

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE  
OF NEVADA IN AND FOR THE COUNTY OF EMERALDA

- - - - ooo - - - -

IN THE MATTER OF THE DETERMINATION OF THE )  
RELATIVE RIGHTS IN AND TO THE WATERS OF )  
INDIAN CREEK (ALSO KNOWN AS McNETT CREEK) ) No. 4226  
AND ITS TRIBUTARIES IN EMERALDA COUNTY, )  
STATE OF NEVADA. )

FINDINGS OF FACT, CONCLUSIONS OF LAW.

JUDGMENT AND DECREE

This matter came on regularly for hearing on the 3rd day of  
January, 1964, before Honorable Peter Breen, District Judge of  
the above-entitled court presiding, the entire stream system being  
within Esmeralda County, State of Nevada, and he being the Judge  
designated by NRS 533.165 to hear and having jurisdiction to hear  
the above-entitled matter, upon the State Engineer's final deter-  
mination of the relative rights of the petitioner and claimants to  
the use of the waters of the stream system of Indian Creek (also  
known as McNett Creek) and its tributaries, which Final Order of  
Determination had been duly filed by the State Engineer. There  
being no exceptions to the Final Order of Determination filed or  
otherwise submitted to the Court by the claimants or petitioner or  
any other person or persons, the matter was submitted to the Court  
for its decision.

William Paul, Esq., Deputy Attorney General of the State of  
Nevada, and Roland D. Westergard, Field Engineer, and L. Edward  
Parmenter, Adjudication Engineer of the Office of the State Engineer,  
State of Nevada, appeared in the hearing and proceedings on behalf  
of the State of Nevada and the Office of the State Engineer.  
Edward C. Reed, Jr., Esq., appeared on behalf of claimant, Frank  
Seminario.

FILED March 9 1964  
Gina Baird Clerk

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30

The record disclosed that petitioner and all claimants had received a certified copy of the Order setting forth the time and place for hearing on the Order of Determination.

The Deputy Attorney General thereupon, at the hearing, offered and there were received in evidence in support of the rights of the petitioner and claimant, as set forth in the Final Order of Determination, verified affidavits, files and records of the State Engineer's Office respecting the rights of the petitioner and claimant in and to the above-named stream system. Roland D. Westergard, Field Engineer, being first duly sworn and qualified, identified and explained the records and files of the State Engineer's Office which were introduced in evidence.

The Court, having duly considered the entire record and evidence introduced, and there being no exception filed by the claimant or petitioner or any other person or persons to the Final Order of Determination of the State Engineer, and being duly advised in the premises, now makes and enters its Findings of Fact, Conclusions of Law, and Judgment and Decree.

FINDINGS OF FACT

I.

That on February 18, 1957, Emma J. Clark, acting by and through her attorney, Edward C. Reed, Jr., of Reno, Nevada, filed with the State Engineer of the State of Nevada, a petition requesting the determination of the relative rights of petitioner and various claimants to the waters of Indian Creek (also known as McNett Creek) and tributaries thereto situate in Esmeralda County, State of Nevada.

That the State Engineer thereupon and in accordance with the provisions of NRS 533.090, made an investigation of the facts and conditions of and concerning the above-named stream system and

1 its tributaries for the purpose of disclosing whether the deter-  
2 mination of such rights was justified, and filed his report there-  
3 on in the Office of the State Engineer of the State of Nevada.  
4 The report of the facts and conditions disclosed that a determina-  
5 tion of the relative rights was justified, and the State Engineer  
6 made and entered his order on February 27, 1957, granting the  
7 petition for the determination of such relative rights in and to  
8 the waters of Indian Creek (also known as McNett Creek) and its  
9 tributaries.

10 That petitioner, all claimants and appropriators, being less  
11 than ten in number, in conformity with NRS 533.215 waived in  
12 writing the provisions of the above mentioned act with reference  
13 to Notices and the Service and Publication thereof.

14 That as a result of the State Engineer's investigation report,  
15 it was found that the waters of Indian Creek (also known as McNett  
16 Creek) and its tributaries are being placed to beneficial use on  
17 one ranch. The Proofs of Appropriation filed indicate the present  
18 claimant and appropriator is the successor in interest to vested  
19 rights initiated by his predecessors.

20 That on the 8th day of March, 1957, the State Engineer did  
21 cause to be published a Notice of Order and Proceedings to  
22 Determine Water Rights in and to the waters of Indian Creek (also  
23 known as McNett Creek) and its tributaries in Esmeralda County,  
24 State of Nevada. That there was filed in the office of the State  
25 Engineer an affidavit of the publisher of the Tonopah Times-  
26 Bonanza and Goldfield News exemplifying the Proof of Publication  
27 of Notice of Order and Proceedings.

28 That the State Engineer, in accordance with NRS 533.140, did  
29 enter and file in the records of his office, on the 17th day of  
30 June, 1963, an Abstract of Claims and a Preliminary Order of

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30

Determination and that notice thereof was duly given to all claimants.

That the State Engineer, in accordance with NRS 533.160, entered in the records of his office, on the 18th day of October, 1963, a Final Order of Determination defining the rights to the waters of Indian Creek (also known as McNett Creek) and its tributaries.

That upon the filing of the Final Order of Determination with the Clerk of the Court of Esmeralda County, State of Nevada, the Court made and entered an order on the 18th day of November, 1963, setting a time for the hearing of any exceptions to the Final Order of Determination, on Friday, the 3rd day of January, 1964, at 10:00 o'clock in the forenoon, at the County Court House at Goldfield, Nevada

That the State Engineer, in accordance with NRS 533.165, gave notice to the claimants, by service of a certified copy of the Order Setting the Time for Hearing.

The Court finds that all and singular the Proceedings, Orders and Notices required by Chapter 533 of NRS were duly had, made and given as required by law, and that all and singular the matters and things contained in the record were done, performed, given and made in strict compliance with the statute, and that this Court had and has jurisdiction to hear and determine this matter.

**II**

The Court Further Finds That Indian Creek (also known as McNett Creek) and its tributaries are situated wholly within Esmeralda County, State of Nevada.

**III**

The Court Further Finds That the names of the claimants

1 and appropriators, the duty of water, the measurement of water,  
2 the length of the irrigation season, stock watering and domestic  
3 use of the water, the change of place of use, and the rights of  
4 appropriation, all as set forth in the Final Order of Determin-  
5 ation, are true, proper and correct, and all and singular the  
6 same should be approved and confirmed.

7 I. PREAMBLE

8 On February 18, 1957, Emma J. Clark, a water user on Indian  
9 Creek (also known as McNett Creek), submitted a petition to the  
10 State Engineer requesting a determination of the relative rights  
11 of claimants in and to the waters of said stream system. On  
12 February 26, 1957, an investigation was made by E. J. DeRicco,  
13 Field Deputy State Engineer, which disclosed that facts and con-  
14 ditions justified the granting of said petition. On February 27,  
15 1957, the State Engineer entered an official order granting the  
16 petition and made proper arrangements to proceed with the deter-  
17 mination in accordance with the provisions of NRS 533.000.

18 All claimants and appropriators, being less than ten in  
19 number, in conformity with NRS 533.215, waived in writing the pro-  
20 visions of the above-mentioned act with reference to notices and  
21 the service of publication thereof.

22 II. CLAIMANT

23 The investigation above referred to disclosed that the waters  
24 of Indian Creek (also known as McNett Creek) and its tributaries  
25 are being placed to beneficial use on one ranch, for irrigation,  
26 stock watering and domestic purposes. The Proofs of Appropriation  
27 filed in the Office of the State Engineer indicate and claim that  
28 the present claimant and appropriator, Frank Seminario, is the  
29 successor in interest to vested rights initiated by his predecess-  
30 ors.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30

**III. SOURCE**

Indian Creek (also known as McNett Creek) heads on the eastern slopes of the White Mountains and is fed by melting snows and springs. It flows in an easterly direction to Fish Lake Valley. Typical of Nevada's mountain streams, it has a relatively high spring runoff which recedes during the summer months to a limited continuous flow.

**IV. DUTY OF WATER**

The lands irrigated by Indian Creek (also known as McNett Creek) have a shallow layer of top soil overlaid with strata of coarse gravels of extremely pervious nature causing rapid dissipation of the waters. This condition has been taken into consideration in establishing the duty of water in this order.

- The duty of water is herein fixed as follows:
- Class A---Harvest Crops-----5.0 acre-feet per season
- Class B---Diversified Pasture--3.0 acre-feet per season

**V. DIVERSION OF WATER AND METHOD OF USE**

The maximum allowable diversion herein fixed is 2.5 c.f.s. for each 100 acres irrigated. Due to the characteristics of the stream flow, the claimant herein named, or his successors in interest, shall be allowed to increase the rate of direct flow diversions to the maximum herein allowed to satisfy any immediate needs of growing crops.

**VI. MEASUREMENT OF WATER**

All water diverted from Indian Creek (also known as McNett Creek) for irrigation purposes shall be measured at a point where the water enters or becomes adjacent to the land to be irrigated, or as near thereto as practical.

Substantial headgates and weirs must be installed to facilitate the measurement and control of water.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30

**VII. IRRIGATION SEASON**

Water for irrigation purposes may be diverted at any time throughout the year, provided that the total amount diverted during any calendar year shall not exceed the duty in acre feet as established herein.

**VIII. STOCK WATERING AND DOMESTIC**

The right to the diversion and use of water for domestic purposes is to be continued by the claimant named herein or his successors in interest at any time during the year and such diversions shall be according to the dates of priority of the irrigation right of such claimant, and such use is to be limited to the quantity of water reasonably necessary for domestic purposes.

The amount of water diverted and used for stock watering purposes shall not exceed 0.00000625 c.f.s. per head of sheep or 0.00003125 c.f.s. per head of cattle, said quantity being delivered to the place of use when necessary for this purpose.

The amount of water diverted for irrigation purposes shall not be increased by any amount to be used for stock watering and domestic purposes at times when water for irrigation is accessible for stock watering and domestic purposes.

**IX. CHANGE OF PLACE OF USE**

All water allotted under this order shall be appurtenant to the place or places of use designated herein. Any water user desiring to change the point of diversion, manner and place of use of waters allotted herein must make application to the State Engineer for permission to make the change pursuant to NRS 533.345.

**X. RIGHTS OF APPROPRIATION**

From the Final Order of Determination and the evidence, both oral and documentary, submitted in support thereof, the Court finds

1 that the names of the claimant and appropriator of the waters of  
2 Indian Creek (also known as McNett Creek) and its tributaries,  
3 the source of the water supply, the means of diversion, the points  
4 of diversion for beneficial use, the year of priority, the cultural  
5 acreages and places of use, the legal subdivisions, sections, town-  
6 ships, ranges and the duty of water, are as listed, stated and set  
7 forth.

8 CONCLUSIONS OF LAW

9 From the evidence presented and received in this matter, and  
10 from the foregoing FINDINGS OF FACT, the Court makes the following  
11 Conclusions of Law:

12 I.

13 That the State Engineer had the right, authority and jurisdic-  
14 tion pursuant to Chapter 533 of NRS, to make the investigations  
15 made by him conduct the hearings had by him, receive the proofs  
16 and maps, hear the evidence presented to him, and prepare, make,  
17 enter and file in his office the original Final Order of Determi-  
18 nation and file a certified copy thereof in this Court, and to  
19 determine the relative rights of claimant and appropriator in and  
20 to the waters of Indian Creek (also known as McNett Creek) and  
21 its tributaries in Esmeralda County, State of Nevada; that the  
22 State Engineer duly made all orders necessary and proper in con-  
23 nection therewith and entered the same in his office as required  
24 by Chapter 533 of NRS; that each and every notice required by  
25 law to be given herein to the claimant and appropriator was duly  
26 served by the State Engineer in the manner and within the time  
27 required by statute, and that the notices contained all of the  
28 statements required by law, and that the claimant and appropriator  
29 of the waters of the above-named stream system and its tribu-  
30 taries duly received the information and notices required by law

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30

herein.

**II.**

That the Fifth Judicial District Court of the State of Nevada in and for the County of Esmeralda, had and has jurisdiction to hear and try this matter, and has jurisdiction to find, make and enter the foregoing Findings of Fact and these Conclusions of Law, and enter its Decree herein.

**III.**

That Frank Seminario, constitutes the claimant and the only claimant who was and now is appropriator and user of the waters of Indian Creek (also known as McNett Creek) and its tributaries on the date the Final Order of Determination was filed with the Clerk of this Court, and on the date of the trial and hearing of this matter.

**IV.**

That the duty of water is herein fixed as follows:

Class A---Harvest Crops-----8.0 acre-feet per season

Class B---Diversified Pasture--3.0 acre-feet per season

**V.**

That the maximum allowable diversion herein fixed is 2.5 c.f.s for each 100 acres irrigated. Due to the characteristics of the stream flow, the claimant herein named, or his successors in interest, shall be allowed to increase the rate of direct flow diversions to the maximum herein allowed to satisfy any immediate needs of growing crops.

**VI.**

That all waters allotted in the Decree shall be appurtenant to the place or places of use designated therein, and in the event that any water user desiring to change the place of use of the waters allotted herein, must make application to the State

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30

Engineer for permission to make the change pursuant to law.

VII.

That except where specifically otherwise ordered herein or in the Decree, the Final Order of Determination made, filed and caused to be entered of record in this matter by the State Engineer, should be affirmed.

JUDGMENT AND DECREE

THEREFORE, BY REASON OF THE FINDINGS OF FACT AND CONCLUSIONS OF LAW HEREINAFORE SET FORTH, IT IS ORDERED, ADJUDGED AND DECREED BY THE COURT AS FOLLOWS:

I.

That the State Engineer made all necessary and proper orders herein as required by law, and that each and every notice required by law was duly given to the claimant and appropriator; that the claimant and appropriator had full opportunity to appear and be heard in objection to and file exceptions to the Final Order of Determination herein; that the claimant and appropriator is the only claimant and appropriator of the waters of Indian Creek (also known as McNett Creek) and its tributaries.

That the Court has full and complete jurisdiction to hear, try and determine this matter and to make and enter herein this Decree.

II.

That the flow of water from Indian Creek (also known as McNett Creek) and its tributaries is being placed to beneficial use on one ranch.

III.

That the duty of water is herein fixed as follows:

Class A---Harvest Crops-----6.0 acre-feet per season

Class B---Diversified Pasture--3.0 acre-feet per season

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30

**IV.**

The maximum allowable diversion herein fixed is 2.5 c.f.s. for each 100 acres irrigated. Due to the characteristics of the stream flow, the claimant herein named, or his successors in interest, shall be allowed to increase the rate of direct flow diversions to the maximum herein allowed to satisfy any immediate needs of growing crops.

**V.**

That all water diverted from Indian Creek (also known as McNett Creek) and its tributaries for irrigation purposes shall be measured at a point where the water enters or becomes adjacent to the land to be irrigated or as near thereto as practicable.

**VI.**

Substantial headgates and weirs must be installed wherever necessary to insure and facilitate the proper measurement, control and distribution of water in accordance with the rights herein defined.

**VII.**

That water for irrigation purposes may be diverted at any time throughout the year, provided that the total amount diverted during any calendar year shall not exceed the duty in acre-feet as established herein.

**VIII.**

That the right to the diversion and use of water for domestic purposes is to be continued by the claimant named herein or his successors in interest at any time during the year and such diversions shall be according to the dates of priority of the irrigation right of such claimant, and such use is to be limited to the quantity of water reasonably necessary for domestic purposes.

1 That the amount of water diverted and used for stock watering  
2 purposes shall not exceed 0.00000625 c.f.s. per head of sheep  
3 or 0.00001125 c.f.s. per head of cattle, said quantity being  
4 delivered to the place of use when necessary for this purpose.

5 That the amount of water diverted for irrigation purposes  
6 shall not be increased by any amount to be used for stock watering  
7 and domestic purposes at times when water for irrigation is  
8 accessible for stock watering and domestic purposes.

9 **IX.**

10 That all waters allotted under this Order shall be appur-  
11 tenant to the place or places of use designated herein. That any  
12 water user desiring to change the point of diversion, manner and  
13 place of use of the waters allotted herein must make application  
14 to the State Engineer for permission to make the change pursuant  
15 to law.

16 **X.**

17 That no person or persons holding a right of appropriation  
18 not herein vested is entitled to receive any water from Indian  
19 Creek (also known as McNett Creek) or its tributaries to the  
20 detriment of the rights herein defined.

21 **XI.**

22 That the name of the claimant and appropriator of Indian  
23 Creek (also known as McNett Creek) and its tributaries, being the  
24 source of water supply, the means of diversion from the source of  
25 supply for beneficial use, the points of diversion, the year of  
26 priority, the cultural acreage, or place of use, the use, the  
27 period of use, the legal subdivisions, sections, townships and  
28 ranges, the duty of water, and the number of cubic feet of water  
29 per second per acre irrigated by the claimant and appropriator are  
30 hereby adjudged as follows, to-wit:

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30

Claimant: Frank Seminario

Proof No.: 02424

Source: Indian Creek (also known as McHett Creek) and its tributaries.

Point of Diversion: NE $\frac{1}{4}$  SW $\frac{1}{4}$  Section 2, T. 2 S., R. 34 E., M.D.B.&M. or at a point from which the NE $\frac{1}{4}$  corner of said Section 2 bears N. 8 $^{\circ}$  45' E., 3,520 feet.

Use: Irrigation, Stock Watering and Domestic

Means of diversion: Dam and Ditches

Class of Culture: Harvest and Diversified Pasture

Period of Use: January 1st to December 31st.

PRIORITY	CULTURAL ACREAGE	SUB- HARVEST: DIVERSIFIED: PASTURE	SUB- DIV.	SEC.	TWP	RGE.	DUTY OF WATER	ACRE-FT
					S.	E.	C.F.S.	
1876	31.3		NW $\frac{1}{4}$ SW $\frac{1}{4}$	1	2	34	0.782	187.8
"	17.6		NE $\frac{1}{4}$ SW $\frac{1}{4}$	1	2	34	0.440	105.6
"		16.4	NE $\frac{1}{4}$ SW $\frac{1}{4}$	1	2	34	0.410	49.2
"		7.3	NW $\frac{1}{4}$ SE $\frac{1}{4}$	1	2	34	0.182	21.9
"	9.5		SE $\frac{1}{4}$ NW $\frac{1}{4}$	1	2	34	0.238	57.0
"		10.9	SW $\frac{1}{4}$ SE $\frac{1}{4}$	1	2	34	0.473	56.7
"		1.0	SW $\frac{1}{4}$ SW $\frac{1}{4}$	1	2	34	0.025	3.0
<b>TOTALS</b>	<b>58.4</b>	<b>43.6</b>					<b>2.550</b>	<b>481.2</b>

Claimant: Frank Seminario

Proof No.: 02425

Source: Indian Creek (also known as McHett Creek) and its tributaries

Use: Stock Watering

Means of Diversion: Ditches and natural channel

Points of Diversion: NE $\frac{1}{4}$  SE $\frac{1}{4}$  Section 3, T. 2 S., R. 34 E., M.D.B.& M., or at a point from which the NE $\frac{1}{4}$  corner of Section 2, T. 2 S., R. 34 E., bears N. 42 $^{\circ}$  00' E., 4,950 feet;

NE $\frac{1}{4}$  NW $\frac{1}{4}$  Section 2, T. 2 S., R. 34 E., M.D.B.& M., or at a point from which the NE $\frac{1}{4}$  corner of said Section 2 bears N. 8 $^{\circ}$  45' E., 3,520 feet.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30

Period of Use: January 1st to December 31st

Priority: 1876

Amount of appropriation: 0.01250 c.f.s. or sufficient to water  
200 cattle and 1,000 sheep.

Description of works of diversion, manner and place of use:

Water is diverted by a dam at the point of diversion within  
NE $\frac{1}{4}$  SE $\frac{1}{4}$  Sec. 3, T. 2 S., R. 34 E., M.D.B.& M., described above  
and is conveyed through the High Line Ditch from which cattle and  
sheep water within NE $\frac{1}{4}$  SE $\frac{1}{4}$ , NE $\frac{1}{4}$  Sec. 3, NW $\frac{1}{4}$  Sec. 2, T. 2 S.,  
R. 34 E., S $\frac{1}{4}$ , NE $\frac{1}{4}$  Sec. 35 and portion of Sec. 36, T. 1 S., R. 34  
E., M.D.B.& M. Water is also diverted by a dam at the point of  
diversion within NE $\frac{1}{4}$  SW $\frac{1}{4}$  Sec. 2, T. 2 S., R. 34 E., described  
above and is conveyed through the McNett Ditch from which cattle  
and sheep water within SE $\frac{1}{4}$  Sec. 2 and SW $\frac{1}{4}$ , S $\frac{1}{4}$  Sec. 1, T. 2 S.,  
R. 34 E., M.D.B.& M. Water is diverted by the last mentioned  
dam to the Northeast Ditch from which cattle and sheep water within  
NE $\frac{1}{4}$  SW $\frac{1}{4}$ , NE $\frac{1}{4}$  Sec. 2, NW $\frac{1}{4}$  Sec. 1, T. 2 S., R. 34 E., M.D.B.& M.  
Cattle and sheep water directly from the natural creek channel  
throughout its length within Sections 2, 3, 9 and 10, T. 2 S.,  
R. 34 E., M.D.B.& M.

DONE IN OPEN COURT THIS 9th DAY OF March,  
1964.

s/ Peter Green  
Peter Green  
District Judge

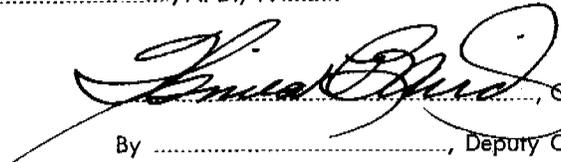
**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF NEVADA, IN AND FOR THE COUNTY OF ESMERALDA**

STATE OF NEVADA,     {  
COUNTY OF ESMERALDA } ss.

I, Xniea Baird, County Clerk and Ex-Officio Clerk of the Fifth Judicial District Court of the State of Nevada, in and for Esmeralda County, said Court being a Court of Record having a common law jurisdiction, and a Clerk and Seal, do hereby certify that the attached is a true copy of the Original FINDINGS OF FACT, CONCLUSIONS OF LAW, JUDGEMENT AND DECREE \*\*\* IN THE MATTER OF THE DETERMINATION OF THE RELATIVE RIGHTS IN AND TO THE WATERS OF INDIAN CREEK (ALSO KNOWN AS MONETT CREEK) AND ITS TRIBUTARIES IN ESMERALDA COUNTY, STATE OF NEVADA.

which now remains on file in my office in Goldfield, Nevada, in said County, the same having been filed on the 9th day of March, A. D., 1964.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, this the 12th day of March, A. D., 1964.

  
Clerk.  
By \_\_\_\_\_, Deputy Clerk.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE  
OF NEVADA IN AND FOR THE COUNTY OF EMERALDA

- - - - oOo - - - -

IN THE MATTER OF THE DETERMINATION OF THE )  
RELATIVE RIGHTS IN AND TO THE WATERS OF )  
INDIAN CREEK (ALSO KNOWN AS McNETT CREEK) )  
AND ITS TRIBUTARIES IN EMERALDA COUNTY, )  
STATE OF NEVADA. )

No. 4220

FINDINGS OF FACT, CONCLUSIONS OF LAW,

JUDGMENT AND DECREE

This matter came on regularly for hearing on the 3rd day of January, 1964, before Honorable Peter Breen, District Judge of the above-entitled court presiding, the entire stream system being within Emeralds County, State of Nevada, and he being the Judge designated by NRS 533.165 to hear and having jurisdiction to hear the above-entitled matter, upon the State Engineer's final determination of the relative rights of the petitioner and claimants to the use of the waters of the stream system of Indian Creek (also known as McNett Creek) and its tributaries, which Final Order of Determination had been duly filed by the State Engineer. There being no exceptions to the Final Order of Determination filed or otherwise submitted to the Court by the claimants or petitioner or any other person or persons, the matter was submitted to the Court for its decision.

William Paul, Esq., Deputy Attorney General of the State of Nevada, and Roland D. Westergard, Field Engineer, and L. Edward Parmenter, Adjudication Engineer of the Office of the State Engineer, State of Nevada, appeared in the hearing and proceedings on behalf of the State of Nevada and the Office of the State Engineer. Edward C. Reed, Jr., Esq., appeared on behalf of claimant, Frank Seminario.

*FILED*  
*March 9 1964*  
*Anna Davis* Clerk

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30

The record disclosed that petitioner and all claimants had received a certified copy of the Order setting forth the time and place for hearing on the Order of Determination.

The Deputy Attorney General thereupon, at the hearing, offered and there were received in evidence in support of the rights of the petitioner and claimant, as set forth in the Final Order of Determination, verified affidavits, files and records of the State Engineer's Office respecting the rights of the petitioner and claimant in and to the above-named stream system. Roland D. Westergard, Field Engineer, being first duly sworn and qualified, identified and explained the records and files of the State Engineer's Office which were introduced in evidence.

The Court, having duly considered the entire record and evidence introduced, and there being no exception filed by the claimant or petitioner or any other person or persons to the Final Order of Determination of the State Engineer, and being duly advised in the premises, now makes and enters its Findings of Fact, Conclusions of Law, and Judgment and Decree.

FINDINGS OF FACT

I.

That on February 18, 1957, Emma J. Clark, acting by and through her attorney, Edward C. Reed, Jr., of Reno, Nevada, filed with the State Engineer of the State of Nevada, a petition requesting the determination of the relative rights of petitioner and various claimants to the waters of Indian Creek (also known as McNett Creek) and tributaries thereto situate in Esmeralda County, State of Nevada.

That the State Engineer thereupon and in accordance with the provisions of NRS 533.090, made an investigation of the facts and conditions of and concerning the above-named stream system and

1 its tributaries for the purpose of disclosing whether the deter-  
2 mination of such rights was justified, and filed his report there-  
3 on in the Office of the State Engineer of the State of Nevada.  
4 The report of the facts and conditions disclosed that a determina-  
5 tion of the relative rights was justified, and the State Engineer  
6 made and entered his order on February 27, 1957, granting the  
7 petition for the determination of such relative rights in and to  
8 the waters of Indian Creek (also known as McHett Creek) and its  
9 tributaries.

10 That petitioner, all claimants and appropriators, being less  
11 than ten in number, in conformity with NRS 533.215 waived in  
12 writing the provisions of the above mentioned act with reference  
13 to Notices and the Service and Publication thereof.

14 That as a result of the State Engineer's investigation report,  
15 it was found that the waters of Indian Creek (also known as McHett  
16 Creek) and its tributaries are being placed to beneficial use on  
17 one ranch. The Proofs of Appropriation filed indicate the present  
18 claimant and appropriator is the successor in interest to vested  
19 rights initiated by his predecessors.

20 That on the 9th day of March, 1957, the State Engineer did  
21 cause to be published a Notice of Order and Proceedings to  
22 Determine Water Rights in and to the waters of Indian Creek (also  
23 known as McHett Creek) and its tributaries in Esmeralda County,  
24 State of Nevada. That there was filed in the office of the State  
25 Engineer an affidavit of the publisher of the Tonopah Times-  
26 Sonanza and Goldfield News exemplifying the Proof of Publication  
27 of Notice of Order and Proceedings.

28 That the State Engineer, in accordance with NRS 533.140, did  
29 enter and file in the records of his office, on the 17th day of  
30 June, 1963, an Abstract of Claims and a Preliminary Order of

1 Determination and that notice thereof was duly given to all  
2 claimants.

3 That the State Engineer, in accordance with NRS 533.160,  
4 entered in the records of his office, on the 18th day of October,  
5 1963, a Final Order of Determination defining the rights to the  
6 waters of Indian Creek (also known as McNett Creek) and its  
7 tributaries.

8 That upon the filing of the Final Order of Determination with  
9 the Clerk of the Court of Esmeralda County, State of Nevada, the  
10 Court made and entered an order on the 18th day of November, 1963,  
11 setting a time for the hearing of any exceptions to the Final  
12 Order of Determination, on Friday, the 3rd day of January, 1964,  
13 at 10:00 o'clock in the forenoon, at the County Court House at  
14 Goldfield, Nevada

15 That the State Engineer, in accordance with NRS 533.165,  
16 gave notice to the claimants, by service of a certified copy of  
17 the Order Setting the Time for Hearing.

18 The Court finds that all and singular the Proceedings, Orders  
19 and Notices required by Chapter 533 of NRS were duly had, made  
20 and given as required by law, and that all and singular the  
21 matters and things contained in the record were done, performed,  
22 given and made in strict compliance with the statute, and that  
23 this Court had and has jurisdiction to hear and determine this  
24 matter.

25 **II**

26 The Court Further Finds: That Indian Creek (also known as  
27 McNett Creek) and its tributaries are situated wholly within  
28 Esmeralda County, State of Nevada.

29 **III**

30 The Court Further Finds: That the names of the claimants

1 and appropriators, the duty of water, the measurement of water,  
2 the length of the irrigation season, stock watering and domestic  
3 use of the water, the change of place of use, and the rights of  
4 appropriation, all as set forth in the Final Order of Determin-  
5 ation, are true, proper and correct, and all and singular the  
6 same should be approved and confirmed.

7 I. PREFACE

8 On February 18, 1957, Emma J. Clark, a water user on Indian  
9 Creek (also known as McNett Creek), submitted a petition to the  
10 State Engineer requesting a determination of the relative rights  
11 of claimants in and to the waters of said stream system. On  
12 February 26, 1957, an investigation was made by E. J. DeRicco,  
13 Field Deputy State Engineer, which disclosed that facts and con-  
14 ditions justified the granting of said petition. On February 27,  
15 1957, the State Engineer entered an official order granting the  
16 petition and made proper arrangements to proceed with the deter-  
17 mination in accordance with the provisions of NRS 533.000.

18 All claimants and appropriators, being less than ten in  
19 number, in conformity with NRS 533.215, waived in Writing the pro-  
20 visions of the above-mentioned act with reference to notices and  
21 the service of publication thereof.

22 II. CLAIMANT

23 The investigation above referred to disclosed that the waters  
24 of Indian Creek (also known as McNett Creek) and its tributaries  
25 are being placed to beneficial use on one ranch, for irrigation,  
26 stock watering and domestic purposes. The Proofs of Appropriation  
27 filed in the Office of the State Engineer indicate and claim that  
28 the present claimant and appropriator, Frank Seminario, is the  
29 successor in interest to vested rights initiated by his predeces-  
30 sors.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30

**III. SOURCE**

Indian Creek (also known as McHett Creek) heads on the eastern slopes of the White Mountains and is fed by melting snows and springs. It flows in an easterly direction to Fish Lake Valley. Typical of Nevada's mountain streams, it has a relatively high spring runoff which recedes during the summer months to a limited continuous flow.

**IV. DUTY OF WATER**

The lands irrigated by Indian Creek (also known as McHett Creek) have a shallow layer of top soil overlaid with strata of coarse gravels of extremely pervious nature causing rapid dissipation of the waters. This condition has been taken into consideration in establishing the duty of water in this order.

The duty of water is herein fixed as follows:

Class A---Harvest Crops-----6.0 acre-feet per season

Class B---Diversified Pasture--1.0 acre-feet per season

**V. DIVERSION OF WATER AND METHOD OF USE**

The maximum allowable diversion herein fixed is 2.5 c.f.s. for each 100 acres irrigated. Due to the characteristics of the stream flow, the claimant herein named, or his successors in interest, shall be allowed to increase the rate of direct flow diversions to the maximum herein allowed to satisfy any immediate needs of growing crops.

**VI. MEASUREMENT OF WATER**

All water diverted from Indian Creek (also known as McHett Creek) for irrigation purposes shall be measured at a point where the water enters or becomes adjacent to the land to be irrigated, or as near thereto as practical.

Substantial headgates and weirs must be installed to facilitate the measurement and control of water.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30

VII. IRRIGATION SEASON

Water for irrigation purposes may be diverted at any time throughout the year, provided that the total amount diverted during any calendar year shall not exceed the duty in acre feet as established herein.

VIII. STOCK WATERING AND DOMESTIC

The right to the diversion and use of water for domestic purposes is to be continued by the claimant named herein or his successors in interest at any time during the year and such diversions shall be according to the dates of priority of the irrigation right of such claimant, and such use is to be limited to the quantity of water reasonably necessary for domestic purposes.

The amount of water diverted and used for stock watering purposes shall not exceed 0.00000625 c.f.s. per head of sheep or 0.00003125 c.f.s. per head of cattle, said quantity being delivered to the place of use when necessary for this purpose.

The amount of water diverted for irrigation purposes shall not be increased by any amount to be used for stock watering and domestic purposes at times when water for irrigation is accessible for stock watering and domestic purposes.

IX. CHANGE OF PLACE OF USE

All water allotted under this order shall be appurtenant to the place or places of use designated herein. Any water user desiring to change the point of diversion, manner and place of use of waters allotted herein must make application to the State Engineer for permission to make the change pursuant to NRS 533.345.

X. RIGHTS OF APPROPRIATION

From the Final Order of Determination and the evidence, both oral and documentary, submitted in support thereof, the Court finds

1 that the names of the claimant and appropriator of the waters of  
2 Indian Creek (also known as McNett Creek) and its tributaries,  
3 the source of the water supply, the means of diversion, the points  
4 of diversion for beneficial use, the year of priority, the cultural  
5 acreages and places of use, the legal subdivisions, sections, town-  
6 ships, ranges and the duty of water, are as listed, stated and set  
7 forth.

8 CONCLUSIONS OF LAW

9 From the evidence presented and received in this matter, and  
10 from the foregoing FINDINGS OF FACT, the Court makes the following  
11 Conclusions of Law:

12 I.

13 That the State Engineer had the right, authority and jurisdic-  
14 tion pursuant to Chapter 533 of NRS, to make the investigations  
15 made by him conduct the hearings had by him, receive the proofs  
16 and maps, hear the evidence presented to him, and prepare, make,  
17 enter and file in his office the original Final Order of Determina-  
18 tion and file a certified copy thereof in this Court, and to  
19 determine the relative rights of claimant and appropriator in and  
20 to the waters of Indian Creek (also known as McNett Creek) and  
21 its tributaries in Esmeralda County, State of Nevada; that the  
22 State Engineer duly made all orders necessary and proper in con-  
23 nection therewith and entered the same in his office as required  
24 by Chapter 533 of NRS; that each and every notice required by  
25 law to be given herein to the claimant and appropriator was duly  
26 served by the State Engineer in the manner and within the time  
27 required by statute, and that the notices contained all of the  
28 statements required by law, and that the claimant and appropriator  
29 of the waters of the above-named stream system and its tribu-  
30 taries duly received the information and notices required by law

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30

herein.

**II.**

That the Fifth Judicial District Court of the State of Nevada in and for the County of Esmeralda, had and has jurisdiction to hear and try this matter, and has jurisdiction to find, make and enter the foregoing Findings of Fact and these Conclusions of Law, and enter its Decree herein.

**XII.**

That Frank Seminario, constitutes the claimant and the only claimant who was and now is appropriator and user of the waters of Indian Creek (also known as McHett Creek) and its tributaries on the date the Final Order of Determination was filed with the Clerk of this Court, and on the date of the trial and hearing of this matter.

**IV.**

That the duty of water is herein fixed as follows:  
Class A---Harvest Crops-----6.0 acre-feet per season  
Class B---Diversified Pasture--3.0 acre-feet per season

**V.**

That the maximum allowable diversion herein fixed is 2.5 c.f.s. for each 100 acres irrigated. Due to the characteristics of the stream flow, the claimant herein named, or his successors in interest, shall be allowed to increase the rate of direct flow diversions to the maximum herein allowed to satisfy any immediate needs of growing crops.

**VI.**

That all waters allotted in the Decree shall be appurtenant to the place or places of use designated therein, and in the event that any water user desiring to change the place of use of the waters allotted herein, must make application to the State

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30

Engineer for permission to make the change pursuant to law.

**VII.**

That except where specifically otherwise ordered herein or in the Decree, the Final Order of Determination made, filed and caused to be entered of record in this matter by the State Engineer, should be affirmed.

**JUDGMENT AND DECREE**

THEREFORE, BY REASON OF THE FINDINGS OF FACT AND CONCLUSIONS OF LAW HEREBEFORE SET FORTH, IT IS ORDERED, ADJUDGED AND DECREED BY THE COURT AS FOLLOWS:

**I.**

That the State Engineer made all necessary and proper orders herein as required by law, and that each and every notice required by law was duly given to the claimant and appropriator; that the claimant and appropriator had full opportunity to appear and be heard in objection to and file exceptions to the Final Order of Determination herein; that the claimant and appropriator is the only claimant and appropriator of the waters of Indian Creek (also known as McNett Creek) and its tributaries.

That the Court has full and complete jurisdiction to hear, try and determine this matter and to make and enter herein this Decree.

**II.**

That the flow of water from Indian Creek (also known as McNett Creek) and its tributaries is being placed to beneficial use on one ranch.

**III.**

That the duty of water is herein fixed as follows:  
Class A---Harvest Crops-----6.0 acre-feet per season  
Class B---Diversified Pasture--3.0 acre-feet per season

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30

**IV.**

The maximum allowable diversion herein fixed is 2.5 c.f.s. for each 100 acres irrigated. Due to the characteristics of the stream flow, the claimant herein named, or his successors in interest, shall be allowed to increase the rate of direct flow diversions to the maximum herein allowed to satisfy any immediate needs of growing crops.

**V.**

That all water diverted from Indian Creek (also known as McHett Creek) and its tributaries for irrigation purposes shall be measured at a point where the water enters or becomes adjacent to the land to be irrigated or as near thereto as practicable.

**VI.**

Substantial headgates and weirs must be installed wherever necessary to insure and facilitate the proper measurement, control and distribution of water in accordance with the rights herein defined.

**VII.**

That water for irrigation purposes may be diverted at any time throughout the year, provided that the total amount diverted during any calendar year shall not exceed the duty in acre-feet as established herein.

**VIII.**

That the right to the diversion and use of water for domestic purposes is to be continued by the claimant named herein or his successors in interest at any time during the year and such diversions shall be according to the dates of priority of the irrigation right of such claimant, and such use is to be limited to the quantity of water reasonably necessary for domestic purposes.

1 That the amount of water diverted and used for stock watering  
2 purposes shall not exceed 0.00000625 c.f.s. per head of sheep  
3 or 0.00003125 c.f.s. per head of cattle, said quantity being  
4 delivered to the place of use when necessary for this purpose.

5 That the amount of water diverted for irrigation purposes  
6 shall not be increased by any amount to be used for stock watering  
7 and domestic purposes at times when water for irrigation is  
8 accessible for stock watering and domestic purposes.

9 **IX.**

10 That all waters allotted under this Order shall be appur-  
11 tenant to the place or places of use designated herein. That any  
12 water user desiring to change the point of diversion, manner and  
13 place of use of the waters allotted herein must make application  
14 to the State Engineer for permission to make the change pursuant  
15 to law.

16 **X.**

17 That no person or persons holding a right of appropriation  
18 not herein vested is entitled to receive any water from Indian  
19 Creek (also known as McNett Creek) or its tributaries to the  
20 detriment of the rights herein defined.

21 **XI.**

22 That the name of the claimant and appropriator of Indian  
23 Creek (also known as McNett Creek) and its tributaries, being the  
24 source of water supply, the means of diversion from the source of  
25 supply for beneficial use, the points of diversion, the year of  
26 priority, the cultural acreage, or place of use, the use, the  
27 period of use, the legal subdivisions, sections, townships and  
28 ranges, the duty of water, and the number of cubic feet of water  
29 per second per acre irrigated by the claimant and appropriator are  
30 hereby adjudged as follows, to-wit:

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30

Claimant: Frank Seminario

Proof No.: 02424

Source: Indian Creek (also known as McNett Creek) and its tributaries.

Point of Diversion: NE $\frac{1}{4}$  SW $\frac{1}{4}$  Section 2, T. 2 S., R. 34 E., M.D.B.&M. or at a point from which the NE $\frac{1}{4}$  corner of said Section 2 bears N. 8° 45' E., 3,520 feet.

Use: Irrigation, Stock Watering and Domestic

Means of diversion: Dam and Ditches

Class of Culture: Harvest and Diversified Pasture

Period of Use: January 1st to December 31st.

PRIORITY	CULTURAL ACREAGE	SUB- HARVEST; DIVERSIFIED; PASTURE	DIV.	SEC.	TWP	RGE.	DUTY OF WATER	ACRE-FT
				S.	E.		C.F.S.	
1876	31.3	SW $\frac{1}{4}$ SW $\frac{1}{4}$		1	2	34	0.782	187.8
"	17.6	NE $\frac{1}{4}$ SW $\frac{1}{4}$		1	2	34	0.440	105.6
"		NE $\frac{1}{4}$ SW $\frac{1}{4}$	16.4	1	2	34	0.410	49.2
"		NW $\frac{1}{4}$ SE $\frac{1}{4}$	7.3	1	2	34	0.182	21.9
"	9.5	SE $\frac{1}{4}$ SW $\frac{1}{4}$		1	2	34	0.238	57.0
"		SW $\frac{1}{4}$ NE $\frac{1}{4}$	18.9	1	2	34	0.473	56.7
"		SW $\frac{1}{4}$ SW $\frac{1}{4}$	1.0	1	2	34	0.025	3.0
<b>TOTALS</b>	<b>58.4</b>	<b>43.6</b>					<b>2.550</b>	<b>481.2</b>

Claimant: Frank Seminario

Proof No.: 02425

Source: Indian Creek (also known as McNett Creek) and its tributaries

Use: Stock Watering

Means of Diversion: Ditches and natural channel

Points of Diversion: NE $\frac{1}{4}$  SE $\frac{1}{4}$  Section 3, T. 2 S., R. 34 E., M.D.B.& M., or at a point from which the NE $\frac{1}{4}$  corner of Section 2, T. 2 S., R. 34 E., bears N. 42° 00' E., 4,950 feet;

NE $\frac{1}{4}$  NW $\frac{1}{4}$  Section 2, T. 2 S., R. 34 E., M.D.B.& M., or at a point from which the NE $\frac{1}{4}$  corner of said Section 2 bears N. 8° 45' E., 3,520 feet.



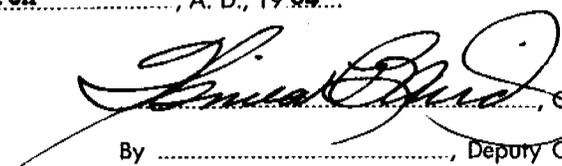
**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF NEVADA, IN AND FOR THE COUNTY OF ESMERALDA**

STATE OF NEVADA,     {  
COUNTY OF ESMERALDA } ss.

I, Xniea Baird, County Clerk and Ex-Officio Clerk of the Fifth Judicial District Court of the State of Nevada, in and for Esmeralda County, said Court being a Court of Record having a common law jurisdiction, and a Clerk and Seal, do hereby certify that the attached is a true copy of the Original FINDINGS OF FACT, CONCLUSIONS OF LAW, JUDGEMENT AND DECREE \*\*\* IN THE MATTER OF THE DETERMINATION OF THE RELATIVE RIGHTS IN AND TO THE WATERS OF INDIAN CREEK (ALSO KNOWN AS McNETT CREEK) AND ITS TRIBUTARIES IN ESMERALDA COUNTY, STATE OF NEVADA.

which now remains on file in my office in Goldfield, Nevada, in said County, the same having been filed on the 9th day of March, A. D., 1964.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, this the 12th day of March, A. D., 1964.

 Clerk.  
By \_\_\_\_\_, Deputy Clerk.