IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF HUMBOLDT

(See memo 6/22/64 filed in Bartlett Creek Correspondence)

In the Matter of the Determination of the Relative Rights in and to the Waters of CANE SPRING CREEK and its Tributaries in Humboldt County State of Nevada.

No. 4191

Filed: November 18-1946

J W Davey
Clerk

JUDGMENT AND DECREE

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

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

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

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

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

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

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

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

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

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that the Order of Determination of the State Engineer

in the above-entitled matter and proceedings be and the same hereby is established, approved, adopted, affirmed and confirmed bythis court without any modification thereof or change therein.

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

" IN THE OFFICE OF THE STATE ENGINEER
OF THE STATE OF NEVADA

In the Matter of the Determination of the Relative Rights in and to the Waters of Cane Spring Creek and its Tributaries in Humboldt County, Nevada.	)	SS.

ORDER OF DETERMINATION

The State Engineer of the State of Nevada upon petition of B. F. Porter Estate, through its President, Porter Sesnon, a water user on the Cane Spring Creek Stream System, hereinafter described, requesting the determination of the relative rights to the waters of said stream system, made an investigation on May 22nd and 23rd, 1945, under and pursuant to Section 18 of Chapter 140 of the Statutes of Nevada of 1913 and acts amendatory thereof and supplementary thereto and found that the facts and conditions justified such determination and on May 29th 1945, entered an order granting said petition.

The State Engineer received and filed in his records maps and statements of claim to the use of water from said stream system required under the provisions of said Chapter 140, Statutes of 1913 and acts amendatory thereof and supplementary thereto. There being only one claimant upon said stream system and it waived in writing the provisions of said Chapter 140, Statutes of 1913, and acts amendatory thereof and supplementary thereto, with reference to notices and the service and publication thereof,

NOW, THEREFORE, in accordance with the provisions of Chapter 140, Statutes of Nevada of 1913 and acts amendatory thereof and supplementary thereto, the State Engineer hereby makes and files and caused to be entered of record in his office, this Order of Determination, defining the right of the claimant to the waters of said Cane Spring Creek stream system, as hereinafter defined.

CLAIMANT

As a result of the field investigation above referred to together with subsequent investigations by the Office of State Engineer, the State Engineer hereby finds that the entire flow of the waters from Cane Spring Creek stream system, as hereinafter defined, since prior to 1880, has been and now is placed to beneficial use by B. F. Porter Estate, a corporation, and its predecessors in interest and that there is now only one appropriator, namely, said B. F. Porter Estate, that is using the flow of said Cane Spring Creek Stream system. All of these waters are being used under a claim of vested right. Deeds of record in this office together with other data show that the present claimant and appropriator, B. F. Porter Estate, is the successor in interest to the vested

rights initiated in the year 1867 by Miller and Lux.

B. F. Porter Estate is the sole successor of the vested rights to the use of water from the Cane Spring Creek stream system, as hereinafter defined, and now owns all the lands on which the waters have been placed to beneficial use for irrigation and domestic purposes and is now the sole user of range rights under the Division of Grazing in this area.

SOURCE

The words 'Cane Spring Creek stream system' as used in this Order shall be interpreted as including Cane Spring, arising in the SW 1/4 NE 1/4 Section 30, T.39 N.,R. 27 E., M.D.M., and Cane Spring Creek which runs in a southerly direction from Cane Spring, situate in the westerly part of Humboldt County, Nevada, on the easterly slope of the Black Rock Mountains, together with any tributaries that may exist.

IRRIGATION

By actual practice over a great number of years summer irrigation for these grass and pasture lands start on about March 1 and continue to October 1st and the winter irrigation from October 1st to December 31st.

The irrigation season is therefore herein fixed as follows:

Summer Irrigation - March 1st to October 1st
Winter Irrigation - October 1st to March 1st

DUTY OF WATER

The duty of water is the amount of water in acre feet per season required to be placed on land in a manner consistent with good irrigation practice to yield adequate crop returns. In this instance due to the topography of the irrigated land and type of culture grown the duty of water is

justifiably low. The State Engineer hereby finds that a duty of 5.0 acre feet per acre per summer season from March 1st to October 1st and 1.0 acre feet per acre per winter season from October 1st to March 1st of the following year.

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

Class of land	Duty	Irrigation Season	Acres	cont. flow	acre feet
Meadow & Pasture	5	Mar. 1 to Oct. 1	25.95	1/ 0.31cfs	129.75
Meadow & Pasture	1	Oct. 1 to Mar. 1	25.95	2/ 0.09cfs	25.95
				Total	155.70 A F

1/ - continuous flow per acre = 0.0118 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 Cane Spring Creek stream system for irrigation and domestic purposes on its Cane Spring 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 No. 02331

Source: Cane Spring Creek Stream System

Point of Diversion for Irrigation Purposes: In the SW 1/4 NE 1/4 Section 30, T. 39 N., R. 27 E., M.D.M.

Water is used for stockwatering purposes throughout the entire stream system and is used for irrigation and domestic purposes on claimant's Cane Spring 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:

Year of Priority	Culture Acres Meadow & Pasture	Subdivision	Sec.	Tp. N.	R. E.	Duty of Water Acre - Feet
1880	4.25	SE 1/4 NE 1/4	30	39	27	25.50
"	4.95	SW 1/4 NE 1/4	30	39	27	29.70
"	4.50	NW 1/4 SE 1/4	30	39	27	27.00
"	12.25	NE 1/4 SE 1/4	30	39	27	73.50
Total	25.95					155.70

STOCKWATERING

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

USE:

The ranching operations at the Cane Spring Creek ranch have from their inception in 1880 been stock raising operations.

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

Hay is raised for use by claimant's cattle and none is shipped out. Garden truck and orchard fruit is likewise produced on the Piute Creek, Battle Creek and Bartlett Creek ranches.

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

GRAZING USE:

B. F. Porter Estate has the exclusive use of the appurtenant range. A ten year permit has been issued by the Division of Grazing which covers all of the easterly slope of the Black Rock range for some few miles northeasterly from Bartlett Creek ranch and some nine miles or more southwesterly from the Cane Spring Creek ranch.

EXTENT OF APPROPRIATION:

Since subsequent to 1880 the livestock watered on this stream system have been in sufficient numbers to utilize substantially all that portion of the public range readily available to livestock watering on said Cane Spring Creek stream system, the number of stock varying with range and economic conditions.

It is hereby ordered that claimant, B. F. Porter Estate, be and it is hereby entitled to water range livestock on and from any portion of the Cane Spring Creek stream system in sufficient numbers to utilize substantially all that portion of the public range readily available to livestock watering at and from the Cane Spring Creek stream system. The State Engineer hereby finds from the records that B. F. Porter Estate is the lawful successor in interest to, and the owner of, the vested right to use the water from the Cane Spring Creek stream system for stockwatering purposes and hereby determines that the source of such water supply is the Cane Spring Creek stream system and that the cattle may be watered at and from, or on any part of, such system; that the year of priority is the year 1880 and the extent of the right is the number of range livestock

which will utilize substantially all that portion of the public range readily available to livestock watering from the Cane Spring Creek stream system, or any part thereof.

CHANGE OF PLACE OF USE

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

JUNIOR RIGHTS

The waters of the Cane Spring 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 Cane Spring Creek stream system.

THIS ORDER OF DETERMINATION made and filed in the Office of the State Engineer on the 21st day of November, 1945.

(signed) Alfred Merritt Smith [SEAL]
Alfred Merritt Smith
State Engineer.

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

Merwyn H. Brown
DISTRICT JUDGE