

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

IN THE MATTER OF PERMIT 6718,)
CERTIFICATE 1629, FILED TO)
APPROPRIATE THE PUBLIC WATERS)
OF AN UNDERGROUND SOURCE)
WITHIN THE DRY LAKE VALLEY)
HYDROGRAPHIC BASIN (181),)
LINCOLN COUNTY, NEVADA.)

RULING

#6281

GENERAL

I.

Certificate 1629 was issued on March 5, 1930, under Permit 6718, to Comet Mines Company, to appropriate 0.025 cubic feet per second of water from an underground source for mining, milling and domestic purposes. The point of diversion is described as being located within SW¼ SW¼ of Section 32, T.1N., R.66E., M.D.B.&M. The place of use is depicted on the supporting map as being located within the NW¼ of Section 6, T.1S., R.66E., 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 1629 was identified as having a diversion rate but no quantified duty of water. As a result, the Office of the State Engineer sent a certified letter on February 21, 2014, to all addresses on file in the Office of the State Engineer for Comet Mines Company. The letter inquired if Comet Mines Company was still using the water, and if so, to provide water use measurements under Permit 6718, Certificate 1629, or other proof of beneficial use of the water. The letter requested a response within 60 days and warned that failure to respond would result in abandonment of this water right. The letter was served by certified mail to two addresses identified for the Comet Mines Company and both letters were returned by the United States Postal Service as "Return to Sender Attempted-Not Known Unable to Forward." To date, Comet Mines Company has not responded to the request for information.¹

¹ File No. 6718, official records in the Office of the State Engineer.

A review of the water right file finds that the last correspondence from Comet Mines Company to the Office of the State Engineer for Permit 6718, Certificate 1629 was over 84 years ago on April 16, 1930.¹ 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 Comet Mines Company to any other person or entity.

The State Engineer finds that the Permittee was properly served with the request for information to the address provided by the Permittee maintained by the Office of the State Engineer and the Permittee failed to respond. The State Engineer further finds that there has been no correspondence from the Permittee for over 84 years and that there is no evidence that title to this water right has been conveyed to any other person or entity.

On June 5, 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 Comet Mines Company. The search of the corporate information database did not reveal an existing company under Comet Mines Company.¹

A search was also made of recent aerial photography of the general area surrounding the described point of diversion and depicted place of use. This search failed to recognize reasonable evidence of recent mining activity such as mining structures, equipment or tailings.¹

CONCLUSIONS

I.

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

II.

Nevada Revised Statute §534.090(4) provides that a right to use groundwater 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 can be described as 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

² NRS Chapters 533 and 534.

abandonment has taken place and this determination may take non-use and other circumstances into consideration).

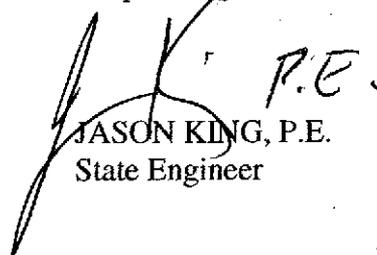
Non-use for a period of time may inferentially be some evidence of intent to abandon a water right. *Franktown Creek Irr. Co., Inc. v. Marlette Lake Co. and the State Engineer of the State of Nevada*, 77 Nev. 348, 354 (1961). While a prolonged period of non-use may raise an inference of intent to abandon, it has been held that it does not create a rebuttable presumption of abandonment. *U.S. v. Orr Water Ditch Co.*, 256 F.3d 935, 945 (9th Cir. 2001). At a minimum, then, 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 Co.*, 291 F.3d 1062, 1077 (9th Cir. 2002).

The State Engineer concludes that Permit 6718, Certificate 1629 has been abandoned based on the following factual findings: the last correspondence between Comet Mines Company and the Office of the State Engineer for Permit 6718, Certificate 1629 was over 84 years ago on April 16, 1930. The Permittee has no active corporate status with the Nevada Secretary of State's Office and there is no evidence that the water right was conveyed to a different owner. The Permittee failed to respond to certified correspondence inquiring whether the Permittee was continuing to beneficially use the water and aerial photography of the point of diversion and place of use reveals no mining activity or ongoing beneficial use of water. In short, the State Engineer can find no evidence to support continuous use of the water which would demonstrate a lack of intent to abandon the water right. Rather, all evidence supports the conclusion that Permit 6718, Certificate 1629 has been abandoned.

RULING

The State Engineer hereby declares Permit 6718, Certificate 1629 abandoned.

Respectfully submitted,


JASON KING, P.E.
State Engineer

Dated this 16th day of

June, 2014.