

*Extra Copy*

No. 325466

Dept. No. 1

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

\*\*\*\*\*

MAY 30 10 13 AM '78

ALEX COON, CLERK  
BY L. MORRIS  
DEPUTY

IN THE MATTER (F THE DETERMINATION )  
OF THE RELATIVE RIGHTS IN AND TO )  
THE WATERS OF FISH HATCHERY SPRINGS) )  
IN WASHOE COUNTY, NEVADA. )

AMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW

JUEGMENT AND DECREE

This matter came on for hearing on the 9th day of December, 1977, before the Honorable Grant L. Bowen, District Judge, presiding. Fish Hatchery Springs exemplified in these proceedings, is within Washoe County, State of Nevada, and he is the Judge designated by NRS 533.165 to hear and to have jurisdiction to hear the matter of the State Engineer's determination of the relative rights of the claimants to the use of the waters of Fish Hatchery Springs. The Order of Determination and all related documentary evidence had been previously filed with the clerk of the said District Court by the State Engineer. There were no exceptions to the Order of determination submitted to the Court by the claimants or any other persons at least five days prior to the date set for hearing as provided for in NRS 533.170.

George Campbell, Deputy Attorney General; James C. Perkins, Surface Water Engineer and L. Edward Parmenter, Adjudication Engineer appeared in the hearings and proceedings on behalf of the State Engineer of Nevada and the Office of the State Engineer.

Neither the claimants or their representatives in this matter, nor any other persons were at the hearing.

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

George Campbell thereupon, at the hearing, offered verified affidavits,

1 files and records from the Office of the State Engineer, all contained in sup-  
2 port of the determination of the rights of the claimants in and to the above  
3 named stream system.

4 On December 9, 1977, the Court, having considered the entire record and the  
5 evidence introduced and received, directed the State Engineer to prepare the  
6 Findings of Fact, Conclusions of Law, and Judgment and Decree affirming the  
7 Order of Determination, in accordance with NRS 533.185.

8 The original proposed decree in this case was inadvertently signed by the  
9 undersigned District Judge on the 28th day of February, 1978, before the expi-  
10 ration of the 30 day period required by NRS 533.170. Under the provisions of  
11 that statute the Court may not sign the proposed decree until it has remained  
12 on file at the office of the Clerk of the District Court for 30 days after the  
13 date of service of a copy of the proposed decree on the Attorney General.

14 This amended decree is identical in all respects to the proposed decree  
15 previously signed except for the date of the Court's signature. The Amended  
16 Decree has remained on file with the Clerk of this Court for the time required  
17 by NRS 533.170. A copy of the Amended Decree was served on the Attorney General  
18 on the 20th day of April, 1978.

19 FINDINGS OF FACT

20 I

21 The Court Finds: That on April 21, 1958, Robert L. McDonald submitted a  
22 petition to the State Engineer on behalf of Edward W. Scripps, II, a water user  
23 of Davis Creek, requesting the determination of the relative rights of the  
24 petitioner and other claimants to the waters of Davis Creek, Browns Creek,  
25 Winters Creek, Ophir Creek and their tributaries, and Fish Hatchery Springs,  
26 situated in Washoe County, Nevada.

27 That as a result of the State Engineer's investigation report, it was found  
28 that the waters of Fish Hatchery Springs might have been placed to beneficial  
29 use on lands in Washoe Valley for irrigation, stock watering and propagation of  
30 wildlife purposes. That evidence contained in the title documents, affidavits

1 and proofs of appropriation submitted by the claimants, relative to the land,  
2 indicates the present claimants; County of Washoe, Parks and Recreation Depart-  
3 ment; State of Nevada, Department of Fish and Game; State of Nevada, Department  
4 of Highways; and John Jay Casey are the successors in interest to claims of  
5 vested water rights claimed by their predecessors. That the report of the facts  
6 and conditions disclosed that a determination of the relative rights was justi-  
7 fied, and the State Engineer made and entered an Order Granting Petition on June  
8 12, 1958.

9 That on June 21, 1958, and once each week for four succeeding weeks, the  
10 State Engineer did cause to be published a Notice of Order and Proceedings to  
11 Determine Water Rights in and to the waters of Fish Hatchery Springs in Washoe  
12 County, State of Nevada, and that notice was duly given to all claimants as  
13 required by law. That on July 22, 1958, there was filed in the Office of the  
14 State Engineer an affidavit of the principal Clerk of the Nevada State Journal,  
15 exemplifying the Proof of Publication of Notice of Order and Proceedings.

16 That the State Engineer did cause to be published on November 13, 1971, and  
17 once each week for four succeeding weeks, a Notice of Order for Taking Proofs to  
18 Determine Water Rights, in and to the waters of Fish Hatchery Springs in Washoe  
19 County, State of Nevada, and that notice was duly given to all claimants as  
20 required by law. That on December 15, 1971, there was filed in the Office of  
21 the State Engineer an affidavit of the legal clerk of the Nevada State Journal  
22 exemplifying the Proof of Publication of the Notice of Order for Taking Proofs  
23 to Determine Water Rights.

24 That thereafter, in accordance with NRS 533.125, the State Engineer did  
25 file in the records of his office on April 10, 1972; April 13, 1972; May 16,  
26 1972; and May 20, 1972, requests to extend the period of time in which proofs  
27 may be allowed to be filed. That he did grant extensions of time to file proofs  
28 and that notices were duly given to all claimants.

29 That the State Engineer, in accordance with NRS 533.140, did file in his  
30 office on February 16, 1977 a Preliminary Order of Determination an Abstract of

1 Claims; and a Notice and Order Fixing and Setting Time and Place of Inspection,  
2 stating when and where the evidence taken by or filed with him and the proofs of  
3 claims were open to the inspection of all interested persons; and that notice  
4 thereof was duly given to all claimants as required by law.

5 That the State Engineer, in accordance with NRS 533.160, entered in the  
6 records of his office on August 2, 1977 an Order of Determination defining the  
7 rights of the claimants to waters of Fish Hatchery Springs and that notice  
8 thereof was duly given to all claimants as required by law.

9 That upon filing a certified copy of the Order of Determination with the  
10 Clerk of the Court of Washoe County, the Court, at the request of the State  
11 Engineer, made and entered an Order on August 19, 1977, setting a time for  
12 hearing on any exceptions to the Order of Determination on Friday, December 9,  
13 1977, at 1:30 o'clock in the afternoon in the court room of the Court House in  
14 Reno, Washoe County, Nevada; and that the Clerk of said Court did furnish the  
15 State Engineer with a certified copy thereof.

16 That the State Engineer, in accordance with NRS 533.165 gave notice of the  
17 hearing to the claimants by service of a certified copy of the Court Order  
18 Setting Time for Hearing.

19 That on September 2, 1977, and once each week for four succeeding weeks,  
20 the State Engineer did cause to be published the Court Order Setting Time for  
21 Hearing and that thereafter on October 2, 1977, there was filed in the Office of  
22 the State Engineer an affidavit of the legal clerk of the Nevada State Journal  
23 exemplifying the Proof of Publication of the Court Order Setting Time for  
24 Hearing.

25 That the Court finds that all and singular, the Proceedings, Orders, and  
26 Notices required by Chapter 533 of Nevada Revised Statutes were duly had, made,  
27 and given as required by law, and that all and singular, the matters and things  
28 contained in the record were done, performed, given and made in strict comp-  
29 liance with the statutes, and that this Court had and has jurisdiction to hear  
30 and determine this matter.

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II

The Court Further Finds; That Fish Hatchery Springs exemplified in these proceedings are situated wholly within Washoe County, State of Nevada.

III

The Court Further Finds: That the names of the claimants of the waters of Fish Hatchery Springs, the source of the water supply, and the rights of the claimants, all as set forth in the Order of Determination are true, proper and correct, and all and singular, the same should be approved and confirmed.

IV SOURCE

Four springs comprise Fish Hatchery Springs, and they are grouped within an area of five acres, between Davis and Winters Creeks in Washoe Valley on the lower foothills of the Carson Range in the SW1/4 NE1/4 Section 27, T.17N., R.19E., M.D.M. The upper two springs are boxed and the lower two springs are not and the unimpeded flow from the springs wets the hillside, supporting the growth of six or seven acres of pasture grass. Water Resources-Reconnaissance Series Report 41 indicates the approximate combined flow of the springs to be 50 g.p.m. (0.111 c.f.s.).

V RIGHTS OF APPROPRIATION

Testimony of persons familiar over a period of years with the discharge from the springs indicates that the combined flow of all four springs never travels more than 800 feet from the source, which is approximately one-half mile short of reaching Old Highway 395 to the east. All existing culture is located east of the highway and therefore is not irrigated from Fish Hatchery Springs. No evidence or documentation was submitted by any of the claimants nor could any information be found by the State Engineer to confirm the claims of the claimants that the waters of Fish Hatchery Springs had been used beneficially prior to 1950, and no vested rights were granted by the Order of Determination.

CONCLUSIONS OF LAW

From the evidence presented and received in this matter, and from the

1 foregoing Findings of Fact, the Court makes the following Conclusions of Law:

2 I

3 That the State Engineer had the right, authority and jurisdiction pursuant  
4 to Chapter 533 of NRS to make the investigations made by him, receive the proofs  
5 and maps, enter and file in his office the original Order of Determination and  
6 file a certified copy thereof in this Court, and to determine the relative  
7 rights of the claimants in and to the waters of Fish Hatchery Springs in Washoe  
8 County, State of Nevada; that the State Engineer duly made all orders necessary  
9 and proper in connection therewith and entered the same in his office as re-  
10 quired by Chapter 533 of NRS; that each and every notice required by law to be  
11 given herein to the claimants was duly served by the State Engineer in the  
12 manner and within the time required by statute, and the notices contained all  
13 the statements required by law, and that the claimants of the waters of the  
14 above named source duly received the information and notices, as required by  
15 law.

16 II

17 That the Second Judicial District Court of the State of Nevada, in and for  
18 the County of Washoe, had and has jurisdiction to hear and try this matter, and  
19 has jurisdiction to find make and enter the foregoing Findings of Fact and these  
20 Conclusions of Law and enter its Decree herein.

21 III

22 That the Order of Determination, filed and caused to be entered of record  
23 in this matter by the State Engineer, should be affirmed.

24 JUDGMENT AND DECREE

25 THEREFORE, BY REASON OF THE FINDINGS OF FACT, AND CONCLUSIONS OF LAW  
26 HEREINBEFORE SET FORTH, IT IS ORDERED, ADJUDGED AND DECREED BY THE COURT AS  
27 FOLLOWS:

28 I

29 That the State Engineer made all necessary and proper orders as required by  
30 law, and that each and every notice required by law was duly given to the claim-

1 ants; that the claimants had full opportunity to appear and be heard in objec-  
2 tion and file exceptions to the Order of Determination; that the County of  
3 Washoe, Parks and Recreation Department; State of Nevada, Department of High-  
4 ways; State of Nevada, Department of Fish and Game, and John Jay Casey are the  
5 only claimants to vested water rights of Fish Hatchery Springs and that this  
6 Decree determines the limit and extent of all vested water rights on the source.

7 That the Court has full and complete jurisdiction to hear, try and deter-  
8 mine this matter and to make and enter this Decree.

9 II

10 That the evidence and documentation submitted by the claimants did not  
11 confirm the claims of the claimants that the waters of Fish Hatchery Springs  
12 had been beneficially used prior to 1905; and that the State Engineer could not  
13 find any information to confirm that the claims of the claimants had been used  
14 beneficially prior to 1905.

15 III

16 That there are no vested rights in and to the use of the waters of Fish  
17 Hatchery Springs.

18  
19 DONE IN OPEN COURT THIS 29<sup>th</sup> DAY OF May, A.D. 78

20  
21  
22 Grant L. Bowen  
23 DISTRICT JUDGE

1 No. 325466

Dept. No. 1

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

4 \* \* \* \* \*

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6 OF THE RELATIVE RIGHTS IN AND TO )  
7 THE WATERS OF FISH HATCHERY SPRINGS )  
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ALEX COON, CLERK  
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9 AMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW

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12 the Honorable Grant L. Bowen, District Judge, presiding. Fish Hatchery Springs  
13 exemplified in these proceedings, is within Washoe County, State of Nevada, and  
14 he is the Judge designated by NRS 533.165 to hear and to have jurisdiction to  
15 hear the matter of the State Engineer's determination of the relative rights of  
16 the claimants to the use of the waters of Fish Hatchery Springs. The Order of  
17 Determination and all related documentary evidence had been previously filed  
18 with the clerk of the said District Court by the State Engineer. There were no  
19 exceptions to the Order of determination submitted to the Court by the claimants  
20 or any other persons at least five days prior to the date set for hearing as  
21 provided for in NRS 533.170.

22 George Campbell, Deputy Attorney General; James C. Perkins, Surface Water  
23 Engineer and L. Edward Parmenter, Adjudication Engineer appeared in the hearings  
24 and proceedings on behalf of the State Engineer of Nevada and the Office of the  
25 State Engineer.

26 Neither the claimants or their representatives in this matter, nor any  
27 other persons were at the hearing.

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

30 George Campbell thereupon, at the hearing, offered verified affidavits,

1 files and records from the Office of the State Engineer, all contained in sup-  
2 port of the determination of the rights of the claimants in and to the above  
3 named stream system.

4 On December 9, 1977, the Court, having considered the entire record and the  
5 evidence introduced and received, directed the State Engineer to prepare the  
6 Findings of Fact, Conclusions of Law, and Judgment and Decree affirming the  
7 Order of Determination, in accordance with NRS 533.185.

8 The original proposed decree in this case was inadvertently signed by the  
9 undersigned District Judge on the 28th day of February, 1978, before the expi-  
10 ration of the 30 day period required by NRS 533.170. Under the provisions of  
11 that statute the Court may not sign the proposed decree until it has remained  
12 on file at the office of the Clerk of the District Court for 30 days after the  
13 date of service of a copy of the proposed decree on the Attorney General.

14 This amended decree is identical in all respects to the proposed decree  
15 previously signed except for the date of the Court's signature. The Amended  
16 Decree has remained on file with the Clerk of this Court for the time required  
17 by NRS 533.170. A copy of the Amended Decree was served on the Attorney General  
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24 petitioner and other claimants to the waters of Davis Creek, Browns Creek,  
25 Winters Creek, Ophir Creek and their tributaries, and Fish Hatchery Springs,  
26 situated in Washoe County, Nevada.

27 That as a result of the State Engineer's investigation report, it was found  
28 that the waters of Fish Hatchery Springs might have been placed to beneficial  
29 use on lands in Washoe Valley for irrigation, stock watering and propagation of  
30 wildlife purposes. That evidence contained in the title documents, affidavits

1 and proofs of appropriation submitted by the claimants, relative to the land,  
2 indicates the present claimants; County of Washoe, Parks and Recreation Depart-  
3 ment; State of Nevada, Department of Fish and Game; State of Nevada, Department  
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5 vested water rights claimed by their predecessors. That the report of the facts  
6 and conditions disclosed that a determination of the relative rights was justi-  
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9 That on June 21, 1958, and once each week for four succeeding weeks, the  
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23 to Determine Water Rights.

24 That thereafter, in accordance with NRS 533.125, the State Engineer did  
25 file in the records of his office on April 10, 1972; April 13, 1972; May 16,  
26 1972; and May 30, 1972, requests to extend the period of time in which proofs  
27 may be allowed to be filed. That he did grant extensions of time to file proofs  
28 and that notices were duly given to all claimants.

29 That the State Engineer, in accordance with NRS 533.140, did file in his  
30 office on February 16, 1977 a Preliminary Order of Determination an Abstract of

1 Claims; and a Notice and Order Fixing and Setting Time and Place of Inspection,  
2 stating when and where the evidence taken by or filed with him and the proofs of  
3 claims were open to the inspection of all interested persons; and that notice  
4 thereof was duly given to all claimants as required by law.

5 That the State Engineer, in accordance with NRS 533.160, entered in the  
6 records of his office on August 2, 1977 an Order of Determination defining the  
7 rights of the claimants to waters of Fish Hatchery Springs and that notice  
8 thereof was duly given to all claimants as required by law.

9 That upon filing a certified copy of the Order of Determination with the  
10 Clerk of the Court of Washoe County, the Court, at the request of the State  
11 Engineer, made and entered an Order on August 19, 1977, setting a time for  
12 hearing on any exceptions to the Order of Determination on Friday, December 9,  
13 1977, at 1:30 o'clock in the afternoon in the court room of the Court House in  
14 Reno, Washoe County, Nevada; and that the Clerk of said Court did furnish the  
15 State Engineer with a certified copy thereof.

16 That the State Engineer, in accordance with NRS 533.165 gave notice of the  
17 hearing to the claimants by service of a certified copy of the Court Order  
18 Setting Time for Hearing.

19 That on September 2, 1977, and once each week for four succeeding weeks,  
20 the State Engineer did cause to be published the Court Order Setting Time for  
21 Hearing and that thereafter on October 2, 1977, there was filed in the Office of  
22 the State Engineer an affidavit of the legal clerk of the Nevada State Journal  
23 exemplifying the Proof of Publication of the Court Order Setting Time for  
24 Hearing.

25 That the Court finds that all and singular, the Proceedings, Orders, and  
26 Notices required by Chapter 533 of Nevada Revised Statutes were duly had, made,  
27 and given as required by law, and that all and singular, the matters and things  
28 contained in the record were done, performed, given and made in strict comp-  
29 liance with the statutes, and that this Court had and has jurisdiction to hear  
30 and determine this matter.

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II

The Court Further Finds; That Fish Hatchery Springs exemplified in these proceedings are situated wholly within Washoe County, State of Nevada.

III

The Court Further Finds: That the names of the claimants of the waters of Fish Hatchery Springs, the source of the water supply, and the rights of the claimants, all as set forth in the Order of Determination are true, proper and correct, and all and singular, the same should be approved and confirmed.

IV SOURCE

Four springs comprise Fish Hatchery Springs, and they are grouped within an area of five acres, between Davis and Winters Creeks in Washoe Valley on the lower foothills of the Carson Range in the SW1/4 NE1/4 Section 27, T.17N., R.19E., M.D.M. The upper two springs are boxed and the lower two springs are not and the unimpeded flow from the springs wets the hillside, supporting the growth of six or seven acres of pasture grass. Water Resources-Reconnaissance Series Report 41 indicates the approximate combined flow of the springs to be 50 g.p.m. (0.111 c.f.s.).

V RIGHTS OF APPROPRIATION

Testimony of persons familiar over a period of years with the discharge from the springs indicates that the combined flow of all four springs never travels more than 800 feet from the source, which is approximately one-half mile short of reaching Old Highway 395 to the east. All existing culture is located east of the highway and therefore is not irrigated from Fish Hatchery Springs. No evidence or documentation was submitted by any of the claimants nor could any information be found by the State Engineer to confirm the claims of the claimants that the waters of Fish Hatchery Springs had been used beneficially prior to 1950, and no vested rights were granted by the Order of Determination.

CONCLUSIONS OF LAW

From the evidence presented and received in this matter, and from the

1 foregoing Findings of Fact, the Court makes the following Conclusions of Law:

2 I

3 That the State Engineer had the right, authority and jurisdiction pursuant  
4 to Chapter 533 of NRS to make the investigations made by him, receive the proofs  
5 and maps, enter and file in his office the original Order of Determination and  
6 file a certified copy thereof in this Court, and to determine the relative  
7 rights of the claimants in and to the waters of Fish Hatchery Springs in Washoe  
8 County, State of Nevada; that the State Engineer duly made all orders necessary  
9 and proper in connection therewith and entered the same in his office as re-  
10 quired by Chapter 533 of NRS; that each and every notice required by law to be  
11 given herein to the claimants was duly served by the State Engineer in the  
12 manner and within the time required by statute, and the notices contained all  
13 the statements required by law, and that the claimants of the waters of the  
14 above named source duly received the information and notices, as required by  
15 law.

16 II

17 That the Second Judicial District Court of the State of Nevada, in and for  
18 the County of Washoe, had and has jurisdiction to hear and try this matter, and  
19 has jurisdiction to find make and enter the foregoing Findings of Fact and these  
20 Conclusions of Law and enter its Decree herein.

21 III

22 That the Order of Determination, filed and caused to be entered of record  
23 in this matter by the State Engineer, should be affirmed.

24 JUDGMENT AND DECREE

25 THEREFORE, BY REASON OF THE FINDINGS OF FACT, AND CONCLUSIONS OF LAW  
26 HEREINBEFORE SET FORTH, IT IS ORDERED, ADJUDGED AND DECREED BY THE COURT AS  
27 FOLLOWS:

28 I

29 That the State Engineer made all necessary and proper orders as required by  
30 law, and that each and every notice required by law was duly given to the claim-

1 ants; that the claimants had full opportunity to appear and be heard in objec-  
2 tion and file exceptions to the Order of Determination; that the County of  
3 Washoe, Parks and Recreation Department; State of Nevada, Department of High-  
4 ways; State of Nevada, Department of Fish and Game, and John Jay Casey are the  
5 only claimants to vested water rights of Fish Hatchery Springs and that this  
6 Decree determines the limit and extent of all vested water rights on the source.

7 That the Court has full and complete jurisdiction to hear, try and deter-  
8 mine this matter and to make and enter this Decree.

9 II

10 That the evidence and documentation submitted by the claimants did not  
11 confirm the claims of the claimants that the waters of Fish Hatchery Springs  
12 had been beneficially used prior to 1905; and that the State Engineer could not  
13 find any information to confirm that the claims of the claimants had been used  
14 beneficially prior to 1905.

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16 That there are no vested rights in and to the use of the waters of Fish  
17 Hatchery Springs.

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19 DONE IN OPEN COURT THIS 29<sup>th</sup> DAY OF May, A.D. 78

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22 Grant L. Bowen  
23 DISTRICT JUDGE  
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