

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF NEVADA, IN AND FOR THE COUNTY
OF NYE.

.....
IN THE MATTER OF THE DETERMINATION .
OF THE RELATIVE RIGHTS IN AND TO THE . DECREE.
WATERS OF CURRANT CREEK AND ITS .
TRIBUTARIES IN NYE COUNTY, NEVADA .
.....

The above entitled matter came on regularly for hearing on November 16th, 1920, upon the Order of Determination theretofore filed herein by the State Engineer of the State of Nevada and the exceptions to said Order filed by the various parties hereinafter named; and the further hearing of said matter having been pursuant to stipulation continued and now coming on for further hearing on the second day of March, 1921, the said parties interested therein being now before the Court and represented as follows:-

John Lawton Butler, John W. Manson, George A. Manson, and H. F. Rutherford by their attorney, Mr. G. F. Boreman; and Hyrum Cazier, Joseph Cazier and Samuel E. Cazier (hereinafter referred to as Cazier Brothers) by their attorney, Mr. Anthony Jurich.

It appears that the above-entitled matter was initiated before the State Engineer of Nevada pursuant to the request of the parties above named who were and are residents and landowners along Carrant Creek and its tributaries in this county and who were and are the users of the water of that stream system, for the purpose of reaching a legal determination of their relative rights to the use of the waters of said Carrant Creek and its tributaries in the manner provided by statute.

In compliance therewith the State Engineer made the usual order for such determination gave the

notices required by statute and subsequently proceeded to gather and assemble the necessary evidence and data and make the necessary measurements in order that a proper determination of said matter might be reached. Pursuant to said notices all of the parties hereinabove named, who comprise all of the claimants and users of the water of said stream system, appeared and presented and submitted to the State Engineer their various respective evidences and proofs of ownership of the lands irrigated by said stream system and of their rights and claims to the use of said waters. After all such proofs had been taken and filed and after the expiration of the period within which proofs might be filed, the State Engineer assembled all of said proofs and prepared and certified an Abstract thereof and caused the same to be printed. Subsequently the State Engineer prepared a Notice fixing and setting a time and place when and where the said proofs and evidence taken by or filed with him would be open to inspection of all parties interested, which said period of inspection was not less than ten days; a copy of said Notice together with a printed copy of said Abstract of Proofs was served upon each and all of the parties above named at least thirty days prior to the first day of such period of inspection. It appears that there was no contest, as such, made before the State Engineer and consequently no further hearing was had or conducted by the State Engineer in respect to said matter. Subsequently the State Engineer made an Order of Determination of the relative rights to the use of the water of said stream system which was entered of record in his office and certified copies thereof were served by registered mail upon each and all of the parties above named and he thereafter filed a certified copy of said Order of Determination together with the

original evidence and transcript of testimony filed with or taken before him and together with all other proofs, data and maps pertinent to said matter with the Clerk of Nye County as ex-officio clerk of the District Court of said county in which said stream system is situated. Thereupon, upon application of the State Engineer, an order was made and entered by said Court setting the time for hearing, which said hearing was thereafter by stipulation of the said parties and the State Engineer continued to November 16th, 1920. At least five days prior to the day set for hearing, all of the parties above named expressing themselves dissatisfied with the Order of Determination of the State Engineer, filed with the Clerk of said Court their respective notices of exceptions to the Order of Determination in due and regular form and caused copies thereof to be served upon or transmitted to the State Engineer by registered mail and also each of said parties served upon the other adverse parties a copy of such exceptions. On November 16th, 1920, as aforesaid, all of the parties being before the Court in person and by their respective attorneys, the Court proceeded to hear the said exceptions to said Order of Determination, which said exceptions and the hearing thereof involved the submission to the Court and consideration by it of all of the evidence, proofs, data and maps which had been considered by the State Engineer and which without objection of any of the parties and by stipulation were considered by the Court; in addition thereto other additional evidence, both oral and documentary, was offered and received on behalf of the said parties at said hearing on the 16th day of November, 1920, and by stipulation the further hearing of said matter was continued, and pursuant to agreement came on for further hearing on March 2nd, 1921, all said parties being present

and represented as aforesaid, at which time further evidence and proofs were offered and received in support of said exceptions and the said matter was thereupon on said last named day, submitted to the Court for its decision, upon all of the evidence, proofs, data, maps and exhibits offered and received as aforesaid and upon the full record and proceedings in said cause. The making of specific Findings of Fact having been by said parties through their attorneys duly waived, except insofar as the Court may see fit to make such findings in and by its Decree, and thereafter, on March 11th, 1921, the Court having rendered and filed its decision therein, now, therefore, in accordance with said decision as modified hereby:-

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

1.

That each and all parties having any interest in or to the use of the Waters of Carrant Creek or its tributaries in Nye County, Nevada, constituting the Carrant Creek stream system, or in or to the use of any of said waters, are now before the Court in this proceeding and duly represented by their attorneys as aforesaid, the said parties being as follows: John Lawton Butler, George A. Manson, John W. Manson, H. F. Rutherford, Hyrum Casier, Joseph Cazier, and Samuel E. Cazier; that there are no other parties than those above named who have or claim any interest in or to said waters or in or to the use of said waters or any part thereof.

2.

That John Lawton Butler (or Frank Callaway, his successor in interest) has an area of two hundred forty (240) acres of land which is irrigated from the said stream system; George A. Manson has an area of one hundred twenty (120) acres which is likewise so irri-

gated; H. F. Rutherford has an area of seventy (70) acres which is likewise so irrigated; John W. Manson has an area of fifty (50) acres which is likewise so irrigated; and Joseph, Edmund and Hyrum Cazier, known as Cazier Brothers, have an area of one hundred twenty (120) acres which is likewise so irrigated. That these respective areas or holdings are upon or adjacent to said stream system and these are all the users of water of said Currant Creek stream system. That the said irrigated area of two hundred forty (240) acres of John Lawton Butler is situated within the following subdivisions: $E\frac{1}{2}$ of the $SE\frac{1}{4}$, $SW\frac{1}{4}$ of the $SE\frac{1}{4}$, and the $SE\frac{1}{4}$ of the $SW\frac{1}{4}$ of Section 4; the $NW\frac{1}{4}$ of the $NE\frac{1}{4}$, the $NW\frac{1}{4}$, and the $NW\frac{1}{4}$ of the $SW\frac{1}{4}$ of Section 9; the $S\frac{1}{2}$ of the $NE\frac{1}{4}$, the $N\frac{1}{2}$ of the $SE\frac{1}{4}$, the $S\frac{1}{2}$ of the $NW\frac{1}{4}$, and the $N\frac{1}{2}$ of the $SW\frac{1}{4}$ of Section 8; the $SE\frac{1}{4}$ of the $NE\frac{1}{4}$, the $NE\frac{1}{4}$ of the $SE\frac{1}{4}$ of Section 7; all situated in township 10 North, Range 58 East, M.D.M. in Nye County, Nevada. That the aforesaid irrigated area of one hundred twenty (120) acres of George A. Manson is situated within the following subdivisions; the $N\frac{1}{2}$ of the $NE\frac{1}{4}$, the $SW\frac{1}{4}$ of the $NE\frac{1}{4}$, the $NW\frac{1}{4}$ of the $SE\frac{1}{4}$, the $NE\frac{1}{4}$ of the $NW\frac{1}{4}$, the $S\frac{1}{2}$ of the $NW\frac{1}{4}$, the $N\frac{1}{2}$ of the $SW\frac{1}{4}$, the $SW\frac{1}{4}$ of the $SW\frac{1}{4}$ of Section 3; and the $NW\frac{1}{4}$ of the $SE\frac{1}{4}$ of Section 4; all in Township 10 North, Range 58 East, M.D.M.

That the aforesaid irrigated area of fifty (50) acres of John W. Manson is situated within the following subdivisions: the $NE\frac{1}{4}$ of the $NE\frac{1}{4}$ and the $NW\frac{1}{4}$ of the $NE\frac{1}{4}$ of Section 3, township 10 North, Range 58 East M.D.M. and the $NW\frac{1}{4}$ of the $SW\frac{1}{4}$ and the $SW\frac{1}{4}$ of the $SW\frac{1}{4}$ of Section 35; the $NE\frac{1}{4}$ of the $SE\frac{1}{4}$, the $SE\frac{1}{4}$ of the $SE\frac{1}{4}$ and the $SW\frac{1}{4}$ of the $SE\frac{1}{4}$ of Section 34 in township 11 North, Range 58 East M.D.M.

That the aforesaid irrigated area of seventy (70) acres of H. F. Rutherford is situated with the following subdivisions: the $SE\frac{1}{4}$ of the $SE\frac{1}{4}$ and the $SW\frac{1}{4}$ of the

SE $\frac{1}{4}$ of Section 26; the NW $\frac{1}{4}$ of the NE $\frac{1}{4}$, the NE $\frac{1}{4}$ of the NE $\frac{1}{4}$, the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$, and the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$, the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$, and the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 35, township 11 North, Range 58 East M.D.M.

That the irrigated area of one hundred (100) acres of Cazier Brothers is situated within the following subdivisions: the SE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 24; the NW $\frac{1}{4}$ of the NE $\frac{1}{4}$, the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$, the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$, the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$, the NE $\frac{1}{4}$ of the SW $\frac{1}{4}$, the NW $\frac{1}{4}$ of the SW $\frac{1}{4}$, and the SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 25; and the SE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 26, all in township 11 North, Range 58 East M.D.M. In addition to this, they have a tract of unsurveyed land of approximately twenty (20) acres situated in about the NW $\frac{1}{4}$ of Sec. 18, township 11 North, Range 59 East, which is land irrigated from the reservoir hereinafter mentioned and is not entitled to participate in the allotments for irrigation hereinafter made, except as to the surplus or "flood water" division.

3.

That the average mean or normal flow of said Currant Creek with its tributaries is ten cubic feet per second. That owing to the character of the soil and its porous nature the duty of water on the aforesaid irrigated areas is fixed at a cubic foot per second flow for each sixty acres during the irrigation season, which extends and is adjudged to be from March first to October first of each year.

4.

Applying the aforesaid factor to the irrigated acreage as above set forth, and computing upon the basis of the normal flow as fixed above, the allotments of water to the use of which the said parties are entitled are fixed, decreed and determined as follows:
Cazier Brothers 2 cubic feet per second or $\frac{1}{5}$ of the flow.
George A. Manson 2 cubic feet per second or $\frac{1}{5}$ of the flow.
John L. Butler 4 cubic feet per second or $\frac{2}{5}$ of the flow.

J. W. Manson $5/6$ cu. feet per second or $1/12$ of the flow.

H. F. Rutherford $1-1/16$ cu. ft. per second or $7/60$ of the flow.

Such allotments covering the entire year and being for domestic and stock watering purposes as well as for irrigation.

5.

It is found from the evidence that at times during the dry season of the year, and during the irrigation season, the flow of Currant Creek falls considerably below the normal hereinabove mentioned and because of the fact it is ordered, adjudged and decreed that at such times each user shall take only his just and due proportion of the flow as herein determined and no more, that is to say, Cazier Brothers one fifth of the flow. George A. Manson one fifth of the flow, John Lawton Butler two fifths of the flow, John W. Manson one twelfth of the flow and H. F. Rutherford seven sixtieths of the flow, measured at their respective intakes or points of diversion.

6.

It is found from the evidence that this stream system is affected by two periods known as the "dry" season and the "flood" season. In the "flood" season the quantity of water in the stream at times rises much above the normal above mentioned and occasionally reaches twenty-four cubic feet per second. In order to compensate for the lack of water during the "dry" season when the flow is below normal it is necessary for the irrigated lands of the users and parties hereto to be thoroughly "soaked" during the "flood" season so that the crops or lands shall not be burned out entirely through lack of water when the flow is below normal. The water users are, therefore, entitled to a just division of the flood waters to cover and compensate for the aforesaid shortages during the "dry" season.

It is therefore, adjudged and determined that the average "flood" water flow (including the normal flow) is fixed at fifteen cubic feet per second to be measured at the point where the measuring device has heretofore been located at the Cazier Bridge situated in the lane and about two hundred (200) feet west of the present Carrant Postoffice; inasmuch as all data heretofore compiled and used in this proceeding has been based upon the measuring device located at this point it is adjudged and deemed advisable to continue its location and measure the stream flow during the "flood" water season, at the same place for the purpose of this Decree in connection with the "flood" waters.

Inasmuch as the Cazier Brothers diversion is above this bridge and above the measuring device mentioned, it is further ordered, adjudged and decreed that when the entire flow of Carrant Creek and its tributaries shall be above twelve (12) cubic feet per second, measured at said bridge, then Cazier Brothers shall be permitted to divert the surplus above twelve (12) cubic feet per second into their reservoir situated in Section 7, township 11 North, Range 59 East (unsurveyed) if they so desire, impound the same there and use it upon the said tract of land irrigated from said reservoir; PROVIDING, HOWEVER, that at all such times, and whenever water is being diverted from said stream system into said reservoir, they shall allow not less than twelve (12) cubic feet per second (12 c.f.s.) to flow past the bridge for the benefit of the lower users, of which waters George A. Manson shall be entitled to use three (3) cubic feet per second, John Lawton Butler six (6) cubic feet per second, John W. Manson, $1\frac{1}{4}$ cubic feet per second and H. F. Rutherford one and three quarters ($1\frac{3}{4}$) cubic feet per second; but when the entire flow of Carrant Creek and its tributaries, during the irrigating season, shall be only twelve (12) cubic feet per second

RESERVOIR

or less (measured at said bridge) then and in that event and at such times Cazier Brothers shall not divert, or cause or permit to be diverted the said waters of Currant Creek or any of its tributaries, or any part thereof, into their said reservoir, but shall allow the same and the whole thereof, up to 12 C.F.S., to flow and remain in its natural channel for the purpose of irrigating all of the lands above described (excluding the twenty (20) acre tract aforesaid, situated at or near the said reservoir); the said waters to be divided among all the parties hereto for use upon said lands in accordance with the allotments specified in paragraph four of this Decree. It being the intent hereof that no water of said stream system shall be diverted into said reservoir except in the time of "flood" water. When no water is being diverted into the reservoir, the stream flow shall be divided pro rata according to the allotments specified in paragraph four hereof.

The foregoing provision as to the diversion of water into the reservoir is limited as above for the reason that there is normally a return flow from the irrigated lands along the creek after the irrigation is completed estimated as amounting to about forty percent and that inasmuch as the reservoir mentioned is situated about three miles from these irrigated areas, of any water should be diverted into the reservoir during the "dry" or low water season, the lower users would not only lose the benefit of this return flow, which the Court has taken into consideration in fixing the allotments, but there would be an additional loss of perhaps fifty percent of any flow diverted into the reservoir, when the same should be turned back into the stream channel, (on account of the gravelly and porous nature of said channel), before it could reach the users below said reservoir.

The court further finds and adjudges that all of

the waters of the Currant Creek stream system are beneficially used and utilized by the present owners and users including the "flood" waters and that there are no unappropriated or surplus or waste waters excepting as hereinabove mentioned and disposed of.

8.

Each water user shall install and maintain substantial head-gates and wiers in his ditches which shall be approved by the State Engineer and shall be installed at such place or places as the State Engineer shall designate. Diversions are to be made at the point where the main channel enters or becomes adjacent to the land to be irrigated or as near thereto as practicable. The parties shall take and use the water allotted to them in continuous flow and not in rotation unless they shall otherwise all agree thereto in writing.

HEADGATES

ROTATION

9.

A water commissioner shall be selected by agreement of the parties, or in the event that they do not so agree before April 15th of each year such commissioner shall be appointed by the State Engineer, to supervise the distribution of water under this Decree. He shall serve from April 15th to August 15th of each year unless a different period shall be agreed upon by a majority of the water users. Such commissioner shall be governed and paid in the manner provided by statute.

It is further by the Court hereby ordered, adjudged and decreed that the said parties hereto, John Lawton Butler, George A. Manson, John W. Manson, H. F. Rutherford, Joseph Cazier, Hyrum Cazier and Samuel E. Cazier, and each and every of them, and their and each of their agents, attorneys, servants and employees, and their successors in interest, and all and every person or persons acting in aid or assistance of the said parties, or of either of any of them, be and they are and each

of them is hereby perpetually enjoined and restrained as follows, to-wit:

A. From at any time diverting or using, or preventing or obstructing the flow in whole or in part in and along its natural channel, of any of the waters of Carrant Creek hereinbefore mentioned, or of any of its tributaries, except to the extent and in the amount and in the manner and at the time or times by this Decree to such respective party hereto allotted, allowed, prescribed and determined.

B. From diverting from the natural channel, and from using, any of the said waters, for irrigation or for any other purpose, in excess of the specific allotment herein and by this Decree made and allowed to such party or parties so diverting or using the same.

C. From diverting from the natural channel, and from using, any of the said waters, in any other manner or for any other purpose or purposes than as provided and prescribed by the terms of this Decree.

D. From diverting from the natural channel, and from using, and of the said waters, at any other time or times than as specified and provided by the terms of this Decree.

E. From in any manner meddling with, opening, closing, changing, injuring or interfering with any headgate, wier, water box, flume or measuring device, placed, installed or established by the State Engineer or by his authority or direction, unless such act be done by the permission or authority of the water commissioner if during the period of his regulation or control of said waters, or if not done during such period, then by virtue of the allowances, authority, terms and provisions of this Decree and of the powers thereby expressly or impliedly granted.

It is further ordered and adjudged that each of

the parties hereto shall pay his own costs, and his
just proportion of any general costs incurred or to be
incurred in putting this Decree into effect.

Dated April 23, 1921.

Mark R. Averill
District Judge.

Endorsed: 3721
F I L E D Apr 23, 1921.
L. E. Glass, Clerk,
By L. Hafferon, Deputy.

CERTIFICATE OF CLERK

STATE OF NEVADA,)
County of Nye) ss.

I, L. E. Glass, County Clerk of Nye County, State of Nevada, and
Ex-Officio Clerk of the District Court of the Fifth Judicial District
of the State of Nevada, in and for the County of Nye, do hereby
certify the foregoing and annexed to be a true and correct copy of
DECREE - IN THE MATTER OF THE DETERMINATION OF THE RELATIVE RIGHTS
IN AND TO THE WATERS OF CURRANT CREEK AND ITS TRIBUTARIES IN NYE
COUNTY, NEVADA.

as the same appears on file and of record in my office at Tonopah,
County and State aforesaid.

Attest my hand and seal of said Court, this
29th day of July, A. D. 1922.

(SEAL)

L. E. GLASS Clerk.
By L. HAFFERON Deputy.