

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

IN THE MATTER OF REQUEST FOR)  
EXTENSION OF TIME FOR FILING)  
THE PROOF OF BENEFICIAL USE )  
FOR PERMIT 30324, LOCATED IN)  
THE FERNLEY AREA, LYON )  
COUNTY, NEVADA. )

RULING

#3866

GENERAL

I.

Permit 30324 was filed on June 10, 1976, by James K. Johnson, James R. Johnson and Emery F. Johnson.<sup>1</sup> The permit was approved on November 17, 1976, for 6.0 c.f.s. for irrigation of 1,920 acres which was planned for a golf course. The annual duty was reduced to 800 acre feet, as ordered in the letter from the State Engineer dated April 23, 1987.<sup>2</sup> The proof of completion of work was timely filed on July 10, 1978. The proof of beneficial use (PBU) and the cultural map were due on June 17, 1981. Annual extensions of time were granted until June 17, 1983, and the permit was cancelled on November 17, 1983, for failure to submit the PBU or a request for extension of time.<sup>3</sup> At a hearing held on December 21, 1983, the cancellation was rescinded and Permit 30324 was reinstated. The new priority date was determined to be November 21, 1983.<sup>3</sup> Annual extensions of time to submit the PBU were granted until July 17, 1989. On July 14, 1989, a request for extension of time was submitted.<sup>4</sup> A hearing to consider this

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<sup>1</sup> Exhibit No. 2, public administrative hearing before the State Engineer, December 3, 1991.

<sup>2</sup> Exhibit No. 7, public administrative hearing before the State Engineer, December 3, 1991.

<sup>3</sup> File No. 30324, official records of the office of the State Engineer.

<sup>4</sup> Exhibit No. 3, public administrative hearing before the State Engineer, December 3, 1991.

request was scheduled for September 28, 1989, but was cancelled due to the untimely death of the principal applicant.<sup>5</sup> Finally, a public administrative hearing before the State Engineer was held on December 3, 1991, to consider the request for extension of time.<sup>6</sup>

## II.

The owner of Permit 30324 as shown in the State Engineer's records is James K. Johnson, James R. Johnson and Emery F. Johnson, the original applicants. However, on September 13, 1991, American Federal Savings Bank foreclosed on Johnson Development Company and obtained a trustee's deed, conveying all water rights including Permit 30324.<sup>7</sup> The new owner has not filed its ownership documents with the State Engineer.<sup>8</sup>

## III.

Fernley Utilities is the water purveyor for the Fernley area, which includes the place of use of Permit 30324. In addition, the Town of Fernley is the holder of Permit 35864 which was abrogated by Permit 40004, the point of diversion of which is the same well as that for Permit 30324.<sup>9</sup> Therefore, the Town of Fernley participated in the hearing as a party with standing.

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<sup>5</sup> Transcript, p. 9, public administrative hearing before the State Engineer, December 3, 1991.

<sup>6</sup> Exhibit No. 1, public administrative hearing before the State Engineer, December 3, 1991.

<sup>7</sup> Transcript, pp. 5-7, 14-15, public administrative hearing before the State Engineer, December 3, 1991.

<sup>8</sup> Transcript, p. 7, public administrative hearing before the State Engineer, December 3, 1991.

<sup>9</sup> Transcript, p. 12, public administrative hearing before the State Engineer, December 3, 1991.

FINDINGS OF FACT

I.

The Town of Fernley contends that no progress has been made toward placing the water under Permit 30324 to beneficial use and asserts that the request for extension of time should not be granted.<sup>10</sup> However, during the summer of 1988, only two years after approval to begin work was obtained from Lyon County,<sup>11</sup> there is evidence of attempts by Mr. Johnson to construct the golf course and irrigate the portions that had been constructed.<sup>12</sup> Mr. Johnson died in 1989 and all progress stopped until the present owner, American Federal Savings Bank obtained ownership in September, 1991. Since that time, American Federal has attempted to define the assets and liabilities related to the Johnson property, negotiate with the Town of Fernley, and find a new buyer who can develop the property and put the water to beneficial use.<sup>13</sup> Therefore, the State Engineer finds there is good cause shown by American Federal to grant the request for extension of time.

II.

The Town of Fernley postulated that pumping the well under Permit 30324 may adversely affect the water quality in the Town's wells located nearby.<sup>14</sup> If water quality problems are found to exist in the Town's wells after pumping the well under Permit

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<sup>10</sup> Transcript, pp. 101-102, public administrative hearing before the State Engineer, December 3, 1991.

<sup>11</sup> Transcript, p. 48, public administrative hearing before the State Engineer, December 3, 1991.

<sup>12</sup> Exhibit No's. 5 and 6, public administrative hearing before the State Engineer, December 3, 1991.

<sup>13</sup> Transcript, pp. 15-25, public administrative hearing before the State Engineer, December 3, 1991.

<sup>14</sup> Transcript, pp. 66, 69-70, public administrative hearing before the State Engineer, December 3, 1991.

30324, there are remedies, such as changing the point of diversion to a more satisfactory location where there would be no effect on the Town's wells.<sup>15</sup> Therefore, the State Engineer finds that there are insufficient grounds to deny this request for extension of time.

### CONCLUSIONS

#### I.

The State Engineer has jurisdiction of the parties and the subject matter of this action.<sup>16</sup>

#### II.

The State Engineer may, for good cause shown, extend the time within which water must be applied to a beneficial use under any permit issued by him.<sup>17</sup>

#### III.

American Federal has shown good cause which forms the basis to grant the request for extension of time.

#### IV.

It has not been shown that granting this request for extension of time will result in negative impacts to the Town of Fernley.

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<sup>15</sup> Transcript, p. 43, public administrative hearing before the State Engineer, December 3, 1991.

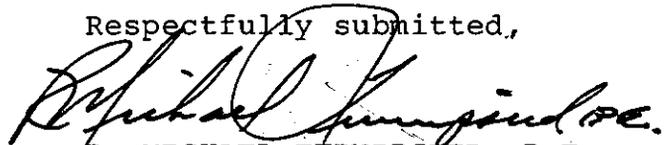
<sup>16</sup> NRS 533.395 (1).

<sup>17</sup> NRS 533.380 (3).

RULING

The request for extension of time for filing the proof of beneficial use under Permit 30324 is hereby granted. The time is extended to July 19, 1992. At that time, the owner must file the proof of beneficial use or another request for extension of time, supported by a summary of activity taken place and a plan for the future with the end result of placing the water to beneficial use.

Respectfully submitted,

  
R. MICHAEL TURNIPSEED, P.E.  
State Engineer

RMT/JCP/pm

Dated this 21st day of  
January, 1992