Filed Feb. 21, 1938

Aline C. Stewart, Clerk

By J. Shoe, Deputy

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

IN AND FOR THE COUNTY OF NYE

IN THE MATTER OF THE DETERMINATION OF THE RELATIVE RIGHTS IN AND TO THE WATERS OF NORTH AND SOUTH SPRINGS AND TRIBUTARIES IN NYE COUNTY, STATE OF NEVADA.	)	No. 4852

PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECREE

The State Engineer of the State of Nevada, pursuant to the statutes thereof, and on the 4th day of August, 1937, filed in the above-entitled Court a certified copy of his final Order of Determination of the relative rights of claimants and appropriators to the use of the waters of the North and South Springs, situated in the County of Nye, State ofNevada. That thereafter, on or about the 9th day of August, 1937, the said State Engineer caused a copy of said Order of Determination to be mailed by registered mail to V. E. Greenwald, the only claimant and appropriator of water of the said North and South Springs; that thereafter, on or about the 13th day of August, 1937, the said V. E. Greenwald did receive said copy of the saidOrder of Determination,

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as shown by the return receipt for such registered mail. That on or about the 4th day of August, 1937, Honorable Wm. D. Hatton, the Judge of the above-entitled Court, did make and enter his order setting Friday, the 17th day of September, 1937, as the date for the hearing on said State Engineer's Order of Determination; that a certified copy of said order setting the date for the hearing on the said State Engineer's Order of Determination was duly published in the Tonopah Daily Times-Bonanza, a daily paper published in the Town of Tonopah, County of Nye, State of Nevada, for five consecutive weeks, the first publication being on the 10th day of August, 1937, and the last publication being on the 7th day of September, 1937. That the said hearing was continued from time to time and that due notice thereof was given. That said hearing was finally set for the 4th day of November, 1937. That no objections or exceptions to the said State Engineer's Order of Determination had been filed with the above-entitled Court. That on the said 4th day of November, 1937, the above-entitled matter came on regularly for hearing, the State of Nevada and the State Engineer being represented by W. Howard Gray, Deputy Attorney General; that no other parties or persons made any appearance whatever.

That there was offered and received in evidence on behalf of the State Engineer and the State of Nevada the sworn statements of the claimant; verified affidavits, and other competent evidence, together with the files and records of the State Engineer's office respecting the rights of the said claimant, V. E. Greenwald, and all maps, plats, surveys and evidence on file in the office of the State Engineer relating to the proofs of appropriation by the said V. E. Greenwald of the waters of the North and South Springs.

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The Court having duly considered the entire record, the evidence offered, and being fully advised in the matter, the matter having been duly submitted, the said Court now makes its Findings of Fact and Conclusions of Law, and enters its final Judgment and Decree concerning the matters submitted to the Court, as follows, to-wit:

I.

That V. E. Greenwald, acting through his agent, J. T. McWilliams, State Water Right Surveyor, of the City of Las Vegas, Nevada, did, on the 20th day of February, 1937, petition the State Engineer, as provided for in Section 18 of the Water Law, for a determination of the relative rights in and to the waters of said North and South Springs.

That responsive to said petition the State Engineer, in accordance with Section 18 of the Water Law of the State of Nevada, did, on the 5th day of May, 1937, make an investigation of said springs, and from such investigation determined that the relative rights to said springs should be determined, and, on the 24th day of May, 1937, the said State Engineer made and entered an order in his office for a determination of the relative rights to the use of the waters of said springs.

That from said investigation the State Engineer determined there was but one claimant and appropriator of the waters of said springs, and that the said claimant and appropriator, the said V. E. Greenwald, was willing to and did, in writing, waive the provisions of the Water Law of the State of Nevada with reference to notice and the service and publication thereof. That in consequence thereof, and in conformity with Section 36 (b) of the Water Law of the State of Nevada (Chapter 106, Stats. 1921), the State Engineer proceeded to make an Order of Determination,

That the State Engineer received and filed, either prior or subsequent to the initiation of this proceeding, claimant's proof of appropriation, supported by adequate cultural maps.

That thereafter, and on the 23rd day of July, 1937, the State Engineer prepared an abstract of claims from proofs and evidence assembled and caused the same to be filed in his office in Carson City, Nevada.

That thereafter, and on the 29th day of July, 1937, the State Engineer caused to be entered in his office, in accordance with Sections 33 and 36 (b) of the Water Law of the State of Nevada, an Order of Determination; that thereafter, and on the 9th day of August, 1937, a copy of said Order of Determination was sent by registered mail to each person who had filed proofs of claims, and to each person who had become interested in the proceeding.

That thereafter, and in accordance with Section 34 of the Water Law, the State Engineer filed with the Clerk of this Court, on the said 4th day of August, 1937, certified copies of the abstract of claims and the Order of Determination, together with original evidence and data filed with the State Engineer.

That on the filing of the said certified copies of said abstract of claims and Order of Determination, and other evidence, with the Clerk of the Fifth Judicial District Court of the State of Nevada, in and for the County of Nye, at Tonopah, Nevada, on the 4th day of August, 1937, the State Engineer requested an order of said court setting the time for hearing, as provided in Section 34 of the Water Law of the State of Nevada. That on the 4th day of August, 1937, the above-entitled Court made and entered its order setting the time for hearing at the hour of 10:00 o'clock, A. M., on September 17, 1937, at the Courthouse, at Tonopah, Nye

County, Nevada, as provided for in Section 34 of the Water Law, and therein further ordered that any and all persons interested who were aggrieved or dissatisfied with said Order of Determination should file with the Clerk of said Court, and serve upon the State Engineer, notice of exceptions to such Order of Determination at least five days prior to the date set for such hearing; that the Clerk of said Court thereupon immediately furnished a certified copy of said order to the State Engineer, and the said State Engineer thereupon, to-wit, and on or about the 9th day of August, 1937, mailed a copy of said certified copy of said order, by registered mail, at Carson City, Nevada, addressed and directed to each of the parties designated in said Order of Determination, to-wit, V. E. Greenwald, at his last known Post Office address.

That the said State Engineer of the State of Nevada, in accordance with Section 34 of the Water Law, also caused the said last mentioned order of the above entitled Court to be published at least once a week for five consecutive weeks in the Tonopah Daily Times-Bonanza, a newspaper of general circulation, published in Nye County, Nevada, commencing with the issue of August 10, 1937, and ending with the issue of September 7, 1937, the said newspaper being published in the county in which said North and South Springs are located, and that thereafter the State Engineer filed with the Clerk of the above-entitled Court, proof of such service by registered mail and by publication.

That no claimant filed exceptions to said Order of Determination within the time permitted by law, or at all, and no person appeared or claimed any interest in the above-entitled matter.

II.

From the record and testimony submitted in the above-entitled proceedings, I find that the said North and South

Springs are situated as follows:

The North Spring is located in the S. E. corner of the N. E. quarter of the N. W. quarter of Section 10; and the South Spring is located in the Westerly portion of the N. W. quarter of the S. E. Quarter of Section 10, Township 11, South, Range 47 East, M. D. B. & M., and that said springs are between seven and eight miles Northeasterly from the Town of Beatty, Nye County, Nevada, and lying about one mile Easterly from State Highway No. 5, and on the Furnace Creek Quadrangle, published by the United States Geological Survey, said springs are shown under the name of Goss Springs. I further find that said springs rise on the Westerly slope of a low range of hills, and on the Eastern edge of Amargosa Valley, at an elevation of about 3750 feet, and originally flowed down natural channels and converged at a point approximately one-half mile Westerly from the source, or near the line dividing Sections 9 and 10, Township 11, South, Range 47 East, M. D. B. & M.

III.

I find that both of said springs rise on the land owned by the said claimant, V. E. Greenwald, and that he has placed all the waters flowing from said springs to a beneficial use, and that there are no other persons who claim any right to the use of the waters of said springs, or either of them, and that the said V. E. Greenwald is the successor in interest to the vested rights initiated to the use of the waters of said springs in the year 1898 by George Goss.

IV.

I find that the said claimant, V. E. Greenwald, irrigates his harvest and meadow lands from January 1st to December 31st of each year, and that irrigation is beneficially carried on

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throughout the year. I find, therefore, that the irrigation season during which time said waters from the North and South Springs may be beneficially used is from January 1st to December 31st, inclusive, in each year.

V.

I find that the combined flow of the waters from said springs is approximately .38 c.f.s., and that the total acreage irrigated by claimant is 37.8 acres, of which 9.8 acres are harvest lands, and the remainder, or twenty-eight acres, is pasture land; and that the said claimant and appropriator, V. E. Greenwald, has for a number of years used the entire flow of water from these springs for the irrigation of all of the said land.

I find, therefore, that the duty of water flowing from said North and South Springs has been fixed by practice, and that the gross duty of water is, therefore, bound to be 7.23 acre feet per acre for the irrigation season of 365 days, measured at the point of diversion, which is the equivalent of a continuous flow of 0.01 c. f. s. for each acre of land; that the claimant, V. E. Greenwald, or his successors in interest, may at his or 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; and that all of the waters of the said springs are now fully appropriated, and that there is no surplus water subject to subsequent appropriation.

VI.

I find that V. E. Greenwald is the lawful successor in interest to the vested rights to the use of the waters of North and South Springs, and tributaries, and I further find that the source of water supply, the location, the point of diversion, the year of priority, the cultural acreage, the legal subdivisions, section, township and ranges, and duty of water for claimant and

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appropriator as set forth in the following tabulation:

Claimant - V. E. Greenwald Proofs Nos. 02288 and 02289

Source - North and South Springs and tributaries.

Points of Diversion:

North Spring: In the NE¼ NW¼ Section 10, Township 11 S., Range 47 E., M. D. M., or at a point which bears South 5° 38' West 1156.0 feet from the North ¼ Corner of said Section 10.

South Spring: In the NW¼ SE¼ Section 10, Township 11 S., Range 47 E., M. D. M., or at a point which bears North 8° 53' East 1989.0 feet from the South ¼ Corner of said Section 10.

Year of Priority	Cultural Acres Harvest	Cultural Acres Pasture	Subdivision	Section	Tp. S.	R. E.	Gross Duty of Water c.f.s.	Season
1898	3.7		NE¼SE¼	9	11	47	0.037	Jan.1-Dec.31
1898	1.6		NW¼SW¼	10	11	47	0.016	" " " "
1898	4.5		SE¼NW¼	10	11	47	0.045	" " " "
1898		5.0	SE¼NW¼	10	11	47	0.050	" " " "
1898		23.0	(NE¼SE¼ (NW¼SW¼ (NE¼SW¼	9 10 10	11 11 11	47) 47) 47)	0.230	" " " "
Total	9.8	28.0					0.378	

VII.

I further find that all water diverted from North and South Spring and tributary for irrigation purposes, in accordance with these Findings of Fact, Conclusions of Law, and Decree, shall be measured at the point where the water is diverted from the source.

VIII.

I further find all waters allocated under these Findings of Fact, Conclusions of Law, and Decree, to be appurtenant to the lands designated herein, and in the event that the claimant, V. E.

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Greenwald, desires to change the place of use of any of the waters herein allocated,to new lands, such water users must make application to the State Engineer for permission to make such change in the manner set forth under the Water Law of the State of Nevada.

IX.

I further find that the right to the diversion and use of the water from North and South Springs and tributaries for stock and domestic purposes shall be continued by the appropriator named herein at any time during the year, as heretofore used.

I further find the amount of water diverted for irrigation purposes shall not be increased by any amount to be used for stock watering purposes, and that the quantity allowed and diverted for irrigation purposes includes the water for stock watering and domestic purposes.

CONCLUSIONS OF LAW

From the evidence presented and received in this matter, and from the foregoing Findings of Fact, the Court makes the following Conclusions of Law:

That the State Engineer had the right, authority and jurisdiction under the Water Code of this state to prepare, make and enter, andfile in his office the final Order of Determination, and a certified copy thereof in the office of the Clerk of the above-entitled Court, and to determine in said final Order of Determination the relative rights of the water users of the North and South Springs and their tributaries. That the said State Engineer duly made all orders necessary and proper in connection therewith, and entered the same in his office as required by law. That each and every notice required by law to be given,

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except the notices which were waived in writing by the said claimant, was duly given by the State Engineer in the manner and at the time required by law, and said notices, and each of them, contained the statements required by law. That the claimants and appropriators of the waters of the North and South Springs and their tributaries duly received the information and notices required by law.

That there is but one claimant and appropriator to the waters of the North and South Springs and their tributaries, and that V. E. Greenwald is said appropriator and claimant, and that all waters of the said North and South Springs and tributaries have been and are appropriated to beneficial use by the said claimant and appropriator, V. E. Greenwald; that the said claimant, V. E. Greenwald, in writing, waived the provisions of the Water Code with reference to notices and the service and publication thereof, as provided by the Water Code, and that pursuant to such written waiver the said State Engineer was authorized to make an Order of Determination without giving, serving, or publishing any notices required in this act. That after said final Order of Determination was filed, as required by law, all subsequent notices required by law were given in the manner and for the time required.

That this Court had jurisdiction to hear and try this matter, and has jurisdiction to find, make, and enter these Findings of Fact and Conclusions of Law, and this Decree; that V. E. Greenwald is and was the only appropriator and user of the waters of the North and South Springs and tributaries on the date the final Order of Determination was filed in this Court; that the said V. E. Greenwald, as appropriator and claimant to the waters of the saidNorth and South Springs and tributaries, is, for himself,

and by and through his respective predecessors in interest, the owner of the right to use the waters of said springs for a beneficial use, and that the said V. E. Greenwald is the owner and possessor of the lands described in said Order of Determination, and in these Findings of Fact, Conclusions of Law, and Decree, and that the said claimant is now and has been, and his predecessors were, continuously diverting the waters of said springs for a beneficial use.

That no exceptions were presented or filed by any person to the final Order of Determination as filed by the State Engineer.

JUDGMENT AND DECREE

Therefore, by reason of the Findings of Fact and Conclusions of Law hereinabove set forth, IT IS ORDERED, ADJUDGED AND DECREED BY THE COURT as follows:

That this Court has full and complete jurisdiction to hear, try, and determine this case and to make and enter herein this Decree; that the said State Engineer duly made all orders necessary and proper, as required by law, and entered the same in his office, and that each and every notice required by law to be given, except the notices which were waived in writing by the one and only claimant and appropriator, was duly given by the State Engineer in the manner and at the time required by law, and that the said notices contained the statements required by law; that there is but one claimant and appropriator to the waters of the North and South Springs and tributaries, and that V. E. Greenwald is said claimant and appropriator, and that he, as said claimant and appropriator, has used and is now using, and his predecessors in interest use, all the waters of the said springs and tributaries.

That said claimant duly appeared in this action and waived the proceedings with the Water Code with reference to notice and the serving and publication thereof, and that pursuant to such written waiver the State Engineer was authorized to make an Order of Determination without giving, serving, or publishing any notice required prior to the making of the said final Order of Determination.

I.

That no persons, other than the appropriator, V. E. Greenwald, herein described, have or claim any interest in or to the waters of the said North and South Springs and tributaries, or in or to the use of the said waters of said springs, or any part thereof.

II.

That there were no objections filed within the time allowed by law, or at all, to the final Order of Determination, filed in the office of the Clerk of the above-entitled Court; that the name of the claimant or appropriator of the waters of the North and South Springs and tributaries, diverted water from said springs for beneficial use, the year of priority, the cultural acreage of harvest crop, the legal subdivisions, section, township, range, and number of acre feet of water for said claimant is hereby ADJUDGED AND DECREED as follows, to-wit:

Claimant - V. E. Greenwald Proofs Nos. 02288 and 02289

Source - North and South Springs and tributaries.

Points of Diversion:

North Spring: In the NE¼ NW¼ Section 10, Township 11 S., Range 47 E., M. D. M., or at a point which bears South 5° 38' West 1156.0 feet from the North ¼ Corner of said Section 10.

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South Spring: In the NW¼ SE¼ Section 10, Township 11 S., Range 47 E., M. D. M., or at a point which bears North 8° 53' East 1989.0 feet from the South ¼ Corner of said Section 10.

Year of Priority	Cultural Acres Harvest	Cultural Acres Pasture	Subdivision	Section	Tp. S.	R. E.	Gross Duty of Water c.f.s.	Season
1898	3.7		NE¼SE¼	9	11	47	0.037	Jan.1-Dec.31
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1898		5.0	SE¼NW¼	10	11	47	0.050	" " " "
1898		23.0	(NE¼SE¼ (NW¼SW¼ (NE¼SW¼	9 10 10	11 11 11	47) 47) 47)	0.230	" " " "
Total	9.8	28.0					0.378	

III.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the waters of the said springs are fully appropriated, and that there is no surplus water for irrigation during the irrigating season; that the irrigation season has been set by practice and is hereby decreed to be from the 1st day of January to the 31st day of Dedember, inclusive, of each year.

IV.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the combined flow of water from the said springs and tributaries at the present time is approximately .38 c. f. s., and that the total acreage irrigated by claimant is 37.8 acres, of which 9.8 acres are harvest lands, and the remainder, or twenty-eight acres, is pasture land; and that the duty of the water flowing from said springs is adjudged and decreed to be 7.23 acre feet per acre for the irrigation season of 365 days, measured at the point of diversion, which is the equivalent of a continuous flow of 0.01 c. f. s. for each acre of land.

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V.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the claimant, V. E. Greenwalt, or his successors in interest, may at his, or 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; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the said V. E. Greenwald is the lawful successor in interest to the vested water rights to the use of the waters of said springs and tributaries.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the costs of this proceeding, as shown by the State Engineer's cost bill, are allowed and ordered certified as required by law.

VI.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the waters herein adjudicated are to be measured at the point where the water is now diverted from the source.

VII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the appropriator is hereby given the right to continue the diversion and use of waters from the North and South Springs and tributaries for stock and domestic purposes at any time during the year, as heretofore and now used, and

IT IS FURTHER ORDERED that the amount of water diverted for irrigation purposes shall not be increased by any amount to be used for stock watering purposes, and that the quantity allowed and diverted for irrigation purposes includes the water for stock watering and domestic purposes.

VIII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the waters heretofore used by the said appropriator and herein adjudicated for irrigation purposes are made appurtenant to the lands herein described and upon which the said water has heretofore and is now being used.

DATED the 21st day of February, 1938.

Hon D. Hatton
District Judge.

Certificate of Clerk

State of Nevada, COUNTY OF NYE } ss.

I, OLINE C. STEWART, County Clerk of Nye County, State of Nevada, and Ex-Officio Clerk of the District Court of the Fifth Judicial District of the State of Nevada, in and for the county of Nye, do hereby certify the foregoing and annexed to be a true and correct copy of "PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECREE" filed Feb. 21, 1938

IN THE MATTER OF THE DETERMINATION OF THE RELATIVE RIGHTS IN AND TO THE WATERS OF NORTH AND SOUTH SPRINGS AND TRIBUTARIES IN NYE COUNTY, STATE OF NEVADA. No. 4852

as the same appears on file and of record in my office at Tonopah, County and State aforesaid.

Attest my hand and seal of said Court, this 21st day of February, A. D. 19 38

Oline C. Stewart Clerk

By E. Shaw Deputy

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