

1 IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
2 IN AND FOR THE COUNTY OF HUMBOLDT
3
4

5
6 In the Matter of the Determination
7 of the Relative Rights in and to
8 the waters of BATTLE CREEK and
9 its Tributaries in Humboldt County,
10 State of Nevada.

see memo 6/22/49
Grace Hill Humboldt Co. (Opp.)
filed in Bartlett Co. (Correspondence)

No. 4190

Filed
November 18-1946

J. W. Davy
Clerk

11
12 JUDGMENT AND DECREE
13

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

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

29 Thereupon evidence, both oral and documentary,
30 was adduced before the court by and on behalf of the applicant

1 and claimant and for the use and benefit of the claimant
2 and no evidence was adduced or offered on behalf of any
3 respondent or objector, or any person whatever other than
4 claimant.

5 Whereupon, the said evidence being closed, the
6 matter was submitted to the court for its order and decision
7 on the facts and the law applicable thereto.

8 Whereupon, on the motion of the said claimant
9 and of the said applicant, by and through their said
10 attorneys, this court orally pronounced and entered its
11 decision and order that the said Order of Determination of
12 the State Engineer in the above-entitled matter and proceed-
13 ings be and the same is established, approved, adopted,
14 affirmed and confirmed without any modification or change
15 thereof or therein.

16 Thereafter, and on the 18th day of November,
17 1946, the court made, signed, entered and caused to be filed
18 herein its findings of fact and conclusions of law in the
19 premises.

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

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

29 IT IS HEREBY FURTHER ORDERED, ADJUDGED AND
30

1 DECREEED that the Order of Determination of the State Engineer
2 in the above-entitled matter and proceedings be and the same
3 hereby is established, approved, adopted, affirmed and con-
4 firmed by this court without any modification thereof or
5 change therein.

6 For the sake of certainty the words and figures
7 of said order of determination are here set out as follows,
8 to wit:

9
10 * IN THE OFFICE OF THE STATE ENGINEER
11 OF THE STATE OF NEVADA
12

13 In the Matter of the Determination)
14 of the Relative Rights in and to) SS.
15 the Waters of Battle Creek and its)
16 Tributaries in Humboldt County,)
17 Nevada.

18 ORDER OF DETERMINATION

19 The State Engineer of the State of Nevada upon
20 petition of W. A. Johnstone, a water user on the Battle
21 Creek stream system, hereinafter described, requesting the
22 determination of the relative rights to the waters of said
23 stream system, made an investigation on April 6 and April 7,
24 1930 under and pursuant to Section 18 of Chapter 140 of the
25 Statutes of Nevada of 1913 and acts amendatory thereof and
26 supplementary thereto and found that the facts and condi-
27 tions justified such determination and on May 9, 1930
28 entered an order granting said petitions.
29
30

1 rights to the use of water from the Battle Creek stream system,
2 as hereinafter defined, and now owns all the lands on which the
3 waters have been placed to beneficial use for irrigation and
4 domestic purposes and is now the sole user of range rights under
5 the Division of Grazing in this area.

6 SOURCE

7 The words "Battle Creek stream system" as used in this
8 order shall be interpreted as including Battle Creek situate in
9 the westerly part of Humboldt County, Nevada, on the easterly
10 slope of the Black Rock Mountains, flowing in a general southeast-
11 erly direction, together with all its tributaries and all springs
12 tributary to it, and without in any way limiting the generality of
13 the foregoing, particularly including Unnamed Creek and Bell Morrell
14 Creek.

15 Unnamed Creek is a tributary of Battle Creek and is part
16 of the Battle Creek stream system. Unnamed Creek rises in the
17 NW 1/4 NW 1/4 Section 7, T. 40 N., R. 27 E. and flows in a
18 northeasterly and easterly direction to its confluence with Battle
19 Creek.

20 Bell Morrell Creek is a tributary of Battle Creek and is
21 part of the Battle Creek stream system. Bell Morrell Creek flows
22 in a southerly direction to its confluence with Battle Creek.

23 IRRIGATION

24 SEASON: By actual practice over a great number of years, irriga-
25 tion for harvest and meadow crops starts about March 1st and
26 continues through to about October 1st. After October 1st, the
27 harvest and meadow fields are used for pasture and irrigation to
28 a lesser degree is carried on until March 1st of the following
29 year. In the pasture fields, irrigation is year around.

30 The irrigation season is therefore herein fixed as follows:

- 1 Harvest and Meadow - March 1st to October 1st.
- 2 Harvest and Meadow (for pasture) - October 1st to March 1st.
- 3 Pasture lands - January 1st to December 31st.

4 DUTY OF WATER: The duty of water is the amount of water in
5 acre feet per season required to be placed on land in a manner
6 consistent with good irrigation practice to yield adequate crop
7 returns. The State Engineer hereby finds that a duty of 3.6
8 acre feet per acre per season would be adequate for the harvest
9 and meadow lands from March 1st to October 1st and 1.0 acre
10 feet from October 1st to March 1st of the following year. The
11 State Engineer further finds that 2.0 acre feet per calendar
12 year would be adequate for pasture lands.

13 During certain times of the runoff period, there is
14 more water in the stream than that amount which would satisfy
15 the continuous flow hereinafter specified, and it is ordered that
16 the claimant be allowed to divert more than the continuous flow
17 that is hereinafter allowed, provided that during any one month
18 the amount of water diverted does not exceed 1.5 acre feet per
19 acre of irrigated land.

20 Due to the lack of sufficient water to afford the
21 claimant a continuous flow of water on its pasture lands, it is
22 hereby ordered that the claimant be allowed to use the water in
23 such quantities as is available and desirable provided that the
24 total yearly use does not exceed the allowed 2.0 acre feet per
25 acre of pasture land.

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

28
29
30

Class of land	Duty	Irrigation Season	Acres	Cont. flow	Acre-feet
Harvest & Meadow	3.6	Mar. 1 to Oct. 1	133.2	1.13 cfs ^{1/}	479.52
Harvest & Meadow	1.0	Oct. 1 to Mar. 1	133.2	0.44 cfs ^{2/}	133.2
Pasture	2.0	Jan. 1 to Dec. 31	349.40		<u>698.80</u>
Total					1311.52 A.F.

1/ - continuous flow per acre = 0.00849 c.f.s.

2/ - continuous flow per acre = 0.00334 c.f.s.

EXTENT OF RIGHTS OF CLAIMANT,
B. F. PORTER ESTATE

The State Engineer hereby determines that B. F. Porter Estate is the lawful successor in interest to, and the owner of, the vested right to the use of the waters of said Battle Creek stream system for irrigation and domestic purposes on its Battle Creek ranch and to water at said stream system livestock from said ranch and from the public range readily available to livestock watering at said stream system and the State Engineer hereby determines the source of water supply, the location of point of diversion, the year of priority, the cultural acreage, the legal subdivisions, sections, townships and ranges and duty of water for claimant as set forth in the following tabulation:

Claimant: B. F. Porter Estate Proof Nos. 02239
02240

Source: Battle Creek Stream System

Points of Diversion for irrigation and domestic use:

Battle Creek - In the NW 1/4 NW 1/4 Section 11, T.40 N.R. 27 E.
Bell Morrell Creek - In the SE 1/4 NE 1/4 Sec.2, T.40 N., R. 27 E.

Water is used for stockwatering purposes throughout the entire stream system and is used for irrigation and domestic purposes on claimant's Battle Creek Ranch and, without in anyway limiting the generality of the foregoing, particularly including the following particularly described parcels with the specified priority, to-wit:

1	Year of Priority	Culture Acres		Subdiv.	Sec.	T. R. E.	Duty of Water	
		Harvest	Meadow Pasture				Harvest & Meadow	Pasture Acre-feet
3	1867		31.4	NW SW	1	40	27	62.8
4	"		40.0	SW SW	1	"	"	80.0
5	"		0.9	SW NW	1	"	"	1.8
6	"		17.5	SE NE	2	"	"	35.0
7	"		40.0	NE SE	2	"	"	80.0
8	"		40.0	SE SE	2	"	"	80.0
9	"		10.1	SW NE	2	"	"	20.2
10	"	8.3	31.0	NW SE	2	"	"	38.18
11	"	18.3	21.7	SW SE	2	"	"	84.18
12	"	16.1		NE SW	2	"	"	74.06
13	"	40.0		SE SW	2	"	"	184.00
14	"	19.3		SW SW	2	"	"	88.78
15	"	3.5		NW NW	11	"	"	16.10
16	"	17.9	5.6	NE NW	11	"	"	82.34
17	"	9.8	31.2	NW NE	11	"	"	45.08
18	"		40.0	NE NE	11	"	"	80.0
19	"		40.0	NW NW	12	"	"	80.0
20		133.2	349.40					612.72 698.80

15 STOCKWATERING

16 The claimant, B. F. Porter Estate claims vested rights
 17 for stockwatering purposes on the entire Battle Creek stream system.

18 USE:

19 The ranching operations at the Battle Creek ranch have
 20 from their inception in 1867 been stock raising operations.

21 The original appropriators of water of Battle Creek
 22 stream system and their successors in interest down to the present
 23 time have raised livestock in this area. This ranch and the Battle
 24 Creek stream system have been used in connection with similar opera-
 25 tions at the Piute Creek ranch, the Bartlett Creek ranch and Cane
 26 Spring Creek, all located in this vicinity and on which the water
 27 rights are now being determined.

28 Hay is raised for use by claimant's cattle and none
 29 is shipped out. Garden truck and orchard fruit is likewise
 30 produced.

1 During certain periods as many as 3000 head of cattle
2 have run on the range appurtenant to these ranches.

3 GRAZING USE:

4 B. F. Porter Estate has the exclusive use of the appurte-
5 nant range. A ten year permit has been issued by the Division
6 of Grazing which covers all of the easterly slope of the Black
7 Rock range for some few miles northeasterly from Bartlett Creek
8 ranch and some twelve miles or more southwesterly from the
9 Plute Creek ranch.

10 EXTENT OF APPROPRIATION:

11 Since subsequent to 1867 the livestock watered on this
12 stream system have been in sufficient numbers to utilize substan-
13 tially all that portion of the public range readily available
14 to livestock watering on said Battle Creek stream system, the
15 number of stock varying with range and economic conditions.

16 It is hereby ordered that claimant, B. F. Porter Estate,
17 be and it is hereby entitled to water range livestock on and
18 from any portion of the Battle Creek stream system in sufficient
19 numbers to utilize substantially all that portion of the public
20 range readily available to livestock watering at and from the
21 Battle Creek stream system. The State Engineer hereby finds from
22 the records that B. F. Porter Estate is the lawful successor in
23 interest to, and the owner of, the vested right to use the water
24 from the Battle Creek stream system for stockwatering purposes
25 and hereby determines that the source of such water supply is
26 the Battle Creek stream system and that the cattle may be watered
27 at and from, or on any part of, such system; that the year of
28 priority is the year 1867 and the extent of the right is the
29 number of range livestock which will utilize substantially all
30 that portion of the public range readily available to livestock

1 watering from the Battle Creek stream system, or any part thereof.

2 CHANGE OF PLACE OF USE

3 All waters allocated under this Order shall be appurte-
4 nant to the lands designated herein. In the event the water
5 user, under this Order, desires to change the place of use of
6 any of the waters herein allocated, to new lands, such water
7 user must make application to the State Engineer for permission
8 to make such change in the manner then set forth under the law
9 of this State.

10 JUNIOR RIGHTS

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

16 THIS ORDER OF DETERMINATION made and filed in the office
17 of the State Engineer on the 7th day of November, 1945.

18 (signed) Alfred Merritt Smith [Seal]
19 Alfred Merritt Smith
20 State Engineer "

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

22
23
24
25
26
27
28
29
30

Merwyn H. Brown
DISTRICT JUDGE