



relative rights on the stream system in question, and that he therefore on April 7, 1926, made and entered on the records of his office an order for the determination of the relative rights of the various claimants to the use of water of the Tony Creek Stream System located in Humboldt County, Nevada.

That, as soon as practicable thereafter, the State Engineer proceeded with such determination by performing the acts required of him by law as hereinafter stated, namely:-

That as soon as practicable after the making and entering of said Order upon the records of his office, and on April 7, 1926 he prepared a Notice Setting forth the facts of the entry of said Order, and of the pendency of said proceedings, naming therein the date of May 3, 1926, when the State Engineer or his assistants would begin said examination, and set forth therein that all claimants to rights in the waters of said stream system were required by law to make proof of their respective claims.

That the State Engineer thereupon caused notice to be published for a period of four consecutive weeks, commencing on April 8, 1926, and ending on May 6, 1926, inclusive, in the Humboldt Star which is a newspaper of general circulation within the boundaries of the Tony Creek Stream System.

That, at the time set in said notice, on May 3, 1926, the State Engineer did begin an investigation of the flow of said Tony Creek and its tributaries and of the ditches diverting waters and of the lands irrigated therefrom and did proceed with such investigation by gathering all data and information as was essential to a proper determination of the water rights in the said Tony Creek and its tributaries.

That he did thereafter, reduce his observations and measurements to writing and did thereafter cause to be executed surveys, and did cause to be prepared maps from the observations of such surveys, in accordance with uniform rules and regulations heretofore adopted by him, which surveys and maps, did and do now, show with substantial accuracy the location and course of said stream and its tributaries, the location of each ditch diverting water therefrom together with the points of diversion thereof, the area and

outline of each parcel of land upon which the waters of said stream or tributaries had heretofore been employed for the irrigation of crops or pasture, and indicating the kind of culture upon each of the said parcels of land, and which said maps, when completed, were filed and made a record in the office of the State Engineer, and that the maps for original filings in said Office were made upon tracing linen to a scale of not less than one thousand (1000) feet to one (1) inch.

That, upon the filing of such measurements, maps and determinations, the State Engineer on August 6, 1926, did prepare a notice setting forth the date of September 20, 1926, when he would commence the taking of said proofs as to the rights in and to the waters of said Tony Creek stream system and the date of November 30, 1926, prior to which the same should be filed.

That, thereafter, the State Engineer did cause said notice to be published for a period of four consecutive weeks commencing on August 9, 1926, and ending on September 6, 1926, in the Humboldt Star, a newspaper of general circulation within the boundaries of said stream system.

That, at the time named in said notice, September 20, 1926, the State Engineer did commence the taking of proofs as stated in said notice and did receive and file in his office various statements and proofs of claims, under the oath of the claimant, during all of the period of sixty days ending on November 30, 1926.

That, as soon as practicable after the expiration of the period within which proofs of claims might be filed with him, the State Engineer, then Geo. W. Malone, did proceed to, and did thereafter prepare and certify an Abstract of Claims dated January 10, 1928, as provided in Section 28, Chapter 106, Statutes of 1921, and cause the same to be typed in his office.

That, beginning with the preparation of said Abstract of Claims, this and subsequent proceedings in connection with the determination of the Relative Rights in and to the waters of Tony Creek and its tributaries in Humboldt County, Nevada, have been performed by Geo. W. Malone, who succeeded, Robert A. Allen, as

State Engineer on March 28, 1927.

That, immediately after preparing, certifying and causing said Abstract of Claims to be typed in his office, the State Engineer did also prepare from the proofs and evidence taken or given before him or obtained by him, a Preliminary Order of Determination dated January 10, 1928, establishing the several rights of claimants to the waters of the said stream system.

That, when said Abstract of Claims and Preliminary Order of Determination were completed, the State Engineer did then prepare a Notice dated January 10, 1928, Fixing and Setting a Time and Place When and Where the Evidence Taken by or Filed with him and the Proofs of Claims would be open to the Inspection of all interested persons for a period of twenty days beginning on Monday February 20, 1928, and which notice was deemed an order of the State Engineer as to matters contained therein.

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 envelopes with the postage thereon fully prepaid, addressed to each of the persons who had heretofore appeared and filed proof of Claims, at his or her correct address, and on the twelfth day of January, 1928, all of said envelopes with their contents and addressed as aforesaid were, by the State Engineer, placed in the United States Post Office at Carson City, Nevada, and caused to be registered before mailing, with a request that return receipts be forwarded to him at his office at Carson City, Nevada. Thus the aforesaid Notice of Inspection, Abstract of Claims and Preliminary Order of Determination were sent out by registered mail, at least 30 days prior to the first day of the period of inspection, to each person who had appeared and filed proof of claims.

That the State Engineer, personally or through his authorized assistants, was present throughout the time and at the place designated in said above described Notice of Inspection and did allow during said twenty day period of inspection, all persons interested to inspect such evidence and proofs as had been filed with or taken by him in connection with the proceedings of Determination of Rela-

tive Rights.

That, for a period of 30 days after the time of opening all evidence and proofs for public inspection as above described, or beginning on February 20, 1928 and ending on March <sup>26,</sup> 1928, the State Engineer did receive and officially file in his records, all objections to any finding, part or portion of the Preliminary Order of Determination made by the State Engineer submitted by any persons claiming any interest in the stream system involved, either under vested right or under permit from the State Engineer. All such objections received by the State Engineer were verified by the affidavit of the objector or his agent or attorney and stated with reasonable certainty the grounds of objection.

That, during the said period of receiving and filing said objections to the State Engineer's Preliminary Order of Determination, objections were received from Daniel Esparaza, Isadore Lau-cirica, and J. C. Charters and Emerick Simonich.

That, the State Engineer did thereafter, on March 26, 1928, prepare a Notice Fixing Time and Place for Hearing Objections, as May 1, 1928, at Winnemucca, Nevada, and which notice was sent by registered mail, in the usual manner, to each claimant whose name appeared in the preliminary Order of Determination in ample time for their delivery at least 30 days prior to the date set for said Hearing.

That, at the time and place named in the notice last above mentioned, the State Engineer did commence the hearing of objections theretofore filed with him and did continue such hearings until hearings were had on all objections. The evidence taken on such hearings was confined to the subjects enumerated in the objections and the Preliminary Order of Determination and was reported and transcribed in its entirety.

That, as soon as practicable after hearing the objections to the Preliminary Order of Determination, and on June 28, 1928, the State Engineer did make, and cause to be entered of record in his office, an Order of Determination defining the several rights to the

waters of Tony Creek and its tributaries and caused typewritten copies of the same to be prepared. The State Engineer thereupon sent by registered mail in the usual manner a certified copy of the Order of Determination to each person who had filed proof of claim or who had become interested through intervention or through filing objections under the provisions of section 26 or 29 of the Water Code of Nevada.

On July 6, 1928, the State Engineer did transmit for filing with the Clerk of the Sixth Judicial District Court at Winnemucca, Nevada, a certified copy of the Order of Determination, together with all the original evidence and transcript of testimony filed with or taken before the State Engineer, duly certified by him.

That, upon the filing of such certified copy of said Order evidence and transcripts with the Clerk of the Court, the State Engineer did, on the 11th day of July 1928, request and secure an Order from said Court Setting the Time for Hearing on the Order of Determination for September 17, 1928, which order is contained in the Minutes of this Court. The Clerk of the Court thereupon immediately furnished a certified copy thereof to the State Engineer who thereupon mailed a copy of such certified order of the Court by registered mail and in the usual manner, addressed to each party in interest at his last known place of residence.

That, the State Engineer did also cause the Order of the Court setting time for Hearing on Wednesday, the 17th day of September, 1928, to be published at least once a week in the Humboldt Star, a daily newspaper of general circulation within the boundaries of the Tony Creek Stream System, and that before such publication had been made for a period of four consecutive weeks its publication was stopped owing to an error in the notice.

That the Court immediately supplied the State Engineer with an order vacating the original order and resetting the time for hearing for Thursday, September 27, 1928, and that the State Engineer did therefore immediately cause the new order to be published once a week for four consecutive weeks commencing on August 15, 1928 and ending on September 12, 1928, in the above mentioned

Humboldt Star, and that the State Engineer also served each claimant and other interested parties, by registered mail, in the usual manner, with certified copies of the Court Order resetting time for hearing for September 27, 1928.

That on the 13th day of September, 1928, Judge L. O. Hawkins, Judge of the above entitled Court, made and entered an Order vacating the former Setting and resetting said Hearing for Thursday October 4, 1928, at the hour of ten o'clock A. M.

That on the first day of October, 1928, Judge L. O. Hawkins made and entered an Order vacating the setting of said proceeding for Hearing on Thursday October 4, 1928, and set down the said matter for hearing at the hour of ten o'clock A. M. Thursday November 1, 1928.

That at least five days prior to the date set for hearing Claimants Pio Esain and Daniel Esparza, filed exceptions to said Final Order of Determination and that Permittees Emerich Simonich and J. C. Charters, within the time allowed by law duly filed their exceptions to the said Final Order of Determination.

That on the 28th day of September, 1928, the State Engineer prepared an Affidavit of Compliance with Jurisdictional Requisites in connection with the proceedings, which affidavit was duly filed with the clerk of the Court, and now appears in the records thereof.

That said cause was, on the first day of November, 1928, heard before this Court, and the Claimants and exceptors having presented their evidence both oral and documentary to the Court, and the Court having heard the witnesses sworn and examined on behalf of the Claimants and Exceptors and of the State and the cause having been submitted to the court for decision and the Court having rendered its written decision thereon and having made and filed its Findings of Fact and Conclusions of Law.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, as follows, to-wit:

I.

That except such persons as may have acquired rights to

the use of the water of the Tony Creek Stream System by Permits granted under application to the State Engineer under and by virtue of the Statutes of 1905, Chapter 46, the Statutes of 1907, Page 30 and under and by virtue of Chapter 140, Statutes of 1915, 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 water or any part thereof.

II.

That claimants, Pio Esain and Daniel Esparza and their successors in interest have and are hereby awarded the right to use a portion of the water of Chimney Creek, a tributary of Tony Creek and a part of the Tony Creek Stream System, at the following times, in the following amounts, upon the following described lands, and of a relative priority as of prior to the year 1903:

All in T. 41 N., R. 38 E., M.D.B. & M.

Culture : Acres	Description of Land	Irrigation	Duty of
Harvest : Meadow	Subdivision	Season	Water
Crops : Pasture	Section		(Acre-Feet)
4.47	Lot III	30	Mar. 15-Aug. 15: 22.35
0.32	Lot IV	30	Mar. 15-Aug. 15: 1.60
2.85	NE $\frac{1}{4}$ SW $\frac{1}{4}$	30	do : 14.25
	do	30	Mar. 15-May 15 : 1.62
7.64	0.54		39.82

III.

That Claimant Isadore Laucirica and his successors in interest has (Have) and is hereby awarded the right to use a portion of Porcupine Creek, a tributary of Tony Creek and part of the Tony Creek Stream System, at the following times, in the following amounts, upon the following described lands, and of a relative priority as of prior to the year 1903.

All in T. 41 N., R. 38 E., M.D.B. & M.

Culture : Acres	Description of Land	Irrigation	Duty of
Harvest : Meadow	Subdivision	Season	Water
Crops : Pasture	Section		
4.95	SE $\frac{1}{4}$ NE $\frac{1}{4}$	31	Mar. 15-Aug. 15: 24.75 ✓
	SE $\frac{1}{4}$ NE $\frac{1}{4}$	31	Mar. 15-May 15: 17.97
	SW $\frac{1}{4}$ NE $\frac{1}{4}$	31	do : 1.77
	NW $\frac{1}{4}$ SE $\frac{1}{4}$	31	do : 26.88
0.35	NE $\frac{1}{4}$ SE $\frac{1}{4}$	31	Mar. 15-Aug. 15: 1.75 ✓
	do	31	Mar. 15-May 15: 2.58
5.30	16.40		75.70

#### IV.

That each water user on the Tony Creek Stream System, shall install and maintain in his ditches substantial headgates and weirs which shall be approved by the State Engineer and shall be installed at such place or places as the State Engineer shall designate. Diversions are to be made at the point where the main diverting channel enters or becomes adjacent to the land to be irrigated, or as near thereto as practicable. The users of water on said Tony Creek Stream System, shall take and use the water allotted to them in continuous flow or in periodic rotation, as the State Engineer shall from time to time determine.

#### V.

That, subject to Section (36a) of the Water code of Nevada as amended, the beginning and end of the irrigation season shall be as defined in this Decree 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 shall set the date, giving notice to all water users on said stream system. The setting of this date shall be for the sole purpose of administration and the distribution of water of the Tony Creek Stream System in accordance with the Decree in this action.

#### VI

That each and every water user of the Tony Creek Stream System and each of their agents, attorneys, servants and employees, and their successors in interest and all and every person or persons acting in aid or assistance of the said parties or either of or any of them be, is hereby perpetually enjoined and restrained as follows to-wit:-

(a) From at any time from diverting or using or preventing or obstructing the flow in whole or in part in and along its natural channel or any of the water of the Tony Creek Stream System hereinbefore mentioned, except to the extent and in the amount and in the manner and at the time or times set by this decree to such respective parties hereto allotted, allowed, prescribed and determined, or allowed by permits which have been or may hereafter be

granted by the State Engineer of the State of Nevada.

(b) From diverting from the natural channel and from using any of the said water for irrigation or for any other purpose, in excess of the specific allotment herein set by this decree, or in excess of the specific allotment under a Permit granted or that may hereafter be granted by the State Engineer of the State of Nevada.

(c) From diverting from the natural channel and from using any of the said water in any other manner or for any other purpose or purposes or upon any other land or lands than as provided and prescribed by the terms of this Decree or by a Permit granted or that may hereafter be granted by the State Engineer of the State of Nevada.

(d) From diverting from the natural channel and from using any of the said water at any other time or times than as specified and provided by the terms of this Decree or by a permit granted or that may be hereafter granted by the State Engineer of the State of Nevada.

(e) From in any manner meddling with, opening, closing, changing, injuring, or interfering with any head-gates, weirs, water box, flume, or measuring device, placed, installed or established by the State Engineer or by his authority or direction, unless such act be done by the permission or authority of the Water Commissioner, if during the period of his regulation or control of said water, or if not done during such period, then by virtue of the allowances, authority, terms and provisions of this Decree or by a Permit granted or that may hereafter be granted by the State Engineer of the State of Nevada.

Done in open Court this 30th day of August A. D. 1929.

(signed) L. O. HAWKINS  
District Judge.

(Endorsements)

No.3057.

In the Sixth Judicial District Court of the State of Nevada,  
In and for the County of Humboldt.

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In the Matter of the Determination of  
the Relative Rights of Claimants and  
Appropriators of the Waters of Tony  
Creek and its Tributaries in Humboldt  
County, Nevada.  
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D E C R E E.

Filed this 31st day of August, 1929.

J.W.Davey., Clerk.

(Recorded this 10th day of Jan A.D.  
( 1930 in Book F of Judgments at  
) page 437.

J W Davey. Clerk  
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