

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

IN THE MATTER OF ROBERT DENNIS)
BROWN AND SHARON A. BROWN AND)
THE ALLEGED FAILURE TO COMPLY)
WITH THE REQUIREMENTS OF STATE)
ENGINEER'S ORDER NO. 1208 WITHIN THE)
GRASS VALLEY HYDROGRAPHIC BASIN)
(71), PERSHING COUNTY, NEVADA.)

**FINDING OF ALLEGED
VIOLATION
ORDER NO. 1225**

LEGAL

I.

The State Engineer, under the authority of Nevada Revised Statutes (NRS) Chapters 532, 533 and 535, has the power and duty to enforce the provisions of NRS Chapters 533 and 535.

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 § 535.200 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 535 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.

FACTS

I.

State Engineer's Order No. 1208 was issued on May 6, 2010, requiring that owners of the land, Robert Dennis Brown and Sharon A. Brown (Respondent), to effect the removal of four dams and the restoration of a ditch so as to no longer interfere, retard and/or impede the flow of waters of Clear Creek in a channel that is the conduit by which a senior water right receives water. Order No. 1208 provided a 30 day time frame from the date of service to the Respondent in which to complete the work. The first notice sent by certified mail on May 6, 2010, was returned to the Office of the State Engineer May 10, 2010. The envelope containing the notice carried a label by the United States Postal Service indicating that the forward time had expired and provided a new address for the Respondent. The second notice was sent to the new address by certified mail on May 10, 2010, and the return receipt was signed on May 20, 2010; therefore, the due date by which the work was to be completed was June 19, 2010.¹

II.

On November 20, 2012, a *Request to Investigate an Alleged Violation* was filed in the Office of the State Engineer. This request alleged that the work required by State Engineer's Order No. 1208 had not been performed.²

III.

On December 10, 2012, an informal field investigation was conducted by staff of the Division of Water Resources. It was found that there has been no attempt to remove the dams or restore the ditch required by State Engineer's Order No. 1208.³

IV.

A review of the on-line records of the Pershing County Assessor's Office shows that the land on which the work was to be performed is owned by Robert D. Brown and Sharon A. Brown, et al.⁴

¹ Order 1208, official records in the Office of the State Engineer.

² File No. AV 59, official records in the Office of the State Engineer.

³ *Ibid.*

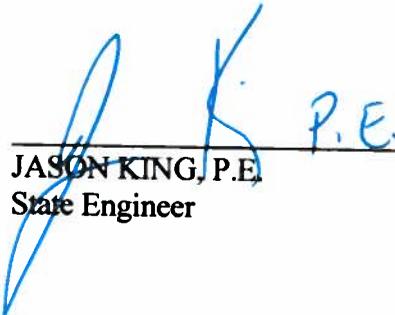
⁴ Pershing County Assessor's Office Online Property Records, <http://pershingcounty.net/index.php/Online-Property-Records.html>, accessed December 13, 2012.

V.

The Decree Affirming Order of Determination in the Manner of the Determination of the Relative Rights in and to the Waters of Clear Creek in Pershing County, State of Nevada was adjudged by the Sixth Judicial District Court of the State of Nevada by the honorable James A. Callahan on November 25, 1919 (Decree). The Decree determined the priority of the water rights on Clear Creek in Pershing County and established an irrigation period from March 1 to September 1 for all rights.⁵

FINDING

The State Engineer finds that the Respondent is in violation of State Engineer's Order No. 1208 by failing to comply within 30 days of noticing with the order to remove the four dams and restore the ditch described in said order so as to no longer interfere, retard and/or impede the flow of waters of Clear Creek in a channel that is the conduit by which a senior water right receives water. The State Engineer finds that the corrective action required of the Respondent is the timely completion of this work as described in State Engineer's Order No. 1208.



JASON KING, P.E.
State Engineer

Dated this 6th day of
February, 2013.

⁵ *In the Matter of the Determination of the Relative Rights in and to the Waters of Clear Creek, Sixth Judicial District Court of Nevada, In and For the County of Pershing, November 25, 1919.*

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

1225

VIOLATION ORDER

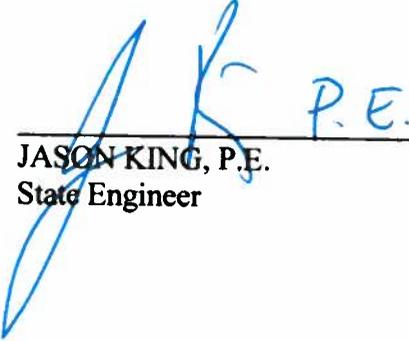
WHEREAS, on the basis of the attached Finding of Alleged Violation, which is hereby made a part of this Violation Order, the State Engineer has determined that Robert Dennis Brown and Sharon A. Brown (Respondent) are in violation of State Engineer's Order 1208; therefore, the Respondents are subject to the provisions of Nevada Revised Statutes (NRS) §§ 533.481 and 535.200.

WHEREAS, under NRS §§ 533.481 and 535.200 and Nevada Administrative Code (NAC) Chapter 532, a person found to be in violation of any provisions of NRS Chapters 533 and 535 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. **Within one week of the date of this order**, inform the Division of Water Resources (Division) of the Respondent's 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 Respondent will comply with the requirements set forth in the Finding of Alleged Violation. This plan shall include a schedule for completing the work required by State Engineer's Order 1208.
3. **Within 60 days of the date of this order**, remove the four dams and cut the channel as described in State Engineer's Order 1208 so as to comply with all of the requirements set forth in the Finding of Alleged Violation.

4. **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 Violation 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 6th day of

February, 2013.