, 41035, 41036, 41826, 43788, 48038, 48522, 49035, 49473, 49474, 49475, 49672 and 49817. Public record in the office of the State Engineer.

¹⁶ Nevada Revised Statutes (NRS) Chapters 533 and 534.

II.

Nevada Revised Statutes provides that beneficial use shall be the basis, the measure and the limit of the right to the use of the water.¹⁷

III.

A final map has not been recorded for the Trandec project.

IV.

Permits 39999 and 40000 were approved by the State Engineer to appropriate 25.76 MGA of water from an underground source to serve 160 single family townhouse residences and other related purposes. Permit 42713 was approved by the State Engineer to appropriate 303.0 AFA (98.733 MGA) of water from the Truckee River to serve 160 single family residences and other related purposes. Permits 39999, 40000, and 42713 were approved to serve a total of 320 single family dwelling units and specify the same place of use as Permit 42713.

V.

The tentative map for the Trandec project was approved about November 1986 for approximately 325 units. The project later was reduced to approximately 168 units. This reduction in the size of the project resulted in Trandec having water rights in excess of that needed for the 168 unit project.

VI.

The Trandec project will not beneficially utilize the groundwater rights under Permits 39999 and 40000, because the Truckee River rights under Permit 42713 (formerly Claim 52, Truckee River Decree) are adequate to serve the 168 unit project. Trandec has allocated approximately 212 acre-feet (69 million gallons) of Claim 52 rights for the project.

The Public Service Commission has approved a Westpac service area expansion to include the Trandec project. The Truckee River rights (Claim 52) will be dedicated to serve the Trandec project at the time that the final map for the project is recorded.

¹⁷ NRS 533.035.

Westpac will not issue a will-serve letter for the subdivision until the Claim 52 rights are dedicated.

VII.

If the State Engineer approves Water Right Applications 52403 and 52404, the water rights will be severed from the project, and will become part of the Westpac system. Westpac intends that these groundwater rights will be removed from the project and will serve the Westpac total system, as municipal use.

Westpac intends to offer these groundwater rights to developers. Any new development could have access to allocation of this water.

VIII.

The State Engineer concludes that the permittee has not proceeded in good faith and with reasonable diligence in placing water under Permits 39999 and 40000 to beneficial use, based upon the record of evidence and testimony.¹⁸

RULING

I.

The Applications for Extension of Time under Permits 39999 and 40000 are hereby denied on the grounds that the permittee has not proceeded in good faith and with reasonable diligence to place the water to beneficial use.

II.

Permits 39999 and 40000 are hereby cancelled.

III.

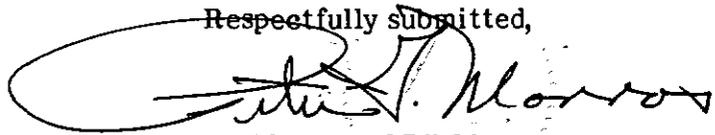
The wells under Permits 39999 and 40000 must be plugged within 60 days of the date of this Ruling in compliance with Nevada well drilling regulations, unless there are other valid water rights utilizing these wells.

¹⁸ NRS 533.395.

IV.

Applications to change 52403 and 52404 are hereby denied on the grounds that there is no existing water right to be changed, because Permits 39999 and 40000 are cancelled.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Peter G. Morros", is written over a large, loopy oval scribble.

PETER G. MORROS
State Engineer

PGM/RLT/bk

Dated this 19th day of
July, 1989.