

Duckwater Case Settled After Weary Litigation

A decision was handed down yesterday in the district court by Judge Averill, in the case of Joseph C. Tognoni versus Louisa Irwin, et al. This is the famous "Duckwater case," which has been in the courts so long that some of the witnesses have died of old age, and which has figured somewhat in state politics.

It will be remembered that Governor Dickerson alleged as one of the reasons for his removal of State Engineer Nicholas the action of the latter in this controversy.

Judge Averill's decision in full is as follows:

The above entitled cause having been tried by the court when sitting without a jury, the decision thereof is hereby rendered in writing by the judge who tried the cause, and is hereby ordered filed. The said judge briefly states in his opinion the facts found and conclusions of law reached, as follows:

Facts found:
1. That the swamp and lake of the Big Warm Spring, Nye county, Nevada, are at the present time one of the sources of supply of Duckwater Creek.

2. That the Big Warm Spring is and has been the principal source of supply of Duckwater creek.

3. That the water of the Big Warm Spring flows through its channel into a swamp, lake and ponds upon an elevation composed of travertine and calcareous tufa, rock debris and soil, from twenty-five to ninety feet higher than King Spring and hereafter referred to herein as the Big Warm Spring plateau.

4. That the edge of said plateau is in the vicinity of the De Flon ranch and it is a travertine bluff.

5. That most of the springs at and in the vicinity of the bluff of the Big Warm Spring plateau receive their supply of water by percolation from the lake and ponds on the plateau.

6. That a few of said springs are probably independent springs, possibly remnants of ancient hot springs.

7. That there is some unappropriated water flowing from the Big Warm Spring, but a much smaller quantity than that granted by permit of the state engineer to the plaintiff herein, and permit bearing date of September 15th, 1908.

8. That the procedure under which said permit was issued was irregular, but there was a substantial compliance with the law, except that the protest of loss against the said permit was not disposed of in accordance with well settled principles of law.

9. That the loss by evaporation from the bodies of water on the Big Warm Spring plateau is great, and the loss by seepage is also of considerable magnitude.

10. That the present conditions on and about the Big Warm Spring plateau result in a wastage of water that to some extent can be overcome by proper control.

11. That since 1882 the owners of the De Flon ranch have acquired by appropriation 2 cubic feet of water per second, when actually needed for irrigation, from the overflow of the Big Warm Spring lake.

Conclusions of law:
A. That Big Warm Springs is a part of Duckwater creek, and that its waters are subject to the decrease of this court allotting water to users along said creek.

B. That all of said allotments are prior in time and in right to the appropriation mentioned in Finding 11, and to any appropriation made or to be made under engineer's permit or otherwise hereafter from the Big Warm Spring, its channel, swamp, lake or ponds.

C. That the appropriation mentioned in Finding 11 is prior to any appropriation made or to be made by the state engineer's permit or otherwise hereafter from the bodies of water on the Big Warm Spring plateau.

D. That the plaintiff shall not take water from the Big Warm Spring or any body of water formed thereby in such manner as to occasion any loss of water to the users of water upon Duckwater creek as secured to them by former decrees of this court, or in any other manner than is herein provided.

E. That any appropriation by the plaintiff of the waters of the Big Warm Spring or any body of water upon the Big Warm Spring plateau shall be subordinate to the

rights of all users of waters below him, and shall be confined absolutely to previously unappropriated water.

F. That, though there is unappropriated water in the supply upon the Big Warm Spring plateau, the appropriation thereof is hereby declared to be detrimental to the public welfare and to invade or impair the rights of other appropriators, unless works of control are constructed as hereinafter set forth, under the control of this court and under its supervision, to be exercised through an officer of this court properly authorized.

G. That the plaintiffs herein shall bear the expense of putting in all works of control necessary to secure to the users of water below him their appropriations as fixed by decrees of this court and to ascertain and secure to himself his own appropriation of water of the Big Warm Spring and its neighboring bodies of water, as more fully explained in the opinion filed herewith and made a part hereof.

H. That the unappropriated water of the Big Warm Spring and the other bodies of water in the Big Warm Spring plateau can be practically determined only by the construction and operation of works of control.

I. That said works of control shall consist:

First—Of a canal sufficiently large to carry all the outflow of the Big Warm Spring from the channel of said spring to Duckwater creek proper a short distance below King Spring, without leakage or overflow, said canal to be free from sharp turns or angles.

Second—Of a water-tight dam at the point where said canal leaves the Big Warm Spring channel, of proper size, structure and strength to hold the water of said channel within said canal, and provided with a gate of sufficient size and strength to control absolutely the flow of said water into said canal or to prevent absolutely its flow into said channel whenever necessary.

Third—Of a water-tight dam across the channel of the Big Warm Spring below the point of beginning of said canal, of proper size, structure and strength to turn the water of said channel into said canal, and provided with a gate of sufficient size and strength to control absolutely the flow of water into said ditches.

All of said gates shall be easy and effective of operation, and so arranged that they may be locked in place whether open, partly open, or wholly closed, and shall be provided with locks, the keys of which shall be held by the water commissioner hereinafter referred to, or in event of his non-appointment by such officer of this court as may be exercising supervision under this decision.

J. The appropriation under Finding 11 shall be by wter, to be constructed by the appropriator, and the last two paragraphs of conclusion "I" shall apply thereto.

K. That the water to be appropriated under Finding 11 shall be conducted to the points of use in proper ditches and without wastage that can be avoided so that no more need be taken than will serve the purpose for which the appropriation is permitted—irrigation only.

L. The necessity of complete protection to the users of water of Duckwater Creek requires that this court should maintain supervision over the distribution of water on the upper reaches of the stream and over all works of control on and in the immediate vicinity of the Big Warm Springs plateau, to which condition the plaintiff must agree before this decision shall in any manner go into effect in his behalf.

M. The appointment of a water commissioner to serve for the months of June, July, August and September of each year and until the further order of this court shall be secured from the state board of irrigation subject to the approval of this court; and if for any reason such officer should not be appointed by said board this court reserves the right to select some suitable person to supervise

(Continued on Page Three.)

BONDS SOLD FOR BUILDING ELY ROAD

FIVE MILLIONS OF BONDS PLACED AS RESULT OF ZABRISKIE'S TRIP.

The cheering information reached Tonopah yesterday that the money had been raised for the actual construction for the Ely-Goldfield railroad. This was the motive of C. B. Zabriskie's recent trip to Europe, and it seems he has succeeded. Mr. Zabriskie is back in this country and is expected in San Francisco in a couple of days.

No announcement has been given out as to the eastern terminus of the road. It will be remembered that the city council of Ely refused White Pine county refused to give the promoters a franchise to enter Ely, and some weeks ago W. R. Alberger stated that upon Mr. Zabriskie's return it would be determined where the route would be run to, several alternative surveys having been located. The road will pass within fifteen miles of Tonopah, and work will begin inside of two months if is now stated.

THE CONTEST FOR GODDESS WARMING UP

SEVERAL OF THEM SHOW A GOOD START; INTEREST INCREASING.

There is going to be all sorts of fun over this Goddess of Liberty contest before it is over. That much is indicated already, and the thing has hardly started. Usually when a contest of this sort starts, the average young lady is quite diffident about the matter, but as she sees some acquaintance manifesting more popularity than she thinks is really coming to her, then she wakes up. Then she gets to doing some boosting on her own behalf—and the race is on.

The judges are making it the rule to count the ballots every night so the contestants and the public alike can know just how the race stands. Last night's poll showed the following vote:
Miss McFadden 1,010
Miss Russel 1,000
Miss Anderson 800
Miss Kirchen 750
Miss Haffner 15
Miss Inez Critchfield 5
Whatever may be the outcome finally of the contest, the one thing certain is that Tonopah on the Fourth will have a most charming Goddess of Liberty.

COUNTY DADS CUT EXPENSES \$8000 A YEAR

THEY CUT OFF EXTRAS IN SEVERAL OF THE COUNTY OFFICES.

The county commissioners were out with their pruning knives yesterday and did considerable slicing in accordance with the recommendations of the grand jury. This paring was done to the salaries of various officials of the county, and in several cases a reduction of the office force was ordered.

In the sheriff's office it was directed that after the first of July the three jailers at \$120 each be dispensed with, and in their stead one man be employed to work the night shift at \$5 per. The \$50 per month paid the deputy assessor was also cut off.

The salary of the deputy district

**Tonopah
Sewer & Drainage
Company
SERVICES PUT IN AT
COST
See F. A. Burnham at the
Offices of
TONOPAH UNITED WATER CO.**

attorney was left untouched, but when court is not in session he is to put in his spare time in the sheriff's office.

The chief of police was directed to cut one man off his force at \$150 per month, while the 10 per cent commission paid him for collecting licenses, which brought him in some \$1,000 a year extra, was cut off.

The chief of the fire department was instructed to reduce his force one man, which means another \$120 per month.

A slight cut was made in the office of the justice of the peace. In future he must pay the \$12 room rent instead of the county paying for it.

The reductions altogether amount to a saving of about \$8,000 a year over the present salary account.

Our want ads bring results.

To J. J. Owens, sheriff of Nye county, state of Nevada, and to the board of county commissioners of Nye county, state of Nevada:

You and each of you will please take notice that on the 7th day of June, 1910, F. L. Berry, for and in behalf of the United States Fidelity and Guaranty company, a corporation, filed with the clerk of the board of county commissioners of Nye county, state of Nevada, a statement and its desire to withdraw as surety from the official bonds of J. J. Owens as sheriff and assessor of Nye county, state of Nevada, the objects of and contents of said statement as stated therein, being as follows, to-wit:

That J. J. Owens was on the third day of November, 1905, duly elected to the office of sheriff and assessor of the county of Nye, State of Nevada, and that on the fourth day of March, 1909, the said United States Fidelity and Guaranty company, a corporation, executed as surety to the state of Nevada an official bond on behalf of said J. J. Owens as sheriff of Nye county, state of Nevada, for the term which he was elected as aforesaid in the penal sum of forty-five thousand dollars, United States gold coin, and also an official bond on behalf of said J. J. Owens as assessor of said Nye county, state of Nevada for the term for which he was elected as aforesaid in the penal sum of ten thousand dollars, United States gold coin, both of which said bonds were duly accepted, ratified and approved by the board of county commissioners of Nye county, state of Nevada, subsequent to the fourth day of March, 1909, and prior to the first day of January, 1910.

You and each of you are hereby notified that the United States Fidelity and Guaranty company, a corporation, does hereby withdraw and does hereby express its desire to withdraw from said official bonds as surety thereon.

F. L. BERRY,
In behalf of the United States Fidelity and Guaranty company,
Respectfully yours,

F. L. BERRY,
In behalf of the United States Fidelity and Guaranty company,
Tonopah, Nevada, June 7, 1910.
First publication June 8, 1910.
Last publication July 1st, 1910.

Wittenberg Warehouse & Transfer Company

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FOR SALE—Stodart piano, almost new fine condition, \$60; surveyor's desk, new, good condition, \$25. Call at Peart's store or phone 932. if.

FOR SALE—At a bargain, one four roomed furnished house; summer kitchen, wood shed and cellar, all fenced, \$250. Enquire O. A. Fuller, Prospect street, 6-8-3t.

LOST—A pair of nose glasses, between the Dixie club and the Manhattan hotel. Finder will please leave at this office. 6-9-5t.

FOR RENT—Furnished 3 and 4 room houses. M. A. Williams.

THE KENDALL—Large front rooms, 2 beds; beautifully furnished rooms with running water. Rents reduced for the summer. 6-14-tf.

WANTED—Clean cotton rags, without buttons; 3 cents a pound. Bonanza office.

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