

STATE OF NEVADA }
County of Humboldt } ss.

I, J. W. Davey, County Clerk of said County and State, and ex-officio Clerk of the Sixth Judicial District Court of the State of Nevada, in and for the County of Humboldt, do hereby certify the hereto attached to be a full, true and correct copy of the original JUDGMENT AND DECREE ~~on file in the Matter of~~ the Determination of the Relative Rights in and to the waters of BARTLETT CREEK and tributaries in Humboldt County, Nevada, and includes all endorsements that appear upon the original Judgment and Decree on file and of record in my said office and in said Bartlett Creek Determination of Relative Rights.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District

Court on this 19th day of November A. D. 1946,
J. W. Davey, Clerk
RECEIVED
NOV 21 1946
DEPARTMENT
OF
ATTORNEY GENERAL

1 IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
2 IN AND FOR THE COUNTY OF HUMBOLDT
3

4 In the Matter of the Determination
5 of the Relative Rights in and to
6 the Waters of BARTLETT CREEK and
7 its Tributaries in Humboldt County,
8 State of Nevada.

No. 4188
Filed
November 18 1946
J. W. Davy
Clerk

9 JUDGMENT AND DECREE
10

11 The above-entitled matter came before the court on the
12 6th day of March, 1946, at 10:00 o'clock in the forenoon of
13 said day, having been regularly set down for hearing at that
14 time.

15 Hugh A. Shamberger, Assistant State Engineer, appeared
16 in person for the State Engineer of Nevada, the applicant
17 herein, and was represented by Alan Bible, Attorney General
18 of the State of Nevada, his attorney. B. F. Porter Estate,
19 a corporation, the claimant and successor in interest to the
20 original petitioner in these proceedings appeared by and was
21 represented by Miles N. Pike, Esq., its attorney, and no other
22 person or party appeared in person or by attorney or by any
23 written appearance, notice of exceptions, pleading, objection,
24 exception or other paper, filed in these proceedings, or at all.

25 Thereupon evidence, both oral and documentary, was
26 adduced before the court by and on behalf of the applicant and
27 claimant and for the use and benefit of the claimant and no
28 evidence was adduced or offered on behalf of any respondent
29 or objector, or any person whatever other than claimant.

30 Whereupon, the said evidence being closed, the matter

1 was submitted to the court for its order and decision on the
2 facts and the law applicable thereto.

3 Whereupon, on the motion of the said claimant and of
4 the said applicant, by and through their said attorneys, this
5 court orally pronounced and entered its decision and order
6 that the said Order of Determination of the State Engineer
7 in the above-entitled matter and proceedings be and the same
8 is established, approved, adopted, affirmed and confirmed
9 without any modification or change thereof or therein.

10 Thereafter, and on the 18th day of November,
11 1946, the court made, signed, entered and caused to be filed
12 herein its findings of fact and conclusions of law in the
13 premises.

14 Therefore, in consideration of the premises and the
15 law in such cases made and provided, it is hereby

16 ORDERED, ADJUDGED AND DECREED that this matter came
17 on regularly to be heard on March 6th, 1946 and that this
18 court has jurisdiction of the subject matter and the parties
19 to this proceeding and that all notices, orders and process
20 required by law in this matter, whether before the State
21 Engineer or this court have been duly given, made and served
22 pursuant to law or have been duly waived; and

23 IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED
24 that the Order of Determination of the State Engineer in the
25 above-entitled matter and proceedings be and the same hereby
26 is established, approved, adopted, affirmed and confirmed
27 by this court without any modification thereof or change
28 therein.

29 For the sake of certainty the words and figures of
30 said Order of Determination are here set out as follows, to wit:

1 *IN THE OFFICE OF THE STATE ENGINEER
2 OF THE STATE OF NEVADA

3 In the Matter of the Determination)
4 of the Relative Rights in and to)
5 the Waters of Bartlett Creek and) SS.
6 its Tributaries in Humboldt County,)
7 Nevada.

8 ORDER OF DETERMINATION

9 The State Engineer of the State of Nevada upon
10 petition of W. A. Johnstone, a water user on the Bartlett
11 Creek stream system, hereinafter described, requesting the
12 determination of the relative rights to the waters of said
13 stream system, made an investigation on April 6 and April 7,
14 1930, under and pursuant to Section 18 of Chapter 140 of the
15 Statutes of Nevada of 1913 and acts amendatory thereof and
16 supplementary thereto and found that the facts and conditions
17 justified such determination and on May 9, 1930, entered an
18 order granting said petition.

19 The State Engineer received and filed in his records
20 maps and statements of claim to the use of water from said
21 stream system required under the provisions of said Chapter
22 140, Statutes of 1913 and acts amendatory thereof and supple-
23 mentary thereto. There being two claimants upon said stream
24 system, namely, W. A. Johnstone and A. L. Delong, both having
25 waived in writing the provisions of said Chapter 140, Statutes
26 of 1913, and acts amendatory thereof and supplementary thereto,
27 with reference to notices and the service and publication
28 thereof.

29 NOW, THEREFORE, in accordance with the provisions of
30 Chapter 140, Statutes of Nevada of 1913 and acts amendatory
 thereof and supplementary thereto, the State Engineer hereby

1 makes and files and caused to be entered of record in his
2 office, this Order of Determination, defining the right of the
3 claimant to the waters of said Bartlett Creek stream system, as
4 hereinafter defined.

5 CLAIMANT

6 After the investigation referred to, together with
7 subsequent investigations by the State Engineer's office in
8 1939 and 1945, the State Engineer hereby finds that W. A.
9 Johnstone, the predecessor of claimant B. F. Porter Estate,
10 purchased the rights of A. L. Delong as evidenced by certifi-
11 cate of Appropriation No. 253 issued under Permit No. 1692,
12 and that the entire flow of the waters of the Bartlett Creek
13 stream system, as hereinafter defined, since prior to 1868,
14 has been and now is placed to beneficial use by B. F. Porter
15 Estate, a corporation, and its predecessors in interest and
16 that there is now only one appropriator, namely, said B. F.
17 Porter Estate, that is using the flow of said Bartlett Creek
18 stream system. All of these waters are being used under a
19 claim of vested right. Deeds of record in this office show
20 that the present claimant and appropriator, B. F. Porter Estate,
21 is the successor in interest to the vested rights initiated in
22 the year 1858.

23 B. F. Porter Estate is the sole successor of the vested
24 rights to the use of water from the Bartlett Creek stream
25 system, as hereinafter defined, and now owns all the lands on
26 which the waters have been placed to beneficial use for irriga-
27 tion and domestic purposes and is now the sole user of range
28 rights under the Division of Grazing in this area.

29 SOURCE

30 The words 'Bartlett Creek stream system' as used in

1 this Order shall be interpreted as including Bartlett Creek
2 situated in the westerly part of Humboldt County, Nevada, on
3 the easterly slope of the Black Rock Mountains, flowing in a
4 generally southeasterly direction, together with all its tribu-
5 taries and all springs tributary to it.

6
7 IRRIGATION

8 SEASON: By actual practice over a great number of years,
9 irrigation for harvest and meadow crops starts about March 1st
10 and continues through to about October 1st. After October 1st,
11 the harvest and meadow fields are used for pasture and irri-
12 gation to a lesser degree is carried on until March 1st of the
13 following year. In the pasture fields, irrigation is year
14 around.

15 The irrigation season is therefore herein fixed as
16 follows: Harvest and Meadow - March 1st to October 1st.
17 Harvest and Meadow (for pasture) - October 1st to March 1st.
18 Pasture lands - January 1st to December 31st.

19 DUTY OF WATER: The duty of water is the amount of water in
20 acre feet per season required to be placed on land in a manner
21 consistent with good irrigation practice to yield adequate
22 crop returns. The State Engineer hereby finds that a duty of 3.6
23 acre feet per acre per season would be adequate for the harvest
24 and meadow lands from March 1st to October 1st and 1.0 acre
25 feet from October 1st to March 1st of the following year.
26 The State Engineer further finds that 2.0 acre feet per calendar
27 year would be adequate for pasture lands.

28 During certain times of the runoff period, there is
29 more water in the stream than that amount which would satisfy
30 the continuous flow hereinafter specified, and it is ordered

1 that the claimant be allowed to divert more than the continuous
 2 flow that is hereinafter allowed, provided that during any one
 3 month the amount of water diverted does not exceed 1.5 acre
 4 feet per acre of irrigated land.

5 Due to the lack of sufficient water to afford the
 6 claimant a continuous flow of water on its pasture lands, it
 7 is hereby ordered that the claimant be allowed to use the water
 8 in such quantities as is available and desirable provided that
 9 the total yearly use does not exceed the allowed 2.0 acre feet
 10 per acre of pasture land.

11 The class of culture, duty, season, acres and flow
 12 of water is therefore as follows:

15	Class of Land	Duty	Irrigation Season	Acres	Cont. flow	Acre-Feet
16	Harvest & Meadow	3.6	Mar. 1 to Oct. 1	156.32	$\frac{1}{1.33}$	562.75
17	Harvest & Meadow	1.0	Oct. 1 to Mar. 1	156.32	$\frac{2}{0.52}$	156.32
18	Pasture	2.0	Jan. 1 to Dec. 31	99.70		<u>199.40</u>
19						
20				Total		918.47 A.F.

21 $\frac{1}{1}$ - continuous flow per acre = 0.00849 c.f.s.

22 $\frac{2}{2}$ - continuous flow per acre = 0.00334 c.f.s.

23
 24 EXTENT OF RIGHTS OF CLAIMANT,
 25 B. F. PORTER ESTATE

26 The State Engineer hereby determines that B. F. Porter
 27 Estate is the lawful successor in interest to, and the owner of,
 28 the vested right to the use of the waters of said Bartlett
 29 Creek stream system for irrigation and domestic purposes on its
 30 Bartlett Creek ranch and to water at said stream system live-

1 stock from said ranch and from the public range readily available
 2 to livestock watering at said stream system and the State Engineer
 3 hereby determines the source of water supply, the location of
 4 point of diversion, the year of priority, the cultural acreage,
 5 the legal subdivisions, sections, townships and ranges and duty
 6 of water for claimant as set forth in the following tabulation:

7 Claimant: B. F. Porter Estate Amended and Supplemental

8 Source: Bartlett Creek Stream System Proof No. 02241

9 Point of Diversion for Irrigation and Domestic Use:

10 (In Lot 1 (NW 1/4 NW 1/4) Section 7, T. 41 N., R. 28 E. M.D.M.
 11 In NE 1/4 NW 1/4 Section 7, " " " " "
 12 In NE 1/4 NE 1/4 Section 7, " " " " "
 In SW 1/4 SE 1/4 Section 8, " " " " "

13 Water is used for stockwatering purposes throughout the entire
 14 stream system and is used for irrigation and domestic purposes
 15 on claimant's Bartlett Creek Ranch and, without in anyway limit-
 16 ing the generality of the foregoing, particularly including the
 17 following particularly described parcels with the specified
 18 priority, to-wit:

Year of Priority	Culture Acres		Subdiv.	Sec.	R.	Duty of Water Acre-Feet	
	Harvest	& Meadow				Tp. R. Harvest	E. & Meadow Pastur
1858	1.80		NE NE	7	41 28	8.28	
1858	2.75		NW NE	7	" "	12.65	
1858	5.00		NE NW	7	" "	23.00	
1867	1.90		SE NE	17	" "	8.74	
1867	3.90	2.8	NE SE	17	" "	17.94	5.60
1867		6.6	SE SE	17	" "		13.20
1867	35.56	0.3	SW NW	16	" "	163.58	0.60
1867	31.80	8.2	NW SW	16	" "	146.28	16.40
"	1.10	38.9	SW SW	16	" "	5.06	77.80
"	33.20	0.7	SE NW	16	" "	152.72	1.40
"	29.50	6.0	NE SW	16	" "	135.70	12.00
"	3.80	36.2	SE SW	16	" "	17.48	72.40
"	0.86		NW SE	16	" "	3.96	
"	0.12		NE NW	16	" "	0.55	
"	4.75		SW NE	16	" "	21.85	
"	0.28		NW NW	16	" "	1.28	
TOTAL	156.32	99.7				719.07	199.40

28
 29
 30

1 substantially all that portion of the public range readily
2 available to livestock watering on said Bartlett Creek stream
3 system, the number of stock varying with range and economic
4 conditions.

5 It is hereby ordered that claimant, B. F. Porter
6 Estate, be and it is hereby entitled to water range livestock
7 on and from any portion of the Bartlett Creek stream system in
8 sufficient numbers to utilize substantially all that portion of
9 the public range readily available to livestock watering at
10 and from the Bartlett Creek stream system. The State Engineer
11 hereby finds from the records that B. F. Porter Estate is the
12 lawful successor in interest to, and the owner of, the vested
13 right to use the water from the Bartlett Creek stream system for
14 stockwatering purposes and hereby determines that the source of
15 such water supply is the Bartlett Creek stream system and that
16 the cattle may be watered at and from, or on any part of, such
17 system; that the year of priority is the year 1867 and the
18 extent of the right is the number of range livestock which will
19 utilize substantially all that portion of the public range
20 readily available to livestock watering from the Bartlett Creek
21 stream system, or any part thereof.

22 CHANGE OF PLACE OF USE

23 All water allocated under this Order shall be
24 appurtenant to the lands designated herein. In the event the
25 water user, under this Order, desires to change the place of use
26 of any of the waters herein allocated, to new lands, such water
27 user must make application to the State Engineer for permission
28 to make such change in the manner then set forth under the law
29 of this state.
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JUNIOR RIGHTS

The waters of the Bartlett Creek stream system are fully utilized for irrigation, stockwatering and domestic purposes and no person or persons other than B. F. Porter Estate and its successors shall be entitled to receive any water from said Bartlett Creek stream system.

THIS ORDER OF DETERMINATION made and filed in the Office of the State Engineer on the 23rd day of November, 1945.

(Signed) Alfred Merritt Smith [Seal]
Alfred Merritt Smith
State Engineer. "

Done in Open Court this 18th day of November, 1946.

Mervyn A. Brown
DISTRICT JUDGE