

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

IN THE MATTER OF PERMIT)
12194, CERTIFICATE 3812, ISSUED)
FOR THE APPROPRIATION OF A)
SURFACE WATER SOURCE IN)
THE ANTELOPE VALLEY)
HYDROGRAPHIC BASIN (151),)
EUREKA COUNTY, NEVADA.)

RULING

5898

GENERAL

I.

Permit 12194 was issued on June 12, 1950, which authorized the appropriation of 0.0094 cubic feet per second or a sufficient quantity of water for 300 head of cattle. The point of diversion is described as being located within the NW¼ SW¼ of Section 24, T.16N., R.50E., M.D.B.&M.¹ Certificate 3812 was issued under Permit 12194 on August 4, 1952, for the same quantity of water that was permitted.

II.

On February 2, 1998, ownership of Permit 12194, Certificate 3812 was assigned in the records of the Division of Water Resources to Fish Creek Ranch, LLC.¹ The agent identified for Fish Creek Ranch, LLC, in the Report of Conveyance is Walter Leberski.

FINDINGS OF FACT

I.

The State Engineer finds that on February 28, 2008, the United States Department of Interior, Bureau of Land Management provided the State Engineer with information indicating that Fish Creek Ranch, LLC, no longer operates in the Seven Mile Allotment.¹ The State Engineer finds the surface-water source is on public land and without the authorization for access to the point of diversion and/or place of use, for example through a grazing permit, the Applicant can no longer place the water to beneficial use.

¹ File No. 12194, official records in the Office of the State Engineer.

II.

By letter dated February 29, 2008, the State Engineer requested information from Fish Creek Ranch, LLC, or its agent Walter Leberski, as to its authorization to be a range user on the land on which the point of diversion under Permit 12194 exists. Fish Creek Ranch, LLC, or its agent was provided 30 days from the date of the letter to provide the requested information and was cautioned that failure to provide the information would result in a declaration of abandonment of Permit 12194, Certificate 3812. The State Engineer finds the United States Postal Service returned the State Engineer's certified letter marked as "Return to Sender, Attempted Not Known." The State Engineer finds the letters addressed as regular mail to the permittee and its agent Walter Leberski were not returned by the United States Postal Service; therefore the State Engineer must assume the mail was received.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.²

II.

Nevada Revised Statute § 533.360 provides that water may be appropriated for a beneficial use and not otherwise. Nevada Revised Statute § 533.365 provides that beneficial use is the basis, the measure and the limit of the right to the use of water. A water-right holder's non-use of a water right is some evidence of an intent to abandon the right and the longer the period of non-use, the greater the likelihood of abandonment. Abandonment is a question of fact to be determined from all the surrounding circumstances, which certainly includes the lack of a right to graze at the point of diversion or place of use permitted and the lack of response from the permittee or its agent of record.

In the case of Permit 12194, the State Engineer concludes that since the Fish Creek Ranch, LLC, no longer operates in the Seven Mile Allotment for which this water right was

² NRS chapter 533.

permitted and the Fish Creek Ranch, LLC, and its agent failed to respond to the request for information that is demonstrable evidence of an intent to abandon the water right. The State Engineer concludes that the purpose for which the water right was issued no longer exists and the water can no longer be placed to the authorized beneficial use.

RULING

Permit 12194, Certificate 3812, is hereby declared abandoned.

Respectfully submitted,



TRACY TAYLOR, P.E.
State Engineer

TT/SJT/jm

Dated this 21st day of
October, 2008.