

IN THE DISTRICT COURT OF THE NINTH JUDICIAL DISTRICT OF THE  
STATE OF NEVADA.

Alfred Bellander, Axel Bel-  
lander and Albin Bellander,

Plaintiffs,

vs.

John L. Smithson,

Defendant.

DECREE

This cause came on regularly to be heard on the  
27 day of April, A. D., 1911, before Honorable  
E. J. L. Taber, Judge of the District Court of the Fourth  
Judicial District of the State of Nevada, sitting in the Ninth  
Judicial District of said State, without a jury, the same hav-  
ing been waived by the parties plaintiff and defendant, Honor-  
able Ben W. Coleman, Judge of the District Court of said Ninth  
Judicial District being disqualified from hearing the same, he  
having been counsel for one of the litigants previously.

Before the case was finally submitted to the Court  
for judgment, the parties litigant, through their attorneys,  
Walker & Haight for plaintiffs and E. W. Belford and James N.  
Lockhart for defendant, entered into and filed herein, with  
the consent of the Court, a written agreement and stipulation  
setting forth the order of priority of the right to use the  
waters of Silver creek, in White Pine county, state of Nevada,  
as between the parties to this action, and all the other facts  
at issue, excepting as to the number of acres of land that  
may be irrigated by means of the waters of said creek by the  
respective parties, it being provided in said agreement and  
stipulation that Messrs. Haff & Colwell Brothers, United States  
Deputy Mineral Surveyors, make a personal examination, survey,  
measurement and map of the lands and waters in controversy and

--2--

that when so made and found the information so obtained should be made a part of said agreement and stipulation and that a judgment and decree of this Court be made and entered herein in conformity with said agreement and stipulation, facts found and map made by said surveyors.

The said firm of Haff & Colwell Brothers having made and filed herein the data obtained and map made, as provided for in said agreement and stipulation, and the parties to this action, through their respective attorneys, having made and filed herein, on the 26 day of June, A. D., 1911, and submitted to the said Judge of the Fourth Judicial District Court of the State of Nevada, a stipulation requesting the making and entering of this judgment and decree in the particular form herein set forth;

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED:

First. That the agreement and stipulation made and filed herein on the 27 day of April, A. D., 1911, together with the data and map obtained and made by said firm of Haff & Colwell Brothers, shall be deemed, considered and construed as the findings of facts in this case;

Second. That the parties to this action are hereby decreed to have the right to the use of the waters of said Silver creek to the amount and extent and in the order of priority as particularly set forth in said agreement and stipulation and as shown by the data obtained and map made by said Haff & Colwell Brothers; that is to say:

1. That the defendant has a prior right, and is entitled, to the use of sufficient water from said Silver creek, to economically and properly irrigate those certain "old" tracts of land lying North of the center line of Sec. 7, Tp. 14 N., R. 70 E., Mt. D. B. & M., which said tracts of land consist of the following pieces, parcels or fields, namely: the "upper field,"

--3--

consisting of 4.17 acres; the "middle field," consisting of 11.58 acres, and the "lower field," consisting of 18.23 acres, together with what was formerly known as the "garden tract" or "tracts," consisting of .93 acres, near the Smithson house, as more correctly shown and delineated upon that certain map or plat marked "Exhibit A" and hereto attached and made a part hereof, which said lands were under cultivation by the said defendant prior to the year 1907;

2. That the plaintiffs have a prior right, and are entitled, to the use of so much of the waters of said Silver creek as may be necessary to economically and properly irrigate that certain tract of land situate, lying and being in the NW 1/4 of the NW 1/4 of Sec. 17, the SW 1/4 of the SW 1/4 of Sec. 8, and the SE 1/4 of the SE 1/4 of Sec. 7, all in Tp. 14 N., R. 70 E., Mt. D. B. & N., and known as the "Gandy place;" it being understood that the tract of land hereinabove defined shall be deemed to be all that portion thereof lying Northwesterly from "the lane" and Southeasterly from a certain fence which intersects, or formerly intersected, the boundary line between the said SW 1/4 of the SW 1/4 of Sec. 8 and the SE 1/4 of the SE 1/4 of Sec. 7 aforesaid at about the middle of said line, and which had been cultivated prior to the year 1907, consisting of approximately 10.75 acres;

3. That the defendant is entitled to the use of so much of the waters of said Silver creek as may be necessary to economically and properly irrigate that certain tract of land situate, lying and being in the said NW 1/4 of the SW 1/4 of said Sec. 17, consisting of 3.5 acres, in the Northeast 1/4 of the NW 1/4 of said Sec. 17, consisting of .12 acres, and in the SW 1/4 of the NW 1/4 of said Sec. 17, consisting of 2.63 acres, said tracts of land hereinabove described being under cultivation and use by the predecessors in interest of the defendant

prior to the year 1892;

4. The right to the use of the waters of said Silver creek for the irrigation of the tracts of land described in paragraphs 2 and 3 hereof shall be an equal right; that is to say, the said plaintiffs and the said defendant shall respectively be entitled to the use of one-half of the waters of said Silver creek, or so much thereof as may be necessary to economically and properly irrigate said tracts of land embraced in said paragraphs 2 and 3 hereof;

5. That the said defendant is entitled to the use of so much of the waters of said Silver creek as may be necessary to economically and properly irrigate that certain tract of land situate in the SE 1/4 of the NW 1/4 of said Sec. 17, consisting of 12.75 acres, the NE 1/4 of the SW 1/4 of said Sec. 17, consisting of 2.12 acres, and the SW 1/4 of the NE 1/4 of said Sec. 17, consisting of .10 acres, known as the "Ed Robison place," as cultivated and used by the defendant and his predecessors in interest subsequent to the year 1892 and prior to the year 1899;

6. That the plaintiffs are entitled to the use of so much of the waters of said Silver creek as may be necessary to economically and properly irrigate that certain tract of land situate in the W 1/2 of the SW 1/4 of said Sec. 8, ~~consisting of approximately 3.75 acres~~ and in the E 1/2 of the SE 1/4 of said Sec. 7, consisting of approximately 3.75 acres, being that portion of said legal subdivisions as are situate Northwesterly from the fence mentioned in paragraph 2 hereof and as were under cultivation and improved prior to the year 1907;

7. That the plaintiffs are entitled to the use of so much of the waters of said Silver creek as may be necessary to economically and properly irrigate that certain tract of land situate in the SE 1/4 and in the NE 1/4 of the SW 1/4 of said

--5--

of said Sec. 17, consisting of 71.9 acres, and in the NE 1/4 of the Sec. 20, consisting of .15 acres, and in the SW 1/4 of the SW 1/4 of Sec. 16, consisting of 2.9 acres, all in Tp. 14 N., R. 70 E., Mt. D. B. & N., as the same were cultivated and improved prior to the year 1907;

8. That the defendant is entitled to the use of so much of the waters of said Silver creek as may be necessary to economically and properly irrigate those certain tracts of land known as the "New fields" and as more particularly shown and delineated upon said map or plat hereinbefore referred to as "Exhibit A," said "new fields" consisting of 25.10 acres.

9. The order of the right to the prior use of the waters of said Silver creek shall be as hereinabove defined; namely, as each of said rights is set forth in ~~these findings~~ <sup>this decree</sup>, beginning with paragraph 1 hereof and as hereinabove stated with reference to paragraphs 2 and 3;

10. The parties hereto shall respectively have the right to use the waters of said Silver creek upon any of their lands as they shall elect; provided, that neither of said parties shall cultivate by the use of said waters a greater number of acres than as herein defined; it being the intention hereof that the place of use of said water may be changed by either of said parties when such change of place shall not involve the use of any additional amount of water nor injuriously affect the order of priorities as herein defined;

11. The respective parties shall keep all ditches, flumes, dams, etc., free from debris, brush and other obstructions and shall maintain said ditches, flumes, dams, etc., in such condition as to secure the unobstructed flow of water therein or there through to and upon the lands sought to be irrigated by means thereof; and the said respective parties shall, in the construction of such dams, ditches, flumes, etc., use all rea-

--6--

sonable care and skill so that the same shall be constructed in such a manner as to secure by means thereof the greatest possible use of the waters of said Silver creek upon the lands sought thereby to be irrigated, and shall not permit any water to run to waste on their respective fields where the same may be avoided by the exercise of due care;

12. The respective parties shall never at any time in the irrigation of any of their said lands, or in the use of the waters of said Silver creek exceed the maximum prescribed by statute; namely, three acre feet of water per acre per year.

Third. All and each of the parties to this action, their and each of their grantees, agents, servants and employes are hereby perpetually restrained and enjoined from in anywise using, diverting or interfering with any of the waters of said Silver creek, other than as in accordance with the provisions of this decree.

Fourth. That each party shall pay his own costs.

Dated this 6 day of July, A.D., 1911.

E. J. L. Tabor

Judge of the Fourth Judicial  
District Court as aforesaid.

*Original decree filed July 10, 1911.*