

IN THE MATTER OF PERMIT 8565 TO)
APPROPRIATE WATER FROM WISEMON)
SPRING CHANNEL IN ELKO COUNTY,)
NEVADA.)

R U L I N G

GENERAL:

Application 8565 was filed June 12, 1928, in the name of Weeks Bros. to appropriate 20.0 c.f.s. from Wisemon Spring Channel and tributaries, for irrigation and stock-watering purposes on 3080 acres within all or portions of Sections 4, 9, 10, 14, 15, 22, 25 and 26, T.35N., R.62E., M.D.B.& M. The point of diversion is located within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 4, T.35N., R.62E., M.D.B.& M.

A protest to the granting of Application 8565 was filed on September 6, 1929 by J. A. Ralph. No further action was taken on the application until April 4, 1969, when, in an effort to clear up long pending applications, J. A. Ralph was requested by certified letter to notify the office of the State Engineer of whether or not he was interested in pursuing his protest. The letter to J. A. Ralph was returned to the State Engineer's office on April 11, 1969 marked "Deceased" by the Post Office Department. By subsequent Ruling No. 1628 of November 26, 1969, the protest to Application 8565 was overruled.

Based upon certified copies of deeds filed in the State Engineer's office prior to the issuance of Ruling No. 1628, the owners of record of Application 8565 and the percentage of the acreage owned by each was as follows:

Dr. Blair G. Johns and Josephine B. Johns - 26.6%
ROM Investment Co. - 18.2%
J. E. Hansen - 4.2%
Russell Wilkins and Martin Wunderlich - 51.0%

Although ownership of the place of use under Application 8565 was proportionately divided as described above, a notice requesting the entire permit fee in the amount of \$117.40 was sent to Dr. Blair G. Johns on March 31, 1970 and Dr. Johns submitted the total permit fee on April 8, 1970. No permit fee was requested from the other three owners of record. On January 21, 1971, a permit was issued under Application 8565 in the amount of 20.0 c.f.s. Copies of Permit 8565 were mailed by certified letter on January 25, 1975, to each of the individual owners of record.

Permit 8565 established as deadlines August 21, 1971, for the filing of the Proof of Commencement of Work, August 21, 1972, for the filing of the Proof of Completion of Work, and August 21, 1975, for the filing of the Proof of Application of Water to Beneficial Use. Blair G. Johns filed a Proof of Commencement of Work on August 16, 1971. On July 5, 1972, Blair G. Johns filed an Application for Extension of Time for an extension of one year within which to file a Proof of Completion of Work, which was granted by the State Engineer, and on July 2 1973, Blair G. Johns filed a Proof of Completion. On July 24, 1975, Blair G. Johns submitted a Proof of Application of Water to Beneficial Use and supporting cultural map.

Under the provisions of NRS 533.390.2 and NRS 533.410, the State Engineer is required to advise the holder of any permit by registered mail that their permit is in poor standing and subject to cancellation for failure to comply with the terms of the permit. The State Engineer is further required to allow a thirty day period following such notice within which the permittee may file the required proofs before cancelling the permit. Following the issuance of Permit 8565, each of the individual owners of record should have filed proofs of commencement, completion and beneficial use for their portions of the permit. Blair G. Johns was the only owner of record to file the required proofs within the established deadlines. The other three owners of record filed no proof within the established deadlines. However, they had not been notified that such proofs were due as required by statute.

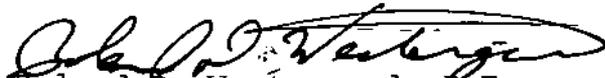
RULING:

Blair G. Johns will be refunded that portion of the permit fee which should have been paid by the other three owners of record or their successors in interest according to the number of acres under their ownership or control. Those other owners of record will then be notified by certified mail that permit fees must be paid according to the acreage under their control. It will be required that such permit fees be received by the State Engineer's office within 30 days of notice that such fees are due. Following receipt of the necessary permit fees, a 30 day period will be allowed for the filing of a Proof of Commencement of Work, a Proof of Completion of Work, a Proof of Application of Water to Beneficial Use and supporting cultural

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map. There will be provision for the consideration of an extension of time within which to file such proofs as provided under NRS 533.380.3 and 533.390.2. However, such application for extension of time must be filed within the same 30 day period allowed for the filing of proofs.

Respectfully submitted,


Roland D. Westergard, E.E.
State Engineer

RDW/BAR/sk

Dated this 5th day
of November, 1975.