IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF PERSHING

3776

Filed March 16 19 71

Cecil Gorst
Clerk

Louise Sumley
Deputy

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IN THE MATTER OF THE DETERMINATION OF THE RELATIVE RIGHTS IN AND TO THE WATERS OF SONOMA CREEK AND ITS TRIBUTARIES IN HUMBOLDT AND PERSHING COUNTIES, STATE OF NEVADA

FINDINGS OF FACT, CONCLUSIONS OF LAW JUDGMENT AND DECREE

This matter came on regularly for hearing on the 9th day of December, 1970, before the Honorable Llewellyn A. Young, District Judge of the above-entitled court presiding, the entire stream system being within Pershing and Humboldt Counties, State of Nevada, and he being the Judge designated by NRS 533.165, to hear and having jurisdiction to hear the above-entitled matter, upon the State Engineer's determination of the relative rights of the petitioner and claimants to the use of the waters of the stream system of Sonoma Creek and tributaries, which Order of Determination and all related documentary evidence had been filed by the State Engineer. There being no exceptions to the Order of Determination filed or otherwise submitted to the Court at least 5 days prior to the date set for hearing as provided for under NRS 533.170 by the claimants or petitioner or any other person or persons, the matter was submitted to the Court for its decision.

William Paul, Esquire, Deputy Attorney General of the State of Nevada, Starr Hill, Jr., Surface Water Engineer, and L. Edward Parmenter, Adjudication Engineer, appeared in the hearing and proceedings on behalf of the State of Nevada and the Office of the State Engineer. The claimant, Van Diest Brothers, Inc., was not represented.

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The record disclosed that the claimant had received a certified copy of the Court Order Setting Forth the Time and Place for Hearing on the Order of Determination.

The Deputy Attorney General thereupon, at the hearing, offered and there were received in evidence in support of the rights of the claimant, as set forth in the Order of Determination, verified affidavits, files and records of the State Engineer's Office respecting the rights of the claimant in and to the above-named stream system.

The Court, having duly considered the entire record, the evidence introduced and received directed that Findings of Fact, Conclusions of Law, and Judgment and Decree be entered accordingly.

FINDINGS OF FACT

I.

That on July 29, 1959, Van Diest Brothers, Inc., a water user on Sonoma Creek and its tributaries, filed with the State Engineer of the State of Nevada, a petition requesting the determination of the relative rights of the petitioner and other claimants to the waters of the afore-mentioned stream, situate in Pershing and Humboldt Counties, State of Nevada.

That the State Engineer thereupon and in accordance with the provisions of NRS 533.090, made an investigation of all facts and conditions of and concerning the above-named stream system and its tributaries for the purpose of disclosing whether the determination of such rights was justified and filed his report thereon in the Office of the State Engineer of the State of Nevada. The report of the facts and conditions disclosed that a determination of the relative rights was justified, and the State Engineer made and entered his order on March 1, 1962, granting the petition for the determination of such relative rights in and to the waters of

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Sonoma Creek and its tributaries.

That as a result of the State Engineer's investigation report, it was found that the waters of Sonoma Creek and its tributaries are being placed to beneficial use for irrigation, stock watering and domestic purposes as affirmed by Amended Proof of Appropriation 01109, and Proof of Appropriation 02502, filed in the Office of the State Engineer. Evidence contained in the title documents submitted by the claimant, relative to the land, indicates the present claimant and appropriator, Van Diest Brothers, Inc., is the successor in interest to vested rights initiated by its predecessors.

That on the 15th day of March, 1962, and once each week for four succeeding weeks, the State Engineer did cause to be published a Notice of Order and Proceedings to Determine Water Rights in and to the waters of Sonoma Creek and tributaries in Pershing and Humboldt Counties, State of Nevada, and that notice was duly given to all claimants as required by law. That on the 16th day of April, 1962, there was filed in the Office of the State Engineer an affidavit of the publisher of the Lovelock Review-Miner, exemplifying the Proof of Publication of the Notice of Order and Proceedings.

That the State Engineer did cause to be published on the 30th day of June 1966, and once each week for four succeeding weeks, a Notice of Order for Taking Proofs to Determine Water Rights, in and to the waters of Sonoma Creek and its tributaries in Pershing and Humboldt Counties, State of Nevada, and that notice was duly given to all claimants as required by law. That on the 16th day of August, 1966, there was filed in the Office of the State Engineer, an affidavit of the publisher of the Lovelock Review-Miner, exemplifying the Proof of Publication of Notice of Order for Taking Proofs.

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That the State Engineer, in accordance with NRS 533.140 did enter and file in the records of his office, on the 8th day of July, 1970, an Abstract of Claims, a Preliminary Order of Determination and Notice and Order Fixing and Setting Time and Place of Inspection, stating when and where the evidence taken or filed with him and the proofs of claims were open to the inspection of all interested persons; and that notice thereof was duly given to all claimants as required by law.

That the State Engineer, in accordance with NRS 533.160, entered in the records of his office, on the 22nd day of September, 1970, an Order of Determination defining the rights of the claimants and appropriators to the waters of Sonoma Creek and its tributaries and that notice thereof was duly given to all claimants as required by law.

That upon the filing of the certified copy of the Order of Determination and original evidence with the Clerk of the Court of Pershing County, State of Nevada, the Court, at the request of the State Engineer, made and entered an Order on the 16th day of October, 1970, setting a time for the hearing of any exceptions to the Order of Determination on Wednesday the 9th day of December, 1970, at 9:00 o'clock in the forenoon of said day, in the court room of the Court House at Lovelock, Nevada; and that the Clerk of the Court did furnish the State Engineer with a certified copy thereof.

That the State Engineer, in accordance with NRS 533.165, gave notice to the claimants, by service of a certified copy of the Court Order Setting Time for Hearing.

That on the 29th day of October, 1970, and once each week for four succeeding weeks, the State Engineer did cause to be published the Court Order Setting Time for Hearing, and that

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thereafter on the 4th day of December, 1970, their was filed in the Office of the State Engineer an affidavit of the publisher of the Lovelock Review-Miner, exemplifying the Proof of Publication of the Court Order Setting Time for Hearing.

The Court finds that all and singular, the Proceedings, Orders and Notices required by Chapter 533 of NRS were duly had, made and given as required by law, and that all and singular the matters and things contained in the record were done, performed, given and made in strict compliance with the statute, and that this court had and has jurisdiction to hear and determine this matter.

II.

The Court Further Finds: That Sonoma Creek and its tributaries are situated within Pershing and Humboldt Counties, State of Nevada.

III.

The Court Further Finds: That the names of the claimants and appropriators, the source of the water supply, the period of use, the duty of water, the diversion of water and method of use, measurement of water, stock watering and domestic use, change of place of use, and the rights of appropriation of the water, all as set forth in the Order of Determination are true, proper and correct, and all and singular the same should be approved and confirmed.

I. PREFACE

On July 29, 1959, Van Diest Brothers, Inc., a water user on Sonoma Creek and its tributaries, filed with the State Engineer of the State of Nevada, a petition requesting the determination of the relative rights of the petitioner and other claimants to the waters of the afore-mentioned stream, situate in Pershing and Humboldt Counties, State of Nevada.

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A field investigation was made of Sonoma Creek on August 21, 1961, by Roland D. Westergard, then Hydraulic Engineer and Charles C. Armuth, Jr., then Hydraulic Engineer, from the Office of the State Engineer. They found that facts and conditions justified the granting of the petition and that proper arrangements should be initiated to proceed with such determination.

On March 1, 1962, the State Engineer entered an Order granting the petition and made proper arrangements to proceed with the determination of the relative rights of the water users in accordance with NRS 533.090.

On June 27, 1966, the State Engineer entered a Notice of Order for Taking Proofs to Determine Water Rights.

II. CLAIMANTS

The investigation disclosed that the waters of Sonoma Creek and its tributaries are being placed to beneficial use for irrigation, stock watering and domestic purposes on lands of Van Diest Brothers, Inc., as affirmed by Amended Proof of Appropriation 01109, and Proof of Appropriation 02502, filed in the Office of the State Engineer. Evidence contained in the title documents submitted by the claimant, relative to the land, indicates the present claimant and appropriator, Van Diest Brothers, Inc., is the successor in interest to vested rights initiated by its predecessors.

Proof 01109 was filed with the State Engineer by claimant, Harriet Guthrie, on May 21, 1912. The only map of record filed with Proof 01109, on January 2, 1912, claims vested rights totaling 341.0 acres in Sections 20, 29 and 30 of T. 34 N., R. 38 E., M.D.B.&M., as being irrigated from Sonoma Creek and tributaries.

Amended Proof 01109, filed by Van Diest Brothers, Inc., on

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June 1, 1962, claims vested rights totaling 52.88 acres in portions of Sections 20 and 29, T. 34 N., R. 38 E., M.D.B.&M. A field investigation, June 10, 1970, disclosed cultivated lands totaling approximately 50 acres are located within said Sections 20 and 29. The remaining acreage indicated as pasture on the 1912 plat has a heavy growth of sagebrush and has not been irrigated for many years.

For this reason Proof 01109 and map were not used in the determination of the acreage to be granted vested rights by this Decree. Instead, Amended Proof 01109 and accompanying plat were used in the determination of vested rights.

III. SOURCE

The headwaters of several tributaries to Sonoma Creek are located in Humboldt County, but these tributaries flow into the northeast corner of Pershing County to form the main Sonoma Creek Stream. The tributaries head on the western slope of the Sonoma Range and Sonoma Creek flows in a westerly direction for approximately six miles into Grass Valley. Springs and small canyons contribute flow in the upper watershed; the springs apparently continue to flow through the summer months.

IV. PERIOD OF USE

The irrigation season shall begin on March 1st and end on November 15th of each year.

V. DUTY OF WATER

The seasonal duty of water on lands irrigated from Sonoma Creek and its tributaries is herein fixed and shall not exceed:

Class A --- Harvest Crop --- 4.0 ac.ft./ac./season

VI. DIVERSION OF WATER AND METHOD OF USE

The claimant shall have the right to divert 2½ cubic feet per second of water per 100 acres of land irrigated, but not to

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exceed the seasonal duty as established herein.

The claimant or its successors in interest will not be required to take or use the amount of water allotted to it in a continuous flow, but may cumulate the same or any part thereof in rotation or periodic turn within the seasonal limits, with the approval of the Water Commissioner and subject to the control and direction of the State Engineer.

VII. MEASUREMENT OF WATER

All measurements of water diverted are to be made at a point where the main ditch enters or becomes adjacent to the land to be irrigated or as near thereto as is practicable; the location if not selected by the State Engineer to be approved by him. The water user shall install and maintain at its own expense, substantial and easily operated regulating headgates and measuring devices in its ditch or ditches or channel. Due allowance for losses in ditches will be made by the State Engineer in case it becomes necessary.

Priorities are fixed by years and where the years are the same, the priorities are equal.

VIII. STOCK WATERING AND DOMESTIC

The right to the diversion and use of water for stock watering and domestic purposes is to be continued by the claimant named herein or its successors in interest at any time during the year, and such diversions shall be according to the dates of priority of the claimant and limited to the quantity of water reasonably necessary for such use.

The amount of water diverted for irrigation purposes shall not be increased by any amount to be used for stock watering and domestic purposes, but the quantity allowed and diverted for irrigation during the irrigation season shall include water for

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stock watering and domestic purposes.

IX. CHANGE OF PLACE OF USE

All water allotted in the Decree shall be appurtenant to the place of use designated. Any water user desiring to change the point of diversion, manner of use or place of use of the waters allotted herein, must make application to the State Engineer for permission to make the change pursuant to NRS 533.345.

X. RIGHTS OF APPROPRIATION

From the Order of Determination and the evidence, both oral and documentary, submitted in support thereof, the Court finds that the name of the claimant and appropriator of the waters of Sonoma Creek and its tributaries, the source of the water supply, the means of diversion, the points of diversion for beneficial use, the period of use, the years of priority, the cultural acreages, the places of use, the legal subdivisions, sections, townships, ranges and the duty of water, are as listed, stated and set forth.

CONCLUSIONS OF LAW

From the evidence presented and received in this matter, and from the foregoing FINDINGS OF FACT, the Court makes the following CONCLUSIONS OF LAW:

I.

That the State Engineer has the right, authority and jurisdiction pursuant to Chapter 533 of NRS to make the investigation made by him, receive the proofs and maps, enter and file in his office the original Order of Determination and file a certified copy thereof in this Court, and to determine the relative rights of claimants and appropriators in and to the waters of Sonoma Creek and its tributaries in Pershing and Humboldt Counties, State of Nevada; that the State Engineer duly

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made all orders necessary and proper in connection therewith and entered the same in his office as required by Chapter 533 of NRS; that each and every notice required by law to be given herein to the claimants and appropriators was duly served by the State Engineer in the manner and within the time required by Statute, and that the notices contained all of the statements required by law, and that the claimants and appropriators of the waters of the above-named stream system and its tributaries duly received the information and notices, as required by law.

II.

That the Sixth Judicial District Court of the State of Nevada, in and for the County of Pershing, had and has jurisdiction to hear and try this matter, and has jurisdiction to find, make and enter the foregoing Findings of Fact and these Conclusions of Law, and enter its Decree herein.

III.

That Van Diest Brothers, Inc., is the only claimant who was and is now the appropriator and user of the waters of Sonoma Creek and its tributaries on the date the Order of Determination was filed with the Clerk of the Court, and on the date of the trial and hearing of this matter.

IV.

That the irrigation season shall begin on March 1st and end on November 15th of each year.

V.

That the seasonal duty of water on lands irrigated from Sonoma Creek and its tributaries is herein fixed and shall not exceed:

Class A --- Harvest Crop --- 4.0 ac.ft./ac./season

VI.

That the claimant shall have the right to divert 2½ cubic

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feet per second of water per 100 acres of land irrigated, but not to exceed the seasonal duty as established herein.

That the claimant or its successors in interest will not be required to take or use the amount of water allotted to it in a continuous flow, but may cumulate the same or any part thereof in rotation or periodic turn within the seasonal limits with the approval of the Water Commissioner and subject to the control and direction of the State Engineer.

VII.

That all measurements of amounts of water diverted are to be made at a point where the main ditch enters or becomes adjacent to the land to be irrigated or as near thereto as is practicable; that the location if not selected by the State Engineer, is to be approved by him. That the water user shall install and maintain at its own expense, substantial and easily operated regulating headgates and measuring devices in its ditch or ditches or channels. That due allowance for losses in ditches will be made by the State Engineer in case it becomes necessary.

That priorities are fixed by years and where the years are the same the priorities are equal.

VIII.

That the right to the diversion and use of water for stock watering and domestic purposes is to be continued by the claimant named herein or its successors in interest at any time during the year and such diversions shall be according to the dates of priority of the claimant and limited to the quantity of water reasonably necessary for such use.

That the amount of water diverted for irrigation purposes shall not be increased by any amount to be used for stock watering and domestic purposes, but the quantity allowed and diverted for

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irrigation during the irrigation season shall include water for stock watering and domestic purposes.

IX.

That all water allotted in the Decree shall be appurtenant to the place of use designated herein. Any water user desiring to change the point of diversion, manner of use or place of use of the waters allotted herein must make application to the State Engineer for permission to make the change pursuant to NRS 533.345.

X.

That from the Order of Determination and the evidence both oral and documentary, submitted in support thereof, the Court finds that the names of the claimant and appropriator of the waters of Sonoma Creek and its tributaries, the source of the water supply, the means of diversion, the points of diversion for beneficial use, the period of use, the years of priority, the cultural acreages, the places of use, the legal subdivisions, sections, townships, ranges and the duty of water, are as listed, stated and set forth.

XI.

That the Order of Determination made, filed and caused to be entered of record in this matter by the State Engineer, should be affirmed.

JUDGMENT AND DECREE

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

I.

That the State Engineer made all necessary and proper orders as required by law, and that each and every notice required by law was duly given to the claimants and appropriators; that the claimants and appropriators had full opportunity to appear and be

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heard in objection to and file exceptions to the Order of Determination; that the claimant and appropriator is the only claimant and appropriator of the waters of Sonoma Creek and its tributaries and this Decree determines the limit and extent of all vested water rights on the source.

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

II.

That the flow of water from Sonoma Creek and its tributaries is being placed to beneficial use by Van Diest Brothers, Inc., for irrigation, stock watering and domestic purposes.

III.

That the irrigation season shall begin on March 1st and end on November 15th of each year.

IV.

That the seasonal duty of water on lands irrigated from Sonoma Creek and its tributaries is herein fixed and shall not exceed:

Class A --- Harvest Crop --- 4.0 ac.ft./ac./season

V.

That the claimant shall have the right to divert 2½ cubic feet per second of water per 100 acres of land irrigated, but not to exceed the seasonal duty as established herein.

That the claimant or its successors in interest will not be required to take or use the amount of water allotted to it in a continuous flow, but may cumulate the same or any part thereof in rotation or periodic turn within the seasonal limits with the approval of the Water Commissioner and subject to the control and direction of the State Engineer.

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VI.

That all measurements of water diverted are to be made at a point where the main ditch enters or becomes adjacent to the land to be irrigated, or as near thereto as is practicable; the location if not selected by the State Engineer, to be approved by him. That the water user shall install and maintain at its own expense, substantial and easily operated regulating head gates and measuring devices in its ditch or ditches or channel. That due allowance for losses in ditches will be made by the State Engineer in case it becomes necessary.

That priorities are fixed by years and where the years are the same, the priorities are equal.

VII.

That the right to the diversion and use of water for stock watering and domestic purposes is to be continued by the claimant named herein or its successors in interest at any time during the year, and such diversions shall be according to the dates of priority of the claimant and limited to the quantity of water reasonably necessary for such use.

That the amount of water diverted for irrigation purposes shall not be increased by any amount to be used for stock watering and domestic purposes, but the quantity allowed and diverted for irrigation during the irrigation season shall include water for stock watering and domestic purposes.

VIII.

That all water allotted in this Decree shall be appurtenant to the place of use designated herein. That any water user desiring to change the point of diversion, manner of use or place of use of the waters allotted herein must make application to the State Engineer for permission to make the change pursuant to

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NRS 533.345.

IX.

That the name of the claimant and appropriator of the waters of Sonoma Creek and its tributaries, the source of the water supply, the means of diversion, the points of diversion for beneficial use, the period of use, the years of priority, the cultural acreages, the places of use, the legal subdivisions, sections, townships, ranges and duty of water are hereby adjudged as follows:

PROOF NO: Amended 01109

CLAIMANT: Van Diest Brothers, Inc.

SOURCE: Sonoma Creek and Tributaries

USE: Irrigation, Stock Watering and Domestic

MEANS OF DIVERSION: Dam and Ditch

POINT OF DIVERSION:

NE¼ NE¼ Section 20, T. 34 N., R. 38 E., M.D.B.&M., or at a point from which the SE corner of Section 17, T. 34 N., R. 38 E., M.D.B.&M., bears N. 5° 03' E., a distance of 892 feet.

PRIORITY	CULTURAL ACREAGE HARVEST	LOCATION SUBD.	SEC.	TWN	RGE	DUTY OF WATER C.F.S.	AC. FT.
1869	5.74	SW¼ SE¼	20	34	38	0.144	22.96
1869	20.09	NW¼ NE¼	29	34	38	0.502	80.36
1869	3.65	NE¼ NW¼	29	34	38	0.091	14.60
1869	17.66	SE¼ NW¼	29	34	38	0.441	70.64
1869	5.74	SW¼ NE¼	29	34	38	0.144	22.96
Total	52.88					1.322	211.52

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PROOF NO: 02502

CLAIMANT: Van Diest Brothers, Inc.

*SOURCE: Sonoma Creek and Tributaries

USE: Irrigation and Stock Watering

MEANS OF DIVERSION: Dam and Ditch

POINT OF DIVERSION:

SE¼ NE¼ Section 26, T. 34 N., R. 37 E., M.D.B.&M., or at a point from which the NW corner of said Section 26 bears N. 72° 47' W., a distance of 5,507 feet.

PRI-ORITY	CULTURAL ACREAGE HARVEST	SUBD.	LOCATION SEC.	TWN	RGE	DUTY OF WATER C.F.S.	AC. FT.
1869	35.57	SE¼ NE¼	26	34	37	0.889	142.28
1870	21.67	NE¼ NW¼	26	34	37	0.542	86.68
1870	8.69	NW¼ NE¼	26	34	37	0.217	34.76
1870	0.44	NE¼ NE¼	26	34	37	0.011	1.76
1870	16.35	SW¼ NW¼	26	34	37	0.409	65.40
1870	40.00	SE¼ NW¼	26	34	37	1.000	160.00
1870	40.00	SW¼ NE¼	26	34	37	1.000	160.00
1870	20.70	NW¼ NW¼	26	34	37	0.518	82.80
1870	2.61	NW¼ SW¼	26	34	37	0.065	10.44
1870	37.25	NE¼ SW¼	26	34	37	0.931	149.00
1870	40.00	NW¼ SE¼	26	34	37	1.000	160.00
1870	37.56	NE¼ SE¼	26	34	37	0.939	150.24
1870	0.35	SE¼ SW¼	26	34	37	0.009	1.40
1870	5.04	SW¼ SE¼	26	34	37	0.126	20.16
1870	8.17	SE¼ SE¼	26	34	37	0.204	32.68
Total	314.40					7.860	1257.60

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*A portion of said Section 26 is also irrigated from Clear Creek as set forth in Certificate of Appropriation 253 issued under the Clear Creek State Decree.

DONE IN OPEN COURT THIS 16th DAY OF March A. D. 1971.

Llewellyn A. Young
District Judge

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