

by the said Proposed Determination; that the said Proposed Determination denies them the right of use during such claimed additional periods, except as to Claims Nos. 140, 261, 392 and 413 wherein the period of use allowed was from April 1 to November 1; and that Newcastle Reservoir Company is an adverse party whose rights will be affected by the decision herein and said company resists any change in the period of use of said rights from that set up in the said Proposed Determination.

2. That the water rights claimed herein by the protestants are all based upon diligence rights alleged to have been established prior to the year 1903.

3. That the lands belonging to the protestants for which water herein involved was allotted are located at Pinto or in Pinto Canyon at an elevation of 6000 feet or more above sea level and are upstream from the Newcastle Reservoir which stores water for use of the stockholders of the Newcastle Reservoir Company.

4. That 80 to 90 percent of the lands irrigated by the protestants under their claims herein involved are now and for a number of years have been used for the growing of grass from which hay is cut and the lands are then pastured; that the balance of the land is used for the growing of grain and potatoes; and that some alfalfa was formerly grown.

5. That in the year 1917 some of the users of water at Pinto transferred to the Desert Reclamation Company the right to use one-half of the flow of Pinto Creek from May 1 to September 30 of each year; that it was then agreed between Pinto users and the said Desert Reclamation Company that, during said period, one-half of the flow of Pinto Creek should flow down for irrigation of lands in the vicinity of Newcastle; and that the Newcastle Reservoir Company has succeeded to the rights of the Desert Reclamation Company.

6. That at the time of the said transfer of rights to the Desert Reclamation Company, a number of the Pinto users also owned land at Newcastle and were shareholders in the Desert Reclamation Company; and that said users and shareholders desired to make such transfer in order to use Pinto Creek water on their lands at Newcastle.

7. That since said transfer in 1917 to the Desert Reclamation Company, the waters of Pinto Creek have been divided or rotated so as to allow one-half of the water to go to the lower users at Newcastle during the period from May 1 to September 30 of each year.

8. That, despite such transfer to lower users, the protestants and their predecessors have continued to irrigate the same acreage of lands at Pinto and in Pinto Canyon as they had done prior to the transfer; that to accomplish this they have diverted more of the early and late flow of Pinto Creek than they had formerly done; and that no applications were filed with the State Engineer to appropriate water for either such earlier or such later use or both.

9. That the Newcastle Reservoir Company has constructed a reservoir which was completed in the year 1956 for storing the waters of Pinto Creek and its tributaries and water diverted by trans-mountain diversion from Grass Valley and Ash Creek for the irrigation of lands at Newcastle; and that said reservoir company owns the right to the use of the waters of Pinto Creek and its tributaries subject to subsisting prior rights of protestants.

10. That water users under the Newcastle Reservoir Company are dependent upon the waters of Pinto Creek and its tributaries plus water flowing down Pinto Creek from Grass Valley and Ash Creek for irrigation of their lands in the vicinity of Newcastle; and that all winter water and all early and late water and other water available from said sources not required for the irrigation of the lands of protestants under their rights is greatly needed for storage and for supplying water to stockholders of Newcastle Reservoir Company.

11. That subsequent to the year 1917, the waters of Pinto Creek have been beneficially used during the months of March and October for irrigation of the lands of protestants at Pinto and in Pinto Canyon; that the period of use during said months has varied depending upon the state of the weather and the dryness of the season;

and that the growing season for crops in said area does not ordinarily begin until April 1 or later, and ordinarily ends not later than September 30, but irrigation of protestant's lands during March and October is beneficial in dry years for storing water in the ground for later growth of grass and other crops.

12. That prior to the transfer of rights in Pinto Creek for use on lower lands at Newcastle in the year 1917, there was little or no irrigation of protestant's lands prior to April 1 or later than September 30, except that in abnormally dry years water was applied to grass lands in October and November; and that, prior to said transfer in 1917, such irrigation earlier than April 1 or later than September 30 was not needed for the lands of protestants except in extraordinarily dry years.

13. That the water users' claims of the protestants herein involved were filed in the years 1943 and 1944; and that in their claims then filed none of the protestants claimed to have used the waters of Pinto Creek or its tributaries for irrigation prior to April 1 except the following:

<u>Claim No.</u>	<u>Claimant</u>	<u>Period Claimed</u>	<u>Quantity in C.F.S.</u>
236	C. H. Knell	January 1 to December 31	0.70
99	John H. Tullis	March 15 to December 1	2.0
140	E. V. Snow	January 1 to December 31	0.22

That in all claims involved herein, excepting the foregoing, the period of use as stated by the claimant began April 1; and in all the claims the end of the period of use as stated was November 30, excepting the following claims:

<u>Claim No.</u>	<u>Claimant</u>	<u>Period Claimed</u>
236	C. H. Knell	January 1 to December 31
208	H. E. Harrison	April 1 to October 31
99	John H. Tullis	March 15 to December 1
839	J. H. Harrison Estate	April 1 to September 30
836	Albert N. Harrison	April 1 to September 30
837	Albert N. Harrison	April 1 to September 30
140	E. V. Snow	January 1 to December 31

14. That, in addition to the individual claims filed by the protestants, a general or group claim, signed by R. E. Tullis, was filed October 14, 1943, in which it is stated that the annual period of use was January 1 to December 31 of each year.

From the foregoing Findings of Fact, the Court concludes as a matter of law, as follows:

CONCLUSIONS OF LAW

1. That the water users at Pinto and in Pinto Canyon, the protestants and objectors herein, did not establish a right to an earlier or a later use of the waters of Pinto Creek or its tributaries during each year than they had formerly had by making use of such waters after the year 1917 at an earlier or a later period than they had done prior to the transfer of water rights to the Desert Reclamation Company in 1917; and that, to establish such rights to early and late water during the year, would have required the filing of applications with the State Engineer.

2. That the evidence presented does not show that diligence rights were established by the protestants by use prior to 1903 of the waters of Pinto Creek or its tributaries for periods in excess of the periods allowed by the State Engineer in the Proposed Determination of Water Rights on file herein.

3. That the State Engineer's determination as to periods of use of water from Pinto Creek and its tributaries by the protestants under the rights herein involved should be approved and the objections filed herein by the protestants should be dismissed.

Dated this 14 day of Oct, 1957.

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DISTRICT JUDGE