



# CITY OF FERNLEY

## CITY COUNCIL

### AGENDA REPORT

**Meeting Date: March 3, 2021**

<b>REPORT TO:</b>	Mayor and City Council
<b>REPORT THRU:</b>	Brandi Jensen, City Attorney
<b>REPORT FROM:</b>	<b>David Rigdon, Special City Water Attorney</b>
<b>REVIEWED BY:</b>	Daphne Hooper, City Manager

<b>FINANCIAL IMPACT:</b> Yes: <input type="checkbox"/> No: <input checked="" type="checkbox"/>	<b>CURRENTLY BUDGETED:</b> Yes: <input type="checkbox"/> No: <input checked="" type="checkbox"/>	<b>FUND/ACCOUNT:</b> N/A
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<b>ACTION REQUESTED:</b> <input checked="" type="checkbox"/> Consent <input type="checkbox"/> Ordinance <input type="checkbox"/> Resolution <input type="checkbox"/> Motion <input type="checkbox"/> Receive/File
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**AGENDA ITEM: Staff Report (For Possible Action):**  
Possible Action to Approve an agreement with D.L.G. Associates, LLC providing for a 15-year extension (to February 21, 2036) of a 1996 Agreement concerning the conveyance and utilization of water rights originally dedicated to Fernley in association with the development of the Desert Lakes Golf Course subdivision.

**Business Impact (per NRS Chapter 237):**

A Business Impact Statement is Attached.

A Business Impact Statement is not required because this is not a rule (term excludes vehicles by which legislative powers are exercised under NRS Chapters 271, 278, 278A, or 278B).

**Agenda Item Brief:**

1. In 1996 the Town of Fernley and the developer of the Desert Lakes Golf Course subdivision entered into an agreement for the dedication, banking, and use of certain water rights.
2. The 1996 Agreement expires on February 21, 2021.
3. The 1996 Agreement was amended twice, in 2002 and again in 2006, but the expiration date was never extended.
4. D.L.G. Associates, LLC, the successor-in-interest to the original developer, has requested a 15-year extension of the Agreement.

**See attached report for background, analysis, alternatives.**

**RECOMMENDED MOTION:**

“I move to approve the Third Amendment to the 1996 Agreement extending the term of the 1996 Agreement for an additional 15-years until February 21, 2036.”

**ALTERNATIVES:**

Alternatively, the Council may: (1) choose to reject the proposed extension agreement, or (2) identify changes the Council would like to make to the extension agreement and request staff conduct additional negotiations to have those changes included within the extension agreement.

**BACKGROUND:**

In 1996 the Town of Fernley and Mark & Julia Simoncini, as trustees of the Rainbow Trust, entered into an Agreement related to the development of the Desert Lakes Golf Course subdivision. Under the terms of the agreement, the Rainbow Trust dedicated certain water rights to Fernley that could be used to support the issuance of will-serve commitments from the Town’s municipal water system. The agreement provided that the will-serve credits would be available for a period of 25-years (expiring on February 21, 2021).

Sometime in 2002 D.L.G. Associates took over the project from the Simoncinis and in August 2002 the City and D.L.G. Associates entered into an agreement ratifying and amending the 1996 Agreement. The 2002 Amendment did not extend the deadline for the use of the will-serve credits.

On October 19, 2006, the City and D.L.G. Associates executed a second amendment to the 1996 Agreement. In the 2006 Amendment the parties clarified the rights that each party had in and to the previously dedicated water rights and placed certain limitations and restrictions on the use of those water rights. Like the 2002 Amendment, the 2006 Amendment did not extend the deadline for the use of any remaining will-serve credits.

In 2017 a legal dispute arose between D.L.G. Associates and the Simoncinis regarding the ownership of the beneficial interest in the water rights created by the 1996 Agreement. The City was named a party in that dispute. On July 31, 2018, the district court entered an order approving a stipulation between the parties. The stipulation recognized D.L.G. Associates as the owner of the beneficial interest in 353.10 acre-feet of the remaining will-serve credits. The district court’s order was the final determination of the matter and resolved “all remaining claims of all parties in this case that were raised *or which could have been raised.*” Like the 2002 and 2006 Amendments, the district court’s order did not extend the February 21, 2021 deadline to use the remaining credits.

**ANALYSIS:**

City staff has reviewed D.L.G. Associates’ request to extend the February 21, 2021 deadline for an additional 15 years and finds the request consistent with other requests approved by the City Council for similar agreements. Accordingly, City staff has negotiated the attached extension agreement extending the deadline to use the will serve credits to February 21, 2036.

**FINDINGS:**

N/A

**LEGAL IMPLICATIONS:**

The approval of the extension agreement will allow D.L.G. an additional 15-years in which to use its will-serve credits to receive water service from the City.

**FINANCIAL IMPLICATIONS:**

N/A

**ATTACHMENTS:**

- 1) Draft Extension Agreement
- 2) Original 1996 Agreement
- 3) 2002 Amendment
- 4) 2006 Amendment
- 5) 2018 District Court Order