

OFFICE OF

County Clerk and Ex-Officio Clerk
of the Seventh Judicial District Court

in and for

White Pine County, Nevada

STATE OF NEVADA, }
COUNTY OF WHITE PINE, } ss.

I, MARY SUE JOHNSON, County Clerk
and ex-officio Clerk of the Seventh Judicial District Court of the State
of Nevada, County of White Pine, do hereby certify that the above and
foregoing is a full, correct and true copy of the original.....

.....
"FINDINGS OF FACT, CONCLUSIONS OF LAW
.....
JUDGMENT AND DECREE"
.....

.....
IN THE MATTER OF THE DETERMINATION OF
.....
THE RELATIVE RIGHTS IN AND TO THE WATERS
.....
OF KALAMAZOO CREEK AND ITS TRIBUTARIES
.....
IN WHITE PINE COUNTY, STATE OF NEVADA.
.....

.....
Case No: 5436
.....
Filed: September 29, 1983
.....

.....
which now remains of record in my office at Ely, County and State
aforesaid.

IN TESTIMONY WHEREOF, I have hereunto set my hand and
affixed the Seal of said Court, at my office in the City of Ely, this
..... TWENTY-NITH day of SEPTEMBER, A.D. 1983.....

..... MARY SUE JOHNSON County Clerk
And Ex-Officio Clerk of Said Court

By  Deputy Clerk

83 SEP 29 P 1:31

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IN THE SEVENTH JUDICIAL DISTRICT OF THE

STATE OF NEVADA ~~MARVIN S. JOHNSON~~

IN AND FOR THE COUNTY OF WHITE PINE ~~DEPUTY~~

* * * * *

IN THE MATTER OF THE DETERMINATION OF)
THE RELATIVE RIGHTS IN AND TO THE WATERS)
OF KALAMAZOO CREEK AND ITS TRIBUTARIES) Case No. 5436
IN WHITE PINE COUNTY, STATE OF NEVADA .)

FINDINGS OF FACT, CONCLUSIONS OF LAW
JUDGMENT AND DECREE

This matter came on regularly for hearing on the 7th day of February, 1983, before the Honorable Merlyn H. Hoyt, District Judge, presiding, pursuant to stipulation of all parties dated December 30, 1983. Kalamazoo Creek and its tributaries, the subject of these proceedings, is within White Pine County, State of Nevada; and therefore, Judge Hoyt is the judge designated, by NRS 533.165, to hear and having jurisdiction to hear the above-entitled matter of the determination of the relative rights of all the claimants to the use of the waters of the stream system of Kalamazoo Creek and its tributaries. The order of Determination and all related documentary evidence was filed on November 12, 1947, with the Clerk of the Court by the State Engineer. A hearing on the Order was scheduled for January 28, 1948, at 10 a.m. A copy of the Order of Determination and a copy of the Court's Order setting time for hearing were properly served on all claimants.

On January 21, 1948, B. H. Robison filed a Notice of Exception to the Order of Determination more than five days prior to the date set for hearing as provided for by NRS 533.170.

In view of the exception, the court vacated the hearing set for January 28, 1948.

A motion was filed on January 17, 1969, in behalf of Mary Agnes Eldridge, Executrix for the Estate of George H. Eldridge, deceased, to move the court for an order setting a hearing on a day certain. A hearing date set for the 4th and 5th of February, 1969, was again postponed by agreement of counsel for the

1 two claimants.

2 On January 10, 1983, a stipulation was filed with the Seventh Judicial
3 District Court signed by Brent Eldridge for George Eldridge and son, successor
4 in interest to the claimant, George H. Eldridge (deceased); Reed B. Robison,
5 successor in interest to B. H. Robison (deceased); and Linda H. Bailey, Deputy
6 Attorney General for Richard H. Bryan, Attorney General. The above parties
7 agreed that the hearing on the State Engineer's Final Order of Determination of
8 the Relative Rights in and to the Waters of Kalamazoo Creek and its tributaries
9 would take place on February 7, 1983, at 10 a.m.

10 At the time set for hearing, Larry C. Reynolds, Chief of the Adjudication
11 and Surface Water Section for Division of Water Resources, and George Benesch,
12 Deputy Attorney General, appeared on behalf of the State Engineer. Also appear-
13 ing were Brent Eldridge, claimant herein, and Reed B. Robison, claimant herein.

14 State Exhibit One admitted into evidence was a Settlement Agreement dated
15 February 4, 1983, between George Eldridge and Son, Inc., a Nevada Corporation,
16 Delbert David Eldridge and Elva J. Eldridge, his wife, first party; and Reed B.
17 Robison, second party. The agreement settled certain differences pertaining to
18 water rights affecting the parties in Spring Valley, White Pine County, Nevada.

19 At the hearing, Reed B. Robison withdrew his predecessor's objection to the
20 Order of Determination.

21 The Court, having considered the entire record and the evidence introduced
22 and received, including the cost bill, directed the State Engineer to prepare
23 the Findings of Fact, Conclusions of Law, and Judgment and Decree affirming the
24 Order of Determination, as amended herein in accordance with NRS 533.185.

25 FINDINGS OF FACT

26 I.

27 The Court Finds: That A. L. Kruger and Steven Doutré, water users on
28 Kalamazoo Creek, submitted petitions to the State Engineer, requesting the
29 determination of the relative rights to the use of the waters of Kalamazoo
30 Creek, located in White Pine County.

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That as a result of the State Engineer's investigations on August 27, 1938, and June 27, 1939, it was found that facts and conditions justified such determination, and on June 14, 1940, entered an order granting said petitions.

That the State Engineer received and filed in his records maps and statements of claims 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.

That there were only two claimants upon said stream system; namely, George H. Eldridge and B. H. Robison, the successors in interest to claimants, Steven Doutre and Mrs. A. L. Kruger, respectively, both having 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.

That in accordance with the provisions of Chapter 140, Statutes of Nevada of 1913 and acts amendatory thereof and supplementary thereto, the State Engineer made and filed and caused to be entered on the records in his office, his Order of Determination, defining the rights of the claimants to the waters of said Kalamazoo Creek stream system, as hereinafter defined.

That all and singular the Proceedings, Orders, and Notices required by Chapter 533 of Nevada Revised Statutes were duly had, made, and given as required by law, and that all and singular, the matters and things contained in the record were done, performed, given and made in strict compliance with the statutes, and that this court had and has jurisdiction to hear and determine this matter.

II.

The Court Further Finds: That Kalamazoo Creek and its tributaries, the subject of these proceedings, is situated wholly within White Pine County, State of Nevada.

III.

The Court Further Finds: That the names of the claimants and appropriators

1 of the waters of Kalamazoo Creek and its tributaries, the source of the water
2 supply, the period of use, the duty of water, the diversion of water and method
3 of use, measurement of water, stock watering and domestic use, change of place
4 of use, and the rights of appropriation of the water, all as set forth in the
5 Order of Determination, as amended herein, are true, proper, and correct, and
6 all and singular, the same should be approved and confirmed.

7 That the waters of Kalamazoo Creek stream system, as hereinafter defined,
8 since prior to 1900, have been and are being placed to beneficial use by George
9 Eldridge and Son, Inc., and Reed B. Robison, and their predecessors in interest.

10 That there are now only two appropriators, namely George Eldridge and Son,
11 Inc., and Reed B. Robison, using the flow of said Kalamazoo Creek stream system.

12 That deeds of record in the State Engineer's office show that the present
13 claimants and appropriators, George Eldridge and Son, Inc., and Reed B. Robison
14 are the successors in interest to the herein determined and adjudged vested
15 rights to the waters of Kalamazoo Creek stream system initiated prior to the
16 year 1900.

17 1. SOURCE

18 The words "Kalamazoo Creek stream system" as used herein shall be inter-
19 preted as including Kalamazoo Creek situated in the easterly part of White Pine
20 County, Nevada, on the easterly slope of the Schell Creek Range, flowing in a
21 general easterly direction into Spring Valley, together with all its tributaries
22 and all springs tributary to it.

23 2. PERIOD OF USE

24 By actual practice over a great number of years, irrigation for harvest and
25 meadow crops starts about March 15th and ends about September 15th of each year.
26 The decree In the Matter of the Determination of the Relative Rights in and to
27 the Waters of Bassett Creek, which is a creek of similar characteristics to
28 Kalamazoo Creek and located a few miles southerly, set the irrigation season
29 from March 15th to September 15th of each year.

30 The irrigation season is, therefore, herein fixed as being from March 15th

1 to September 15th of each year, except when climatic conditions are such that
2 irrigation is not in accordance with good husbandry and actual beneficial use of
3 water, in which event the State Engineer shall determine by examination the
4 beginning of the irrigation season and shall set the date, giving notice to all
5 concerned. The setting of the date shall be for the sole purpose of administra-
6 tion and distribution of water from Kalamazoo Creek stream system, in accordance
7 with the Decree. When the date of beginning of the irrigation season is changed
8 from that fixed as above by order of the State Engineer, the date of the end of
9 the irrigation season shall be six months from said date.

10 3. DIVERSION OF WATER

11 A number of years ago, a concrete division box was constructed on Kalamazoo
12 Creek at a point near the westerly edge of the SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 28, T20N, R66E.
13 The box is 6 feet wide, inside width, and spread by a "V" shaped concrete
14 dividing abutment in the center into two divisions, each 2.9 feet wide and 2.9
15 feet deep, inside dimensions. The division box divides the water on a fifty-
16 fifty basis. It was the intention of the predecessors of the present claimants
17 to divide the water on a fifty-fifty basis. On February 4, 1983, claimants
18 George Eldridge and Son, Inc., and Reed B. Robison signed an agreement to the
19 effect that in the adjudication of the relative rights in and to the waters of
20 the Kalamazoo Creek stream system, the State Engineer may make and enter his
21 order directing that the waters of the said Kalamazoo Creek be divided, share
22 and share alike, at the point at which the said cement division box is now
23 located.

24 It appears that the division of the waters of the Kalamazoo Creek
25 stream system in such manner is satisfactory to all claimants on the stream
26 system, and further that such division will tend to prevent future misunder-
27 standing and that the placing of water to beneficial use has been based upon
28 such division for a number of years. The Court hereby confirms, ratifies and
29 adopts the order of the State Engineer dividing the waters of Kalamazoo Creek
30 stream system on a fifty-fifty basis by a division box located near the westerly

1 edge of the SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 28, T20N, R66E; one portion being conveyed to the
2 George Eldridge and Son, Inc., property by means of a ditch taking out immediately
3 below the division box and running in a northeasterly direction a distance of
4 about 1.3 miles; the other portion being conveyed down the Kalamazoo Creek
5 channel a distance of about 1 $\frac{1}{4}$ miles, thence by a ditch running in a southerly
6 direction a distance of about 2 $\frac{3}{4}$ miles to the property of Reed B. Robison.

7 4. DUTY OF WATER

8 The duty of water is the amount of water in acre-feet per season required
9 to be placed on land in a manner consistent with good irrigation practice to
10 yield adequate crop returns. The lands on the George Eldridge and Son, Inc.,
11 and Reed B. Robison properties are similar in character and also similar to the
12 lands on Bassett Creek on which the Court found the duty to be six acre-feet
13 per acre for the six months irrigation season.

14 The duty of water is herein fixed in the amount of six acre-feet per acre
15 for the season of 184 days on the lands of George Eldridge and Son, Inc., in
16 Sections 22 and 27, T20N, R66E, and the lands of Reed B. Robison in Sections 11,
17 12, and 14, T19N, R66E, MDM.

18 Kalamazoo Creek stream system can be considered as perennial in character.
19 After the spring runoff period, the flow gradually decreases until August when
20 there is barely sufficient water to reach the lands to be irrigated, especially
21 the lands of Reed B. Robison. A measurement taken on June 27, 1939, showed
22 about 5.0 cfs of water flowing in Kalamazoo Creek above the division box.

23 During certain times of the runoff period, there is more water in the
24 stream system than that amount which would satisfy the continuous flow herein-
25 after specified, and it is ordered that the claimants be allowed to divert more
26 than the continuous flow that is hereinafter allowed, provided that during any
27 one month, the amount of water diverted does not exceed 1.5 acre-feet per acre
28 of irrigated lands.

29 5. MANNER OF USE:

30 Claimant George Eldridge and Son, Inc., and Reed B. Robison are each

1 entitled to one-half the flow of the Kalamazoo Creek stream system as divided by
2 the concrete diversion box located in near the westerly edge of the SW $\frac{1}{4}$ SE $\frac{1}{4}$
3 Section 28, T20N, R66E. Claimant George Eldridge and Son, Inc., is entitled to
4 use, under this Order, 6 acre-feet of water on each acre of land, or a total of
5 517.56 acre-feet on 86.26 acres of land, with the understanding that said
6 claimant can use as much as 1 $\frac{1}{2}$ acre-feet of water on each acre during any one
7 month of the irrigation season or a total of 129.39 acre-feet per month, pro-
8 vided that the total acre footage of water from all sources does not exceed 6
9 acre-feet per acre of land for the irrigation season.

10 Claimant Reed B. Robison is entitled to use, under this Order, 6 acre-feet
11 of water on each acre of land, or a total of 877.2 acre-feet on 146.2 acres of
12 land, with the understanding that said claimant can use as much as 1 $\frac{1}{2}$ acre-feet
13 of water on each acre during any one month of the irrigation season or a total
14 of 219.3 acre-feet per month, provided that the total acre footage of water from
15 all sources does not exceed 6 acre-feet per acre of land for the irrigation
16 season. When there is more than sufficient water in the Robison ditch to satisfy
17 his decreed water rights, he is entitled to use such excess under Certificate
18 No. 1928 issued under Permit No. 4043.

19 6. MEASUREMENT OF WATER

20 Should measurement of water become necessary, all measurements of water
21 diverted are to be made at a point where the main ditch enters or becomes adja-
22 cent to the land to be irrigated or as near thereto as practicable; the location
23 if not selected by the State Engineer, to be approved by him. The claimants
24 shall install and maintain at their own expense, substantial and easily operated
25 regulating headgates and measuring devices in the ditch or ditches or channel.
26 Due allowance for losses in ditches will be made by the State Engineer in case
27 it becomes necessary.

28 Priorities are fixed by years and where the years are the same, the
29 priorities are equal.

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7. STOCK WATERING AND DOMESTIC

The right to the diversion and use of water for stock watering and domestic purposes shall be continued by the claimants named herein or their successors in interest at any time during the year that stock are grazing on the range, except as otherwise specified under stock watering rights of appropriation, and such diversions shall be according to the dates of priorities of such users and limited to the quantity of water reasonably necessary for such use.

The amount of water diverted for irrigation purposes shall not be increased by any amount to be used for stock watering and domestic purposes, but the quantity allowed and diverted for irrigation during the irrigation season shall include water for stock watering purposes, and domestic use.

8. CHANGE OF PLACE OF USE

All water allotted under this Order shall be appurtenant to the place of use designated herein. Any water user desiring to change the point of diversion, manner of use, or place of use of the waters allotted herein, must make application to the State Engineer for permission to make the change pursuant to NRS 533.345.

9. RIGHTS OF APPROPRIATION

From the Order of Determination and the documentary evidence presented at the hearing in support thereof, the Court finds that the waters of Kalamazoo Creek are to be divided equally between the two claimants, Reed B. Robison and George Eldridge and Son, Inc., at the location of the present division in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 28, T20N, R66E. The water is carried to the Eldridge property through a ditch about 1.3 miles in length and there placed to beneficial use on 86.26 acres of land. The water appurtenant to the Reed B. Robison property is conveyed through the old channel of Kalamazoo Creek about $\frac{1}{4}$ miles and then by means of a ditch about 2 $\frac{3}{4}$ miles long to some 146.2 acres of land. The amount of water reaching the Reed B. Robison lands, being conveyed about 2.7 miles farther than the George Eldridge and Son, Inc., portion of the water, would naturally be less in amount than that reaching the Eldridge lands, yet is used

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NYS BUILDING
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CARSON CITY, NEVADA
89601
2801A

1 over more land than the Eldridge water. However, the records of the office of
2 the State Engineer show that the lands of Reed B. Robison located in the NW $\frac{1}{4}$ NE $\frac{1}{4}$
3 Section 14 and S $\frac{1}{2}$ SE $\frac{1}{4}$ Section 11, T19N, R66E, also receive water from Meadow and
4 North Creeks under Certificate No. 1930 issued under Permit No. 4041. This
5 certificate was issued in the amount of 1.20 cfs for the irrigation season from
6 April 1 to September 30 of each year. Also, some 13.72 acres of land of George
7 Eldridge and Son, Inc., receive supplemental water supply from Muncy Creek.

8 That Reed B. Robison is the owner of Certificate No. 1928 issued under
9 Permit No. 4043 in the amount of 2.40 cfs of the water of Kalamazoo Creek for
10 irrigation of pasture lands in the NE $\frac{1}{4}$ Section 11 and the W $\frac{1}{2}$ NW $\frac{1}{4}$ Section 12,
11 T19N, R66E. The water right under Certificate No. 1928 is junior in right to
12 the vested rights designated under this Order.

13 That from the records in these proceedings George Eldridge and Son, Inc.,
14 and Reed B. Robison are the lawful successors in interest to, and the owners of,
15 the vested rights to the use of the water of Kalamazoo Creek stream system, the
16 source of water supply, the location of the points of diversion, the year of
17 priority, the cultural acreage, the legal subdivision, section, township and
18 range and duty of water for claimants and appropriators as are listed, stated,
19 and set forth.

20 IV. FULL APPROPRIATION

21 The Court further finds that from all the records in these proceedings, it
22 is determined that the waters of Kalamazoo Creek and its tributaries are fully
23 appropriated during the irrigation season.

24 CONCLUSIONS OF LAW

25 From the evidence presented and received in this matter, and from the
26 foregoing Findings of Fact, the Court makes the following Conclusions of Law:

27 I.

28 That the State Engineer had the right, authority and jurisdiction pursuant
29 to Chapter 533 of Nevada Revised Statutes to make the investigations made by
30 him, receive the proofs and maps, enter and file in his office the original

1 Order of Determination and file a certified copy thereof in this Court, and to
2 determine the relative rights of the claimants and appropriators in and to the
3 waters of Kalamazoo Creek and its tributaries in White Pine County, State of
4 Nevada; that the State Engineer duly made all orders necessary and proper in
5 connection therewith and entered the same in his office as required by Chapter
6 533 of Nevada Revised Statutes. That each and every notice required by law to
7 be given herein to the claimants and appropriators was duly served by the State
8 Engineer in the manner and within the time required by statute, and that the
9 notices contained all of the statements required by law, and that the claimants
10 and appropriators of the waters of the above-named stream system and its tribu-
11 taries duly received the information and notices, as required by law.

12 II.

13 That the Seventh Judicial District Court of the State of Nevada, in and for
14 the County of White Pine had and has jurisdiction to hear and try this matter,
15 and has jurisdiction to make and enter the foregoing Findings of Fact and these
16 Conclusions of Law and enter its Decree herein.

17 III.

18 That George Eldridge and Son, Inc., and Reed B. Robison are the only
19 claimants of vested rights recognized in this Decree and are lawful successors
20 to the appropriators and users of the waters of Kalamazoo Creek and its tribu-
21 taries on the date the Order of Determination was filed with the Clerk of the
22 Court and on the date of the hearing on this matter.

23 IV.

24 That the irrigation season shall begin on March 15th and extend to
25 September 9th of each year, unless otherwise changed in accordance with this
26 Judgment and Decree.

27 V.

28 That the lands irrigated from Kalamazoo Creek are similar to the lands
29 irrigated from nearby Bassett Creek; therefore, the seasonal duty of water from
30 Kalamazoo Creek and its tributaries is herein fixed and shall not exceed:

1 Harvest Crop----6.0 ac-ft/ac./season

2 VI.

3 That each of the claimants shall have the right to divert one-half of the
4 flow of Kalamazoo Creek at the concrete division at a point near the westerly
5 edge of the SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 28, T20N, R66E, but not to exceed the seasonal duty
6 of water as established herein.

7 That the claimants or their successors in interest will not be required
8 to take or use the amount of water allotted to them in a continuous flow, but
9 may cumulate the same or any part thereof in rotation or periodic turn within
10 the seasonal limits, with the approval of the water commissioner and subject to
11 the control and direction of the State Engineer.

12 VII.

13 That should measurement of water become necessary, all measurements of
14 water are to be made at a point where the main ditch enters or becomes adjacent
15 to the land to be irrigated or as near thereto as practicable; the location if
16 not selected by the State Engineer to be approved by him. That the claimants
17 shall install and maintain at their own expense, substantial and easily operated
18 regulating headgates and measuring devices in the ditch or ditches or channel.
19 That due allowance for losses in ditches will be made by the State Engineer in
20 case it becomes necessary.

21 That priorities are fixed by years and where the years are the same, the
22 priorities are equal.

23 VIII.

24 That the right to the diversion and use of the water for stock watering and
25 domestic purposes shall be continued by the claimants named herein or their
26 successors in interest at any time during the year that stock are grazing on the
27 range, except as otherwise specified under stock watering rights of appropria-
28 tion, and such diversions shall be according to the dates of priorities of such
29 users and limited to the quantity of water reasonably necessary for such use.

30 That the amount of water diverted for irrigation purposes shall not be

1 increased by any amount to be used for stock watering and domestic purposes, but
2 the quantity allowed and diverted for irrigation during the irrigation season
3 shall include water for stock watering purposes, and domestic use.

4 IX.

5 That all water allotted under this Decree shall be appurtenant to the place
6 of use designated herein. That any water user desiring to change the point of
7 diversion, manner of use, or place of use of the waters allotted herein must
8 make application to the State Engineer for permission to make the change pursu-
9 ant to Nevada Revised Statutes 533.345.

10 X.

11 That from the Order of Determination and the documentary evidence presented
12 at the hearing in support thereof, the Court finds that the names of the
13 claimants and appropriators of the waters of Kalamazoo Creek and tributaries,
14 the source of the water supply, the manner of use of the water, the means of
15 diversion, the points of diversion for beneficial use, the period of use, the
16 years of priority, the cultural acreages, the places of use, the legal subdivi-
17 sions, sections, townships, ranges, and the duty of water are as listed, stated
18 and set forth hereinabove.

19 XI.

20 That the Order of Determination, as amended herein, filed and caused to be
21 entered of record in this matter, by the State Engineer, should be affirmed.

22 XII.

23 That Kalamazoo Creek is fully appropriated during the irrigation season.

24 XIII.

25 That the Decree to be hereinafter entered should provide that each and
26 every water user of the Kalamazoo Creek stream system and its tributaries and
27 each of their agents, attorneys, servants, and employees, and their successors
28 in interest, and all and every person or persons acting in aid or assistance
29 of the said parties or either of or any of them be, and that each of them is,
30 hereby perpetually enjoined and restrained as follows, to wit:

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DIVISION OF WATER
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DEPARTMENT OF
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NATURAL RESOURCES
CAPITOL COMPLEX
HYE BUILDING
501 S. PAUL STREET
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From at any time diverting or using the flow in whole or in part of any of the water of the Kalamazoo Creek stream system, and its tributaries hereinabove mentioned, except to the extent and in the amount and in the manner and at the time or times set by this Decree to such respective party hereto allotted, allowed, prescribed and determined, or allowed by permits which have been or may hereafter be granted by the State Engineer of the State of Nevada.

From diverting from the natural channel and from using any of the said water for irrigation or for any other purpose in excess of the specific allotment herein set by this decree, or in excess of the specific allotment under a permit granted or that may hereafter be granted by the State Engineer of the State of Nevada.

From diverting from the natural channel and from using any of the said water in any other manner or for any other purpose or purposes or upon any other land or lands than as provided and prescribed by the terms of this Decree or by a permit granted or that may hereafter be granted by the State Engineer of the State of Nevada.

From diverting from the natural channel and from using any of the said water at any other time or times than as specified and provided by the terms of this Decree or by a permit granted or that may hereafter be granted by the State Engineer of the State of Nevada.

From in any manner meddling with, opening, closing, changing, injuring, or interfering with any headgates, weirs, water box, flume or measuring device, placed, installed, or established by the State Engineer or by his authority or direction, unless such act be done by the permission or authority of the Water Commissioner, if during the period of his regulation or control of said water, or if not done during such period, then by virtue of the allowances, authority, terms and provisions of this Decree or by a permit granted or that may hereafter be granted by the State Engineer of the State of Nevada.

JUDGMENT AND DECREE

THEREFORE, BY REASON OF THE FINDINGS OF FACT, AND CONCLUSIONS OF LAW

STATE OF NEVADA
DIVISION OF WATER
RESOURCES
DEPARTMENT OF
CONSERVATION AND
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89710
2011A

1 HEREINBEFORE SET FORTH, IT IS ORDERED, ADJUDGED AND DECREED BY THE COURT AS
2 FOLLOWS:

3 I.

4 That the State Engineer made all necessary and proper orders as required by
5 law, and that each and every notice required by law was duly given to the
6 claimants and appropriators; that the claimants and appropriators had full
7 opportunity to appear and be heard in objection to and file exceptions to the
8 Order of Determination; that George Eldridge and Son, Inc., and Reed B. Robison
9 are the only claimants of vested water rights recognized in this Decree as
10 appropriators of the waters of Kalamazoo Creek and its tributaries and that this
11 Decree determines the limit and extent of all vested water rights on the source.

12 That the court has full and complete jurisdiction to hear, try, and deter-
13 mine this matter and to make and enter herein this decree.

14 II.

15 That the waters of Kalamazoo Creek and its tributaries are being placed to
16 beneficial use by George Eldridge and Son, Inc., and Reed B. Robison for irriga-
17 tion, stock watering and domestic purposes.

18 III.

19 That the irrigation season shall begin on March 15th and extend to
20 September 15th of each year, unless otherwise determined pursuant to Finding
21 No. III (2) hereof.

22 IV.

23 That the seasonal duty of water from Kalamazoo Creek and its tributaries is
24 herein fixed and shall not exceed:

25 Harvest Crop---6.0 ac-ft/ac./season

26 V.

27 That each of the claimants shall have the right to divert one-half the flow
28 of Kalamazoo Creek at the concrete diversion box at a point near the westerly
29 edge of the SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 28, T20N, R66E, but not to exceed the seasonal duty
30 of water as established herein.

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That the claimants or their successors in interest will not be required to take or use the amount of water allotted to them in a continuous flow, but may accumulate the same or any part thereof in rotation or periodic turn within the seasonal limits, with the approval of the water commissioner and subject to the control and direction of the State Engineer.

VI.

That should measurement of water become necessary, all measurements of water diverted are to be made at a point where the main ditch enters or becomes adjacent to the land to be irrigated or as near thereto as practicable; the location if not selected by the State Engineer, to be approved by him. That the claimants shall install and maintain at their own expense, substantial and easily operated regulating headgates and measuring devices in the ditch or ditches or channel. That due allowance for losses in ditches will be made by the State Engineer in case it becomes necessary.

That priorities are fixed by years and where the years are the same, the priorities are equal.

VII.

That the right to the diversion and use of water for stock watering and domestic purposes shall be continued by the claimants named herein or their successors in interest at any time during the year that stock are grazing on the range, except as otherwise specified under stock watering rights of appropriation, and such diversions shall be according to the dates of priorities of such users and limited to the quantity of water reasonably necessary for such use.

That the amount of water diverted for irrigation purposes shall not be increased by any amount to be used for stock watering and domestic purposes, but the quantity allowed and diverted for irrigation during the irrigation season shall include water for stock watering purposes, and domestic use.

VIII.

That all water allotted under this Decree shall be appurtenant to the place of use designated herein. That any water user desiring to change the point of

1 diversion, manner of use, or place of use of the waters allotted herein, must
 2 make application to the State Engineer for permission to make the change pursuant
 3 to NRS 533.345.

4 IX.

5 That the following tabulation lists the rights as determined by this Decree:

6 Claimant: George Eldridge and Son, Inc. Proof No. 02332

7 Source: Kalamazoo Creek stream system

8 Point of Diversion: In the SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 28, T20N, R66E, or at a point from
 9 whence the W $\frac{1}{2}$ corner of Section 27, bears N. 50 $^{\circ}$ E., 3,890
feet.

10 Amount of Diversion: The waters of Kalamazoo Creek Stream System are divided by
 11 a concrete diversion box at the point of diversion,
 12 one-half of such water to be conveyed through the Eldridge
ditch to be used under the decreed right herein established
and Permit No. 10808.

Year of Priority	Cultural Acres	Description				Duty of Water	
		Subdivision	Section	Township North	Range East	C.F.S.	Acre-Feet
Prior to 1900	0.70	NW $\frac{1}{4}$ SE $\frac{1}{4}$	22	20	66	0.011	4.20
"	39.28	SW $\frac{1}{4}$ SE $\frac{1}{4}$	22	20	66	0.646	235.68
"	28.26	SE $\frac{1}{4}$ SE $\frac{1}{4}$	22	20	66	0.465	169.56
"	6.13	SE $\frac{1}{4}$ SW $\frac{1}{4}$	22	20	66	0.101	36.78
"	1.79	NE $\frac{1}{4}$ NW $\frac{1}{4}$	27	20	66	0.029	10.74
"	<u>10.10</u>	NW $\frac{1}{4}$ NE $\frac{1}{4}$	27	20	66	<u>0.166</u>	<u>60.60</u>
Total	86.26					1.418	517.56

23 Claimant: Reed B. Robison Proof No. 02305

24 Source: Kalamazoo Creek stream system

25 Point of Diversion: In the NW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 34, T20N, R66E, MDM, or at a point
 26 from which the NE corner of said Section 34 bears N. 59 $^{\circ}$
50' E., 1,672 feet.

27 Amount of Diversion: The waters of Kalamazoo Creek are divided by a concrete
 28 diversion box located within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 28, T20N,
 29 R66E, one-half of such water down the old channel and
thence diverted through the Robison ditch to be used under
 30 the decreed rights herein established and Certificate
No. 1928 issued under Permit No. 4043.

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	<u>Cultural Acreage</u>	<u>Subdivision</u>	<u>Section</u>	<u>Township North</u>	<u>Range East</u>
1					
2	40.00	SW $\frac{1}{4}$ NW $\frac{1}{4}$	12	19	66
3	40.00	NW $\frac{1}{4}$ NW $\frac{1}{4}$	12	19	66
4	40.00	SE $\frac{1}{4}$ NE $\frac{1}{4}$	11	19	66
5	40.00	NE $\frac{1}{4}$ NE $\frac{1}{4}$	11	19	66
6	40.00	SW $\frac{1}{4}$ NE $\frac{1}{4}$	11	19	66
7	<u>40.00</u>	NW $\frac{1}{4}$ NE $\frac{1}{4}$	11	19	66

240.00 Acres Total

Certificate No. 1930

Permit No. 4041

Priority: June 29, 1916

Claimant: Reed B. Robison

Source: Meadow Creek and North Creek

Point of Diversion: NW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 14, T19N, R66E

Amount of Appropriation: 1.20 cfs or 435 acre-feet per season

Period of Use: April 1 to September 30

	<u>Cultural Acreage</u>	<u>Subdivision</u>	<u>Section</u>	<u>Township North</u>	<u>Range East</u>
17					
18					
19	40.00	SE $\frac{1}{4}$ SE $\frac{1}{4}$	11	19	66
20	40.00	SW $\frac{1}{4}$ SE $\frac{1}{4}$	11	19	66
21	<u>40.00</u>	NW $\frac{1}{4}$ NE $\frac{1}{4}$	14	19	66

120.00 Acres Total

The Order of Determination as amended and set forth herein, is affirmed.

Accordingly, it is hereby Ordered, Adjudged, and Decreed that the relative rights of the users in and to the waters of Kalamazoo Creek and its tributaries be, and the same hereby are, determined as stated hereinabove.

It is further Ordered, Adjudged, and Decreed that each and every water user and claimant to the Kalamazoo Creek stream system and its tributaries and each of their agents, attorneys, servants, and employees, and their successors in interest and all and every person or persons acting in aid or assistance of

1 the said parties or either of or any of them be, and that each of them is, hereby
2 perpetually enjoined and restrained as follows, to wit:

3 (a) From at any time diverting or using any of the water of the Kalamazoo
4 Creek stream system and its tributaries hereinbefore mentioned, except to
5 the extent and in the amount and in the manner and at the time or times set
6 by this Decree to such respective party hereto allotted, allowed, pre-
7 scribed and determined, or allowed by permits which have been or may here-
8 after be granted by the State Engineer of the State of Nevada.

9 (b) From diverting from the natural channel and from using any of the said
10 water for irrigation or for any other purpose, in excess of the specific
11 allotment herein set by this Decree, or in excess of the specific allotment
12 under a permit granted or that may hereafter be granted by the State
13 Engineer of the State of Nevada.

14 (c) From diverting from the natural channel and from using any of the said
15 water in any other manner or for any other purpose or purposes or upon any
16 other land or lands than as provided and prescribed by the terms of this
17 Decree or by a permit granted or that may hereafter be granted by the State
18 Engineer of the State of Nevada.

19 (d) From diverting from the natural channel and from using any of the said
20 water at any other time or times than as specified and provided by the
21 terms of this Decree or by a permit granted or that may hereafter be
22 granted by the State Engineer of the State of Nevada.

23 (e) From in any manner meddling with, opening, closing, changing, injur-
24 ing, or interfering with any headgates, weirs, water box, flume, or
25 measuring device, placed, installed or established by the State Engineer or
26 by his authority or direction, unless such act be done by the permission or
27 authority of the Water Commissioner, if during the period of his regulation
28 or control of said water, or if not done during such period, then by virtue
29 of the allowances, authority, terms and provisions of this Decree or by a
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permit granted or that may hereafter be granted by the State Engineer of the State of Nevada.

Dated this 29th day of Sept., 1983.

Merlyn A. Hoyt
District Judge

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Case No. 5436

MAINT. JUDGE JOHNSON

BY *[Signature]*
DEPUTY

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IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WHITE PINE

IN THE MATTER OF THE DETERMINATION)
OF THE RELATIVE RIGHTS IN AND TO)
THE WATERS OF KALAMAZOO CREEK AND)
ITS TRIBUTARIES IN WHITE PINE)
COUNTY, STATE OF NEVADA.)

NOTICE OF
ENTRY OF JUDGMENT

On September 29, 1983, the Court entered its Findings of Fact, Conclusions of Law, Judgment and Decree in the above-entitled matter. A copy of the same is attached hereto. This decree is provided to the claimants in lieu of a certificate pursuant to NRS 533.265(4).

DATED October 3, 1983.

BRIAN MCKAY
Attorney General

By *[Signature]*
GEORGE BENESCH
Deputy Attorney General

CERTIFICATE OF MAILING

On October 3, 1983, at Carson City, Nevada, I mailed a copy of the Notice of Entry of Judgment to:

George Eldridge and Son, Inc.
c/o Brent Eldridge
S.R.1, Box 42
Ely, NV 89301

Reed Robison
S.R. 1, Box 41
Ely, NV 89301

[Signature]
Berta Lane, an Employee
of the State Engineer