

No. 164

Jacob Shallenbarger  
Plaintiff

vs.

Martin Guptil, H. A. Comins  
and F. F. Hilp  
Defendants

Decree

This cause having been regularly called and the decision thereon in writing having been duly rendered by the Court wherein judgment was awarded in favor of the respective parties as follows to wit:

That the waters in dispute to wit: the waters of Steptoe Creek the respective parties are to have as follows: The defendant H. A. Commins one third (1/3) of all the waters of Steptoe Creek as the same flows past and through his ranch; that of the remaining two thirds (2/3) thus flowing and also all the water rising on the ranch of Jacob Shallenbarger, said Jacob Shallenbarger shall have two thirds (2/3) and the defendants Martin Guptil and F. F. Hilp together shall have the remaining one third (1/3). All the said water rights to be equal in all respects that is, no one is to be superior to the other in any respect as to time or priority or otherwise, and no one of the parties shall divert any of the said waters at a point so as to interfere with the foregoing distribution of said waters and that each party pay his own costs.

It is now, therefore hereby ordered adjudged and decreed that the defendant H. A. Commins have judgment and decree in his favor and against Jacob Shallenbarger, plaintiff herein, and Martin Guptil and F. F. Hilp defendants herein, for one third (1/3) of the waters of Steptoe Creek as the same flows past and through his ranch and that of the remaining two thirds (2/3) flowing through said defendants ranch and also all the water rising on the ranch of the plaintiff Jacob Shallenbarger, Jacob Shallenbarger shall have two thirds (2/3) and the defendants

D.L.D.

Martin Guptil and F. F. Hilp shall have the remaining one third (1/3).

All of the said water rights are to be equal in all respects, that is, no one is to be superior to the others in any respect as to time or priority or otherwise and all and each of the parties, their grantees, agents, servants and employees are perpetually enjoined from diverting any of the said waters at a point so as to interfere with the foregoing distribution of said waters, and that each party pay his own costs.

Dated Feby--1900

1900 Feb 1900

Done

A. L. Fitzgerald  
District Judge

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on behalf of Ely Water Company, Morley Griswold appeared in behalf of Griswold-Henderson Livestock Company and V. H. Vargas appeared on behalf of Consolidated Coppermines Corporation.

And it appearing to the satisfaction of the Court that said Final Order of Determination of the relative rights of the claimants and appropriators to the use of the waters of said stream system was duly filed herein on or about December 17, 1934; that, pursuant to the law of this State and the lawful Order of this Court and the notices duly given of the time within which to file exceptions thereto and the lawful extensions of time therefor, the above-mentioned oral exception thereto was interposed at the time of said hearing by Ely Water Company; that the only matter in said final Order of Determination which was thereby or at all finally excepted to related to that portion thereof pertaining to the point of diversion by the Griswold-Henderson Livestock Company for stock watering purposes as provided for in said Final Order of Determination; and that, on February 21, 1935, the date duly fixed for said hearing, and prior to the time said hearing actually began, a written stipulation was made and entered by and between all claimants interested, through their said counsel, respectively, wherein and whereby it was agreed that that portion of said Final Order of Determination under the title and heading thereof designated "Relative Rights of Appropriators" on page 6 thereof be amended so as to read as hereinafter specified, and that, when so amended should be included in and made a part of these Findings of Fact and Conclusions of Law, and Decree, which said stipulation was then and there filed herein, and which reads as follows:

"IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above entitled action that the decree to be entered in said action shall award to the various appropriators on the

stream system the rights set out in the final order of determination of the State Engineer, with the following exceptions:

The point of diversion at which the Griswold Henderson Livestock Company, its successor or successors in interest, shall water its sheep as mentioned in said order shall be as follows:

On the Steptoe Creek channel or Steptoe Creek ditch from and including the Northwest quarter of Section thirteen to and including the Northwest quarter of the Northeast quarter of Section eleven and the Northeast quarter of the Southeast quarter of Section two, all in Township sixteen North, Range sixty-three East, M. D. B. & M., said appropriator to pay any and all damages suffered by said ditch from said watering."

And it further appearing to the satisfaction of the Court that said stipulation and amendment removed the objections of said excepting claimant to said Final Order of Determination and rendered it satisfactory to all claimants and appropriators of the use of waters on said stream system; that the notice of said hearing, and all other notices required by law to be given prior to said hearing, had been given at the time so fixed for such hearing in the manner and for the time required by the law of this State relating to such matters; that said matter was in condition to be heard and tried, and that this Court has jurisdiction of the subject matter and of the parties herein.

The Deputy Attorney-General thereupon, at said hearing, offered, and there were received in evidence in support of the rights of claimants, as set forth in said Final Order of Determination, the said stipulation so made and entered into on February 21, 1935, and so hereinbefore quoted, and, also, the sworn statements of claimants, verified affidavits, files, and records of the State Engineer's office respecting the rights of each claimant to the

use of the waters of said stream system, including, also, the cultural maps establishing the cultural area involved, the diversion ditches, and the kinds and character of lands irrigated by each of said claimants, together with the oral testimony of H. W. Reppert, Assistant State Engineer of the State of Nevada, explaining said maps and other files and records so introduced in evidence.

No evidence was introduced by said excepting claimant, in view of the fact that it was satisfied with said Final Order of Determination as so amended by said stipulation so made and entered into on February 21, 1935.

The Court, having duly considered the entire record and evidence so introduced and being fully advised in the premises, made and caused to be entered in the Court Minutes its decision directing that Findings of Fact, Conclusions of Law and Decree be made in accordance with Final Order of Determination made by the State Engineer and the stipulation hereinabove quoted for submission to and approval by the court.

WHEREFORE, pursuant to and in accordance with said decision, the Court finds the facts, makes its conclusions of law, and enters its final judgment and decree concerning all and singular the matters submitted to the Court herein as follows, to wit:

FINDINGS OF FACT

I.

That the State Engineer of the State of Nevada, pursuant to a Petition of Consolidated Coppermines Corporation, dated January 12, 1931 and filed in the office of the State Engineer on January 22, 1931 a report of investigation, dated August, 1931 made and filed by O. L. Hussman, Deputy State Engineer and Section 18, Chapter 140, 1913 Statutes of Nevada, and acts amendatory

thereof and supplementary thereto, being Nevada Compiled Laws, 1929, Section 7905, on or about August 17, 1931, made and entered an order granting the said petition of said Consolidated Coppermines Corporation, for determination of the relative rights of the various claimants in and to the waters of Steptoe Creek and its tributaries in White Pine County, State of Nevada; and said State Engineer thereupon made and entered his order that the examination and proceedings for such determination begin as soon as practicable thereafter, to wit, on February 20, 1932, as stated in said Order, all as provided for in said Section 7905 (Section 18 of the Water Code of this State), and also included therein a requirement and notice that all claimants to the use of said waters were required to make proof of their rights to such use of said waters as were claimed by them; that said State Engineer thereupon and commencing January 15, 1932, and ending February 12, 1932, caused said Orders and notices to be published once a week for four consecutive weeks in The Ely Record, a newspaper of general circulation published in Ely, White Pine County, Nevada; that on or about March 21, 1932, said State Engineer made and entered Orders and notices designating and fixing the period of time for the taking of proofs to be made by said claimants of their rights to the use of said waters, the date for the end of said period and prior to which said proofs must be filed being not less than sixty (60) days after the date so set for the commencement of the taking of said proofs, as provided for in Section 22 of the Water Code of this State, the said Water Code being Nevada Compiled Laws, 1929, Sections 7890-7978, inclusive, and said Section 22 being Section 7909, Nevada Compiled Laws, 1929, and caused said notices of said Orders to be given all claimants to the use of said waters, by publication thereof at least once a week for four consecutive weeks in said The Ely Record commencing

on March 25, 1932, and ending April 22, 1932, the last publication thereof, being not less than fifteen (15) days prior to the date so fixed for the commencement of the taking of said proofs, and, on or about March 24, 1932, caused said notice to be mailed, by registered mail and postage prepaid, to each of said claimants, to wit, each person who he had reason to believe had any interest in said proceedings, with return receipts requested, all as provided for in said Section 7909 (Section 22 of said Water Code), and thereafter extended the time for the filing of said proofs and any additional or supplemental maps, plats, surveys and evidence relating to any such claim or claims, from time to time, as provided for in Nevada Compiled Laws, 1929, Section 7912 (Section 25 of said Water Code), up to and including December 31, 1932, and gave each of said claimants and persons who he had any reason to believe had any interest in said proceedings due notice thereof, as provided for in Nevada Compiled Laws, 1929, Section 7910 (Section 23 of said Water Code) and as shown on pages 3, 4 and 5 of the "Affidavit of Compliance with Jurisdictional Requisites" on file herein and in Exhibit "CC" mentioned therein; and that prior to the beginning of said proceedings, said claimant, Consolidated Coppermines Corporation, filed in the office of the State Engineer proof of appropriation and cultural maps in support of its claims, showing with substantial accuracy the location and source of said stream and its tributaries, the location of each ditch diverting water therefrom, the points of diversion thereof, the area and outline of each parcel of land irrigated with said waters and the kind of culture upon each of said parcels of land; and the said claimant, Griswold-Henderson Livestock Company, also filed in the office of the State Engineer proof of appropriation for stockwatering purposes in support of its claim, showing with substantial accuracy

the point of diversion thereof, both of said proofs giving other information required in and as provided for in Nevada Compiled Laws, 1929, Section 7907 (Section 20 of said Water Code).

That said claimants and the State Engineer have considered springs arising within the confines of the claimant, Consolidated Coppermines Corporation, holdings as tributaries of the stream system and the Court hereby finds that they are and constitute a part of said stream system and are so considered and treated herein. That, on or about April 10, 1933, the State Engineer prepared and filed an Abstract of Claims, as provided for in Nevada Compiled Laws, 1929, Section 7915 (Section 23 of said Water Code), and, on or about April 27, 1933, duly filed, in the manner provided by law, his Preliminary Order of Determination, in typewritten form, as provided for in accordance with provisions of Chapter 140, Statutes of 1913, and Chapter 253, Statutes of 1915, being Nevada Compiled Laws, 1929, Sections 7890-7978, inclusive, of the relative rights of the water users on said stream system to the use of the waters thereof, and on May 10, 1933, the State Engineer filed in his office Notice and Order setting time and place of inspection, beginning June 14, 1933, and notifying all persons claiming any interest in the said Steptoe Creek stream system and to the use of the water, whether claiming under vested right or under permit, from the State Engineer that they may object to any findings, part or portion of the Preliminary Order of Determination made by the said State Engineer, as provided for by law; and that on May 11, 1933 the said State Engineer duly mailed certified copies of the Abstract of Claims, the Preliminary Order of Determination and Notice and Order setting the time and place of inspection to each of said claimants and parties in interest whose name appeared in said

Order of Determination or who had become interested in said water in these proceedings, at his or her last post office address known to said State Engineer, and on July 12, 1933 made and filed his order extending time for filing objections to the Preliminary Order of Determination to and including the 15th day of August, 1933, and on the same day duly mailed a certified copy thereof, by registered mail and postage prepaid, to each of said claimants and parties in interest whose name appeared in said Preliminary Order of Determination or who had become interested in said water and these proceedings, at his or her last post office address known to said State Engineer. That thereafter, and within the time objections were to be filed, in accordance with said extension, and on the 15th day of August, 1933 objections of R.T. Swallow, Incorporated to said Preliminary Order of Determination were filed, and on the 18th day of January, 1934 said State Engineer duly mailed a notification in pursuance of Section 30, Chapter 106, Statutes of 1921, by registered mail and postage prepaid, to each of said claimants and parties interested, notifying them that a hearing would be held on objections to any findings, part or portion of the said Preliminary Order of Determination at the Court House in Ely, Nevada, commencing at 10:00 A.M., February 27, 1934; that thereafter, and on the 27th day of August, 1934 said claimant, Consolidated Coppermines Corporation, and claimant, R. T. Swallow, Incorporated, objector, entered into an agreement concerning the right of claimant, R. T. Swallow, Incorporated, for stockwatering purposes, a duplicate original of which said agreement was, on the said 27th day of August, 1934, duly filed in the office of said State Engineer and which said agreement is in words and figures following, to wit:

THIS AGREEMENT, Made and entered into this 27th day of August, 1934, by and between R. T. SWALLOW and R. T. SWALLOW

INCORPORATED, a Nevada Corporation, acting by and through its President, parties of the first part, and CONSOLIDATED COPPER-MINES CORPORATION, a Delaware Corporation, acting by and through its duly authorized officers and agents, parties of the second part,

W I T N E S S E T H:

WHEREAS, there is now pending in the office of the State Engineer of the State of Nevada, a proceeding to determine the relative rights of claimants in and to the waters of Steptoe Creek and its tributaries in White Pine County, State of Nevada, one of which tributaries is that certain creek commonly known as and called Cave Creek, and

WHEREAS, a controversy has arisen in said proceeding as to the right of the parties of the first part to water 5000 head of sheep at and from the waters of said Cave Creek, and

WHEREAS, the parties of the first part are the owners of the hereinafter described land covering a portion of the channel of said Cave Creek and the party of the second part is desirous of procuring from the parties of the first part a right of way over and across said land for the purpose of either piping or fencing the waters of said creek against pollution, and the parties of the first part are willing to deed to the party of the second part such a right of way as hereinafter described on the terms and conditions hereinafter stipulated and agreed.

NOW, THEREFORE, in consideration of the premises, and the mutual covenants herein contained, the parties hereto hereby agree as follows:

(1) The parties of the first part agree to execute and deliver to the party of the second part a good and sufficient deed conveying to the party of the second part, a right of

way fifteen (15) feet on each side from the center line of said Cave Creek, for the purpose of fencing same or installing a pipe line therein, over and across the

$N\frac{1}{2}$  of the  $NW\frac{1}{4}$  of the  $SW\frac{1}{4}$  of Section 10;  
 $SE\frac{1}{4}$  of the  $NE\frac{1}{4}$  of Section 9;  
 $W\frac{1}{2}$  of the  $NE\frac{1}{4}$  of Section 9, all in Township  
15 N. R. 65 E. M. D. B. & M.

(2) Immediately upon the execution and delivery of the said deed the party of the second part agrees to file in the office of the State Engineer of the State of Nevada, in said water adjudication proceeding, its written consent to the granting to the parties of the first part, a right to water five thousand (5000) head of sheep from the waters of said Cave Creek, as hereinafter provided.

(3) Until the party of the second part shall fence or pipe the waters of said Cave Creek across the right of way hereinabove provided for the parties of the first part shall have the right to water said sheep in the channel of said creek but if and when the party of the second part shall fence or pipe the waters of said creek it shall immediately thereafter at its own expense provide at two points designated by the parties of the first part upon their land, watering facilities of sufficient capacity to water five thousand head of sheep and shall in addition to the installation of such facilities provide a drive-way across the channel of said creek at some convenient point through the  $SE\frac{1}{4}$  of the  $NE\frac{1}{4}$  of Section 9 T. 15 N. R. 65 E., M. D. B. & M.  
Executed at Ely, Nevada this  
27th day of August, 1934.

R. T. SWALLOW

R. T. SWALLOW INCORPORATED

By R. T. SWALLOW  
Its President



IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year in this certificate first above written.

V. H. VARGAS  
Notary Public in and for said County  
and State.

STATE OF NEVADA            )  
                                  )SS.  
COUNTY OF WHITE PINE )

On this 27th day of August, A. D. 1934, personally appeared before me a Notary Public in and for said County and State, J. B. Haffner, known to me to be the General Manager of the corporation that executed the foregoing instrument, and upon oath did depose that he is the officer of said corporation and that the seal affixed to said instrument is the corporate seal of said corporation; that the signatures to said instrument were made by officers of said corporation as indicated after said signatures; and that the said corporation executed the said instrument freely and voluntarily and for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year in this certificate first above written.

V. H. VARGAS  
Notary Public in and for said County  
and State.

And in pursuance with the provisions of said agreement said Consolidated Coppermines Corporation did, on the 27th day of August, 1934, cause to be filed in the office of the State Engineer of the State of Nevada a Waiver of Objections and consent to the granting of a stockwatering right to claimant, R. T. Swallow, Incorporated, in words and figures following, to-wit:

BEFORE THE STATE ENGINEER OF THE STATE OF NEVADA

IN THE MATTER OF THE ADJUDICATION OF )  
THE WATERS OF STEPTOE CREEK AND ITS )  
TRIBUTARIES IN WHITE PINE COUNTY, )  
STATE OF NEVADA. )

WAIVER OF OBJECTIONS

We, the undersigned, Consolidated Coppermines Corporation, a Delaware Corporation, do hereby waive any objections we may have and do hereby consent to the granting of a right to water 5000 head of sheep from the waters of Cave Creek, a tributary of Steptoe Creek in White Pine County, State of Nevada by R. T. Swallow or R. T. Swallow, Incorporated, in accordance with the provisions of that certain agreement made and entered into the 27th day of August, 1934 by and between R. T. Swallow, and R. T. Swallow Incorporated, as parties of the first part and the undersigned, Consolidated Coppermines Corporation, as party of the second part, duplicate original copy of which is hereto attached marked Exhibit "A" and hereby referred to for the purpose of making it a part hereof.

Dated: August 27, 1934.

Consolidated Coppermines Corporation

By J. B. Haffner  
Its General Manager

And, on or about December 14, 1935, filed a duly certified copy of Final Order of Determination and all the original evidence and a transcript of the testimony filed with or taken before said State Engineer with the Clerk of this Court; that said State Engineer thereupon obtained an Order of this Court, dated December 20, 1934, setting the time for hearing exceptions to said Order of Determination for February 21, 1935, at the

hour of 10:00 o'clock A. M. of that day, in and at the courtroom of this Court, in the White Pine County Court House, at Ely, Nevada, and requiring all parties in interest who were aggrieved by or dissatisfied with said Order of Determination to file with the Clerk of this Court and serve upon or transmit to said State Engineer by registered mail notice of exceptions thereto at least five (5) days prior to the date set for the hearing thereof, all as provided for in Nevada Compiled Laws, 1929, Sections 7921 and 7922 (Sections 34 and 35 of said Water Code), and gave and served due notice thereof on all of said claimants and water users by registered mail, postage prepaid, and by publication thereof in Ely Record, a newspaper of general circulation and published at Ely, White Pine County, Nevada, at least once a week for five (5) consecutive weeks, as provided by law; and that, on or about February 14, 1935, the said Ely Water Company filed herein and served their exception to said Order of Determination, which said exception was waived when said Order of Determination was amended under said heading so designated "Relative Rights of Appropriators" by stipulation, as hereinabove quoted, and said Order of Determination duly came on for hearing and confirmation on February 21, 1935

## II.

The Court further finds that all and singular the orders and notices required by said Water Code of this State were duly made and given as required by law and all and singular the proceedings required by law to be had were duly had as required by said Water Code; that all and singular the claimants and persons named in said Order of Determination and hereinafter in this decree as the persons entitled to use the waters of said stream system, or their predecessors in interest, respectively, duly

filed their claims and proofs of claims and appropriation with said State Engineer and are the claimants, appropriators, and users of the waters of the stream system of Steptoe Creek and its tributaries; and that the persons hereinafter named and shown are entitled to the use of the waters thereof as hereinafter set forth and are the only claimants who are appropriators and users of the waters of said stream system, excepting from this finding the names of those persons who have made application to the State Engineer for permits, if any there be.

### III.

The Court further finds from the evidence submitted at said hearing that all of the persons named as claimants or appropriators in said Final Order of Determination as claimants to the waters of the stream system of Steptoe Creek and its tributaries by and through the several ditches are appropriators or claimants to the waters of said stream system and each of them is such an appropriator or claimant; that each of such appropriators or claimants, either for himself or by and through his respective claimants and predecessors in interest, made due and legal appropriations of the quantity of water, for beneficial uses, at the times and in the manner set forth in said Order of Determination; and that each of such appropriators or claimants or his respective successors in interest now is the owner or possessor of the lands described in said Order of Determination and in these Findings of Fact, Conclusions of Law, and Decree, and each of them continuously, from the date of said appropriation or priority, when such water was available for such beneficial use, diverted all of such quantity of water from said stream system and applied the same to beneficial use, as set forth in said Order of Determination.

IV.

The Court further finds that the climate where the lands of said respective claimants in said Order of Determination are situated is dry and arid; that it is necessary to irrigate said lands in order to produce or raise crops thereon; that, with such irrigation, said lands produce valuable crops of the culture specified in said Order of Determination; and that there is no source of supply of water for the irrigation of said lands of claimants and for stock and domestic purposes other than the waters of said stream system.

V.

That the names of claimants or appropriators set forth in said Final Order of Determination, the source of water supply, the means by which the water is secured from such sources and applied to beneficial use, the year of priority, the legal subdivisions and classification of lands, the length of the irrigation season, the provisions for the installation, maintenance, and regulation of headgates and control works, measuring devices, designation of ditches and channels, the duty of water, and the provisions as to junior rights and relative rights of appropriators, as set forth in said Final Order of Determination, and more particularly on pages 3-7 thereof, are true, proper, and correct, except as the same or some portion thereof may be modified by and set forth in said Stipulation amending said Order of Determination on page 6 thereof under the title "Relative Rights of Appropriators" so hereinabove quoted and so made and entered into on February 21, 1935; and, as so modified, all and singular, the same is and are hereby approved and confirmed.

VI.

That said Order of Determination as to the relative rights of the users of said stream system as it appears on pages

6-9 thereof and in all other respects, except as so modified by said stipulation so made and entered into on February 21, 1935, relating to "Relative Rights of Appropriators", is correct and in accordance with the said vested rights of the said Consolidated Coppermines Corporation under its said Proof of Appropriation No. 02266, and the vested rights of said Griswold-Henderson Livestock Company under its Proof of Appropriation No. 02233, and the stockwatering rights of said R. T. Swallow, Incorporated, in accordance with its vested rights and the agreement between it and said Consolidated Coppermines Corporation, hereinabove set out, which Order of Determination as so modified is hereby approved and confirmed; that the water rights determined in said Order of Determination now vest in and belong to the claimants and users thereof, as hereinafter found, determined, ordered, adjudged and decreed.

VII.

IRRIGATION SEASON

The Court further finds that the irrigation season for the lands herein listed should be fixed as the period from March first to September thirtieth of each year, both dates inclusive, or a total period of 214 days; provided that in the event the irrigation season is not in accordance with good husbandry and actual beneficial use of water the State Engineer shall determine by examination the beginning of the irrigation season and shall set the date giving notice to all parties concerned. The setting of the date shall be for the sole purpose of administration and distribution of the waters of the stream system in accordance with the decree herein.

VIII.

DUTY OF WATER

The Court further finds that the duty of water for the lands herein listed shall be fixed at 4.5 acre feet for each acre irrigated for the maximum length of the irrigation season of 214 days; that the rate of use of water shall be based upon a continuous flow of 0.0106 of a cubic foot per second for each acre irrigated that will yield the acre foot allotment per acre during the irrigation season; provided, that if at any time during the irrigation season there are excess waters in the stream system which would more than satisfy the continuous flow to which each water user is entitled, or which would more than satisfy any deficiency in the allotment to which each user is entitled since the beginning of the irrigation season, then such surplus water shall be proportioned ratably among all appropriators; but the amount used shall not exceed the seasonal allowance in acre feet specified and allowed by this order. Thus the parties hereto, or their successors in interest, shall not be required to take or use the amount of water allotted to them in continuous flow but may cumulate same, or any part thereof, in rotation or periodic turn with the approval of the water commissioner, subject to the control and supervision of the State Engineer.

That for the watering of livestock there shall be allowed .00000625 of a cubic foot per second in continuous flow for each head of sheep or where cattle and/or horses are watered in lieu of sheep the allowance shall be at the rate of .00003125 of a cubic foot in continuous flow per head.

#### IX.

#### MEASUREMENT OF WATER ALLOTTED

The Court further finds that all water diverted from Steptoe Creek and its tributaries in accordance with the decree

herein shall be measured at a point where the main ditch enters or becomes adjacent to the land to be irrigated, or as near thereto as practicable, the location if not selected by the State Engineer to be approved by him.

X.

SPRINGS

The Court further finds that springs rising within the confines of the claimants holdings shall be considered as tributaries of the stream system, and the aggregate diversions from all sources of supply shall not exceed the seasonal acre foot allotment.

XI.

HEADGATES, CONTROL WORKS, ETC.

The Court further finds that each water user shall install and maintain substantial headgates, control works and weirs in his ditch, or ditches, of such construction as may be approved by the State Engineer, and shall keep his ditches, as well as the main channel through his land, reasonably clean of weeds, vegetation, and deposits of silt and in all other respects maintain said ditches and channels in a manner conducive to minimum losses of conveyed water by seepage, evaporation or other causes.

XII.

JUNIOR RIGHTS

The Court further finds that no person or persons holding a right of appropriation not herein listed, shall be entitled to receive any water from the Steptoe Creek stream system until all appropriations herein have been fully satisfied.

RELATIVE RIGHTS OF APPROPRIATORS

From the foregoing and the evidence the Court further finds that the claimants hereinafter named have the right to the use of the waters of Steptoe Creek and its tributaries for the purposes, through the ditches, at the points of diversion, at the times, in the amounts, with the priority or priorities, upon the lands or for stockwatering purposes as follows:

Claimant: Griswold Henderson Livestock Company.

Source: Steptoe Creek and its tributaries.

Point of Diversion: On the Steptoe Creek channel or Steptoe Creek ditch from and including the NW $\frac{1}{4}$  of Sec. 13 to and including the NW $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Sec. 11 and the NE $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Sec. 2, all in T. 16 N., R. 63 E., M. D. B. & M.

Proof: 02233.

Right to the use of 0.094 of a cubic foot of water per second continuous flow for the watering of 15,000 head of sheep during the months of November, December and March of each year with a priority of 1899.

Claimant: R. T. Swallow and R. T. Swallow Incorporated.

Source: Cave Creek, a tributary of Steptoe Creek.

Point of Diversion: N $\frac{1}{2}$  of the NW $\frac{1}{4}$  SW $\frac{1}{4}$  of Sec. 10; SE $\frac{1}{4}$  NE $\frac{1}{4}$  of Sec. 9; W $\frac{1}{2}$  NE $\frac{1}{4}$  of Sec. 9, all in T. 15 N., R. 65 E., M. D. B. & M.

In accordance with that certain stipulation and agreement dated August 27, 1934 between R. T. Swallow and R. T. Swallow Incorporated and Consolidated Coppermines Corporation, and subject to the terms and conditions of said stipulation and agreement, R. T. Swallow Incorporated is granted a right to the use of 0.03125 of a cubic foot of water per second in continuous flow with priority prior to 1905 for the watering of 5000 head of sheep along the channel of Cave Creek in the N $\frac{1}{2}$  of NW $\frac{1}{4}$  SW $\frac{1}{4}$  Section 10; SE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 9; and W $\frac{1}{2}$  NE $\frac{1}{4}$  of Section 9, all in T. 15 N., R. 65 E., M. D. B. & M.

Claimant: Consolidated Coppermines Corporation.

Source: Steptoe Creek and tributaries.

Ditches: Irrigation Ditches Nos. 1 to 12 and springs.

Point of Diversion: Ditches Nos. 1 to 10 in Sections 14, 15, 16, 17 and 5 respectively of Twp. 15 N., R. 64 E., M. D. B. & M. and ditches 11 and 12 in Sections 31 and 24 respectively of Twp. 16 N., R. 63 E. M. D. B. & M.

Proof: No. 02266.

Culture (Ac.)				Description	Duty of Water			
Prior-ity	Harvest Crop	Meadow Pasture	Diverted Pasture	Subdv.	Sec.	Twp.	Range	C. F. S.
1890	5.85			NE 1/4 SE 1/4	15	15	64	.06
"	11.02			NW 1/4 SE 1/4	15	15	64	.117
"	3.62			NE 1/4 SW 1/4	15	15	64	.038
"	11.82			NW 1/4 SE 1/4	16	15	64	.125
"	0.70			SW 1/4 NE 1/4	16	15	64	.007
"	2.59			NE 1/4 SW 1/4	16	15	64	.026
"	8.90			SE 1/4 NW 1/4	16	15	64	.094
"	10.80			SW 1/4 NW 1/4	16	15	64	.114
"	15.20			SE 1/4 NE 1/4	17	15	64	.161
"	17.76			SW 1/4 NE 1/4	17	15	64	.188
"	5.77			NW 1/4 NE 1/4	17	15	64	.061
"	11.54			SE 1/4 NW 1/4	17	15	64	.122
"	24.71			NE 1/4 NW 1/4	17	15	64	.261
"	4.36			NW 1/4 NW 1/4	17	15	64	.046
"	34.08			SE 1/4 SW 1/4	8	15	64	.361
"	28.57			SW 1/4 SW 1/4	8	15	64	.303
"	30.30			NE 1/4 SW 1/4	8	15	64	.321
"	40.00			NW 1/4 SW 1/4	8	15	64	.424
"	40.00			SW 1/4 NW 1/4	8	15	64	.424
"	39.00			SE 1/4 NW 1/4	8	15	64	.413
"	40.00			NE 1/4 NW 1/4	8	15	64	.424
"	40.00			NW 1/4 NW 1/4	8	15	64	.424
"	8.02			NW 1/4 NE 1/4	8	15	64	.085
"	4.02			SW 1/4 NE 1/4	8	15	64	.043
"	4.00			NE 1/4 SE 1/4	7	15	64	.042
"	13.09			SE 1/4 NE 1/4	7	15	64	.139
"	13.40	26.40		NE 1/4 NE 1/4	7	15	64	.422
"	33.52			NW 1/4 NE 1/4	7	15	64	.355
"	5.18	22.70		SE 1/4 SE 1/4	6	15	64	.295
"	31.65			SW 1/4 SE 1/4	6	15	64	.335
"	15.50		7.46	NW 1/4 SE 1/4	6	15	64	.243
"		40.00		NE 1/4 SE 1/4	6	15	64	.424
"		40.00		SE 1/4 NE 1/4	6	15	64	.424
"	9.19		26.90	SW 1/4 NE 1/4	6	15	64	.382

Proof No. 02266, Continued

Prior-ity	Harvest-Crop	Meadow-Pasture	Diversi-fied Pasture	Subdv.	Sec.	Twp.	Range	C.F.S.
1890	20.60	2.01	17.20	NW 1/4 NE 1/4	6	15	64	.422
"		40.00		NE 1/4 NE 1/4	6	15	64	.424
"	32.53	7.47		SW 1/4 SW 1/4	5	15	64	.424
"	40.00			SE 1/4 SW 1/4	5	15	64	.424
"	40.00			NE 1/4 SW 1/4	5	15	64	.424
"	30.82	9.18		NW 1/4 SW 1/4	5	15	64	.424
"	32.60	1.40		SW 1/4 NW 1/4	5	15	64	.424
"	35.00			SE 1/4 NW 1/4	5	15	64	.371
"	30.60			NE 1/4 NW 1/4	5	15	64	.324
"	40.00			NW 1/4 NW 1/4	5	15	64	.424
"	26.40			SW 1/4 SE 1/4	31	16	64	.280
"	26.42			NW 1/4 SE 1/4	31	16	64	.280
"	40.00			SE 1/4 SW 1/4	31	16	64	.424
"	40.00			SW 1/4 SW 1/4	31	16	64	.424
"	27.35	12.65		NW 1/4 SW 1/4	31	16	64	.424
"	40.00			NE 1/4 SW 1/4	31	16	64	.424
"	8.05	3.45		SW 1/4 NE 1/4	31	16	64	.122
"	12.40	27.60		SE 1/4 NW 1/4	31	16	64	.424
"	0.30	39.70		SW 1/4 NW 1/4	31	16	64	.424
"		24.80		NE 1/4 NW 1/4	31	16	64	.262
"		40.00		NW 1/4 NW 1/4	31	16	64	.424
"	2.88	8.40		SE 1/4 SE 1/4	36	16	63	.120
"	3.72	7.75		NE 1/4 SE 1/4	36	16	63	.121
"		40.00		SE 1/4 NE 1/4	36	16	63	.424
"		40.00		NE 1/4 NE 1/4	36	16	63	.424
"		40.00		SW 1/4 SW 1/4	30	16	64	.424
"		10.35		SE 1/4 SW 1/4	30	16	64	.110
"		5.74		NE 1/4 SW 1/4	30	16	64	.061
"		33.30	5.70	NW 1/4 SW 1/4	30	16	64	.413
"			21.20	SW 1/4 NW 1/4	30	16	64	.225
"		40.00		SE 1/4 SE 1/4	25	16	63	.424
"		11.70		SW 1/4 SE 1/4	25	16	63	.124
"		0.75		NW 1/4 SE 1/4	25	16	63	.008
"		29.20	4.30	NE 1/4 SE 1/4	25	16	63	.355
"			27.90	SE 1/4 NE 1/4	25	16	63	.296
"		13.25	18.90	NE 1/4 NE 1/4	25	16	63	.341
"		12.60		NW 1/4 NE 1/4	25	16	63	.133
"		32.00		SW 1/4 SE 1/4	24	16	63	.332
"		17.00	0.80	NW 1/4 SE 1/4	24	16	63	.189
"		0.86		SE 1/4 SW 1/4	24	16	63	.009
"		13.80		NE 1/4 SW 1/4	24	16	63	.146
"			4.60	SW 1/4 NE 1/4	24	16	63	.049
"			22.40	SE 1/4 NW 1/4	24	16	63	.237
"			6.80	NE 1/4 NW 1/4	24	16	63	.072

TOTALS 1099.83 694.06 164.16 1958.05 20.750

8811.285

61.56 = 0.2514384  
1958.25

2.6523675

### CONCLUSIONS OF LAW

From the foregoing facts so found, the Court makes the following Conclusions of Law:

That the State Engineer duly made all orders necessary and proper and entered the same in his office as required by 1913 Statutes of the State of Nevada, pages 192 et seq. and acts amendatory thereof or supplemental thereto, known as the Water Code of the State of Nevada and being Nevada Compiled Laws, 1929, Sections 7890-7978, as amended; that each and every notice required by law, required to be given to claimants and appropriators, was duly given by said State Engineer in the manner and at the time required by law and the said notices so given contained all the statements required by law; that all claimants and appropriators of the waters of said Steptoe Creek stream system and its tributaries duly received the information and notices required by law, and each and all of said claimants duly appeared in these proceedings.

That the parties named herein as claimants constitute and are, respectively, the only claimants who were and are appropriators and users of the waters of Steptoe Creek stream system and its tributaries on the date the Final Order of Determination was filed with the Clerk of this Court and at the time of the hearing hereof, except those parties who have subsequently made application to the State Engineer for permits to use the waters of said stream system, if any there be.

That all and singular the persons named as claimants or appropriators in this Order of Determination, and as hereinbefore found and hereinafter decreed, as claimants to the waters of Steptoe Creek stream system and its tributaries are, respectively, appropriators or claimants of the waters of said stream system, by and through the several diversion ditches and canals

named in said Order of Determination and herein found and decreed; that all and singular the said appropriators and claimants, each for himself or by and through his respective claimants or predecessors in interest, made due and legal appropriations, for beneficial use, of the quantity of water, at the times and in the manner set forth in said Order of Determination as herein found and decreed; that each of said appropriators and claimants, or its respective successors in interest, is now the owner or possessor of the lands described in said Order of Determination and as described herein, and each continuously, from the date of its said appropriation or priority, when such water was available for such beneficial use, diverted all of said quantity of water from said Steptoe Creek stream system and applied the same to beneficial use, as set forth in said Order of Determination and as herein found and decreed; that each of said appropriators and claimants is legally entitled to the use of the quantity of water from said stream system specified in said Order of Determination and herein found and decreed, for said beneficial use, and from the source of water supply, by the ditch or ditches and other means of diversion and application to beneficial use, for the purpose named in said Final Order of Determination, with the priority or priorities, the length and time of irrigation season or seasons, the duty of water, and the point of measurement and measuring devices, and is legally entitled to the right to so use and apply said quantity of water for stockwatering purposes or to the legal subdivisions and classifications of lands owned or possessed by it, and to install, maintain, and regulate its head-gates, control works and measuring devices, and also to use said water in rotation with other water users on said stream system

and/or otherwise use it as herein determined and decreed, and to protection from junior or subsequent appropriators, all as set forth in said Order of Determination and as herein found, adjudged and decreed.

That the climate where the lands of said respective claimants named in said Order of Determination and herein are situated is dry and arid; that it is necessary to irrigate said lands in order to produce or raise crops thereon; that, with irrigation, said lands produce valuable harvest crops, meadow pasture, and/or diversified pasture; and that there is no source of supply of water for the irrigation of said lands and for stock and domestic purposes other than the waters of said stream system and its tributaries.

That final decree and judgment should be entered herein in accordance with said Final Order of Determination as so modified by said Stipulation as to "Relative Rights of Appropriators" on February 21, 1935, and in accordance with the Opinion and Decision of this Court heretofore filed herein, and with these Findings of Fact and Conclusions of Law, and as hereinafter specified.

That the Judgment and Decree to be hereinafter entered should provide that each and every water user of the Steptoe Creek stream system and its tributaries, and each of their agents, attorneys, servants, employees, and their respective successor in interest, and each and every person acting in aid or assistance of said parties, or either or any of them, be perpetually enjoined and restrained as follows, to-wit:

(a) From at any time diverting or using or preventing or obstructing the flow, in whole or in part, in or along its

natural channel, of any of the water of said stream system, except to the extent and in the amount and in the manner and at the time or times fixed by this Decree and allocated, allowed, prescribed and determined to such parties respectively, and as may be allowed in the permits which have been or may hereafter be granted by the State Engineer of the State of Nevada.

(b) From diverting from the natural channel and from using any of the said water for irrigation or any other purpose in excess of the amount specifically allotted to or for said party herein and fixed by this Decree, or in excess of the specified allotment under such permit or permits so heretofore granted or which may hereafter be granted by said State Engineer.

(c) From diverting from the natural channel and from using any of the said waters in any other manner or for any other purpose or purposes or upon any other land or lands or in any other amount than as provided and prescribed by the terms of this Decree, or by any such permit so granted by said State Engineer.

(d) From diverting from the natural channel and from using any of the said water at any other time or times than as specified and provided by the terms of this Decree or by any such permit so granted by the said State Engineer.

(e) From in any manner meddling with, opening, closing, changing, injuring, or interfering with any headgates, weirs water-boxes, flumes, or measuring devices, or either or any of them, placed, installed, established, or approved by said State Engineer or by his authority or direction, unless such act be done with the permission or authority of the water commissioner or commissioners on said stream system during the period of his regulation or control of said water, or, if not done during such

period of his control, then by virtue of the allowances, authority, terms, and provisions of this Decree or by a permit so granted by said State Engineer.

The Court further concludes from the facts so found that all and singular the appropriators and claimants hereinafter named in the Judgment and Decree herein are entitled to all and singular the water rights and other rights incident thereto as specified, adjudged, and decreed in the Judgment and Decree herein.

JUDGMENT AND DECREE

IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

I.

That, except such persons as may have acquired rights to the waters of Steptoe Creek stream system and its tributaries granted under and pursuant to applications to the State Engineer under and by virtue of the Statutes of 1905, Chapter 46, Statutes of 1907, page 30 and under and by virtue of Chapter 140, Statutes of 1913, as amended, no person other than the parties named herein has any interest in or to the waters of said stream system or in or to the use of said waters of said stream system, or any part thereof.

II.

That the names of claimants or appropriators of the waters of said Steptoe Creek stream system and its tributaries who divert waters from said stream system for beneficial use, the source of water supply, the means by which water is secured from the source of supply and applied to beneficial use, the point of diversion and measurement of water, the year of priority, the cultured acreage, the legal subdivisions, sections, township and range, length of season and duty of water for each of said claimants or appropriators are hereby adjudged and decreed as follows, to-wit:

Claimant: Griswold Henderson Livestock Company.

Source: Steptoe Creek and its tributaries.

Point of Diversion: On the Steptoe Creek channel or Steptoe Creek ditch from and including the NW $\frac{1}{4}$  of Sec. 13 to and including the NW $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Sec. 11 and the NE $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Sec. 2, all in T. 16 N., R. 63 E., M. D. B. & M.

Proof: 02233.

*no channel or ditch according to maps*

Right to the use of 0.094 of a cubic foot of water per second continuous flow for the watering of 15,000 head of sheep during the months of November, December and March of each year with a priority of 1899.

Claimant: R. T. Swallow and R. T. Swallow Incorporated.

Source: Cave Creek, a tributary of Steptoe Creek.

Point of Diversion: N $\frac{1}{2}$  of the NW $\frac{1}{4}$  SW $\frac{1}{4}$  of Sec. 10; SE $\frac{1}{4}$  NE $\frac{1}{4}$  of Sec. 9; W $\frac{1}{2}$  NE $\frac{1}{4}$  of Sec. 9, all in T. 15 N., R. 65 E., M. D. B. & M.

Proof: 02 In accordance with that certain stipulation and agreement dated August 27, 1934 between R. T. Swallow and R. T. Swallow Incorporated and Consolidated Coppermines Corporation, and subject to the terms and conditions of said stipulation and agreement, R. T. Swallow Incorporated is granted a right to the use of 0.03125 of a cubic foot of water per second in continuous flow with priority prior to 1905 for the watering of 5000 head of sheep along the channel of Cave Creek in the N $\frac{1}{2}$  of NW $\frac{1}{4}$  SW $\frac{1}{4}$  Section 10; SE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 9; and W $\frac{1}{2}$  NE $\frac{1}{4}$  of Section 9, all in T. 15 N., R. 65 E., M. D. B. & M.

Claimant: Consolidated Coppermines Corporation.

Source: Steptoe Creek and tributaries.

Ditches: Irrigation Ditches Nos. 1 to 12 and springs.

POINT of Diversion: Ditches Nos. 1 to 10 in Sections 14, 15, 16, 17 and 5 respectively of TWP. 15 N., R. 64 E., M. D. B. & M. and ditches 11 and 12 in Sections 31 and 24 respectively of Twp. 16 N., R. 63 E., M. D. B. & M.

Proof: No. 02266.

Culture (Ac.)				Description	Duty of Water			
Prior-ity	Harvest Crop	Meadow Pasture	Diversified Pasture	Subd.	Sec.	Twp.	Range	C. F. S.
1890	5.85			NE 1/4 SE 1/4	15	15	64	.06
"	11.02			NW 1/4 SE 1/4	15	15	64	.117
"	3.62			NE 1/4 SW 1/4	15	15	64	.038
"	11.82			NW 1/4 SE 1/4	16	15	64	.125
"	0.70			SW 1/4 NE 1/4	16	15	64	.007
"	2.59			NE 1/4 SW 1/4	16	15	64	.026
"	8.90			SE 1/4 NW 1/4	16	15	64	.094
"	10.80			SW 1/4 NW 1/4	16	15	64	.114
"	15.20			SE 1/4 NE 1/4	17	15	64	.161
"	17.76			SW 1/4 NE 1/4	17	15	64	.188
"	5.77			NW 1/4 NE 1/4	17	15	64	.061
"	11.64			SE 1/4 NW 1/4	17	15	64	.122
"	24.71			NE 1/4 NW 1/4	17	15	64	.261
"	4.36			NW 1/4 NW 1/4	17	15	64	.046
"	34.08			SE 1/4 SW 1/4	8	15	64	.361
"	28.57			SW 1/4 SW 1/4	8	15	64	.303
"	30.30			NE 1/4 SW 1/4	8	15	64	.321
"	40.00			NW 1/4 SW 1/4	8	15	64	.424
"	40.00			SW 1/4 NW 1/4	8	15	64	.424
"	39.00			SE 1/4 NW 1/4	8	15	64	.413
"	40.00			NE 1/4 NW 1/4	8	15	64	.424
"	40.00			NW 1/4 NW 1/4	8	15	64	.424
"	8.02			NW 1/4 NE 1/4	8	15	64	.085
"	4.02			SW 1/4 NE 1/4	8	15	64	.043
"	4.00			NE 1/4 SE 1/4	7	15	64	.042
"	13.09			SE 1/4 NE 1/4	7	15	64	.139
"	13.40	26.40		NE 1/4 NE 1/4	7	15	64	.422
"	33.52			NW 1/4 NE 1/4	7	15	64	.355
"	5.18	22.70		SE 1/4 SE 1/4	6	15	64	.295
"	31.65			SW 1/4 SE 1/4	6	15	64	.335
"	15.50		7.46	NW 1/4 SE 1/4	6	15	64	.243
"		40.00		NE 1/4 SE 1/4	6	15	64	.424
"		40.00		SE 1/4 NE 1/4	6	15	64	.424
"	9.19		26.90	SW 1/4 NE 1/4	6	15	64	.382
"	20.60	2.01	17.20	NW 1/4 NE 1/4	6	15	64	.422
"		40.00		NE 1/4 NE 1/4	6	15	64	.424
"	32.53	7.47		SW 1/4 SW 1/4	5	15	64	.424
"	40.00			SE 1/4 SW 1/4	5	15	64	.424
"	40.00			NE 1/4 SW 1/4	5	15	64	.424
"	30.82	9.18		NW 1/4 SW 1/4	5	15	64	.424
"	38.60	1.40		SW 1/4 NW 1/4	5	15	64	.424
"	35.00			SE 1/4 NW 1/4	5	15	64	.371
"	30.60			NE 1/4 NW 1/4	5	15	64	.324
"	40.00			NW 1/4 NW 1/4	5	15	64	.424
"	26.40			SW 1/4 SE 1/4	31	16	64	.280
"	26.42			NW 1/4 SE 1/4	31	16	64	.280
"	40.00			SE 1/4 SW 1/4	31	16	64	.424
"	40.00			SW 1/4 SW 1/4	31	16	64	.424
"	27.35	12.65		NW 1/4 SW 1/4	31	16	64	.424

Proof No. 02266. Continued

Culture (Ac.)				Description				Duty of Water
Prior-ity	Harvest Crop	Meadow Pasture	Diversified Pasture	Subdv.	Sec.	Twp.	Range	C. F. S.
1890	40.00			NE $\frac{1}{4}$ SW $\frac{1}{4}$	31	16	64	.424
"	8.05	3.45		SW $\frac{1}{4}$ NE $\frac{1}{4}$	31	16	64	.122
"	12.40	27.60		SE $\frac{1}{4}$ NW $\frac{1}{4}$	31	16	64	.424
"	0.30	39.70		SW $\frac{1}{4}$ NW $\frac{1}{4}$	31	16	64	.424
"		24.80		NE $\frac{1}{4}$ NW $\frac{1}{4}$	31	16	64	.262
"		40.00		NW $\frac{1}{4}$ NW $\frac{1}{4}$	31	16	64	.424
"	2.88	8.40		SE $\frac{1}{4}$ SE $\frac{1}{4}$	36	16	63	.120
"	3.72	7.75		NE $\frac{1}{4}$ SE $\frac{1}{4}$	36	16	63	.121
"		40.00		SE $\frac{1}{4}$ NE $\frac{1}{4}$	36	16	63	.424
"		40.00		NE $\frac{1}{4}$ NE $\frac{1}{4}$	36	16	63	.424
"		40.00		SW $\frac{1}{4}$ SW $\frac{1}{4}$	30	16	64	.424
"		10.35		SE $\frac{1}{4}$ SW $\frac{1}{4}$	30	16	64	.110
"		5.74		NE $\frac{1}{4}$ SW $\frac{1}{4}$	30	16	64	.061
"		33.30	5.70	NW $\frac{1}{4}$ SW $\frac{1}{4}$	30	16	64	.413
"			21.20	SW $\frac{1}{4}$ NW $\frac{1}{4}$	30	16	64	.225
"		40.00		SE $\frac{1}{4}$ SE $\frac{1}{4}$	25	16	63	.424
"		11.70		SW $\frac{1}{4}$ SE $\frac{1}{4}$	25	16	63	.124
"		0.75		NW $\frac{1}{4}$ SE $\frac{1}{4}$	25	16	63	.008
"		29.20	4.30	NE $\frac{1}{4}$ SE $\frac{1}{4}$	25	16	63	.355
"			27.90	SE $\frac{1}{4}$ NE $\frac{1}{4}$	25	16	63	.296
"		13.25	18.90	NE $\frac{1}{4}$ NE $\frac{1}{4}$	25	16	63	.341
"		12.60		NW $\frac{1}{4}$ NE $\frac{1}{4}$	25	16	63	.133
"		32.00		SW $\frac{1}{4}$ SE $\frac{1}{4}$	24	16	63	.339
"		17.00	0.80	NW $\frac{1}{4}$ SE $\frac{1}{4}$	24	16	63	.189
"		0.86		SE $\frac{1}{4}$ SW $\frac{1}{4}$	24	16	63	.009
"		13.80		NE $\frac{1}{4}$ SW $\frac{1}{4}$	24	16	63	.146
"			4.60	SW $\frac{1}{4}$ NE $\frac{1}{4}$	24	16	63	.049
"			22.40	SE $\frac{1}{4}$ NW $\frac{1}{4}$	24	16	63	.237
"			6.80	NE $\frac{1}{4}$ NW $\frac{1}{4}$	24	16	63	.072
TOTALS 1099.83 694.06 164.16								20.750

IT IS FURTHER ORDERED, ADJUDGED AND DECREED as to irrigation season, measurement of water, headgates and control works, duty of water, springs and junior rights as follows:

IRRIGATION SEASON

That the irrigation season for the lands herein listed is herewith fixed as the period from March first to September thirtieth of each year, both dates inclusive, or a total period of 214 days; provided that in the event the irrigation season is

not in accordance with good husbandry and actual beneficial use of water the State Engineer shall determine by examination the beginning of the irrigation season and shall set the date giving notice to all parties concerned. The setting of the date shall be for the sole purpose of administration and distribution of the waters of the stream system in accordance with this decree.

#### MEASUREMENT OF WATER ALLOTTED

That all water diverted from Steptoe Creek and its tributaries in accordance with this decree shall be measured at a point where the main ditch enters or becomes adjacent to the land to be irrigated, or as near thereto as practicable, the location if not selected by the State Engineer to be approved by him.

#### HEADGATES, CONTROL WORKS, ETC.

That it is for the best interests of all water users concerned, and the Court, therefore, ORDERS, ADJUDGES AND DECREES that each water user shall install and maintain substantial headgates, control works and weirs in his ditch, or ditches of such construction as may be approved by the State Engineer, and shall keep his ditches, as well as the main channel through his land, reasonably clean of weeds, vegetation, and deposits of silt and in all other respects maintain said ditches and channels in a manner conducive to minimum losses of conveyed water by seepage, evaporation or other causes.

#### DUTY OF WATER

That the duty of water for the lands herein listed is hereby fixed at 4.5 acre feet for each acre irrigated for the maximum length of the irrigation season of 214 days; that the rate of use of water shall be based upon a continuous flow of 0.0106 of a cubic foot per second for each acre irrigated that will yield the

acre foot allotment per acre during the irrigation season; provided that if at any time during the irrigation season there are excess waters in the stream system which would more than satisfy the continuous flow to which each water user is entitled, or which would more than satisfy any deficiency in the allotment to which each user is entitled since the beginning of the irrigation season, then such surplus water shall be proportioned ratably among all appropriators; but the amount used shall not exceed the seasonal allowance in acre feet specified and allowed by this order. Thus the parties hereto, or their successors in interest, shall not be required to take or use the amount of water allotted to them in continuous flow but may cumulate same, or any part thereof, in rotation or periodic turn with the approval of the water commissioner, subject to the control and supervision of the State Engineer.

That for the watering of livestock this order allows .00000625 of a cubic foot per second in continuous flow for each head of sheep or where cattle and/or horses are watered in lieu of sheep the allowance shall be at the rate of .00003125 of a cubic foot in continuous flow per head.

#### SPRINGS

That springs rising within the confines of the claimants holdings shall be considered as tributaries of the stream system, and the aggregate diversions from all sources of supply shall not exceed the seasonal acre foot allotment.

#### JUNIOR RIGHTS

That no person or persons holding a right of appropriation not herein listed, shall be entitled to receive any water from the Steptoe Creek stream system until all appropriations herein have been fully satisfied.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that no person holding a water right of a later priority than those herein listed, and not included herein, shall be entitled to receive any water from Steptoe Creek stream system or its tributaries until all appropriations herein set forth shall have been fully satisfied.

That the order of the rights of the respective appropriators of the waters of said stream system and its tributaries, and in which order they are entitled to divert and use said waters, shall be and is according to the date of the relative priority of right as herein set forth and determined, excepting as to the stockwatering right of claimant R. T. Swallow, Incorporated, which right shall be considered first in priority; and the first in order of time according to the date of relative priority shall be and is the first in order of right and so on down to the date of the latest priority or relative right; and those having prior rights are entitled, respectively, to divert and use the waters of said stream system and its tributaries when necessary for beneficial use, for stockwatering purposes or in connection with the irrigation of its lands at all times and against all those having subsequent rights, without let or hindrance; and, whenever the water is not required by the appropriator or user having a prior right to its use for the purposes for which said water was appropriated, it must and shall permit it to flow down in the natural channel of the stream as it was wont to flow in its natural course, or in the ditch or channel provided therefor, without hindrance or diversion thereof; and those having subsequent rights are entitled to the use of such water and to divert the same to the extent of their rights of appropriations, accord-

ing to the order of their priority rights; and, at all times, the waters diverted shall be beneficially, economically, and reasonably used without waste by those having the right to the use thereof by reason of the priority of their rights.

That the rights of appropriation of said claimant, Consolidated Coppermines Corporation, hereby confirmed are appurtenant to its lands herein described for irrigation purposes, and the right of use of the waters of said stream system and its tributaries by virtue of such rights of appropriation are limited to and confined to the irrigation of the lands described herein to the extent of said lands as herein set forth; and the priorities herein confirmed confer no right of use of the waters of said stream system and its tributaries on lands other than those specified tracts to which such rights of appropriation are herein set forth as appurtenant; and the right of a water user to change the place of use of a vested water right in the manner now or hereafter provided or permitted by law shall not be prohibited or affected by this decree.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, except as indicated in this Decree, all objections filed to the Final Order of Determination are hereby denied and overruled.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that each and every water user and claimant to the use of the waters of Steptoe Creek stream system and its tributaries, and each of their agents, attorneys, servants, and employees, and their and each of their successors in interest, and all and every person or persons acting in aid or assistance of said parties, or either or any of them, be, and each of them hereby is, perpetually enjoined and restrained as follows, to-wit:

(a) From at any time diverting or using or preventing or obstructing the flow, in whole or in part, in or along its

natural channel, of any of the water of said stream system, except to the extent and in the amount and in the manner and at the time or times fixed by this Decree and allocated, allowed, prescribed and determined to such parties respectively, and as may be allowed in the permits which have been or may hereafter be granted by the State Engineer of the State of Nevada;

(b) From diverting from the natural channel and from using any of the said water for irrigation or any other purpose in excess of the amount specifically allotted to or for said party herein and fixed by this Decree, or in excess of the specified allotment under such permit or permits so heretofore granted or which may hereafter be granted by said State Engineer;

(c) From diverting from the natural channel and from using any of the said waters in any other manner or for any other purpose or purposes or upon any other land or lands or in any other amount than as provided and prescribed by the terms of this Decree, or by any such permit so granted by said State Engineer;

(d) From diverting from the natural channel and from using any of the said water at any other time or times than as specified and provided by the terms of this Decree or by any such permit so granted by the said State Engineer;

(e) From in any manner meddling with, opening, closing, changing, injuring or interfering with any headgates, weirs, water-boxes, flumes or measuring devices or either or any of them, placed, installed, established or approved by said State Engineer or by his authority or direction, unless such act be done with the permission or authority of the water commissioner or commissioners on said stream system during the period of his regulation or control of said water, or, if not done during such period of his control, then by virtue of the allowances, authority, terms and provisions of this Decree or by a permit so granted by

said State Engineer.

DONE at Ely, White Pine County, Nevada this 6<sup>th</sup>  
day of November, 1935.

Edgar Walker  
District Judge  
*Quidary*

State of Nevada }  
County of White Pine } ss.

I, F. D. OLDFIELD, County Clerk

and ex-officio Clerk of the Seventh Judicial District of the State of Nevada, County of White Pine,

do hereby certify that the above and foregoing is a full, correct and true copy of the original

"FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECREE" IN THE MATTER OF THE  
DETERMINATION OF THE RELATIVE RIGHTS IN AND TO THE WATERS OF STEPTOE CREEK  
AND TRIBUTARIES IN THE COUNTY OF WHITE PINE, STATE OF NEVADA. - - - - -

which now remains of record in my office at Ely, County and State aforesaid.

IN TESTIMONY WHEREOF, I have hereunto set my hand  
and affixed the Seal of said Court, at my office in the  
town of Ely, this 25th day of June

A. D. 1936....

F. D. Oldfield County Clerk  
And ex-officio Clerk of said Court.

By..... Deputy Clerk.