

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

1211

ORDER

Charles M. Brown
c/o White River Ranch, LLC
HC 34, Box 34165
Ely, Nevada 89301
Certified Mail 71067808063000435017

WHEREAS, during the field investigation of July 8, 2009, personnel of the Office of the State Engineer have documented the construction of a sump with the purpose to impound and divert waters within the channel of Ellison Creek, sometimes referred to as Smith Creek, located within the confines of White Pine County. Specifically the sump, considered a diversion works by this office, occupies the portion of the channel described as lying near or within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ and the SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 25; and/ or the NE $\frac{1}{4}$ NW $\frac{1}{4}$ and the NW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 36, T.13N., R.60E., M.D.B.&M.

WHEREAS, the State Engineer has been given the authority to cause the removal of a diversion works as set forth under NRS 535.050. Specifically, subsection 3 states: "If the dam, diversion works or obstruction has not been removed after 30 days' notice in writing given by the State Engineer and served upon the owner or person controlling the dam, diversion works or obstruction, or if no appeal has been taken from the order of the State Engineer as is provided for in NRS 533.450, then the State Engineer may remove the dam, diversion works or obstruction." The cost of such removal is the responsibility of the person liable therefore.

WHEREAS, the diversion of water from the unnamed spring area lying within SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 25, and the NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 36 of T.13N., R.60E., M.D.B.&M. for irrigation purposes was confirmed by the land owner, Charles M. Brown of White River Ranch, LC.

WHEREAS, the flows of these springs have historically contributed, in their entirety, by passing unhindered through the Ellison Creek, (sometimes known as Smith Creek) channel to satisfy the downstream water right identified as Permit 7251, Certificate 1330 on file with the Nevada Division of Water Resources.

WHEREAS, no application has been filed, nor has any permit been granted, to allow for the above mentioned sump or springs to be utilized as points of diversion, as required under Nevada Revised Statutes (NRS) 533.325.

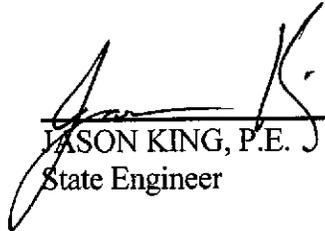
NOW THEREFORE, to insure the proper delivery of water identified by Permit 7251, Certificate 1330 located downstream of these unauthorized diversions and to cease the illegal impoundment of water to which no water right has been established as set forth under NRS Chapter 533, the property owner is hereby ordered as set forth under NRS 535.030 (4), and NRS 535.050 to:

1. Remove the sump described as lying near or within the confluence of the following 40 acre subdivisions: SE $\frac{1}{4}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 25; NE $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 36, T.13N., all within R.60E., M.D.B.&M., and fill in the channel such that it is returned to its natural course and flow in compliance with this order within 30 days of service.
2. Cease and desist diverting water or hindering the flow of the unnamed spring area lying within SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 25, and the NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 36 of T.13N., R.60E., M.D.B.&M.

Failure to comply with this order will result in the owner being charged with a misdemeanor as set forth under NRS 533.480. NRS 533.480 states: "Any person violating any of the provisions of NRS 533.010 to NRS 533.475, inclusive, shall be guilty of a misdemeanor." After July 1, 2009, per NRS 533.481, "the State Engineer may, after notice and opportunity for a hearing, require a person who violates any provision of this chapter or any permit, certificate, order or decision issued or regulation adopted by the State Engineer pursuant to this chapter or NRS 532.120 to:"

- (a) Pay an administrative fine not to exceed \$10,000 per day for each violation as determined by the State Engineer.
- (b) Replace not more than 200 percent of the water used, wasted, or diverted.
- (c) Where an administrative fine or water replacement is imposed, the State Engineer may require the person to pay the costs of the proceeding, including investigative costs and attorney's fees.

Cost of the removal of this structure shall be borne by the parties that are the subject of this order.



JASON KING, P.E.
State Engineer

Dated at Carson City, Nevada,

this 14th day of July, 2010

cc: White River Ranch, LC
Richard J. Baughman
Douglas W. Carson, Trustee
Robert Coache