

Title 10084

In the District Court of the Third Judicial District of
the State of Nevada, in and for the County of Esmeralda.

Frank Romano

Plaintiff

vs.

Edgar Radler and Huntington
and Diamond Valley Stock and
Land Company, a Corporation
Defendants.

Stipulation

It is hereby stipulated by and between the
parties hereto, that:
Whereas Plaintiff herein is willing to and does
hereby dismiss the above entitled action against the
Defendants herein, and is willing to and does
hereby waive any rights he may have to the

damages prayed for in his Complaint in the above entitled action, and is willing to and do hereby consent to settle all his right, title and interest in and to that certain water right or rights set out in his Complaint herein by this stipulation; and

whereas, The Defendants herein, in consideration of the premises, are willing to settle all differences in regard to the rights growing out of Big Shipley Spring, situated on their land, between themselves and the Plaintiff herein by this stipulation, and do hereby consent to the dismissal of the above entitled action, and do hereby waive all right to defend the issues set forth in the pleading in the above entitled action, and do hereby agree that the Plaintiff herein shall be entitled to certain rights in the use and benefit of the flow of water from said Big Shipley Spring, as more particularly hereinafter set forth; and

whereas, The Plaintiff herein, or his predecessors in interest, have for more than twenty (20) years next preceding the date hereof, been the owners and holders, in possession and entitled to the possession of all those certain lands and premises situated in the County of Eureka, and State of Nevada, and more particularly described as follows, to-wit:

"North half of the northwest quarter; Southeast quarter of northwest quarter; North half of southwest quarter, and east half of southeast quarter of section twenty-nine (29); also North half of Southeast quarter of section thirty (30), all in Township twenty-four (24) North, of Range fifty-three (53), East Mount Diablo Base and meridian in the County of Eureka, and State of Nevada, in all containing 360 acres"

That said lands of Plaintiff herein are adjacent to and lying just below, with reference to the natural slope of the land and inclination of the land, the lands of the Defendants herein; and

whereas, The Huntington and Diamond Valley Stock and Land Company, the Defendant corporation herein, and its predecessors in title, and grantors in interest, for more than thirty (30) years next preceding the date hereof have been the owners and holders, in possession of, and entitled to the possession of all those certain lands and premises situate in the County of Eureka, State of Nevada, and more particularly described as follows, to-wit:

"In Township twenty-four (24) North, Range fifty-two

(52) East M. D. B. & M.: all of the northeast quarter (N.E. 1-4), all of the southeast quarter (S.E. 1-4), the south half of the southeast quarter (S. 1-2 of S.E. 1-4), and the northwest quarter of the southeast quarter (N.W. 1-4 of S.E. 1-4) of section thirteen (13); the east half of the northeast quarter (E. 1-2 of N.E. 1-4), and the northeast quarter of the southeast quarter (N.E. 1-4 of S.E. 1-4) of section twenty-three (23); all of section twenty-four (24); all of the north half (N. 1-2), and the north half of the south half (N. 1-2 of S. 1-2) of section twenty-five (25); and the east half of the northeast quarter (E. 1-2 of N.E. 1-4) of section twenty-six (26).

"In Township twenty-four (24) north, Range fifty-three (53) East, M. D. B. & M.: the south half of the south half (S. 1-2 of S. 1-2), the north half of the southwest quarter (N. 1-2 of S.W. 1-4), and the northwest quarter of the southeast quarter (N. 1-4 of S.E. 1-4) of section eighteen (18); the west half of the northwest quarter (W. 1-2 of N.W. 1-4), and the northwest quarter of the southwest quarter (N.W. 1-4 of S.W. 1-4) of section nineteen (19); all of the north half (N. 1-2) of section thirty (30); and the southwest quarter of the northwest quarter (S.W. 1-4 of N.W. 1-4) of section twenty-nine (29); southwest quarter of the southwest quarter (S.W. 1-4 of S.W. 1-4) of section seventeen (17)."

That there is situate on said land of said defendant corporation the Big Shipley Spring in the East half (E. 1-2) of the northeast quarter (N.E. 1-4) of section twenty-three (23), Township twenty-four (24) north, Range fifty-two (52) East, M. D. B. & M.; that the proper name of said Spring is the Big Shipley Spring; that there are certain dams and ditches on said lands of said defendant corporation which are used to divert the waters of said Big Shipley Spring by said defendant corporation, for the purpose of irrigating the irrigable portions of said lands, heretofore described of said defendant corporation, and that the main system of said dams and ditches, on said lands, were constructed by the predecessors in interest of said defendant corporation, more than thirty (30) years before the commencement of this action; that the main dam, at the eastern end of said Big Shipley Spring was constructed by the said predecessors in interest of said defendant corporation, more than thirty (30) years before the commencement of this action, and has been continuously maintained at the eastern end of said Big Shipley Spring, by the defendant corporation, its predecessors and grantors in

interest, during the whole of said thirty (30) years; that at the time that said dam, at the said easterly end of said Big Shipley Spring was constructed, more than thirty (30) years before the commencement of this action, there was also constructed a ditch, leading from said dam, directly eastward, with a water gate, which said ditch has of late years been abandoned, and which said ditch is still capable of use, and which said ditch, together with the natural swales and depressions of the land and the easterly inclination of the land, has produced a water course leading Easterly, then Northwesterly and then Southeastly from said Big Shipley Spring, which said water course feeds the lands of Plaintiff herein;

That upon, from, and after, to-wit: the first day of January, a. d. 1892, the said Plaintiff and his grantors and predecessors in interest in said lands, by means of dams and embankments constructed by him in and across said water course of said Big Spring, and otherwise, lawfully turned, directed and used of the waters thereof 200 minus inches or 5 second feet, being about one-third of the total flow of said Big Spring, so called, as the same runs in its natural channel of the lands of the defendant corporation, and then and thereafter made use thereof, in flooding and irrigating said lands of said Plaintiff for and during the months of January, February, and March, of each succeeding year; and, thereafter, so continued to use the said amount of water for the purpose of flooding and irrigating said lands; and ever since then have continuously used and appropriated the said amount of water for and during the months aforesaid for said purposes; that the flooding and irrigating of said lands in said months and in the quantity hereinbefore described produces sufficient water for the crop of Plaintiff herein, and that without the flooding and irrigating of said lands of Plaintiff, during said months no crop may be produced thereon, and that said lands become valueless;

That by reason of the contour of said land, the natural drainage of the ditches and water-courses from a higher to a lower level, and the Eastern inclination of the land, the waters of the Big Shipley Spring, whenever the defendant corporation begins the

flooding and irrigating of its lands, naturally discharge themselves upon the lands of the Plaintiff herein, and if prevented from discharging themselves upon the lands of the Plaintiff herein, thereupon discharge themselves upon the desert lands which are at the outskirts of the lands of the defendant corporation herein, and which adjoin the lands of the Plaintiff herein, and are therefore wasted, and prevented from any beneficial use upon the lands of the defendant corporation herein or the lands of the Plaintiff herein.

That upon opening certain ditches or system of ditches upon the said lands aforesaid a little earlier in the season than is their custom, for the flooding and irrigating of their lands, to-wit: during the months of January, February and March, of each year, the waters of the Big Shipley Spring are permitted to discharge themselves upon the lands of the Plaintiff herein, and by means of dams and embankments constructed by Plaintiff herein, said waters are lawfully turned and diverted and used to the extent of 200 miners inches, more or less, for the purpose of flooding and irrigating lands of Plaintiff herein, to a sufficient extent to prepare the soil each year and to produce the crops of which the lands of the Plaintiff are capable; and that it has been the custom of the defendant corporation herein, and its predecessors in interest, to so open said ditches each year during more than twenty (20) years for the benefit of defendants' lands.

Now, therefore, it is hereby agreed by and between the parties hereto, that, from and after the date of this agreement, the Plaintiff herein, his heirs, executors, administrators, or assigns, shall be entitled and are hereby entitled to the following water right, to-wit: That during the months of January, February, and March, to-wit: beginning on the first day of January, and up to and including the first day of April, of each year, there shall be permitted to flow by the defendant corporation, its successors or assigns, through the hereinafter described artery of its system of irrigating ditches, to and upon the lands of the Plaintiff herein, 200 miners inches, or 5 second feet, of the waters of Big Shipley Spring, situated on the lands of the defendant corporation; provided, however, that said amount of water does not divert the waters from Big Shipley Spring to such an extent that there will not be sufficient water flowing from said Big

Shipley Spring through the ditches of the defendant corporation herein for domestic purposes and the watering of the stock of the defendant corporation heretofore used for said purposes, but that during said months, to-wit: January, February and March, and from said first day of January up to and including said first day of April, of each year, there shall always be water enough in said ditches of said defendant corporation for said purposes of domestic use and of watering the stock of said defendant corporation; and

It is hereby agreed by and between the parties hereto that on the first day of January, each year, succeeding the date of this agreement, the defendant corporation herein, or its successor or assigns, shall open that certain ditch hereinafter described, selected to convey the waters of the Big Shipley Spring to the extent heretofore agreed upon to the lands of Plaintiff herein, and that Plaintiff herein, his heirs, executors, administrators or assigns, shall be entitled to and are hereby given the right to the uninterrupted flow of 200 miners inches of said waters of said Big Shipley Spring by and through the said hereinafter described ditch until said waters reach the lands of Plaintiff herein, his heirs, executors, administrators or assigns, and the Plaintiff, herein his executors, heirs, administrators or assigns, are hereby given the right to construct dams and embankments, ditches and flood gates upon Plaintiff's land to lawfully turn, divert and use the waters from said ditch to the extent of 200 miners inches or 5 second feet, with the proviso that said use and diversion shall not diminish the usual supply of water for domestic purposes and the watering of stock of the said defendant corporation, its successor or assigns, during the months aforesaid.

That the ditch through which the said waters of said Big Shipley Spring, during the months of January, February and March, to-wit: from the first day of January up to and including the first day of April, of each year, shall be permitted to flow from said Big Shipley Spring to and upon the lands of the Plaintiff herein, his heirs, executors, administrators or assigns, as hereinbefore described is hereby described as follows: The ditch denoted

ditch E of that certain map filed herewith and the continuation thereof, said ditch beginning in the S.W. 1/4 of the N.W. 1/4 of S.W. 1/4 of section 24 Township 24 N. R. 52 E. M. D. B. M. continuing in a northeasterly direction through the said N.W. 1/4 of the S.W. 1/4 of said section 24 thence Easterly through N.E. 1/4 of the S.W. 1/4 of said section 24 thence in a southeasterly direction parallel to the natural water channel so called in said map annexed hereto, to a point in the S.W. 1/4 of the S.E. 1/4 of said section 24 thence in a southeasterly direction along the said natural water channel so called on said map annexed hereto to a point in the S.E. 1/4 of the N.W. 1/4 of section 30 Township 24 N. R. 53 E. M. D. B. M. where said continuation of ditch E empties into said natural water channel so called depicted on said map annexed hereto. Said map herein referred to is marked Exhibit A and annexed hereto and shall ~~be~~ be recorded with the within instrument.

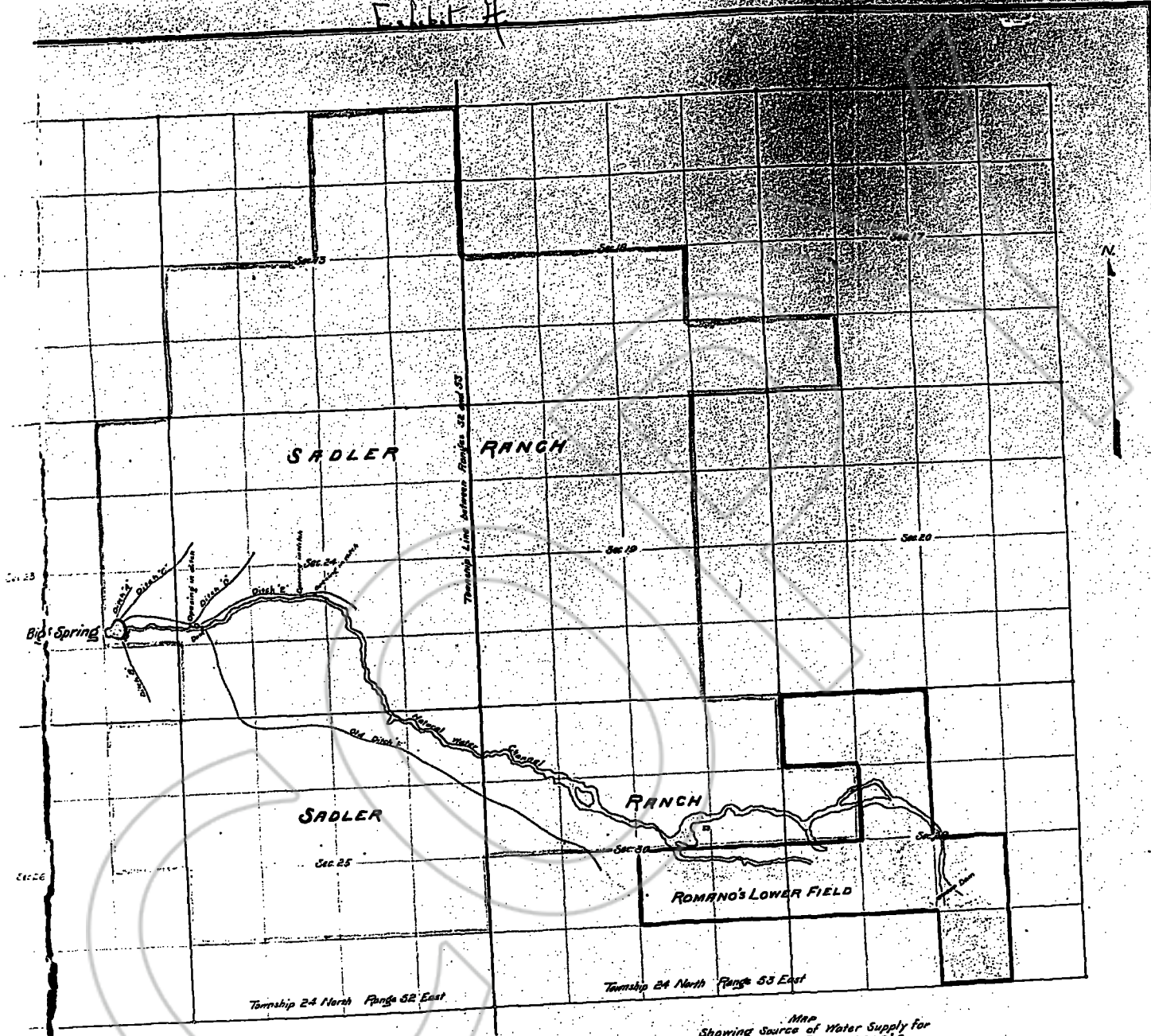
The opening in said ditch E through which the said water hereby allowed to the plaintiff herein his heirs, executors, administrators and assigns is to flow is at that point marked "O" on said map. Each year on the first day of January the dam of the Easterly end of said Big Shipby Spring is to be opened by the defendant corporation herein successors or assigns and the water permitted to flow in a Easterly direction along the ditch shown on said map running parallel to said natural water channel to a point marked on said map "opening in ditch" thence by means of a dam at said "opening in the ditch" is to be dropped into the natural water channel so called in said map and thence conveyed by means of a dam into the said ditch E, at the point marked "O" on said map and thence conveyed through said ditch E and the continuation thereof until discharged upon plaintiff's land in section 30 Township 24 N. R. 53 E. M. D. B. M. as hereinbefore set

forth: That the Plaintiff herein, his heirs, executors, administrators or assigns, are entitled to the unimpeded flow of the water of the Big Shipby Spring to the extent of 200 minus inches or 5 second feet, through the said ditch hereinbefore described, for the irrigation and flooding of their lands during the months of January, February and March, of each year, to wit: from the first day of January up to and including the first day of April, of each year, and said flow in said feet or inches shall be in

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Exhibit #

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Surveyed March 1, 2 and 3, 1912 by Geo. J. Nickerson, C.E.

MAP
Showing Source of Water Supply for
FRANK ROMANO'S
Lower Field
EUREKA COUNTY, NEVADA
Scale: 3 Inches = 1 Mile

Location of Land in Romano's Lower Field.
1/4 of NW 1/4; SE 1/4 of SW 1/4; N 1/2 of SW 1/4; and
1/4 of SE 1/4 of Section 29, also N 1/2 of SE 1/4 of
Section 29, all in Township 24 North, Range 53
East, M.D.B. and N. Eureka County, Nevada.

Filed March 5, 1913
Edgar Cather, Recorder

opened by the defendant - corporation here
to be permitted to flow

no use interfered with or obstructed by the said defendant corporation herein, its successors or assigns, provided that said flow does not diminish, as hereinabove set forth, a sufficient amount of water flowing from said Big Shipley Spring for the domestic use and the watering of the stock of the defendant corporation, its successors or assigns, through the ditches heretofore used by it for said purposes.

That, in case, for any reason, the ditch heretofore described for the conveyance of waters of the Big Shipley Spring to the lands of the Plaintiff herein, his heirs, executors, administrators or assigns, to the extent hereinbefore set forth, shall become inconvenient or inadequate for the conveyance of said water as aforesaid to the lands of the Plaintiff herein, his heirs, executors, administrators or assigns, another ditch, or ditches may be selected by the parties hereto, their heirs, executors, administrators, successors, or assigns, for said purposes.

It is hereby agreed by and between the parties hereto that during the remaining months of each succeeding year, to-wit: during the remainder of the year, save and except the period from the first day of January up to and including the first day of April, the defendant corporation herein, its successors or assigns, are entitled to all the water rights appurtenant to the Big Shipley Spring, and to the unimpeded and unobstructed use of the water of said Big Shipley Spring through their present system of ditches, or any other system of ditches, for irrigating or flooding, or for domestic purposes, or other purposes, upon their lands, or any other lands, to which they have heretofore been entitled.

It is hereby agreed by and between the parties hereto that each of the parties to the within action shall pay their own costs herein, and that these presents shall bind the heirs, executors, administrators, successors or assigns of the parties hereto, and that this instrument shall be recorded in the office of the Recorder of the County of Eureka, and State of Nevada.

Frank Thomas
 Thomas J. McLaughlin, atty for Plaintiff
 Huntington & Diamond Valley Stock
 & Land Co.

H. J. Sadler, Vice Pres.
 Henderson, Cairns & Van Fleet,
 attorneys for Defendant
 Edgar Sadler.

Recorded at the request of S. J. McFarlin March 5
a. d. 1913 at 35 minutes past 10 A.M.

Edgar Carter, Recorder
File 10094.

E. S. Tadlock }
to } agreement
C. S. Walker }

Palisade Nevada, Mar. 3, 1913.

To whom it may concern:-

This is to certify that I have
this day given as security to C. S. Walker for value
received, to the amount of $10\frac{3}{4}$ (one hundred three
dollars), one gray mare, and one brown mare, bit of
Semele brothers.

The above contract to be cancelled when I have
C. S. Walker's receipt in full for above amount.
E. S. Tadlock.

Witness

Elizabeth Faud Walker.

Recorded at the request of C. S. Walker, March 6, a. d.
1913 at 50 minutes past 6 P.M.

Edgar Carter, Recorder
File 10097