

1 IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
2 IN AND FOR THE COUNTY OF ESMERALDA.

3 No. 4131

4131

4 IN THE MATTER OF THE DETERMINATION)
5 OF THE RELATIVE RIGHTS IN AND TO THE)
6 WATERS OF ROBINSON (LEIDY) CREEK AND)
7 ITS TRIBUTARIES IN ESMERALDA COUNTY,)
8 STATE OF NEVADA.)

April 29th 46
Ang Robinson

9 FINDINGS OF FACT AND CONCLUSIONS OF LAW

10 This matter came on regularly to be heard in the court-
11 room of the above-entitled Court in the courthouse at Goldfield,
12 Esmeralda County, Nevada, before the above-entitled Court, Hon.
13 Wm. D. Hatton, District Judge presiding, at 10 o'clock in the
14 forenoon of Friday, the 16th day of November, 1945.

15 The applicant appeared in person by Hugh A. Shamberger,
16 Assistant State Engineer of the State of Nevada, and was represent-
17 ed by Homer Mooney, Deputy Attorney General of the State of
18 Nevada, his attorney.

19 The claimant and original petitioner, E. L. Cord, was
20 represented by W. Moward Gray, Esq., his attorney. No other
21 person, party, claimant, water user, or objector appeared either
22 in person, by attorney or otherwise and no pleading, petition,
23 exception, objection or other writing was filed or on file in the
24 papers or files of this matter with the Clerk of this Court or
25 at all, except the determination, appendix thereto, and record
26 filed by the State Engineer and the waivers and appearance filed
27 and entered by E. L. Cord, the original petitioner.

28 Evidence, both oral and documentary, was duly present-
29 ed to the Court for and on behalf of the applicant the State
30 Engineer of the State of Nevada, and for the use and benefit of

1 E. L. Cord, the claimant and original petitioner, and no evidence
2 or any testimony was adduced or offered by or on behalf of any
3 other person or party.

4 It appeared from the evidence and the records of
5 this Court that there are less than ten appropriators or claimants
6 of the waters or the use of the waters of Robinson Creek in
7 question in these proceedings, to wit, only one such appropriator
8 or claimant, namely, E. L. Cord, aforesaid; that on the 12th day
9 of September, 1944, the State Engineer did file with the Clerk
10 of Esmeralda County and ex-officio Clerk of this Court a
11 certified copy of his order of determination and appendix thereto
12 in the above-entitled matter, together with the original evidence
13 and transcript of testimony filed with or taken before him in
14 said matter, duly certified by him; that on the 15th day of
15 September, 1945, this Court signed and caused to be filed an
16 order setting the time for a hearing in said matter before this
17 Court for Wednesday, the 14th day of November, 1945, at 10 o'clock
18 in the forenoon of said day; that due notice of said order was
19 given to the persons, for the time and in the manner as pre-
20 scribed by law and a certified copy of said order was published
21 in the Goldfield News and Weekly Tribune, a weekly newspaper of
22 general circulation in and published in Esmeralda County, Nevada,
23 on September 21, 23, October 5, 12 and 19, 1945; that E. L. Cord,
24 the claimant and original petitioner in said matter, and the only
25 appropriator or user or claimant of the waters or the use of the
26 waters of Robinson Creek in question in this matter, in Open
27 Court by and through his attorney, W. Howard Gray, Esq., ac-
28 knowledged due notice of said hearing and of all other proceedings
29 in said matter, and waived all other and further notice thereof
30 and consented that this court might make, sign and enter findings

1 and judgment in this matter forthwith without delay or limit in
2 time, and without notice to him; that the hearing in this matter
3 was duly and regularly continued to Friday, the 16th day of Novem-
4 ber, 1945, at 10 o'clock in the forenoon of said day.

5 Whereupon this Court in consideration of all the
6 aforesaid matters and things without objection and free and clear
7 of all objection as to competency, materiality, relevancy, or
8 at all, does now make, enter and sign its findings of fact, and
9 conclusions of law in said matter, that is to say:

10 FINDINGS OF FACT
11

12 1. That all matters of fact set forth in the
13 affidavit of Hugh A. Shamberger, Assistant State Engineer, sworn
14 to the 5th day of November, 1945, a copy of which was filed in
15 the office of the State Engineer and certified by the State
16 Engineer by Hugh A. Shamberger on the 5th day of November, 1945,
17 and a certified copy of which was filed in this Court and cause
18 and received in evidence at said hearing, are true and are support-
19 ed by the evidence taken herein and are not denied and no such
20 matter is denied.

21 2. That no objection was made or exists in point
22 of fact or at all to the order of determination, including
23 appendix thereto, of the State Engineer referred to in said
24 affidavit; that the same is true and correct and is not denied
25 and is supported by the testimony taken herein.

26 And the Court in consideration of the premises and
27 the foregoing findings of facts, and in consideration of the law
28 of the State of Nevada in such case made and provided, makes,
29 signs and enters the following:
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CONCLUSIONS OF LAW

1. That this Court has jurisdiction of the subject matter and the parties in this proceeding.

2. That all notices required by law in the above-entitled matter, whether before the State Engineer or this Court, have been duly given, pursuant to law, or have been duly waived.

3. That the order of determination, including appendix thereto, by the State Engineer in the above-entitled matter, as made by him and as filed with and presented to this Court for establishment, approval, confirmation and adoption and for the decree of this Court thereon, ought to be approved, confirmed and adopted, without modification or change and that the judgment and decree of this Court ought to be entered herein to that effect.

Let judgment be entered accordingly.

Signed, entered and filed this 29th day of April,
1946.

Wm D. Hatton
District Judge.

1 IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
2 IN AND FOR THE COUNTY OF ESMERALDA.

3 No. 4131

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4 IN THE MATTER OF THE DETERMINATION)
5 OF THE RELATIVE RIGHTS IN AND TO THE)
6 WATERS OF ROBINSON (LEIDY) CREEK AND)
7 ITS TRIBUTARIES IN ESMERALDA COUNTY,)
8 STATE OF NEVADA.)

April 29th 46
Aug. Tolerson

9 JUDGMENT AND DECREE

10 The above-entitled matter came before the Court on the
11 16th day of November, 1945, at 10 o'clock in the forenoon of said
12 day, having been regularly set down for hearing and regularly
13 continued for hearing at that time.

14 Hugh A. Shamberger, Assistant State Engineer, appeared
15 in person for the State Engineer of Nevada, the applicant herein,
16 and was represented by Homer Mooney, Deputy Attorney General of
17 the State of Nevada. E. L. Cord, the claimant and original
18 petitioner in these proceedings, appeared by and was represented
19 by W. Howard Gray, Esq., his attorney, and no other person or
20 party appeared in person or by attorney or by any written
21 appearance, pleading or objection filed in these proceedings, or
22 at all.

23 Thereupon evidence, both oral and documentary, was
24 adduced before the Court by and on behalf of the applicant and
25 claimant and for the use and benefit of the claimant and no
26 evidence was adduced or offered by or on behalf of any respondent,
27 objector, or other person.

28 Whereupon the said evidence being closed the matter
29 was submitted to the Court for its order and decision on the
30 facts and the law applicable thereto.

1 and its Tributaries is being placed to beneficial use by only
2 one appropriator, i.e., E. L. Cord. A portion of the waters of
3 said Robinson Creek (Leidy) Creek is being placed to beneficial
4 use under claims of vested right and the remaining portions under
5 permitted rights. The evidence shows that the present appropria-
6 tor and claimant, E. E. Cord, is the successor in interest to the
7 vested rights initiated in the year 1875 by Sophronia McAfee.

8 The conditions surrounding this adjudication are
9 somewhat dissimilar to the various problems that have confronted
10 the State Engineer in other adjudication proceedings because here
11 we have only one claimant and appropriator who is the sole suc-
12 cessor of the vested water right from this source and sole suc-
13 cessor of the permitted water rights, which together, fully take
14 up all of the waters of this source, and who also owns the
15 lands on which the waters have been placed to beneficial use.

16 SOURCE

17 Robinson Creek, also known as Leidy Creek, rises in
18 the White Mountains in the Inyo National Forest, Mono County,
19 California, at an elevation of approximately 9,000 feet. Its
20 headwaters are located approximately four miles westerly of the
21 California-Nevada State line and flows northeasterly to near
22 the southwest corner of Section 25, Township 2 S., Range 35 E.,
23 M.D.B.&M. thence east to the Circle L Ranch to which the waters
24 of this creek are appurtenant.

25 For many years this stream system was known first
26 as McGee Creek, then as Robinson Creek and in later years gener-
27 ally known as Leidy Creek, after one of the former owners.
28 The maps of the General Land Office show this creek as Leidy
29 Creek.
30



1 Matter of the Determination of the Relative Rights in and to the
2 Waters of Perry Aiken or Spanish Creek and its Tributaries' is
3 herein set as the duty of water in the Order of Determination.

4 Said duty is as follows:

5 For irrigated crop lands 1 c.f.s. of water for
6 each 80 acres of land which gives duty of 4.93
7 acre feet per acre. This duty would be equiva-
8 lent to a continuous flow during the irrigation
9 season from March 15 to October 1st of 0.0125
10 c.f.s. per acre of land.

11 For meadow pasture land 1 c.f.s. of water for
12 each 100 acres of land which gives a duty of
13 3.03 acre feet per acre. This would be equival-
14 ent to a continuous flow during the irrigation
15 season from May 1st to October 1st of 0.01 c.f.s.
16 per acre of land.

17 It is further provided that the claimant named herein,
18 or its successors in interest, shall be entitled to increase
19 the rate of direct flow diversion so as to satisfy any immediate
20 needs of the growing crops in order to take advantage of excess
21 water during the spring runoff; provided that the total diver-
22 sion for the claimant during any calendar month shall not ex-
23 ceed 1.5 acre-feet for each acre of land granted a water right,
24 and provided further, that the total diversion during the irri-
25 gation season shall not exceed the duty of water in acre-feet
26 as specified for such land.

27 It is further provided that the claimant or its success-
28 ors in interest be allowed to rotate the waters of this source on
29 the lands to which this water is appurtenant under this Order
30 during the non-irrigation season in the following amount;

On irrigated crop lands a total duty of 2 A.F.
per acre between October 1st and March 15th
of the following year, and

On meadow pasture land a total duty of 1 A.F.
between October 1st and May 1st of the following
year.

1 Claimant: E. L. Cord

Proof No. 01312

2 Source: Robinson (Leidy) Creek

3 Use: Irrigation, stockwatering and domestic

4 Means of diversion: Leidy Ditch

5 Point of Diversion: SW SE Section 29, T. 2 S., R. 35 E., M.D.M.,
6 or at a point from which the S.E. corner of
7 said Section 29 bears S. 69°55' E., 1608.8
8 feet.

9 Class of Culture: Harvest crops, meadow and pasture

10 Period of Use: Irrigated crop lands March 15th to Oct. 1st
11 Meadow pasture lands May 1st to Oct. 1st

12 Priority: 1875

| Crop lands | Cultural acreage | | Sub-division | Sec-tion | Tp. N. | R. E. | Duty of Water A.F. | |
|------------|------------------|----------------|--------------|----------|--------|-------|--------------------|----------------|
| | Crop lands | Meadow pasture | | | | | Crop lands | Meadow Pasture |
| 35.95 | | | NW SW | 34 | 2 | 35 | 177.23 | |
| 34.77 | | | NE SE | 33 | " | " | 171.41 | |
| 34.95 | | | SW NW | 34 | " | " | 172.30 | |
| 28.23 | | | SE NE | 33 | " | " | 139.17 | |
| | | 39.50 | SW NW | 35 | " | " | | 119.69 |
| | | 39.50 | SW SW | 35 | " | " | | 119.69 |
| | | 36.47 | NE SE | 34 | " | " | | 110.50 |
| | | 27.08 | SE NE | 34 | " | " | | 82.05 |
| 10.20 | | | SE NE | 33 | " | " | 50.29 | |
| 21.42 | | | NE SW | 34 | " | " | 105.60 | |
| 0.86 | | | NE NE | 33 | " | " | 4.24 | |
| 2.42 | | | SW NW | 34 | " | " | 11.93 | |
| 0.05 | | | SE NE | 33 | " | " | 0.25 | |
| 13.46 | | | NE NE | 33 | " | " | 66.36 | |
| 12.72 | | | NW NW | 34 | " | " | 62.71 | |
| 195.03 | | 142.55 | | | | | 961.49 | 431.93 |

1 During the non-irrigation season the use of water
 2 on the above mentioned lands shall be as follows:

| 3 | 4 | 5 | 6 | 7 | 8 | 9 |
|----------|----------------|-----|-----------------------|--------|---------------|------|
| Class of | Duty of Water | | Irrigation Season | Acres | Duty of Water | |
| land | Acre-Feet | | | | Acre-Feet | |
| | <u>1/</u> | | | | | |
| 6 | | | | | | |
| 7 | Crop lands | 2.0 | Oct. 1st to Mar. 15th | 195.03 | 390.06 | |
| 8 | | | | | | |
| | <u>2/</u> | | | | | |
| 9 | | | | | | |
| 10 | Meadow Pasture | 1.0 | Oct. 1st to May 1st | 142.55 | 142.55 | |
| 11 | | | | | | |
| | | | Total | 337.58 | 532.61 | A.F. |

13 1/ Equals continuous flow of 0.0061 c.f.s. per acre

14 2/ Equals continuous flow of 0.0024 c.f.s. per acre

17 STOCK AND DOMESTIC RIGHTS

18 The claimant named herein, or its successors in
 19 interest, in conjunction with the rights to the use of water
 20 for irrigation purposes, as herein defined, shall be entitled
 21 to a reasonable diversion and use of water for stockwatering
 22 and domestic purposes at any time during the year; provided,
 23 that during the irrigation season the quantity of water allowed
 24 and diverted for irrigation purposes shall include that amount
 25 of water required for stock and domestic purposes.

26 JUNIOR RIGHTS

27 The waters of Robinson (Leidy) Creek and its Tribu-
 28 taries are fully utilized for irrigation, stockwatering and
 29 domestic purposes by the claimant named herein and no person
 30 or persons holding a right of appropriation not herein listed

1 shall be entitled to receive any water from said Robinson
2 (Leidy) Creek and its Tributaries.

3
4 THIS ORDER OF DETERMINATION made and filed in the
5 Office of the State Engineer on the 1st day of September,
6 1945.

7 (SEAL)

8 /s/ ALFRED MERRITT SMITH
9 Alfred Merritt Smith
10 State Engineer

11 APPENDIX

12 The following represents water rights in name of
13 E. L. Cord, acquired by virtue of application filed and permit
14 granted by the State Engineer, which water rights are used in
15 conjunction with the vested rights as heretofore defined.

16 Certificate No. 1881

17 Permit No. 2889

18 Priority Feb. 13, 1914

19 Source: Robinson Creek

20 Point of Diversion: SW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 29, T. 2 S., R. 35 E.

21 Manner of Use: Through Ditches

22 Amount of Appropriation: 1.16 c.f.s. or 535 A.F. per season

23 Period of Use: March 15th to November 30th

24

| Cultural Acreage | Sub-division | Section | T.S. | R.E. |
|------------------|--------------|---------|------|------|
| 18 | SW SW | 27 | 2 | 35 |
| 17 | SE SE | 28 | 2 | 35 |
| 39 | NE NE | 33 | 2 | 35 |
| 40 | NW NW | 34 | 2 | 35 |

29 114 Acres Total

30 Certificate No. 1881 contains the following statement:

| Cultural Acreage | Sub-division | Description | | |
|---------------------|--------------|-------------|------|------|
| | | Section | T.S. | R.E. |
| 5 | NE SE | 28 | 2 | 35 |
| 7 | NW SW | 27 | 2 | 35 |

12 Acres Total

Certificate No. 1281

Permit No. 5525

Priority: June 3, 1919

Source: Fish Lake Spring

Point of Diversion: NW SW Sec. 25, T. 2 S., R. 35 E.

Manner of Use: Through Ditches

Amount of Appropriation: 1.041 c.f.s. or 566.82 A.F. Per Season

Period of Use: March 1st to December 1

| Cultural Acreage | Sub-division | Description | | |
|---------------------|--------------|-------------|------|------|
| | | Section | T.S. | R.E. |
| 1.2 | SW NW | 25 | 2 | 35 |
| 11.8 | NW SW | 25 | 2 | 35 |
| 38.7 | SE NE | 26 | 2 | 35 |
| 38.0 | NE SE | 26 | 2 | 35 |
| 14.4 | NW SE | 26 | 2 | 35 |

104.1 Acres Total

Certificate No. 1878

Permit No. 3159

Priority: Nov. 5, 1914

Source: Perry Aiken Creek

Point of Diversion: SE $\frac{1}{2}$ SW $\frac{1}{2}$ Sec. 35, T. 2 S., R. 35 E.

Manner of Use: Through Ditches

Amount of Appropriation: 0.226 c.f.s. or 96 A.F. per season

Period of Use: April 1st to November 1st

| Cultural Acreage | Description | | | | |
|---------------------|--------------|---------|------|------|--|
| | Sub-division | Section | T.S. | R.E. | |
| 16.80 | NE NW | 35 | 2 | 35 | |
| 5.80 | SE NW | 35 | 2 | 35 | |

22.60 Acres Total

Certificate No. 2679

Permit No. 10532

Priority: July 12, 1940

Source: Robinson or Leidy Creek

Point of Diversion: NW NE Sec. 35, T. 2 S., R. 34 E., M.D.M.

Manner of Use: Pipe line & Pelton Wheel for Power development

Amount of Appropriation: 3 c.f.s.

Period of Use: January 1st to December 31st

Certificate No. 2859

Permit No. 10575

Priority: October 30, 1940

Source: Underground Water (Well No. 1)

Point of Diversion: NW NE Sec. 33, T. 2 S., R. 35 E., M.D.M.

Manner of Use: Water pumped by electrical driven deep well pump and diverted through ditches.

Amount of Appropriation: 0.66 c.f.s. or 357 A.F. per season

Period of Use: Feb. 1st to Nov. 1st

| Cultural Acreage | Description | | | | |
|---------------------|--------------|---------|------|------|--|
| | Sub-division | Section | T.S. | R.E. | |
| 40 | NW NE | 34 | 2 | 35 | |
| 26 | NE NE | 34 | 2 | 35 | |

66 Acres Total

Certificate No. 2860

Permit No. 10576

Priority: Oct. 30, 1940

Source: Underground Water (Well No. 2)

Point of Diversion: SW NW Sec. 34, T. 2 S., R. 35 E.

Manner of Use: Water pumped by electrically driven deep well pump and diverted through ditches.

Amount of Appropriation: 0.66 c.f.s. or 357 A.F. per season

Period of Use: Feb. 1st to November 1st

| Cultural Acreage | Sub-division | Description | | | |
|---------------------|--------------|-------------|------|------|--|
| | | Section | T.S. | R.E. | |
| 40 | SW NE | 34 | 2 | 35 | |
| 26 | SE NW | 34 | 2 | 35 | |

66 Acres Total

Certificate No. 2861

Permit No. 10577

Priority: Oct. 30, 1940

Source: Underground Water (Well No. 3)

Point of Diversion: SE SE Sec. 28, T. 2 S., R. 35 E., M.D.M.

Manner of Use: Water pumped by electrically driven pump and diverted into ditches.

Amount of Appropriation: 0.07 c.f.s. or 38 A.F. per season

Period of Use: Feb. 1st to Nov. 1st

| Cultural Acreage | Sub-division | Description | | | |
|---------------------|--------------|-------------|------|-------|--|
| | | Section | E.S. | R. E. | |
| 7 | NE NW | 34 | 2 | 35 | |

7 Acres Total

Certificate No. 2862

Permit No. 10578

Priority: Oct. 30, 1940

Source: Underground Water (Well No. 4)

Point of Diversion: NE NE Sec. 33, T. 2 S., R. 35 E., M.D.M.

Manner of Use: Water pumped by electrically driven pump and diverted through ditches.

Amount of Appropriation: 0.33 c.f.s. or 178.5 A.F. per season

Period of Use: Feb. 1st to November 1st

| Cultural Acreage | Description | | | |
|---------------------|--------------|---------|------|------|
| | Sub-division | Section | T.S. | R.E. |
| 33 | NE NW | 34 | 2 | 35 |

33 Acres Total"

FURTHER ORDERED, ADJUDGED AND DECREED that it has been made to appear by the certified copy of correction of the Order of Determination signed by the State Engineer and filed on behalf of the petitioner and the original claimant in the above-entitled proceedings, with the clerk of this court in said matter after the trial and hearing in this proceeding, that in copying Proof No. 01312 in the Order of Determination the land therein described is, by a clerical mistake in a column heading, described as situate in Township 2 North, whereas the original proof referred to shows that it is and should be in Township 2 South, and it further appearing that no person is prejudiced by said correction, the said copy and description as copied and set forth in this decree foregoing is corrected accordingly so as to make this decree speak the truth.

DONE IN OPEN COURT this 29th day of April,
1946.

Wm D. Hatton
District Judge.

OFFICE OF COUNTY CLERK,)
of the) ss.
County of Esmeralda,)

I, AMY ROBERSON, County Clerk of the County of Esmeralda, in the State of Nevada, and ex-officio Clerk of the District Court of the said Esmeralda County and State aforesaid, hereby certify that I have compared the foregoing copy with the original

Findings of Fact and Conclusions of Law and
Judgment and Decree in Matter #4131

in the above entitled action filed in my office on the ^{29th} day of April A. D., 1946...
and that the same is a full, true and correct copy of such original and of the whole thereof.

WITNESS my hand and the seal of said Court, this 31st day of May
A. D., 1946....


Clerk.

Certificate to Copy
or Record of Paper.

By _____
Deputy Clerk.