

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

IN THE MATTER OF PERMIT 7646, CERTIFICATE)
2359 FILED TO APPROPRIATE THE PUBLIC)
WATERS OF REEF SPRING WITHIN THE)
NEWARK VALLEY HYDROGRAPHIC BASIN (154),)
WHITE PINE COUNTY, NEVADA.)

RULING
#6284

GENERAL

I.

Certificate 2359 was issued on January 15, 1938, under Permit 7646, to James C. Riordan, and later assigned to P.C. Fraser, to appropriate 0.10 cubic feet per second of water from Reef Spring for mining, milling and domestic purposes. The point of diversion is described as being located within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 15, T.16N., R.57E., M.D.B.&M. The place of use is described as being located within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 10, T.16N., R.57E., M.D.B.&M.¹

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 Certificate 2359 was identified as having a diversion rate but no quantified duty of water. As a result, the Office of the State Engineer sent a letter to the Permittee on March 5, 2014, to the address of record on file in the Office of the State Engineer. The letter inquired if P.C. Fraser was still using the water, and if so, to provide water use measurements under Permit 7646, Certificate 2359. The letter requested a response within 60 days and warned that failure to respond would result in an abandonment of the water right. The letter was served to the address on file and was returned as "Return to Sender, Insufficient Address, Unable to Forward" by the United States Postal Service. To date, P.C. Fraser has not responded to the request for information.¹

¹ File No. 7646, official records in the Office of the State Engineer.

A review of the water right permit file shows that the last correspondence from P.C. Fraser or a representative agent to the Office of the State Engineer for Permit 7646, Certificate 2359, was over 53 years ago on December 9, 1960. A search of the records of the Office of the State Engineer conducted April 10, 2014, failed to locate any evidence of a Report of Conveyance or any transfer documents from P.C. Fraser to any other person or entity.^{1,2}

The State Engineer finds that the Permittee was properly served with the request for additional information at the address provided by the Permittee on file in the Office of the State Engineer and that the Permittee was not located at the address he provided. The State Engineer further finds that there has been no correspondence from the Permittee for over 53 years and that there is no evidence that title to this water right has been conveyed to any other person or entity.

II.

The Office of the State Engineer researched the mining activity records of the Nevada Division of Minerals and finds that there has been no mining activity for the past 20 years in the area of the described point of diversion.

III.

The Office of the State Engineer examined recent aerial photography of the described point of diversion of Permit 7646, Certificate 2359. The search of these records failed to reveal evidence of a spring area or cleared areas and no evidence of recent mining and milling use relative to the described point of diversion and place of use. The State Engineer finds no evidence of recent mining activity at the point of diversion and place of use.

IV.

The Office of the State Engineer examined 7.5 minute topographical maps produced by the United States Geological Survey (USGS) titled Mount Hamilton, Nevada and Seligman Canyon, Nevada. The State Engineer finds that neither of these maps list a spring labeled Reef Spring near the point of diversion.

CONCLUSIONS OF LAW

I.

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

² Nevada Division of Water Resources Deeds Database, official records of the Office of the State Engineer.

³ NRS Chapter 533.

II.

Nevada Revised Statute § 533.060 provides that a right to use surface water may be lost by abandonment. 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 the claimant to decide whether abandonment has taken place, and in this determination may take non-use and other circumstances into consideration). Where 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 Permittee was not located at the address provided by him, and therefore failed to respond to the request for information, which leads the State Engineer to conclude that no evidence was submitted pursuant to NRS § 533.060(4) that would create a presumption against abandonment. Rather, the Permittee has not corresponded with the Office of the State Engineer for over 53 years. Aerial photography does not show evidence of a spring area, cleared areas or recent mining activity at the certificated place of use. In addition, the USGS maps for Mt. Hamilton and Seligman Canyon do not identify Reef Spring as an existing source near the certificated point of diversion. Based on the totality of the evidence, the State Engineer concludes that there is no evidence to support continuous use of the water that could demonstrate a lack of intent to abandon the water right. Rather, all evidence supports the conclusion that Permit 7646, Certificate 2359 has been abandoned.

RULING

The State Engineer hereby declares Permit 7646, Certificate 2359 abandoned.

Respectfully submitted,



JASON KING, P.E.
State Engineer

Dated this 17th day of
July 2014