

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

IN THE MATTER OF APPLICATION 61933 )  
FILED TO APPROPRIATE THE PUBLIC )  
WATERS OF AN UNDERGROUND SOURCE )  
WITHIN THE COLUMBUS SALT MARSH )  
VALLEY HYDROGRAPHIC BASIN (118) )  
ESMERALDA COUNTY, NEVADA. )

**RULING**

**#5451**

**GENERAL**

**I.**

Application 61933 was filed on March 4, 1996, by Dos Amigos, Inc., to appropriate 0.5 cubic foot per second of water from an underground source for mining, milling, and domestic purposes within the SE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 21 and the NW $\frac{1}{4}$  NW $\frac{1}{4}$ , SW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 22, T.1N., R.33E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 22, T.1N., R.33E., M.D.B.&M.<sup>1</sup>

**FINDINGS OF FACT**

**I.**

On August 12, 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 Dos Amigos, Inc. A search of the corporate information database showed the corporate status of Dos Amigos, Inc., as default. A follow-up phone call December 5, 2003, to the Nevada Secretary of State's office confirmed that the corporate status for Dos Amigos, Inc., had been delinquent from June 1, 2003. On October 8, 2004, the Office of the State Engineer made an additional inquiry to the Nevada Secretary of State's office, through their official website, regarding the corporate status of Dos Amigos, Inc. A search of the corporate information database showed the corporate status of Dos Amigos, Inc., as revoked.<sup>1</sup>

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<sup>1</sup> File No. 61933, 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>2</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, Dos Amigos, Inc., 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.

On March 6, 2001, the applicant was contacted by phone in regards to providing additional information on its project. The applicant indicated that it was in the process of completing an Environmental Assessment and requested that the State Engineer withhold action on Application 61933 pending finalization of the Environmental Assessment.

The Nevada Secretary of State’s office confirmed the corporate status of the applicant was delinquent on December 5, 2003. Concerned over this information and the lack of any correspondence from the applicant since its request to withhold action in 2001, the Office of the State Engineer issued a letter of inquiry to the United States Forest Service (USFS) regarding the status of the Environmental Assessment. In particular, the USFS was asked to provide a written update on the Environmental Assessment and any Decision Notice or other authorizations from the USFS for Dos Amigos, Inc., to utilize lands identified as the place of use filed under pending Application 61933. The USFS responded by letter dated March 3, 2004, and indicated that the

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<sup>2</sup> Black’s Law Dictionary, 1028(5<sup>th</sup> ed. 1979).

Environmental Assessment was never completed and a Decision Notice was not issued, and that Dos Amigos, Inc., had terminated its interest with the claim holder of the project.<sup>1</sup>

The State Engineer finds that the applicant failed to follow through with the finalization of the Environmental Assessment and appears to have abandoned its interest in the mining project. In light of the above circumstances, the State Engineer further finds that it is not in the public interest to continue to withhold action on Application 61933.

## CONCLUSIONS

### I.

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

### II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:<sup>4</sup>

- 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.

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.

### IV.

The applicant requested that the State Engineer withhold action pending the finalization of an Environmental Assessment. The applicant did not follow through with the Environmental Assessment process and terminated its interest with the mining project claim holder. The State Engineer concludes that the reason for withholding action on the water right application no longer exists. The State Engineer concludes that the failure to follow through with the Environmental

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<sup>3</sup> NRS chapters 533 and 534.

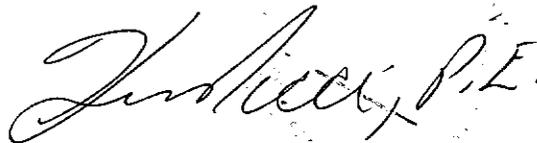
<sup>4</sup> NRS § 533.370(4).

Assessment process and the termination of the applicant's interest with the mining project claim holder makes Application 61933 subject to denial.

**RULING**

Application 61933 is hereby denied on the grounds that to grant a water right application to an applicant not entitled to apply for a water right and that has demonstrated an intent to abandon the project for which it applied for a water right would threaten to prove detrimental to the public interest.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Hugh Ricci, P.E.", is written over a faint, circular official seal.

HUGH RICCI, P.E.  
State Engineer

HR/TW/jm

Dated this 16th day of  
November, 2004.