

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

IN THE MATTER OF THE DETERMINATION)
OF THE RELATIVE RIGHTS IN AND TO)
THE WATERS OF BOWERS MANSION OVERFLOW)
AND ITS TRIBUTARIES IN WASHOE COUNTY,)
NEVADA.)

JUN 30 3 05 PM '78

ALICE COOK, CLERK
L. MORRIS
DEPUTY

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DECREE

This adjudication of the relative rights in and to the waters of the Bowers Mansion Overflow and its tributaries was initiated and conducted pursuant to the provisions of Chapter 533 of the Nevada Revised Statutes. The Court finds that the State Engineer has in all respects complied with the provisions of that chapter and has filed with the Court all required evidence and documents.

On November 16, 1977, the State Engineer's Order of Determination was filed with the Court and a hearing on the Order was set for February 16, 1978, at 1:30 P.M. A copy of the Order of Determination and of the Court's Order Setting Time For Hearing were properly served on all claimants and parties in interest.

At the time set for hearing Brian Randall, Surface Water Engineer; Ed Parmenter, Adjudication Engineer; Jim Perkins, Hydraulic Engineer; and George Campbell, Deputy Attorney General appeared on behalf of the State Engineer. No other persons appeared. No exceptions or protests to the Order of Determination were filed with the Court.

The Order of Determination as approved by the Court is here set forth in full.

I. GENERAL

The State Engineer after due consideration and investigation decided that facts and conditions warranted the initiation of proceedings to determine the relative rights of claimants to the waters of Bowers Mansion Overflow in Washoe County, Nevada.

1 On October 22, 1971, the State Engineer entered an Order and made proper
2 arrangements to proceed with the determination of the relative rights of the
3 water users in accordance with NRS 533.090.

4 II. CLAIMANTS

5 The investigation by the State Engineer disclosed that the waters of Bowers
6 Mansion Overflow were being placed to beneficial use on lands in Washoe Valley
7 for irrigation, stock watering and recreation purposes.

8 Proof 02441 and accompanying map were filed by E. W. Scripps on September
9 14, 1959, claiming vested rights to the waters of Bowers Mansion Overflow and
10 other sources. Subsequently, succeeding owners of the land claimed under Proof
11 02441, filed separate proofs for the water of Bowers Mansion Overflow as fol-
12 lows. Proof 02753 was filed by John Jay Casey and Second Amended Proof 02760
13 was filed by the State of Nevada, Department of Fish and Game.

14 Proof 02442 with the required map was filed September 14, 1959. Vested
15 rights were claimed from Bowers Mansion Overflow and other sources by the Nevada
16 Fish and Game Commission. Subsequently, they filed Second Amended Proof 02760
17 for their claim to the waters of Bowers Mansion Overflow.

18 Amended Proof 02753 was filed March 31, 1975, by John Jay Casey claiming
19 vested rights for 103 acres for irrigation, domestic and stock watering use,
20 with a priority of 1857. The supporting map was filed March 27, 1975. The
21 source of water for Bowers Mansion Overflow subject to vested rights is des-
22 cribed under item III, SOURCE, of this Order and would irrigate a total of
23 approximately 11 acres of harvest crop of Amended Proof 02753. The claimed
24 vested acreage of Amended Proof 02753 has been reduced accordingly.

25 Second Amended Proof 02760 and accompanying map were filed May 16, 1975, by
26 the State of Nevada, Department of Fish and Game, claiming vested rights for 46
27 acres for fish, wildlife, recreation and stock watering purposes. Water from
28 Bowers Mansion Overflow, subject to vested rights, is described in detail in the
29 following section under item III, SOURCE, (1) and is capable of irrigating only
30 13.932 acres of diversified pasture. The acreage, culture and use claimed under

1 Second Amended Proof 02760 have been revised accordingly.

2 Amended Proof 02753 and Second Amended Proof 02760, claim domestic use for
3 water from Bowers Mansion Overflow. There are no dwellings on lands included in
4 these two proofs served by Bowers Mansion Overflow, nor has any evidence been
5 submitted indicating any dwellings existed on these lands in the past. There-
6 fore, a vested right for domestic use has not been granted in this Order to any
7 of the claimants.

8 No proof of appropriation was filed by Washoe County for consideration in
9 the adjudication of the waters of Bowers Mansion Overflow. They are owners of
10 record of land surrounding Bowers Mansion and also adjacent pools that have
11 historically used water from Bowers Hot Spring. NRS 533.125 (2) provides that
12 any person failing to make proof of his claim of vested rights to the waters of
13 a stream system prior to the expiration of the period for filing proofs, shall
14 have his rights determined by the State Engineer. This has been done for Washoe
15 County in these proceedings.

16 III. SOURCE

17 Bowers Mansion Overflow is presently comprised of water overflowing from
18 the circular concrete reservoir on the Bowers Mansion grounds owned by Washoe
19 County. The circular reservoir is supplied by water from Bowers Hot Spring, the
20 overflow from the tiled swimming pool comprised of water piped from Riter
21 Spring and a well drilled in 1965, and from spring snow melt piped from Kelley
22 Canyon. When the circular reservoir is filled with water it overflows into a
23 pipeline and is transported to a culvert under Old Highway 395. The water flows
24 through the culvert under the highway and is commingled with water from Ophir
25 Creek for irrigation use on lands east of the highway.

26 Bowers Hot Spring contributes the only water to the circular reservoir that
27 was used prior to 1905 and is the only source considered as having vested
28 rights. Bowers Hot Spring is located at the base of the eastern slopes of the
29 Carson Range, approximately 100 feet north of Bowers Mansion. The pipeline from
30 Riter Spring was installed in 1926. The pipeline conveying snow melt waters

1 from Kelley Canyon was constructed after 1905.

2 Bowers Hot Spring was first used in 1853 by Hodges and Campbell to supply a
3 swimming pool and for irrigation of an area surrounding what is now the Bowers
4 Mansion. Records have been kept by Washoe County personnel of the flow of the
5 hot spring and it was found to flow 37 gpm (0.08244 c.f.s.).

6 IV. PERIOD OF USE

7 Water for irrigation is allowed to be used at any time during the year
8 provided that the amount applied to the land during any calendar year shall not
9 exceed the quantity in acre-feet herein set forth.

10 However, the Washoe County facility at Bowers Mansion uses water benefi-
11 cially from Bowers Hot Spring during a period of six months from April 15 to
12 October 15 only, and that period has been established in the Order as the period
13 of use for Washoe County.

14 V. DUTY OF WATER

15 The seasonal duty of water on lands irrigated from Bowers Mansion Overflow
16 is herein fixed and shall not exceed:

17 Class A Harvest Crop..... 4.5 ac.ft./ac./season

18 Class C Diversified Pasure..... 3.5 ac.ft./ac./season

19 In addition to vested rights granted for irrigation to Washoe County,
20 vested rights have also been granted for the evaporation loss of the circular
21 reservoir at Bowers Mansion. The mean annual evaporation for the area has been
22 determined by the Soil Conservation Service, Central Lahontan Basin Report of
23 June 1969, to be 48 inches.

24 Evaporation loss..... 4.0 ac.ft./ac./season

25 VI. DIVERSION OF WATER AND METHOD OF USE

26 The individual claimants shall have the right to divert the amount of water
27 indicated under item "X. RIGHTS OF APPROPRIATION" of this Order but not to
28 exceed the duty in acre-feet as established therein.

29 The claimants or their successors in interest will not be required to take
30 or use the amount of water allotted to them in a continuous flow, but may cumu-

1 late the same or any part thereof in rotation or periodic turn within the sea-
2 sonal limits, with the approval of the water commissioner and subject to the
3 control and direction of the State Engineer.

4 VII. MEASUREMENT OF WATER

5 All measurements of water diverted are to be made at a point where the main
6 ditch enters or becomes adjacent to the land to be irrigated or as near thereto
7 as practicable; the location, if not selected by the State Engineer, to be
8 approved by him. The claimants shall install and maintain at their own expense,
9 substantial and easily operated regulating headgates and measuring devices in
10 the ditch or ditches or channel. Due allowance for losses in ditches will be
11 made by the State Engineer in case it becomes necessary.

12 Priorities are fixed by years and where the years are the same, the priori-
13 ties are equal.

14 VIII. STOCK WATERING AND RECREATION

15 The right to the diversion and use of water for stock watering and recrea-
16 tion purposes shall be continued by the claimants named herein or their succes-
17 sors in interest at those times indicated under item "X RIGHTS OF APPROPRIATION"
18 for irrigation, and such diversions shall be according to the dates of priori-
19 ties of such users and limited to the quantity of water reasonable necessary for
20 such use. If a claimant is not in priority for irrigation water then the claim-
21 ant is not in priority for stock water and recreation water.

22 The amount of water diverted for irrigation purposes shall not be increased
23 by any amount to be used for stock watering and recreation purposes.

24 IX. CHANGE OF PLACE OF USE

25 All water allotted under this Order shall be appurtenant to the place of
26 use designated herein. Any water user desiring to change the point of diver-
27 sion, manner of use or place of use of the waters allotted herein, must make
28 application to the State Engineer for permission to make the change pursuant to
29 NRS 533.345.

X. RIGHTS OF APPROPRIATION

The following tabulation lists the rights as determined by this Order:

PROOF NO.: Amended 02753
 CLAIMANT: John Jay Casey
 SOURCE: Bowers Hot Spring, a Tributary of Bowers Mansion Overflow.
 USE: Irrigation and Stock Watering
 MEANS OF DIVERSION: Dams and Ditches
 POINT OF DIVERSION: NE1/4 NW1/4 Section 3, T.16N., R.19E., M.D.B.&M.,
 or at a point from which the N1/4 corner of said
 Section 3, bears N. 52° 45' E., a distance of
 1200 feet.

PRIORITY	CULTURAL ACREAGE: HARVEST	SUBD.:	LOCATION			DUTY OF WATER	
			SEC.:	TWP.N.:	RGE.E:	CFS	AC.FT.
1857	10.836	NE1/4NW1/4	3	16	19	a. 0.052	18.927
						b. 0.082	29.835
Total	10.836						*48.762

a. During the period April 15 to October 15, or a total of 182 1/2 days, there is a diversion of 0.05230 c.f.s. available to Amended Proof 02753 and Second Amended Proof 02760 from the total flow of 0.08244 c.f.s. of the spring, the balance of 0.03014 c.f.s. being served to Washoe County with a senior priority.

b. During the priod October 15 to April 15, or a total of 182 1/2 days, there is a diversion of 0.08244 c.f.s., the total flow of the spring, available to Amended Proof 02753 and Second Amended Proof 02760.

* The total amount of acre-feet available for both Amended Proof 02753 and Second Amended Proof 02760 is 48.762 a.f.

PROOF NO.: Second Amended 02760
 CLAIMANT: State of Nevada, Department of Fish and Game
 SOURCE: Bowers Hot Spring, a Tributary of Bowers Mansion Overflow
 USE: Irrigation and Stock Watering
 MEANS OF DIVERSION: Dams and Ditches
 POINT OF DIVERSION: NE1/4 NW1/4 Section 3, T.16N., R.19E., M.D.B.&M.,
 or at a point from which the N1/4 corner of said Section 3,
 bears N. 52° 45' E., a distance of 1200 feet.

PRIORITY	CULTURAL ACREAGE:	SUBD.:	LOCATION			DUTY OF WATER	
			SEC.:	TWP.N.:	RGE.E:	CFS	AC.FT.
	DIVERSIFIED PASTURE						
1857	2.500	SE1/4SW1/4	2	16	19	a. 0.009	3.397
						b. 0.014	5.353
1857	10.100	NE1/4SW1/4	2	16	19	a. 0.038	13.721
						b. 0.060	21.629
1857	1.332	SE1/4NW1/4	2	16	19	a. 0.005	1.809
						b. 0.008	2.853
Total	13.932						*48.762

a. During the period April 15 to October 15, or a total of 182 1/2 days there is a diversion rate of 0.05230 c.f.s., available to Second Amended Proof 02760 and Amended Proof 02753 from the total flow of 0.08244 c.f.s. of the spring, the balance of 0.03014 c.f.s. being served to Washoe County with a senior priority.

b. During the period October 15 to April 15, or a total of 182 1/2 days, there is a diversion rate of 0.08244 c.f.s., the total flow of the spring, available to Second Amended Proof 02760 and Amended Proof 02753.

* The total amount of acre-feet available for both Second Amended Proof 02760 and Amended Proof 02753 is 48.762 a.f.

The flow of the spring is commingled with water from Ophir Creek not far from the spring and the combined waters irrigate lands under Amended Proof 02753 and Second Amended Proof 02760.

PROOF NO.: No Proof was filed by the vestee, but a determination has been made by the State Engineer of the vestee's rights in this proceeding.

CLAIMANT: Washoe County

SOURCE: Bowers Hot Spring, a Tributary of Bowers Mansion Overflow

USE: Irrigation and Recreation

MEANS OF DIVERSION: Collection Box, Pipeline and Reservoir

POINT OF DIVERSION: NW1/4 NW1/4 Section 3, T.16N., R.19E., M.D.B.&M., or at a point from which the N1/4 corner of said Section 3 bears N. 58° 30' W., a distance of 1822 feet.

PRIORITY	CULTURAL ACREAGE: HARVEST	SUBD.:	LOCATION			DUTY OF WATER	
			SEC.:	TWP.N.:	RGE.E:	CFS	AC.FT.
1853	1.332	NW1/4NW1/4	3	16	19	0.017	5.994
1853	0.271	NE1/4NW1/4	3	16	19	0.003	1.220
1853	<u>0.821</u>	SW1/4NW1/4	3	16	19	<u>0.010</u>	<u>3.694</u>
Total	2.424					*0.030	*10.908

* The period of use is from April 15th to October 15th, or a total of 182 1/2 days of each year. The total c.f.s. will provide 10.908 ac.ft. for the designated harvest acreage when used for the period of use of 182 1/2 days. The total of 10.908 ac.ft. includes the amount of water allowed for evaporation from the reservoir.

The Order of Determination is affirmed.

The Court approves and adopts as its own the findings of fact and conclusions of law contained in the State Engineer's Order of Determination.

Accordingly, it is hereby Ordered, Adjudged and Decreed that the relative rights in and to the waters of Bowers Mansion Overflow and its tributaries be, and the same hereby are, determined as stated in the Order of Determination.

DATED this 25th day of June, 1978.

James J. Guinan

James J. Guinan
District Judge