

BEFORE THE NEW MEXICO STATE ENGINEER

**IN THE MATTER OF THE APPLICATION OF)
STRICKLING RANCH PARTNERS, LP AND)
HERMAN GALLEGOS AS TRUSTEE FOR THE)
HERMAN GALLEGOS REVOCABLE TRUST)
DATED JANUARY 29, 2007 FOR PERMIT TO)
CHANGE PLACE OF USE AND POINT OF)
DIVERSION OF SURFACE WATER IN THE)
PECOS STREAM SYSTEM IN SAN MIGUEL)
COUNTY, NEW MEXICO)**

Hearing No 16-020

OSE File No. SP-5093

**MOTION TO SET ASIDE AND VACATE THE ORDER
APPROVING DISMISSAL OF SAN MIGUEL COUNTY AND THEIR
STATUS AS PROTESTOR.**

COMES NOW Dave Romero, Jr. Law Firm, San Miguel County Attorney on behalf of the Board of County Commissioners and hereby submits its Motion to Set Aside and Vacate the Order Approving Dismissal of San Miguel County and their status as Protestor.

1. On August 7, 2017, Damian Martinez Esq. entered his appearance for the County of San Miguel.
2. Attorney Martinez recommended in Executive Session that the County withdraw from the above styled case. After the meeting, he mistakenly filed the Withdrawal.
3. The Applicant Strickling Ranch Partners, LP agreed / objected to this Motion to Set Aside Order and Reinstatement of Protestor Status. The OSE Administrative Litigation Unit, agreed / objected to this Motion to Set Aside Order.

Exhibit B

4. Pursuant to the San Miguel County Clerk's attached Affidavit:

-there was no issue of a Change of Protestor Status on any County Agenda.

-There was no public hearing where the County Commission voted or gave direction on the issue as to whether the governmental body should withdraw its Protestor status.

5. Formal action of a governmental body must occur in a public meeting before the legal status can be changed.

6. A regular County Attorney was appointed on September 11, 2017 received The Strickling Legal file from the Las Cruces firm on September 21, 2017 .

7. This Motion to Set Aside the Order was filed soon after.

8. The Agreement as to the County's Protestor Status is void ab initio until approved by the Board of San Miguel County Commissioners. Public policy requires that the issue be considered in open session.

9. In the case of Kelly v. Belcher, 155 WVa. 757, 1972) a lawyer has no implied authority to compromise based on retainer alone, but consent for compromise by the client must be clear and unequivocal.

The policy of the law is to have every litigated case tried on its merits; and it looks with disfavor upon a party who, regardless of the merits of his case, attempts to take advantage of the mistake, surprise, inadvertence, or neglect of his adversary.

Under Rule 59 and Rule 60 analysis, rule 60 (b) should be liberally construed to accomplish justice, and when it appears from the evidence that an order of dismissal confirming a compromise resulted from a misunderstanding or mistaken belief of the attorney for the parties whose cause of action was dismissed by virtue of the compromise and that such

compromise was unauthorized and was not consented to by such parties, the judgment of the trial court denying their motion to set aside and vacate the order of dismissal constitutes an abuse of discretion and such judgment will be reversed upon appeal.

10. Because of the short time frame and nature of the Motion, concurrence by Applicant was has been denied or not yet provided.

WHEREFORE, THE BOARD OF COUNTY COMMISSIONERS OF SAN MIGUEL COUNTY, requests that the Office of the State Engineer reconsider its Order regarding withdrawal as a Protestant and continue to recognize San Miguel County as a Protestant until the County approves of the withdrawal in formal open session.

THE ROMERO LAW FIRM,

Original signed by: *Dave Romero, Jr.*

BY: Dave Romero, Jr.
San Miguel County Attorney
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Las Vegas, New Mexico 87701
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AFFIDAVIT OF GERALDINE GUTIERREZ, SAN MIGUEL COUNTY CLERK

STATE OF NEW MEXICO)
) ss:
COUNTY OF SAN MIGUEL)

1. Geraldine Gutierrez, being duly sworn, states as follows:
2. My name is Geraldine Gutierrez.
3. I am the San Miguel County Clerk.
4. My office is responsible for the minutes of the Board of San Miguel County Commissioner's and all of their open meetings.
5. My office has reviewed the minutes since June 1, 2017 to the present for any matter which pertains the Withdrawal of Protestor Status in the above Strickling Partners Application.
6. There are no minutes or agenda items which indicate that the Protestor status in the Strickling matter was considered or voted on.

FURTHER AFFIANT SAYETH NAUGHT:

STATE OF NEW MEXICO)
) ss
COUNTY OF SAN MIGUEL)

Geraldine Gutierrez
Geraldine Gutierrez

Before me, Geraldine Gutierrez, subscribed and swore to this affidavit in my presence on September 26, 2017.

Louanna Sanchez
Notary Public

My Commission Expires on 03-07-2020

