

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

IN THE MATTER OF WILLIAM R. TOMERLIN)
TRUST; INCOMPARABLE HOLDING)
COMPANY, LLC; MCDERMID 1980 LIVING)
TRUST; MICHAEL C. GILBERT; JOHN AND)
STACY PIFER; AND GARDNERVILLE)
RANCHOS GENERAL IMPROVEMENT)
DISTRICT AND THE ALLEGED OVER-))
PUMPING OF GROUNDWATER FROM THE)
TWO WELLS AUTHORIZED UNDER)
PERMITS 58765, 58766, 64972, 64989, 64990,)
66340, 67374 AND 70517 WITHIN THE)
CARSON VALLEY HYDROGRAPHIC BASIN)
(105), DOUGLAS COUNTY, NEVADA.)

**FINDING OF ALLEGED
VIOLATION
ORDER NO. 1224**

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 § 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.

Water Rights

The Sierra Country Estates subdivision is served by two wells. In the Carson Valley Groundwater Inventory, the well authorized for use under Permits 58765, 64972 and 64990 is identified as Well 1, and the well authorized for use under Permits 58766, 64989, 66340, 67374 and 70517 is identified as Well 2.¹

Permit 58765 was approved August 23, 1993, for 0.283 cubic feet per second (cfs), but not to exceed 12.88 acre-feet annually (afa). Permit 58766 was approved August 23, 1993, for 0.283 cfs, but not to exceed 12.88 afa. The permits were issued with a total combined duty of 25.76 afa. The owner of record of Permits 58765 and 58766 is the William R. Tomerlin Trust.^{2,3} Permits 64210 and 64211 abrogated 1 afa from each of the permits, respectively, reducing the total combined duty to 23.76 afa.^{4,5}

Permit 64972 was approved December 23, 1999, for 0.1448 cfs, but not to exceed 14.56 afa. The owner of record of Permit 64972 is the William R. Tomerlin Trust.⁶ Permit 64989 was approved December 23, 1999, for 0.0879 cfs, but not to exceed 20.36 afa. Permit 64990 was

¹ *Groundwater Pumpage Inventory Carson Valley 2011, No. 105*, official records in the Office of the State Engineer.

² File No. 58765, official records in the Office of the State Engineer.

³ File No. 58766, official records in the Office of the State Engineer.

⁴ File No. 64210, official records in the Office of the State Engineer.

⁵ File No. 64211, official records in the Office of the State Engineer.

⁶ File No. 64972, official records in the Office of the State Engineer.

approved December 23, 1999, for 0.0879 cfs, but not to exceed 20.36 afa. The owners of record of Permits 64989 and 64990 are Michael C. Gilbert and Incomparable Holding Company, Ltd.^{7,8} The permits were issued with a total combined duty of 58.68 afa for Permits 58765, 58766, 64972, 64989 and 64990.⁹

Permit 66340 was approved December 28, 2001, for 0.0114 cfs, but not to exceed 0.249 afa. The owner of record of Permit 66340 is Michael C. Gilbert.¹⁰ Permit 67374 was approved December 28, 2001, for 0.0552 cfs, but not to exceed 5.55 afa. The owners of record of Permit 67374 are Michael C. Gilbert, the McDermid 1980 Living Trust and John and Stacy Pifer.¹¹ The permits were issued with a total combined duty of 64.48 afa for Permits 58765, 58766, 64972, 64989, 64990, 66340 and 67374.¹²

Permit 70517 was approved May 2, 2006, for 0.0685 cfs, but not to exceed 10.0 afa. The owners of record of Permit 70517 are Michael C. Gilbert and Gardnerville Ranchos G.I.D. The permit was issued with a total combined duty of 74.48 afa for Permits 58765, 58766, 64972, 64989, 64990, 66340, 67374 and 70517.¹³

On November 30, 2011, a relinquishment was approved withdrawing 2 afa from Permit 67374; thus, the total combined duty for Permits 58765, 58766, 64972, 64989, 64990, 66340, 67374 and 70517 was reduced to 72.48 afa.¹⁴

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 points of diversion or place of use of Permits 58765, 58766, 64972, 64989, 64990, 66340, 67374 and 70517.^{15,16}

II.

Sierra Country Estates Subdivision

Phase 1 of the Sierra Country Estates Subdivision was approved as to water quantity for 13 lots at a dedication rate of 1.12 afa per lot, for a total of 14.56 afa, by the Division of Water

⁷ File No. 64989, official records in the Office of the State Engineer.

⁸ File No. 64990, official records in the Office of the State Engineer.

⁹ *Ibid.*

¹⁰ File No. 66340, official records in the Office of the State Engineer.

¹¹ File No. 67374, official records in the Office of the State Engineer.

¹² *Ibid.*

¹³ File No. 70517, official records in the Office of the State Engineer.

¹⁴ File No. 67374, official records in the Office of the State Engineer.

¹⁵ *Township Card 12N 19E*, official records in the Office of the State Engineer.

¹⁶ Nevada Division of Water Resources' Water Rights Database, November 6, 2012, official records in the Office of the State Engineer.

Resources letter dated October 10, 1995. The will serve letter received June 19, 1995, from Douglas County (owner of record of the water right at the time of issuance) indicated that Permits 58765 and 58766 would be dedicated for this project.¹⁷

While reviewing Phase 2 of the Sierra Country Estates Subdivision, concern was raised by the Office of the State Engineer regarding the over-pumping already occurring. In a letter received December 10, 1999, from the agent for the Tomerlins, the State Engineer was reassured that additional water rights have been moved to the wells to serve the subdivision (Permits 64972, 64989 and 64990) and that additional water rights would be moved to the wells to serve the subdivision if this is insufficient. On December 23, 1999, the State Engineer agreed to approve the subdivision with the understanding that additional water rights would be dedicated to the subdivision, if needed, and instructed that any use of the water, except for the subdivision, must cease.¹⁷

Phase 2 of the Sierra Country Estates Subdivision was approved as to water quantity for 10 lots at a dedication rate of 1.12 afa per lot, for a total dedication of 11.2 afa, by the Division of Water Resources letter dated January 5, 2000. The will serve letter received November 10, 1999, from Douglas County (owner of record of the water right at the time of issuance) indicated that Permits 58765 and 58766 would be dedicated for this project.¹⁸

The Sierra Country Estates Subdivision is composed of 22 parcels (lots 17 and 18 were reverted to a single parcel), identified by Douglas County as Assessor Parcel Numbers 1219-10-002-001 thru -017 and 1219-10-002-020 thru -024. Of these 22 parcels, only 17 have houses built and are connected to the system; the other 5 parcels are vacant.¹⁹

Although other parcels lie within the place of use of Permits 58765, 58766, 64972, 64989, 64990, 66340, 67374 and 70517, they are not a part of the Sierra Country Estates Subdivision.^{20, 21}

¹⁷ File No. 58765, official records in the Office of the State Engineer.

¹⁸ *Ibid.*

¹⁹ Douglas County Assessor On-line Services, <http://www.douglascountynv.gov/index.aspx?NID=612>, accessed November 1, 2012.

²⁰ *Ibid.*

²¹ File No. 58765, official records in the Office of the State Engineer.

**III.
Groundwater Pumpage Inventory**

The Office of the State Engineer, Division of Water Resources (Division) conducts annual groundwater pumpage inventories in the Carson Valley Hydrographic Basin (105). The meter readings in the records of the Office of the State Engineer demonstrate that the wells authorized for diversion by Permits 58765, 58766, 64972, 64989, 64990, 66340, 67374 and 70517 have been pumped in excess of the total combined duty of said permits as follows:²²

Water Year	Acre-feet Pumped	Acre-feet Pumped Over Permitted Amount	Percentage Pumped Over Permitted Amount
2012	114.92	42.44	58.6%
2011	96.85	22.37	30.0%
2010	109.06	34.58	46.4%
2009	123.28	48.80	65.5%

Note that in years 2009 thru 2011 the total combined duty for Permits 58765, 58766, 64972, 64989, 64990, 66340, 67374 and 70517 was 74.48 afa and that in year 2012 the total combined duty for said permits was 72.48 afa.²³

**IV.
Notice of Alleged Violation**

On April 14, 2011, the Division of Water Resources sent a letter by certified mail to the operator of the Sierra County Estates water system and courtesy copies of this letter by regular mail to the other owners of record of Permits 58765, 58766, 64972, 64989, 64990, 66340, 67374 and 70517, the owner of the parcel upon which the wells are located and other parties of interest identified in the record. The letter warned that the wells under said permits were over-pumped in the 2009 water year and have been over-pumped in years prior. This letter identified actions that could be taken to correct the over-pumping, being either reduce the water usage to the total combined duty of said permits or acquire additional water rights and effect the approval of an

²² Carson Valley Groundwater Pumpage Inventory Field Book, official records in the Office of the State Engineer.

²³ File No. 67374, official records in the Office of the State Engineer.

application to change. This letter established a date of May 14, 2011, to initiate the corrections for over-pumping.²⁴

On May 11, 2011, the Division of Water Resources received a letter by the agent for the owner of record noticed in the April 14, 2011, letter. The letter included a letter from the operator of the Sierra Country Estates water system to the Sierra Country Estate homeowners. The plan set forth by these letters was to install meters for each connection and change to a water rate based on usage. On June 9, 2011, the Division of Water Resources sent a letter by certified mail accepting the plan. This letter requested that times in late June or early July be provided for when staff of the Division could inspect the meters.²⁵

On July 26, 2011, the agent for the owners of record submitted the delinquent monthly pumping records, but the letter made no mention of the progress in implementing the plan described in the May 11, 2011, letter. No response was received regarding the request for times in which to inspect the meter installation.²⁶

Pursuant to the Nevada Administrative Code (NAC) Chapter 532, on December 22, 2011, the Division sent a notice of alleged violation warning letter by certified mail to the owners of record Permits 58765, 58766, 64972, 64989, 64990, 66340, 67374 and 70517 setting forth the alleged violation and the possible actions to correct the violation. The alleged violations were described as exceeding the duty authorized under the above referenced permits and failing to submit quarterly reports of monthly pumping data. Since that time, quarterly reports have been received regularly and are current as of the date of this Finding of Alleged Violation. 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 and effect the approval of an application to change, or a combination thereof. The warning letter established a 90-day time frame in which to initiate the corrective actions and a date of October 31, 2012, in which to complete the corrective actions. 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 for the William R. Tomerlin Trust was signed for December 23, 2011. The certified mail receipt for John and Stacy Pifer was signed for on January 6, 2012.

²⁴ File No. 58765, official records in the Office of the State Engineer.

²⁵ *Ibid.*

²⁶ *Ibid.*

The certified mail receipt for the McDermid 1980 Living Trust was signed for on December 27, 2011. The notice to Incomparable Holding Company, LLC was returned on December 28, 2011, marked with “no such number”; it was resent by certified mail December 19, 2011, but this too was returned on January 10, 2012, marked “attempted not known.” The notice to Michael C. Gilbert was returned on January 17, 2012, as unclaimed; it was resent January 18, 2012, by regular mail. Gardnerville Ranchos was not an owner of record at that time.²⁷

On March 22, 2012, a letter was received from the agent for the owners of record, which set forth a new plan for curtailment of water use. In the letter, it was explained that the attempt to install individual meters failed because the homeowners did not pay the special assessment required to execute the contract for the installation. The letter explained that the water system owner was in litigation with some of the homeowners and that some homeowners have refused to pay water bills, placing a financial burden on the water system owner. The letter described how the system was transferred to a nonprofit corporation and that this corporation applied to the Public Utilities Commission of Nevada (PUCN) for a Certificate of Public Convenience and Necessity; upon approval of the application, the corporation board of directors intended to implement a new rate structure including an assessment to allow for the installation of meters.²⁸

On October 12, 2012, a letter received by the Division of Water Resources from the agent for the owners of record indicated that the water company continues to pursue approval of its application with the PUCN. On October 18, 2012, the U.S. Bankruptcy Court Trustee for the Estate of Tomerlin requested that the application with the PUCN be withdrawn, and on October 25, 2012, the PUCN acknowledge the withdrawal and stated that the case before it has been closed.²⁹

FINDING

The State Engineer finds that William R. Tomerlin Trust; Incomparable Holding Company, LLC; McDermid 1980 Living Trust; Michael C. Gilbert; John and Stacy Pifer; and Gardnerville Ranchos General Improvement District (Respondents) have failed to take adequate corrective action required by the December 22, 2011, notice of alleged violation warning letter. The wells authorized for diversion under Permits 58765, 58766, 64972, 64989, 64990, 66340,

²⁷ *Ibid.*

²⁸ File No. AV 25, official records in the Office of the State Engineer.

²⁹ *Ibid.*

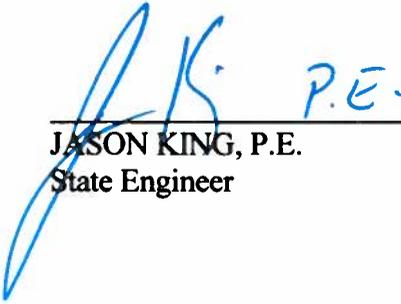
67374 and 70517 continue to be pumped in excess of the permitted total combined duty, and in the time frame since the December 22, 2011, notice of alleged violation warning letter, pumping has increased to the highest level since 2009.

The State Engineer finds that connections or uses other than to the Sierra Country Estates Subdivision is in conflict with the State Engineer's approval, that the entire 72.48 afa total combined duty of Permits 58765, 58766, 64972, 64989, 64990, 66340, 67374 and 70517 is dedicated to serve the Sierra Country Estates Subdivision; therefore, only the Sierra Country Estates Subdivision may be served by these water rights.

The State Engineer finds that individually metering each connection will allow for the implementation of water audits and conservation measures; thus, installation of a meter for each connection will facilitate the corrective actions to be taken by the Respondents.

The State Engineer finds that by pumping in excess of the total combined duty of said permits, the Respondents have violated the terms of those permits and have therefore appropriated additional water in violation of NRS §§ 534.020 and 534.080. To correct the alleged violation the Respondents must:

1. Curtail pumping to not exceed the total combined duty of the subject water rights, or
2. Acquire additional water rights of sufficient quantity to account for the actual use and take the actions necessary to effect the approval of the application to change, or
3. Act on a combination thereof.



JASON KING, P.E.
State Engineer

Dated this 25th day of
January, 2013.

IN THE OFFICE OF THE STATE ENGINEER

OF THE STATE OF NEVADA

1224

VIOLATION ORDER

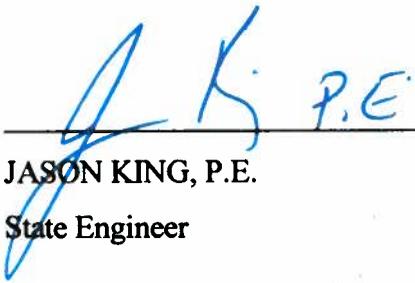
WHEREAS, on the basis of the attached Finding of Alleged Violation, which is hereby made a part of this Violation Order, the State Engineer has determined that William R. Tomerlin Trust; Incomparable Holding Company, LLC; McDermid 1980 Living Trust; Michael C. Gilbert; John and Stacy Pifer; and Gardnerville General Improvement District (Respondents) are in violation of the terms of Permits 58765, 58766, 64972, 64989, 64990, 66340, 67374 and 70517 and 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 NRS §§ 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 two weeks of the date of this order**, inform the Division of Water Resources (Division) of the Respondents' intent to comply with this order.
2. **Within 60 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. **Within 90 days of the date of this order**, install or cause to be installed a meter for every connection to the system.
4. **Within 1 year of the date of this order**, sever any connection to the system that is not a part of the Sierra Country Estates Water System, unless such a connection is requested by the Respondents and approved by the State Engineer; such approval will depend on the amount of water pumped, total combined duty of water rights, place of use of water rights and any other factors the State Engineer considers relevant to the request.

5. **Within 1 year of the date of this order**, comply with all of the requirements set forth in the Finding of Alleged Violation.
6. **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 25th day of

January, 2013.