

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

IN THE MATTER OF CLAIR SHAW, JR. )  
AND THE UNAUTHORIZED USE OF )  
GROUNDWATER FROM A WELL )  
WITHIN THE MIDDLE REESE RIVER )  
HYDROGRAPHIC BASIN (58), LANDER )  
COUNTY, NEVADA. )

**FINDING OF VIOLATION  
ORDER NO. 1240**

**JURISDICTION AND AUTHORITY**

**I.**

The State Engineer, under the authority of Nevada Revised Statute (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 § 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 the NRS pertaining to the appropriation of water. Nevada Revised Statute § 534.080(2) provides that the State Engineer may, upon written notice sent by registered or certified mail, return receipt requested, advise the owner of a well who is using water therefrom without a permit to appropriate the water, to cease using the water until the owner has complied with laws pertaining to the appropriation of water. If the owner fails to initiate proceedings to secure such a permit within 30 days after the date of the notice, the owner is guilty of a misdemeanor.

**STATEMENT OF FACTS**

**I.**

On January 20, 1961, Permit 18778 was issued for 5.4 cubic feet per second (cfs), but not to exceed 1,280 acre-feet annually (afa), of water for irrigation purposes. Proof of Completion of Work was filed under Permit 18778 on August 1, 1962, which declared that a 180-foot deep well was drilled and cased with a 16 inch casing, in the SE¼ SW¼ of Section 15, T.25N., R.42E., M.D.B.&M. Proof of Application of Water to Beneficial Use was filed by the Permittee and

Certificate 6628 was issued on April 25, 1968, for 4.821 cfs, but not to exceed 1,198.80 afa of water for irrigation purposes. Robert E. French was the owner of record.<sup>1</sup>

## II.

Records in the Office of the State Engineer indicate that the water right issued under Permit 18778, Certificate 6628 was not beneficially used during the years 1992 through 1997. On August 21, 1997, the State Engineer initiated procedures to forfeit the water right pursuant to NRS § 534.090, and on December 31, 1997, Permit 18778, Certificate 6628 was declared forfeited. A Petition for Judicial Review of the State Engineer's forfeiture of Permit 18778, Certificate 6628 was filed by Sharon Bianchini Doughty and Patrick Bianchini in the Sixth Judicial District Court of the State of Nevada. On October 29, 1998, the State Engineer's forfeiture declaration was upheld. The decision of the Sixth Judicial District Court, *Bianchini vs. State Engineer*, was appealed to the Nevada State Supreme Court, which affirmed the district court.<sup>1</sup>

## III.

The Office of the State Engineer, Division of Water Resources (Division) conducts annual groundwater inventories in the Middle Reese River Hydrographic Basin (58). In the course of conducting the annual inventory, a well located in the SE¼ SW¼ of Section 15, T.25N., R.42E., M.D.B.&M., on Lander County Assessor Parcel Number (APN) 007-530-12, was observed on September 17, 2013, to be pumping water to an irrigation pivot that was irrigating approximately 66 acres in the SW¼ of Section 15, T.25N., R.42E., M.D.B.&M. A search of the records of the Office of the State Engineer determined that no valid water right is associated with the well and that the only water right that had ever been associated with the well was forfeited Permit 18778, Certificate 6628. Records of the Lander County Assessor indicate that the current property owner, Clair Shaw, Jr. (Respondent), acquired APN 007-530-12 in 2011 and owned the property on September 17, 2013.<sup>2,3</sup>

## IV.

On February 3, 2014, the Division notified the Respondent by certified letter that unauthorized water use from the well located on APN 007-530-12 was occurring and that

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<sup>1</sup> File No. 18778, official records in the Office of the State Engineer.

<sup>2</sup> File AV 102, official records of the Office of the State Engineer.

<sup>3</sup> Lander County Assessor's Office Property Records Database, last accessed September 12, 2014.

diversion of water from the well must cease and desist. The letter established a 30-day time frame in which to initiate proceedings to secure a valid water right permit. Information obtained through the official U.S. Postal Service USPS Tracking website indicates that the letter was delivered on February 7, 2014. No response to the letter was received from the Respondent, nor was any action taken to initiate application for a water right to correct the unauthorized water use.<sup>2</sup>

#### V.

On April 21, 2014, the Division notified the Respondent by certified letter that unauthorized water use from the well located on APN 007-530-12 was continuing to occur and that diversion of water from the well must cease and desist. Again, the letter established a 30-day time frame in which to initiate proceedings to secure a water right permit and described possible penalties for noncompliance under NRS § 534.193. Information obtained through the official U.S. Postal Service USPS Tracking website indicates that the letter was delivered on April 26, 2014. No response to the letter was received from the Respondent, nor was any action taken to initiate application for a water right to correct the unauthorized water use.<sup>2</sup>

#### VI.

On June 20, 2014, Division staff conducted a field investigation of the well and irrigation pivot in APN 007-530-12 that confirmed the well continued to be pumped and continued to irrigate the approximately 66-acre pivot in the SW¼ of Section 15, T.25N., R.42E., M.D.B.&M. Per Nevada Administrative Code (NAC) 532, the Division sent a certified letter to the Respondent on July 29, 2014, setting forth an alleged violation and the actions required to correct the violation. The alleged violation was described as the unauthorized diversion of water from a well to irrigate approximately 66 acres without a valid water right required by NRS § 534.020. The letter required that the Respondent immediately cease and desist diversion from the well, established a 30-day time frame to initiate corrective actions, and warned that failing to take such actions could result in additional enforcement actions as provided under NAC Chapter 532. The certified mail receipt was signed by Clair Shaw on August 13, 2014. The signed certified mail receipt was received in the Office of the State Engineer on August 18, 2014.<sup>2</sup>

## VII.

On September 8, 2014, Division staff conducted a site visit of APN 007-530-12 and confirmed that diversion of water from the well was continuing to irrigate the approximately 66-acre pivot in the SW $\frac{1}{4}$  of Section 15, T.25N., R.42E., M.D.B.&M.<sup>2</sup>

## VIII.

An analysis conducted by NDWR staff of Landsat (satellite) imagery available through the U.S. Geological Survey indicates that prior to 2013, irrigation was not occurring in the SW $\frac{1}{4}$  of Section 15, T.25N., R.42E., M.D.B.&M., and that irrigation of the 66-acre pivot had occurred during the 2013 and 2014 irrigation seasons.<sup>2,4</sup>

## IX.

A search of the records of the Office of the State Engineer on September 11, 2014, confirms that no action has been taken by the Respondent to respond to repeated notices of alleged violation, to cease and desist unauthorized diversion and irrigation, or to file documents with the Office of the State Engineer to initiate the application process for obtaining a water right to authorize the irrigation from the well.<sup>2,5,6</sup>

### FINDING OF VIOLATION

The State Engineer finds that the Respondent has unlawfully diverted water from an underground source to irrigate approximately 66 acres without a valid water right in violation of NRS §§ 534.020 and 534.080, and that the Respondent has failed to take any action to cease and desist the unauthorized diversion or to make legal the unpermitted irrigation occurring within the SW $\frac{1}{4}$  of Section 15, T.25N., R.42E., M.D.B.&M., being further described as being within APN 007-530-12. To correct the violation, the Respondent must:

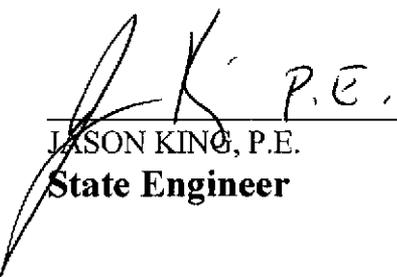
1. **Immediately cease and desist** pumping the well located in SE $\frac{1}{4}$  SW $\frac{1}{4}$  Section 15, T.25N., R.42E., M.D.B.&M.;
2. And either:
  - a. Take the statutory, regulatory and procedural actions necessary to effect the approval of an application to change sufficient water rights to the unpermitted irrigation well to account for the actual point of diversion, place of use and manner of use; or

<sup>4</sup> U.S. Geological Survey, Global Visualization Viewer (GloVis), [glovis.usgs.gov](http://glovis.usgs.gov).

<sup>5</sup> Nevada Division of Water Resources' Water Rights Database.

<sup>6</sup> Nevada Division of Water Resources' Titles Database.

- b. Retain a Nevada licensed well driller to plug and abandon the unpermitted irrigation well in accordance with NAC Chapter 534.

  
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JASON KING, P.E.  
**State Engineer**

Dated this 26th day of  
September, 2014.

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

**1240**

**VIOLATION ORDER**

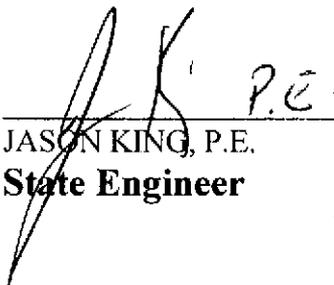
**WHEREAS**, on the basis of the attached Finding of Violation, which is hereby made a part of this Violation Order, the State Engineer has determined that Clair Shaw, Jr. (Respondent) is in violation of Nevada Revised Statute (NRS) §§ 534.020 and 534.080 and is subject to the provisions of NRS § 534.193.

**WHEREAS**, 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 a willful waste of water in violation of NRS § 534.070 or an unlawful diversion of water in violation of NRS § 534.080, 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.

**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 and schedule a date and time to meet with Division staff.
2. **Within 30 days of the date of this order, at a time and location to be determined**, meet with Division staff to present and discuss an approvable mitigation plan, which sets forth the circumstances under which the Respondent will comply with the requirements set forth in the Finding of Violation and show cause why injunctive relief should not be sought under NRS § 534.195.

3. **Within 45 days of the date of this order**, submit to the Division an approvable written mitigation plan, which sets forth the circumstances under which the Respondent will comply with the requirements set forth in the Finding of Violation.
  
4. **Within 90 days of the date of this order**, comply with the requirements set forth in the Finding of 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 Violation and this order have been acted upon and to show cause why penalties should not be incurred.

  
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JASON KING, P.E.  
**State Engineer**

Dated this 26th day of  
September, 2014.