

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

IN THE MATTER OF PROTESTED)
APPLICATION 66824 FILED TO)
APPROPRIATE THE PUBLIC WATERS OF)
AN UNDERGROUND SOURCE WITHIN THE)
PAHRANAGAT VALLEY HYDROGRAPHIC)
BASIN (209), LINCOLN COUNTY,)
NEVADA.)

RULING

#5548

GENERAL

I.

Application 66824 was filed on September 20, 2000, by Turtle Walk Sand, LLC, to appropriate 1.33 cubic feet per second of the underground water from the Pahrnagat Valley Hydrographic Basin for mining purposes, i.e., processing sand and gravel. The proposed place of use is described as being located within the S $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, and N $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 33, and the NW $\frac{1}{4}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$, and S $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 34, all within T.8S., R.62E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 34, T.8S., R.62E., M.D.B.&M.¹

II.

Application 66824 was timely protested by United States Department of the Interior, National Park Service on the grounds that:

1. There is no water available for appropriation because the committed water resources exceed the perennial yield of Pahrnagat Valley.

2. The proposed appropriation, in combination with existing appropriations and pending applications, could reduce

¹ File No. 66824, official records in the Office of the State Engineer.

the discharge of Muddy River Springs, flows in the Muddy River, and discharge in numerous springs in the Lake Mead area thereby impacting senior water rights.

3. The public interest would not be served because water resources in the Lake Mead National Recreational Area would be diminished or impaired as a result of the appropriation proposed by this application.¹

FINDINGS OF FACT

I.

On October 7, 2003, and on January 26, 2006, the Office of the State Engineer obtained information from the Nevada Secretary of State that indicated that Turtle Walk Sand, LLC, has been dissolved.¹

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 § 534.014 defines person to include any municipal corporation, power district, political subdivision of this state or any state, or an agency of the United States Government.

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

The State Engineer finds that upon the dissolution of the applicant's incorporation status 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.

CONCLUSIONS

I.

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

II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where:⁴

- 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.

III.

Application 66824 was filed by a limited liability corporation that is currently classified as a dissolved entity by the Nevada Secretary of State's Office. The State Engineer concludes that upon the dissolution of the applicant's incorporation status, it 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.

³ NRS chapters 533 and 534.

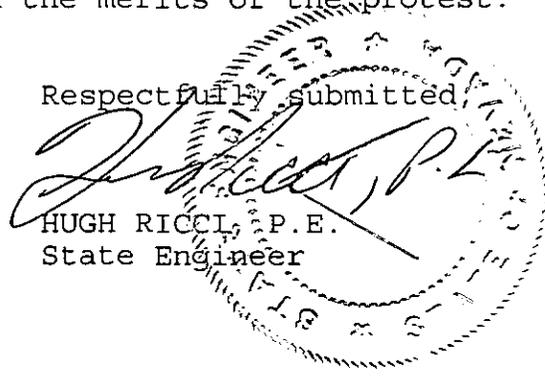
⁴ NRS § 533.370(4).

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RULING

Application 66824 is hereby 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,

A circular official seal of the State Engineer is partially visible behind the signature. The seal contains the text "STATE ENGINEER" and "OFFICE OF THE STATE ENGINEER" around the perimeter. The signature is written in cursive over the seal.

HUGH RICCI, P.E.
State Engineer

HR/SJT/jm

Dated this 30th day of
January, 2006.