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IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF WHITE PINE

In The Matter Of The Determination)
Of The Relative Rights Of Claimants)
And Appropriators In And To The Wa-)
ters Of Schell Creek And Its Tribu-)
taries, In White Pine County, Nevada.)

(*Enclosed*)
No. 3007
Filed Sept 9th, 1934
By *J. D. Oldfield*
Clerk

PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECREE

The above entitled matter came on regularly for hearing in the above entitled Court on October 18, 1937, before Honorable L. O. Hawkins, District Judge of said Court presiding, the whole of said stream system being within said White Pine County, State of Nevada, and he being the judge duly selected to hear and having jurisdiction to hear said matter upon the State Engineer's Final Order of Determination of the Relative Rights of Claimants and Appropriators to the use of the waters of the stream system of Schell Creek and its Tributaries, which Final Order of Determination had been duly filed by said State Engineer herein and also upon certain exceptions thereto which were duly filed herein by the hereinafter named claimants to the use of said waters, the sworn statements and claims of claimants, and all the other evidence on file herein and the entire records and files in said matter. Gray Mashburn, Attorney-General of the State of Nevada, appeared in said hearing and proceedings in behalf of said State and the State Engineer of the State of Nevada; Messrs. McNamara & Robbins appearing as attorneys for claimant Jose Castillo, and Messrs. Chandler, Quayle & Gill appearing as attorneys for

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claimant James G. Katsaros. The Attorney-General thereupon offered and there were received in evidence in support of the rights of claimants named in the Final Order of Determination sworn statements of claimants, verified affidavits and other competent evidence, together with the files and records of the State Engineer's Office respecting the rights of each of said claimants, including cultural maps establishing the cultural area, diversion ditches, and evidence of the kind and character of lands irrigated by each claimant, and all other maps, plats, surveys and evidence on file in the Office of the State Engineer relating to the Proof of Appropriation of each of said claimants involved in this matter for determination of the relative rights of said claimants in and to the waters of said stream system which were obtained and filed in said State Engineer's Office under the provisions of law relating to the Office of the State Engineer, and all other records and files in said State Engineer's Office relating to and constituting competent evidence in this matter.

The contests tendered by the exceptions filed were then presented to the Court by claimants who had filed and given notice of exceptions to the Final Order of Determination.

Competent evidence, both oral and documentary, was offered and received showing full compliance by the State Engineer with each and every act required by law for him to do and perform in the preparation and filing in court of the Final Order of Determination. It was stipulated by and between counsel representing the respective claimants and the Attorney-General, representing the State and the State Engineer, that the testimony which had been taken before the State Engineer on the State Engineer's Preliminary Order of Determination

1 should be considered by the Court as evidence in the matter.
2 Further testimony was taken, briefs were filed, and the entire
3 matter was submitted to the Court for decision. The Court
4 having duly considered the entire record, the evidence offer-
5 ed and the briefs and arguments of counsel having been duly
6 considered, the Court made, entered and filed on June 20,
7 1938, in the above-entitled Court an opinion and decision,
8 and directed that judgment be entered accordingly.

9 Wherefore, pursuant to and in accordance with said
10 opinion and decision, the Court finds facts, makes conclusions
11 of law and enters its judgment and decree concerning matters
12 submitted to the Court as follows, to-wit:

13 FINDINGS OF FACT

14 I

15 That Jose Castillo, a claimant on said stream system,
16 on September 28, 1934, by and through his attorneys, McNamara
17 & Robbins, petitioned the State Engineer as provided in Sec-
18 tion 18 of the Water Code of this State, being Nevada Compil-
19 ed Laws 1929, Section 7905, for a determination of the rela-
20 tive rights of the various claimants in and to the waters of
21 said Schell Creek and its Tributaries.

22 That responsive to said petition, the State Engineer,
23 in accordance with said Section 18 of the Water Code, on Octo-
24 ber 13, 1934, made an investigation of said stream system,
25 and from such investigation determined that the relative rights
26 in and to said stream system should be determined, and on Novem-
27 ber 14, 1934, made and entered on his records an order grant-
28 ing the petition for the determination of the relative rights
29 in and to the waters of said stream system.

30 That on the 14th day of November, 1934, the State En-
31 gineer made and entered a notice of order and proceeding, sett-
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ing forth the fact of the entry of said order and of the pendency of proceedings, as prescribed in Section 19 of the Water Code, being Nevada Compiled Laws 1929, Section 7906, and setting forth that all claimants in the rights of said Schell Creek Stream System are required, as provided by law, to make proof of their claims.

That in conformity with said Section 19 of the Water Code of this State said State Engineer also caused a copy of said notice to be duly published at least once a week for four consecutive weeks in the Ely Record, a newspaper of general circulation in White Pine County. The date of first publication was November 23, 1934, and the date of final publication was December 21, 1934.

That on the 25th day of January, 1936, the State Engineer, pursuant to Section 22 of the Water Code of the State, being Nevada Compiled Laws 1929, Section 7909, prepared a notice and order for taking proofs and setting forth the date when the taking of said proofs would commence, as to the rights in and to the waters of said Schell Creek Stream System, and the date prior to which all proofs must be filed. The date set prior to which all such proofs were to be filed was not less than sixty days prior to the date set for the commencement of the taking of said proofs.

That in conformity with said Section 22 of the Water Code of this State the State Engineer also caused a copy of said notice and order for taking proofs to be published at least once a week for four consecutive weeks in the Ely Daily Times, a newspaper of general circulation published in White Pine County, Nevada, the date of first publication being January 27, 1936, and the date of final publication being February 24, 1936. The said date of final publication was

1 not less than fifteen days prior to the commencement of taking
2 of such proofs.

3 That on the 28th day of January, 1936, the State En-
4 gineer, pursuant to Section 22 of the Water Code of this State,
5 enclosed copies of said notice and order for taking proofs in
6 envelopes and mailed same by registered mail, postage prepaid,
7 to Jose Castillo, in care of his attorneys, McNamara & Robbins,
8 at Elko, Nevada, and to James G. Katsaros, in care of his at-
9 torneys, Chandler, Quayle & Gill, at Ely, Nevada, being all
10 of the known claimants in and to the waters of the Schell
11 Creek Stream System. That the State Engineer did then and
12 there in addition enclose with each of said notices mailed as
13 aforesaid blank forms on which each claimant should present
14 in writing all necessary particulars for the determination of
15 his rights in and to the waters of said stream system. That
16 the date of mailing said notice and order was at least thirty
17 days prior to the date fixed for the commencement of taking
18 of said proofs.

19 That during the time named in said order and notice
20 for taking proofs, beginning on March 17, 1936, and ending
21 on May 20, 1936, the State Engineer received and filed in
22 his office under oath proofs, maps, plats, surveys, abstracts
23 and evidence relating to claims in and to the waters of said
24 Schell Creek Stream System.

25 That as soon as practical after the sixty day period
26 specifically set forth in the aforesaid notice, to-wit, on
27 June 11, 1936, the State Engineer assembled all proofs which
28 had been filed with him and prepared an abstract of claims
29 as provided for in Section 28, Chapter 106, Statutes of 1921,
30 being Nevada Compiled Laws 1929, Section 7915, and caused the
31 same to be typed in his office.
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That the State Engineer also prepared under date of June 12, 1936, and caused to be typed in his office a Preliminary Order of Determination establishing the several rights of claimants to the waters of Schell Creek and its Tributaries.

That when said abstract of claims and Preliminary Order of Determination were completed, the State Engineer then prepared a notice and order dated June 12, 1936, fixing and setting a time and place when and where the evidence taken by or filed with him and the proof of claims would be open for inspection of all interested persons for a period of twenty days, beginning on Monday, July 20, 1936 (Sundays and legal holidays excepted), and also fixing a time for filing of objections.

That a copy of said notice, together with a typewritten copy of the abstract of claims and a typewritten copy of the Preliminary Order of Determination, were enclosed in an envelope and sent by registered mail to each of said claimants. That the aforesaid copies of the notice of inspection, abstract of claims and Preliminary Order of Determination were sent by registered mail at least thirty days prior to the first day of inspection to each person who had appeared and filed proof of his claim, all pursuant to Section 28 of the Water Code, being Nevada Compiled Laws 1929, Section 7915.

That during the period after the time of opening evidence and proofs for public inspection as provided for in the foregoing notice and on or before August 22, 1936, being at least thirty days, as provided in Section 29 of the Water Code, being Nevada Compiled Laws 1929, Section 7916, the State Engineer received and officially filed in his records objections to any finding, part or portion of the Preliminary Order of Determination submitted by any person claiming any

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interest in the stream system involved by vested right.

That on September 2, 1936, the State Engineer prepared a notice fixing a time and place for hearing objections to the Preliminary Order of Determination and mailed copies of same by registered mail to all claimants to the waters of said stream system.

That on the 21st day of October, 1936, the State Engineer did commence hearings on objections filed to the Preliminary Order of Determination. The evidence taken during said hearings was reported and transcribed and made a part of the record herein.

That thereafter the State Engineer duly prepared, made and filed and caused to be entered in the records of his office on or about May 22, 1937, a Final Order of Determination defining the several rights of the claimants and appropriators to the waters of Schell Creek Stream System and its Tributaries.

That on or about the 24th day of May, 1937, the State Engineer, in accordance with Section 34 of the Water Code of this State, being Nevada Compiled Laws 1929, Section 7921, filed with the Clerk of the Seventh Judicial District Court of the State of Nevada, in and for the County of White Pine, at Ely, Nevada, a certified copy of the Order of Determination, together with the original evidence and the transcript of testimony filed with or taken by the State Engineer, duly certified by him.

That the State Engineer, in accordance with Section 33 of the Water Code of this State, being Nevada Compiled Laws 1929, Section 7920, did send by registered mail, postage prepaid, on or about the 24th day of May, 1937, a copy of the Order of Determination to each person who had filed proof of claim.

1 That upon the filing of said Order of Determination,
2 evidence and transcript of testimony with the Clerk of the
3 Seventh Judicial District Court of the State of Nevada, in and
4 for the County of White Pine, the State Engineer, in accordance
5 with Section 34 of the Water Code of this State, being Nevada
6 Compiled Laws 1929, Section 7921, requested an order of said
7 Court setting a time for the hearing of exceptions to said
8 Order of Determination. That on or about the 24th day of May,
9 1937, the Honorable J. M. Lockhart, District Judge of the
10 Seventh Judicial District Court of the State of Nevada, in and
11 for White Pine County, made an order setting a time for the
12 hearing of exceptions to the Order of Determination at the
13 hour of ten o'clock A.M. on July 12, 1937, at the White Pine
14 County Court House at Ely, Nevada, as provided for in Section
15 34, being Nevada Compiled Laws 1929, Section 7921, as amended
16 by Chapter 90, 1931 Statutes of Nevada, Pages 148-149, and
17 therein further ordered that any and all parties in interest
18 who were aggrieved or dissatisfied with said Order of Determina-
19 tion so filed should file with the Clerk of said Court and
20 transmit to said State Engineer by registered mail notice of
21 exceptions to said Order of Determination at least five days
22 prior to the hearing of said exceptions as provided in Section
23 35, Chapter 106, Statutes of Nevada 1921, as amended, being
24 Nevada Compiled Laws 1929, Section 7922; that the Clerk of
25 said Court thereupon immediately furnished a certified copy
26 of said Court Order to the State Engineer of Nevada, and said
27 State Engineer thereupon, to-wit, on or about the 26th day of
28 May, 1937, mailed a copy of said certified copy of said certifi-
29 ed copy of the Court order by registered mail to each party in
30 interest whose name appeared in said Order of Determination.
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32 That the State Engineer of the State of Nevada also

1 caused said last mentioned Order of the Court to be published
2 at least once a week for four consecutive weeks in the Ely
3 Daily Times, a newspaper of general circulation published in
4 White Pine County, Nevada. That the first date of publica-
5 tion of said notice was May 28, 1937, and the last date of
6 publication was June 25, 1937.

7 That on or about July 3, 1937, and within the time
8 allowed by law, claimant Jose Castillo filed with the Clerk
9 of the Seventh Judicial District Court of the State of Nevada,
10 in and for the County of White Pine, certain exceptions to the
11 Final Order of Determination, and also filed with the State
12 Engineer notice of said exceptions. That on or about July 9,
13 1937, and within the time allowed by law, claimant James G.
14 Katsaros also filed with the Clerk of the Seventh Judicial
15 District Court of the State of Nevada, in and for the County
16 of White Pine, certain exceptions to the Final Order of De-
17 termination, and also filed with the State Engineer notice
18 of said exceptions.

19 II

20 I find that Schell Creek and its Tributaries is lo-
21 cated in Township 22 N., Ranges 64 and 65 E., M.D.B.& M., and
22 approximately fifty miles in a Northeasterly direction from
23 Ely, Nevada; that the Creek heads in the Schell Creek range of
24 mountains and runs in a Westerly direction; that in addition
25 to water derived from melting snows and precipitation in the
26 form of rain within its drainage area the Creek also has its
27 source in two feeder springs commonly known as Overland Spring
28 and Warm Spring; that Overland Spring is located in the bed
29 of Schell Creek in the NW $\frac{1}{4}$ of Section 7, Township 22 N., Range
30 65 E., and the spring commonly referred to as Warm Spring is
31 located in the West part of the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 7;
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1 that in addition to these two springs there are a number of
2 marshy areas or cienagas along the creek channel which also
3 contribute a fair flow of water to the creek below said areas.

4 III

5 I find that the stream system's flow is typical of
6 many small streams and creeks existing in the State of Nevada;
7 that in the Spring when the snowfall is normal the Spring flow,
8 added to the melting snow, gives a supply of water sufficient
9 to serve all of the appropriators; that this flow of water
10 usually continues only for a comparatively short period and
11 in the ordinary season when the flow from melting snow is at an
12 end the only supply of water for claimants and appropriators
13 must be derived entirely from the tributary springs.

14 IV

15 I find that all of the persons named as claimants and
16 appropriators in said Final Order of Determination as claimants
17 to the waters of said Schell Creek Stream System by and through
18 the several diversion ditches named therein are appropriators
19 or claimants to the waters of said stream system; that said
20 appropriators or claimants, each for himself or by and through
21 his respective predecessors in interest, made due and legal
22 appropriation of the quantity of water for beneficial use, at
23 the times and in the manner alleged in said Order of Determina-
24 tion; that each of said appropriators or claimants, or his
25 respective successors in interest, now is the owner or possess-
26 or of the lands described in said Order of Determination and
27 in these Findings of Fact, Conclusions of Law and Decree in
28 connection with the said water right, and each continuously
29 from the date of said appropriation or priority, when such
30 water was available for such beneficial use, diverted all of
31 such quantity of water from the said stream system and applied
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1 the same to beneficial use as alleged in said Order of De-
2 termination.

3 V

4 I find that the climate where the lands of said res-
5 pective claimants in said Order of Determination are situated
6 is dry and arid; that it is necessary to irrigate said lands
7 in order to produce or raise crops thereon, but, with irriga-
8 tion, said lands produce valuable harvest crops and meadow
9 pasture; and that there is no source of water supply for the
10 irrigation of said lands of the claimants herein and for
11 stockwatering and domestic purposes other than the waters of
12 said Schell Creek Stream System and its Tributaries.

13 VI

14 I find that the names of claimants or appropriators
15 set forth in the Final Order of Determination, the source of
16 water supply, the means by which the water is secured from the
17 source and applied to the beneficial use named, the year of
18 priority, the number of acres of harvest crop and meadow pas-
19 ture, the legal subdivision of the lands, length of season,
20 the duty of water for each of said claimants as set forth in
21 said Order of Determination, are true and correct, except as
22 changed as hereinafter set forth herein.

23 VII

24 I find that the State Engineer duly made all necessary
25 and proper orders, as required by law, and each and every not-
26 ice required by law was given to all claimants and appropria-
27 tors in the manner and at the times, and contained the subject
28 matter required by law; that all of said claimants named duly
29 appeared, and are the only claimants and appropriators of the
30 waters of said stream system.
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VIII

I find that all of the persons named herein are claimants, appropriators and users of the waters of Schell Creek Stream System and its Tributaries; that each of said persons filed proof of his claim with the State Engineer, and that each of said parties appeared in court in person, and by his attorneys, and by submitting to the court evidence in support of his claim.

IX

I find that the duty of water on lands irrigated from the Schell Creek Stream System and its Tributaries is five acre-feet per acre for the lands classed herein as harvest crop and meadow pasture, and that the rate of use of water under both classifications is based on a continuous flow of 0.0118 of a cubic foot of water per second of time for each acre of land having a water right, which amount in uniform continuous flow will yield the acre-foot allotment per acre during the irrigation season fixed herein. I further find that during those periods of the irrigation season when the flow of water in the stream system will more than satisfy the continuous flow allotment of all claimants, each of such claimants, subject to a condition that there be no undue interference with other users, shall be entitled to increase the rate of his direct diversion so as to satisfy any immediate needs of the growing crops and build up the ground water storage; provided, that the total diversion for each claimant during any calendar month shall not exceed 1.5 acre-feet for each acre of land granted a water right, and provided further, that the total diversion during the irrigation season shall not exceed the duty of water in acre-feet as specified for such land.

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X

I find that the irrigation season should begin on March 15th and end on October 15th of each year, being a length of 214 days, except when climatic conditions are such that irrigation is not in accordance with good husbandry and actual beneficial use of water. The State Engineer shall determine by examination the beginning of the irrigation season and set the date, giving notice to all parties concerned; that the setting of the date shall be for the sole purpose of administering and distributing the waters of Schell Creek and its Tributaries.

XI

I find that the appropriators or their successors in interest along said stream system should 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, by storage or in rotation or periodic turn, within the seasonal limits with the approval of the State Engineer or water commissioner. I further find that each of the said appropriators herein named, in order to have a greater irrigation head under the continuous flow, should be allowed to rotate the water which he is collectively entitled to use between his various ditches.

XII

I find that all of the claimants and appropriators herein named having water rights for irrigation are entitled to use such water for stockwatering and domestic purposes at any time during the year; that the total diversion for each claimant for stockwatering and domestic purposes should not exceed 0.25 of a cubic foot of water per second of time, and that during the irrigation season the amount of water divert-

1 ed for irrigation purposes should not be increased by any
2 amount to be used for stock and domestic purposes, but the
3 quantity allowed and diverted for irrigation purposes dur-
4 ing the irrigation season includes the water for stock and
5 domestic purposes.

6 XIII

7 I find that the water diverted for irrigation should
8 be measured at the point where the water in each ditch first
9 becomes appurtenant to the land to be irrigated, or as near
10 thereto as practicable.

11 XIV

12 I find that claimant Jose Castillo, the lower user
13 on Schell Creek, has constructed reservoirs along the channel
14 of Schell Creek on his property and below any of the lands
15 irrigated by James G. Katsaros, for the conservation of water
16 to assist in the irrigation of his lands; that any change in
17 the manner of use of the water as originally initiated for
18 the Castillo lands by virtue of use of said reservoirs could
19 in no way be harmful to the upper appropriator, James G.
20 Katsaros. I further find that Jose Castillo may continue
21 the present manner and method of the use of the water to the
22 extent of his right as allowed herein.

23 XV

24 I find from the evidence in this matter that Mrs.
25 Eliza A. Burke was the first person to file with the State
26 Engineer a Proof of Appropriation covering a claim of a vest-
27 ed right to the use of the waters of Schell Creek Stream Sys-
28 tem and its Tributaries; that this proof was filed by Mrs.
29 Eliza A. Burke with the State Engineer on or about June 24,
30 1911, and was assigned Serial Number 0773 in that Office.
31 I further find that said proof was defective in that it did
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1 not give a clear and concise statement as representative of
2 the water rights then existent upon the stream system, nor a
3 true and correct description of the location of said lands so
4 irrigated. I further find that each of said claimants, Jose
5 Castillo and James G. Katsaros, as successors in interest to
6 portions of the water right as evidenced by the parent proof,
7 No. 0773, filed proof to his portion of such claim of water
8 right by filing with the State Engineer Amended Proofs of
9 Appropriation No. 0773 covering his claim of water rights ac-
10 quired to the use of the waters of Schell Creek and its
11 Tributaries as evidenced by said parent proof No. 0773.

12 XVI

13 I find from the evidence that Henry Gilbert settled
14 on the lower ranch along Schell Creek, which ranch is now the
15 Castillo ranch, in 1869, and continuously thereafter until
16 about the Fall of the Year 1881 improved the same; that dur-
17 ing said period of time he grew thereon vegetables, fruit,
18 hay, grain, fed milk cows, peddling such produce, fruit and
19 milk and butter to neighboring camps at Schellbourne and
20 Cherry Creek, and that in 1881 he had in cultivation sub-
21 stantially all of the acreage he ever brought in cultivation
22 on said ranch. I further find from the evidence that Henry
23 Gilbert's death occurred in 1892, and that said ranch was
24 sold by Mrs. Gilbert to M. F. Boyle in 1896. I further find
25 from the evidence that from the time M. F. Boyle purchased
26 the lower ranch from Mrs. Gilbert in 1896 until Castillo took
27 possession thereof in 1922 no new lands were brought under
28 cultivation on said ranch that had not theretofore been
29 cultivated by the Gilberts. I further find that by applying
30 the doctrine of relation to the facts in this case, all of
31 the land brought under cultivation by Henry Gilbert is entitl-
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1 ed to a water right with a priority of the Year 1869, or that
2 the date of priority of the water right awarded to claimant
3 Jose Castillo for the irrigation of 10 acres of land in the
4 SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 11, Township 22 N., Range 64 E., fixed by
5 said Final Order of Determination as of the Year 1900, should
6 have a priority of the Year 1869, or of the same year as the
7 other priorities awarded to the Castillo ranch.

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XVII

I further find from the evidence that in addition to the lands belonging to claimant James G. Katsaros that were allowed water rights in the Final Order of Determination, there are additional lands for which claimant James G. Katsaros should have been allowed water rights, but which were denied him, as follows:-

(a) 7.2 acres situated in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 7; T. 22 N., R. 65 E., under irrigation through and by means of water conducted through the so-called Middle and South ditches, with a priority of 1880; - for harvest crops.

(b) 9.1 acres lying in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 7, under irrigation by water diverted and conducted through said South ditch from Warm Spring, with a priority of 1880; - for harvest crops.

(c) 0.7 acre in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 1, T. 22 N., R. 64 E., under irrigation with water diverted from Schell Creek through the so-called North ditch, with a priority of 1884 - for harvest crops.

(d) A triangular piece of land in the Southeast Corner of the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 12, T. 22 N., R. 64 E., under irrigation with water diverted through the ditch designated as "X", or the one irrigating

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the meadow pasture right just above said tract of land, which land has a priority of 1880; - for meadow pasture.

I further find that such lands should be allowed priorities as of the years, in the amounts and for the character of crops above set forth.

XVIII

I further find that the 1.1 acres of grain land and the 4.1 acres of alfalfa land in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 12 of Township 22 N., Range 64 W., M.D.B. & M., and the 0.4 acres of alfalfa land in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 12 shown as irrigated on the Millard map filed with the Office of the State Engineer on May 18, 1936, under said Amended Proof No. 0773, and on which lands a water right was claimed by James G. Katsaros, had been brought under cultivation for the first time in or subsequent to the Year 1922, and that no permits have been issued by the State Engineer to appropriate water with which to irrigate such lands; nor had there been any permits issued by him to change the place of use of vested water rights from other lands to the lands brought under cultivation in or subsequent to the Year 1922, as required by the water laws since the Year 1913. I further find no rights to continue the irrigation of such lands have been established by the claimant, James G. Katsaros.

XIX

I find from the evidence that the 1.4 acres of land in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 12, the 0.3 acres of land in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 11, the 5.5 acres of land in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 11, the 5.7 acres of land in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 11, the 16.1 acres of land in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 11, the 13.0 acres of land in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 11, and the

1 1.7 acres of land in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 11, all shown as
2 irrigated on the Millard map made from surveys on July 19-21,
3 1932, also designated in blue on Exhibit 3, in the record,
4 for all of which lands a water right was claimed by Jose
5 Castillo, had been brought under irrigation for the first
6 time in or subsequent to the Year 1922. That no permits
7 have been issued by the State Engineer to appropriate water
8 with which to irrigate such lands, nor any permit issued by
9 him to change the place of use of vested water rights from
10 other lands to the lands brought under cultivation in or
11 subsequent to 1922, as required by the water laws since the
12 Year 1913. I further find that no right to continue the
13 irrigation of such lands has been established by the claim-
14 ant, Jose Castillo.
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16 XX

17 I find that the claim of James G. Katsaros that he
18 is entitled to water rights superior to any appurtenant to
19 the lower ranch, because of the method employed in irrigat-
20 ing the two ranches during the period from 1898 to 1922, when
21 they were both owned by William Burke, Sr., and his heirs,
22 is without merit and is rejected.

23 XXI

24 I find that the claim of Jose Castillo that he is
25 entitled to all of the water in Schell Creek by reason of the
26 words found in the deed from Mrs. William Burke, Sr., and
27 other heirs, William Burke, Sr., to William J. Burke; in her
28 proofs of claims for water rights, filed with the State En-
29 gineer; in the various papers executed by William J. Burke
30 effecting title to the lower place; in the certificate of
31 water rights issued by the State Engineer on Mrs. Burke's
32 proofs, and in the Decree of Foreclosure and Sheriff's Deed,

1 divesting title to the lower ranch from William J. Burke, etc.,
2 is without merit and is rejected.

3 XXII

4 That all exceptions and objections filed in writing
5 or otherwise to the Final Order of Determination, except as
6 otherwise indicated herein, have not, nor have any of them,
7 been sustained by the evidence, and that any and all of such
8 exceptions and objections made and filed by claimants to the
9 Final Order of Determination, if not settled or determined by
10 the general findings, should be denied.

11 XXIII

12 That except where specifically in this decision other-
13 wise ordered, the Order of Determination made, filed and caus-
14 ed to be entered of record in this case by the State Engineer
15 should be confirmed.

16 CONCLUSIONS OF LAW

17 From the evidence presented and received in this
18 matter and from the foregoing Findings of Fact the Court makes
19 the following Conclusions of Law:-

20 That the State Engineer had the right, authority and
21 jurisdiction under the Water Code of this State to make the
22 investigations made by him, conduct the hearings had by him,
23 receive the proofs, maps and plats received by him, hear the
24 evidence presented to him, and to prepare, make, enter and
25 file in his office the original of said Final Order of Deter-
26 mination and a certified copy thereof in this Court, and to
27 determine in said Final Order of Determination the relative
28 rights of the water users of said Schell Creek Stream System
29 and its Tributaries; that said State Engineer duly made all
30 orders necessary and proper in connection therewith and enter-
31 ed the same in his office as required by said Water Code;
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1 that each and every notice required by law to be given to claim-
2 ants and appropriators was duly given by the State Engineer in
3 the manner and at the time required by law, and said notices
4 contain the statements required by law; that all claimants and
5 appropriators of the waters of the Schell Creek Stream System
6 and its Tributaries duly received the information and notices
7 required by law in such cases; and that each and all of said
8 claimants duly appeared in these proceedings.

9 That this Court had jurisdiction to hear and try
10 this matter and has jurisdiction to find, make and enter these
11 Findings of Fact and Conclusions of Law and this Decree, and
12 each and every portion thereof, in this matter.

13 That Jose Castillo and James G. Katsaros constitute
14 and are the claimants, and the only claimants, who were and
15 are appropriators and users of the waters of the Schell Creek
16 Stream System and its Tributaries on the date the Final Order
17 of Determination was filed with the Clerk of this Court.

18 That all and singular the persons named in the Final
19 Order of Determination as claimants and appropriators to the
20 waters of the Schell Creek Stream System and its Tributaries
21 by and through the several diversion ditches and canals named,
22 and their successors in interest, are appropriators or claim-
23 ants to the waters of said stream system; and that such ap-
24 propriators or claimants, each for himself or by and through
25 his respective predecessors in interest, now are the owners
26 or possessors, respectively, of the lands described in said
27 Order of Determination and in these Findings of Fact, Conclu-
28 sions of Law and Decree under their respective proofs, and
29 each continuously from the date of said appropriation or prior-
30 ity, when such water was available for beneficial use, divert-
31 ed all of such quantity of water from said Schell Creek Stream
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1 System and its Tributaries and applied the same to beneficial
2 use as alleged in said Order of Determination.

3 In addition to the irrigated lands of James G. Katsar-
4 os as described in said Order of Determination, there should be
5 included in the Decree the additional areas omitted by the
6 State Engineer in said Order of Determination as set forth in
7 the findings.

8 That the Decree to be entered should fix the duty
9 of water as five acre-feet per acre for the irrigation season
10 for all lands classified as harvest crop land or meadow pasture
11 land.

12 That all of the water allotted under the Decree should
13 be appurtenant to the lands designated herein and in the event
14 that claimants named herein desire to change the point of di-
15 version, manner and place of use of the waters herein allotted,
16 such water users must make application to the State Engineer for
17 permission to make such change in the manner set forth under
18 the provisions of the Water Code of the State of Nevada.

19 That except as specifically otherwise ordered herein,
20 the doctrine of relation has been fairly, legally and equitably
21 applied by the State Engineer in the Order of Determination and
22 the claimants, respectively, are entitled to the priorities
23 shown in the Decree herein.

24 That the evidence does not sustain any prescriptive
25 right or any right of adverse possession in any of the claim-
26 ants or appropriators herein.

27 That the relative priorities or rank of the several
28 rights to appropriate the waters of Schell Creek and its Tribu-
29 taries as listed in the Decree shall govern and be recognized
30 at all times hereafter.

31 That no person or persons holding a right of appropria-
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tion not herein listed shall be entitled to receive any water from Schell Creek Stream System and its Tributaries until all appropriations herein set forth have been fully satisfied.

That except where specifically otherwise ordered herein, the Order of Determination made, filed and caused to be entered of record in the matter by the State Engineer should be affirmed.

That all objections made at the time and all exceptions filed and not specifically ruled upon herein should be overruled and denied.

That the parties hereto and each of them is entitled to a restraining order and injunction, as set forth in the Decree.

JUDGMENT AND DECREE

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

I.

That the State Engineer made all necessary and proper orders herein as required by law, and that each and every notice required by law was duly given to all claimants and appropriators; that all of said claimants named duly appeared and are the only claimants and appropriators of the waters of Schell Creek Stream System and its Tributaries.

That this Court has full and complete jurisdiction to hear, try and determine this case and to make and enter herein this Decree.

II.

~~That, except such persons as may hereafter acquire rights to the use of the waters of the Schell Creek Stream Sys-~~

Cor. II is stricken from 32nd judgment E.O. H. Anderson, 9/22/38

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L. O. H.

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~~tem and its tributaries granted under and pursuant to applica-
tions to the State Engineer under and by virtue of Chapter
340, Statutes of 1913, as amended, no person other than the
parties named herein have or claim any interest in or to said
water or in or to the use of said water of said stream, sys-
tem and its tributaries or any part thereof.)~~

III.

That except as specifically in this Decree otherwise ordered, all objections filed to the Final Order of Determination are hereby denied and overruled.

IV.

That except as specifically in this Decree otherwise ordered, the Order of Determination made, filed and caused to be entered of record in this case by the State Engineer be, and the same is hereby confirmed.

V.

That the names of claimants and appropriators of the waters of the Schell Creek Stream System and its Tributaries diverting water from said Schell Creek Stream System and its Tributaries for beneficial use, the year of priority, the cultured acreage of harvest crop and meadow pasture, the legal subdivisions, section, township and range, and number of cubic feet of water per second for each acre irrigated by said claimants and appropriators is hereby adjudged as follows, to-wit:-

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Claimant - Jose Castillo
 Proof No. - 0773 (Amended)
 Source - Schell Creek
 Ditches - Burke and Unnamed
 Points of Diversion of Ditches:-

- (b) In the SE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 12 and the NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 11, T. 22 N., R. 64 E., M.D.B.& M.
- (c) At the dam in the center of the NE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 11, T. 22 N., R. 64 E., M.D.B.& M.
- (d) At the dam in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 11, T. 22 N., R. 64 E., M.D.B.& M.

Priority	Culture (acres)		Description				Duty of Water
	Harvest Crop	Meadow Pasture	Subdi- vision	Sec- tion	Tp. N.	R. E.	c.f.s.
1869	(b) 5.2		NE $\frac{1}{4}$ SE $\frac{1}{4}$	11	22	64	0.061
1869	(b) 1.0		NW $\frac{1}{4}$ SE $\frac{1}{4}$	11	22	64	0.012
1869	(d) 0.3		NW $\frac{1}{4}$ SE $\frac{1}{4}$	11	22	64	0.004
1869	*(d) 5.7	(d) 2.1	NE $\frac{1}{4}$ SW $\frac{1}{4}$	11	22	64	0.092
1869	(c) 4.0		SW $\frac{1}{4}$ NE $\frac{1}{4}$	11	22	64	0.047
1869	(d) 0.1	(d) 3.4	SE $\frac{1}{4}$ NW $\frac{1}{4}$	11	22	64	0.041
1869	<u>(c)10.0</u>		SE $\frac{1}{4}$ NW $\frac{1}{4}$	11	22	64	<u>0.118</u>
Total	26.3	5.5					0.375

NOTE - Letters indicate lands irrigated under each ditch.

* On North side of channel only.

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Claimant - James G. Katsaros

Proof No. - 0773 (Amended)

Source - Schell Creek

Ditches - Burke

Points of Diversion of Ditches:-

(a) North Ditch - N.54° 45' E. 3310' from W.

¼ Cor. Sec. 7, T. 22 N., R. 65 E., M.D.B.& M.

(b) Middle Ditch - N. 48° E. 1570' from W. ¼ Sec.

7, T. 22 N., R. 65 E., M.D.B.& M.

(c) South Ditch - N. 48° E. 1430' from W. ¼ Sec.

7, T. 22 N., R. 65 E., M.D.B.& M.

(d) Warm Spring - In NW¼ MW¼ SW¼ Sec. 7, T. 22

N., R. 65 E., M.D.B.& M.

(e) Ditch - S. 61° 45' W. 920' from NE Cor. Sec.

12, T. 22 N., R. 64 E., M.D.B.& M.

Priority	Culture (acres)		Subdivi- sion	Sec- tion	Tp. N.	R. E.	Duty of Water c.f.s.
	Harvest Crop	Meadow Pasture					
1875	(a) 1.63		SE¼SE¼	1	22	64	0.019
1875	(a) 0.20		NE¼NE¼	12	22	64	0.002
1884	(a) 0.70		SW¼SW¼	1	22	64	0.008
1875	(b) 0.92		SE¼SE¼	1	22	64	0.011
1878	(b) 1.80		NE¼NE¼	12	22	64	0.021
1880	(b&c) 7.20		SW¼NW¼	7	22	65	0.085
1880	(c&d) 9.10		NW¼SW¼	7	22	65	0.107
1880	(c&d) 10.40	(c&d) 6.40	NE¼NE¼	12	22	64	0.198
1880		(e) 2.40	NE¼NE¼	12	22	64	0.028
1880		(e) 1.00	NE¼NW¼	12	22	64	0.012
1880	(e) 8.10	(e) 18.30	NW¼NE¼	12	22	64	0.312
1880		(e) 1.00	SW¼NE¼	12	22	64	0.012
1880		(e) 1.10	SE¼NW¼	12	22	64	0.013
1880	(c) 2.00		NW¼NE¼	12	22	64	0.024
1884	(a) 5.27		SE¼SE¼	1	22	64	0.062
1884	(a) 0.40		NW¼NE¼	12	22	64	0.005
Total	47.72	30.20					0.919

NOTE: Letters indicate lands irrigated under each ditch.

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IT IS FURTHER ORDERED, ADJUDGED AND DECREED that no person or persons other than the parties named herein have or claim any interest in or to said water, or in or to the use of said water or any part thereof.

That the irrigation season shall begin on March 15th and end on October 15th of each year, being a length of 214 days, except when climatic conditions are such that irrigation is not in accordance with good husbandry and actual beneficial use of water. The State Engineer shall then determine by examination the beginning of the irrigation season and set the date, giving notice to all parties concerned. The setting of the date shall be for the sole purpose of administering and distributing the waters of Schell Creek Stream System and its Tributaries.

That the duty of water on lands irrigated from said stream system is hereby adjudged, decreed and fixed as five acre-feet per acre during the irrigation season for the lands classified as harvest crop or meadow pasture; that the rate of flow of 0.0118 of a cubic foot of water per second for each acre of land irrigated is based upon an irrigation season of 214 days, which amount in uniform continuous flow will yield the acre-foot allotment per acre as fixed as said duty of water of five acre-feet; that during those periods of the irrigation season when the flow of water in the stream system will more than satisfy the continuous flow allotment of all claimants, each of such claimants, subject to a condition that there be no undue interference with other users, shall be entitled to increase the rate of his direct diversion so as to satisfy the immediate needs of the growing crops and build up ground water storage; provided, that the total diversion for each claimant during any calendar month shall not exceed 1.5

1 acre-feet for each acre of land granted a water right, and pro-
2 vided further, that the total diversion during the irrigation
3 season shall not exceed the duty of water in acre-feet as
4 specified for such land.

5 That all measurements of amounts of water diverted
6 are to be made at the point where the water in the ditch first
7 becomes appurtenant to the land to be irrigated, or as near
8 thereto as practicable, the location, if not selected by the
9 State Engineer, to be approved by him. Due allowance for
10 ditch losses shall be made by the State Engineer.

11 That claimants and appropriators herein named having
12 water rights for irrigation shall be entitled to the use of
13 water for stockwatering and domestic purposes at all times
14 throughout the year; that the total diversion for each claim-
15 ant for stockwatering and domestic purposes shall not exceed
16 0.25 of a cubic foot of water per second of time, and that
17 during the irrigation season the amount of water diverted for
18 irrigation purposes shall not be increased by any amount to be
19 used for stock and domestic purposes, but the quantity allowed
20 and diverted for irrigation purposes during the irrigation
21 season includes the water for stock and domestic purposes.

22 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the
23 water from springs arising within the confines of the claim-
24 ants' premises shall be considered as tributaries of the stream
25 system, the same as the waters from any source used on any of
26 each claimant's lands, and as such the claimant on whose land
27 the spring may be located shall have no rights to the use of
28 said water other than the right herein granted.

29 That the claimants named herein or their successors
30 in interest shall not be required to take or use the amount of
31 water allotted to them in continuous flow, but may accumulate
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1 the same, or any part thereof, by storage or in rotation or
2 periodic turn, within the seasonal limits, with the approval
3 of the State Engineer or water commissioner. That each water
4 user, in order to increase the irrigation head in continuous
5 flow, shall be entitled to rotate his allotted amount of water
6 between his various ditches.

7 That the priorities fixed herein, transmission loss,
8 evaporation, seepage, combination of flow, nature of crops,
9 duty of water, sub-flow, and other elements shall be taken
10 into consideration in connection with distribution of the
11 waters of said stream system.

12 That all of the water allotted under the Decree shall
13 be appurtenant to the lands designated herein and in the event
14 that claimants named herein desire to change the point of di-
15 version, manner and place of use herein allotted, such water
16 users must make application to the State Engineer for per-
17 mission to make such change in the manner set forth under the
18 provisions of the Water Code of the State of Nevada.

19 That the State Engineer and his assistants shall be
20 the administrators of the waters of the Schell Creek Stream
21 system and its Tributaries, and he shall make such rules and
22 regulations as may be necessary for the proper distribution of
23 said waters so long as said rules conform to these findings
24 and this Decree.

25 That no person or persons holding a right of ap-
26 propriation by virtue of any permit granted by the State En-
27 gineer to appropriate water from the Schell Creek Stream Sys-
28 tem and its Tributaries shall be entitled to receive any wa-
29 ter from Schell Creek until all appropriations herein set
30 forth have been fully satisfied.

31 That no prescriptive rights, and no rights of ad-
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verse possession, in and to the waters of the Schell Creek Stream System and its Tributaries have been established by this action.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that each of the parties hereinbefore named is the owner of the flow and use of the several amounts of water appropriated to him as set forth herein, and in said Order of Determination where no change has been made; that each and every party to this action, and their and each of their servants, agents and attorneys, and all persons claiming by, through or under them, and their successors and assigns, in and to the water rights and land herein described, be and each of them is forever enjoined and restrained from claiming any rights in or to the waters of the Schell Creek Stream System and its Tributaries, except the rights set up and specified in this Decree, and each of said parties is hereby enjoined and restrained from taking, diverting or interfering in any way with the waters of said Schell Creek Stream System and its Tributaries so as to in any way, shape or manner interfere with the diversion, enjoyment and use of the waters of any of the other parties to this action as set forth in this Decree, having due regard to the relative priorities herein contained, and each of said parties is enjoined and restrained from ever taking, diverting, carrying away, or otherwise using or claiming any of the waters so allotted to him in any manner or at any time so as to in any way interfere with the prior rights of other parties to this action, as the same are herein determined, or until such parties having prior rights as herein specified have received upon their several lands all waters so adjudged to be due them.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that

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except as indicated in the Decree, all exceptions filed to the Final Order of Determination are hereby denied and overruled.

IT IS FURTHER ORDERED that each of the parties here- to shall pay his own costs.

Dated this 29th day of September, 1938.

C. O. Hawkins
District Judge Presiding.

State of Nevada }
County of White Pine } ss.

I, F. D. OLDFIELD....., County Clerk

and ex-officio Clerk of the Seventh Judicial District of the State of Nevada, County of White Pine,

do hereby certify that the above and foregoing is a full, correct and true copy of the original

"PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECREE" In the matter of the determination of the relative rights of Claimants and appropriators in and to the waters of Schell Creek and its tributaries, In White Pine County, Nevada.

which now remains of record in my office at Ely, County and State aforesaid.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of said Court, at my office in the town of Ely, this 16th day of November.....

A. D. 1938.

Oliver D. ... County Clerk
And ex-officio Clerk of Said Court.

By..... Deputy Clerk.

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except as indicated in the Decree, all exceptions filed to the Final Order of Determination are hereby denied and overruled.

IT IS FURTHER ORDERED that each of the parties here- to shall pay his own costs.

Dated this 22nd day of September, 1938.

C. O. Hawkins
District Judge Presiding.

STATE OF NEVADA—STATE ENGINEER'S OFFICE

I, ALFRED MERRITT SMITH, State Engineer of the State of Nevada, duly appointed and qualified, having charge of the records and files of the office of the State Engineer, do hereby certify that the foregoing is a full, complete and true copy of ~~an~~ Proposed Findings of Fact, Conclusions of Law and Decree in the Matter of the Determination of the Relative Rights of Claimants in and to the Waters of Schell Creek and its tributaries, as presented to the Court on or about the 4th day of August, A. D. 1938, as appears by the records and files of the office of the State Engineer of Nevada, and nothing more or less.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at the City of Carson, State of Nevada, this 9th day of August, A. D. 1938.

ALFRED MERRITT SMITH, STATE ENGINEER
By Angela Shubert
Deputy State Engineer

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