

Humboldt River Litigation History

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STATE ENGINEERS OFFICE

ADJUDICATION THE HUMBOLDT

The early history of the settlement of lands lying along the Humboldt River is comparable to all early development or irrigated lands in the West. Some time during the interval of a ten year period between the years 1850 and 1860, the first settlers started irrigating from this system. On the Lower River, Palisade, to and including Lovelock area, the early irrigation was natural. The spring runoff would flood into the numerous sloughs and irrigate the surrounding lands.

Artificial irrigation began in the early 1860's. Records show the First Right to be 1861. Ranchers began constructing diversion dams in the sloughs to spread more water and irrigate more land. To get more water in the sloughs, ranchers would plow the entrance from the river and clean it out with scrapers. As more people settled along the river, diversion dams were built in the river to put more water in the sloughs. Most of the early diversion dams were built with rocks and willow and had to be worked on every year. Some ditches were constructed to irrigate lands that never flooded and on such lands, the first alfalfa fields were established. Most of the early ranchers tried to control the amount of water diverted by installing control works of some sort. Control gates were also installed in some of the diversion dams in the river.

All early development was closely associated with stock raising industry. In fact, cattle-growing industry was paramount to all other agricultural pursuits, and irrigation of arid lands was a secondary consideration. This continued until the outlying ranges became over stocked and raising crops became a consideration by new settlers.

Until the season of 1889, irrigation of lands along the Lower Humboldt was routine. The flood waters would begin about March or April and there

would be sufficient water in most years through June. With the floods and more artificial irrigation, the lands would be irrigated. Each year brought more land under irrigation. This was especially true in Elko County, where most of the water originated.

In the Battle Mountain area, more water was diverted into the Argenta Slough as irrigation of ranches along the slough increased. As more water went down the Argenta Slough, the lake, sometimes called the Argenta Swamp, north and east of Battle Mountain enlarged and increased in size to the south and east. More water would have to run into the swamp before the river below began to run.

William Dunphy built the dam to divert water into the Argenta Slough. More water was being diverted each year, especially the flood waters. The Humboldt River bed was practically dry for many miles from the Dunphy Dam to where the Argenta Slough emptied into the Old Humboldt Channel on or near the McIntyre Starett Ranch. Almost all the water that was in the Old River Channel came from Rock Creek and when Rock Creek quit running, the ranchers were out of water.

The irrigation season of 1889 was the driest water year the settlers on the Lower Humboldt had seen to that date. Humboldt Lake, below Lovelock, went dry. This was the first time the emigrants and settlers had seen this happen. The Argenta Swamp, east of Battle Mountain was almost dry. The small amount of water in the river was mostly diverted in the Beowawe and Dunphy area, and what water was there, was not enough to divert.

This brought about the realization that irrigation waters have a potential value. This was impressed upon the water users having water rights which were considered of value because of long continued use. A Custom, or Unwritten Law, or Precedant that has always been recognized in the Western States and which established the real value of any Water Right, is the year of priority

of that right. This firmly established method of computing the value of a water right originated with the early Placer miners, who accepted the theory and fact that THE FIRST IN TIME was the FIRST IN RIGHT. This brought about the initiation of court actions on the part of early water users on many streams in order to set forth and determine in a legal manner, the rights of various water users, in order that prior users, or THE FIRST IN TIME would receive the water to which they were justly entitled.

George W. Bliss settled in San Francisco in 1853 and had several ranches in California. He expanded his operation into Nevada, running cattle between Winnemucca and Golconda. He purchased the first ranch from Pedrolis Bros. in 1873 and the Fairbanks Ranch later. These ranches claimed a water right or claim beginning in 1863. As was the case with several ranches, Bliss did not receive any water during the 1889 irrigation season.

The first attempt at Adjudicating waters of the Humboldt River began when George W. Bliss filed suit July 8, 1889 in the Humboldt County District Court. The lawsuit was filed against William Dunphy, George W. Grayson, H. C. Hinckley, Clover Valley Land & Cattle Co., L. D. Parkinson, H. A. Mason, Jefferson Bradley, J. R. Paul, Louis Lay, G. W. Crum, A. Layton, J. A. Blossom, Thomas Nelson, Robert Henderson, George Bain, C. Gonzales, J. P. Anderson, George Russell, John Bradley, _____ Picket, _____ Chance, Mrs. McIntyre, _____ Slaven, _____ Slaven, _____ Egoff and _____ Lemaire, The given first names of the last seven persons were unknown to the Plaintiff and were to be inserted later.

On September 2, 1890, twenty seven of the defendants were dismissed upon a motion of the Plaintiff and against the objections of the remaining defendants, William Dunphy, George W. Grayson, and J. P. Anderson. Grayson and Dunphy, like Bliss were both from San Francisco.

Testimony in the trial began the same day and continued until April 6th, 1891. There were fifty-one days of testimony during the period. The case was argued orally and by briefs during July of 1891. January of 1896, the case was submitted for consideration and decision. On the 12th day of June, 1896, the Court rendered it's decision. Judge A.L. Fitzgerald awarded the Bliss Ranch 14000 inches of water(280 C.F.S.) before the defendants could divert any.

The defendants filed a motion for a new trial and it was denied on December 11, 1897.

In an Appeal to the Supreme Court in January, 1899, the Judgment of the District Court for the Plaintiff denying a motion for a new trial was reversed. In a petition for rehearing in January, 1900, the case was dismissed. The main reason being that the twenty seven defendants dismissed by Judge Fitzgerald should have been parties to the suit and their rights determined. This would stop separate suits against each water user to determine their rights.

The dry year of 1889 was followed by a very hard winter. There was a lot of snow, big cattle losses by some ranchers and a flood in the spring of 1890. That year, the Humboldt River changed it's course from the main channel to the Argenta Slough, where it is today. Due to the increase in size of the Argenta Swamp, more water was lost to irrigators down river.

On November 12, 1890, in the Circuit Court of the United States, George W. Crum filed a bill in equity against William Dunphy.

By which bill it was alleged and shown that the Complainant owned lands and irrigated lands from the Humboldt River. William Dunphy built a dam in the river above Crum's land and changed the course of the river. Dunphy was Subpoenaed to answer the Complaint. The Court appointed an examiner to take testimony of the respective parties. During Sept. of 1892, before action was taken, William Dunphy died. George W. Crum died during July, 1893, before the case against the Dunphy Estate was heard.

The case came before the Court on the 29th of January, 1898, as James H. Crum, Administrator for Crum Estate vs. Jennie C. Dunphy, for the William Dunphy Estate. Federal Judge Thomas P. Hawley Decreed that Crum Estate had one half of the Humboldt River and that William Dunphy Estate could only interfere with one half of the flow of the river. Each user was to have the beneficial and advantageous use of half of Said Waters upon their Said Lands.

Previous to 1888, the only irrigation going on in Lovelock Valley was in what is known as the Lower Valley. The Upper Valley is the part above the town of Lovelock and was irrigated mainly from two ditches, the Old Channel Ditch and the Young Ditch. Previous to the initiation of the rights of those ditches, the entire portion of the valley that was irrigated was the Lower Valley, which was irrigated from the Union Canal, Southwest and some other ditches. The Irish American Ditch was in the Upper Valley to some extent, but mostly in the middle of the valley.

During the year of 1888, extensive rights were initiated in Lovelock Valley. Most being in the Upper Valley. Stephen R. Young filed a location for the Young Ditch and also filed a location for the Old River Ditch with J.P. Hauskins. Hauskins filed again with W.C. Pitt on the location of the River Ditch, calling it the Old Channel Ditch. They filed in the fall of the year construction began and the ditch was completed the next April. Land was put in with diligence during and following the construction of the ditch and the diversion dam.

The Old Channel Ditch did not irrigate any land until 1891, the third year it was in existence. The first year, 1889, there was not enough water in the Humboldt River to divert. The next year, after the big snow winter of 1889-90, brought the big flood and washed out the Old Channel Diversion Dam. After replacing the structure, the Old Channel Ditch began to irrigate a major

portion of the valley in 1891 and 1892. That was when a suit was brought against W. C. Pitt and J. H. Hauskins by the Southwest Ditch Company, led by John Harrison, Joseph Manzen, Joseph Hill, Robert Welch, A. C. Brown, Ed Clarke, A. Feliz and W. B. Bonnifield and the Union Canal Company led by Peter Anker, Ingvert Hansen, John Read, John Hill, J. R. Brown, L. L. Downs, L. Monk, Joe Damas, A. Hansen, Hans Jensen, A. Westfall, H. W. Fuss, Nelse Nelson, Catherine Bastian. Jerry Fenton, J. C. Damm, and Thomas Clery.

On July 18, 1893, after a trial without jury in the District Court of the State of Nevada, in and for Humboldt County, Judge A. E. Cheney Decreed to the Southwest Ditch Company 1100 inches of water (22 C. F. S.) at their point of diversion for irrigation and the Union Canal Company 1650 inches of water (33 C. F. S.) at the point of diversion before Old Channel Ditch Company could divert any water. The Rodgers Ditch was also involved in the suit but dropped out, but filed suit at a later date. Albert Rodgers got Judgment and Decree in the United States Circuit Court for the State of Nevada for Previous Right for 3500 inches of water (70 C. F. S.--Court allowed 1 inche per acre) against the Old Channel Ditch Company but Junior to the 2750 inches of water (55 C. F. S.) of the Southwest Ditch Company and the Union Canal Company.

On the Upper Humboldt River, Upper being above Palisade, water users were also having disagreements.

After the Irrigation Season of 1895, W. T. Smith, William H. Dakin and Edwin Odell filed suit against C. E. Noble, Elmer Dakin, Thomas Cahill, P. H. McDermitt, George Bower, J. B. Cheen, Judson Dakin, J. A. Roberson and Victoria Reboule over the waters of Lamoille Creek.

The suit was filed September 16, 1895 and the Trial without Jury was October 12, 1895. Webster Patterson was the Attorney for the Defendants and W. A. Massey and E. S. Farrington represented the Plaintiffs.

In a Decree, signed and filed January 21, 1896, District Judge C. F. Talbot Decreed the first 50 inches of water to the Plaintiffs, divided $\frac{2}{5}$, $\frac{2}{5}$, and $\frac{1}{5}$. In the Second Priority, $292 \frac{2}{3}$ inches were Decreed and 1492 inches in the Third Priority. An inch of water was Decreed to be a quantity of water which will, under a six inch pressure, flow through an orifice one inch square. In all, $1834 \frac{2}{3}$ inches were Decreed or 45.866 C. F. S.

A Complaint was filed March 17, 1898 on the waters of Smith Creek, located in Mound Valley, by Josephine Henry for the Estate of Joseph Henry against John B. Scott, S. A. Merkley & S. S. Young, under the firm name Merkley and Young; L. D. Albert, and J. H. Sanquinet, under the firm name Albert & Sanquinet; Fred C. Scott, Mary Ann Kennedy, Oliver Riffe who was a Lessee of the Mary Ann Kennedy Land and Fred C. Scott, James Buscaglia and Antone Zunino, under the firm name Buscaglia and Zunino. Peter Gennetti and G. T. Suttle.

Judge Talbot's Decree, filed September 17, 1898, divided the First 375 inches from Jan. 1 to July 15; 200 inches from July 15 to July 20 and 150 inches from July 20 until the end of the year.

There were several lawsuits on streams where only two water users were involved in the action. Some of them were Smiley vs. Goodale on Deering Creek 1901, Porch vs. Sestenvoich on Pearl and Brown Creeks 1901, Porch vs. Lani on Huntington Creek 1906, and Yowell vs. Bellinger on Spring Creek 1906.

During the spring of 1900, a lawsuit was filed by P. Walsh, James and Margaret F. Ryan, L. F. and Mrs. L. F. Maestrette, Mrs. A. G. Birchman, and A. P. Maestretti against D. T. Wallace, Jacob E. Hess, Lissie E. Ashlers, Fran McMahan, Charles Ashlers, C. A. Richards, the Administrator for the Estate of Frederick Ashlers, deceased, and Jacob Hess, Executor of Estate of John B. Coney, deceased over the waters of Upper Reese River.

The case known as Walsh vs. Wallace had a distinct effect on the

Adjudication of the Humboldt River. In the Decree, issued by Judge A. L. Fitzgerald on March 12, 1900, the Defendants were restrained from diverting any of the water of Reese River and from, in any way, interfering with Said Water, in such manner as to prevent Said Water from flowing on the lands of the Plaintiffs in sufficient quantity to irrigate all Said Lands.

The problem of irrigating the lands of the Plaintiffs, was that their system of irrigation was natural flooding. Their rights were established without diversion.

Not only did the Defendants lose the right to divert water, they had to pay the Court costs amounting to \$907.05 and were denied a Re-Trial. G. T. Wallace took the case to the Supreme Court after being found in Contempt of Court and fined \$150.00.

The Supreme Court Ruling in 1902 reversed the Lower Court. The Ruling gave Defendants a new trial and the Plaintiff no 1863 Priority. The Court stated that no actual diversion was made in 1863 to establish priority. Actual diversions were made years later.

The first State Engineer, Albert E. Chandler, took office May 29, 1903, under the Irrigation Act of 1903. L. L. Richard was assistant State Engineer.

The primary purpose of the Act of 1903, creating the office of State Engineer, was to provide a method by which the existing rights to water might be defined before conditions became any more acute than they were among the water users of the State. It was clearly seen at that time that existing rights to the use of water on the Humboldt River, as well as other streams, had to be ascertained.

Sec. 9 of the Irrigation Act directed the State Engineer to prepare for each stream in the State of Nevada a list of appropriations of water according to priority. In order to make such a list, he had to send to each person having a claim on the stream, a blank form on which said claimant would present in writing, all the particulars showing the amounts and dates of appropriation to the use of waters of the stream which he laid claim too. The statement had to include the following:

- The name and address of the claimant;
- The nature of use on which the claim for an appropriation is based;
- The time of the commencement of such use, and if distributing works are required;
- The date of beginning of survey;
- The date of beginning of construction;
- The date when completed;
- The date of beginning and completion of enlargements;
- The dimensions of the ditch as originally constructed and as enlarged;
- The date when water was first used for irrigation or other beneficial purposes;
- And if used for irrigation, the amount of land reclaimed or irrigated the first year; the amount in subsequent years, with dates of reclamation, and the amount of land each ditch was capable of irrigating.

This form had to be completed and certified by oath within sixty days after the water user received notice to do so.

At this time, work began on the Humboldt River in Lovelock Valley on the collections of proofs of the use to waters of the Humboldt River. Map and claims to water in the valley were collected as fast as the information

necessary was obtained. The first proofs were filed in October of 1906.

The State Engineer at that time thought it was impossible to devise any Just System of distribution of the waters of the stream until the rights to the use of the water upon the land watered were fully determined, and thought the work would probably require twenty years. The office believed the work could not be done hurriedly by any person, even if furnished with the proper authority to do so. It was painstaking in nature, and must be done so or not at all.

The Irrigation Act of 1903 was amended and supplemented in 1905.

The 1905 Irrigation Law, approved March 1, 1905, was amended and modified to the extent that every person intending to make a new appropriation apply to the State Engineer for permission to make the diversion, the quantity of water claimed in cubic feet per second or fractional part thereof; the source of water supply; location of point of diversion; whether or not for irrigation or domestic use, and the number of acres to be irrigated. If for mining, manufacturing, power, or transportation, the appropriator must state the purpose of use; the amount of power to be generated, and at what point, whether or not water is to be returned to the stream, and if so, to designate the point; estimated cost of works; description of works for diversion, size of headgate, etc.

The first State Engineer's Permit accepted and approved was by A.C. Pratt on the East Carson River for power, July 18, 1905. The first permit on the Humboldt River System was #19 by W. T. Jenkins Company, filed Oct. 1, 1905, on Rock Creek for irrigation, approved March 24, 1906.

During 1906 and 1907, only limited attention was given to the Humboldt River. Most work was concentrated on the Virgin and Muddy Rivers.

The Humboldt River was divided into three districts for convenience of collecting proofs and maps.

District #1, Humboldt Lake to Winnemucca
(10)

District #2, Winnemucca to Elko, including South Fork and its
Tributaries
District #3, the North Humboldt River and its Tributaries

In District #1, the Claims of Priorities of Vested Rights were to be established before April 15, 1909, when irrigation for the season started.

In the latter part of July, 1908, a complaint was made to the State Engineer that the water of the Humboldt River in Lovelock Valley was not being used in accordance with the Decree of Courts of Competent Jurisdiction. An investigation found that lower appropriators were not receiving the volumes of water permitted by Judicial Adjudications.

The priorities of the Vested Rights had not been fully determined and it was found necessary to prepare in tabulated forms a partial statement of the claims of users who had filed Proofs of Appropriation in accordance with the Irrigation Law, in order that the Water Commissioner might have data upon which to equitably apportion the stream.

Mr. John Ellis, the First Water Commissioner on the Humboldt River, was appointed for District No.1 and rendered excellent service in this capacity.

The compensation allowed the Water Commissioner at that time, was five dollars per diem, which included the hire of a saddle horse.

In May, 1905, State Engineer Albert Chandler resigned to accept a more lucrative position as Engineer Land and Legal Matters in Field for the United States Reclamation Service. He was succeeded by Mr. Henry Thurtell, appointed by Governor Sparks May 1, 1905.

On May 1, 1907, State Engineer Thurtell resigned to accept a position as a Railroad Commissioner of Nevada. Mr. Frank R. Nicholas was appointed by Governor Sparks as his successor. March 8, 1910, Emmet D. Boyle was appointed to succeed Frank R. Nicholas and held the position until March 21, 1911, at which time W. M. Kearney was appointed.

During February and March of 1910, one of the greatest floods recorded came down the Humboldt River, causing great damage throughout its entire

length. Nearly all the dams in the Stream System were destroyed. The channel of the river was changed at various points. Thousands of acres of cultivated lands were inundated. Railroad bridges were carried away, and many appropriators were unable to procure water through their works of diversion during any time of the year.

The flood of 1910 washed out all the dams in Lovelock Valley except the Old Channel Diversion Dam. All the irrigating in the valley that year was done from the Old Channel Ditch System. On Sept. 15th of that year, the Union Canal and the Southwest Ditch Companies signed an agreement with the Old Channel Ditch Company. Under the agreement, the Union Canal and Southwest Ditch Company would move their point of diversion to the Old Channel Dam. The benefit to them was that they diverted above the Rodgers Canal. In Exchange, they gave the Old Channel 5,500 inches of water, after the 2750 inches was served. After that, they divided the water equally, honoring the rights of the Rodgers Canal.

At the time of the flood, a reclamation project of the Humboldt-Lovelock Light & Power Company was in progress and under construction. Water began flowing into the new \$30,000 Pitt-Taylor Reservoir (Capacity 40,000 acre feet) on March 12, 1910. In a short time, the water level raised seven feet, broke over the dam and levees washed out irrigation canals, bridges, etc. below the dam. That and the high river caused all the damage in the Lovelock area.

The Adjudication of Vested Rights on the Humboldt River proceeded in a rather intermittent manner during this time. Field Engineer Ray B. Crowell collected statements from some ninety appropriators in Paradise Valley claiming rights to about 90,000 acres on the Little Humboldt and Tributaries.

An application was filed by the State Land Registrar for the Pacific Reclamation Company of Wells, Nevada, on Oct. 21, 1909, for the segregation of 20,706.97 acres in Elko County to be reclaimed with the waters of Bishop Creek Trout Creek and Burnt Creek. The application was approved for 10,246.02 acres by the Department of Interior on May 29, 1910, following a report on water

supply and feasibility submitted on August 3, 1909, by State Engineer Frank R. Nicholas.

The Pacific Reclamation Company constructed an earth and concrete dam with necessary canals and laterals. The plans and specifications were approved by the State Engineers office. Bid for construction closed April 15, 1911, and in 1912, 5,000 acre feet of water was stored toward a capacity of 30,000 acre feet. Through the promotion of the enterprise, the town of Metropolis sprung into existence. Many substantial buildings were erected in the years 1911-1912, notably was a modern two-story brick hotel. A branch line of the Southern Pacific Railroad was constructed to the town of Metropolis from a point on the main line called Tulasco, and a daily train service was maintained over the branch line.

On April 13, 1912 Union Canal Ditch Company, Old Channel Ditch Co. and John G. Taylor, all filed in the Humboldt County Court House, and undertaking for an Injunction, a Restraining Order, and an Order to Show Cause was issued and served upon the Pacific Reclamation Company and George M. Bacon.

The Entitled Action came before the Court on May 20, 1912 and continued until June 1st. About 500 pages of testimony was given by several witnesses. At the close of the hearing, Judge Edward Duker ordered that the Restraining Order that had been issued before, was to be continued in full force, virtue, and effect in all and each of its requirements and conditions to and until five o'clock p.m., June 4, 1912 and until further Order of the Court.

The Court also ordered that the Defendants, the Pacific Reclamation Co., George M. Bacon and John Does, whose names are unknown, from impounding, diverting or using any waters of the Humboldt River, Bishop Creek, Burnt Creek, or Trout Creek during the irrigation season or the period from February 1 to October 1 of each calendar year.

Pacific Reclamation was also to remove any obstruction in stream so that water that was previously impounded would flow down to the Humboldt River.

On June 4th, 1912, the attempt to Appeal from Order was extended until July 10, 1912 so the defendants could get any Proposed Statement, Bill of Exceptions, Affidavits, or other records to be used in the appeal.

On June 8, 1912, the Pacific Reclamation Company filed with the Nevada Supreme Court a Mandamus Proceeding against Judge Edward Duker. In January, of 1913, the Supreme Court ruled.

This is a Mandatory Injunction as distinguished from a mere Prohibitive Injunction. It requires the delivery of water in the possession and under control of Defendants to the Plaintiffs. On an appeal from a Mandatory Injunction requiring Defendants to deliver property to Plaintiffs, as in this case, an Appeal from the Order entitles the Defendants, as a Matter of Right, upon the filing of Stay Bond, to Stay the Proceeding Under the Injunction. Petitioners are entitled to the Peremptory Writ in this case and the Issuance of the Writ should be Stayed until such time another application can be made to the Court to fix the amount of a Stay Bond.

On January 31, 1913, Judge Edward Duker issued the same Restraining Order that he ordered in June. On February 5th, Pacific Reclamation put up a \$15,000 Stay Bond to hold the water.

December 2, 1913 Judge Edward Duker made a decision to study the defendants case. He reasoned that only three creeks were involved in the defendants case and there were several tributaries to the Humboldt River and there were many unlawful users.

During 1913, the Pacific Reclamation Company was declared insolvent by U. S. District Court of the District of Nevada. George Bacon, the appointed receiver resigned and James P. Raine was appointed receiver in charge of property of Pacific Reclamation Company.

On June 15, 1915 Judge Edward Duker came out with his Final Decree. He gave Pacific Reclamation the right to store all waters that made up above

Bishop Creek Reservoir but restrained them from using the waters of Burnt Creek and Trout Creek excepting the rights their predecessors developed prior to the formation of the Pacific Reclamation Company.

Judge Ducker awarded the Plaintiffs to recover from the Defendants all expenses, cost and disbursements incurred which he determined to be \$13,500.00.

Before the Final Decree, the Pacific Reclamation Company had fallen into financial difficulties. The settlers under the project, continued to use the irrigation system for acreage that was reclaimed. Metropolis was doomed and became an agricultural ghost town.

An application was made on December 21, 1910, by the State Land Registrar for the Lovelock Land & Development Company and the Humboldt-Lovelock Irrigation Light and Power Company for withdrawal of 10,175,91 acres of land situated in Lovelock Valley in Humboldt County. This enterprise was done by private capital and was successfully completed. W. C. Pitt was President of the Company, John G. Taylor, Secretary and John Holmstrom, Treasurer, all from Lovelock. A diversion dam and four miles of canal were completed in 1911 along with two reservoirs. The canal had a capacity of three hundred cubic feet per second. The completed reservoir has a capacity of 32,050 acre feet.

The United States Geological Survey began measurements of Nevada streams in 1889. Money appropriations were small and the work was rather irregular until 1900, when available funds allowed the stream gaging to be systematized. Until the appointment of the State Engineer, the hydrographic work in Nevada was under the direction of L. H. Taylor who later became Supervising Engineer for the Reclamation Service.

Under agreement, all the United States Geological Survey Stream Stations on Nevada Rivers were placed under control of the State Engineer and all field assistants engaged in stream and ditch measurements reported to him directly, copies of all measurements were forwarded to Washington. For his services as

Resident Hydrographer, the hotel bills of the State Engineer were paid by the United States Geological Survey when he was away from his office. The first State Engineer had seven stream gages on the Humboldt River System. They were the North and South Forks of the Humboldt and the Humboldt at Palidsade, Golconda and Oreana. Mary's River and Pine Creek were dropped in 1906.

In 1908, the State Engineer discontinued its connection with the United States Geological Survey for further maintenance of water measurements. Measurements of streams stopped June 30, 1908.

In 1910, State Engineer Boyle recommended that the State co-operate with the U. S. Geological Survey in Stream Gaging. After the State discontinued Stream Gaging in 1908, the U.S.G.S. started to do it on their own on a limited basis. The State started to co-operate once more in 1912 and more or less has continued to do so.

In 1910, then State Engineer Emmet D. Boyle recommended a law similar to the Oregon Irrigation Code enacted in 1909. The State would be divided into two water divisions with a Superintendent for each division. The Determination of Rights would be made by a Scientific Board consisting of two Division Superintendants and the State Engineer. The Finding would then pass to the Court for review, after which a Final Decree in the matter would be entered.

At the same time State Engineer Boyle thought a speedy Adjudication of Water Rights would relieve acute situations where bitter litigation was imminent and would also give impetus to new appropriations which at the time could not be initiated with any confident knowledge of their value. Protests of new applications at that time expressed constant fear of fatal invasion of older rights by new appropriations. State Engineer Boyle referred to new permits as being between Scylla and Charybdis.

On February 26, 1907, The Act of 1905, was repealed and a more comprehensive

sive one was passed. In the year 1909, several sections of the Act of 1907 were amended to meet the growing requirements of the office.

The law pertaining to the Adjudication of Vested Water Rights had been in force for ten years and the law defining method of appropriation for eight years, the question of constitutionality still confronted the State Engineer.

A number of people held to the belief that the portion of the Act which conferred upon the State Engineers power to pass upon and regulate water rights, initiated prior to the adoption of the code, was unconstitutional and would be so declared by the courts. Sufficient precedent had been established through decisions of the Supreme Courts of the States having water codes similar to that of Nevada. The trend of most of the decisions was in favor of the State Engineers. The Nevada State Engineer proceeded to Adjudicate the Rights of the Humboldt River and other streams.

The change in personnel of the office of the State Engineer caused a delay in the adjudication. Hearings were postponed where a protest was filed. It was deemed unwise to continue the work on the Humboldt until accurate surveys could be made to obtain accurate data and work almost ceased in 1910. The same condition existed on the Little Humboldt River.

Emmet D. Boyle was replaced as State Engineer by William M. Kearney, March 21, 1911.

During the first years of the Kearney Administration, he came to the conclusion that determining the Relative Rights of the Humboldt River was no small task, because of the distance of the stream and its tributaries. In his report of 1912, he wrote the following:

"Numerous tributaries of large flow enter the river at different points along its course. The Principal Tributaries in Elko County are Mary's River (which in itself has many tributaries of considerable size), Bishop Creek, Star Creek, Lamoille Creek, South Fork of the Humboldt, North Fork of the Humboldt and Maggie Creek.

In Eureka County, Pine Creek furnishes a part of the supply for the main river. Rock Creek enters the Humboldt in Lander County, near Argenta. Reese River cannot be considered a tributary of the Humboldt except in years of exceptional precipitation and run-off. During the year of 1910, this stream reached the main river for a period of several weeks in early March. The Little Humboldt rarely flows into the Humboldt. Like Reese River, it becomes a tributary only in years of high precipitation and heavy run-off.

Below Battle Mountain, or below the confluence of Rock Creek with the Humboldt, there are no tributaries of any large proportion, though several small streams furnish the river with early flood waters. The normal flow of the small creeks tributary to the river is such that many of them will not reach the river. They are, however, used on ranches near their source."

The Humboldt River Adjudication did not include all tributaries in the Decree, and did not include isolated ranches on some of the tributaries. Without mentioning ranches and tributaries, the Final Decree declared the River System fully appropriated. Paragraph #38, Bartlett Decree, 1923.

After making his evaluation of the River System, State Engineer Kearney, to speed along the adjudication and facilitate the compilation of Claim's and Priority lists, divided the Stream System into eleven districts. Each district was taken geographically so that separately it would be considered a complete system within itself. The districts were as follows:

- No. 1 Humboldt Sink to Oreana
- No. 2 Oreana to Pinson's Bridge Crossing
- No. 3 Pinson's Bridge to Palisade
- No. 4 Palisade to source at Wells
- No. 5 Pine Creek and tributaries

- No. 6 Maggie Creek and tributaries
- No. 7 South Fork of the Humboldt and tributaries
- No. 8 Lamoille Creek and tributaries
- No. 9 Star Valley Creeks
- No. 10 North Fork of the Humboldt and tributaries
- No. 11 Mary's River and tributaries, being Currant, Tom Cain, Hanks, Pole, T. and Wild Cat Creeks; also, Taber, Burnt, Trout, and Bishop Creeks.

The claims in each district were compiled separately, the work of the adjudication progressed and the objections were disposed as far as possible for each district. The compilation of each district was to be submitted to every other district to enable each appropriator on the entire source to become familiar with the claims of every other appropriator before the final results of claims were determined.

State Engineer Kearney set a list of rules to observe to determine the final water rights of each appropriation.

- (A) To constitute a valid appropriation there must be an actual diversion of water from the stream and an actual application of the water to a beneficial use.
- (B) The means employed in the diversion of water and its application to use are immaterial, except that they must be such as to conduce a reasonable and economical diversion and application, provided that all unused water shall be returned to the stream, where it is practicable.
- (C) Every appropriator has the right to change at will the place and means of his diversion and carrying of the water, and the place and character of its use; and he does not thereby lose any priority of right which he may have acquired, except in so far as such change may be prejudicial to the right of others previously acquired.

For example, one who has appropriated water through a certain ditch may discontinue the use of that ditch, and carry the appropriated water through another ditch, heading at a different point on the stream, without losing his priority, except insofar as such change may deprive another person of a right acquired before the change. But, on the other hand, though one who has appropriated water to run a mill, may afterwards, use that water for irrigation, he cannot make that change so as to prejudice those who, before he commenced to irrigate, had acquired rights by appropriation. A change in the use of water is not necessarily an abandonment of the appropriation for the first use.

(D) A valid right of appropriation may be lost by abandonment. A mere failure to divert or use the water, however long continued, does not constitute abandonment, unless accompanied with the intent not to again use it. The intent to abandon may be inferred from circumstances, but should not be presumed except from clear evidence. But while mere non-user does not amount to abandonment, the fact is competent evidence on the question of abandonment, and, if continued for an unreasonable period, it may indicate an intent to abandon, and may warrant the deduction of the fact of abandonment. The presumption, however, is not conclusive and may be overcome by other satisfactory evidence. Mere non-user, if continued for five years or more, may however, result in a forfeiture of the right or render the right subservient to the prescriptive right of another.

(E) The notorious, peaceable, exclusive, adverse and continuous use under claim of right, by a user up the stream, of water claimed to have been appropriated by another at a point lower down the stream, gives to such adverse user, title to such water by limitation or prescription, but such adverse user must have continued without adverse interruption for a period

of five years or more after such prior appropriator has obtained a complete right of action therefore against such upper adverse use.

- (F) Where an appropriator of water has prosecuted the work of appropriation with reasonable diligence and brought it to completion within a reasonable time, his right of appropriation relates back to the time when the first step was taken to secure it; but if the work of appropriation is not prosecuted with reasonable diligence and brought to completion within a reasonable time, his right of appropriation does not relate back to the time when work of appropriation was commenced, but is to be deemed to have been acquired only at the time when the work of appropriation was completed and the water actually diverted from the stream and put to beneficial use. The appropriator must have exercised that Degree of Diligence which will indicate the constancy and steadiness of purpose and labor usual with men engaged in like enterprises, who desire and intend a speedy accomplishment of their designs.

Kearney found that several proofs filed on the Humboldt and Little Humboldt Rivers before he became State Engineer were defective. He thought it would be best if new or amended proofs were filed in certain cases. He asked for completion of and objections to all proofs in District No.1 be submitted before Dec. 24, 1912. If no showing was made, the findings of the State Engineer were deemed to be correct.

One of the determinations the State Engineer had to make was the duty of water for the different districts. District No.1 was first selected and the Lovelock Valley was to be studied. During the irrigation season, June on, in 1911, and May 15 to September 15, 1912, detailed measurements were made of water entering the irrigating canals every day and a station was maintained on the sink of the Humboldt to determine the waste from the valley. Due to the fact that the

study was incomplete and another season's study was needed, no water measurements were published at that time.

To facilitate the movement of the person making the study in Lovelock Valley a second-hand motorcycle was purchased for \$150.00 and used the two years. In December, 1912, the motorcycle was sold for \$90.00 and the proceeds applied to the payment of the gage reader on the Humboldt. The study of the duty of water was extended to other districts.

State Engineer Kearney was very interested in the duty of water. His reasoning was if three acre-feet of water per acre was sufficient to produce crops, and the appropriator was permitted to use four acre-feet per acre, the State would lose actually one-fourth of the revenue to which it was entitled. He reasoned that at a rate of fifty dollars per acre for water (at that time) through unrestricted use, the states taxable property was reduced by millions of dollars.

When Wm. Kearney took office, 356 permits were not acted on and during the first two years he was in office, 677 applications were filed. Out of these 1,000+ permits, he approved over 500 of them. Action on about 50 Humboldt River permits were withheld pending determination of supply and protests that had to be resolved.

When State Engineer Wm. Kearney started the Adjudication of Vested Rights under the Water Code of the time, he requested from the Attorney General of Nevada an opinion as to the Powers of the State Engineer conferred by Statute. He got opinions from a number of attorneys referring to particular sections of the Act. He also received a very complete list of the recent decisions of the Supreme Courts of various western states, in which water codes were in force, and reviewed them carefully. Many of them had passed upon the points which seemed doubtful in the Nevada code, to the end that the Administrative System of determining water rights was deemed by the Courts to be Constitutional and did not deprive a holder of water rights his day in Court.

State Engineer Kearney proceeded on the theory that unless property rights were actually jeopardized and that the procedure was such that the parties had proper notice that the determination of their rights was in progress, that the courts would uphold the method used.

The 1913 Legislature after considerable opposition, repealed the Water Law passed February 26, 1907, and that passed February 22, 1909. On March 22, 1913, the New Water Law became effective. With the passing of the New Water Law, State Engineer Kearney got serious about the Humboldt River Adjudication.

On the 21st day of May, 1913, W. M. Kearney, as State Engineer of the State of Nevada, caused to be served upon respondents, and also caused to be published in local newspapers, the following notices:

"State of Nevada.

"In the Office of the State Engineer,

"In the Matter of the Adjudication of the Relative
Rights to the Waters of the Humboldt

River and Its Tributaries.

"Order.

"It appearing to me, W. M. Kearney, State Engineer of the State of Nevada, from an investigation made of the Humboldt River and its tributaries, one of the most important stream systems in the State of Nevada, that the Relative Rights to the use of water of the various claimants upon the said Humboldt River and its tributaries in the counties of Humboldt, Lander, Eureka, and Elko, State of Nevada, should be determined: Now, therefore, it is hereby ordered, that the Humboldt River and its tributaries, situated within the counties of Humboldt, Lander, Eureka, and Elko, State of Nevada, is hereby selected for the determination of Relative Rights to the use of water of the various claimants thereon. It is further ordered, that the proceedings for the determination of the Relative Rights to the waters of the said Humboldt River and its tributaries, situate in Humboldt, Lander, Eureka, and Elko Counties, State of Nevada, shall begin on the 26th day of May, A.D. 1913. All claimants to rights in the waters of said stream system are required to make proof of their claims in the manner prescribed by law.

Dated and entered at Carson City, State of Nevada, this 21st day of May, 1913.

"[Signed] W. M. Kearney,
State Engineer."

"[Seal.]

"Notice of Order and Proceedings to Determine
Water Rights Before the State
Engineer of Nevada."

"In the Matter of the Determination of the Relative Rights to the Waters of the Humboldt River and Its Tributaries."

"To Whom It May Concern: You are hereby notified that the State Engineer will begin the proceedings for the determination of the Relative Rights to the waters of the Humboldt River and its tributaries, situate in Humboldt, Lander, Eureka, and Elko Counties, State of Nevada, on the 26th day of May, A.D. 1913. All claimants to rights in the waters of Said Stream System are required to make proof of their claims in the manner prescribed by law."

"By Order of the State Engineer.

"W. M. Kearney, State Engineer

"Dated at Carson City, Nevada, this the 21st day of May, A. D. 1913."

The notices heretofore set forth were given by the State Engineer, pursuant to the Act of the Legislature of the State of Nevada, approved March 22, 1913.

The hearing of Contested Claims in determining the Relative Rights to the Humboldt River were again taken up. The hearings on the Contested Cases were held and the Case Closed with the exception of the Filing of Briefs.

About the time the Briefs were due, a suit was initiated in the District Court of Humboldt County by Johannes Anderson alleging that the 1913 Act under which the State Engineer was proceeding was unconstitutional. An Ex Parte Injunction was issued by Judge Ducker restraining the States Engineer's office from making any rulings on the contested cases or on any case on the Humboldt River involving rights which had been acquired prior to the passage of the 1913 Act.

The case was heard October 21, 1913. On January 28, 1914, a decision was rendered by Judge Ducker holding sections 18 to 54 of the Act unconstitutional. Sections 18 to 54 covered the appropriation, adjudication and administration of Vested Stream Rights.

State Engineer Kearney took an Appeal to the Supreme Court, and the same was heard on April 7, 1914. On August 4, 1914, the Supreme Court filed a decision holding the law constitutional for administrative purposes and permitted the State Engineer to proceed as outlined in the statute to obtain proofs, hold hearings and render findings. The decision held that the Courts had full power to hear any

water case irrespective of the action of the State Engineer. The Court held that the State Legislature had the authority to delegate to an Administrative Office the power to determine the Relative Rights in and to the use of the water notwithstanding the fact that the water was appropriated prior to the passage of the act granting such power. The Court held further that the determination made by the State Engineer was not final and binding as a Court Decree.

In short, the decision meant that the State Engineer could determine Relative Water Rights under the Statutory Procedure and that, until determined otherwise by the Courts, the findings stand as Relative Water Rights in the Adjudication.

The Supreme Court ordered the District Court of Humboldt County to modify the decision so as to only restrain the State Engineer from making findings which would impair Vested Rights. The Humboldt County District Court, upon receipt of the Order, issued a new Ex Parte Injunction substantially in accord with the one from which the Appeal was taken, again restraining the State Engineer from proceeding under the Statute. State Engineer Kearney knew the validity of the modified order would be tested in due time.

The work on the Adjudication of the Humboldt River and Tributaries proceeded under somewhat difficult conditions. The interests opposed to the determination of the Relative Rights retarded the progress of the work by instituting proceedings to test the constitutionality of the law, necessitating delays, and by persistent effort to prevent the filing of proofs of appropriation, or claims of rights in and to the waters of the system.

It was not so much the determination of the rights that certain interests opposed to strongly, but rather the regulation of the headgates and the administration of the Stream System so as to divide the waters in accordance with the legal rights of each user.

The work of filings of the proofs was completed in 1914 and tabulated.

The proofs were grouped by Districts and numbered in the same way.

District No. 1 started at 001
District No. 2 started at 00100
District No. 3 started at 00151
District No. 4 started at 00201
District No. 5 started at 00301
District No. 6 started at 00321
District No. 7 started at 00351
went to 00400 then
started at 00651
District No. 8 started at 00401
District No. 9 started at 00476
District No. 10 started at 00551
District No. 11 started at 00601

The only deviation from this numbering system was moving proof #00440 and #00441 to District No. 7 from District No. 8.

DISTRICT NO. 1, LOVELOCK VALLEY

<u>NO.</u>	<u>NAME</u>	<u>SOURCE</u>
001	Alves, J. A.	Humboldt River
002	Anderson, Johannes	Humboldt River
003	Anker, Peter	Humboldt River
004	Bassman, L. R.	Humboldt River
005	Bastian, Katherine	Humboldt River
006	Jurgenson, Annie A.	Humboldt River
007	Berg, Ed	Humboldt River
008	Biggs, C. V.	Humboldt River
009	Billups, S.	Humboldt River
0010	Borland, Mrs. E. A.	Humboldt River
0011	Burnk, E. E.	Humboldt River
0012	Brown, J. R. Estate	Humboldt River
0013	Carpenter, L. H.	Humboldt River
0014	Carpenter, C. C.	Humboldt River
0015	Christensen, John	Humboldt River
0016	Christensen, Julius	Humboldt River
0017	Damm, H. H.	Humboldt River
0018	Damm, J. C.	Humboldt River
0019	Damm, Jurgen	Humboldt River
0020	Derby, Thomas	No Claim
0021	Devita, R.	Humboldt River

0022	Dotta, John	Humboldt River
0023	Dumas, Joseph	Humboldt River
0024	Elges, Carl	Humboldt River
0025	Elges, William	Humboldt River
0026	Engle, T. N.	Humboldt River
0027	Fuss, Mrs. Mary T.	Humboldt River
0028	Fenton, Jerry, Estate	Humboldt River
0030	Grannis, Mrs. Eva	Humboldt River
0031	Hanson, A. T.	Humboldt River
0032	Hanson, Chris	Humboldt River
0033	Hanson, Andrew	Humboldt River
0034	Hanson, Ingvert	Humboldt River
0035	Helwinkle, R.	Humboldt River
0037	Henrickson, J. A.	Humboldt River
0038	Hill, John Estate	Humboldt River
0039	Hill, John J.	Humboldt River
0040	Holmstrom, Emil	Humboldt River
0041	Holmstrom, Hugh	Humboldt River
0042	Holmstrom, John	Humboldt River
0043	Holmgren, Alec	Humboldt River
0044	Blank	Humboldt River
0045	Jensen, Nels	Humboldt River
0046	Johnson, Jas.	Humboldt River
0047	Johnson, Joe P.	Humboldt River
0048	Johnson, Paul	Humboldt River
0049	Kennedy, Geo.	Humboldt River
0050	Killebrew, H.A. & Mrs. R.L.	Humboldt River
0051	Blank	Humboldt River
0052	Kruse, H. P.	Humboldt River
0053	Larsen, C. C.	Humboldt River
0054	Larsen, Henry	Humboldt River
0055	Loorz, Wm.	Humboldt River
0056	McCracken, J. H.	No claim for water, land not cultivated
0057	Mortenson, Conrad	Humboldt River
0058	Munk, Ludwig J.	Humboldt River
0059	Munk, H. C.	Humboldt River
0060	Nevada Land & Livestock	Humboldt River
0061	Olsen, Andrew	Humboldt River
0062	O'Neal, Mrs. Sophia	Humboldt River
0063	Ostrander, Geo. W.	Humboldt River
0064	Pitt, W. C.	Humboldt River
0065	Pitt, W. C.	Humboldt River
0066	Quillici, L.	Humboldt River
0067	Reno, A.	Humboldt River
0068	Ruddell, W. C.	Humboldt River
0069	Rogers, Arthur Estate	Humboldt River
0070	Shebbas, Victor	Humboldt River
0071	Sommers, E. W.	Humboldt River
0072	Smith, Matt	Humboldt River
0073	Springer, I.M.	Humboldt River
0074	Stouts, Wm. A.	Humboldt River
0075	Stoker, B. E.	Humboldt River
0076	Stoker, George C.	Humboldt River
0077	Stoker, H.	Humboldt River
0078	Stoker, H. & H. C.	Humboldt River
0079	O'Kane, John	Land Sold
0080	Hinze, F.	Humboldt River

0081	Taylor, John G.	Humboldt River	
0082	Berman & Alltree	Humboldt River	
0084	Union Canal Ditch Co.	Acreege listed	under individual proofs
0085	Tessler, F.	Humboldt River	
0086	Therien, Joseph	Humboldt River	
0087	Torrey, Eben	Humboldt River	
0088	Tycksen, Theo.	Humboldt River	
0089	Van, Reed, W.W.	Humboldt River	
0090	Viera, Joe R. & Triguiero, J.	Humboldt River	
0091	Westfall, Andrew	Humboldt River	
0092	Johnson, L. P.	Humboldt River	
0093	Young, S. R.	Humboldt River	
0094	Blank		
0095	Hanson, E.K.	Humboldt River	
0096	Nevada Land & Livestock	Humboldt River	
0097	Old Channel Ditch Co.	Acreege listed	under individual proofs
0098	Harrison, John	Humboldt River	
0099	Nixon Estate & John Funt	Humboldt River	
----	U. S. Indian School	Humboldt River	

DISTRICT NO. 2--OREANA TO PINSON'S BRIDGE

00101	Anderson, J. P. Estate	Humboldt River	
00102	Bliss Bros. G.D. & R.O.	Humboldt River	
00103	Reinhart Land & Livestock	Humboldt River	
00104	Johnson, Eric	Humboldt River	
00105	Robinson, Robert	Humboldt River	
00106	Thacker, E.J.	Humboldt River	
00107	McCarthy, J.J.	Humboldt River	
00108	Russell & Chadwick	Humboldt River	
00109	Rogers, A. Estate	Humboldt River	
00110	Thacker, Mrs. S.E.	Humboldt River	
00111	Organ, Peter	Humboldt River	
00112	Taylor, John G.	Humboldt River	
00113	O'Donnell, Thos. C.	Humboldt River	
00114	Pedroli, Chas.	Humboldt River	
00115	Dedman, S. A.	Humboldt River	
00116	Trousdale, A. F.	Humboldt River	
00117	O'Donnell, Patrick	Humboldt River	
00118	Pacific Livestock Co.	Humboldt River	
00119	Tobin & Pierce	Humboldt River	
00120	Taylor & Sheehan	Humboldt River	
00121	Glasgow & Western Mill Co.	Humboldt River	
00122	Bernard, Alfonso	Humboldt River	
00123	Deutretre, Eugene	Humboldt River	
00124	Pinson, P.A.	Humboldt River	
00125	Viera, Jose R. & Trigueiro	Humboldt River	
00126	Blank		
00127	Smith, Hazel D.	Humboldt River	
00128	Pascal,	Humboldt River	
00129	Bell, W.J.	Humboldt River	
00130	Giroux, David	Humboldt River	

DISTRICT NO.3 - PINSON'S BRIDGE TO PALISADE (Including Rock Creek)

<u>NO.</u>	<u>NAME</u>	<u>SOURCE</u>
00151	Bain, Geo.H.	Humboldt River
00152	Blank	
00153	Duborg, C. H.	Humboldt River
00154	Humboldt Land&Cattle Co.	Humboldt River
00155	Broyles, Sam	Humboldt River
00156	Golconda Cattle Co.	Humboldt River
00157	Clover Valley Land&Stock	Humboldt River
00158	Sanders, P. V.	Humboldt River
00159	Taylor, John G.	Humboldt River
00160	Nofsinger, Charles R.	Humboldt River
00161	Johnson, Albert H.	Humboldt River
00162	Langwith, Eleanor M.	Humboldt River
00163	Land Development Co.	Humboldt River
00164	Licking, W. E.	Humboldt River
00165	Starrett, E.	Humboldt River
00166	Blossom, J. A.	Humboldt River
00167	Faris, Dr. C. H.	Humboldt River
00168	Williams, W.W. Estate	Humboldt River
00169	Dean Estate	Humboldt River
00170	Ellison Ranching Co.	Humboldt River
00171	Dunphy Ranching Co.	Humboldt River
00172	Russell, Geo.	Humboldt River

DISTRICT NO. 4 - PALISADE TO WELLS (Including Mary's River)

00201	Bruce, Albert	Humboldt River
00202	Elko Water Co.	Humboldt River
00203	Fernold, Frank	Humboldt River
00204	Furniss, Samuel	Humboldt River
00205	Glaser, Mrs. C.	Humboldt River
00206	Armstrong, M. P.	Humboldt River
00207	Linebarger, W. F.	Humboldt River
00208	Redden, L.L.	Humboldt River
00209	Howell, John	Humboldt River
00210	Halleck Cattle Co.	Humboldt River
00211	Wright, Jube J.	Humboldt River
00212	Griswold-Henderson Lvst.Co.	Humboldt River
00213	Hunter & Banks	Humboldt River
00214	Weeks, J. F.	Humboldt River, Bishop Creek
00215	Gobel, A. W.	Humboldt River, Town Creek
00216	Coryell, H. H.	Town Creek
00217	Badt, M & Co.	Humboldt River, Town Creek
00218	Holm, P.	Town Creek
00219	Hedin, Eric	Town Creek & Mary's River
00220	Cox, Mrs.	Humboldt River
00221	Tomera, Batista	Humboldt River
00222	McCain, H. Estate	Humboldt River
00223	Griffin, Thomas	Humboldt River
00224	Griffin, Thomas	Humboldt River
00225	McIntosh, Geo. Estate	Humboldt River
00226	Griffin, Mrs. T. D.	Humboldt River
00227	Arthur, Geo.	Humboldt River
00228	Downley, Mrs.	Humboldt River, Town Creek
00229	Guidici, Paul	Humboldt River
00230	Dressi, Chas.	Humboldt River

00231	Van Drielen, H.S.	Humboldt River
00232	Larsen, Mrs. S.	Humboldt River
00233	Van Drielen, H.S.	Humboldt River
00234	Russell, James	Humboldt River
00235	Yowell, J.W.	Humboldt River
00236	Hunter & Lytton	Humboldt River
00237	Griswold-Henderson, L.S.Co.	Humboldt River
00238	Dewer, J. Estate	Humboldt River
00239	Green, Mrs. M.H.	Humboldt River
00240	Bett, James	Humboldt River
00241	Elmore, M.G.	Humboldt River
00242	Clubine, Chas.	Humboldt River
00243	O'Neil Cattle Co.	Humboldt River

DISTRICT NO. 5 - PINE CREEK AND TRIBUTARIES

00301	Eberts, J.W.	Pine Creek
00302	Hale, C.H.	Hot Creek
00303	Jewett, T.H.	Pony & Pine Creeks
00304	Raine, J.P.	Pine, Willow, Dry, Padleford or Hot Creek
00305	Yates, Wm.	Pine & Smith Creek
00306	Rand, C. H.	Trout Creek
00307	Ennor, H. B.	Pine Creek

DISTRICT NO. 6 - MAGGIE & SUSIE CREEKS & TRIBUTARIES

00321	Arthur, George	James Creek
00322	Pruett, J. W.	Maggie Creek
00323	Jenkins Co., W. T.	Spring, Lake, Stampede & Meadow Creeks
00324	Banks & Hunter	Susie Creek
00325	Dunphy Estate	Maggie Creek
00326	Dunphy Estate	Maggie & Simmons Creeks
00327	Dunphy Estate	Maggie & Haskell Creeks
00328	Dunphy Estate	Short & Fish Creeks
00329	Dunphy Estate	Maggie Cr., Coyote Cr., & Springs
00330	McKnight, Geo.	Cold Creek
00331	Paleni, Guiditti	Springs
00332	Paleni, John	Susie Creek
00333	Dunphy Estate	Coyote Creek

DISTRICT NO. 7 - SOUTH FORK AND TRIBUTARIES

00351	Max, Arnold & Wife	Pearl Creek
00352	Brehe Brothers	Springs & Spring Branch
00353	Brennen, T. F.	Ogilvie, Youngs, Ainly & Lee Creeks
00354	Campbell, Mrs. M.	McCutcheon & Dry Creeks
00355	Clayton Brothers	South Fork
00356	Corta, Pedro	Spencer Creek
00357	Drown, Clark	South Fork & Lee Creek
00358	Hankins, Al	McCutcheon, Dry, Adams, Carville & Smith Creeks
00359	Hylton, J. J.	S.Fork, Pearl, Welch, Ten Mile, Smith & Huntington Creeks
00360	Merkley, S. A.	McCutcheon Creek
00361	Merkley & Young	McCutcheon, Smith & Huntington Creeks
00362	Mitchell, C. W.	Brown's Creek
00363	Odiga, F. & Orbe, P	Huntington, Pearl & Robinson Creeks
00364	Ogilvie, P. J.	South Fork
00365	Riordan, James	Smith & Dry Creeks

00366	Smith, Conrad	South Fork
00367	Clayton Brothers	South Fork, Pearl & Rattlesnake Creeks
00368	Heenen, Joseph	Butterfield, Young & Schesken Creeks
00369	Griswold-Henderson Lvst.	Thompson, Dry, Butterfield, Stofer, Seitz, Lake C
00370	Prediger, J.	Stofer and Dry Creeks
00371	Zunino, Antone	Cottonwood and Smith Creeks
00372	Griswold, A. M.	South Fork
00373	Cowling, J. & Sons	South Fork
00374	Crane, James	South Fork
00375	Francis, Charles	South Fork
00376	Goff, Frank	Mitchell Creek
00377	Hardesty, Geo. & L.	Smith, Cottonwood & Willow Creeks
00378	Health, Ed	Ten Mile Creek
00379	Irwin, Theo.	Wastewater
00380	Hanna, George	Cottonwood Creek
00381	Hanna & Arnott	Cottonwood & Smith Creeks
00382	Blank	
00383	Carville, E. & A.R.	Carville Creek
00384	Porch, Mrs. M.A.	Huntington Creek
00385	Drown Bros.	Pearl, South Fork & unnamed creeks
00386	Martin, X. B.	Welch & Lee Creeks
00387	Scott & Adams	Little & Big Cottonwood, Smith Creeks
00388	Adams, Mrs. E.	Rattlesnake Creek
00389	Adams, Mrs. E.	Rattlesnake & Pearl Creeks
00390	Adams, Mrs. E.	South Fork
00391	Pete Gennette Co.	Little & Big Cottonwood, Smith Creeks
00392	McKee, Mamie	South Fork
00393	McInnis, J. C.	South Fork & Pearl Creeks
00394	Petterson, J. H.	Rattlesnake Creek & South Fork
00395	Wyland, Phil	Dry Creek
00396	Burner, Victor	Lee Creek, waste water, Chimney Canyon & Sprir
00397	Henry, Gilbert (deceased)	Smith Creek & waste water
00398	Eureka Land & Livestock	Smith Creek No. 2
00399	Williams, J. E.	South Fork
00400	Hardesty, J. C.	Spring Gulch and Sheep Creek
00651	Sadler Ranch	Huntington Cr. & Springs, Mitchell Cr. & unnamed c
00652	Hylton, J. J.	Smith Creek
00653	Health, Ed	Ten Mile, Mitchell & Spring Creeks
00654	Toyn, C. A.	Willow Creek
00655	Hylton, W. R.	Brown, Frost Canyon & Arnold Creeks
00656	Lindsay, David	Lindsay Creek, Canyon & Springs
00657	Scott, Nick	Willow Creek No. 2
00658	Minola Ranger Station	Willow Creek No. 2
00659	Peters, Henry	Peters Creek
00660	Sohlman, Walfried	Gulch & Springs, Creek (unnamed)
00661	Hunter, F. T.	Waste Water
00662	Holum, Pete	Dry Gulch & Springs
00663	Carter, John H.	Rattlesnake & Willow Creeks
00664	Toyn, Chas. Sr.	Green Mountain, Town & Cedar Hill Crks.
00665	Harrison Pass Ranger Stat.	Green Mountain Creek
00666	Munlocks, Mrs. C. W.	Waste Water
00667	Williams, Miss F.	Waste Water
00668	Klechner, C. H.	South Fork & Klechner Canyon
00669	Burns, Mrs. H.	Klechner Canyon
00670	Hylton, J. J.	Sherman Canyon
00671	Walthers, J & V	Walthers Creek & Springs
00672	Walthers, Fred	Sherman Canyon & Springs
00673	Sastanovich, J.	Walthers Creek & Springs

00674	Hadsward, J. C.	Dixie Creek
00675	Armstrong M. P.	Dixie Creek
00676	Hylton, J. J. & Montgomery C. D.	Bullion Creek
00677	Bett, James, Aurelia, Papa	Bullion Creek
00678	Bett, James, Aurelia, Papa	Dixie Creek
00679	Elliott, E. E.	N. Fork Dixie Cr., Springs & Creeks
00680	Sabala Ranch	Rattlesnake Creek
00681	Hylton, D. L.	Warm Spring
00682	Drown Bros.	South Fork
00683	Rattlesnake Ranger Sta.	Pearl Creek
00440	Butler, Luther	Stoffer & Dry Creeks
00441	Butler, Luther	

DISTRICT NO. 8 - LAMOILLE CREEK & TRIBUTARIES

00401	Bellinger, W. R.	Lamoille Creek
00402	Boyd, Q. D.	Rabbit Creek
00403	Capriolla, Joe	Lamoille Creek
00404	Erro, Pedro	Lamoille Creek
00405	Hankins, E.	Lamoille Creek
00406	Jessen, N. J.	Lamoille Creek
00407	Jones, I. E.	Lamoille & Talbot Creeks
00408	Lamoille Merc. Co.	Lamoille Creek
00409	McIntyre, Samuel	Lamoille, Horton, Cold, Soldier & Secret Creek
00410	McDermott, O. P.	Lamoille Creek
00411	Meyers, J. E.	Rabbit Creek
00412	Noble, C. E.	Lamoille Creek & swamp
00413	Blank	
00414	McKinney, John	Talbot Creek & Springs
00415	Morrow, David	Talbot Creek
00416	Wiggins, Frank	Beaver Creek
00417	Rodwell, M. M.	Snell & Talbot Creeks
00418	Frasier, James E.	Rabbit Creek
00419	McDermott, E. M.	Lamoille Creek
00420	Trott, Harry	Talbot Creek
00421	Voight, Henry	Beaver Creek
00422	Conrad, Jacob	Conrad Creek
00423	Hunter & Lytton	Lamoille, Talbot & Beaver Creeks
00424	Gill, R. G.	Lamoille Creek & Swamps
00425	McDermott, E. M.	East Branch Lamoille Creek
00426	Bower, G. M.	Lamoille Creek
00427	Hayward, J. H.	Lamoille Creek
00428	Purdy, WM.	Lamoille Creek
00429	McDermott, E. V.	Branch of Talbot Creek
00430	Patterson, W.	Lamoille Creek
00431	Holland, G. R. & J. H.	Seitz Creek & Springs
00432	Lytton, C. B.	Lamoille Creek
00433	Lytton, C. B.	Talbot Creek
00434	Lytton, C. B.	Branch of Talbot Creek
00435	Lytton, C. B.	Spring Creek
00436	Voight, Henry	Talbot Creek
00437	Noble, C. E.	Talbot Creek
00438	Castor, J. A.	Little Rabbit Creek
00439	Castor, N. R.	Little Rabbit Creek
00440	Butler, Luther	(see District #7)
00441	Butler, Luther	(see District #7)

00442	Carden, A. B.	Dry, Seitz & Garden Creeks
00443	Carden, A. B.	Dry, Seitz & Garden Creeks
00444	Westlund, A.	Snell & Lamoille Creeks
00445	Griswold-Henderson L. S. Co.	South Branch of Cold Creek
00446	Heenan, Geo.	Rabbit & Dry Creeks & Springs
00447	Clubine, Charles W.	Beaver & Talbot Creeks
00448	Reinkin, C. H.	Lamoille, Beaver, Talbot Creeks & Sloughs
00449	Roberts, Wm. E.	Springs
00450	Health, Ed	Talbot Creek
00451	Searls, Mrs. M. A.	McCombs Creek
00452	Cook, Samuel	Spring Creek
00453	Leberski, Robert	Rabbit Creek
00454	Hankins, E.	Talbot Creek
00455	Gorman, Harry	McIntyre Reservation
00456	Bachman, Geo.	McIntyre Reservation
00457	Brown, Chris	Lamoille Creek
00458	Randolph, G. CO.	Lamoille Creek & Humboldt River
00459	Trescartes Bros.	
00460	Glaser, Mrs. C.	Lamoille Creek

DISTRICT NO. 9 - STARR VALLEY AND SURROUNDING CREEKS

00476	Alles, August	Alles & Ackler Creeks
00477	Alles, W. W.	Waste Water
00478	Earles, Thos. J.	Boulder Creek
00479	Goodale, Mrs. H.	Boulder Creek
00480	Goodale, John	Boulder Creek
00481	Henry, Mrs. Wm.	Deering Creek
00482	Johnstone, J. W.	Boulder Creek
00483	Lane, Horace	Left Boulder Creek
00484	McDermott, John	Soldier Creek
00485	McNamara, Mrs. J.	Soldier Creek
00486	Paul, W. L.	Deering Creek
00487	Redden, L.L.	Herder Creek
00488	Riddell, J. M.	Ackler, Starr & Boulder Creeks
00489	Scott, Pete	Soldier Creek
00490	Smiley, Wm.	Hall's Canon, Smiley & Herder Creeks
		Dry Gulch
00491	Smiley, W. J.	Deering, Boulder, Reed, Starr Herder & Ackler Creeks
00492	Stone, C. F.	Deering & Branch of Deering Creek
00493	Stiers, John	Deering Creek
00494	Tavalle, W..B.	Boulder Creek
00495	Taufer, C. T.	Ackler & Deering Creeks
00496	Wells, Chas.	Boulder Creej & Springs
00497	Wright, Mrs. Jane	Wright, Secret, Dry Creeks & Springs
00498	Stiers, John	Alles Creeks
00499	Goodale, Wm.	Herder Creek
00500	Smiley, Ed	Hall's Canon & Little Hall Canon
00501	Gray, Enoc	Hall's Canon & Burger Canon
00502	Crosson, John	Herder & Ackler Creeks
00503	Riddell, E. C.	Herder & Ackler Creeks
00504	Byers, Geo.	Hall's Canon, Herder & Blossomgame Creek, waste water & swamps
00505	Black, W. J.	Ackler & Herder Creeks
00506	Jeanney, Joe	Ackler & Lost Creeks

00507	Black, C. H.	Ackler Creek
00508	Weather, W. W.	Boulder, Starr, & Herder Creeks & Waste Water
00509	Johnstone, Mrs. H. P.	Boulder Creek
00510	Halleck Cattle Co.	Soldier, Secret, Hays, Rosses, Shorts, Jack Reed, Dry & Heelfly Creeks
00511	Murphy, E.C.	Lemon, Dry, Hays, Stevens, Shorts, Secret, Soldier, Deering, Boulder, Wright & Groves Springs
00512	Davis, Sam	Ackler Creek
00513	Riddell, Jas.	Ackler Creek
00514	Grock, Geo.	Starr Creek
00515	Goodale, Edward	Secret Creek
00516	Gardner, Alex	Wolverton, Secret Covert & Wright Creek
00517	Clevey, F. & F.	Blossengame & Hall's Canyon Creek
00518	Lewis, J. G.	Springs
00519	Griswold, Isaac	Boulder & Monks Creeks
00520	Sepulveda, Serbulo	Boulder Creek
00521	Martin, W. D.	Blossengame Creek
00522	McMullen, S. Estate	Boulder, Monks & Stevens Crk.
00523	Cazier, John	Trout & Meadow Creeks
00524	Cazier, Jeff	

DISTRICT NO. 10 - NORTH FORK AND TRIBUTARIES

00551	Blundell Bros.	Walthers Creek
00552	Clayton Bros.	North Fork
00553	Connell, M. D.	Freeman, Winters, Johnson & Walker Creeks
00554	Doherty, Chas.	North Fork & Woods Creek
00555	Glasier, Mrs. C.	Pie Creek
00556	Johnson, Emory & Lily Curjux	North Fork
00557	McKnight, Geo.	North Fork
00558	Morris, Richard, et al	Peterson Creek
00559	Knuckols, Charles L.	Peterson Creek & North Fork
00560	Park, T. S.	Dorsey Creek
00561	Peterson, Neils	N. Fork, McAfee & Water Creeks
00562	Pratt & Johnson	Pratt & McAfee Creeks
00563	Rutherford, Frank	North Fork
00564	Eyroz, G.	Eyroz & Beaver Creeks
00565	Gilruth Estate	Squaw Creek
00566	Helsey, Cas. B.	East Fork of Beaver Creek
00567	Keddie, W. A.	North Fork & Springs
00568	McIntyre, S. A.	North Fork
00569	McKee, John & J.B. Tucker	North Fork
00570	McKnight, Geo.	North Fork
00571	Saval Livestock Co.	Ganz Creek
00572	Carter & Stewart	Willie, Pie, Red & Clay Crks.
00573	Tucker, Robert	Ganz Creek
00574	Wieland Bros.	Pie Creek
00575	Williams, W.W. Estate	North Fork
00576	Hill, H. Morgan Estate	N. Fork & Freeman Creeks
00577	Hill, H. Morgan Estate	N. Fork & Freeman Creeks
00578	Hill, H. Morgan Estate	N. Fork & Freeman Creeks

DISTRICT NO. 11 - MARY'S RIVER AND TRIBUTARIES
(including Taber & Bishop Creeks)

00601	Nevada Land & L.S. Co.	Pole, Hanks, Current, "T", Bishop Taber Creeks & Mary's River
00602	Martin, W. D.	Trout & Bishop Creek
00603	McMullen, Mrs. A.	Taber & Bishop Creeks
00604	Truett Land & L.S. Co.	Wild Cat & "T" Creeks
00605	Crosson, Wm.M. & J.W.	Bishop, Dry & Blossengame Creeks
00606	Halleck Cattle Co.	Mary's River
00607	Anderson, Robert	"T" Creek
00608	Bacon, Geo. M.	
00610	Cazier, John	
00611	Truett, Frank	
00612	Campbell, J. J.	
00613	Tanner Ranch	Bishop Creek
00614	Anderson, Robert	Mary's River

District No. 1 has some 700 numbers that were inserted on additional claims to the original abstract. The first hundred numbers were used up.

On March 1, 1916 an abstract of all claims to the waters of the Humboldt River and tributaries then of record was prepared and a copy mailed to each appropriator. The claims in this publication did not show Proof Numbers.

On April 29, 1916, State Engineer, Wm. Kearney signed an Order setting dates and places where all maps, plats, data and evidence, together with the abstract of claims in the proceedings of the determination of the Relative Rights to the waters of the Humboldt River and tributaries could be inspected by interested parties. These could be seen and inspected in Carson City at the State Engineers office for a period of 10 working days, starting June 10, 1916.

Before that showing, supplemental exhibitions were held at the following places:

Lovelock, at Big Meadow Hotel	May 15 & 16
Winnemucca, at El Dorado Hotel	May 17 & 18
Battle Mountain at Nevada Hotel	May 19 & 20
Elko at Mayer Hotel	May 22 & 23
Lee at Town Hall	May 24 & 25
Lamoille at Lamoille Hotel	May 26 & 27

Deeth at Deeth Mercantile Co. Store

May 29 & 30, 1916

Also, on the same day, May 29, 1916, Wm. Kearney, because of pending court procedures involving the Constitutionality of Law allowing the water determination signed an Order extending the time for filing of contests. No date was set.

The 1915 Legislature added numerous sections to the 1913 Law providing a method of filing the State Engineers findings with the Court for confirmation on modification and providing a method for Hearing in Court all persons dissatisfied with the Administrative Decision.

Shortly after the Law had become effective, Berman & Allfree and John G. Taylor, Inc., filed a suit in Federal District Court praying for an injunction to prohibit the State Engineer from continuing with the work outlined by Statute. The Restraining Order was modified but it did slow down the progress of the State Engineers office. On March 8, 1917, an exhaustive opinion in the case was handed down by Federal Judge E. S. Farrington, wherein the Water Law was held to be Constitutional and was vigorously defended. One thing Judge Farrington said in his opinion was that the Little Humboldt River should be considered a tributary. This was ignored during the Adjudication Proceedings.

On March 24, 1917, Wm Kearney signed an Order giving W. G. Bergman, H. B. Alfree and John G. Taylor an extension of time for filing additional proofs and contests.

Shortly after this, an action began in the State Supreme Court which involved the question whether or not the Water Law was constitutional. On March 5, 1918, a majority opinion was handed down by Associate Justices Coleman and Sanders, again upholding the law as constitutional. Chief Justice McCarran filed a long dissenting opinion and a petition for rehearing was denied.

A short while after the above action began, Wm. Kearney left the post of

State Engineer, He was replaced by J. C. Scrugham on May 16, 1917.

Scrugham had been in charge of the Department of Engineering Experimentation at the University of Nevada. J. G. Scrugham's tenure in office was of a short duration, he resigned January 15, 1918, along with Asst. State Engineer B. G. McBride to accept commissions in the Ordinance Department of the Army.

Before leaving office, J. G. Scrugham made surveys of several reservoir sites on Rock and Maggie Creeks and brought them to the attention of the U.S. Reclamation Service. He also signed an Order dated November 5, 1917, that all maps, plats, surveys and evidence on file in the State Engineers office for the determination of the Humboldt River would be submitted to the Court. Claimants had sixty days to file supplemental evidence or objections to protect their claim of water rights. Taking of proofs would continue until January 5, 1918.

On January 25, 1918, Seymore Case, who had been serving as Deputy State Engineer, became the State Engineer. On February 28, 1918 a circular letter was sent to each appropriator. The letter reads as follows:

"By reason of the provision for filing amended claims, there is an opportunity for water users to lend great assistance in hastening the pending adjudication of water rights on the Humboldt River System. This may be done by the water users in any locality getting together for consideration of their respective claims. For this purpose the unit may be each separate valley, each tributary, or each natural division of the main river. The definite object would be the amending of claims, where necessary, to conform to the concensus of opinion of all water users in the locality or to the testimony, where available, of the original appropriators.

When so adjusted the claims would not likely be protested by water users in other localities or sections of the stream system, for it may be presumed that all claims would be very nearly in accordance with the facts when each

had been carefully scrutinized and approved by neighboring water users.

By consideration of claims in the manner suggested such changes can be made as will forestall and prevent innumerable protests and contests, thus avoiding much of the bitterness and delay that must result in the hearing of formal contests. And it seems to me to be the most practical way to make a fair adjudication of water rights on a stream system so extensive and complicated as the Humboldt. This office stands ready, on request, to lend every possible assistance to water users in filing proper claims."

Seymore Case extended the time for taking additional and amended proofs to the abstract of claims three times. On February 28, 1918 to April 10, then on April 9 till May 10, then the last order on May 9 extending the time until July 10, 1918.

December 1, 1918, Seymore Case presented the supplemental abstract of additional and amended claims to the waters of the Humboldt River and its tributaries.

DISTRICT 1 - LOVELOCK VALLEY

0082	Bergman & Alfree
00702	William M. Biggs
0010	Mrs. E. A. Borland
0015	John Christensen
0016	John Christensen
00700	Thomas P. Ebert
0069	Millie R. Evans
0099	Kate I. Nixon, John Fant, & Nixson Est.
00701	George W. Ostrander
0070	Vik Sebbas
0071	Emil W. Sommers & Catherine Sommers
0073	I. M. Springer Sr. & Mrs. Ada Springer
009	William C. & Ida M. Throne
0081	John G. Taylor
0060	Union Land & Cattle Co.
00100	U. S. Government, Dept. Unt.

DISTRICT NO. 2 - OREANA TO PINSON'S BRIDGE

00104	J. A. Callahan
00131	Golconda Cattle Co.
00119	C. L. Tobin
00120	Taylor & Sheehan

DISTRICT NO. 3 - PINSON'S BRIDGE TO PALISADE

00156 Golconda Cattle Co.
00166 W. T. Jenkins Co.

DISTRICT NO. 4 - PALISADE TO WELLS

00227 George Arthur
00205 Mrs. C. Glaser
00229 Paul Guidici

DISTRICT NO. 5 - PINE CREEK

00307 Bell, Hurburt, Sarah Ennor
00304 J. P. Raine, Est.
00306 C. H. Rand

DISTRICT NO. 7 - SOUTH FORK & TRIBUTARIES

00387 Ella Adams by Chris Scott
00381 Arnot & Hanna
00385 - Drown Bros.
00354 Peart Toyn
00684 Hylton & Bolton

DISTRICT NO. 8 - LAMOILLE VALLEY

00442 Jacob Conrad
00452 Samuel Cook
00447 Chas. W. Clubine
00460 Mrs. C. Glaser
00415 David Morrow
00414 John McKinney
00437 C. E. Noble
00430 Webster Paterson
00462 James B. Stewart
00459 Charles M. & Albert Trescartes
00420 Harry Troff
00416 Frank Wiggins

DISTRICT NO. 9 - STARR AND SECRET VALLEYS

00507 C. H. Black
00505 W. J. Black
00504 George Byers
00512 S. M. Davis
00478 Thomas J. Earles
00499 William Goodale
00519 Isaac Griswold
00514 George A. Grock
00502 Hylton & Mentz
00509 Joseph W. Johnston
00483 H. M. Lane

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00522	Mrs. Anna McMullen
00492	W. C. Mills
00511	E. C. Murphy
00487	L. L. Redden
00503	E. C. Riddell
00488	John M. Riddell
00513	James Riddell
00500	Ed Smiley
00491	W. J. Smiley
00494	W. B. Tarvelle
00510	Union Land & Cattle Co.
00508	W. W. Weathers
00496	Charles Wells

DISTRICT NO. 10 - NORTH FORK AND TRIBUTARIES

00576	Diana Morgan Hill
00561	Thomas Kearns
00565	Rosa M. Tremewan

DISTRICT NO. 11 - MARY'S RIVER AND TRIBUTARIES

00607	Robert W. Anderson
00601	Union Land & Cattle Co.
00214	C. J. Weeks

On January 15, 1919, Seymore Case put out a notice that all maps, plats, data and evidence heretofore collected by or filed with the State Engineer together with the original and supplemental abstracts of claims in the proceedings for the determination of the Relative Rights in and to the waters of the Humboldt River and its tributaries will be open for inspection for a period of ten days beginning February 17, 1919. All contest or objections to be filed before March 10, 1919.

On March 1, 1919, State Engineer Case extended the time for filing contest and objection until April 10, 1919.

March 28, 1919, J. G. Scrugham replaced Seymour Case as State Engineer, having returned from Army Duty. He filed the Second Supplemental Abstract of additional and amended claims to the waters of the Humboldt River and its tributaries on February 20, 1922. It included the following claims:

LOVELOCK DISTRICT

0093	S. R. Young
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WINNEMUCCA DISTRICT

00132 Estate of Henry Bain
00133 A. E. Kent & Co.
00117 Mary G. Rose

BATTLE MOUNTAIN DISTRICT

00176 Lulu K. Burch
00173 Ike Erickson
00151 Ellison Ranching Co.
00175 Garat & Co.
00174 George Heard
00151 The A. E. Kent Co.
00168 George B. Williams

PINE VALLEY DISTRICT

00308 George Goodfellow

ELKO DISTRICT

00660 Frank J. Brennen
00504 George W. Byers
00685 E. Dotta
00222 Christine Glaser
00369 Griswold-Henderson Land & Livestock Co.
00687 Albert Lomori
00461 Gabriel Rossi

Proof #00131 by Golconda Cattle Co. in the Supplemental Abstract of Claims and Proof #'s 00132, Estate of Henry Bain and 00133, A. E. Kent Co. in the Second Supplemental Abstract of Claim were the First Proofs filed on a Tributary below Palisade other than Rock Creek or Pine Creek.

When the State Engineer was trying to get Proof of Claims and Abstracts together, several of the Claimants did not file maps. To complete the Proof of Appropriation, Wm. Kearney had the ranches surveyed at State expense and billed the Claimants.

Several re-surveys also had to be made because of the in-accuracy of maps filed by the Appropriators. The cost of the surveys and re-surveys was almost \$6,000.00.

After the Abstract of Claims was filed and during the period when the Supplemental Abstracts were filed, the State Engineer held Hearings up and down the river in several localities.

On December 1, 1920 the State Engineer and Representatives of Water Users Association came out with rules for the Hearings:

I.

No immediate decision will be made in the matter of dating back of priorities based on doctrine of relation. The testimony recorded should cover:

- (A) The date of beneficial use, whether natural meadow or cultivated areas.
- (B) The date of construction of first irrigation works, including dam, diverting ditches, etc.
- (C) Character of culture on which right was initiated, and dates when character of culture was changed.
- (D) The measure of beneficial use, as evidenced by tons of hay cut, number of head of stock pastured, etc.

II.

Land should be classified under four general heads, and the duty of water thereupon will be determined at a later date as conditions and requirements may warrant.

- (A) Lands from which crops are harvested. (Note-in this connection, there should be noted the number of cuttings per year.)
- (B) Meadow or pasture land.
- (C) Willow and sagebrush pasture.
- (D) Swamp land or natural flooded land.

In this connection, testimony should be taken as to the length of the irrigating season in the particular locality under investigation. The standarization of irrigating season should be presented to the various water user's associations for discussion and recommendation.

III.

Court decrees will be observed as between parties at interest. However, rights of persons not parties to the decree will be observed, where such rights take precedence over decreed rights.

IV.

All claims for water rights will be checked in detail. Each claimant will be expected to have supporting testimony ready to present to the examining engineer at the time his claim is investigated.

There will be no charge to the claimant for having testimony taken under oath, providing he is a member of one of the water users' associations. Testimony is recorded by the official reporter from the office.

If a claimant so desires, he may submit any affidavits which he may

deem relevant to his claim, which affidavits will be considered by the examining engineer in formulating his decisions for the tentative finding. This office expects enough definite proof to satisfy the examining engineer that the claims are just and proper.

The date of purchase or application for land does not have a bearing on the water right which was initiated prior to said purchase or application.

A formal protest now on file in the office will be heard unless such hearings are temporarily waived by the parties at interest.

In fixing the duty of water, local customs will be observed in so far as possible, provided they are not wasteful.

In considering the irrigation of bottom lands, which are irrigated by flooding, it is impracticable to set a rate of flow for the diversion, but such will be regulated by limiting the length of time for which the water may be kept on the land for any one irrigation. A limit will be set at an economical period of time.

It is to be distinctly understood that the examining engineers are not to undertake to interpret controversial points on the water law, but such matters must be referred to the office, together with supporting evidence or an agreed-upon statement of facts from the parties at interest in the controversy which will enable a legal opinion to be rendered thereon at the time of the final finding.

It is the function of the examining engineer to primarily ascertain the facts in every case, particularly with regard to dates of cultivation or beneficial use; also areas cultivated and classification thereof. The duty of water will be finally fixed at that which is found to be economical and practicable for the district under examination. The examining engineer shall take such testimony regarding duty of water as he may deem to be necessary to determine what has been the best irrigation practice in the district. Particular care should be taken that such testimony is based on accurate information, and not on heresay or guesswork.

Legitimate water claims which have not heretofore been filed with the State Engineer's office shall be investigated by the examining engineer in the same manner as those filed in accordance with the law. Results of such investigations will be reported and published in the tentative findings for the information of all other water users.

In considering each case the examining engineer will take systematic notes of such facts as he may deem relevant in the issues which are raised.

At the conclusion of each hearing, the examining engineer should tabulate a list of all areas under consideration, with the dates of beneficial use and cultivation. These two dates do not necessarily coincide.

Each claimant or protestant is expected to furnish his own witnesses, but expense of recording such testimony will be borne from the funds contributed by the various water users' associations.

Most of the hearings were held in 1921 and 1922. Approximately 500 hearings were held, mostly involving determination of priority and class of culture. The following personnel were assigned to do this: B. C. McBride, Ira McFarland, Melvin E. Jepson, L. H. Taylor, W. J. Pike, John V. Muller, C. V. Taylor, and R. E. Tilden as Field Engineers. Mrs. Bill Walters, Nellie McWilliams and W. B. Hill as reporters for the Hearings.

On March 23, 1922, J. G. Scrugham filed the Preliminary Order of Determination of the waters of the Humboldt River and its Tributaries. On April 10, he filed a notice that all evidence and proof of claims received or considered by the State Engineer in the Preliminary Order of Determination would be open for inspection for a period of twenty days beginning May 10, 1922. Also that any objections to the findings must be filed before June 15, 1922.

When the preliminary order was filed, certain proofs were omitted or modified from the ones first listed in 1914 and the ones published in 1916 without numbers.

LOVELOCK DISTRICT

005 Katherine Bastian to Grace S. Jahn
006 Annie A. Jurgenson to Pitt and McDonald
008 C.Y. Biggs to William Loorz
009 S. Billups to W.C. & Ida Thorne
0011 E.E. Burnk to F.A. Preston
0012 J.R. Brown estate to Pitt & McDonald
0014 Part from C.C. Carpenter to Chris Beck
0015 John Cristensen to Chris Hanson
0016 Julius Cristensen to John G. Taylor
0019 Jurgen Damm to E.A. Perez & John Dotta
0020 Thomas Derby - not a vested right
0022 John Dotta to Frank Ambrosetti and John Scott
0023 Joseph Dumas to Santos & Souza
0025 William Elges to Frank R. Mancebo
0026 T.N. Engle to James Kjeldsen
0029 Omitted
0030 Mrs. Eva Grannis dropped
0031 A.T. Hanson to Hans Westergard
0033 Andrew Hanson to Nellie Martin
0035 R. Melwinkle to Andrew Jacobsen
0039 John J. Hill to Joseph Hill
0043 Alec Holmgren to Emil Holmstrom
0044 dropped - blank
0047 Joe P. Johnson part to M.A. Moreira
0048 Paul Johnson part to Mrs. John Chambers
0050 Split from H.A. & Mrs. Rachel Killebrew to H.A. Killebrew other part
Mrs. Rachel Killebrew
0051 Blank - dropped
0054 Henry Larson to John Greve
0055 J.H. McCracken, dropped - no claim for water
0056 J.H. McCracken, not a vested right
0057 Conrad Mortenson to John & Domenico Ferritto
0059 N.C. Munk to Johannes Anderson
0061 Andrew Olson to John Greve
0065 W.C. Pitt part to U.S. Government Indian School
0066 L. Quilici - dropped
0069 Arthur Rodgers estate to Millie R. Evans
0077 H. Stoker to Antone Alves & Anna Alves
0078 H. Stoker & H.C. Stoker to Pascasio Bilbao
0083 dropped
0084 Union Canal Ditch Company, acreage under individual proofs
0086 Joseph Therien to Morris Nelson
0087 Eben Torrey to Hans Christensen
0088 Theo. Tycksen to Peter Olson
0094 From Blank app. to H.M. Mann
0096 Nevada Land & Livestock - dropped
0097 Old Channel Ditch Co., dropped, acreage listed under individual proofs.
0098 John Harrison - dropped
00100 U.S. Indian School - in 0065

WINNEMUCCA DISTRICT

00101 J.P. Anderson Estate to Madison Anderson
 00103 Reinhart Land & Livestock Co. part to L. Hirzel
 00104 Eric Johnson to J.A. Callahan
 00107 J.J. McCarthy, under Proof 00125
 00111 Corrected to John G. Taylor
 00112 Corrected to Peter Organ
 00116 A.F. Trousdale to W.F. & F.H. Pearce
 00117 Patrick O'Donnell to Mary G. Rose
 00119 Tobin & Pearce to C.L. Tobin
 00121 Glasgow & Western Mill Co., no proof filed
 00122 Alfonso Bernard to Taylor & Sheehan
 00123 Eugene Deutretre in 00120
 00126 Blank
 00128 D. Pascal, under Proof 00134
 00129 W.J. Bell, not a vested right
 00131 Golconda Cattle Co. added
 00132 Henry Bain Estate added
 00133 A.E. Kent & Co. added
 00134 Mrs. James Marr, added

BATTLE MOUNTAIN DISTRICT

00151 George H. Bain part to Ellison Ranching Co., part to A.L. Kent Co.
 00156 Golconda Cattle Co. to Ellison Ranching Co.
 00158 P.V. Sanders to Wm. Pettit
 00160 Charles R. Notinger, not a vested right
 00161 Albert H. Johnson, not a vested right
 00162 Eleanor M. Langwith, not a vested right
 00166 J.A. Blossom to W.T. Jenkins Co.
 00167 Dr. C.M. Faris to Faris Estate
 00168 W.W. Williams Estate to Geo. B. Williams
 00171 Dunphy Ranching Co. to William Dunphy Estate
 00172 Geo. Russell to Russell Land & Cattle Co.

ELKO AND PINE CREEK DISTRICTS

00201 Albert Bruce to Henderson Banking Co.
 00204 Samuel Furniss to H. Aguirre
 00206 M.P. Armstrong, not a vested right
 00209 John Howell to M. Aguirre
 00210 Halleck Cattle Co. to Union Land & Cattle Co.
 00213 Hunter & Banks part to Batiste Tamara
 00217 M. Badt & Co. to Bank of Wells
 00219 Eric Hedin, not a vested right
 00220 Mrs. N.J. Cox no proof filed
 00222 H. McCain Estate to Mrs. C. Glaser
 00228 Mrs. Downey under 00218
 00231 H.S. Van Drielen to Albert Lomori
 00235 J.W. Yowell, no proof filed
 00237 Griswold-Henderson Livestock Co, under 00212
 00239 Mrs. M.H. Green to J.H. Phillips
 00244 Mrs. H.J. Allen to Chas. W. Clubine
 00245 John C. Cazier under 00521
 00302 C.H. Hale to Geo. W. Goodfellow
 00330 Geo. McKnight to Hunter-Banks Co.

00331 Guiditti Paleni to John Paleni
 00352 Brehe Brothers to J.J. Hylton
 00355 Clayton Bros. to J.J. Hylton
 00365 James Riordan to D.J. Riordan
 00366 Conrad Smith to Manuel Urrutia
 00367 Clayton Bros., in 00355
 00370 J. Prediger to Ernest Hodges
 00373 James Cowling & Sons to Arruscada Bros.
 00374 James Crane to W.R. Bellinger
 00375 Charles Francis to Minnie Hankins, Lillie Hankins, Elizabeth Hankins Est.
 and Jane Bellinger
 00376 Frank Goff, no proof filed
 00377 Geo. & L. Hardesty to J.G. Hankins
 00378 Edmund Helth to Griswold-Henderson Livestock Co.
 00379 Theo. Ervin, no proof filed
 00380 George W. Hanna, no proof filed
 00381 Hanna & Arnot to J.J. Hylton
 00384 Mrs. M.A. Porch to George Brehe, under 00352
 00387 Scott & Adams to Albert Hankins
 00388 Mrs. Ella Adams to Estate of Mamie Winstead, parts to Leslie Carter
 & H.J. Dewar
 00389 Blank
 00390 Blank -
 00392 Mamie McKee, under 00388
 00393 J.C. McInnis, under 00359
 00394 J.H. Peterson to Chris Baumbach
 00395 Phil Wyland, not a vested right
 00396 Victor Burner, not a vested right
 00397 Gilbert Henry Est. to Merkley & Young
 00399 J.E. Williams, part to C.P. McIlew, part to A.J. Dewar
 00400 J.C. Hardesty to W.S. Griswold
 00402 Q.D. Boyd to Mrs. C. Glaser
 00406 N.J. Jesson to Mrs. Johanna Eisenberg
 00407 T.E. Jones to Henderson Banking Co.
 00412 C.E. Noble, part to John W. McIlew
 00413 Blank
 00415 David Morrow to Ramon Lugea
 00417 M.M. Rodwell to Antonio Echeverrieta
 00419 E.U. McDermott, Permit 1299
 00424 R.G. Gill to Alex Carden
 00425 E.U. McDermott, permit 1299
 00427 J.H. Hayward to John Paleni
 00428 Wm. Purdy to Joe Capriola
 00429 E.U. McDermott permit 1299
 00431 G.R. & J.H. Holland to R.B. Stewart
 00432 C.B. Lytton in 00423
 00433 C.B. Lytton in 00423
 00434 C.B. Lytton in 00423
 00435 C.B. Lytton in 00423
 00436 Henry Voight in 00421
 00437 Chas. E. Noble in 00412
 00440 Luther Butler in 00441
 00441 Luther Butler to C. Larrondo & Co.
 00442-00443 A.B. Carden to R.B. Stewart
 00446 George Hennen to R.B. Stewart
 00449 Wm. E. Roberts to Dave Morrow

00450 Ed. Health, in Proof 00454
 00451 Mrs. M.A. Searles to Jas. Byers
 00458 G. Randolph Co. to Q.D. Boyd
 00460 Mrs. C. Glaser, in proof 00205
 00478 Thomas J. Earles, in proof 00496
 00479 Mrs. H. Goodale to J.W. Weathers
 00480 John Goodale, in proof 00496
 00481 Mrs. Wm. Henry to Mrs. H.E. Goodale & J.H. Goodale
 00484 John McDermott to Phil Harney
 00485 Mrs. J. McNamara to Earl Green
 00492 C.F. Stone to W.C. Mills
 00495 C.T. Taufer, in proof 00491
 00496 Chas. Wells, part to W.W. Weathers
 00501 Enoc Gray to H.A. Agee
 00502 John Crosson to Hylton & Mentz
 00509 Mrs. H.P. Johnstone, in proof 00482
 00510 Halleck Cattle Co. to Union Land & Cattle Co.
 00513 Jas. Riddle to Wm. Goodale
 00520 Serbalo Sepulveda, not a vested right
 00521 John Casier, under 00609
 00524 Jeff Casier to Quilici Bros.
 00525 W.G. Randolph, added
 00552 Clayton Bros. to Diana Morgan Hill
 00553 M.D. Connell to R.T. Evans
 00554 Chas. Doherty, in proof 00554
 00556 Emory Johnson and Lily Curiax to C.A. & L.M. Liang
 00558 Richard Morris to Howard Morse
 00561 Neils Peterson to Thos. Kearns Est.
 00562 Pratt & Johnson to Geo. W. Pratt
 00564 G. Eyroz, not a vested right
 00565 Gilrath Est. to Rose M. Tremewan
 00566 Cas. B. Helsey to Diana Morgan Hill
 00573 Robert Tucker to Warner Griswold
 00576 H. Morgan Hill Est. part to Diana Morgan Hill, part to J.J. Hylton
 00577 H. Morgan Hill Est. in 00576
 00578 H. Morgan Hill Est. in 00576
 00601 Nevada Land & Livestock Co. to Union Land & Cattle Co.
 00602 W.D. Martin to Jno. H. Casier & Sons, Co.
 00604 Truett Land & Livestock Co. to W.B. Gibbs
 00605 Wm. M. & J.V. Crosson to Hylton & Mentz
 00606 Halleck Cattle Co., omitted
 00608 Geo. M. Bacon, part to Metropolis Land Co., part to H.A. Agee, Steele Bros., S.C. & S.J. Weeks
 00609 Added Jno Casier
 00610 L.L. Redden instead of Jno Casier
 00611 Frank Truett
 00612 J.J. Campbell
 00613 Tanner Ranch, in proof 00609
 00614 Robt. Anderson, in proof 00607
 00651 Sadler Ranch to Huntington and Diamond Valley Stock & Land Co.
 00652 J.J. Hylton to Bert Stoddart
 00653 Ed. Helth to Griswold-Henderson Livestock Co.
 00654 C.A. Toyn to J.H. Carter
 00656 David Lindsay to Javier Goyeneche
 00657 Nick Scott to V. Juaristi

00658 Minola Ranger Station, not a Vested Right
 00660 Walfried Sohlman to Frank Brennan
 00661 F. T. Hunter, waste water, no claim
 00662 Pete Holm to V. Juaristi
 00665 Harrison Pass Ranger Station, not a Vested Right
 00666 Mrs. C. W. Munlocks, not a Vested Right
 00667 Miss F. Williams, not a Vested Right
 00669 Mrs. H. Burns, not a Vested Right
 00670 J. J. Hylton, in Proof 00359
 00672 Fred Walthers in Proof 00671
 00675 M. P. Armstrong to James Bett
 00680 Sabala Ranch to Chas. Hairgrove
 00681 D. L. Hylton part to Merkley & Young, part to J. J. Hylton
 00682 Brown Bros. in Proof 00213
 00683 Rattlesnake Ranger Station, not a Vested Right
 00684 Hylton & Bolton, in Proof 00359

The Preliminary Order also had an Appendix B, B and C.

Appendix A was a stipulation between Huntington and Diamond Valley Land and Stock Co. and J. J. Hylton, Merkley & Young and Frank Odiago, regarding the use of waters of Huntington Creek.

Appendix B was about the Co-op ditch establishing priority of water between Ackler Creek and Herder Creek in Starr Valley. All water users of the two streams were concerned.

Appendix C represented a continuation of rights acquired prior to 1905 into the period up to the date of the Preliminary Order or land which the water was not diverted until after 1905. When Wm. Kearney was State Engineer, he divided the Rights that were Vested and those that were later because of continuing Law Suits that were brought against him. This was put into the Preliminary Order to show that the Rights were later and not vested and were a continuation of the earlier claim. All previous Decrees in Lovelock area and on other Tributaries were incorporated into the Preliminary Order where water was allocated by inches. The State Engineer usually gave the Decreed Owner 2 acres per inch.

On June 30th, 1922, State Engineer J. G. Scrugham filed the Objections to the Preliminary Order of Determination of the waters of the Humboldt River and its Tributaries.

Objections were filed by:

- No. 1 W. C. Ruddell, John G. Taylor, John Holmstrom, H. P. Cruse & H. M. Damm
- No. 2 John G. Taylor
- No. 3 Lovelock Land & Development Company
- No. 4 John G. Taylor and J. Sheehan
- No. 5 Estate of James Faris, deceased
- No. 6 William Dunphy Estate
- No. 7 Humboldt Land & Cattle Co.
- No. 8 Old Channel Ditch Co., Union Canal Ditch Co., Southwest Ditch Co., Irish American Ditch Co., and John Fant
- No. 9 Old Channel Ditch Company
- No. 10 Pacific Livestock Company

- No. 11 Ellison Ranching Co.
- No. 12 Land Development Company of Battle Mountain
- No. 13 Geo. L. Kaeding (Proof 00163)
- No. 14 George B. Williams
- No. 15 Hunter-Banks Co., Proof No's. 00213, 00330 and 00382
- No. 16 Mildred Elmore, Walter S. Elmore, Mildred C. Clubine & Clark Kendricks
Proof No. 00241
- No. 17 Charles W. Clubine, Proofs 00242, 00244, 00447 and 00421
- No. 18 R.F. Raine for J.P. Raine Estate
- No. 19 W.S. Yates, proof 00305
- No. 20, R.F. Raine, individual capacity
- No. 21 R.R. Raine, individual capacity
- No. 22 Minnie Hankins, Lillie Hankins, Elizabeth Hankins & Jane Bellinger Est.
Proof No. 00375
- No. 23 Hankins-Bellinger Company Proof No. 00405
- No. 24 Samuel McIntyre Investment Co.
- No. 25 Henry Voight, Proof No. 00421
- No. 26 Hunter & Lytton, Proof No. 00423
- No. 27 Webster Patterson, Proof No. 00430
- No. 28 Robert B. Stewart, Proof Nos. 00431, 00442, 00443, 00446 & 00572
- No. 29 Ralph McCoy & James Dysart against Proof No. 00444 filed by Andrew Westlund
- No. 30 James Billit, Proof 00454, listed under E. Hankins
- No. 31 H.A. Agee, Proof 00500 and
- No. 32 Proof 00501 of Ed Smiley
- No. 33 S.M. Davis, Proof No. 00512
- No. 34 Fred & Frank Cleverly, proof No. 00517
- No. 35 Jno. H. Cazier & Sons Co., Proof Nos. 00521, 00602 & 00609
- No. 36 Estate of Thomas Kearns, Proof 00561
- No. 37 Elko Co. Water Users Assoc., an organization composed of all the water
users of the Humboldt River and Tributaries who reside in Elko County
(50)

No. 38 J. H. Carter

No. 39 Flora Dean Hobart & Ether D. Hussey for the Dean Estate, Proof 00169

The hearing of the objections to the Preliminary Order of Determination began in Carson City August 14, 1922.

The State Engineers Office was represented by Colonel J. C. Scrugham, State Engineer, Robert A. Allen, Assistant State Engineer, J. V. Mueller, Deputy State Engineer, Robert Richards, Deputy Attorney General and George B. Thatcher, Special Counsel for the State Engineers Office.

Due to a train delay, service and illness of attorneys, there were only five other appearances other than the State Representatives, so the objections could not be taken in order.

The Hearings began with Objection No. 5 of the Faris Estate being heard first. One of the main points of the Faris Objection was leaving out the Little Humboldt River System.

State Engineer Scrugham stated that the Little Humboldt was left out because the United States Supreme Court, in a Colorado case, where a tributary to the Laramie River flowed into the Laramie more often than the Little Humboldt reaches the Humboldt, held that it was not a tributary and should not be considered in an adjudication of the rights on the Laramie River.

Another point brought up by the Attorney for the Faris Estate, Attorney Samuel C. Weil, was the acquisition of a Prescriptive Right for the lands of the Faris Estate. Weil claimed this was done by a continuous use of the waters of the middle Humboldt River for over a quarter-century regardless of the Rights downstream.

When the objection for the William Dunphy Estate was heard, Attorney Perry Evans wanted the same objection as the Faris Estate made available to them.

X. R. Meyer testified for the owners of the William Dunphy Estate. At the time of the hearings, the ranch was in five parts under five different

owners, all sons, daughters and grandchildren of the late Willlliam Dunphy. Meyer said the Preliminary Order did not allow enough water to irrigate crops and stock water was not taken into consideration. It was decided that stock water would be left to the Court.

Albert C. Aiken, Attorney for the Humboldt Land & Cattle Co. wanted on record for his clients the same objections as the Faris Est., the Doctrine of Prescription and for the same reasons. He also stated that once irrigated, the ranch kept the stream below with more water than above as was brought out in the Bliss vs. Dunphy Trial in 1890.

The next objection heard was by the Old Channel and other Ditch Companies in Lovelock Valley and the Lovelock Water Users Association. They had two main objections which were stated by Attorney B. Goodman.

The First General Objection by the Lovelock Water Assoc. was that the Preliminary Order did not define the several streams, creeks and rivers that Constitute the Humboldt River and its Tributaries. They wanted the Order to define and outline once and for all what is the Humboldt River System.

The Second Main Objection was the Doctrine of Relation. They wanted the Priorities dated back to the construction of various dams and ditches. If the Doctrine was applied, Old Channel Ditch users would have a priority of 1888.

Attorney Goodman also made a statement on behalf of the Lovelock Water Users Assoc. He stated the Lovelock users were once the greatest foes of the adjudications and were the ones who initiated several Lawsuits to stop it. The Association is now for the Adjudication and its opinion is that the Preliminary Order of Determination is a great credit to the State Engineer and to the State Engineers Office.

Prince Hawkins, Attorney for other Lovelock interests, mainly those of John G. Taylor, once again claimed that the State Engineer had no right or authority to determine Vested Property Rights. Hawkins interposed the objection as a Matter of Statute to be referred to later, if the occasion should require

it. Objection had to do with 1915 Statute and 1921 Statute brought up during Pitt vs. Scrugham, Amended by the Legislature after the Decision was handed down.

Hawkins other main objection was the same as other Lovelock users, the Doctrine of Relation being applied. What Lovelock clients wanted was a 1887 Priority for the Irish American Ditch and a 1888 Priority for the Old Channel and Young ditches.

Attorney L. G. Campbell for Pacific Livestock Company had the same objection of some other water users and this was that the State Engineer did not have the Jurisdiction to make the findings in the Preliminary Order of Determination. Campbell also objected to the length and duration of the irrigation season and priority awarded them.

State Engineer Scrugham said that for the benefit of the record, that in addition to water used during the irrigation season, each user should be entitled, in his proper proportion and priority to the use of water in such reasonable amounts as necessary for fall and spring irrigation and for stock watering purposes during the non-irrigation season.

One main objection brought up by almost all objectors was the listing of acreages and priorities with no description as to the location of the acres. This was a concern to all Elko County water users who made objections as well as downstream objectors. When this came up at the Hearing on August 22, George B. Thatcher Special Counsel for the State Engineers Office addressed the problem.

Thatcher said that the intention of the State Engineer was to bracket all listings so that the acreages would be in the Legal Subdivisions. When the Preliminary Order of Determination went to the printer, the printing office had no brackets available. He said that when the Final Order went to press and brackets still were not available, they would be penciled or inked in before being submitted to the Courts.

Fourteen objections to the Preliminary Order were cleared when George

Thatcher explained about the brackets. The Hearings of the Preliminary Order continued on until August 29 and then one more day, Sept. 23, to finish the Faris Estate objection.

The six main items objected to were as follows:

1. Listing of acreage
2. Doctrine of Relation
3. Recognizing other Decrees and Agreements
4. Priority
5. Doctrine of Prescription
6. Irrigation season and stockwater

On the 29th day of September, 1922, State Engineer J. G. Scrugham filed the Final Order of Determination of the Relative Rights of Claimants and Appropriators of the waters of the Humboldt River and its Tributaries.

The Final Order was different than the Preliminary because several objections were upheld. The main differences were mostly in Lovelock Valley where the Doctrine of Relation was applied to the Irish American where some priorities related back to 1887. About 5,000 acres irrigated from the Old Channel Ditch and the Young Ditch related back to the construction year, to a Priority of 1888. Proof 00517 of Fred and Frank Cleverly was dropped, the owner, Shipoc Land and Water could not be substantiated.

State Engineer J. G. Scrugham made the following entry in the Final Order of Determination to answer some of the objections made to the Preliminary Order.

The parties named in the Order of Determination, or their successors in interest, shall not be required to take or use the amount of water allotted to them in a continuous flow, but may cumulate the same or any part thereof in rotation or periodic turn, within the season limits, with the approval of the Water Commissioner, and subject to the control and direction of the State Engineer.

The Irrigation Season as fixed in the Order of Determination is not to be considered as being absolute. It is, and must be, of necessity flexible, and vary as to the beginning and end of the season, depending upon the seasons.

climatic conditions, water supply, runoff, and other matter of like character necessarily affecting the practical operation and conduct of irrigation.

In addition to water used during the irrigating season, each user should be entitled, in his proper proportion and priority, to the use of water in such reasonable amounts as necessary for fall and spring irrigation and for stock watering purposes during the non-irrigating season.

In case any water user is dissatisfied with the duty of water as allotted in the Order of Determination, he may, at any time not later than three years from the issuance of the Court Decree, submit to the State Engineer such authenticated measurements as may be necessary to prove the actual and beneficial use of water on his lands. Upon approval of the proof submitted, the State will accordingly apply to the Court for a modification of the duty of the water allotment in conformity with the proof submitted.

All Decrees and Contracts are hereby recognized as between the parties, and water will be distributed accordingly, in so far as the rights of the parties affected by such Decrees or Contracts are concerned.

The Faris Estate, the William Dunphy Estate and the Humboldt Land and Development Company claimed a Prescriptive Right or a Right Adverse Possession to the use of all waters of the Humboldt River, as against all appropriators on the Lower Stream System though holders or owners of priorities earlier in period of time. However, they have not established the necessary elements showing Prescriptive Right or a Right to the use of Said Water by Adverse Possession, and therefore the claim is denied. Wherein the foregoing Order of Determination acreages irrigated are bracketed with legal subdivisions, the water allotted is appurtenant to the legal subdivision indicated as a unit, but limited to the acreage and culture indicated, and with a priority for the respective acreages indicated.

After the Order of Determination came off the press, the brackets were penciled in to show the legal subdivisions.

On October 7, 1922, State Engineer J. G. Scrugham left the State Engineer's office to run for Governor of the State. Assistant State Engineer Robert A. Allen became the new State Engineer. J. G. Scrugham became the Governor in Jan. 1923. On October 23, 1922, State Engineer Robert Allen sent Notice to the following:

Honorable Peter Breen, District Judge of the Third Judicial District Court of the State of Nevada, in and for the Counties of Eureka and Lander.

Honorable E. J. L. Taber, District Judge of the Fourth Judicial District of the State of Nevada, in and for the County of Elko.

Honorable J. A. Callahan, District Judge of the Sixth Judicial District of the State of Nevada, in and for the Counties of Humboldt and Pershing.

Notice stated the State Engineer had picked the Humboldt River System for Adjudication when the Order of Determination was filed on September 29. The River System was within the Third, Fourth, and Sixth Judicial Districts and as required by law, that within ten days after the Notice was received, the Judges had to confer and agree where the Court Proceedings were to be held and the Judge that was to preside.

The State Engineer had to be notified of an agreement within five days after the ten day period expired or he would file the Order of Determination, Evidence and Transcript with the Clerk of any County within the Third, Fourth, or Sixth Judicial Districts that he selected.

The Judges did not agree where the Court proceedings of and concerning the Order of Determination should be held or upon the Judge to preside within the ten days after receipt of the notification.

After more than five days had elapsed after the ten days, on Jan. 17, 1923, the State Engineer filed the Order of Determination, together with the original evidence and transcript of testimony theretofore filed with or taken before the State Engineer with J. W. Davy, Clerk of the County of Humboldt, Clerk of the Sixth Judicial District Court of the State of Nevada, in and

for the County of Humboldt.

State Engineer Robert Allen notified clerks of the counties of Elko, Lander, Eureka, and Pershing that he had filed the Order of Determination in the Sixth Judicial District Court.

The State Engineer then applied to the Court for an Order of the Court setting the time for hearing upon Said Order of Determination of the Relative Rights of Claimants and Appropriators of the waters of the Humboldt River Stream System and its Tributaries. On January 23, the Court ordered that the Hearing of the Order of Determination would begin April 2, 1923, at 10:00 a.m.

The Court also ordered the State Engineer send a Certified Copy of the Order of the Court and a copy of the Order of Determination by Registered Mail to each person, firm, corporation or association who has filed a Proof of Claim and to each person who has become interested through intervention or through filing objections under the Provision of the Act. The Order was mailed to each party in interest at his last known place of address.

The State Engineer also had to publish at least once a week for four consecutive weeks, in some newspaper of general circulation, published in each of the counties, Elko, Eureka, Lander, Pershing and Humboldt. The Court designated the Elko Free Press, Eureka Sentinel, Battle Mountain Scout, The Humboldt Star and the Lovelock Review-Miner, and that the State Engineer should file with Clerk of the Court proof of such service by Registered Mail.

The Court further ordered that all parties in interest, who were aggrieved or dissatisfied with the Order of Determination by the State Engineer, should file at least five days prior to the 2nd of April, 1923, a Notice of Exception to Said Order of Determination by the State Engineer, stating briefly the exceptions taken, the prayer for relief, and serve a copy upon the State Engineer or transmit a copy by Registered Mail.

The Adjudication was assigned No. 2804 and Judge George A. Barlett was appointed to hear the case. By the time the hearing began, a last effort to stop the Adjudication began when an exception to the Jurisdiction of the

Court was filed by Samuel G. Weil, Attorney for the Estate of James Faris, Deceased, T. P. Wittschen, Attorney for Pacific Livestock Co., Perry Evans, Attorney for Jennie C. D. Dunphy, et al., Albert C. Aiken, Attorney for Humboldt Land & Cattle Co., challenging the Jurisdiction of the Court on Constitutional grounds that were held unconstitutional in Pitt vs. Scrugham. Other exceptions also questioned the Jurisdiction of the Court. The Court decided to Rule upon the Jurisdiction Question first and came up with the following decision:

COURT DECISION

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

In the Matter of the Determination of the Relative Rights of
Claimants and Appropriators of the Waters of the Humboldt River Stream-
System and its Tributaries.

DECISION ON CERTAIN OBJECTIONS AND EXCEPTIONS TO THE FINAL ORDER
OF DETERMINATION OF THE STATE ENGINEER.

At the time of the presentation of the exceptions and objections to the State Engineer's order of determination, at Winnemucca recently, counsel for interested parties were informed by the court that only those questions would at that time be considered and ruled upon which challenged the jurisdiction of the court on the constitutional grounds suggested by many of the parties, so that the expense and labor of prolonged hearings might be avoided in the event objections in that respect should be held well taken. Counsel were not limited in the discussion, however, and covered practically all of the material matters raised by the written exceptions, inclusive of most of those raised by the objections to the preliminary order of determination.

The court will, however, adhere to the stated limitations, and rule only on the constitutional points without more than passing comment at this time on the many other questions so earnestly and ably argued by counsel for the objectors and the State Engineer. The brevity of this decision must not be regarded as any indication of lack of labor or careful consideration of the contentions of counsel, for whom the court entertains a high respect and recognizes a preeminent ability and special equipment in the particular subject-matter of these proceedings. I am regardful of the fact that the reasoning processes of a nisi prius court are not so much desired by litigants as determinative results.

Much careful study has been given the authorities cited and arguments made by counsel for both sides. I have thoughtfully followed the evolution of the state water law through the shedding of its various objectionable vestments that have been held to cover the State Engineer with power of judicial authority, and find we have now reached a point where, after twenty years of legislation, only four sections of the code are left which have not been laundered and finally passed upon by our own Supreme Court and Federal District Courts.

The opinions of Justices Norcross, Coleman and Sanders and Judge Farrington in the several cases cited in argument, I feel, have determined all material questions covered by the ninety-one sections of the water law, with the exception of the four sections 29, 30, 31, 32, as amended in 1921, after the decision in the Pitt-Scrugham case, which held the referred-to sections, as then existing, unconstitutional.

Investigation shows that within ten days after the Pitt-Scrugham decision was rendered the Legislature, which happened to be in session, amended the said sections with what must be presumed to have been an honest desire to remove any constitutional objections. Whether this has been accomplished the courts have now to determine.

The Supreme Court held the said sections (prior to amendment referred to) unconstitutional "because they attempt to give judicial powers to the State Engineer to hear and determine contests involving not relative but vested rights, which the statute itself expressly inhibits." (Section 84)

The theory upon which this conclusion was based was not given, so the Legislature was to some extent handicapped, but, as these amendments were made in the immediate atmosphere of a supreme judicial determination of what has always been the vexed question involved in the development of the water code, because of the jealous regard for the exercise of only judicial power in the establishment and maintenance of private property rights, and the principal attacks on the code had been against clothing the State Engineer with any such power, the presumption of a proper protection against the violation of the rights guaranteed under the due-process clauses of the Federal and State Constitutions should be indulged in favor of the new enactments.

The general purpose of an Act must be considered and it is the duty of courts to sustain the legislative action unless clearly satisfied of its invalidity. The higher courts of Nevada, state and federal, have approved the purpose and policy of the Legislature in the framing of its water law to suit the conditions of our climate, soil and the arid character of our State. The earnest labor of highly qualified engineers has been devoted for twenty years to the development of a code that is designed to bring about the intelligent and economical application of our waters to a beneficial use. It is not designed to destroy vested rights, but to assure them, and to provide a state control and administration, so that these and all relative rights and new appropriations may be exercised under such reasonable regulations as are essential to the state development, to the end, as one court has put it, "that the use of water by one, however absolute and unqualified his right thereto, shall not be injurious to the equal enjoyment of others entitled to the equal privilege of using water from the same source, nor injurious to the

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rights of the public."

One man has no right to cut hay in a rowboat, while his immediate neighbor idly ponders the rambling lizard and horn-toad on the sunbaked soil of his unwatered farm.

Ample opportunity is provided all persons claiming water rights in the stream-systems of the State to present their claims to the Engineer, whose order of determination when filed in court becomes in effect one of the pleadings, and only finally effective after the consideration and determination by a court of the said order and all objections that may be filed by the persons interested whose rights may be affected by it.

It is the hearing before the court that is judicial, and the advisory determination by the Engineer is not binding on the court, whose power to modify or affirm or to refer back for further determination under the Court's Instruction, and with the aid of additional expert assistance, if deemed necessary, is definitely fixed by the code.

As one of the courts states it, "It is the inherent authority not only to decide, but to make binding orders or judgments, which constitutes judicial power; and the instrumentalities used to inform the tribunal, whether left to its own choice or fixed by law, are merely auxiliary to that power, and operate on persons or things only through its action, and by virtue of it."

The power of the Engineer is limited to the determination of the relative rights for administrative purposes. "The court receives the conclusions of this arbiter of the parties, gives each of them an opportunity of showing whether he has kept within the rules of the authority conferred upon him, and, if satisfied he has complied with his duty, gives judgment accordingly."

The rapid growth and extension of diversified activities necessitates demand upon technical skill in the proper determination of certain matters

before the application of the strictly judicial power wherein finally the ultimate rights are established. Conclusions are reached by administrative officers, even though based upon the consideration to some extent of certain factors that are also part of eventual judicial consideration by the court, do not make such conclusious judicial in the sense that they determine thereby the action of the court, in which only can the real judicial power be exercised. It is true that much evidence has been taken apparently, by the Engineer in the course of the years which, up to the time of the filing of the order of determination, interested parties may not have had an opportunity to analyze or properly meet under the rules of evidence, but the right to do this when in court is not abridged by the law, and, while it may entail a vast amount of labor as suggested by one of counsel, still it is all in the day's work, and we must do it in the spirit that has animated the framers of the water code, to the end that eventually controversy over water rights may be minimized and wise control in the administration of one of our important resources be established.

I believe the amendments of 1921 have cured all of the constitutional objections; but, even if this were not so, it is my judgment that, if eliminated, these sections would not in any manner hamper the administration of the law according to its general purposes.

The Court holds that it has power under the law to hear and determine all questions raised under the order of determination and the exceptions and objections, in whatever forms or character they have been taken, whether by demurrer, motion to strike, objection, exception, or otherwise.

The questions raised by many of the objectors relative to classification, duty of water, the length of irrigation season, prescriptive rights, priorities, rights by existing agreements, judicial decrees, and kindred matters, will be considered by the court at the hearings hereinafter fixed.

IT IS ORDERED, That all objections and exceptions, in whatever manner taken by claimants, parties and persons in any manner interested or affected by the order of determination, in so far as they relate to the power of this court to exercise its jurisdiction in hearing and determining all questions raised under the said order of determination, be and the same hereby are, over-ruled.

IT IS FURTHER ORDERED, That the hearing of all said referred-to objections and exceptions, not hereinabove specifically ruled upon, be held in the courtroom of the above-entitled court at Winnemucca, Humboldt County, Nevada, commencing on the 3d day of September, 1923, at 10 o'clock a.m.

IT IS FURTHER ORDERED, That the State Engineer cause all objections and exceptions to the said order of determination filed herein to be printed, and a copy to be forwarded by registered mail to all parties interested in the stream-system of the Humboldt River, or affected by the said order of determination, together with notice of the time and place of the hearing above fixed, at least thirty days prior to the date of the commencement of said hearing.

GEO. A. BARTLETT,
District Judge, Presiding,

Dated this 30th day of June, 1923.

Before the Hearing started again on September 3, Judge Bartlett's Decision was taken to the Supreme Court by the same exceptors with the addition of:

W. M. Kearney
Attorney for Land Development Company

Brown & Belford
Attorneys for W. T. Smith, Receiver for Union Land & Cattle Co.

The Supreme Court opinion was filed March 26, 1924. Opinion was by Justice J. Sanders and concurring were: C. J. Ducker and J. Coleman.

The Court stated the questions discussed in the able and elaborate briefs which do not go to the question of Jurisdiction and have no place in the proceeding.

Our conclusion is that the Alternative Writ was improvidently issued and that the Water Law of Nevada is in all respects, Constitutional.

On April 17, 1924, the Humboldt Land and Cattle Company filed a petition for rehearing against:

M. A. Disken, Attorney General of the State of Nevada.

Honorable George A. Bartlett, District Judge named in the proceedings.

Honorable Robert A. Allen, State Engineer of Nevada.

George B. Thatcher, Associate Counsel for the District Court.

On July 9, 1924, the Supreme Court came out with an Order denying Petition for Rehearing.

On November 10th, 1924, George A. Bartlett, District Judge presiding issued an Order that the Hearing in the Matter of the Determination of the Relative Rights of Claimants and Appropriators of the waters of the Humboldt River Stream System and its Tributaries would begin on January 5th, 1925 at 10:00 a. m.

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