

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

IN THE MATTER OF ALLEGED )  
VIOLATIONS OF THE CONTROLLING )  
STATUTES AND/OR REGULATIONS BY )  
RICHARD K. THOMPSON, NEVADA )  
LICENSED WELL DRILLER NO. 290. )

**RULING**

**#5406**

**GENERAL**

**I.**

A hearing in the matter of well driller Richard K. Thompson, Well Driller License No. 290, was held regarding the repeated failure of Mr. Thompson to follow the rules and regulations of the State of Nevada as to the drilling and plugging of water wells in the State of Nevada. These failures caused the State Engineer to consider whether Richard K. Thompson's well driller license should be revoked. Following the statutory procedures, the State Engineer held a public administrative hearing to consider the matter of whether Richard K. Thompson has failed to comply with the controlling statutes and regulations regarding the drilling and plugging of water wells in the State of Nevada.

**II.**

After all parties of interest were duly noticed by certified mail or personal service, a public administrative hearing was held on November 6, 2003, before a representative of the Office of the State Engineer and members of the Statewide Well Drillers' Advisory Board in Las Vegas, Nevada.<sup>1</sup>

**FINDINGS OF FACT**

**I.**

**FRED LEAVITT REPLACEMENT WELL**

On April 13, 1999, Mr. Thompson filed in the Office of the State Engineer Notice of Intent to drill card number 18033. This

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<sup>1</sup> Exhibit No. 1 and Transcript, public administrative hearing before the State Engineer, November 6, 2003. (Hereinafter, the exhibits and transcript will be referred to by Exhibit No. or Transcript.)

notice card indicated that he intended to drill a replacement well for Mr. Fred Leavitt.<sup>2</sup> On July 19, 1999, the State Engineer received Well Driller's Report number 75903 from Mr. Thompson. This is the well log for the new well drilled for Mr. Leavitt under Notice of Intent to drill card number 18033.

The regulations that address the duties of well drillers includes Nevada Administrative Code § 534.300(2), which provides that a:

water well may be drilled to replace an existing well if the existing well cannot be reconditioned and it will no longer produce the quantity of water allowed by the permit. A permit, waiver or certificate of water right must exist for the well to be replaced. The replacement well must not be drilled more than 300 feet from the location of the existing well described in the permit and may not be moved outside of the 40-acre subdivision described in the permit, waiver or certificate. The existing well must be plugged at the time the replacement well is drilled. If continued use will be made of the existing well, a permit or waiver must be issued for the replacement well before any drilling is commenced. (Emphasis added.)

The Well Driller's Report indicates that the replacement well was drilled between April 12th and June 22nd, 1999. A witness for the State Engineer testified that he found no record of the original well being plugged as required by the regulation.<sup>3</sup>

Mr. Thompson testified that the log for plugging the well should be found within the records of the Office of the State Engineer, and that the well that was plugged was not on Fred Leavitt's property or done for Fred Leavitt. Rather, it was on an adjacent property that was being developed for warehouses and such, and the developers were going to abandon the well. However the well could not be taken out of service until the replacement well was drilled, but the old well was abandoned and plugged at the conclusion of the drilling work. Mr. Thompson indicated that the Leavitt Trust had sold the adjacent property to the developer

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<sup>2</sup> Exhibit No. 1, Section 1.

<sup>3</sup> Transcript, pp. 22-23.

and it was across the street from their home, which the replacement well was drilled to serve.<sup>4</sup>

The Hearing Officer provided Mr. Thompson additional time to search for the documentation demonstrating the plugging of the original well. By letter dated November 7, 2003, Mr. Thompson submitted a copy of a well log filed for the abandonment of a well on July 14, 1999, for a B.H. Miller under Waiver R-1025.<sup>5</sup>

Well Driller's Report number 75903 indicates that the replacement well was drilled under Permit 10367. A review of the files maintained in Carson City, Nevada, for Permit 10367 indicates that on July 12, 1999, Mr. Thompson filed a request for a waiver of the regulation applicable to perforating the casing as to the abandonment of the existing well. The request notes that the well had recently been replaced by Thompson Drilling Co., Inc., under Notice of Intent 18033. By letter dated July 13, 1999, the Drilling Supervisor in the Southern Nevada Branch Office granted Waiver R-1025 waiving the requirements of Nevada Administrative Code § 534.420(5)(b). In the file is a Well Driller's Report number 75816, which indicates that on July 14, 1999, the original well under Permit 10367 was plugged for a B.H. Miller.

Nevada Administrative Code § 534.370(5) provides that if "drilling is suspended for any reason, the division must be notified within 24 hours after drilling is suspended or before the drilling equipment is moved from the drilling site, whichever occurs first. The suspension of drilling without completing or plugging the well must be approved by the division."

The State Engineer finds Mr. Thompson did plug the abandoned well, but the request for a waiver as to the requirements for the abandonment of that well was not filed until 22 days after the replacement well had been completed; therefore, Mr. Thompson did not plug the existing well at the time the replacement well was drilled and left the drilling site without completing the abandonment of the original well as required and suspended the

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<sup>4</sup> Transcript, pp. 27-28.

<sup>5</sup> Exhibit No. 4.

work as to the plugging of the existing well without the proper notice to and approval by the Office of the State Engineer.

II.

**JOHNNIE BREED AND JAMES CORDELL**

On August 11, 2000, the State Engineer received Notice of Intent to drill card number 19990, which indicated that Mr. Thompson was intending to drill a replacement well for a Johnnie Breed and James Cordell under Permit 62478.<sup>6</sup> On August 31, 2000, a staff member from the Office of the State Engineer made a field investigation at the drilling site and found the new well drilled, the pump being installed and the original well had not been plugged.<sup>7</sup> On September 6, 2000, the staff member rechecked the drilling site and the original well still had not been plugged and all drilling equipment had been moved off the site.<sup>8</sup> The staff member indicated that he returned to the office, called Mr. Thompson to inquire as to the plugging of the original well, and Mr. Thompson said that he did not know he had to plug the replaced well.<sup>9</sup> At the hearing, Mr. Thompson said he was aware he had to abandon the existing well, but indicated that he was not aware that he could not remove the drilling rig from the site without abandonment of the existing well.<sup>10</sup>

On September 7, 2000, the staff member faxed to Mr. Thompson a copy of Nevada Administrative Code § 534.300, which provides that the existing well must be plugged at the time a replacement well is drilled.<sup>11</sup> On September 22, 2000, the State Engineer received the Well Driller's Report number 81199, which indicates that the drilling of the replacement well was started on August 11th and completed on August 24, 2000.<sup>12</sup> Mr. Thompson testified

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<sup>6</sup> Exhibit No. 1, Section II.

<sup>7</sup> Transcript, p. 36.

<sup>8</sup> Transcript, p. 36.

<sup>9</sup> Transcript, p. 36.

<sup>10</sup> Transcript, pp. 44, 61.

<sup>11</sup> Exhibit No. 1, Section II.

<sup>12</sup> Exhibit No. 1, Section II.

that he faxed Notice of Intent card number 19990 to the Office of the State Engineer at least 3 days prior to the commencement of drilling, which was confirmed by staff from the Office of the State Engineer.<sup>13</sup>

On September 20, 2000, after a second telephone call to Mr. Thompson,<sup>14</sup> the State Engineer received Notice of Intent to drill card number 19992, which indicated that Thompson Drilling Co., Inc. was going to plug the original well under Permit 62478.<sup>15</sup> On September 22, 2000, the State Engineer received Well Driller's Report number 81198, which indicates that the existing well was plugged on September 19, 2000. The well report originally indicated that the well was plugged with sand slurry, but that indication is crossed out and next to it is written that 2 yards of cement grout were pumped into the well from the 92 foot depth of the well to the surface.<sup>16</sup> Mr. Thompson testified that the indication of cement grout must be an error as the only material he has ever used for plugging is neat cement.<sup>17</sup>

On December 15, 2003, staff members from the Office of the State Engineer took a core sample from the abandoned well. The sample was found to be light grey, wet and pliable and had not solidified, as neat cement should have done after more than a 3-year period. After the sample dried it became light in color, very brittle and crumbled easily. These are indications the material was not neat cement. On December 19, 2003, the Hearing Officer wrote to Mr. Thompson concerning these findings and provided him an opportunity to respond. On January 14, 2004, Mr. Thompson responded and provided the receipt for the material delivered for plugging the well. The receipt indicates that 2 cubic yards of 8-sack sand slurry were delivered on September 19, 2000.

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<sup>13</sup> Transcript, pp. 39-40.

<sup>14</sup> Transcript, p. 37.

<sup>15</sup> Exhibit No. 1, Section II.

<sup>16</sup> Exhibit No. 1, Section II.

<sup>17</sup> Transcript, pp. 47-48.

Nevada Administrative Code § 534.320 provides that a well "driller shall notify the division before drilling, reconditioning or plugging a well by submitting a notice of intent to drill," and the "notice must be received by the division at least 3 working days before the well rig is set up and the drilling commenced." Nevada Administrative Code §§ 534.420(2)(a) requires that the driller shall ensure that a notice of his intent to plug a well is received by the Division of Water Resources not less than 3 working days before the drill rig is moved to the location, and 534.420(2)(b) requires a well driller notify the Division of Water Resources not less than 24 hours before plugging begins.

Nevada Administrative Code § 534.420(5)(b) and (6) requires that a well be plugged "from the total depth of the well to 50 feet above the uppermost saturated ground water stratum or to within 20 feet of the surface of the well, whichever is less, with neat cement or bentonite grout specifically designed to plug abandoned wells" and that the "well driller shall place a surface plug in the well consisting of neat cement, cement grout or concrete grout, from a depth of at least 20 feet to the surface."

Nevada Administrative Code § 534.370(5) provides that if "drilling is suspended for any reason, the division must be notified within 24 hours after drilling is suspended or before the drilling equipment is moved from the drilling site, whichever occurs first. The suspension of drilling without completing or plugging the well must be approved by the division."

The State Engineer finds Mr. Thompson did plug the abandoned well, but not until 26 days after the replacement well had been completed; therefore, Mr. Thompson did not plug the existing well at the time the replacement well was drilled and left the drilling site without completing the abandonment of the original well as required and suspended the work as to the plugging of the existing well without the proper notice to and approval by the Office of the State Engineer. The State Engineer finds that since the new well was not equipped with a pump until August 31, 2000, one can assume the old well continued to be used. The State Engineer finds Nevada Administrative Code § 534.300(2)

required that since Mr. Thompson was not plugging the existing well simultaneously with the drilling of the replacement well that a permit or waiver had to have been issued before any drilling on the replacement well was commenced.

The State Engineer finds Mr. Thompson did not timely file Notice of Intent Card number 19992 in that it was not filed until after the plugging was actually completed; therefore, it was not received 3 days before the drilling rig was set up, and Mr. Thompson did not provide the State Engineer's office with the required 24-hour notice before plugging began. The State Engineer finds based on Mr. Thompson own filing that Mr. Thompson did not plug the depth of the well with neat cement or bentonite grout, but rather plugged the entire well with sand slurry, which does not comply with the provisions of Nevada Administrative Code § 534.420(5)(b) and (6), and was not truthful about the matter when questioned at the administrative hearing.

### III.

#### FREHNER CONSTRUCTION

On or about August 5, 2002, Mr. Thompson spoke with a member of the staff of the Southern Nevada Branch Office of the State Engineer indicating that he wanted to drill an exploratory well for Frehner Construction.<sup>18</sup> Mr. Thompson was informed no waiver would be issued for said exploratory well, because an existing well existed within 100 feet of the proposed drill site. Mr. Thompson then inquired about the drilling of a replacement well and was informed that if he drilled a replacement well, the existing well would have to be plugged prior to leaving the drilling site. He was also informed that if Frehner Construction wanted to operate both wells, it would need to file a change application for all or a portion of the water right that was on the existing well, and have the permit granted prior to any drilling taking place.

On or about August 5, 2002, Mr. Thompson faxed to the Office of the State Engineer Notice of Intent to drill card indicating he was going to drill a new well for Frehner Construction and

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<sup>18</sup> Memo in Well Driller File License No. 290.

noted Vested Right 05814 as the water right that would be in the well.<sup>19</sup> Staff from the Office of the State Engineer telephoned Mr. Thompson and informed him that a well already existed for Vested Right 05814; therefore, his notice of intent card should indicate the drilling of a replacement well.<sup>20</sup> Apparently, Mr. Thompson argued with the staff member that since the water right on the well was a vested right, he did not have to plug the existing well.<sup>21</sup> On August 8, 2002, Mr. Thompson filed in the Office of the State Engineer Notice of Intent to drill card number 22551, which indicates that he was going to drill a replacement well for Frehner Construction as to Vested Right 05814.<sup>22</sup>

On August 29, 2002, a staff member from the Office of the State Engineer visited the drilling site, no work was being performed; however, the well rig was set up over the new well. A field inspection completed on October 8, 2002, indicated that the new well had been drilled, the drilling rig had been moved off the well head, but was still on site, and the old well was still in use.<sup>23</sup>

On October 10, 2002, the staff member sent Mr. Thompson a facsimile requesting information as to the date scheduled for plugging the existing well.<sup>24</sup> On October 18, 2002, the staff member conducted a third field investigation of the drilling site and found all the drilling equipment had been removed, the new well was in operation and had been piped to work in conjunction with the existing well. When Mr. Thompson was questioned as to why the existing well was not plugged he indicated that the Office of the State Engineer would have to address that question

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<sup>19</sup> Transcript, p. 62.

<sup>20</sup> Transcript, p. 62.

<sup>21</sup> Transcript, p. 62.

<sup>22</sup> Exhibit No. 1, Section III.

<sup>23</sup> Transcript, p. 63.

<sup>24</sup> Exhibit No. 1, Section III.

to Frehner Construction.<sup>25</sup> By letter dated October 23, 2002, the Office of the State Engineer informed Mr. Thompson of the regulation, which requires that if continued use will be made of the existing well, a permit or waiver was required before any drilling could commence on the replacement well.<sup>26</sup>

Mr. Thompson indicated that Mr. Frehner would not allow Thompson Drilling Co. to abandon the old well until the new well was equipped and the yield determined. Upon finding that the new well did not produce enough water as allowed for under the original water right, Mr. Frehner decided not to abandon the old well and would not allow Mr. Thompson to plug the existing well. Mr. Frehner later moved a portion of the vested right into the new well.<sup>27</sup>

Well Driller's Report number 87122 filed by Mr. Thompson indicates that he did not drill a replacement well, but rather drilled a new well.

As noted above Nevada Administrative Code § 534.300(2) provides that a water well may be drilled to replace an existing well under certain conditions; however, the existing well must be plugged at the time the replacement well is drilled. If continued use will be made of the existing well, a permit or waiver is required before any drilling is commenced on the replacement well. Nevada Revised Statute § 533.325 provides that any person who wishes to change the place of diversion of water already appropriated shall, before performing any work in connection with such appropriation, apply to the State Engineer for a permit to do so. No change application was filed before performing the work in connection with drilling the new well.

Nevada Administrative Code § 534.370(5) provides that if "drilling is suspended for any reason, the division must be notified within 24 hours after drilling is suspended or before the drilling equipment is moved from the drilling site, whichever

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<sup>25</sup> Transcript, p. 64.

<sup>26</sup> Exhibit No. 1, Section III.

<sup>27</sup> Exhibit No. 2.

occurs first. The suspension of drilling without completing or plugging the well must be approved by the division."

The State Engineer finds Mr. Thompson did not plug the existing well as required by the regulation at the time he drilled the replacement well. The State Engineer finds based on the fact that Mr. Thompson's original notice of intent indicated he was drilling a new well and that the well driller's report indicated he drilled a new well by drilling the second well without the benefit of permit or waiver Mr. Thompson violated the statutes (NRS § 533.325) and regulations (NAC § 534.300) of the State of Nevada that required a permit or waiver be issued for continued use of the well or to move water to a new well. The State Engineer finds Mr. Thompson left the drilling site without completing the abandonment of the original well as required and suspended the work as to the plugging of the existing well without the proper notice to and approval by the Office of the State Engineer. The State Engineer finds it was Mr. Thompson's responsibility to inform the Office of the State Engineer as to the customer not wanting the old well to be plugged in order to allow the office to pursue the matter.

#### IV.

##### REPUBLIC DUMP COMPANY

On September 18, 2002, Mr. Thompson filed Well Driller's Report number 88435 in the Office of the State Engineer indicating that he had reconditioned a well for Republic Dump Company, Inc., between September 10 and 11, 2002.<sup>28</sup> In that Well Driller's Report, he referenced Notice of Intent to drill card number 20975. Review of the State Engineer's records indicated that Notice of Intent to drill card number 20975 was filed in reference to a monitor well drilled by a driller that worked for another company, and the monitor well was completed in April 2002.<sup>29</sup>

Staff from the Division of Water Resources notified Mr. Thompson on September 23, 2002, that no Notice of Intent to drill

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<sup>28</sup> Exhibit No. 1, Section IV.

<sup>29</sup> Exhibit No. 1, Section IV.

card was on file for the work he indicated he performed between September 10 and 11, 2002.<sup>30</sup> On September 25, 2002, Mr. Thompson filed Notice of Intent to drill card number 22567, 14 days after the work had actually been completed.<sup>31</sup>

Mr. Thompson indicated that the project hydrologist had supplied him with the Notice of Intent card no. 20975 and had directed him to use the notice of intent number on the well log.

Nevada Administrative Code § 534.320 provides that the well driller shall notify the division before reconditioning a well by submitting a notice of intent to drill at least 3 working days before the well rig is set up and the drilling commenced.

The State Engineer finds Mr. Thompson did not file a Notice of Intent to recondition the well the required 3 working days before commencing the work. The State Engineer finds Mr. Thompson was responsible for the information provided on the card.

**V.**

**MARNELL CARRAO ASSOCIATES**

On or about August 14, 2003, staff from the Office of the State Engineer indicate that a message was received to return a telephone call from Mr. Thompson. Later in the day, the staff member returned Mr. Thompson's telephone call, and was informed by Mr. Thompson that he had plugged 4 wells at the Bellagio Hotel and had not filed Notice of Intent cards. Mr. Thompson indicated that he had his rig at the job site and it was just convenient to do the job, so he just went ahead and did it.<sup>32</sup> On August 14, 2003, Mr. Thompson filed Notice of Intent to drill card number 24536 indicating that on August 12, 2003, he had abandoned 4 wells for Marnell Carrao Associates.<sup>33</sup>

Mr. Thompson indicated that on August 12, 2003, he received a telephone call from Marnell Carrao's superintendent at

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<sup>30</sup> Exhibit No. 1, Section IV.

<sup>31</sup> Exhibit No. 1, Section IV.

<sup>32</sup> Transcript, pp. 90-91.

<sup>33</sup> Exhibit No. 1, Section V.

the Bellagio project.<sup>34</sup> Approximately a week before this date, he had received a telephone call from someone from Marnell Carrao requesting information as to what had to be done to abandon these 4 dewatering wells. On April 12, 2003, Marnell Carrao's superintendent called Mr. Thompson and asked him to come over to the Bellagio project right away. "So being a good customer, a very good customer, I jumped in my pickup and drove over there."<sup>35</sup>

When Mr. Thompson arrived on site he found a large crane, a load of neat cement and a large concrete pump waiting for him. Mr. Thompson indicated that he called one staff member at the Office of the State Engineer and that staff member was not in the office "so I couldn't inform him what was going on."<sup>36</sup> Mr. Thompson did not attempt to contact any other staff members or supervisors within the Division of Water Resources. So, Mr. Thompson made the decision to just go ahead and proceed with the well plugging "as any reasonable person would" do with the full knowledge that he had not complied with the regulations as to filing Notice of Intent cards and the regulation that requires 24-hour notice before beginning to plug a well.<sup>37</sup> Mr. Thompson indicated that he thinks he should have some discretion about whether to adhere to the rules under certain circumstances and if that places his license in jeopardy so be it.<sup>38</sup>

Nevada Administrative Code § 534.320 provides that a well driller shall notify the division before plugging a well by submitting a notice of intent to drill at least 3 working days before the well rig is set up and the plugging is commenced. Nevada Administrative Code § 534.420(2) requires that the driller shall ensure that a notice of his intent to plug a well is received by the Division of Water Resources not less than 3 working days before the drill rig is moved to the location, and

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<sup>34</sup> Transcript, pp. 90-91.

<sup>35</sup> Transcript, pp. 91-92.

<sup>36</sup> Transcript, p. 92.

<sup>37</sup> Transcript, p. 92.

<sup>38</sup> Transcript, p. 95.

NAC § 534.420(2) requires notification to the Division of Water Resources not less than 3 working days before the drill rig is moved to the location where the well is to be plugged, and requires notification to the division not less than 24 hours before beginning to plug a well.

The State Engineer finds that Mr. Thompson did not timely file the required Notice of Intent card or provide the required 24-hour notice before beginning to plug the wells. The State Engineer finds that Mr. Thompson believes he can ignore the regulations at will upon his own discretion, which is not correct.

## VI.

### CARL SHEETS

A staff member from the Office of the State Engineer received a phone call from a lady inquiring about what water rights were appurtenant to property she was preparing to sell. Upon researching the records she was informed that the permit number she provided (Permit 47656) was a cancelled permit. Upon additional research it was found that she had reapplied and a new permit had been issued for the property (Permit 56533).<sup>39</sup>

On July 13, 1999, Mr. Thompson filed Notice of Intent to drill card number 18910 indicating that he was going to drill a replacement well under Permit 47656.<sup>40</sup> Mr. Thompson was informed that a well could not be drilled under the Notice of Intent card due to the fact that Permit 47656 had been cancelled in January 1992.<sup>41</sup> On July 16, 1999, Mr. Thompson filed Notice of Intent to drill card number 18911 indicating he was going to drill a replacement well under Permit 56533. On August 13, 1999, Mr. Thompson filed Well Driller's Report number 76498 for the replacement well.

Afterwards, staff from the Office of the State Engineer conducted a field inspection and found that the old well had not been plugged and was being used in conjunction with the

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<sup>39</sup> Transcript, p. 99-100.

<sup>40</sup> Exhibit No. 1, Section VI.

<sup>41</sup> Transcript, p. 101.

replacement well. Mr. Thompson indicated that he drilled this well as a subcontractor for S.R. McKinney who is not a licensed well driller.<sup>42</sup> He indicated that he was supposed to be informed when the equipment was installed and the new well put in service so that the old well could be abandoned.<sup>43</sup> He later learned that the customer did not want to abandon the original well.<sup>44</sup>

Nevada Administrative Code § 534.300(2) provides that a water well may be drilled to replace an existing well under certain conditions; however, the existing well must be plugged at the time the replacement well is drilled. If continued use will be made of the existing well, a permit or waiver must be issued for the replacement well before any drilling is commenced.

Nevada Administrative Code § 534.370(5) provides that if "drilling is suspended for any reason, the division must be notified within 24 hours after drilling is suspended or before the drilling equipment is moved from the drilling site, whichever occurs first. The suspension of drilling without completing or plugging the well must be approved by the division.

The State Engineer finds Mr. Thompson did not plug the existing well as required by the regulation at the time he drilled the replacement well. The State Engineer finds Mr. Thompson left the drilling site without completing the abandonment of the original well as required and suspended the work as to the plugging of the existing well without the proper notice to and approval by the Office of the State Engineer. The State Engineer finds it was Mr. Thompson's responsibility to inform the Office of the State Engineer as to the customer not wanting the old well to be plugged in order to allow the office to pursue the matter.

## VII.

The Statewide Well Driller's Advisory Board's recommendation to the State Engineer was that a strong letter of reprimand should be put in Mr. Thompson's well driller file, and that if

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<sup>42</sup> Transcript, pp.103-105.

<sup>43</sup> Exhibit No. 2.

<sup>44</sup> Transcript, pp. 103-105.

said infractions continue Mr. Thompson should come before the Advisory Board for another hearing for revocation of his well driller's license.<sup>45</sup> While the State Engineer appreciates the recommendation of the Advisory Board, a review of Mr. Thompson's well driller file indicates that these sorts of problems have gone on for more than 10 years. For example, by letter dated March 21, 1992, the then State Engineer indicated that:

over the past year, the Division has witnessed your drill rigs drilling wells for which no "Intent Card" was filed and, we are missing at least two well logs. As you know we have suspended licenses for similar infractions of the rules. I want you to know that I expect exemplary compliance from the Well Driller's Advisory Board members and Thompson Drilling is no exception. I want the past infraction corrected and strict compliance in the future or disciplinary proceedings will be taken.<sup>46</sup>

There are other memos in the file indicating additional problems the State Engineer's office has had regarding Mr. Thompson's failure to comply with the rules and regulations.

The State Engineer finds that Mr. Thompson was put on notice more than 10 years ago that continued infractions of the rules and regulations would result in a disciplinary hearing and yet he continued to ignore said rules and regulations. The State Engineer finds that based on the long history of repeated infractions he does not accept the recommendation of the Advisory Board.

#### VIII.

The State Engineer finds that Mr. Thompson has repeatedly for over 10 years ignored the rules and regulations pertaining to the drilling and plugging of water wells in the State of Nevada even after being put on notice that it could jeopardize his license. The State Engineer has found that Mr. Thompson believes that he should have discretion whether to follow the rules or not. The State Engineer finds well drillers do not have the discretion to determine whether or not to follow the rules and

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<sup>45</sup> Transcript, p. 115.

<sup>46</sup> Well Driller's License File No. 290, official records in the Office of the State Engineer.

regulations, and those rules provide methods by which well drillers can obtain waivers of the rules for specific situations. The State Engineer finds Mr. Thompson's repeated violations are cause for disciplinary action.

### CONCLUSIONS

#### I.

The State Engineer has jurisdiction over the parties and subject matter of this action and determination.<sup>47</sup>

#### II.

Nevada Revised Statute § 534.160(3) provides that the State Engineer may revoke or refuse to re-issue a well-drilling license if he determines after an investigation and disciplinary hearing that any of the referenced statutes or regulations have been violated.

#### III.

The State Engineer concludes that Mr. Thompson has violated Nevada Revised Statute § 534.160(2) and Nevada Administrative Code § 534.330, which require well drillers to comply with the regulations adopted by the State Engineer governing the drilling of wells in the State of Nevada.

The State Engineer concludes that Mr. Thompson has repeatedly violated Nevada Administrative Code § 534.300(2), which requires that when a well is replaced the existing well must be plugged at the time the replacement well is drilled. If continued use will be made of the existing well, a permit or waiver must be issued for the replacement well before any drilling is commenced. The State Engineer concludes that Mr. Thompson had a responsibility to inform the Office of the State Engineer when customers refused to plug wells in accordance with the regulations in order to allow the State Engineer to pursue the matter. As Mr. Thompson did not inform the State Engineer he bears the responsibility for the failure to plug the wells.

The State Engineer concludes that Mr. Thompson has repeatedly violated Nevada Administrative Code § 534.370(5), which provides that if drilling is suspended for any reason, the

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<sup>47</sup> NRS chapter 534 and NAC chapter 534.

division must be notified within 24 hours after drilling is suspended or before the drilling equipment is moved from the drilling site, whichever occurs first. The suspension of drilling without completing or plugging the well must be approved by the division.

The State Engineer concludes that Mr. Thompson has repeatedly violated Nevada Administrative Code § 534.320, which requires that a well driller shall notify the division before drilling, reconditioning or plugging a well by submitting a notice of intent to drill at least 3 working days before the well rig is set up and the drilling commenced.

The State Engineer concludes that Mr. Thompson has repeatedly violated Nevada Administrative Code § 534.420(2)(b), which requires that the driller shall ensure that a notice of his intent to plug a well is received by the Division of Water Resources not less than 3 working days before the drill rig is moved to the location, and requires a well driller notify the Division of Water Resources not less than 24 hours before plugging begins.

The State Engineer concludes that Mr. Thompson violated Nevada Revised Statute § 533.325 when he drilled a well for Frehner Construction without the benefit of complying with Nevada Administrative Code § 534.300 as to continued use of the well and performing work on the new well without the issuance of a permit to do so.

The State Engineer concludes that Mr. Thompson has violated Nevada Administrative Code § 534.420(5) and (6) in his failure to use the proper material to plug a well as indicated by his own records.

#### **RULING**

As provided in Nevada Revised Statute § 534.160(3) and Nevada Administrative Code § 534.290, the State Engineer hereby revokes Mr. Thompson's well drilling license number 290 on the grounds that he failed repeatedly and over a long period of time to comply with the statutes and regulations governing the drilling of wells and well drillers in the State of Nevada. Mr. Thompson may reapply for a well-drilling license at any time in

compliance with the provisions of Nevada Revised Statute chapter 534 and Nevada Administrative Code chapter 534; however, due to his long history of infractions he will be required to retake the written examination and appear before the Statewide Well Driller's Advisory Board.

Respectfully submitted,



HUGH RICCI, P.E.  
State Engineer

HR/SJT/jm

Dated this 29th day of

June, 2004.