

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

IN THE MATTER OF APPLICATIONS 29522 )  
AND 29523 FILED TO APPROPRIATE THE )  
PUBLIC WATERS OF NO NAME SPRING AND )  
SHERIDAN CREEK WITHIN THE SOUTH FORK )  
OWYHEE RIVER HYDROGRAPHIC BASIN (35) )  
ELKO COUNTY, NEVADA. )

**RULING**  
**# 5585**

**GENERAL**

**I.**

Application 29522 was filed on July 1, 1975, by Louis Koncher, Stanley Zunino, Paul Urgel, San Rafael Mining Co., Inc., and later assigned to San Rafael Exploration Co. to appropriate 2.0 cubic feet per second (cfs) of water from No Name Spring for milling and domestic purposes within Lot 1, the SE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 3, and the SW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 2, T.43N., R.52E., M.D.B.&M. The proposed point of diversion was described as being located within the SE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 34, T.44N., R.52E., M.D.B.&M.<sup>1</sup>

**II.**

Application 29523 was filed on July 1, 1975, by Louis Koncher, Stanley Zunino, Paul Urgel, San Rafael Exploration Co., Inc., and later assigned to San Rafael Exploration Co. to appropriate 2.0 cfs of water from Sheridan Creek for milling and domestic purposes within Lot 1, the SE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 3, and the SW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 2, T.43N., R.52E., M.D.B.&M. The proposed point of diversion was described as being located within the SE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 34, T.44N., R.52E., M.D.B.&M.<sup>2</sup>

**FINDINGS OF FACT**

**I.**

On December 1, 2003, the office of the State Engineer made inquiries to the Nevada Secretary of State's office, through their official website, regarding the corporate status of the San Rafael Exploration Co. A search of the corporate information database showed the corporate status of the San Rafael Exploration Co. as revoked.<sup>1</sup>

<sup>1</sup> File No. 29522, official records in the Office of the State Engineer.

<sup>2</sup> File No. 29523, official records in the Office of the State Engineer.

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.<sup>3</sup>

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 or any state, or an agency of the United States Government.

The State Engineer finds that the applicant, the San Rafael Exploration Co., due to its revoked corporate status, is not a valid corporate entity in the State of Nevada; therefore, it is disqualified from obtaining a water right permit under Nevada water law.

## II.

The applicant and its agent were notified by certified mail dated February 9, 2005, to submit additional information regarding Applications 29522 and 29523 to the State Engineer’s office. The applicant was warned that failure to respond within 30 days would result in denial of the applications. A properly endorsed certified mail receipt was received in the Office of the State Engineer, February 17, 2005, for one of the letters. The U.S. Postal Service returned two letters, sent to additional addresses contained within the application files, to the Office of the State Engineer. To date, the applicant and its agent have expressed no interest in pursuing these applications and have not submitted the additional information requested.<sup>1</sup> The State Engineer finds that the applicant and its agent were properly notified of the request for additional information regarding interest in pursuing Applications 29522 and 29523 and failed to respond.

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<sup>3</sup> Black’s Law Dictionary, 1028(5<sup>th</sup> ed. 1979)

## CONCLUSIONS

### I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>4</sup>

### 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.<sup>5</sup>

### III.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:<sup>6</sup>

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

### IV.

The applicant is a revoked corporation as determined by the Nevada Secretary of State's office. The State Engineer concludes the applicant, as a revoked corporation, is ineligible to apply for a water right in the State of Nevada and therefore, to grant a water right would threaten to prove detrimental to the public interest.

### V.

The applicant and its agent were properly notified of the requirement for additional information and have failed to submit the information to the State Engineer's Office. The State Engineer concludes that the failure to express any interest in these applications for over nine years and the failure to submit requested information demonstrates the applicant's lack of interest in pursuing Applications 29522 and 29523. The State Engineer concludes it would threaten to prove detrimental to the public interest to issue permits under these circumstances.

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<sup>4</sup> NRS chapter 533.

<sup>5</sup> NRS § 533.375.

<sup>6</sup> NRS § 533.370(4).

**RULING**

Applications 29522 and 29523 are hereby denied on the grounds that their issuance would threaten to prove detrimental to the public interest.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "H Ricci, P.E.", written in a cursive style.

HUGH RICCI, P.E.  
State Engineer

HR/TW/jm

Dated this 13th day of

March, 2006.