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2
3 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

Electronically Filed
Jul 27 2015 04:13 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

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
9 Irene M. Windholz Trust
Dated August 11, 1992,

Supreme Court No. 67289

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

Appellants,

10 vs.

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

Respondents.

17 **APPENDIX TO RESPONDENT EDWARD H.**
18 **GROENENDYKE'S ANSWERING BRIEF - VOLUME I**

19 Severin A. Carlson
20 Nevada Bar No. 9373
21 Tara C. Zimmerman
22 Nevada Bar No. 12146
KAEMPFER CROWELL
50 West Liberty Street, Suite 700
Reno, Nevada 89501
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Attorneys for Respondent, EDWARD H. GROENENDYKE

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1	<u>October 21, 2012</u> Errata to Exhibit 3 to the Affidavit of Edward H. Groenendyke in Support of the Claimant's Supplement to Notice of Exceptions to the Final Order of Determination Regarding Proof of Appropriation No. V-08850 and Motions 1.) Motion to Allow Repair of Facilities and Allocation of Costs 2.) Motion to Recognize Stockwater Rights 3.) Motion to Correct State Engineer's Errors in Acreage 4.) Motion to Condition Water Rights and Affidavit of Edward H. Groenendyke in Support	RGA1
2	<u>October 22, 2012</u> Reply by Claimant Groenendyke Family Trusts in Support of Supplement and Motions	RGA16

DATED this 27th day of July, 2015.

KAEMPFER CROWELL

BY:



SEVERIN A. CARLSON (NBN 9373)
TARA C. ZIMMERMAN (NBN 12146)
50 West Liberty Street, Suite 700
Reno, Nevada 89501

**Attorneys for Respondent
EDWARD H. GROENENDYKE,
Trustee of the Groenendyke
Family Trust**

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Case No. 08-CV-0363

Dept. I

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

K. WILFERT
DEPUTY

In the Matter of the Determination of the Relative rights in and to the Waters of Mott Creek, Taylor Creek, Cary Creek (AKA 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.,

**ERRATA TO EXHIBIT 3 TO THE
AFFIDAVIT OF EDWARD H.
GROENENDYKE IN SUPPORT OF THE
CLAIMANT'S SUPPLEMENT TO
NOTICE OF EXCEPTIONS TO THE
FINAL ORDER OF DETERMINATION
REGARDING PROOF OF
APPROPRIATION NO. V-08850 AND
MOTIONS**

**1.) MOTION TO ALLOW REPAIR OF
FACILITIES AND ALLOCATION OF
COSTS;**

**2.) MOTION TO RECOGNIZE
STOCKWATER RIGHTS**

**3.) MOTION TO CORRECT STATE
ENGINEER'S ERRORS IN ACREAGE**

**4.) MOTION TO CONDITION WATER
RIGHTS**

**AND AFFIDAVIT OF EDWARD H.
GROENENDYKE IN SUPPORT**

COMES NOW Claimant, EDWARD H. GROENENDYKE AS TRUSTEE OF THE GROENENDYKE FAMILY TRUST (hereinafter referred to as "TRUST" or "CLAIMAINT"), by and through his counsel of record, T. Scott Brooke, Brooke · Shaw · Zumpft, and hereby submits Errata Sheet to Exhibit 3 attached to the Affidavit of Edward H. Groenendyke in Support of the Claimant's Supplement to Notice of Exceptions to the Final Order of Determination Regarding Proof of Appropriation No. V-08850 and Motions filed on 21 September 2012, as follows:

Attached is the Exhibit 3 which contains the corrected pages 2 and 7 attached to the Affidavit of Edward H. Groenendyke in Support of Claimant's Supplement to Notice of Exceptions to the Final Order of Determination Regarding Proof of Appropriation No. V-08850

COPY

1 and Motions filed on 21 September 2012. The correction relates to APN: 1219-24-002-005,
2 owned by David J. and Anna Della Rosa, pertaining to the improvement information. The mistake
3 was caused by a typographical error in the APN.

4 Respectfully submitted.

5 Dated this 10th day of October 2012.

6 BROOKE · SHAW · ZUMPF

7
8 By:



T. SCOTT BROOKE, ESQ.

State Bar No. 0159

1590 Fourth Street

P.O. Box 2860

Minden, NV 89423

Attorneys for Claimant

EDWARD H. GROENENDYKE

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the law office of Brooke · Shaw · Zumpft and that on the 10 day of October 2012, I served a true and correct copy of the preceding document entitled **ERRATA TO CLAIMANTS SUPPLEMENT TO NOTICE OF EXCEPTIONS TO THE FINAL ORDER OF DETERMINATION REGARDING PROOF OF APPROPRIATION NO. V-08850 and MOTIONS; MOTION TO ALLOW REPAIR OF FACILITIES AND ALLOCATION OF COSTS; MOTION TO RECOGNIZE STOCKWATER RIGHTS; MOTION TO CORRECT STATE ENGINEER'S ERRORS IN ACREAGE; MOTION TO CONDITION WATER RIGHTS and AFFIDAVIT OF EDWARD H. GROENENDYKE IN SUPPORT** as follows:

Bryan L. Stockton
Deputy Attorney General
Catherine cortez Mastro
Attorney General
Nevada Office of the Attorney General
100 North Carson Street
Carson City, NV 89701-4717

Tracy Taylor, P.E.
State Engineer
Division of Water Resources
901 South Stewart Street
Suite 2002
Carson City, NV 89701

Gordon H. DePaoli, Esq.
Woodburn and Wedge
6100 Neil Road, Suite 500
Reno, NV 89511

☒ **BY U.S. MAIL:** I deposited for mailing in the United States mail, with postage fully prepaid, an envelope containing the above-identified document(s) at Minden, Nevada, in the ordinary course of business.

☐ **BY PERSONAL SERVICE:** I personally delivered the above-identified document(s) by hand delivery to the office(s) of the person(s) named above.

☐ **BY FACSIMILE:**

☐ **BY FEDERAL EXPRESS ONE-DAY DELIVERY.**

☐ **BY MESSENGER SERVICE:** I delivered the above-identified document(s) to Reno-Carson Messenger Service for delivery.

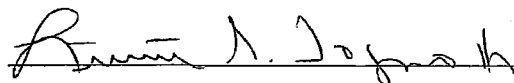


EXHIBIT 3

EXHIBIT 3

RGA 4

GREEN ACRES: Spring A is water source for:

APN Number	Claim Brought by:	Claim Number	Assessed Owner	Gross Acreage	Net Acreage	Percentage Difference	Improv. Sq. footage
1219-25-001-001 (portion)	Granat Revocable Trust of 10-18-85 Myles S. Douglas and Amy B. Douglas Grantors and Trustees of the Bartholomew Family Trust dated November 21, 2001	V-06322	Myles and Amy Douglas	20.00	19.383	3.09%	Home: 2693 Site improve: 30 WODR ² : 44 Game room: 738 Garage: 1092 Barn/Arena 10,230 Asphalt: 6,000 Horse Barn: 3,120 CFW ³ : 1,770 WCDSR ⁴ : 1,119 Total: 26,838
1219-26-001-029	Richard E. Brown & Sharon E. Burns	V-06325	Richard E. Brown & Sharon Burns ⁵	2.540	2.420	4.72%	House: 2049 Garage: 814 Site impro: 5 CCPS ⁶ : 40 Wodr: 790 BP: 220 Barn: 864 Barn cover: 432 Total: 5,214
1219-26-001-030	Jeanne C. Nelson Revocable Trust	V-06326	Jeanne C. Nelson	2.500	2.046	18.16%	Home: 3,322 Garage/Carport: 2043 CFW: 8,160 CCPS: 39 Shed: 432 Site impro: 10 BP ⁷ : 750 Arbor: 500 DGHS ⁸ : 144

¹ Also own APN's 1219-24-010 (4.867 acres) and 1219-26-001-027 (2.530 acres) in Green Acres

² Redwood open deck

³ Concrete Flat Work

⁴ Wood covered deck

⁵ Also own APN 1220-04-101-030 (0.750)

⁶ Concrete covered porch

⁷ Brick Pavers

APN Number	Claim Brought by:	Claim Number	Assessed Owner	Gross Acreage	Net Acreage	Percentage Difference	Improv. Sq. footage	Total: 15,400
1219-23-002-012	Blaise & Leslie Carrig	V-06327	Blaise & Leslie Carrig	4.900	4.623	5.65%	Home: 2,936 Site Imp: 10 Stg Bldg: 144 CFW: 972 Garage: 864 Observatory: 244 Electronic bldg: 49 BP: 350 Asphalt: 5,100 CCPS: 24 Storage bldg: 864 Wodr: 482 Pumphouse: 16 Total: 12,055	
1219-24-002-014	Wayne & Sharon W. Currie	V-06328	Wayne A. & Sharon W. Trust	3.140	2.992	4.71%	House: 2,139 Site impro: 3 Wodr: 680 WCDSR: 180 Patio: 935 Bldgs: 2,468 Total: 6,405	
1219-24-002-005	David J. & Annie Della Rosa	V-06329	David J & Anne Dellarosa	5.220	4.973	4.73%	Home: 2,113 Detached Garage: 864 CCPC: 210 CFW: 937 Redwood Deck: 970 Balcony Deck: 144 Pump House: 64 Asphalt: 5520 Total: 10,822	

⁸ Detached garage

APN Number	Claim Brought by:	Claim Number	Assessed Owner	Gross Acreage	Net Acreage	Percentage Difference	Improv. Sq. footage
1219-23-002-014	Gary B. and Claudia A. Casteel ⁹	V-06330	Gary Jr. & Marci Casteel	5.080	4.683	7.81%	Home: 3,258 Site Impr: 6 Garages: 1,786 Barn: 864 Shed: 128 Cov area: 1,152 CFW: 1,020 CCPS: 750 Wodr: 955 Asphalt: 6,936 Office: 436 Total: 17,291
1219-24-002-010	Bartholomew Family Trust	V-06331	Myles S. & Amy B. Douglas	4.870	4.870	0%	No improvements
1219-26-001-028	Richard C. & Sandra J. Ferguson	V-06333	Richard C. & Sandra J. Ferguson	4.980	4.867	2.27%	Home: 2,378 Shed: 160 Wodr: 727 WCDCR: 321 Bldg: 1,296 Total: 4,882
1219-26-001-032	Pedro and Margaret Villalobos	V-06334	Pedro & Margaret M. Villalobos ¹⁰	2.550	2.355	7.65%	Home: 2,378 Site improve: 3 Barn: 448 CFW: 4,769 CCPS: 44 Exag: 846 Total: 8,488
1219-26-001-044,	Jerald R. Jackson 1975 Trust as Amended August 11, 1992, and Irene W. Windholz Trust dated August 11, 1992	V-06342	Martin B. & Rebecca W. Jackson	2.000	1.846	7.70%	Home: 1,924 CCP: 336 Storage: 180 Wodr: 160 BOP: 336 CFW: 294

⁹ Gary and Claudia Casteel own APN 1220-06-001-013 (total acreage: 20.760, 18.760 of which is Ag)

¹⁰ Also own APN 1420-08-211-013, located within the IHGID (0.160 acres)

219-26-001-043,				Dwight T. & Caughlan C. Dumpert	2.000	2.0	0%	Asphalt: 1,800 Shed: 144 Fence: 132 Porch: 162 Corral Fence: 232 Vinyl Fence: 208 Bunk house: 520 Grainery: 432 Shed: 128 Chute/Squeeze: 17 Total: 6,705 No improvements
1219-26-001-039,				Bradley J. & Kyle L. Fiene	2.00	1.910	4.50%	Home: 3,203 Fence: 196 BP: 315 CCPC-BP: 183 Total: 3,897
1219-26-001-019,				Kim E. & Carol L. Kamholz	2.080	1.972	5.19%	Home: 3,297 Garage: 1,046.8 WCD: 286 CCP: 62.5 Total: 4,691.5
1219-26-001-018				Mark T. & Krista Wyman ¹¹	2.160	2.04	5.56%	Sheds: 352 Bunk house: 520 Grainery: 432 Barn: 2520 Chute/Squeeze: 17 WOD: 130 Fences: 1,140 Gates: 96 Total: 5,207
1219-23-002-013	Michael Catherwood and Robin L. Catherwood	V-07486		Michael W. & Robin L. Catherwood	4.860	4.580	5.76%	Home: 2,548 Site Improv: 7

¹¹ Also own APN 1219-04-001-017 (1.2 acres) located on Taylor Creek Road

							Asphalt: 5,175 Pump house: 42 DCPC: 32 BCP: 32 Wodr: 945 BFW: 648 CFW: 808 Barn: 1,920 Total: 12,157
APN Number	Claim Brought by:	Claim Number	Assessed Owner	Gross Acreage	Net Acreage	Percentage Difference	Improv. Sq. footage
1219-26-001-031	Tyne Honkanen & Marshall Kyle	V-09264 ¹²	Tyne Honkanen & Marshall Kyle	2.530	2.453	3.04%	Home: 1,632 Garage: 1,080 CFW: 600 Total: 3,312
1219-24-002-009 (portion)	Stephen H. & Patricia Christian	V-09265 ¹³	Stephen H. & Patricia Christian	5.110	4.947	3.19%	Home: 2,495 Garage: 1,008 Wodr: 104 WCDCR: 1,534 Barn: 1,920 Total: 7,061
1219-24-002-007	John Minasian	V-09266 ¹⁴	John Minasian	5.180	5.180	0%	No improvement
1219-24-002-008	Stephen H. & Patricia Christian	V-09270 ¹⁵	Berridge R. & Debra L. Marsh	2.610	2.439	6.55%	Home: 2,666 Garage: 1,029 WCDCR: 1,221 CCPC: 540 Barn: 1,960 Total: 7,416
1219-24-002-009 (portions)			Stephen H. & Patricia Christian	5.110	4.947	3.19%	Home: 2,495 Garage: 1,008 Wodr: 104 WCDCR: 1,534 Barn: 1,920 Total: 7,061
TOTAL				86.31	82.579	4.32%	

¹² Proof unilaterally filed by State Engineer.

¹³ Proof unilaterally filed by State Engineer.

¹⁴ Proof unilaterally filed by State Engineer.

¹⁵ Proof unilaterally filed by State Engineer.

GREEN ACRES Spring D is water source for:

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TOTAL				73.52	70.458	4.16%	

S:\LITIGATE\Groenendyke\Misc\Chart of Springs A and D (final).doc

¹⁸ Proof unilaterally filed by State Engineer.

¹⁹ Proof unilaterally filed by State Engineer.

²⁰ Proof unilaterally filed by State Engineer.

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OCT 22 2012

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Case No. 08-CV-0363-E

DOUGLAS COUNTY
DISTRICT COURT CLERK

2012 OCT 22 PM 1:44

Dept. I

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS
K. WILFERT DEPUTY

In the Matter of the Determination of the Relative rights in and to the Waters of Mott Creek, Taylor Creek, Cary Creek (AKA 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,

REPLY BY CLAIMANT GROENENDYKE
FAMILY TRUSTS IN SUPPORT OF
SUPPLEMENT AND MOTIONS

COMES NOW, Claimant, EDWARD H. GROENENDYKE AS TRUSTEE OF THE GROENENDYKE FAMILY TRUST (hereinafter referred to as the Groenendyke Trust or Claimant), by and through his counsel of record T. Scott Brooke of Brooke • Shaw • Zumpft, and presents this Reply in Support of its Supplement and Motions filed herein on 21 September 2012.

1. Background

The Groenendyke Trust filed its Exceptions to the State Engineer's Order of Determination on 25 March 2009. On 21 September 2012, after Notice from the Court of its Pretrial Conference Scheduling, the Groenendyke Trust filed its Supplement and Motions. On 08 October, 2012, an Opposition thereto was filed by Jerald R. Jackson, Trustee of the Jerald R. Jackson 1975 Trust ("Jackson Trust"), together with the Supporting Affidavit of Jerald R. Jackson.

The Jackson Trust pleadings contend that this Court cannot review or take action with regard to issues raised by the Groenendyke Trust, and disputes facts that were previously undisputed and in the record regarding its ownership of water rights. Jackson further apparently contends that no other person, regardless of ownership of water rights, has an interest in the ditches which convey such water right across its property, and no water right owner can access its

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(775) 782-7171

COPY

1 property for any purpose without his consent. Further, Jackson contends that the six (6) inch pipe
2 which provides water to the Groenendyke Trust and others from the Unnamed Spring is not in
3 disrepair so as to impact its water flow; however, nonetheless, it agrees to repair the pipes.
4 Finally, Jackson contends that there is no stock water right which is entitled to delivery through
5 such pipe.

6 The Groenendyke Trust will respond to such matters in order.

7 2. The Groenendyke Trust Owns Water Rights and Appurtenant Ditch Rights

8 The Order of Determination as well as the information provided by the Groenendyke
9 Trust in the Exceptions and the Affidavit of Edward Groenendyke establish indisputably the
10 Groenendyke Trust's water rights. For Jackson to contend that the Groenendyke Trust has no
11 water rights in the six (6) inch pipe from an unnamed spring is unsupported.

12 The provisions of Nevada law provide rights and remedies to water right holders, and also
13 provide authority for the Court to act on such. In fact, following the filing of the Order of
14 Determination in the District Court by the State Engineer, the distribution of water is under the
15 control of the District Court, and the State Engineer and his representatives are officers of the
16 Court. *NRS 533.220.1*. The Groenendyke Trust has previously cited the provisions of the Nevada
17 Revised Statutes which deal with the rights and obligations of ditches and ditch owners. See e.g.,
18 *NRS 536*. The entire structure of that chapter, which is entitled "Regulations of Ditches and
19 Canals by State Engineer," is intended to allow the proper and efficient distribution of water
20 within the State for beneficial use under the State laws.

21
22 It is incongruous for a water right holder to argue that other water right holders have no
23 rights in the ditches necessary to deliver such water rights. It is further incongruous for any water
24 right holder, including one who succeeds to those ownership rights by recent purchase, to contest
25 long standing and recognized historical customs and usages. The Groenendyke Trust has
26 suggested that the Court, in connection with this statutory procedure to adjudicate water rights, has
27
28

1 the necessary statutory powers to adjudicate related issues necessary for the recognition and use of
2 such water rights.

3 3. The Six (6) Inch Pipe from Unnamed Spring is in a State of Disrepair.

4 The Affidavit of Edward Groenendyke contained a picture of a portion of the six (6) inch
5 pipe which was intended to be an example of the deterioration, and supportive of Mr.
6 Groenendyke's opinion that the pipe can necessarily carry less water than its design if it were not
7 in a deteriorated condition. Jackson's claim that the pipe is totally functional, notwithstanding the
8 clear damage, is difficult to understand. It is also difficult to understand Jackson's contradictory
9 positions regarding the offer by the Jackson Trust to repair such pipe, while refusing access and
10 while complaining that other parties did not participate with the Jackson Trust on another repairs.
11 The Groenendyke Trust reiterates its willingness to participate to the extent of its fair share in
12 access, maintenance and repairs of common delivery facilities.
13

14 4. The Established Rotation Schedule Should Not be Disturbed.

15 The well recognized goal and judicial tradition of efficiency would be well served by the
16 recognition that the details of delivery are necessarily included in the adjudication of water rights.
17 In this regard, the State Engineer has suggested that the historical delivery be modified in order to
18 accommodate the State Engineer's determination of rights. This suggestion is apparently made
19 notwithstanding the necessary recognition that the total of vested rights are impossible to use on
20 the pertinent properties because of improvements thereon. In fact, Nevada law prohibits the use of
21 water rights beyond beneficial use or beyond what is necessary for such, irrespective of
22 ownership. NRS 533.060.1. It is clearly established that beneficial use is the limit of the right to
23 the use of the water. NRS 533.035. See also NRS 533.070. Further, State law recognizes and
24 encourages the historical practice of rotation, in order to more economically use available water.
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1 NRS 533.075. While vested rights are protected, such right is still subject to the limit of beneficial
2 use. See NRS 533.085.

3 The Groenendyke Trust reiterates its Exception to the suggestion of the State Engineer that
4 the historical and long standing and accepted rotation schedule be modified, based upon and as a
5 required result of, the State Engineer's Determination. That Determination should instead have
6 recognized such rotation, based upon the practical limitations of use and the rotation established
7 by the owners in accordance with both State law and the provisions of the federal Alpine Decree.
8

9 5. Conclusion.

10 The Groenendyke Trust requests that the Court exercise its power to remedy issues
11 pertaining to or caused by the State Engineer's Order of Determination Changes which are not
12 requested and which are contrary to existing established practice are counter-productive. Changes
13 which enable efficient and cooperative utilization of existing rights should be encouraged.
14

15 Respectfully submitted.

16 Dated this 22nd day of October 2012.

17 BROOKE · SHAW · ZUMPF

18 By: 

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the law office of Brooke · Shaw · Zumpf and that on the 22nd day of October 2012, I served a true and correct copy of the preceding document entitled **CLAIMANT GROENENDYKE FAMILY TRUSTS REPLY IN SUPPORT OF SUPPLEMENT AND MOTIONS** as follows:

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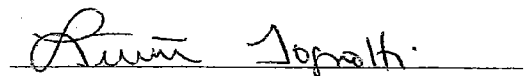
☒ **BY U.S. MAIL:** I deposited for mailing in the United States mail, with postage fully prepaid, an envelope containing the above-identified document(s) at Minden, Nevada, in the ordinary course of business.

☐ **BY PERSONAL SERVICE:** I personally delivered the above-identified document(s) by hand delivery to the office(s) of the person(s) named above.

☐ **BY FACSIMILE:**

☐ **BY FEDERAL EXPRESS ONE-DAY DELIVERY.**

☐ **BY MESSENGER SERVICE:** I delivered the above-identified document(s) to Reno-Carson Messenger Service for delivery.



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