STATE OF NEVADA }
County of Humboldt } ss.

I, Grace W. Bell, 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 hereunto attached to be a full, true and correct copy of FINDINGS OF FACT, CONCLUSIONS OF LAW JUDGMENT AND DECREE in the matter entitled IN THE MATTER OF THE DETERMINATION OF THE RELATIVE RIGHTS IN AND TO THE WATERS OF BOTTLE CREEK AND ITS TRIBUTARIES IN HUMBOLDT COUNTY, STATE OF NEVADA and includes all endorsements that appear upon the original F I N D I N G S A N D D E C R E E on file and of record in my said office and in said Civil Action No. 6832

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court on this 11th day of April A. D. 19 69.

Grace W. Bell, Clerk

..., Deputy

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF NEVADA IN AND FOR THE COUNTY OF HUMBOLDT

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IN THE MATTER OF THE DETERMINATION OF THE RELATIVE RIGHTS IN AND TO THE WATERS OF BOTTLE CREEK AND ITS TRIBUTARIES IN HUMBOLDT COUNTY, STATE OF NEVADA	No. 6832 Date filed By

FILED
APR 1 1969
GRACE W. BELL
CLERK OF DIST. COURT
BY

FINDINGS OF FACT, CONCLUSIONS OF LAW

JUDGEMENT AND DECREE

This matter came on regularly for hearing on the 16th day of November, 1967, before Honorable Llewellyn A. Young, District Judge of the above-entitled court presiding, the entire stream system being within Humboldt County, State of Nevada, and he being the judge designated by NRS 533.165 to hear and having jurisdiction to hear the above-entitled matter, upon the State Engineer's determination of the relative rights of the petitioner and claimants, to the use of the waters of the stream system of Bottle Creek and its tributaries; which Order of Determination and all related documentary evidence had been filed by the State Engineer. There being no exceptions to the Order of Determination filed or otherwise submitted to the Court at least 5 days prior to the date set for hearing, as provided for under NRS 533.170, by the claimants or petitioner or any other person or persons, the matter was submitted to the Court for its decision.

William Paul, Esquire, Deputy Attorney General of the State of Nevada, Roland D. Westergard, State Engineer, Starr Hill, Jr., then Field Engineer and L. Edward Parmenter, Adjudication Engineer, appeared in the hearing and proceedings

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on behalf of the State of Nevada and the Office of the State Engineer. James A. Callahan, Esq. appeared on behalf of the claimants, William and Ardelia Clarno.

The record disclosed that all claimants had received a certified copy of the Court Order setting forth the Time and Place for Hearing on the Order of Determination.

The Deputy Attorney General thereupon, at the hearing, offered and there were received in evidence in support of the rights of the claimants, as set forth in the Order of Determination, verified affidavits, files and records of the State Engineer's Office respecting the rights of the claimants in and to the above-named stream system.

The Court, having duly considered the entire record, the evidence introduced and received, directed that Findings of Fact, Conclusions of Law, and Judgement and Decree be entered accordingly.

FINDINGS OF FACT

I.

That on August 12, 1959, William Clarno, a water user on Bottle Creek and its tributaries, filed with the State Engineer of the State of Nevada a petition requesting the determination of the relative rights of petitioner and other claimants to the waters of Bottle Creek and its tributaries, thereto, situate in Humboldt County, State of Nevada.

That the State Engineer thereupon and in accordance with the provisions of NRS 533.090, made an investigation of the facts and conditions of and concerning the above-named stream system and its tributaries for the purpose of disclosing whether the determination of such rights were justified, and filed his report thereon in the Office of the State Engineer of the State

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of Nevada. The report of the facts and conditions disclosed that a determination of the relative rights was justified, and the State Engineer made and entered his order on December 29, 1961, granting the petition for the determination of such relative rights in and to the waters of Bottle Creek and its tributaries.

That as a result of the State Engineer's investigation report, it was found that the waters of Bottle Creek and its tributaries are being placed to beneficial use for irrigation, stock watering and domestic purposes on lands assessed to William and Ardelia Clarno and to the Bottle Creek Ranch Company, as affirmed by Proof of Appropriation 02503, filed in the Office of the State Engineer. Evidence contained in the title documents, submitted by the claimant, relative to the land on which a vested right is claimed, indicates the present claimants and appropriators, William and Ardelia Clarno, are the successors in interest to vested rights initiated by their predeccessors in interest.

That on the 29th day of December, 1961, the State Engineer did cause to be puslished a Notice of Order and Proceedings to Determine Water Rights in and to the waters of Bottle Creek and its tributaries in Humboldt County, State of Nevada, and that notice was duly given to all claimants as required by law. That on the 2nd day of February, 1962, there was filed in the Office of the State Engineer an affidavit of the publisher of the Humboldt Star, exemplifying the Proof of Publication of Notice of Order and Proceedings.

The State Engineer did cause to be published on the 26th day of September, 1963, and once each week for four succeeding weeks, a Notice of Order for Taking Proofs to Determine Water Rights, in and to the waters of Bottle Creek and

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its tributaries in Humboldt County, State of Nevada, and that notice was duly given to all claimants as required by law. That on the 28th day of October, 1963, there was filed in the Office of the State Engineer an affidavit of the publisher of the Humboldt Star and Battle Mountain Scout, exemplifying the Proof of Publication of Notice of Order for Taking Proofs.

That the State Engineer, in accordance with NRS 533.140, did enter and file in the records of his office, on the 16th day of March, 1967, an Abstract of Claims, a Preliminary Order of Determination and Notice and Order Fixing and Setting Time and Place of Inspection, stating when and where the evidence taken by or filed with him and the proofs of claims shall be open to the inspection of all interested persons; and that notice thereof was duly given to all claimants as required by law.

That the State Engineer, in accordance with NRS 533.160, entered in the records of his office, on the 22nd day of June, 1967, an Order of Determination defining the rights of the claimants and appropriators to the waters of Bottle Creek and its tributaries and that notice thereof was duly given to all claimants as required by law.

That upon the filing of the certified copy of the Order of Determination and original evidence with the Clerk of the Court of Humboldt County, State of Nevada, the Court, at the request of the State Engineer, made and entered an Order on the 21st day of August, 1967, setting a time for the hearing of any exceptions to the Order of Determination, on Thursday, the 16th day of November, 1967, at 10:00 o'clock in the forenoon, at the County Court House at Winnemucca, Nevada; and that the clerk of said Court did furnish the State Engineer with a certified copy thereof.

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That the State Engineer, in accordance with NRS 533.165, gave notice to the claimants, by service of a certified copy of the Court Order Setting the Time for Hearing.

That on the 6th day of September, 1967, and once each week for four succeeding weeks, the State Engineer did cause to be published, the Court Order Setting Time for Hearing, and that thereafter on the sixth day of October, 1967, there was filed in the Office of the State Engineer an affidavit of the publisher of the Humboldt Star and Battle Mountain Scout, exemplifying the Proof of Publication of the Court Order Setting Time for Hearing.

The Court finds that all and singular, the Proceedings, Orders and Notices required by Chapter 533 of NRS were duly had, made and given as required by law, and that all and singular the matters and things contained in the record were done, performed, given and made in strict compliance with the statute, and that this Court had and has jurisdiction to hear and determine this matter.

II

The Court Further Finds: That Bottle Creek and its tributaries are situated wholly within Humboldt County, State of Nevada.

III

The Court Further Finds: That the name of the claimants and appropriators, the period of use, the duty of water, the diversion of water and method of use, measurement of water, stock watering and domestic use, change of place of use, and the rights of appropriation of the water, all as set forth in the Order of Determination, are true, proper and correct, and all and singular the same should be approved and confirmed.

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I. PREFACE

That on August 12, 1959, William Clarno, a water user on Bottle Creek and its tributaries, filed with the State Engineer of the State of Nevada, a petition requesting the determination of the relative rights of petitioner and other claimants to the waters of Bottle Creek and its tributaries thereto, situate in Humboldt County, State of Nevada.

On August 22, 1961, Roland D. Westergard, then Hydraulic Engineer, and Charles C. Armuth, Jr., then Hydraulic Engineer, conducted a field investigation of the source. They found that facts and conditions justified the granting of the petition and that proper arrangements should be initiated to proceed with such determination.

On December 29, 1961, the State Engineer entered an Order granting the petition and made proper arrangements to proceed with the determination of the relative rights of the water users in accordance with NRS 533.090.

On September 18, 1963, the State Engineer entered a Notice of Order for Taking Proofs to Determine Water Rights.

II. CLAIMANTS

Investigations disclosed that the waters of Bottle Creek and its tributaries are being placed to beneficial use for irrigation, stock watering and domestic purposes on lands assessed to William and Ardelia Clarno and to the Bottle Creek Ranch Company, as affirmed by Proof of Appropriation 02503, filed in the Office of the State Engineer. Evidence contained in the title documents submitted by the claimants, relative to the land on which a vested right is claimed, indicates the present claimants and appropriators, William and Ardelia Clarno and the Bottle Creek Ranch Company, are successors in

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interest to vested rights initiated by their predecessors in interest.

III. SOURCE

Bottle Creek heads on the eastern slopes of the Jackson Mountains and is fed by melting snows and springs. It flows easterly into Desert Valley. Typical of Nevada's mountain streams, it has a relatively high spring run-off which recedes during the summer months to a limited continuous flow.

IV. PERIOD OF USE

The irrigation season shall begin on March 1st and end on November 30th of each year.

V. DUTY OF WATER

The seasonal duty of water from all sources is herein fixed and shall not exceed 4 acre-feet per acre per season.

VI. DIVERSION OF WATER AND METHOD OF USE

The claimants shall have the right to divert 2½ cubic feet per second of water per 100 acres of land irrigated, but not to exceed the seasonal duty as established herein. The 2½ cubic feet per second of water per 100 acres shall be the basis for the water commissioner to set priorities on this stream system.

The claimants or their successors in interest will not be required to take or use the amount of water allotted to them in a continuous flow, but may cumulate the same or any part thereof in rotation or periodic turn within the seasonal limits with the approval of the water commissioner and subject to the control and direction of the State Engineer.

VII. MEASUREMENT OF WATER

All measurements of amounts of water are to be made at the point where the main ditch enters or becomes adjacent to

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the land to be irrigated or as near thereto as is practicable; the location, if not selected by the State Engineer, to be approved by him. Each water user shall install and maintain at his own expense, substantial and easily operated regulating headgates and measuring devises in his ditch or ditches. Due allowance for losses in ditches will be made by the State Engineer in case it becomes necessary.

Priorities are fixed by years and where the years are the same the priorities are equal.

VIII. STOCK WATERING AND DOMESTIC

The right to the diversion and use of the water for stock and domestic purposes shall be continued by the claimants at any time during the year. The amount of water diverted for irrigation purposes shall not be increased by any amount to be used for stock and domestic purposes but the quantity allowed and diverted for irrigation during the irrigation season includes the water for stock and domestic purposes.

IX. CHANGE OF PLACE OF USE

All water herein allotted shall be appurtenant to the place of use designated herein. Any water user desiring to change the point of diversion, manner of use or place of use of the water allotted herein must make application to the State Engineer for permission to make the change pursuant to NRS 533.345.

X. RIGHTS OF APPROPRIATION

From the Order of Determination and the evidence, both oral and documentary, submitted in support thereof, the Court finds that the name of the claimants and appropriators of the waters of Pottle Creek and its tributaries, the source of the water supply, the means of diversion, the points of diversion

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for beneficial use, the year of priority, the cultural acreages and places of use, the legal subdivisions, sections, townships, ranges and the duty of water, are as listed, stated and set forth.

CONCLUSIONS OF LAW

From the evidence presented and received in this matter, and from the foregoing FINDINGS OF FACT, the Court makes the following Conclusions of Law:

I.

That the State Engineer had the right, authority and jurisdiction pursuant to Chapter 533 of NRS to make the investigations made by him, conduct the hearings had by him, receive the proofs and maps, hear the evidence presented to him, and prepare, make, enter and file in his office the original Order of Determination and file a certified copy thereof in this Court, and to determine the relative rights of claimants and appropriators in and to the waters of Bottle Creek and its tributaries in Humboldt County, State of Nevada; that the State Engineer duly made all orders necessary and proper in connection therewith and entered the same in his office as required by Chapter 533 of NRS; that each and every notice required by law to be given to the claimants and appropriators was duly served by the State Engineer in the manner and within the time required by Statute, and that the notices contained all of the statements required by law, and that the claimants and appropriators of the waters of the above-named stream system and its tributaries duly received the information and notices herein stated as required by law.

II.

That the Sixth Judicial District Court of the State of Nevada, in and for the County of Humboldt, had and has

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jurisdiction to hear and try this matter, and has jurisdiction to find, make and enter the foregoing Findings of Fact and these Conclusions of Law, and enter its Decree herein.

III.

That William and Ardelia Clarno and the Bottle Creek Ranch Company, are the only claimants who were and are now appropriators and users of the waters of Bottle Creek and its tributaries on the date the Order of Determination was filed with the Clerk of this Court, and on the date of the trial and hearing of this matter.

IV.

That the irrigation season shall begin on March 1st and end on November 30th of each year.

V.

That the seasonal duty of water, on lands irrigated from Bottle Creek and its tributaries, is herein fixed and shall not exceed 4 acre-feet per acre per season.

VI.

That the claimants shall have the right to divert 2½ cubic feet per second of water per 100 acres of land irrigated, but not to exceed the seasonal duty as established herein. That 2½ cubic feet per second of water per 100 acres shall be the basis for the water commissioner to set priorities on this stream system.

That the claimants or their successors in interest will not be required to take or use the amount of water allotted to them in a continuous flow, but may cumulate the same or any part thereof in rotation or periodic turn within the seasonal limits with the approval of the water commissioner and subject to the control and direction of the State Engineer.

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VII.

That all measurements of amounts of water diverted are to be made at the point where the main ditch enters or becomes adjacent to the land to be irrigated or as near thereto as is practicable; the location, if not selected by the State Engineer, to be approved by him. That each water user shall install and maintain at his own expense, substantial and easily operated regulating headgates and measuring devises in his ditch or ditches. That due allowance for losses in ditches will be made by the State Engineer in case it becomes necessary.

That priorities are fixed by years and where the years are the same the priorities are equal.

VIII.

That the right to the diversion and use of the water for stock and domestic purposes shall be continued by claimants at any time during the year, and diversions shall be according to the date of priorities of claimants. That the amount of water diverted for irrigation purposes shall not be increased by any amount to be used for stock and domestic purposes but the quantity allowed and diverted for irrigation during the irrigation season includes the water for stock and domestic purposes.

IX.

That all water allotted in the Decree shall be appurtenant to the place of use designated therein. That any water user desiring to change the point of diversion, manner of use or place of use of the water allotted herein must make application to the State Engineer for permission to make the change pursuant to NRS 533.345.

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X.

That from the Order of Determination and the evidence, both oral and documentary, submitted in support thereof, the Court finds that the name of the claimants and appropriators of the waters of Bottle Creek and its tributaries, the source of water supply, the means of diversion, the points of diversion for beneficial use, the year of priority, the cultural acreages and places of use, the legal subdivisions, sections, townships, ranges and the duty of water, are as listed, stated and set forth.

XI.

That the Order of Determination made, filed and caused to be entered of record in this matter by the State Engineer, should be affirmed.

JUDGEMENT AND DECREE

THEREFORE, BY REASON OF THE FINDINGS OF FACT AND CONCLUSIONS OF LAW HEREIN BEFORE SET FORTH, IT IS ORDERED, ADJUDGED AND DECREED BY THE COURT AS FOLLOWS:

I.

That the State Engineer made all necessary and proper orders as required by law, and that each and every notice required by law was duly given to the claimants and appropriators; that the claimants and appropriators had full opportunity to appear and be heard in objection to and file exceptions to the Order of Determination entered herein; that the claimants and appropriators are the only claimants and appropriators of the waters of Bottle Creek and its tributaries, and this Decree determines the limit and extent of all vested water rights on the source.

That the Court has full and complete jurisdiction to hear, try and determine this matter and to make and enter

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herein this Decree.

II.

That the flow of water from Bottle Creek and its tributaries is being placed to beneficial use by William and Ardelia Clarno and the Bottle Creek Ranch Company, for irrigation, stock watering and domestic purposes.

III.

That the irrigation season shall begin on March 1st and end on November 30th of each year.

IV.

That the seasonal duty of water on lands irrigated from Bottle Creek and its tributaries is herein fixed and shall not exceed 4 acre-feet per acre per season.

V.

That the claimants shall have the right to divert 2½ cubic feet per second of water per 100 acres of land irrigated, but not to exceed the seasonal duty as established herein. That 2½ cubic feet per second of water per 100 acres shall be the basis for the water commissioner to set priorities on this stream system.

That the claimants or their successors in interest will not be required to take or use the amount of water allotted to them in a continuous flow, but may cumulate the same or any part thereof in rotation or periodic turn within the seasonal limits with the approval of the water commissioner and subject to the control and direction of the State Engineer.

VI.

That all measurements of amounts of water diverted are to be made at the point where the main ditch enters or becomes adjacent to the land to be irrigated or as near thereto

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as is practicable; the location, if not selected by the State Engineer, to be approved by him. The water user shall install and maintain at his own expense, substantial and easily operated regulating headgates and measuring devises in his ditch or ditches. Due allowance for losses in ditches will be made by the State Engineer in case it becomes necessary.

That priorities are fixed by years and where the years are the same the priorities are equal.

VII.

That the right to the diversion and use of the water for stock and domestic purposes shall be continued by claimant at any time during the year. The amount of water diverted for irrigation purposes shall not be increased by any amount to be used for stock and domestic purposes but the quantity allowed and diverted for irrigation during the irrigation season includes the water for stock and domestic purposes.

VIII.

That all water herein allotted shall be appurtenant to the place of use designated herein. Any water user desiring to change the point of diversion, manner of use or place of use of the water allotted herein must make application to the State Engineer for permission to make the change pursuant to NRS 533.345.

IX.

That the names of the claimants and appropriators of Bottle Creek and its tributaries, the source of the water supply, the means of diversion, the points of diversion for beneficial use, the year of priority, the cultural acreages and places of use, the legal subdivisions, sections, townships, ranges and duty of water, are hereby adjudged as follows:

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Proof No: 01823

Claimants: William and Ardelia Clarno

Source: Bottle Creek and Tributaries

Use: Irrigation, Stock Watering and Domestic

Means of Diversion: Dams and Ditches

Points of Diversion: 1. SE¼ SW¼ Section 22, T. 40 N., R. 33 E., M.D.B.&M., or at a point from which the S¼ corner of said Section 22 bears S. 64°52' E., a distance of 743 feet.

2. SW¼ SE¼ Section 22, T. 40 N., R. 33 E., M.D.B.&M., or at a point from which the S¼ corner of said Section 22 bears S. 36°36' W., a distance of 188 feet.

PRI-ORITY	CULT.ACREAGE HARVEST	SUB-DIVISION	LOCATION SEC.	TWP.N.	RGE.E.	DUTY OF WATER ACRE-FEET
1878	18.35	SW¼ SE¼	22	40	33	73.40
1886	13.00	SW¼ SE¼	22	40	33	52.00
1890	34.85	NW¼SE¼	22	40	33	139.40
1890	13.02	NE¼ SE¼	22	40	33	52.08
1890	4.34	SW¼ SE¼	22	40	33	17.36
1890	13.02	SE¼ SE¼	22	40	33	52.08
1890	28.60	NW¼ NE¼	27	40	33	114.40
1890	12.22	NE¼ NE¼	27	40	33	48.88
1890	0.75	SW¼ NE¼	27	40	33	3.00
1900	10.37	NE¼ SE¼	22	40	33	41.48
1900	10.37	SE¼ SE¼	22	40	33	41.48
1900	10.37	NE¼ NE¼	27	40	33	41.48
1902	15.69	NE¼ SE¼	22	40	33	62.76
1902	15.69	SE¼ SE¼	22	40	33	62.76
1902	15.69	NE¼ NE¼	27	40	33	62.76
Totals	216.33					865.32

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Proof 02503 submitted by William Clarno on June 18, 1962, listed acreages and priorities in conflict with Proof 01823, submitted by Lillie Martin on August 8, 1923.

The claim of vested rights as listed on Proof 01823, included all lands cultivated in 1923, situated intermittently along Bottle Creek for a distance of six miles. William Clarno has sold the greater portion of these lands retaining the water rights and using them on lands presently farmed. An affidavit, dated January 16, 1967, subscribed and sworn to by Herb S. Clarno, the present ranch operator, has requested that the vested rights supported by Proof 01823, be transferred from acreages described in that proof to acreages as indicated on a plat submitted in support of the said affidavit. Acreages and priorities as listed on Proof 01823 and supporting plats have been the basis for the rights as determined by this Order with appropriate corrections made in the place of use.

DONE IN OPEN COURT THIS 1st **DAY OF** April **A.D.** 1969.

Llewellyn A. Young
District Judge

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