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No. 293400

Dept. No. 2

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 MCEWEN CREEK AND ITS)
TRIBUTARIES IN WASHOE COUNTY,)
STATE OF NEVADA.)

FILED
AUG 7 10 36 AM '74
H.K. DECATUR
BY F. KOONTZ
CLERK

FINDINGS OF FACT, CONCLUSIONS OF LAW
JUDGMENT AND DECREE

This matter came on regularly for hearing on the 6th day of June, 1974, before the Honorable John W. Barrett, District Judge presiding, the portion of McEwen Creek and its tributaries exemplified in these proceedings, being within Washoe County, State of Nevada, and he being the Judge designated by NRS 533.156 to hear and having jurisdiction to hear the above-entitled matter, upon the State Engineer's determination of the relative rights of of the petitioner and claimants to the use of the waters of the stream system of McEwen Creek and its tributaries, which Order of Determination and all related documentary evidence had been filed by the State Engineer. There being no exceptions to the Order of Determination filed or otherwise submitted to the Court by the claimants, petitioners, or any other person or persons at least 5 days prior to the date set for hearing as provided for under NRS 533.170, the matter was submitted to the Court for its decision.

Ross de Lipkau, Deputy Attorney General, Starr Hill, Jr.
Surface Water Engineer, L. Edward Parmenter, Adjudication Engineer

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appeared in the hearing and proceedings on behalf of the State of Nevada and the office of the State Engineer.

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

Ross de Lipkau, thereupon, at the hearing, offered verified affidavits, files and records from the State Engineer's Office, all contained in the Order of Determination, which were entered as evidence in support of the rights of the claimants in and to the above-named stream system.

The Court, having duly considered the entire record and the evidence introduced and received, directed that Findings of Fact, Conclusions of Law, and Judgment and Decree be entered accordingly.

FINDINGS OF FACT

I.

That on October 22, 1971, the State Engineer, after investigating the facts, and conditions in the field, determined they warranted the initiation of proceedings to determine the relative rights of claimant to the waters of McEwen Creek and its tributaries in Washoe County, Nevada.

That as a result of the State Engineer's investigation report, it was found that the waters of McEwen Creek and its tributaries are being placed to beneficial use for irrigation and domestic purposes as affirmed by Amended Proof of Appropriation 02751, filed in the Office of the State Engineer. Evidence contained in the title documents submitted by the claimants, relative to the land, indicates the present claimant and appropriator, List Cattle Company, is the successor in interest to vested rights initiated by its predecessors.

STATE OF NEVADA
DEPARTMENT OF
CONSERVATION AND
NATURAL RESOURCES
RVE BUILDING
201 SO. FALL ST.
CARSON CITY, NEVADA
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That on the 2nd day of December, 1971, and once each week for four succeeding weeks, the State Engineer did cause to be published a Notice of Order and Proceedings to Determine Water Rights in and to the waters of McEwen Creek and its tributaries in Washoe County, State of Nevada, and that notice was duly given to all claimants as required by law. That on the 6th day of January, 1972, there was filed in the Office of the State Engineer an affidavit of the publisher of the Sparks Tribune, exemplifying the Proof of Publication of Notice of Order and Proceedings.

That the State Engineer did cause to be published on the 6th day of January, 1972, and once each week for four succeeding weeks, a Notice of Order for Taking Proofs to Determine Water Rights, in and to the waters of McEwen Creek and its tributaries in Washoe County, State of Nevada, and that notice was duly given to all claimants as required by law. That on the 10th day of February, 1972, there was filed in the Office of the State Engineer an affidavit of the publisher of the Sparks Tribune, exemplifying the Proof of Publication of the Notice of Order Taking Proofs.

That the State Engineer, in accordance with NRS 533.140, did enter and filed in the records of his office on the 9th day of November, 1973, an Abstract of Claims, a Preliminary Order of Determination, and a Notice and Order Fixing and Setting Time and Place of Inspection, stating when and where the evidence taken or filed with him and the proofs of claims were open to the inspection of all interested persons; and that notice thereof was duly given to the claimant as required by law.

That the State Engineer, in accordance with NRS 533.160 entered in the records of his office, on the 8th day of March, 1974, an Order of Determination defining the rights of the claimant and

1 appropriator to the waters of McEwen Creek and its tributaries
2 and that notice thereof was duly given to the claimant as required
3 by law.

4 That upon the filing of the certified copy of the Order
5 of Determination and the original evidence with the Clerk of the
6 Court of Washoe County, State of Nevada, the Court, at the request
7 of the State Engineer, made and entered an Order on the 27th day
8 of March, 1974, setting a time for hearing of any exceptions to
9 the Order of Determination on Thursday, the 6th day of June, 1974,
10 at 1:30 o'clock of the afternoon in the courtroom of the Court
11 House in Reno, Washoe County, Nevada; and that the clerk of said
12 Court did furnish the State Engineer with a certified copy thereof.

13 That the State Engineer, in accordance with NRS 533.165,
14 gave notice to the claimant by service of a certified copy of the
15 Court Order Setting Time for Hearing.

16 That on the 2nd day of April, 1974, and once each week
17 for four succeeding weeks, the State Engineer did cause to be
18 published the Court Order Setting Time for Hearing, and that there-
19 after on the 1st day of May, 1974, there was filed in the Office
20 of the State Engineer an affidavit of the publisher of the Nevada
21 State Journal, exemplifying the Proof of Publication of the Court
22 Order Setting time for Hearing.

23 That the Court finds that all and singular, the Proceed-
24 ings, Orders and Notices required by Chapter 533 of NRS were duly
25 had, made and given as required by law, and that all and singular,
26 the matters and things contained in the record were done, performed,
27 given and made in strict compliance with the statute, and that this
28 Court had and has jurisdiction to hear and determine this matter.

29 II.

30 The Court Further Finds: That the portion of McEwen

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Creek and its tributaries exemplified in these proceedings, is situated wholly within Washoe County, State of Nevada.

III.

The Court Further Finds: That the name of the claimant and appropriator, the source of water supply, the period of use, the duty of water, the diversion of water and method of use, measurement of water, domestic use, change of place of use, and the rights of appropriation of the water, all as set forth in the Order of Determination are true, proper and correct, and all and singular, the same should be approved and confirmed.

I. PREFACE

On October 22, 1971, the State Engineer entered an Order for the Determination of the relative rights of the water users in accordance with NRS 533.090.

On January 6, 1972, the State Engineer entered a Notice of Order for Taking Proofs to Determine Water Rights.

II. CLAIMANTS

The investigation disclosed that the waters of McEwen Creek and its tributaries were being placed to beneficial use on the lands of List Cattle Company for irrigation and domestic purposes, as evidenced by Amended Proof of Appropriation 02751, filed in the Office of the State Engineer. Evidence contained in the title documents and the proof of appropriation submitted by the present claimant relative to the land, indicates the present claimant and appropriator, List Cattle Company, is a successor in interest to vested rights initiated by its predecessors.

III. SOURCE

The headwaters of McEwen Creek originate in the Carson Range at an elevation of approximately 7800 feet in the vicinity of Hobart Creek Reservoir. The creek flows northeasterly down

1 Sawmill Canyon for approximately three miles where it is used to
2 irrigate fields in the south end of Washoe Valley immediately
3 north of Lakeview Summit. McEwen Creek is fed by numerous springs
4 and melting snow, having a relatively high spring runoff and it
5 usually dries up in July or August.

6 IV. PERIOD OF USE

7 The irrigation season shall begin on January 1st and
8 extend through December 31st of each year.

9 V. DUTY OF WATER

10 The seasonal duty of water on lands irrigated from
11 McEwen Creek and its tributaries is herein fixed and shall not
12 exceed:

13 Class A	Harvest Crop	4.5 Ac. Ft./Ac./Season
14 Class B	Meadow Pasture	4.0 Ac. Ft./Ac./Season

15 VI. DIVERSION OF WATER AND METHOD OF USE

16 The claimant shall have the right to divert 2.5 cubic
17 feet per second of water per 100 acres of land irrigated, but not
18 to exceed the annual duty as established herein.

19 The claimant or its successors in interest will not be
20 required to take or use the amount of water allotted to them in a
21 continuous flow, but may cumulate the same or any part thereof in
22 rotation or periodic turn within the annual limits, with the
23 approval of the water commissioner and subject to the control and
24 direction of the State Engineer.

25 VII. MEASUREMENT OF WATER

26 All measurements of water diverted are to be made at a
27 point where the main ditch enters or becomes adjacent to the land
28 to be irrigated, or as near thereto as is practicable; the loca-
29 tion, if not selected by the State Engineer, to be approved by him.
30 The claimant shall install, and maintain at its own expense, sub-

1 stantial and easily operated regulating headgates and measuring
2 devices in their ditch or ditches or channel. . Due allowance for
3 losses in ditches will be made by the State Engineer in the event
4 it becomes necessary.

5 Priorities are fixed by years and where the years are the
6 same, the priorities are equal.

7 VIII. DOMESTIC

8 The right to the diversion and use of the water for
9 domestic purposes shall be continued by the claimant named herein
10 or its successors in interest at any time during the year and such
11 diversions shall be according to the dates of priorities of such
12 users and limited to the quantity of water reasonably necessary
13 for such use. If a claimant is not in priority for irrigation
14 water, then the claimant is not in domestic water.

15 The amount of water diverted for irrigation purposes
16 shall not be increased by any amount to be used for domestic
17 purposes, but the quantity allowed and diverted for irrigation
18 during the irrigation season shall include water for domestic
19 purposes.

20 IX. CHANGE OF PLACE OF USE

21 All water allotted in the Decree shall be appurtenant
22 to the place of use designated herein. Any water user desiring
23 to change the point of diversion, manner of use, or place of use
24 of the waters allotted herein, must make application to the State
25 Engineer for permission to make the change pursuant to NRS 533.345.

26 X. RIGHTS OF APPROPRIATION

27 From the Order of Determination and the documentary
28 evidence submitted in support thereof, the Court finds that the
29 names of the claimant and appropriator of the waters of McEwen
30 Creek and its tributaries, the source of the water supply, the

1 means of diversion, the points of diversion for beneficial use,
2 the periods of use, the years of priority, the cultural acreages,
3 the places of use, the legal subdivisions, sections, townships,
4 ranges, and the duty of water are as listed, stated and set forth.

5 CONCLUSIONS OF LAW

6 From the evidence presented and received in this matter,
7 and from the foregoing FINDINGS OF FACT, the Court makes the
8 following CONCLUSIONS OF LAW.

9 I.

10 That the State Engineer has the right, authority and
11 jurisdiction pursuant to Chapter 533 of NRS to make the investiga-
12 tion made by him, receive the proofs and maps, enter and file in
13 his office the original Order of Determination and file a certified
14 copy thereof in this Court, and to determine the relative rights
15 of the claimant and appropriator in and to the waters of McEwen
16 Creek and its tributaries in Washoe County, State of Nevada; that
17 the State Engineer duly made all orders necessary and proper in
18 connection therewith and entered the same in his office as required
19 by Chapter 533 of NRS; that each and every notice required by law
20 to be given herein to the claimant and appropriator was duly served
21 by the State Engineer in the manner and within the time required
22 by Statute, and that the notices contained all of the statements
23 required by law, and that the claimant and appropriator of the
24 waters of the above-named stream system and its tributaries duly
25 received the information and notices, as required by law.

26 II.

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

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III.

That List Cattle Company is the only claimant of vested rights recognized in this Decree who were and are now appropriators and users of the waters of McEwen Creek and its tributaries on the date the Order of Determination was filed with the Clerk of the Court, and on the date of the trial and hearing of this matter.

IV.

That the irrigation season shall begin on January 1st and extend through December 31st of each year.

V.

That the seasonal duty of water on lands irrigated from McEwen Creek and its tributaries is herein fixed at and shall not exceed:

Class A	Harvest Crop	4.5 Ac. Ft./Ac./Season
Class B	Meadow Pasture	4.0 Ac. Ft./Ac./Season

VI.

That the claimant shall have the right to divert 2.5 cubic feet per second of water per 100 acres of land irrigated, but not to exceed the annual duty as established herein.

That the claimant or its successors in interest will not be required to take or use the amount of water allotted to them in a continuous flow, but may cumulate 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.

VII.

That 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 is practicable; that the location, if not selected by the State Engineer, to be

1 approved by him. That the water user shall install and maintain
2 at its own expense, substantial and easily operated regulating
3 headgates and measuring devices in their ditch or ditches or
4 channel. That due allowance for losses in ditches will be made
5 by the State Engineer in the event it becomes necessary.

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

8 VIII.

9 That the right to the diversion and use of the water
10 for domestic purposes shall be continued by the claimant named
11 herein or its successors in interest at any time during the year
12 and such diversions shall be according to the dates or priorities
13 of such users and limited to the quantity of water reasonably
14 necessary for such use. That, if a claimant is not in priority
15 for irrigation water then the claimant is not in priority for
16 domestic water.

17 That the amount of water diverted for irrigation
18 purposes shall not be increased by any amount to be used for
19 domestic purposes but the quantity allowed and diverted for
20 irrigation during the irrigation season shall include water for
21 domestic purposes.

22 IX.

23 That all water allotted in the Decree shall be appurte-
24 nant to the place of use designated herein. That any water user
25 desiring to change the point of diversion, manner of use or place
26 of use of the waters allotted herein, must make application to the
27 State Engineer for permission to make the change pursuant to
28 NRS 533.345.

29 X.

30 That form the Order of Determination and the documentary

1 evidence submitted in support thereof, the Court finds that the
2 names of the claimant and appropriator of the waters of McEwen
3 Creek and its tributaries, the source of the water supply, the
4 means of diversion, the points of diversion for beneficial use,
5 the periods of use, the years of priority, the cultural acreages
6 and places of use, the legal subdivisions, sections, townships,
7 ranges, and the duty of water are as listed, stated and set forth.

8 XI.

9 That the Order of Determination made, filed and caused
10 to be entered of record in this matter by the State Engineer,
11 should be affirmed.

12 JUDGMENT AND DECREE

13 THEREFORE, BY REASON OF THE FINDINGS OF FACT, AND CONCLUSIONS OF
14 LAW HEREINBEFORE SET FORTH, IT IS ORDERED, ADJUDGED AND DECREED
15 BY THE COURT AS FOLLOWS:

16 I.

17 That the State Engineer made all necessary and proper
18 orders as required by law, and that each and every notice required
19 by law was duly given to the claimant and appropriator; that the
20 claimant and appropriator had full opportunity to appear and be
21 heard in objection to and file exceptions to the Order of Determination;
22 that List Cattle Company is the only claimant of vested
23 rights recognized in this Decree as appropriators of the waters of
24 McEwen Creek and its tributaries and this Decree determines the
25 limit and extent of all vested water rights on the source.

26 That the Court has full and complete jurisdiction to
27 hear, try and determine this matter and to make and enter herein,
28 this Decree.

29 II.

30 That the flow of water from McEwen Creek and its tribu-

1 taries is being placed to beneficial use by List Cattle Company
2 for irrigation and domestic purposes.

3 III.

4 That the irrigation season shall begin on January 1st
5 and extend through December 31st of each year.

6 IV.

7 That the seasonal duty of water on lands irrigated from
8 McEwen Creek and its tributaries is herein fixed at and shall not
9 exceed:

10	Class A	Harvest Crop	4.5 Ac. Ft./Ac./Season
11	Class B	Meadow Pasture	4.0 Ac. Ft./Ac./Season

12 V.

13 That the claimant shall have the right to divert 2.5
14 cubic feet per second of water per 100 acres of land irrigated,
15 but not to exceed the annual duty as established herein.

16 That the claimant or its successors in interest will not
17 be required to take or use the amount of water allotted to in a
18 continuous flow, but may cumulate the same or any party thereof
19 in rotation or periodic turn within the seasonal limits, with the
20 approval of the water commissioner and subject to the control and
21 direction of the State Engineer.

22 VI.

23 That all measurements of water diverted are to be made
24 at a point where the main ditch enters or becomes adjacent to the
25 land to be irrigated or as near thereto as is practicable; that
26 the location, if not selected by the State Engineer, to be
27 approved by him. That the water user shall install and maintain
28 at its own expense substantial and easily operated regulating
29 headgates and measuring devices in their ditch or ditches or
30 channel. That due allowance for losses in ditches will be made

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by the State Engineer in the event 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 the water for domestic purposes shall be continued by the claimant named herein or its successors in interest at any time during the year 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 if a claimant is not in priority for irrigation water, then the claimant is not in priority for domestic water.

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

VIII.

That all water allotted in this Decree shall be appurtenant to the place of use designated herein. That 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.

IX.

That the name of the claimant and appropriator of the waters of McEwen Creek and its tributaries, the source of the water supply, the means of diversion, the points of diversion for beneficial use, the period of use, the years of priority, the cultural acreages and places of use, the legal subdivisions, sections, township, ranges, and duty of water are hereby adjudged

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as follows:

PROOF NO. : Amended 02751
 CLAIMANT : List Cattle Co.
 SOURCE : McEwen Creek and Tributaries
 USE : Irrigation and Domestic
 MEANS OF DIVERSION : Dam, Headgate, Pipeline and Ditches

POINTS OF DIVERSION:

1. NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 35, T. 16 N., R. 19 E., M.D.B. & M., or at a point from which the N. quarter corner of said Section 35, bears N. 26° 43' E., a distance of 611.0 feet.
2. NW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 35, T. 16 N., R. 19 E., M.D.B. & M., or at a point from which the N. quarter corner of said Section 35, bears N. 8° 48' W., a distance of 390.0 feet.
3. NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 35, T. 16 N., R. 19 E., M.D.B. & M., or at a point from which the N. quarter corner of said Section 35, bears N. 81° 25' W., a distance of 1878.0 feet.
4. NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 35, T. 16 N., R. 19 E., M.D.B. & M., or at a point from which the N. quarter corner of said Section 35, bears N. 88° 05' W., a distance of 2350.0 feet.
5. Unnamed spring in NW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 35, T. 16 N., R. 19 E., M.D.B. & M., or at a point from which the N. quarter corner of said Section 35, bears N. 43° 16' W., a distance of 1470.0 feet.

PRIORITY:	CULTURAL HARVEST	ACREAGE MEADOW PASTURE	LOCATION			DUTY OF WATER	
			SUBD.:	SEC.:	TWP. RGE. N. E.:	C.F.S.:	AC. FT.
1856	1.43	---	SW $\frac{1}{4}$ SW $\frac{1}{4}$	25	16 19	0.035	6.44
1856	33.40	7.19	SE $\frac{1}{4}$ SE $\frac{1}{4}$	26	16 19	1.015	179.06
1856	7.18	---	NE $\frac{1}{4}$ SE $\frac{1}{4}$	26	16 19	0.180	32.31
1856	8.70	3.55	SW $\frac{1}{4}$ SE $\frac{1}{4}$	26	16 19	0.306	53.35
1856	11.90	2.04	NW $\frac{1}{4}$ NE $\frac{1}{4}$	35	16 19	0.349	61.71
1856	17.11	3.19	NE $\frac{1}{4}$ NE $\frac{1}{4}$	35	16 19	0.507	89.75

STATE OF NEVADA
 DEPARTMENT OF
 CONSERVATION AND
 NATURAL RESOURCES
 NRE BUILDING
 401 SO. FALL ST.
 CARSON CITY, NEVADA
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 48720P
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PRIORITY:	CULTURAL	ACREAGE	LOCATION			DUTY OF WATER	
	HARVEST	MEADOW	TWP. RGE.				
		PASTURE	SUBD.:	SEC.:	N. E.:	C.F.S.:	AC. FT.
1856	3.54	---	NW $\frac{1}{4}$ NW $\frac{1}{4}$	36	16	19	0.089 15.93
TOTALS	83.26	15.97					2.481 438.55

DONE IN OPEN COURT THIS 6th DAY OF
Aug., A.D. 1961.

John W. Barrett

JOHN W. BARRETT
DISTRICT JUDGE