

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

IN THE MATTER OF PERMIT 1633, )  
CERTIFICATE 44 FILED TO APPROPRIATE )  
THE PUBLIC WATERS OF HILLSIDE )  
SPRING WITHIN THE NEWARK VALLEY )  
HYDROGRAPHIC BASIN (154), WHITE PINE )  
COUNTY, NEVADA. )

**RULING**

**#6286**

**GENERAL**

**I.**

Certificate 44 was issued on October 31, 1912, under Permit 1633, to Thomas Dixon to appropriate 0.025 cubic feet per second of water from Hillside Spring for livestock purposes. The point of diversion is located within unsurveyed land, approximately within the NW¼ of Section 22, T.16N., R.55E., M.D.B.&M. The place of use is not described.<sup>1</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 Certificate 44 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 current owner of record on March 3, 2014, which inquired if Thomas Dixon was still using the water, and if so, to provide water use measurements under Permit 1633, Certificate 44. 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 in the Office of the State Engineer and was returned by the United States Postal Service as "Return to Sender, Attempted-Not Known, Unable to Forward." To date, Thomas Dixon has not responded to the request for information.

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<sup>1</sup> File No. 1633, official records in the Office of the State Engineer.

The State Engineer finds a review of the water right permit file shows that the last correspondence from Thomas Dixon, by a representative agent, was over 101 years ago on December 21, 1912. 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 Thomas Dixon to any other person or entity.<sup>1,2</sup>

The State Engineer finds that the Permittee was properly served with the request for information at the address provided by the Permittee to the Office of the State Engineer and that the Permittee was not found at the address provided by him. The State Engineer further finds that there has been no correspondence from the Permittee for over 101 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 examined recent aerial photography of the general area surrounding the described point of diversion. This search failed to reveal evidence of a spring area or cleared areas for troughs, tanks or corrals indicating recent use of the general surrounding area that would suggest stockwatering use.

## III.

The Office of the State Engineer examined of 7.5 minute topographical maps produced by the United States Geological Survey (USGS) titled Black Point, Nevada and Pogues Station, Nevada. Neither of these maps listed a spring labeled Hillside Spring near the point of diversion.<sup>1</sup>

## IV.

The Office of the State Engineer researched the grazing right records of the United States Department of the Interior, Bureau of Land Management (BLM), and found that Thomas Dixon is not currently listed as an authorized operator within the Duckwater Allotment 00701, within which the point of diversion would be located. The State Engineer finds that there is no evidence to support ongoing stockwatering by the Permittee at the point of diversion.<sup>1</sup>

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

## CONCLUSIONS OF LAW

### I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>3</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;
- (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 State Engineer concludes that Permit 1633, Certificate 44 has been abandoned based on the following factual findings: the last correspondence by a representative of Thomas Dixon and the Office of the State Engineer for Permit 1633, Certificate 44, was over 101 years ago on December 21, 1912; there is no evidence that the water right was conveyed to a different owner; the Permittee was not located at the

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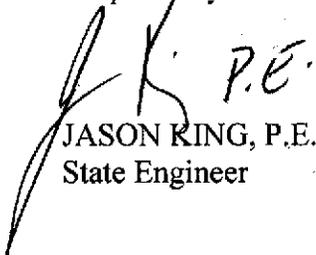
<sup>3</sup> NRS Chapter 533.

address provided by him, and therefore failed to respond to certified correspondence requesting information concerning continuous use of the water; the Permittee is not listed as a current Range User by the BLM in the allotment where the point of diversion would be found; aerial photography does not show evidence of recent stock watering use in the area of the point of diversion; and the USGS 7.5 minute maps do not show a spring entitled Hillside Spring at the location of the 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 1633, Certificate 44 has been abandoned.

**RULING**

The State Engineer hereby declares Permit 1633, Certificate 44 abandoned.

Respectfully submitted,

  
JASON KING, P.E.  
State Engineer

Dated this 17th day of  
July 2014  
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