

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

IN THE MATTER OF ALLEGED VIOLATIONS)
OF THE CONTROLLING STATUTES OR)
REGULATIONS REGARDING THE DRILLING)
OF WATER WELLS BY TOM BENEDICT AND)
JACK DOTSON, NEVADA LICENSED WELL)
DRILLERS, NO. 2134 AND NO. 2167.)

RULING

#5356

GENERAL

I.

By Notice dated March 19, 2004,¹ the State Engineer provided Tom Benedict and Jack Dotson with notification of the State Engineer's concern about the failure to follow the statutes and regulations applicable to the drilling of wells in the State of Nevada, in regards to a complaint filed by the property owner at 15065 Hoover Drive, south of Lahontan Reservoir. The State Engineer notified the drillers that a public administrative hearing was being scheduled to receive testimony and evidence regarding compliance with the controlling statutes and regulations.

II.

After all parties of interest were duly noticed by certified mail, an administrative hearing was held on April 29, 2004, in Carson City, Nevada, before representatives of the Office of the State Engineer.² At the administrative hearing, Attorney Geoffrey Roullard represented Mr. Benedict. Jack Dotson was not present at the administrative hearing but Mr. Benedict indicated that he would speak on behalf of Mr. Dotson.³

¹ Exhibit No. 1, public administrative hearing before the State Engineer, April 29, 2004. Hereinafter the exhibits will be referred to solely by the exhibit number or letter and the transcript will be referred to by page number.

² Transcript, public administrative hearing before the State Engineer, April 29, 2004.

³ Transcript, p. 11.

III.

Records on file in the Office of the State Engineer show that Mr. Benedict is currently a licensed well driller in the State of Nevada under License No. 2134. Records on file in the Office of the State Engineer show that Mr. Dotson is currently a licensed well driller in the State of Nevada under License No. 2167.

FINDINGS OF FACT

I.

In the late spring of 2002, Champion Homes contacted Blain Well Drilling & Pump Company, on behalf of the Kellehers, regarding the drilling of a domestic well at 15065 Hoover Drive, south of Lahontan Reservoir.⁴ Ultimately a contract was signed between Blain Well Drilling and the Kellehers, and well drilling was commenced on the property around June 2, 2002. The well was initially drilled to a depth of about 525 feet with a potential water stratum from 485 to 520 feet. The well was cased and everything was done to develop water from the well. After determining that the well would not produce water, the hole was deepened to about 700 feet. No additional water was located. At some point, the drill rig was removed from the property with the uncompleted well left in place. The owners of the property hired another well drilling company to drill a second well that is currently serving the home on the property.⁵

Nevada Administrative Code (NAC) § 534.370(5) provides that a driller shall notify the Nevada Division of Water Resources within 24 hours after drilling was suspended or before the well rig was removed from the site and the driller must receive approval to suspend drilling without completing or plugging the well. The well in question was inspected on November 13, 2002, and again on January 6, 2004. The inspections showed the well was left uncompleted; the casing could be moved by hand at the surface, the annular space between the well bore and the casing was open and not sealed, and no precautions were taken to prevent contamination of the groundwater.⁶

⁴ Transcript, p. 16.

⁵ Transcript, pp. 17, 18 and 19.

⁶ Transcript, p. 5.

At the administrative hearing, Mr. Benedict did not dispute his failure to contact the Nevada Division of Water Resources. Mr. Benedict went on to testify that he was not aware of the regulation requiring notification and approval to suspend drilling.⁷ Mr. Benedict also admitted to failing to place an annular seal and failing to take precautions or actions necessary to prevent contamination of the groundwater.⁸

The State Engineer finds that the Nevada Division of Water Resources was not properly notified of the suspension of drilling and was not notified in advance of the drill rig leaving the site as required under NAC § 534.370(5). The State Engineer finds that Mr. Benedict failed to place an annular seal and failed to take precautions necessary to prevent the contamination of the groundwater.

II.

Nevada Administrative Code § 534.320(1) provides a driller shall notify the Nevada Division of Water Resources before drilling, reconditioning or plugging a well by submitting a Notice of Intent to drill card. Nevada Administrative Code § 534.320(3) provides that a Notice of Intent to drill card must be submitted at least 3 working days before the well rig is to be set up and the drilling commenced.

Notice of Intent card No. 46297 was submitted to the Office of the State Engineer date stamped June 25, 2002. The card indicated that Blain Drilling & Pump Company was the contractor and Jack Dotson was the driller who was to be on site and responsible for the work.⁹

At the administrative hearing, Mr. Benedict indicated that the actual drilling on the property occurred from June 2, 2002, to June 20, 2002.¹⁰ He further testified, "The intent card was sent in late."¹¹ In regards to the responsibility on the job, Mr. Benedict stated that he is the owner of the Blain Well Drilling & Pump Company and Mr. Dotson is one of his employees. The company

⁷ Transcript, p. 15.

⁸ Transcript, p. 13.

⁹ Exhibit No. 2.

¹⁰ Transcript, p. 12.

¹¹ Transcript, p. 13.

is small and the work was done as a team. Although Mr. Dotson's name was on the Intent to Drill card, he had nothing to do with the paperwork problems.¹² As the contractor and a licensed well driller, Mr. Benedict took full responsibility for the drilling by stating, "I'm totally responsible. I'm the contractor, it's my driller's license. I was on the job everyday pretty much, so I take full responsibility for it."

The State Engineer finds Tom Benedict was the responsible well driller on site for this job. The State Engineer finds that the Notice of Intent card was not filed in a timely manner in accordance with the provisions of the Nevada Administrative Code.

III.

Nevada Administrative Code §§ 534.340, 534.345, and Nevada Revised Statute § 534.170 requires a well log and record of work be filed with the State Engineer's office. Mr. Benedict admitted that he failed to file a well log and record of work.¹³

The State Engineer finds that Mr. Benedict violated the above code and statute by failing to file a well log and record of work.

IV.

Mr. Benedict admitted to all of the violations detailed in the Notice of Hearing and discussed in the preceding sections.¹⁴ In considering whether to revoke or refuse to re-issue a well driller's license the State Engineer must not only determine what violations occurred but why those violations occurred.

Mr. Benedict testified that the Notice of Intent was submitted late due to miscommunication between his office manager and himself. The card should have been sent in on time but wasn't.¹⁵

The remaining violations occurred when Mr. Benedict left the property without completing the well or contacting the Division of Water Resources. Mr. Benedict submitted a written response to the Notice of Violations dated January 12, 2004, to explain his side of the story, as follows. The well was originally drilled to 525 feet and cased. After two days trying to develop the well, it was

¹² Transcript, p. 22.

¹³ Transcript, p. 13.

¹⁴ Transcript, P. 13.

¹⁵ Transcript, pp. 13 and 14.

determined that there was no water. The well was deepened to 700 feet, which was the maximum depth for the drill rig and there was still no water. It was decided to bring in another well driller to deepen the well further. Sometime later, Mr. Benedict was contacted about drilling a second well on the property but an agreement could not be reached on the price. Subsequently, Leach Drilling was hired to drill the new well. Mr. Benedict believed that Leach Drilling should have plugged the original 700-foot well before the new well was drilled and the plugging should be at the expense of the Kellehers. Mr. Benedict indicated that he could not be responsible for plugging the original well at his expense, when the Kellehers had failed to pay for all of the work on the drilling of the 700-foot well. Both parties eventually signed a mutual release agreement and a financial settlement was reached. With this agreement Blain Drilling wrote off \$11,150.00 as a loss on this job and Mr. Benedict feels that his responsibility for the well has ended.¹⁶

The State Engineer finds that the violations of the well drilling regulations are serious but somewhat mitigated by the circumstances of the conflict between the driller and client. The State Engineer further finds that Blain Well Drilling & Pump Company sustained a substantial financial loss on this job.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and subject matter of this action and determination.¹⁷

II.

The State Engineer concludes that Tom Benedict was the responsible well driller on site and employee Jack Dotson is not responsible for the violations of the Nevada Administrative Code and Nevada Revised Statutes.

¹⁶ Exhibit No. 3.

¹⁷ NRS chapter 534 and NAC chapter 534.

III.

Nevada Administrative Code § 534.290 provides that:

1. The State Engineer may revoke or refuse to reissue a well-drilling license if he determines, after an investigation and a disciplinary hearing, that the well driller has:

- (a) Intentionally made a material misstatement of facts in his application for license;
- (b) Intentionally made a material misstatement of facts in a log or record of work;
- (c) Been found to be incompetent as a well driller by the state engineer or the board;
- (d) Failed to submit a log or record of work for wells drilled in accordance with the provisions of this chapter;
- (e) Failed to comply with or violated any of the provisions of this chapter;
- (f) Failed to comply with or violated any law applicable to well drillers;
- (g) Falsely sworn to any affidavit, proof of completion, proof of beneficial use, log or any other document filed with the division;
- (h) Supplied false information to an owner or a holder of permit or his agent; or
- (i) Failed to report information concerning improper construction or the abandonment of a well pursuant to NAC 534.448.

The State Engineer concludes that Tom Benedict failed to timely file a Notice of Intent; failed to file a well log or record of work; failed to place an annular seal in the well bore to the depth required; failed to take precautions necessary to prevent contamination and to protect the groundwater; and failed to notify the Division of Water Resources within 24 hours after drilling was suspended or before the well rig was removed from the site and failed to receive approval to suspend drilling without completing or plugging the well.

IV.

The State Engineer concludes that, aside for the late filing of the Notice of Intent card, the remaining violations occurred as a result of the dispute between the driller and client that resulted in an uncompleted well on the property. The State Engineer concludes that these violations would have been avoided if Mr. Benedict had simply contacted the Nevada Division of Water Resources prior to leaving the property.

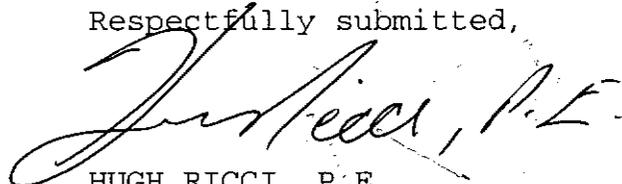
v.

The State Engineer concludes that, under the specific circumstances of this case, the violations of the laws and regulations governing the drilling of wells in the State of Nevada, although serious, do not rise to the level of revocation or refusal to re-issue well driller Tom Benedict's license.

RULING

The State Engineer hereby rules that no action will be taken against the well drilling license or Jack Dotson. A copy of this ruling and an accounting of the violations by Tom Benedict will be maintained in his Well Driller's License File No. 2134, public record in the Office of the State Engineer. In addition, Well Driller Tom Benedict will be considered under probation for a period of 90 days from the date of this Ruling. If any additional violations of the Well Drilling Regulations occur during the probation period, action will be taken to revoke or refuse to re-issue his well drilling license.

Respectfully submitted,



HUGH RICCI, P.E.
State Engineer

HR/TW/jm

Dated this 2nd day of
June, 2004.