

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF NYE **FILED**

OCT 25 1957

1 IN THE MATTER OF THE DETERMINATION OF THE
2 RELATIVE RIGHTS OF CLAIMANTS AND APPRO-
3 PRIATORS IN AND TO THE WATERS OF LAST
4 CHANGE, OPHIR, WISCONSIN AND SUMMIT CREEKS
5 AND THEIR TRIBUTARIES IN NYE COUNTY, STATE
6 OF NEVADA.

Rudolph Murphy County Clerk
} NO. 6323

7 FINDINGS OF FACT, CONCLUSIONS OF LAW,
8 JUDGMENT AND DECREE

9 The above entitled matter came on regularly for hearing in the
10 above entitled Court on the 29th day of August, 1957, before Hon.
11 Peter Breen, District Judge of the above entitled court presiding,
12 the entire stream system being within Nye County, State of Nevada,
13 and he being the Judge designated by NRS 533.165 to hear and having
14 jurisdiction to hear the above-entitled matter, upon the State
15 Engineer's Final Order Of Determination of the relative rights of
16 the claimants and petitioner to the use of the waters of the stream
17 of the Last Chance, Ophir, Wisconsin and Summit Creeks and their
18 tributaries, which Final Order Of Determination had been duly filed
19 by the State Engineer of the State of Nevada.

20 There being no exceptions to the Final Order of Determination
21 filed or otherwise submitted by the Claimant or Petitioner or any
22 other person or persons, the matter was submitted to the Court for
23 its decision.

24 Paul C. Parraguirre, Esq., Deputy Attorney General of the State
25 of Nevada, and Victor Stafford, Deputy State Engineer, of the Office
26 of the State Engineer of the State of Nevada, appeared in the
27 hearing and proceedings on behalf of the State of Nevada, and the
28 Office of the State Engineer, however, neither the Claimant nor
29 Petitioner entered an appearance at the hearing, notwithstanding
30 the receipt of a certified copy of the Order setting forth the time
31 and place for the hearing on the Order of Determination.

32 The Deputy Attorney General thereupon, at the hearing, offered
and there were received in evidence in support of the rights of the
Claimant, as set forth in the Final Order of Determination, verified

1 affidavits, files and records of the State Engineer's office res-
2 specting the rights of the Claimant to the use of the waters of the
3 above entitled stream system. Victor Stafford, Deputy State Engineer
4 of the State of Nevada, being first duly sworn and qualified, iden-
5 tified and explained the records and files of the State Engineer's
6 office which were introduced in evidence.

7 The Court, having duly considered the entire record and evidence
8 introduced, and there being no exceptions filed by the Claimant or
9 any other person or persons to the Final Order of Determination of
10 the State Engineer, and being duly advised in the premises, now
11 makes and enters its Findings of Fact, Conclusions of Law, and
12 Judgment and Decree.

13 FINDINGS OF FACT

14 I.

15 That on September 19, 1951, WILL J. FARRINGTON, filed with
16 Hugh A. Shamberger, State Engineer of the State of Nevada, a
17 petition requesting the determination of the relative rights of the
18 various users of Last Canyon Creek, Ophir Canyon Creek, Wisconsin
19 Canyon Creek and Summit Canyon Creek and tributaries thereto,
20 situate in NYE County, State of Nevada.

21 That the State Engineer, through his assistant, Robert S.
22 Leighton, thereupon and in accordance with the provisions of NRS
23 533.090 made an investigation of the facts and conditions of and
24 concerning the above-named stream systems and their tributaries for
25 the purpose of disclosing whether the determination of such rights
26 was justified, and filed his report thereon with the State Engineer
27 of the State of Nevada on October 18, 1951. The report of the
28 facts and conditions disclosed that a determination of the relative
29 rights was justified, and that the State Engineer made and entered
30 his Order on October 24, 1951, granting the petition for the deter-
31 mination of such relative rights in and to the waters of Last Chance,
32 Ophir, Wisconsin, and Summit Creeks and their tributaries.

1 That as a result of the State Engineer's Investigation Report,
2 it was found that the only proof of appropriation of the waters of
3 Last Chance, Ophir, Wisconsin and Summit Creeks was filed on
4 February 14, 1908, by William Rogers.

5 That on November 14, 1951, the petitioner, Will J. Farrington,
6 pursuant to NRS 533.215, did waive in writing the provisions with
7 reference to notices, and the service and publication thereof; that
8 on November 8, 1951, Carl V. Haas did also waive in writing the
9 notices and the service and publication thereof; so that the State
10 Engineer could make a Final Order of Determination without the
11 giving, serving or publication of any notices otherwise required.

12 That on the 26th day of October, 1951, the State Engineer did
13 publish a notice of Order and Proceedings to Determine Water Rights
14 in and to the Last Chance, Ophir, Wisconsin and Summit Creeks, and
15 their tributaries, situate in Nye County, State of Nevada, and
16 that there was filed in the Office of the State Engineer an affida-
17 vit of the publisher of the Tonopah Times-Bonanza exemplifying the
18 proof of publication of Notice of Order and Proceedings.

19 The Abstract of Title filed in the Office of the State Engineer,
20 State of Nevada, discloses that the original claimant and petitioner,
21 WILL J. FARRINGTON, conveyed all of his right, title and interest
22 to R O Incorporated, the successor in interest, as witnessed by
23 an instrument filed in the Office of the State Engineer, State
24 of Nevada, November 10, 1955.

25 That the State Engineer, in accordance with the provisions of
26 NRS 533.160, entered in the records of his office, on the 12th day
27 of June, 1957, a Final Order of Determination, defining the rights
28 to the waters of Last Chance, Ophir, Wisconsin and Summit Creeks
29 and their tributaries.

30 That upon the filing of the Final Order of Determination with
31 the Clerk of the Court of Nye County, the Court made and entered an
32 Order on the 20th day of June, 1957, setting a time for the hearing

1 of any exception to the Final Order of Determination, on Thursday,
2 the 29th day of August, 1957, at 10:00 o'clock in the forenoon,
3 at the County Court House at Tonopah, Nevada.

4 That the State Engineer, on June 25th, 1957, gave notice to
5 R O Incorporated, through its attorney, GORDON C. SHELLEY, of Reno,
6 Nevada, by service of a certified copy of the order setting the
7 time for the hearing of the above-entitled matter.

8 The Court finds that all and singular the proceedings, orders
9 and notices required by Chapter 533 of NRS were duly had, made and
10 given as required by Statute, and that all and singular the matters
11 and things contained in the record were done, performed, given and
12 made in strict compliance with the Statute, and that the Court had
13 and has jurisdiction to hear and determine this matter.

14 II.

15 The Court Further Finds, that the Last Chance, Ophir, Wisconsin
16 and Summit Creeks and their tributaries are situated wholly within
17 Nye County, State of Nevada.

18 The Court further finds, that the name of the claimant and
19 appropriator, the duty of water, the measurement of water, the
20 length of the irrigation season, stockwatering and the domestic use
21 of water, the change of place of use, and the right of appropriation,
22 all as set forth in the Final Order of Determination, are true,
23 proper and correct, and that all and singular the same should be
24 approved and confirmed.

25 I. PREFACE

26 On September 19, 1951, Will J. Farrington, a water user on
27 Last Chance, Ophir, Wisconsin and Summit Creeks submitted a petition
28 to the State Engineer requesting a determination of the relative
29 rights of claimants in and to the waters of said stream system. On
30 October 12, 1951, an investigation was made by Robert S. Leighton,
31 Assistant State Engineer, and J. A. Millar, Office Engineer, which
32 disclosed that facts and conditions justified the granting of said

1 petition. On October 24, 1951, the State Engineer entered an
2 official order granting said petition and made proper arrangements
3 to proceed with the determination under the provisions of NRS
4 533.000.

5 The Claimant and Appropriator, in conformity with NRS 533.215,
6 waived in writing the provisions of the above-mentioned act with
7 reference to notices and the service and publication thereof.

8 II. CLAIMANTS

9 The investigation above-referred to disclosed that the flow
10 of water from Last Chance, Ophir, Wisconsin, Summit Creeks and their
11 tributaries, is being placed to beneficial use by one ranch now
12 owned by R O Incorporated. The Proof of Appropriation filed in
13 this office claims vested rights initiated in the year 1875.

14 III. DUTY OF WATER

15 The duty of water herein fixed is 4 acre-feet per acre per
16 annum with a maximum diversion of 2.5 c.f.s. for each 100 acres
17 irrigated. The duty may be changed or altered by the court within
18 a period of three years after entry of the decree, as provided for
19 in NRS 533.210.

20 Last Chance, Ophir, Wisconsin and Summit Creeks, typical of
21 Nevada's mountain streams fed by melting snows, have high spring
22 runoffs which recede during the early summer months. Due to the
23 unstable characteristics of the streams' flow, the claimants named
24 herein, or their successors in interest, shall be allowed to increase
25 the rate of direct flow diversions to the maximum as herein allowed
26 so as to satisfy any immediate needs of the growing crops. They
27 may, at their own option, rotate the allotted water between the
28 various fields having a decreed water right at such times and in
29 such quantities as is necessary to place the water to the greatest
30 beneficial use.

31 IV. MEASUREMENT OF WATER

32 All water diverted from Last Chance, Ophir, Wisconsin, and

1 Summit Creeks and their tributaries for irrigation purposes shall
2 be measured at a point where the water enters or becomes adjacent
3 to the land to be irrigated or as near thereto as practical.

4 Substantial headgates and weirs to facilitate the measurement
5 and control of water must be installed wherever necessary to insure
6 proper distribution in accordance with the rights defined herein.

7 V. IRRIGATION SEASON

8 Water for irrigation purposes may be diverted from April 1st
9 to August 31st of each year, provided that the total amount diver-
10 ted during any calendar year shall not exceed the acre-foot duty.

11 VI. STOCKWATERING AND DOMESTIC

12 The claimant named herein, or their successors in interest,
13 shall be entitled to a reasonable diversion and use of water for
14 stockwatering and domestic purposes at any time during the year.

15 VII. CHANGE OF PLACE OF USE

16 All waters allotted under this order shall be appurtenant to
17 the place of places of use designated herein. Any water user
18 desiring to change the place of use of the waters allotted herein
19 must make application to the State Engineer for permission to make
20 the change pursuant to law.

21 VIII. RIGHTS OF APPROPRIATION

22 From the Final Order of Determination and the evidence, both
23 oral and documentary, submitted in support thereof, the Court finds
24 that the name of the claimant and appropriator of the waters of
25 Last Chance, Ophir, Wisconsin and Summit Creeks and their tribu-
26 taries, the source of the water supply, the means of diversion,
27 the points of diversion for beneficial use, the year of priority,
28 the cultural acreage, and place of use, the legal subdivision,
29 sections, township, range and the duty of water, all as listed,
30 stated and set forth in the Final Order of Determination, are
31 proper, full, true and correct, and that it should, and is hereby
32 confirmed, settled and allowed as herein fully set forth.

CONCLUSIONS OF LAW

1
2 From the evidence presented and received in this matter, and
3 from the foregoing FINDINGS OF FACT, the Court makes the following
4 Conclusions of Law:

I.

5
6 That the State Engineer had the right, authority and juris-
7 diction pursuant to Chapter 533 of NRS to make the investigations
8 made by him, conduct the hearings had by him, receive the proofs
9 and maps, hear the evidence presented to him, and prepare, make,
10 enter and file in his office the original Final Order of Determina-
11 tion and file a certified copy thereof in this Court, and to
12 determine in the Final Order of Determination, the relative rights
13 of the claimants and appropriators in and to the waters of Last
14 Chance, Ophir, Wisconsin and Summit Creeks and their tributaries
15 in Nye County, State of Nevada; that the State Engineer duly made
16 all orders necessary and proper in connection therewith and entered
17 the same in his office as required by Chapter 533 of NRS; that each
18 and every notice required by law to be given herein to the claimants
19 and appropriators was duly served by the State Engineer in the
20 manner and within the time required by statute, and that the
21 notices contained all of the statements required by law, and that
22 the claimants and appropriators of the waters of the above-named
23 stream system and their tributaries duly received the information
24 and notices required by law herein.

II.

25
26 THAT THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF
27 NEVADA IN AND FOR THE COUNTY OF NYE, had jurisdiction to find,
28 make and enter the foregoing Findings of Fact and these Conclusions
29 of Law, and enter its decree herein.

III.

30
31 That R O Incorporated, constitutes the claimant and the only
32 claimant who is now the appropriator and user of the waters of

1 Last Chance, Ophir, Wisconsin and Summit Creeks and their tribu-
2 taries on the date the Final Order of Determination was filed with
3 the Clerk of this Court and on the date of the trial and hearing
4 of this matter.

IV.

5
6 That the R O Incorporated, as claimant of the waters of Last
7 Chance, Ophir, Wisconsin and Summit Creeks and their tributaries,
8 by and through the means of diversion named herein, and its succes-
9 sors in interest, are claimants and appropriators of and to the
10 waters of the above-named stream systems; that R O Incorporated
11 and its predecessors in interest have continually from the date of
12 appropriation or priority, when such water was available for bene-
13 ficial use, diverted all of such quantity of water from the above-
14 named stream systems, and applied the same to beneficial use as
15 alleged in the Final Order of Determination.

V.

16
17 That the duty of water should be fixed in the Decree as
18 4 acre-feet per acre per annum, with a maximum diversion of 2.5
19 c.f.s. for each 100 acres irrigated.

VI.

20
21 That all waters allocated in the decree shall be appurtenant
22 to the place or places of use designated herein, and in the event
23 that any water user desiring to change the place of use of the
24 water allotted herein, must make application to the State Engineer
25 for permission to make the change pursuant to law.

VII.

26
27 That except where specifically otherwise ordered herein or
28 in the Decree, the Final Order of Determination made, filed and
29 caused to be entered of record in this matter by the State Engineer
30 should be affirmed.

JUDGMENT AND DECREE

31
32 THEREFORE, BY REASON OF THE FINDINGS OF FACT AND CONCLUSIONS

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

I.

3
4 That the State Engineer made all necessary and proper orders
5 herein as required by law, and that each and every notice required
6 by law was duly given to the claimant; that the claimant had full
7 opportunity to appear and be heard in objection to and file excep-
8 tions to the Final Order of Determination herein; that the claimant
9 is the only claimant of the waters of Last Chance, Ophir, Wisconsin
10 and Summit Creeks and their tributaries.

11 That the Court has full and complete jurisdiction to hear,
12 try and determine this matter, and to make and enter herein this
13 Decree.

II.

14
15 That R O Incorporated is the successor in interest to the
16 vested property rights of their predecessors in interest.

III.

17
18 That the flow of water from Last Chance, Ophir, Wisconsin
19 and Summit Creeks and their tributaries is being placed to a bene-
20 ficial use by a ranch now owned by R O Incorporated.

21 That the proof of appropriation filed in the office of the
22 State Engineer claims vested rights initiated in the year 1875.

IV.

23
24 That the duty of water is hereby adjudged, decreed and fixed
25 at 4 acre-feet per acre per annum, with a maximum diversion of 2.5
26 c.f.s. for each 100 acres of land irrigated; that the duty may be
27 changed or altered by the court within a period of 3 years after
28 entry of this decree pursuant to NRS 533.210; that the claimant or
29 successor in interest shall be allowed to increase the rate of
30 direct flow diversions to the maximum, as herein allowed, to satisfy
31 any immediate needs of the growing crops.
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V.

That the claimant or successor in interest shall have the right, at his own option, to rotate the allotted water between the various fields having a decreed water right at such times and in such quantities as is necessary to place the water to the greatest beneficial use.

VI.

That all waters diverted from Last Chance, Ophir, Wisconsin, and Summit Creeks and their tributaries for irrigation purposes shall be measured at a point where the water enters or becomes adjacent to the land irrigated or as near thereto as practical.

That substantial headgates and weirs to facilitate the measurement and control of water must be installed wherever necessary to insure proper distribution in accordance with the rights herein defined.

VII.

That water for irrigation purposes may be diverted from April 1st to August 31st of each year, provided that the total amount diverted during any calendar year shall not exceed the acre-foot duty of 4 acre-feet per acre per annum.

VIII.

That the claimant or successors in interest shall be entitled to a reasonable diversion and use of water for stockwatering and domestic purposes at any time during the year.

IX.

That the waters allocated in the Decree shall be appurtenant to the place or places of use as herein designated; that any water user desiring to change the place of use of the waters allotted herein, shall make application to the State Engineer for permission to make the change pursuant to law.

X.

That no person or persons holding a right of appropriation

1 not herein vested is entitled to receive any water from Last Chance,
 2 Ophir, Wisconsin, or Summit Creeks, or their tributaries, to the
 3 detriment of the rights herein defined.

4 That the name of the claimant of the waters of Last Chance,
 5 Ophir, Wisconsin and Summit Creeks and their tributaries, being
 6 the source of water supply, the means of diversion from the source
 7 of supply for beneficial use, the points of diversion, the year of
 8 priority, the cultural acreage or place of use, the use, the period
 9 of use, the legal subdivision, sections, township and range, the
 10 duty of water and the number of cubic feet of water per second per
 11 acre irrigated by the claimant and appropriator is hereby adjudged
 12 as follows, to-wit:

13 Claimant: R O Incorporated
 14 Source: Last Chance, Ophir, Wisconsin and Summit Creeks
 15 Use: Irrigation, Stockwatering and Domestic
 16 Means of
 17 Diversion: Ditches
 18 Point of
 19 Diversion: In the SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 6, T. 12 N., R. 43 E., M.D.B.&M.,
 or at a point from which the S.W. corner of said Section
 6 bears S. 27° 22' W., 3472.0 feet.
 20 Class of
 21 Culture: Pasture and Hay
 22 Period of
 23 Use: April 1st to August 31st of each year

24	25	26	27	28	29	30	31	32	Duty of Water	
									Ac.	Ft.
Prior-	Cultural	Sub-		Twp.	Rge.	Max.	Div.			
ity	Acreage	division	Sec.	N.	E.	c.f.s.	per	annum		
1875	40.00	NW $\frac{1}{4}$ NE $\frac{1}{4}$	3	12	43	1.00		160.0		
"	80.00	S $\frac{1}{2}$ NW $\frac{1}{4}$	3	12	43	2.00		320.0		
"	40.00	NW $\frac{1}{4}$ SW $\frac{1}{4}$	3	12	43	1.00		160.0		
"	80.00	S $\frac{1}{2}$ SW $\frac{1}{4}$	3	12	43	2.00		320.0		
"	40.00	SW $\frac{1}{4}$ SE $\frac{1}{4}$	3	12	43	1.00		160.0		
"	80.00	E $\frac{1}{2}$ SE $\frac{1}{4}$	4	12	43	2.00		320.0		
"	80.00	N $\frac{1}{2}$ NE $\frac{1}{4}$	9	12	43	2.00		320.0		

continued:

	Prior-ity	Cultural Acreage	Sub-division	Sec.	Twp. N.	Rge. E.	Max. Div. c.f.s.	Duty of Water Ac. Ft. per annum
1	1875	20.00	SE $\frac{1}{4}$ NE $\frac{1}{4}$	9	12	43	1.00	160.0
2	"	80.00	N $\frac{1}{2}$ NW $\frac{1}{4}$	10	12	43	2.00	320.0
3	"	60.00	S $\frac{1}{2}$ NW $\frac{1}{4}$	10	12	43	1.50	240.0
4	"	40.00	NW $\frac{1}{4}$ NE $\frac{1}{4}$	10	12	43	1.00	160.0
5								
6								
7								
8	TOTAL	660.00					16.50	2,640.0

DONE IN OPEN COURT this 29th day of AUGUST, 1957.

Peter Breen

 PETER BREEN
 District Judge

Certificate of Clerk

State of Nevada, }
 COUNTY OF NYE } ss.

I, EUDORA V. MURPHY, County Clerk of Nye County, State of Nevada, and Ex-Officio Clerk of the District Court of the Fifth Judicial District of the State of Nevada, in and for the County of Nye, do hereby certify the foregoing and annexed to be a true and correct copy of "FINDINGS OF FACT, CONCLUSIONS OF LAW, JUDGMENT AND DECREE".

IN THE MATTER OF THE DETERMINATION OF THE RELATIVE RIGHTS OF CLAIMANTS AND APPROPRIATORS IN AND TO THE WATERS OF LAST CHANCE, OPHIR, WISCONSIN AND SUMMIT CREEKS AND THEIR TRIBUTARIES IN NYE COUNTY, STATE OF NEVADA, Case No.

6323-

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

Attest my hand and seal of said Court, this 25th

day of October A. D., 19 57

Eudora V. Murphy Clerk

By _____ Deputy