

**SECTION NO. 2**

---

**INTERVENING ORDERS OF JUDGE H. W. EDWARDS  
AND JUDGE L. O. HAWKINS**

**NOTE**—The above Orders were made and entered in the Humboldt River Adjudication Proceedings between the time of the filing of the Bartlett Decree, October 20, 1931, and the entry of the Edwards Decree on October 8, 1935.

# INTERVENING ORDERS OF JUDGE H. W. EDWARDS AND JUDGE L. O. HAWKINS

IN THE SIXTH JUDICIAL DISTRICT COURT OF THE  
STATE OF NEVADA, IN AND FOR THE COUNTY  
OF HUMBOLDT.

IN THE MATTER OF THE DETERMINATION OF THE RELATIVE RIGHTS OF }  
CLAIMANTS AND APPROPRIATORS OF THE WATERS OF THE HUM- } No. 2804  
BOLDT RIVER STREAM SYSTEM AND ITS TRIBUTARIES. }

Filed December 14, 1931—J. W. Davey, Clerk

## PETITION AND MOTION FOR MODIFICATION, AMENDMENT, AND CORRECTION OF DECREE

COME NOW Josephine K. Pinson, Ella A. Pinson, Victor A. Pinson, Bertha S. Wilkinson, Gertrude M. Pinson and Camille Pinson, successors in interest to Paul A. Pinson estate, by their attorneys, Hawkins, Mayotte & Hawkins, and, upon information and belief, respectfully state, represent and show unto the court;

1. That your petitioners, Josephine K. Pinson, Ella A. Pinson, Victor A. Pinson, Bertha S. Wilkinson, Gertrude M. Pinson, and Camille Pinson, are the successors in interest in and to all of the lands and water rights formerly owned or possessed by Paul A. Pinson Estate, situated in Humboldt County, Nevada, along the Humboldt River, including the lands and water rights referred to and mentioned in the findings of fact, conclusions of law and decree filed in the above entitled matter and court, October 20, 1931.

2. That certain of said lands and water rights of your petitioners were omitted from said decree, and some of the years of priority, as designated in said decree, are erroneous, and some of the lands of your petitioners are improperly classified, and in some instances the duty of water is not correctly stated in said decree.

That all and each of such omissions, and the errors in the designated years of priority, and in the classification of the lands, and in the duty of water, herein mentioned, occurred by reason of an oversight, inadvertence and mistake in the preparation of said findings of fact, conclusions of law and decree, and are in conflict with the record in the above entitled matter; and that said decree should be modified, amended, changed and made to conform to the facts and law in reference thereto, as disclosed by the record in the above entitled matter.

3. That said findings of fact, conclusions of law and decree should be modified, corrected and amended, as to that portion thereof appearing on pages 89 and 90 thereof, under the heading "Claimant—Paul A. Pinson, Source—Humboldt River. Ditch—Louis Lay Dam. Ditch—Pinson Dam and Ditch System," so as to read as follows, to wit:

INTERVENING ORDERS

Proof No. 00124

Claimant—Paul A. Pinson.  
Source—Humboldt River.  
Ditch—Louis Lay Dam.

Pri- ority	Harvest	Medw. Pasture	Divers. Pstr.	Sub- division	Sec.	T	R	Length of season
1864	.....	7.94	.....	SW $\frac{1}{4}$ SW $\frac{1}{4}$	25	36	40	3-15- 6-13
1864	.....	7.50	.....	SE $\frac{1}{4}$ SW $\frac{1}{4}$	25	36	40	3-15- 6-13
1864	11.70	.....	.....	SW $\frac{1}{4}$ SE $\frac{1}{4}$	25	36	40	3-15- 9-15
1864	2.29	.....	.....	NW $\frac{1}{4}$ SE $\frac{1}{4}$	25	36	40	3-15- 9-15
1864	17.92	.....	.....	NE $\frac{1}{4}$ SE $\frac{1}{4}$	25	36	40	3-15- 9-15
1864	4.07	.....	.....	SE $\frac{1}{4}$ SE $\frac{1}{4}$	25	36	40	3-15- 9-15
1864	4.00	.....	.....	SE $\frac{1}{4}$ SE $\frac{1}{4}$	25	36	40	3-15- 9-15
1864	7.00	.....	.....	NE $\frac{1}{4}$ NE $\frac{1}{4}$	35	36	40	3-15- 9-15
1864	7.00	.....	.....	SE $\frac{1}{4}$ NE $\frac{1}{4}$	35	36	40	3-15- 9-15
1864	18.00	.....	.....	SW $\frac{1}{4}$ NE $\frac{1}{4}$	35	36	40	3-15- 9-15
1864	20.00	.....	.....	NW $\frac{1}{4}$ NW $\frac{1}{4}$	36	36	40	3-15- 9-15
1864	24.97	.....	.....	NW $\frac{1}{4}$ SW $\frac{1}{4}$	30	36	41	3-15- 9-15
1864	2.72	.....	.....	NE $\frac{1}{4}$ SW $\frac{1}{4}$	30	36	41	3-15- 9-15
1864	6.88	.....	.....	SW $\frac{1}{4}$ NW $\frac{1}{4}$	30	36	41	3-15- 9-15
1864	21.18	.....	.....	SE $\frac{1}{4}$ NW $\frac{1}{4}$	30	36	41	3-15- 9-15
1864	5.43	.....	.....	NE $\frac{1}{4}$ NW $\frac{1}{4}$	30	36	41	3-15- 9-15

Source—Humboldt River.  
Ditch—Pinson Dam and Ditch System.

1885	.....	.....	3.13	SW $\frac{1}{4}$ NE $\frac{1}{4}$	30	36	41	3-15- 4-28
1885	.....	10.00	.....	NW $\frac{1}{4}$ NE $\frac{1}{4}$	30	36	41	3-15- 6-13
1885	.....	.....	10.93	NW $\frac{1}{4}$ NE $\frac{1}{4}$	30	36	41	3-15- 4-28
1885	.....	.....	.37	NE $\frac{1}{4}$ NE $\frac{1}{4}$	30	36	41	3-15- 6-13
1885	.....	9.84	.....	SW $\frac{1}{4}$ SE $\frac{1}{4}$	19	36	41	3-15- 6-13
1885	13.77	.....	.....	SE $\frac{1}{4}$ SE $\frac{1}{4}$	19	36	41	3-15- 9-15
1885	.....	1.83	.....	SE $\frac{1}{4}$ SE $\frac{1}{4}$	19	36	41	3-15- 6-13
1885	5.60	.....	.....	NE $\frac{1}{4}$ SE $\frac{1}{4}$	19	36	41	3-15- 9-15
1885	.....	13.08	.....	NW $\frac{1}{4}$ SW $\frac{1}{4}$	20	36	41	3-15- 6-13
1885	.....	.....	12.05	NW $\frac{1}{4}$ SW $\frac{1}{4}$	20	36	41	3-15- 4-28
1885	.....	11.17	.....	SW $\frac{1}{4}$ SW $\frac{1}{4}$	20	36	41	3-15- 6-13
1885	.....	.....	4.29	SW $\frac{1}{4}$ SW $\frac{1}{4}$	20	36	41	3-15- 4-28
1885	.....	4.93	.....	NE $\frac{1}{4}$ SW $\frac{1}{4}$	20	36	41	3-15- 6-13
1885	.....	.....	25.04	NE $\frac{1}{4}$ SW $\frac{1}{4}$	20	36	41	3-15- 4-28
1885	.....	9.39	.....	SE $\frac{1}{4}$ SW $\frac{1}{4}$	20	36	41	3-15- 6-13
1885	.....	.....	3.05	SE $\frac{1}{4}$ SW $\frac{1}{4}$	20	36	41	3-15- 4-28
1876	10.31	.....	.....	NW $\frac{1}{4}$ SE $\frac{1}{4}$	20	36	41	3-15- 9-15
1876	.....	.....	13.90	NW $\frac{1}{4}$ SE $\frac{1}{4}$	20	36	41	3-15- 4-28
1876	23.08	.....	.....	NE $\frac{1}{4}$ SE $\frac{1}{4}$	20	36	41	3-15- 9-15
1876	.....	.....	3.70	NE $\frac{1}{4}$ SE $\frac{1}{4}$	20	36	41	3-15- 4-28
1876	17.72	.....	.....	SW $\frac{1}{4}$ SE $\frac{1}{4}$	20	36	41	3-15- 9-15
1876	.....	.....	4.59	SW $\frac{1}{4}$ SE $\frac{1}{4}$	20	36	41	3-15- 4-28
1876	12.12	.....	.....	SE $\frac{1}{4}$ SE $\frac{1}{4}$	20	36	41	3-15- 9-15
1876	.....	.....	10.89	SE $\frac{1}{4}$ SE $\frac{1}{4}$	20	36	41	3-15- 4-28
1876	7.50	.....	.....	NE $\frac{1}{4}$ SW $\frac{1}{4}$	21	36	41	3-15- 9-15
1876	.....	.....	1.58	NE $\frac{1}{4}$ SW $\frac{1}{4}$	21	36	41	3-15- 4-28
1876	24.62	.....	.....	NW $\frac{1}{4}$ SW $\frac{1}{4}$	21	36	41	3-15- 9-15
1876	.....	.....	4.12	NW $\frac{1}{4}$ SW $\frac{1}{4}$	21	36	41	3-15- 4-28
1876	.20	.....	.....	SW $\frac{1}{4}$ SW $\frac{1}{4}$	21	36	41	3-15- 9-15
1876	.....	.....	5.32	SW $\frac{1}{4}$ SW $\frac{1}{4}$	21	36	41	3-15- 4-28
1876	7.80	.....	.....	SE $\frac{1}{4}$ NW $\frac{1}{4}$	21	36	41	3-15- 9-15
1876	.....	.....	1.49	SE $\frac{1}{4}$ NW $\frac{1}{4}$	21	36	41	3-15- 4-28
1876	.98	.....	.....	SW $\frac{1}{4}$ NW $\frac{1}{4}$	21	36	41	3-15- 9-15
1876	20.02	.....	.....	NW $\frac{1}{4}$ NE $\frac{1}{4}$	21	36	41	3-15- 9-15
1876	34.09	.....	.....	SW $\frac{1}{4}$ NE $\frac{1}{4}$	21	36	41	3-15- 9-15
1876	.....	.....	.20	SW $\frac{1}{4}$ NE $\frac{1}{4}$	21	36	41	3-15- 4-28
1876	1.44	.....	.....	SE $\frac{1}{4}$ NE $\frac{1}{4}$	21	36	41	3-15- 9-15
1876	.....	.....	5.75	SE $\frac{1}{4}$ NE $\frac{1}{4}$	21	36	41	3-15- 4-28
1876	3.35	.....	.....	NE $\frac{1}{4}$ NE $\frac{1}{4}$	21	36	41	3-15- 9-15
1876	.....	.....	28.58	NE $\frac{1}{4}$ NE $\frac{1}{4}$	21	36	41	3-15- 4-28
1876	3.05	.....	.....	NW $\frac{1}{4}$ SE $\frac{1}{4}$	21	36	41	3-15- 9-15

4. That in support of this petition and motion, petitioners will use and rely upon; this petition and motion and all the record heretofore made in the above entitled Matter and Court.

WHEREFORE, your petitioners pray; that said findings of fact, conclusions of law and decree be modified, corrected and amended, as to that portion thereof appearing on pages 89 and 90, herein mentioned, so that when said decree shall be so modified, corrected and amended, it will read as hereinabove specifically set forth.

HAWKINS, MAYOTTE & HAWKINS,  
*Attorneys for Petitioners.*

STATE OF NEVADA, }  
 COUNTY OF HUMBOLDT } ss.

VICTOR A. PINSON, being first duly sworn, deposes and says: That he is one of the petitioners named in the foregoing petition; that he has read said petition and knows the contents thereof, and that the same is true of his own knowledge except as to any matters therein stated upon information and belief, and as to those matters he believes it to be true.

VICTOR A. PINSON,

SUBSCRIBED AND SWORN to before me this 14th day of December, 1931.

[SEAL]

J. W. DAVEY.

*County Clerk and Ex Officio Clerk of the Sixth Judicial District Court of the State of Nevada, in and for the County of Humboldt.*

We, the undersigned, Geo. A. Bartlett, former district judge and M. A. Diskin, formerly Attorney-General, and now Special Deputy Attorney-General in charge of the above entitled matter, confess error in the above entitled matter, as to the draft and provisions of the findings of fact, conclusions of law and decree made and entered herein—as to that portion thereof in reference to “Claimant—Paul A. Pinson. Source—Humboldt River. Ditch—Louis Lay Dam. Source—Humboldt River. Ditch—Pinson Dam and Ditch System.”, appearing on pages 89 and 90 thereof, and consent and recommend that the above and foregoing petition and motion be granted, and that said findings of fact, conclusions of law and decree, of date October 20, 1931, be modified, corrected and amended, as in said petition and motion specifically set forth.

DATED: December 8, 1931.

GEO. A. BARTLETT,

*Former District Judge Presiding at Trial.*

M. A. DISKIN,

*Special Deputy Attorney-General.*

#### ORDER OF COURT

GOOD CAUSE APPEARING THEREFOR, and no objection appearing thereto, IT IS ORDERED;

That the foregoing petition and motion be, and the same is hereby, allowed and granted; and that the said findings of fact, conclusions of law and decree be, and the same are hereby, modified, corrected and amended so as to read as in said petition and motion prayed, and specifically set forth.

DONE in open Court this December 16th, 1931.

H. W. EDWARDS,

*District Judge Presiding.*

IN THE SIXTH JUDICIAL DISTRICT COURT OF THE  
STATE OF NEVADA, IN AND FOR THE COUNTY  
OF HUMBOLDT.

IN THE MATTER OF THE DETERMINATION OF THE RELATIVE RIGHTS OF }  
CLAIMANTS AND APPROPRIATORS OF THE WATERS OF THE HUM- } No. 2804  
BOLDT RIVER STREAM SYSTEM AND ITS TRIBUTARIES. }

Filed May 12, 1933—J. W. Davey, Clerk

Hawkins, Mayotte and Hawkins, Attorneys for Movants

**ORDER CORRECTING CLERICAL OR FORMAL ERRORS IN  
FINAL JUDGMENT AND DECREE**

The above entitled Matter came regularly on to be, and was further heard in the above entitled Court on April 27, 1933, upon motion of Ada Kafader, et al., for an order correcting the final judgment and decree made and filed in the above entitled Court and Matter October 20, 1931, so as to make said final judgment and decree speak the truth, and to conform with the "Opinion and Decision," rendered herein, and filed on January 2, 1931, and with the finding of fact and conclusions of law made and filed herein October 20, 1931, in reference to the distribution of the water from the Last Chance or Irish-American Ditch, and the rights and interests of claimants thereto, being the Movants and W. C. Ruddell, said motion being made pursuant to, and in accordance with, the written "Notice of Motion for Orders," duly served and filed herein on April 5, 1933.

The Movants appeared by their attorneys, Hawkins, Mayotte & Hawkins, and the State Engineer appeared by H. W. Reppert, Assistant State Engineer, and by his attorney, Gray Mashburn, Attorney General of the State of Nevada, and W. C. Ruddell appeared by his attorneys, Cooke, Stoddard & Jurgenson.

The said motion for said order was argued, and submitted for decision. The Court, being fully advised in the premises, and after due consideration of said motion, and the record herein, finds:

That, through inadvertence, mistake and oversight, errors and omissions of a clerical or formal nature had been made in the preparation of said final judgment and decree, and by reason of such errors and omissions, the said final judgment and decree is ambiguous and uncertain, and fails to speak the truth as to what was actually decided by the court, in reference to the matter involved in said motion; and that such ambiguity and uncertainty, and such clerical or formal errors, so arising from inadvertence and oversight, should be removed from said final judgment and decree, in order to make the record entry of said final judgment and decree conform to and recite the truth, as to what was actually decided concerning the matter of the distribution of the water from said Last Chance or Irish-American Ditch.

IT IS, THEREFORE, ORDERED that the ambiguity, uncertainty and/or error arising from such inadvertence and oversight in the preparation of said final judgment and decree be corrected, so as to make said judgment and decree speak the truth as to what was actually decided, as appears from the said "Opinion and Decision," filed herein January 2, 1931, and to conform with and follow the said findings of fact and conclusions of law, made and filed herein October 20, 1931; and so as to make said final judgment and decree speak the

truth, as to what was actually decided in and by said "Opinion and Decision," filed herein January 2, 1931, and to conform with and follow the clear and unambiguous intent and purpose of said findings of fact and conclusions of law, made and filed herein October 20, 1931;

IT IS FURTHER ORDERED that said final judgment and decree be, and the same hereby is, corrected so as to declare of record that which was actually decided, as follows, to wit:

That there is no priority, as among such appropriators or claimants in and to the waters so diverted from said Humboldt River by said Last Chance or Irish-American dam, ditch or canal, or to any of such waters flowing or to flow in said Last Chance or Irish-American canal or ditch; that W. C. Ruddell, Sr., and all persons claiming rights or interests under or through said W. C. Ruddell, Sr., have no right to divert from said canal or ditch any greater part than 1/4th or 16/64ths of the waters flowing or to flow therein, and that the balance of all such waters flowing or to flow therein, at the partition gate or weir constructed in said Last Chance or Irish-American canal, and at the head of said Ruddell ditch, shall flow unobstructed down said canal to the points of diversion of the other appropriators or claimants to such waters; and

That all waters appurtenant to the lands irrigated by the said Last Chance or Irish-American Ditch or canal system have, by agreement and by use, for more than forty-two years last past, been continuously appropriated and beneficially used by the claimants and their predecessors in interest, in the following proportions: 1/4th or 16/64ths to W. C. Ruddell, and 3/4ths or 48/64ths to the other appropriators or claimants or their predecessors in interest, in the proportions, to wit: to Ada Kafader, 8/64ths; to Alice Taylor, the Borland Ranch, 6 2/3/64ths; to C. & L. Arobio, 1 1/3/64ths; to F. E. Baker and J. N. Mart, a copartnership, 2/64ths; to Chris Hansen, 2 2/3/64ths; to T. C. Johnson, 1/64th, and to John G. Taylor, 26 1/3/64ths; said 64th interests aggregating 3/4ths of the whole; and

IT IS FURTHER ORDERED that the clerk of the court be, and he hereby is, ordered and directed to insert in said final judgment and decree, at the end of the tabulation of each of said Movants and said W. C. Ruddell, designated in said final judgment and decree as claimants, to wit, John G. Taylor, page 64; Mrs. A. E. Borland (Alice Taylor) Borland Ranch, page 64; I. M. Springer, Sr. (Ada Kafader) page 65; Thornton C. and Ruth F. Johnson, page 65; John O'Kane (John G. Taylor) page 65; John G. Taylor, page 65; C. & L. Orobio, page 66; and W. C. Ruddell, page 64, the following, to wit:

All waters appurtenant to the lands irrigated by the Last Chance or Irish-American Ditch have, by agreement and by use, for more than forty-two years last past, been continuously appropriated and beneficially used by the claimants and their predecessors in interest, in the proportions as set forth in the findings of fact and conclusions of law, at pp. 13-14 and pp. 48-49 of the printed copy of the "Findings of Fact, Conclusions of Law and Decree," made and filed herein October 20, 1931, to which reference is hereby made, and in that certain "Order Correcting Clerical or Formal Errors in Final Judgment and Decree," made and entered herein April 27, 1933, to which reference is hereby made.

IT IS FURTHER ORDERED; That the foregoing "Order Correcting Clerical or Formal Errors in Final Judgment and Decree" be entered nunc pro tunc, as of October 20, 1931.

DONE in open court this April 27th, 1933.

H. W. EDWARDS,  
*District Judge.*

IN THE SIXTH JUDICIAL DISTRICT COURT OF THE  
STATE OF NEVADA, IN AND FOR THE COUNTY  
OF HUMBOLDT.

IN THE MATTER OF THE DETERMINATION OF THE RELATIVE RIGHTS OF }  
CLAIMANTS AND APPROPRIATORS OF THE WATERS OF THE HUM- } No. 2804  
BOLDT RIVER STREAM SYSTEM AND ITS TRIBUTARIES. }

Filed June 12, A. D. 1935—J. W. Davey, Clerk

**ORDER CORRECTING CLERICAL OR FORMAL ERRORS IN FINDINGS  
OF FACT, CONCLUSIONS OF LAW AND DECREE—RE DIVERSI-  
FIED PASTURE.**

The above entitled Matter came regularly on to be and was further heard in the above entitled Court on February 5th–8th, 1934, pursuant to the “Decision on Motions for New Trials,” filed in the above entitled Court and Matter March 18, 1932, and particularly as to Diversified Pasture, as Stated in said “Decision on Motions for New Trials,” at page 24 thereof—upon motion for an order correcting the Conclusions of Law at page 52 thereof, and correcting the Decree, at page 245 thereof, of said Findings of Fact, Conclusions of Law and Decree, so as to make said Conclusions of Law and said Decree speak the truth and conform with the “Opinion and Decision” rendered herein, and filed January 2, 1931, in reference to said Diversified Pasture.

The said motion having been duly made, and no objection having been made thereto, and good cause appearing therefor, the Court—being fully advised in the premises, and after due consideration of said motion, and the record herein, especially the said “Opinion and Decision,” wherein on page 8 thereof it is stated:

“These lands are usually watered only when the stream is in flood or when there is excess water above the needs of higher class culture”—

finds:

That, through inadvertence, mistake and oversight, errors and omissions of a clerical or formal nature had been made in the preparation of said Conclusions of Law and Decree in reference to Diversified Pasture, as appears from said “Opinion and Decision,” in that on page 52 in the sentence—“These lands are usually watered only when the stream is in flood or when there is excess water above the needs of higher class culture,” the word “usually,” being the fourth word in the sentence above quoted, had been stricken, and that on page 245, in the sentence reading—“These lands are usually watered only when the stream is in flood or when there is excess water above the needs of higher class culture,” the words “are usually” were stricken, and, in lieu thereof, the words “shall be” were interlined with pen and ink.

IT IS THEREFORE, ORDERED: That said Conclusions of Law, at page 52, hereinabove quoted, be, and the same hereby are, amended, changed and corrected, by the insertion of the word “usually” at the place where said word “usually” was stricken, as hereinabove found, so as to make said sentence, on page 52 of said Findings of Fact, Conclusions of Law and Decree, read as follows:

"These lands are usually watered only when the stream is in flood or when there is excess water above the needs of higher class culture"; and

IT IS FURTHER ORDERED: That said Decree, at page 245, hereinabove quoted, be, and the same hereby is, amended, changed and corrected, by striking the words "shall be" and inserting in lieu thereof, the words "are usually," so as to make said sentence, on page 245 of said Findings of Fact, Conclusions of Law and Decree, read as follows:

"These lands are usually watered only when the stream is in flood or when there is excess water above the needs of higher class culture."

IT IS FURTHER ORDERED: That the clerk of the above entitled court be, and he hereby is, directed and ordered to amend, change and correct the printed copy of the Findings of Fact, Conclusions of Law and Decree, of date and filed in the above entitled Court and Matter October 20, 1931, so as to make said Conclusions of Law and Decree conform to and with this order, by interlining in said Conclusions of Law, at page 52 thereof, and in the sentence hereinabove quoted, the word "usually," and by striking from said decree, at page 245 thereof, and in the sentence hereinabove quoted, the words "shall be," and, in lieu thereof, inserting the words "are usually"; and

IT IS FURTHER ORDERED: That the foregoing order correcting clerical or formal errors in the Conclusions of Law and Decree be entered nunc pro tunc, as of October 20th, 1931.

DONE in open Court this February 8th, 1934.

H. W. EDWARDS,  
*District Judge Presiding.*

IN THE SIXTH JUDICIAL DISTRICT COURT OF THE  
STATE OF NEVADA, IN AND FOR THE COUNTY  
OF HUMBOLDT.

IN THE MATTER OF THE DETERMINATION OF THE RELATIVE RIGHTS OF  
CLAIMANTS AND APPROPRIATORS OF THE WATERS OF THE HUM- } No. 2804  
BOLDT RIVER STREAM SYSTEM AND ITS TRIBUTARIES.

Filed June 12, A. D. 1935—J. W. Davey, Clerk

**AMENDED, CHANGED AND CORRECTED FINDINGS OF FACT, CON-  
CLUSIONS OF LAW AND DECREE—UPON NEW TRIAL RE DIVI-  
SION OF HUMBOLDT RIVER STREAM-SYSTEM INTO DISTRICTS.**

The above entitled Matter came regularly on to be heard and was further heard and tried by the above entitled Court, on February 5th, 6th, 7th and 8th, 1934, pursuant to, and in accordance with, the order of court, filed March 18, 1932, granting New Trials, upon several separable issues, including a new trial re division of the Humboldt River Stream-System into districts, the issues involved in said new trial being confined to:

- “(1) Court’s authority to divide the Humboldt river into districts;
- “(2) The place or places that should mark the dividing lines between districts;
- “(3) The power of the Court to fix a time for the beginning of seasonal irrigation within districts”;

as stated in the “Decision on Motions for New Trials,” filed in the above entitled Court and Matter March 18, 1932, as appears upon pages 38–40, both inclusive—upon the entire record, heretofore offered and admitted, in evidence, herein applicable and limited to said issues.

Gray Mashburn, Attorney General of the State of Nevada, appeared on behalf of the State of Nevada, the State Engineer, and all claimants and appropriators who had filed no exceptions to the Order of Determination filed herein January 17, 1923. Other exceptors, being claimants to some of the waters of said Humboldt River Stream-System, appeared in person and/or by their respective attorneys, viz., Roy W. Stoddard, Prince A. Hawkins, John A. Jurgenson, J. D. Skeen, E. J. L. Taber, Morley Griswold, and Milton B. Badt.

All questions of fact, presented by the record herein, and all principles of law applicable to or concerning the division of the Humboldt River Stream-System into districts and fixing the date before and after which the water in the said stream-system should be distributed to appropriators situated in one of such districts, and denied to appropriators, of equal or earlier priorities, situated in another district, were argued and submitted to the court for decision.

The Court—having duly considered the entire record, the evidence offered and received, the arguments of counsel, and being fully advised in the premises—finds, concludes and decides, as follows:

That the Findings of Fact, Conclusions of Law and Decree, made and filed herein October 20, 1931, insofar as it is therein found, concluded, and decreed, in substance, that the Humboldt River Stream-System be divided into two districts, with the division between the upper and lower districts fixed at Palisade,

Nevada, and fixing the date of May 15th of each year as the approximate date before and after which the water in said stream-system should be distributed to appropriators situated in the lower or upper district, respectively, and denied to appropriators, of equal or earlier priorities, situated in the upper or lower district, respectively, as specifically appears at pp. 29-30, 52, 243-244 of said Findings of Fact, Conclusions of Law and Decree—are invalid and void.

That the Court, in the above entitled Matter, same being a special proceeding under the Water Code, has no authority, right or power, by decree, to divide the Humboldt River Stream-System into districts and fix a definite date as the controlling factor, for the distribution of the water of the stream-system, by districts, to appropriators and claimants thereof, thereby distributing all the waters of the stream-system, prior to or after said fixed date, to the appropriators and claimants in one district, to the exclusion of appropriators and claimants in another district, although such appropriators or claimants in the district so denied water may have priorities equal to or earlier than appropriators or claimants in the district to whom the water would, under such decree, be distributed; that any such decree, dividing the Humboldt River Stream-System into districts, and decreeing that the waters of the stream-system should be distributed by districts and before or after the definite fixed date, for the distribution of the water in one district without distributing water to appropriators entitled thereto in another district, would in fact abrogate the theory of priorities, and invade, impair and destroy the vested property rights of appropriators or claimants entitled to receive, but under such decree denied, water for beneficial purposes and uses, as authorized by the Water Code of Nevada.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED, by the Court: 1. That all of the finding of fact No. 45, appearing on page 29 of said Findings of Fact, Conclusions of Law and Decree, be, and the same hereby is, stricken from said Findings of Fact, Conclusions of Law and Decree.

2. That the finding of fact No. 46, including the typewritten rider pasted thereon, appearing at page 29 in said Findings of Fact, Conclusions of Law and Decree, be, and the same hereby is, amended changed and corrected so as to read as follows, to wit:

46

The Court finds that the growing season in Lovelock and the lower reaches of the Humboldt River is earlier than the growing season in Elko County, and that the temperatures in the upper reaches are lower than in Lovelock. The Court further finds that the temperature varies between Battle Mountain and Lovelock, as well as between Lovelock and Elko. The Court finds from the evidence that there is a difference in the irrigation season between Battle Mountain and Lovelock, and a difference in the irrigation season between Winnemucca and Lovelock; that the Battle Mountain District irrigates earlier than the Elko district. The evidence shows the most economical method of irrigation on the Humboldt River is to begin irrigation at Lovelock in the earlier spring and progress up stream to the Elko District. Such a system of irrigation is the most economical and the only system that will serve the proper priorities on the entire stream system, and the Court finds from the evidence that this was the system under which the water rights along the Humboldt River were initiated and used since the first irrigation on said stream system.

"Flash streams" are streams that have a sudden or flash flow or flush flow for a comparatively brief period of time, while such stream is

draining the particular basin or source of supply fed by melting snows. Periods of flush flow in such so-called flash streams vary, as more particularly indicated in finding of fact No. 38. These flash streams in varying degrees are typical of the necessity of cumulating the flow during the flush for the particular rights to be served. Where lands are entitled to irrigation from such flash streams, they must be served at the times when the water is available.

That all that portion of said finding of fact No. 46, including said typewritten rider pasted thereon, at page 29, not hereinabove set forth, be, and the same hereby is, stricken from said Findings of Fact, Conclusions of Law and Decree.

3. That all of the finding of fact No. 47, appearing on pages 29 and 30 of said Finding of Fact, Conclusions of Law and Decree, be, and the same hereby is, stricken from said Findings of Fact, Conclusions of Law and Decree.

4. That all that portion of the Conclusions of Law, appearing on page 52 of said Findings of Fact, Conclusions of Law and Decree, and reading as follows:

“The Decree to be entered, for the purpose of distributing the water to claimants and appropriators, shall divide the stream system into two districts. Areas located below Palisade shall be designated as District Number One. Areas located above Palisade shall be District Number Two”

be, and the same hereby is, stricken from said Findings of Fact, Conclusions of Law and Decree.

5. That the typewritten rider pasted on page 53 of said Findings of Fact, Conclusions of Law and Decree, be, and the same hereby is, amended, changed and corrected by inserting therein, after the word “have” and before the word “not,” in line 3 of said typewritten rider, the words “or have,” so as to make said line 3 of said typewritten rider read: “which said agreements or decrees have or have not been mentioned in.”

6. That the “Final Judgment and Decree,” appearing on pages 243 and 244 of said Findings of Fact, Conclusions of Law and Decree, be, and the same hereby is, amended, changed and corrected in the following way and manner, to wit:

a. That all the interlineations made by pen and ink on page 243, said interlineations reading “within the districts hereinafter created” and “for the period or season or time of year in which the said right attaches as herein provided,” be, and said interlineations hereby are, stricken, so as to make said Decree read as therein printed, beginning with the words “IT IS FURTHER ORDERED, ADJUDGED AND DECREED that except, in the first line at the top of said page 243, and continuing down to and including the words “by law shall not be prohibited or affected by this decree,” in the last line of the third paragraph on said page 243 of said Decree;

b. That the typewritten rider pasted on page 243 of said Findings of Fact, Conclusions of Law and Decree be, and the same hereby is, amended, changed and corrected, by inserting therein, after the word “have” and before the word “not,” in line 3 of said typewritten rider, the words “or have,” so as to make said line 3 of said typewritten rider read: “which said agreements or decrees have or have not been mentioned in.”

c. That all that part and portion of the printed decree beginning with the printed words “the said stream,” in line 6 from the bottom of said page 243, and continuing down to and including the printed words “lower district,” in line

8 of page 244 of said decree; and also all the pen and ink interlineations appearing at and near the top of said page 244; and also the typewritten rider pasted on said page 244, and near the top thereof, and beginning with the words "That all water flowing," and continuing down to and including the words "equal priorities," being the last words in said typewritten rider; be, and all and each portion so designated herein, hereby is, stricken from said Findings of Fact, Conclusions of Law and Decree, so as to make said Decree, as so amended, changed and corrected, and beginning with the words "IT IS FURTHER ORDERED, ADJUDGED AND DECREED that for," appearing in line 8 from the bottom of said page 243, and continuing down to and including the printed words "lower district," in line 8, page 244, and the typewritten rider pasted near the top of page 244, read as follows:

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that for the purpose of distributing the waters of the Humboldt River stream-system and its tributaries in accordance with the provisions of this decree, the State Engineer, or Water Commissioner, shall commence the distribution of water flowing in said stream system, excepting flash streams, to the users thereof, at the time specified in the decree, under the heading "Length of Season," as limited and enlarged herein. The delivery of water to appropriators shall progress from the lower reaches of the river until appropriators in the upper reaches thereof have been served. In the distribution of water to appropriators, the Water Commissioner shall give due consideration to the growing season in different localities, the supply of water available in each season, the beneficial use thereof, the climatic conditions prevailing along the river in each irrigation season, the matter of transmission loss, evaporation and seepage and of the time required for the transportation of water from the upper to the lower sections of the stream system.

d. That paragraph 2 on page 244 of said Findings of Fact, Conclusions of Law and Decree, beginning with the words "IT IS FURTHER ORDERED, ADJUDGED AND DECREED," in the first line of said paragraph, and in line 9 on said page 244, and continuing down to and including the words "in accordance with this Decree," being the last words in said paragraph, and appearing in line 17 on said page 244, be amended by adding the letter "s" to the word "section," and by inserting between the figures "36A" and the word "of" the words and figures "and section 36½," appearing in line 10 on page 244, so as to make said portion read as follows:

"IT IS FURTHER ORDERED, ADJUDGED AND DECREED  
that, subject to section 36A and Section 36½ of the Water Code"

and continue as printed to the end of said paragraph, ending with the words "in accordance with this Decree."

e. That all that part and portion of the printed Decree appearing on page 244 thereof, beginning with the words "That the rate of flow in District No. 1," appearing in line 18, and continuing down to and including the printed words "stream system," appearing in line 26 on said page 244, same constituting paragraphs 3 and 4 of said page 244, be, and all and each portion so designated herein, hereby is, stricken from said Findings of Fact, Conclusions of Law and Decree.

f. That after the words "Humboldt stream system and its tributaries in accordance with this Decree," appearing in line 17, page 244 of said Findings of Fact, Conclusions of Law and Decree, said Decree is amended, changed and corrected by adding thereto the following, to wit:

The rate of flow from Palisade to the lowest user on the stream system is based upon an irrigation season of the following approximate lengths—180 days for Class A lands; 90 days for Class B lands; 45 days for Class C lands. That the rate of flow from Palisade to the users on the head waters of Humboldt River stream system is based upon an irrigation season of the following approximate lengths—120 days for Class A lands; 60 days for Class B lands; 30 days for Class C lands. The State Engineer and Water Commissioner in distributing water to the appropriators will give due consideration to the head required to distribute the water over the land and to the water which returns to the stream system.

7. \*IT IS FURTHER ORDERED, ADJUDGED AND DECREED. That the clerk of the above entitled Court be, and he hereby is, directed and ordered to amend, change and correct the printed copy of the Findings of Fact, conclusions of Law and Decree, of date and filed in the above entitled Court and Matter, October 20, 1931, so as to make said Findings of Fact, Conclusions of Law and Decree conform to and with these "Amended, Changed and Corrected Findings of Fact, Conclusions of Law and Decree," by striking from the printed copy those portions herein ordered to be stricken, and by pasting typewritten riders in the proper places of said Findings of Fact, Conclusions of Law and Decree, as herein adjudged and ordered.

DONE in open Court this 8th day of February, 1934.

H. W. EDWARDS,  
*District Judge Presiding.*

---

\*The order that the clerk amend, change and correct the printed Findings of Fact, Conclusions of Law and Decree of October 20, 1931, held null and void by Judge J. M. Lockhart, page 5, sec. 4, Later Orders.

IN THE SIXTH JUDICIAL DISTRICT COURT OF THE  
STATE OF NEVADA, IN AND FOR THE COUNTY  
OF HUMBOLDT.

---

IN THE MATTER OF THE DETERMINATION OF THE RELATIVE RIGHTS OF  
CLAIMANTS AND APPROPRIATORS OF THE WATERS OF THE HUM- } No. 2804  
BOLDT RIVER STREAM SYSTEM AND ITS TRIBUTARIES.

Filed June 14, 1934—J. W. Davey, Clerk

E. J. L. Taber, Attorney for Rufus H. Kimball

---

**ORDER CORRECTING CLERICAL ERRORS**

It appearing to the court from the motion of Rufus H. Kimball, and the affidavit of his attorney, E. J. L. Taber, in support thereof, that there are two clerical errors on page 160 of the printed Findings of Fact, Conclusions of Law and Decree, filed herein on the 20th day of October, 1931, to wit—(a) Hunter-Banks Company is named as claimant, whereas its successor in interest, Rufus H. Kimball, should be so named, and (b) the  $E\frac{1}{2}$  of the  $NW\frac{1}{4}$  of Section 8, Township 36 North, Range 54 East, M. D. B. & M., is incorrectly described as the  $E\frac{1}{4}$  of the  $NW\frac{1}{4}$  of said section in said township and range—and the interested parties having stipulated that an order be made directing the correction of said errors:

NOW, THEREFORE, IT IS ordered by the court that said corrections be made in accordance with said claimant Rufus H. Kimball's motion, and the clerk is hereby directed to make said changes on said page 160 of the printed Findings of Fact, Conclusions of Law and Decree, by changing Hunter-Banks Company to Rufus H. Kimball, and by changing " $E\frac{1}{4}NW\frac{1}{4}$ " to  $E\frac{1}{2}NW\frac{1}{4}$ .

Dated June 8th, 1934.

H. W. EDWARDS,  
*District Judge.*

IN THE SIXTH JUDICIAL DISTRICT COURT OF THE  
STATE OF NEVADA, IN AND FOR THE COUNTY  
OF HUMBOLDT.

---

IN THE MATTER OF THE DETERMINATION OF THE RELATIVE RIGHTS OF  
CLAIMANTS AND APPROPRIATORS OF THE WATERS OF THE HUM- } No. 2804  
BOLDT RIVER STREAM SYSTEM AND ITS TRIBUTARIES.

Filed June 14, 1934—J. W. Davey, Clerk

E. J. L. Taber, Attorney for Filippini Ranching Company

---

**ORDER CORRECTING CLERICAL ERRORS**

It appearing to the court from the motion of Filippini Ranching Company, a corporation, and the affidavit of its attorney, E. J. L. Taber, in support thereof, that there are two clerical errors, one on page 19 and the other on page 118, of the printed Findings of Fact, Conclusions of Law and Decree, filed herein on the 20th day of October, 1931, to wit: (a) on page 19 Proof No. 00168 is erroneously printed Proof No. "00165," and (b) on page 118, in the column of section numbers on the line which, as now printed, reads "1878 34.10 .... SW $\frac{1}{4}$ SE $\frac{1}{4}$  832 46 3-15—9-15 .277 102.30," being the fifty-fourth listed priority on said page 118, the figure "8" is printed by mistake and should be the figure 9. And the interested parties having stipulated that an order be made directing the correction of said errors:

NOW, THEREFORE, it is ordered by the court that said corrections be made, in accordance with said claimant Filippini Ranching Company's motion, and the clerk is hereby directed to make said changes on page 19 and page 118 respectively of said printed Findings of Fact, Conclusions of Law and Decree, by changing Proof No. "00165" to Proof No. 00168, and by changing the figure "8" to the figure 9.

Dated June 8th, 1934.

H. W. EDWARDS,  
*District Judge.*

IN THE SIXTH JUDICIAL DISTRICT COURT OF THE  
STATE OF NEVADA, IN AND FOR THE COUNTY  
OF HUMBOLDT.

IN THE MATTER OF THE DETERMINATION OF THE RELATIVE RIGHTS OF  
CLAIMANTS AND APPROPRIATORS OF THE WATERS OF THE HUM- } No. 2804  
BOLDT RIVER STREAM SYSTEM AND ITS TRIBUTARIES.

Filed October 3, 1934.—J. W. Davey, Clerk

**ORDER AMENDING DECREE, BY SUBSTITUTING WILLIAMS ESTATE  
COMPANY, A CORPORATION, IN PLACE OF HUMBOLDT LAND  
AND CATTLE COMPANY, AS BEING THE OWNER OF CERTAIN  
LANDS AND ENTITLED TO DIVERT WATER FOR THE IRRIGA-  
TION THEREOF FROM THE HUMBOLDT RIVER.**

The above-entitled matter came regularly on for hearing on February 5, 1934, pursuant to the order of the Court granting a new trial upon certain severable issues, including the substitution of the WILLIAMS ESTATE COMPANY, a corporation, as being the owner of the lands and water rights hereinafter described, instead of the HUMBOLDT LAND AND CATTLE COMPANY, and upon motion and introduction of the records of the case applicable thereto, and there being no objection, and counsel present in court consenting thereto:

IT IS ORDERED: That the decree filed herein on October 20, 1931, be and the same is hereby amended so that the following described lands, to-wit:

All those certain lots, pieces or parcels of land situate, lying and being in the County of Eureka, State of Nevada, bounded and particularly described as follows, to-wit:

Section One, Township Thirty-one North, Range forty-eight East, M. D. B. & M.: East Half of Southeast Quarter, Section thirty-six, Township Thirty-two North, Range Forty-eight East, M. D. B. & M.; Southwest Quarter, West Half of Southeast Quarter of Section Thirty-one, Township Thirty-two North, Range Forty-nine East, M. D. B. & M., containing about 956.42 acres.

Set forth and described on pages 97 and 99 of said Decree, and therein described as belonging to the said Humboldt Land and Cattle Company, with the respective priorities, diversion rights, ditch rights and water rights appurtenant and decreed thereto, be changed so as to read that said above described lands and the said priorities, diversion rights, ditch rights and water rights belong and are decreed to the said Williams Estate Company, instead of to the said Humboldt Land and Cattle Company; and be it

FURTHER ORDERED: That the Clerk of this Court be and he is hereby instructed to draw a line in red ink, through lines 1 to 20, both inclusive, on page 97 of said Decree, under the designation "Source—Humboldt River. Ditch—Beowawe No. 2" in the middle of said page 97, and insert a typewritten or printed slip on page 207 of said Decree, as follows:

**Williams Estate Company.**  
 Source—Humboldt River.  
 Ditch—Beowawe No. 2.

1897	*40.00	-----	-----	NE <sup>1</sup> NE <sup>1</sup>	1	31	48	3-15-9-15	.325	120.00
1897	*40.00	-----	-----	NW <sup>1</sup> NE <sup>1</sup>	1	31	48	3-15-9-15	.325	120.00
1889	*40.00	-----	-----	SE <sup>1</sup> NE <sup>1</sup>	1	31	48	3-15-9-15	.325	120.00
1897	*40.00	-----	-----	SW <sup>1</sup> NE <sup>1</sup>	1	31	48	3-15-9-15	.325	120.00
1897	*40.05	-----	-----	NE <sup>1</sup> NW <sup>1</sup>	1	31	48	3-15-9-15	.325	120.15
1897	*40.00	-----	-----	SE <sup>1</sup> NW <sup>1</sup>	1	31	48	3-15-9-15	.325	120.00
1897	*2.70	-----	-----	NW <sup>1</sup> NW <sup>1</sup>	1	31	48	3-15-9-15	.022	8.10
1897	-----	-----	37.32	NW <sup>1</sup> NW <sup>1</sup>	1	31	48	3-15-4-28	.303	27.99
1897	*2.08	-----	-----	SW <sup>1</sup> NW <sup>1</sup>	1	31	48	3-15-9-15	.017	6.24
1897	-----	-----	37.92	SW <sup>1</sup> NW <sup>1</sup>	1	31	48	3-15-4-28	.308	28.44
1897	*38.96	-----	-----	NE <sup>1</sup> SW <sup>1</sup>	1	31	48	3-15-9-15	.317	116.88
1897	-----	-----	1.04	NE <sup>1</sup> SW <sup>1</sup>	1	31	48	3-15-4-28	.008	.78
1897	*2.08	-----	-----	NW <sup>1</sup> SW <sup>1</sup>	1	31	48	3-15-9-15	.017	6.24
1897	-----	-----	37.92	NW <sup>1</sup> SW <sup>1</sup>	1	31	48	3-15-4-28	.308	28.44
1897	-----	-----	40.00	SW <sup>1</sup> SW <sup>1</sup>	1	31	48	3-15-4-28	.325	30.00
1897	*15.67	-----	-----	SE <sup>1</sup> SW <sup>1</sup>	1	31	48	3-15-9-15	.127	47.01
1897	-----	-----	18.20	SE <sup>1</sup> SW <sup>1</sup>	1	31	48	3-15-4-28	.148	13.65
1883	*17.57	-----	-----	NE <sup>1</sup> SE <sup>1</sup>	1	31	48	3-15-9-15	.143	52.71
1883	*39.50	-----	-----	NW <sup>1</sup> SE <sup>1</sup>	1	31	48	3-15-9-15	.321	118.50
1883	*10.40	-----	-----	SW <sup>1</sup> SE <sup>1</sup>	1	31	48	3-15-9-15	.085	31.20

AND IT IS FURTHER ORDERED: That the Clerk of this Court be and he is hereby instructed to draw a line in red ink, through lines 3, 4, 5, and 6, commencing from the top of page 99 of said Decree and also a line in red ink through lines 19 and 20 and lines 31 and 32 on said page 99, and insert a type-written or printed slip on page 207 of said Decree, as follows:

**Williams Estate Company.**

1874	-----	*2.47	-----	SW <sup>1</sup> SE <sup>1</sup>	31	32	49	3-15-6-13	.020	3.71
1874	37.60	-----	-----	SE <sup>1</sup> SW <sup>1</sup>	31	32	49	3-15-9-15	.306	112.80
1874	37.60	-----	-----	SW <sup>1</sup> SW <sup>1</sup>	31	32	49	3-15-9-15	.306	112.80
1874	-----	-----	31.70	NW <sup>1</sup> SE <sup>1</sup>	31	32	49	3-15-4-28	.258	23.78
1874	40.00	-----	-----	NE <sup>1</sup> SE <sup>1</sup>	36	32	48	3-15-9-15	.325	120.00
1874	40.00	-----	-----	SE <sup>1</sup> SE <sup>1</sup>	36	32	48	3-15-9-15	.325	120.00
1874	40.00	-----	-----	NE <sup>1</sup> SW <sup>1</sup>	31	32	49	3-15-9-15	.325	120.00
1874	38.76	-----	-----	NW <sup>1</sup> SW <sup>1</sup>	31	32	49	3-15-9-15	.315	116.28

\*Was Class C-1874

Done in Open Court this 1st day of October, 1934.

H. W. EDWARDS,  
 District Judge Presiding.

IN THE SIXTH JUDICIAL DISTRICT COURT OF THE  
STATE OF NEVADA, IN AND FOR THE COUNTY  
OF HUMBOLDT.

IN THE MATTER OF THE DETERMINATION OF THE RELATIVE RIGHTS OF }  
CLAIMANTS AND APPROPRIATORS OF THE WATERS OF THE HUM- } No. 2804  
BOLDT RIVER STREAM SYSTEM AND ITS TRIBUTARIES. }

Filed November 24, 1934—J. W. Davey, Clerk

E. P. Carville, Attorney for Petitioner, S. A. Merkley

**ORDER AND JUDGMENT CORRECTING RECORD**

The petition of S. A. Merkley, of Elko, Nevada, was filed herein on the 24th day of October, 1934, praying for a correction of the records in the above entitled matter in the particulars hereinafter specifically set forth.

That thereafter and on the 31st day of October, 1934, notice was duly given to all interested parties of the filing of said petition, and that the hearing upon the same would be had before the above entitled court on the 19th day of November, 1934, at the hour of 10:00 o'clock a. m. of said day in the court room of the above entitled court in the court house at Winnemucca, Nevada; that said notice was given by mailing a copy thereof, attached to a certified copy of the petition, to all interested parties, postage prepaid, and mailed in the United States Post Office at Reno, Nevada.

That thereafter, and before the said 19th day of November, 1934, Milton B. Badt, Esquire, an attorney at law residing at Elko, Nevada, filed on behalf of certain of his clients a demurrer to said petition.

This matter came on regularly to be heard before the above entitled court on the 19th day of November, 1934, at the hour of 10:00 o'clock a. m. of said day, E. P. Carville, Esquire, appearing for the petitioner, and no other party or attorney representing any other party appearing, the court proceeded to a consideration of the questions raised by the demurrer. A motion was made by counsel for the petitioner that the demurrer be overruled upon the ground that there was no merit to the provisions set forth therein. The court granted said motion on the ground stated, and upon the further ground of the failure of the prosecution thereof, and said demurrer was ordered overruled.

The court then proceeded to hear said petition and received in evidence the oral testimony of Robert A. Allen and S. A. Merkley besides documentary evidence contained within the files and records of this case. From all of which it is made to appear to the satisfaction of the court that the evidence received herein prior to the entry of the original judgment in this case entitled the petitioner herein to the decree of this court that he is the owner of the particular water rights set forth in his present petition, and that in entering said judgment herein the court has inadvertently omitted to insert in said decree such specific water rights of said petitioner and to therein adjudge petitioner to be the owner thereof.

The original records under Proofs Nos. 00358 and 00361 show, among other things, testimony of witnesses to the effect that in 1868 the Merkley and Young lands set forth in said petition were irrigated from McCutcheon Creek, and that in the year 1871 a portion of said lands was irrigated from Smith Creek.

Included in, and as a part of said original record, is the following statement by Deputy State Engineer B. G. McBride:

"The witnesses state it is impossible to determine the amount of water that is used from McCutcheon Creek and Smith Creek on the land between the two creeks. This will, therefore, have to be considered as both creeks jointly."

Said original records further show, among other things, that the priorities contained in the order of determination heretofore filed in this action were arrived at and agreed upon by the Elko County Water Users Association.

WHEREFORE, and by reason of the premises, and for the purpose of correcting a mistake inadvertently made by this court in omitting from the original judgment entered and filed herein on the 20th day of October, A. D. 1931, and for the purpose of amending and correcting the records and said original judgment, it is ORDERED, ADJUDGED and DECREED that said petition be granted;

And it is accordingly ORDERED, ADJUDGED and DECREED that the judgment herein entered on October 20, 1931, be, and the same hereby is corrected nunc pro tunc as of the 20th day of October, A. D. 1931, as follows: Fixing the date of priority of the use of waters from McCutcheon Creek in Elko County, Nevada, on the lands hereafter described, as of the year 1868, and fixing the date of priority of the use of the water rights of Smith Creek in said Elko County, Nevada, on the lands hereafter described, as of the year 1871;

That petitioner and S. S. Young are adjudged to be the owners of the particular water rights as set forth in the present petition and as applied to the streams and lands herein designated;

That the lands which have been irrigated, are now being irrigated, and to be irrigated from said McCutcheon Creek, and jointly from said McCutcheon Creek and said Smith Creek, and to which this order applies, are described as follows, to wit:

SE $\frac{1}{4}$  of NE $\frac{1}{4}$ , Section 36, Township 30 N., R. 56 East.  
 NW $\frac{1}{4}$  of NE $\frac{1}{4}$ , Section 36, Township 30 N., R. 56 East.  
 NE $\frac{1}{4}$  of NW $\frac{1}{4}$ , Section 36, Township 30 N., R. 56 East.  
 SW $\frac{1}{4}$  of NE $\frac{1}{4}$ , Section 36, Township 30 N., R. 56 East.  
 SE $\frac{1}{4}$  of NW $\frac{1}{4}$ , Section 36, Township 30 N., R. 56 East.  
 NW $\frac{1}{4}$  of SE $\frac{1}{4}$ , Section 36, Township 30 N., R. 56 East.  
 SE $\frac{1}{4}$  of SW $\frac{1}{4}$ , Section 36, Township 30 N., R. 56 East.  
 NE $\frac{1}{4}$  of SW $\frac{1}{4}$ , Section 36, Township 30 N., R. 56 East.  
 NW $\frac{1}{4}$  of SW $\frac{1}{4}$ , Section 36, Township 30 N., R. 56 East.  
 SW $\frac{1}{4}$  of SW $\frac{1}{4}$ , Section 36, Township 30 N., R. 56 East.  
 SE $\frac{1}{4}$  of SE $\frac{1}{4}$ , Section 35, Township 30 N., R. 56 East.  
 NW $\frac{1}{4}$  of NE $\frac{1}{4}$ , Section 2, Township 29 N., R. 56 East.  
 NE $\frac{1}{4}$  of NE $\frac{1}{4}$ , Section 2, Township 29 N., R. 56 East.  
 SE $\frac{1}{4}$  of NE $\frac{1}{4}$ , Section 2, Township 29 N., R. 56 East.  
 SW $\frac{1}{4}$  of NE $\frac{1}{4}$ , Section 2, Township 29 N., R. 56 East.

That this order is intended to correct, and does correct, an error contained in the records of the above entitled case, and shall be construed to have no effect upon the priority, acreage, classification or amount of water allotted to any other water user under the terms of the aforesaid judgment made and filed herein on October 20, 1931.

DONE IN OPEN COURT, this 19th day of November, 1934.

H. W. EDWARDS,  
*District Judge Presiding.*

IN THE SIXTH JUDICIAL DISTRICT COURT OF THE  
STATE OF NEVADA, IN AND FOR THE COUNTY  
OF HUMBOLDT.

IN THE MATTER OF THE DETERMINATION OF THE RELATIVE RIGHTS OF }  
CLAIMANTS AND APPROPRIATORS OF THE WATERS OF THE HUM- } No. 2804  
BOLDT RIVER STREAM SYSTEM AND ITS TRIBUTARIES. }

Filed February 11, 1935—J. W. Davey, Clerk

**ORDER CORRECTING TYPOGRAPHICAL ERRORS IN DECREE**

The Notice of Motion and Motion of Charles S. Aldous was filed herein on the 21st day of January, 1935, for an order correcting typographical errors appearing in page 115 of the Judgment and Decree entered and filed in the above cause on the 20th day of October, 1931, in the particulars hereinafter specifically set forth.

Thereafter and on the same date, to-wit: the 21st day of January, 1935, notice was duly given to all interested parties of the filing of said Notice of Motion and Motion, and that the hearing upon the same would be had before the above-entitled Court on the 6th day of February, 1935, at the hour of ten o'clock, A. M., in the courtroom of the above-entitled court, in the Court House at Winnemucca, Nevada, or as soon thereafter as the matter could be heard; that said Notice of Motion was given by mailing a copy thereof attached to a copy of the Motion and Affidavit of Charles S. Aldous, to all interested parties, postage fully prepaid, and mailed in the United States Post Office at Reno, Nevada, as appears by the affidavit of mailing thereof on file herein; that thereafter the above-entitled Court entered its order continuing the hearing of said matter to the hour of 10 o'clock, A. M., on February 11, 1935.

The matter came on regularly to be heard before the above-entitled Court on said February 11, 1935 at 10 o'clock, A. M. of said day; Roy W. Stoddard, Esq. appearing for the movant and no other party or attorney representing any other party appearing, the Court proceeded with the hearing of said motion. The Motion was presented by counsel and oral and documentary testimony was taken in support thereof;

And it appearing that the movant, Charles S. Aldous is the successor in interest to Land Development Company and is now the owner of the lands described at page 115 of said Judgment and Decree entered in the above cause on October 20, 1931 under the name of said Land Development Company, and that the said Land Development Company filed its claims and proof of claims to the water rights set forth in said Decree, and that the abstract of claims, the cultural maps or plats of said lands, the Preliminary Order of Determination and the Final Order of Determination of the State Engineer of the State of Nevada,—all of which appear of record in the above-entitled matter, designate and describe the lands listed at said page 115 of said Decree under the titles

“Claimant—Land Development Company

Source—Humboldt River

Ditch—Layton”

and

“Source—Humboldt River

Ditch—Rocky Point”

as being in "Range 45" in each line and specific description under said titles, except the description in line number 10 under said title "Claimant—Land Development Company, etc.," which reads "Section 1, Township 32, Range 44"; and it appearing that at page 115 of said Decree, through mistake and inadvertence, typographical errors appear in the last five lines in the description of said lands in the Column "R" under the title

"Claimant—Land Development Company  
Source—Humboldt River  
Ditch—Layton"

and similarly in each of the twelve lines under the title

"Source—Humboldt River  
Ditch—Rocky Point"

the Range number being erroneously designated, is given as "44" instead of "45," and that said errors are typographical occurring in said designated lines through mistake and inadvertence.

Therefore, it is

ORDERED, ADJUDGED AND DECREED: That the said Judgment and Decree entered and filed herein on October 20, 1931, be and the same is hereby amended and corrected so that at page 115 thereof under the titles

"Claimant—Land Development Company  
Source—Humboldt River  
Ditch—Layton"

and

"Source—Humboldt River  
Ditch—Rocky Point"

the location of the lands described shall appear in each instance as being in Range 45, instead of Range 44 as now designated and described under said titles at page 115 in said Decree, excepting that under the title "Claimant—Land Development Company, etc.," on said page 115, the description and location of the land appearing on line 10 shall remain unaltered in said Decree, which description reads "Section 1, Township 32, Range 44"; and it is further

ORDERED, ADJUDGED AND DECREED: That the Clerk of this court shall with pen and ink, in each of the last five lines under the said title

"Claimant—Land Development Company  
Source—Humboldt River  
Ditch—Layton"

and likewise in each of the twelve lines under the title

"Source—Humboldt River  
Ditch—Rocky Point"

strike the figures 44 where they appear under the column indicating Range as "R," and in each of said descriptions and each of said lines under said column "R" insert in pen and ink the figures "45" in lieu of the stricken figures "44."

Done in Open Court this 11th day of February, 1935.

L. O. HAWKINS,  
*District Judge.*

IN THE SIXTH JUDICIAL DISTRICT COURT OF THE  
STATE OF NEVADA, IN AND FOR THE COUNTY  
OF HUMBOLDT.

IN THE MATTER OF THE DETERMINATION OF THE RELATIVE RIGHTS OF  
CLAIMANTS AND APPROPRIATORS OF THE WATERS OF THE HUM- } No. 2804  
BOLDT RIVER STREAM SYSTEM AND ITS TRIBUTARIES.

Filed March 11, 1935—J. W. Davey, Clerk  
Stoddard and Jurgenson, Attorneys for Movant

**ORDER CORRECTING CLERICAL ERRORS IN DECREE**

The Notice of Motion and Motion of Zabulon Silve was filed herein on February 25, 1935, for an Order correcting typographical errors appearing on pages 99 and 100 of the Decree entered and filed in the above cause on October 20, 1931, in the particulars hereinafter specifically set forth.

Thereafter and on the same date, to-wit: February 25, 1935, notice was duly given to all interested parties of the filing of said Notice of Motion and Motion, and that the hearing upon the same would be had before the above-entitled Court on the 11th day of March, 1935, at the hour of ten o'clock, A. M., in the courtroom of the above-entitled court, in the Court House at Winnemucca, Nevada, or as soon thereafter as the matter could be heard; that said Notice of Motion was given by mailing a copy thereof, attached to a copy of the Motion and Affidavit of Roy W. Stoddard, to all interested parties, postage fully prepaid, and mailed in the United States Post Office at Winnemucca, Nevada, as appears by the affidavit of mailing thereof on file herein.

The matter came on regularly to be heard before the above-entitled Court on said March 11, 1935, at 10 o'clock, A. M., of said day; Roy W. Stoddard and John A. Jurgenson, Esqrs. appearing for the movant and no other party or attorney representing any other party appearing, the Court proceeded with the hearing of said motion. The Motion was presented by counsel and oral and documentary testimony was taken in support thereof;

And it appearing that the movant, Zabulon Silve, sometimes known as Zeb Silve and sometimes known as Z. Silve, is the successor in interest of E. A. Duvivier, and is now the owner of the lands described at pages 99 and 100 of said Judgment and Decree entered in the above cause on October 20, 1931, under the name of Golconda Cattle Co.; that Proofs of Claim No. 00156 filed in the above cause by the Golconda Cattle Co. disclose upon their face that E. A. Duvivier was in fact the owner of said lands and water rights and that likewise the Abstract of Claims, the Preliminary Order and the Final Order of the State Engineer discloses that said lands and water rights should have been decreed to said E. A. Duvivier instead of Golconda Cattle Co. and that the testimony taken before Assistant State Engineer, Ira MacFarland, on October 20, 1931, discloses that said lands and water rights should have been decreed to E. A. Duvivier, and that through a typographical and clerical error in the preparation of said Decree of October 20, 1931, the said name Golconda Cattle Co. was used instead of the correct name of E. A. Duvivier;

Therefore, it is

## INTERVENING ORDERS

ORDERED, ADJUDGED AND DECREED: That the said Judgment and Decree entered and filed herein on October 20, 1931 be and the same is hereby amended and corrected so that commencing with the last paragraph on page 99 thereof under the title:

“Claimant—Golconda Cattle Co.  
Source—Humboldt River  
Ditch—Aemes Dam”

and continuing on page 100 of said Decree under the same title, and also under the title:

“Source—Humboldt River  
Ditch—Aemes Dam (Land of Duvivier)”

and also under the title:

“Source—Humboldt River  
Ditch—Henderson”

and also under the title:

“Source—Humboldt River  
Ditch—Outside Slough”

shall read:

“Claimant—E. A. Duvivier  
Source—Humboldt River  
Ditch—Aemes Dam”

and continuing on page 100 of said Decree, said Decree shall read:

“E. A. Duvivier—Continued.”; and it is

further

ORDERED, ADJUDGED AND DECREED: That the Clerk of this court shall with pen and ink, strike the words “Golconda Cattle Co.,” where they appear on said page 99, and insert with pen and ink, in lieu thereof, the words “E. A. Duvivier”; and the said Clerk shall with pen and ink, strike the words “Golconda Cattle Co.,” where they appear on said page 100, and insert with pen and ink, in lieu thereof, the words “E. A. Duvivier.”

Done in Open Court this 11th day of March, 1935.

L. O. HAWKINS,  
*District Judge.*