

IN THE OFFICE OF THE STATE ENGINEER

OF THE STATE OF NEVADA

#1272

FINDING OF ALLEGED VIOLATION AND VIOLATION ORDER

IN THE MATTER OF ALLEGED VIOLATION NO. 110, THE FAILURE TO UPDATE OWNERSHIP OF PERMIT 39393, CERTIFICATE 14012 AND PERMIT 59843, CERTIFICATE 16057, AND TO CORRECTLY MAINTAIN A TOTALIZING METER ON A WELL, WITHIN THE EAGLE VALLEY HYDROGRAPHIC BASIN (104), CARSON CITY, NEVADA.

JURISDICTION AND AUTHORITY

I.

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

II.

Nevada Revised Statute § 533.384(1)(a) states, in relevant part, that a person to whom is conveyed a certificate of appropriation shall: (a) file with the State Engineer, together with the prescribed fee, a report of conveyance which includes: (1) an abstract of title; (2) a copy of any deed, written agreement or other document pertaining to the conveyance; and (3) any other information requested by the State Engineer.

III.

Nevada Revised Statute § 534.020(1) states that all underground waters within the boundaries of the State belong to the public, and, subject to all existing rights to the use thereof, are subject to appropriation for beneficial use only under the laws of this State relating to the appropriation and use of water and not otherwise. Nevada Revised Statutes §§ 533.324 through 533.560 define procedures for Appropriation of Public Waters that the State Engineer must follow in the administration of water rights in Nevada, including procedures and requirements for applications, permits and certificates for the appropriation of water.

IV.

Nevada Revised Statutes (NRS) §§ 533.481 and 534.193 provide 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 Chapters 533 or 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, 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.

STATEMENT OF FACTS

I.

On September 22, 1980, Permit 39393 was issued to Harrie H. Snelling for 0.1 cubic feet per second (cfs), but not to exceed 0.402 million gallons annually (mga), of water for commercial purposes, subject to certain limitations and conditions, which included the requirement that a totalizing meter be installed and maintained in the discharge pipeline near the point of diversion.¹ On April 24, 1984, the Proof of Commencement of Work was filed under Permit 39393 by the Permittee for a well located in the SE¼ SW¼ of Section 31, T.15N., R.20E., M.D.B.&M. On April 30, 1984, the Proof of Completion was filed under Permit 39393 by the Permittee. On February 13, 1991, the Proof of Application of Water to Beneficial Use was filed by the Permittee and Certificate 14012 was issued, subject to the terms of the permit, on January 27, 1995, for 0.1 cfs, but not to exceed 0.402 mga of water for commercial purposes. Harrie H. Snelling is currently the owner of record of Permit 39393, Certificate 14012.

II.

On October 13, 1998, Permit 59843 changing the manner of use of a portion of water under Permit 39393, Certificate 14102, was issued to Harrie H. Snelling for commercial and domestic purposes, subject to certain limitations and conditions, which included the requirement that a totalizing meter be installed and maintained in the discharge pipeline near the point of diversion.² On March 29, 2000, Proof of Completion of Work was filed under Permit 59843 by the Permittee.³ Proof of Application of Water to Beneficial Use was filed on December 11, 2001, by the Permittee and Certificate 16057 was issued, subject to the terms of the permit, on April 16, 2002, for 0.015 cfs, but not to exceed 0.060 mga of water for commercial and domestic

¹ File No. 39393, official records in the Office of the State Engineer.

² File No. 59843, official records in the Office of the State Engineer.

³ The Proof of Completion of Work filed was for the same well as drilled under Permit 39393.

purposes. Harrie H. Snelling is currently the owner of record of Permit 59843, Certificate 16057.

III.

On August 8, 1997, the Office of the State Engineer received an uncertified copy of an Affidavit Terminating Community Property Tenancy signed by Gail A. Snelling, which indicated that her spouse, Harrie H. Snelling, was deceased. The affidavit was uncertified, unaccompanied by the prescribed fee or an abstract of title, and was therefore determined to be inadequate to convey ownership of Permit 39393, Certificate 14012 and Permit 59843, Certificate 16057, from Harrie H. Snelling to a new owner of record.^{1,2} No Report(s) of Conveyance were subsequently filed to update ownership of the water right and Harrie H. Snelling remains the current owner of record of Permit 39393, Certificate 14012 and Permit 59843, Certificate 16057.⁴

IV.

The well associated with Permit 39393, Certificate 14012 and Permit 59843, Certificate 16057, is located in the SE¼ SW¼ of Section 31, T.15N., R.20E., M.D.B.&M., at 800 Old Clear Creek Road, Carson City, within Carson City Assessor Parcel Number (APN) 009-302-09, and records of the Carson City Assessor indicate that the current owners of the property are William Kugler and C.S. Coffey (Respondents).⁵ Carson City Assessor records further indicate that the Respondents acquired the property in 2006 and have owned the property from 2006 to the present. Further, records at the Carson City Recorder appear to reflect a chain of title, which includes the Respondents having the last filed deed. Accordingly, on information and belief of the State Engineer, Respondents are the owners of Permit 39393, Certificate 14012, and Permit 59843, Certificate 14102.

V.

The Office of the State Engineer, Division of Water Resources (Division) conducts annual groundwater inventories in the Eagle Valley Hydrographic Basin. In the course of conducting annual inventories, staff of the Division observed that, for five consecutive years, the totalizing meter on the well associated with Permit 39393, Certificate 14012, and Permit 59843, Certificate 16057, has been non-functional. Site visits by Division staff were conducted on

⁴ See NRS § 533.384.

⁵ Carson City Assessor's Office Property Records Database (last accessed November 17, 2015).

November 18, 2010, November 16, 2011, November 8, 2012, December 18, 2013 and October 23, 2014, documenting the non-functioning totalizing meter.⁶

VI.

On January 2, 2014, the Division notified the Respondents by certified mail that a properly functioning totalizing meter must be installed on the well, and that ownership of Permit 39393, Certificate 14012, and Permit 59843, Certificate 16057, must be updated with the Division.¹ The letter established a 60-day time frame in which to install a functioning totalizing meter on the well, to submit a Report of Conveyance to the Division to update ownership of Permit 39393, Certificate 14012, and to respond in writing when these actions had been completed.¹ A certified mail receipt, signed by William Kugler, was received in the Office of the State Engineer on January 7, 2014. No written response to the letter was received from the Respondents, nor was any action taken to install a functioning totalizing meter on the well or to update ownership of the water right.

VII.

On March 13, 2014, the Division again notified the Respondents by certified mail that it is the responsibility of the person to whom a water right is conveyed to update ownership in the Office of the State Engineer and that a functioning totalizing meter must be installed by May 12, 2014.⁴ The certified mail receipt, signed by William Kugler, was received in the Office of the State Engineer on March 19, 2014. No written response to the letter was received from the Respondents, nor was any action taken to install a functioning totalizing meter on the well or to update ownership of the water right.

VIII.

On July 7, 2014, the Division notified the Respondents a third time by certified mail that it is the responsibility of the person to whom a water right is conveyed to update ownership in the Office of the State Engineer and that a functioning totalizing meter must be installed by August 1, 2014.¹ The letter documents that Mr. Kugler spoke with Division staff by telephone, stating that the Respondents are the current owners of Permit 39393, Certificate 14012, and that they were intending to sell or dedicate the water right to Carson City.¹ The certified mail receipt was signed by Sue Coffey on July 20, 2014. No written response to the letter was received from

⁶ Alleged Violation File No. AV-110, official records in the Office of the State Engineer.

the Respondents, nor was any action taken to install a functioning totalizing meter on the well or to update ownership of the water right.

IX.

On December 5, 2014, the Division served the Respondents with a Notice of Alleged Violation (Notice) by certified mail alleging that the absence of a functioning totalizing meter on the well was a violation of the terms of Permit 39393, Certificate 14012, and that failure to update ownership of the water right with the Office of the State Engineer was a violation of NRS § 533.384(1)(a).^{1,4} The Notice described actions that must be taken to correct the alleged violations and established a 60-day time frame in which to submit an approvable, written corrective action stating the Respondents' intentions concerning the use of the well and diversion of water under Permit 39393, Certificate 14012, and setting forth how the alleged violations would be corrected. The certified mail receipt, signed by Sue Coffey, was received in the Office of the State Engineer on December 9, 2014.¹ In an e-mail to the Division dated March 24, 2015, Bill Kugler advised the Division that he would be re-installing the totalizing meter within the next week, and that he had begun gathering documents necessary to update ownership records.⁶

X.

On April 24, 2015, Division staff conducted a site visit of the well and confirmed that the meter on the well continued to be non-functional.⁴

XI.

A search of the records of the Division on November 17, 2015, found that no Report of Conveyance, Abstract of Title, deeds, written agreement or any other documentation pertaining to the conveyance of Permit 39393, Certificate 14012, has been submitted. Records of the Division also indicate that no Report of Conveyance, Abstract of Title, deeds, written agreement or any other documentation pertaining to the conveyance of Permit 59843, Certificate 16057, has been submitted.^{7,8}

FINDING OF ALLEGED VIOLATION

The State Engineer finds that during the years 2010 through April 24, 2015, the Respondents have failed to install and maintain a functioning totalizing meter in the discharge

⁷ Nevada Division of Water Resources' Water Rights Database, November 17, 2015, official records in the Office of the State Engineer.

⁸ Nevada Division of Water Resources' Titles Database, November 17, 2015, official records in the Office of the State Engineer.

pipeline near the point of diversion, being the well located in the SE¼ SW¼ of Section 31, T.15N., R.20E., M.D.B.&M., at 800 Old Clear Creek Road, Carson City, APN 009-302-09, in violation of the conditions of Permit 39393, Certificate 14012 and Permit 59843, Certificate 16057. The State Engineer further finds that the Respondents have failed to update ownership of Permit 39393, Certificate 14012 and Permit 59843, Certificate 16057, in violation of NRS § 533.384(1)(a). To correct the violations, the Respondents must:

1. Install a functioning totalizing meter on the well located in the SE¼ SW¼ of Section 31, T.15N. R.20E., M.D.B.&M., at 800 Old Clear Creek Road, Carson City, APN 009-302-09; and,
2. File with the Division, Reports of Conveyance, supporting documentation, and the prescribed fees to update ownership of Permit 39393, Certificate 14012 and Permit 59843, Certificate 16057.

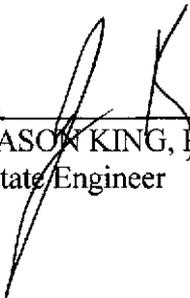
VIOLATION ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the Respondents must:

1. **Within seven (7) days of the date of this order**, inform the Division of Water Resources (Division) of the Respondents' intent to comply with this order and schedule a date and time to meet with Division staff.
2. **Within 15 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 Respondents will comply with the requirements of the Finding of Alleged Violation.
3. **Within 30 days of the date of this order**, submit to the Division an approvable written mitigation plan, which sets forth the circumstances under which the Respondents will comply with the requirements set forth in the Finding of Alleged Violation.

4. **Within 90 days 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 penalties should not be assessed or injunctive relief pursued under NRS §§ 533.482 and 534.195.

 P.E.

JASON KING, P.E.
State Engineer

Dated this 1st day of
February, 2016.