

Conclusion: Use Permit 17-92 Expired on August 25, 1999 pursuant to Condition # 3 of Shasta County Board of Supervisors' Resolution #17-183

A complete review of the Planning Department file pertaining to Use Permit No. 17-92 reveals the following documentation listed by year. The material below describes all documentation relating to requests for and/or the granting of extensions. It is clear that Use Permit No. 17-92 expired on August 25, 1999 pursuant to Condition #3 of Resolution No. 92-183.

Also included is a request for "minor modification" submitted four and a half years after the expiration . It is a request for a replacement well "**due to the limited water volume at the existing well.**"

1992

Controlling Document– Shasta County Board of Supervisors' Resolution No. 92-183

Use Permit 17-92 approved by Resolution No. 92-183 on August 25, 1992. This resolution denied the appeal of Philip Folino and upheld the earlier approval of Use Permit 17-92 subject to the findings and amended conditions.

Condition 3. " This use permit shall become **automatically revoked** without further actions by Shasta County **if the activity or use for which the use permit was granted has not actively and substantially commenced within two years of the date of approval.** An annual report shall be submitted to the Planning Division documenting progress of the project."(Emphasis added).

The permit "allows the establishment of a water extraction operation. The operation will extract approximately 26,000 gallons of water per day from Crook Springs for transfer and sales to bottling plants."

"Commissioner Scholes voted NO on the project, because of water availability in the area."

1994

One year extension granted by Planning Commission – Sept. 22, 1994 – Resolution No. 95-057

By letter dated June 28, 1994 the permit holders, Lawrence and Melinda Adams, requested an extension. Their letter states, "Under Statement of Conditions, condition number three granted up to two years to complete the improvements for Use Permit # 17-92. Due to special circumstances we are not able to complete all of the improvements at this time. We would like a one year extension on the amount of time allocated. The following improvements have been

completed or are ready to proceed(sic): Condition # 5 . . . Condition # 8 . . . Condition # 11 . . . Condition # 30 . . .” The applicants erroneously state that it is only the improvements rather than the actual extraction of water which must commence within two years. Nonetheless, their request for extension was timely.

Pursuant to the recommendation of the Planning Department, on September 22, 1994, the Planning Commission passed Resolution 95-057 to approve the extension.

All parties were cognizant of the fact that without an extension, Permit 17-92 would automatically expire.

1995

Result: Two year extension pursuant to Resolution No. 96-23. New expiration date: 8/25/1997

By letter dated June 16, 1995 the Adams stated “We are requesting a one year extension of the application for use permit 17-92 (Hidden Meadow Spring Water). Due to the extreme weather conditions, we do not anticipate completing the improvements mandated by Use Permit 17-92 within the given time frame. . . . Unfortunately, the excessive rainfall of 1994-95 has enlarged the spring area, making completion of the underground pipeline impossible. According to the waiver with Fish and Game we must wait for the meadow to dry, to minimize damage to the surrounding riparian habitat. Due to the continuing rainfall we cannot meet the application deadline. Please consider this when reviewing our request for the extension.”

Pursuant to Resolution No. 96-23 The Planning Commission “approves a two year extension of time for Use Permit 17-92, with a new expiration date of August 25, 1997, subject to the original conditions as set for in the Board of Supervisors Resolution 92-183.” Commissioner Eide voted “no.”

By letter dated August 16, 1995, the Department of Resource Management advised the applicants that they were “now authorized to engage in the use or undertake the activity described in the use permit, **provided that all conditions required to be met prior to initiating the activity have been completed.** The Use Permit will be deemed to be automatically revoked if the approved uses(s) are not actively and substantially commenced within two years of the date of its approval, August 25, 1997, or unless an extension of time has been applied for prior to the expiration of the two year period and approved by the County.” (emphasis and underlines are in the original).

1996

The Adams submit a request for a “minor modification” to “replace the office with a residence which may be used occasionally as an office.” By letter dated September 24, 1996, the Adams are advised that “initiation of the water extraction operation and use of the residence as an office is not allowed until all the conditions of UP 17-92 have been satisfied.”

1997

Result: Pursuant to Resolution 97-122 a two year extension granted. New expiration date is August 25, 1999.

By letter dated July 7, 1997, the Adams request on one year extension. The letter states “we could not obtain an easement for power so we purchased the adjoining (sic) lot . . . Unfortunately, we lost time on the project due to illness and a death in our immediate family. We are however, completing negotiations with Mt. Rose Spring Water and Certes Inc. for production and sale of bulk spring water. We expect to be in production within six months.”

The July 7, 1997 request for extension outlined additional progress the Adams accomplished, “The following is a list of permits that we have obtained to go ahead with this Project: an Army Corp of Engineers permit, a Department of Fish & Game permit, a Shasta County grading permit. We had the road extension surveyed and obtained engineering for the extension of Hidden Meadow Road (put out to bid). We have installed an underground waterline and had Pacific Gas & Electric install the powerline and turn on power. We have installed the 5 h.p. pump and it is at this time operational. We had our use permit application amended to allow for residence and this took three months.”

By letter dated July 8, 1997, Certes Corporation – “high Mountain Spring Water” Development Company confirms that it is “putting together the funds to purchase the water from Larry and Melinda Adams from their spring site at Hidden Meadows.” Certes’s President states that he has read the two year extension granted on August 16, 1995 and expiring on August 25, 1997. He notes that “It is going to take up to 10 months to complete the financial process and reach an agreement that is mutually agreed upon by Larry and Melinda Adams, and Certes and Associates. With the loss of the use permit many hours and valuable time would be lost. The development of the water source as a bulk source, and the marketability of the water source itself is the motive for the purchase. Certes respectfully asks the County Planning to grant the one year extension to the Adams.”

The Adams’ request for extension was made prior to the expiration date of August 25, 1997.

Resolution 97-122 passed on September 11, 1997 (slightly after the expiration date) approved “an extension of time for Use Permit 17-92, to August 25, 1999, subject to the conditions as set forth in Board of Supervisor’s Resolution No. 92-183.”

Provision 2. C. of Resolution 97-122 states that “The applicants have demonstrated that due to circumstances beyond their control, they have not been able to make a substantial start within the time limits of the previous extension of time approval.” (underline not in original).

By 1997 numerous improvements and work had been accomplished.
IT IS CLEAR THAT ALL AGREED AND UNDERSTOOD THAT THE USE PERMIT WAS FOR THE EXTRACTION OF WATER FOR BOTTLING WAS NECESSARY TO MEET CONDITION 3 of Use Permit 17-92 i.e. “to actively and substantially commence.”

By letter dated September 12, 1997, the Shasta County Department of Resource Management advised the Adams of “New Expiration Date: August 25, 1999.”

1999

By letter dated July 16, 1999 the Department of Resource Management reminds the Adams that the permit “Expires: 08/25/99.” “You are now authorized to engage in the use or undertake the activity described in the use permit, provided that all conditions required to be met prior to initiating the activity have been completed. . . . Any change in the approved use or activity will require review by the Department of Resource Management Planning Division, and may require either an amendment to the permit or an entirely new use permit.”

NO FURTHER EXTENSION OF USE PERMIT 17-92 WAS REQUESTED. NONE HAS BEEN GRANTED. BY THE EXPRESS TERMS OF RESOLUTION 92-183 (specifically condition 3) THE PERMIT IS “AUTOMATICALLY REVOKED WITHOUT FURTHER ACTION BY SHASTA COUNTY” BECAUSE THE “ACTIVITY OR USE FOR WHICH THE USE PERMIT WAS GRANTED HAS NOT ACTIVELY AND SUBSTANTIALLY COMMENCED WITHIN TWO YEARS OF THE DATE OF APPROVAL” (the applicants timely applied for and were granted extensions until August 25, 1999)

The Applicant did not comply with the annual reports provision of Condition 3. The file reflects no report from 1992 until the request for extension dated June 8, 1994. As noted earlier, the June 1994 request refers to Conditions #5, #8, #11, #30.

Similarly it is unclear whether the request for extension dated June 16, 1995 meant to serve as an annual report as well as well as a request for extension. The file reflects no annual report for 1996. (There is a request to remove the office from the project and replace it with a residence.)

The Request for Extension dated July 1997 may have served as an annual report. No further “annual” reports are in the file.

Condition 15 provided that “Water extraction shall not exceed the rate of 26,000 gallons per day or 29 acre feet per year . . . a written report shall be submitted to the Planning Division quarterly.” NO QUARTERLY WATER USAGE REPORT WAS SUBMITTED FROM THE PASSAGE OF BOARD OF SUPERVISORS’ RESOLUTION 92-183 THROUGH THE EXPIRATION DATE OF AUGUST 25, 1999.

2000-2002 and 2005 quarterly report

Only two “Quarterly Water Usage Report” appear in the file. Both are well after the permit had expired. A report dated August 28, 2002 notes that the “pumping station building was finalized (sic) by Shasta County Building Division this quarter but no water was shipped.” A letter dated February 3, 2005 from Adams entitled “RE: Quarterly water report as per condition #15 of Use Permit #17-92” “No spring water was extracted during the fourth quarter of 2004.

The file also has a letter from Department of Resource Management permitting “a minor modification to Use Permit 17-92 as approved by Board of Supervisors’ Resolution 92-183, allowing the installation and utilization of a 26,000 gallon, 12-foot-high, water storage tank in conjunction the water extraction operation. The location as well as the housing for the pump and other aspects of the proposal shall be as described in your letter dated May 31, 2000. All other terms and conditions of approval of Use Permit 17-92 remain in full force and effect.”

There is no requesting letter (May 31, 2000) in the file.

More significantly, Use Permit had expired pursuant to Condition #3

2005

February 3, 2005 - Four and one half years after the expiration on August 25, 1999 of Use Permit 17-92 Lawrence Adams wrote the Planning Department to “request a minor modification to Use Permit #17-92(Adams) as allowed in condition #2 of said Use Permit.”

“Due to the **limited water volume at the existing well**, I would like to replace it in a slightly different location. A geophysical groundwater investigation was performed by Luhdorff & Scalmanini Consulting Engineers of Woodland. Their investigation assures that the new well location will produce an adequate volume.” (emphasis added).

Based on the **admission that the current well had/has limited volume** (thus calling into question the validity of the initial water report on which the permit for 26,000 gallons was

granted in 1992) even if the applicant was in a position to request another extension, the wiser course would clearly be to require a new application rather than proceeding by amendment. That is, **if there was insufficient volume in the existing well for the extraction of the authorized 26,000 gallons per day (Use Permit 17-92) , the accuracy of the underlying hydrological report is questionable. However, this issue is not before Planning, the applicants or the community. It is clear from a review of the file that Use Permit 17-92 expired on August 25, 1999.**

Kent:

We discussed the above issues a couple times and I sent a brief note in February. I don't know where the applicants are in submitting a new application. The above is a thorough summary of the "permit expiration issue" for review by you and Resource Management.

I hope you find it helpful in assessing any new application Hidden Meadows Springs Co/Adams may submit clearly **the law requires a new application, not an amendment.** I am confident there will be a legal challenge if the applicants are allowed to proceed by amendment.

I think it would be prudent as well to review the quick note I sent you in February 2009 discussing the fallacy of classifying water as a "mineral." Again, I think any attempt to classify water as a mineral, will also result in a legal challenge by citizens.

Sincerely,

Beth Livezey

August 25, 2009 (No significance intended on the 10 yr. anniversary of the expiration of Permit No. 17-92

cc: Rachael Hooper
Les Baugh
✓ Dick and Coleen Rullman