

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

1222

VIOLATION ORDER

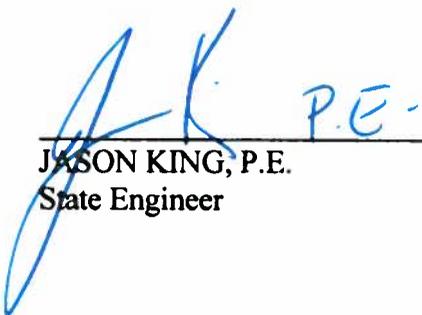
WHEREAS, on the basis of the attached Finding of Alleged Violation, which is hereby made a part of this Violation Order, the State Engineer has determined that Charles K. and D. Jean Hollis (Respondent Hollis) are in violation of the terms of Permit 31261, Certificate 11290 and Garwheel LLC (Respondent Garwheel) is in violation of the Nevada Revised Statutes (NRS) §§ 534.020 and 534.080; therefore, the Respondents are subject to the provisions of NRS §§ 533.481 and 534.193.

WHEREAS, under Nevada Revised Statutes §§ 533.481 and 534.193 and Nevada Administrative Code (NAC) Chapter 532, a person found to be in violation of any provisions of NRS Chapters 533 and 534 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 Respondents must:

1. **Within one week of the date of this order**, inform the Division of Water Resources (Division) of the Respondents' intent to comply with this order.
2. **Within 30 days of the date of this order**, submit to the Division an approvable mitigation plan, which sets forth the circumstances under which the Respondents will comply with the requirements set forth in the Finding of Alleged Violation.
3. Cease using the water from the West Well until in compliance with the laws pertaining to the appropriation of water and **within 30 days of the date of this order**, initiate proceedings to secure a permit to divert water.
4. **Within 1 year of the date of this order**, comply with the requirements set forth in the Finding of Alleged Violation.

5. **At a time and location to be determined**, appear at a hearing with the Division 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.



JASON KING, P.E.
State Engineer

Dated this 1st day of
November, 2012.

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

IN THE MATTER OF CHARLES K. AND D.)
JEAN HOLLIS AND GARWHEEL, LLC)
AND THE ALLEGED OVER-PUMPING OF)
GROUNDWATER FROM THE WELL)
AUTHORIZED UNDER PERMIT 31261,)
CERTIFICATE 11290 AND THE ALLEGED)
PUMPING FROM A WELL WITHOUT A)
LEGAL USE WITHIN THE PAHRUMP)
VALLEY HYDROGRAPHIC BASIN (162),)
NYE COUNTY, NEVADA.)

**FINDING OF ALLEGED
VIOLATION
ORDER NO. 1222**

LEGAL

I.

The State Engineer, under the authority of Nevada Revised Statutes (NRS) Chapters 532, 533 and 534, has the power and duty to enforce the provisions of NRS Chapters 533 and 534.

II.

Nevada Revised Statute (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 Chapter 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 § 533.463, 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 Statute § 534.193 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 Chapter 534 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 § 534.070, 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.

IV.

Nevada Revised Statute § 534.020(1) provides that all underground waters within the boundaries of the state are subject to appropriation for beneficial use only under the laws of this state relating to appropriation and use of water and not otherwise. Nevada Revised Statute § 534.080 provides that a legal right to appropriate groundwater can only be acquired by complying with the provisions of Chapter 533 of NRS pertaining to the appropriation of water.

FACTS

I.

The C-Valley Mobile Home Park is served by two wells. The well authorized for use under Permit 31261, Certificate 11290 is identified as Well 1 and as the East Well in the Pahrump Valley Groundwater Inventory (East Well). The well without a permit to appropriate water is identified as Well 2 and as the West Well in said inventory (West Well).¹

II.

Permit 31261 was issued for 0.2 cubic feet per second (cfs), but not to exceed 1.934 million gallons annually (mga), equivalent to 5.94 acre-feet annually (afa). Proof of Application of Water to Beneficial Use was filed by the Permittee and Certificate 11290 was issued for 0.0106 cfs, but not to exceed 1.934 mga, equivalent to 5.94 afa. The owner of record of Permit 31261, Certificate 11290 is Charles K. and D. Jean Hollis (Respondent Hollis).²

III.

The C-Valley Mobile Home Park is located on three parcels in Nye County. A search of the Nye County Assessor's records for Assessor Parcel Numbers (APN) 35-345-07, 35-346-01 and 35-346-02 show the owner to be Garwheel LLC (Respondent Garwheel).³ APNs 35-345-07 and 35-346-01 lie within the place of use of Permit 31261, Certificate 11290. APN 35-346-02

¹ *Groundwater Pumpage Inventory Pahrump Valley 2011, No. 162*, official records in the Office of the State Engineer.

² File No. 31261, official records in the Office of the State Engineer.

³ File No. AV 36, official records in the Office of the State Engineer.

lies outside the place of use of Permit 31261, Certificate 11290 and cannot be legally served by the East Well.⁴

IV.

The Office of the State Engineer, Division of Water Resources (Division) conducts annual groundwater pumpage inventories in the Pahrump Valley Hydrographic Basin (162). The meter readings in the records of the Office of the State Engineer demonstrate that in 2010 the East Well (the well authorized for use under Permit 31261, Certificate 11290) was pumped for 7.45 acre-feet.⁵ The duty authorized under said permit is 5.94 acre-feet annually, so the well was over-pumped by 1.51 acre-feet, or 25.4%.

The meter readings in the records of the Office of the State Engineer demonstrate that the West Well (the well without a water right) was pumped for 1.93 acre-feet in 2010⁶ and 7.11 acre-feet in 2009.⁷

V.

Per the Nevada Administrative Code (NAC) 532, on August 16, 2011, the Division sent a certified letter to Respondent Hollis setting forth the alleged violation and the possible actions to correct the violation. The alleged violations were described as exceeding the duty authorized under Permit 31261, Certificate 11290 by 1.51 acre-feet, or 25.4%, in 2010 and as pumping 7.11 acre-feet in 2009 and 1.93 acre-feet in 2010 from a well without a water right.

The options presented for correcting the alleged violation regarding the over-pumping were described as taking the actions necessary to curtail water use to the authorized duty, acquire additional water rights or a combination thereof.

The options presented for correcting the alleged violation regarding the diversion from the well without a water right were described as taking the actions necessary to change the point of diversion from another water right to that well (either from Permit 31261, Certificate 11290 or

⁴ File No. 31261, official records in the Office of the State Engineer.

⁵ *Groundwater Pumpage Inventory Pahrump Valley 2010, No. 162*, official records in the Office of the State Engineer.

⁶ *Ibid.*

⁷ *Groundwater Pumpage Inventory Pahrump Valley 2009, No. 162*, official records in the Office of the State Engineer.

another acquired water right), to appropriate diversion rate only to have a total combined duty not to exceed that of Permit 31261, Certificate 11290 or a combination thereof.

The warning letter established a 30-day timeframe in which to file with the State Engineer an approvable plan for correcting the alleged violation and a one-year timeframe in which to take the corrective actions set forth in the plan; the letter warned that failing to take such actions could result in additional enforcement actions as provided for under NAC 532. The certified mail receipt was signed by EP McAdams on August 18, 2011. The signed certified mail receipt was received in the Office of the State Engineer on August 22, 2011.⁸

VI.

A memo to file AV 36 documents a telephone conversation on August 19, 2011, between the Office of the State Engineer and Joe Reynolds, on behalf of Respondent Hollis, in which he stated that the new owner of the property was fixing a leak that would correct the excessive use. Mr. Reynolds also stated he would advise the new owner that a written response was required and would provide to the Office of the State Engineer contact information for the new owner.⁹

VII.

Since the Office of the State Engineer had not received a written response within the timeframe established in the August 16, 2011 warning letter, but had received an oral response, this office sent a letter on December 21, 2011, by certified mail as a reminder that a written response was required. The certified mail receipt signed by EP McAdams on December 23, 2011, was received in the Office of the State Engineer on December 27, 2011.¹⁰

VIII.

On January 19, 2012, a letter from Brenda Reynolds on behalf of Respondent Hollis was received in the Office of the State Engineer as a follow-up to a telephone conversation with this office on January 6, 2012. In this letter, it was expressed that the water right ownership was not the same as the land ownership and that the water right owner does not have control over the actions of the property owner with regards to pumping. It was not elaborated on in the letter, but in the memo to file AV 36 documenting the January 6, 2012, conversation, Ms. Reynolds

⁸ File No. 31261, official records in the Office of the State Engineer.

⁹ File No. AV 36, official records in the Office of the State Engineer.

¹⁰ File No. 31261, official records in the Office of the State Engineer.

expressed her concern that if additional water rights were acquired, the property owners may exceed that amount, too.^{11,12}

IX.

A memo to file AV 36 documents a telephone conversation on February 3, 2012, between the Office of the State Engineer and Francisco Wheeler, on behalf of Respondent Garwheel, in which the August 16, 2011, warning letter was discussed. The issues were reiterated and Mr. Wheeler was advised that a follow-up letter from this office would be sent to clarify responsibilities for correcting the alleged violation.¹³

X.

On February 6, 2012, the Office of the State Engineer sent a certified letter describing the responsibility of the water right owner and the land owner with respect to both the pumping of the East Well in excess of the amount authorized under Permit 31261, Certificate 11290, and the diversion of water from the West Well for which there is no permit to appropriate water. This letter advised both Respondent Hollis and Respondent Garwheel that the due date for completing the corrective actions necessary to cease over-pumping the well subject to Permit 31261, Certificate 11290 remained August 15, 2012, and established a timeframe of 30 days from the date of the letter to either file an application to place a water right in the subject well or notify this office in writing of the scheduled plan to plug and seal the well within one year. The August 16, 2011, warning letter was enclosed.

The certified mail receipt to Respondent Garwheel was signed by Brenda Garcia on February 10, 2012, and was received in the Office of the State Engineer on February 13, 2012. The certified mail receipt to Respondent Hollis was signed by EP McAdams on February 13, 2012, and was received in the Office of the State Engineer on February 15, 2012.¹⁴

XI.

On March 7, 2012, the Office of the State Engineer received a letter from Brenda J. Reynolds, on behalf of Respondent Hollis. In this letter Ms. Reynolds stated that they were

¹¹ File No. 31261, official records in the Office of the State Engineer.

¹² File No. AV 36, official records in the Office of the State Engineer.

¹³ *Ibid.*

¹⁴ File No. 31261, official records in the Office of the State Engineer.

looking into acquiring additional water rights, that they would have to hold the water rights on the unpermitted well and that they did not want the unpermitted well to be capped.¹⁵

XII.

A memo to file AV 36 documented a telephone conversation on July 19, 2012, between the Office of the State Engineer and Brenda Garcia on behalf of Respondent Garwheel. In this conversation, Ms. Garcia expressed concerns that no action was being taken by Respondent Hollis. She was advised that Garwheel, LLC could take action on its own to secure a water right for the unpermitted well.¹⁶ On August 2, 2012, this office received a letter from Brenda Garcia as a follow-up to the July 19, 2012, telephone conversation, which stated that in her conversations with Brenda Reynolds, it is Ms. Reynolds who is working on getting water rights to achieve compliance. The issue of taking independent action was not addressed in the letter.¹⁷

XIII.

On August 13, 2012, the Office of the State Engineer received a courtesy copy of a letter from Brenda Garcia to Brenda Reynolds regarding the acquisition of water rights to satisfy the mobile home park and meet the requirements of this office. It set a timeframe of September 15, 2012, before legal action will be sought.¹⁸

XIV.

On August 22, 2012, the Office of the State Engineer received a letter from Dorothy Hollis and Brenda Reynolds, on behalf of Respondent Hollis, describing agreements between the parties regarding the maintenance of water rights, when conveyance of water rights will occur and other issues. This letter expressed their disagreement with this office's determination that the unpermitted well has no lawful use. It also appears that there is no intention to acquire additional water rights or at least not without a contribution from the owners of C Valley Mobile Home Park.¹⁹

¹⁵ *Ibid.*

¹⁶ File No. AV 36, official records in the Office of the State Engineer.

¹⁷ File No. 31261, official records in the Office of the State Engineer.

¹⁸ *Ibid.*

¹⁹ *Ibid.*

XV.

The August 22, 2012, letter from Respondent Hollis stated that they disagreed with the Division of Water Resources determination that the West Well has no lawful use. According to the well driller's report, the West Well was drilled in 1979 for domestic purposes in association with Permit 31261;²⁰ however, this well is more than 300 feet from the point of diversion of Permit 31261, and therefore could not be a replacement well. Further, it is the East Well that is described in the Proof of Completion and the Proof of Beneficial Use filed for Permit 31261.²¹ Since the well is serving multiple RV spaces, it is not being used for domestic purposes as defined by NRS § 534.013, which would allow for the domestic well exemption provided by NRS § 534.180.

A review of the records of the Office of the State Engineer revealed that previous applications to appropriate groundwater for diversion from the West Well were denied. Application 51813 was denied on the grounds that granting the application would conflict with existing rights and be detrimental to the public interest.²² Application 52401 sought to change Permit 24179, Certificate 8641, but the base right was declared forfeited and thus Application 52401 was denied because there was no valid existing right to change.²³ Nevada Administrative Code § 534.427(1) provides that if any type of permit, waiver or application to appropriate water from a water well is cancelled, abrogated, forfeited, withdrawn or denied, the well must be plugged in the manner prescribed in NAC § 534.420.

XVI.

Upon review of the 2011 Pahrump Valley Groundwater Pumpage Inventory, the meter readings demonstrate that the East Well, which is authorized for use under Permit 31261, Certificate 11290, was pumped for 1.20 acre-feet. This is less than the 5.94 acre-feet annually duty authorized under said permit; however, the West Well, which is the unpermitted well also serving the site was pumped for 9.22 acre-feet.²⁴ In total, the pumping for the C-Valley Mobile

²⁰ Well Log No. 63297, official records in the Office of the State Engineer.

²¹ File No. 31261, official records in the Office of the State Engineer.

²² File No. 51813, official records in the Office of the State Engineer.

²³ File No. 52401, official records in the Office of the State Engineer.

²⁴ *Groundwater Pumpage Inventory Pahrump Valley 2011, No. 162*, official records in the Office of the State Engineer.

Home Park increased by about one acre-foot annually since 2010.²⁵ The combined pumping of the two wells in 2009 was 10.08 acre-feet.²⁶

XVII.

An approvable plan for correcting the alleged violation was not received in the Office of the State Engineer within the timeframe established in the August 16, 2011, warning letter.^{27,28}

XVIII.

A search of the records of the State Engineer confirms that there is no other active water right or application for a water right at the point of diversion of Permit 31261, Certificate 11290 or at the location of the West Well.^{29,30}

FINDING

The State Engineer finds that the Respondents have failed to take any corrective action required by the August 16, 2011, warning letter. The West Well continues to be pumped without the benefit of a water right and the East Well was reduced in pumping only by increasing the pumping from the West Well. To correct the alleged violations the Respondents must have at least one permit authorizing diversion from each well that is to serve the trailer park, the place of use of the permit(s) must encompass all the parcels being served and the total combined duty must be sufficient for the amount of water to be pumped.



JASON KING, P.E.
State Engineer

Dated this 1st day of
November _____, 2012.

²⁵ *Groundwater Pumpage Inventory Pahrump Valley 2010, No. 162*, official records in the Office of the State Engineer.

²⁶ *Groundwater Pumpage Inventory Pahrump Valley 2009, No. 162*, official records in the Office of the State Engineer.

²⁷ File No. 31261, official records in the Office of the State Engineer.

²⁸ File No. AV 36, official records in the Office of the State Engineer.

²⁹ *Township Card 20S 53E*, official records in the Office of the State Engineer.

³⁰ Nevada Division of Water Resources' Water Rights Database, September 7, 2012, official records in the Office of the State Engineer.