



**DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES**

901 South Stewart Street, Suite 2002

Carson City, Nevada 89701-5250

(775) 684-2800 • Fax (775) 684-2811

<http://water.nv.gov>

December 19, 2011

Brian D. and Joann H. Carter
P.O. Box 4777
Pahrump, NV 89048
Certified Mail No.: 7106 7808 0630 0048 5227

Re: Finding of Alleged Violation and Violation Order 1216

Dear Mr. and Mrs. Carter:

Enclosed please find the above referenced Finding of Alleged Violation and Violation Order issued by the State Engineer per Nevada Administrative Code (NAC) Chapter 532.

Please read the Violation Order carefully for all requirements and due dates. Failure to comply with the order may result in further action by the State Engineer under Nevada Revised Statutes §§ 533.481, 533.482, 534.193, 534.195 and NAC Chapter 532.

A notice regarding the hearing to show cause will be sent to you under separate cover. Please direct any questions regarding the hearing to show cause to Tim Wilson, Hearings Officer, at (775) 684-2873. Please direct any questions regarding the Finding of Alleged Violation and Violation Order to the undersigned at (775) 684-2806.

Sincerely,

A handwritten signature in cursive script that reads "Malcolm J. Wilson, P.E.".

Malcolm J. Wilson, P.E.
Water Planning Engineer

MJW/mk

Enclosures: Finding and Order 1216

cc: Brian D. and Joann H. Carter (Canada)
Southern Nevada Branch Office
Hamilton Reed, Basin Engineer, via e-mail
Bob Dennis, SNBO, via e-mail

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

IN THE MATTER OF BRIAN D. AND JOANN H.)
CARTER AND THE ALLEGED OVER-PUMPING)
OF GROUNDWATER FROM THE WELL)
AUTHORIZED UNDER PERMIT 59994,)
CERTIFICATE 15795 AND PERMIT 64424,)
CERTIFICATE 15751 WITHIN THE PAHRUMP)
VALLEY HYDROGRAPHIC BASIN (162), NYE)
COUNTY, NEVADA.)

**FINDING OF ALLEGED
VIOLATION
ORDER NO. 1216**

LEGAL

I.

The State Engineer, under the authority of Nevada Revised Statute (NRS) Chapters 532, 533 and 534, has the power and duty to enforce the provisions of NRS Chapters 533 and 534.

II.

Nevada Revised Statute § 534.193 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 534 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 in violation of NRS § 534.070, or any other violation of this chapter that, as determined by the State Engineer, results in an unlawful use, waste or diversion of water, replace not more than 200 percent of the water used, wasted or diverted.

FACTS

I.

Permit 59994 was issued for 0.033 cubic feet per second (cfs), but not to exceed 10.0 acre-feet annually (afa). Proof of Application of Water to Beneficial Use was filed by the permittee and Certificate 15795 was issued for 0.033 cfs., but not to exceed 10.0 afa. Brian D. Carter and Joann H. Carter are the owners of record.¹

¹ File No. 59994, official records in the Office of the State Engineer.

II.

Permit 64424 was issued for 0.033 cfs, but not to exceed 10.0 afa. Proof of Application of Water to Beneficial Use was filed by the permittee and Certificate 15751 was issued for 0.033 cfs, but not to exceed 10.0 afa. Brian and Joann Carter are the owners of record.²

III.

The Office of the State Engineer, Division of Water Resources (Division) conducts annual groundwater pumpage inventories in the Pahrump Valley Hydrographic Basin (162). The meter readings in the records of the Office of the State Engineer demonstrate that in 2010 the well authorized for use under Permit 59994, Certificate 15795 and Permit 64424, Certificate 15751 was pumped for 23.49 acre-feet.³ The duty authorized under Permit 59994, Certificate 15795 and Permit 64424, Certificate 15751 is 20.0 afa, so the well was over-pumped by 3.49 acre-feet, or 17.5%, in 2010. Also observed during the groundwater inventory was that the irrigation conducted under Permit 59994, Certificate 15795 was partially outside the place of use of Permit 59994, Certificate 15795.

IV.

Per the Nevada Administrative Code (NAC) 532, on July 29, 2011, the Division sent a certified letter to the Respondent setting forth the alleged violations and the possible actions to correct the violations. The alleged violation was described as exceeding the duty authorized under Permit 59994, Certificate 15795 and Permit 64424, Certificate 15751 by 3.49 acre-feet, or 17.5%, in 2010 and the irrigation outside the place of use of Permit 59994, Certificate 15795. The options presented for correcting the over-pumping alleged violation was described as taking the actions necessary to curtail water use to the authorized duty, acquire additional water rights or a combination thereof. The options presented for correcting the irrigation outside the place of use alleged violation was described as taking the actions necessary to restrict water use to the authorized place of use, make an application to change the place of use or a combination thereof. The warning letter established a 30-day timeframe in which to file an approvable plan for correcting the alleged violation with the State Engineer and a one year timeframe in which to

² File No. 64424, official records in the Office of the State Engineer.

³ *Groundwater Pumpage Inventory Pahrump Valley 2010, No. 162*, official records in the Office of the State Engineer.

take the corrective actions set forth in the plan and warned that failing to take such actions could result in additional enforcement actions as provided for under NAC 532. The certified mail receipt was signed by Joshua McDaniel on August 4, 2011. The signed certified mail receipt was received in the Office of the State Engineer on August 8, 2011.¹

V.

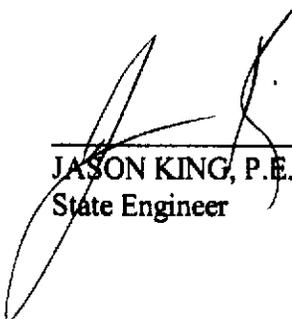
An approvable plan for correcting the alleged violations was not received in the Office of the State Engineer within the timeframe established in the July 29, 2011, warning letter.^{1,2}

VI.

A search of the records of the Office of the State Engineer confirms that there is no other water right at the point of diversion of Permit 59994, Certificate 15795 and Permit 64424, Certificate 15751.^{4,5}

FINDING

The State Engineer finds that the Respondent has exceeded the annual duty for diverting water under Permit 59994, Certificate 15795 and Permit 64424, Certificate 15751 in violation of the terms of the permits for the 2010 year, that the Respondent irrigated outside of the place of use of Permit 59994, Certificate 15795 and that the Respondent failed to file an approvable plan for taking the corrective actions necessary for compliance as required by the warning letter dated July 29, 2011.



JASON KING, P.E.
State Engineer

Dated this 19th day of
December, 2011.

⁴ *Township Card 21S 54E*, official records in the Office of the State Engineer.

⁵ Nevada Division of Water Resources' Water Rights Database, October 21, 2011, official records in the Office of the State Engineer.

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

1216

VIOLATION ORDER

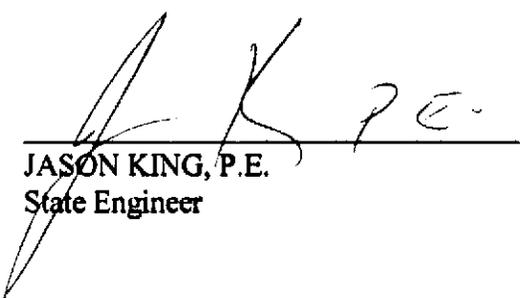
WHEREAS, on the basis of the attached Finding of Alleged Violation, which is hereby made a part of this Violation Order, the State Engineer has determined that Brian D. and Joann H. Carter (Respondent) is in violation of the terms of Permit 59994, Certificate 15795 and Permit 64424, Certificate 15751 and subject to the provisions of Nevada Revised Statutes (NRS) § 533.481.

WHEREAS, under NRS § 534.193 and Nevada Administrative Code (NAC) Chapter 532, a person found to be in violation of any provisions of NRS Chapters 533 and 534 or any permit, certificate, order or decision of the State Engineer is to be provided notice and opportunity for a hearing.

NOW, THEREFORE, IT IS HEREBY ORDERED that the Respondent must:

1. **Within one week of the date of this order**, inform the Division of Water Resources (Division) of the Respondent's intent to comply with this order.
2. **Within 30 days of the date of this order**, 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 29, 2012**, comply with the requirements set forth in the Finding of Alleged Violation.

4. At a time and location to be determined, appear at a hearing with the Division for the purpose of determining the manner in which the Finding of Alleged Violation and this Order have been acted upon and to show cause why injunctive relief should not be sought and why penalties should not be incurred.



JASON KING, P.E.
State Engineer

Dated this 19th day of

December, 2011.