

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

**1214-A**

**ORDER**

**WHEREAS**, the following general statements establish the foundation of this order:

**I.**

Nevada Revised Statute (NRS) § 533.481 provides that in addition to any other penalty provided by law, the State Engineer may, after notice and opportunity for a hearing, require a person who violates any provision of NRS Chapter 533 or any permit, certificate, order or decision of the State Engineer to: (a) pay an administrative fine not to exceed \$10,000 per day for each violation as determined by the State Engineer and/or (b) in the case of an unauthorized use or willful waste of water, or an unlawful diversion of water, require the replacement of up to 200 percent of the water used, wasted or diverted.

**II.**

On June 21, 2011, the Finding of Alleged Violation and Violation Order No. 1214 were issued by the State Engineer ordering John H. Koot (Respondent) to:

1. By June 24, 2011, inform the Division of Water Resources (Division) of the Respondent's intent to comply with the order.
2. By July 1, 2011, submit to the Division an approvable mitigation plan which sets forth the circumstances under which the Respondent will comply with the requirements set forth in the Finding of Alleged Violation.
3. By July 8, 2011, comply with requirements set forth in the Finding of Alleged Violation, being the cessation of diversion from Cold Creek and the removal of the diversion structure.

4. On July 27, 2011 (rescheduled to August 3, 2011), appear at a hearing with the Division, in which to determine the manner in which the Finding of Alleged Violation and Violation Order have been acted upon and to show cause why injunctive relief should not be sought and why penalties should not be incurred.

**WHEREAS**, from the records in the Office of the State Engineer and the record created during the hearing to show cause on August 3, 2011, the State Engineer has made the following findings:

**I.**

The Finding of Alleged Violation and Violation Order No. 1214 was sent to the Respondent by certified mail and the return receipt indicates that the delivery occurred on June 25, 2011, after the date required to inform the Division of the Respondent's intent to comply. The State Engineer finds that due to the timing of the mail delivery the Respondent could not have timely complied with Item 1 of Violation Order No. 1214.

**II.**

The Division received a letter from the Respondent in the Southern Nevada Branch Office (SNBO) on June 28, 2011, indicating that the diversion has ceased and the pond created by the diversion has been removed. The State Engineer finds that the Respondent did not explicitly comply with Item 2 of Violation Order No. 1214, but instead implied that the requirement for a mitigation plan under that item was moot by virtue of having taken corrective action.

**III.**

The Respondent's letter of June 28, 2011, indicated that the diversion has ceased and the pond created by the diversion has been removed. A field investigation conducted July 7, 2011, by the SNBO determined that the pond was removed and the diversion had substantially ceased and only a small rock dam remained that caused some shallow pooling of water. At the hearing to show

cause, testimony and evidence was provided by the Respondent establishing that the rock dam was since removed. The State Engineer finds that compliance with Item 3 of Violation Order No. 1214 was achieved.

**IV.**

On August 3, 2011, the Respondent and the Respondent's council appeared at the hearing to show cause during which evidence was taken regarding the alleged violation. The State Engineer finds that the Respondent complied with Item 4 of Violation Order No. 1214.

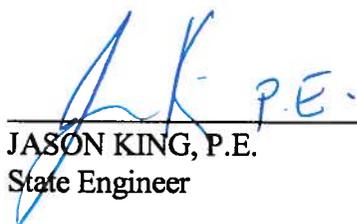
**V.**

From the evidence presented at the hearing, the State Engineer finds that the Respondent achieved partial compliance prior to the July 8, 2011, deadline and full compliance prior to the August 3, 2011, hearing to show cause.

**WHEREAS**, the intent of the enforcement regulations is to achieve compliance with the statutes, regulations, orders, permits and decisions of the State Engineer.

**WHEREAS**, the respondent complied with the State Engineer's order to correct the alleged violation.

**NOW, THEREFORE, IT IS HEREBY ORDERED** that although it was found that a violation had occurred and the State Engineer has the authority to issue a penalty, a penalty will not be assessed for this violation because of the ultimate compliance by the Respondent.

  
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JASON KING, P.E.  
State Engineer

Dated this 30th day of

August, 2011.