

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

JOHN BOSTA, FRANK MAURIZIO  
AND OTHERS SIMILARLY SITUATED,

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Elizabeth A. Brown  
Clerk of Supreme Court

Appellants,

vs.

JASON KING, THE STATE ENGINEER, IN HIS OFFICIAL AND PERSONAL CAPACITY,  
DOES I-XX, ROES I-XX,

Respondents.

DOCKET NO.: 68448

D.Ct. Case No.: CV 36505

**APPELLANT'S OPPOSITION TO  
RESPONDENT'S MOTION TO DISMISS**

**BEHALF OF THE APPELLANTS      BEHALF OF THE RESPONDENTS**

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### **PRELIMINARY STATEMENT**

The State is unlawfully attempting to confiscate and control water rights which they have no jurisdiction or control. The Respondents have advanced arguments which are in violation of both Rule 11 and the Nevada Rules of Professional Conduct in order to advance their unlawful cause. Granting the Respondent's Motion to Dismiss, when the following issues have been brought to the Court's attention would be improper for the reasons set forth below.

### **RESTATEMENT OF THE FACTS**

Counsel previously provided notice to this Court that his clients had terminated his representation. Thereafter, the Appellants filed a notice of reappearance in proper person. This Court accepted and filed this document. But for this act, Counsel would have filed a motion to withdraw and submitted an order to that effect.

As this was believed to be unnecessary, the Appellants having filed their

un-rejected Notice of Reappearance in Proper Person, proceeded with their case. The Appellant, in proper person filed their Amended/corrected Opening Brief Court in a timely manner. This Court then rejected the filing as being improper with Counsel on the case. When Counsel was informed that he was still Counsel of Record he immediately filed the corrected brief under his name. The delay was only a few days. The lateness of the filing was unintentional and was caused by this own Court's acceptance of the Appellants' notice of reappearance. Sans this Court's acceptance of the Appellants' notice of reappearance, this Counsel would have filed a Motion to Withdraw due to having his services terminated and the matter would not even be before this Honorable Court. It was an unintended error by both Counsel and the Appellants.

## **POINTS AND AUTHORITIES IN SUPPORT OF OPPOSITION**

This Court rejected the Appellant's Proper Person Amended Opening Brief, which was filed timely, because it held that the Appellants' counsel was still the Attorney of Record. However, this Court DID NOT reject the Appellants' Notice of Reappearance in Proper Person based upon this same precept. The Court failed to reject this document.

As Counsel had advised this Honorable Court in his responsive pleading to

the State's Motion to Strike and for Sanction of the Appellants', that because the Appellants' interpretation of this Court seeking to have Counsel on this case was to permit the Respondents to procedurally harass the Appellants with minutia by placing form over substance, his clients, the Appellants, terminated Counsel's representation. In other words, the Appellants' relieved Counsel so they could proceed on their own as they did at the beginning of the present appeal. Counsel notified the Court in the Opposition to Motion to Strike and for Sanctions, that he had been fired.

The Appellants have a constitutional right to the Counsel of their choice or may choose to have no Counsel at all. The fact that this Court accepted the Appellants' notice of reappearance in proper person and did not reject it, was an overt signal that this Court had permitted the termination of Counsel from the case and had relieved him of his duties.

In essence, both the Appellants' and Counsel's believed that the Court's decision not to reject their notice of reappearance in proper person, indicated that a motion to remove or withdraw as Counsel was unnecessary to file. This Court purposely choose its action. It cannot now be argued that this act did not cause confusion to the Appellants. Not only were Appellants misled by the Court's act but Counsel was misled as well. Counsel was under the mistaken belief that the

Court had accepted the notice of his termination as Counsel and relieved him of his further duties.

The acceptance of the Appellants' Notice of Reappearance in Proper Person can only be viewed for what it really is - a trap set for the Appellants' case, which this Court well knows that: (1) the issue regarding the State Engineer having NO jurisdiction over natural persons is meritorious; (2) that the State's argument that the ground water in Nevada, and therefore this case, has been severed from the land by the Desert Land Act of 1877 is a fraud and a lie, in addition (3) the ground water issue has state wide, Federal and even global political ramifications regarding the raw unsanctioned governmental power over individuals and the oppression of their clearly delineated rights. There are also questions raised by the Appellants which make this Court uncomfortable because they address issues that have never been addressed before and they challenge the very authority of the current government's *status quo*.

The strict application of the Court's Rules to eliminate this case is an attack on the rights of the citizens of the State of Nevada. This is especially true where the State has unclean hands and has purposely conducted itself knowing several of their arguments to be completely untrue/false from the very beginning. Let's talk about the misconduct and fraud of the Respondent in front of this Court.

**FIRST**, the State purports that the water was severed from the land through the DESERT LAND ACT of March 3, 1877. This law only applied to federal “public lands” and it only applied to lands transferred *after* 1877. The land at issue in this case was ceded to Nevada in 1866 by the Federal Government. (See attached as **EXHIBIT A**) In said document, the Congress reserved no rights to public land (so there is no federal public land in Clark County or the Southern tip of Nye County), nor did it reserve any rights to water in the ceded land (so the Federal government has no claims to water in Clark County or the southern tip of Nye County). Therefore, this allegation and/or representation is a blatant misrepresentation to this Court and constitutes an attempt to rewrite history to the Respondent’s benefit.

**SECOND**, the Respondent argues that a “natural person” was included in the Statutes (**NRS 533.010**, *et seq.* and **NRS 534.010**, *et seq.*) which granted the State Water Engineer his jurisdictional authority. In fact, the definition of a “natural person” is not specifically defined in the statute. Therefore, Respondent attempted to argue that **NRS 0.039** authorized the State Engineer to incorporate the term “natural person” into the State Water Engineer’s jurisdictional statutes. This allegation is patently false. The Respondent knew and had no excuse for not knowing that the Nevada Legislature purposefully removed the term “natural

person” and “individual” from both of these statutes and any argument that NRS 0.039 applies is therefore an intentional misrepresentation to this Court and a nullity.<sup>12</sup>

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See AB 200 (1985); as follows: 4. “Person” ~~[means any natural person, firm, copartnership, corporation, company, association, joint stock association or body politic, and includes any trustee, receiver, assignee or other similar representative thereof.]~~ includes a government, a governmental agency and a political subdivision of a government.

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See AB 200 (1985); as follows: **Sec. 54.** NRS 533.010 is hereby amended to read as follows:

533.010 As used in this chapter, “person” includes ~~{a corporation, an association, the United States, and the state, as well as a natural person.}~~ the United States and this state.

**Sec. 55.** NRS 534.010 is hereby amended to read as follows:

534.010 1. As used in this chapter:

**1985 Statutes of Nevada, Page 523 (Chapter 127, AB 200)**

- (a) “Aquifer” means a geological formation or structure that transmits water.
- (b) “Artesian well” means a well tapping an aquifer underlying an impervious material in which the static water level in the well stands above where it is first encountered in the aquifer.
- ( c) “Domestic use” extends to culinary and household purposes, in a single-family dwelling, the watering of a family garden, lawn, and the watering of domestic animals. The term also includes the use of geothermal resources for domestic heating purposes.
- (d) “Percolating waters” are underground waters, the course and boundaries of which are incapable of determination.
- (e) “Person” ~~[means any individual, firm, partnership, association, company or corporation, municipal corporation, power district, political subdivision of this or any state, or a]~~ includes any municipal corporation, power district, political subdivision of this state or any state and an agency of the United States

Rule 11 is very specific. It states in pertinent part that,

## **RULE 11. SIGNING OF PLEADINGS**

**(a) Signature.** Every pleading, written motion, and other paper shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. Each paper shall state the signer's address and telephone number, if any. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

**(b) Representations to Court.** By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,—

- (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
- (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
- (3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and
- (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

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Government. [agency.]

**NRCP Rule 11(b)(1)** through **(4)** were clearly and unequivocally violated by the Respondent and its Counsel. As such, the Nevada Rules of Professional Conduct were violated.

The NEVADA RULES OF PROFESSIONAL CONDUCT, are set forth by this Court and stated in **RULE 203 - MISCONDUCT**, that

**It is professional misconduct for a lawyer to:**

- [1] **Violate or attempt to violate the rules of professional conduct**, knowingly assist or induce another to do so, or do so through the acts of another;
- [2] Commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- [3] **Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;**
- [4] **Engage in conduct that is prejudicial to the administration of justice;**
- [5] State or imply an ability to influence improperly a government agency or official; or
- [6] Knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.  
(Emphasis added to applicable sections).

Clearly, the Respondents, both jointly and severally have violated NRCP 11 and the Nevada Professional Rules of Conduct. In particular, **SCT RULE 203(1), (3)** and **(4)**.

Even though Nevada courts have a sound policy preference for deciding case on the merits, the refusal to apply that policy must be weighed against other

policy considerations, including the public's interest in government honesty; the violation of the most basic rules of integrity required of licensed attorney's and that dishonesty's prejudice to the opposing party; judicial administration concerns are moot under these facts, as the Court has more important needs before it such as the Court's need to manage and sanction the illegal conduct of licensed legal professionals appearing before it. Even though this Court has the right to control its calendar, it would hard pressed to apply *Huckabay Props v. NC Auto Parts*, 130 Nev. Adv. Opn. 23, 32 P.3d 329, 433 (2014), which does not contain the same facts as this case. In that case there were no allegations that a party committed professional misconduct or violated NRCPC Rule 11. The Appellants have remained silent on this issue for two reasons: (1) the Appellants want their issues heard on the merits and the Respondent's issues denied on their merits; and (2) Counsel for the Appellant does not intentionally engage in misconduct, nor is he one to bring up these issues unless he is pressed. Here Counsel has been pressed, as the Respondents' dilatory and frivolous motions have resulted this Court taking action on them. This Court has held that a party cannot rely on the preference of deciding cases on the merits to the exclusion of all other policy consideration. *Id.* at 434. So it is the Appellants' position that another policy consideration that this Court needs to consider is the Unclean Hands of the Respondent. It is the

position of the Appellants that the Respondents' unclean hands negates their ability to obtain equitable relief from this Court in the form of a dismissal. To assure that this issue is fairly presented the Appellant's are filing a Motion for An Order To Show Cause Why the Respondent and its Counsel Should not be Held in Contempt and Sanctioned for their Intentional Misrepresentations to this Court. It is the Appellants' belief that this Motion should be considered First, before the accused parties Motion to Dismiss. After all, it would be patently unfair to grant a severe sanction, such as dismissal, to a party who has committed a greater and more serious violation of Court's own rules by violating the rules of professional conduct.

Once the Appellants' Motion for Order to Show Cause has been heard, then and only then, will it be fair for this Court to consider the Respondent's Motion to Dismiss.

Inherent in Nevada court is the power to dismiss a case for failure to prosecute or to comply with its orders; to prevent undue delays and to control their calendars, courts may exercise this power **within the bounds of sound judicial discretion, independent of ay authority granted under statutes or court rules.**

*Moore v. Cherry*, 90 Nev. 390, 393, 528 P.2d 1018, 1020 (1974).

This Court has stated that for this court to be able to continue to fulfill its responsibility of resolving legal disputes in a fair, efficient, and timely manner, it is imperative that the parties comply in a timely fashion with this Court's directives. This Court prefers not to tolerate procedural derelictions. *Weddell v. Stewart*, 127 Nev. Adv. Opn. 58, 261 P.3d 1080, 1084 (2011). However, the error committed by the Appellants and Counsel, in this case, was caused by the confusion generated by the improper filing of the Appellants' Notice of Reappearance in Proper Person. Had that Document not been filed, Counsel would have immediately filed a Motion to withdraw as Counsel. But because the Court accepted that document and filed it (which it was not supposed to do if Counsel was still on the case), this cause the Appellants and Counsel to believe that this Court had removed Counsel as counsel of record. This caused the Appellants to file their corrected/amended Opening Brief under their names. The Opening Brief was completely corrected and was timely filed. When it was discovered that this was in error. Counsel immediately re-filed the corrected/amended Opening Brief under his name and filed Motion for late filing based upon the Court's conduct, causing the confusion.

### **CONCLUSION**

For the above and foregoing reasons, the Appellants pray that this

Honorable Court Deny the Respondent's request for relief in their Motion to Dismiss.

Respectfully submitted this 27th day of December, 2016.

/s/ Thomas J. Gibson  
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Attorney for the Appellants

**CERTIFICATE OF SERVICE**

I, the undersigned, do hereby certify that the above and foregoing Appellant's Opposition to the Respondent's Motion to Dismiss Appeal was submitted on December 27, 2016 and served upon the Respondent's counsel through the Nevada Supreme Court E-Flex filing and service system and addressed to the following parties:

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JASON KING, STATE ENGINEER  
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Their last known addresses.

*/s/ Ross Huebner*  
\_\_\_\_\_  
SERVICE FACILITATOR  
An Employee of agent of the Law Office of  
Gibson Law Group

Exhibit “A”

Exhibit “A”

a port of the United States, via Canada, if the said produce was actually in transitu and detained by ice when the recent reciprocity treaty with Canada expired.

APPROVED, May 2, 1866.

CHAP. LXXII. — *An Act to provide for the better Organization of the Pay Department of the Navy.* May 3, 1866.  
See ch. 131.  
Post, p. 70.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That, from and after the passage of this act, the active list of the pay corps of the navy shall consist of eighty paymasters, forty passed assistant paymasters, and thirty assistant paymasters. Paymasters shall be regularly promoted and commissioned from passed assistant paymasters, and passed assistant paymasters from assistant paymasters, and all passed assistant paymasters authorized by this act to be appointed who have not heretofore been appointed and commissioned as assistant paymasters and all assistant paymasters hereby authorized to be appointed shall be selected from those who have served as acting assistant paymasters for the term of one year, and who were eligible to appointment in the grade of assistant paymasters when they were appointed acting assistant paymasters, as aforesaid; subject, however, to such examinations as are required by law, and such as may be established by the Secretary of the Navy.

Pay corps of the navy.  
Appointment of paymasters, passed assistant paymasters, &c.

Examinations.

Bonds and pay of passed assistant paymasters.

SEC. 2. *And be it further enacted,* That passed assistant paymasters shall give bonds for the faithful performance of their duties in the sum of fifteen thousand dollars, and that their annual pay shall be, at sea, fifteen hundred dollars; on other duty, fourteen hundred dollars; on leave or waiting orders, twelve hundred dollars.

APPROVED, May 3, 1866.

CHAP. LXXIII. — *An Act concerning the Boundaries of the State of Nevada.* May 5, 1866.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That, as provided for and consented to in the constitution of the State of Nevada, all that territory and tract of land adjoining the present eastern boundary of the State of Nevada, and lying between the thirty-seventh and the forty-second degrees of north latitude and west of the thirty-seventh degree of longitude west of Washington, is hereby added to and made a part of the State of Nevada.

Boundaries of Nevada.

SEC. 2. *And be it further enacted,* That there is hereby added to and made a part of the State of Nevada all that extent of territory lying within the following boundaries, to wit: Commencing on the thirty-seventh degree of north latitude, at the thirty-seventh degree of longitude west from Washington; and running thence south on said degree of longitude to the middle of the river Colorado of the West; thence down the middle of said river to the eastern boundary of the State of California; thence northwesterly along said boundary of California to the thirty-seventh degree of north latitude; and thence east along said degree of latitude to the point of beginning: *Provided,* That the territory mentioned in this section shall not become a part of the State of Nevada until said State shall, through its legislature, consent thereto: *And provided further,* That all possessory rights acquired by citizens of the United States to mining claims, discovered, located, and originally recorded in compliance with the rules and regulations adopted by miners in the Pah-Ranagat and other mining districts in the Territory incorporated by the provisions of this act into the State of Nevada shall remain as valid subsisting mining claims; but nothing herein contained shall be so construed as granting a title in fee to any mineral lands held by possessory titles in the mining States and Territories.

State to give its assent.

Possessory rights to mining claims to remain valid.

Title in fee not granted.

APPROVED, May 5, 1866.