

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

IN THE MATTER OF PERMIT 13046,)
CERTIFICATE 4176, FILED TO APPROPRIATE)
THE WATERS OF MEDICINE SPRING WITHIN)
THE RUBY VALLEY HYDROGRAPHIC BASIN)
(176), ELKO COUNTY, NEVADA.)

RULING
#6325

GENERAL

I.

Permit 13046 was issued on August 28, 1950, to Amos Epperson, later assigned to Sadie L. Epperson, to appropriate 20 gallons per minute of the waters of Medicine Spring for mining and milling purposes from January 1st through December 31st of each year within the Ruby Valley Hydrographic Basin. Both the point of diversion and the place of use are described as being located within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 32, T.29N., R.60E., M.D.B.&M.¹ On January 24, 1955, Certificate 4176 was issued to Sadie L. Epperson, assignee, to appropriate 0.02 cubic-feet per second (cfs) for domestic use.

FINDINGS OF FACT

I.

On February 2, 1953, Amos Epperson transferred all rights to the Silver Butte Mine Site, which includes Permit 13046, to his wife Sadie L. Epperson, and this assignment was recorded with Elko County Recorder on December 16, 1953.

By letter dated June 29, 1953, Mrs. Amos Epperson informed the Office of the State Engineer that Amos Epperson had recently passed away, and further stated that she was requesting an extension of time to file proof of completion of work in order to have time to dispose of the property. An extension of time was filed in conjunction with her letter.

II.

The proof of beneficial use was filed on July 26, 1954. A field investigation was conducted on October 16, 1954, by staff of the Office of the State Engineer, who described the site as containing a pond, but suggesting that the site had not been in use for at least a year. The

¹ File No. 13046, official records in the Office of the State Engineer.

field investigation report described one remaining building and one motor as all that remained of the mill site. The report estimated that the site may have been in use until 1952, but that it was unlikely to have been used after Mr. Epperson passed away in 1953. Nevertheless, Certificate 4176 was issued to Sadie L. Epperson on January 24, 1955, for domestic purposes. The last correspondence received from the Permittee was a receipt for the permit fee dated over 60 years ago on December 20, 1954.

III.

Judgment was entered on March 8, 1955, in an unrelated quiet title action where Sadie L. Epperson was adjudged to be the owner of the waters of Medicine Spring in the amount of 0.045 cfs, which differs from the certificated amount of 0.02 cfs for reasons unknown.

The land on which the Silver Butte Mine Site was located has since been conveyed to another party. On August 3, 1983, a note in the water right permit file states that ownership of the water right could not be transferred through a chain of title for the land and that a separate chain of title for the water right was required. There has been no correspondence received by the Office of the State Engineer in the file since 1983 regarding updating title to the water right.

IV.

A search conducted by staff of the Office of the State Engineer on Google Earth on April 2, 2015, shows that no structures currently exist anywhere on or near the spring site.¹ Google Earth provides images dating back to 1999, and the records available indicate that no activity appears to have occurred in the area during that time.

CONCLUSIONS OF LAW

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.²

II.

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,

² NRS Chapter 533.

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); *Masters Inv. Co. v. Irrigationists Ass'n*, 702 P.2d 268 (Colo. 1985) (evidence that water rights were not used because they were not needed is probative of the question of intent). 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.

At the time of the field investigation in 1953, it was observed that all that remained of the mill site was one building and a motor, and it was noted that other buildings had burned down and the pond was not in use. The land on which the mill site was located was conveyed to someone other than the Permittee. The Permittee had indicated in correspondence to the Office of the State Engineer that she was attempting to sell the property, and the last documented correspondence by the Permittee was the receipt for the permit fee dated over 60 years ago on December 20, 1954. A review of Google Earth imagery from 1999 forward reveals no delivery of water or works of diversion. In 1983, it appears someone made an inquiry into updating title of the water right, but when advised that the chain of the title to the land was insufficient, no other inquiries were made in the last 32 years. Taken together, the State Engineer concludes that there is no evidence of actions or events within the last 10 years which give rise to a presumption against abandonment.

RULING

Permit 13046, Certificate 4176 is hereby declared abandoned.

Respectfully submitted,



P.E.

JASON KING, P.E.
State Engineer

Dated this 13th day of
November, 2015.