

1 No. 292669

Dept. No. 5

2 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

3 IN AND FOR THE COUNTY OF WASHOE

AUG 12 2 43 PM '74

4 * * * * *

H. K. BROWN, CLERK

5 IN THE MATTER OF THE DETERMINATION)
6 OF THE RELATIVE RIGHTS IN AND TO)
7 THE WATERS OF UPPER AND LOWER MAHALA)
8 SPRINGS AND THEIR TRIBUTARIES IN)
9 WASHOE COUNTY, STATE OF NEVADA.)

BY _____ S. COURTNEY
DEPUTY

11 FINDINGS OF FACT, CONCLUSIONS OF LAW
12 JUDGMENT AND DECREE

13 This matter came on regularly for hearing on the 25th
14 day of April, 1974, before the Honorable William N. Foreman,
15 District Judge presiding. Upper and Lower Mahala Springs and their
16 tributaries exemplified in these proceedings being within Washoe
17 County, State of Nevada, and he being the Judge designated by
18 NRS 533.165 to hear and having jurisdiction to hear the above-
19 entitled matter upon the State Engineer's determination of the
20 relative rights of the claimants to the use of the waters of the
21 stream system of Upper and Lower Mahala Springs and their tribu-
22 taries, which Order of Determination and all related documentary
23 evidence had been filed by the State Engineer. There being no
24 exceptions to the Order of Determination filed or otherwise sub-
25 mitted to the Court by the claimants, or any other person or persons
26 at least 5 days prior to the date set for hearing as provided for
27 under NRS 533.170, the matter was submitted to the Court for its
28 decision.

29 Ross de Lipkau, Deputy Attorney General, Starr Hill, Jr.,
30 Surface Water Engineer, and L. Edward Parmenter, Adjudication

STATE OF NEVADA
BY _____
CLERK OF COURT
JUDICIAL DISTRICT NO. 2
SPRINGFIELD ST.
SPRING CITY, NEVADA
89701
2801A

1 Engineer, appeared in the hearing and proceedings on behalf of the
2 State of Nevada and the Office of the State Engineer. Thomas R.C.
3 Wilson II, Esquire, appeared on behalf of Thomas C. Wilson and
4 Ina W. Wilson.

5 The record disclosed that the claimants had received a
6 certified copy of the Court Order Setting Time for Hearing on the
7 Order of Determination.

8 Ross de Lipkau, thereupon, at the hearing, offered
9 verified affidavits, files and records from the State Engineer's
10 Office, all contained in the Order of Determination, which were
11 entered as evidence in support of the rights of the claimants in
12 and to the above-named stream system.

13 The court, having duly considered the entire record and
14 the evidence introduced and received, directed that FINDINGS OF
FACT, CONCLUSIONS OF LAW, and JUDGMENT AND DECREE be entered
16 accordingly.

17 FINDINGS OF FACT

18 I.

19 That the State Engineer in accordance with the provisions
20 of NRS 533.090, on October 22, 1971, entered his Order and made
21 proper arrangements to proceed with the determination of the
22 relative rights of the water users.

23 That as a result of the State Engineer's investigation,
24 it was found that the waters of Upper and Lower Mahala Springs and
25 their tributaries are being placed to beneficial use for irriga-
26 tion, stock watering, domestic and propagation of wildlife purposes
27 as affirmed by Proofs of Appropriation 02451 and 02452, filed in
28 the Office of the State Engineer. Evidence contained in the title
29 documents submitted by the claimants, relative to the land,
30 indicates the present claimants and appropriators, Thomas C. Wilson

1 and Ina W. Wilson, are the successors in interest to vested rights
2 initiated by their predecessors.

3 That on the 2nd day of December, 1971, and once each
4 week for four succeeding weeks, the State Engineer did cause to be
5 published a Notice of Order and Proceedings to Determine Water
6 Rights in and to the waters of Upper and Lower Mahala Springs and
7 their tributaries in Washoe County, State of Nevada, and that
8 notice was duly given to all claimants as required by law. That
9 on the 6th day of January, 1972, there was filed in the Office
10 of the State Engineer an affidavit of the publisher of the Sparks
11 Tribune, exemplifying the Proof of Publication of Notice of Order
12 and Proceedings.

13 That the State Engineer did cause to be published on the
14 6th day of January, 1972, and once each week for four succeeding
15 weeks, a Notice of Order for Taking Proofs to Determine Water
16 Rights, in and to the waters of Upper and Lower Mahala Springs and
17 their tributaries in Washoe County, State of Nevada, and that
18 notice was duly given to all claimants as required by law. That
19 on the 10th day of February, 1972, there was filed in the Office
20 of the State Engineer an affidavit of the publisher of the Sparks
21 Tribune, exemplifying the Proof of Publication of the Notice of
22 Order for Taking Proofs.

23 That the State Engineer, in accordance with NRS 533.140
24 did enter and file in the records of his office on the 30th day of
25 October, 1973, an Abstract of Claims, a Preliminary Order of
26 Determination, and a Notice and Order Fixing and Setting Time and
27 Place of Inspection, stating when and where the evidence taken or
28 filed with him and the proofs of claims were open to the inspec-
29 tion of all interested persons; and that notice thereof was duly
30 given to all claimants as required by law.

1 That upon the filing of the certified copy of the Order
2 of Determination and the original evidence with the Clerk of the
3 Court of Washoe County, State of Nevada, the Court, at the request
4 of the State Engineer, made and entered an Order on the 6th day of
5 February, 1974, setting a time for hearing of any exceptions to
6 the Order of Determination on Thursday, the 25th day of April, 1974,
7 at 9:45 o'clock of the forenoon in the courtroom of the Court House
8 in Reno, Washoe County, Nevada; and that the Clerk of said Court
9 did furnish the State Engineer with a certified copy thereof.

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

13 That on the 14th day of February, 1974, and once each

1 Lakeview summit. A sump approximately 25 feet square at each
2 spring site collects the water for distribution and it is conveyed
3 by ditches to the place of use. Both springs flow the year-round.
4 At various times the waters of the two springs are commingled with
5 waters from Bryan Creek to irrigate lands of the claimants in
6 Sections 23 and 26, T. 16 N., R. 19 E., M.D.B. & M.

7 IV. PERIOD OF USE

8 Water for irrigation purposes may be used at any time
9 during the year provided that the amount applied to the land during
10 any calendar year does not exceed the total quantity in acre feet
11 herein set forth.

12 V. DUTY OF WATER

13 The seasonal duty of water on lands irrigated from Upper
14 and Lower Mahala Springs and their tributaries is herein fixed and
shall not exceed:

16 Class A-----Harvest Crop-----4.5 Ac.Ft./Ac./Season

17 Class B-----Meadow Pasture-----4.0 Ac.Ft./Ac./Season

18 VI. DIVERSION OF WATER AND METHOD OF USE

19 The claimants shall have the right to divert 2.5 cubic
20 feet per second of water per 100 acres of land irrigated, but not
21 to exceed the annual duty as established herein.

22 The claimants or their successors in interest will not
23 be required to take or use the amount of water allotted to them in
24 a continuous flow, but may cumulate the same or any part thereof
25 in rotation or periodic turn within the annual limits, with the
26 approval of the water commissioner and subject to the control and
27 direction of the State Engineer.

28 VII. MEASUREMENT OF WATER

29 All measurements of water diverted are to be made at a
30 point where the main ditch enters or becomes adjacent to the land

1 to be irrigated, or as near thereto as is practicable; the location
2 if not selected by the State Engineer, to be approved by him. The
3 claimants shall install, and maintain at their own expense, sub-
4 stantial and easily operated regulating headgates and measuring
5 devices in their ditch or ditches or channel. Due allowance for
6 losses in ditches will be made by the State Engineer in the event
7 it becomes necessary.

8 Priorities are fixed by years and where the years are
9 the same, the priorities are equal.

10 VIII. STOCK WATERING, DOMESTIC AND WILDLIFE PROPAGATION

11 The right to the diversion and use of water for stock
12 watering, domestic and wildlife propagation purposes shall be
13 continued by the claimants named herein or their successors in
14 interest at any time during the year and such diversions shall be
15 according to the dates of priorities of such users and limited to
16 the quantity of water reasonably necessary for such use. If a
17 claimant is not in priority for irrigation water then the claimant
18 is not in priority for stock water, domestic water and wildlife
19 propagation water.

20 The amount of water diverted for irrigation purposes
21 shall not be increased by any amount to be used for stock watering,
22 domestic and wildlife propagation purposes but the quantity allowed
23 and diverted for irrigation during the irrigation season shall
24 include water for stock watering, domestic and wildlife propagation
25 purposes.

26 IX. CHANGE OF PLACE OF USE

27 All water allotted in the Decree shall be appurtenant to
28 the place of use designated herein. Any water user desiring to
29 change the point of diversion, manner of use, or place of use of
30 the waters allotted herein, must make application to the State

1 Engineer for permission to make the change pursuant to NRS 533.345.

2 X. RIGHTS OF APPROPRIATION

3 From the Order of Determination and the documentary
4 evidence submitted in support thereof, the Court finds the names of
5 the claimants and appropriators of the waters of Upper and Lower
6 Mahala Springs and their tributaries, the source of the water supply,
7 the means of diversion, the points of diversion for beneficial use,
8 the periods of use, the years of priority, the cultural acreages,
9 the places of use, the legal subdivisions, sections, townships,
10 ranges, and the duty of water are as listed, stated and set forth.

11 CONCLUSIONS OF LAW

12 From the evidence presented and received in this matter,
13 and from the foregoing FINDINGS OF FACT, the Court makes the
14 following CONCLUSIONS OF LAW.

15 I.

16 That the State Engineer had the right, authority and
17 jurisdiction pursuant to Chapter 533 of NRS to make the investiga-
18 tion made by him, receive the proofs and maps, enter and file a
19 certified copy thereof in this Court, and to determine the relative
20 rights of claimants and appropriators in and to the waters of Upper
21 and Lower Mahala Springs and their tributaries in Washoe County,
22 State of Nevada; that the State Engineer duly made all orders
23 necessary and proper in connection therewith and entered the same
24 in his office as required by Chapter 533 of NRS; that each and
25 every notice required by law to be given herein to the claimants
26 and appropriators was duly served by the State Engineer in the
27 manner and within the time required by Statute, and that the
28 notices contained all of the statements required by law, and that
29 the claimants and appropriators of the waters of the above-named
30 stream system and its tributaries duly received the information

1 and notices, as required by law.

2 II.

3 That the Second Judicial District Court of the State of
4 Nevada, in and for the County of Washoe, had and has jurisdiction
5 to hear and try this matter, and has jurisdiction to find, make
6 and enter the foregoing Findings of Fact and these Conclusions of
7 Law and enter its Decree herein.

8 III.

9 That Thomas C. Wilson and Ina W. Wilson are the only
10 claimants of vested rights recognized in this Decree who were and
11 are now appropriators and users of the waters of Upper and Lower
12 Mahala Springs and their tributaries on the date the Order of
13 Determination was filed with the Clerk of the Court, and on the
14 date of the trial and hearing of this matter.

15 IV.

16 That the water for irrigation purposes may be used at
17 any time during the year provided that the amount applied to the
18 land during any calendar year does not exceed the total quantity
19 in acre feet herein set forth.

20 V.

21 That the seasonal duty of water on lands irrigated from
22 Upper and Lower Mahala Springs and their tributaries is herein
23 fixed and shall not exceed:

24 Class A-----Harvest Crop-----4.5 Ac.Ft./Ac./Season

25 Class B-----Meadow Pasture-----4.0 Ac.Ft./Ac./Season

26 VI.

27 That the claimants shall have the right to divert 2.5
28 cubic feet per second of water per 100 acres of land irrigated,
29 but not to exceed the annual duty as established herein.

30 That the claimants or their successors in interest will

1 not be required to take or use the amount of water allotted to
2 them in a continuous flow, but may cumulate the same or any part
3 thereof in rotation or periodic turn within the seasonal limits,
4 with the approval of the water commissioner and subject to the
5 control and direction of the State Engineer.

6 VII.

7 That all measurements of water diverted are to be made
8 at a point where the main ditch enters or becomes adjacent to the
9 land to be irrigated or as near thereto as is practicable; that
10 the location, if not selected by the State Engineer, to be approved
11 by him. That the water users shall install and maintain at their
12 own expense, substantial and easily operated regulating headgates
13 and measuring devices in their ditch or ditches or channel. That
14 due allowance for losses in ditches will be made by the State
15 Engineer in the event it becomes necessary.

16 That priorities are fixed by years and where the years
17 are the same, the priorities are equal.

18 VIII.

19 That the right to the diversion and use of the water for
20 stock watering, domestic and wildlife propagation purposes shall
21 be continued by the claimants named herein or their successors in
22 interest at any time during the year and such diversions shall be
23 according to the dates of priorities of such users and limited to
24 the quantity of water reasonably necessary for such use. That, if
25 a claimant is not in priority for irrigation water than the claimant
26 is not in priority for stock water, domestic water and wildlife
27 propagation water.

28 That the amount of water diverted for irrigation purposes
29 shall not be increased by any amount to be used for stock watering,
30 domestic and wildlife propagation purposes but the quantity allowed

1 and diverted for irrigation during the irrigation season shall
2 include water for stock watering, domestic and wildlife propagation
3 purposes.

4 IX.

5 That all water allotted in the Decree shall be appurtenant
6 to the place of use designated herein. That any water user desiring
7 to change the point of diversion, manner of use or place of use of
8 the waters allotted herein, must make application to the State
9 Engineer for permission to make the change pursuant to NRS 533.345.

10 X.

11 That from the Order of Determination and the documentary
12 evidence submitted in support thereof, the Court finds that the
13 names of the claimants and appropriators of the waters of Upper and
14 Lower Mahala Springs and their tributaries, the source of the water
15 supply, the means of diversion, the points of diversion for benefi-
16 cial use, the periods of use, the years of priority, the cultural
17 acreages and places of use, the legal subdivisions, sections, town-
18 ships, ranges, and the duty of water are as listed, stated and set
19 forth.

20 XI.

21 That the Order of Determination made, filed and caused to
22 be entered of record in this matter by the State Engineer, should
23 be affirmed.

24 JUDGMENT AND DECREE

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

28 I.

29 That the State Engineer made all necessary and proper
30 orders as required by law, and that each and every notice required
by law was duly given to the claimants and appropriators; that the

1 claimants and appropriators had full opportunity to appear and be
2 heard in objection to and file exceptions to the Order of Determin-
3 ation; that Thomas C. Wilson and Ina W. Wilson are the only
4 claimants of vested rights recognized in this Decree as appropri-
5 ators of the waters of Upper and Lower Mahala Springs and their
6 tributaries and this Decree determines the limit and extent of all
7 vested water rights on the source.

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

11 II.

12 That the flow of water from Upper and Lower Mahala
13 Springs and their tributaries is being placed to beneficial use
14 by Thomas C. Wilson and Ina W. Wilson for irrigation, stock
watering, domestic and wildlife propagation purposes.

16 III.

17 That the water for irrigation purposes may be used at
18 any time during the year provided that the amount applied to the
19 land during any calendar year does not exceed the total quantity
20 in acre feet herein set forth.

21 IV.

22 That the seasonal duty of water on lands irrigated from
23 Upper and Lower Mahala Springs and their tributaries is herein
24 fixed and shall not exceed.

25 Class A-----Harvest Crop-----4.5 Ac.Ft./Ac./Season

26 Class B-----Meadow Pasture-----4.0 Ac.Ft./Ac./Season

27 V.

28 That the claimants shall have the right to divert 2.5
29 cubic feet per second of water per 100 acres of land irrigated,
30 but not to exceed the annual duty as established herein.

1 domestic and wildlife propagation purposes, but the quantity
2 allowed and diverted for irrigation during the irrigation season
3 shall include water for stock watering, domestic and wildlife
4 propagation purposes.

5 VIII.

6 That all water allotted in this Decree shall be appurte-
7 nant to the place of use designated herein. That any water user
8 desiring to change the point of diversion, manner of use or place
9 of use of the waters allotted herein, must make application to the
10 State Engineer for permission to make the change pursuant to NRS
11 533.345.

12 IX.

13 That the name of the claimants and appropriators of the
14 waters of Upper and Lower Mahala Springs and their tributaries,
15 the source of the water supply, the means of diversion, the points
16 of diversion for beneficial use, the period of use, the years of
17 priority, the cultural acreages and places of use, the legal sub-
18 divisions, sections, townships, ranges, and the duty of water are
19 hereby adjudged as follows:

20 PROOF NO. : 02451
21 CLAIMANT : Thomas C. Wilson and Ina W. Wilson
22 SOURCE : Upper Mahala Springs
23 USE : Irrigation, Stock Watering, Domestic
24 and Wildlife Propagation
25 MEANS OF DIVERSION: Sump and Ditches
26 POINT OF DIVERSION:
27 SE¼ SW¼ Section 23, T. 16N., R. 19E., M.D.B. & M.,
28 or at a point from which the S. quarter corner
29 of said Section 23 bears S. 7° 30' E., a distance
30 of 149.00 feet.

PRIORITY:	CULTURAL ACREAGE		LOCATION			DUTY OF WATER			
	MEADOW	PASTURE	SUBD.:	SEC.:	TWP. RGE.	N.:	E.:	C.F.S.:	AC.FT.:
1869	1.30		SE $\frac{1}{4}$	SW $\frac{1}{4}$	23	16	19	0.033	5.20
1869	21.80		SW $\frac{1}{4}$	SE $\frac{1}{4}$	23	16	19	0.545	87.20
1869	<u>1.70</u>		NW $\frac{1}{4}$	NE $\frac{1}{4}$	26	16	19	<u>0.042</u>	<u>6.80</u>
TOTALS	24.80							*0.620	*99.20

*Water is diverted from Upper Mahala Springs under Proof 02451, described above and is commingled with water from Lower Mahala Springs (Proof 02452) and water from Bryan Creek (Proof 02450).

The total rate of flow from any one or any combination of these three sources shall not exceed 2 $\frac{1}{2}$ cubic feet per second per 100 acres. The total acre feet of water from all sources for the lands described under Proof 02451 shall be limited to the quantity listed above.

PROOF NO. : 02452
CLAIMANT : Thomas C. Wilson and Ina W. Wilson
SOURCE : Lower Mahala Springs
USE : Irrigation, Stock Watering, Domestic and Wildlife Propagation
MEANS OF DIVERSION: Sump and Ditches
POINT OF DIVERSION:
NW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 26, T.16N., R.19E., M.D.B.& M., or at a point from which the N. quarter corner of said Section 26 bears N. 71° 53' W., a distance of 1,058.00 feet.

PRIORITY:	CULTURAL ACREAGE		LOCATION			DUTY OF WATER			
	MEADOW	PASTURE	SUBD.:	SEC.:	TWP. RGE.	N.:	E.:	C.F.S.:	AC.FT.:
1869	1.30		SE $\frac{1}{4}$	SW $\frac{1}{4}$	23	16	19	0.033	5.20
1869	21.80		SW $\frac{1}{4}$	SE $\frac{1}{4}$	23	16	19	0.545	87.20

PROOF NO.: 02452 (Continued)

PRIORITY:	CULTURAL ACREAGE		LOCATION			DUTY OF WATER	
	MEADOW PASTURE		SUBD.: SEC.:	TWP. RGE. N.: E.:		C.F.S.:	AC.FT.:
1869	1.70		NW¼ NE¼ 26	16 19		0.042	6.80
TOTALS	24.80					*0.620	*99.20

*Water is diverted from Lower Mahala Springs under Proof 02452, described above and is commingled with water from Upper Mahala Springs (Proof 02451) and water from Bryan Creek (Proof 02450). The total rate of flow from any one or any combination of these three sources shall not exceed 2½ cubic feet per second per 100 acres. The total acre feet of water from all sources for the lands described under Proof 02452 shall be limited to the quantity listed above.

DONE IN OPEN COURT THIS 12th DAY OF Aug, A.D. 1974.

William N. Foreman
 WILLIAM N. FOREMAN
 DISTRICT JUDGE