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Washoe County Planning Commission
c/o Washoe County Clerk
1001 E. Ninth St., Building A
Reno, Nevada 895012

Re: Truckee Meadows Water Authority: WAC21-0005
Hearing Date: November 2, 2021


Dear Commissioners:

This letter is submitted by the Truckee Meadows Water Authority (“TMWA” or “Applicant”), a political subdivision of the State of Nevada and joint powers authority, and the regional municipal water purveyor in Washoe County and successor of the Washoe County Water Utility. This letter is about TMWA’s request for a two-year extension of time for an existing Special Use Permit (SW07-017) and Variance (VA07-021) authorizing construction of a booster pump station (the “Verdi #1 PS”) as part of the extension of regional surface water system facilities to West Reno and the Verdi area (the “Verdi Backbone Water Facilities”).

TMWA appreciates the request for an extension 14 years after the original approval is unique. However, so are the critical regional water supply facilities authorized by the Special Use Permit and Variance. Unlike typical applicants, TMWA is a governmental entity whose mission is to provide water to the public, and TMWA is legally obligated to develop the water system facilities at issue in these approvals. As described below, we believe the extension for the Special Use Permit and Variance are warranted and in the best interest of the public.

A. TMWA’s Role As Regional Water Purveyor

Pursuant to the Cooperative Agreement creating TMWA, to which the County is a party, TMWA is obligated to provide retail water service to users in its service area. To carry out these duties, TMWA must identify and plan for water service needs within its service areas. TMWA’s integrated planning processes ensures the long-term resource, facility, and funding mechanisms are in place to meet current and future water demand. When and how growth occurs is solely within the land use entitlement and planning functions of cities, counties, and regional planning agencies. By contrast, TMWA must engage in long-term water supply planning to ensure its ability to deliver safe and reliable water supplies when growth occurs. TMWA’s water system is large and complex, and comprehensive water planning must occur years, if not decades, in advance of anticipated growth. It is a long-term process that requires TMWA to acquire rights of way, easements, and fee parcels and to secure entitlements for water facilities far in advance of actual demand.



While TMWA must be prepared to provide water service when growth occurs, it has no control over the timing of that growth. As growth must pay for growth, that puts TMWA in the difficult position of having to plan for and be fully entitled to construct water facility improvements with no definitive control over when such improvements will be needed. While Staff notes “many changes have occurred” since the original application, TMWA would like to outline additional significant factors and changes relevant to the delay in construction of the Verdi #1 PS.

Following the initial approval, the region was hit with a nearly 10-year recession which halted new development. The COVID-19 global pandemic further impacted not only the economy, but governmental processes required for development to secure necessary approvals. Additionally, since the time of the previous extension, anticipated growth has been delayed by unforeseeable litigation over development entitlements, which is outside of TMWA’s control. The Meridian 120 South project (which will require the Verdi #1 PS) applied for tentative maps in 2017, was heard, appealed, settled, re-heard by the City, appealed again, litigated, appealed again, and is now being litigated in the Nevada Supreme Court. The Lucas project (which will also require the Verdi #1 PS) applied for tentative maps in 2018, was heard, appealed, remanded to the City, re-heard, appealed again and is currently being litigated in the Second Judicial District Court. It appears Staff was not aware of these underlying delays which provide additional context for why construction did not commence sooner.

While TMWA is not to blame for these delays, it must nonetheless continue to plan for and be prepared to implement construction of the Verdi Backbone Water Facilities. As such, it remains critical to maintain the SUP and Variance in good standing.

B. Necessity of Verdi Backbone Water Facilities

Currently, the Verdi area relies solely on groundwater for potable supply. Extension of TMWA’s surface water system into Verdi is critical to ensure reliable water service and protect groundwater resources by allowing conjunctive use of surface water and groundwater resources. As such, TMWA’s water resource plan has contemplated future expansion of the surface water system into the Verdi area for years, and construction of the Verdi #1 PS is a critical component of that expansion. In fact, both the Verdi Backbone Water Facilities generally, and the Verdi #1 PS specifically, are identified as critical and necessary regional water facilities in the 2016-2035 Regional Water Management Plan and the Truckee Meadows Regional Plan. 2016-2035 Regional Water Management Plan, Sec. 9.1.7 pp. 339-41; See p. 9-14, Table 9-1. Additionally, TMWA’s water resource plan recognizes the critical need for these facilities, estimating roughly \$17.0 million of new backbone water facilities, including booster pump stations, storage tanks and main extensions, required to provide full capacity water service for the entire Verdi area. In short, the Verdi #1PS is a critical component of the regional water supply infrastructure that has been planned for over a decade, is recognized and incorporated into multiple regional plans, and which will protect the viability of groundwater supplies and ensure reliable water service in Verdi for new and existing customers.


Despite third party delays, TMWA has not sat idle for 14 years. To the contrary, significant actions have been taken to further develop the Verdi Backbone Water Facilities. These actions are detailed below.

- In December 2014, TMWA acquired Washoe County's Water Utility, becoming the sole municipal purveyor responsible for water service in west Reno and the Verdi area and furthering the critical need for the Verdi Backbone Water Facilities.
- In June 2018, TMWA acquired permits from State Lands to construct a 30" pipe casing under the Truckee River necessary to extend the Verdi Backbone Water Facilities. In March 2019, TMWA acquired the West Reno (Boomtown) water system, a system dependent on groundwater and further accelerating the critical need to extend redundant and conjunctive surface water supply for the benefit of both existing customers and future growth.
- In June 2019, TMWA completed the Verdi Water Main Extension with nearly a mile of 18" pipe to extend the system west and across the Truckee River to the Riverbelle Mobile Home Park.
- In October 2019, TMWA held public hearings and adopted changes to its Water System Facility rate tariffs, modifying the area facility charges for Area 7 (Verdi) to enable TMWA to recapture construction costs for the Verdi Backbone Water Facilities from new development.
- In March 2020, TMWA contributed to the oversizing of the Verdi Elementary Water Main extension and brought surface water further west into the Verdi Community.
- In March 2021, the City of Reno approved a tentative map for the development of 1,000 homes in the Santerra/Quilici project, a project that will require construction of the Verdi Backbone Water Facilities.
- In April 2021, TMWA completed the Boomtown to TMWA Intertie with 1,800 feet of 16" water main and a new pump station to bring limited amounts of surface water to the Boomtown system.
- In September 2021, TMWA secured a special use permit from the City of Reno to construct the US 40 Tank, another component of the Verdi Backbone Water Facilities from which, the Verdi #1 Pump Station draws water to send west.
- Last week TMWA secured easements on the Lucas property for water mains and a tank which are additional components of the Verdi Backbone Water Facilities to which, the Verdi #1 Pump station sends water west to.

As shown above, TMWA has taken significant, diligent, and responsible steps in moving forward with these needed facilities. These investments have been substantial and have been made in reliance on the ongoing viability of the Special Use Permit and Variance, among other entitlements. Again, to protect the public interest it is critical to maintain these approvals.


C. The Findings To Approve An Extension Can Be Made

Staff recommended denying TMWA's request to extend the Special Use Permit and Variance for Verdi #1 PS, because of changed circumstances since the original approval. Respectfully, we believe the extension is necessary, and that the changes which have occurred justify, rather than contradict, the need for the extension.



With respect to the Special Use Permit, Staff expressed concern with the ability to make Finding (a) (Consistency) and Finding (B). Finding (a) provides that the “proposed use is consistent with the action programs, policies, standards and maps of the Master Plan and the Verdi area plan”. Staff believes the finding cannot be made because of intervening changes in the County grading code, which Staff incorrectly asserts are “part of the Master Plan.” First, changes in the grading code cannot legally be considered, as NRS 278.02333 prohibits the County from considering or imposing requirements, limitations, or conditions on the use of property which were not in effect at the time of application. Nothing in Finding (a) requires consideration of changes in law nor should it, as to find otherwise would preclude the ability to obtain any extension in the first place. Second, Staff incorrectly asserted the grading code is part of the Master Plan. A master plan is not an ordinance, it is a long-term general plan for physical development adopted as policy pursuant to NRS 278.150 and which must conform to the regional plan. (NRS 278.0282.) It is not “legislative mandates from which no leave can be taken.” *Sustainable Growth Initiative v. Jumpers*, 122 Nev. 53 (2006). By contrast, the grading code is a zoning ordinance codified in County code pursuant to NRS 278.250. Nowhere is it incorporated into nor part of the Master Plan. Third, Staff’s belief that compliance with current grading code will benefit adjacent properties is subjective and appears unsupported by actual development potential. The rear areas of these lots have remained undeveloped for 30 years because, among other constraints, topography and the existence of a drainage channel running through them. Any other development would necessitate extensive culverts and bridges, which are not feasible. The suggestion that TMWA should employ modified grading to better blend with development which has not and is physically precluded from occurring has no foundational basis. Finding (a) merely requires consistency with the Master Plan. TMWA’s use has twice been found as consistent, and there have been no changes in the County’s Master Plan which change this conclusion. Moreover, as the Verdi #1 PS and the Verdi Backbone Water Facilities are adopted in the Regional Plan to which the County Master Plan must by law conform, there is no question the proposed water infrastructure, which will provide significant benefits to public health, safety, and welfare, is consistent with the County Master Plan.

Finding (b) states that “Adequate utilities, roadway improvements, sanitation, water supply, drainage, and other necessary facilities have been provided, the proposed improvements are properly related to existing and proposed roadways, and an adequate public facilities determination has been made.” Staff contends the finding cannot be made because the “impact of access to the facility from public roadways has not undergone thorough evaluation in 14 years.” First, this is a booster pump station, so it needs no facilities or improvements other than a roadway. W. 4th Street is that roadway, and it is in the same place, and has not changed in any material manner since the SUP was first approved. Second, only TMWA personnel will access the site, which will occur infrequently, rarely more than once or twice a week. No “thorough analysis” is needed to recognize there will be no impacts on W. 4th Street by adding 2-3 vehicle trips a week. Third, the “development changes” referenced by Staff are further to the west and north in Somerset and Mogul West. It is clear from the nature and location of the on and off-ramps to Interstate 80 that traffic to these developments do not use this stretch of W. 4th Street, evidenced by, among other things, the fact no improvements to this roadway were required by jurisdictional agencies in connection with those developments. Not to mention that those developments came after this entitlement, and thus would have been required to accommodate TMWA’s pre-existing use, not vice-versa.



Finding (b) has been made two times before, and nothing has changed with respect to the location of or access to W. 4th Street in that time that remotely suggests, let alone demonstrates, additional improvements are required. No additional improvements are required by these extensions of time, and as such Finding (b) can easily be made.

With respect to the Variance, Staff expressed concern with the ability to make Finding (c)(Special Circumstances) and Finding (d)(No Special Privileges). Finding (c) recognizes the special circumstances which should exist to warrant a variance, including without limitation exceptional topography, exceptional lot size or shape, or other extraordinary conditions. Staff appears to have evaluated the parcel itself, rather than recognizing TMWA only holds an easement on a portion of the lot. TMWA has little to no flexibility on where this booster pump can be installed, as it must have proximity to the water main in W. 4th Street and be appropriately located to maintain water pressure. TMWA purchased this easement on the condition that these approvals were secured, and as the original approval recognized grading modifications were necessary to avoid exceptional and undue hardships. Those same hardships exist today, and nothing in the passage of time has changed that. There is a substantial elevated hill on this site that necessitates the combination of retaining walls and grading. Moving the facility to the east, as suggested, would require more grading and more cuts, and would likely increase wall height to confine the work to the narrow easement area. In other words, strict application of the code (whether 2007 or 2021) continues to result in an exceptional and undue hardship justifying the Variance.

Finding (d) recognizes that the granting of the variance will not constitute a special privilege inconsistent with limitations on other properties in identical regulatory zones in the vicinity. Staff expressed concern that extending the water infrastructure project beyond 14 years “without any progress toward completion is unprecedented.” First, as stated above regional water facilities take decades to develop, plan and complete, and TMWA has made substantial progress and expended significant time and resources diligently pursuing the Verdi Backbone Water Facilities. Any delays that have occurred were wholly unforeseeable and completely out of TMWA’s control. Second, Staff cites no other limitation on any property in the vicinity to which granting this extension would be inconsistent. Third, nothing in Finding (d) prohibits or restricts multiple extensions, especially in the circumstances presented here. Fourth, this is not private development – these are municipal water facilities proposed by a municipal water purveyor, of which the County is a member, which are included in adopted in multiple regional plans. The unique and limited circumstances involved in this case do not set a precedent for decisions related to private commercial or residential development.

In conclusion, we appreciate Staff’s hesitation in granting an extension for what on its face, and in typical circumstances, may appear to be an extended period. However, the very nature of regional water system design, planning and construction does not march to the same clock as private development. Lands and entitlements must be secured decades in advance so that TMWA can meet its legal obligations to stand ready to make water supply available when growth occurs. The lag in development in Verdi, which has occurred over the past 14 years, was due to factors unforeseeable and beyond TMWA’s control. The obligations to secure lands for future water facilities decades in advance, and the lack of control over when construction of those facilities will be triggered, may from time to time requires unique flexibility among our regional partners. We respectfully submit that flexibility is clearly warranted where, as here, the water infrastructure at issue furthers the public health, safety, and welfare.

We request the extensions be approved so TMWA may continue with the development of these critical, regionally approved water system improvements.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Rotter', with a long horizontal flourish extending to the right.

Danny Rotter, P.E.
Engineering Manager
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