IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF HUMBOLDT

(See memo 6/22/69 - Grace Bell Humb. Co. Clerk. Filed in Bartlett Cr. Correspondence)

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| In the Matter of the Determination of the Relative Rights in and to the Waters of PIUTE CREEK and its Tributaries in Humboldt County, State of Nevada | No. 4189 Filed November 18-1946 J W Davey Clerk |

## JUDGMENT AND DECREE

The above-entitled matter came before the court on the 6th day of March, 1946, at 10:00 o'clock in the forenoon of said day, having been regularly set down for hearing at that time.

Hugh A. Shamberger, Assistant State Engineer, appeared in person for the State Engineer of Nevada, the applicant herein, and was represented by Alan Bible, Attorney General of the State of Nevada, his attorney. B. F. Porter Estate, a corporation, the claimant and successor in interest to the original petitioner in these proceedings appeared by and was represented by Miles N. Pike, Esq., its attorney, and no other person or party appeared in person or by attorney or by any written appearance, notice of exceptions, pleading, objection, exception or other paper, filed in these proceedings, or at all.

Thereupon evidence, both oral and documentary was adduced before the court by and on behalf of the applicant

and claimant and for the use and benefit of the claimant and no evidence was adduced or offered on behalf of any respondent or objector, or any person whatever other than claimant.

Whereupon, the said evidence being closed, the matter was submitted to the court for its order and decision on the facts and the law applicable thereto.

Whereupon, on the motion of the said claimant and of the said applicant, by and through their said attorneys, this court orally pronounced and entered its decision and order that the said Order of Determination of the State Engineer in the above-entitled matter and proceedings be and the same is established, approved, adopted, affirmed and confirmed without any modification or change thereof or therein.

Thereafter, and on the 18th day of November, 1946, the court made, signed, entered and caused to be filed herein its findings of fact and conclusions of law in the premises.

Therefore, in consideration of the premises and the law in such cases made and provided, it is hereby

ORDERED, ADJUDGED AND DECREED that this matter came on regularly to be heard on March 6th, 1946, and that this court has jurisdiction of the subject matter and the parties to this proceeding and that all notices, orders and process required by law in this matter, whether before the State Engineer or this court have been duly given, made and served pursuant to law or have been duly waived; and

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND

DECREED that the Order of Determination of the State Engineer in the above-entitled matter and proceedings be and the same hereby is established, approved, adopted, affirmed and confirmed by this court without any modification thereof or change therein.

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

IN THE OFFICE OF THE STATE ENGINEER
OF THE STATE OF NEVADA

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| In the Matter of the Determination of the Relative Rights in and to the Waters of Piute Creek and its Tributaries in Humboldt County, Nevada. | ) | SS. |

ORDER OF DETERMINATION

The State Engineer of the State of Nevada upon petition of W. A. Johnstone, a water user on the Piute Creek stream system, hereinafter described, requesting the determination of the relative rights to the waters of said stream system, made an investigation on April 6 and April 7, 1930, under and pursuant to Section 18 of Chapter 140 of the Statutes of Nevada of 1913 and acts amendatory thereof and supplementary thereto and found that the facts and conditions justified such determination and on May 9, 1930 entered an order granting said petition.

The State Engineer received and filed in his records,

maps and statements of claim to the use of water from said stream system required under the provisions of said Chapter 140, Statutes of 1913 and acts amendatory thereof and supplementary thereto. There being only one claimant upon said stream system and he waived in writing the provisions of said Chapter 140, Statutes of 1913, and acts amendatory thereof and supplementary thereof, with reference to notices and the service and publication thereof,

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

CLAIMANT

After the investigation referred to, together with subsequent investigations by the State Engineer's office in 1939 and 1945, the State Engineer hereby finds that the entire flow of the waters from the Piute Creek stream system, as hereinafter defined, since prior to 1868, has been and now is placed to beneficial use by B. F. Porter Estate, a corporation, and its predecessors in interest and that there is now only one appropriator, namely, said B.F. Porter Estate, that is using the flow of said Piute Creek stream system. All of these waters are being used under a claim of vested right. Deeds of record in this office show that the present claimant and appropriator, B. F. Porter Estate, is the successor in interest to the vested rights initiated in the year 1867 by Miller and Lux.

B. F. Porter Estate is the sole successor of the vested rights to the use of water from the Piute Creek stream system, as hereinafter defined, and now owns all the lands on which the

waters have been placed to beneficial use for irrigation and domestic purposes and is now the sole user of range rights under the Division of Grazing in this area.

SOURCE

The words "Piute Creek Stream System" as used in this order shall be interpreted as including Piute Creek situate in the westerly part of Humboldt County, Nevada, on the easterly slope of the Black Rock Mountains, flowing in a general southeasterly direction, together with all its tributaries and all springs tributary to it, and without in any way limiting the generality of the foregoing, particularly including Deer Creek, North Fork of Piute Creek, Sheep Springs Creek, Deer Springs, Big Mountain Spring, One Mile Spring, East Spring and Sheep Springs.

Deer Creek is a tributary of Piute Creek and is part of the Piute Creek stream system. It is fed in part from Deer Springs and in part from Big Mountain Spring. Deer Springs are located in the Northeast Quarter of the Northwest Quarter of Section 10, Township 39 North, Range 26 East, M.D.B. & M. and are tributary both to Deer Creek and to Piute Creek, and are a part of the Piute Creek stream system. Big Mountain Spring is located in the Southeast Quarter of the Southwest Quarter of Section 17, Township 39 North, Range 26 East, M.D.B. & M. and is tributary both to Deer Creek and to Piute Creek and is part of the Piute Creek stream system. Deer Creek rises on the easterly slope of the Black Rock Mountains in Township 39 North, Range 26 East and flows in a general northeasterly direction to its confluence with Piute Creek.

The North Fork of Piute Creek is a tributary of Piute Creek and is part of the Piute Creek stream system. The North

Fork of Piute Creek rises on the easterly slope of the Black Rock Mountains generally in the easterly half of Township 40 North, Range 26 East, M.D.B. & M. and flows in a general southerly direction to its confluence with Piute Creek.

One Mile Spring is a tributary of Piute Creek and is part of the Piute Creek stream system. It is located in the Southwest Quarter of the Southeast Quarter of Section 7, Township 39 North, Range 27 East, M.D.B. & M.

East Spring is a tributary of Piute Creek and is part of the Piute Creek stream system. It is located in the Northeast Quarter of the Northeast Quarter of Section 17, Township 39 North, Range 27 East, M.D.B. & M.

Sheep Springs Creek is a tributary of Piute Creek and is part of the Piute Creek stream system. It is fed in part from Sheep Springs. Sheep Springs are located in Lot 2, Section 13, Township 39 North, Range 26 East, M.D.B. & M. and are tributary both to Sheep Springs Creek and to Piute Creek and are part of the Piute Creek Stream system. Sheep Springs Creek rises on the easterly slope of the Black Rock Mountains in Township 39 North, Range 26 East and flows in a general easterly direction to its confluence with Piute Creek in Sections 7 and 8, Township 39 North, Range 27 East, M.D.B. & M.

## IRRIGATION

SEASON: By actual practice over a great number of years, irrigation for harvest and meadow crops starts about March 1st, and continues through to about October 1st. After October 1st, the harvest and meadow fields are used for pasture and irrigation to a lesser degree is carried on until March 1st of the following year. In the pasture fields, irrigation is year around.

The irrigation season is therefore herein fixed as

follows: Harvest and Meadow - March 1st to October 1st.
Harvest and Meadow (for pasture) - October 1st to March 1st.
Pasture lands - January 1st to December 31st.

DUTY OF WATER: The duty of water is the amount of water in acre feet per season required to be placed on land in a manner consistent with good irrigation practice to yield adequate crop returns. The State Engineer hereby finds that a duty of 3.6 acre feet per acre per season would be adequate for the harvest and meadow lands from March 1st to October 1st and 1.0 acre feet from October 1st to March 1st of the following year. The State Engineer further finds that 2.0 acre feet per calendar year would be adequate for pasture lands.

During certain times of the runoff period, there is more water in the stream than that amount which would satisfy the continuous flow hereinafter specified, and it is ordered that the claimant be allowed to divert more than the continuous flow that is hereinafter allowed, provided that during any one month the amount of water diverted does not exceed 1.5 acre feet per acre of irrigated land.

Due to the lack of sufficient water to afford the claimant a continuous flow of water on his pasture lands, it is hereby ordered that the claimant be allowed to use the water in such quantities as is available and desirable provided that the total yearly use does not exceed the allowed 2.0 acre feet per acre of pasture land.

The class of culture, duty, season, acres and flow of water is therefore as follows:

| Class of land | Duty | Irrigation Season | Acres | Cont. flow | Acre-feet |
|---|---|---|---|---|---|
| Harvest & Meadow | 3.6 | Mar. 1 to Oct. 1 | 265.82 | 1/ 2.26 cfs | 956.95 |
| Harvest & Meadow | 1.0 | Oct. 1 to Mar. 1 | 265.82 | 2/ 0.88 cfs | 265.82 |
| Pasture | 2.0 | Jan. 1 to Dec. 31 | 164.00 | | 328.00 |
| | | | | Total | 1550.77 A.F |

1/ - continuous flow per acre = 0.008 + c.f.s.

2/ - continuous flow per acre = 0.003 + c.f.s.

EXTENT OF RIGHTS OF CLAIMANT,
B. F. PORTER ESTATE.

B. F. Porter Estate is the lawful successor in interest to, and the owner of, the vested right to the use of the waters of said Piute Creek stream system for irrigation and domestic purposes on its Piute Creek ranch and to water at said stream system, livestock from said ranch and from the public range readily available to livestock watering at said stream system and the State Engineer hereby determines the source of water supply, the location of point of diversion, the year of priority, the cultural acreage, the legal subdivisions, sections, townships and ranges and duty of water for claimant and appropriator, as set forth in the following tabulation.

Claimant: B. F. Porter Estate Proof Nos. 02237
02238

Source: Piute Creek Stream System

Points of Diversion for irrigation and domestic use:

Piute Creek - in the NW SW (Lot 6) Sec. 6, T.39N., R.27 E.
Sheep Springs Creek - in the NE NE Sec. 18, T.39 N., R. 27 E.
One Mile Spring - In the SW SE Sec. 7, T. 39 N., R. 27 E.
East Spring - In the NE NE Sec. 17, T. 39 N., R. 27 E.

Water is used for stockwatering purposes throughout the entire stream system and is used for irrigation and domestic purposes

on claimants' Piute Creek Ranch and, without in any way limiting the generality of the foregoing, particularly including the following particularly described parcels with the specified priority, to-wit:

| Year of Priority | Culture Acres Harvest & Meadow | Culture Acres Pasture | Subdiv. | Sec. | Tp. | R. | Duty of Water Acre-Feet Harvest & Meadow | Duty of Water Acre-Feet Pasture |
|---|---|---|---|---|---|---|---|---|
| 1867 | 6.3 | | Lot 6 | 6 | [illegible] | 27 | [illegible] | |
| " | 8.3 | | NE SW | 6 | [illegible] | " | [illegible] | |
| " | 21.5 | | SE SW | [illegible] | [illegible] | " | 98.[illegible] | |
| " | 2.6 | | SW SE | [illegible] | [illegible] | " | 11.[illegible] | |
| " | 2.2 | | NE NW | [illegible] | " | " | 10.1[illegible] | |
| " | 21.5 | | NW NE | 7 | " | " | 98.90 | |
| " | | 1.1 | NW NE | 7 | " | " | | 2.2 |
| " | | 0.4 | NE NE | 7 | " | " | | 0.8 |
| " | | 5.1 | SW NE | 7 | " | " | | 10.2 |
| " | 3.0 | | SW NE | 7 | " | " | 13.80 | |
| " | 19.0 | | SE NE | 7 | " | " | 87.40 | |
| " | | 1.8 | SE NE | 7 | " | " | | 3.6 |
| " | 12.3 | | NE SE | 7 | " | " | 56.58 | |
| " | | 3.7 | NE SE | 7 | " | " | | 7.4 |
| " | | 20.3 | SE SE | 7 | " | " | | 40.6 |
| " | 1.7 | | SE SE | 7 | " | " | 7.82 | |
| " | | 5.1 | SW SE | 7 | " | " | | 10.2 |
| " | 2.3 | | SW NW | 8 | " | " | 10.58 | |
| " | | 0.9 | SW NW | 8 | " | " | | 1.8 |
| " | 15.0 | | NE SW | 8 | " | " | 69.00 | |
| " | | 0.5 | NE SW | 8 | " | " | | 1.0 |
| " | 39.52 | | NW SW | 8 | " | " | 181.79 | |
| " | | 0.8 | NW SW | 8 | " | " | | 1.6 |
| " | 23.0 | | SW SW | 8 | " | " | 105.80 | |
| " | | 17.0 | SW SW | 8 | " | " | | 34.0 |
| " | | 8.5 | SE SW | 8 | " | " | | 17.0 |
| " | 31.5 | | SE SW | 8 | " | " | 144.90 | |
| " | 2.7 | | SW SE | 8 | " | " | 12.42 | |
| " | | 28.3 | SW SE | 8 | " | " | | 56.6 |
| " | | 7.5 | SE [illegible] | 8 | " | " | | 15.0 |
| " | | 7.1 | NW NW | 17 | " | " | | 14.2 |
| " | | 14.1 | NE NW | 17 | " | " | | 28.2 |
| " | 8.9 | | NE NW | 17 | " | " | 40.94 | |
| " | 25.1 | | NW NE | 17 | " | " | 115.46 | |
| " | | 12.9 | NW NE | 17 | " | " | | 25.8 |
| " | | 19.1 | NE NE | 17 | " | " | | 38.2 |
| " | 8.6 | | NE NE | 17 | " | " | 39.56 | |
| " | | 4.5 | SW NE | 17 | " | " | | 9.0 |
| " | | 5.3 | SE NE | 17 | " | " | | 10.6 |
| " | 10.8 | | SE NE | 17 | " | " | 49.68 | |
| | 265.82 | 164.0 | | | | | 1222.77 | 328.0 |



1222.77
328
1550.77

## STOCKWATERING

SPRINGS:

The claimant, B. F. Porter Estate claims vested rights for stockwatering purposes on the entire Piute Creek stream system and, without limiting the generality of the foregoing, the following springs:

| | | | | |
|---|---|---|---|---|
| Big Mountain Spring | under | Proof | No. | 02103 |
| Deer Springs | " | " | " | 02082 |
| North Fork of Piute Creek | | " | " | 02197 |
| Sheep Springs | " | " | " | 02080 |

USE:

The ranching operations at the Piute Creek ranch have from their inception in 1867 been stock raising operations. Miller and Lux, the original appropriators of water of Piute Creek stream system and their successors in interest down to the present time have raised livestock in this area. This ranch and the Piute Creek stream system have been used in connection with similar operations at the Battle Creek ranch, the Bartlett Creek ranch and Cane Spring Creek, all located in this vicinity and on which the water rights are now being determined.

Hay is raised for use by claimant's cattle and none is shipped out. Garden truck and orchard fruit is likewise produced.

During certain periods as many as 3000 head of cattle have run on the range appurtenant to these ranches.

GRAZING USE:

B. F. Porter Estate has the exclusive use of the appurtenant range. A ten year permit has been issued by the Division of Grazing which covers all of the easterly slope of the Black Rock range for some few miles northeasterly from Bartlett Creek ranch and some twelve miles or more southwesterly from the Piute Creek ranch.

EXTENT OF APPROPRIATION:

Since subsequent to 1867 the livestock watered on this stream system have been in sufficient numbers to utilize substantially all that portion of the public range readily available to livestock watering on said Piute Creek stream system, the number of stock varying with range and economic conditions.

It is hereby ordered that claimant, B. F. Porter Estate, be and it is hereby entitled to water range livestock on and from any portion of the Piute Creek stream system in sufficient numbers to utilize substantially all that portion of the public range readily available to livestock watering at and from the Piute Creek stream system. The State Engineer hereby finds from the records that B. F. Porter Estate is the lawful successor in interest to, and the owner of, the vested right to use the water from the Piute Creek stream system for stockwatering purposes and hereby determines that the source of such water supply is the Piute Creek stream system and that the cattle may be watered at and from, or on any part of, such system; that the year of priority is the year 1867 and the extent of the right is the number of range livestock which will utilize substantially all that portion of the public range readily available to livestock watering from the Piute Creek stream system, or any part thereof.

CHANGE OF PLACE OF USE

All waters allocated under this Order shall be appurtenant to the lands designated herein. In the event the water user, under this Order, desires to change the place of use of any of the waters herein allocated, to new lands, such water user must make application to the State Engineer for permission to make such change in the manner set forth under the water law

of this state.

JUNIOR RIGHTS

The waters of the Piute Creek stream system are fully utilized for irrigation, stockwatering and domestic purposes and no person or persons other than B. F. Porter Estate and its successors shall be entitled to receive any water from said Piute Creek stream system.

THIS ORDER OF DETERMINATION made and filed in the office of the State Engineer on the 15th day of August ,1945.

(Signed) Alfred Merritt Smith [SEAL]
Alfred Merritt Smith
State Engineer."

Done in Open Court this 18th day of November ,1946.

Mervyn H. Brown
DISTRICT JUDGE.