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

IN THE MATTER OF THE DETERMINATION
OF THE RELATIVE RIGHTS IN AND TO
THE WATERS OF JUMBO CREEK AND ITS
TRIBUTARIES IN WASHOE COUNTY,
STATE OF NEVADA.

FILED
SEP 29 9 11 AM '47
E. H. BEEMER, CLERK
By A. L. Donati
Deputy

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

This matter came on regularly to be heard before Hon. Merwyn H. Brown, District Judge presiding, in the Courtroom of the above-entitled Court, at Reno, Washoe County, Nevada, on the 10th day of June, 1947, beginning at 10:00 o'clock A.M. of said day.

The applicant State Engineer was represented by Hugh A. Shamberger, his assistant, and by Homer Mooney, Deputy Attorney General, his attorney.

Roy A. Judd, the claimant and original petitioner before the State Engineer, appeared in his own proper person.

No other person appeared in person or by attorney or by any written appearance and no objection to the petition or the proceedings was made by anyone either in person, by attorney or by written objection filed or at all.

Said Roy A. Judd in open court acknowledged notice and waived all other and further notice respecting the doings of the State Engineer in making his determination and respecting the proceedings herein and consented that findings and judgment might be made,

signed and entered herein without other or further notice to him and forthwith. The Deputy Attorney General in open court on behalf of the State Engineer and on behalf of all persons in interest waived notice of such findings and judgment and consented that they might be made, signed and entered forthwith without other or further notice.

Evidence both oral and documentary was adduced, presented and received in support of the petition on the part of the State Engineer, applicant, and on behalf of said Roy A. Judd, original claimant. No other evidence was offered or adduced by any other person in opposition or at all.

It appeared from the evidence that there are less than ten, to wit, only one, claimants to or appropriators of the waters that are the subject matter of these proceedings.

The Court in consideration of the premises and the evidence, without objection and free and clear from all objection as to competency, materiality and relevancy, and having heard the arguments of counsel now makes, enters and files its findings of fact and conclusions of law in said matter as follows:

FINDINGS OF FACT

I

That on April 6, 1947, the State Engineer caused to be filed herein with the Clerk of this Court a certified copy of his order of determination in this proceeding together with the original evidence filed with or taken before him in said proceedings. That hearing herein was duly and regularly set down by order of this Court for the 10th day of June, 1947, at 10:00 o'clock A.M. of said day. That notice thereof was duly given to Roy A. Judd who has acknowledged the same in open court; that said order and notice thereof was duly published in the Nevada State Journal, a

newspaper of general circulation in and published in Washoe County, Nevada, for five consecutive weekly issues in the period from April 29, 1947, to May 27, 1947, both dates inclusive; that all the allegations in the affidavit of Hugh A. Shamberger reciting compliance with all jurisdictional requirements in this proceeding, which affidavit was received in evidence herein, are true.

In consideration of the premises and the findings of fact aforesaid and the law in such case provided, the Court makes, signs and enters the following

CONCLUSIONS OF LAW

I

That this Court has jurisdiction of the subject matter and the parties in this proceeding.

II

That all notices required by law to be given by the State Engineer in the premises, and all notices of this proceeding required by law to be given, have been duly, regularly and timely given, and acknowledgment of the same has been made in open court by all persons concerned or has been regularly waived in open court.

III

That the State Engineer's order of determination, including the appendix thereto, filed herein by him, is lawful and reasonable and ought to be approved, confirmed and adopted with any modification thereof or change therein.

Let judgment be entered accordingly.

Signed, entered and filed this 26th day of September, 1947.

Merwyn H. Brown

District Judge, Presiding.

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

IN THE MATTER OF THE DETERMINATION OF THE RELATIVE RIGHTS IN AND TO THE WATERS OF JUMBO CREEK AND ITS TRIBUTARIES IN WASHOE COUHTY, STATE OF NEVADA.

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E. H. BEEMER, CLERK
By A. L. Donati Deputy

JUDGMENT AND DECREE

The above-entitled matter came duly and regularly before the Court, Hon. Merwyn H. Brown, District Judge presiding, for hearing the 10th day of June, 1947, at 10:00 o'clock A.M. of said day.

The applicant State Engineer was represented in person by Hugh A. Shamberger, Assistant State Engineer, and by Homer Mooney, Deputy Attorney General, his attorney.

Roy A. Judd, the original applicant and claimant before the State Engineer, appeared in person.

No other person appeared in person or by counsel or by written appearance and no objections were made or filed against the proceedings or the proposed judgment.

Roy A. Judd acknowledged in open court due notice of all proceedings before the State Engineer and before this Court and waived all other and further notice and consented that findings and conclusions might be made and filed and judgment and decree entered herein forthwith without other or further or any notice to him.

The Deputy Attorney General, on behalf of the State Engineer and also on behalf of all other persons in interest, made like acknowledgment and waiver in open court.

Whereupon evidence both oral and documentary was adduced before and received by the Court in support of the application and no evidence was offered, adduced or received in opposition to the same.

And the Court having considered the evidence and the law, on the motion of Homer Mooney, Deputy Attorney General, on behalf of the State Engineer, orally pronounced its decision and order in open court that the said order of determination, including any appendix thereto, ought to be and hereby is established, approved, adopted and confirmed without any modification thereof or change therein whatsoever, and directed that findings of fact, conclusions of law and judgment and decree be prepared and presented to the Court.

Thereafter in consideration of the premises the Court signed, entered and filed its findings of fact and conclusions of law under date, the ____ day of _____, 1947, and in consideration thereof it is now

ORDERED, AJDUDGED and DECREED by the Court that the said order of determination and appendix thereto in said matter be and the same is hereby established, approved, adopted and confirmed, without any modification thereof or change therein whatsoever.

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

"IN THE OFFICE OF THE STATE ENGINEER

OF THE STATE OF NEVADA

"In the Matter of the Determination of)
the Relative Rights in and to the Waters)
of Jumbo Creek and its Tributaries in) SS.
Washoe County, Nevada.)

ORDER OF DETERMINATION

The State Engineer of the State of Nevada upon petition of Roy A. Judd, a water user on the Jumbo Creek stream system, hereinafter described, requesting the determination of the relative rights to the waters of said stream system, made an investigation on July 8th, 1946 under and pursuant to Section 18 of Chapter 140 of the Statutes of Nevada of 1913 and acts amendatory thereof and supplementary thereto and found that the facts and conditions justified such determination and on August 12th, 1946 entered an order granting said petition.

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

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

CLAIMANT

After the investigation referred to, together with prior investigations by the State Engineer's office, the State Engineer hereby finds that the flow of the waters from the Jumbo Creek stream system, as hereinafter defined, since 1885, has been and now is placed to beneficial use by Roy A. Judd, and his predecess-

ors in interest and that there is now only one appropriator, namely, said Roy A. Judd, that is using the flow of said Jumbo Creek stream system, under a claim of vested right. Certified copies of deeds of record in this office show that the present claimant and appropriator, Roy A. Judd, is the successor in interest to the vested rights initiated in the year 1885 by E. G. Stevenson.

Roy A. Judd is the sole successor of the vested rights to the use of water from the Jumbo Creek stream system, as hereinafter defined, and owns the lands on which the right was initiated in 1885 for irrigation, atockwatering and domestic purposes and is also the user of range rights appurtenant to said stream system under the Division of Land Management.

SOURCE

The Jumbo Creek stream system consists of two short branches that confluence about one-half mile below their origin and then flows down a canyon for about two miles towards Washoe Lake. The said creek debouches from the canyon in about SE¼ NE¼ Section 5, T. 16 N., R. 20 E., M.D.M.

The north fork of Jumbo Creek originates from some springs located about 100 yards above the old deserted mining camp of Jumbo. The south fork of Jumbo Creek heads just below the reservoir of the Virginia City Water Company. The main source of the water on both forks is from melting snows, some of which runs off by surface flow and some which sinks into the ground to again appear on the surface from springs.

IRRIGATION SEASON

The irrigation season shall begin on March 15th and end on Octover 15th of each year, both dated inclusive, being a length of 215 days, except when climatic conditions are such that irrigation is not in accordance with good husbandry and actual beneficial

use of water, in which event the State Engineer shall determine by examination the beginning of the irrigation season and shall set the date, giving due notice to any parties concerned. The setting of the date shall be for the sole purpose of administration and distribution of the waters of Jumbo Creek and its Tributaries in accordance with this Order.

DUTY OF WATER

The duty of water is the amount of water in acre-feet required to be placed on land in a manner consistent with good irrigation practice to yield adequate crop returns. The only method of arriving at the duty of water on a given tract of land growing a certain crop is by actually measuring the amount of water over a period of years delivered at the margin of the tract and applied to the land in quantities consistent with the requirements of plant growth under good irrigation practice. In the absence of this data, it has been necessary for the State Engineer to base his estimate of the duty of water in this area on his knowledge of duty of water in other licalities where similar conditions exist.

Jumbo Creek can be considered perennial in character, as several springs or spring areas on the upper reaches of the stream system serve as small feeders throughout the year. During the early part of the irrigation season, the runoff resulting from melting snows or precipitation in the form of rain within the drainage area augments the flow of water from springs, while ordinarily during the latter part of the season the only water available for use from the stream system is derived solely from the so-called feeder springs.

The lands irrigated from Jumbo Creek are of the sandy loam type with some coarse gravel and well supplied with organic

material, having slope of about one percent towards Washoe Lake. It is important in arriving at the proper duty of water for the irrigated lands that proper consideration be given to the porus character of the soils, their altitude, length of irrigation season and the fact that some are more or less sloping and uneven. In order to accomplish a satisfactory definition and limitation of the right to the use of water by the claimant on this stream system for irrigation use, it is essential that some unit or units of measurement be adopted which will establish the measure or the amount of the user's right.

The duty of water for irrigation of these lands is therefore herein fixed in the amount of five acre-feet per acre for the irrigation season and the rate of flow to which the claimant is entitled for direct diversion, as herein modified and enlarged upon, shall not exceed 0.01174 of a cubic foot of water per second of time for each acre of land having a water right, which amount, in uniform continuous flow during an irrigation season of 215 days will yield the duty of water per acre in acre-feet as herein specified.

It is recognized that Jumbo Creek is not dissimilar to a number of other small mountain streams in Nevada when the run-off from melting snows or precipitation in the form of rain is unusually rapid and of comparatively short duration. It was for this reason that one of the early users of the waters of Jumbo Creek, for irrigation purposes on the lands now owned by Roy A. Judd, constructed a small dam in Jumbo Creek in order that enough water could be stores so that when released, there would be a sufficient head for irrigation purposes. This dam apparently was partially washed out in later years and in 1939, Roy A. Judd, the claimant herein, filed application No. 10443 for permission to appropriate 1.0 c.f.s. of

the flood waters of Jumbo Creek for irrigation and domestic purposes. Under this application, it was proposed to enlarge the dam and reservoir already in existence for the purpose of equalizing the flow and to secure a good head of water. Said application was approved in 1941 and an earth dam was constructed at a point in the SW¼ NE¼ Section 4, T. 16 N., R. 20 E. and being about 5000 feet upstream from the upper edge of the irrigated lands of Mr. Judd.

It is therefore highly important that some flexibility with respect to the rate of diversion must be maintained in order to meet some conditions where water is not constantly available in the source to satisfy the continuous flow in cubic feet per second as herein allotted and the water user must, of necessity, conform his irrigation practice to the availability of water. For this reason, during those periods of the irrigation season when the flow of water in the stream system will more than satisfy the continuous flow allottment as herein allowed, the claimant named herein or his successors in interest, shall be allowed to increase the rate of direct flow diversions so as to satisfy any immediate needs of the growing crops and build up ground water storage; provided, that the total diversion for the claimant during any calendar month shall not exceed 1.5 acre-feet for each acre of land granted a water right, and provided further, that the total diversions during the irrigation season shall not exceed the duty of water in acre-feet as specified for such land.

MEASUREMENT OF WATER

All water diverted from Jumbo Creek for irrigation purposes in accordance with the rights as herein defined, shall be measured at a point where the water first becomes appurtenant to the land to be irrigated or as near thereto as practical.

Substantial headgates or such other control works and weirs to facilitate the measurement and control of water must be installed whenever necessary to insure its proper distribution in accordance with the right to its use as herein defined.

ROTATION IN USE OF WATER

The claimant named herein or any of his successors in interest shall have the right to rotate the use of water to which they may be collectively entitled between the various ditches diverting water from the stream system.

CHANGE OF PLACE OF USE

All waters allotted under this Order shall be appurtenant to the place or places of use designated herein. In the event any water user under this Order desires to change the place of use of the waters allotted herein, such water user must make application to the State Engineer for permission to make such change pursuant to law.

RIGHTS OF APPROPRIATION

The name of the claimant or appropriator of the waters of Jumbo Creek and its Tributaries, the source of water supply, the means by which water is secured from the source of supply for beneficial use, the point of diversion, the year of priority, the cultural acreage or place of use, the legal sub-division, section, township and range, length of season and duty of water as listed in the following tabulation shall govern and be recognized at all times hereafter.

Claimant: Roy A. Judd Proof No. 02337

Source: Jumbo Creek and Tributaries

Use: Irrigation, Stockwater and domestic

Means of Diversion: Water stored in small reservoir, thence through Jumbo Creek bed to point of diversion, thence by means of Stevenson ditch to place of use.

Point of Diversion: SE¼ NE¼ Section 5, T. 16 N., R. 20 E., or at a point from which the N.E. section corner of said section 5 bears N. 15° 35' E., 1490.9 feet.

Period of Use: March 15th to October 15th of each year.

Priority	Cultural Acreage	Sub-Division		Section	T. N.	R. E.	Duty of Water C.F.S.	Duty of Water Acre-feet
1885	24.32	SW	NW	5	16	20	0.2856	121.60
1885	31.52	SE	NW	5	16	20	0.3702	157.60
1885	10.43	SW	NE	5	16	20	0.1225	52.15
Total	66.27						0.7783	331.35

STOCK AND DOMESTIC RIGHTS

The claimant named herein, or his successors in interest, in conjunction with the rights to the use of water for irrigation purposes, as herein defined, shall be entitled to a reasonable diversion and use of water for stockwatering and domestic purposes at any time during the year. The claimant is the holder of certain grazing privileges on the public domain and shall be entitled to water his range live-stock from the waters of Jumbo Creek in the number that he is entitled to range under such grazing permit.

JUNIOR RIGHTS

No person or persons holding a right of appropriation not herein listed shall be entitled to receive any water from Jumbo Creek or its tributaties to the detriment of the rights as herein defined.

This Order of Determination made and filed in the Office of

the State Engineer of Nevada on the 26th day of February, 1947.

Alfred Merritt Smith

ALFRED MERRITT SMITH

State Engineer

APPENDIX

The following represents rights in good standing acquired by virtue of applications filed with and approved by the State Engineer to appropriate water:

Permit No. 10425

Appropriator - Henry E. Heidenreich

Source - South Ford Jumbo Creek

Point of Diversion - SW¼ NE¼ Section 3, T. 16 N., R. 20 E.

Amount of Appropriation - 3.0 c.f.s.

Priority - September 20, 1939

Use: Irrigation and domestic purposes

Place of Use - Parts of south one-half Sec. 5, N½ Section 8, and SW¼ Section 8, T. 16 N., R. 20 E.

Remarks: Permittee has not to date commenced works of diversion.

Permit No. 10443

Appropriator: Roy A. Judd

Source: Jumbo Creek

Point of Diversion: SW¼ NE¼ Section 4, T. 16 N., R. 20 E.

Amount of Appropriation: 1.0 c.f.s.

Priority: November 16, 1939

Use: Irrigation and Domestic

Place of Use: 100 acres in the S½ NW¼ and W½ SW¼ NE¼ Sec. 5, T. 16 N., R. 20 E.

Remarks: Proof of commencement filed Nov. 7, 1941. Works of diversion to consist of small reservoir to store water so that a sufficient head of water can be developed for irrigation purposes during the latter part of the irrigation season."

DONE IN OPEN COURT this 26th day of September, 1947.

Merwyn H. Brown

DISTRICT JUDGE.

STATE OF NEVADA, }
COUNTY OF WASHOE. } SS.

I, E. H. BEEMER, County Clerk and ex-officio Clerk of the Second Judicial District Court of the State of Nevada, in and for Washoe County, said court being a court of record, having a common law jurisdiction, and a clerk and a seal, do hereby certify that the foregoing is a full, true and correct copy of the original, Findings of Fact and Conclusions of Law and Judgment and Decree, In the Matter of the Determination of the Relative Rights in and to the Waters of Jumbo Creek and its Tributaries in Washoe County, State of Nevada,

which now remains on file and of record in my office at Reno, in said County.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said court, at Reno, this 26th day of December, A. D. 1947.

E. H. Beemer, Clerk.

By M. Neale, Deputy.