

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

IN THE MATTER OF PERMIT 7715, )  
CERTIFICATE 1480, PERMIT 7716, )  
CERTIFICATE 1478, PERMIT 7738, )  
CERTIFICATE 1479, PERMIT 7746, )  
CERTIFICATE 1477 FILED TO )  
APPROPRIATE THE PUBLIC WATERS OF )  
CALIFORNIA MILL SPRING NO. 1, )  
CALIFORNIA MILL SPRING NO. 2, )  
CALIFORNIA MILL SPRING NO. 11, AND )  
CALIFORNIA MILL SPRING NO. 18, )  
RESPECTIVELY, WITHIN THE NEWARK )  
VALLEY HYDROGRAPHIC BASIN (154), )  
WHITE PINE COUNTY, NEVADA. )

**RULING**  
**#6285**

**GENERAL**

**I.**

Certificate 1480 was issued on January 17, 1929, under Permit 7715, to Francis Cutting Company to appropriate 0.033 cubic feet per second (cfs) of water from California Mill Spring No. 1 for mining, milling and domestic purposes. The point of diversion is described as being located within the SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 6, T.16N., R.58E., 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 1, T.16N., R.57E., M.D.B.&M.<sup>1</sup>

Certificate 1478 was issued on January 17, 1929, under Permit 7716, to Francis Cutting Company to appropriate 0.013 cfs of water from California Mill Spring No. 2 for mining, milling and domestic purposes. The point of diversion is described as being located within the NE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 6, T.16N., R.58E., 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 1, T.16N., R.57E., M.D.B.&M.<sup>2</sup>

Certificate 1479 was issued on January 17, 1929, under Permit 7738, to Francis Cutting Company to appropriate 0.0067 cfs of water from California Mill Spring No. 11 for mining, milling and domestic purposes. The point of diversion is described as being

<sup>1</sup> File No. 7715, official records in the Office of the State Engineer.

<sup>2</sup> File No. 7716, official records in the Office of the State Engineer.

located within the SE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 5, T.16N., R.58E., 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 1, T.16N., R.57E., M.D.B.&M.<sup>3</sup>

Certificate 1477 was issued on January 17, 1929, under Permit 7746, to Francis Cutting Company to appropriate 0.0067 cfs of water from California Mill Spring No. 18 for mining, milling and domestic purposes. The point of diversion is described as being located within the NE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 8, T.16N., R.58E., 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 1, T.16N., R.57E., M.D.B.&M.<sup>4</sup>

### FINDINGS OF FACT

#### I.

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 1477, 1478, 1479 and 1480 were identified as having diversion rates but no quantified duties of water. As a result, the Office of the State Engineer sent a letter to the current and prior owner of record on March 5, 2014, which inquired if the Francis Cutting Company and/or Tonopah Development Company were still using the water, and if so, to provide water use measurements under the aforementioned certificates. The letter requested a response within 60 days and warned that failure to respond would result in an abandonment of the water rights. The letters were served to the addresses on file in the Office of the State Engineer and were returned by the United States Postal Service as "Return to Sender, No Such Number, Unable To Forward" and "Return To Sender, No Mail Receptacle, Unable To Forward." To date, neither Francis Cutting Company nor Tonopah Development Company have responded to the request for information.

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<sup>3</sup> File No. 7738, official records in the Office of the State Engineer.

<sup>4</sup> File No. 7746, official records in the Office of the State Engineer.

A review of the water right permit files shows that the last correspondence from Francis Cutting Company and/or Tonopah Development Company, or a representative agent, was received in the Office of the State Engineer on the following dates:

Permit 7715, Certificate 1480 on December 5, 1928;

Permit 7716, Certificate 1478 on October 2, 1927;

Permit 7738, Certificate 1479 on December 12, 1928; and

Permit 7746, Certificate 1477 on January 29, 1929.

Thus, the most recent correspondence on file from Francis Cutting Company and/or Tonopah Belmont Company was over 85 years ago. 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 Francis Cutting Company to any other person or entity.<sup>5</sup>

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 it provided. The State Engineer further finds that there has been no correspondence from the Permittee for over 85 years and that there is no evidence that title to these water rights has been conveyed to any other person or entity.

## II.

On June 6, 2014, 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 Francis Cutting Company and Tonopah Belmont Company. The search of the corporate information database did not reveal an active entity for either Francis Cutting Company or Tonopah Belmont Company, and the State Engineer finds no evidence to support that Francis Cutting Company or Tonopah Belmont Company are still in existence.<sup>1,2,3,4</sup>

## III.

The Office of the State Engineer examined 7.5 minute topographical maps produced by the United States Geological Survey (USGS) titled Hamilton, Nevada. The Hamilton, Nevada map did not list California Mill Springs Numbered 1, 2, 11 or 18 as

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<sup>5</sup> Nevada Division of Water Resources Deeds Database, official records in the Office of the State Engineer.

described in Certificates 1480, 1478, 1479 and 1477, respectively, within the quarter-quarter of the described points of diversion.

#### IV.

The Office of the State Engineer examined recent aerial photography, which failed to reveal recent mining activity such as recent mining deposits, new infrastructure or mining equipment. In addition, research by the Nevada Division of Minerals revealed no mining activity within the past 20 years. The State Engineer finds no evidence to support ongoing mining activity within the area of the points of diversion.

### CONCLUSIONS OF LAW

#### I.

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

#### 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;

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<sup>6</sup> NRS Chapter 533.

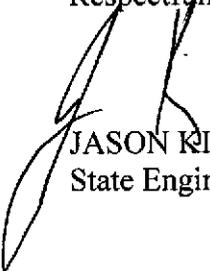
- (c) The payment of any costs for capital improvements, including works of diversion and irrigation; or
- (d) The actual performance of maintenance related to the delivery of the water.

Neither the Permittee nor the prior owner were located at the address provided by them, and therefore they 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, there has been no correspondence with the Office of the State Engineer for over 85 years and it appears that the Permittee has ceased existence. Aerial photography does not show evidence of recent mining activity at the certificated places of use, and current USGS topographic maps do not list the water sources. 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 these permits have been abandoned.

**RULING**

The State Engineer hereby declares Permit 7715, Certificate 1480; Permit 7716, Certificate 1478; Permit 7738, Certificate 1479; and Permit 7746, Certificate 1477 abandoned.

Respectfully submitted,

 P.E.  
JASON KING, P.E.  
State Engineer

Dated this 17th day of  
July, 2014.