

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

IN THE MATTER OF PERMIT 7689 CERTIFICATE)
1606, PERMIT 7693 CERTIFICATE 1610, PERMIT 7694)
CERTIFICATE 1611, PERMIT 7695 CERTIFICATE)
1612 AND PERMIT 7696 CERTIFICATE 1613 FILED)
TO APPROPRIATE THE PUBLIC WATERS OF)
VARIOUS SURFACE WATER SOURCES WITHIN)
THE RED ROCK VALLEY HYDROGRAPHIC BASIN)
(99), WASHOE COUNTY, NEVADA.)

RULING
#6201

GENERAL

I.

On April 5, 1926, the Office of the State Engineer received a water right application from the Washoe County Title Guarantee Co., which was assigned the serial number 7689. This application requested a new appropriation of water from Horse Spring for stock water purposes. It was the Applicant's intention to divert 0.015 cubic feet per second (cfs) for the watering of 500 head of cattle, 50 horses and 2,000 sheep located within the NW¼ SE¼ of Section 16, T.22N., R.18E., M.D.B.&M. Permit 7689 was issued on August 28, 1926. The water right was perfected and Certificate 1606 was issued on January 15, 1930, for 0.0016 cfs or sufficient water to water 50 head of cattle. The spring was developed by being dug out and walled up with rock and water conveyed through 22 feet of 1-inch galvanized pipe into a watering trough.

II.

On April 5, 1926, the Office of the State Engineer received a water right application from the Washoe County Title Guarantee Co., which was assigned the serial number 7693. This application requested a new appropriation of water from Mountain Spring for stock water purposes. It was the Applicant's intention to divert 0.015 cfs for the watering of 200 head of cattle, 20 horses and 1,000 sheep located within the NE¼ SE¼ of Section 17, T.23N., R.18E., M.D.B.&M. Permit 7693 was issued on August 28, 1926. The water right was perfected and Certificate 1609 was issued on January 15, 1930, for 0.016 cfs or sufficient water to water 50 head of cattle. The spring was developed by being dug out and cribbed up and water conveyed through 40 feet of 1¼-inch pipe into one wooden watering trough and one galvanized watering trough.

III.

On April 5, 1926, the Office of the State Engineer received a water right application from the Washoe County Title Guarantee Co., which was assigned the serial number 7694. This application requested a new appropriation of water from Choke Cherry Spring for stock water purposes. It was the Applicant's intention to divert 0.01 cfs for the watering of 200 head of cattle, 20 horses and 1,000 sheep located within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 21, T.23N., R.18E., M.D.B.&M. Permit 7694 was issued on August 28, 1926. The water right was perfected and Certificate 1611 was issued on January 16, 1930, for 0.003 cfs or water sufficient to water 100 head of cattle. The spring was developed by being cleaned out and cribbed and water conveyed through 16 feet of 1-inch pipe into a watering trough.

IV.

On April 5, 1926, the Office of the State Engineer received a water right application from the Washoe County Title Guarantee Co., which was assigned the serial number 7695. This application requested a new appropriation of water from Upper and Lower Willow Springs for stock water purposes. It was the Applicant's intention to divert 0.025 cfs for the watering of 500 head of cattle, 50 horses and 2,000 sheep located within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 16, T.23N., R.18E., M.D.B.&M. Permit 7695 was issued on August 28, 1926. The water right was perfected and Certificate 1612 was issued on January 16, 1930, for 0.0019 cfs or sufficient to water 60 head of cattle. At the upper spring, water conveyed through 22-feet of one inch galvanized pipe into a watering trough. At the lower spring, a cut 25 feet long was made and water conveyed through 22 feet of 1-inch pipe into a watering trough.

V.

On April 5, 1926, the Office of the State Engineer received a water right application from the Washoe County Title Guarantee Co., which was assigned the serial number 7696. This application requested a new appropriation of water from Dick's Tunnel Spring for stock water purposes. It was the Applicant's intention to divert 0.015 cubic feet per second for the watering of 200 head of cattle, 20 horses and 1,000 sheep located within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 21, T.23N., R.18E., M.D.B.&M. Permit 7696 was issued on August 28, 1926. The water right was perfected and Certificate 1613 was issued on January 16, 1930, for 0.0016 cfs or sufficient to water 50 head of cattle. The spring was developed by digging a 30-foot long cut and water conveyed through 50 feet of 1-inch galvanized pipe into a watering trough.

VI.

According to records on file in the Office of the State Engineer, the current owner of record for all of the subject permits is Red Rock Ranch, Ltd.

FINDINGS OF FACTS

I.

In Nevada, 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*, 108 P.2d 311, 315 (Nev. 1940). Abandonment requires both action 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).¹

[U]nder Nevada law, a determination of whether there exists an intent to abandon requires a consideration of all the relevant circumstances. *See Revert*, 603 P.2d at 264; *see also In re Manse Spring*, 108 P.2d at 316 (stating that courts must determine the intent of the claimant to decide whether abandonment has taken place, and in this determination may take non-use and other circumstances into consideration).²

Non-use for a period of time may inferentially be some evidence of intent to abandon.³ Although a prolonged period of non-use may raise an inference of intent to abandon, it does not create a rebuttable presumption.⁴

At a minimum, proof of continuous use of the water right should be required to support a finding of lack of intent to abandon.⁵

In the case of the subject permits, not only does each of these permits have an extensive history of non-use, but the required intent to voluntarily relinquish the water rights also exists.

On May 1, 2012, the Office of the State Engineer received an application to appropriate water from Hillside Spring for stock water purposes from DS Ranches, LLC. DS Ranches, LLC indicated on the application form that they are the permitted user for the Antelope and Red Rock grazing allotments. When an application to appropriate water becomes ready-for-action, the assigned basin engineer will conduct the research necessary to obtain sufficient information for a decision to approve, deny or otherwise take action on the application. It was discovered that there

¹ *U.S. v. Alpine Land & Reservoir Company*, 340 F.3rd 903 (9th Cir. 2003).

² *Ibid.*

³ *Franktown Creek Irrigation Co., Inc. v. Marlette Lake Company and the State Engineer of the State of Nevada*, 77 Nev. 348, 354 (1961).

⁴ *U.S. v. Orr Water Ditch Company*, 256 F.3d 935, 945 (9th Cir. 2001).

⁵ *U.S. v. Alpine Land & Reservoir Company*, 291 F.3rd 1062, 1077 (9th Cir. 2002).

was an existing water right permit on Hillside Spring for stock water purposes (Permit 7692, Certificate 1609). The U.S. Bureau of Land Management (BLM) was contacted and asked to provide information on the authorized range user in this area. The BLM confirmed that DS Ranches, LLC is the authorized range user and Red Rock Ranch, Ltd. is no longer the grazing allotment holder. With this information in hand, the basin engineer then conducted an informal field investigation of Hillside Spring and the other spring sources in the area in an effort to determine, in part, whether Red Rock Ranch, Ltd. was still utilizing the sources of water.

By certified letter, Red Rock Ranch, Ltd. was informed that the informal field investigation discovered that its certificated water rights had not been used for the beneficial use of stock watering for many years and that the BLM informed the Office of the State Engineer that it is not the current grazing allotment holder. Red Rock Ranch, Ltd. was provided 30 days from the date of the letter to provide information and was cautioned that failure to provide the information would result in a declaration of abandonment of its water rights. The State Engineer finds the United States Postal Service returned the State Engineer's certified letters indicating that the addresses are no longer valid. On August 7, 2012, 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 Red Rock Ranch, Ltd. A search of the corporate information database did not reveal any company under that name. A review of the associated water right files confirms that there has been no evidence of any correspondence from Red Rock Ranch, Ltd. since about 1973.

The State Engineer finds there is evidence of a significant period of non-use of the water rights by Red Rock Ranch, Ltd. and that relinquishment of its grazing permit and failure to respond to the certified notice demonstrates intent to abandon the water rights.

II.

On August 6, 2012, the Office of the State Engineer received correspondence from the representative for D.S. Ranches, LLC. This information indicates that the grazing permit file shows a chain of conveyance from Red Rock Ranch, Ltd. in 1972, through various permit holders, and to Sparrowk Livestock and D.S. Ranches, LLC. The D.S. Ranches, LLC has expressed an intent to update ownership on Red Rock Ranch, Ltd. existing water rights for springs currently used for stock watering purposes. These springs are Cottonwood Spring (Permit 7687, Certificate 1605), Lake Spring (Permit 7691, Certificate 1608), Hillside Spring (Permit 7692, Certificate 1609), and Blitz Spring (Permit 25001, Certificate 8096). For the remaining Red Rock Ranch, Ltd. water rights on Horse Spring (Permit 7689, Certificate 1606), Mountain Spring (Permit 7693, Certificate

1610), Choke Cherry Spring (Permit 7694, Certificate 1611), Upper and Lower Willow Spring (Permit 7695, Certificate 1612), and Dick's Tunnel Spring (Permit 7696, Certificate 1613), it is indicated that there is no beneficial use of these sources by D.S. Ranches, LLC.

The State Engineer finds that Red Rock Ranch, Ltd. no longer has a grazing permit in the area and there is no beneficial use of the waters associated with Permit 7689, Certificate 1606, Permit 7693 Certificate 1610, Permit 7694 Certificate 1611, Permit 7695 Certificate 1612 and Permit 7696 Certificate 1613, and that decades of non-use demonstrate an intent to abandon the water rights.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁶

II.

The record establishes that Red Rock Ranch, Ltd. has abandoned its water rights under Permit 7689 Certificate 1606, Permit 7693 Certificate 1610, Permit 7694 Certificate 1611, Permit 7695 Certificate 1612, and Permit 7696 Certificate 1613.

RULING

Permit 7689 Certificate 1606, Permit 7693 Certificate 1610, Permit 7694 Certificate 1611, Permit 7695 Certificate 1612 and Permit 7696 Certificate 1613 are hereby declared abandoned.

Respectfully submitted,


JASON KING, P.E.
State Engineer

Dated this 12th day of
October, 2012

⁶ NRS Chapter 533.