

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

#1279

FINDING OF ALLEGED VIOLATION AND VIOLATION ORDER

IN THE MATTER OF ALLEGED VIOLATION NO. 165 REGARDING THE PUMPING  
FROM AN UNDERGROUND WELL UNDER PERMIT 75775 LOCATED WITHIN THE  
WHITE RIVER VALLEY HYDROGRAPIC BASIN (207), WHITE PINE COUNTY,  
NEVADA.

JURISDICTION AND AUTHORITY

I.

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

II.

Nevada Revised Statute § 533.0245 provides that the State Engineer shall not carry out his or her duties pursuant to Nevada Revised Statute Chapter 533 in a manner that conflicts with any applicable provision of a decree or order issued by a state or federal court, an interstate compact or an agreement to which this State is a party for the interstate allocation of water pursuant to an act of Congress.

III.

Nevada Revised Statute § 533.220 provides from and after the filing of the order of determination in the district court, the distribution of water by the State Engineer or by any of the State Engineer's assistants or by the water commissioners or their assistants shall, at all times, be under the supervision and control of the district court. Such officers and each of them shall, at all times, be deemed to be officers of the court in distributing water under and pursuant to the order of determination or under and pursuant to the decree of the court.

IV.

Nevada Revised Statute § 533.275 provides that the State Engineer may appoint an engineer, who is qualified in hydrographic and water distribution experience, to work in a supervisory capacity on water distribution and regulation services upon all adjudicated stream systems within the state.

V.

Nevada Revised Statute § 533.085(1) provides that “[n]othing contained in ... chapter [533] shall impair the vested right of any person to the use of water, nor shall the right of any person to take and use water be impaired or affected by any of the provisions of this chapter where appropriations have been initiated in accordance with law prior to March 22, 1913.”

VI.

Nevada Revised Statute § 534.020(1) states that all underground waters within the boundaries of the State belong to the public, and, subject to all existing rights to the use thereof, are subject to appropriation for beneficial use only under the laws of this State relating to the appropriation and use of water and not otherwise.

**STATEMENT OF FACTS**

I.

**COMPLAINT**

On September 21, 2015, Thomas E. Rosevear (Complainant) filed a Request to Investigate Alleged Violation (AV-165) claiming that pumping of groundwater under Permit 75775, owned by Rick Lynn Perigo and Kim Danelle Perigo Family Trust, dated February 24, 2004, (Respondent), has proven to seriously impact the existing surface water rights of the Complainant to the waters of the White River.<sup>1</sup>

II.

**WHITE RIVER DECREE**

On December 4, 1922, the Seventh Judicial District Court of the State of Nevada, in and for White Pine County, entered Findings of Fact, Conclusions of Law and Decree in *In the Matter of the Determination of the Relative Rights in and to the Waters of White River and its Tributaries in White Pine County, Nevada*. Paragraph 2 of the Decree requires that all vested rights established by the Decree, shall be recognized, and that no one holding a subsequent appropriation shall be entitled to receive any water until all prior appropriations have been fully satisfied.

III.

**COMPLAINANT'S DECREED SURFACE WATER RIGHTS**

The Decree established that Proof of Appropriation of Water, Proof No. 01171, filed by claimants Christian and Karen Hermansen, later assigned to the Complainant, have water rights

<sup>1</sup> Alleged Violation Case File No. 165, official records of the Office of the State Engineer.

with a priority of 1881, a period of use of April 1 to September 15 of each year and the source of water being the White River, having the following places of use and quantities of water:<sup>2</sup>

Harvest Crop	Diversified Pasture	Sub-division	Section	T. North	R. East	C.F.S.	Acre-Feet
95.0		E1/2	32	13	61	0.787	285.0
71.5		S1/2	33	13	61	0.592	214.5
.....	67.0	S1/2	33	13	61	0.555	201.0

<b>Totals:</b>	166.5	67.0				1.934	700.5
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On September 12, 2013, a Report of Conveyance to update ownership of Proof No. 01171 was filed. The Report of Conveyance was confirmed on January 22, 2014, updating current owner of record in the Office of the State Engineer to Thomas Rosevear, trustee or successor trustee of the Thomas E. Rosevear Trust, Dated November 13, 2009.<sup>3</sup>

#### IV.

#### COMPLAINANT'S OTHER SURFACE WATER RIGHT

On May 19, 1954, Permit 13031 was issued to W.C. Goodman and Walter Rosevear, later assigned to Thomas E. and Angela Rosevear, for 1.66 cubic feet per second (cfs) of water, from the White River and tributaries and Williams Creek and tributaries for irrigation and domestic purposes.<sup>4</sup> On December 12, 1955, the Proof of Commencement of Work and Proof of Completion of Work was filed for a point of diversion in the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 29, T.13N., R.61E., M.D.B.&M. The Proof of Beneficial Use was filed on January 7, 1957. The State Engineer issued Certificate No. 4550 under Permit 13031 on June 17, 1957, for 1.66 cfs of water, to irrigate 194.481 acres, not to exceed 292 acre-feet per season from October 1 to April 1 of each year, and with a priority date of August 26, 1949.

<sup>2</sup> Proof No. 01171, filed in the District Court of the Seventh Judicial District of the State of Nevada, in and for White Pine County.

<sup>3</sup> Report of Conveyance for Proof No. 01171 filed in the White River Transfer Book 2, official records in the Office of the State Engineer.

<sup>4</sup> File No. 13031, official records in the Office of the State Engineer.

V.

**RESPONDENT'S UNDERGROUND WATER RIGHT**

Application 75775 was filed on May 23, 2007, by Douglas W. Carson, Trustee of the Douglas W. Carson Trust, Dated October 19, 1990, later assigned to the Respondent, to appropriate underground water from a well to be placed in the NE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 31, T.13N., R.61E., M.D.B.&M.<sup>5</sup> The application, for irrigation and domestic purposes, requested to divert 1.0 cfs of the public waters of the state of Nevada for the irrigation of 85.43 acres of land located within portions of Sections 30 and 31, T.13N., R.61E., M.D.B.&M. The remarks section of the application stated that the water would be comingled with existing Permits 7251 and 70969.

Application 75775 was timely protested by Charles M. Brown on July 20, 2007, and Thomas E. and Angela Rosevear on July 30, 2007, on the grounds that the pumping of water from the well would affect surface flows of the White River and conflict with their senior water rights.

Nevada Administrative Code § 534.390 requires, unless waived by the State Engineer, wells drilled within  $\frac{1}{4}$  mile (1,320 feet) of a river, lake, perennial stream or unlined reservoir or canal to be sealed to depth of 100 feet, to avoid surface interference with nearby surface water sources. The State Engineer determined that there was a sufficient quantity of underground water available for appropriation in the hydrographic basin and the construction of a 100 foot seal to avoid surface interference met the conditions for the issuance of Application 75775 near an existing surface source.

The State Engineer overruled the protests by Ruling No. 6264 issued on February 19, 2014. An amended Ruling No. 6264-A was issued on March 24, 2014, corrected the maximum allowed duty to correctly read 384.44 acre-feet instead of 341.72 acre-feet on pages 3 and 4.

Permit 75775 was issued subject to existing rights and with the requirement of a 100-foot surface seal of the well. Permit 75775 was issued with a period of use of March 1<sup>st</sup> through October 15<sup>th</sup> and with terms of the permit including but not limited to:

- [t]he State retains the right to regulate the use of the water granted herein at any and all times.
- This permit is also issued subject to the provision that the place of use of the water herein granted is limited to and supplemental to lands having existing water rights.

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<sup>5</sup> File No. 75775, official records in the Office of the State Engineer.

- The total combined duty of the waters under Permit 7251, Certificate 1330; Permit 70969 (Smith Creek); and Permit 75775 shall not exceed 384.44 acre-feet seasonally for the irrigation of 85.43 acres, of which 75.67 acres (340.51 acre-feet) are supplemental to surface water under these two permits.

Neither a hydrologic study nor pump test were completed prior to the approval of Permit 75775. No appeal to Ruling No. 6264-A was filed by the Protestants.

## VI.

### RESPONDENT'S SURFACE RIGHT

On September 14, 1925, Permit 7251 was issued to Peter Pastorino, later assigned to the Respondent, for 1.2 cfs of water from Smith Creek for irrigation and domestic purposes. On May 19, 1927, the Affidavit of Labor and Improvements and the Affidavit of Completion of Work was filed for a point of diversion in the NW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 31, T.13N., R.61E., M.D.B.&M. The Proof of Beneficial Use was filed on June 6, 1927. The State Engineer issued Certificate No. 1330 on February 11, 1928, for 0.4187 cfs, to irrigate 41.87 acres, not to exceed 188.41 acre-feet per season from March 1 to October 15 of each year, and with a priority date of November 19, 1924.

## VII.

### RESPONDENT'S EXPANDED PLACE OF USE SURFACE RIGHT

On August 16, 2007, Permit 70969 was issued to Douglas W. Carson Trust, Dated October 19, 1990, later assigned to the Respondent, for 0.34 cfs of water from Smith Creek for irrigation purposes from March 1 to October 15 of each year on 33.8 acres of land in Section 30 and 31 of T.13N., R.61E., M.D.B.&M, not to exceed 152.10 acre-feet seasonally. The terms of this permit limit the total combined duty of water under Permit 7251, Certificate 1330 and Permit 70969 not to exceed 340.51 acre-feet seasonally for the irrigation of 75.67 acres within the described place of use. On January 25, 2010, the Proof of Completion was filed for a point of diversion in the NW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 31, T.13N., R.61E., M.D.B.&M. The Proof of Beneficial Use was received on March 6, 2013.

## VIII.

### INVESTIGATION OF ALLEGED VIOLATION

On September 21, 2015, the Complainant filed a Request to Investigate Alleged Violation, claiming that pumping from Permit 75775 has proven to seriously impact his existing water rights. The Water Resources Specialist assigned to the White River Valley Hydrographic Basin and the Water Commissioner in the Elko Office of the State Engineer were notified of the

complaint. A program already existed to collect water measurements from the Complainant's 18" Parshall Flume, which is used to measure the Complainant's existing water rights. The Division of Water Resources (Division) was contacted by the Complainant and a meeting was held on Monday, June 13, 2016, to discuss the Alleged Violation Case and the observed impacts claimed by the Complainant. Following this meeting, the Division arranged a field investigation to collect information based on the claims of impacts to senior water rights filed by the Complainant in the Request to Investigate Alleged Violation, and which also were stated by the Complainant at the meeting on June 13, 2016.

A field investigation was conducted by Division staff on June 28, 2016.<sup>6</sup> A copy of the Memorandum of Field Investigation, dated July 7, 2016, is enclosed with this Finding of Alleged Violation and Violation Order. Water measurements were collected from multiple points along the White River. The summary of the measurements indicate fairly constant flow rates between the four measured locations. The investigators reported that significant gains between U.S. Highway 6 and the Complainant's diversion as he described during the meeting held on June 13, 2016, were not observed.

The investigators also visited the location of the Respondent's existing water rights for the underground well and Smith Creek. The investigators found the well for Permit 75775 to be 340 feet from the White River, a decreed water source. The underground well was pumping at the time of the investigation and the installed flow meter reported that well to be pumping 260 gallons per minute (0.58 cfs). The meter reported 27,713,500 gallons (85.05 acre-feet) pumped since July 19, 2015.

The Memorandum of Field Investigation reported the findings from a Glover analyses used to evaluate potential capture of surface water by the pumping of water from the well under Permit 75775.<sup>7</sup> The analysis shows that capture of surface water by the well is likely to range from a minimum of about 50% to a maximum of 90% of pumped water after 90 days. The report discusses that the Glover analysis has a level of uncertainty and it is possible that capture is delayed more than estimated by the method. Regardless of the uncertainty of the delay time of

<sup>6</sup> Memorandum of Field Investigation dated July 7, 2016, filed in Alleged Violation Case No. 165, official records of the Office of the State Engineer.

<sup>7</sup> Glover, R. E., and C.G. Balmer, 1954, *River depletion resulting from pumping a well near a river*. Am. Geophysical Union Trans. v. 35; no. 3; 468-470; and see also, Jenkins, C.T., 1968, *Techniques of water-resources investigations of the United State Geological Survey* (Computation of rate and volume of stream depletion by wells). United States Geological Survey. Book 4, ch. D1; p. 17.

capture, the underground well under Permit 75775 is capturing water from the White River and conflicting with senior water rights.

**FINDING OF ALLEGED VIOLATION**

**I.**

The State Engineer finds that the underground well under Permit 75775 is capturing water from the White River in direct conflict with senior White River water rights that shall receive their full diversion and this constitutes a violation of the *White River Decree* and Nevada Revised Statutes §§ 533.0245, 533.085(1) and 534.020(1).

**II.**

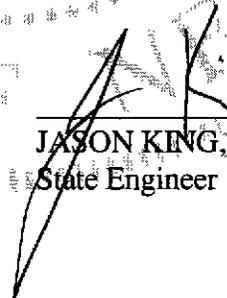
To correct the violations, the Respondent must:

1. **Immediately cease and desist** all pumping from the irrigation well located in the NE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 31, T.13N., R.61E., M.D.B.&M., in White Pine County, Nevada.

**VIOLATION ORDER**

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

1. **Immediately cease and desist** all pumping from the irrigation well located in the NE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 31, T.13N., R.61E., M.D.B.&M., in White Pine County, Nevada.
2. **Within seven (7) days of the date of this order,** inform the Division of Water Resources of the Respondent's intent to comply with this order.

  
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JASON KING, P.E.  
State Engineer

Dated this 23rd day of  
September, 2016.