

IN THE OFFICE OF THE STATE ENGINEER

OF THE STATE OF NEVADA

#1273

FINDING OF ALLEGED VIOLATION AND VIOLATION ORDER

IN THE MATTER OF ALLEGED VIOLATION NO. 125, THE UNAUTHORIZED USE OF
GROUNDWATER FROM A WELL LOCATED WITHIN THE PAHRUMP VALLEY
HYDROGRAPHIC BASIN (162), NYE COUNTY, 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 § 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, which 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.

III.

Nevada Revised Statute § 534.080(1) states that a legal right to appropriate underground water for beneficial use from an artesian or definable aquifer subsequent to March 22, 1913, or from percolating water, the course and boundaries of which are incapable of determination, subsequent to March 25, 1939, can only be acquired by complying with the provisions of NRS Chapter 533 pertaining to the appropriation of water.

IV.

Nevada Revised Statute § 534.080(2) states 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 the 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.

V.

Nevada Revised Statute § 534.050(5) states that any person using water after a permit has been withdrawn, denied, cancelled, revoked or forfeited is guilty of a misdemeanor. Each day of violation of this subsection constitutes a separate offence and is separately punishable.

VI.

Nevada Revised Statutes §§ 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 November 24, 2003, Permit 70153 was issued to Jack W. Sanders (Respondent) for 0.02 cubic feet per second (cfs), not to exceed 1.0 acre-feet annually (afa), of underground water for commercial purposes.¹ On February 21, 2006, the Proof of Completion of Work was filed by the Respondent for a well located in the SE¼ SE¼ of Section 18, T.21S., R.54E., M.D.B.&M.

In 2008, the Respondent filed an Application for Extension of Time to file Proof of Beneficial Use, which was granted.^{1,2}

In 2009, the Respondent filed an Application for Extension of Time to file Proof of Beneficial Use. While the extension of time was granted, the Respondent was warned that the Permit did not allow for irrigation of the vineyard, as the Respondent had stated in the extension request, and the Respondent was similarly warned that the pumpage under the permit exceeded the allowable duty. Consequently, the Respondent was directed to cease the illegal use and overpumpage. In response, the Respondent advised the Division of Water Resources (Division) that he would cease irrigation outside the permitted use, and would acquire additional water

¹ File No. 70153, official records in the Office of the State Engineer.

² See NRS § 533.410.

rights to address the overpumpage.¹ The Respondent did acquire additional water rights in the form of Permit 78839 (discussed below).

In 2010, the Respondent filed an Application for Extension of Time to file Proof of Beneficial Use, which was granted to December 24, 2010. The Respondent then filed an Application for Extension of Time to file Proof of Beneficial Use, which was granted to December 24, 2011.¹

In 2011, the Respondent failed to timely file Proof of Beneficial Use or Application for Extension of Time and Permit 70153 was cancelled on February 29, 2012. The Respondent petitioned for review of the cancellation; and, after a hearing, the cancellation was rescinded upon the filing of an Application for Extension of Time, which was granted to December 24, 2012.^{1,3}

In 2012, the Respondent filed an Application for Extension of Time to file Proof of Beneficial Use, which was granted to December 24, 2013.¹

In 2013, the Respondent attempted to file an untimely Application for Extension of Time for Proof of Beneficial Use, which untimely extension was rejected. Consequently, on February 26, 2014, the permit was cancelled. No petition for review of the cancellation was filed.^{1,4}

II.

On January 25, 2010, Permit 78839 was issued to Jack W. Sanders and Betsie V. Sanders (Respondent) for 0.0113 cfs, not to exceed 2.0 afa of underground water for irrigation purposes.⁵ The permit terms provided that the total combined duty of water under Permit 70153 (Commercial) and Permit 78839 (Irrigation), having the same point of diversion, was limited to 3.0 acre-feet annually. On March 4, 2011, the Proof of Completion of Work was filed under Permit 78839.

In 2012, the Respondent failed to timely file Proof of Beneficial Use and Permit 78839 was cancelled on March 16, 2012. The Respondent filed a petition to review the cancellation; and, after a hearing, the cancellation was rescinded upon the filing of an Application for Extension of Time. The Extension of Time was granted to January 25, 2013.⁵

³ See NRS § 533.395.

⁴ The water under cancelled permits reverts to the public domain and is available for further appropriation. *Desert Irr., Ltd. v. State Engineer*, 113 Nev. 1049, 944 P.2d 835 (1997).

⁵ File No. 78839, official records in the Office of the State Engineer.

In 2013, the Respondent filed an Application for Extension of Time to file Proof of Beneficial Use, which was granted to January 25, 2014.⁵

In 2014, the Respondent filed an Application for Extension of Time to file Proof of Beneficial Use. The Application for Extension of Time was denied and the Respondent was granted until January 25, 2015, to file Proof of Beneficial Use. The Respondent failed to file Proof of Beneficial Use by that date; therefore, on January 30, 2015, the Respondent was advised they had 30 days within which to file the Proof, or the permit would be cancelled. The Respondent failed to file the Proof and Permit 78839 was cancelled on May 13, 2015. No petition for review of the cancellation was filed.⁵

III.

On October 14, 2014, a notice regarding excessive withdrawal of groundwater under Permit 70153 (Cancelled 2/26/2014) and Permit 78839 was served on the Respondent by certified mail.^{1,5} Additional similar notices were served on the Respondent on December 18, 2014 and February 11, 2015. All notices informed the Respondent that meter readings in the records of the Division for the last 5 years demonstrated that the well had been pumped in excess of the permitted duty.

The following table lists the annual water use from the well since 2009, based on Division records:

Year	Water Use (acre-feet annually)	Total Permitted Duty (acre-feet annually)	% Pumped Above Total Permitted Duty
2009	5.67	1.0	467%
2010	4.59	3.0	53%
2011	4.45	3.0	48%
2012	5.30	3.0	77%
2013	5.86	3.0	95%
2014	6.64	2.0	232%
2015	8.04	2.0 ac.-ft. was Available Until Permit 78839 was Cancelled on May 13, 2015	Permit Cancelled

IV.

On April 15, 2015, a Notice of Alleged Violation regarding excessive withdrawal of groundwater under Cancelled Permit 70153 and Permit 78839 was served on the Respondent by certified mail.^{1,5,6} The Notice of Alleged Violation reiterated that notification letters regarding the excessive withdrawal had been served on the Respondent on October 14, 2014, December 18, 2014, and February 11, 2015, and that all notices provided information on the alleged violation and corrective action necessary to achieve compliance. No written response was received by the Division to correct the alleged violation.

V.

The records of the Division show that there are currently no active water rights in the well associated with Cancelled Permits 70153 and 78839.^{1,5,7}

FINDING OF ALLEGED VIOLATION

I.

The State Engineer finds that during the years 2009 through 2014, the Respondent has failed to reduce excessive pumpage to within the permitted duties, and/or to obtain sufficient water rights to cover the excessive water pumped from a well located in the SE¼ SE¼ of Section 18, T.21S., R.54E., M.D.B.&M. at 3780 E. Kellogg Road, Pahrump, Nye County Assessor Parcel Number (APN) 045-191-03 in violation of terms by which Permits 70153 and 78839 were issued.

II.

The State Engineer finds that the Respondent has failed to keep Permits 70153 and 78839 in good standing, and consequently is unlawfully diverting groundwater without an active water right from the well located at SE¼ SE¼ of Section 18, T.21S., R.54E., M.D.B.&M. at 3780 E. Kellogg Road, Pahrump, Nye County Assessor Parcel Number (APN) 045-191-03.

III.

The State Engineer finds that these actions by the Respondent constitute violations of NRS §§ 534.020(1), 534.080(1), 534.080(2) and 534.050(5).

⁶ See NAC § 532.200(1).

⁷ Nevada Division of Water Resources' Water Rights Database, Special Hydrographic Abstract, November 23, 2015, official records in the Office of the State Engineer.

IV.

To correct the violations, the Respondent must:

1. **Immediately cease and desist** all groundwater pumping from the well located in the SE¼ SE¼ of Section 18, T.21S., R.54E., M.D.B.&M. at 3780 E. Kellogg Road, Pahrump, Nye County APN 045-191-03.
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 well to account for the actual amount of water to be used at the property; or
 - b. Retain a Nevada licensed well driller to plug and abandon the unpermitted well in accordance with Nevada Administrative Code Chapter 534.

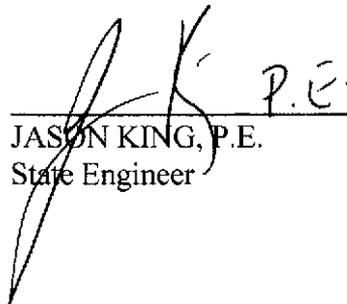
VIOLATION ORDER

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

1. **Within seven (7) days 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 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 Respondent 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 Respondent 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 incurred or injunctive relief not sought under NRS §§ 533.482 and 534.195.



JASON KING, P.E.
State Engineer

Dated this 1st day of
February, 2016.