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3 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

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4 JERALD R. JACKSON,  
5 Trustee of the Jerald R.  
6 Jackson 1975 Trust, as  
7 amended; and IRENE M.  
8 WINDHOLZ, Trustee of the  
Irene M. Windholz Trust  
Dated August 11, 1992,

**Supreme Court No. 67289**

Ninth Judicial District Court  
Case No. 08-CV-0363-E

9 Appellants,  
10 vs.

11 THE STATE OF NEVADA  
12 STATE ENGINEER;  
13 EDWARD H.  
14 GROENENDYKE, Trustee  
of the Groenendyke  
Family Trust,

15 Respondents.  
16

17 **RESPONDENT EDWARD H.**  
18 **GROENENDYKE'S ANSWERING BRIEF**

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1                   **RESPONDENT EDWARD H. GROENENDYKE'S**  
2                   **ANSWERING BRIEF**

3           COMES       NOW       Respondent       EDWARD       H.  
4 GROENENDYKE, Trustee of the Groenendyke Family Trust  
5 ("Groenendyke"), by and through his attorneys Kaempfer  
6 Crowell, and hereby submits his Answering Brief to the  
7 *Appellants' Opening Brief* ("*Opening Brief*") filed by Appellants  
8 JERALD R. JACKSON, Trustee of the Jerald R. Jackson 1975  
9 Trust, as amended ("Jackson") and IRENE M. WINDHOLZ,  
10 Trustee of the Irene M. Windholz Trust Dated August 11,  
11 1992 ("Windholz") (collectively referred to as "Appellants") on  
12 May 12, 2015, with this Court. Groenendyke hereby requests  
13 that this Court affirm the district court's order requiring that  
14 the Appellants allow Groenendyke reasonable access to water  
15 facilities affecting the Groenendyke property, but located on  
16 the Jackson property, for purposes of repair, maintenance  
17 and use of his easement.  
18  
19

20  
21   **I. INTRODUCTION**

22       The       district       court       properly       determined       that  
23 Groenendyke has the right to access the Jackson property in  
24

1 order to repair, maintain and use his pipeline easement for  
2 the provision of his water rights to his property. Issues  
3 related to whether an owner of a water right may access the  
4 lands of another person for purposes of repair and  
5 maintenance of their ditch or pipe easement rights are  
6 properly issues to be heard and determined in adjudication  
7 under Nevada's water law. These are not matters which must  
8 be determined separately under principles of real property  
9 law.  
10

11  
12 The Jackson and Groenendyke properties were  
13 originally part of the Berrum-Heritage Ranch property until it  
14 was subsequently subdivided and sold to Jackson and  
15 Groenendyke or their predecessors-in-interest. The Berrum-  
16 Heritage Ranch had water rights associated with it, which  
17 water rights were diverted from their source (Spring (A))  
18 through a 6" pipeline. As divided, the pipeline runs through  
19 the Jackson property. With the purchase of the real property,  
20 the parties or their predecessor-in-interest purchased certain  
21 water rights, which came with easements to use the 6"  
22 pipeline. Thus, by way of his purchase of the water rights,  
23  
24

1 Groenendyke has a permanent easement to use the 6"  
2 pipeline running across the Jackson property for the  
3 diversion of his water rights. Groenendyke also recently  
4 expended funds to replace the pipeline and repair or replace  
5 the valve that diverts the water to his property, making even  
6 a mere revocable license to use the 6" pipeline over the  
7 Jackson property an irrevocable permanent easement and  
8 enforceable in equity.  
9

10       It is a well established rule in water law that with his  
11 easement, Groenendyke has the secondary easement right to  
12 access the Jackson property in order to service, repair,  
13 maintain and use his pipeline easement. The district court, in  
14 recognizing the undisputed fact that Groenendyke has an  
15 easement for the use of the 6" pipeline, granted to  
16 Groenendyke the right to enter property belonging to  
17 Jackson. This order granting such access is wholly supported  
18 by facts in the record and relevant legal principles.  
19 Accordingly, Groenendyke respectfully requests that this  
20 Court affirm the district court's order requiring that  
21 Appellants allow Groenendyke reasonable access to water  
22  
23  
24

1 facilities affecting the Groenendyke property but located on  
2 the Jackson property for purposes of repair, maintenance  
3 and use of his easement.

## 4 **II. STATEMENT OF THE ISSUE<sup>1</sup>**

5  
6 1. Whether the district court properly granted to  
7 Respondent Groenendyke the right to ingress and egress over  
8 the Jackson property for the purpose of repair and  
9 maintenance of his water right pipe easement.

## 10 **III. STATEMENT OF THE CASE**

11  
12 This is an appeal of an order resolving the exceptions to  
13 the State Engineer's Order of Determination entered on  
14 December 26, 2013, and the Findings of Fact, Conclusions of  
15 Law, and Judgment and Decree. In its order resolving the  
16 exceptions to the State Engineer's Order of Determination,  
17 the district court properly determined that Groenendyke has  
18

---

19 <sup>1</sup> Groenendyke is only addressing the third issue  
20 presented in the Opening Brief. The first and second issues  
21 presented by the Opening Brief are related to the claimed  
22 water rights of the current owners of the Green Acres lands.  
23 As such, Groenendyke is taking no position on those issues  
24 as he has not appealed any portion of the district court's  
order and Jackson does not appear to challenge the district  
court's conclusions regarding Groenendyke's rights to the  
underlying water resource.



1 a right to reasonable access to water facilities affecting the  
2 Groenendyke property but located on the Jackson property.  
3 (4AA 777.<sup>2</sup>)  
4

5 The district court held a pretrial conference in this  
6 matter on October 10, 2012, and scheduled a hearing to hear  
7 the exceptions. (2AA 309-310.) A field investigation was held  
8 on November 7, 2012, and an evidentiary hearing was held  
9 on November 30, 2012, concerning the issues involved in this  
10 appeal. (2AA 359-378; 3AA 379-518.)  
11

12 On December 26, 2013, the district court entered an  
13 order resolving the exceptions to the State Engineer's Order  
14 of Determination. (4AA 772.) The district court ordered that  
15 "the Jackson Trustees are to allow the Groenendyke Trustees  
16 reasonable access to water facilities affecting the  
17 Groenendyke property but located on the Jackson property."  
18 (4AA 777.) Findings of Fact, Conclusions of Law, and  
19

---

20 <sup>2</sup> In order to avoid confusion by and among the briefs to  
21 be filed in this matter, Respondent Groenendyke shall refer to  
22 the Appellants' Appendix as AA. The various volumes shall be  
23 identified by the number followed by "AA," such as 1AA or  
24 2 AA, etc. Said volume identification will be followed by the  
applicable page numbers within the respective volumes, and  
line numbers, if applicable.

1 Judgment and Decree were entered on September 29, 2014,  
2 and this appeal followed.

3 **IV. STATEMENT OF FACTS**

4 The lands involved in this appeal are portions of the  
5 Berrum-Heritage Ranch and lands referred to as Green Acres.  
6 Both the Jackson and Groenendyke properties contain  
7 portions of what was the Berrum-Heritage Ranch. The  
8 Jackson property is the portion of the Berrum-Heritage  
9 Ranch located west of Foothill Road.<sup>3</sup> (1AA 13; 218.) The  
10 Groenendyke property is the portion of the Berrum-Heritage  
11 Ranch east of Foothill Road. *Id.* at 218.

14 The Berrum-Heritage Ranch is shown on Figure 4,  
15 "Heritage Place of Use." See Add. 4 to Opening Brief. On  
16 Figure 4, the Berrum-Heritage Ranch/Green Acres parcels  
17 have a number on them which corresponds with the "Proof of  
18 Appropriation" filed for that particular parcel pursuant to  
19 NRS 533.125. The Groenendyke property is parcel number  
20 08850. (1AA 218; Add. 4 to Opening Brief.)

---

23 <sup>3</sup> Foothill Road (Add. 1 to Opening Brief). It shows only as  
24 "Road" on Add. 4 to Opening Brief.

1       The water rights at issue in this appeal are related to  
2 unnamed Spring (A) ("Spring (A)"). Spring (A) is improved at  
3 its source in California with a spring box and two buried  
4 pipelines: one is 6" and the other is 2". Both pipelines take  
5 the entire surface flow of Spring (A) south and east onto the  
6 portion of the former Berrum-Heritage Ranch located on the  
7 east side of Foothill Road. (2AA 351-353; 3AA 438-443.) Once  
8 on the Berrum-Heritage Ranch, the "2" Pipeline Diversion"  
9 takes the water to the Berrum home for domestic use, and  
10 also to the Berrum-Heritage Ranch barn area on the east side  
11 of Foothill Road for livestock water. (3AA 422-423; 442.)

14       Historically, the "6" Pipeline Diversion" split in two  
15 directions at a valve which may have been on the Hill  
16 property or a portion of the former Berrum-Heritage Ranch.  
17 The valve could direct the water to flow east into Unnamed  
18 Creek where the water was used to irrigate a portion of the  
19 former Berrum-Heritage Ranch owned by Groenendyke, and  
20 which is also east of Foothill Road. (1AA 24, 88-89; 3AA 443.)  
21 The valve could also direct the water to the south where it is  
22 commingled with water from Spring (B) and is used to irrigate  
23  
24

1 a portion of the former Berrum-Heritage Ranch on the west  
2 side of Foothill Road. (1AA 77.) Sometime during the  
3 pendency of this matter before the State Engineer, the valve  
4 and wooden pipe were replaced to allow water from Spring (A)  
5 to again directly reach the Groenendyke property east of  
6 Foothill Road. (3AA 442-443, 463-464.)

8       When the valve which allows water to flow to the portion  
9 of the Berrum-Heritage Ranch east of Foothill Road is kept as  
10 is, the water can be directed further south where it is  
11 comingled with water from Spring (D). (3AA 423, 428, 436.) It  
12 can also be directed under Foothill Road into the Black Bear  
13 Trail Ditch where it is used to irrigate portions of the former  
14 Berrum-Heritage Ranch owned by Groenendyke. (3AA 441.) A  
15 schematic which illustrates the above is Figure 2 attached to  
16 the Opening Brief and titled "Heritage Ranch Spring Area  
17 Schematic."  
18

19  
20       Matt Benson managed the Berrum-Heritage Ranch from  
21 1964 until 1990, and his son managed it thereafter. In a  
22 statement given in 1992, he confirms that water from the 2"  
23 and 6" Pipeline Diversions from Spring (A) was used  
24

1 exclusively for irrigation, domestic and stock water purposes  
2 on the Berrum-Heritage Ranch. (4AA 724-725.) Ed Brown,  
3 the irrigator on the Berrum-Heritage Ranch for 16 years,  
4 confirmed those facts. *Id.* at 728.

5  
6 The exact date when Spring (A) was first diverted into  
7 the 6" and 2" Pipeline Diversions is not known. It is known,  
8 however, that such diversions existed sometime prior to  
9 1938, and possibly before 1904. (3AA 408,412 (expert for  
10 state testifying that "whoever put that pipeline in put it in to  
11 bring water to the Heritage Ranch to the south...and the  
12 information we have is that it was put in prior to 1904. And --  
13 and that's how the people who owned these properties in the  
14 '60s recognized it to be and how the State Engineer did it  
15 when dealing with these applications.")). (3AA 422, 433-434.)  
16  
17 The Berrum-Heritage Ranch appears on the 1904 plain table  
18 map. (3AA 453.) A buried pipeline would not appear on the  
19 plain table map. *Id.* Dorothy Berrum, born in 1900 and  
20 interviewed in 1992, stated that the house was built prior to  
21 1890, and always received its domestic water from Spring (A).  
22 (4AA 726-727.) In addition, when the new portion of the 6"  
23  
24

1 Pipeline Diversion taking water to the Groenendyke Property  
2 was installed, it replaced a wooden pipeline. (3AA 463-464.)

3 **V. SUMMARY OF ARGUMENT**

4 Issues related to whether an owner of a water right may  
5 access the lands of another person for purposes of repair and  
6 maintenance of their ditch or pipe easement right are  
7 properly issues to be heard and determined in adjudication  
8 under Nevada's water law. These are not matters which must  
9 be determined separately under principles of real property  
10 law. Moreover, the District Court's order concerning access to  
11 the Jackson lands is supported by facts and relevant legal  
12 principles.  
13

14 **VI. ARGUMENT**

15 **1. Standard of Review**

16 Pursuant to the provisions of NRS 533.170 and NRS  
17 533.185, the district court must make its own findings and  
18 draw its own conclusions. *Vineyard Land & Stock. Co. v. Dist.*  
19 *Court*, 42 Nev. 1, 171 P. 166, 172-74 (1918); *Scossa v.*  
20 *Church*, 43 Nev. 407, 409, 187 P. 1004, 1005-06 (1920).  
21 Under the provisions of NRS 533.200, appeals from the  
22  
23  
24

1 decree of the district court are taken to the Supreme Court  
2 “in the same manner and with the same effect as in civil  
3 cases.” Therefore, the standard of review here is the same as  
4 review of a trial court’s decision after a bench trial.  
5

6 In a case such as this one, where the decision at issue  
7 rests on mixed findings of law and fact, this Court applies a  
8 two-fold standard of review. The district court’s conclusions  
9 that are based on purely legal issues are reviewed *de novo*.  
10 See *Las Vegas Taxpayer Accountability Committee v. City of*  
11 *Las Vegas*, 125 Nev. 17, 208 P.3d 429, 433 (2009). However,  
12 the Supreme Court is more deferential to findings of fact and  
13 states:  
14

15 This court has consistently provided that the  
16 district court’s findings of fact will not be  
17 disturbed on appeal if they are supported by  
substantial evidence.

18 *Id.*, 208 P.3d at 441 (internal quotation marks omitted); see  
19 also *Clark County v. Sun State Properties*, 119 Nev. 329, 334,  
20 72 P.3d 954, 957 (2003). Substantial evidence is “that  
21 evidence which a reasonable mind might accept to support a  
22 conclusion.” *Bacher v. State Engineer*, 122 Nev. 1110, 1121,  
23  
24

1 146 P.3d 793, 800 (2006). Moreover, “[f]indings of fact shall  
2 not be set aside unless clearly erroneous, and due regard  
3 shall be given to the opportunity of the trial court to judge the  
4 credibility of the witnesses.” NRCP Rule 52(a).

6 **2. The District Court had Jurisdiction to Grant**  
7 **Groenendyke Access to the Jackson Property**  
8 **for Purposes of Repair and Maintenance.**<sup>4</sup>

8 Appellants state in their Opening Brief that “[i]ssues  
9 related to whether an owner of a water right may access the  
10 lands of another person are not issues to be heard and  
11 determined in an adjudication under Nevada’s laws. Those  
12 are matters which must be determined separately under

---

14 <sup>4</sup> Appellants argue that the district court could not make  
15 any ruling on access to the Jackson lands without the Hills  
16 and federal government being brought into the lawsuit as  
17 well, since the pipe also runs over property belonging to them  
18 (i.e., that the Hills and federal government are necessary  
19 parties to the dispute between Groenendyke and Jackson).  
20 Opening Brief at 31:13-14. This is incorrect. Groenendyke  
21 sought access only to the facilities located on the Jackson  
22 property, not that of the Hills or federal government. (2AA  
23 312-14.) This was a dispute as to Groenendyke’s access to  
24 the Jackson property only. As such, it was not necessary for  
the Hills or federal government to be involved in the lawsuit.  
The district court could, and did, resolve the dispute as to  
Groenendyke’s access to the Jackson land for purposes of  
maintaining, repairing and using those portions of the pipe  
easement affecting the Groenendyke property but located on  
the Jackson property.



1 principles of real property law related to express or  
2 prescriptive easements or condemnation.” Opening Brief at  
3 18:24-19:2. However, NRS Chapter 536 does in fact provide  
4 district courts with jurisdiction to make decisions regarding  
5 whether an appropriator of water rights with an easement  
6 over the land of another may enter that land for the  
7 construction, use and maintenance of any works for the  
8 lawful diversion, conveyance and storage of waters. *See, e.g.,*  
9 NRS Chapter 536 (pursuant to NRS 536.060-080, water  
10 rights owners are entitled to construct and utilize conveyance  
11 facilities for established water rights). Moreover, both the  
12 State Engineer and the Court have the power to require and  
13 allow the repair and replacement of water facilities, in this  
14 case the 6” pipe, as well as the allocation of costs thereof to  
15 the parties benefitting. *See* NRS 536.060, NRS 533.190.

19 **3. THE DISTRICT COURT PROPERLY GRANTED**  
20 **GROENENDYKE ACCESS TO THE JACKSON PROPERTY**  
21 **FOR THE PURPOSE OF REPAIR, MAINTENANCE AND USE**  
22 **OF THE PIPELINE EASEMENT.**

23 Appellants mischaracterize the nature of the district  
24 court’s decision. Groenendyke agrees that the law is well

1 settled that the acquisition of a water right by appropriation  
2 does not create an easement to enter the land of another for  
3 purposes of diverting water from its source – such an  
4 easement must be created by an instrument in writing,  
5 prescription or condemnation. *See, e.g.,* Opening Brief at  
6 29:4-14 (internal citations omitted). Groenendyke disagrees,  
7 however, with Appellants' application of that doctrine to this  
8 case. The legal authority relied upon by Appellants deals with  
9 the circumstances under which an easement to divert water  
10 from its source, such as through the use of a ditch or  
11 pipeline, may be created. *In re General Determination of Rights*  
12 *of Payette River Basin*, 107 Ida. 221, 687 P.2d 1348, 1354-55  
13 (1984) (examining whether a water right holder had  
14 established a right-of-way to enter the lands of another for  
15 the purposes of diverting their water – the development of a  
16 ditch or pipe right-of-way or easement); *Prentice v. McKay*, 38  
17 Mont. 114, 98 P. 1080, 1083 (1909) (holding that a water  
18 right holder did not create an easement to access the land of  
19 another for purposes of their water right as “[t]he United  
20 States and the State of Montana have recognized the right of  
21  
22  
23  
24

1 an individual to acquire the use of water by appropriation,  
2 but neither has authorized...one person to go upon the  
3 private property of another for the purpose of making an  
4 appropriation, except by condemnation proceedings.”); 1 S.  
5 Weil, *Water Rights in the Western States* at Sections 221-226  
6 (3rd. Ed., 1911) (discussing the methods by which a ditch  
7 easement may be created and the differences in California  
8 and Colorado law regarding the same); 2 C. Kinney, *Irrigation*  
9 *and Water Rights*, Sections 770, 972-987 (1912) (discussing  
10 the methods by which a ditch easement may be created).  
11  
12

13 Here, by contrast, the issue is not whether such an  
14 easement to divert water exists, but whether the owner of an  
15 existing easement (the dominant estate – here Groenendyke)  
16 has the right to enter the land of the servient estate (here the  
17 Jacksons) in order to repair and maintain his easement. As  
18 stated by the above theory, and relied upon by Appellants, it  
19 is equally well established that a ditch or pipe easement  
20 carries with it a secondary easement granting the right to  
21 enter the lands of another in order to inspect, maintain,  
22 repair and otherwise use the easement. *See, e.g., O’Connor v.*  
23  
24

1 *Brodie*, 454 P.2d 920 (Mont. 1969); *see also* Kinney at  
2 Sections 990 and 992. On this, Kinney – one of the very  
3 sources cited by Appellants - states as follows:  
4

5       Where a permanent easement has once been  
6       acquired over the lands of another, and the ditch  
7       or canal has been constructed, the owner of the  
8       primary easement has the right, as a secondary  
9       easement to go upon the lands and remove  
10      obstructions from the ditch, and to make other  
11      repairs necessary, consistent with full enjoyment of  
12      the easement. Such a right or easement carries  
13      with it the right to full enjoyment of the easement  
14      itself. The express or implied grant of an easement  
15      is accompanied by certain secondary easements  
16      necessary for the enjoyment of the principal one.

17 Kinney at Section 992 (internal quotations and citations  
18 omitted); *see also id.* at Section 990 (“Where a permanent  
19 easement has once been acquired by the user of water over  
20 the lands of another, whether it was acquired by deed,  
21 executed contract, prescription, or by the exercise of the  
22 power of eminent domain, the owner thereof has the right to  
23 enter the premises and construct the ditch and canal or other  
24 works, for which the easement was acquired, and for the  
purpose of keeping them in repair. This right to enter the  
lands of the owner for purposes of construction and repair

1 are incidental to the easement itself, and are called by some  
2 of the authorities 'secondary easements'" (internal citations  
3 omitted).) Nevada law is consistent with this. *See, e.g.*, NRS  
4 536.060, NRS 533.190.

5  
6 It is undisputed that Groenendyke has a valid and  
7 existing easement to the use of the 6" pipeline for the  
8 provision of his water rights from Spring (A).

9 While it is true that a water right and a ditch right are  
10 separate property interests, often the two are sufficiently  
11 linked, and thus the two pass together in a subsequent sale  
12 of the water rights. This is precisely the case here. The  
13 Berrum-Heritage Ranch pulled its water rights from Spring  
14 (A) through the 6" Pipeline. When the property was split and  
15 later sold in parcels, the purchasers and the successors-in-  
16 interest received water rights to the lands. Along with the  
17 water rights came the easement for the use of the 6" pipeline  
18 for the delivery of the water rights attached to the land. *See,*  
19 *e.g., Jacob v. Lorenz*, 33 P. 119 (Cal. 1893) (a ditch may be  
20 regarded as an appurtenance of the water rights and pass  
21 with a deed to a new owner of the property and water rights).  
22  
23  
24

1 Thus, it cannot be disputed that Groenendyke has a valid  
2 easement for the use of the 6" pipeline on the Jackson  
3 property.

4  
5 It is undisputed that Groenendyke owns water rights to  
6 be delivered through the 6" pipeline. See 3AA 320-21, 324-  
7 25. It is also undisputed that Groenendyke or his  
8 predecessor-in-interest has been using the 6" pipeline to  
9 divert water from Spring (A) onto their land for decades, if not  
10 more than a century. Appellants themselves recognize "that  
11 the evidence did show that Spring (A) has been diverted from  
12 its source...and onto the Berrum-Ranch, where it was used  
13 for water in the Berrum home and for irrigation, well before  
14 1914." Opening Brief at 18:9-12. Appellants further  
15 recognized that the owners of the Berrum-Heritage Ranch  
16 lands claimed a direct diversion right to Spring (A), as  
17 evidenced by actions in the 1960s. *Id.* at 18:14-17. Finally,  
18 Appellants' own trial counsel recognized before the trial court  
19 that Groenendyke had a pipe easement that had been in use  
20 for decades prior to this lawsuit:  
21  
22  
23

24 /./././

1 Mr. Depaoli: ...Mr. Groenendyke has a vested right  
2 to that water as also a successor to the Berrum  
3 Ranch or Cary property.... But what we are trying  
4 to do here is to figure out who prior to 1905 in  
5 Nevada and prior to 1914 in California diverted  
6 that water and put it to beneficial use through that  
7 six-inch pipeline.

8 The Court: Mr. Depaoli, concerning that, I believe  
9 the evidence is unopposed that at some - - at some  
10 point in the past, and I can't recall the date, during  
11 a controversy between Mr. Groenendyke and Mr.  
12 Jackson that Mr. Groenendyke replaced that valve  
13 and pipeline -- or I shouldn't say it that way --  
14 replaced the valve and out in pipeline from the  
15 place where the valve crosses the road, allows the  
16 water to cross onto the road into -- to commingle  
17 with D or to go on Jackson property, between there  
18 and the -- and Foothill Road on a straight line  
19 down parallel basically to the channel of the  
20 unnamed creek.

21 The -- I believe uncontested evidence is that when  
22 Mr. Groenendyke did that that [sic] he fund  
23 evidence of a preexisting pipe going down that way.

24 Mr. Depaoli: Yes.

The Court: I haven't heard anything to the contrary  
have you?

Mr. Depaoli: Yes, my understanding was the  
preexisting wood pipe...

The Court: ...[T]he point I am making is that there  
was a preexisting pipe that - - there was a  
preexisting fork in the water flow that allowed the  
water to go east or south.

1 Mr. Depaloi: Yes.

2 ...

3 Mr. Depaoli: They're basically -- and it shows up  
4 on the Heritage application that was filed, there  
5 was essentially a T in that pipeline -- that -- and  
6 part of the T sent the water south to Jackson. The  
7 other part in that wooden pipeline let it go down  
8 and did not go under Foothill Road, it went into the  
9 unnamed creek and that was the way as Mr.  
10 Benson describes in his interview --

11 The Court: Right.

12 Mr. Depaoli: -- and in his statements that the  
13 Heritage Ranch then got water to irrigate --

14 The Court: The upper part.

15 Mr. Depaoli: -- the upper part of the Groenendyke's  
16 property.

17 (3AA 499-501.)

18 To the extent that Appellants contest this and claim that  
19 no such easement was sold to the subsequent purchasers of  
20 the Berrum-Heritage Ranch land, it is still clear that  
21 Groenendyke has a valid easement to pull his water from  
22 Spring (A) using the 6" pipeline. Though it is Groenendyke's  
23 position that he has an outright easement to the pipeline, the  
24 actions of the parties to the case show that Groenendyke, at



1 the very least, has been granted a separate license from  
2 Jackson to use the pipeline to divert his water rights from  
3 Spring (A). Even assuming for purposes of this Brief that  
4 Groenendyke was granted a mere revocable license (more  
5 commonly referred to as a "parol revocable license"), the acts  
6 of the interested parties have changed such into a permanent  
7 easement. As explained in Kinney:

9 [T]he great weight of authority now holds that  
10 where a parol license without consideration is  
11 granted by the owner of lands to another to  
12 construct ditches and canals over the same, and  
13 such owner not only assents, but aids and  
14 encourages the performance of the work, and the  
15 licensee expends money, or its equivalent in labor,  
16 in the construction of the same, the owner of the  
17 land is thereafter estopped from denying the right  
18 of the licensees, and such license then becomes  
19 irrevocable, and the nature of the grant for the  
20 right of way changes to that of a permanent  
21 easement over the land, or,, at least, "the license  
22 will continue for so long a time as the nature of it  
23 calls for." As was said in a recent California case:  
24 "The general rule, no doubt, is that one who rests  
his claim to an easement on a verbal contract  
alone, unexecuted and unaccompanied by any  
other facts, has no rights thereto which he can  
enforce. But there are many cases where a mere  
parol license, which has been executed, and where  
investments have been made upon the faith of it,  
has been held irrevocable.

/./././

1 Kinney at Section 983 (internal citations omitted). In  
2 other words:

3 a parol license to enter the land of the owner to  
4 construct a ditch, canal, or other works, for the  
5 purpose of conducting water, operates as an  
6 irremovable grant, after entry and the construction  
7 of the works at considerable expense, and after  
8 commencing the use of the water; and the rights  
9 thus acquired under the grant will be protected in  
10 equity.

11 *Id.* (internal citations omitted). The rule that a parol license  
12 becomes irrevocable after a licensee has entered upon the  
13 land and made improvements thereon is:

14 especially true in the arid West, where such  
15 licenses have been given to construct ditches and  
16 canals over the lands of others for the purposes of  
17 conducting water for irrigation or other useful  
18 purposes.

19 *Id.* (internal citations omitted).

20 This case provides a prime example of such an  
21 irrevocable license. Assuming for the purposes of this Brief  
22 that Groenendyke was merely granted a revocable license by  
23 Jackson to use the 6" pipeline to divert his water rights from  
24 Spring (A), because Jackson granted Groenendyke permission  
to improve said pipeline, and Groenendyke entered the

1 Jackson property, improved the pipeline through the  
2 construction of a new modern pipeline, as well as a new valve  
3 at significant expense, and has commenced the use of the  
4 water from that pipeline and valve, any revocable license was  
5 converted to an irrevocable license or permanent easement in  
6 favor of Groenendyke for the use of the 6" pipeline on the  
7 Jackson property.  
8

9         Given the undisputed existence of Groenendyke's  
10 pipeline easement, the record in this case supports the  
11 district court's conclusion that Groenendyke has the right to  
12 enter the Jackson property for the purpose of maintaining  
13 and repairing his pipeline easement for the diversion of his  
14 water right. While the district court did not state the legal  
15 authority supporting its conclusion, law in this area is clear -  
16 with an easement comes a secondary easement for the repair,  
17 maintenance, inspection and use. Accordingly, the district  
18 court's grant of access to the Jackson property for purposes  
19 of repair and maintenance was neither clearly erroneous nor  
20 unsupported by law, and must not be overturned.  
21  
22  
23

24 /./././

1 **VII. CONCLUSION**

2 Groenendyke respectfully requests that this Court affirm  
3 the district court's order requiring that Appellants allow  
4 Groenendyke reasonable access to the water facilities  
5 affecting the Groenendyke property, but located on the  
6 Jackson property, for purposes of repair, maintenance and  
7 use of his easement.  
8

9 DATED this 27<sup>th</sup> day of July, 2015.

10 KAEMPFER CROWELL

11  
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1                                    **CERTIFICATE OF COMPLIANCE**

2            1.    I hereby certify that this brief complies with the  
3 formatting requirements of NRAP 32(a)(4), the typeface  
4 requirements of NRAP 32(a)(5) and the type style  
5 requirements of NRAP 32(a)(6) because:  
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13 *program*] with [*state number of characters per inch and name*  
14 *of type style*].

15            2.    I further certify that this brief complies with the  
16 page or type-volume limitations of NRAP 32(a)(7) because,  
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24 inch, and contains \_\_\_\_ words or \_\_\_\_ lines of text; or

1 [ ] Does not exceed \_\_\_ pages.

2 3. Finally, I hereby certify that I have read this  
3 appellate brief, and to the best of my knowledge, information  
4 and belief, it is not frivolous or interposed for any improper  
5 purpose. I further certify that this brief complies with all  
6 applicable Nevada Rules of Appellate Procedure, in particular  
7 NRAP 28(e)(1), which requires every assertion in the brief  
8 regarding matters in the record to be supported by a  
9 reference to the page and volume number, if any, of the  
10 transcript or appendix where the matter relied on is to be  
11 found. I understand that I may be subject to sanctions in the  
12 event that the accompanying brief is not in conformity with  
13 the requirements of the Nevada Rules of Appellate Procedure.  
14  
15

16 DATED this 27<sup>th</sup> day of July, 2015.

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