

1 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE  
2 OF NEVADA IN AND FOR THE COUNTY OF DOUGLAS

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4  
5 IN THE MATTER OF THE DETERMINATION OF THE  
6 RELATIVE RIGHTS IN AND TO THE WATERS OF  
7 SMALL'S (EDGEWOOD) CREEK AND ITS TRIBUTARIES  
8 IN DOUGLAS COUNTY, STATE OF NEVADA.

No. 1921

9 FINDINGS OF FACT, CONCLUSIONS OF LAW,

10 JUDGMENT AND DECREE

May 19 58  
Edward C. Reed, Jr.  
Ira K. Johnson

11 This matter came on regularly for hearing on the 11th day of  
12 April, 1958, before Honorable Frank B. Gregory, District Judge of  
13 the above-entitled court presiding, the entire stream system being  
14 within Douglas County, State of Nevada, and he being the Judge  
15 designated by NRS 533.165 to hear and having jurisdiction to hear  
16 the above-entitled matter, upon the State Engineer's final determi-  
17 nation of the relative rights of the petitioner and claimants to  
18 the use of the waters of the stream system of Small's (Edgewood)  
19 Creek and its tributaries, which Final Order of Determination had  
20 been duly filed by the State Engineer. There being no exceptions  
21 to the Final Order of Determination filed or otherwise submitted  
22 to the Court by the claimants or petitioner or any other person  
23 or persons, the matter was submitted to the Court for its decision.

24 William Paul, Esq., Deputy Attorney General of the State of  
25 Nevada, and Elmo J. DeRicco, Assistant State Engineer of the Office  
26 of the State Engineer, State of Nevada, appeared in the hearing and  
27 proceedings on behalf of the State of Nevada and the Office of the  
28 State Engineer. Edward C. Reed, Jr. Esq., appeared on behalf of  
29 claimant Placerville Lumber Company, William J. Cashill, Esq.  
30 appeared on behalf of claimant D. W. Park and Paul D. Laxalt, Esq.

1 appeared on behalf of claimant Lloyd A. Shellabarger.

2 The record disclosed that petitioner and all claimants had  
3 received a certified copy of the Order setting forth the time and  
4 place for hearing on the Order of Determination.

5 The Deputy Attorney General thereupon, at the hearing, offered  
6 and there were received in evidence in support of the rights of  
7 the petitioner and claimants, as set forth in the Final Order of  
8 Determination, verified affidavits, files and records of the  
9 State Engineer's office respecting the rights of the petitioner and  
10 other claimants of the above named stream system. Elmo J. DeRicco,  
11 Assistant State Engineer of the State of Nevada, being first duly  
12 sworn and qualified, identified and explained the records and files  
13 of the State Engineer's Office which were introduced in evidence.

14 The Court, having duly considered the entire record and evi-  
15 dence introduced, and there being no exception filed by the claim-  
16 ants or petitioner or any other person or persons to the Final  
17 Order of Determination of the State Engineer, and being duly ad-  
18 vised in the premises, now makes and enters its Findings of Fact,  
19 Conclusions of Law, and Judgment and Decree.

20 FINDINGS OF FACT

21 I.

22 That on September 23, 1955, Lloyd A. Shellabarger, acting  
23 by and through his Attorney, Richard R. Hanna, of Carson City,  
24 Nevada, filed with the State Engineer of the State of Nevada, a  
25 petition requesting the determination of the relative rights of  
26 petitioner and various claimants to the waters of Small's (Edgewood)  
27 Creek and tributaries thereto situate in Douglas County, State of  
28 Nevada.

29 That the State Engineer thereupon and in accordance with the  
30 provisions of NRS 533.090, made an investigation of the facts and

1 conditions of and concerning the above-named stream system and  
2 its tributaries for the purpose of disclosing whether the deter-  
3 mination of such rights was justified, and filed his report there-  
4 on in the Office of the State Engineer of the State of Nevada.  
5 The report of the facts and conditions disclosed that a determina-  
6 tion of the relative rights was justified, and the State Engineer  
7 made and entered his order on February 6, 1956, granting the  
8 petition for the determination of such relative rights in and to  
9 the waters of Small's (Edgewood) Creek and its tributaries.

10 That petitioner, all claimants and appropriators, being less  
11 than ten in number, in conformity with NRS 533.215 waived in  
12 writing the provisions of the above mentioned act with reference  
13 to Notices and the Service and Publication thereof.

14 That as a result of the State Engineer's investigation  
15 report, it was found that the waters of Small's Creek and its  
16 tributaries are being placed to beneficial use on two ranches, one  
17 owned by D. W. Park and the other by the Placerville Lumber  
18 Company and Lloyd A. Shellabarger. The proofs of application  
19 filed indicate the present claimants and appropriators are the  
20 successors in interest to vested rights initiated by their pre-  
21 decessors prior to March 1, 1905.

22 That on the 16th day of February, 1956, the State Engineer  
23 did publish a Notice of Order and Proceedings to Determine Water  
24 Rights in and to the waters of Small's (Edgewood) Creek and its  
25 tributaries in Douglas County, State of Nevzda. That there was  
26 filed in the office of the State Engineer an affidavit of the  
27 publisher of the Record-Courier exemplifying the proof of publica-  
28 tion of Notice of Order and Proceedings.

29 That the State Engineer, in accordance with NRS 533.140, did  
30 enter and file in the records of his office, on the 3rd day of

1 May, 1957, a Preliminary Order of Determination and that notice  
2 thereof was duly given to all claimants. That thereafter, on the  
3 1st day of August, 1957, Objections were filed to the Preliminary  
4 Order by Claimant, D. W. Park; that thereafter, pursuant to NRS  
5 533.150 the State Engineer held a hearing on said objections.

6 That the State Engineer, in accordance with NRS 533.160,  
7 entered in the records of his office, on the 17th day of January,  
8 1958, a Final Order of Determination defining the rights to the  
9 waters of Small's (Edgewood) Creek and its tributaries.

10 That upon the filing of the Final Order of Determination  
11 with the Clerk of the Court of Douglas County, State of Nevada,  
12 the Court made and entered an order on the 24th day of January,  
13 1958, setting a time for the hearing of any exceptions to the  
14 Final Order of Determination, on Friday, the 11th day of April,  
15 1958, at 10:00 o'clock in the forenoon, at the County Court House  
16 at Minden, Nevada.

17 That the State Engineer, in accordance with NRS 533.165,  
18 gave notice to the claimants, by service of a certified copy of  
19 the order setting the time for hearing.

20 The Court finds that all and singular the proceedings, orders  
21 and notices required by Chapter 533 of NRS were duly had, made  
22 and given as required by law, and that all and singular the  
23 matters and things contained in the record were done, performed,  
24 given and made in strict compliance with the statute, and that  
25 this Court had and has jurisdiction to hear and determine this  
26 matter.

## 27 II

28 The Court Further Finds: That Small's (Edgewood) Creek and  
29 its tributaries are situated wholly within Douglas County, State  
30 of Nevada.

1           The Court Further Finds: That the names of the claimants  
2 and appropriators, the duty of water, the measurement of water,  
3 the length of the irrigation season, stockwatering and domestic  
4 use of the water, the change of place of use, and the rights of  
5 appropriation, all as set forth in the Final Order of Determination,  
6 are true, proper and correct, and all and singular the same should  
7 be approved and confirmed.

8                           I.   PREFACE

9           On September 23, 1955, Lloyd A. Shellabarger, a water user  
10 on Small's Creek, submitted a petition to the State Engineer re-  
11 questing a determination of the relative rights of claimants in  
12 and to the waters of said stream system. On October 14, 1955, an  
13 investigation was made by E. J. DeRicco, Field Deputy State Engi-  
14 neer, which disclosed that facts and conditions justified the  
15 granting of said petition. On February 6, 1957, the State Engineer  
16 entered an official order granting the petition and made proper  
17 arrangements to proceed with the determination in accordance with  
18 the provisions of NRS 533.000.

19           All claimants and appropriators, being less than ten in  
20 number, in conformity with NRS 533.215, waived in writing the pro-  
21 visions of the above-mentioned act with reference to notices and  
22 the service of publication thereof.

23                           II.   CLAIMANTS

24           The investigation above referred to disclosed that the waters  
25 of Small's Creek and its tributaries are being placed to beneficial  
26 use on two ranches, one owned by D. W. Park and the other by the  
27 Placerville Lumber Company and Lloyd A. Shellabarger. The Proofs  
28 of Appropriation filed in the Office of the State Engineer indicate  
29 and claim that the present claimants and appropriators are the  
30 successors in interest to vested rights initiated by their prede-

cessors prior to March 1, 1905.

### III. SOURCE

Small's Creek and its tributaries, located on the western slope of the Carson Mountain Range near the California State Line, includes Small's Creek (also known as Edgewood Creek), its south fork known as Lapham Creek and all tributary sources.

### IV. DUTY OF WATER

The duty of water herein fixed is 4.5 acre-feet per acre per annum with a maximum allowable diversion of 2.5 c.f.s. (subject to proration as hereinafter provided) for each 100 acres irrigated. This duty may be changed or altered within a period of three years after entry of the decree, as provided for in NRS 533.210.

Small's Creek, typical of Nevada's mountain streams fed by melting snows, has a high spring run-off which recedes during the summer months to a limited continuous flow. Due to the characteristics of the stream flow, the claimants named herein or their successors in interest shall be allowed to increase the rate of direct flow diversions to the maximum herein allowed so as to satisfy any immediate needs of the growing crops and they may at their own option rotate the allotted water between the various fields having a decreed water right at such times and in such quantities as is necessary to place the water to the greatest beneficial use. When there is not sufficient water to fully serve 1361 priorities, the maximum allowable diversion for this priority shall be prorated between the parties in a ratio based upon each party's share of the total annual diversions under this priority to the total annual diversions under this priority herein

1 set forth in Small's Creek.

2 V. MEASUREMENT OF WATER

3  
4 All water diverted from Small's Creek and its tributaries  
5 for irrigation purposes shall be measured at a point where the  
6 water enters or becomes adjacent to the land to be irrigated or as  
7 near thereto as practical.

8 Substantial headgates and weirs must be installed to facili-  
9 tate the measurement and control of water.

10 VI. IRRIGATION SEASON

11  
12 Water for irrigation purposes may be diverted at any time  
13 throughout the year, provided that the total amount diverted dur-  
14 ing any calendar year shall not exceed the duty in acre feet as  
15 established herein.

16 VII. STOCKWATERING & DOMESTIC

17  
18 The claimants named herein, or their successors in interest,  
19 as part of their rights for water for irrigation purposes, as  
20 herein defined, shall be entitled to a reasonable diversion and  
21 use of water for stockwatering and domestic purposes at any time  
22 during the year, provided that the total amount diverted during  
23 any calendar year shall not exceed the duty in acre feet as es-  
24 tablished herein.

25 VIII. FIRE PROTECTION

26  
27 The Claimant, D. W. Park, shall be entitled to divert and  
28 use water from Lapham Creek for fire protection purposes at any  
29 and all times during the year.

1 IX. CHANGE OF PLACE OF USE

2 All waters allotted under this order shall be appurtenant to  
3 the place or places of use designated herein. Any water user de-  
4 siring to change the point of diversion, manner and use of waters  
5 allotted herein must make application to the State Engineer for  
6 permission to make the change pursuant to law.

7 X. RIGHTS OF APPROPRIATION

8  
9 From the Final Order of Determination and the evidence, both  
10 oral and documentary, submitted in support thereof, the Court finds  
11 that the names of the claimants and appropriators of the waters of  
12 Small's (Edgewood) Creek and its tributaries, the source of the  
13 water supply, the means of diversion, the points of diversion for  
14 beneficial use, the year of priority, the cultural acreages and  
15 places of use, the legal subdivisions, sections, townships, ranges  
16 and the duty of water, all as listed, stated and set forth.

17 CONCLUSIONS OF LAW

18  
19 From the evidence presented and received in this matter, and  
20 from the foregoing FINDINGS OF FACT, the Court makes the following  
21 Conclusions of Law:

22 I.

23  
24 That the State Engineer had the right, authority and juris-  
25 diction pursuant to Chapter 533 of NRS, to make the investigations  
26 made by him, conduct the hearings had by him, receive the proofs  
27 and maps, hear the evidence presented to him, and prepare, make,  
28 enter and file in his office the original Final Order of Determina-  
29 tion and file a certified copy thereof in this Court, and to de-  
30 termine the Final Order of Determination, the relative rights of

1 claimants and appropriators in and to the waters of Small's  
2 (Edgewood) Creek and its tributaries in Douglas County, State of  
3 Nevada; that the State Engineer duly made all orders necessary and  
4 proper in connection therewith and entered the same in his office  
5 as required by Chapter 533 of NRS; that each and every notice  
6 required by law to be given herein to the claimants and appropria-  
7 tors was duly served by the State Engineer in the manner and within  
8 the time required by statute, and that the notices contained all  
9 of the statements required by law, and that the claimants and  
10 appropriators of the waters of the above-named stream system and  
11 its tributaries duly received the information and notices required  
12 by law herein.

13 II.

14  
15 That the First Judicial District Court of the State of Nevada,  
16 in and for the County of Douglas, had and has jurisdiction to hear  
17 and try this matter, and has jurisdiction to find, make and enter  
18 the foregoing Findings of Fact and these Conclusions of Law, and  
19 enter its Decree herein.

20 III.

21  
22 That D. W. Park, Placerville Lumber Company and Lloyd A.  
23 Shellabarger, constitute the claimants and the only claimants who  
24 were and now are appropriators and users of the waters of Small's  
25 (Edgewood) Creek and its tributaries on the date the Final Order  
26 of Determination was filed with the Clerk of this Court, and on  
27 the date of the trial and hearing of this matter.

28 IV.

29 That D. W. Park, Placerville Lumber Company and Lloyd A.  
30 Shellabarger, as claimants and appropriators of the waters of

1 Small's (Edgewood) Creek and its tributaries, by and through the  
2 means of diversion named, and their successors in interest, are  
3 claimants and appropriators of and to the waters of the above-  
4 named stream system; that D. W. Park, Placerville Lumber Company  
5 and Lloyd A. Shellabarger and their predecessors in interest  
6 continuously from the date of appropriation or priority, when  
7 such water was available for beneficial use, diverted all of  
8 such quantity of water from Small's (Edgewood) Creek and its  
9 tributaries and applied the same to beneficial use as alleged in  
10 the Final Order of Determination.

11  
12 V.

13 That the duty of water should be fixed in the Decree as 4.5  
14 acre-feet per acre per annum, with a maximum allowable diversion of  
15 2.5 c.f.s. (subject to proration as hereinafter provided) for each  
16 100 acres irrigated. This duty to be subject to change or altera-  
17 tion within a period of three years after entry of the Decree, as  
18 provided for in NRS 533.210.

19  
20 VI.

21 That all waters allotted in the Decree shall be appurtenant  
22 to the place or places of use designated therein, and in the event  
23 that any water user desiring to change the place of use of the  
24 waters allotted herein, must make application to the State  
25 Engineer for permission to make the change pursuant to law.

26  
27 VII.

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



1 this Decree as provided by NRS 533.210; that the claimants or  
2 their successors in interest shall be allowed to increase the  
3 rate of direct flow diversion to the maximum as herein allowed,  
4 to satisfy any immediate needs of the growing crops and they may  
5 at their own option rotate the allotted water between the various  
6 fields having a decreed water right at such times and in such  
7 quantities as is necessary to place the water to the greatest  
8 beneficial use.

9  
10 IV.

11 That all water diverted from Small's Creek and its tribu-  
12 taries for irrigation purposes shall be measured at a point where  
13 the water enters or becomes adjacent to the land to be irrigated  
14 or as near thereto as practicable.

15 V.

16 Substantial headgates and weirs must be installed wherever  
17 necessary to insure and facilitate the proper measurement, control  
18 and distribution of water in accordance with the rights herein  
19 defined.

20 VI.

21 That water for irrigation purposes may be diverted at any  
22 time throughout the year, provided that the total amount diverted  
23 during any calendar year shall not exceed the duty in acre-feet  
24 as established herein.

25 VII.

26 That the claimants or their successors in interest shall be  
27 entitled to a reasonable diversion and use of water for stock-  
28 watering and domestic purposes at any time during the year, pro-  
29 vided that the total amount diverted during any calendar year  
30

1 shall not exceed the duty in acre-feet as established herein.

2 VIII.

3 That the Claimant, D. W. Park, shall be entitled to divert  
4 and use water from Lapham Creek for fire protection purposes at  
5 any time and all times during the year.  
6

7 IX.

8 That all waters allotted under this Order shall be appurte-  
9 nant to the place or places of use designated herein. That any  
10 water user desiring to change the point of diversion, manner and  
11 place of use of the waters allotted herein must make application  
12 to the State Engineer for permission to make the change pursuant  
13 to law.

14 X.

15 That no person or persons holding a right of appropriation  
16 not herein vested is entitled to receive any water from Small's  
17 (Edgewood) Creek or its tributaries to the detriment of the  
18 rights herein defined.  
19

20 XI.

21 That the names of the claimants and appropriators of Small's  
22 (Edgewood) Creek and its tributaries, being the source of water  
23 supply, the means of diversion from the source of supply for  
24 beneficial use, the points of diversion, the year of priority,  
25 the cultural acreage, or place of use, the use, the period of use,  
26 the legal subdivisions, sections, townships and ranges, the duty  
27 of water, and the number of cubic feet of water per second per  
28 acre irrigated by the claimants and appropriators are hereby  
29 adjudged as follows, to-wit:  
30

Claimants: Lloyd A. Shellabarger and the  
Placerville Lumber Company

Source : Small's Creek

Use : Irrigation and Domestic

Means of Diversion: Dam and Ditches

Point of Diversion: In the NE $\frac{1}{4}$  NE $\frac{1}{4}$  Section 26, T. 13 N., R.  
18 E., M.D.B.&M., or at a point from which  
the N $\frac{1}{4}$  corner of said Section 26 bears N.  
65° 36' 45" W., 2,374.56 feet.

Class of Culture: Meadow

| PRIORITY | CULTURAL<br>ACREAGE | SUB.                              | Sec. | Tp. | N.R.E.  | MAX.DIV.<br>C.F.S. | DUTY OF WATER<br>A.F.PER ANNUM |
|----------|---------------------|-----------------------------------|------|-----|---------|--------------------|--------------------------------|
| 1881     | 2.2                 | NE $\frac{1}{4}$ NE $\frac{1}{4}$ | 26   | 13  | N.18 E. | 0.055              | 9.9                            |
| "        | 2.6                 | NW $\frac{1}{4}$ NE $\frac{1}{4}$ | 26   | 13  | N.18 E. | 0.065              | 11.7                           |
| "        | 8.6                 | SW $\frac{1}{4}$ SE $\frac{1}{4}$ | 23   | 13  | N.18 E. | 0.215              | 38.7                           |
| 1882     | 1.0                 | NE $\frac{1}{4}$ NE $\frac{1}{4}$ | 26   | 13  | N.18 E. | 0.025              | 4.5                            |
| Total    | 14.4                |                                   |      |     |         | 0.36               | 64.8                           |

1 Claimant: D. W. Park

2 Source : Small's Creek

3 Use : Irrigation and Stockwatering

4 Means of Diversion: Dams and Ditches

5 Points of Diversion: In the SW $\frac{1}{4}$  NW $\frac{1}{4}$  Section 26, T. 13 N., R. 18  
 6 E., MDB&M, or at points from which the  
 7 W $\frac{1}{4}$  corner of said Section 26 bears S. 58 $^{\circ}$   
 8 30' W., 1,190.0 feet and S. 29 $^{\circ}$  00' W.,  
 9 1,310.00 feet. In the NE $\frac{1}{4}$  NE $\frac{1}{4}$  Section 27,  
 10 T. 13 N., R. 18 E., M.D.B.&M., or at a  
 11 point from which the NE corner of said  
 12 Section 27 bears N. 57 $^{\circ}$  00' E., 1,090.00 feet.

13 Class of Culture: Hay and Pasture

| PRIORITY | CULTURAL ACREAGE | SUB.   | Sec.                              | Tp. | N.R.E. | MAX. DIV. C.F.S. | DUTY OF WATER A.F. PER ANNUM |        |  |
|----------|------------------|--------|-----------------------------------|-----|--------|------------------|------------------------------|--------|--|
| 14       | 1861             | 1.45   | NW $\frac{1}{4}$ NW $\frac{1}{4}$ | 26  | 13     | 18               | 0.04                         | 6.53   |  |
| 15       | "                | 15.33  | NE $\frac{1}{4}$ NE $\frac{1}{4}$ | 27  | 13     | 18               | 0.38                         | 68.99  |  |
| 16       | "                | 23.07  | NW $\frac{1}{4}$ NE $\frac{1}{4}$ | 27  | 13     | 18               | 0.58                         | 103.82 |  |
| 17       | "                | 2.99   | Lot 2                             | 27  | 13     | 18               | 0.07                         | 13.45  |  |
| 18       | "                | 23.35  | Lot 1                             | 27  | 13     | 18               | 0.58                         | 105.08 |  |
| 19       | "                | 6.82   | SE $\frac{1}{4}$ SE $\frac{1}{4}$ | 22  | 13     | 18               | 0.17                         | 30.69  |  |
| 20       | "                | 17.99  | SW $\frac{1}{4}$ SE $\frac{1}{4}$ | 22  | 13     | 18               | 0.45                         | 80.96  |  |
| 21       | "                | 13.74  | Lot 4                             | 22  | 13     | 18               | 0.34                         | 61.83  |  |
| 22       | "                | 1.14   | Lot 3                             | 22  | 13     | 18               | 0.03                         | 5.13   |  |
| 23       |                  |        |                                   |     |        | <hr/>            |                              | <hr/>  |  |
| 24       | Total            | 105.88 |                                   |     |        | 2.64             | 476.48                       |        |  |

Claimant: D. W. Park

Source : South Fork of Small's Creek (also known as Lapham Creek)

Use : Irrigation, Stockwatering, Domestic and Fire Protection

Means of Diversion: Dam, Ditches, Pipelines and Tanks

Point of Diversion: In the SE $\frac{1}{4}$  SW $\frac{1}{4}$  Section 26, T. 13 N., R. 18 E., M.D.B.&M., or at a point from which the W $\frac{1}{4}$  corner of said Section 26 bears N. 54 $^{\circ}$  30' W., 2,305.00 feet.

Class of Culture: Hay and Pasture

| PRIOR- RITY     | CULTURAL ACREAGE | SUB.                              | SEC. | TP. | N.R.E. | MAX. DIV. C.F.S. | DUTY OF WATER A.F. PER ANNUM |
|-----------------|------------------|-----------------------------------|------|-----|--------|------------------|------------------------------|
| Prior to 1861 * | 14.11            | SW $\frac{1}{4}$ NW $\frac{1}{4}$ | 26   | 13  | 18     | 0.35             | 63.50                        |
| "               | 3.72             | SE $\frac{1}{4}$ NE $\frac{1}{4}$ | 27   | 13  | 18     | 0.09             | 16.74                        |
| " **            | 0.72             | SW $\frac{1}{4}$ NW $\frac{1}{4}$ | 26   | 13  | 18     | 0.02             | 3.24                         |
| " **            | 2.68             | NW $\frac{1}{4}$ NW $\frac{1}{4}$ | 26   | 13  | 18     | 0.07             | 12.06                        |
| " **            | 0.20             | SE $\frac{1}{4}$ NE $\frac{1}{4}$ | 27   | 13  | 18     | 0.01             | 0.90                         |
| " **            | 3.10             | NE $\frac{1}{4}$ NE $\frac{1}{4}$ | 27   | 13  | 18     | 0.08             | 13.95                        |
| " ***           | 33.88            | SE $\frac{1}{4}$ NE $\frac{1}{4}$ | 27   | 13  | 18     | 0.85             | 152.46                       |
| " ***           | 14.14            | NE $\frac{1}{4}$ NE $\frac{1}{4}$ | 27   | 13  | 18     | 0.35             | 63.63                        |
| " ***           | 16.13            | SW $\frac{1}{4}$ NE $\frac{1}{4}$ | 27   | 13  | 18     | 0.40             | 72.59                        |
| " ***           | 8.00             | NW $\frac{1}{4}$ NE $\frac{1}{4}$ | 27   | 13  | 18     | 0.20             | 36.00                        |
| " ***           | 8.88             | Lot 2                             | 27   | 13  | 18     | 0.22             | 39.96                        |
| 1866            | 4.03             | NW $\frac{1}{4}$ SW $\frac{1}{4}$ | 26   | 13  | 18     | 0.10             | 18.14                        |
| "               | 13.74            | NE $\frac{1}{4}$ SE $\frac{1}{4}$ | 27   | 13  | 18     | 0.34             | 61.83                        |
| "               | 0.70             | NW $\frac{1}{4}$ SE $\frac{1}{4}$ | 27   | 13  | 18     | 0.02             | 3.15                         |
| Total           | 124.03           |                                   |      |     |        | 3.10             | 558.15                       |

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\* A priority of prior to 1861 on these lands is recognized, however in the proration of water between the parties as described in paragraph IV herein priorities of 1861 and prior to 1861 will be considered equal.

\*\* These lands comprise the farmstead area and may be irrigated from Lapham Creek through the domestic pipeline or by ditch from Small's Creek.

\*\*\* These lands may also be irrigated from Small's Creek with a priority of 1861.

FIRE PROTECTION

The claimant under Proof No. 02421 is hereby allowed the right, with a priority of prior to 1861, to at all times divert from Lapham Creek sufficient water to supply 0.25 c.f.s. at the existing pipe intake works located within the SW $\frac{1}{4}$  NW $\frac{1}{4}$  Section 26, T. 13 N., R. 18 E., M.D.B.&M.

This right is considered non-consumptive and the water so diverted must be returned to the stream system.

DONE IN OPEN COURT this 19th day of May,  
1958.

\_\_\_\_\_  
FRANK B. GREGORY  
District Judge