

CASE NO.

08-CV-0363

NO. 66932

DEPT NO.

I

IN THE MATTER OF THE DETERMINATION OF THE  
RELATIVE RIGHTS IN AND TO THE WATERS OF MOTT  
CREEK, TAYLOR CREEK, CARY CREEK (ADA CAREY  
CREEK), MONUMENT CREEK, AND BULLS CANYON,  
STUTLER CREEK (AKA STATTLER CREEK:, SHERIDAN  
CREEK, GANSBERG SPRING, SHARPE SPRING,  
WHEELER CREEK NO. 1, WHEELER CREEK NO. 2,  
MILLER CREEK, BEERS SPRING, LUTHER CREEK AND  
VARIOUS UNNAMED SOURCES IN CARSON VALLEY,  
DOUGLAS VALLEY, NEVADA,

**FILED**

NOV 26 2014

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
CHIEF DEPUTY CLERK

DATE:

4/1/09

**COUNSEL PRESENT:**

Ross de Lipkau

John Zimmerman-rep.

the Kimmerling's

and the Equestrian Center

Brian Stockton-Deputy

Attorney General rep.

State Engineer's

Tom Hall-rep. Forrester/Hall Ranches

George Keele-rep. Jackson/Windholz

Paul Taggert-rep. Maddi's Friesian Ranch

David Davis-in proper person

Scott Brooke-rep.

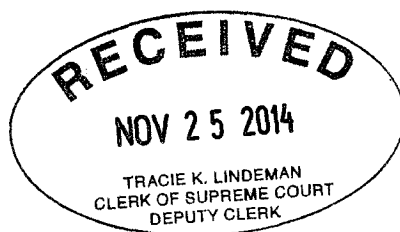
Groenendyke

Jennifer Yturbide-rep. Yturbide Trust

Kelly Chase- rep.

Eric/Elizabeth Parks

Michael Matuska-rep. Brooks Family Trust



OTHERS PRESENT:

Steve Walmsley-Adjudication Engineer  
Reed Cozens-with Mr. Walmsley  
James Vasey-consultant  
Russell Scossa-homeowner  
Sharon Davis  
Susan Joseph

JUDGE: DAVID R. GAMBLE

CLERK: Pamela Gregory

COURT REPORTER: Carrie Hewerdine

LAW CLERK: Michael Millward

BAILIFFS: Rick Sousa

The above-entitled matter was before the Court this being the time set for  
HEARING OF EXCEPTIONS.

The Court made a proposal that this case be divided into sub-cases and each sub-case be assigned a letter as follows:

A-Kimmerling (filed Notice of Request and Notice Regarding Partial Ownership of Claim 06320 on 2/11/09, by Ross E. De Lipkau and John Zimmerman;

B-Douglas (nothing was filed but the Exception was requested orally by Mr. De Lipkau in open Court)

C-Brooks (filed Notice of Exceptions and Exceptions to Final Order of Determination on 3/23/09, by Michael Matuska);

D-Bentley/Forester (filed Reply to Exceptions by Bentley to Final Order of Determination on 3/27/09, by Thomas Hall;

E-Gronendyke/Jackson- (Gronendyke filed Claimant's Notice of Exceptions to the Final Order of Determination Regarding proof of Appropriation No. V-08850 on 3/25/09, by T. Scott Brooke and Jackson filed Notice of Exceptions to the Final Order of Determination on 3/26/09, by George Keele;

F-Davis-(filed Notice of Exception to the Order of Determination on 3/26/09, in proper person.

There was no opposition to the Court's proposal. All further pleadings will reflect each parties assigned letter.

The Court ordered the following pleadings stricken from the record:

- 1) Response to Reply to Exceptions by Bentley to Final Order of Determination (filed 3/31/09);
- 2) Reply to Exceptions by Bentley to Final Order of Determination (filed 3/27/09);
- 3) Notice of Appearance and Intent to Participate (filed 3/27/09);
- 4) Amended Notice of Exceptions and Exceptions to Final Order of Determination (filed 3/25/09).

The Court advised the parties that the next document they are to file will be their Request to Intervene and they are to file that document within ten (10) days from today's date.

Oppositions are to be filed within five (5) days from that date.

The Court will then make a ruling and once allowed, there will be ten (10) days to file oppositions to the exceptions and then the case will be completely at issue.

With regards to the Brooks property, the Court was advised that the State Engineers have conceded to the addition of 4.63 acres upon the filing of a 24" by 32" map prepared by a licensed water rights surveyor and that the matter will be resolved with regards to this adjudication.

The Court advised the parties it will be sending out a Setting Order for the Pre-Trial Conference and further advised that the clients, as well as the consultants, are invited to attend.

The State Engineer stated that A, B and C will be resolved per stipulation

Mr. Stockton will prepare the Stipulation and proposed Findings of Fact as to A-Kimmerling & B- Douglas.

CASE NO. 08-CV-363 D

DEPT NO. I

IN THE MATTER OF THE DETERMINATION  
OF THE RELATIVE RIGHTS IN AND TO THE  
WATERS OF MOTT CREEK,

DATE: 07/16/10

JUDGE: DAVID R. GAMBLE

CLERK: Mary Biaggini

COURT REPORTER: Kathy Jackson

LAW CLERK: John Seddon

BAILIFFS: Stacey Chambers

OTHERS PRESENT: Jennifer Yturbide for The Yturbide Trust  
Paul Taggart for Maddis Ranch  
Elizabeth Park for Elizabeth and Eric Park  
Brian Stockton for the State Engineer  
Steve Walmsley witness for State Engineer  
David Davis in Proper Person  
Steve Hadaway for Gerald Novonty/Daily Creek Ranch  
Ruth Page and Gregory Walsh for Maddis Ranch

The above-entitled matter was before the Court this being the time set for IRRIGATION ROTATION SCHEDULE. The following parties were present in Court:

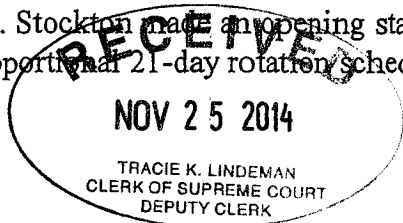
The Court stated that the purpose of today's hearing was to review a rotation schedule for this irrigation season and further noted that Mr. Stockton filed a request for a Temporary Restraining Order.

Ms. Yturbide presented an opening statements.

No statement made by Ms. Park.

Mr. Taggart presented an opening statements.

Mr. Stockton made an opening statement and presented a PowerPoint illustration regarding a proportional 21-day rotation schedule.



Mr. Davis presented an opening statement.

Ms. Page addressed the Court with a proposed rotation and explained as requested by Court. Mr. Walsh provided a map of the area and explained the water hours to the Court.

The Court marked the map as exhibit 1 "2005/2006 aerial photo." The Court admitted exhibit 1 for purposes of irrigation.

The Court stated that the issues will be for implementation and a duty study.

The Court opens the floor if anyone wishes to be heard.

Mr. Davis presented closing arguments.

Mr. Taggart presented closing arguments and presented all parties with an irrigation illustration.

Ms. Yturbide presented closing arguments and requested that the Court impose the 2011 irrigation schedule.

The Court ordered the following:

- \* Mr. Stockton's recommendation will be followed regarding the 21-day watering rotation schedule will be implemented for this season;
- \* Each property has the right to use the supplemental underground water;
- \* The Court will not order a study.

Mr. Stockton to prepare the Order and attach the rotation schedule.

CASE NO. 08-CV-0363(D)

DEPT NO. I

IN THE MATTER OF THE DETERMINATION OF THE  
RELATIVE RIGHTS IN AND TO THE WATERS OF MOTT  
CREEK, TAYLOR CREEK, CARY CREEK (ADA CAREY  
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MILLER CREEK, BEERS SPRING, LUTHER CREEK AND  
VARIOUS UNNAMED SOURCES IN CARSON VALLEY,  
DOUGLAS VALLEY, NEVADA,

DATE: 8/1/11

COUNSEL:

JUDGE: DAVID R. GAMBLE

Michael Matuska-rep. Brooks  
Family Trust

Tom Hall-rep. Forrester/Hall  
Ranches

Brian Stockton-Deputy  
Attorney General rep. State  
Engineer's

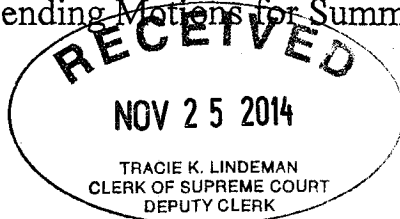
CLERK: Pamela Gregory

COURT REPORTER: Joan Dotson

LAW CLERK: John Seddon

BAILIFFS: Rick Sousa

The above-entitled matter was before the Court this being the time set to hear the  
pending Motions for Summary Judgment.



Mr. Hall and Mr. Matuska made their arguments.

The Court denied both motions, determining that genuine issues of material fact remain unresolved.

Mr. Matuska will prepare the Order.

The Court ordered the parties to meet and confer with representatives from the State Engineer's Office, together with their counsel if they choose, to determine reasonable steps for the maximal preservation and use of the Gansberg Stream and/or other water systems pertaining to the parties, including any improvements to prevent seepage associated with Bentley's use and appropriate division works necessary to implement the final Order of Decree.

The State Engineer's Office is to report back to the Court.

Mr. Stockton will prepare the Order.



CASE NO. 08-CV-0363(D)

DEPT NO. I

IN THE MATTER OF THE DETERMINATION OF THE  
RELATIVE RIGHTS IN AND TO THE WATERS OF MOTT  
CREEK, TAYLOR CREEK, CARY CREEK (ADA CAREY  
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MILLER CREEK, BEERS SPRING, LUTHER CREEK AND  
VARIOUS UNNAMED SOURCES IN CARSON VALLEY,  
DOUGLAS VALLEY, NEVADA,

DATE: 1/9/12-1/13/12

JUDGE: DAVID R. GAMBLE COUNSEL:  
Tom Hall-rep. Forrester/Hall  
Ranches, et al.

Brian Stockton-Deputy  
Attorney General rep. State  
Engineer

Michael Matuska-rep. Bentley  
Family Trust

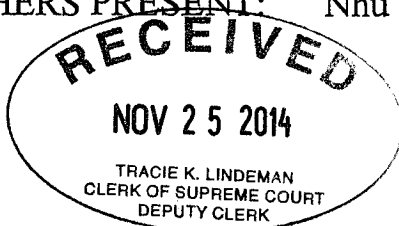
CLERK: Pamela Gregory (Bobbie Williams 1/11/12-2 hrs.)

COURT REPORTER: Michelle Loomis

LAW CLERK: John Seddon

BAILIFFS: Rick Sousa

OTHERS PRESENT: Nhu Nguyen-Attorney General's Office



The above-entitled matter was before the Court this being the time set for TRIAL.

Mr. Matuska was heard on his Motion in Limine.

The Court denied the Motion in Limine.

Plaintiff's Exhibits #1-43 were marked for identification.

Plaintiff's Exhibit's admitted-#1-#43, to include #36a and #37a, were admitted with the exception of Exhibits #22 and #23 which were not admitted.

Defendant's Exhibits #49-100 were marked for identification.

Defendant's Exhibits #49-#100 were admitted with the exception of Exhibits #72 and #73 which were not admitted.

Exception #1-Counsel stipulated the final Decree will not contain a permanent Court imposed rotation schedule but the State Engineer will retain the statutory authority to impose a rotation schedule during any water year with those affected having the right to object and this matter being brought back to Court.

Counsel also stipulated as follows:

Exception #2- dismissed;

Exception #3-the alleged typo will be fixed for the final Decree;

Exception #4-the stated acreage needs to be adjusted in the final Decree;

Exception #5-there needs to be a splitter device installed.

The Court accepted and adopted the stipulations.

Mr. Stockton stated there are two issues to be determined. The validity of the diversion agreement and how to divide the water to make it fair to all the parties.

The Court recessed to allow the parties to attempt settlement discussions.

The Court reconvened and was advised no settlement had been reached.

Mr. Stockton waived his opening argument.

Mr. Matuska gave his opening argument.

Tom Hall gave his opening argument.

**PLAINTIFF'S WITNESSES**

Donald Forrester

Frank Scharo

Glen Roberson

Thomas J. Scyphers

Michael Stanka

**DEFENDANT'S WITNESSES**

Joy Smith

Maryanne Bentley

Jim Bentley

Dan Barton

**STATE'S WITNESSES**

Stephen Joseph Walmsley

**Day two-1/11/12**

Mr. Scharo resumed the stand.

**Day three-1/12/12**

The Court took judicial notice that Joseph Lodato died on June 17, 2000.

**Day four-1/13/12**

Mr. Bentley resumed the stand.

Mr. Hall gave his closing argument.

Mr. Matuska gave his closing argument.

Mr. Stockton gave his closing argument.

Mr. Hall gave his final argument.

The Court finds that from its conception, the diversion agreement was ineffective and invalid.

The Court confirmed the final Order of Determination, to include the stipulations of the parties regarding Exceptions #1-5.

The Court authorizes the intervenors, as the prevailing party, to file a Memorandum of Fees and Costs, to include evidence of work performed.

With regards to Mr. Stockton's request for a decision regarding an implementation of a rotation schedule, the Court finds the State Engineer has full authority to implement a rotation schedule for fair distribution of the water of the State of Nevada when they deem it to be appropriate.

The Court further finds specifically that when the stream flow in the north division of Sheridan Creek, when co-mingled with the waters of the Gansberg Spring and Stattler Creek, fall below 2 CFS, it will be the order that a rotation schedule be implemented.