



October 3, 2016

Gordon H. DePaoli  
E-MAIL: [gdepaoli@woodburnandwedge.com](mailto:gdepaoli@woodburnandwedge.com)  
DIRECT DIAL: (775) 688-3010

*Via Electronic Mail [lindaacciari@gmail.com](mailto:lindaacciari@gmail.com)*  
Dennis Acciari  
Director, Walker River Irrigation District

*Via Electronic Mail [Dmlittle55@yahoo.com](mailto:Dmlittle55@yahoo.com)*  
David Little  
Director, Walker River Irrigation District  
61 Bowman Lane  
Yerington, Nevada 89447

*Via Electronic Mail [davegiorgisr@gmail.com](mailto:davegiorgisr@gmail.com)*  
David Giorgi  
Director, Walker River Irrigation District

*Via Electronic Mail [jsnyder@slcnv.com](mailto:jsnyder@slcnv.com)*  
Jim Snyder  
Director, Walker River Irrigation District  
165 Osborne Lane  
Yerington, Nevada 89447

*Via Electronic Mail [rnuti77@hotmail.com](mailto:rnuti77@hotmail.com)*  
Richard Nuti

*Via Electronic Mail [bert@wrid.us](mailto:bert@wrid.us)*  
Robert C. Bryan, General Manager  
Walker River Irrigation District  
P.O. Box 820  
Yerington, Nevada 89447

**Re: Revisions to Bylaws and Rules and Regulations of the Walker River  
Irrigation District / July 18, 1941 Decision of Judge Frank Norcross  
Our File No. 1709.0189**

Dear Members of the Board and Bert:

As you will recall, when we were considering the draft of Regulation No. 13 concerning Complaints About the Distribution of Water, we discussed the relevance of a July 8, 1941 decision of Judge Norcross which is referenced in Section 2 of the current District pamphlet on page 3 of that Section. The current Section 2 on page 3 of the Section states in part: "According to Judge Norcross' decision in 1941, the U.S. Water Master has no authority to regulate storage water after its diversion from the stream system where no rights to normal flow are involved." What is meant by "where no rights to normal flow are involved" was not clear. Since that meeting, I have obtained a copy of that decision and of the motion for reconsideration of it. The final outcome of that matter did not occur until Judge Norcross entered a decision on the motion to reconsider on June 5, 1943.

WOODBURN AND WEDGE  
Attorneys and Counselors at Law

6100 Neil Road | Suite 500 | Reno, Nevada 89511  
P.O. Box 2311 | Reno, NV 89505  
Phone (775) 688-3000 | Facsimile (775) 688-3088

William K. Woodburn  
(1910-1989)  
Virgil H. Wedge  
(1912-2000)

Gordon H. DePaoli  
John F. Murtha  
W. Chris Wicker  
Shawn B. Meador  
Ellen Jean Winograd

Don L. Ross  
Gregg P. Barnard  
Dale L. Ferguson  
Shawn G. Pearson  
Dane W. Anderson

Michael W. Keane  
Sharon M. Jannuzzi  
Jason C. Morris  
Joshua M. Woodbury  
Seth J. Adams

Nico D. R. DePaoli  
Shay L. Wells  
Lauren D. Berkich

Of Counsel:  
Edward G. Stevenson

Board of Directors, Robert C. Bryan  
October 3, 2016  
Page 2 of 3

A copy of the July 8, 1941, Memorandum of Decision Re Contempt Proceedings is attached. It appears from that decision that two persons were charged with interfering with the Water Master in the exercise of duties by reason of their adjustments to headgates from the Saroni Canal which had been set by the Water Master under the terms of the Decree. In his initial decision, Judge Norcross found that those persons had not interfered with the Water Master in the exercise of his duties, and therefore would not be found in contempt. On the face of the decision, it appeared that the Judge had reached that decision based upon the erroneous conclusion that "the Saroni Canal is devoted exclusively to the diversion of storage water."

On July 18, 1941, counsel for the U.S. Board of Water Commissioners filed a Motion for Reconsideration of that Decision, pointing out that the Saroni Canal delivers not only storage water, but also decree water (normal flow), and those waters are comingled in the ditch. Based upon those facts, he contended that the Water Master had jurisdiction, and that the alleged adjustments to the headgates were in violation of the Decree and an interference with the authority of the Water Master. A copy of the Motion for Reconsideration is attached.

On November 21, 1942, the parties alleged to be in contempt filed a response to the Motion for Reconsideration. In that response, they pointed out that the evidence at the hearing showed that at the time the alleged Saroni Canal headgate adjustments took place, the only water in the Saroni Canal was storage water, and that as a result of that fact, the original decision of the Court had been correct. A copy of those Points and Authorities is also attached.

On June 5, 1943, Judge Norcross entered his decision regarding the Motion to Reconsider. In that decision, he recognized that the original decision was in error, and that the Saroni Canal did in fact at times carry decree water (natural flow) from the river. In that decision, he stated that:

Head-gates for diversions from the natural river channels are clearly under the control of the Water Master appointed by this Court. The interference with diversions claimed to be contemptuous were not directly from a river channel, but from the Saroni Canal, owned by the Walker River Irrigation District. The evidence is to the effect that at the times the interferences were alleged to have taken place, the Saroni Canal was devoted exclusively to the diversion of storage water.

The error referred to appearing in the decision when corrected to conform to the evidence as submitted does not affect the legal conclusions as stated in the decision.

Board of Directors, Robert C. Bryan  
October 3, 2016  
Page 3 of 3

The Motion for Reconsideration is denied.

A copy of that decision is also attached.

Although the Norcross decision did not directly involve a complaint about the distribution of water *per se*, one can infer from it that in the rare situation where the only water in a ditch at the time is stored water, any complaints about its distribution should be made to the District, and are the responsibility of the District to resolve. However, in the more likely situation where the water in a ditch includes both natural flow and stored water at the same time, and there is a complaint about the distribution of either, it would seem that complaints should be made to the Chief Deputy Water Commissioner, and are for the Chief Deputy Water Commissioner to resolve. However, in that situation, the District can and should cooperate with the Chief Deputy Water Commissioner in that resolution. For purposes of discussion, I have revised Regulation No. 13 to reflect these conclusions. There should also be a discussion with the Chief Deputy Water Commissioner and his counsel concerning whether they agree with this approach.

Sincerely,



Gordon H. DePaoli

GHD:hd

Attachments

cc: Dale Ferguson (dferguson@woodburnandwedge.com)



Filed July 8<sup>th</sup>, 1941

O. E. BENHAM, Clerk

By R. J. Bratt, Deputy

IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA,  
IN AND FOR THE DISTRICT OF NEVADA.

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

WALKER RIVER IRRIGATION  
DISTRICT, a corporation,  
et als.,

Defendants.

No. C-125

MEMORANDUM DECISION RE  
CONTEMPT PROCEEDINGS.

NORCROSS, District Judge.

An affidavit filed in the above entitled cause charges that Tony Masini and A. Quilici did respectively interfere with the head gates of certain boxes established for the diversion of water from the Saroni Canal used for the purpose of diverting water from the West Walker River, in violation of the provisions of the decree entered in this case. Upon such affidavit as a basis a citation was issued, directed to said parties to appear and show cause why they should not be adjudged in contempt of this court for interfering with said diversion head gates after they had been adjusted by the Water Master appointed in pursuance of said decree.

The decree adjudicated the rights of all landowners to the normal flow of the waters of the Walker River, its branches and tributaries during the irrigation season, and in addition thereto contains the following provision:

"Walker River Irrigation District, a corporation,  
is hereby adjudged to be the owner of the flow  
and use of the flood water of East Walker River and

its tributaries for storage in Bridgeport Reservoir  
\* \* \*, to the amount of 42,000 acre feet, \* \* \*,  
and said Walker River Irrigation District is hereby  
adjudged to be the owner of the flow and use of  
flood waters of West Walker River and its tributaries  
for storage in Topaz Lake Reservoir situated near  
West Walker River, to the amount of 50,000 acre feet,  
\* \* \*."

The decree also provides for additional storage rights  
and contains the following concluding provision:

"Said Walker River Irrigation District may  
distribute such water so stored in said reservoirs  
to the lands in said district entitled thereto,  
in accordance with their respective rights."

The decree contains no provision respecting descrip-  
tion or ownership of the land entitled to the use of the stored  
water. Such landowners, unless they also are entitled to rights  
in the normal flow of the river during the irrigation season,  
are not named as defendants. Evidence introduced upon the  
hearing is to the effect that the Saroni Canal is devoted  
exclusively to the diversion of storage water and that the land-  
owners using water from such canal derive their rights solely  
from the Walker River Irrigation District.

The decree also provides:

"The Court, whenever it shall deem it necessary,  
shall appoint a Water Master, who shall be charged  
with the duty of apportioning and distributing the  
waters of the Walker River, its forks and tributaries  
in the State of Nevada and in the State of California,  
including water for storage and stored water, in  
accordance with the provisions of this decree."

While it appears from the evidence that the Water  
Master appointed by this court to administer the distribution of  
water in accordance with the terms of the decree, cooperates  
with the Irrigation District in the distribution of storage water  
subject to its control, it does not follow that such Water Master  
has authority to regulate storage water after diversion from the  
stream system where no rights to normal flow are involved. When  
storage water is diverted from the reservoir to the river for  
distribution to the parties entitled thereto the Water Master has  
authority to regulate ditch or canal head gates through which  
waters are diverted, and to determine what portion, if any, is

storage or natural flow. If such ditch or canal also contains normal flow the Water Master would have the right to superintend the distribution thereof. Where, however, in a case like that of the Saroni Canal, where only storage water is diverted the authority of the Water Master ends when the head gate of the canal is regulated. If he or his assistants also cooperate with the Walker River Irrigation District in the distribution of the flow of the canal his or their authority for so doing is derived from the said District and not from the terms of this decree.

It is the conclusion of the Court that the respondents not having interfered with the Water Master in the exercise of his duties as such, a contempt of this Court may not be said to have been shown.

WHEREFORE IT IS ORDERED that the proceeding in contempt be, and the same hereby is, dismissed.

Dated this 8<sup>th</sup> day of July, 1941.



DISTRICT JUDGE.

WILLIAM M. KEARNEY  
Attorney for Board of Water  
Masters.  
Reno, Nevada

IN EQUITY.  
No. C-125

IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA,  
IN AND FOR THE DISTRICT OF NEVADA.

UNITED STATES OF AMERICA.

Plaintiff,

VS.

WALKER RIVER IRRIGATION DISTRICT,  
a corporation, et als,

Defendants,

Contempt Proceedings against  
A. Quilici and Tony Masini.

MOTION FOR RECONSIDERATION

OF OPINION AND DECISION

FILED JULY 8, 1941.

Come now George Parker, John H. Wichman, Fred Fulstone, Frank Stickman, Stanley Hunewill and Don C. Foster, duly and regularly appointed, qualified and acting Water Masters, appointed by the above-entitled court, and move the Honorable Frank H. Norcross, Judge of the above-entitled court, to reconsider the opinion and decision filed in the above-entitled cause on July 8, 1941, and for reason therefor say:

That in the memorandum decision of the court in said contempt proceedings, the court say among other things:

"Evidence introduced upon the hearing is to the effect that the Saroni Canal is devoted exclusively to the diversion of storage water and that the landowners using water from such canal derive their rights solely from the Walker River Irrigation District.

Inasmuch as the court's decision appears to be based upon such premise, the petitioners desire to respectfully point out to the court that the conclusion as to what the evidence



1 shows is erroneous and, therefore, the decision based upon such  
2 erroneous fact should be reconsidered.

3 The Saroni Canal carries not only storage water but  
4 also decreed water and it is comingled in the ditch as will ap-  
5 pear from the record and the decree themselves by reference to  
6 the description of the lands containing priorities earlier than  
7 the date when the storage reservoirs were constructed.

8 Decree 731 is in evidence in this case and, of course,  
9 the court will take judicial notice of Decree C-125. The record  
10 in this case also will show that the decreed waters and the  
11 stored waters are comingled in the Saroni Canal.

12 If the Federal Water Masters have no jurisdiction to  
13 follow the decreed waters upon the headgates of the Saroni Canal  
14 on the erroneous assumption that the Saroni Canal carries storage  
15 water exclusively, then there would be a conflict within the  
16 canal itself as to which was storage water and which was decreed  
17 water and a chaotic condition would result. Those entitled to  
18 storage water only would claim that they were taking storage water  
19 and those that were entitled to natural flow as well as storage  
20 water may claim that it is all natural flow and each party would  
21 help himself to the water.

22 I quote from pages 22 and 23 of the Record (Testimony  
23 of Mr. Whistler, Deputy Water Master):

24 "Q. Who has charge of the release of the water from the  
25 reservoirs?

26 A. I do.

27 Q. And when the water is released, is that comingled  
28 with the natural flow water?

29 A. It is.

30 Q. How is that water separated later, by you or by  
someone else?

A. By me.

Q. So that the water stored and water in natural flow  
is all regulated by you as one water, in accordance  
with the various rights?

A. It is.



1 Q. As given by you either by decree or by owners  
2 in the various ditches?  
3 A. It is.  
4 Q. Now with reference to Mr. Beaman, you said that  
5 you deputized him to regulate the waters in the  
6 Saroni Canal, is that correct?  
7 A. That is correct.  
8 Q. He is deputized by you as an assistant of the  
9 Federal Board of Water Masters?  
10 A. Yes, sir.  
11 Q. And is that with the approval of the Board of  
12 Water Masters?  
13 A. It is.  
14 Q. Now the Saroni Canal, do you know whether or not  
15 that is owned by the sub-district of the Walker  
16 River Irrigation District?  
17 A. It is what we call an Improvement District, a sub-  
18 district.  
19 Q. Local Improvement District No. 4?  
20 A. Local Improvement District No. 4.  
21 Q. Of the Walker River Irrigation District?  
22 A. Yes, sir.  
23 Q. And in that district they have both natural flow  
24 water and storage water all under the decree, is  
25 that correct?  
26 A. That is correct.  
27 Q. And it is all distributed after the water is re-  
28 leased from the river by you?  
29 A. It is.  
30 Q. And divided up in the ditch in accordance with the  
various claims of each to that water, is that right?  
A. That is correct."

We do not believe that anyone will contend that the  
Saroni Canal does not carry both decreed water and stored water.

The question here involved is of such importance for  
future regulation of the waters in the Saroni Canal that a  
decision based upon the finding that the Saroni Canal is devoted  
exclusively to the conveyance of storage waters should be re-  
considered.

Dated: July 17, 1941.

GEORGE PARKER  
JOHN H. WICHMAN  
FRED FULSTONE  
FRANK STICKMAN  
STANLEY HUNEWILL  
DON C. FOSTER

By *W. M. Kearney*  
Attorney for Board of Water Masters.

WILLIAM M. KEARNEY  
ATTORNEY AT LAW  
RENO, NEVADA

1 Filed: Nov 21st 1942

2 J. E. Benham  
3 Clerk

4 BY \_\_\_\_\_  
5 Deputy

JOHN R. ROSS  
Attorney for A. Quilici  
and Tony Masini  
Carson City, Nevada

IN EQUITY  
No. C-125

6 IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA  
7 IN AND FOR THE DISTRICT OF NEVADA

8 \* \* \*  
9 )  
10 UNITED STATES OF AMERICA, )  
11 Plaintiff, )  
12 -vs- )  
13 WALKER RIVER IRRIGATION DISTRICT, )  
14 a corporation, et als, )  
15 Defendants, )  
16 Contempt Proceedings against )  
17 A. Quilici and Tony Masini. )  
18 \* \* \*

POINTS AND AUTHORITIES OF  
A.QUILICI and TONY MASINI  
ON MOTION FOR RECONSIDERATION

19 It appears to the writer, counsel for Quilici and Masini,  
20 that the point involved in this contempt proceeding has long since  
21 been lost sight of.

22 This action was begun as a contempt proceeding -- and  
23 should continue as such. Counsel for the irrigation district  
24 has been, and is now, using these proceedings as a vehicle to  
25 haul into the controversy every point of law upon which he would  
26 have the Court enlighten him. It is our contention that there  
27 is but one simple question involved in this proceeding, namely:

28 Were the persons named, Quilici and Masini,  
29 in contempt of the Federal Court as charged?

30 The question of whether or not there was a contempt has  
31 already been decided by this Court. That ruling disposed of this  
32 entire matter. Counsel now appears to be after a judicial in-

1 interpretation of Decree C-125. Consequently we argue -- and urge --  
2 that Counsel is going outside the issues presented by this pro-  
3 ceeding.

4 The inquiry on a hearing for contempt is  
5 limited to the issues and no consideration  
6 will be given to incident or collateral  
7 questions. (14 C.J.S. 121)

8 Where the contempt proceeding is based on  
9 the alleged violation of a judicial order  
10 or decree, such order or decree may be ex-  
11 amined only with a view of ascertaining  
12 whether it was coram judice. (14 C.J. 121)

13 Contempt is only a summary proceeding to enforce obedience  
14 to the Court's orders and the main issue concerns only the Court  
15 and the defendant. Dugas and LeBanc vs. Port Timber Co., 80  
16 So. 203. It is clearly apparent that there are only three matters  
17 to be determined in a contempt proceeding of this character,  
18 namely:

- 19  
20 1) The establishment of the decree alleged to  
21 have been violated;  
22 2) The so-called acts of violation on the part  
23 of defendant;  
24 3) Were the acts complained of, under the cir-  
25 cumstances shown, contemptions? *tuos*

26 Now, in its original findings in the instant matter, the  
27 evidence showed -- and the Court found:

- 28 1) That C-125 was the decree alleged to have been  
29 violated.  
30 2) That at the time when defendants took the water  
31 from the Saroni Canal it contained only storage  
32 water



1           3) And since there was no decreed water in the  
2           Saroni Canal at the time the acts complained  
3           of were committed, the water master had no  
4           authority or jurisdiction over the Saroni  
5           Canal and/or the storage water therein.  
6           Hence the acts complained of did not con-  
7           stitute a violation, or contempt, of the  
8           provisions of C-125.

9           This seems to be a proper finding in all respects. It passes  
10          on the evidence concerned with contempt charges and finds that  
11          there was no contempt.

12          It is true that the Court in the findings makes a state-  
13          ment to the effect that:

14               Evidence introduced upon the hearing is to the  
15               effect that the Saroni Canal is devoted exclu-  
16               sively to the diversion of storage water.

17          This statement does not square with the testimony. The  
18          testimony, by the watermaster and officers of the Walker River  
19          Irrigation District, was to the effect that at the time of the  
20          alleged contemptuous acts the only water in the Canal was storage  
21          water. See transcript of testimony page 17 where Ike Whistler,  
22          the water master testified:

23               Q. What was the character of the water in the  
24               ditch (Saroni Canal) on that particular day  
25               (when the contemptuous acts were alleged to  
26               have taken place)?

27               A. Storage entirely.

28          In view of the foregoing we respectfully urge that the  
29          statement made by the Court in its decision upon which Counsel  
30          entirely bases his motion for reconsideration (quoted above in  
31          lines 14 - 16) can be corrected to conform to the actual testimony  
32          by rewording the objectionable portion of the sentence referred to

1 so as to make it read as follows:

2 Evidence introduced upon the hearing is to the  
3 effect that the Saroni Canal was (instead of "is")  
4 devoted exclusively to the diversion of storage  
5 water at the time the contemptuous acts were al-  
6 leged to have taken place. (These last underscored  
7 words being added).

8 Counsel "goes to town" on "stock water" and arrives at  
9 these conclusions:

10 The record in this case will show that Mr.  
11 Masini (no mention of Quillici) was receiving  
12 stock water at the time he is charged with  
13 contempt. (Lines 24 to 26, p. 5 of his memo-  
14 randum).

15 Hence if the duties of the Water Master are  
16 interfered with in distributing stock water  
17 which may or may not be comingled with storage  
18 water, the purposes of the regulatory pro-  
19 visions of the decree are nullified. (Lines  
20 20 to 23 p. 5)

21 Our comment on the "stock water" proposition is that  
22 Counsel is attempting to put the camel through the eye of a  
23 needle. It is obvious to all that Counsel -- as attorney for the  
24 Walker River Irrigation District -- is mostly interested in  
25 "passing the buck" from the Irrigation District to the Federal  
26 Court in the matter of the distribution of storage as well as  
27 decreed water.

28 If Counsel can confer federal jurisdiction by uttering  
29 the magic words "stock water" then indeed he is a legal Aladin.  
30 For all he then has to do is to wisely proclaim that some of  
31 the water in every ditch, canal, slough or pond is stock water  
32 and - presto! the Walker River Irrigation District immediately

1 transfers the trouble and expense of distribution to the Federal  
2 Court.

3 Inasmuch as the matter contained in counsel's memorandum  
4 is entirely repetitious -- with the exception of his novel "stock  
5 water" theory -- we are not going to further burden the Court  
6 with comment thereon. We respectfully refer the Court to our  
7 points and authorities heretofore filed in this matter.

8 In conclusion we make these following observations:

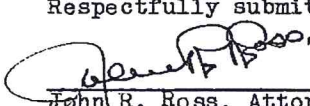
9 1) We admit that under C-125 (Par. XV) the water master  
10 is "charged" with the duty of apportioning and distributing the  
11 waters of the Walker River, its forks and tributaries --- in-  
12 cluding water for storage and stored water.

13 2) We contend that water master's duty as to "stored  
14 water" ends when he diverts it from the river channel into the  
15 canal at the point of diversion.

16 3) We contend that the question of whether or not the  
17 water master has jurisdiction of "storage" water in a ditch by  
18 reason of the fact that there is some "decreed" water in the same  
19 ditch comingled with the "storage" water is a question with which  
20 we are not concerned in these proceedings for the reason that the  
21 uncontradicted evidence is that at the time the acts complained  
22 of were committed there was only storage water in the Saroni Canal.  
23 The question is a hypothetical one. It is irrelevant to the in-  
24 stant case, and goes outside the issues involved.

25 Dated: this 12th day of November, A. D. 1942.

26 Respectfully submitted,

27   
28 John R. Ross, Attorney  
29 for A. Quilici and Tony  
30 Masini.  
31  
32



Filed June 5<sup>th</sup>, 1943  
P. E. Benham, Clerk.  
By P. F. Pratt, Deputy.

IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA,  
IN AND FOR THE DISTRICT OF NEVADA.

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
vs.  
  
WALKER RIVER IRRIGATION  
DISTRICT, a corporation,  
et als.,  
  
Defendants.

No. C-125  
  
DECISION  
  
RE MOTION TO RECONSIDER  
CONTEMPT PROCEEDINGS.

A motion for reconsideration of the decision and order of this Court made in certain contempt proceedings, interposed on behalf of defendant Walker River Irrigation District, has been submitted upon briefs, final brief being filed May 24, 1943. The question of contempt involved in the proceeding related mainly to alleged interference with a diversion head-gate for the diversion of water from the Saroni Canal upon the ranch of Tony Masini. In the decision sought to be reconsidered appears the following statement:

"Evidence introduced upon the hearing is to the effect that the Saroni Canal is devoted exclusively to the diversion of storage water and that the land-owners using water from such canal derive their rights solely from the Walker River Irrigation District."

This statement was in error to the extent that "the Saroni Canal is devoted exclusively to the diversion of storage water." During portions of the irrigation season some of the natural flow of the river channel is diverted therefrom into the Saroni Canal. Head-gates for diversions

from the natural river channels are clearly under the control of the Water Master appointed by this Court. The interference with diversions claimed to be contemptuous were not directly from a river channel but from the Saroni Canal, owned by the Walker River Irrigation District. The evidence is to the effect that at the times the interferences were alleged to have taken place, the Saroni Canal was devoted exclusively to the diversion of storage water.

The error referred to appearing in the decision, when corrected to conform to the evidence as submitted, does not affect the legal conclusions as stated in the decision.

The motion for reconsideration is denied.

Dated this 5<sup>th</sup> day of June, 1943.



DISTRICT JUDGE.