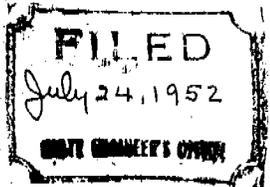


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No. 2461

H.A. DISKIN
Attorney for Petitioner



IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF LANDER

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IN THE MATTER OF THE DETERMINATION
OF THE RELATIVE RIGHTS IN AND TO THE
WATERS OF CARRICO CREEK AND ITS
TRIBUTARIES IN LANDER COUNTY, STATE
OF NEVADA

} Filed: July 16, 1952
} Melene T. Malloy Clerk

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ORDER AMENDING JUDGMENT

The petition of ST. JOHN LABORDE, for an order of this court amending a judgment entered in the above entitled court and cause on the 26th day of November, 1929, came on this day for hearing before the undersigned Judge.

In support of said petition there was offered and received in evidence a certificate executed by the State Engineer of the State of Nevada, and a written consent to such amendment executed by W.W. Whitaker.

From the proof submitted it appears to my satisfaction that in said judgment and decree there were three claimants to the waters of Carrico Creek, consisting of Joe Phillipi, Michel Cadet and Eusebia Cadet, and that the interest of Joe Phillipi in the waters of said stream and the lands to be irrigated thereby are now owned by W.W. Whitaker, and the interests of Michel Cadet and Eusebia Cadet are now owned by St. John Laborde.

I further find from the evidence submitted that the final decree, as entered in the above entitled court and cause, under the water rights awarded to Michel Cadet and Eusebia Cadet, designated

1 certain acreages in Sections 32 and 33, Township 23 North, Range
2 45 East, M.D.B. & M.

3 I further find that there is no irrigated area in
4 Sections 32 and 33, Township 23 North, Range 45 East, M.D.B. & M.
5 and that the lands irrigated by the waters of Hall Creek, a
6 tributary of Carrico Creek, should have been designated in
7 Sections 32 and 33, Township 24 North, Range 45 East, M.D.B. & M.,
8 and that said designation of said areas in Sections 32 and 33,
9 Township 23 North, Range 45 East, M.D.B. & M. was a clerical
10 mistake.

11 IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the
12 Judgment entered in the above entitled court and cause on the
13 26th day of November, 1929, be and the same is hereby amended
14 nunc pro tunc in the following respects, to-wit:

15 That the acreages and the water rights awarded to Michel
16 Cadet, as appears on page 9a of said Judgment and Decree, and the
17 water rights and acreages awarded to Eusebia Cadet, on page 11 of
18 said Decree, be and the same are hereby changed and corrected to
19 show that the acreages in Sections 32 and 33 are located in
20 Township 24 North, Range 45 East, M.D.B. & M., and not in Township
21 23 North, Range 45 East, M.D.B. & M., as stated in said Decree.

22 IT IS FURTHER ORDERED that the Clerk of this Court make
23 and enter on said original record a marginal reference to this
24 Order and Amendment.

25 DONE in open Court this 16 day of July
26 1952.

27
28 D. W. Priest
29 DISTRICT JUDGE
30

1 certain acreages in Sections 32 and 33, Township 23 North, Range
2 45 East, M.D.B. & M.

3 I further find that there is no irrigated area in
4 Sections 32 and 33, Township 23 North, Range 45 East, M.D.B. & M.
5 and that the lands irrigated by the waters of Hall Creek, a
6 tributary of Carrico Creek, should have been designated in
7 Sections 32 and 33, Township 24 North, Range 45 East, M.D.B. & M.
8 and that said designation of said areas in Sections 32 and 33,
9 Township 23 North, Range 45 East, M.D.B. & M. was a clerical
10 mistake.

11 IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the
12 Judgment entered in the above entitled court and cause on the
13 26th day of November, 1929, be and the same is hereby amended
14 nunc pro tunc in the following respects, to-wit:

15 That the acreages and the water rights awarded to Michel
16 Cadet, as appears on page 9a of said Judgment and Decree, and the
17 water rights and acreages awarded to Eusebia Cadet, on page 11 of
18 said Decree, be and the same is hereby amended to read as follows:

Clerk's Office of the Third Judicial District Court }
Of the State of Nevada, in and for the County of Lander

*I, the undersigned, Clerk of Said Court, do hereby certify the foregoing to be a full, true
and correct copy of* ORDER AMENDING JUDGMENT - IN THE MATTER OF THE DETER-
MINATION OF THE RELATIVE RIGHTS IN AND TO THE WATERS OF CARRICO CREEK
AND ITS TRIBUTARIES IN LANDER COUNTY, STATE OF NEVADA.

Attest my hand and Seal of said Court, this 16th
day of July A. D. 19. 62

Helene S. Macloy Clerk
Deputy Clerk

11

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF LANDER 26

IN THE MATTER OF THE DETERMINATION)
OF THE RELATIVE RIGHTS IN AND TO THE)
WATERS OF CARRICO CREEK AND ITS)
TRIBUTARIES IN LANDER COUNTY, STATE)
OF NEVADA.)

November 29
Sun 29
@ Clark

D E C R E E

This proceeding coming on for hearing on the 18th day of September, 1929, at the hour of 10:00 o'clock A. M., before Honorable W. R. Reynolds, Judge of the above-entitled Court, and the State Engineer being represented by Deputy State Engineer G. F. Engle and his Counsel, Howard E. Browne, and none of the claimants or other parties to this action being present, either in person or by their counsel, and it appearing to the Court:

That on July 29, 1927, John Wholey, of Austin, Nevada, did, through his attorney, W. M. Kearney, petition the State Engineer to determine the relative rights in and to the waters of Carrico Creek and its tributaries situated in Lander County, Nevada.

That the State Engineer thereupon, and in accordance with section 18, chapter 140, Nevada Statutes of 1913, did, through his Deputy, G. F. Engle, make an investigation, which disclosed that facts and conditions justified the determination of the relative rights involved, and that he therefore entered in his records an Order, dated August 17, 1927, granting said petition and signifying his intention to make proper arrangements to proceed with the determination in question.

That as soon as practicable thereafter, the State Engineer did prepare a notice, dated August 19, 1927, setting forth the fact of the entry of the said order and of the pendency of proceedings and naming the date of October 1, 1927, when he

or his assistants would begin an examination, and setting forth that all claimants to rights in the waters of said stream system were required, as in the Water Act provided, to make proof of their claims.

That such notice was published for a period of four consecutive weeks in the Reese River Reveille, a newspaper of general circulation within the boundaries of said stream system, the first publication being on August 20, 1927, and the last publication on September 17, 1927.

That at the time set in said notice, dated August 19, 1927, the State Engineer did begin an investigation of the flow of the stream and of the ditches diverting water and of the lands irrigated therefrom, and did gather such other data and information as was essential to the proper determination of the water rights in the stream system.

That during the course of said investigation he did determine that there were less than ten appropriators or claimants upon the stream system and that all of said claimants and appropriators did in writing waive the provisions of the Water Act with reference to notices and the service and publication thereof, and that in consequence thereof, and in conformity with the provisions of section 36b, chapter 106, Nevada Statutes of 1921, the State Engineer did proceed to make an Order of Determination without the giving, serving or publication of any notices required by the Water Act, to the end that it might be filed, when completed, in the manner presented in section 34 of said Act.

That the State Engineer did thereupon take the same steps and proceedings as if all preliminary notices had been given prior to the making, entering and filing of the said Order of Determination.

That, all claimants or appropriators having duly and regularly filed for record with the State Engineer, either prior

III

That Claimant Michel Cadet has and is hereby awarded the right to use a portion of the water of Hall Creek, a tributary of Carrico Creek and a part of the Carrico Creek stream system, at the following times, in the following amounts, upon the following described lands, and as of the following described priorities:

(See next page)

See assignment file where this right was assigned on Feb 16, 1937 to St John Laborde, dead filed in file No 7123 on April 29, 1937

were located as in the map heretofore provided to make good of
the all statements to rights in the waters of said stream system
of his assistants would begin an examination and setting forth

or subsequent to initiation of these proceedings, his or her
proofs of appropriation supported by adequate cultural maps, the
State Engineer did proceed to assemble all proofs which had been
filed with him, and to prepare and certify an abstract of all
said proofs, under date of May 10, 1928.

That the State Engineer did thereupon proceed to make
and cause to be entered of record in his office, under date of
May 16, 1928, an Order of Determination defining the several
rights to the waters of the Carrico Creek stream system.

That, prior to the preparing and certifying of the
Order of Determination, no Preliminary Order of Determination
was prepared, it being the State Engineer's interpretation of
section 36b, Chapter 106, Nevada Statutes of 1921, that in
proceeding in accordance with the waiver method outlined in
said section 36b, the necessity for the preparation of a Pre-
liminary Order and conducting hearings on objections thereto
is precluded.

That as soon as practicable after preparing, certifying
and entering in his records the aforesaid Order of Determination,
he did send by registered mail, a copy of the Abstract of Claims
and the Order of Determination to each person who had filed
proof of claim, and to each person who had become interested in
the proceedings.

That as soon as practicable thereafter the State
Engineer did file with the Clerk of Lander County, and Ex-Officio
Clerk of the Third Judicial District Court, a certified copy of
the Abstract of Claims and Order of Determination, together with
all the original evidence and data filed with or taken before
the State Engineer.

That upon the filing of the certified copy of the
Abstract of Claims and Order of Determination, evidence and re-
lated data with the Clerk of the Court as aforesaid, the State
Engineer did request and procure an Order from the Court setting

State Engineer did proceed to assemble all records which had been
blotted or obliterated and by separate certified mails the
on and present to initiation of these proceedings, his or her

the time of hearing for Monday, June 18, 1928, at 2:00 o'clock
of the afternoon of said day, in the Court Room of the Court
House at Austin, Lander County, Nevada, and further ordering
all parties in interest, who were aggrieved or dissatisfied
with the Order of Determination, to file with the Clerk of the
Court notice of exceptions to said Order at least five days
prior to the date set for hearing.

That, upon the Court's attention being called to the
fact that a hearing set on the above date would not allow suf-
ficient elapsed time to permit of publication of the Order for
a period of four consecutive weeks in the Reese River Reveille,
the Court entered, on July 18, 1928, a minute Order vacating
the former Order and resetting the hearing for November 1, 1928.

That the State Engineer did thereupon send, by
registered mail, addressed to each party in interest at his
last known place of residence, a copy of such certified Order
of the Court setting time for hearing.

That in addition, the State Engineer did cause said
notice to be published in the Reese River Reveille, a newspaper
of general circulation within the boundaries of Carrico Creek
and its tributaries, for at least once a week for four con-
secutive weeks.

That at least five days prior to the time set for
hearing, John C. Wholey, the person upon whose petition the
proceedings were initiated, through his attorney, W. M. Kearney,
did file with the Clerk of the Court exceptions to the State
Engineer's Order of Determination, a copy of which was served
upon the State Engineer by registered mail.

That, owing to certain phases of the exceptions above
mentioned, the State Engineer, on October 24, 1928, requested
the Court to vacate the former Order setting time of hearing
and continue the matter indefinitely, and the Court, on
October 25, 1928, allowed such postponement.

House of Representatives, General Counsel, Nevada, and further ordering
of the afternoon of said day, in the Court room of the Court
the time of hearing for Monday, June 18, 1929, at 8:00 o'clock

That the matter was thus indefinitely postponed until, upon request of the State Engineer, the Court again set time of hearing for 10:00 o'clock A. M., September 18, 1929.

That copies of said Order setting time for hearing on this date were sent, by registered mail, to each party in interest at his last known place of residence.

That on the 14th day of September, 1929, the State Engineer prepared an Affidavit of Compliance with Jurisdictional Requisites in connection with this proceeding, which affidavit is duly filed with the Clerk of the Court and now appears in the records thereof.

That said cause was, on the 18th day of September, 1929, heard before this Court, and no claimants or exceptors being present, and the State Engineer having presented his evidence, both oral and documentary, to the Court, and the Court having heard the witnesses sworn and examined, and the cause having been submitted to the Court for decision, and the Court having rendered its written decision thereon and having made and filed its Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED
as follows, to-wit:

I

That, except such parties as may have acquired rights to the use of the water of Carrico Creek and its tributaries by Permits granted under applications to the State Engineer, under and by virtue of the Statutes of Nevada of 1907, chapter 30 or Statutes of 1913, chapter 140, as amended, each and all parties having any interest in or to the water of the Carrico Creek stream system, or in or to the use of any of said water, are now before the Court in this proceeding.

That there are no other persons then the above-named who have or claim any interest in or to said water, or in or to

Time of hearing 10:00 o'clock A. M. September 18, 1958
with the presence of the State Engineer, the Court and the
and the other interested parties and the Board of

the use of said water or any part thereof.

II

That Claimant Joe Phillipi has and is hereby awarded the right to use a portion of the water of Iowa Creek, a tributary of Carrico Creek and a part of the Carrico Creek stream system, at the following times, in the following amounts, upon the following described lands, and as of the following described priorities:

(See next page)

Source - Iowa Creek	Classification & Area of Lands		Ditch - Iowa Creek Ditch			Proof No. 02182	
	Priority	Harvest: Diversified: (Acres)	Sub-division	Description of Land	Length of Season	Duty of Water	Cubic Feet: Acre Feet
			Sec.: North:	East:		Per	Per
			23:	44:		Second	Season
1866	0.34	SW 1/4	16	44	Mar. 15 - Sept. 15	0.003	1.02
"	2.25	SE 1/4	16	44	185 days	0.018	6.75
"	11.48	NE 1/4	21	44	"	0.094	34.44
"	15.67	NW 1/4	21	44	"	0.128	47.01
"	30.51	SW 1/4	21	44	"	0.250	91.53
"	6.84	SE 1/4	21	44	"	0.066	20.52
"	0.46	NE 1/4	21	44	"	0.004	1.38
"	26.42	NW 1/4	21	44	"	0.216	79.26
"	18.85	SW 1/4	21	44	"	0.154	56.55
"	0.62	NE 1/4	20	44	"	0.006	1.86
"	10.86	SE 1/4	20	44	"	0.089	32.68
"	10.31	NE 1/4	20	44	"	0.084	30.93
"	15.30	NW 1/4	28	44	"	0.125	45.90
"	13.62	SW 1/4	28	44	"	0.111	40.86
"	5.21	SE 1/4	28	44	"	0.043	16.63
"	3.63	NE 1/4	28	44	"	0.030	10.89
"	0.57	SE 1/4	28	44	Mar. 15 - June 12	0.022	3.85
"	0.37	SW 1/4	28	44	Mar. 15 - Sept. 15	0.005	1.71
"	0.12	NW 1/4	33	44	"	0.003	1.11
						0.001	.56
Total	173.43						524.14

the ... of the water of Hall Creek, a tributary
 that claimant Michel Cadet has and is hereby awarded

III

Source - Hall Creek (Tributary of Carrico Creek)	Classification & Area of Lands		Description of Land		Ditch - Budd		Proof No. 01723		
Priority:	Harvest:	Diversified:	Sub-division:	Sec.:	North:	East:	Length of Season	Cubic Feet Per Second	Duty of Water Per Season
(Acres)	(Acres)	(Acres)							
1967	0.4		NE 1/4 SW 1/4	4	23	45	Mar. 15-Sept. 15	0.003	1.2
"	1.3		SE 1/4 SW 1/4	4	23	45	"	0.011	3.9
"	4.5		SW 1/4 SW 1/4	4	23	45	"	0.037	13.5
"		6.7	SE 1/4 SE 1/4	5	23	45	Mar. 15-June 12	0.066	10.06
"	12.3		SE 1/4 SE 1/4	5	23	45	Mar. 15-Sept. 15	0.101	36.9
"		10.0	SE 1/4 SE 1/4	5	23	45	Mar. 15-June 12	0.084	15.0
"	18.3		SW 1/4 SE 1/4	5	23	45	Mar. 15-Sept. 15	0.150	54.9
"		0.3	SW 1/4 SE 1/4	5	23	45	Mar. 15-June 12	0.002	0.45
"	12.0		SE 1/4 SW 1/4	5	23	45	Mar. 15-Sept. 15	0.098	36.0
"		3.5	SE 1/4 SW 1/4	5	23	45	Mar. 15-June 12	0.029	5.25
"	0.9		NW 1/4 NE 1/4	8	23	45	Mar. 15-Sept. 15	0.007	2.7
Total	49.7	20.5							179.85

(Michel Cadet - Continued)

Source - Hall Creek (Tributary of Garrico Creek)	Ditch - Hall Ditch	Proof No. 01723
Classification & Area of Lands	Length of Ditch	Duty of Water
Priority: Harvest: Diversified	Length of Ditch	Cubic Feet: Acre Feet
Groups: Pasture	Season	Per Second
(Acres): (Acres)	Season	Second
1867	Mar. 15 - Sept. 15	0.019
"	"	0.133
"	"	0.072
"	Mar. 15 - June 12	0.019
"	Mar. 15 - Sept. 15	0.254
"	"	0.228
"	Mar. 15 - June 12	0.002
"	Mar. 15 - Sept. 15	0.001
"	Mar. 15 - June 12	0.002
"	Mar. 15 - Sept. 15	0.020
"	"	0.076
Total		298.35

Corrected to T. 24 N. by order Amending judgement dated July 16, 1952. Certified copy of said order filed July 24, 1952. Herein.

IV

That Claimant Eusebia Cadet has and is hereby awarded the right to use a portion of the water of Hall Creek, a tributary of Carrico Creek and a part of the Carrico Creek stream system, at the following times, in the following amounts, upon the following described lands, and as of the following described priorities:

(See next page)

See assignment file where this right was assigned on Feb 16, 1937 to Rt John Lohrde - deed filed April 29, 1937 in file 7123

Source - Hall Creek (Tributary of Garrico Creek)		Ditch - Hall Ditch		Proof No. 01723	
Classification & Area of Lands		Length of Season		Duty of Water	
Priority	Harvest: Diversified	Description of Land	Length of Season	Cubic Feet Per Second	Acres Feet Per Season
Crops	Pasture (Acres)	Sub-division: Sec.: North: East			
1867	4.1	SW $\frac{1}{4}$ SW $\frac{1}{4}$: 33 : 23 : 45	Mar. 15 - Sept. 15 : 186 days	0.034	12.3
Totals	4.1				12.3

Corrected to T. 24 N., by Order amending judgement, dated July 16, 1952. Certified copy of said Order filed July 24, 1952 herewith

V

That the relative priority of rank of the said several rights to the waters of Carrico Creek and its tributaries, as listed in the foregoing tabulation, is and shall be recognized as being in the order of the dates of the several appropriators and no one holding a subsequent appropriation shall be entitled to receive any water until all prior appropriations have been fully satisfied.

VI

That each of the parties hereto, together with his or her agents, servants, and employees, and those claiming by or through or under it, is perpetually enjoined from using any of the waters of said stream system in excess of his or her several rights as the same are herein defined and from using any water at such time, or in such manner, or in such amount as will infringe upon any right as herein defined.

VII

That all waters diverted from Carrico Creek and its tributaries be measured at a point where the main ditch enters or becomes adjacent to the land to be irrigated, or as near thereto as practicable, the location of the point of measurement to be selected, or, if not selected, to be approved by the State Engineer.

VIII

That each water user shall install and maintain substantial headgates, works of control and weirs in his ditch or ditches of such construction as will be approved by the State Engineer.

IX

That in addition to water used during the irrigating season each user shall be entitled to divert sufficient water for stock and domestic purposes, the amount diverted not to exceed a flow of 0.025 of a cubic foot per second at each point of use, such diversion to be made during the non-irrigating

season, subject to the provisions of section VI. The point of measurement of stock water shall be the same point as selected and approved by the State Engineer for the measurement of irrigation water.

X

That the parties as listed in the tabulation, or their successors in interest, shall not be required to take or use the amount of water allotted to them in a continuous flow but may accumulate same within the seasonal limits, with the approval of the Water Commissioner subject to the control and direction of the State Engineer.

XI

That the beginning and end of the irrigation season shall be as defined in this Order except when climatic conditions are such that irrigation is not in accordance with good husbandry and actual beneficial use of water; the State Engineer shall then determine by examination the beginning of the irrigation season and shall set the date, giving notice to all parties concerned.

Clerk's Office of the Third Judicial District Court
Of the State of Nevada, in and for the County of Lander.

I, THE UNDERSIGNED, CLERK OF SAID COURT, DO HEREBY CERTIFY THE

FOREGOING TO BE A FULL, TRUE AND CORRECT COPY OF DECREE entered in the matter of the Determination of the Relative Rights in and to the Waters of Carrico Creek and its Tributaries in Lander County, Nevada, as the same appears on file and of record in my office.

Attest my hand and seal of said court, this 11th

day of December A. D. 1929.

Rena B. Stensley Clerk.

Deputy Clerk,

season, subject to the provisions of section VI. The point of measurement of stock water shall be the same point as selected and approved by the State Engineer for the measurement of irrigation water.

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That the parties as listed in the tabulation, or their successors in interest, shall not be required to take or use the amount of water allotted to them in a continuous flow but may accumulate same within the seasonal limits, with the approval of the Water Commissioner subject to the control and direction of the State Engineer.

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Dated this 26 day of November, 1929.

W. R. Reynolds
District Judge.

*Sec. 5189, as amended
1925 Laws, page 114-115*

Recorded at page 149, Book C. Judgment Records, Lander County, Nevada. Lena E. Streshley, Clerk.

and approved by the State Engineer for the measurement of irrigation water.

X

That the parties as listed in the tabulation, or their successors in interest, shall not be required to take or use the amount of water allotted to them in a continuous flow but may accumulate same within the seasonal limits, with the approval of the Water Commissioner subject to the control and direction of the State Engineer.

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Dated this 26 day of November, 1929.

W R Reynolds
District Judge.

*Sec. 5189, as amended
1925 Laws, page 114-115*

Recorded at page 149, Book C. Judgment Records, Lander County, Nevada. Lena E. Streshley, Clerk.

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That the beginning and end of the irrigation season shall be as defined in this Order except when climatic conditions are such that irrigation is not in accordance with good husbandry and actual beneficial use of water; the State Engineer shall then determine by examination the beginning of the irrigation season and shall set the date, giving notice to all parties concerned.

Clerk's Office of the Third Judicial District Court

Of the State of Nevada, in and for the County of Lander.

I, THE UNDERSIGNED, CLERK OF SAID COURT, DO HEREBY CERTIFY THE

FOREGOING TO BE A FULL, TRUE AND CORRECT COPY OF DECREE entered In the matter of the Determination of the Relative Rights in and to the Waters of Carrico Creek and its Tributaries in Lander County, Nevada, as the same appears on file and of record in my office.

Attest my hand and seal of said court, this 11th

day of December A. D. 1929.

Anna B. Stensley Clerk.

Deputy Clerk.