

FILED

OCT 25 8 56 AM '90

Karen J. Miller
NYE COUNTY CLERK

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

IN THE MATTER OF THE DETERMINATION) OF RELATIVE RIGHTS IN AND TO THE) WATERS OF PEAVINE CREEK AND ITS) TRIBUTARIES, IN NYE COUNTY, STATE) OF NEVADA.)	FINDINGS OF FACT, CONCLUSIONS OF <u>LAW AND DECREE</u>
--	--

INTRODUCTION

The adjudication of the relative rights in and to the waters of Peavine Creek and its tributaries was initiated in 1929, after the State Engineer conducted a field investigation and found that the facts and conditions justified a determination of the claimants' relative rights. The State Engineer's Order of Determination was originally filed with the Court in 1932 and a hearing was set for November 14, 1932. For unknown reasons, the hearing was neither held nor reset.

On December 5, 1989, at the request of the State Engineer, the Court entered an Order Setting Time for Hearing in this matter. A copy of the Order of Determination and the notice of the hearing were sent to the successors in interest to the original claimants and present day landowners along Peavine Creek.

///

1 continuous flow for each 100 acres of land irrigated. This
2 results in an annual duty of water for the decreed lands
3 irrigated by the waters of Peavine Creek and its tributaries,
4 including all springs within this drainage, of 4.5 acre feet per
5 acre for the maximum length of the irrigation season.

6 In case any water user is dissatisfied with the
7 allotted duty of water, he may at any time, not later than three
8 years from the date of issuance of the court decree, submit to
9 the State Engineer such authenticated measurements as may be
10 necessary to prove the actual and beneficial use of water on his
11 lands. Upon approval of the proof submitted, the State Engineer
12 will accordingly apply to the court for a modification of the
13 duty of water allotment in conformity with the proof submitted.

14 The parties hereto, or their successors in interest,
15 shall not be required to take or use the amount of water allotted
16 to them in a continuous flow, but may cumulate the same, or any
17 part thereof, in rotation or periodic turn, within the seasonal
18 limits, subject to the control and direction of the State
19 Engineer. Rotation whenever possible should be encouraged and be
20 permitted at all times as it tends to conserve the water and
21 increase the duty and service.

22 Each water user shall install substantial headgates,
23 control works and weirs in his or her ditch or ditches of such
24 construction as will be approved by the State Engineer.

25 In case of any disagreement over the distribution of
26 water under the respective allotments from Peavine Creek or its
27 tributaries, there shall be appointed, in conformity with
28 existing statutory provisions, a water commissioner, who shall

1 insure the proper enforcement of the provisions of the court
2 decree.

3 In addition to water used during the irrigation season,
4 each user shall be entitled to divert sufficient water for
5 stockwatering and domestic purposes during the non-irrigating
6 season in an amount not to exceed a continuous flow of 0.025
7 cubic feet per second.

8 Springs rising within the confines of claimants
9 holdings shall be considered as tributaries of the Peavine Creek
10 stream system, and the aggregate diversions from all sources of
11 supply shall not exceed the seasonal acre foot allotment.

12 Only persons holding a right of appropriation listed
13 herein shall be entitled to receive any water from Peavine Creek
14 or its tributaries. It is further determined that as long as the
15 magnitude and extent of the use of water under present
16 appropriations remains substantially the same, the stream system
17 be closed to subsequent appropriation of water for irrigation
18 purposes.

19 CONCLUSIONS OF LAW

20 From the record on review and the evidence and
21 testimony presented and received in this matter and from the
22 foregoing Findings of Fact, the Court makes the following
23 Conclusions of Law:

24 The State Engineer had the right, authority and
25 jurisdiction pursuant to Chapter 140 of the Statutes of Nevada
26 1913, and acts amendatory and supplemental thereto, to make the
27 investigations made by him, receive the proofs and maps, enter
28 and file in his office the Preliminary Order of Determination and

1 Order of Determination, and file certified copies thereof in this
2 Court for the purpose of determining the relative rights of the
3 claimants and appropriators in and to the waters of Peavine Creek
4 and its tributaries in Nye County, State of Nevada. The State
5 Engineer duly made all orders necessary and proper in connection
6 therewith and entered the same in his office as required by
7 Chapter 140 of the Statutes of Nevada 1913, and acts amendatory
8 and supplemental thereto.

9 Each and every notice required by law to be given to
10 the claimants and appropriators was duly served by the State
11 Engineer in the manner and within the time required by statute,
12 the notices contained all the information required by law, and
13 the claimants and appropriators of the waters of the above-named
14 stream system and its tributaries duly received the information
15 and notices as required by law.

16 The Fifth Judicial District Court of the State of
17 Nevada in and for the County of Nye had jurisdiction to hear and
18 try this matter and has jurisdiction to make and enter the
19 foregoing Findings of Fact and these Conclusions of Law and
20 further enter its Decree set forth hereinafter.

21 All measurements of water diverted are to be made at a
22 point where the main ditch enters or becomes adjacent to the land
23 to be irrigated or as near thereto as practicable, the location,
24 if not selected by the State Engineer, must meet with his
25 approval. The claimants shall install and maintain at their own
26 expense substantial and easily operated regulating headgates and
27 measuring devices in the ditch or ditches or channels and

28 ///

1 reservoirs. Due allowance for losses in ditches may be made by
2 the State Engineer.

3 Priorities are fixed by years and where years are the
4 same, the priorities are equal.

5 The right to the diversion and use of water for
6 stockwatering and domestic purposes shall be continued by the
7 claimants named herein or their successors in interest at any
8 time during the year that stock are grazing on the range and such
9 diversions shall be according to the dates of priorities of such
10 users and limited to the quantity of water reasonably necessary
11 for such use.

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

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

23 From the record of this adjudication proceeding and
24 records of permits issued by the State Engineer, it is hereby
25 determined that the waters of Peavine Creek and its tributaries
26 are fully appropriated.

27 ///

28 ///

1 The relative priority or rank of the several rights to
2 appropriate the waters of Peavine Creek and its tributaries, as
3 listed in the following tabulations, shall govern and be
4 recognized at all times hereafter.

5 ORIGINAL CLAIMS

6
7 Note: A resurvey conducted by Wallace T. Bounty in June and July
8 1987 has shifted Sections 9 and 16, T.8N., R.42E.,
9 M.D.B.&M. from 20' to 35' to the east. For purposes of
10 this decree, the cultural acreage shall remain the same
11 within a given 40 acre subdivision, however the physical
12 location of a portion of the culture may be outside the
13 subdivision boundary.

Claimant: Mrs. O. Bertolino

Proof No. 02225

Source: Peavine Creek

Ditch: System of Irrigation (Thru Ditches #1, 2, 3, 4 and 6)

Point of Diversion

Ditch No. 1--N.10 25'W., 3635 Ft. from Corner No. 5, H.E.S. No. 8

Ditch No. 2--SE1/4 NE1/4 Sec. 32, T.9N., R.42E., unsurveyed.

Ditch No. 3--NE1/4 SE1/4 Sec. 31, T.9N., R.42E., unsurveyed.

Ditch No. 4--NW1/4 SW1/4 Sec. 32, T.9N., R.42E., unsurveyed.

Ditch No. 6--SW1/4 NW1/4 Sec. 4, T.8N., R.42E., unsurveyed.

Year of Priority	CULTURE (acres)		DESCRIPTION			DUTY OF WATER		
	Class A		Subdivision	Sec.	T.N.	R.E.	cubic feet	acre feet
	Harvest Crops						per second	(cumulative)
1868	0.68		NE1/4 NE1/4*	31	9	42	0.008	3.06
1868	57.61		H.E.S. #83	-	9	42	0.709	262.30
1868	2.3		SE1/4 SW1/4*	32	9	42	0.028	272.65
1868	4.5		SW1/4 SE1/4*	32	9	42	0.055	292.90
1868	4.42		Lot 2	5	8	42	0.054	312.79
1877	4.27		Lot 1	5	8	42	0.052	332.01
1877	4.4 **		SE1/4 NE1/4	5	8	42	0.054	351.81
1877	0.7		Lot 4	4	8	42	0.009	354.96
1877	8.9		SW1/4 NW1/4	4	8	42	0.109	395.01
1896	0.46		Lot 2	5	8	42	0.006	397.08
1896	1.34		Lot 1	5	8	42	0.016	403.11
1896	2.16 **		SE1/4 NE1/4	5	8	42	0.027	412.83
	91.74							

* Unsurveyed

** Land irrigated but not owned by claimant.

CURRENT OWNERSHIP OF RECORD BY CLAIM

02225

PRIORITY	OWNER	DESCRIPTION					DUTY OF WATER
		ACREAGE	Subdivision	Sec.	T.N.	R.E.	Acre Ft.
1868	Denman Trust	0.68	NE1/4 NE1/4	31	9	42	3.06
1868	Eugene P. & Linda A. Yale	57.61	H.E.S. #83		9	42	259.25
1868	Denman Trust	2.30	SE1/4 SW1/4	32	9	42	10.35
1868	Denman Trust	4.50	SW1/4 SE1/4	32	9	42	20.25
1868	Denman Trust	4.42	Lot 2	5	8	42	19.89
1896	Denman Trust	0.46	Lot 2	5	8	42	2.07
1877	Denman Trust	4.40 **	SE1/4 NE1/4	5	8	42	19.80
1896	Denman Trust	2.16 **	SE1/4 NE1/4	5	8	42	9.72
1877	Denman Trust	0.70	Lot 4	4	8	42	3.15
1877	Gladys McCulloch	4.27	Lot 1	5	8	42	19.21
1896	Gladys McCulloch	1.34	Lot 1	5	8	42	6.03
1877	Pete & Sheila Bertolino	8.90	SW1/4 NW1/4	4	8	42	40.05

91.74

412.83

** Land irrigated but not owned by claimant.

Claimant: E. E. Seyler

Proof No. 02226

Source: Peavine Creek

Ditch: Nos. 2, 3, 4, and Indian Ditch.

Point of Diversion

Ditch No. 2 in the NE1/4 NW1/4 Sec. 9, T.8N., R.42E.

Ditch No. 3 in the SE1/4 NW1/4 Sec. 9, T.8N., R.42E.

Ditch No. 4 in the NE1/4 SW1/4 Sec. 9, T.8N., R.42E.

Indian Ditch in the NW1/4 NE1/4 Sec. 16, T.8N., R.42E.

Year of Priority	CULTURE (acres)		DESCRIPTION			DUTY OF WATER		
	Class A		Subdivision	Sec.	T.N.	R.E.	cubic feet	acre feet
	Harvest Crops						per second	(cumulative)
1868	0.30		NE1/4 NW1/4	9	8	42	0.004	1.35
1868	18.28		SW1/4 NE1/4	9	8	42	0.225	83.61
1868	9.54		SE1/4 NW1/4	9	8	42	0.117	126.54
1868	11.07		NW1/4 SE1/4	9	8	42	0.136	176.35
1868	1.46	**	NE1/4 SW1/4	9	8	42	0.018	182.92
1868	4.00		NW1/4 SE1/4	9	8	42	0.049	200.92
1888	2.70		SW1/4 SE1/4	9	8	42	0.033	213.07
1888	4.30		SE1/4 SE1/4	9	8	42	0.053	232.42
1888	8.30		NW1/4 SE1/4	9	8	42	0.102	269.77
1888	5.90		NW1/4 NE1/4	16	8	42	0.073	296.32
1888	11.46		NE1/4 NE1/4	16	8	42	0.141	347.89
1903	0.09	**	NE1/4 SE1/4	9	8	42	0.001	348.29
1903	0.90		NW1/4 SE1/4	9	8	42	0.011	352.34
1903	14.00		SE1/4 SE1/4	9	8	42	0.172	415.34
1903	2.40		SW1/4 SE1/4	9	8	42	0.029	426.14
1903	3.68		NE1/4 NE1/4	16	8	42	0.045	442.7
1905	4.10	**	SW1/4 NE1/4	16	8	42	0.050	461.15
1905	0.30		NE1/4 NE1/4	16	8	42	0.004	462.5
1905	12.27		SE1/4 NE1/4	16	8	42	0.150	517.72
1905	2.54		NE1/4 SE1/4	16	8	42	0.031	529.15
	117.59							

** Land irrigated but not owned by claimant.

CURRENT OWNERSHIP OF RECORD BY CLAIM

02226

PRIORITY	OWNER	DESCRIPTION					DUTY OF WATER
		Acreage	Subdivision	Sec.	T.N.	R.E.	Acre Ft.
1868	Eugene P. & Linda A. Yale	0.30	NE1/4 NW1/4	9	8	42	1.35
1868	Eugene P. & Linda A. Yale	18.28	SW1/4 NE1/4	9	8	42	82.26
1868	Eugene P. & Linda A. Yale	9.54	SE1/4 NW1/4	9	8	42	42.93
1868	Eugene P. & Linda A. Yale	11.07	NW1/4 SE1/4	9	8	42	49.82
1868	Eugene P. & Linda A. Yale	1.46 **	NE1/4 SW1/4	9	8	42	6.57
1868	Eugene P. & Linda A. Yale	4.00	NW1/4 SE1/4	9	8	42	18.00
1888	Eugene P. & Linda A. Yale	2.70	SW1/4 SE1/4	9	8	42	12.15
1888	Eugene P. & Linda A. Yale	4.30	SE1/4 SE1/4	9	8	42	19.35
1888	Eugene P. & Linda A. Yale	8.30	NW1/4 SE1/4	9	8	42	37.35
1903	Eugene P. & Linda A. Yale	0.09 **	NE1/4 SE1/4	9	8	42	0.40
1903	Eugene P. & Linda A. Yale	0.90	NW1/4 SE1/4	9	8	42	4.05
1903	Eugene P. & Linda A. Yale	14.00	SE1/4 SE1/4	9	8	42	63.00
1903	Eugene P. & Linda A. Yale	2.40	SW1/4 SE1/4	9	8	42	10.80
1888	Eugene P. & Linda A. Yale	1.30	NW1/4 NE1/4	16	8	42	5.85
1903	Eugene P. & Linda A. Yale	3.68	NE1/4 NE1/4	16	8	42	16.56
1888	Eugene P. & Linda A. Yale	4.00	NE1/4 NE1/4	16	8	42	18.00
1888	Stevens-Newcomb Holdings	4.60	NW1/4 NE1/4	16	8	42	20.70
1888	Stevens-Newcomb Holdings	7.46	NE1/4 NE1/4	16	8	42	33.57
1905	Stevens-Newcomb Holdings	0.30	NE1/4 NE1/4	16	8	42	1.35
1905	Raymond & Cheryl Kretschmer	4.10 **	SW1/4 NE1/4	16	8	42	18.45
1905	Raymond & Cheryl Kretschmer	12.27	SE1/4 NE1/4	16	8	42	55.21
1905	Raymond & Cheryl Kretschmer	2.54	NE1/4 SE1/4	16	8	42	11.43

117.57

529.16

** Land irrigated but not owned by claimant.

Owner of Record: E. E. Seyler

Permit No. 5027
Certificate No. 2457

Source: Peavine Creek

Point of Diversion NE1/4 SE1/4 Sec. 16, T.8N., R.42E., M.D.B.&M.

Date of Priority	CULTURE (acres)	DESCRIPTION				TOTAL DUTY OF WATER	
		Subdivision	Sec.	T.N.	R.E.	CFS	AC. FT.
October 9, 1911	4.0	NE1/4 SE1/4	16	8	42		
October 9, 1911	21.0	SE1/4 SE1/4	16	8	42		
	25.0					0.25	91

Owner of Record: E.The "Denman Trust"

Permit No. 51404

Source: Peavine Creek (Surface and Underground)

Points of Diversion

1. SW1/4 SE1/4 Sec. 4, T.8N., R.42E., M.D.B.&M.
2. SW1/4 NW1/4 Sec. 4, T.8N., R.42E., M.D.B.&M.

Date of Priority	CULTURE (acres)	DESCRIPTION				TOTAL DUTY OF WATER	
		Subdivision	Sec.	T.N.	R.E.	CFS	AC. FT.
December 23, 1937	*	W1/2 E1/2	9	8	42		
December 23, 1937	*	SE1/4 NW1/4	9	8	42		
December 23, 1937	*	SE1/4 SE1/4	9	8	42		
December 23, 1937	*	E1/2 E1/2	16	8	42		
December 23, 1937	*	NW1/4 NE1/4	16	8	42		
December 23, 1937	*	E1/2 NE1/4	21	8	42		
						5	4 AC FT/AC

* Total amount of acreage to be determined upon filing proof of beneficial use.

DECREE

1
2 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the
3 relative rights of the users in and to the waters of Peavine
4 Creek and its tributaries be and the same hereby are determined
5 as stated hereinabove.

6 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that each
7 and every water user and claimant to the Peavine Creek stream
8 system and its tributaries and each of their agents, attorneys,
9 servants and employees and their successors in interest and each
10 and every person or persons acting in aid or assistance of the
11 said parties or either of or any of them be, and that each of
12 them is, hereby perpetually enjoined and restrained as follows:

13 a) From diverting or using any of the water of the
14 Peavine Creek stream system and its tributaries, except to the
15 extent and in the amount and in the manner and at the time or
16 times set by this Decree to such respective party hereto
17 allotted, allowed, prescribed and determined, or allowed by
18 permits which have been or may hereafter be granted by the State
19 Engineer of the State of Nevada.

20 b) From, in any manner, meddling with, opening,
21 closing, changing, injuring or otherwise interfering with any
22 headgates, weirs, water box, flume or other measuring device
23 placed, installed or established by the State Engineer or under
24 his authority or direction unless such act be done by the
25 permission or authority of the Water Commissioner or the State
26 Engineer, if during the period of his regulation or control of

27 ///

28 ///

1 said water, or if not done during such period, then by notice of
2 the allowances, authority, terms and provisions of this Decree or
3 by a permit granted or that may hereafter be granted by the State
4 Engineer.

5 DATED this 24th day of October, 1990.

6
7 Paul C. Parraguirra
8 DISTRICT JUDGE
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

25 **CERTIFIED COPY**

26 The document to which this certificate is attached is
27 a full, true and correct copy of the original on file
28 and of record in my office.

Date: 10-25-90

SARAH A. WILTER, Clerk of the Fifth Judicial
District Court, in and for the County of Nye,
State of Nevada.

By Erte Robb Deputy