

1 IN THE SIXTY JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN
2 AND FOR THE COUNTY OF HUMBOLDT

3
4 IN THE MATTER OF THE DETERMINATION
5 OF THE RELATIVE RIGHTS OF CLAIMANTS
6 AND APPROPRIATORS OF THE WATERS OF
7 THE HUMBOLDT RIVER STREAM-SYSTEM
8 AND ITS TRIBUTARIES.
9

No. 2804

Filed: April 29th, 1933
J. W. Dawsey, Clerk.

10
11 - STIPULATION AND AGREEMENT -

12 THIS STIPULATION AND AGREEMENT, made and entered into this
13 ___ day of April, 1933, by and between JAMES DYSART of Elko,
14 Nevada, as party of the first part, and JOHN WESTLUND, Administrat-
15 or With the Will Annexed of the estate of ANDREW A. WESTLUND (also
16 known as ANDREW WESTLUND), deceased, of Lamoille, Elko County,
17 Nevada, the party of the second part, for and in consideration of
18 the covenants and agreements herein contained and in further con-
19 sideration of the sum of One Dollar by each of the said parties
20 to the other in hand paid, the receipt whereof is hereby acknow-
21 ledged, do hereby stipulate and agree as follows:

22 That, whereas, the said parties hereto each claim certain
23 water rights from Snell Canyon Creek, in the County of Elko, State
24 of Nevada, which waters have heretofore been used by the said
25 parties on portions of Sections 28 and 29 in Township 33 North,
26 Range 58 East, M. D. R. & M., within the said County of Elko;
27 and, whereas, under the Preliminary Order of Determination and the
28 Proposed Findings of Fact, Conclusions of Law and Decree entered
29 in the above entitled matter, certain rights were given to the
30 said ANDREW WESTLUND, now deceased, from the said Snell Canyon

1 Creek, which said rights were given under proof No. 00444, page
2 231 of the Preliminary Order of Determination, and at page 278
3 of the Abstract of Claims of the Waters of the Humboldt River and
4 its Tributaries, and at page 184 of the said Proposed Findings of
5 Fact, Conclusions of Law and Decree, and which were included in
6 the Findings and Decree entered in the above entitled matter at
7 page 184; and, whereas, upon motion duly made and entered, the
8 above entitled Court entered its Decision on Motions for New
9 Trials in the above entitled matter on the 18th day of March,
10 1932, granting a motion for new trial of the issue of the Andrew
11 Westlund rights on Snell Canyon Creek, involving the rights of
12 the said ANDREW A. WESTLUND (also known as ANDREW WESTLUND), now
13 deceased, and his said estate; and, whereas, JOHN WESTLUND, above
14 named, was, by order of said Court, substituted as a party in the
15 place and stead of the said ANDREW A. WESTLUND in the above en-
16 titled proceeding; and, whereas, the said JAMES DYSART holds re-
17 corded certificates Nos. 1089 and 1283 issued by the State Engin-
18 eer's Office pursuant to law, granting to the said JAMES DYSART
19 certain rights to the waters of Snell Canyon Creek; and, whereas
20 the said parties hereto are the only users of the waters from
21 the said Snell Canyon Creek;

22 NOW, THEREFORE, the said parties have agreed and do hereby
23 agree to settle their respective and relative rights to the use
24 of said water from the said Snell Canyon Creek, and do hereby
25 stipulate and agree as follows, to-wit:

26 1. That the water flowing in said Snell Canyon Creek shall
27 be divided equally between the said parties hereto during the i
28 rrigation season of each year, beginning with the irrigation
29 season of 1933; that is to say, the parties hereto agree to es-
30 tablish and install a proper headgate and weir for the divisor

1 of said water at the point of diversion where the said JAMES
2 DYSART diverts the water from the said Snell Canyon Creek under
3 his said permit recorded certificate No. 1089, being a point in
4 the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 33, Township 33 North, Range 58 East, M. D.
5 B. & M., so that the water may be equally divided at said point
6 between the parties hereto.

7 2. That, in making such equal division of the said water
8 from the said Snell Canyon Creek, such division, during the said
9 irrigation seasons, shall be made in the following manner, that
10 is to say:

11 So long as the flow in said Snell Canyon Creek ^{is Greater} ~~does not~~
12 ^{than} ~~fall below~~ two second feet, ^{at The Point of Diversion} each party shall be entitled to one-
13 half of the flow; but, should the flow of the water in the said
14 Snell Canyon Creek drop below two second feet, then the whole
15 amount of the flow in Snell Canyon Creek shall be rotated in the
16 following manner:

17 Beginning with April 15th of each year, the said JOHN
18 WESTLUND, as such Administrator, or the heirs of the said ANDREW
19 A. WESTLUND, deceased, or his or their successors in interest,
20 shall have the full flow of water for a ten day period; that is
21 to say, beginning with the 15th of April to and including the
22 24th day of April of each year; that, beginning with the 25th
23 day of April of each year, the said JAMES DYSART, or his succes-
24 sors in interest, shall have the full flow of said creek to and
25 including the 4th day of May; and thereafter and during the ir-
26 rigation season of each year the said parties shall rotate said
27 water in such ten day periods; provided, however, that said ro-
28 tation shall not begin until such time as the said

2 iod of rotation shall be arrived at by the said second party be-
3 ginning with the said 15th day of April and computing the time
4 up to when said flow is to be rotated as herein provided.

5 3. That the above entitled Court is hereby authorized and
6 requested to enter an order and decree modifying and correcting
7 the said findings and decree heretofore entered by the above en-
8 titled Court in the above entitled matter under said proof No.
9 00444 and found at page 184 of the Proposed Findings of Fact,
10 Conclusions of Law and Decree, and in the Findings and Decree
11 entered under the title "Source - Snell Creek; Ditch - Andrew
12 Westlund Ditches," and fixing the relative rights of the parties
13 hereto as herein provided, and that a copy of this Stipulation
14 and Agreement shall be filed in the office of the State Engineer
15 of the State of Nevada, as fixing the relative rights of the par-
16 ties hereto.

17 IN WITNESS WHEREOF, the said parties have hereunto set their
18 hands and executed these presents in quadruplicate the day and
19 year first above written.

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21 _____
-First Party-

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23 
24 Administrator with the Will An-
25 nexed of the estate of ANDREW A.
WESTLUND (also known as ANDREW
WESTLUND), deceased.

26 -Second Party-

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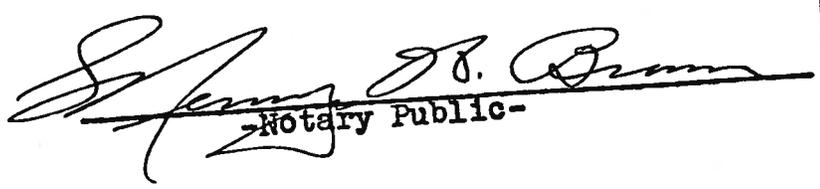
27 and, whereas, under the Preliminary Order of Determination

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STATE OF NEVADA
COUNTY OF ~~SIERRA~~ *Humboldt* ss.

On this 28th day of April, 1933, personally appeared before me, a Notary Public in and for said County and State, JAMES DYSART, and JOHN WESTLUND, Administrator with the Will Annexed of the estate of ANDREW A. WESTLUND (also known as ANDREW WESTLUND), deceased, known to me to be the persons described in and who executed the foregoing instrument, who acknowledged to me that they executed the same freely and voluntarily and for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year in this certificate last above written.


Notary Public-

SCHEDULE OF DATES OF ROTATION OF WATER AS PROVIDED
FOR IN STIPULATION AND AGREEMENT BETWEEN DYSART
AND WESTLUND RE SNELL CANYON CREEK

Westlund -- April 15 to April 24 inclusive.
Dysart -- April 25 to May 4 inclusive.
Westlund -- May 5 to May 14 inclusive.
Dysart -- May 15 to May 24 inclusive.
Westlund -- May 25 to June 3 inclusive.
Dysart -- June 4 to June 13 inclusive.
Westlund -- June 14 to June 23 inclusive.
Dysart -- June 24 to July 3 inclusive.
Westlund -- July 4 to July 13 inclusive.
Dysart -- July 14 to July 23 inclusive.
Westlund -- July 24 to August 2 inclusive.
Dysart -- August 3 to August 12 inclusive.
Westlund -- August 13 to August 22 inclusive.
Dysart -- August 23 to September 1 inclusive.

The foregoing schedule to apply on any of the above dates when the flow of the water in Snell Canyon Creek drops below two second feet.



Administrator with the Will An-
nounced of the estate of Andrew