

IN THE OFFICE OF THE STATE ENGINEER

1201

OF THE STATE OF NEVADA

ORDER

Randy Soule
Encore Energy
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Reno, NV 89511
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WHEREAS, during the field investigation of April 16, 2009, personnel of the Office of the State Engineer have documented the construction of a dam across the channel of an unnamed stream, sometimes referred to as Hardin Creek, located within the confines of Washoe County APN 017-410-05, further described as Lot 1 (SE¼NE¼) Section 3, T.17N., R.20E., M.D.B.&M.;

WHEREAS, personnel of the Office of the State Engineer observed the impoundment of water flowing naturally within the unnamed stream channel from south of Washoe County APN 017-410-05 behind said dam;

WHEREAS, no application has been filed or permit issued as set forth under Nevada Revised Statute (NRS) 533.325 to appropriate the water that occurs within the unnamed stream channel in excess of water right associated with the unnamed spring under Permit 55952, Certificate 14825;

WHEREAS, no permit has been approved and issued for the construction of a dam and associated reservoir as required under NRS 535.010 for this location or drainage on land owned by you or your corporation;

WHEREAS, the State Engineer finds that this structure is at or near to the twenty (20) foot height threshold set forth under NRS 535.010(2)(b) and the dam is also not in compliance with NRS 535.010(4). The construction and use of any dam is prohibited before approval of the plans and specifications by the State Engineer;

WHEREAS, the State Engineer finds that this dam poses a threat to the safety, life or property located downstream of this structure as set forth under NRS 535.030(3);

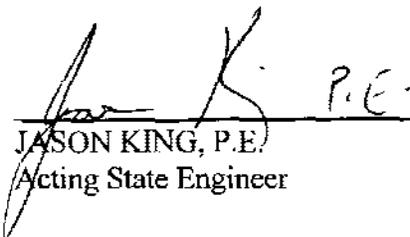
WHEREAS, the State Engineer has the authority to cause the removal of a dam as set forth under NRS 535.050(3), which provides that "If the dam, diversion works or obstruction has not been removed after 30 days' notice in writing given by the State Engineer and served upon the owner or person controlling the dam, diversion works or obstruction, or if no appeal has been taken from the order of the State Engineer as is

provided for in NRS 533.450, then the State Engineer may remove the dam, diversion works or obstruction." The cost of such removal is the responsibility of the person liable therefore;

NOW THEREFORE, to insure the safety of individuals or property located downstream of this dam and to cease the illegal impoundment of water to which no water right has been established as set forth under NRS chapter 533, the property owner is hereby ordered as set forth under NRS 535.030(4), and NRS 535.050:

1. To pump the reservoir "dry" and simultaneously lower the embankment by removing material and placing it elsewhere such that it cannot further obstruct the flow of water.
2. Once the reservoir is drained, the remainder of the embankment shall be removed and the channel restored to its natural condition. The material must be moved to areas that will not be subject to additional erosion into the channel by any future runoff events.
3. The dam shall be removed in compliance with this order within 30 days of service to the owner of record of Washoe County APN 017-410-05.
4. Failure to comply with this order will result in the owner being charged with a misdemeanor as set forth under NRS 533.480, which provides that "Any person violating any of the provisions of NRS 533.010 to NRS 533.475, inclusive, shall be guilty of a misdemeanor." After July 1, 2009, per NRS 533.481 and NRS 535.200 the State Engineer "may , after notice and opportunity for a hearing, require a person who violates any provision of this chapter or any permit, certificate, order or decision issued or regulation adopted by the State Engineer pursuant to this chapter or NRS 532.120 to:
 - (a) Pay an administrative fine not to exceed \$10,000 per day for each violation as determined by the State Engineer."

Cost of the removal of this structure shall be borne by the parties that are subject of this order.



JASON KING, P.E.
Acting State Engineer

Dated at Carson City, Nevada,
this 20th day of MAY, 2009