

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

IN THE MATTER OF APPLICATION)
61660 FILED TO APPROPRIATE THE)
PUBLIC WATERS FROM AN)
UNDERGROUND SOURCE WITHIN)
THE WINNEMUCCA SEGMENT)
HYDROGRAPHIC BASIN (70),)
HUMBOLDT COUNTY, NEVADA.)

RULING

5152

GENERAL

I.

Application 61660 was filed on November 1, 1995, in the name of Dale Aslett Sand & Gravel, Inc., to appropriate 0.5 cubic feet per second of water from an underground source for mining, milling and domestic purposes. The proposed place of use is described as a portion of the SE $\frac{1}{4}$ of Section 28, T.36N., R.37E., M.D.B.&M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 28, T.36N., R.37E., M.D.B.&M.¹

II.

The Application was timely protested by the Pershing County Water Conservation District on the following grounds:

That the granting of said application will effect [sic] the water table and drainage and adversely effect [sic] the decreed waters of the Humboldt River.

FINDINGS OF FACT

I.

The applicant and its agent were notified by certified mail dated June 13, 2002, to advise the Office of the State Engineer in writing if the applicant was interested in pursuing Application 61660. The applicant was warned that failure to respond within 60 days could result in denial of the application. The letter further indicated that the Nevada Secretary of State records indicate that the corporate status of the applicant has been revoked. The certified letter to the applicant was sent to two addresses on file. The letters were returned by the U.S. Postal Service stamped "RETURN TO SENDER NOT

¹ File No. 61660, official records in the Office of the State Engineer.

DELIVERABLE AS ADDRESSED ” and “FORWARDING ORDER EXPIRED”. The certified letter was also sent to agent John H. Milton. The certified receipt was returned to the Office of the State Engineer on June 17, 2002, signed by his secretary Helen F. Hemmert.¹

To date, no information on this matter has been submitted to the State Engineer’s Office. The State Engineer finds that the applicant and agent were properly notified of the request for additional information regarding interest in pursuing Application 61660 and failed to respond.

II.

Nevada Revised Statute § 533.325 provides that only a “person” can file an application to appropriate water. In general usage, a “person” is defined to be a human being, firm, labor organization, partnership, association, corporation, legal representative, trustee, etc.²

Nevada Revised Statute § 0.039 provides that except as otherwise expressly provided in a particular statute or required by the context, “person” means a natural person, any form of business or social organization, and any other non-governmental legal entity including, but not limited to, a corporation, partnership, association, trust or unincorporated organization. The term does not include a government, governmental agency or political subdivision of a government. Nevada Revised Statute § 533.010 defines person as used in chapter 533 to include the United States and the State of Nevada. Nevada Revised Statute § 534.010 defines person to include any municipal corporation, power district, political subdivision of this or any state, or an agency of the United States Government.

The State Engineer finds that upon revocation of the incorporation status of the applicant by the Nevada Secretary of State, the applicant ceased to be a “person” and thereby became disqualified from obtaining a water right permit under Nevada water law.

III.

The State Engineer finds that it is the responsibility of the applicant, or their successor in interest, to keep this office informed of a current mailing address.

² Black’s Law Dictionary, 1028 (5th ed. 1979).

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.³

II.

Before either approving or rejecting an application, the State Engineer may require such additional information as will enable him to properly guard the public interest.⁴

III.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public water where:⁵

- A. there is no unappropriated water at the proposed source;
- B. the proposed use or change conflicts with existing rights;
- C. the proposed use or change conflicts with protectible interests in existing domestic wells as set forth in NRS § 533.024; or
- D. the proposed use or change threatens to prove detrimental to the public interest.

IV.

Application 61660 was filed by a corporation that is currently classified as a revoked entity by the Nevada Secretary of State's Office. The State Engineer concludes that upon the revocation of the applicant's incorporation status, the applicant became ineligible to apply for a water right in the state of Nevada. Therefore, to grant a water right to an applicant no longer entitled to apply for a water right would threaten to prove detrimental to the public interest.

V.

The applicant and agent were properly notified of the requirement for additional information concerning this application and have failed to submit the information to the State Engineer's Office. The State Engineer concludes that the failure to respond affirms the applicant's lack of interest in pursuing Application 61660.

³ NRS chapters 533 and 534.

⁴ NRS § 533.375.

⁵ NRS § 533.370(3).

RULING

Application 61660 is hereby denied on the grounds that the applicant or agent has not submitted the information requested by the State Engineer's Office and that without this information the granting of the application would threaten to prove detrimental to the public interest. The application is also denied on the grounds that to grant a water right application to an entity not entitled to apply would threaten to prove detrimental to the public interest. No ruling is made on the merits of the protest.

Respectfully submitted,



HUGH RICCI, P.E.
State Engineer

HR/TW/jm

Dated this 24th day of
September, 2002.