NO. 192036 DEPT. NO. 1

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE

OF NEVADA IN AND FOR THE COUNTY OF WASHOE

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FILED

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H. K. BROWN, CLERK
BY P. LUCAS
DEPUTY

IN THE MATTER OF THE DETERMINATION OF THE)
RELATIVE RIGHTS IN AND TO THE WATERS OF)
NEWTON CREEK AND TRIBUTARIES, IN WASHOE)
COUNTY, STATE OF NEVADA.)

FINDINGS OF FACT, CONCLUSIONS OF LAW,

JUDGEMENT AND DECREE

This matter came on regularly for hearing on the 22nd day of June, 1961, before Honorable Thomas O. Craven, District Judge of the above-entitled court presiding, the entire stream system being within Washoe 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 Newton 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 Elmo J. DeRicco, Assistant State 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. William N. Dunseath, Esq., appeared on behalf of petitioner, Mary Wright Bain.

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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 claimants, 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 other claimants of the above named stream system.

The Court, having duly considered the entire record and evidence introduced, and there being no exceptions filed by the claimants 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 Judgement and Decree.

FINDINGS OF FACT

I.

That on August 12, 1948, Mary Wright Bain, acting by and through her Agent, Robert F. Guinn, 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 Newton Creek and tributaries thereto situate in Washoe 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 its tributaries for the purpose of disclosing whether the determination of such rights was justified, and filed his report thereon in the office of the State Engineer of the State of Nevada. The report of the facts and conditions disclosed that a determination of the

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relative rights was justified, and the State Engineer made and entered his order on June 20, 1951, granting the petition for the determination of such relative rights in and to the waters of Newton Creek and its tributaries.

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

That as a result of the State Engineer's investigation report, it was found that the waters of Newton Creek and its tributaries are being placed to beneficial use on one ranch, that of petitioner. The proof of appropriation filed indicates the present claimant and appropriator is the successor in interest to vested rights initiated by her predecessors.

That on the 21st day of June, 1951, the State Engineer did publish a Notice of Order and Proceedings to Determine Water Rights in and to the waters of Newton Creek and its tributaries in Washoe County, State of Nevada. That there was filed in the office of the State Engineer an affidavit of the publisher of the Nevada State Journal exemplifying the proof of publication of Notice of Order and Proceedings.

That the State Engineer, in accordance with NRS 533.140, did enter and file in the records of his office, on the 2nd day of February, 1961, a Preliminary Order of 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 11th day of May, 1961, a Final Order of Determination defining the rights to the waters of Newton Creek and its tributaries.

That upon the filing of the Final Order of Determination with

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the Clerk of the Court of Washoe County, State of Nevada, the Court made and entered an order on the 15th day of May, 1961, setting a time for the hearing of any exceptions to the Final Order of Determination on Thursday, the 22nd day of June, 1961, at 4:00 o' clock in the afternoon, at the County Court House at Reno, Nevada.

That the State Engineer, in accordance with NRS 533.165, gave notice to the claimants, by service of a ceritfied 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 Newton Creek and its tributaries are situated wholly within Washoe County, State of Nevada.

The Court Further Finds: That the names of the claimants and appropriators, the duty of water, the measurement of water, and length of the irrigation season, stockwatering and domestic use of the water, the change of place of use, and the rights of appropriation, all as set forth in the Final Order of Determination, are true, proper and correct, and all and singular the same should be approved and confirmed.

I. PREFACE

On August 12, 1948, Mary Wright Bain, a water user on Newton Creek, submitted a petition to the State Engineer requesting a determination of the relative rights of claimants in and to the waters of said stream system. On April 16, 1951, an investigation

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was made by E. J. DeRicco, Field and Office Engineer and Hugh A. Shamberger, State Engineer, which disclosed that facts and conditions justified the granting of said petition. On June 20, 1951, The State Engineer entered an official order granting the petition and made proper arrangements to proceed with the determination in accordance with the provisions of NRS 533.000.

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

II. CLAIMANTS

The investigation above referred to disclosed that the waters of Newton Creek and its tributaries are being placed to beneficial use on one ranch, that of petitioner. The proof of Appropriation filed in the Office of the State Engineer indicates and claims that the present claimant and appropriator is the successor in interest to vested rights initiated by her predecessors.

III. SOURCE

Newton Creek is located on the westerly slope of the Virginia Range and is fed from melting snows and springs. It is an intermittent stream and the bulk of its runoff is dependent on the amount of precipitation in its watershed. Its runoff is of short duration and the claimant, in order to place the water to its maximum beneficial use, must be allowed to divert relative large flows when the water is available. The normal flow is supplied by two spring areas within the SE¼ SW¼ Sec. 7, T. 17 N., R. 21 E., and NE¼ NW¼ Sec. 12, T. 17 N., R. 20 E., M.D.B&M. The flow of the spring areas is fully appropriated.

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IV. DUTY OF WATER

The duty of water is herein fixed as follows:

Class A---Harvest Crop---4.0 acre-feet per acre per season

V. MEASUREMENT OF WATER

All water diverted from Newton 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.

VI. 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.

VII. STOCKWATERING & DOMESTIC

The claimant named herein, or her successors in interest, in conjunction with the rights to the use of water for irrigation purposes, shall be entitled to a reasonable diversion and use of water for stock watering and domestic purposes at any time during the year.

VIII. CHANGE OF PLACE OF USE

All irrigation 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 or place of use of the waters allotted herein must make application to the State Engineer for permission to change pursuant to NRS 533.345.

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IX. RIGHTS OF APPROPRIATION

From the Final Order of Determination and the evidence, both oral and documentary, submitted in support thereof, the Court finds that the names of the claimants and appropriators of the waters of Newton Creek and its tributaries, the sources of the water supply, the means of diversion, the points of diversion for beneficial use, the year of priority, the cultural acreages and places of use, the legal subdivisions, sections, townships, ranges and the duty of water, all as listed, stated and set forth.

CONCLUSIONS OF LAW

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

I.

That the State Engineer had the right, authority and jurisdiction pursuant to Chapter 533 of NRS, to make the investigations made by him conduct the hearings had by him, receive the proofs and maps, hear the evidence presented to him, and prepare, make, enter and file in his office the original Final Order of Determination and file a certified copy thereof in this Court, and to determine the Final Order of Determination, the relative rights of claimants and appropriators in and to the waters of Newton Creek and its tributaries in Washoe County, State of Nevada; that the State Engineer duly made all orders necessary and proper in connection therewith and entered the same in his office as required by Chapter 533 of NRS; that each and every notice required by law to be given herein to the claimants and appropriators was duly served by the State Engineer in the manner and within the time required by

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statute, and that the notices contained all of the statements required by law, and that the claimants and appropriators of the waters of the above-named stream system and its tributaries duly received the information and notices required by law herein.

II.

That the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, had and has jurisdiction to hear and try this matter, and has jurisdiction to find, make and enter its Decree herein.

III.

That Mary Wright Bain constitutes the claimant and the only claimant which was and now is appropriator and user of the waters of Newton 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 Mary Wright Bain, as claimant and appropriator of the waters of Newton Creek and its tributaries, by and through the means of diversion named, and her successors in interest, are claimants and appropriators of and to the waters of the above-named stream system; that Mary Wright Bain and her predecessors in interest continuously from the date of appropriation or priority, when such water was available for beneficial use, diverted all of such quantity of water from Newton Creek and its tributaries and applied the same to beneficial use as alleged in the Final Order of Determination.

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V.

That the duty of water should be fixed in the Decree of 4.0 acre-feet per acre per season, with a maximum allowable diversion not to exceed 1.0 c.f.s.

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 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.

JUDGEMENT AND DECREE

THEREFORE, BY REASON OF THE FINDINGS OF FACT AND CONCLUSIONS OF LAW HEREINBEFORE 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 claimants and appropriators; that the claimants and appropriators had full opportunity to appear and be heard in objection to and file exceptions to the Final Order of Determination herein; that the claimants and appropriators are the

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only claimants and appropriators of the waters of Newton 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 Newton Creek and its tributaries is being placed to beneficial use on one ranch, that of petitioner. That the proof of appropriation filed in the Office of the State Engineer claims vested rights initiated prior to 1875.

III.

That the duty of water is hereby adjudged, decreed and fixed at 4.0 acre-feet per acre per season with a maximum allowable diversion not to exceed 1.0 c.f.s.; that the duty may be changed or altered by the Court within a period of three years after entry of this Decree as provided by NRS 533.210; that the claimants or their successors in interest shall be allowed to increase the rate of direct flow diversion to the maximum as herein allowed, to satisfy any immediate needs of the growing crops and they may at their own option rotate the allotted water between the various fields having a decreed water right at such times and in such quantities as is necessary to place the water to the greatest beneficial use.

IV.

That all water diverted from Newton 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.

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V.

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.

VI.

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.

VII.

That the claimants or their successors in interest shall be entitled to a reasonable diversion and use of water for stock-watering and domestic purposes at any time during 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 all waters allotted under this Order shall be appurtenant to the place or places of use designated herein. That any water user desiring to change the point of diversion, manner and place of use of the waters allotted herein must make application to the State Engineer for permission to make the change pursuant to law.

IX.

That no person or persons holding a right of appropriation not herein vested is entitled to receive any water from Newton Creek or its tributaries to the detriment of the rights herein defined.

X.

That the names of the claimants and appropriators of Newton Creek and its tributaries, being the source of water supply, the means of diversion from the source of supply for beneficial use,

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the points of diversion, the year of priority, the cultural acreage, or place of use, the use, the period of use, the legal subdivisions, sections, townships and ranges, the duty of water, and the number of cubic feet of water per second per acre irrigated by the claimants and appropriators are hereby adjudged as follows, to-wit:

Proof No. 02352

Claimant: Mary Wright Bain

Source: Newton Creek and its Tributaries

Use: Irrigation, Stock watering and Domestic

Means of Diversion: Dams, Ditches and Pipeline

Points of Diversion:

No. 1 - NW¼ NE¼ Section 12, T. 17 N., R. 20 E., M.D.B.&M., or at a point from which the N¼ corner of said Section 12 bears N. 28° 43' 53" W., 980 feet.

Spring No. 1 - NE¼ NW¼ Section 12, T. 17 N., R. 20 E., M.D.B.&M., or at a point from which the N¼ corner of said Section 12 bears N. 47° 02' 46" E., 519.7 feet.

Spring No. 2 - NE¼ NW¼ Section 12, T. 17 N., R. 20 E., M.D.B.&M., or at a point from which the N¼ corner of said Section 12 bears N. 53° 32' 34" E., 573.1 feet.

Class of Culture: Harvest

Period of Use: January 1st to December 31st

PRIORITY	CULTURAL ACREAGE	SUBDIVISION	SECTION	TWP.	RGE.	AMOUNT C.F.S.	DUTY A.F.
Prior to 1875	9.14	SE¼ SE¼	2	17 N.	20 E.	0.510	36.56
"	0.22	NE¼ SE¼	2	17 N.	20 E.	0.011	0.88
"	1.67	SE¼ SW¼	1	17 N.	20 E.	0.090	6.68
"	6.52	SW¼ SW¼	1	17 N.	20 E.	0.362	26.08
"	0.15	NE¼ NW¼	12	17 N.	20 E.	0.008	0.60
"	0.36	NW¼ NW¼	12	17 N.	20 E.	0.019	1.44
	18.06					1.000	72.24

DONE IN OPEN COURT THIS 22d day of August, 1961.

THOMAS O. CRAVEN

THOMAS O. CRAVEN
District Judge

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STATE OF NEVADA, }
COUNTY OF WASHOE. } SS.

I, H. K. BROWN, County Clerk and ex-officio Clerk of the Second Judicial District Court of the State of Nevada, in and for Washoe County, said court being a court of record, having a common law jurisdiction, and a clerk and a seal, do hereby certify that the foregoing is a full, true and correct copy of the original, FINDINGS OF FACT, CONCLUSIONS OF LAW, JUDGEMENT AND DECREE.

CASE NO. 192036. IN THE MATTER OF THE DETERMINATION OF THE RELATIVE RIGHTS IN AND TO THE WATERS OF NEWTON CREEK AND TRIBUTARIES, IN WASHOE COUNTY, STATE OF NEVADA.

which now remains on file and of record in my office at Reno, in said County.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said court, at Reno, this 18th. day of MAY, A. D. 1962.

H. K. BROWN, Clerk.

By J. McMasters Deputy.

District Judge

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