

BRIAN SANDOVAL  
Governor

STATE OF NEVADA

LEO DROZDOFF  
Director

JASON KING, P.E.  
State Engineer



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>

June 21, 2011

John H. Koot  
3280 La Mirada Ave.  
Las Vegas, Nevada 89120  
Certified Mail #7106 7808 0630 0046 6981

Re: Finding of Alleged Violation and Violation Order 1214

Dear Dr. Koot:

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.

As provided in the enclosed Violation Order, the State Engineer requires notice of your intent to comply with the order by **June 24, 2011**. Also as required in the Violation Order, you must attend a hearing to show cause on **July 26, 2011**. *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 and 533.482 and NAC Chapter 532.

The hearing to show cause is not a public hearing; only you, your counsel or agent, witnesses, the Division of Water Resources staff and counsel, and the court reporter will be permitted at the hearing. 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 black ink that reads "Malcolm J. Wilson, P.E.".

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

MJW/ml  
Enclosures

cc: Southern Nevada Branch Office  
Capital Reporters, E-mail

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

IN THE MATTER OF JOHN H. KOOT AND )  
THE ALLEGED CONSTRUCTION OF )  
DIVERSION WORKS AND DIVERSION OF )  
WATER FROM COLD CREEK WITHIN THE )  
INDIAN SPRINGS VALLEY HYDROGRAPHIC )  
BASIN (161), CLARK COUNTY, NEVADA. )

**FINDING OF ALLEGED  
VIOLATION  
ORDER No. 1214**

**LEGAL**

**I.**

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

**II.**

Nevada Revised Statutes § 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 (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.

**III.**

Nevada Revised Statutes § 533.325 provides that any person who wishes to appropriate any of the public waters shall, before performing any work in connection with such appropriation, apply to the State Engineer for a permit to do so. NRS § 533.460 provides that the unauthorized use of water to which another person is entitled shall be a misdemeanor, and the possession and use of such water without legal right shall be prima facie evidence of the guilt of the person diverting it.

**FACTS**

**I.**

Multiple complaints have been received by the Office of the State Engineer, multiple field investigations have been conducted by the representatives of the State Engineer, and multiple letters from the Office of the State Engineer have advised John Koot (Respondent) of the alleged violations and how to come into compliance.<sup>1</sup>

On May 30, 2002, representatives of the State Engineer performed an informal field investigation in response to a telephoned complaint on May 16, 2002. This field investigation revealed that the water of Cold Creek in the Indian Springs Valley Hydrographic Basin had been diverted onto lands located within a portion of the SE¼ SE¼ of Section 36, T.17S., R.55E., M.D.B.&M., being further described as Clark County Assessor's Parcel Numbers (APN) 092-36-801-007, 092-36-801-008 and 092-36-801-011, and thence into a man-made pond of approximately forty square feet in area and six feet in depth for the purpose of making a fishing hole.

In a certified letter dated May 30, 2002, the Respondent was informed that the diversion must stop, the fish removed from the pond and the ground restored to its original state, and to acquire a water right for the intended use. This letter set a 30 day time frame in which to comply.

In a letter dated June 28, 2002, the attorney for the Respondent requested an extension of time to complete the restoration of the ground and to locate a suitable water right for the properties.

In a letter dated July 16, 2002, the Respondent stated that instead of removing the pond, he intended to improve it to reduce losses and leave it in place as a fire draw while still actively attempting to purchase water rights.

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<sup>1</sup> File No. AV2 (Koot, John H.), official records in the Office of the State Engineer.

In a certified letter from the Office of the State Engineer dated August 5, 2002, the Respondent was informed that the NRS cannot be waived and that since corrective action had not occurred, legal actions have been started.

A certified cease and desist letter from the Office of the State Engineer dated August 6, 2008, was sent to the Respondent following another informal field investigation conducted on or about June 25, 2008, by representatives of the State Engineer.

On November 10, 2009, the Division of Water Resources Southern Nevada Branch Office received a written complaint regarding Cold Creek water being diverted and causing the creek to be dried for extended periods of time. This letter identified the Respondent and another property owner.

On November 16, 2009, a representative of the State Engineer performed an informal field investigation in response to this written complaint. This field investigation revealed that a dam was in place and a pipeline carrying water from the creek to the fields on the Respondent's property, being Clark County APN's 092-36-801-007 and 092-36-801-008 located within a portion of the SE¼ SE¼ of Section 36, T.17S., R.55E., M.D.B.&M.

## **II.**

Per the Nevada Administrative Code (NAC) 532, on November 25, 2009, the Division sent a certified letter to the Respondent setting forth the alleged violation and how to correct the violation. It established a date of December 10, 2009, in which to take the corrective actions and warned that failing to take such actions could result in additional enforcement actions as provided for under NAC 532. The signed certified mail receipt was received in the Office of the State Engineer on December 2, 2009. The record retrieved from the "Track and Confirm" database on the United States Postal Service's official website shows that this letter was delivered November 30, 2009.<sup>1</sup>

**III.**

On December 15, 2009, a representative of the State Engineer performed an informal field investigation. The Respondent had not fully performed the corrective actions described in the warning letter dated November 25, 2009, since while one diversion from the creek was removed, another remained in place.<sup>1</sup>

**IV.**

In the spring of 2010, a representative of the State Engineer performed an informal field investigation. At that time, the Respondent had performed the corrective actions described in the warning letter dated November 25, 2009. Although the Respondent did not comply within the timeframe established by said warning letter, the State Engineer did not take further action at that time because the Respondent had eventually complied.<sup>1</sup>

**V.**

In response to a new complaint, on June 6, 2011, a representative of the State Engineer performed another informal field investigation. Despite the spring 2010 compliance with the requirements set forth in the warning letter dated November 25, 2009, the Respondent has since constructed new diversion works and resumed diverting the waters of Cold Creek to fill a pond.<sup>1</sup>

**VI.**

A search of the records of the State Engineer confirms that there is no water right from Cold Creek at the point of diversion or appurtenant to the place of use where the water of Cold Creek is being diverted and used.<sup>2,3</sup>

**FINDING**

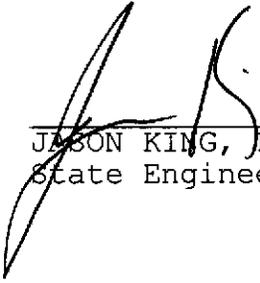
The State Engineer finds that the Respondent has constructed diversion works and diverted water from Cold Creek without the benefit of a water right in violation of NRS §§ 533.325 and

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<sup>2</sup> Township Card 17S 55E, official records in the Office of the State Engineer

<sup>3</sup> Nevada Division of Water Resources' Water Rights Database, Hydrographic Abstract, June 7, 2011, official records in the Office of the State Engineer

533.460, respectively, and that the Respondent is required to comply with these statutes by ceasing the diversion of water from Cold Creek and removing the unauthorized diversion structure.

 P.E.  
\_\_\_\_\_  
JASON KING, P.E.  
State Engineer

Dated at Carson City, Nevada  
this 21st day of June, 2011.

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

**1214**

**VIOLATION ORDER**

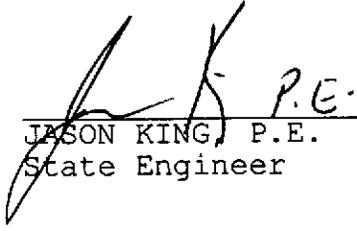
**WHEREAS**, on the basis of the attached Finding of Alleged Violation, which is hereby made a part of this Violation Order, the State Engineer has determined that John H. Koot (Respondent), is in violation of the provisions of Nevada Revised Statutes (NRS) §§ 533.325 and NRS 533.460.

**WHEREAS**, under NRS § 533.481 and Nevada Administrative Code (NAC) Chapter 532, a person found to be in violation of any provisions of NRS Chapter 533 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. **By June 24, 2011**, inform the Division of Water Resources (Division) of the Respondent's intent to comply with this order.
2. **By July 1, 2011**, 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 8, 2011**, comply with the requirements set forth in the Finding of Alleged Violation.
4. **At 9:00 a.m. on July 26, 2011**, appear at a hearing with the Division to be held at the Department of Conservation and Natural Resources, Tahoe Hearing Room, 901 S. Stewart Street, Second Floor, Carson City, Nevada, 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.

  
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JASON KING, P.E.  
State Engineer

Dated at Carson City, Nevada  
this 21<sup>st</sup> day of June, 2011.