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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE
OF NEVADA IN AND FOR THE COUNTY OF WASHOE

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IN THE MATTER OF THE DETERMINATION OF THE
RELATIVE RIGHTS IN AND TO THE WATERS OF
FRANKTOWN CREEK AND ITS TRIBUTARIES IN
WASHOE COUNTY, STATE OF NEVADA.

No. 182,418
Dept. No. 1

FILED
JUL 11, 4:02 PM '60
By W. L. LIVERMORE
DEPUTY

FINDINGS OF FACT, CONCLUSIONS OF LAW. BROWN, Clerk
JUDGMENT AND DECREE

This matter came on regularly for hearing on the 11th day of July, 1960, before Honorable Grant L. Bowen, District Judge of the above-entitled Court presiding, the entire stream system being within Washoe County, State of Nevada, and he being the Judge designated by NRS 533.165 to hear and having jurisdiction to hear the above-entitled matter, upon the State Engineer's Order of Determination of the relative rights of the petitioner and claimants to the use of the waters of the stream system of Franktown Creek and its Tributaries, which Order of Determination had been duly filed by the State Engineer. Exceptions and objections to the Order of Determination were duly filed by Frank W. List, Franktown Irrigation Company and Marlette Lake Company. Thereafter, Marlette Lake Company, a Nevada Corporation, exceptant and party in interest, duly moved this Court for summary judgment pursuant to Rule 56 of the Nevada Rules of Civil Procedure; (1) In favor of the State Engineer in accordance with his Order of Determination; (2) In favor of said exceptant Marlette Lake Company for the relief demanded in its exceptions; and (3) In favor of the State Engineer and said exceptant Marlette Lake Company dismissing the exceptions filed by Frank W. List and Franktown Creek Irrigation Company, a Nevada Corporation. The State

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1 Engineer, having duly mailed and published the Order of this Court,
2 setting the hearing on the above-entitled matter on the 20th day of
3 November, 1959, and said hearing having been duly continued, and
4 all jurisdictional matters precedent to said hearing having been
5 resolved, and the above-entitled matter, including the matters of
6 said motion for summary judgment, the State Engineer's Order of
7 Determination, and all exceptions thereto on file herein, having
8 duly come before this Court on the 4th day of May, 1960, for
9 statutory hearing, as provided by the Nevada Rules of Civil Pro-
10 cedure and Section 533.170, Nevada Revised Statutes, as amended,
11 and all parties in interest, claimants and exceptants, being before
12 the Court by counsel of record, and the Court having jurisdiction
13 of the subject matter of and persons interested in the cause, and
14 the Court having duly considered said matters, taking into account
15 all the pleadings, depositions, admissions, affidavits, exhibits,
16 and other files and records in this proceeding, and the arguments
17 of counsel, and having duly rendered its decision on file herein,
18 it was ordered, adjudged and decreed that the motion for summary
19 judgment of Marlette Lake Company, exceptant and party in interest
20 herein, be and the same was, in all respects granted.

21 It was further ordered, adjudged and decreed that the Order
22 of Determination of the State Engineer be, and the same was,
23 affirmed, save and except for modification thereof in accordance
24 with the exceptions of the Marlette Lake Company on file herein;
25 (1) As to substitution of Marlette Lake Company for Virginia City
26 Water Company; (2) As to enlargement of points of diversion to
27 include the additional points set forth in said exceptions; (3)
28 As to the restatement of the footnote in the State Engineer's Order
29 of Determination dealing with relative priorities and in accordance
30 with said exceptions; and (4) Save and except by such further

1 modification as may be warranted, if at all, upon taking of further
2 proof by the State Engineer on the sole question of proper defi-
3 nition of place of use of the waters constituting the 10 c.f.s.
4 adjudicated to Marlette Lake Company, and the State Engineer was
5 ordered and directed to present to this Court forthwith proposed
6 Findings of Fact, and Decree with presentation and service thereof,
7 and attention to such other matters as may be required in connec-
8 tion therewith, all in accordance with the applicable statutes in
9 such case made and provided.

10 It was further ordered, adjudged and decreed that the
11 exceptions heretofore filed by Marlette Lake Company be and the
12 same were granted save and except for the matter of place of use
13 hereinabove provided.

14 It was further ordered, adjudged and decreed that the
15 exceptions heretofore filed by Frank W. List and Franktown Creek
16 Irrigation Company be and the same were dismissed, with prejudice,
17 in their entirety.

18 William Paul, Esq., Deputy Attorney General of the State of
19 Nevada, Edmund A. Muth, State Engineer, and Elmo J. DeRocco,
20 Assistant State Engineer of the office of the State Engineer,
21 State of Nevada, appeared in the hearing and proceedings in behalf
22 of the State of Nevada and the office of the State Engineer. John
23 S. Halley, Esq., appeared on behalf of Franktown Creek Irrigation
24 Company and Kenneth P. Dillon, Esq., appeared on behalf of claimant
25 Marlette Lake Company.

26 The record disclosed that petitioner and all claimants have
27 received a certified copy of the Order setting forth the time and
28 place for hearing on the Order of Determination.

29 The Deputy Attorney General thereupon, at the hearing,
30 offered and there were received in evidence in support of the rights

1 of the petitioner and claimants, as set forth in the Order of
2 Determination, verified affidavits, files and records of the State
3 Engineer's office respecting the rights of the petitioner and other
4 claimants of the above-named stream system. The records and files
5 of the State Engineer's office were identified and produced in
6 evidence.

7 The Court, having duly considered the entire record and
8 evidence introduced, and in accordance with the Court's prior
9 decision on the motion for summary judgment above referred to, and
10 being duly advised in the premises, now makes and enters its
11 Findings of Fact, Conclusions of Law, and Judgment and Decree.

12 FINDINGS OF FACT

13 I.

14 That on September 14, 1951, Alvin H. Cliff, president of
15 the Franktown Creek Irrigation Company, filed with the State
16 Engineer of the State of Nevada, a petition requesting the deter-
17 mination of the relative rights of claimants in and to the waters
18 of Franktown Creek and its Tributaries in Washoe County, Nevada.

19 That the State Engineer thereupon and in accordance with
20 the provisions of NRS 533.090, made an investigation of the facts
21 and conditions of and concerning the above-named stream system for
22 the purpose of disclosing whether the determination of such rights
23 was justified, and filed his report thereon in the office of the
24 State Engineer of the State of Nevada. The report of the facts
25 and conditions disclosed that a determination of the relative
26 rights was justified, and the State Engineer made and entered his
27 Order on November 7, 1951, granting the petition for the determi-
28 nation of such relative rights in and to the waters of Franktown
29 Creek and its Tributaries.

30 That petitioner, all claimants and appropriators, being

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less than ten in number, in conformity with NRS 533.215, waived in writing the provisions of the above-mentioned act with reference to Notices and the Service and Publication thereof.

That as a result of the State Engineer's investigation report, it was found that the waters of Franktown Creek and its Tributaries are being placed to beneficial use for irrigation, stockwatering and domestic purposes on ranches which were served by the Franktown Creek Irrigation Company and also by the Virginia City Water Company, the latter having transferred its interest to the Marlette Lake Company, for municipal, commercial and industrial purposes. The Proofs of Appropriation filed indicate the present claimants and appropriators are the successors in interest to vested rights initiated by their predecessors.

That on the 19th day of February, 1952, the State Engineer did publish the Notice of Order and Proceedings to Determine Water Rights in and to the waters of Franktown Creek and its Tributaries, in Washoe County, State of Nevada. That there was filed in the office of the State Engineer an affidavit of the publisher of the Reno Evening Gazette exemplifying the proof of publication of Notice of Order and Proceedings.

That the State Engineer, in accordance with NRS 533.140, did enter and file in the records of his office, on the 14th day of May, 1959, a Preliminary Order of Determination and that notice thereof was duly given to all claimants. That thereafter, on the 30th day of September, 1959, the State Engineer, in accordance with NRS 533.160, entered in the records of his office, an Order of Determination defining the rights to the waters of Franktown Creek.

That upon the filing of the Order of Determination with the Clerk of the Court of Washoe County, State of Nevada, the Court

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made and entered an Order on the 5th day of October, 1959, setting a time for the hearing of any exceptions to the Order of Determination, on Friday, the 20th day of November, 1959, at 10:00 o'clock in the forenoon, at the County Court House at Reno, Nevada.

That the State Engineer, in accordance with NRS 533.165, gave notice to the claimants, by service of a certified copy of the Order setting the time for hearing.

The Court finds that all and singular the proceedings, orders and notices required by Chapter 533 of NRS were duly had, made and given as required by law, and that all and singular the matters and things contained in the record were done, performed, given and made in strict compliance with the statute, and that this Court had and has jurisdiction to hear and determine this matter.

That within the statutory time allowed by law, exceptions were filed to the Order of Determination by Frank W. List, the Franktown Irrigation Company and Marlette Lake Company.

That thereafter, Marlette Lake Company, a Nevada Corporation, one of exceptants herein, duly moved this Court for summary judgment, pursuant to Rule 56 of Nevada Rules of Civil Procedure; (1) in favor of the State Engineer in accordance with his Order of Determination; (2) in favor of said exceptants for the relief demanded in its exceptions; and (3) in favor of the State Engineer and said exceptant dismissing the exceptions filed by Frank W. List and Franktown Creek Irrigation Company; supporting said motion with various affidavits on file herein, together with a memorandum of points and authorities in support thereof; and exceptant Frank W. List, in representing to the Court, through his counsel of record, that he had withdrawn his exceptions, had no

1 objection to the dismissal thereof, and no intention of opposing
2 the aforesaid motion for summary judgment, and Franktown Creek
3 Irrigation Company, also an exceptant, having submitted to the
4 Court its points and authorities in opposition to the aforesaid
5 motion for summary judgment, and said Marlette Lake Company having
6 submitted to the Court certain further points and authorities by
7 way of reply, and the State Engineer having duly mailed and
8 published the Order of this Court setting a hearing on the above-
9 entitled matter on the 20th day of November, 1959, and said hearing
10 having been duly continued, and all jurisdictional matters prece-
11 dent to said hearing having been resolved and the above-entitled
12 matter, including the matters of said motion for summary judgment,
13 the State Engineer's Order of Determination, and all exceptions
14 thereto on file herein, having duly come before this Court on the
15 4th day of May, 1960, for statutory hearing as provided by the
16 Nevada Rules of Civil Procedure of Section 533.170, Nevada Revised
17 Statutes, as amended, and all parties in interest, claimants and
18 exceptants, being before the Court by counsel of record, and the
19 Court having jurisdiction of the subject matter of and persons
20 interested in the cause, and the Court having duly considered said
21 matter, taking into account all the pleadings, depositions,
22 admissions, affidavits, exhibits and other files and records in
23 this proceeding, and the arguments of counsel, and having duly
24 rendered its decision on file herein.

25 It was heretofore, by this Court, ordered, adjudged and
26 decreed that the motion for summary judgment of Marlette Lake
27 Company, exceptant, be in all respects granted.

28 It was by this Court further ordered, adjudged and decreed
29 that the Order of Determination of the State Engineer be affirmed,
30 save and except for modification thereof, in accordance with the

1 exceptions of the Marlette Lake Company on file herein; (1) as to
2 substitution of Marlette Lake Company for Virginia City Water Com-
3 pany; (2) as to enlargement of points of diversion to include the
4 additional points set forth in said exceptions; (3) as to the
5 restatement of the footnote in the State Engineer's Order of De-
6 termination dealing with relative priorities and in accordance with
7 said exceptions; and (4) save and except by such further modifica-
8 tion as may be warranted, if at all, upon taking of further proof
9 by the State Engineer on the sole question of proper definition of
10 the place of use of the waters constituting the ten c.f.s. adjudi-
11 cated to Marlette Lake Company, and the State Engineer was ordered
12 and directed to present to this Court forthwith proposed Findings
13 of Fact, Conclusions of Law and Decree with presentation of service
14 thereof, and attention to such other matters as may be required in
15 connection herewith, all in accordance with the applicable statutes
16 in such case made and provided.

17 It was further ordered, adjudged and decreed that the
18 exceptions heretofore filed by Marlette Lake Company be and the
19 same were granted, save and except for the matter of place of use
20 hereinabove provided for.

21 It was further ordered, adjudged and decreed that the
22 exceptions heretofore filed by Frank W. List and Franktown Creek
23 Irrigation Company be and the same were dismissed with prejudice
24 in their entirety.

25 II.

26 The Court Further Finds: That Franktown Creek and its
27 Tributaries are situated wholly within Washoe County, State of
28 Nevada.

29 The Court Further Finds: That the names of the claimants
30 and appropriators, the duty of water, the measurement of water, the

1 length of the irrigation season, stockwatering and domestic use of
2 the water, the change of the place of use, and the rights of
3 appropriation, all as set forth in the Order of Determination, as
4 ordered amended by this Court, are true, proper and correct, and
5 all and singular the same should be approved and confirmed.

6 I. PREFACE

7 On September 14, 1951, Alvin H. Cliff, president of the
8 Franktown Creek Irrigation Company, submitted a petition to the
9 State Engineer requesting a determination of the relative rights
10 of claimants in and to the waters of Franktown Creek and its tribu-
11 taries, Washoe County, Nevada. On October 4, 1951, Robert S.
12 Leighton, Assistant State Engineer, and Elmo J. DeRiesco, Field and
13 Office Engineer, conducted an investigation and found that facts
14 and conditions justified the granting of said petition. On Novem-
15 ber 7, 1951, the State Engineer entered an Order granting the
16 petition and made proper arrangements to proceed with the determi-
17 nation in accordance with Chapter 533 of NRS.

18 All claimants and appropriators, being less than ten in
19 number, in conformity with NRS 533.215, waived in writing the
20 provisions of the above-mentioned act with reference to notices
21 and the service of publication thereof.

22 II. CLAIMANTS

23 The investigation above referred to disclosed that the
24 waters of Franktown Creek and its Tributaries were being placed to
25 beneficial use for irrigation, stockwatering and domestic purposes
26 on ranches which were served by the Franktown Creek Irrigation
27 Company, and also by the Virginia City Water Company, which said
28 latter company has transferred its interest to Marlette Lake
29 Company, for municipal, commercial and industrial purposes. The
30 Proofs of Appropriation filed in the office of the State Engineer

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indicate and claim that the present claimants and appropriators are the successors in interest to vested rights initiated by their predecessors.

III. SOURCE

Franktown Creek and its Tributaries are located on the eastern slope of the Sierra Nevada Mountains and are fed from melting snows and springs. Typical of Nevada's mountain streams they have a high spring run-off which recedes during the summer months to a limited continuous flow.

IV. DUTY OF WATER

The seasonal rainfall, the numerous springs in the irrigated area and the fluctuating water levels in Washoe Lake contribute to a sub-irrigation condition on a large portion of the cultivated lands. This condition has been taken into consideration in establishing the duty of water in this Order.

The duty of water is herein fixed as follows:

- Class A-----Harvest Crop-----3.0 acre-feet per acre per season
- Class B-----Meadow Pasture-----1.5 acre-feet per acre per season

The maximum allowable diversion herein fixed is 2.0 c.f.s. for each 100 acres irrigated. Due to the characteristics of the stream flow, the claimants herein named or their successors in interest shall be allowed to increase the rate of direct flow diversion to the maximum herein allowed to satisfy any immediate needs of growing crops and they may at their own option rotate the allotted water between the various fields having a decreed water right at such times and in such quantities as is necessary to place the water to the greatest beneficial use.

V. MEASUREMENT OF WATER

All water diverted from Franktown Creek and its Tributaries for irrigation purposes shall be measured at a point where the water enters or becomes adjacent to the land to be irrigated, or

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as near thereto as practical.

Substantial headgates and weirs must be installed to facilitate the measurement of water.

VI. IRRIGATION SEASON

Water for irrigation purposes may be diverted at any time throughout the year, provided that the total amount diverted during any calendar year shall not exceed the duty in acre-feet as established herein.

VII. STOCKWATERING AND DOMESTIC

The claimants named herein, or their successors in interest, in conjunction with the rights to the use of water for irrigation purposes, shall be entitled to a reasonable diversion and use of water for stockwatering and domestic purposes at any time during the year.

VIII. USE BY MARLETTE LAKE COMPANY

The waters of Hobart Creek, one of the tributaries to Franktown Creek, have historically been diverted and used by Marlette Lake Company and its predecessors in interest, for domestic, industrial, commercial and municipal uses since August, 1871. These waters are presently being used by priority of appropriation to beneficial use under date of August, 1871, and under the terms of a certain agreement dated September 11, 1878, between The Virginia and Gold Hill Water Company and H. L. Perkins, et al., the interest of The Virginia and Gold Hill Water Company having been duly acquired by Marlette Lake Company. Pursuant to this agreement, H. L. Perkins, et al., granted, bargained, sold and released to the Virginia and Gold Hill Water Company, by deed dated October 21, 1878, all of their right, title and interest in and to all of the waters of Franktown Creek and its Tributaries (including Hobart Creek) situated in the County of Washoe, State

1 of Nevada, having sources upon the eastern slopes of the Sierra
2 Nevada Mountains at and above certain flume intersections with
3 Franktown Creek and its said Tributaries. This deed was duly
4 recorded in the Clerk's Office of the County of Washoe on October
5 24, 1878 in Volume 7 of Deeds at pages 5 and 6.

6 Pursuant to this agreement and deed, Marlette Lake Company
7 as successor in interest to the Virginia and Gold Hill Water
8 Company is presently entitled to divert and perpetually use at all
9 times the whole of the waters naturally flowing in Franktown Creek
10 and each and all of its tributaries (including Hobart Creek) at
11 and above the lower Red House Diversion in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 32,
12 T. 16 N., R. 19 E., M.D.B. and M.

13 The waters arising in the Hobart Creek Watershed are
14 impounded in Hobart Reservoir which has a present capacity of 110
15 acre feet and is located within the NE $\frac{1}{4}$ Section 5, T. 15 N., R. 19
16 E., M.D.B. and M., and are released into the natural channel of
17 Hobart Creek which conveys them in a northwesterly direction to a
18 smaller reservoir which is the upper Red House Diversion point in
19 the SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 32, T. 16 N., R. 19 E., M.D.B. and M. The
20 waters from the eastern slopes of the Sierra Nevada Mountains in
21 the Franktown Creek watershed proper are diverted into the Tunnel
22 Flume of Marlette Lake Company at various points of diversion,
23 comingled in the past and to some extent presently, with water
24 from Marlette Lake and/or other areas, and conveyed to Hobart
25 Creek at a point above said upper Red House Diversion.

26 These waters are then diverted at points Nos. 1 and 2 set
27 out in Proof No. 02419, and conveyed by pipeline to two tanks
28 situated in the NE $\frac{1}{4}$ Section 3, T. 15 N., R. 19 E., M.D.B. and M.,
29 from which they are conveyed by siphon and pipeline to the general
30 area comprising Virginia City, Gold Hill, Silver City and Carson

1 City, all within the State of Nevada.

2 **IX. CHANGE OF PLACE OF USE**

3 All irrigation water allotted under this Order shall be
4 appurtenant to the place or places of use designated herein. Any
5 water user desiring to change the point of diversion, manner and
6 place of use of the waters allotted herein must make application
7 to the State Engineer for permission to change pursuant to law.

8 **X. RIGHTS OF APPROPRIATION**

9 From the Order of Determination as amended by judgment of
10 this Court, and the evidence, both oral and documentary, submitted
11 in support thereof, the Court finds that the names of the claimants
12 and appropriators of the waters of Franktown Creek and its Tribu-
13 taries, the source of the water supply, the means of diversion, the
14 points of diversion for beneficial use, the year of priority, the
15 cultural acreages and places of use, the legal subdivisions,
16 sections, townships, ranges and the duty of water are all as listed,
17 stated and set forth.

18 **CONCLUSIONS OF LAW**

19 From the evidence presented and received in this matter,
20 and from the foregoing FINDINGS OF FACT, the Court makes the
21 following Conclusions of Law:

22 I.

23 That the State Engineer had the right, authority and juris-
24 diction pursuant to Chapter 513 of NRS, to make the investigations
25 made by him, conduct the hearings had by him, receive the proofs
26 and maps, hear the evidence presented to him, and prepare, make,
27 enter and file in his office the original Order of Determination
28 and file a certified copy thereof in this Court, and to determine
29 the Order of Determination, the relative rights of claimants and
30 appropriators in and to the waters of Franktown Creek and its

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Tributaries in Washoe County, State of Nevada; that the State Engineer duly made all orders necessary and proper in connection therewith and entered the same in his office as required by Chapter 533 of NRS; that each and every notice required by law to be given herein to the claimants and appropriators was duly served by the State Engineer in the manner and within the time required by statute, and that the notices contained all of the statements required by law, and that the claimants and appropriators of the waters of the above-named stream system and its tributaries duly received the information and notices required by law herein.

II.

That the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, had and has jurisdiction to hear and try this matter, and has jurisdiction to find, make and enter the foregoing Findings of Fact and these Conclusions of Law, and enter its Decree herein.

III.

That Franktown Creek Irrigation Company and Marlette Lake Company constitute the claimants and the only claimants who were and now are appropriators and users of the waters of Franktown Creek and its Tributaries on the date the Order of Determination was filed with the Clerk of this Court, and on the date of the trial and hearing of this matter.

IV.

That Marlette Lake Company and Franktown Creek Irrigation Company, as claimants and appropriators of the waters of Franktown Creek and its Tributaries, by and through the means of diversion named, and their successors in interest, are claimants and appropriators of and to the waters of the above-named stream system; that Marlette Lake Company and Franktown Creek Irrigation Company

1 and their predecessors in interest continuously from the date of
2 appropriation or priority, when such water was available for bene-
3 ficial use, diverted all of such quantity of water from Franktown
4 Creek and its Tributaries and applied the same to beneficial use
5 as alleged in the Order of Determination.

6 V.

7 That the duty of water should be fixed in the Decree as
8 follows:

9 Class A-----Harvest Crop-----3.0 acre-feet per acre per season
10 Class B-----Meadow Pasture-----1.5 acre-feet per acre per season
11 with a maximum allowable diversion of 2.0 c.f.s. for each 100
12 acres irrigated. This duty to be subject to change or alteration
13 within a period of three years after entry of the Decree, as
14 provided for in NRS 533.210.

15 VI.

16 That all waters allotted in the Decree shall be appurtenant
17 to the place or places of use designated therein, and in the event
18 that any water user desiring to change the place of use of the
19 waters allotted herein, must make application to the State Engineer
20 for permission to make the change pursuant to law.

21 VII.

22 That except where specifically otherwise ordered herein
23 or in the Decree, the Order of Determination made, filed and
24 caused to be entered of record in this matter by the State Engineer,
25 should be affirmed.

26 JUDGMENT AND DECREE

27 I.

28 That the State Engineer made all necessary and proper orders
29 herein as required by law, and that each and every notice required
30 by law, was duly given to the claimants and appropriators; that the

1 claimants and appropriators had full opportunity to appear and be
2 heard in objection to and file exceptions to the Order of Determination herein; that the claimants and appropriators are the only
3 claimants and appropriators of the waters of Franktown Creek and
4 its Tributaries.
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6 That the Court has full and complete jurisdiction to hear,
7 try and determine this matter and to make and enter herein this
8 Decree.

9 II.

10 That the flow of water from Franktown Creek and its Tributaries is being placed to beneficial use for irrigation, stock-watering and domestic purposes on ranches which are served by the Franktown Creek Irrigation Company and also by the Marlette Lake Company for municipal, commercial and industrial purposes. That the Proofs of Appropriation filed in the office of the State Engineer claim vested rights initiated by their predecessors.

17 III.

18 That the duty of water is hereby adjudged, decreed and
19 fixed at:

20 Class A-----Harvest Crop-----3.0 acre-feet per acre per season
21 Class B-----Meadow Pasture-----1.5 acre-feet per acre per season
22 with a maximum allowable diversion of 2.0 c.f.s. for each 100
23 acres irrigated; that the duty may be changed or altered by the
24 Court within a period of three years after entry of this Decree as
25 provided by NRS 533.210; that the claimants or their successors
26 in interest shall be allowed to increase the rate of direct flow
27 diversion to the maximum as herein allowed, to satisfy any immediate needs of the growing crops and they may at their own option
28 rotate the allotted water between the various fields having a
29 decreed water right at such times and in such quantities as is
30 necessary to place the water to the greatest beneficial use.

IV.

1 That all water diverted from Franktown Creek and its
2 Tributaries for irrigation purposes shall be measured at a point
3 where the water enters or becomes adjacent to the land to be
4 irrigated or as near thereto as practicable.

V.

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6 Substantial headgates and weirs must be installed wherever
7 necessary to insure and facilitate the proper measurement, control
8 and distribution of water in accordance with the rights herein
9 defined.

10 VI.

11 That water for irrigation purposes may be diverted at any
12 time throughout the year, provided that the total amount diverted
13 during any calendar year shall not exceed the duty in acre-feet
14 as established herein.

15 VII.

16 That the claimants or their successors in interest shall be
17 entitled to a reasonable diversion and use of water for stockwater-
18 ing and domestic purposes at any time during the year, provided
19 that the total amount diverted during any calendar year shall not
20 exceed the duty in acre-feet as established herein.

21 VIII.

22 That all waters allotted under this Order shall be
23 appurtenant to the place or places of use designated herein.
24 That any water user desiring to change the point of diversion,
25 manner and place of use of the waters allotted herein must make
26 application to the State Engineer for permission to make the
27 change pursuant to law.

28 IX.

29 That no person or persons holding a right of appropriation
30 not herein vested is entitled to receive any water from Franktown

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Creek or its Tributaries to the detriment of the rights herein defined.

x.

That the names of the claimants and appropriators of Franktown Creek and its Tributaries, being the source of water supply, the means of diversion from the source of supply for beneficial use, the points of diversion, the year of priority, the cultural acreage, or place of use, the use, the period of use, the legal subdivisions, sections, townships and ranges, the duty of water, and the number of cubic feet of water per second per acre irrigated by the claimants and appropriators are hereby adjudged as follows, to-wit:

Proof No. 02395

Claimant: Franktown Creek Irrigation Company

Source : Franktown Creek

Use : Irrigation, Stockwatering and Domestic

Means of Diversion : Dams, Weirs and Ditches

Points of Diversion:

1. NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 9, T. 16 N., R. 19 E., N.D.B.&M.,
or at a point from which the E $\frac{1}{4}$ corner of said
Section 9 bears S. 60° 05' 05" E., 3,782.6 feet.
2. SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 4, T. 16 N., R. 19 E., N.D.B.&M.,
or at a point from which the E $\frac{1}{4}$ corner of Section
9, T. 16 N., R. 19 E., bears S. 28° 12' 30" E.,
3,168.8 feet.
3. SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 4, T. 16 N., R. 19 E., N.D.B.&M.,
or at a point from which the E $\frac{1}{4}$ corner of Section
9, T. 16 N., R. 19 E., bears S. 21° 42' 20" E.,
3,028.4 feet.
4. SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 4, T. 16 N., R. 19 E., N.D.B.&M.,
or at a point from which the E $\frac{1}{4}$ corner of Section
9, T. 16 N., R. 19 E., bears S. 11° 19' 55" E.,
2,751.8 feet.
5. SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 3, T. 16 N., R. 19 E., N.D.B.&M.,
or at a point from which the E $\frac{1}{4}$ corner of Section
9, T. 16 N., R. 19 E., bears S. 20° 03' 15" W.,
3,025.0 feet.
6. SE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 3, T. 16 N., R. 19 E., N.D.B.&M.,
or at a point from which the E $\frac{1}{4}$ corner of Section
9, T. 16 N., R. 19 E., bears S. 23° 14' 35" W.,
3,548.3 feet.

Class of Culture: Grain, Alfalfa, Hay, Pasture, Orchard,
Garden and Lawn

Period of Use : January 1st to December 31st

PRI- ORITY	CULTURAL ACREAGE		SUB.	SEC.	TWP.	RGE.	DUFFY OF WATER	
	HARVEST	PASTURE					UPS	ACRE-FEET
1855		19.82	NE $\frac{1}{4}$ SW $\frac{1}{4}$	2	16N	19E	0.40	29.73
"		20.38	NW $\frac{1}{4}$ SW $\frac{1}{4}$	2	16N	19E	0.41	30.57
"	3.26	36.83	SW $\frac{1}{4}$ SW $\frac{1}{4}$	2	16N	19E	0.80	65.03
"		40.25	SE $\frac{1}{4}$ SW $\frac{1}{4}$	2	16N	19E	0.81	60.37
"		21.20	NE $\frac{1}{4}$ SE $\frac{1}{4}$	3	16N	19E	0.42	31.80
"	0.95	20.36	NW $\frac{1}{4}$ SE $\frac{1}{4}$	3	16N	19E	0.43	33.39
"	20.08	20.07	SW $\frac{1}{4}$ SE $\frac{1}{4}$	3	16N	19E	0.80	90.35
"	19.25	20.86	SE $\frac{1}{4}$ SE $\frac{1}{4}$	3	16N	19E	0.80	89.04
"	22.29	0.24	NE $\frac{1}{4}$ SW $\frac{1}{4}$	3	16N	19E	0.45	67.23
"	12.46		NW $\frac{1}{4}$ SW $\frac{1}{4}$	3	16N	19E	0.25	37.38
"	4.84	12.95	SW $\frac{1}{4}$ SW $\frac{1}{4}$	3	16N	19E	0.36	33.95
"	21.80	16.09	SE $\frac{1}{4}$ SW $\frac{1}{4}$	3	16N	19E	0.76	89.54
"	17.30	22.62	NE $\frac{1}{4}$ NE $\frac{1}{4}$	10	16N	19E	0.80	86.07
"	28.32	11.67	NW $\frac{1}{4}$ NE $\frac{1}{4}$	10	16N	19E	0.80	102.53
"	37.52		SW $\frac{1}{4}$ NE $\frac{1}{4}$	10	16N	19E	0.75	112.56
"	40.04		SE $\frac{1}{4}$ NE $\frac{1}{4}$	10	16N	19E	0.80	120.12
"	17.52	1.20	NE $\frac{1}{4}$ NW $\frac{1}{4}$	10	16N	19E	0.37	54.36
"	5.70	.23	NW $\frac{1}{4}$ NW $\frac{1}{4}$	10	16N	19E	0.12	17.45
"	20.88	4.04	SW $\frac{1}{4}$ NW $\frac{1}{4}$	10	16N	19E	0.50	68.70
"	31.32		SE $\frac{1}{4}$ NW $\frac{1}{4}$	10	16N	19E	0.63	93.96
"	17.22	18.11	NE $\frac{1}{4}$ SW $\frac{1}{4}$	10	16N	19E	0.71	78.83
"	32.02		NW $\frac{1}{4}$ SW $\frac{1}{4}$	10	16N	19E	0.64	96.06
"	18.17		SW $\frac{1}{4}$ SW $\frac{1}{4}$	10	16N	19E	0.36	54.51
"	33.79	3.26	SE $\frac{1}{4}$ SW $\frac{1}{4}$	10	16N	19E	0.74	105.26
"	11.21	10.70	NE $\frac{1}{4}$ SE $\frac{1}{4}$	10	16N	19E	0.44	49.68
"	1.74	37.22	NW $\frac{1}{4}$ SE $\frac{1}{4}$	10	16N	19E	0.78	61.05
"	0.90	37.54	SW $\frac{1}{4}$ SE $\frac{1}{4}$	10	16N	19E	0.77	59.01
"	2.22	11.87	SE $\frac{1}{4}$ SE $\frac{1}{4}$	10	16N	19E	0.28	24.47
"		7.27	SW $\frac{1}{4}$ NE $\frac{1}{4}$	11	16N	19E	0.15	10.91

PRI-ORITY	CULTURAL ACREAGE		SUB.	SEC.	TWP.	RGE.	DUTY OF WATER	
	HARVEST	PASTURE					CFS	ACRE-FEET
1855	1.45	36.61	NE $\frac{1}{4}$ NW $\frac{1}{4}$	11	16N	19E	0.76	59.27
"	7.41	32.59	NW $\frac{1}{4}$ NW $\frac{1}{4}$	11	16N	19E	0.80	71.11
"	40.00		SW $\frac{1}{4}$ NW $\frac{1}{4}$	11	16N	19E	0.80	120.00
"	22.27	17.73	SE $\frac{1}{4}$ NW $\frac{1}{4}$	11	16N	19E	0.80	93.40
"	15.22	23.73	NE $\frac{1}{4}$ SW $\frac{1}{4}$	11	16N	19E	0.78	81.25
"	37.62		NW $\frac{1}{4}$ SW $\frac{1}{4}$	11	16N	19E	0.75	112.86
"	11.92	2.13	SW $\frac{1}{4}$ SW $\frac{1}{4}$	11	16N	19E	0.28	38.95
"	5.48	34.23	SE $\frac{1}{4}$ SW $\frac{1}{4}$	11	16N	19E	0.79	67.78
"		25.06	NW $\frac{1}{4}$ SE $\frac{1}{4}$	11	16N	19E	0.50	37.59
"		35.19	SW $\frac{1}{4}$ SE $\frac{1}{4}$	11	16N	19E	0.70	52.79
"		26.64	NW $\frac{1}{4}$ NE $\frac{1}{4}$	14	16N	19E	0.53	39.96
"		19.76	SW $\frac{1}{4}$ NE $\frac{1}{4}$	14	16N	19E	0.40	29.64
"		37.03	NE $\frac{1}{4}$ NW $\frac{1}{4}$	14	16N	19E	0.74	55.94
"	7.79	1.75	NW $\frac{1}{4}$ NW $\frac{1}{4}$	14	16N	19E	0.19	23.99
"	3.08	15.15	SW $\frac{1}{4}$ NW $\frac{1}{4}$	14	16N	19E	0.36	31.96
"		39.45	SE $\frac{1}{4}$ NW $\frac{1}{4}$	14	16N	19E	0.79	59.17
"		11.92	NW $\frac{1}{4}$ SW $\frac{1}{4}$	14	16N	19E	0.24	17.88
"		13.24	NE $\frac{1}{4}$ SW $\frac{1}{4}$	14	16N	19E	0.26	19.86
"		8.15	NW $\frac{1}{4}$ SE $\frac{1}{4}$	14	16N	19E	0.16	12.22
"	28.04	3.49	NE $\frac{1}{4}$ NE $\frac{1}{4}$	15	16N	19E	0.63	89.36
"	28.31	7.31	NW $\frac{1}{4}$ NE $\frac{1}{4}$	15	16N	19E	0.71	95.89
"	38.06		SW $\frac{1}{4}$ NE $\frac{1}{4}$	15	16N	19E	0.76	114.18
"	19.59	12.94	SE $\frac{1}{4}$ NE $\frac{1}{4}$	15	16N	19E	0.65	78.18
"	40.00		NE $\frac{1}{4}$ NW $\frac{1}{4}$	15	16N	19E	0.80	120.00
" 13.18	17.26		NW $\frac{1}{4}$ NW $\frac{1}{4}$	15	16N	19E	0.26	39.54
" 13.18	31.94		SW $\frac{1}{4}$ NW $\frac{1}{4}$	15	16N	19E	0.64	95.82
"	39.15		SE $\frac{1}{4}$ NW $\frac{1}{4}$	15	16N	19E	0.78	117.45
"	39.82		NE $\frac{1}{4}$ SW $\frac{1}{4}$	15	16N	19E	0.80	119.46
"	37.02	2.45	NW $\frac{1}{4}$ SW $\frac{1}{4}$	15	16N	19E	0.79	114.73
"	31.11	1.24	SW $\frac{1}{4}$ SW $\frac{1}{4}$	15	16N	19E	0.65	95.19

PRI- ORITY	CULTURAL ACREAGE		SUB.	SEC.	TWP.	RGE.	DUTY OF WATER	
	HARVEST	PASTURE					CFS	ACRE-FEET
1855	35.31	2.51	SE $\frac{1}{4}$ SW $\frac{1}{4}$	15	16N	19E	0.76	109.69
"	19.39	9.13	NE $\frac{1}{4}$ SE $\frac{1}{4}$	15	16N	19E	0.57	71.86
"	39.99		NW $\frac{1}{4}$ SE $\frac{1}{4}$	15	16N	19E	0.80	119.97
"	36.81	3.17	SW $\frac{1}{4}$ SE $\frac{1}{4}$	15	16N	19E	0.80	115.18
"	28.72	1.52	SE $\frac{1}{4}$ SE $\frac{1}{4}$	15	16N	19E	0.60	88.44
"	0.11		NE $\frac{1}{4}$ NE $\frac{1}{4}$	16	16N	19E	0.01	0.33
"	2.27		SE $\frac{1}{4}$ NE $\frac{1}{4}$	16	16N	19E	0.05	6.81
"	6.12		NE $\frac{1}{4}$ SE $\frac{1}{4}$	16	16N	19E	0.12	18.36
"	18.50		SE $\frac{1}{4}$ SE $\frac{1}{4}$	16	16N	19E	0.37	55.50
"	3.32		NE $\frac{1}{4}$ NE $\frac{1}{4}$	21	16N	19E	0.07	9.96
"	6.05		NE $\frac{1}{4}$ NE $\frac{1}{4}$	22	16N	19E	0.12	18.15
"	9.92		NW $\frac{1}{4}$ NE $\frac{1}{4}$	22	16N	19E	0.20	29.76
"	12.08		NE $\frac{1}{4}$ NW $\frac{1}{4}$	22	16N	19E	0.24	36.24
"	12.56		NW $\frac{1}{4}$ NW $\frac{1}{4}$	22	16N	19E	0.25	37.68
TOTALS	1150.49	818.90					39.39	4679.86

Proof No. 02419

Claimant: Marlette Lake Company, a Nevada corporation.

Source: Hobart Creek (tributary to Franktown Creek) and certain waters in the Franktown Creek Watershed proper having sources in the eastern slopes of the Sierra Nevada Mountains at and above Red House.

Use: Municipal, Commercial, Industrial and Domestic

Means of Diversion: Dams, Flumes and Pipelines

- Points of Diversion:
1. SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 32, T. 16 N., R. 19 E., N.D.B.&M., or at a point from which the SE corner of said Section 32 bears S. 68° 03' E., 2,674 feet.
 2. NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 32, T. 16 N., R. 19 E., N.D.B.&M., or at a point from which the SE corner of said Section 32 bears S. 55° 18' E., 3,531 feet.
 3. NE $\frac{1}{4}$ SW $\frac{1}{4}$ section 30, T. 16 N., R. 19 E., N.D.B.&M., or at a point from which the SE corner of section 32, T. 16 N., R. 19 E., bears S. 50° 27' 25" E., 11,058 feet.
 4. NE $\frac{1}{4}$ SW $\frac{1}{4}$ section 30, T. 16 N., R. 19 E., N.D.B.&M., or at a point from which the SE corner of section 32, T. 16 N., R. 19 E., bears S. 52° 07' 40" E., 10,711 feet.
 5. SE $\frac{1}{4}$ SW $\frac{1}{4}$ section 30, T. 16 N., R. 19 E., N.D.B.&M., or at a point from which the SE corner of section 32, T. 16 N., R. 19 E., bears S. 52° 57' 20" E., 10,606 feet.
 6. SE $\frac{1}{4}$ SW $\frac{1}{4}$ section 30, T. 16 N., R. 19 E., N.D.B.&M., or at a point from which the SE corner of section 32, T. 16 N., R. 19 E., bears S. 56° 51' 50" E., 10,300 feet.
 7. NE $\frac{1}{4}$ NW $\frac{1}{4}$ section 31, T. 16 N., R. 19 E., N.D.B.&M., or at a point from which the SE corner of section 32, T. 16 N., R. 19 E., bears S. 60° 30' E., 9,848 feet.
 8. SW $\frac{1}{4}$ NE $\frac{1}{4}$ section 31, T. 16 N., R. 19 E., N.D.B.&M., or at a point from which the SE corner of section 32, T. 16 N., R. 19 E., bears S. 65° 04' 24" E., 8,196 feet.
 9. NW $\frac{1}{4}$ SE $\frac{1}{4}$ section 31, T. 16 N., R. 19 E., N.D.B.&M., or at a point from which the SE corner of section 32, T. 16 N., R. 19 E., bears S. 70° 11' 40" E., 7,687 feet.

10. SW $\frac{1}{4}$ SE $\frac{1}{4}$ section 31, T. 16 N., R. 19 E., M.D.B. & M., or at a point from which the SE corner of section 32, T. 16 N., R. 19 E., bears S. 80°09'20" E., 7,195 feet.
11. SW $\frac{1}{4}$ SE $\frac{1}{4}$ section 31, T. 16 N., R. 19 E., M.D.B. & M., or at a point from which the SE corner of section 32, T. 16 N., R. 19 E., bears S. 81°35'40" E., 7,114 feet.
12. SE $\frac{1}{4}$ SE $\frac{1}{4}$ section 31, T. 16 N., R. 19 E., M.D.B. & M., or at a point from which the SE corner of section 32, T. 16 N., R. 19 E., bears S. 79°32'30" E., 5,814 feet.
13. SW $\frac{1}{4}$ SW $\frac{1}{4}$ section 32, T. 16 N., R. 19 E., M.D.B. & M., or at a point from which the SE corner of section 32, T. 16 N., R. 19 E., bears S. 79°18'15" E., 5,000 feet.

Place of Use : Within the cities of Virginia City, Gold Hill, Silver City and Carson City

Period of Use : January 1st to December 31st

Amount of Appropriation : 10.0 c.f.s.

*Priority of Appropriation : August, 1871

Manner of Use: The waters of Hobart Creek as above defined under "Source" may be stored in Hobart Creek Reservoir, or any enlargement thereof or supplement thereto, and they may be released and diverted at any and all times and in the quantities necessary to satisfy any demand on the distribution system providing the amount of appropriation described herein, which is computed on an annual continuous flow basis, is not exceeded.

* The priority of appropriation under this proof is consistent with and established by an agreement between the predecessors of the claimant and the predecessors of Franktown Creek Irrigation Company, dated September 11, 1878, and a deed, dated October 21, 1878, executed and delivered pursuant to said agreement, whereby the predecessors of Franktown Creek Irrigation Company conveyed to the predecessor of the claimant all of the former's right, title and interest to all of the waters of the stream known as Franktown Creek situated in Washoe County, Nevada, having its sources upon the eastern slopes of the Sierra Nevada Mountains and running thence to Washoe Lake, into which its waters are discharged, which naturally flow in the said stream or any of the tributaries at

and above a point where the said stream is intersected by a flume of The Virginia and Gold Hill Water Company, thereby subjecting the priorities of the predecessors in interest of Franktown Creek Irrigation Company, which are earlier in time, to the priority of the predecessors of the claimant, which is later in time.

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Done in open Court this 11 day of July,
1960.

~~GRANT L. BOWEN~~

GRANT L. BOWEN, DISTRICT JUDGE

STATE OF NEVADA, }
COUNTY OF WASHOE. } ss.

I. H. K. BROWN, County Clerk and ex-officio Clerk of the Second Judicial District Court of the State of Nevada, in and for Washoe County, said court being a court of record, having a common law jurisdiction, and a clerk and a seal, do hereby certify that the foregoing is a full, true and correct copy of the original, FINDINGS OF FACT, CONCLUSIONS OF LAW,

JUDGMENT AND DECREE IN CASE NUMBER 182418

IN THE MATTER OF THE DETERMINATION OF THE RELATIVE RIGHTS IN AND TO THE WATERS OF FRANKTOWN CREEK AND ITS TRIBUTARIES IN WASHOE COUNTY, STATE OF NEVADA

which now remains on file and of record in my office at Reno, in said County.

IN TESTIMONY WHEREOF, I have hereunto set my

hand and affixed the seal of said court, at Reno,

this 10 day of

October, A. D. 19 66.

H. K. Brown, Clerk.

By D. Hartman Deputy.

