

IN THE TENTH JUDICIAL DISTRICT COURT  
OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF LINCOLN

IN THE MATTER OF THE DETERMINATION)  
OF THE RELATIVE RIGHTS IN AND TO ( )  
THE WATERS OF PAHRANAGAT LAKE AND ( )  
ITS TRIBUTARIES IN LINCOLN COUNTY, ( )  
STATE OF NEVADA. ( )

D E C R E E

This proceeding coming on for hearing on the twenty-first day of June, 1927, at the hour of 10:00 o'clock of the forenoon of said day, before Honorable Wm. E. Orr, Judge of the above entitled Court, and all exceptors to the State Engineer's Order of determination being present in person and represented by their counsel, and the State Engineer being represented by Field Engineer H. T. McQuiston and it appearing to the Court;

That on Dec. 8, 1919, Mrs. Rachel Stewart, John W. Wedge, Geo. W. Richard, John W. Richard, Joseph L. Sharp, Christian A. Koyen, and W. F. Thorne, all of Alamo, Lincoln County, Nevada, and water users from Ash Springs, a tributary of Pahrana-gat Lake, petitioned the State Engineer for a determination of the relative rights to the use of water from Pahrana-gat Lake and its tributaries.

That on the \_\_\_\_\_ day of July, 1920, a further petition for such determination was received by the State Engineer from N. T. Stewart Sr., J. F. Foremaster, Raymond Stewart, Sid Pace and C. I. Wadsworth, all of Alamo, Lincoln County, Nevada, and using water from Ash, Crystal, and Hiko Springs, tributaries of Pahrana-gat Lake.

That the then State Engineer, J. G. Scrugham, thereupon in accordance with the provisions of section 18, chapter 140, Nevada Statutes of 1913, made an investigation to disclose whether facts and conditions justified such determination of the

relative rights involved.

That as a result of his investigation, he was convinced that facts and conditions did justify such determination of relative rights on the stream system in question, and that he did therefore make and enter on the records of his office an Order for the determination of the relative rights of the various claimants to the use of water of the Pahranaget Lake stream system, located in Lincoln County, Nevada.

That as soon as practicable thereafter, the State Engineer did proceed with such determination of performing the acts required of him by law, as hereinafter stated, namely:

That as soon as practicable after the making and entering of said Order upon the records of his office, and on the 22d day of June, 1921, he prepared a Notice setting forth the fact of the entry of said Order, and of the pendency of said proceedings, naming therein the date of July 27, 1921, when he or his assistants would begin their examinations, and set forth therein that all claimants to rights in the waters of said stream system were required by law to make proof of their respective claims.

That the State Engineer thereupon caused said notice to be published for a period of four consecutive weeks in the Caliente News, a newspaper of general circulation within the boundaries of the Pahranaget Lake Stream system.

That at the time set in said Notice, or on July 27, 1921, the State Engineer did begin an investigation of the flow of said Pahranaget Lake and its tributaries and of the ditches diverting waters and of the lands irrigated therefrom and did proceed with such investigation by gathering all data and information as was essential to a proper determination of the water rights involved.

That he did thereafter reduce his observations and measurements to writing and did cause to be executed surveys,

and did cause to be prepared maps from the observations of such surveys, in accordance with uniform rules and regulations heretofore adopted by him, which surveys and maps did, and do now, show with substantial accuracy the location and course of said stream and its tributaries, the location of each ditch diverting water therefrom together with the points of diversion thereof, the area and outline of each parcel of land upon which the waters of said stream or tributaries had heretofore been employed for the irrigation of crops or pastures, and indicating the kind of culture upon each of said parcels of land, and which said maps, when completed, were filed and made a record in the office of the State Engineer, and that the maps for original filings in said office were made upon tracing linen to a scale of not less than one thousand feet to one inch.

That upon the filing of such measurements, maps and determinations, the State Engineer did prepare a Notice setting forth the date of October 15, 1921, when he would commence the taking of proofs as to the rights in and to the waters of Pahrnagat Lake and its tributaries and the date prior to which the same should be filed.

That, thereafter, the State Engineer did cause said notice to be published for a period of four consecutive weeks in the Caliente News, a newspaper of general circulation within the boundaries of said stream system.

That at the time named in said Notice, or on October 15, 1921, the State Engineer did commence the taking of proofs as stated in said notice and did receive and file in his office various statements and proofs of claims, under the oath of the claimants, during all of the period of sixty days ending on the 15th day of December, 1921.

That he did, in addition, extend the time for filing proofs of claims, by Notice dated December 14, 1921, up to and

including March 15, 1922; and again, by Notice dated March 15, 1922, up to and including June 15, 1922; and still again by Notice dated May 27, 1922, up to and including June 25, 1922.

That as soon as practicable after the expiration of the extended period within which proofs of claims might be filed with him he did proceed to and did in fact thereafter prepare and certify, an Abstract of Claims, which bears no date, and caused the same to be typed in his office.

That immediately after preparing, certifying and causing said Abstract of Claims to be typed in his office, the State Engineer did also prepare from the proofs and evidence taken or given before or obtained by him, a Preliminary Order of Determination, dated October 1, 1925, establishing the several rights of Claimants to the waters of the said stream system, which Preliminary Order he caused to be printed in the State Printing Office.

That, when said Abstract of Claims and Preliminary Order of Determination were completed, the State Engineer did then prepare a Notice, dated December 15, 1925, fixing and setting a period of twenty days, beginning on Monday, January 25, 1926, when the evidence taken by or filed with him and the proofs of claims would be open to inspection of all interested parties at his office at Carson City, Nevada; which Notice was deemed an Order of the State Engineer as to the matter contained therein.

That a copy of said Notice, together with a copy of the typewritten Abstract of Claims and a printed copy of the Preliminary Order of Determination were enclosed in envelopes with the postage thereon fully prepaid, addressed to each of the persons who had theretofore appeared and filed proofs of claims, at his or her correct address and on the 15th day of December, 1925, all of said envelopes with their contents and addressed as aforesaid were, by the State Engineer, placed in the United States

Post Office at Carson City, Nevada, and caused to be registered before mailing, with a request that return receipts be forwarded to him at his office at Carson City, Nevada. Thus the aforesaid Notice of Inspection, Abstract of Claims and Preliminary Order of Determination were sent by registered mail at least thirty days prior to the first day of the inspection period to each person who had appeared and filed proof of claims.

That the State Engineer, personally or through his authorized assistants, was present throughout the time and at the place designated in said above described Notice of Inspection, and did allow during said twenty day period of inspection, all persons interested to inspect such evidence and proofs as had been filed with or taken by him in connection with the proceedings of Determination of the Relative Rights.

That, for a period of thirty days after the time of opening all evidence and proofs for public inspection as hereinabove described, the State Engineer did receive and officially file in his records, all objections to any finding, part or portion of the Preliminary Order of Determination made by the State Engineer submitted by any persons claiming any interest in the stream system involved either under vested right or under permit from the State Engineer. All such objections received were verified by the affidavit of the objector or his agent or attorney and stated with reasonable certainty the grounds of objection.

That the State Engineer did thereafter prepare a Notice, fixing a time and place for hearing objections, which was sent by registered mail, in the usual manner, to each claimant whose name appeared in the Preliminary Order of Determination, in ample time for its delivery at least thirty days prior to the date set for said hearing.

That at the time and place named in the Notice last above mentioned, the State Engineer did commence the hearing of objections theretofore filed with him and did continue such hearings until hearings were had on all such objections. The evidence taken at such hearings was confined to the subjects enumerated in the objections and Preliminary Order of Determination.

That as soon as practicable after hearing objections to the Preliminary Order of Determination, the State Engineer did make, under date of April 21, 1926, and cause to be entered of record in his office, an Order of Determination defining the several rights to the waters of the stream system and caused the same to be printed in the State Printing Office at Carson City, Nevada. The State Engineer thereupon delivered in person, or by registered mail, in the usual manner, a certified copy of said Order of Determination to each person who had filed proof of claim or had become interested in the proceedings through intervention or their filing objections under the provision of sections 26 to 29 of the Water Code of Nevada.

As soon as practicable thereafter the State Engineer did file with the Clerk of the Tenth Judicial District Court at Pioche, Nevada, a certified copy of the Order of Determination together with all of the original evidence and transcript of testimony filed with or taken before the State Engineer, duly certified by him.

That upon the filing of such certified copy of said Order, evidence and transcript with the Clerk of the Court, the State Engineer did request an order from said Court setting the time for hearing on the Order of Determination, which order is contained in the minutes of this Court. The Clerk of the Court thereupon immediately furnished a certified copy thereof to the State Engineer, who thereupon mailed a copy of such certi-

fied Order of the Court, by registered mail and in the usual manner, addressed to each party in interest at his last known place of residence.

That the State Engineer did also cause said Order of Court setting time for hearing on June 21, 1927, to be published at least once a week for four consecutive weeks in the Lincoln County Record, a newspaper of general circulation within the boundaries of the Pahrangat Lake stream system.

That at least five days prior to the date set for hearing, all exceptions to the Order of Determination were received and duly filed by the Clerk of this Court.

That on the 22nd day of August, 1929, Deputy State Engineer G. F. Engle prepared an Affidavit of Compliance with Jurisdictional Requisites in connection with the proceedings, which affidavit was duly filed with the Clerk of this Court and now appears in the records thereof.

That said cause was, on the 21st day of June, 1927, heard before this Court, and the claimants and exceptors having presented their evidence, both oral and documentary, to the Court, and the Court having heard the witnesses sworn and examined on behalf of the claimants and exceptors and of the State, and the cause having been submitted to the Court for decision, and the Court having rendered its written decision thereon, and having made and filed its Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, as follows,  
to-wit:

I

That except such persons as may have acquired rights to the use of the water of Pahrangat Lake Stream System by Permits granted under applications to the State Engineer under and by virtue of the Statutes of 1905, Chapter 46, the Statutes of 1907, page 30, and under and by virtue of Chapter 140, Statutes of 1913, as amended, no person other than the parties named herein

have or claim any interest in or to said water or in or to the use of water or any part thereof.

II

That the following claimants and their successors in interest have and are hereby awarded the right to use the waters of Pahrnagat Lake and its tributaries at the following times, in the following amounts, upon the following described lands, through the following ditches, conduits, or other means of conveyance, and of the following relative priorities:

Claimant - J. L. SHARP

Proof No. 01354

Source - ASH SPRINGS.

Ditch - BROWN, SHARP BROS.,  
RICHARD and WEDGE.

Year of Priority	Culture-Acres		Location				Length of Season	Duty of Water	
	Har-vest Crops	Diver-sified Pasture	Subdi- vision	Sec.	Tp.	S. R.E.		C.F.S.	Acre-Ft.
1894	8.00		SW $\frac{1}{4}$ SW $\frac{1}{4}$	29	6	61	3-14-10- 1	0.080	32.00
1894	4.00		SW $\frac{1}{4}$ SW $\frac{1}{4}$	29	6	61	3-14-10- 1	0.040	16.00
1894	10.00		SE $\frac{1}{4}$ SE $\frac{1}{4}$	30	6	61	3-14-10- 1	0.100	40.00
1896	0.30		SE $\frac{1}{4}$ NE $\frac{1}{4}$	31	6	61	3-14-10- 1	0.003	1.20
1900	21.00		NE $\frac{1}{4}$ NE $\frac{1}{4}$	31	6	61	3-14-10- 1	0.210	84.00
1896	4.00		SE $\frac{1}{4}$ NE $\frac{1}{4}$	31	6	61	3-14-10- 1	0.040	16.00
1885	40.00		NE $\frac{1}{4}$ SW $\frac{1}{4}$	32	6	61	3-14-10- 1	0.400	160.00
1885	10.00		NW $\frac{1}{4}$ SW $\frac{1}{4}$	32	6	61	3-14-10- 1	0.100	40.00
1885	5.00		NW $\frac{1}{4}$ SW $\frac{1}{4}$	32	6	61	3-14-10- 1	0.050	20.00
1898	5.00		SW $\frac{1}{4}$ NW $\frac{1}{4}$	32	6	61	3-14-10- 1	0.050	20.00
1898	3.00		SW $\frac{1}{4}$ NW $\frac{1}{4}$	32	6	61	3-14-10- 1	0.030	12.00
1898	9.00		SW $\frac{1}{4}$ NW $\frac{1}{4}$	32	6	61	3-14-10- 1	0.090	36.00
1898	17.00		SW $\frac{1}{4}$ NW $\frac{1}{4}$	32	6	61	3-14-10- 1	0.170	68.00
1898	20.00		NW $\frac{1}{4}$ NW $\frac{1}{4}$	32	6	61	3-14-10- 1	0.200	80.00
1898	5.00		NW $\frac{1}{4}$ NW $\frac{1}{4}$	32	6	61	3-14-10- 1	0.050	20.00
1898	2.00		NW $\frac{1}{4}$ NW $\frac{1}{4}$	32	6	61	3-14-10- 1	0.020	8.00
1898	2.60		NW $\frac{1}{4}$ NW $\frac{1}{4}$	32	6	61	3-14-10- 1	0.026	10.40

165.90

1.659

Claimant - J. W. RICHARD

Proof No. 01362

Source - ASH SPRING CREEK.

Ditch - RICHARD and WEDGE.

1892	9.00		SW $\frac{1}{4}$ SW $\frac{1}{4}$	29	6	61	3-14-10- 1	0.090	36.00
1892	...	12.00	NW $\frac{1}{4}$ SE $\frac{1}{4}$	29	6	61	3-14- 6-22	0.120	24.00
1895	9.00		NE $\frac{1}{4}$ NW $\frac{1}{4}$	32	6	61	3-14-10- 1	0.090	36.00
1895	15.00		NW $\frac{1}{4}$ NW $\frac{1}{4}$	32	6	61	3-14-10- 1	0.150	60.00
1895	4.00		SW $\frac{1}{4}$ NW $\frac{1}{4}$	32	6	61	3-14-10- 1	0.040	16.00
1900	8.00		NE $\frac{1}{4}$ NW $\frac{1}{4}$	32	6	61	3-14-10- 1	0.080	32.00
1900	25.00		SE $\frac{1}{4}$ NW $\frac{1}{4}$	32	6	61	3-14-10- 1	0.250	100.00

0.82



Claimant - JOHN W. WEDGE

Proof No. 01363

Source - ASH SPRING CREEK. Ditch - RICHARD and WEDGE,  
J. WEDGE WEST.

Year of Priority	Har-vest Crops	Diver-sified Pasture	Subdi- vision		Location			Length of Season	Duty of Water	
			Sec.	Tp.	S.	R.	E.		C.F.S.	Acre-Ft.
1866	5.00		SW $\frac{1}{4}$	SE $\frac{1}{4}$	32	6	61	3-14-10-1	0.050	20.00
1867	7.00		SW $\frac{1}{4}$	SE $\frac{1}{4}$	32	6	61	3-14-10-1	0.070	28.00
1868	6.00		SW $\frac{1}{4}$	SE $\frac{1}{4}$	32	6	61	3-14-10-1	0.060	24.00
1890	30.00		SE $\frac{1}{4}$	SW $\frac{1}{4}$	32	6	61	3-14-10-1	0.300	120.00
1890	10.00		SE $\frac{1}{4}$	SW $\frac{1}{4}$	32	6	61	3-14-10-1	0.100	40.00
1885	6.00		SW $\frac{1}{4}$	SW $\frac{1}{4}$	32	6	61	3-14-10-1	0.060	24.00
1868	16.00		SW $\frac{1}{4}$	SE $\frac{1}{4}$	32	6	61	3-14-10-1	0.160	64.00
1905	2.00		SE $\frac{1}{4}$	SE $\frac{1}{4}$	32	6	61	3-14-10-1	0.020	8.00

Claimant - G. W. RICHARD

Proof No. 01393

Source - ASH SPRINGS. RICHARD. Ditch - RICHARD and WEDGE,  
J. WEDGE WEST.

1868	25.00		NW $\frac{1}{4}$	SE $\frac{1}{4}$	32	6	61	3-14-10-1	0.250	100.00
1868	40.00		W $\frac{1}{2}$	NE $\frac{1}{4}$	5	7	61	3-14-10-1	0.400	160.00
1883	25.00		W $\frac{1}{2}$	NE $\frac{1}{4}$	5	7	61	3-14-10-1	0.250	100.00
1891	10.00		NE $\frac{1}{4}$	NE $\frac{1}{4}$	5	7	61	3-14-10-1	0.100	40.00
1891	2.00		SE $\frac{1}{4}$	NE $\frac{1}{4}$	5	7	61	3-14-10-1	0.020	8.00
1891	7.00		SE $\frac{1}{4}$	NE $\frac{1}{4}$	5	7	61	3-14-10-1	0.070	28.00

Claimant - W. H. SHARP

Proof No. 01394

Source - ASH SPRING CREEK. SHARP BROS. Ditch - GILBERT and SHARP,  
RICHARD and SHARP.

1875	4.00		SE $\frac{1}{4}$	NW $\frac{1}{4}$	18	6	61	3-14-10-1	0.040	16.00
1875	5.10		NE $\frac{1}{4}$	SW $\frac{1}{4}$	18	6	61	3-14-10-1	0.051	20.40
1875	13.00		SE $\frac{1}{4}$	SW $\frac{1}{4}$	18	6	61	3-14-10-1	0.130	52.00
1875	9.50		NE $\frac{1}{4}$	NW $\frac{1}{4}$	19	6	61	3-14-10-1	0.095	38.00
1875	1.00		SE $\frac{1}{4}$	NW $\frac{1}{4}$	19	6	61	3-14-10-1	0.010	4.00
1875	8.00		SW $\frac{1}{4}$	NE $\frac{1}{4}$	19	6	61	3-14-10-1	0.080	32.00
1875	4.30		SW $\frac{1}{4}$	SE $\frac{1}{4}$	19	6	61	3-14-10-1	0.043	17.20
1875	2.00		NW $\frac{1}{4}$	SE $\frac{1}{4}$	19	6	61	3-14-10-1	0.020	8.00
1875	5.80		NW $\frac{1}{4}$	SE $\frac{1}{4}$	18	6	61	3-14-10-1	0.058	22.40
1875	11.00		SW $\frac{1}{4}$	SE $\frac{1}{4}$	18	6	61	3-14-10-1	0.110	44.00
1875	2.00		NW $\frac{1}{4}$	NE $\frac{1}{4}$	19	6	61	3-14-10-1	0.020	8.00
1875	16.60		NE $\frac{1}{4}$	NE $\frac{1}{4}$	19	6	61	3-14-10-1	0.166	66.40
1875	6.00		SE $\frac{1}{4}$	NE $\frac{1}{4}$	19	6	61	3-14-10-1	0.060	24.00
1875	2.60		SW $\frac{1}{4}$	NE $\frac{1}{4}$	19	6	61	3-14-10-1	0.026	10.40
1875	2.70		NW $\frac{1}{4}$	SE $\frac{1}{4}$	19	6	61	3-14-10-1	0.027	10.80
1875	4.00		NE $\frac{1}{4}$	SE $\frac{1}{4}$	19	6	61	3-14-10-1	0.040	16.00
1875	1.00		SE $\frac{1}{4}$	SE $\frac{1}{4}$	19	6	61	3-14-10-1	0.010	4.00
1875	15.00		NE $\frac{1}{4}$	SW $\frac{1}{4}$	18	6	61	3-14-10-1	0.150	60.00
1875	15.00		NW $\frac{1}{4}$	SE $\frac{1}{4}$	18	6	61	3-14-10-1	0.150	60.00
1875	6.00		SE $\frac{1}{4}$	SW $\frac{1}{4}$	18	6	61	3-14-10-1	0.060	24.00
1875	18.00		SW $\frac{1}{4}$	SE $\frac{1}{4}$	18	6	61	3-14-10-1	0.180	72.00
1875	3.00		NE $\frac{1}{4}$	NW $\frac{1}{4}$	19	6	61	3-14-10-1	0.030	12.00
1875	36.00		NW $\frac{1}{4}$	NE $\frac{1}{4}$	19	6	61	3-14-10-1	0.360	144.00

W. H. SHARP - Continued.

Year of Priority	Culture-Acres		Location				Duty of Water	
	Har-vest Crops	Diver-sified Pasture	Subdi- vision	Sec.	Tp.	S. R.E.	Length of Season	C.F.S. Acre-Ft.
1875	3.00		NE 1/4 NE 1/4	19	6	61	3-14-10-1	0.030 12.00
1875	29.00*		SW 1/4 NE 1/4	19	6	61	3-14-10-1	0.290 116.00
1875	5.00*		SE 1/4 NE 1/4	19	6	61	3-14-10-1	0.050 20.00
1875	3.00*		NE 1/4 SW 1/4	19	6	61	3-14-10-1	0.030 12.00
1875	28.00*		NW 1/4 SE 1/4	19	6	61	3-14-10-1	0.280 112.00
1875	15.00*		NE 1/4 SE 1/4	19	6	61	3-14-10-1	0.150 60.00
1875	34.00*		SW 1/4 SE 1/4	19	6	61	3-14-10-1	0.340 136.00
1875	32.00*		SE 1/4 SE 1/4	19	6	61	3-14-10-1	0.320 128.00
1875	23.00*		NW 1/4 NE 1/4	30	6	61	3-14-10-1	0.230 92.00
1876	33.00*		NE 1/4 NE 1/4	30	6	61	3-14-10-1	0.330 132.00
1876	26.00		SW 1/4 NE 1/4	30	6	61	3-14-10-1	0.260 104.00
1895	28.00		SE 1/4 NE 1/4	30	6	61	3-14-10-1	0.280 112.00
1876	6.00		NE 1/4 NE 1/4	30	6	61	3-14-10-1	0.060 24.00
1895	3.00		SW 1/4 NE 1/4	30	6	61	3-14-10-1	0.030 12.00

\* These areas, long under cultivation but classified as "Meadow pasture" in the Preliminary Order, have been ordered drained and when so drained assume their original status of cultivated land.

Claimant - LAWRENCE RICHARD

Proof No. 01490

Source - ASH SPRING CREEK.

Ditch - ALAMO CANAL

1885	22.00		NE 1/4 NW 1/4	5	7	61	3-14-10-1	0.220 88.00
1884	18.00		NE 1/4 NW 1/4	5	7	61	3-14-10-1	0.180 72.00
1883	15.00		SE 1/4 NW 1/4	5	7	61	3-14-10-1	0.150 60.00
1882	4.50		SW 1/4 NE 1/4	5	7	61	3-14-10-1	0.045 18.00

Claimant - G. W. THIRIOT

Proof No. 01548

Source - CRYSTAL and NORTH CRYSTAL SPRINGS WEST.

Ditch - MAIN CHANNEL, EAST.

1872	17.00		SE 1/4 NW 1/4	25	5	60	3-14-10-1	0.170 68.00
1872	3.80		SE 1/4 NW 1/4	25	5	60	3-14-10-1	0.038 15.20
1872	16.00		SW 1/4 NW 1/4	25	5	60	3-14-10-1	0.160 64.00
1872	26.00		NW 1/4 SW 1/4	25	5	60	3-14-10-1	0.260 104.00
1872	12.00		NW 1/4 SW 1/4	25	5	60	3-14-10-1	0.120 48.00
1872	32.70		NE 1/4 SW 1/4	25	5	60	2-14-10-1	0.327 130.80
1872	3.00		NE 1/4 SW 1/4	25	5	60	3-14-10-1	0.030 12.00
1872	29.00		SW 1/4 SW 1/4	25	5	60	3-14-10-1	0.290 116.00
1872	1.00		SW 1/4 SW 1/4	25	5	60	3-14-10-1	0.010 4.00
1872	34.00		SE 1/4 SW 1/4	25	5	60	3-14-10-1	0.340 136.00
1872	3.60		SE 1/4 SW 1/4	25	5	60	3-14-10-1	0.036 14.40
1885	....	1.00	NW 1/4 SE 1/4	25	5	60	3-14- 6-22	0.010 2.00
1885	14.50		SW 1/4 SE 1/4	25	5	60	3-14-10-1	0.145 58.00
1885	31.00		NW 1/4 NE 1/4	36	5	60	3-14-10-1	0.310 124.00
1872	2.70		NE 1/4 NW 1/4	36	5	60	3-14-10-1	0.027 10.80
1872	34.50		NE 1/4 NW 1/4	36	5	60	3-14-10-1	0.345 138.00
1872	3.80		NE 1/4 NW 1/4	36	5	60	3-14-10-1	0.038 15.20
1872	26.60		NW 1/4 NW 1/4	36	5	60	3-14-10-1	0.266 106.40
1872	....	24.00	SW 1/4 NW 1/4	25	5	60	3-14- 6-22	0.240 48.00
1872	....	22.50	NE 1/4 NW 1/4	25	5	60	3-14- 6-22	0.225 45.00

Claimant - RACHEL STEWART

Proof No. 01630

Source - ASH SPRINGS.

Ditch - ASH SPRING CHANNEL.

Year of Priority	Culture-Acres		Location				Duty of Water		
	Harvest Crops	Diversified Pasture	Subdivision	Sec.	Tp.	S. R.E.	Season	C.F.S.	Acre-Ft.
1872	....	1.40	SE $\frac{1}{4}$ NE $\frac{1}{4}$	21	7	61	3-14- 6-22	0.014	2.80
1872	10.40		SE $\frac{1}{4}$ NE $\frac{1}{4}$	21	7	61	3-14-10- 1	0.104	41.60
1872	6.20		SE $\frac{1}{4}$ NE $\frac{1}{4}$	21	7	61	3-14-10- 1	0.062	24.60
1872	17.70		SE $\frac{1}{4}$ NE $\frac{1}{4}$	21	7	61	3-14-10- 1	0.177	70.80
1872	3.60		SE $\frac{1}{4}$ NE $\frac{1}{4}$	21	7	61	3-14-10- 1	0.035	14.00
1873	....	3.80	NE $\frac{1}{4}$ NE $\frac{1}{4}$	21	7	61	3-14- 6-22	0.038	7.60
1873	1.50		NE $\frac{1}{4}$ NE $\frac{1}{4}$	21	7	61	3-14-10- 1	0.015	6.00
1872	....	5.20	SW $\frac{1}{4}$ NW $\frac{1}{4}$	22	7	61	3-14- 6-22	0.052	10.40
1872	0.70		SW $\frac{1}{4}$ NW $\frac{1}{4}$	22	7	61	3-14-10- 1	0.007	2.80
1872	0.90		SW $\frac{1}{4}$ NE $\frac{1}{4}$	21	7	61	3-14-10- 1	0.009	3.60

Claimant - MARY A. CASTLES

Proof No. 01765

Source - HIKO SPRING.

Ditch - CASTLES and HIKO M. & M. CO.

1884	10.00		NW $\frac{1}{4}$ SE $\frac{1}{4}$	14	4	60	3-14-10- 1	0.100	40.00
1884	13.00		SW $\frac{1}{4}$ SE $\frac{1}{4}$	14	4	60	3-14-10- 1	0.130	52.00
1884	3.80		NE $\frac{1}{4}$ SW $\frac{1}{4}$	14	4	60	3-14-10- 1	0.038	15.20
1884	....	10.45	NE $\frac{1}{4}$ SW $\frac{1}{4}$	14	4	60	3-14- 6-22	0.105	20.90
1884	6.00		SE $\frac{1}{4}$ SW $\frac{1}{4}$	14	4	60	3-14-10- 1	0.080	32.00
1884	7.00		SE $\frac{1}{4}$ SW $\frac{1}{4}$	14	4	60	3-14-10- 1	0.070	28.00
1884	....	25.00	SE $\frac{1}{4}$ SW $\frac{1}{4}$	14	4	60	3-14- 6-22	0.250	50.00
1884	3.25		NW $\frac{1}{4}$ NW $\frac{1}{4}$	23	4	60	3-14-10- 1	0.033	13.00
1884	....	9.25	NW $\frac{1}{4}$ NW $\frac{1}{4}$	23	4	60	3-14- 6-22	0.093	18.50
1884	10.00		NE $\frac{1}{4}$ NW $\frac{1}{4}$	23	4	60	3-14-10- 1	0.100	40.00
1884	....	29.00	NE $\frac{1}{4}$ NW $\frac{1}{4}$	23	4	60	3-14- 6-22	0.290	58.00
1884	4.00		NW $\frac{1}{4}$ SW $\frac{1}{4}$	14	4	60	3-14-10- 1	0.040	16.00
1905	....	3.10	SW $\frac{1}{4}$ SW $\frac{1}{4}$	14	4	60	3-14- 6-22	0.031	6.20
1884	0.75		NE $\frac{1}{4}$ SW $\frac{1}{4}$	14	4	60	3-14-10- 1	0.008	3.00

Claimant - MARY E. WRIGHT

Proof No. 01788

Source - HIKO SPRING.

Ditch - MARY E. WRIGHT,  
HIKO M. & M. CO.

1872	4.48		NE $\frac{1}{4}$ SW $\frac{1}{4}$	14	4	60	3-14-10- 1	0.045	17.92
1872	6.81		NW $\frac{1}{4}$ SE $\frac{1}{4}$	14	4	60	3-14-10- 1	0.068	27.24
1872	2.08		SW $\frac{1}{4}$ NE $\frac{1}{4}$	14	4	60	3-14-10- 1	0.021	8.32
1885	3.72		NE $\frac{1}{4}$ SW $\frac{1}{4}$	14	4	60	3-14-10- 1	0.037	14.88

Claimant - J. L. SHARP

Proof No. 01789

Source - ASH SPRING.

Ditch - SHARP and McCLANE.

1867	35.00		SE $\frac{1}{4}$ SE $\frac{1}{4}$	21	7	61	3-14-10- 1	0.350	140.00
1867	35.00		NE $\frac{1}{4}$ SE $\frac{1}{4}$	21	7	61	3-14-10- 1	0.350	140.00
1870	25.00		SW $\frac{1}{4}$ SW $\frac{1}{4}$	22	7	61	3-14-10- 1	0.250	100.00
1870	5.00		NW $\frac{1}{4}$ SW $\frac{1}{4}$	22	7	61	2-14-10- 1	0.050	20.00

100.00

Claimant - GARDNER RANCH CO.

Proof No. 01793

Source - ASH SPRINGS.

Ditch - 0, 2, 3, 4, 6 and 7

Year of Priority	Culture-Acres		Location				Length of Season	Duty of Water		
	Har-vest Crops	Diver-sified Pasture	Subdi- vision	Sec.	Tp.	S. R.E.		C.F.S.	Acres-Ft.	
1885	.....	24.80	NE $\frac{1}{4}$	NE $\frac{1}{4}$	1	6	60	3-14- 6-22	0.242	48.40
1885	9.30		NE $\frac{1}{4}$	NE $\frac{1}{4}$	1	6	60	3-14-10- 1	0.093	37.20
1885	.....	10.00	SE $\frac{1}{4}$	NE $\frac{1}{4}$	1	6	60	3-14- 6-22	0.100	20.00
1904	1.30		SE $\frac{1}{4}$	NE $\frac{1}{4}$	1	6	60	3-14-10- 1	0.013	5.20
1904	8.00		NE $\frac{1}{4}$	SE $\frac{1}{4}$	1	6	60	3-14-10- 1	0.080	32.00
1901	10.30		NE $\frac{1}{4}$	NE $\frac{1}{4}$	12	6	60	3-14-10- 1	0.103	41.20
1901	.....	25.00	NE $\frac{1}{4}$	NE $\frac{1}{4}$	12	6	60	3-14- 6-22	0.250	50.00
1901	.....	40.00	SE $\frac{1}{4}$	NE $\frac{1}{4}$	12	6	60	3-14- 6-22	0.400	80.00
1901	.....	23.00	NE $\frac{1}{4}$	SE $\frac{1}{4}$	12	6	60	3-14- 6-22	0.230	46.00
1900	6.00		NE $\frac{1}{4}$	SE $\frac{1}{4}$	12	6	60	3-14-10- 1	0.060	24.00
1900	.....	13.60	NW $\frac{1}{4}$	NW $\frac{1}{4}$	7	6	61	3-14- 6-22	0.136	27.20
1900	.....	7.70	SE $\frac{1}{4}$	NW $\frac{1}{4}$	7	6	61	3-14- 6-22	0.077	15.40
1900	.....	11.00	NE $\frac{1}{4}$	SW $\frac{1}{4}$	7	6	61	3-14- 6-22	0.110	22.00
1900	.....	2.50	SE $\frac{1}{4}$	SW $\frac{1}{4}$	7	6	61	3-14- 6-22	0.025	5.00
1895	.....	2.00	NW $\frac{1}{4}$	NW $\frac{1}{4}$	7	6	61	3-14- 6-22	0.020	4.00
1890	.....	3.00	SE $\frac{1}{4}$	NW $\frac{1}{4}$	7	6	61	3-14- 6-22	0.030	6.00
1895	.....	37.39	SW $\frac{1}{4}$	NW $\frac{1}{4}$	7	6	61	3-14- 6-22	0.374	74.78
1895	.....	24.00	NW $\frac{1}{4}$	SW $\frac{1}{4}$	7	6	61	3-14- 6-22	0.240	48.00
1900	13.50	.....	NW $\frac{1}{4}$	SW $\frac{1}{4}$	7	6	61	3-14-10- 1	0.135	54.00
1904	.....	13.00	SE $\frac{1}{4}$	SW $\frac{1}{4}$	7	6	61	3-14- 6-22	0.130	26.00
1895	.....	24.50	SE $\frac{1}{4}$	SW $\frac{1}{4}$	7	6	61	3-14- 6-22	0.245	49.00
1895	.....	33.90	SW $\frac{1}{4}$	SW $\frac{1}{4}$	7	6	61	3-14- 6-22	0.339	67.80
1895	.....	30.60	NW $\frac{1}{4}$	NW $\frac{1}{4}$	18	6	61	3-14- 6-22	0.306	61.20
1895	9.00	.....	NE $\frac{1}{4}$	NW $\frac{1}{4}$	18	6	61	3-14-10- 1	0.090	36.00
1895	9.00	.....	SE $\frac{1}{4}$	NW $\frac{1}{4}$	18	6	61	3-14-10- 1	0.090	36.00
1904	.....	27.50	NE $\frac{1}{4}$	NW $\frac{1}{4}$	18	6	61	3-14- 6-22	0.275	55.00
1904	.....	31.00	SE $\frac{1}{4}$	NW $\frac{1}{4}$	18	6	61	3-14- 6-22	0.310	62.00
1900	2.50	.....	SE $\frac{1}{4}$	SE $\frac{1}{4}$	12	6	61	3-14-10- 1	0.025	10.00
1901	.....	10.50	SE $\frac{1}{4}$	SE $\frac{1}{4}$	12	6	61	3-14- 6-22	0.105	21.00
1901	.....	2.50	NE $\frac{1}{4}$	NE $\frac{1}{4}$	13	6	61	3-14- 6-22	0.025	5.00
1890	.....	10.00	SE $\frac{1}{4}$	NE $\frac{1}{4}$	1	6	60	3-14- 6-22	0.100	20.00
1904	5.00	.....	NE $\frac{1}{4}$	SW $\frac{1}{4}$	1	6	60	3-14-10- 1	0.050	20.00
1904	.....	26.00	SW $\frac{1}{4}$	NW $\frac{1}{4}$	18	6	61	3-14- 6-22	0.260	52.00
1904	.....	14.00	SW $\frac{1}{4}$	NE $\frac{1}{4}$	18	6	61	3-14- 6-22	0.140	28.00

-73.90 446.89

5.208 1189.38

Source - RESERVOIR.

Ditch - CANAL<sup>oo</sup>

1900	.....	1.60	Lot 4		2	8	61	3-14- 6-22	0.016	3.20
1900	.....	15.00	Lot 1		3	8	61	3-14- 6-22	0.150	30.00
1900	.....	11.81	SW $\frac{1}{4}$	NW $\frac{1}{4}$	2	8	61	3-14- 6-22	0.118	23.62
1900	.....	9.23	NW $\frac{1}{4}$	SW $\frac{1}{4}$	2	8	61	3-14- 6-22	0.092	18.46
1905	16.00	.....	SW $\frac{1}{4}$	NW $\frac{1}{4}$	11	8	61	3-14-10- 1	0.160	64.00
1895	15.00	.....	SW $\frac{1}{4}$	NW $\frac{1}{4}$	11	8	61	3-14-10- 1	0.150	60.00
1904	2.31	.....	SE $\frac{1}{4}$	NE $\frac{1}{4}$	10	8	61	3-14-10- 1	0.023	9.24
1900	31.80	.....	NW $\frac{1}{4}$	SW $\frac{1}{4}$	11	8	61	3-14-10- 1	0.318	127.20
1900	16.63	.....	NE $\frac{1}{4}$	SE $\frac{1}{4}$	10	8	61	3-14-10- 1	0.166	66.52
1900	6.00	.....	SE $\frac{1}{4}$	SE $\frac{1}{4}$	10	8	61	3-14-10- 1	0.060	24.00
1880	.....	10.00	SE $\frac{1}{4}$	SE $\frac{1}{4}$	10	8	61	3-14- 6-22	0.100	20.00
1900	6.00	.....	SW $\frac{1}{4}$	SW $\frac{1}{4}$	11	8	61	3-14-10- 1	0.060	24.00
1880	.....	34.00	SW $\frac{1}{4}$	SW $\frac{1}{4}$	11	8	61	3-14- 6-22	0.340	68.00
1885	.....	40.00	SE $\frac{1}{4}$	SW $\frac{1}{4}$	11	8	61	3-14- 6-22	0.400	80.00
1885	.....	40.00	NE $\frac{1}{4}$	NW $\frac{1}{4}$	14	8	61	3-14- 6-22	0.400	80.00

GARDNER RANCH CO. - Continued

Year of Priority	Culture-Acres		Location				Length of Season		Duty of Water	
	Harvest Crops	Diversified Pasture	Subdivision	Sec.	Tp.S.	R.E.	Season	C.F.S.	Acre-Ft.	
1880		40.00	NW $\frac{1}{4}$ NW $\frac{1}{4}$	14	8	61	3-14- 6-22	0.400	80.00	
1890		40.00	SE $\frac{1}{4}$ NW $\frac{1}{4}$	14	8	61	3-14- 6-22	0.400	80.00	
1890		40.00	SW $\frac{1}{4}$ NE $\frac{1}{4}$	14	8	61	3-14- 6-22	0.400	80.00	
1890		7.00	SE $\frac{1}{4}$ NE $\frac{1}{4}$	14	8	61	3-14- 6-22	0.070	14.00	
1890		7.50	NE $\frac{1}{4}$ SE $\frac{1}{4}$	14	8	61	3-14- 6-22	0.075	15.00	
1890		40.00	NW $\frac{1}{4}$ SE $\frac{1}{4}$	14	8	61	3-14- 6-22	0.400	80.00	
1890		40.00	NE $\frac{1}{4}$ SW $\frac{1}{4}$	14	8	61	3-14- 6-22	0.400	80.00	
1890		40.00	SW $\frac{1}{4}$ SE $\frac{1}{4}$	14	8	61	3-14- 6-22	0.400	80.00	
1895		40.00	NW $\frac{1}{4}$ NE $\frac{1}{4}$	23	8	61	3-14- 6-22	0.400	80.00	
1895		38.00	SW $\frac{1}{4}$ NE $\frac{1}{4}$	23	8	61	3-14- 6-22	0.380	72.00	
1895		40.00	SE $\frac{1}{4}$ NE $\frac{1}{4}$	23	8	61	3-14- 6-22	0.400	80.00	
1895		40.00	NW $\frac{1}{4}$ SW $\frac{1}{4}$	24	8	61	3-14- 6-22	0.400	80.00	

\*\* Reservoir is filled with winter flow of Ash and Crystal Springs, from October 1 to March 14, and the water used on the above areas according to the tabulated length of season.

Claimant - GARDNER RANCH CO.

Proof No. 01794

Source - CRYSTAL SPRINGS

Ditch - 1, 2, 3, 4, 5, 6, 7, 8 and 9.

1900	....	4.00	NW $\frac{1}{4}$ NE $\frac{1}{4}$	14	5	60	3-14- 6-22	0.040	8.00
1900	....	6.30	NW $\frac{1}{4}$ NE $\frac{1}{4}$	14	5	60	3-14- 6-22	0.063	12.60
1875	10.00	....	SW $\frac{1}{4}$ NW $\frac{1}{4}$	14	5	60	3-14-10- 1	0.100	40.00
1867	4.50	....	SW $\frac{1}{4}$ NW $\frac{1}{4}$	14	5	60	3-14-10- 1	0.045	18.00
1875	2.80	....	NW $\frac{1}{4}$ SW $\frac{1}{4}$	14	5	60	3-14-10- 1	0.028	11.20
1880	14.80	....	NE $\frac{1}{4}$ SW $\frac{1}{4}$	14	5	60	3-14-10- 1	0.148	59.20
1900	....	8.00	SW $\frac{1}{4}$ NE $\frac{1}{4}$	14	5	60	3-14- 6-22	0.080	16.00
1880	....	3.00	NE $\frac{1}{4}$ SW $\frac{1}{4}$	14	5	60	3-14- 6-22	0.030	6.00
1880	....	20.00	SE $\frac{1}{4}$ SW $\frac{1}{4}$	14	5	60	3-14- 6-22	0.200	40.00
1885	18.00	....	NE $\frac{1}{4}$ SW $\frac{1}{4}$	14	5	60	3-14-10- 1	0.180	72.00
1880	37.00	....	SE $\frac{1}{4}$ NW $\frac{1}{4}$	14	5	60	3-14-10- 1	0.370	148.00
1895	20.00	....	SW $\frac{1}{4}$ NE $\frac{1}{4}$	14	5	60	3-14-10- 1	0.200	80.00
1895	....	3.00	SW $\frac{1}{4}$ NE $\frac{1}{4}$	14	5	60	3-14- 6-22	0.030	6.00
1895	32.00	....	NW $\frac{1}{4}$ SE $\frac{1}{4}$	14	5	60	3-14-10- 1	0.320	128.00
1895	....	1.30	NW $\frac{1}{4}$ SE $\frac{1}{4}$	14	5	60	3-14- 6-22	0.013	2.60
1900	....	10.00	NE $\frac{1}{4}$ SE $\frac{1}{4}$	14	5	60	3-14- 6-22	0.100	20.00
1895	....	6.30	NW $\frac{1}{4}$ SE $\frac{1}{4}$	14	5	60	3-14- 6-22	0.063	12.60
1885	....	2.00	NE $\frac{1}{4}$ SW $\frac{1}{4}$	14	5	60	3-14- 6-22	0.020	4.00
1867	....	2.00	SE $\frac{1}{4}$ NW $\frac{1}{4}$	14	5	60	3-14- 6-22	0.020	4.00
1880	....	3.00	SW $\frac{1}{4}$ SW $\frac{1}{4}$	2	5	60	3-14- 6-22	0.030	6.00
1880	....	27.00	SE $\frac{1}{4}$ SE $\frac{1}{4}$	3	5	60	3-14- 6-22	0.270	54.00
1875	....	8.00	NE $\frac{1}{4}$ NE $\frac{1}{4}$	10	5	60	3-14- 6-22	0.080	16.00
1880	5.00	....	NE $\frac{1}{4}$ NE $\frac{1}{4}$	10	5	60	3-14-10- 1	0.050	20.00
1880	5.00	....	NW $\frac{1}{4}$ SW $\frac{1}{4}$	11	5	60	3-14-10- 1	0.050	20.00
1885	5.30	....	SW $\frac{1}{4}$ SW $\frac{1}{4}$	11	5	60	3-14-10- 1	0.053	21.20
1885	12.50	....	SW $\frac{1}{4}$ SW $\frac{1}{4}$	11	5	60	3-14-10- 1	0.125	50.00
1900	....	18.00	SW $\frac{1}{4}$ SW $\frac{1}{4}$	11	5	60	3-14- 6-22	0.180	36.00
1900	....	10.00	SE $\frac{1}{4}$ SW $\frac{1}{4}$	11	5	60	3-14- 6-22	0.100	20.00
1870	23.50	....	SE $\frac{1}{4}$ SE $\frac{1}{4}$	10	5	60	3-14-10- 1	0.235	94.00
1870	5.20	....	NE $\frac{1}{4}$ NE $\frac{1}{4}$	15	5	60	3-14-10- 1	0.052	20.80
1875	14.00	....	NW $\frac{1}{4}$ NW $\frac{1}{4}$	14	5	60	3-14-10- 1	0.140	56.00
1890	....	9.00	NW $\frac{1}{4}$ NW $\frac{1}{4}$	14	5	60	3-14- 6-22	0.090	18.00
1890	....	31.70	NE $\frac{1}{4}$ NW $\frac{1}{4}$	14	5	60	3-14- 6-22	0.317	63.40
1900	....	8.30	NE $\frac{1}{4}$ NW $\frac{1}{4}$	14	5	60	3-14- 6-22	0.083	16.60

GARDNER RANCH CO. - Continued

Year of Priority	Culture-Acres		Location				Length of Season	Duty of Water	
	Har-vest Crops	Diver-sified Pasture	Subdi-vision	Sec.	Tp.S.	R.E.		C.F.S.	Acre-Ft.
1890	17.00		SE $\frac{1}{4}$ SW $\frac{1}{4}$	36	5	60	3-14-10-1	0.170	68.00
1890	29.00		SW $\frac{1}{4}$ SE $\frac{1}{4}$	36	5	60	3-14-10-1	0.290	116.00
1890	9.30		SW $\frac{1}{4}$ SE $\frac{1}{4}$	36	5	60	3-14-10-1	0.093	37.20
1890	3.20		SE $\frac{1}{4}$ SE $\frac{1}{4}$	36	5	60	3-14-10-1	0.032	12.60
1895	28.80		SE $\frac{1}{4}$ SE $\frac{1}{4}$	36	5	60	3-14-10-1	0.288	115.20
1895	....	21.40	NW $\frac{1}{4}$ NE $\frac{1}{4}$	1	6	60	3-14-6-22	0.214	42.80
1895	5.60	....	NW $\frac{1}{4}$ NE $\frac{1}{4}$	1	6	60	3-14-10-1	0.056	22.40
1895	4.80	....	NE $\frac{1}{4}$ NE $\frac{1}{4}$	1	6	60	3-14-10-1	0.048	19.20
1895	7.00	....	SE $\frac{1}{4}$ NE $\frac{1}{4}$	1	6	60	3-14-10-1	0.070	28.00
1870	5.00	....	NE $\frac{1}{4}$ NE $\frac{1}{4}$	10	5	60	3-14-10-1	0.050	20.00
1870	5.00	....	NW $\frac{1}{4}$ NW $\frac{1}{4}$	11	5	60	3-14-10-1	0.050	20.00
1885	1.00	....	NW $\frac{1}{4}$ SW $\frac{1}{4}$	11	5	60	3-14-10-1	0.010	4.00
1870	10.00	....	NE $\frac{1}{4}$ SE $\frac{1}{4}$	10	5	60	3-14-10-1	0.100	40.00
1867	10.00	....	SE $\frac{1}{4}$ SE $\frac{1}{4}$	10	5	60	3-14-10-1	0.100	40.00
1875	2.40	....	NE $\frac{1}{4}$ NE $\frac{1}{4}$	15	5	60	3-14-10-1	0.024	9.60
1885	14.00	....	NW $\frac{1}{4}$ NW $\frac{1}{4}$	14	5	60	3-14-10-1	0.140	56.00

(See Map 01793)

Claimant - GARDNER RANCH CO.

Proof No. 01794

Source - CRYSTAL SPRING.

Ditch - 1 and 2.

1870	31.00		NE $\frac{1}{4}$ SW $\frac{1}{4}$	2	5	60	3-14-10-1	0.310	124.00
1870	28.00		SE $\frac{1}{4}$ SW $\frac{1}{4}$	2	5	60	3-14-10-1	0.280	112.00
1870	37.00		SW $\frac{1}{4}$ SW $\frac{1}{4}$	2	5	60	3-14-10-1	0.370	148.00
1870	7.00		NW $\frac{1}{4}$ NW $\frac{1}{4}$	11	5	60	3-14-10-1	0.070	28.00
1870	4.00		NE $\frac{1}{4}$ NE $\frac{1}{4}$	10	5	60	3-14-10-1	0.040	16.00
1870	4.00		SE $\frac{1}{4}$ SE $\frac{1}{4}$	3	5	60	3-14-10-1	0.040	16.00

Note:-- These areas, once highly cultivated but at present inundated, shall receive the above tabulated classification when drained.

Claimant - G. EDGAR NESBITT

Proof No. 01796

Source - HIKO SPRING.

Ditch - CLAPP DITCH.

1888	12.80		SW $\frac{1}{4}$ NW $\frac{1}{4}$	23	4	60	3-14-10-1	0.128	51.20
1888	6.00		SE $\frac{1}{4}$ NW $\frac{1}{4}$	23	4	60	3-14-10-1	0.060	24.00
1888	1.30		SW $\frac{1}{4}$ NW $\frac{1}{4}$	23	4	60	3-14-10-1	0.013	5.20
1888	2.00		NW $\frac{1}{4}$ SW $\frac{1}{4}$	23	4	60	3-14-10-1	0.020	8.00
1888	20.22		NW $\frac{1}{4}$ SW $\frac{1}{4}$	23	4	60	3-14-10-1	0.202	80.88
1888	11.30		NW $\frac{1}{4}$ SW $\frac{1}{4}$	23	4	60	3-14-10-1	0.113	45.20
1888	4.20		SW $\frac{1}{4}$ SW $\frac{1}{4}$	23	4	60	3-14-10-1	0.042	16.80
1888	2.70		SW $\frac{1}{4}$ SW $\frac{1}{4}$	23	4	60	3-14-10-1	0.027	10.80
1888	....	28.80	SE $\frac{1}{4}$ NW $\frac{1}{4}$	23	4	60	3-14-6-22	0.288	57.60
1888	....	23.57	NE $\frac{1}{4}$ SW $\frac{1}{4}$	23	4	60	3-14-6-22	0.236	47.14
1888	....	11.27	SE $\frac{1}{4}$ SW $\frac{1}{4}$	23	4	60	3-14-6-22	0.113	22.54
1888	....	10.50	SW $\frac{1}{4}$ SW $\frac{1}{4}$	23	4	60	3-14-6-22	0.105	21.00

Note:-- Claimant Schofield, successor of John Roeder, is awarded by the terms of Decree No. \_\_\_\_\_, filed in Lincoln County, \_\_\_\_\_, as evidenced by the Decision in "John Roeder, Plaintiff, v. Charles Stein, Defendant," filed in Lincoln County, February 6, 1893, prior right to irrigate 125 acres of land with water from Hiko Spring.

Claimant G. Edgar Nesbitt, successor of Charles Stein, awarded next succeeding priority to irrigate 40 acres of land with water from Hiko Spring. The Decree is binding between said parties thereto, and the water shall be so distributed in the event of a diminishing flow reaching such a low quantity as to be less than that amount necessary to irrigate the total acreage of both parties as described in the final order of determination.

Claimant - JAMES CASTLES

Proof No. 01797

Source - HIKO SPRING

Ditch - J. CASTLES,  
HIKO M. & M. CO.

Year of Priority	Culture-Acres		Location				Length of Season	Duty of Water	
	Har-vest Crops	Diver-sified Pasture	Subdi-vision	Sec.	Tp.S.	R.E.		C.F.S.	Acre-Ft.
1878	10.00		NE $\frac{1}{4}$ SW $\frac{1}{4}$	14	4	60	3-14-10-1	0.100	40.00

Claimant - M. F., W. U. and W. J. SCHOFIELD Proof No. 01798

Source - HIKO SPRING.

Ditch - FERGUSON and HIKO LAKE

1885	1.00		NE $\frac{1}{4}$ NE $\frac{1}{4}$	34	4	60	3-14-10-1	0.010	4.00
1885	13.00		SE $\frac{1}{4}$ NE $\frac{1}{4}$	34	4	60	3-14-10-1	0.130	52.00
1885	13.50		NE $\frac{1}{4}$ SE $\frac{1}{4}$	34	4	60	3-14-10-1	0.135	54.00
1885	5.50		SE $\frac{1}{4}$ SE $\frac{1}{4}$	34	4	60	3-14-10-1	0.055	22.00
1885	4.00		SE $\frac{1}{4}$ SW $\frac{1}{4}$	34	4	60	3-14-10-1	0.040	16.00
1885	3.50		NW $\frac{1}{4}$ NW $\frac{1}{4}$	35	4	60	3-14-10-1	0.035	14.00
1873	5.50		NW $\frac{1}{4}$ NW $\frac{1}{4}$	35	4	60	3-14-10-1	0.055	22.00
1885	8.00		SW $\frac{1}{4}$ NW $\frac{1}{4}$	35	4	60	3-14-10-1	0.080	32.00
1873	32.00		SW $\frac{1}{4}$ NW $\frac{1}{4}$	35	4	60	3-14-10-1	0.320	128.00
1873	28.00		NW $\frac{1}{4}$ SW $\frac{1}{4}$	35	4	60	3-14-10-1	0.280	112.00
1885	12.00		NW $\frac{1}{4}$ SW $\frac{1}{4}$	35	4	60	3-14-10-1	0.120	48.00
1885	15.00		SW $\frac{1}{4}$ SW $\frac{1}{4}$	35	4	60	3-14-10-1	0.150	60.00
1873	25.00		SW $\frac{1}{4}$ SW $\frac{1}{4}$	35	4	60	3-14-10-1	0.250	100.00
1873	15.00		SE $\frac{1}{4}$ NW $\frac{1}{4}$	35	4	60	3-14-10-1	0.150	60.00
1873	6.00		NE $\frac{1}{4}$ SW $\frac{1}{4}$	35	4	60	3-14-10-1	0.060	24.00
1873	5.00		SE $\frac{1}{4}$ SW $\frac{1}{4}$	35	4	60	3-14-10-1	0.050	20.00
1885	12.50		NW $\frac{1}{4}$ NW $\frac{1}{4}$	2	5	60	3-14-10-1	0.125	50.00
1885	....	20.00	SW $\frac{1}{4}$ NW $\frac{1}{4}$	2	5	60	3-14-6-22	0.200	40.00
1873	10.00	....	NE $\frac{1}{4}$ NW $\frac{1}{4}$	2	5	60	3-14-10-1	0.100	40.00
1873	....	35.00	SE $\frac{1}{4}$ NW $\frac{1}{4}$	2	5	60	3-14-6-22	0.350	70.00
1873	....	2.00	SW $\frac{1}{4}$ NE $\frac{1}{4}$	2	5	60	3-14-6-22	0.020	4.00

Note:- Claimant Schofield, successor of John Roeder, is awarded by the terms of Decree No. \_\_\_\_\_, filed in Lincoln County, \_\_\_\_\_, as evidenced by the Decision in "John Roeder, Plaintiff v. Charles Stein, Defendant," filed in Lincoln County, February 6, 1893, prior right to irrigate 125 acres of land with water from Hiko Spring. Claimant G. Edgar Nesbitt, successor of Charles Stein, awarded next succeeding priority to irrigate 40 acres of land with water from Hiko Spring. The Decree is binding between said parties thereto, and the water shall be so distributed in the event of a diminishing flow reaching such a low quantity as to be less than that amount necessary to irrigate the total acreage of both parties as described in the final order of determination.

NW $\frac{1}{4}$  SE $\frac{1}{4}$  SW $\frac{1}{4}$  T14S R64E

Claimant - W. F. THORNE

Proof No. 01799

Source - ASH SPRING CREEK.

Ditch - ALAMO CANAL

Year of Priority	Culture-Acres		Location				Length of Season	Duty of Water	
	Harvest Crops	Diversified Pasture	Subdivision	Sec.	Tp.	S. R. E.		C.F.S.	Acre-Ft.
1877	5.70		NW $\frac{1}{4}$ NE $\frac{1}{4}$	8	7	61	3-14-10-1	0.057	22.80
1877	2.60		NE $\frac{1}{4}$ NW $\frac{1}{4}$	8	7	61	3-14-10-1	0.026	10.40
1877	2.20		SW $\frac{1}{4}$ SE $\frac{1}{4}$	5	7	61	3-14-10-1	0.022	8.80
1877	0.90		SE $\frac{1}{4}$ SW $\frac{1}{4}$	5	7	61	3-14-10-1	0.009	3.60

Claimant - ALAMO IRRIGATION CO., INC.

Proof No. 01802

Source - ASH SPRINGS CREEK.

Ditch - ALAMO CANAL, EAST DITCH.

1881	30.00		NE $\frac{1}{4}$ NE $\frac{1}{4}$	17	7	61	3-14-10-1	0.300	120.00
1881	15.00		SE $\frac{1}{4}$ NE $\frac{1}{4}$	17	7	61	3-14-10-1	0.150	60.00
1881	27.10		NW $\frac{1}{4}$ SW $\frac{1}{4}$	16	7	61	3-14-10-1	0.271	108.40
1881	9.50*		SE $\frac{1}{4}$ SW $\frac{1}{4}$	16	7	61	3-14-10-1	0.095	38.00
1877	2.50		SE $\frac{1}{4}$ NE $\frac{1}{4}$	8	7	61	3-14-10-1	0.025	10.00
1877	12.10		NE $\frac{1}{4}$ SE $\frac{1}{4}$	8	7	61	3-14-10-1	0.121	48.40
1881	31.00		SE $\frac{1}{4}$ SE $\frac{1}{4}$	8	7	61	3-14-10-1	0.310	124.00
1880	22.50		NW $\frac{1}{4}$ NW $\frac{1}{4}$	16	7	61	3-14-10-1	0.225	90.00
1880	40.00		SW $\frac{1}{4}$ NW $\frac{1}{4}$	16	7	61	3-14-10-1	0.400	160.00
1880	....	4.60	SE $\frac{1}{4}$ NW $\frac{1}{4}$	16	7	61	3-14-6-22	0.046	9.20
1880	....	29.00	NE $\frac{1}{4}$ SW $\frac{1}{4}$	16	7	61	3-14-6-22	0.290	58.00
1880	9.00*	....	NW $\frac{1}{4}$ SE $\frac{1}{4}$	16	7	61	3-14-10-1	0.090	36.00
1880	30.70*		SW $\frac{1}{4}$ SE $\frac{1}{4}$	16	7	61	3-14-10-1	0.307	122.80
1868	30.10		SW $\frac{1}{4}$ SE $\frac{1}{4}$	5	7	61	3-14-10-1	0.301	120.40
1868	-4.00		NE $\frac{1}{4}$ SW $\frac{1}{4}$	5	7	61	3-14-10-1	0.040	-16.00
1868	....	6.80	NW $\frac{1}{4}$ NE $\frac{1}{4}$	8	7	61	3-14-6-22	0.068	13.60
1868	27.50		NW $\frac{1}{4}$ NE $\frac{1}{4}$	8	7	61	3-14-10-1	0.275	110.00
1868	40.00		SW $\frac{1}{4}$ NE $\frac{1}{4}$	8	7	61	3-14-10-1	0.400	160.00
1868	40.00		NW $\frac{1}{4}$ SE $\frac{1}{4}$	8	7	61	3-14-10-1	0.400	160.00
1877	11.90		NW $\frac{1}{4}$ SE $\frac{1}{4}$	5	7	61	3-14-10-1	0.119	47.60
1877	1.50		SE $\frac{1}{4}$ SW $\frac{1}{4}$	5	7	61	3-14-10-1	0.015	6.00
1877	10.00		SE $\frac{1}{4}$ SW $\frac{1}{4}$	5	7	61	3-14-10-1	0.100	40.00
1877	3.20		NE $\frac{1}{4}$ NW $\frac{1}{4}$	8	7	61	3-14-10-1	0.032	12.80
1877	....	26.00	SE $\frac{1}{4}$ NW $\frac{1}{4}$	8	7	61	3-14-6-22	0.260	52.00
1881	30.00		SW $\frac{1}{4}$ SE $\frac{1}{4}$	8	7	61	3-14-10-1	0.300	120.00
1881	2.00		SW $\frac{1}{4}$ SW $\frac{1}{4}$	9	7	61	3-14-10-1	0.020	8.00
1881	3.50		NE $\frac{1}{4}$ SW $\frac{1}{4}$	8	7	61	3-14-10-1	0.035	14.00
1881	2.00		NW $\frac{1}{4}$ NE $\frac{1}{4}$	17	7	61	3-14-10-1	0.020	8.00

\* Note:- These areas, long under cultivation but classified as "Meadow Pasture" in the Preliminary Order, have been ordered drained and when so drained assume their original status of cultivated land.

-- Lands of C. A. Koyen.

Claimant - A. W. GEER

Proof No. 01825

Source - CRYSTAL SPRINGS.

Ditch - A. W. GEER.

1866	26.70		SE $\frac{1}{4}$ SE $\frac{1}{4}$	14	5	60	3-14-10-1	0.267	106.80
1866	9.40		SW $\frac{1}{4}$ SE $\frac{1}{4}$	14	5	60	3-14-10-1	0.094	37.60
1866	....	30.60	SW $\frac{1}{4}$ SE $\frac{1}{4}$	14	5	60	3-14-6-22	0.306	61.20
1867	39.10		NE $\frac{1}{4}$ NE $\frac{1}{4}$	23	5	60	3-14-10-1	0.391	156.40



A. W. GEER - Continued

Year of Priority	Culture-Acres		Location				Length of Season	Duty of Water	
	Har-vest Crops	Diver-sified Pasture	Subdi-vision	Sec.	TP.S.	R.E.		C.F.S.	Acre-Ft.
1867	40.00		SE $\frac{1}{4}$ NE $\frac{1}{4}$	23	5	60	3-14-10-1	0.400	160.00
1867	11.70		SW $\frac{1}{4}$ NE $\frac{1}{4}$	23	5	60	3-14-10-1	0.117	46.80
1867	....	27.10	SW $\frac{1}{4}$ NE $\frac{1}{4}$	23	5	60	3-14-6-22	0.271	54.20
1867	....	40.00	NW $\frac{1}{4}$ NE $\frac{1}{4}$	23	5	60	3-14-6-22	0.400	80.00
1866	10.00	....	NE $\frac{1}{4}$ SE $\frac{1}{4}$	23	5	60	3-14-10-1	0.100	40.00
1866	....	12.50	NE $\frac{1}{4}$ SE $\frac{1}{4}$	23	5	60	3-14-6-22	0.125	25.00
1867	....	40.00	SE $\frac{1}{4}$ SE $\frac{1}{4}$	23	5	60	3-14-6-22	0.400	80.00
1867	....	5.40	SW $\frac{1}{4}$ SE $\frac{1}{4}$	23	5	60	3-14-6-22	0.054	10.80
1866	0.70	....	NW $\frac{1}{4}$ SE $\frac{1}{4}$	23	5	60	3-14-10-1	0.007	2.80
1866	....	23.40	NW $\frac{1}{4}$ SE $\frac{1}{4}$	23	5	60	3-14-6-22	0.234	46.80
1867	6.00	....	SW $\frac{1}{4}$ NW $\frac{1}{4}$	24	5	60	3-14-10-1	0.060	24.00
1867	....	27.00	SW $\frac{1}{4}$ SW $\frac{1}{4}$	24	5	60	3-14-6-22	0.270	54.00
1867	24.90	....	NW $\frac{1}{4}$ SW $\frac{1}{4}$	24	5	60	3-14-10-1	0.249	99.60
1867	....	1.50	NE $\frac{1}{4}$ NW $\frac{1}{4}$	25	5	60	3-14-6-22	0.015	3.00
1867	....	24.80	NW $\frac{1}{4}$ NW $\frac{1}{4}$	25	5	60	3-14-6-22	0.249	49.60
1867	....	2.00	NW $\frac{1}{4}$ NW $\frac{1}{4}$	25	5	60	3-14-6-22	0.020	4.00
1867	....	4.00	NE $\frac{1}{4}$ NE $\frac{1}{4}$	26	5	60	3-14-6-22	0.040	8.00
1867	....	12.00	NE $\frac{1}{4}$ NE $\frac{1}{4}$	26	5	60	3-14-6-22	0.120	24.00
1867	17.50	....	NE $\frac{1}{4}$ SE $\frac{1}{4}$	23	5	60	3-14-10-1	0.175	70.00
1867	5.40	....	SW $\frac{1}{4}$ NW $\frac{1}{4}$	24	5	60	3-14-10-1	0.054	21.60

Claimant - A. W. GEER

Proof No. 01825

Source - CRYSTAL SPRINGS

Ditch - THIRIOT.

1872	27.50	SW $\frac{1}{4}$ NE $\frac{1}{4}$	36	5	60	3-14-6-22	0.275	55.00
1872	40.00	SE $\frac{1}{4}$ NW $\frac{1}{4}$	36	5	60	3-14-6-22	0.400	80.00
1872	38.00	NW $\frac{1}{4}$ SE $\frac{1}{4}$	36	5	60	3-14-6-22	0.380	76.00
1872	24.60	NE $\frac{1}{4}$ SW $\frac{1}{4}$	36	5	60	3-14-6-22	0.246	49.20
1872	7.60	NE $\frac{1}{4}$ SE $\frac{1}{4}$	36	5	60	3-14-6-22	0.076	15.20

III

Each water user on the Pahrnagat Lake and tributaries shall install and maintain substantial headgates and weirs in his ditches, which shall be approved by the State Engineer and shall be installed at such place or places as the State Engineer shall designate.

Diversions are to be made at the point where the main diverting channel enters or becomes adjacent to the land to be irrigated, or as near thereto as practicable. The users of water on said Pahrnagat Lake and tributaries shall take and use the water allotted to them in continuous flow or in periodic rotation, as the State Engineer shall from time to time determine.

IV

Subject to Section 36a of the Water Code of Nevada as amended, the beginning and end of the irrigation season shall be as defined in this Decree except when climatic conditions are such that irrigation is not in accordance with good husbandry and actual beneficial use of water. The State Engineer shall then determine, by examination, the beginning of the irrigation season and shall set the date, giving notice to all water users on said stream system. The setting of this date shall be for the sole purpose of administration and the distribution of water of the Pahrnagat Lake and tributaries in accordance with this Decree.

V

The Court hereby Orders, Adjudges, and Decrees, that each and every Water User of the Pahrnagat Lake and tributaries and each of their agents, attorneys, servants and employees, and their successors in interest and all and every person or persons acting in aid or assistance of the said parties or either of or any of them be, and that each of them is hereby perpetually enjoined and restrained as follows, to-wit:

(a) From at any time diverting or using or preventing or obstructing the flow in whole or in part in and along its natural channel or any of the water of the Pahrnagat Lake and tributaries hereinbefore mentioned, except to the extent and in the amount and in the manner and at the time or times set by this decree to such respective party hereto allotted, allowed, prescribed and determined, or allowed by permits which have been or may hereafter be granted by the State Engineer of the State of Nevada.

(b) From diverting from the natural channel and from using any of the said water for irrigation or for any other purpose, in excess of the specific allotment herein set by this Decree, or in excess of the specific allotment under a Permit granted or that may hereafter be granted by the State Engineer of the State of Nevada.

(c) From diverting from the natural channel and from using any of the said water in any other manner or for any other purpose or purposes or upon any other land or lands than as provided and prescribed by the terms of this Decree or by a Permit granted or that may hereafter be granted by the State Engineer of the State of Nevada.

(d) From diverting from the natural channel and from using any of the said water at any other time or times than as specified and provided by the terms of this Decree or by a permit granted or that may hereafter be granted by the State Engineer of the State of Nevada.

(e) From in any manner meddling with, opening, closing, changing, injuring, or interfering with any head-gates, weirs, water box, flume, or measuring device, placed, installed or established by the State Engineer or by his authority or direction, unless such act be done by the permission or authority of the Water Commissioner, if during the period of his regulation or control of said water, or if not done during such period, then by virtue of the allowances, authority, terms and provisions of this Decree or by a Permit granted or that may hereafter be granted by the State Engineer of the State of Nevada.

Dated this 14<sup>th</sup> day of October, 1929

Wm. C. Over  
DISTRICT JUDGE

1929 DEC 2 AM 11 53

STATE ENGINEER  
OFFICE

Cir. 1967); *Boyd v. Gardner*, 377 F.2d 718 (4th Cir. 1967). There is absolutely no evidence in the record showing what jobs are available to a person with plaintiff's characteristics. Therefore, the hearing examiner's finding that there is gainful employment available to plaintiff is unsupported by any evidence and cannot be affirmed.

It is clear, then, that the evidence in this record, when analyzed under the guidelines set down in *Thomas v. Celebrezze*, supra, reveals that plaintiff is disabled within the meaning of the Social Security Act. The record overwhelmingly supports the conclusion that plaintiff's disabilities preclude him from engaging in substantial gainful employment as defined under the Act and the hearing examiner's conclusions to the contrary are unsupported by substantial evidence.

The determination of the Secretary is overruled and the Clerk is directed to enter judgment for the plaintiff.

And it is so ordered.



**UNITED STATES of America,  
Plaintiff,**

v.

**George W. HENNEN, State Engineer for  
the State of Nevada, et al.,  
Defendants.**

**Civ. No. LV-927.**

United States District Court  
D. Nevada.

May 2, 1968.

Action by United States attacking correction of state water rights decree, and to enjoin enforcement and quiet title to certain rights. On cross-motions for summary judgment, the District Court, Roger D. Foley, J., held that the state court correction proceeding was not a suit for adjudication of water rights,

within statute waiving sovereign immunity in such cases, but was a suit for administration of adjudicated rights, within the waiver.

Judgment for defendants.

**1. Evidence**  $\S$ 43(4)

Federal district court in United States' action attacking proceeding to amend decree in state water rights case took judicial notice of all files and records in state case.

**2. United States**  $\S$ 125(2, 5)

Only Congress can waive sovereign immunity, and dereliction of counsel for government is not a waiver.

**3. Waters and Water Courses**  $\S$ 128½

There is no body of federal water law, and United States' rights in Nevada water must be determined by Nevada law.

**4. United States**  $\S$ 125(6)

Acts of Congress waiving sovereign immunity are strictly construed.

**5. Action**  $\S$ 16

Where liability and remedy are created by statute, limitation of remedy is a limitation of the right.

**6. United States**  $\S$ 131

Terms of consent of Congress to be sued in any court define that court's jurisdiction to entertain suit.

**7. United States**  $\S$ 125(22)

Under statute permitting suit against United States for adjudication of rights to use of water, adjudication must be general and encompass all water claimants. 43 U.S.C.A. § 666(a) (1).

**8. United States**  $\S$ 125(22)

State court proceeding for nunc pro tunc correction of water rights decree was not a suit for adjudication of rights to use of water within statute waiving sovereign immunity. 43 U.S.C.A. § 666(a) (1).

**9. United States**  $\S$ 125(22)

State court proceeding for nunc pro tunc amendment of water rights decree was a suit for administration of water

rights previously adjudicated, within statute waiving sovereign immunity. 43 U.S.C.A. § 666(a) (2).

10. Judgment ⇨855(1)

To "administer" a decree is to execute it, to enforce its provisions, to resolve conflicts as to its meaning, to construe and to interpret its language.

See publication Words and Phrases for other judicial constructions and definitions.

11. Judgment ⇨828(3.49)

Decision of Nevada Supreme Court that omissions from water rights decree were clerical errors, subject to nunc pro tunc correction, was res judicata barring United States' action attacking the correction.

Joseph L. Ward, U. S. Atty., Las Vegas, Nev., Martin Green, U. S. Dept. of Justice, Washington, D. C., for plaintiff.

Harvey Dickerson, Atty. Gen. for State of Nevada, Carson City, Nev., Singleton, De Lanoy & Jemison, Las Vegas, Nev., Gray, Horton & Hill, Reno, Nev., for defendants.

OPINION

ROGER D. FOLEY, District Judge.

This action has been submitted for decision to the Court upon cross-motions for summary judgment, pursuant to Rule 56, F.R.Civ.P., the parties having presented points and authorities and evidence in support of their respective motions.

[1] In 1919, a proceeding was initiated under what is now codified as Chapter 533 of Nevada Revised Statutes, for the determination of relative rights in and to the waters of Pahrana-gat Lake and its tributaries in Lincoln County, Nevada. In accordance with said statute, the State Engineer made an investigation of the stream system and took proofs of the various claims thereto. From the proofs and evidence taken or given be-

fore him, the State Engineer prepared a preliminary Order of Determination, establishing the several rights of claimants to waters of the stream system. After hearing objections to said preliminary Order of Determination, and in accordance with said statute, the State Engineer prepared an Order of Determination, and on March 10, 1927, filed it with the District Court of Nevada, in and for Lincoln County, and thus, commenced Case No. 3160<sup>1</sup> in said State Court, entitled "In the Matter of the Determination of the Relative Rights in and to Waters of Pahrana-gat Lake and its Tributaries in Lincoln County, State of Nevada".

Paragraphs 6 and 7 of the Order of Determination read as follows:

"6. That in addition to water used during the irrigating season each user shall be entitled to divert sufficient water for stock and domestic purposes, the amount diverted not to exceed a flow of 0.025 of a cubic foot per second at each point of use, such diversion to be made during the nonirrigating season, subject to the provisions of paragraph 3. The point of measurement of stock water shall be at the same point as selected and approved by the State Engineer for the measurement of irrigation water.

"7. That in addition to the water allowed for irrigation, stock and domestic purposes, each user in his proper proportion and priority shall also be entitled to an economical bimonthly diversion of water for washing mineral salts from his land; such diversion to be permitted from October 1 to March 14 of each year in accordance with custom long prevailing."

The State Engineer procured an order of said State Court, setting the hearing of said Order of Determination for June 21, 1927, and duly noticed all claimants according to said statute. On June 21, 1927, certain exceptions having been taken and evidence received, and the Court having made certain corrections

1. This Court takes judicial notice of all of the files and records in said Case No. 3160.

not here involved, a minute order was entered directing that a decree be entered in accordance with the Order of Determination of the State Engineer.<sup>2</sup> The State Engineer prepared and the Court entered a formal decree on October 14, 1929, which substantially followed the Order of Determination except that paragraphs 6 and 7 of the Order of Determination were omitted from the decree.

One of the claimants whose rights were adjudicated in said suit was Gardner Ranch Company. In August, 1963, Plain-

tiff, United States of America, acquired lands and water rights formerly owned by the Gardner Ranch Company. In March, 1964, most, if not all, of the water users, or their successors in interest, along the stream system filed a motion in said Case No. 3160 to correct the decree nunc pro tunc as of the date of its entry, October 14, 1929, pursuant to Rule 60, Nevada Rules of Civil Procedure.<sup>3</sup> The United States of America was served with said motion as provided in Title 43, U.S.C. § 666.<sup>4</sup> At the hearing

2. The minutes of the Court read in full as follows:

"Court convened pursuant to recess June 21st A.D. 1927. Wm. F. Orr District Judge presiding and all other officers of the Court present.

**"IN THE MATTER OF THE DETERMINATION AND ADJUDICATION OF WATERS OF PAHARANAGAT LAKE AND TRIBUTARIES**

"The above entitled matter came on regularly for hearing before the Court June 21, A.D. 1927. The State Engineer was in Court ready to proceed with said Hearing and for the submission of such proofs as was necessary. Will Schofield and Merle Schofield were in Court having filed exceptions to the Order of the State Engineer so so filed.

Proof of service admitted and filed. Affidavit of Publication admitted and filed.

The Court ordered that the correction by the State Engineer of the Preliminary Order of Determination. Page 5 line 7. Claimant W. H. Sharp be allowed. It was further ordered that the correction by the State Engineer of the of the Order of Determination, page 6 line 13, Claimant W. H. Sharp be allowed. The Court having heard all of the evidence, ORDERED that the protests be denied. IT WAS FURTHER ORDERED by the Court that a Decree be entered affirming the Determination and Adjudication of the Waters of Paharanagat Lake and Tributaries as made by the State Engineer."

3. In *Alamo Irrigation Co. v. United States*, 1965, 81 Nev. 390, at 394, 404 P.2d 5, at 7, the Court states:

"NRCP 60(a) states: 'Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any

party and after such notice, if any, as the court orders. \* \* \* Sparrow & Trench v. Strong, 2 Nev. 362, 366; Ex parte Breckenridge, 34 Nev. 275, 280, 118 P. 687, overruled on another point; Lindsay v. Lindsay, 52 Nev. 26, 33-34, 280 P. 95, 67 A.L.R. 824; Brockman v. Ullom, 52 Nev. 267, 268, 286 P. 417; Silva v. Second Judicial District Court, 57 Nev. 468, 474, 66 P.2d 422; Finley v. Finley, 65 Nev. 113, 119, 189 P.2d 334, 196 P.2d 766, overruled on another point; Iveson v. Second Judicial District Court, 66 Nev. 145, 152, 206 P.2d 755; Marble v. Wright, 77 Nev. 244, 248, 362 P.2d 265."

4. "§ 666. *Suits for adjudication of water rights—Joinder of United States as defendant; costs*

"(a) Consent is given to join the United States as a defendant in any suit (1) for the adjudication of rights to the use of water of a river system or other source, or (2) for the administration of such rights, where it appears that the United States is the owner of or is in the process of acquiring water rights by appropriation under State law, by purchase, by exchange, or otherwise, and the United States is a necessary party to such suit. The United States, when a party to any such suit, shall (1) be deemed to have waived any right to plead that the State laws are inapplicable or that the United States is not amenable thereto by reason of its sovereignty, and (2) shall be subject to the judgments, orders, and decrees of the court having jurisdiction, and may obtain review thereof, in the same manner and to the same extent as a private individual under like circumstances: *Provided*, That no judgment for costs shall be entered against the United States in any such suit.

*"Services of summons*

"(b) Summons or other process in any such suit shall be served upon the Attor-

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of said motion, the United States ap-  
peared and raised the objection that the  
State Court was without jurisdiction on  
the grounds that the sovereign immunity  
of the United States had not been waived,  
that the proceeding to correct clerical  
error was not a suit for adjudication of  
rights to the use of water of the stream  
system or other source or for the ad-  
ministration of such rights under 43  
U.S.C. § 666. The State Court found  
that it had jurisdiction over the United  
States, but denied the motion to correct  
the decree of 1929, holding that the omis-  
sion of the two paragraphs was not clerical  
but judicial error.

[2] The Supreme Court of Nevada,  
on July 15, 1965, 81 Nev. 390, 404 P.2d  
5, found the omissions to be clerical  
errors. The State District Court was  
reversed with instructions to correct the

ney General or his designated representa-  
tive.

*"Joinder in suits involving use of inter-  
state streams by State*

"(c) Nothing in this section shall be  
construed as authorizing the joinder of  
the United States in any suit or contro-  
versy in the Supreme Court of the United  
States involving the right of States  
to the use of the water of any interstate  
stream. July 10, 1952, c. 651, Title II,  
§ 208(a)-(c), 66 Stat. 560."

5. The Nevada Supreme Court brushed  
aside the Government's contention that  
sovereign immunity had not been waived

6.

"IN THE OFFICE OF THE STATE ENGINEER  
OF THE STATE OF NEVADA

\*\*\*\*\*

"IN THE MATTER OF THE DETERMINATION OF  
THE RELATIVE RIGHTS IN AND TO THE WATERS  
OF PAHRANAGAT LAKE AND ITS TRIBUTARIES  
IN LINCOLN COUNTY, STATE OF NEVADA OF  
THE DECREE DATED OCTOBER 14, 1929 AS  
CORRECTED PURSUANT TO DECISION OF THE  
SUPREME COURT OF THE STATE OF NEVADA  
OF JULY 15, 1965.

ORDER

"Paragraph (g) of Article V of the Decree allows that in addition to the water  
allowed for irrigation, stock and domestic purposes, each user in his proper pro-  
portion and priority shall be entitled to an economical bi-monthly diversion of  
water for washing mineral salts from his lands. Such diversion will be permit-  
ted from October 1st to March 14th each year in accordance with custom long  
prevailing.

"For the purpose of administering Paragraph (g) of Article V the State Engi-  
neer will follow the priorities, acreages and duty of water as set out in the De-

decree so as to include paragraphs 6 and  
7 of the Order of Determination and  
the said decree was corrected accordingly  
nunc pro tunc for October 14, 1929. Un-  
der mandate from the Nevada Supreme  
Court, the State District Court added  
paragraphs (f) and (g) to the decree.  
These paragraphs are identical in lan-  
guage with paragraphs 6 and 7 of the  
Order of Determination. The Govern-  
ment did not petition for certiorari to the  
United States Supreme Court from the  
decision of the Nevada Supreme Court.<sup>5</sup>

Thereafter, on March 2, 1966, the State  
Engineer issued an order implementing  
distribution of the waters of the stream  
system in accordance with paragraph (g)  
of the amended decree and gave due  
notice thereof to all claimants and water  
users on the stream system, including  
Plaintiff.<sup>6</sup> No appeal was taken from the

in this case under § 666 on the narrow  
and technical ground that the United  
States had not cross appealed. This ob-  
viously was error. The Nevada Su-  
preme Court should have decided whether  
or not the United States had waived sov-  
ereign immunity. Only the Congress can  
waive sovereign immunity. The dereliction  
of counsel for the Government does  
not constitute a waiver. United States  
v. United States Fidelity & Guaranty Co.,  
309 U.S. 506, 60 S.Ct. 653, 84 L.Ed.  
894 (1940). United States v. United  
States District Court, 9 Cir., 1953, 206  
F.2d 303.

order of the State Engineer as is provided by Nevada law.

On June 20, 1966, this action was initiated by the United States to have both paragraphs (f) and (g) of the decree and the order of the State Engineer of March 2, 1966, declared null and void, to enjoin the enforcement of the added paragraphs and the State Engineer's order, to enjoin all of the named defendant water users from diverting water to the extent that such diversions might diminish or extinguish the flow into Pahrangat Lake of the water needed to satisfy the Plaintiff's water rights, and to quiet the title of the United States to specific adjudicated, as well as certificated, water rights.

This Court must decide whether or not, by the provisions of 43 U.S.C. § 666, Congress has waived the sovereign immunity of the United States and subjected the Government to the jurisdiction of the courts of Nevada in the proceedings begun in March of 1964 in Case No. 3160.

There are really two questions:

1. Were the Nevada proceedings a suit for the adjudication of rights to the use of water of a river system or other source within the meaning of 43 U.S.C. § 666(a) (1)?

2. Were such proceedings a suit for the administration of such rights within the meaning of 43 U.S.C. § 666(a) (2)?

This Court believes that the first question must be answered in the negative

and the second question, in the affirmative.

cree. Claimants and their successors in interest will not be required to take or use the amount of water allotted to them on a continuous flow but may combine the same or any part thereof in rotation or periodic turn with the approval of the water commissioner and subject to the control of the State Engineer.

"Because of the limitation on the amount of water available for distribution, part of the priorities and lands that are listed in the Decree will receive their water during the months of October, December and February. The remainder of the priorities and lands not receiving their allotment during the above mentioned months will receive it during the months of November, January and March. The attached schedules are for the guidance of the water commissioner and can be altered with his consent.

"George W. Hennen  


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 GEORGE W. HENNEN  
 State Engineer

"Dated at Carson City, Nevada  
 this 2nd of March 1966"

### QUESTION I

Both the Plaintiff and the Defendants agree that the proceedings begun by the State Engineer in 1919 and concluded in 1929 by the entry of the formal decree was a suit for the adjudication of water rights of a river system within the meaning of § 666(a) (1). Defendants urged that the entire proceedings through 1965, when the 1929 decree was amended nunc pro tunc was such an adjudication. The Government argues that the adjudication proceedings terminated in 1929. The Government concedes that its water rights are no better or no worse than the rights of its predecessors in interest and that Nevada water law controls.

[3] There is no body of Federal water law. *United States v. Fallbrook Public Utility District, D.C., 165 F.Supp. 806, 831.*

What rights the United States has and the extent thereof must be determined by the law of Nevada. *California Oregon Power Co. v. Beaver Portland Cement Co., 295 U.S. 142, 55 S.Ct. 725, 79 L.Ed. 1356 (1935). United States v. Humboldt Lovelock Irr. Light & Power Co., 9 Cir., 1938, 97 F.2d 38.*

[4-6] Acts of Congress waiving the sovereign immunity of the United States are strictly construed. The courts are confined to the letter of the statute waiving immunity. The liability and the rem-

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edy are created by statute, a limitation of the remedy is a limitation of the right. The terms of the consent of Congress to be sued in any court defines that court's jurisdiction to entertain the suit. The Harrisburg (Lewis v. Rickards), 119 U.S. 199, 7 S.Ct. 140, 30 L.Ed. 358 (1886). Schillinger v. United States, 155 U.S. 163, 15 S.Ct. 85, 39 L.Ed. 108 (1894). United States v. Sherwood, 312 U.S. 584, 61 S.Ct. 767, 85 L.Ed. 1058 (1941). Dalehite v. United States, 346 U.S. 15, 73 S.Ct. 956, 97 L.Ed. 1427 (1953). Uarte v. United States, D.C., 7 F.R.D. 705 (1948).

[7, 8] It is clear from the cases dealing with the language of § 666(a) (1) that a suit for adjudication of rights to use of water of a river system or other source means precisely that and no more. The adjudication, that is, the determination of the relative rights, must be general and encompass all water claimants. Although, as conceded, the proceedings begun in 1919 and concluded in 1929 were adjudication proceedings contemplated by § 666(a) (1), the proceedings commenced thirty-five years later, in 1964, are not embraced within the language waiving immunity as found in § 666(a) (1). People of State of California v. United States, 9 Cir., 1956, 235 F.2d 647; Miller v. Jennings, 5 Cir., 1957, 243 F.2d 157; State of Nevada ex rel. Shamberger v. United States, 9 Cir., 1960, 279 F.2d 699. Dugan v. Rank, 372 U.S. 609, at 617, 83 S.Ct. 999, 10 L.Ed. 2d 15 (1963); State of California v. Rank, 9 Cir., 1961, 293 F.2d 340; Green River Adjudication v. United States, 1965, 17 Utah 2d 50, 404 P.2d 251; Turner v. Kings River Conservation District, 9 Cir., 1966, 360 F.2d 184.

#### QUESTION II

[9] However, it appears to this Court that the court proceedings begun in 1964, after the United States had acquired the Gardner Ranch and water rights, come within the purview of § 666(a) (2), that is, a suit for the administration of the water rights in a stream system previously adjudicated. It is believed that

this is a case of first impression. This Court has examined all of the cases cited by counsel and all other cases found as a result of its own reading treating 43 U.S.C. § 666.

Let us examine the legislative history of § 666. See the report of Senator McCarran of Nevada, Senate Report No. 755, 82d Congress, 1st Session. Pages 2-6 read in pertinent part:

"The doctrine of prior appropriation had its inception in the Western States early in the settlement of the West, being brought about by the arid and semi-arid character of such States. The doctrine that 'first in time is first in right' to the beneficial use of the water in the streams of such States first became the law of appropriation by custom and was later sanctioned by constitutional and legislative enactment in 11 of the Western States. Under the law sanctioning the doctrine of 'first in time is first in right,' vast quantities of land in these States, beginning back in the territorial days, was brought under cultivation through the courage and hard work of those who homesteaded or otherwise secured farm and ranch lands and made appropriations of water with which to make such lands productive. Litigation with respect to the water rights developed early in the history of the right to the use of water by appropriation. Down through the years the courts of the respective States marked out the pathway whereby order was instituted in lieu of chaos. Rights were established and all of this at the expense, trial, and labor of the pioneers of the West, without material aid from our United States Government until a much later time when irrigation projects were initiated by Congress through the Department of the Interior and later the Bureau of Reclamation. Even then Congress was most careful not to upset, in any way, the irrigation and water laws of the Western States \* \* \*

"It will be seen that in the Western States irrigation of the lands is essen-

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tial to successful farming and ranching and failure by a landowner to receive the amount of water vested or adjudicated to him is likely to be fatal to his economic welfare.

"In the arid Western States, for more than 80 years, the law has been that the water above and beneath the surface of the ground belongs to the public, and the right to the use thereof is to be acquired from the State in which it is found, which State is vested with the primary control thereof.

"In 1877 the Congress, in the Desert Land Act of 1877 (19 Stat.L. 377, Ch. 107), severed the water from the land, and the effect of such statute was thereafter that the land should be patented by the United States separate and apart from the water and that all the nonnavigable water should be reserved for the use of the public under the laws of the States and Territories named in the act. This statute was construed by the Supreme Court of the United States in *California-Oregon Power Co. v. Beaver Portland Cement Co.* (295 U.S. 142 [55 S.Ct. 725, 79 L.Ed. 1356]), in which the Court, *inter alia*, held:

\* \* \* \* \*

"Nothing we have said is meant to suggest that the act, as we construe it, has the effect of curtailing the power of the States affected to legislate in respect of waters and water rights as they deem wise in the public interest. What we hold is that following the act of 1877, if not before, all non-navigable waters then a part of the public domain became *publici juris*, subject to the plenary control of the designated States, including those since created out of the Territories named, with the right in each to determine for itself to what extent the rule of appropriation or the common law rule in respect of riparian rights should obtain. For since Congress cannot enforce either rule upon any State, *Kansas v. Colorado* (206 U.S. 46, 94 [27 S.Ct. 655, 51 L.Ed. 956]), the full power of choice must remain with the State.

"It is interesting to note what the Court said in a marginal note on page 164 of the opinion [295 U.S., on page 731 of 55 S.Ct.]:

"In this connection it is not without significance that Congress, since the passage of the Desert Land Act, has repeatedly recognized the supremacy of State law in respect to the acquisition of water for the reclamation of public lands of the United States and lands of its Indian wards.

\* \* \* \* \*

"It is therefore settled that in the arid Western States the law of appropriation is the law governing the right to acquire, use, administer and protect the public waters as provided in each such State.

*"It is most clear that where water rights have been adjudicated by a court and its final decree entered, or where such rights are in the course of adjudication by a court, the court adjudicating or having adjudicated such rights is the court possessing the jurisdiction to enter its orders and decrees with respect thereto and thereafter to enforce the same by appropriate proceedings. [Emphasis added.]*

In the administration of and the adjudication of water rights under State laws the State courts are vested with the jurisdiction necessary for the proper and efficient disposition thereof, and by reason of the interlocking of adjudicated rights on any stream system, any order or action affecting one right affects all such rights. Accordingly all water users on a stream, in practically every case, are interested and necessary parties to any court proceedings. It is apparent that if any water user claiming to hold such right by reason of the ownership thereof by the United States or any of its departments is permitted to claim immunity from suit in, or orders of, a State court, such claims could materially interfere with the lawful and equitable use of water for beneficial use by the other water users who are amenable to and bound by the decrees

and orders of the State courts. Unless Congress has removed such immunity by statutory enactment, the bar of immunity from suit still remains and any judgment or decree of the State court is ineffective as to the water right held by the United States. Congress has not removed the bar of immunity even in its own courts in suits wherein water rights acquired under State law are drawn in question. The bill (S. 18) was introduced for the very purpose of correcting this situation and the evils growing out of such immunity.

"The committee believes that such a situation cannot help but result in a chaotic condition. Each water user under some State laws is required to pay a graduated fee or tax annually for the services of water commissioners. The commissioners must apportion the water to the decreed users thereof in accordance with their decreed rights, and are required to deny the use of water to any user who at a particular time is not in the priority for the available supply of water. Failure to comply with the lawful orders of the water commissioner subjects the offender to the administrative and penal orders of the court, usually issued in contempt proceedings. If a water user possessing a decreed water right is immune from suits and proceedings in the courts for the enforcement of valid decrees, then the years of building the water laws of the Western States in the earnest endeavor of their proponents to effect honest, fair and equitable division of the public waters will be seriously jeopardized.

"If such a condition is to continue in the future it will result in a throw-back to the conditions that brought about the enactment of the statutory water laws, i. e., the necessity that the public waters so necessary to the economic welfare of the arid States be allotted in as equitable manner as possible to all users of the available supply thereof \* \* \*

"The committee is aware of the fact, as shown by the hearings, that the United States Government has acquired many lands and water rights in States that have the doctrine of prior appropriation. When these lands and water rights were acquired from the individuals the Government obtained no better rights than had the persons from whom the rights were obtained.

"Since it is clear that the States have the control of the water within their boundaries, it is essential that each and every owner along a given water course, including the United States, must be amenable to the law of the State, if there is to be a proper administration of the water law as it has developed over the years.

\* \* \* \* \*

"The committee is of the opinion that there is no valid reason why the United States should not be required to join in a proceeding when it is a necessary party and to be required to abide by the decisions of the Court in the same manner as if it were a private individual."

Once a legal proceeding within the purview of § 666(a) (1), determining relative rights of claimants to the waters of a stream system or other source, has been had and a decree adjudicating such rights entered, Congress has given its consent to any suit properly commenced for the administration of such rights under § 666(a) (2).

[10] To administer a decree is to execute it, to enforce its provisions, to resolve conflicts as to its meaning, to construe and to interpret its language. Once there has been such an adjudication and a decree entered, then one or more persons who hold adjudicated water rights can, within the framework of § 666(a) (2), commence among others such actions as described above, subjecting the United States, in a proper case, to the judgments, orders and decrees of the court having jurisdiction.

The statutory provisions of the Nevada water law empowering the State Engi-

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neer to take certain administrative steps following the entry of the decree are not exclusive.

This Court holds that the application to the State Court in 1964 to correct the 1929 decree which culminated in the amended decree in 1965 and in the order of implementation of 1966 were proceedings within the meaning of § 666(a) (2). The sovereign immunity of the United States was waived and the Government is subject to the jurisdiction of the State Courts.

### CONCLUSION

The Government's claim to quiet title to certificated rights must fail. It is apparent from the decree, as entered in 1929 and as amended in 1965 (Para. I, p. 8, Exh. A, Stipulated Exhibits), that all prior existing water rights based upon certificates of appropriation issued by a State Engineer pursuant to State water law are protected by and exempted from the decree. Those certificated rights claimed by the Government, obtained after the 1929 decree, are admittedly junior rights.

The Government attacks the nunc pro tunc amendment and the State Engineer's order of March 2, 1966, implementing the same, urging that the amendment and order of implementation are invalid because of uncertainty. A short answer is that these are matters that the Government should have addressed to the State Court, because they have to do with the administration of the decree.

[11] The Defendants are entitled to summary judgment. The Government's motion for summary judgment is denied. The complaint by the Government in this action constitutes a collateral attack on the State Court proceedings. The decision of the Supreme Court of Nevada in 1965, *Alamo Irrigation Co. v. United States*, supra, is res judicata.

This opinion constitutes this Court's Findings of Fact and Conclusions of Law. Summary Judgment will be entered accordingly.

UNITED STATES of America ex rel.  
Joseph Russell BRESNOCK

v.

Alfred T. RUNDLE, Superintendent.  
Misc. No. 3879.

United States District Court  
E. D. Pennsylvania.  
May 27, 1969.

Petition for habeas corpus by state prisoner. The District Court, Master-son, J., held that record established that petitioner had neither knowingly nor voluntarily pleaded guilty to prison breach or holding a hostage in a penal institution.

Writ granted.

#### 1. Criminal Law Ⓒ-232

Under Pennsylvania law, a preliminary hearing is not a critical stage of criminal proceeding, thus failure of Commonwealth to provide petitioner with counsel at alderman's hearing at which he was charged by informations with crimes of prison breach and holding a hostage and at which he pleaded guilty was not, of itself, fatal to pleas. 18 P.S.Pa. §§ 4309, 4723.1.

#### 2. Criminal Law Ⓒ-273

Petitioner who has neither voluntarily nor understandingly pleaded guilty is unconstitutionally detained.

#### 3. Habeas Corpus Ⓒ-85.5(4)

Record established that state defendant's guilty pleas to crimes of prison breach and holding hostage in a penal institution were neither knowingly nor voluntarily made. 18 P.S.Pa. §§ 4309, 4723.1.

#### 4. Habeas Corpus Ⓒ-85.2(1)

In the absence of any interrogation by the trial court of defendant's understanding of his guilty pleas, burden is on prosecution to demonstrate validity of those pleas by a showing that totality of circumstances existing at time pleas were entered were such as to indicate

fee agreement between counsel which, by its express terms, contemplates and provides for an unequal division of the work. True it is that, had the agreement simply provided for a division of the fee, without more, a court, in line with the quoted paragraph could, in its discretion, make a different apportionment. In such case there is room for dispute whether the fee division contemplated a corresponding work division. This, however, is not the case before us. Here, the contracting attorneys expressly agreed upon an equal division of the fee, regardless of the division of the work. There is no room left for the exercise of discretion by the court. The agreement must be enforced, absent recognized legal defenses. The respondent's repudiation of his agreement is unbecoming to a member of our bar. We regard the lower court's ruling as plainly wrong. The selected quotation from *Mau v. Woodburn* was unnecessary to the holding of that case and was not meant as an invitation to counsel to repudiate fee agreements, nor may it sensibly be so construed.

The judgment below is reversed, and the lower court is directed to apportion equally the attorneys fees which it authorized, ordinary and extraordinary, in accordance with the agreement of counsel.

BADT, J., and ZENOFF, D. J., concur.

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ALAMO IRRIGATION COMPANY, INC., ET AL.,  
APPELLANTS, v. UNITED STATES OF AMERICA,  
RESPONDENT.

July 15, 1965

No. 4820

404 P.2d 5

Appeal from an order of the Seventh Judicial District Court denying appellants' motion to correct a decree nunc pro tunc; Jon R. Collins, Judge.

The Supreme Court, ZENOFF, D. J., held that provisions for watering of livestock and washing of mineral salts from ranch lands were necessary and indispensable to

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territorial area concerned under 36-year-old decree  
which determined relative rights in and to waters of  
lake and its tributaries, and omission of these provisions  
was a clerical error which could be corrected without  
time limitation.

Reversed.

[Rehearing denied August 20, 1965]

Gray, Horton and Hill, of Reno, for Appellants.

J. Edward Williams, Acting Assistant Attorney Gen-  
eral, Roger P. Marquis, Martin Green, Raymond N.  
Zagone, Department of Justice, of Washington, D.C.,  
and John W. Bonner, United States Attorney, of Las  
Vegas, for Respondent.

1. APPEAL AND ERROR.

Generally, errors affecting a party who does not appeal will  
not be reviewed.

2. APPEAL AND ERROR.

Reviewing court will sometimes relax strict application of  
rule that errors affecting a party who does not appeal will not  
be reviewed, and will sometimes consider cross assignments of  
error, without cross appeal, in exercise of discretion.

3. APPEAL AND ERROR.

Court refused to review objections of respondent United  
States that it was not a proper party to motion to correct decree  
nunc pro tunc because sued without its consent, and that laches  
was applicable where such defenses were not raised by cross  
appeal.

4. JUDGMENT.

Burden of party filing motion to correct 36-year-old decree  
nunc pro tunc was to establish proposition that alleged error  
in decree was clerical rather than judicial. NRCP 60(a).

5. JUDGMENT.

Court can correct a clerical error in judgment or decree  
without time limitation. NRCP 60(a).

6. JUDGMENT.

Applied to judgments and decrees, a "clerical error" is a  
mistake or omission by a clerk, counsel, judge, or printer which  
is not result of the exercise of the judicial function, that is, one  
which cannot reasonably be attributed to exercise of judicial  
consideration or discretion.

7. JUDGMENT.

A "judicial error" not correctable by nunc pro tunc order  
is one made when court reaches an incorrect result in the inten-  
tional exercise of the judicial function, occurring when a judge  
reaches a wrong or incorrect decision in deciding a judicial  
question.

8. JUDGMENT.

Provisions for watering of livestock and washing of mineral salts from ranch lands were necessary and indispensable to territorial area concerned under 36-year-old decree which determined relative rights in and to waters of lake and its tributaries, and omission of these provisions was a clerical error which could be corrected without time limitation. NRCP 60(a).

OPINION

By the Court, ZENOFF, D. J.:

In 1919, a statutory proceeding was initiated for the determination of the relative rights in and to the waters of Pahrnagat Lake and its tributaries in Lincoln County, Nevada. In accordance with the water laws the state engineer made an investigation of the stream system and proofs of the various claims thereto.

After hearing objections to the preliminary order of determination, he prepared an Order of Determination defining the rights of the various claimants and filed the same with the District Court of Lincoln County on March 10, 1927. At the court hearing April 21, 1927, claimants and objectors appeared, presented their evidence, and the court allowed two corrections, neither of which is of concern or involved on this appeal.

On June 27, 1927, the court entered a minute order that a decree be entered affirming the determination and adjudication of rights as made by the state engineer. The minute order made no other reference to the hearing, and gave no indication or suggestion of a dispute concerning any portions of the order of the engineer.

Thereafter, the court by letter directed the attorney general to prepare the findings of fact, conclusions of law, and the final decree. The attorney general in turn requested the state engineer to draft those same documents. By the very nature of the subject matter, its complexities and intricacies, it was apparent that the composition of the findings and decree would be a difficult task. The attorney general, in fact, suggested that the state engineer follow the "Tony Creek decision" which was another water determination heard and drafted at an earlier date.

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Comparing the Tony Creek decision to the decree of the court in this case, the same form was followed, except that paragraphs six and seven of the Order of Determination of the state engineer in this matter, which were not contained in the Tony Creek decision, were omitted.

One of the claimants whose rights were adjudicated was the Gardner Ranch Company. In August, 1963, respondent United States of America purchased from the Buckhorn Investment Company the lands and water rights formerly comprising the Gardner Ranch.

Paragraph six of the order of the state engineer makes provision for watering of livestock and paragraph seven allows for seasonal use of water to wash mineral salt from the soil. Throughout the years, before and after the 1929 decree, the waters were used for the purposes contained in the two paragraphs as if they were in the decree.

Upon discovery of the omission, in February, 1964, appellants filed their motion to correct the decree nunc pro tunc as of the date of its entry, October 14, 1929, arguing that the two paragraphs were left out of the decree through inadvertence and oversight, a clerical error, while respondent protested that the absence of the paragraphs is the result of a judicial determination, and no timely appeal having been taken, the appellants are without a remedy.

Respondent, as part of its answering argument, requests this court to consider the propositions that the United States of America is not a proper party to the suit because sued without its consent, and also the defense of laches. Both objections were raised in the lower court and overruled.

[Headnotes 1-3]

These objections are not properly before this court. Respondent did not cross-appeal, but filed a cross-assignment of error only as to the issue of laches. Generally, errors affecting a party who does not appeal will not be reviewed. *Salter v. Ulrich*, 22 Cal.2d 263, 138 P.2d 7; *Alfred M. Lewis, Inc. v. Warehousemen, Teamsters, Chauffeurs and Helpers Local Union No. 542*, 163



Cal.App.2d 771, 330 P.2d 53. However, our court has relaxed the strict application of this rule and will sometimes consider cross-assignments of error, without cross-appeal, in the exercise of the court's discretion. Leonard v. Bowler, 72 Nev. 165, 298 P.2d 475. In this case we do not choose to review the objections of the respondent because they were not raised by a cross-appeal and will not now be considered by the court.

The problem with which we are chiefly concerned is whether or not a decree 36 years old can be corrected to include now what was intended to be a part of the 1929 decree. It is appellants' contention that the court record establishes that the typist who transposed the Tony Creek decision into this one, was too literal and mistakenly left out the paragraphs six and seven, and that the error was not discovered by the state engineer, the attorney general, or the court.

[Headnotes 4, 5]

It was the burden of the appellant to establish the proposition that the error was clerical, not judicial. Smith v. Smith, 157 Cal.App.2d 658, 321 P.2d 886. That a court can correct a clerical error in a judgment or decree without time limitation is conclusively established.

NRCP 60(a) states: "Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. \* \* \*" Sparrow & Trench v. Strong, 2 Nev. 362, 366, Ex parte Breckenridge, 34 Nev. 275, 280, 118 P. 687, overruled on another point; Lindsay v. Lindsay, 52 Nev. 26, 33-34, 280 P. 95; Brockman v. Ullom, 52 Nev. 267, 268, 286 P. 417; Silva v. District Court, 57 Nev. 468, 474, 66 P.2d 422; Finley v. Finley, 65 Nev. 113, 119, 189 P.2d 334, 196 P.2d 766, overruled on another point; Iveson v. District Court, 66 Nev. 145, 152, 206 P.2d 755; Marble v. Wright, 77 Nev. 244, 248, 362 P.2d 265.

[Headnote 6]

A clerical error, as opposed to a judicial error, is defined to be "\* \* \* a mistake in writing or copying. As

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more specifically applied to judgments and decrees a clerical error is a mistake or omission by a clerk, counsel, judge, or printer which is not the result of the exercise of the judicial function. In other words, a clerical error is one which cannot reasonably be attributed to the exercise of judicial consideration or discretion.

[Headnote 7]

"A judicial error, on the other hand, is one made when the court reaches an incorrect result in the intentional exercise of the judicial function. It occurs when a judge reaches a wrong or incorrect decision in deciding a judicial question." Marble v. Wright, supra.

The appellants direct us to the court record and the circumstances and facts existing during the drafting of the findings and decree, i.e., the complexities involved in drawing findings and a decree in a water determination; that the Tony Creek decision was followed in all respects but that it did not contain paragraphs akin to six and seven and thus the same were not put in this decree; that there were no protests nor contest to the subject matter in the disputed paragraphs and therefore the trial court could not have acted specifically upon them; that the minute order clearly and entirely adopted the order of the engineer without change, reservation, or qualification; that there was continuous use of the water for said purposes reflecting an understanding that the decree allowed it; and that the foregoing, accumulated, satisfies their burden that the omission was clerical and the decree subject to correction.

[Headnote 8]

But for the subject matter of the two paragraphs we would be constrained to agree with the lower court who denied the motion. However, the watering of livestock and the washing of mineral salts from ranch lands are integral, necessary, and indispensable to the territorial area concerned. Prohibiting water for such uses would most normally create a protest of sufficient strength to earn a place in the court record. The two paragraphs referred to are treated together in the briefs. While the provision for diversion of water to wash the alkali from the soil may be applicable only in certain districts, the provision for diversion for domestic use and stock water

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Clerical error  
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may be said to be of universal application. Omission of this provision under the circumstances *cannot* reasonably be said to be other than a clerical error. From the absence of such reference we can only conclude that no such problem arose and that the two paragraphs were inadvertently left out in the typing of the findings and decree. The evidence, we hold, is clear and convincing. *Fall River Irr. Co. v. Swendsen*, 41 Idaho 686, 241 P. 1021; *Application of Beaver Dam Ditch Co. (Crowell v. City of Cheyenne)*, 54 Wyo. 459, 93 P.2d 934.

The order denying appellants' motion is reversed.

The lower court is directed to correct the decree of October 14, 1929, by adding thereto the following:

"6. That in addition to water used during the irrigation season, each user shall be entitled to divert sufficient water for stock and domestic purposes, the amount diverted not to exceed a flow of 0.025 of a cubic foot per second at each point of use, such diversion to be made during the non-irrigating season, subject to the provisions of paragraph 3. The point of measurement of stock water shall be at the same point as selected and approved by the State Engineer for the measurement of irrigation water.

"7. That in addition to the water allowed for irrigation, stock and domestic purposes, each user in his proper proportion and priority shall also be entitled to an economical bimonthly diversion of water for washing mineral salts from his land, such diversion to be permitted from October 1 to March 14 of each year, in accordance with custom long prevailing."

THOMPSON and BADT, JJ., concur.

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IN THE OFFICE OF THE STATE ENGINEER  
OF THE STATE OF NEVADA

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IN THE MATTER OF THE DETERMINATION OF )  
THE RELATIVE RIGHTS IN AND TO THE WATERS )  
OF PAHRANAGAT LAKE AND ITS TRIBUTARIES )       O  R  D  E  R    
IN LINCOLN COUNTY, STATE OF NEVADA OF )  
THE DECREE DATED OCTOBER 14, 1929 AS )  
CORRECTED PURSUANT TO DECISION OF THE )  
SUPREME COURT OF THE STATE OF NEVADA )  
OF JULY 15, 1965. )

Paragraph (g) of Article V of the Decree allows that in addition to the water allowed for irrigation, stock and domestic purposes, each user in his proper proportion and priority shall be entitled to an economical bi-monthly diversion of water for washing mineral salts from his lands. Such diversion will be permitted from October 1st to March 14th each year in accordance with custom long prevailing.

For the purpose of administering Paragraph (g) of Article V the State Engineer will follow the priorities, acreages and duty of water as set out in the Decree. Claimants and their successors in interest will not be required to take or use the amount of water allotted to them on a continuous flow but may combine the same or any part thereof in rotation or periodic turn with the approval of the water commissioner and subject to the control of the State Engineer.

Because of the limitation on the amount of water available for distribution, part of the priorities and lands that are listed in the Decree will receive their water during the months of October, December and February. The remainder of the priorities and lands not receiving their allotment during the above mentioned months will receive it during the months of November, January and March. The attached schedules are for the guidance of the water commissioner and can be altered with his consent.

  
GEORGE W. HENNEN  
State Engineer

Dated at Carson City, Nevada  
this   2nd   of   March   1966

ROTATION SCHEDULE FOR ASH SPRINGS WATER RIGHT LANDS

Flow Ash Springs 12/6/62 18.951 c.f.s.  
 Ditch loss & Stock water 25% 4.74 c.f.s.  
 Water available for rotation 14.21 c.f.s.

MONTHS FOLLOWING LANDS WILL BE DELIVERED AVAILABLE WATER  
 FOR  
 WASHING MINERAL SALTS

October -- December -- February

PRIORITY	ALAMO CANAL	SHARP EAST-WEST MIDDLE RANCH	ANDHER-HIGBEE RICHARDSVILLE	U. S. GOV'T SHARP
1866			0.11	
1867			0.07	0.70*
1868	1.714		0.58	
1870				0.30*
1872	0.460			
1873	0.053			
1875		3.634		
1876		0.650		
1877	0.786			
1880	1.758			0.840
1881	1.501			
1882	0.045			
1883	0.150		0.25	
1884	0.180			
1885	0.280			
TOTAL	6.927	4.284	1.01	0.940 <i>1.840</i>

\*Sharp's Right  
 Alamo Canal Use 52.6% *49* 15.5 days *14.5*  
 Sharp East-West Middle Ranch Use 32.5% *31* 10.5 days *9.5*  
 Andher-Higbee Richardsville Use 7.8% *7* 2.0 days *2*  
 U. S. Gov't Sharp Use 7.1% *5* 2.0 days *4*

MONTHS FOLLOWING LANDS WILL BE DELIVERED AVAILABLE WATER  
 FOR  
 WASHING MINERAL SALTS

November -- January -- March

PRIORITY	ALAMO CANAL	SHARP EAST-WEST MIDDLE RANCH	ANDHER-HIGBEE RICHARDSVILLE	U.S. GOV'T SHARP
1885		.435	.55	.800
1890		0.130		2.145
1891			0.19	
1892			0.21	
1894			0.22	
1895		2.014	0.28	1.710
1896			0.043	
1898			0.636	
1900		0.220	0.540	0.980
1901		1.113		
1904		1.258		0.023
1905				0.160
TOTAL	000	5.170	2.669	5.818

Alamo Canal Use  
 Sharp East-West Middle Ranch Use 37.9% 11.5 days  
 Andher-Higbee Richardsville Use 19.5% 6.0 days  
 U. S. Gov't Use 42.6% 12.5 days

CORRECTED

ROTATION SCHEDULE FOR ASH SPRINGS WATER RIGHT LANDS

Flow Ash Springs	12/6/62	18.951 c.f.s.
Ditch loss & stock water	25%	4.74 c.f.s.
Water available for rotation		14.21 c.f.s.

MONTHS FOLLOWING LANDS WILL BE DELIVERED AVAILABLE WATER  
FOR  
WASHING MINERAL SALTS

October -- December -- February

<u>PRIORITY</u>	<u>ALAMO CANAL</u>	<u>SHARP EAST-WEST MIDDLE RANCH</u>	<u>ANDHER-HIGBEE RICHARDSVILLE</u>	<u>U. S. GOV'T SHARP</u>
1866			0.11	
1867			0.07	0.70*
1868	1.714		0.58	
1870				0.30*
1872	0.460			
1873	0.053			
1875		3.634		
1876		0.650		
1877	0.786			
1880	1.758			0.840
1881	1.501			
1882	0.045			
1883	0.150		0.25	
1884	0.180			
1885	0.280			
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TOTAL	6.927	4.284	1.01	1.840

\*Sharp's Right  
 Alamo Canal Use 49% 14.5 days  
 Sharp East-West Middle Ranch Use 31% 9.5 days  
 Andher-Higbee Richardsville Use 7% 2 days  
 U.S. Gov't Sharp Use 13% 4 days

MONTHS FOLLOWING LANDS WILL BE DELIVERED AVAILABLE WATER  
FOR  
WASHING MINERAL SALTS

November -- January -- March

<u>PRIORITY</u>	<u>ALAMO CANAL</u>	<u>SHARP EAST-WEST MIDDLE RANCH</u>	<u>ANDHER-HIGBEE RICHARDSVILLE</u>	<u>U.S. GOV'T SHARP</u>
1885		.435	.55	.800
1890		0.130		2.145
1891			0.19	
1892			0.21	
1894			0.22	
1895		2.014	0.28	1.710
1896			0.043	
1898			0.636	
1900		0.220	0.540	0.980
1901		1.113		
1904		1.258		0.023
1905				0.160
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TOTAL	000	5.170	2.669	5.818

Alamo Canal Use  
 Sharp East-West Middle Ranch Use 37.9% 11.5 days  
 Andher-Higbee Richardsville Use 19.5% 6.0 days  
 U. S. Gov't Use 42.6% 12.5 days

ROTATION SCHEDULE FOR CRYSTAL SPRINGS WATER RIGHT LANDS

Flow Crystal Springs 1/16/63 11.082 c.f.s.  
 Ditch loss & stock water 25% 2.77 c.f.s.  
 Water available for rotation 8.31 c.f.s.

MONTHS FOLLOWING LANDS WILL BE DELIVERED AVAILABLE WATER  
 FOR  
 WASHING MINERAL SALTS

October -- December -- February

<u>PRIORITY</u>	<u>PROOF</u>	<u>WRIGHT</u>	<u>(ACRES)</u>		<u>BURNS</u>
			<u>STEWART</u>		
1866	01825	113.30			
1867	01825	328.40			
1867	01794		16.50		
1870	01794		159.70		
1872	01548	146.1			
1872	01825	68.85			
<u>TOTAL</u>		656.65	176.20		

Wrights Use	78.9%	23.5 days
Stewarts Use	21.1%	6.5 days
Burns Use	0	000

MONTHS FOLLOWING LANDS WILL BE DELIVERED AVAILABLE WATER  
 FOR  
 WASHING MINERAL SALTS

November -- January -- March

<u>PRIORITY</u>	<u>PROOF</u>	<u>WRIGHT</u>	<u>(ACRES)</u>		<u>BURNS</u>
			<u>STEWART</u>		
1872	01548	146.1			
1872	01825	68.85			
1875	01794		37.20		
1880	01794		114.80		
1885	01548	46.5			
1885	01794		52.80		
1890	01794		40.70	58.50	
1895	01794		62.60	67.60	
1900	01794		64.60		
<u>TOTAL</u>		261.45	372.70	126.10	

Wrights Use	34.4%	34.4%	10 days
Stewarts Use	49.0%	49.0%	14.5 days
Burns Use	16.6%	16.6%	5.5 days