

IN THE MATTER OF APPLICATION NO. 12471 )  
IN NAME OF HARRISON GROVE TO APPROPRIATE :  
WATERS OF BOYD CREEK FOR IRRIGATION PUR- :  
POSES, HUMBOLDT COUNTY, NEVADA. )

RULING

Application No. 12471 was filed June 2, 1948 by Harrison Grove to appropriate 2.0 c.f.s. of the waters of Boyd Creek for the irrigation of 200 acres of land within Boyd Basin. The proposed point of diversion is given as being within the SE $\frac{1}{4}$  SE $\frac{1}{4}$  Section 32, T. 45 N., R. 30 E., M.D.M.

On August 13, 1948 a protest to the granting of a permit under said application was filed by E. D. Farnham.

A field examination was made on September 28, 1949 by Assistant State Engineer Hugh A. Shamberger. Also present at the field investigation was Applicant Harrison Grove and A. V. Tallman. Later in the day Mr. Farnham, the protestant, was visited at his ranch on Big Creek.

In acting on this application we must give great consideration to the "Decree on Mandate", In Equity No. B-29, entitled "Pacific Live Stock Company (a corporation), Complainant, vs. D. M. Read, Defendant." The Pacific Live Stock Company was the owner of the property now owned by protestant E. D. Farnham and Mr. Read was the owner of a 320 acre homestead in Boyd Basin.

That portion of the decree pertaining to the water rights appurtenant to the Farnham place (formerly Pacific Live Stock Co., the Complainant) reads as follows:

"That the complainant Pacific Live Stock Co., a corporation, is the owner of and in the possession of all those certain lots, pieces or parcels of land situate, lying and being in the County of Humboldt, State of Nevada, and more particularly bounded and described as follows, to-wit:

The northwest quarter of Section thirty-six (36), the west half of Section twenty-five (25), the west half of the west half of Section twenty-four (24), the south half of the southeast quarter, and the northwest quarter of the southeast quarter of Section twenty-three (23) and the northeast quarter of the northeast quarter of Section twenty-six (26), all in Township forty-four (44) North, Range thirty (30) East, Mount Diablo Base and Meridian, which said land is known as the Big Creek Ranch."

"That of said lands at least 200 acres thereof have been under cultivation for more than 25 years last past, and devoted to the raising of hay, grain, alfalfa, garden and orchard produce, and at least 300 acres thereof have been fenced and used as pasture land; that complainant has a right prior to defendant to sufficient of the waters of Pass Creek, Big Creek and of Boyd Basin Creek and of any stream intercepted by complainant's Boyd Basin Creek ditch during the irrigating season of each year, to irrigate the land above described; that the necessary amount of water for this purpose during the irrigation season of each year is nine (9) cubic feet per second prior to June 15th, and seven and one-half (7-1/2) cubic feet per second thereafter. That insofar as Big Creek and Pass Creek can supply the needed water, the same shall be taken first from those streams; after taking all of the water which Big Creek and Pass Creek carry, measured at the point where the same enters the ranch, complainant is entitled as a prior right and prior to any claim of defendant to divert from Boyd Basin Creek and from the ditch leading from Boyd Basin Creek, and from any stream flowing into said ditch, enough more water measured at the place where the same enters its ranch to make up its full diversion from said streams as hereinbefore specified, to-wit, nine (9) cubic feet per second prior to June 15th in each year, and seven and one-half (7-1/2) cubic feet per second thereafter continuous flow.

That it is hereby ORDERED, ADJUDGED AND DECREED that complainant is the owner of the amount of water from said stream so used and appropriated by it, and that it is entitled to take, appropriate and use the same prior to any claim of defendant, and that complainant's title to the water so appropriated by it is quieted against the defendant."

That portion relating to D. M. Read, defendant, reads as follows:

"That the said defendant, his agent, servants and attorneys, and all persons acting by, through or under him or them, or any thereof, as successors in interest or otherwise be and they are forever enjoined and restrained from interfering in any way with the waters of said Boyd Basin Creek, or with any stream intercepted by said Boyd Basin Creek Ditch, or with the said ditch conveying the waters of said creek to said ranch, or with any flow flowing into said ditch, or with any of the waters herein adjudicated to complainant, so as to prevent or interfere in any way with the said complainant receiving on its said ranch the amount of water found necessary for the uses of complainant, and to which it is entitled

as herein decreed.

It is FURTHER ORDERED, ADJUDGED AND DECREED that defendant is in possession and entitled to the possession as against said complainant, of the lands and premises constituting his homestead, situated in Boyd Basin, Humboldt County, Nevada, and constituting three hundred and twenty (320) acres, or thereabouts, and more particularly described in the answer, and devoted by said defendant to the raising of crops of hay and other products thereon, and upon which defendant has since May, 1918, used and diverted a part or portion of the waters of Boyd Basin Creek for the artificial irrigation thereof.

That all of the waters flow in Boyd Basin Creek and not hereinbefore decreed to and quieted in complainant, be and the same is hereby decreed to the said defendant, and his title thereto is hereby quieted in him as against the said complainant."

On October 20, 1917 D. M. Read filed Application No. 4647 to appropriate 3.2 c.f.s. of the waters of Boyd Creek for irrigation purposes in Boyd Basin. The land to be irrigated, according to the application, is located near the base of the Pine Forest Range where Boyd Creek debouches from the canyon and is about 3½ miles southeasterly from the lands covered in Application No. 12471. This location is probably in error as it appears from the correspondence that the location was intended to be in Boyd Basin and probably covered the same land as described under Application No. 12471. Application No. 4647 was protested by the Pacific Live Stock Company. Following a hearing, and on July 20, 1922, said Application No. 4647 was approved in the amount of 3.5 c.f.s. This action no doubt was the cause of the suit between the Pacific Live Stock Company and D. M. Read. On December 26, 1935 said Permit No. 4647 was cancelled due to failure to comply with the provisions of the permit.

From the records in this office it appears that the land owned by D. M. Read in Boyd Basin is the land now owned by Harrison Groves and on which water is to be appurtenant to under Application No. 12471. On the date of the investigation some of the old ditches were noted, although it was evident that no irrigation had been practiced for some years and no crops raised. However, regardless of the apparent non-use, it would seem from the language of the decree that the former property of D. M. Read in Boyd Basin would have a decreed water right to such water that was not needed by Protestant Farnham to make up his water right as described in said decree. This interpretation is from the language of the decree heretofore quoted and which reads:

"That all of the waters flow in Boyd Basin Creek and not hereinbefore decreed to and quieted in complainant, be and the same is hereby decreed to the said defendant, and his title thereto is hereby quieted in him as against the said complainant."

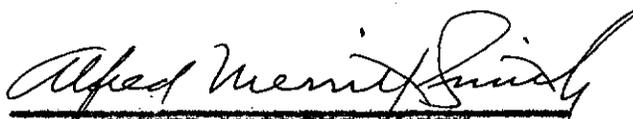
This being the case, there would be no unappropriated water in Boyd Creek. If our construction is correct, the D. M. Read land, now apparently owned by Harrison Grove, has a decreed water right and the magnitude of this right would be all of the water not needed to fulfill the water right decreed to the property now owned by protestant Farnham. If the land owned by Applicant Groves is not the property formerly owned by D. M. Read, we would still have to deny said application on the grounds that there is no unappropriated water.

It should be noted that the Pacific Live Stock Company made claim of a vested right to the waters of Boyd Creek with a priority of 1902. However, we have no record of any claim on the part of D. M. Read, other than Permit No. 4647 (now cancelled), of acquiring a water right under State law for his lands in Boyd Basin. In fact, the Decree on Mandate heretofore referred to states that the defendant (D. M. Read) had been using the waters of Boyd Basin Creek since 1918 for irrigation purposes.

#### RULING

For the reasons stated above, the protest to the granting of a permit under Application No. 12471 is sustained and said application is herewith denied on the grounds that there is no unappropriated water in Boyd Creek.

Respectfully submitted,

  
ALFRED MERRITT SMITH  
State Engineer

Dated March 30, 1951.