

RECEIVED
OCT 5 1948
DEPARTMENT
OF
ATTORNEY GENERAL

1 IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
2 STATE OF NEVADA, IN AND FOR THE COUNTY OF WASHOE
3

4 In the Matter of the Determination of the Relative Rights in
5 and to the Waters of WARM and BIG SPRING and Tributaries in
6 Washoe County, State of Nevada.) No. 118,189. Dept. No. 2.
7

8 FINDINGS OF FACT

9 AND

10 CONCLUSIONS OF LAW

J. J. Moran

11 This matter came on regularly to be heard in the Court-
12 room of the above-named Court in the Courthouse of Washoe County,
13 Nevada, at Reno, Nevada, before Hon. A. J. Maestretti, Judge of
14 said Court, at 10:30 o'clock A.M. on Monday, the 2nd day of August,
15 1948.

16 The applicant appeared in person by Hugh A. Shamberger,
17 Assistant State Engineer of the State of Nevada, and by Hon. Alan
18 Bible, Attorney General of Nevada, his attorney, by and through
19 Homer Mooney, Deputy Attorney General.

20 The State Engineer's order of determination together with
21 the data and map required to be assembled, which were filed June
22 10, 1948, with the Clerk of this Court and made a part of the
23 record pursuant to Section 34 of the Water Law, were before the
24 Court as if exhibits herein.

25 No other person, party, claimant, water user or objector
26 appeared at the hearing or herein either by personal appearance,
27 by attorney or by any pleading or document filed.

28 Evidence, oral and documentary, was offered and adduced
29 before the Court on behalf of the applicant and in support of the
30 application and no evidence was adduced or offered to the contrary.

1 in these proceedings at his last known place of residence and
2 caused the same to be published at least once a week for four (4)
3 consecutive weeks in a newspaper of general circulation published
4 in Washoe County, State of Nevada, which said county is the only
5 county in which Warm and Big Spring and tributaries or any part
6 thereof are located and the State Engineer has filed with the
7 Clerk of this Court proof of such service by registered mail and by
8 publication.

9 6. That Warm and Big Spring and tributaries is a stream
10 system situate entirely within the County of Washoe, State of
11 Nevada.

12 7. That all matters of fact set forth in the affidavit
13 of Hugh A. Shamberger, Assistant State Engineer, sworn to the
14 27th day of July, 1948, which was filed in this Court and cause
15 and received in evidence at said hearing are true and are support-
16 ed by the evidence taken herein and are not denied and no such
17 matter is denied.

18 8. That no objection was made or exists in point of
19 fact or at all to the Order of Determination of the State Engineer
20 in the above-entitled proceedings; that the same is true and
21 correct and is not denied or objected or excepted to and is
22 supported by the evidence admitted herein; and

23 The Court, in consideration of the premises and of the
24 foregoing Findings of Fact and in consideration of the law of the
25 State of Nevada in such case made and provided, makes, signs and
26 enters the following:

27 CONCLUSIONS OF LAW

28 1. That this Court has jurisdiction of the subject
29 matter and the parties in this proceeding.

30 2. That all notices, orders and process required by law

1 in the above-entitled matter whether before the State Engineer or
2 this Court have been duly given, made and served, pursuant to law
3 or have been duly waived.

4 3. That the Order of Determination by the State Engineer
5 in the above-entitled matter as made by him and as filed with and
6 presented to this Court for establishment, approval, confirmation,
7 affirmation and adoption and for the decree of this Court thereon
8 ought to be established, approved, confirmed, affirmed and adopted
9 without modification or change and that the judgment and decree of
10 this Court ought to be entered herein to that effect.

11 Let judgment be entered accordingly.

12 Signed, entered and filed this 2nd day of Oct,
13 1948.

14
15 A. J. Mastrucetti
16 DISTRICT JUDGE
17
18
19
20
21
22
23
24
25
26
27
28
29
30

1 IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
2 STATE OF NEVADA, IN AND FOR THE COUNTY OF WASHOE
3

4 In the Matter of the Determination of the Relative Rights in
5 and to the Waters of WARM and BIG SPRING and Tributaries in
6 Washoe County, State of Nevada.

No. 118, 189. Dept. No. 2.

7
8 JUDGMENT AND DECREE *J. Myran*
9

10 The above-entitled matter came before the Court on the
11 2nd day of August, 1948, at 10:30 o'clock in the forenoon of said
12 day, having been regularly set down for hearing at that time.

13 Hugh A. Shamberger, Assistant State Engineer, appeared
14 in person for the State Engineer of Nevada, the applicant herein,
15 and was represented by Alan Bible, Attorney General of the State of
16 Nevada, his attorney, by and through Homer Mooney, Deputy Attorney
17 General. No other person or party appeared in person or by
18 attorney or by any written appearance, pleading, objection, ex-
19 ception or other paper, filed in these proceedings, or at all.

20 Thereupon evidence, both oral and documentary, was
21 adduced before the Court by and on behalf of the applicant and no
22 evidence was adduced or offered on behalf of any respondent or
23 objector, or any other person whatever.

24 Whereupon, the said evidence being closed, the matter
25 was submitted to the Court for its order and decision on the
26 facts and the law applicable thereto.

27 Counsel for applicant as such and as Attorney General
28 waived in open Court all notice and any further notice of the
29 Findings of Fact, Conclusions of Law or Judgment and Decree herein
30 and consented that they may be signed, entered and filed forthwith

1 and without any further or other notice to him either as attorney
2 for applicant or as Attorney General.

3 Whereupon, on the motion of the said applicant, by and
4 through his said attorney, this Court orally pronounced and entered
5 its decision and order that the said Order of Determination of the
6 State Engineer in the above-entitled matter and proceedings be and
7 the same is established, approved, adopted, affirmed and confirmed
8 without any modification or change thereof or therein.

9 Thereafter, and on the ____ day of _____,
10 1948, the Court made, signed, entered and caused to be filed
11 herein its Findings of Fact and Conclusions of Law in the premises.

12 Therefore, in consideration of the premises and the law
13 in such cases made and provided, it is hereby

14 ORDERED, ADJUDGED AND DECREED that this matter came on
15 regularly to be heard on August 2, 1948, and that this Court has
16 jurisdiction of the subject matter and the parties to this pro-
17 ceeding and that all notices, orders and process required by law
18 in this matter, whether before the State Engineer or this Court
19 have been duly given, made and served pursuant to law or have been
20 duly waived; and

21 IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that
22 the Order of Determination of the State Engineer in the above-
23 entitled matter and proceedings be and the same hereby is estab-
24 lished, approved, adopted, affirmed and confirmed by this Court
25 without any modification thereof or change therein.

26 For the sake of certainty the words and figures of said
27 Order of Determination are here set out, as follows, to wit:

28 "IN THE OFFICE OF THE STATE ENGINEER
29 OF THE STATE OF NEVADA
30

1 IN THE MATTER OF THE DETERMINATION)
2 OF THE RELATIVE RIGHTS IN AND TO THE : SS
3 WATERS OF WARM AND BIG SPRING AND :
4 TRIBUTARIES IN WASHOE COUNTY, NEVADA. :

5 ORDER OF DETERMINATION

6 The State Engineer of the State of Nevada, upon petition
7 of R. M. Miller, a water user on the Warm and Big Spring stream
8 system, hereinafter described, requesting the determination of
9 the relative rights to the waters of said stream system, made an
10 investigation on November 20, 1947 under and pursuant to Section
11 18 of Chapter 140 of the statutes of Nevada of 1913 and acts
12 amendatory and supplementary thereto and found that the facts and
13 conditions justified such determination, and on November 25, 1947,
14 entered an order granting said petition.

15 The State Engineer received and filed in his records maps
16 and statements of claim to the use of water from said stream
17 system required under the provisions of said Chapter 140, Statutes
18 of 1913 and acts amendatory thereof and supplementary thereto.
19 There being only one claimant upon said stream system and it
20 waived in writing the provisions of said Chapter 140, Statutes of
21 1913 and acts amendatory thereof and supplementary thereto, with
22 reference to notices and the service and publication thereof.

23 NOW, THEREFORE, in accordance with the provisions of
24 Chapter 140, Statutes of Nevada of 1913 and acts amendatory thereof
25 and supplementary thereto, the State Engineer hereby makes and
26 files and caused to be entered of record in his office, this Order
27 of Determination, defining the right of the claimant to the waters
28 of said Warm and Big Spring stream system, as hereinafter defined.

29 CLAIMANT

30 As a result of the field investigation above referred to,
together with subsequent investigation by the office of State

1 Engineer, the State Engineer hereby finds that the entire flow
2 of the waters of Warm and Big Spring stream system as hereinafter
3 defined, since 1897, has been and now is placed to beneficial use
4 by R. M. Miller and his predecessors in interest and that there is
5 only one appropriator, namely, R. M. Miller, that is using the
6 flow of said Warm and Big Spring stream system. All of these
7 waters are being used under a claim of vested right. Abstract of
8 Title on file shows that the property owned by R. M. Miller and on
9 which said waters are appurtenant was patented in 1915. Prior to
10 that time, the land was unsurveyed and the predecessors of R. M.
11 Miller obtained the land by squatters rights. Affidavits on file,
12 and from information obtained by personal contact with old timers,
13 point conclusively to the fact that the waters from the Warm and
14 Big Creek stream system were used for irrigation purposes on the
15 Miller ranch prior to 1900.

16 R. M. Miller is the sole successor of the vested rights to
17 the use of water from the Warm and Big Spring stream system, as
18 hereinafter defined, and now owns the lands on which the waters
19 have been placed to beneficial use for irrigation and domestic
20 purposes and, according to Mr. Miller, is now the sole user of
21 range rights within the service area of said stream system under
22 the Bureau of Land Management.

23 SOURCE

24 The words "Warm Spring and Big Spring and tributaries" as
25 used in this Order shall be interpreted to include the waters of
26 Warm Spring arising within the NE SW Section 27, T. 41 N., R. 18
27 E. and flowing southwesterly in its original channel to a point
28 near the N.W. corner of the NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 33, T. 41 N., R. 18 E.,
29 a distance of about 4000 feet, and thence through an old man-made
30 ditch about two miles in length to the place of use in the

1 southerly portion of Section 5, T. 40 N., R. 18 E; together with
2 the waters of Big Spring arising within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 4, T.
3 40 N., R. 18 E. and flowing westerly to the place of use within
4 the southerly portion of Section 5, T. 40 N., R. 18 E. Both
5 springs are located on the westerly slope of what is known locally
6 as "Hat Mountain" and on the easterly side of Surprise Valley.

7 From information gathered during the field investigation
8 referred to above, it is evident that the waters of Big Springs
9 and Warm Springs at one time flowing down their original channels
10 confluenced near the edge of Middle Lake. They are therefore
11 considered as being tributary to each other.

12 IRRIGATION

13 Season: The irrigation season is herein fixed as being from
14 January 1st to December 31st of each year.

15 Duty of Water: The duty of water is the amount of water in acre-
16 feet per season required to be placed on the lands in a manner con-
17 sistent with good irrigation practice to yield adequate crop and
18 forage returns. On this particular stream system, unlike so many
19 others, the flow is rather uniform throughout the year. There are
20 no doubt yearly fluctuations due to precipitation on the recharge
21 area. It is obvious that the amount of land irrigated by claimant,
22 R. M. Miller, is the maximum amount that can be irrigated with the
23 available water, and that full use of the waters of Warm and Big
24 Spring stream system is being made.

25 The water is used on the 102.86 acres of meadow land
26 throughout the year with the exception of the month of July when
27 the Meadow grains are being harvested. During July, the water for
28 the most part is run on sagebrush grazing areas outside of the
29 meadow grass land. On the basis that about 0.4 c.f.s. of water
30 from this stream system reaches the irrigated land, it would appear

1 that the duty of water as established by actual practice over
 2 many years would be about 2.5 acre-feet of water per acre per year.

3 The State Engineer hereby sets the duty of water to be
 4 2.5 acre-feet per acre of land per year.

5 EXTENT OF RIGHTS OF CLAIMANT, R. M. MILLER

6 The State Engineer hereby determines that R. M. Miller is
 7 the lawful successor in interest to, and the owner of, the vested
 8 right to the use of the waters of the Warm and Big Spring stream
 9 system for irrigation and domestic purposes, and to water along
 10 said stream channels livestock from the property and from the
 11 public domain readily available thereto, in a number equal to
 12 his permitted right to range on the public domain, and the State
 13 Engineer hereby determines the source of water supply, the location
 14 of points of diversion, the year of priority, the cultural acreage,
 15 the legal descriptions, section, township and range and duty of
 16 water for claimant as set forth in the following tabulation:

17 Claimant: R. M. Miller Proof Nos. 02306
 18 Source: Warm Spring and Big Spring 02307
 19 and tributaries

20 Points of Diversion: From Warm Spring in NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 33,
 21 T. 41 N., R. 18 E. or S. 88° 20' W.,
 1245 feet from the N.E. corner of said
 Section 33.

22 From Big Spring in SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 4, T.
 23 40 N., R. 18 E., or S. 2° 15' E., 1580
 feet from the W $\frac{1}{4}$ corner said Section 4.

Year of Priority	Cultural Acres	Location				Type of Cul- ture	Duty of Water	
		Sub- div.	Sec.	T. N.	R. E.		Flow c.f.s.	Acre- Feet
1897	39.22	NE SW	5	40	18	Meadow	0.15	98.05
"	31.62	SE SW	5	40	18	Meadow	0.12	78.55
"	10.15	SW SE	5	40	18	Meadow	0.04	25.37
"	1.47	SW SE	5	40	18	Garden & Pasture	0.01	4.18
"	14.00	NW SE	5	40	18	Meadow	0.05	35.00
"	2.00	NW SW	5	40	18	Meadow	0.01	5.00
"	4.40	SW SW	5	40	18	Meadow	0.02	11.00
Total acs.		102.86				0.40cfs		257.15 A.F.



