

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

IN THE MATTER OF PERMIT 5522,)
CERTIFICATE 1046 FILED TO APPROPRIATE)
THE PUBLIC WATERS OF HARRIS CREEK)
WITHIN THE LAS VEGAS VALLEY)
HYDROGRAPHIC BASIN (212), CLARK)
COUNTY, NEVADA.)

RULING

#6292

GENERAL

I.

Certificate 1046 was issued on August 14, 1924, under Permit 5522, to S. P. Hill to appropriate 0.0531 cubic feet per second (cfs), not to exceed 31.86 acre-feet annually (afa), of water from Harris Creek for irrigation and domestic purposes. The point of diversion is described as being located within the southwest part of the NE¼ SW¼ of Section 1, T.20S., R.57E., M.D.B.&M. The place of use is described as being located within 0.05 acres of the SE¼ NW¼ and 5.26 acres of the NE¼ SW¼ of Section 1, T.20S., R.57E., M.D.B.&M.¹

FINDINGS OF FACT

I.

The State Engineer initiated a review of Permit 5522, Certificate 1046 to clarify the amounts and validity of the record of appropriations on Harris Spring(s)/Creek. Permit 5522, Certificate 1046 as well as Permit 9811, Certificate 2150 and Proof of Appropriation V01587 were identified as having Harris Spring(s)/Creek as the source of their appropriations of public waters.

II.

Certificate 2150 was issued on November 12, 1935, under Permit 9811, to Nellie C. Martin to appropriate 0.0572 cfs, not to exceed 42.0 afa, of water from Big and Little Harris Springs for irrigation and domestic purposes. The point of diversion is described as being located within the NE¼ SW¼ for Big Harris Spring and NW¼ SW¼ for Little Harris Spring, all in Section 1, T.20S., R.57E., M.D.B.&M. The place

¹ File No. 5522, official records in the Office of the State Engineer.

of use is described as being located within 0.35 acres of the SE $\frac{1}{4}$ NW $\frac{1}{4}$ and 5.37 acres of the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 1, T.20S., R.57E., M.D.B.&M.² - essentially the same as that described on Certificate 1046, under Permit 5522.

III.

Proof of Appropriation V01587 was made on August 26, 1918, by Jas. B. and Tweed A. Wilson to claim a vested right to water a maximum of 110 cattle, approximately 2.46 afa, from Harris Spring for stock watering purposes on open [range] government land. The point of diversion was described to explain the absence of a tie bearing and distance stating: "Harris Spring rises at different places along [the] creek within sub-division described."³ Proof of Appropriation V01587 was assigned to Willard H. George on February 9, 1929, and is currently assigned to Jim R. and Naomi Jimenez.

IV.

A field investigation conducted by the State Engineer and staff on August 5, 2014, measured the flow from Big Harris Spring, and also a separate spring discovered during the field investigation located downstream of Big Harris Spring. Little Harris Spring was not visited. Flow from Big Harris Spring was measured at 5.6 gallons per minute and the unnamed downstream spring was measured at 22.7 gallons per minute for a total of 28.3 gallons per minute, or approximately 0.06305 cfs and 45.65 afa.⁴

The State Engineer finds that water in Harris Creek is the discharge from a spring complex of multiple seeps with a partial measured flow of approximately 45.65 afa, which is less than the duty certificated under Permits 5522 and 9811.

V.

A Report of Conveyance was executed for Permit 5522, Certificate 1046 on March 21, 2005, by Phila Back (3/8 interest), Las Vegas Paiute Tribe (3/8 interest), and the Donnelly Family Limited Liability Company (2/8 interest). By letter dated September 22, 2005, the Office of the State Engineer rejected the Report of

² File No. 9811, official records in the Office of the State Engineer.

³ File No. V01587, official records in the Office of the State Engineer.

⁴ File No. 5522, Office Memorandum dated August 11, 2014, regarding Field Investigation of Big Harris Spring (Permit Nos. 5522, 9811 and V01587), official records in the Office of the State Engineer.

Conveyance citing an incomplete chain of title.¹ The Abstract of Title indicates that S. P. Hill, permittee of record, died in 1925 leaving no estate of record and no land patent for the Desert Land Entry that would have been the place of use under Permit 5522, Certificate 1046. This comment is supported by a letter dated July 14, 1928, from Las Vegas attorneys Steven & Henderson to the State Engineer, which states:¹

On or about December 26, 1925, [S.P.] Hill died and while he presumably completed the appropriation of the spring, he never filed the final proof on the homestead entry, and since that time the homestead entry has been cancelled and said land was taken up under the Desert Act [DLE] by Nellie P. [sic] Martin....⁵

The abstract for Permit 5522, Certificate 1046 also implies that Permit 9811, Certificate 2150 was allowed to be top filed on Harris Spring(s) over Permit 5522, Certificate 1046 because heirs to S. P. Hill could not be located. In a letter dated October 1, 1937, from H. W. Stewart, Assistant State Engineer, responding to an inquiry from Las Vegas water rights surveyor J. T. McWilliams, Stewart stated that:¹

It would not be within the province of the State Engineer to cancel this final certificate of water right as issued to S. P. Hill. However, under our Water Law a legal right to the use of water, whether vested or applied, can be lost through non-use, and apparently the State Engineer, in his ruling on Application No. 9811 on September 19, 1935, assumed that any rights which had been acquired by virtue of Certificate No. 1046, issued under Permit 5522, had been abandoned, or whatever rights that may have accrued by virtue of said certificate had been acquired by the

⁵ Although one piece of contradictory evidence exists as to whether Hill died intestate, it does not materially affect the conclusion reached in this Ruling. In a 1935 letter from Dr. Roy Martin, husband of Nellie C. Martin, to the State Engineer, Martin states:

Mr. Hill did all the required amount of work called for the by the U.S. Land Department for furnishing final proof before U.S. Commissioner A. A. Hinman in Las Vegas, but S. P. Hill died at the Harris Spring ranch house the day before the date for giving the affidavits. Frank Dickinson came to look after his interests in the place and as Mr. Dickinson was too ill from T.B. to care for the place he corresponded with Mr. Hill's heirs and received quit claim deeds from them and made a tentative though definite verbal deal with my wife for the place. We took possession of the place at once. . .

Correspondence dated March 12, 1935, from Roy Martin to State Engineer George Malone, File No. 9811, official records in the Office of the State Engineer.

applicant under Application No. 9811. In other words, it would appear from the records that any right to the use of the waters as evidenced by Certificate No. 1046, Permit No. 5522, have now been superseded by the right as evidenced by Certificate No. 2150 issued under Permit No. 9811.

The September 19, 1935, ruling referred to in H. W. Stewart's letter is the ruling on Permit 9811, which is located in that file.⁶ The ruling briefly outlines the history of Harris Spring from S. P. Hill through several intervening occupants that never instituted legal occupancy or ownership of the spring after it was appropriated under Permit 5522, Certificate 1046. The ruling also discussed Application 9811 [now Permit 9811, Certificate 2150] by Nellie C. Martin, on the same source to support her Desert Land Entry after S. P. Hill failed to perfect his homestead entry. The 1935 ruling and H. W. Stewart's 1937 letter both suggest that Harris Spring had been abandoned under Permit 5522, Certificate 1046 and Proof of Appropriation V01587⁷ prior to the filing of Application 9811. However, the State Engineer declined to declare Permit 5522, Certificate 1046 abandoned in 1935, and subsequent ownership of Harris Springs was resolved by the State Engineer's approval and certification of the top filed Permit 9811 issued to Nellie C. Martin. The State Engineer finds it a desirous goal that records of valid water rights are truly and accurately reflected in the Office of the State Engineer; therefore, it is necessary for the State Engineer to re-examine whether Permit 5522, Certificate 1046 has been abandoned.

VI.

Abandonment of a water right is the voluntary "relinquishment of the right by the owner with the intention to forsake and desert it." *In re Manse Spring*, 60 Nev. 280, 108 P.2d 311, 315 (1940). Abandonment is the union of acts and intent; and, under Nevada law is "a question of fact to be determined from all the surrounding circumstances." *Revert v. Ray*, 95 Nev. 782, 786, 603 P.2d 262, 264 (1979); *see also In re Manse Spring*, 108 P.2d at 316 (stating that courts must determine the intent of

⁶ In the Office of the State Engineer, ruling numbers were not assigned to rulings prior to 1947.

⁷ The State Engineer finds that whether Proof of Appropriation V01587 has been abandoned is beyond the scope of this ruling and will be addressed through an adjudication proceeding.

the claimant to decide whether abandonment has taken place, and in this determination may take non-use and other circumstances into consideration). Where the abandonment of surface water is concerned, NRS § 533.060(4) states that:

In a determination of whether a right to use surface water has been abandoned, a presumption that the right to use the surface water has not been abandoned is created upon the submission of records, photographs, receipts, contracts, affidavits or any other proof of the occurrence of any of the following events or actions within a 10-year period immediately preceding any claim that the right to use the water has been abandoned:

- (a) The delivery of water;
- (b) The payment of any costs of maintenance and other operational costs incurred in delivering the water;
- (c) The payment of any costs for capital improvements, including works of diversion and irrigation; or
- (d) The actual performance of maintenance related to the delivery of the water.

The State Engineer finds that no presumption against abandonment is created by NRS § 533.060(4) in this case. Rather, facts which support abandonment include the belief that S. P. Hill died intestate in or about 1925 and his homestead entry was cancelled, which allowed Nellie C. Martin to obtain a Desert Land Entry supported by Permit 9811, Certificate 2150. Although there is evidence suggesting there were other occupants on Hill's land for approximately 9 years following his death, none of those occupants perfected the homestead entry, nor did they bring title in Hill's water right forward in the State Engineer's office. In his 1935 ruling on Permit 9811, the State Engineer recounted these facts and issued Permit 9811 to Nellie C. Martin with the knowledge that the water right had been top filed over Hill's water right. Later, in a 1937 letter, the State Engineer's office opined that Permit 5522, Certificate 1046 ceased to exist as having been superseded by Permit 9811, Certificate 2150; however, the State Engineer's office took no formal action to declare Hill's water right abandoned at that time. Additionally, there is also the fact that there has been non-use of the water under Hill's right since approximately 1934. Based on the totality of the foregoing facts, the State Engineer finds that Permit 5522, Certificate 1046 has been abandoned.

CONCLUSIONS OF LAW

I.

The State Engineer has jurisdiction over the parties and subject matter of this action and determination.⁸

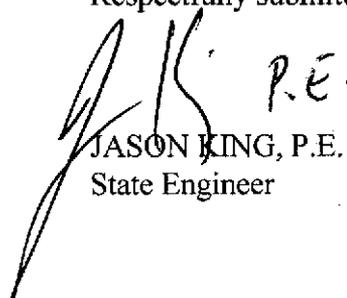
II.

The State Engineer concludes there is no presumption against abandonment created by NRS § 533.060, and that all foregoing findings of fact support the conclusion that Permit 5522, Certificate 1046 has been abandoned.

RULING

Permit 5522, Certificate 1046 is hereby declared abandoned.

Respectfully submitted,


JASON KING, P.E.
State Engineer

Dated this 15th day of
September, 2014.

⁸ NRS Chapter 533.