

1 No. 292633

Dept. No. 5

2 IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
3 OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF WASHOE

4 * * * *

FILED

5 IN THE MATTER OF THE DETERMINATION)
6 OF THE RELATIVE RIGHTS IN AND TO)
7 THE WATERS OF BRYAN CREEK AND ITS)
8 TRIBUTARIES IN WASHOE COUNTY, NEVADA.)

DEC 9 2 05 PM '75
ALEXANDER
& BROWN

9 FINDINGS OF FACT, CONCLUSIONS OF LAW

10 JUDGMENT AND DECREE

11 This matter came on regularly for hearing on the 11th
12 day of April, 1974, before the Honorable William N. Forman,
13 District Judge presiding. Bryan Creek and its tributaries are
14 exemplified in these proceedings as being within Washoe County,
15 State of Nevada. Judge Forman is a District Court Judge
16 designated by NRS 533.165 to hear and to have jurisdiction to
17 hear the above entitled matter of the State Engineer's deter-
18 mination of the relative rights of the claimants to the use of
19 the waters of the stream system of Bryan Creek and its tribu-
20 taries. The Order of Determination and all related documentary
21 evidence had been previously filed with the Clerk of said
22 District Court by the State Engineer.

23 Ross de Lipkau, Deputy Attorney General, Starr Hill,
24 Jr., Surface Water Engineer, and L. Edward Parmenter, Adjudica-
25 tion Engineer, appeared in the hearing and proceedings on behalf
26 of the State of Nevada and the Office of the State Engineer.

27 The record disclosed that the claimants had received
28 a certified copy of the Court Order Setting Time For Hearing on
29 the Order of Determination.

30 Ross de Lipkau, thereupon, at the hearing, offered
verified affidavits, files and records of the State Engineer's

STATE OF NEVADA
DIVISION OF WATER
RESOURCES
DEPARTMENT OF
CONSERVATION AND
NATURAL RESOURCES
HYDROLOGICAL
301 S. FALL STREET
CARSON CITY, NEVADA
89701



1 Office, all contained in support of the rights of the claimants
2 in and to the above named stream system.

3 At the hearing objections were raised to the findings
4 of the State Engineer as contained in the Order of Determination.
5 Because the hearing was set for fifteen minutes, time did not
6 allow an adequate hearing of the objections. Judge Forman, after
7 conferring with the claimants set a date of November 13, 1975 for
8 an additional hearing of the objections, at which hearing the
9 objections to the Order of Determination were denied based upon
10 oral and written arguments of the claimants.

11 On November 13, 1975, the Court, having considered the
12 entire record and the evidence introduced and received, including
13 the cost bill, directed the State Engineer to prepare the
14 Findings of Fact, Conclusions of Law, and Judgment and Decree
15 affirming the Order of Determination, in accordance with NRS
16 533.185.

17 FINDINGS OF FACT

18 I.

19 The Court Finds: That the State Engineer after due
20 consideration and investigation decided that facts and conditions
21 warranted the initiation of proceedings to determine the
22 relative rights of the claimants in and to the waters of Bryan
23 Creek and its tributaries in Washoe County, State of Nevada.
24 That the investigation disclosed that the waters of Bryan Creek
25 and its tributaries were being placed to beneficial use on lands
26 of Thomas C. Wilson and Ina W. Wilson for irrigation, stock
27 watering, domestic and propagation of wildlife purposes and on
28 the lands of Grant J. Weise for irrigation and stock watering
29 purposes. Evidence contained in title documents, affidavits and
30 proofs of appropriation submitted by the present claimants

1 indicate that they are the successors in interest to vested
2 rights initiated and claimed by their predecessors.

3 That on October 22, 1971, the State Engineer entered
4 an Order and made proper arrangements to proceed with the
5 determination of the relative rights of the water users in
6 accordance with NRS 533.090.

7 That on November 22, 1971, and once each week for
8 four succeeding weeks, the State Engineer did cause to be pub-
9 lished a Notice of Order and Proceedings to Determine the Water
10 Rights in and to the waters of Bryan Creek and its tributaries
11 in Washoe County, State of Nevada, and that notice was duly
12 given to all claimants as required by law. That on December 21,
13 1971, there was filed in the Office of the State Engineer an
14 affidavit of the legal clerk of the Reno Evening Gazette,
15 exemplifying the Proof of Publication of Notice of Order and
16 Proceedings.

17 That the State Engineer did cause to be published on
18 January 6, 1972, and once each week for four succeeding weeks, a
19 Notice of Order for Taking Proofs to Determine Water Rights, in
20 and to the waters of Bryan Creek in Washoe County, State of
21 Nevada, and that notice was duly given to all claimants as
22 required by law. That on February 10, 1972, there was filed in
23 the Office of the State Engineer an affidavit of the record clerk
24 of the Sparks Tribune, exemplifying the Proof of Publication of
25 the Notice of Order for Taking Proofs.

26 That thereafter, in accordance with NRS 533.125 the
27 State Engineer did file in the records of his office on April 17,
28 1972, a request to extend the time in which proofs may be filed.
29 That he did grant an extension of time to file proofs and that
30 notices thereof were duly given to all claimants.

1 That the State Engineer, in accordance with NRS 533.140,
2 did file in the records of his office on October 29, 1973, an
3 Abstract of Claims, a Preliminary Order of Determination, and a
4 Notice and Order Fixing and Setting Time and Place of Inspection,
5 stating when and where the evidence taken by or filed with him
6 and the proofs of claims were open to the inspection of all
7 interested persons; and that notice thereof was duly given to all
8 claimants as required by law.

9 That the State Engineer, in accordance with NRS 533.160
10 entered in the records of his office, on February 1, 1974, an
11 Order of Determination defining the rights of the claimants and
12 appropriators to the waters of Bryan Creek and its tributaries
13 and that notice thereof was duly given to all claimants as
14 required by law.

15 That upon the filing of the certified copy of the
16 Order of Determination and the original evidence with the Clerk
17 of the Court of Washoe County, State of Nevada, the Court, at
18 the request of the State Engineer, made and entered an Order on
19 February 5, 1974, setting a time for hearing of any exception to
20 the Order of Determination on Thursday, April 11, 1974, at 9:45
21 o'clock in the forenoon in the courtroom of the courthouse in
22 Reno, Washoe County, Nevada; and that the Clerk of said Court
23 did furnish the State Engineer with a certified copy thereof.

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

27 That on February 9, 1974, and once each week for four
28 succeeding weeks, the State Engineer did cause to be published
29 the Court Order Setting Time For Hearing, and that thereafter
30 on March 12, 1974, there was filed in the Office of the State

1 Engineer an affidavit of the legal clerk of the Reno Evening
2 Gazette exemplifying the Proof of Publication of the Court
3 Order Setting Time For Hearing.

4 That the Court finds that all and singular, the
5 Proceedings, Orders, and Notices required by Chapter 533 of NRS
6 were duly had, made, and given as required by law, and that all
7 and singular, the matters and things contained in the record
8 were done, performed, given and made in strict compliance with
9 the statutes, and that this Court had and has jurisdiction to
10 hear and determine this matter.

11 II.

12 The Court Further Finds: That Bryan Creek and its
13 tributaries exemplified in these proceedings is situated wholly
14 within Washoe County, State of Nevada.

15 III.

16 The Court Further Finds: That the names of the
17 claimants and appropriators of the waters of Bryan Creek and
18 its tributaries, the source of the water supply, the manner of
19 use of the water, the period of use, the duty of water, the
20 diversion of water and method of use, measurement of water,
21 stock watering and domestic and wildlife propagation use, change
22 of place of use, and the rights of appropriation of the water,
23 all as set forth in the Order of Determination are true, proper
24 and correct, and all and singular, the same should be approved
25 and confirmed.

26 I. SOURCE

27 The headwaters of Bryan Creek originate at an elevation
28 of approximately 6,000 feet on northeasterly slopes of the
29 Carson Range. The creek flows northerly and northeasterly and
30 irrigates meadows in the southern portion of Washoe Valley,

1 approximately 3 miles north of Lakeview summit. Bryan Creek
2 is fed by melting snow and springs having a relatively high
3 spring runoff which later recedes to an intermittent flow and
4 frequently becomes dry in the late summer months.

5 II. PERIOD OF USE

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

10 III. DUTY OF WATER

11 The seasonal duty of water on lands irrigated from
12 Bryan Creek and its tributaries is herein fixed and shall not
13 exceed:

14	Class A	Harvest Crop	4.5 ac.ft./ac./season
15	Class B	Meadow Pasture	4.0 ac.ft./ac./season

16 IV. DIVERSION OF WATER AND METHOD OF USE

17 The claimants shall have the right to divert 2.5
18 cubic feet per second of water per 100 acres of land irrigated,
19 but not to exceed the seasonal duty in acre feet as established
20 herein.

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

27 V. MEASUREMENT OF WATER

28 All measurements of water diverted are to be made at a
29 point where the main ditch enters or becomes adjacent to the
30 land to be irrigated or as near thereto as practicable; the

1 location, if not selected by the State Engineer, is to be approved
2 by him. The claimants shall install and maintain at their own
3 expense, substantial and easily operated regulating headgates
4 and measuring devices in their ditch or ditches or channel.
5 Due allowance for losses in ditches will be made by the State
6 Engineer in the event it becomes necessary.

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

9 VI. STOCK WATERING, DOMESTIC AND WILDLIFE PROPAGATION

10 The right to the diversion and use of water for stock
11 watering, domestic and wildlife propagation purposes shall be
12 continued by the claimants named herein or their successors in
13 interest at any time during the year and such diversions shall
14 be according to the dates of priorities of such users and limited
15 to the quantity of water reasonably necessary for such use. If
16 a claimant is not in priority for irrigation water then the
17 claimant is not in priority for stock water, domestic and
18 wildlife propagation purposes.

19 The amount of water diverted for irrigation purposes
20 shall not be increased by any amount to be used for stock
21 watering, domestic and wildlife propagation purposes, but the
22 quantity allowed and diverted for irrigation during the irrigation
23 season shall include water for stock watering, domestic and wild-
24 life propagation purposes.

25 VII. CHANGE OF PLACE OF USE

26 All water allotted in the Decree shall be appurtenant
27 to the place of use designated herein. Any water user desiring
28 to change the point of diversion, manner of use or place of
29 use of the waters allotted herein, must make application to the
30 State Engineer for permission to make the change pursuant to

1 NRS 533.345.

2 VIII. RIGHTS OF APPROPRIATION

3 From the Order of Determination and the documentary
4 evidence presented at the hearing in support thereof, the
5 Court finds that the names of the claimants and appropriators
6 of the waters of Bryan Creek and its tributaries, the source
7 of the water supply, the manner of use of the water, the means
8 of diversion, the points of diversion for beneficial use, the
9 period of use, the years of priority, the cultural acreages,
10 the places of use, the legal subdivisions, sections, townships,
11 ranges, and the duty of water are as listed, stated and set
12 forth.

13 CONCLUSIONS OF LAW

14 From the evidence presented and received in this
15 matter, and from the foregoing Findings of Fact, the Court makes
16 the following Conclusions of Law:

17 I.

18 That the State Engineer had the right, authority and
19 jurisdiction pursuant to Chapter 533 of NRS to make the investi-
20 gation made by him, receive the proofs and maps, enter and file
21 in his office the original Order of Determination and file a
22 certified copy thereof in this Court, and to determine the
23 relative rights of the claimants and appropriators in and to
24 the waters of Bryan Creek and its tributaries in Washoe County,
25 State of Nevada; that the State Engineer duly made all orders
26 necessary and proper in connection therewith and entered the
27 same in his office as required by Chapter 533 of NRS. That each
28 and every notice required by law to be given herein to the
29 claimants and appropriators was duly served by the State Engineer
30 in the manner and within the time required by statute, and that

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

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, as required by law.

II.

That the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, had and has 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 Grant J. Weise, Thomas C. Wilson and Ina W. Wilson are the only claimants of vested rights recognized in this Decree who were appropriators and users of the waters of Bryan Creek and its tributaries on the date the Order of Determination was filed with the Clerk of the Court, and on the date of the hearing on this matter.

IV.

That the water for irrigation is allowed to be used at any time, provided that the amount applied to the land during any calendar year shall not exceed the quantity in acre feet herein set forth.

V.

That the seasonal duty of water on lands irrigated from Bryan Creek and its tributaries is herein fixed and shall not exceed:

Class A	Harvest Crop	4.5 ac.ft./ac./season
Class B	Meadow Pasture	4.0 ac.ft./ac./season

VI.

That the claimants shall have the right to divert



1 2.5 cubic feet per second of water per 100 acres of land
2 irrigated, but not to exceed the seasonal duty in acre feet as
3 established herein.

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

10 VII.

11 That all measurements of water diverted are to be
12 made at a point where the main ditch enters or becomes adjacent
13 to the land to be irrigated or as near thereto as is practicable;
14 that the location, if not selected by the State Engineer, is to
15 be approved by him. That the claimants shall install and
16 maintain at their own expense, substantial and easily operated
17 regulating headgates and measuring devices in their ditch or
18 ditches or channel. That due allowance for losses in ditches
19 will be made by the State Engineer in the event it becomes
20 necessary.

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

23 VIII.

24 That the right to the diversion and use of water for
25 stock watering, domestic and wildlife propagation purposes
26 shall be continued by the claimants named herein or their
27 successors in interest at any time during the year and such
28 diversions shall be according to the dates of priorities of such
29 users and limited to the quantity of water reasonably necessary
30 for such use. That if a claimant is not in priority for

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

irrigation water then the claimant is not in priority for stock water, domestic and wildlife propagation purposes.

That the amount of water diverted for irrigation purposes shall not be increased by any amount to be used for stock watering, domestic and wildlife propagation purposes, but the quantity allowed and diverted for irrigation during the irrigation season shall include water for stock watering, domestic and wildlife propagation purposes.

IX.

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

X.

That from the Order of Determination and the documentary evidence presented at the hearing in support thereof, the Court finds that the names of the claimants and appropriators of the waters of Bryan Creek and its tributaries, the source of the water supply, the manner of use of the water, the means of diversion, the points of diversion for beneficial use, the period of use, the years of priority, the cultural acreages, the 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, filed and caused to be entered of record in this matter by the State Engineer, should be affirmed.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

JUDGMENT AND DECREE

THEREFORE, BY REASON OF THE FINDINGS OF FACT, AND CONCLUSIONS OF LAW HEREINBEFORE 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; that Grant J. Weise, Thomas C. Wilson and Ina W. Wilson are the only claimants of vested water rights recognized in this Decree as appropriators of the waters of Bryan Creek and its tributaries and that 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 herein, this Decree.

II.

That the waters of Bryan Creek and its tributaries are being placed to beneficial use by Grant J. Weise and Thomas C. Wilson and Ina W. Wilson for irrigation, stock watering, domestic purposes and wildlife propagation.

III.

That the water for irrigation is allowed to be used at any time, provided that the amount applied to the land during any calendar year shall not exceed the quantity in acre feet herein set forth.

IV.

That the seasonal duty of water on lands irrigated



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

from Bryan Creek and its tributaries is herein fixed and shall not exceed:

Class A	Harvest Crop	4.5 ac.ft./ac./season
Class B	Meadow Pasture	4.0 ac.ft./ac./season

V.

That the claimants shall have the right to divert 2.5 cubic feet per second of water per 100 acres of land irrigated, but not to exceed the seasonal duty as established herein.

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 water diverted are to be made at a point where the main ditch enters or becomes adjacent to the land to be irrigated or as near thereto as is practicable; that the location, if not selected by the State Engineer, is to be approved by him. That the claimants shall install and maintain at their own expense, substantial and easily operated regulating headgates and measuring devices in their ditch or ditches or channel. That due allowance for losses in ditches will be made by the State Engineer in the event 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 water for

1 stock watering, domestic and wildlife propagation purposes shall
2 be continued by the claimants named herein or their successors
3 in interest at any time during the year and such diversions
4 shall be according to the dates of priorities of such users
5 and limited to the quantity of water reasonably necessary for
6 such use. That if a claimant is not in priority for irrigation
7 water then the claimant is not in priority for stock water,
8 domestic and wildlife propagation purposes.

9 That the amount of water diverted for irrigation
10 purposes shall not be increased by any amount to be used for
11 stock watering, domestic and wildlife propagation purposes,
12 but the quantity allowed and diverted for irrigation during
13 the irrigation season shall include water for stock watering,
14 domestic and wildlife propagation purposes.

15 VIII.

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

22 IX.

23 That the names of the claimants and appropriators of
24 the waters of Bryan Creek and its tributaries, the source of
25 the water supply, the manner of use of the water, the means of
26 diversion, the points of diversion for beneficial use, the
27 period of use, the years of priority, the cultural acreages,
28 the places of use, the legal subdivisions, sections, townships,
29 ranges, and the duty of water are hereby adjudged as
30 follows:

1 PROOF NO.: 02450
 2 CLAIMANT: Thomas C. Wilson and Ina W. Wilson
 3 SOURCE: Bryan Creek and Tributaries
 4 USE: Irrigation, Stock Watering, Domestic
 and Wildlife Propagation
 5
 6 MEANS OF DIVERSION: Pipe and Ditch
 7 POINT OF DIVERSION: SE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 23, T.16N., R.19E.,
 8 M.D.B.&M., or at a point from which the
 SW corner of said section 23, bears
 S. 22° 14' W., a distance of 2,074.90
 9 feet.

	PRIORITY:	CULTURAL ACREAGE		LOCATION			DUTY OF WATER	
		MEADOW PASTURE	SUBD.:	SEC.:	TWP.:	RGE.:	C.F.S.:	AC.FT.
12	1869	1.30	SE $\frac{1}{4}$ SW $\frac{1}{4}$	23	16	19	0.033	5.20
13	1869	21.80	SW $\frac{1}{4}$ SE $\frac{1}{4}$	23	16	19	0.545	87.20
14	1869	1.70	NW $\frac{1}{4}$ NE $\frac{1}{4}$	26	16	19	0.042	6.80
15	TOTALS	24.80					*0.620	*99.20

16 *Water is diverted from Bryan Creek under Proof 02450 described
 17 above and is commingled with water from Upper Mahala Springs
 (Proof 02451) and water from Lower Mahala Springs (Proof 02452).
 18 The total rate of flow from any one or any combination of these
 three sources shall not exceed 2.5 cubic feet per second per
 19 100 acres. The total acre feet of water from all sources for
 the lands described under Proof 02450 shall be limited to the
 20 quantity listed above.

21 PROOF NO.: 02779
 22 CLAIMANT: Grant J. Weise
 23 SOURCE: Bryan Creek and Tributaries
 24 USE: Irrigation and Stock Watering
 25 MEANS OF DIVERSION: Dam and ditch
 26 POINT OF DIVERSION: SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 23, T.16N., R.19E.,
 27 M.D.B.&M., or at a point from which
 the SW corner of said section 23,
 28 bears S. 67° 19' W., a distance of
 1,192 feet.
 29
 30

PROOF NO.: 02779 (Continued)

PRIORITY:	CULTURAL ACREAGE	LOCATION			DUTY OF WATER	
	MEADOW PASTURE	TWP.:RGE.:			C.F.S.: AC.FT.	
		SUBD.:	SEC.:	N. E.		
1870	<u>8.0</u>	SW $\frac{1}{4}$ SW $\frac{1}{4}$	23	16	19	<u>0.200</u> <u>32.00</u>
TOTAL	8.0					0.200 32.00

Dated this 9th day of December, 1976.

William N. Forman
District Judge