

IN THE OFFICE OF THE STATE ENGINEER

1209-A

OF THE STATE OF NEVADA

ORDER

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

GENERAL

I.

Nevada Revised Statutes (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 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 in violation of NRS § 533.460 or an unlawful diversion of water in violation of NRS § 533.530, 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.

II.

On December 6, 1979, State Engineer's Order No. 733 required the installation of suitable headgates, measuring devices and/or recording devices as may be required or deemed necessary by the State Engineer for those diversions of water from Kingston Creek and its tributaries as provided in the Kingston Creek Decree and in conformity with the statutes of the State of Nevada.¹

¹ State Engineer's Order No. 733, December 6, 1979, official records in the Office of the State Engineer.

III.

Applications 67295, 67296 and 67297 were approved by State Engineer's Ruling No. 5788, subject to the installation of continuous recording devices that must be approved by the State Engineer as to their model and location. The State Engineer concluded in said ruling that there would be no impact to existing rights provided that the measuring, recording and control devices are installed, maintained and monitored so as to guarantee adequate flow in Kingston Creek to satisfy the senior downstream water right, in the amount of 1.40 cfs, held by the Town of Kingston.²

IV.

Permits 67295, 67296 and 67297 were issued December 12, 2007, subject to the provisions set forth in State Engineer's Ruling No. 5788, dated October 8, 2007, and that prior to the diversion or delivery of water under this permit, the permittee must notify the State Engineer's office that measuring devices with continuous recorders have been installed pursuant to Ruling No. 5788.^{3,4,5}

V.

On May 24, 2010, the Finding of Alleged Violation and Violation Order No. 1209 were issued by the State Engineer ordering Young Bros., a Nevada General Partnership (Respondent) to:

1. By June 1, 2010, inform the Division of Water Resources (Division) of their intent to comply with this order.
2. By June 8, 2010, submit to the Division an approvable mitigation plan which sets forth the circumstances under which they will comply with the requirements set forth in the Finding of Alleged Violation.

² State Engineer's Ruling No. 5788, October 8, 2007, official records in the Office of the State Engineer.

³ File 67295, official records in the Office of the State Engineer.

⁴ File No. 67296, official records in the Office of the State Engineer.

⁵ File No. 67297, official records in the Office of the State Engineer.

3. By June 23, 2010, comply with the installation of measuring devices as required under the terms of Permits 67295, 67296, and 67297, State Engineer's Ruling No. 5788 and State Engineer's Order 733.
4. On July 29, 2010, appear at a hearing with the Division, in which to determine 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.

WHEREAS, from the records in the Office of the State Engineer and the record created during the hearing to show cause on July 29, 2010, the State Engineer has made the following findings:⁶

FINDINGS

I.

On May 31, 2010, the Respondent informed the Division of their intent to comply. The State Engineer finds that the Respondent complied with Item 1 of Violation Order No. 1209.

II.

A review of the record shows the Respondent failed to submit an approvable mitigation plan. The State Engineer finds that the Respondent did not comply with Item 2 of Violation Order No. 1209.

III.

By June 23, 2010, the Respondent had not provided evidence of compliance with the requirements set forth in Item 3 of the Finding of Alleged Violation for Violation Order No. 1209 regarding installation of approved measuring devices. The State Engineer finds that compliance with Item 3 of Violation Order No. 1209 was not timely achieved.

⁶ Exhibits and Transcripts, public administrative hearing to show cause before the Office of the State Engineer, July 29, 2010, official records in the Office of the State Engineer.

IV.

On July 29, 2010, the Respondent appeared at the hearing to provide testimony and evidence regarding the alleged violation. The State Engineer finds that the Respondent complied with Item 4 of Violation Order No. 1209.

V.

At the hearing to show cause, the testimony provided by the witnesses, including the Respondent, and the exhibits entered into evidence established that water had been used prior to the installation of approved measuring and recording devices in violation of the terms of Permits 67295, 67296, and 67297. The State Engineer finds that violations of the terms of Permits 67295, 67296 and 67297, State Engineer's Ruling No. 5788 and State Engineer's Order No. 733 did occur and that the Respondent is subject to penalties as described under NRS § 533.481 and NAC Chapter 532.

VI.

At the hearing to show cause, the testimony provided by the witnesses, including the Respondent, and the exhibits entered into evidence established that measuring devices have since been installed of the type and at the locations required by the State Engineer. The State Engineer finds that a Parshall flume and a recording device was installed on or about June of 2010, at the Kingston Creek diversion and that the Applicant currently is working with the staff of the Division to refine the installation of these devices. The State Engineer finds that a totalizing meter was installed on or about July 27, 2010, in the pipeline that conveys the commingled waters of Shoshone and Santa Fe Creeks diverted by the Applicant.

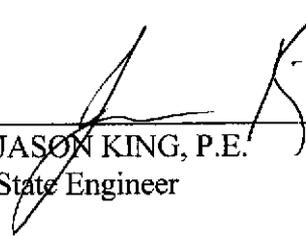
VII.

From the evidence presented at the hearing and the follow-up field investigation conducted by staff of the Division on August 4, 2010, the State Engineer finds that the Respondent achieved compliance on or about July 27, 2010, with respect to the installation of measuring and recording devices required by the terms of Permits 67295, 67296 and 67297, State Engineer's Ruling No. 5788 and State Engineer's Order No. 733.

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 ultimately, if not timely, complied with the State Engineer's request to correct the alleged violation.

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



JASON KING, P.E.
State Engineer

Dated at Carson City, Nevada

this 15th day of September, 2010.