

1 CASE NO.: 322675

2 IN THE SECOND JUDICIAL DISTRICT COURT OF THE
3 STATE OF NEVADA
4 IN AND FOR THE COUNTY OF WASHOE

5 * * * * *

6 IN THE MATTER OF THE DETERMINATION)
7 OF THE RELATIVE RIGHTS OF THE USERS)
8 IN AND TO THE WATERS OF WINTERS)
9 CREEK AND ITS TRIBUTARIES IN WASHOE)
10 COUNTY, NEVADA)

11 FINDINGS OF FACT, CONCLUSIONS OF LAW
12 AND DECREE

13 The adjudication of the relative rights of the users in and to the waters
14 of Winters Creek and its tributaries in Washoe County, Nevada was initiated and
15 conducted pursuant to the provisions of Chapter 533 of Nevada Revised Statutes.
16 The Court finds that the State Engineer has in all respects complied with the
17 provisions of that chapter and that all required evidence and documents have
18 been filed with the Court.

19 On April 29, 1977, the State Engineer's Order of Determination was filed
20 with the Court and a hearing on the Order was scheduled for August 25, 1977,
21 at 1:30 P.M. A copy of the Order of Determination and a copy of the Court's
22 Order setting time for Hearing were properly served on all claimants and parties
23 in interest.

24 At the time set for hearing, James C. Perkins, Surface Water Engineer; L.
25 Edward Parmenter, Adjudication Engineer; and George Campbell, Deputy Attorney
26 General appeared on behalf of the State Engineer. Also appearing were John
27 Kincheloe, representing the United States Forest Service, claimant herein; and
28 John J. Casey, claimant herein.

29 At the hearing, the representatives of the State Engineer were informed
30 that John Jay Casey, claimant herein, had filed with the Court an exception to
the Order of Determination on August 19, 1977, more than five days prior to the
date set for hearing as provided for by NRS 533.170. The exception is here

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ALEX C. O'NEAL
S. McKay

1 quoted in full.

2 "TO STATE ENGINEER AND JUDGE JAMES J. GUINAN

3 "Wish to appeal the ruling on case number 322675

4 "I, John Jay Casey hereby notify you of my objection to state engineer
5 finding, a copy of which finding I attach to my protest. The basis to my
6 objection will be presented in detail at the hearing set for August 25,
7 1977 before Judge Guinan

8 "My grounds for protest include Nevada State Highway Department. Failure
9 to make any beneficial use of the water derived from condemnation of part
10 of my grounds, and the U. S. Department of Fish and Game Historically and
11 legal position for use of the water which is limited to run off from the
12 property of John Casey.

13 "The Fishing Games and Nevada State Highway have no historical or legal
14 right to exercise discretion with respect diversion of the subject waters.

15 /s/John Jay Casey."

16 The Court then continued the hearing to allow Mr. Casey time to obtain
17 counsel to present his objections in detail.

18 The hearing on the State Engineer's Order of Determination was re-scheduled
19 for February 24, 1978 at 1:30 P.M. All claimants and parties of interest were
20 notified by certified mail of the re-scheduled date and time of hearing.

21 At the time set for hearing, Brian A. Randall, Surface Water Engineer;
22 L. Edward Parmenter, Adjudication Engineer; James C. Perkins, Hydraulic Engi-
23 neer; and George Campbell, Deputy Attorney General, appeared on behalf of the
24 State Engineer. Also appearing were John J. Kincheloe, representing the U. S.
25 Forest Service, claimant herein; and John H. Sweetland, representing the Nevada
26 Department of Highways, claimant herein.

27 John Jay Casey, claimant and objector herein, did not appear at the hear-
28 ing, nor did anyone appear in his behalf.

29 The Court then approved the Order of Determination, which is here set forth
30 in full.

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I. GENERAL

On April 21, 1958, a petition was submitted by Edward W. Scripps, II, to the State Engineer requesting the determination of the relative rights of claimants to the waters of Winters Creek and its tributaries in Washoe County, Nevada.

On June 12, 1958, 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.

II. CLAIMANTS

The investigation by the State Engineer disclosed that the waters of Winters Creek and its tributaries were being placed to beneficial use on lands in Washoe Valley for irrigation, domestic and stock watering purposes. Evidence contained in title documents, affidavits and proofs of appropriation submitted by the present claimants indicate that they are successors in interest to vested rights initiated by their predecessors.

Amended Proof 02756 and maps were filed in March, 1975, by John Jay Casey claiming vested rights for 659 acres of harvest crops irrigated from Winters Creek and tributaries. However, some of the lands are irrigated from streams other than Winters Creek and only those acreages irrigated from Winters Creek are determined to have vested rights in this proceeding. Amended Proof 02756 claims all culture as harvest crop, however a field inspection disclosed that some culture is diversified pasture.

Amended Proof 02767 and accompanying maps were filed by the State of Nevada, Department of Fish and Game on May 16, 1975, claiming vested rights for 2155 acres for wildlife habitat purposes. Only those lands with an elevation greater than 5029 feet, which is the elevation of Washoe Lake as determined by the U. S. Geological Survey, are determined to have vested rights in this Order, totaling 107.8 acres. The culture on this acreage was determined to be diversified pasture from a field inspection.

Amended Proof 02815 and accompanying maps were filed February 26, 1975, by

1 the State of Nevada, Department of Highways, claiming vested rights for 5.67
2 acres. Evidence of record indicates an acreage of 1.78 acres of meadow pasture
3 irrigated from Winters Creek.

4 III. SOURCE

5 Winters Creek originates at an elevation of 7700 feet on the eastern slopes
6 of Slide Mountain in the Carson Range. It flows down the canyon to the valley
7 floor and irrigates meadows east of Highway 395 in Washoe Valley. The sources
8 of its water are springs and melting snow and it experiences a relatively high
9 spring runoff which later recedes to a minimal flow during the summer.

10 IV. PERIOD OF USE

11 Water for irrigation is allowed to be used at any time during the year pro-
12 vided that the amount applied to the land during any calendar year shall not
13 exceed the quantity in acre-feet herein set forth.

14 V. DUTY OF WATER

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

- 17 Class A. . .Harvest Crop 4.5 ac.ft./ac./season
18 Class B. . .Meadow Pasture 4.0 ac.ft./ac./season
19 Class C. . .Diversified Pasture. . 3.5 ac.ft./ac./season

20 VI. DIVERSION OF WATER AND METHOD OF USE

21 The claimants shall have the right to divert 2.5 cubic feet per second of
22 water per 100 acres of land irrigated, but not to exceed the annual duty in
23 acre-feet as established herein.

24 The claimants or their successors in interest will not be required to take
25 or use the amount of water allotted to them in a continuous flow, but may cumu-
26 late the same or any part thereof in rotation or periodic turn within the sea-
27 sonal limits, with the approval of the water commissioner and subject to the
28 control and direction of the State Engineer.

29 VII. MEASUREMENT OF WATER

30 All measurements of water diverted are to be made at a point where the

1 main ditch enters or becomes adjacent to the land to be irrigated or as near
2 thereto as practicable; the location if not selected by the State Engineer, to
3 be approved by him. The claimants shall install and maintain at their own ex-
4 pense, substantial and easily operated regulating headgates and measuring de-
5 vices in the ditch or ditches or channel. Due allowance for losses in ditches
6 will be made by the State Engineer in case it becomes necessary.

7 Priorities are fixed by years and where the years are the same, the prior-
8 ities are equal.

9 VIII. STOCK WATERING AND DOMESTIC

10 The right to the diversion and use of water for stock watering and domestic
11 purposes shall be continued by the claimants named herein or their successors in
12 interest at any time during the year except as otherwise specified under stock
13 watering rights of appropriation, and such diversions shall be according to the
14 dates of priorities of such users and limited to the quantity of water reason-
15 ably necessary for such use.

16 The amount of water diverted for irrigation purposes shall not be increased
17 by any amount to be used for stock watering and domestic purposes, but the quan-
18 tity allowed and diverted for irrigation during the irrigation season shall in-
19 clude water for these uses.

20 The amount of water diverted and used for stock watering purposes shall not
21 exceed 0.0000625 c.f.s. per head of sheep or 0.00003125 c.f.s. per head of
22 cattle or horses, said quantity being delivered to the place of use when neces-
23 sary for this purpose.

24 IX. CHANGE OF PLACE OF USE

25 All water allotted under this order shall be appurtenant to the place of
26 use designated herein. Any water user desiring to change the point of diver-
27 sion, manner of use or place of use of the waters allotted herein, must make
28 application to the State Engineer for permission to make the change pursuant to
29 NRS 533.345.
30

X. RIGHTS OF APPROPRIATION

The following tabulation lists the rights as determined by this Order:

PROOF NO.: Amended 02756
 CLAIMANT: John Jay Casey
 SOURCE: Winters Creek and Tributaries
 USE: Irrigation, Domestic and Stock Watering
 MEANS OF DIVERSION: Dam and Ditches
 POINT OF DIVERSION: SE1/4 NE1/4 Section 27, T.17N., R.19E., M.D.B.&M., or at a point from which the N1/4 corner of Section 26, T.17N., R.19E., M.D.B.&M., bears N. 63° 31' E., a distance of 3,246 feet.

PRIORITY:	CULTURAL ACREAGE		LOCATION				DUTY OF WATER		
	HAR-VEST	DIVERSIFIED PASTURE	SUB.:	SEC.:	TWP. N.:	RGE. E.:	C.F.S.:	AC.FT.:	
1862	--	5.4	SE1/4	SE1/4	26	17	19	0.135	18.90
1862	0.1	23.6	SW1/4	SE1/4	26	17	19	0.593	83.05
1862	9.6	1.4	SE1/4	SW1/4	26	17	19	0.275	48.10
1862	1.7	--	SW1/4	SW1/4	26	17	19	0.042	7.65
1862	2.6	--	NW1/4	SW1/4	26	17	19	0.065	11.70
1862	39.4	--	NE1/4	SW1/4	26	17	19	0.985	177.30
1862	13.6	26.4	NW1/4	SE1/4	26	17	19	1.000	153.60
1862	--	37.0	NE1/4	SE1/4	26	17	19	0.925	129.50
1862	0.2	39.8	SE1/4	NE1/4	26	17	19	1.000	140.20
1862	33.1	6.9	SW1/4	NE1/4	26	17	19	1.000	173.10
1862	40.0	--	SE1/4	NW1/4	26	17	19	1.000	180.00
1862	3.3	--	SW1/4	NW1/4	26	17	19	0.083	14.85
1862	0.9	--	NW1/4	NW1/4	26	17	19	0.022	4.05
1862	19.7	--	NE1/4	NW1/4	26	17	19	0.493	88.65
1862	27.9	--	NW1/4	NE1/4	26	17	19	0.697	125.55
1862	7.0	11.7	NE1/4	NE1/4	26	17	19	0.468	72.4
1862	--	10.7	NW1/4	SW1/4	25	17	19	0.267	37.45
1862	--	2.3	NE1/4	SW1/4	25	17	19	0.058	8.05

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PROOF NO.: Amended 02756 (Continued)

PRIORITY:	CULTURAL ACREAGE		LOCATION				DUTY OF WATER	
	HAR-VEST	DIVERSIFIED PASTURE	SUB.:	SEC.:	TWP. N.:	RGE. E.:	C.F.S.:	AC.FT.
1862	--	17.9	SE1/4NW1/4	25	17	19	0.447	62.65
1862	--	37.6	SW1/4NW1/4	25	17	19	0.940	131.60
1862	--	1.7	NW1/4NW1/4	25	17	19	0.042	5.95
1862	--	1.8	NE1/4NW1/4	25	17	19	0.045	6.30
TOTAL		199.1 224.2					10.582*	1680.65

*Some of the lands listed above receive water from sources other than Winters Creek. The total quantity of water placed on these lands from all sources shall not exceed the quantity in acre-feet tabulated above for each parcel.

PROOF NO.: Amended 02767
 CLAIMANT: State of Nevada, Department of Fish and Game
 SOURCE: Winters Creek and Tributaries
 USE: Irrigation
 MEANS OF DIVERSION: Dam and Ditches
 POINT OF DIVERSION: SE1/4 NE1/4 Section 27, T.17N., R.19E., M.D.B.&M., or at a point from which the N1/4 corner of Section 26, T.17N., R.19E., M.D.B.&M., bears N. 63° 31' E., a distance of 3246 feet.

PRIORITY:	CULTURAL ACREAGE		LOCATION				DUTY OF WATER	
	DIVERSIFIED PASTURE		SUB.:	SEC.:	TWP. N.:	RGE. E.:	C.F.S.:	AC.FT.:
1862	1.6		SW1/4SE1/4	26	17	19	0.040	5.60
1862	26.4		SE1/4SE1/4	26	17	19	0.660	92.40
1862	4.6		NE1/4SE1/4	26	17	19	0.115	16.10
1862	6.8		SW1/4SW1/4	25	17	19	0.170	23.80
1862	26.4		NW1/4SW1/4	25	17	19	0.660	92.40
1862	8.8		NE1/4SW1/4	25	17	19	0.220	30.80
1862	1.1		NW1/4SE1/4	25	17	19	0.028	3.85
1862	8.8		SW1/4NE1/4	25	17	19	0.220	30.80

1 PROOF NO.: Amended 02767 (Continued)

2

PRIORITY:	CULTURAL ACREAGE		LOCATION				DUTY OF WATER	
	DIVERSIFIED PASTURE		SUB.:	SEC.:	TWP. N.:	RGE. E.:	C.F.S.:	AC.FT.:
4	1862	8.6	SE1/4NW1/4	25	17	19	0.215	30.10
5	1862	13.6	NE1/4NW1/4	25	17	19	0.340	47.60
6	1862	1.1	NW1/4NE1/4	25	17	19	0.027	3.85
7	TOTAL	107.8					2.695	*377.30

8 *Some of the lands listed above receive water from sources other than
9 Winters Creek. The total quantity of water placed on these lands from all
10 sources shall not exceed the quantity in acre-feet tabulated above for each
11 parcel.

11 PROOF NO.: Amended 02815

12 CLAIMANT: State of Nevada, Department of Highways

13 SOURCE: Winters Creek and Tributaries

14 USE: Irrigation and Stock Watering

15 MEANS OF DIVERSION: Dam and Ditches

16 POINT OF DIVERSION: SE1/4 NE1/4 Section 27, T.17N., R.19E., M.D.B.&M., or
17 at a point from which the E1/4 corner of said Section
27 bears S. 6° 00' E., a distance of 1310 feet.

18

PRIORITY:	CULTURAL ACREAGE		LOCATION				DUTY OF WATER	
	MEADOW PASTURE		SUB.:	SEC.:	TWP. N.:	RGE. E.:	C.F.S.:	AC.FT.:
20	1862	0.05	SE1/4NW1/4	26	17	19	0.001	0.20
21	1862	1.07	SW1/4NW1/4	26	17	19	0.027	4.28
22	1862	0.33	NW1/4NW1/4	26	17	19	0.008	1.32
23	1862	0.33	NE1/4NW1/4	26	17	19	0.008	1.32
24	TOTAL	1.78					0.044	*7.12

25 *Some of the lands listed above receive water from sources other than
26 Winters Creek. The total quantity of water placed on these lands from all
27 sources shall not exceed the quantity in acre-feet tabulated above for each
28 parcel.

28 PROOF NO.: 02742

29 CLAIMANT: U.S.A. - Forest Service

30 SOURCE: Winters Creek and Tributaries

1 USE: Stock Watering
2 MEANS OF DIVERSION: Stream Channel
3 POINT OF DIVERSION: SW1/4 SW1/4 Section 21, T.17N., R.19E., M.D.B.&M., or
4 at a point from which the SW section corner of said
5 Section 21, bears S. 30° 32' 36" W., a distance of 374
6 feet.
7 PERIOD OF USE: May 1st through November 30th of each year.
8 PRIORITY: 1880
9 AMOUNT OF APPROPRIATION: 0.00156 c.f.s. or sufficient to water 50 cattle.
10 DESCRIPTION OF WORKS OF DIVERSION, MANNER AND PLACE OF USE:

Cattle are watered from the natural stream channel, the location described above under point of diversion.

The Order of Determination is affirmed.

The Court approves and adopts as its own the findings of fact and conclusions of law contained in the State Engineer's Order of Determination.

Accordingly, it is hereby Ordered, Adjudged and Decreed that the relative rights of the users in and to the waters of Winters Creek and its tributaries be, and the same hereby are, determined as stated in the Order of Determination.

DATED this 22 day of Nov, 1978.

James J. Guinan

James J. Guinan
District Judge