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Department of Reclamation

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(24)

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON.

FILED
JUL 20 1962
S. S. FOOTE, CLERK
H. POWELL
DEPUTY

OTTO MULLER and
MARIE MULLER,
Husband and Wife,

Plaintiffs,

vs.

EDWIN B. KARN as Watermaster
of Water District No. 12A,
State of Idaho,

Defendant.

Civil No. 15626

J U D G M E N T

This matter came on regularly for hearing in open court without a jury on the 20th day of April, 1962, and on June 22, 1962, upon the Plaintiffs' complaint, the Plaintiffs appearing by one of their attorneys of record, Calvin Dworshak, Esquire, and the Defendant, having been regularly served with process according to law and he not appearing either in person or by an attorney, and a default having been duly and regularly entered against the Defendant, witnesses were sworn and examined on behalf of the Plaintiffs, and oral and documentary evidence having been introduced, the court being fully advised in the premises and having duly considered the same, and the court having arrived at his conclusions and having made and filed Findings of Fact and Conclusions of Law from which it appears that the Plaintiffs are entitled to Judgment as follows:

NOW, THEREFORE, it is ORDERED, ADJUDGED AND DECREED, and this does ORDER, ADJUDGE AND DECREE as follows:

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I.

That Plaintiffs are the owners in fee simple and are in possession of the following described lands situate in the County of Ada, State of Idaho, and adjacent to the said Boise River and its tributaries, and more particularly described as follows, to-wit:

→ The West Half (W1/2) of the Southeast Quarter (SE1/4) of Section Ten (10); and Lot Two (2) and the West Half (W1/2) of the Northeast Quarter (NE1/4) of Section Fifteen; all in Township Four North (T4N), Range One West (R1W) of the Boise Meridian, together with all water, ditch and lateral rights appurtenant thereto or used in connection therewith.

II.

63-0370 That the Plaintiffs and their predecessors in interest have continually since on or about the 15th day of April, 1893, diverted water from the natural flow of the Boise River to irrigate the above-described land, having diverted approximately eighty (80") miner's inches measured under a four inch pressure, and that the same has been continually applied to said land for the beneficial use thereof in irrigating the same annually thereafter during each irrigation season; that said eighty (80") inches have been diverted and applied by Plaintiffs and their predecessors in interest in addition to the water diverted by reason of ownership of stock in the Middleton Mill Ditch Company, a corporation, or otherwise, and applied to the same parcel of land; that the Plaintiffs and their predecessors in interest have a right to the use of a portion of the natural flow and flood waters of said stream.

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III.

That there shall be allowed to flow to the said land, diverted from the Boise River and its tributaries, for the use of the irrigation of the said land for the benefit of the Plaintiffs and their successors in interest lawfully entitled thereto priority of eighty (80") miner's inches of water measured under a four inch pressure, dating from the 15th day of April, 1892, provided that this decree shall at all times be subject to the terms of the original decree of the Boise River, as follows:

A/ That certain decree entered by the Judge of the District Court of the Seventh Judicial District of the State of Idaho in and for the County of Canyon in the case of Farmers Co-operative Ditch Company, a corporation v. Riverside Irrigation District, Ltd., and dated January 18, 1906, which is commonly referred to and known as the "Stewart Decree" of the natural flow of said river or stream; and

B/ That certain decree made and entered in the District Court of the Seventh Judicial District of the Pioneer Irrigation District v. American Ditch Association, et al., dated February 14, 1929, commonly known as the "Bryan Decree"; in which decrees were adjudicated the priorities of the natural flow of said stream and of the flood waters of said stream.

IV.

That the Defendant as Watermaster of Water District No. 12A, State of Idaho, and his successors in the office shall allow to flow to the said land of the Plaintiffs for

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irrigation purposes and for the benefit of the Plaintiffs herein and their successors in interest, who may be lawfully entitled thereto by virtue of the appropriation, in an amount of eighty (80") miner's inches of water measured under a four inch pressure, dating from the 15th day of April, 1893; and the said Watermaster and his successors in interest shall distribute to them the said water in accordance therewith in the same manner and effect as thereof their said rights had been included in the said original decrees commonly known as the "Stewart Decree" and the "Bryan Decree" hereinabove referred to, and with the same priority as thereof contained in the said two original decrees; that the point of diversion shall be the Middleton Mill Ditch, which ditch shall carry said water.

Done in Open Court this 22nd day of June, 1962.

Gilbert C. Norris

District Judge

State of Idaho }
County of Canyon } ss.

I hereby certify that the foregoing instrument is a true and correct copy of the original as the same appears in this office,

32110

July 30, 1962
S. S. Frite, Clerk of the District Court
and Ex Officio Recorder.

by Lavona Sayre
Deputy

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