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IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA,
IN AND FOR THE DISTRICT OF NEVADA.

UNITED STATES OF AMERICA,
Plaintiff,
-vs-
WALKER RIVER IRRIGATION
DISTRICT, a corporation,
et al,
Defendants.

IN EQUITY.
NO. C-155.

Filed April 15th 1936
R. E. Benham, Clerk

REBUTALS OF FACT AND CONCLUSIONS OF LAW

The above entitled cause having been submitted for decision on January 10, 1936, and the Court having considered the law and the evidence, finds as follows:

I. Walker River Indian Reservation, hereinafter referred to as "Reservation", was set aside by the United States of America on November 20, 1866, for the use of the Shoshone tribe of Indians. In setting aside said Reservation the United States of America made no express reservation of any water rights for the irrigation of the lands thereof.

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BOARD 'S EXHIBITS 1052
DATE: _____

1 II. Walker River is an unnavigable, interstate stream
2 consisting of two main branches, the East and West Walker
3 Rivers, which are fed by many small streams most of which
4 rise on the eastern slope of the Sierra Nevada Mountains in
5 Alpine and Mono Counties, California. The West Walker River
6 flows through Leavitt and Middle Meadows, two high mountain
7 valleys, thence through a canyon with practically no culti-
8 vated area, thence northerly and northeasterly through Ante-
9 lope Valley into the State of Nevada, thence through Smith
10 Valley to the head of Mason Valley where it joins the East
11 Walker River. The principal streams forming the West Walker
12 River combine in Bridgeport Meadows, which is a large area
13 devoted to the raising of wild grasses and pasturage at an
14 elevation of about sixty-eight hundred feet above sea level.
15 The East Walker River flows thence northerly and northeasterly
16 through canyons and sparsely populated valleys to Mason Valley,
17 where it joins the West Walker River and forms the main Walker
18 River. This river flows northerly and northeasterly through
19 Mason Valley to near the town of Wabuska, where it turns ab-
20 ruptly to the southeast and flows through the Reservation and
21 thence into Walker Lake. The mountains at the source of
22 these streams are sparsely forested and afford little protec-
23 tion for the snows which melt rapidly in the spring months re-
24 sulting in a rapid runoff of the water. From the source of
25 the West Walker River to its junction with the East Walker
26 River the distance is approximately sixty-six miles; from
27 the source of the East Walker River to its junction with the
28 West Walker River the distance is approximately seventy-four
29 miles; and from the junction through Mason Valley to the
30 point of diversion on the Reservation the distance is approx-
31 imately thirty-seven miles; and from the latter point to

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1 Walker Lake the distance is approximately twelve miles. The
2 flow of said river is variable from day to day, from month to
3 month and from year to year. The peak flow occurs late in
4 May or early in June and thereafter the water subsides rapidly
5 so that in most years the flow by the middle of July is in-
6 sufficient, without storage facilities, to meet the require-
7 ments of the lands along the river which have been brought
8 under cultivation. Even under natural conditions, that is,
9 without upstream diversions, the water would not, in some
10 years of low flow, reach the lands of the Reservation by the
11 end of July by reason of seepage and high evaporation loss.

12 III. The lands along Walker River, including the
13 lands in the Reservation, are arid and incapable of producing
14 crops without artificial irrigation and there is no source of
15 supply for the irrigation of the lands of the parties to this
16 suit except Walker River and its tributaries.

17 IV. The first use of water from said river by the
18 plaintiff and by the predecessors of the defendants was by
19 means of the overflow of the river in periods of high water,
20 but within a few years after said reservation was set aside
21 the plaintiff and the settlers upstream commenced the construc-
22 tion of ditches and dams for the diversion of the water upon
23 their lands. The plaintiff from time to time enlarged and
24 extended the irrigation ditches upon said Reservation until
25 there are now two canals thereon having a combined length of
26 seventeen miles, a combined capacity of one hundred fifteen
27 cubic feet per second and lateral ditches having a combined
28 length of thirteen miles. There are approximately two thou-
29 sand one hundred acres of said Reservation under cultivation
30 and irrigation and the Indians produce thereon valuable crops
31 of alfalfa hay, grain, vegetables, fowl and livestock, part
32 of which they are enabled to sell.

1 V. There are upon said Reservation approximately five
2 hundred Indians. Ninety-six individual Indians are farming
3 parts of one hundred forty allotments of twenty acres each and
4 ninety-six allotments have homes on them. The Indians general-
5 ly refuse to irrigate at night and there results a considerable
6 loss of water by reason thereof. The number of Indians upon
7 said Reservation is not increasing and it has not been shown
8 that there is the necessity or demand by the Indians for the
9 cultivation of a larger area of land than two thousand one
10 hundred acres.

11 VI. The lands along Walker River and its tributaries
12 above the Reservation were purchased from the United States
13 under acts of Congress by the white settlers, the earliest
14 title originating shortly after the establishment of said Re-
15 servation and the water of Walker River was applied to benefi-
16 cial use upon said lands by successive appropriations, the
17 earliest appropriation being in 1860. In order to supplement
18 the supply for irrigation purposes the settlers through the
19 defendant, Walker River Irrigation District, constructed in
20 1922 Topaz Lake Reservoir having a capacity of approximately
21 fifty thousand acre feet and in 1924-25 Bridgeport Reservoir
22 having a capacity of approximately forty-two thousand acre feet
23 and is storing therein the surplus or flood waters of said
24 river. The aggregate cost of these reservoirs was over eight
25 hundred thousand dollars. No objection was made by the United
26 States of America to the appropriation of water by the white
27 settlers or their construction of expensive irrigation works
28 and no proceedings were taken to determine or preserve the res-
29 pective rights of the United States of America and the white
30 settlers along said river until the commencement of this suit,
31 notwithstanding the United States of America was given an op-
32 portunity to become a party to the suit in this Court entitled

1 "Pacific Livestock Company, a corporation, plaintiff, vs. T.
2 B. Hickey, et al, defendants," No. 731 (hereinafter referred
3 to as suit No. 731), which suit was brought for the purpose
4 of determining all of the water rights in and to the waters of
5 Walker River and its tributaries, commenced in 1904 and decid-
6 ed March 22, 1919, and was invited to file its pleadings in
7 said suit as stipulated by nearly all of the parties thereto
8 under date of May, 1907. The United States of America as
9 late as 1910 relied upon the doctrine of appropriation for
10 its rights, in which year the superintendent of the Reserva-
11 tion, on behalf of the Indians, made application to appro-
12 priate public waters of the State of Nevada. The sixty-ninth
13 Congress authorized a reconnaissance in Schurz Canyon to de-
14 termine to what extent the water supply of Walker River might
15 be augmented, the feasibility of reservoir sites, the cost of
16 rights of way, etc. Pursuant to this authorization, a com-
17 prehensive report known as the Blomgren Report was made Dec-
18 ember 23, 1926, and the supervising engineer recommended to
19 the government as follows:

20 "1. That water rights be adjudicated at the earli-
21 est possible date.

22 "2. That the entire river system be placed in
23 charge of a water commissioner appointed by the fed-
24 eral court, with instructions to require the install-
25 ation of suitable weirs, headgates, and measuring
26 devices by all diverters.

27 "3. That a storage reservoir be created for the
28 Indian land of Walker River Indian Reservation by the
29 construction of a dam at the Rio Vista site, and that
30 the irrigation system be extended to cover the entire
31 irrigable area of the reservation."

32 It was found by Special Master Henry Shurtell in said

1 suit No. 731 and conceded by the defendants in this suit that
 2 the United States of America had appropriated from the Walker
 3 River and applied to beneficial use upon the lands of the
 4 Reservation for the use of the Indians, the quantities of
 5 water in cubic feet per second with dates of priority and the
 6 number of acres irrigated thereby, as follows:

7	<u>Priority</u>	<u>c.f.s.</u>	<u>Acres</u>
8	1868	4.70	335.95
9	1872	3.55	295.80
10	1875	6.15	512.80
11	1883	7.50	625.80
12	1886	1.00	85.80

13 VII. The areas irrigated from said river, exclusive
 14 of the irrigated lands in the Reservation, are approximately
 15 as follows:

16	Bridgeport Meadows	20,000 acres
17	Narrow valleys on East Walker	14,000 acres
18	Antelope Valley	13,000 acres
19	Smith Valley	15,000 acres
20	Mason Valley	48,000 acres

21 VIII. There is a considerable return flow into Walker
 22 River from the water diverted for irrigation in the valleys
 23 above said Reservation, which augments to a certain extent
 24 the flow in the river at said Reservation, but the data fur-
 25 nished in the evidence is insufficient upon which to base any
 26 findings as to the quantity of such return flow.

27 IX. The assessed valuation of the lands in Walker
 28 River Irrigation District is approximately Four Million Dol-
 29 lars. The annual production consisting of alfalfa hay, vege-
 30 tables, grain, dairy products, wool, eggs, fowl and livestock
 31 produced upon the lands watered by said river, exclusive of
 32 the lands of said Reservation, are of the value of upwards of

1 Two Million Dollars. Walker River Irrigation District covers
2 an area of one hundred sixty thousand acres of irrigable land,
3 not all of which is irrigated, and extends up Walker River and
4 its tributaries to the California State Line. The population
5 of the District is approximately three thousand and that of
6 Bridgeport and Antelope Valleys, in California, approximately
7 six hundred.

8 X. The parties to this suit in their pleadings have
9 recognized as effective and binding the water and ditch rights
10 along Walker River with the priorities which were adjudicated
11 by the final decree of this Court in the cause entitled "Siera-
12 Pacific Livestock Company, a corporation, plaintiff, vs. T. B.
13 Riekey, et al, defendants," in Equity No. 731, but subject to
14 the rights and priorities which the Court shall find the plain-
15 tiff and Sierra Pacific Power Company shall be entitled to,
16 which adjudicated rights are set forth in detail in the decree
17 accompanying these findings and which description in said de-
18 cree is made a part hereof by reference as fully as though
19 said description were fully set forth herein.

20 XI. The parties to this suit have stipulated as fol-
21 lows respecting the relative water rights other than those of
22 the plaintiff and Sierra Pacific Power Company, of the water
23 users along the Walker River and its tributaries, which were
24 not adjudicated by said decree in said Suit No. 731:

1 UNITED STATES -vs- WALKER RIVER IRRIGATION
2 DISTRICT, ET AL,
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7 In order to shorten the trial of this case, and to
8 facilitate its early determination, the plaintiff is
9 willing to make concessions to certain defendants,
10 provided they are assented to by the other parties
11 hereto.

12 The plaintiff concedes to the defendants herein-
13 after named for and appurtenant to the lands belong-
14 ing to said defendants respectively, the following
15 water rights on and along the Walker River and its
16 tributaries in Nevada and in California, with the
17 priorities also hereafter named in connection there-
18 with; except that the priorities and water rights
19 of the plaintiff, United States of America, as they
20 may be fixed and determined by the court shall take
21 their places in the order of priorities so that said
22 defendants' rights as so conceded, which are subse-
23 quent to the rights of the United States as they may
24 be fixed and determined by the court herein shall be
25 subordinate to the rights of the United States.

26 All the rights of the defendants as hereby con-
27 ceded shall be fixed and determined upon the basis
28 of the doctrine or law of appropriation and not upon
29 the doctrine or law of riparian rights.

30 The duty of water shall be at the rate of .016
31 cubic feet of water per second of time per acre for
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1 each acre of land irrigated during the irrigation
2 season. In Bridgeport Valley on the West Fork of
3 the Walker River, and at all points above Coleville,
4 Gauging Station on the West Fork of the Walker River,
5 the irrigation season covers the period from March
6 1st to September 15th in each year, and at other
7 points on said river the irrigation season shall con-
8 form to the season fixed in Decree 731. The water
9 shall be measured at the point of diversion from the
10 river.

11 The names of the defendants included in this con-
12 cession; the description of the lands; the dates of
13 priorities, and the areas are as follows:

14
15 (For the sake of brevity the schedule of the rights
16 covered by this stipulation is not set forth herein, but is
17 set forth in detail in the decree accompanying these findings
18 under the head of "Rights of Other Defendants not included in
19 the Decree in said suit No. 731," which schedule in said de-
20 crees is made a part hereof by reference as fully as though
21 said description were fully set forth herein.)

22
23 "The irrigated areas and reservoir capacities re-
24 ferred to in the foregoing stipulation shall be verified
25 by rough survey made by the engineers or representa-
26 tives of the said defendants above named, and checked
27 and approved by the engineers or representatives of
28 the plaintiff prior to insertion in any final decrees
29 entered herein. In the preparation of the recommended
30 and final decrees in this cause, the plaintiff shall
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1 not be precluded from correcting any errors, omissions,
2 mis-calculations, land descriptions or duplications
3 of lands or water rights contained in the foregoing
4 tabulations.

5 The court shall retain jurisdiction of this cause
6 for the purpose of changing the duty of water or for
7 correcting or modifying the decree to be entered; al-
8 so for other regulatory purposes, including a change
9 of the place of use of any water away, but no water
10 shall be sold or delivered outside of the basin of the
11 Walker River (except that appurtenant to the lands of
12 Mrs. J. A. Conway and R. P. Conway, referred to in the
13 foregoing tabulation). The decree shall provide for
14 the method and character of notice to be given respect-
15 ing any proposed changes or modifications thereof.
16 The decree shall contain such other provisions as
17 may be determined proper by the court for the ad-
18 ministration of the decree and the distribution of
19 water thereunder.

20 All the foregoing is subject to such rights and
21 priority or priorities for the plaintiff's lands,
22 and water rights as may be determined by the court.

23 This, and the foregoing concession and tabula-
24 tion does not include and does not refer to the
25 lands and water rights of the Sierra Pacific Power
26 Company, and is without prejudice to their claim
27 of riparian rights. Whatever rights are claimed
28 by said Sierra Pacific Power Company are unaffected
29 by this concession to the other defendants, and are
30 unaffected by their assent thereto."

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1 XII. The irrigation season along the Walker River,
2 its branches and its tributaries, extends from the first day
3 of March to the thirtieth day of September of each year, ex-
4 cept that in Bridgeport Valley on the East Walker River and
5 at all points above Coleville Gauging station on the West
6 Walker River the irrigation season covers the period from
7 March first to September fifteenth of each year.

8 XIII. Sierra Pacific Power Company is the owner of
9 2636.94 acres of land in Mono County, California, at the head
10 waters of West Walker River, described as follows:

11 SWAMP LANDS acquired under the Act of Congress of
12 September 28, 1850.

13 $\frac{1}{2}$ of NW $\frac{1}{4}$, E $\frac{1}{2}$ of SW $\frac{1}{4}$, SW $\frac{1}{4}$ of Sec. 22;
14 S $\frac{1}{2}$ of NW $\frac{1}{4}$, of Sec. 24; SE $\frac{1}{4}$ of NW $\frac{1}{4}$ of
15 Sec. 25; W $\frac{1}{2}$ of NE $\frac{1}{4}$, E $\frac{1}{2}$ of NW $\frac{1}{4}$, E $\frac{1}{2}$ of
SW $\frac{1}{4}$, NW $\frac{1}{4}$ of SW $\frac{1}{4}$, Sec. 26; NW $\frac{1}{4}$ of SW $\frac{1}{4}$,
Sec. 27; T. 6 N., R. 23 E.

16 N $\frac{1}{2}$ of SW $\frac{1}{4}$, SW $\frac{1}{4}$ of SW $\frac{1}{4}$, SW $\frac{1}{4}$ of SW $\frac{1}{4}$, Sec.
17 18; NW $\frac{1}{4}$ of NW $\frac{1}{4}$, Sec. 22; NW $\frac{1}{4}$ of NW $\frac{1}{4}$,
18 Sec. 20; T. 6 N., R. 23 E. M. D. B.
19 & M.

20 SCHOOL LANDS acquired under the Act of Congress of
21 March 3, 1853, described as follows:

22 $\frac{1}{2}$ of NW $\frac{1}{4}$, E $\frac{1}{2}$ of NW $\frac{1}{4}$, SW $\frac{1}{4}$, NW $\frac{1}{4}$ of SW $\frac{1}{4}$,
23 Sec. 16; T. 7 N., R. 23 E. M. D. B.
24 & M. Surveyed March 30, 1850.

25 SCHOOL LIEU LANDS acquired under the Act of Congress
26 of March 3, 1853, with certificate numbers of selection by
27 the State of California and the date of approval by the Sec-
28 retary of the Interior as follows:

29 SW $\frac{1}{4}$ of SW $\frac{1}{4}$, Sec. 10; T. 6 N., R. 23 E.
30 SW $\frac{1}{4}$ of SW $\frac{1}{4}$, Sec. 22; W $\frac{1}{2}$ of NW $\frac{1}{4}$, NW $\frac{1}{4}$
31 of SW $\frac{1}{4}$, Sec. 27; T. 7 N., R. 23 E.
32 M. D. B. & M.
33 Acquired under certificate 12,717, ap-
proved June 25, 1896.

- 1 SE $\frac{1}{4}$ of NW $\frac{1}{4}$, SW $\frac{1}{4}$ of SW $\frac{1}{4}$, Sec. 4; E $\frac{1}{2}$ of
- 2 NW $\frac{1}{4}$, NE $\frac{1}{4}$ of SW $\frac{1}{4}$, W $\frac{1}{2}$ of SW $\frac{1}{4}$, Sec. 9; E $\frac{1}{2}$
- 3 of NE $\frac{1}{4}$, Sec. 21; T. 7 N., R. 23 E.,
- 4 M. D. B. & M.
Acquired under certificate 12,163, ap-
proved June 25, 1896.
- 5 Lots 2 and 3 of Section 4; T. 7 N., R.
- 6 23 E., M. D. B. & M.
Acquired under certificate 13,649, ap-
proved June 25, 1896.
- 7 W $\frac{1}{2}$ of NW $\frac{1}{4}$, W $\frac{1}{2}$ of SW $\frac{1}{4}$, Sec. 22; T. 8
- 8 N., R. 23 E., M. D. B. & M.
Acquired under certificate 12,533, ap-
proved June 25, 1896.
- 9 W $\frac{1}{2}$ of NW $\frac{1}{4}$, W $\frac{1}{2}$ of SW $\frac{1}{4}$, Sec. 15; T. 6
- 10 N., R. 23 E.
- 11 NE $\frac{1}{4}$ of NE $\frac{1}{4}$, Sec. 28; T. 8 N., R. 23
- 12 E., M. D. B. & M.
Acquired under certificate 12,265, ap-
proved June 15, 1896.
- 13 NW $\frac{1}{4}$ of NE $\frac{1}{4}$, Sec. 28; T. 8 N., R. 23 E.,
- 14 excepting 3.72 acres, rectangular in form,
- 15 at the Northwest corner of said NW $\frac{1}{4}$ of
- 16 NE $\frac{1}{4}$, M. D. B. & M.
Acquired under certificate 17,403, ap-
proved June 15, 1896.
- 17 SE $\frac{1}{4}$ of SW $\frac{1}{4}$, Sec. 4; T. 6 N., R. 23 E.
- 18 E $\frac{1}{2}$ of SW $\frac{1}{4}$, Sec. 21; E $\frac{1}{2}$ of NE $\frac{1}{4}$, Sec.
- 19 28; T. 7 N., R. 23 E., M. D. B. & M.
Acquired under certificate 12,157, ap-
proved January 2, 1902.

20 The above described lands are riparian to West Sal-

21 key River and its tributaries at the head waters thereof in

22 that each separate tract originally acquired under a single

23 title borders on said river or its tributaries. The water

24 has been diverted from said river and its tributaries, Green

25 Creek and Poor Creek, by said Sierra Pacific Power Company

26 and its predecessors in interest from the year 1901 and for

27 sometime prior thereto by means of nine small ditches and

28 applied to the lands for the irrigation thereof. The lands

29 so irrigated comprise three hundred twenty-two acres of ir-

30 rigated land and twelve acres of natural overflowed land

31 situated in the following described parcels in Pickle Meadows,

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1 Mono County, California;

2 $\frac{1}{2}$ of NW $\frac{1}{4}$, E $\frac{1}{2}$ of SW $\frac{1}{4}$, SE $\frac{1}{4}$, Sec. 23;
3 S $\frac{1}{2}$ of NE $\frac{1}{4}$, Sec. 24; W $\frac{1}{2}$ of NE $\frac{1}{4}$, N $\frac{1}{2}$
4 of NW $\frac{1}{4}$, E $\frac{1}{2}$ of SW $\frac{1}{4}$, NW $\frac{1}{4}$ of SE $\frac{1}{4}$, Sec.
5 25; T. 6 N., R. 22 E.
6 N $\frac{1}{2}$ of SE $\frac{1}{4}$, SW $\frac{1}{4}$ of SE $\frac{1}{4}$, SE $\frac{1}{4}$ of SW $\frac{1}{4}$,
7 Sec. 18; T. 6 N., R. 23 E., M. D.
8 B. & M.

9 The time of the diversion of said waters and putting
10 same to a beneficial use for irrigation prior to 1901 was not
11 established by the evidence. The irrigating season in said
12 Pickle Meadows was stipulated to be from April first to Sep-
13 tember fifteenth of each year. One-thirtieth of a cubic foot
14 of water per second is necessary for the irrigation of each
15 of said three hundred twenty-two acres of land, or a total of
16 8.05 cubic feet per second for all of said land.

17 By reason of the situation of said lands and the
18 fall of the waters flowing over and across the same, said
19 lands are adaptable, and said waters can be beneficially used
20 by said Sierra Pacific Power Company for the hydraulic effect
21 of the same in the production of power and in the generation
22 of electricity.

23 XIV. During the final hearings before the master, it
24 was stipulated by counsel representing all of the parties to
25 the suit that W. S. Morgan, successor to Spence L. Gregory,
26 by his predecessors in interest, appropriated in 1880 and be-
27 neficially used thereafter from the waters of Rough Creek and
28 its tributaries 1.20 c. f. s. of water for the irrigation of
29 seventy-five acres of land out of the following described
30 parcels situated in Township 5 North, Range 27 East.

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SE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 8;
SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 9;
EW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 16;
NE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 17;

and it was further stipulated that a supplemental answer and counterclaim of H. S. Morgan setting forth such rights be waived and that he be adjudged to have such rights.

IV. It was also stipulated that as to the rights of Ira Fallon set forth in the stipulation respecting the rights other than those covered by said decree No. 731, a duplication of rights amounting to 4.53 c. f. s. had been included in said stipulation and that 4.53 c. f. s. of water should be deducted from the stipulated rights so that the allotment to him under said last mentioned stipulation should read as follows:

<u>Date</u>	<u>Water used for irrigation in c. f. s.</u>	<u>Acres irrigated</u>	<u>Stream</u>
1874	5.14	433	Walker River
1880	2.644	220	
1891	.936	78	

for use upon the following described lands:

NE $\frac{1}{4}$, Sec. 2; T. 14 N., R. 25 E.
W $\frac{1}{2}$ of SE $\frac{1}{4}$, Sec. 23; E $\frac{1}{2}$ of SW $\frac{1}{4}$,
Sec. 24; W $\frac{1}{2}$ of SW $\frac{1}{4}$, SW $\frac{1}{4}$ of NW $\frac{1}{4}$,
E $\frac{1}{2}$ of NW $\frac{1}{4}$, Sec. 26; W $\frac{1}{2}$ of NE $\frac{1}{4}$,
E $\frac{1}{2}$ of SE $\frac{1}{4}$, Sec. 26; NE $\frac{1}{4}$ of E $\frac{1}{2}$ of
NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of SW $\frac{1}{4}$, E $\frac{1}{2}$ of SE $\frac{1}{4}$, SE $\frac{1}{4}$
of SE $\frac{1}{4}$, Sec. 26; W $\frac{1}{2}$ of W $\frac{1}{2}$, Sec.
36; T. 15 N., R. 25 E.

xvi. It was also stipulated that See Science acquired from Mono County, California, under date of May 6, 1909, since the commencement of this suit, the following described lands and the water rights for the irrigation thereof from Virginia and Dogtown Creeks, to-wit:

1	Date	Water used for irriga- tion in a. f. s.	Acres irri- gated	Description
2				
3	1961	1.28	80	NE $\frac{1}{4}$ of NE $\frac{1}{4}$, SW $\frac{1}{4}$ of NE $\frac{1}{4}$, NE $\frac{1}{4}$ of NW $\frac{1}{4}$, Sec. 21; SW $\frac{1}{4}$ of NW $\frac{1}{4}$ Sec. 22; T. 4 N., R. 25 E., M. D. R. 5 M.
4	1962	1.28	80	

5
6 and it was further stipulated that the filing of a supplement-
7 al answer and cross complaint by said Joe Sciarino be waived
8 and that he be entitled to said claim in the decree.

9 XVII. Antelope Valley Mutual Water Company is a cor-
10 poration organized under the laws of the State of Nevada.
11 It is the successor in interest of all the rights of Ante-
12 lope Valley Land and Cattle Company in and to the waters of
13 West Walker River and its tributaries except certain rights
14 conveyed to A. A. Pitt, Edmond Powell, J. A. McAllister and
15 Bruce Chichester, aggregating 5,86 a. f. s. It has no in-
16 terest in the lands upon which said water is used but acts
17 as an agent for the distribution of such waters to the
18 owners of the lands who in the main acquired them from Ante-
19 lope Valley Land and Cattle Company. Antelope Valley Mutual
20 Water Company has changed its application of the water under
21 its priority of 1964 for 17,00 cubic feet of water per se-
22 cond for the irrigation of eleven hundred acres of land along
23 the West Walker River known as the Nevada Lands, Riskey Ranch,
24 as shown in said suit No. 731, to the following described
25 lands and that such substitution does not impair the rights
26 of other parties to this suit.

27 NE $\frac{1}{4}$ of NW $\frac{1}{4}$, Sec. 4; E $\frac{1}{2}$ of E $\frac{1}{2}$, SW $\frac{1}{4}$
28 of NE $\frac{1}{4}$, SW $\frac{1}{4}$ of NW $\frac{1}{4}$, NW $\frac{1}{4}$ of SW $\frac{1}{4}$, Sec.
5; SE $\frac{1}{4}$ of NW $\frac{1}{4}$, W $\frac{1}{2}$ of SW $\frac{1}{4}$, Sec. 8;
29 T. 9 N., R. 23 E.
30 NE $\frac{1}{4}$ of NE $\frac{1}{4}$, Sec. 31; T. 9 N., R. 23 E.
31 SW $\frac{1}{4}$ of NE $\frac{1}{4}$, SW $\frac{1}{4}$ of SW $\frac{1}{4}$, Sec. 12; NE $\frac{1}{4}$
of NW $\frac{1}{4}$, SW $\frac{1}{4}$ of SW $\frac{1}{4}$, Sec. 13; SW $\frac{1}{4}$ of
NW $\frac{1}{4}$, Sec. 36; T. 9 N., R. 22 E.
32 SW $\frac{1}{4}$ of NW $\frac{1}{4}$, Sec. 7; W $\frac{1}{2}$ of SW $\frac{1}{4}$, Sec.

1 16; SW $\frac{1}{4}$ of NE $\frac{1}{4}$, W $\frac{1}{2}$ of SW $\frac{1}{4}$, Sec. 33;
2 T. 9 N., R. 23 E.

3 XVIII. The defendant, Walker River Irrigation Dis-
4 trict, a corporation, is the owner of Bridgeport Reservoir,
5 having a present capacity of forty-two thousand acre feet,
6 situated on the East Walker River below the Town of Bridge-
7 port, and had made application to the State Water Commission
8 of the State of California for water appropriation from the
9 flood and unappropriated waters of East Walker River and
10 its tributaries for the purpose of storing said water in
11 said reservoir and distributing the same to its shareholders,
12 to supplement the use of water to which they are entitled
13 under the decree in case No. 731 as recognized by the stipu-
14 lations hereinbefore set forth when the flow of water in
15 said river is insufficient to meet their several recognized
16 rights.

17 Said appropriation is as follows:

18 Amended application number 1269, permit number 2586,
19 received by said Commission March 11, 1925, for sixty-three
20 thousand acre feet per annum, approved June 18, 1925, for the
21 amount of water applied for which can be beneficially used,
22 not to exceed fifty-seven thousand acre feet per annum, sub-
23 ject to vested rights, for storage to be collected from East
24 Walker River from September first to about July twentieth
25 of each season, the construction work was required to be
26 completed thereunder on or before July 1, 1927, and complete
27 application of the water to the proposed uses to be made on
28 or before August 1, 1929.

29 And said Walker River Irrigation District is the owner
30 of Topac Lake Reservoir, having a present capacity of fifty
31 thousand acre feet, situated near West Walker River below
32 Antelope Valley and has made applications to the State Water
Commission of the State of California for appropriations

1 from the flood and unappropriated waters of West Walker
2 River and its tributaries for the purpose of storing said
3 water in said reservoir and distributing the same to its
4 shareholders, to supplement the use of water to which they
5 are entitled under the decree in case No. 731 as recognized
6 by the stipulations hereinbefore set forth when the flow
7 of water in said river is insufficient to meet their several
8 recognized rights.

9 Said appropriations are as follows:

10 Amended application number 2221, permit number 2507,
11 received by said Commission March 11, 1926, for eighty-five
12 thousand acre feet per annum, approved June 10, 1926, for
13 the amount of water which can be beneficially used, not to
14 exceed eighty-five thousand acre feet per annum, subject to
15 vested rights, for storage in Topaz Lake Reservoir, to be
16 collected from West Walker River from about October first to
17 July fifteenth of each season, the construction work was
18 required to be completed thereunder on or before January
19 1, 1930.

20 Amended application number 2615, permit number 2630,
21 received by said Commission April 20, 1926, for two hundred
22 acre feet per annum, approved June 16, 1926, for the amount
23 of water which can be beneficially used, not to exceed two
24 hundred acre feet per annum, subject to vested rights for
25 storage in Topaz Lake Reservoir, to be collected from an
26 unnamed stream, tributary of Topaz (Formerly Alkali) Lake,
27 from January first to December thirty-first of each season,
28 construction work was required to be completed thereunder
29 on or before June 1, 1930, and complete application of the
30 water to the proposed use to be made on or before August 1,
31 1932.

32 Said defendant, Walker River Irrigation District, has
also made application to the State Water Commission of the

1 State of California for water appropriation for storage pur-
2 poses as follows;

3 Amended application number 1097, permit number 2654,
4 received by said Commission March 11, 1925, for thirty-five
5 thousand acre feet per annum, approved June 18, 1926, for the
6 amount of water which can be beneficially used, not to exceed
7 thirty-five thousand acre feet per annum, subject to vested
8 rights, for storage in Leavitt Meadows, to be collected from
9 West Walker River from about January first to December thirty-
10 first of each season, the construction work was required to
11 be completed thereunder on or before December 1, 1929, and
12 complete application of the water to the proposed use to be
13 made on or before August 1, 1930.

14 Amended application number 1098, permit number 2656,
15 received by said Commission March 11, 1925, for one hundred
16 fifteen thousand acre feet per annum, approved June 19, 1926,
17 for the amount of water which can be beneficially used, not
18 to exceed one hundred fifteen thousand acre feet per annum,
19 subject to vested rights, for storage in Piddle Meadows to
20 be collected from West Walker River from January first to Dec-
21 ember thirty-first of each season, the construction work was
22 required to be completed thereunder on or before December 1,
23 1929, and complete application of the water to the proposed
24 use to be made on or before August 1, 1930.

25 The storage of water in said reservoirs between the
26 first of November and the first of the succeeding March
27 will not interfere with the water required for irrigation
28 purposes by the other parties to this suit and the storage
29 of water in said reservoirs from the water in said river in
30 excess of the amounts adjudicated to the parties hereto under
31 the decrees in said suit No. 731 and recognized in the stipu-
32

1. lations hereinbefore contained, and found herein for the
 2 United States of America and Sierra Pacific Power Company,
 3 will not interfere with the rights of the parties to this
 4 suit.

5 XIX. During the final hearings before the Master, it
 6 was stipulated by the attorneys for the parties to this suit
 7 that the applicants for permits filed with the State Engineer
 8 of Nevada for the use of water from Walker River and its
 9 tributaries so far as the applications therefor are in force
 10 may be deemed such rights in such waters as they may have,
 11 subject to vested rights and subject to final action thereon
 12 by said State Engineer.

13 The following is a schedule of such applications, so
 14 far as the same were presented, showing the name of the ap-
 15 plicant, the stream from which the water is to be diverted,
 16 the number of the application, the date of the application,
 17 the amount of water applied for in cubic feet per second,
 18 the number of acres to be irrigated, a description of the
 19 land in which the amount of land to be irrigated is to be
 20 found, the quantity of water allowed by the State Engineer
 21 and the number of acres to be irrigated thereby:

22	<u>Name</u>	<u>Stream</u>	<u>Number</u>	<u>Date</u>	<u>Water</u>	<u>No. of</u>	<u>Description</u>
23					<u>applied</u>	<u>acres</u>	
24					<u>for</u>		
25	Arons, Frank A.,		1258	January 20, 1909	.8	80	21.5 acres in SW $\frac{1}{4}$ of SW $\frac{1}{4}$; 21.1 acres in SW $\frac{1}{4}$ of SE $\frac{1}{4}$; Sec. 28; 4.7 acres in NW $\frac{1}{4}$ of NE $\frac{1}{4}$; 32.7 acres in NE $\frac{1}{4}$ of NE $\frac{1}{4}$; Sec. 28; T. 12 N., R. 26 E.
26							
27							
28							
29							
30	Approved for				a.f.s. and		acres.
31							
32							

1 Regli, Paul,
2 West 1476 October 2.66 320 4 acres in NW¹/₄ of
3 Walker 25, 1909 NE¹/₄, 20 acres in
4 in SW¹/₄ of NE¹/₄, 7 acres
5 36 acres in SE¹/₄ of NE¹/₄,
6 38 acres in NW¹/₄ of
7 SE¹/₄, 14 acres in
8 NE¹/₄ of SE¹/₄, 38 acres
9 in SW¹/₄ of SE¹/₄, 10
10 acres in SE¹/₄ of SE¹/₄,
11 Sec. 25; T. 12 N.,
12 R. 23 E.
13 Approved for 1.57 c.f.s. and 157 acres.
14
15 Yeager, J. D., et al,
16 West 1419 February 2.26 320
17 Walker 25, 1910 River
18 Approved for 1.5203 c.f.s. and 152.03 acres.
19 Approved for .6364 c.f.s. and 63.64 acres.
20
21 Garney, Henry, Succeeded by L. L. Wedertz,
22 Succeeded by F. E. Wedertz, Succeeded by
23 C. E. Wedertz,
24 West 1630 March 1.53 160 60 acres in SE¹/₄ of
25 Walker 21, 1910 River Sec. 16; 30
26 acres in NE¹/₄ of NE¹/₄,
27 Sec. 22; T. 11 N.,
28 R. 23 E.
29 Approved for 1.53 c.f.s. and 160 acres.
30
31 Arons, Samuel,
32 1776 August
33 10, 1914
34 Approved for 3.2 c.f.s. and 320 acres.
35
36 Butler, J. D., Succeeded by Ugo
37 and Giulio Giorgi,
38 East 3040 May 9.6 960
39 Walker 8, 1911 River
40 Approved under certificate 1200 for
41 .79 c.f.s. and 79 acres
42
43 39.5 acres in SW¹/₄
44 of SE¹/₄, Sec. 21;
45 39.5 acres in SE¹/₄

1 of Sec. 5, T. 13 N., R. 26 E.

2

3 Butler, J. D., Succeeded by
Isabel Foster Bernard,

4 East 2040 May 9.6 960
Walker 8, 1911
River

5

6 Approved under certificate 1801 for
7 1.5658 c.f.s. and 158.55 acres

8

9 40 acres in SW¹/₄ of
10 NW¹/₄, 40 acres in
11 NW¹/₄ of NW¹/₄, 25.2
12 acres in NE¹/₄ of
13 SW¹/₄, 59.45 acres in
14 SW¹/₄ of SW¹/₄, 9.26
15 acres in NW¹/₄ of
16 SW¹/₄, Sec. 6; 9.6
17 acres in NE¹/₄ of NW¹/₄,
18 Sec. 7; T. 13 N.,
19 R. 26 E.

20 Butler, J. D., Succeeded by
21 Joseph Traill,

22 East 2040 May 9.6 960
Walker 8, 1911
River

23

24 Approved under certificate 1802 for
25 1.3056 c.f.s. and 130.56 acres.

26

27 37.55 acres in NW¹/₄
28 of NW¹/₄, 34.43 acres
29 in NW¹/₄ of NW¹/₄,
30 39.04 acres in NW¹/₄
31 of NW¹/₄, 14.94 acres
32 in SW¹/₄ of NW¹/₄, Sec.
33 6; T. 13 N., R.
34 26 E.

35 Butler, J. D., Succeeded by
36 D. J. Kennahan,

37 East 2040 May 9.6 960
Walker 8, 1911
River

38

39 Approved under certificate 1803 for
40 1.707 c.f.s. and 70.7 acres.

41

42 40 acres in NW¹/₄ of
43 NE¹/₄, 39.45 acres in
44 NW¹/₄ of NW¹/₄, 1.84
45 acres in NW¹/₄ of
46 NW¹/₄, Sec. 6; T. 13
47 N., R. 26 E.

48 Butler, J. D. Succeeded by
49 Leslie A. E. Green,
50 East 2040 May 9.6 960
Walker 8, 1911
River

1	Approved under certificate 1804 for					
2	.3266 c.f.s. and 32.66 acres.					SW $\frac{1}{4}$ of SW $\frac{1}{4}$, Sec. 32;
3	Approved under certificate 1904 for					
4	.3904 c.f.s. and 39.04 acres.					SE $\frac{1}{4}$ of SE $\frac{1}{4}$, Sec. 31;
5						T. 19 N., R. 26 E.
6	Arena, Franklin, Succeeded by MasonValley Bank,					
7	West	2523	October	2.3	230	
8	Walker		9, 1912			
9	Approved under certificate 654 for					
10	1.851 c.f.s. and 185.1 acres.					40 acres in SW $\frac{1}{4}$ of
11						NE $\frac{1}{4}$, 40 acres in
12						SE $\frac{1}{4}$ of NE $\frac{1}{4}$, 37.6
13						acres in NW $\frac{1}{4}$ of
14						SE $\frac{1}{4}$, 40 acres in
15						NW $\frac{1}{4}$ of SE $\frac{1}{4}$, 9.6
16						acres in SW $\frac{1}{4}$ of
17						SE $\frac{1}{4}$, 17.9 acres in
18						SE $\frac{1}{4}$ of SE $\frac{1}{4}$, Sec. 28;
19						T. 19 N., R. 25 E.
20	Penny, Oliver, A.,					
21	East	3369	April	3.4	340	
22	Walker		26, 1915			W $\frac{1}{2}$ of SE $\frac{1}{4}$, Sec. 12;
23	River					W $\frac{1}{2}$ of NE $\frac{1}{4}$, Sec. 13;
24						SW $\frac{1}{4}$ of SE $\frac{1}{4}$, Sec. 34;
25						SW $\frac{1}{4}$ of NE $\frac{1}{4}$, Sec. 25;
26						T. 19 N., R. 25 E.
27	Approved for					c.f.s. and acres.
28	Penny, Charles G.,					
29	East	3370	April	2	200	
30	Walker		26, 1915			
31	River					
32	Approved for					c.f.s. and acres.
33	Lewis, Annette D.					
34	East	4381	April	1	100	
35	Walker		8, 1917			
36	River					
37	Approved for					1 c.f.s. and 95 acres.
38						

1	Regli, Paul,					
2	West	4391	April			
3	Walker		10, 1917			
4	River					
5	No action by State Engineer.					
6	Allup, R. W. and W. G.					
7		4856	January	2.0	200	SE 1/4 of SW 1/4, Sec. 1;
8			22, 1918			NE 1/4 of NE 1/4, NW 1/4 of
9						NE 1/4, SE 1/4 of NW 1/4, Sec.
10						12; T. 12 N., R.
11						25 W.
12	Approved for		c.f.s. and			acres.
13	Lewin, Arnette D.,					
14	East	5052	May	1	100	
15	Walker		4, 1918			
16	River					
17	Approved for		c.f.s. and			acres.
18	Wichman, John H. and James H.,					
19	East	4896	December	.4768	47.68	4.3 acres in NE 1/4
20	Walker	superseded	12			of NE 1/4, Sec. 8;
21	River	4896	1916			13.10 acres in
22						NW 1/4 of SW 1/4, .75
23						acres in NE 1/4 of
24						SW 1/4, 7.9 acres
25						in NE 1/4 of SW 1/4,
26						1.17 acres in
27						SW 1/4 of NE 1/4, 1.9
28						acres in SW 1/4 of
29						SW 1/4, 6.10 acres
30						in SW 1/4 of SW 1/4,
31						5.41 acres in
32						SW 1/4 of SW 1/4, 4
33						acres in SW 1/4 of
34						SW 1/4, Sec. 9; T.
35						8 N., R. 27 W.
36	Approved for	.4768	c.f.s. and	47.68	acres	
37	with priority of filing application					
38	number 4346, December 12, 1916.					
39	Parker, George,					
40	Birmingham	3850	March	.8782	86.83	12.56 acres in
41	Slough		13, 1916			NE 1/4 of SW 1/4,
42	(a part of					10.50 acres in
43	Walker					SW 1/4 of NE 1/4;
44	River)					25.60 acres in
45						SW 1/4 of NE 1/4;
46						15.94 acres in
47						NE 1/4 of SW 1/4;

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5.66 acres in NE $\frac{1}{4}$
of SE $\frac{1}{4}$; 19.66 acre
in SE $\frac{1}{4}$ of NE $\frac{1}{4}$; Sec.
20; T. 15 N., R. 2
E.

Approved for 0.6702 a.T.S. and 87.82 acres.

All of the land hereinabove described is situated in townships north and ranges east of Mount Diablo Base and Meridian and the designation "N. D. L. & M" is hereby made a part of each description of land as fully as if specifically set forth.

CONCLUSIONS OF LAW

Even if a reservation of water may be implied in the executive order of 1859, yet the facts and circumstances here shown impel the conclusion that the interests of the white settlers, enjoyed without challenge for more than fifty years, should not be disturbed.

Upon the facts found, the Court concludes as follows:

I. The law or doctrine of appropriation and not of riparian rights applies to all the claims of all the parties to this suit in and to the waters of Walker River and its tributaries, save and except defendant, Sierra Pacific Power Company, whose rights shall be determined by the doctrine or law of riparian rights, as recognized by statute and decisions in the State of California.

II. The plaintiff, the United States of America, is entitled to a decree that it is the owner and entitled to the use of, upon the Reservation, by right of appropriation, the

1 amounts of water from Walker River, at the points of diversion,
2 with priorities and acreage to be irrigated as set forth in
3 the aforesaid findings of fact.

4 III. Sierra Pacific Power Company, a corporation, is
5 entitled to a decree that it is the owner of the lands in the
6 State of California described in paragraph XIII. of the aforesaid
7 findings of fact and that said corporation is the owner
8 of and entitled to the use of a flow of 9.05 c. f. s. under
9 its riparian rights in and to the waters of West Walker River,
10 Green Creek and Poor Creek, tributaries of West Walker River,
11 for the irrigation of these hundred twenty-two acres of land
12 in Pickle Meadows, Mono County, California, and embraced
13 within the land specifically described in paragraph XIII. of
14 the aforesaid findings of fact. That said Sierra Pacific
15 Power Company, a corporation, as a riparian owner is entitled
16 to a decree to the use of the hydraulic effect of the waters
17 of the said West Walker River for power purposes for the gen-
18 eration of electricity and has the right for such purpose to
19 divert said waters by means of a dam or dams across said
20 stream on its own land, and to erect flumes or conduits, and
21 such machinery as the stream at ordinary stages is adequate
22 for such purpose to propel said machinery and produce power
23 and electricity and after such use shall return such waters
24 to the natural channel of said stream without unreasonable de-
25 tention or substantial diminution in quantity or quality.

26 IV. The parties to this suit and their successors in
27 interest claiming rights under the decree in suit No. 731 in
28 this Court, are entitled to a decree that they are the owners
29 and entitled to the use of the several quantities of water
30 from Walker River and its tributaries under the priorities
31 and applicable to the lands as found in paragraph X. of the
32 aforesaid findings of fact and as set forth in the tabulations
revised to show the present ownership specifically set forth

1 in the decree accompanying the findings of fact aforesaid and
2 these conclusions of law,

3 V. The parties defendant to this suit other than
4 those whose rights were adjudicated under said decree No. 731,
5 are entitled to a decree that they are the owners and en-
6 titled to the use of the several quantities of water under the
7 priorities and applicable to the lands described in the stip-
8 ulation set forth in paragraph XI, of the aforesaid find-
9 ings of fact with the specific amounts of water, priorities
10 and land to which applicable, included in the stipulation
11 and set forth in detail in the decree accompanying the find-
12 ings of fact aforesaid and these conclusions of law.

13 VI. K. S. Morgan is entitled to a decree adjudging him
14 to be the owner and entitled to the use of 1.2 c.f.s. of the
15 water of Rough Creek, a tributary of East Walker River, with
16 a priority of 1860, for the irrigation of seventy-five acres
17 of land described in paragraph XIV. of the aforesaid find-
18 ings of fact.

19 VII. Ira Fallon is entitled to a decree adjudging
20 him to be the owner of and entitled to the use of 5.14 c.f.s.
21 of the priority of 1874, 2.644 c.f.s. of the priority of
22 1880 and .926 c.f.s. of the priority of 1891, of the waters
23 of Walker River, in addition to the water allocated to him
24 under said decree No. 731, for use upon the lands specific-
25 ally described in paragraph XV. of the aforesaid findings of
26 fact.

27 VIII. Joe Solerins, as the successor of Mono County,
28 California, in the lands hereinafter referred to, is entitled
29 to a decree adjudging him to be the owner and entitled to the
30 use of 1.28 c.f.s. of the priority of 1861 and 1.26 c.f.s. of
31 the priority of 1863, of the waters of Virginia and Dogtown
32 Creeks for application upon the lands specifically described

1 in paragraph XVI. of the aforesaid findings of fact.

2 IX. Walker River Irrigation District, a corporation,
3 is entitled to a decree adjudging it to be the owner of
4 Bridgeport Reservoir on East Walker River, having a present
5 capacity of forty-two thousand acre feet and to be the owner
6 of Topaz Lake Reservoir near West Walker River, having a
7 present capacity of fifty thousand acre feet and authorized
8 to divert and store in said reservoirs from the East and
9 West Walker Rivers, respectively, and their tributaries,
10 flood and unappropriated waters of said streams to the
11 extent of the respective capacities of said reservoirs for
12 the use of its shareholders, such diversion to be made an-
13 nually during the season from November first to March first
14 and at other times when there is an excess of water in said
15 rivers over the amounts severally adjudicated to the other
16 parties to this suit, but such diversion should not be per-
17 mitted to the extent of depriving such parties of water for
18 stock watering and for domestic purposes and/or water now
19 in use for power purposes.

20 said Walker River Irrigation District is entitled to
21 a decree for storage purposes of flood and unappropriated
22 waters under applications made to and approved by the State
23 Water Commission of the State of California for fifteen
24 thousand acre feet per annum from East Walker River for
25 storage in Bridgeport Reservoir, being the difference between
26 the quantity approved by said Commission under permit No.
27 2536 and the present capacity of said reservoir; thirty-
28 five thousand acre feet per annum from West Walker River for
29 storage in Topaz Lake Reservoir, being the difference between
30 the quantity approved by said Commission under permit No.
31 2537 and the present capacity of said reservoir; two hundred
32 acre feet per annum from an unnamed stream flowing into

1 Topan Lake Reservoir, formerly Alkali Lake, for storage in
2 said reservoir; thirty-five thousand acre feet per annum
3 from West Walker River for storage in a reservoir to be
4 constructed in Leavitt Meadows and one hundred fifteen
5 thousand acre feet per annum from West Walker River for
6 storage in a reservoir to be constructed in Pickett Meadows,
7 subject to vested rights and subject to prior appropriation
8 made under permits issued by the State Engineer of the State
9 of Nevada and subject to final action on said applications
10 made by said Walker River Irrigation District to the State
11 Water Commission of the State of California.

12 X. The following persons:

13 Frank A. Arents
14 Paul Regli
15 J. D. Yeager
16 Henry Carnoy
17 Samuel Arents
18 F. D. Butler
19 Franklin Arents
20 Oliver A. Ferry
21 Charles C. Ferry
22 Annette D. Lewis
23 R. W. Allwa
24 John H. and James H. Wickham

25 who have made application to the State Engineer of the State
26 of Nevada for permits for use of water of Walker River and
27 its tributaries specifically set forth in the findings of
28 fact aforesaid, are entitled to a decree adjudging them to
29 be severally the owners and entitled to the use of the
30 amounts of water, the land to which the water is to be ap-
31 plied and the priorities allowed by said State Engineer, sub-
32 ject to compliance with the requirements under the respective
33 permits issued to them and to final action thereon by said
34 State Engineer, and subject to prior vested rights.

35 DONE IN OPEN COURT this 14th day of April, 1946.

36 A. F. ST. BURE
37 United States District Judge.