

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

IN THE MATTER OF PERMIT 11163,)
CERTIFICATE 3132 AND PERMIT 11359,)
CERTIFICATE 3163 FILED TO APPROPRIATE)
THE PUBLIC WATERS OF UNDERGROUND)
SOURCES WITHIN THE DIAMOND VALLEY)
HYDROGRAPHIC BASIN (153), EUREKA)
COUNTY, NEVADA.)

RULING

#6272

GENERAL

I.

Certificate 3132 was issued on September 22, 1948, under Permit 11163, to the Callahan Zinc-Lead Company, to appropriate 0.2 cubic feet per second (cfs) of water from an underground source (mine tunnel and underground mine workings) for mining, milling and domestic purposes. The point of diversion is described as being located within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ and the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 7, T.22N., R.52E., M.D.B.&M. The place of use is described as being located within the N $\frac{1}{2}$ and the N $\frac{1}{2}$ S $\frac{1}{2}$ of Section 7, T.22N., R.52E., M.D.B.&M.¹

II.

Certificate 3163 was issued on December 20, 1948, under Permit 11359, to the Callahan Zinc-Lead Company, to appropriate 0.2 cfs of water from an underground source (Sweetwater Wells Nos. 1, 2, 3, and 4) for milling purposes. The point of diversion is described as being located within the W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 9, T.22N., R.52E., M.D.B.&M. The place of use is described as being located within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 7, T.22N., R.52E., M.D.B.&M.²

FINDINGS OF FACT

I.

The Office of the State Engineer has initiated a review of older water right certificates for the purpose of assigning a duty of water to those certificates that currently list a diversion rate only with no associated duty of water being quantified. In the course of this review, water right Certificates 3132 and 3163 were identified as having a diversion rate but no quantified duty of

¹ File No. 11163, official records in the Office of the State Engineer.

² File No. 11359, official records in the Office of the State Engineer.

water. As a result, the Office of the State Engineer sent a certified letter on December 23, 2013, to all of the addresses available on file for Callahan Zinc-Lead Company. The letter inquired if Callahan Zinc-Lead Company was still using the water, and if so, to provide water use measurements under Permit 11163, Certificate 3132 and Permit 11359, Certificate 3163 or other proof of beneficial use of the water. The letter requested a response within 60 days and warned that failure to respond could result in an abandonment or forfeiture of the water rights. The letter was served by certified mail to six addresses identified for the Callahan Zinc-Lead Company and all six letters were returned as undeliverable by the U.S. Postal Service. To date, the Callahan Zinc-Lead Company has not responded to the request for information.

A review of the water right files finds that the last correspondence from Callahan Zinc-Lead Company to the Office of the State Engineer for Permit 11163, Certificate 3132 was over 65 years ago on June 15, 1948, and the last correspondence for Permit 11359, Certificate 3163 was over 65 years ago on November 30, 1948. A search of the records of the Office of the State Engineer failed to locate any evidence of a Report of Conveyance or any transfer documents from the Callahan Zinc-Lead Company to any other person or entity.

The State Engineer finds that the Permittee was properly notified of the request for additional information and failed to respond. The State Engineer further finds that there has been no correspondence from the Permittee for over 65 years and that there is no evidence that title to these water rights has been conveyed to any other person or entity.

II.

On February 19, 2014, the Office of the State Engineer made inquiries to the Nevada Secretary of State's office, through its official website, regarding the corporate status of Callahan Zinc-Lead Company. The search revealed no listings under the name of Callahan Zinc-Lead Company. The State Engineer finds the Callahan Zinc-Lead Company has no corporate status in Nevada at this time that is active and in good standing.

CONCLUSIONS

I.

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

³ NRS Chapters 533 and 534.

II.

Nevada Revised Statute § 534.090(4) provides that a right to use groundwater may be lost by abandonment. 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*, 60 Nev. 280, 108 P.2d 311, 315 (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); *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).

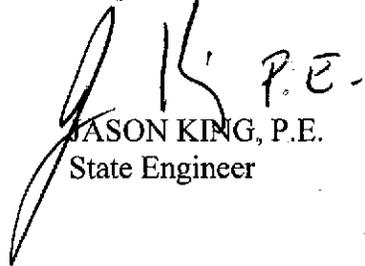
Non-use for a period of time may inferentially be some evidence of intent to abandon. *Franktown Creek Irrigation Co., Inc. v. Marlette Lake Company and the State Engineer of the State of Nevada*, 77 Nev. 348, 354 (1961). Although a prolonged period of non-use may raise an inference of intent to abandon, it does not create a rebuttable presumption. *U.S. v. Orr Water Ditch Company*, 256 F.3d 935, 945 (9th Cir. 2001). At a minimum, proof of continuous use of the water right should be required to support a finding of lack of intent to abandon. *U.S. v. Alpine Land & Reservoir Company*, 291 F.3d 1062, 1077 (9th Cir. 2002).

Based on the findings of fact, the State Engineer concludes that there are sufficient facts from the surrounding circumstances to support a declaration that Permit 11163, Certificate 3132 and Permit 11359, Certificate 3163 have been abandoned. The Permittee failed to timely respond to a request for information from the State Engineer’s office; including, failing to demonstrate to the State Engineer that the water has been in continuous use. The Permittee has not corresponded with the State Engineer’s office for over 65 years, and there is no evidence that the Callahan Zinc-Lead Company has a corporate status in Nevada that is active and in good standing. Based on the totality of circumstances, the State Engineer concludes that these facts demonstrate an intention and action on the part of the Permittee to abandon the water rights, and the State Engineer hereby declares them to be abandoned.

RULING

Permit 11163, Certificate 3132 and Permit 11359, Certificate 3163 are hereby declared abandoned.

Respectfully submitted,



JASON KING, P.E.
State Engineer

Dated this 31st day of
March, 2014.