

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

IN THE MATTER OF PERMIT 9008, CERTIFICATE)
1831 AND PERMIT 9061, CERTIFICATE 1832)
FILED TO APPROPRIATE THE PUBLIC WATERS)
OF STAR CANYON CREEK WITHIN THE BUENA)
VISTA VALLEY HYDROGRAPHIC BASIN (129),)
PERSHING COUNTY, NEVADA.)

RULING
#6182

GENERAL

I.

On August 10, 1929, the Office of the State Engineer received a water right application from the Central Pacific Railway Company, which was assigned the serial number 9008. This application requested a new appropriation of water from Star Canyon Creek for general railroad and domestic use at the town of Imlay, which lies approximately 13 miles to the northwest. It was the Applicant's intention to divert 1.25 cubic feet per second of the flow of Star Canyon Creek into a concrete diversion box located within the NW¼ NE¼ of Section 24, T.31N., R.34E., M.D.B.&M. and convey it through a 6" – 8" pipeline to a 350,000 gallon water storage tank at the Imlay rail yards.

Permit 9008 was issued on December 15, 1930, and is fourth in priority among the five water rights that have been issued for appropriations of water from Star Canyon Creek.¹ The water right was perfected and Certificate 1831 was issued on June 16, 1932.

II.

A second water right filing, Application 9061, was received from the Central Pacific Railway Company on September 20, 1929, requesting a change in the point of diversion, place of use and manner of use of a portion of an existing decreed water right. Decreed Proof V-01177, emerged from the Star Canyon Creek adjudication as the senior decreed water right on Star Canyon Creek. Permit 9061, issued on May 28, 1930, allowing the Central Pacific Railway Company to change the manner of use from irrigation on the Star Creek Ranch to general railroad and domestic use within the same area described under Application 9008. The Applicant also intended to

¹ File No. 9008, official records in the Office of the State Engineer.

combine the seasonal periods of use requested under Applications 9008 and 9061 to allow a year round use of the creek.

Application 9061, upon its approval, also inherited the priority date of its base right permit, which in this instance would be the 1862 priority established under Proof V-01177. Therefore, Permit 9061 and Proof V-01177 share the same priority date, that being the senior priority on Star Canyon Creek.² The water right was perfected and Certificate 1832 was issued on June 16, 1932.

FINDINGS OF FACTS

I.

Conflicts arising over the use of water from Star Creek have existed for many years, foremost among these being civil action *Gallio v. Ryan*, which was settled through the formal adjudication of Star Canyon Creek and Santa Clara Creek.³ A more recent dispute between agricultural and mining interests was resolved by State Engineer's Ruling No. 6150. In Ruling No. 6150 the State Engineer through a series of findings of fact and conclusions of law approved an additional appropriation of Star Canyon Creek water for mining and milling purposes. A determination was made that during those months when Proof V-01177 and Permit 2925, Certificate 575, were outside of their respective periods of use, a limited amount of surface water could be diverted to support a proposed placer gold operation.

A pair of certificated railroad permits was also addressed in the findings of fact of Ruling No. 6150. Based upon the records of the Office of the State Engineer, it was found that Permit 9008, Certificate 1831 and Permit 9061, Certificate 1832 had an extended period of non-use.⁴ The State Engineer chose at the time of his ruling not to pursue an abandonment of these surface water rights, but finds that recent interest in additional appropriations of water from Star Canyon Creek has spurred consideration of Permit 9008, Certificate 1831 and Permit 9061, Certificate 1832 and their possible abandonment.

² File No. 9061, official records in the Office of the State Engineer.

³ *Gallio v. Ryan*, Sixth Judicial District Court of the State of Nevada, In and For The County of Pershing, May 6, 1927.

⁴ State Engineer's Ruling No. 6150, dated September 19, 2011, official records in the Office of the State Engineer.

II.

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).⁵

[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).⁶

Non-use for a period of time may inferentially be some evidence of intent to abandon.⁷ Although a prolonged period of non-use may raise an inference of intent to abandon, it does not create a rebuttable presumption.⁸

At a minimum, proof of continuous use of the water right should be required to support a finding of lack of intent to abandon.⁹

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.

The evidence for non-use centers upon the manner of use that was perfected under each of these permits. Certificates of Appropriation Nos. 1831 and 1832 were approved on June 6, 1932, and describe in general terms, the water related activities that were taking place within their common place of use. The descriptions of the manner of use for both certificates are identical and described as “locomotive water columns, fire hydrants, railroad shops, other railroad facilities and dwellings.”

The degree to which the manner of use established under Permits 9008 and 9061 has deteriorated can be determined from information provided by several outside sources in addition to

⁵ *U.S. v. Alpine Land & Reservoir Company*, 340 F.3d 903 (9th Cir. 2003).

⁶ *Ibid.*

⁷ *Franktown Creek Irrigation Co., Inc. v. Marlette Lake Company and the State Engineer of the State of Nevada*, 77 Nev. 348, 354 (1961).

⁸ *U.S. v. Orr Water Ditch Company*, 256 F.3d 935,945 (9th Cir. 2001).

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

the records of the Office of the State Engineer. Of particular interest is the current state of the Imlay rail yards. At its zenith, Imlay's population and industry was dominated by the railroad, and it must be assumed that it had a significant land position within the town. It can also be assumed that as the railroad's presence lessened, its property holdings dwindled. A search of the Pershing County Assessors' online property information confirms that there are 17 parcels owned by the Union Pacific Railroad, two being vacant commercial with the remainder being classified as vacant single family.¹⁰ Further insight into the railroads decline is evidenced by recent aerial imagery of the town of Imlay. Faint surface traces of the former rail center can be found within the place of use and an active rail line skirts the town to the north, but the 350,000 gallon water tank, large shops and locomotive sheds so vital to past operations, are no longer present.¹¹ The absence of the railroad facilities coupled with the knowledge that the last commercial steam locomotives left Southern Pacific Railroad service in 1957, strongly supports the contention that the manner of use authorized under Permits 9008 and 9061 has ceased to exist for at least the last 50 years.

While most of the structures that once comprised the Central Pacific Railroad Company's rail center have been either razed or removed, a significant portion of the Star Canyon Creek pipeline still exists. Both the railroad's intake valve on the Star Creek Ranch's diversion dam and the nearby exposed portions of the pipe appear to be in fair condition.¹² Due to the fact that the pipeline passes over several sections of public land, a right-of-way was required from the federal government. The original right-of-way is depicted upon the Bureau of Land Management's (BLM) Master Title Plat, for T.31N., R.34E., M.D.B.&M.¹³ Information provided by the BLM indicates that a right-of-way for the pipeline was issued by the federal government on June 8, 1931. Eventually, the Union Pacific Railroad filed a relinquishment of the Star Canyon Creek pipeline right-of-way due to its lack of use.¹⁴ It should be noted that the Central Pacific Railroad was acquired by the Union Pacific Railroad on June 30, 1959.

¹⁰ Pershing County Assessors' Website, Online Property Information, May 10, 2012.

¹¹ Google Earth Imagery as viewed on May 10, 2012.

¹² Field Investigation No. 1144, dated March 29, 2011, official records in the Office of the State Engineer.

¹³ Bureau of Land Management Land Records website, Master Title Plat.

¹⁴ File No. 9008, e-mail from Bureau of Land Management, received May 9, 2012, official records in the Office of the State Engineer.

The Star Canyon Creek pipeline was not the single source of water for the town of Imlay. A second, older pipeline transported surface water from the springs in Prince Royal Canyon and Eagle Canyon to the town.¹⁵ To improve the efficiency of this system the State Engineer allowed Pershing County to replace the aging spring boxes and pipelines with several infiltration wells. A search of the Nevada Division of Water Resources water right database indicates that the Prince Royal Canyon wells are now the major source of municipal water for the Imlay Water Company. At one time, the Star Canyon Creek pipeline is thought to have augmented the Prince Royal Canyon municipal water supply, but this is no longer the case. On June 11, 2007, the Pershing County Board of Commissioners submitted an application to the BLM to revive the Star Canyon Creek right-of-way, which was approved on November 7, 2007.¹⁴ Approval of the right-of-way, does not, however, resurrect the nonexistent railroad use. The granting of the second right-of-way as it relates to a renewed use of the water is further rendered moot by Pershing County's position that it does not have any interest in Permits 9008 and 9061 or the remnants of the Star Canyon Creek pipeline.¹⁶

The final point that supports the finding of abandonment is based upon transfer of title, or in this case, the lack of it. The Central Pacific Railway Company filed both applications over 70 years ago. Letters received by the Office of the State Engineer suggest that by 1932, Permits 9008 and 9061 had been acquired by the Southern Pacific Company. It is also thought that the Union Pacific Railroad may have at one time acquired the permittee's interests. Except for general inquiries by several outside parties, there have been no written communications between the Central Pacific Railway Company, the Union Pacific Railroad or the Southern Pacific Company and the State Engineer's office since May 12, 1932, nor has there been any attempt to transfer title from the original applicant.^{1,2} The State Engineer finds that this prolonged period of silence supports a lack of interest in maintaining the active status of Permits 9008 and 9061.

The State Engineer finds there is evidence of a significant period of non-use of the water rights and that relinquishment of the right-of-way demonstrates a voluntary intent to permanently

¹⁵ File No. 145, official records in the Office of the State Engineer.

¹⁶ File No. 9008, e-mail from Pershing County, May 8, 2012, official records in the Office of the State Engineer.

desert the right to appropriate Star Canyon Creek water in the manner perfected under Permit 9008, Certificate 1831 and Permit 9061, Certificate 1832.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.¹⁷

II.

The record establishes that there is sufficient evidence of non-use and intent to abandon and relinquish possession by the owner of record under Permit 9008, Certificate 1831 and Permit 9061, Certificate 1832.

RULING

Permit 9008, Certificate 1931 and Permit 9061, Certificate 1932 are hereby declared abandoned.

Respectfully submitted,


JASON KING, P.E.
State Engineer

Dated this 15th day of
June, 2012.

¹⁷ NRS Chapter 533.