

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

IN THE MATTER OF PERMIT)
20927, CERTIFICATE 5719, AND)
APPLICATION 48439 FILED TO)
APPROPRIATE THE PUBLIC)
WATERS OF MUSTANG SPRING)
WITHIN THE BUENA VISTA)
VALLEY HYDROGRAPHIC BASIN)
(129), PERSHING COUNTY,)
NEVADA.)

RULING
5268

GENERAL

I.

Certificate 5719 was issued on April 8, 1964, under Permit 20927, to the Dixie Valley Cattle Corporation to appropriate 0.005 cubic feet per second (cfs) of water from Mustang Spring for stockwatering and domestic purposes. The place of use is described as being located within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 25, T.26N., R.36E., M.D.B.&M. The point of diversion is described as being located within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 25.¹

II.

Application 48439 was filed on September 26, 1984, by Don and Martha Sims, and later assigned to Michael Maestri and Sharon B. Siegel to appropriate 1.0 cfs of water from Mustang Spring for stockwatering purposes. The proposed place of use is described as being located within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 25, T.26N., R.36E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 25.²

FINDINGS OF FACT

I.

On May 1, 1973, the agent for Don and Martha Sims submitted certified copies of deeds, in part to prove ownership of Permit 20927, Certificate 5719. The assignment of Permit 20927, Certificate 5719, could not be completed because a complete chain of

¹ File No. 20927, official records in the Office of the State Engineer.

² File No. 48439, official records in the Office of the State Engineer.

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title was not provided. By letter dated September 26, 1984, Omni-Means, Ltd., on behalf on Don and Martha Sims, wrote the following:¹

On behalf of Don and Martha Sims, they request Permit 20927, Certificate 5719, be forfeited and/or abandoned as provided under NRS 533.060 and/or other appropriate sections of NRS. The water appropriated under said permit has not been used by the permittee since at least September 1, 1979.

Don and Martha Sims have been trying to transfer title of Permit 20927 since prior to May 3, 1979. The current permittee, Dixie Valley Cattle Corp., has not been in existence [sic] for more than six years. As the water right is on BLM land, no land deeds exist transferring the right, nor are there any other deeds specifying Permit 20927 to be transferred to another owner.

As a result, the Sims are making a new water right application and request the existing right be forfeited and/or abandoned.

A hearing was held on June 5, 1985, by the State Engineer to consider the petition that Permit 20927, Certificate 5719, be declared forfeited and/or abandoned. At the hearing, a continuance was ordered when the Sims indicated that they would again attempt to clear the chain of title from Dixie Valley Cattle Corporation to Don and Martha Sims.¹ The State Engineer finds Don and Martha Sims were unable to clear the chain of title to Permit 20927, Certificate 5719, and therefore, the administrative action regarding abandonment, started at the hearing of June 5, 1985, must be reconsidered.

II.

On March 21, 2000, Application 48439 was assigned to show Michael Maestri and Sharon B. Siegel as the current owners of record, succeeding Don and Martha Sims.² Application 48439 was filed on the same source of water appropriated under Permit 20927, Certificate 5719. A review of records on file in the Office of the State Engineer show there are no other applications, permits, certificates, vested, or reserved rights on Mustang Spring. The State Engineer finds that approval of Application 48439 cannot be considered until a determination of abandonment is made on Permit 20927, Certificate 5719.

III.

Nevada Revised Statute § 533.503 provides that the State Engineer shall not issue a permit to appropriate water for the purpose of watering livestock on the public lands unless the applicant for the permit is legally entitled to place livestock on the public lands

for which the permit is sought. The BLM informed the State Engineer on April 2, 2003, that Michael Maestri is the Permittee and Range User for the locations described under Application 48439.² The State Engineer finds that the applicant is entitled by the proper federal agency to place livestock upon the public range serviced by the water source described under Application 48439.

IV.

The Dixie Valley Cattle Corporation has not been the range user on the grazing allotment served by Permit 20927, Certificate 5719, since prior to 1985.² The State Engineer finds the Dixie Valley Cattle Corporation has not been legally entitled to use water under Permit 20927, Certificate 5719, for at least 18 years and the corporation is not known to exist any longer.

V.

A review of records from the Nevada Secretary of State's office shows no listing under the name of Dixie Valley Cattle Corporation. The State Engineer finds the Dixie Valley Cattle Corporation has no corporate status in the State of Nevada at this time.

VI.

William M. Lamb, manager of the Dixie Valley Cattle Corporation, signed the original water right application under Permit 20927, Certificate 5719. Deeds submitted in 1979 include documentation quitclaiming the interest of Sheldon W. Lamb to Ward Tarp and deeds from Ward Tarp to Don and Martha Sims with the implication that Sheldon W. Lamb was the successor to William M. Lamb, manager of the Dixie Valley Cattle Corporation.¹ Although this information was not sufficient to convey the water right, the State Engineer finds that the Dixie Valley Cattle Corporation intended to convey the water right under Permit 20927, Certificate 5719, to the grazing allotment successor.

CONCLUSIONS

I.

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

³ NRS chapter 533.

II.

The State Engineer concludes Application 48439 was filed to replace Permit 20927, Certificate 5719, because all other efforts to convey the stock water rights on Mustang Spring to the new range user were exhausted. The State Engineer further concludes that, under these particular circumstances, the only solution provided by Nevada Water Law is to declare Permit 20927, Certificate 5719, abandoned and issue Application 48439 to the new range user.

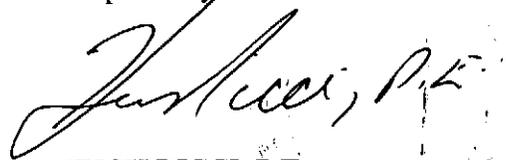
III.

The State Engineer concludes that the Dixie Valley Cattle Corporation abandoned Permit 20927, Certificate 5719, as evidenced by the overt acts of failure to maintain corporate status, failure to maintain a federal grazing permit, failure to put the water to beneficial use for at least 18 years, and the attempts to transfer the water right by deed to new range users.

RULING

Permit 20927, Certificate 5719, is hereby declared abandoned. The water under Permit 20927, Certificate 5719, reverts to the source and may be subject to further appropriation in accordance with Nevada Water Law. Application 48439 is hereby approved subject to existing rights and the payment of the statutory permit fee.

Respectfully submitted,



HUGH RICCI, P.E.
State Engineer

HR/TW/jm

Dated this 13th day of
August, 2003.