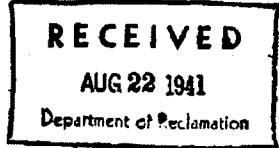


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37-5



IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF BLAINE

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TOM HUGHES, A. W. BECKERT,  
 SCOTT ALLRED, SMITH FARN-  
 LUN, GEORGE KNIGHT, ANDREW  
 KNIGHT, I. E. ROCKWELL,  
 R. E. SUTHERLAND, and Wm. J.  
 BUEHLER, Trustees for Upper  
 Big Wood River Water Users'  
 Association, a corporation,  
 BASE LINE CANAL COMPANY, a  
 corporation, and  
 GEORGE ALLRED,  
 Plaintiffs,  
 -v-  
 MANS H. COFFIN, Watermaster,  
 Defendant.

FINDINGS OF FACT  
 CONCLUSIONS OF LAW  
 and  
 DECREE

-----

This cause came on for hearing in open court before the above entitled court, the undersigned presiding, in the courtroom of the courthouse at Hailey, Blaine County, Idaho, on the second day of June, 1941. The plaintiffs appeared by one of their attorneys, Conroy Gillespie, Esq., and the defendant failed to appear either in person or by counsel. Thereupon, plaintiffs introduced proof of personal service upon the defendant, duly acknowledged by defendant, and proof of publication of Notice of Pendency of the above entitled action as required by law. The default of the defendant and all other persons interested having been entered for failure to appear and plead within the time allowed by law, the plaintiffs then introduced documentary and oral testimony in support of the complaint.

Thereafter, on motion of plaintiffs, said cause was by order of the court reopened for further hearing, which was duly had before the undersigned judge of this court on the 18th day of July, 1941, at his chambers in Gooding, Gooding County, Idaho. At said hearing, the plaintiffs appeared by their attorneys, B. W. Oppenheim and Conroy Gillespie. Whereupon, the plaintiffs called the defendant, Mans H. Coffin, who, being sworn, voluntarily testified to certain matters of fact within his official knowledge as watermaster on Big Wood River.

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## FINDINGS OF FACT

Proposed findings of fact and decree having been by plaintiffs voluntarily submitted to the said Mans H. Coffin, and he having approved the same with certain modifications to which plaintiffs agreed, and the court, having heard the testimony and being fully advised, now finds:

### 1.

#### Qualification of Plaintiffs

The plaintiffs, Tom Hughes, A. W. Heckert, Scott Allred, Smith Faralun, George Knight, Andrew Knight, I. K. Rockwell, R. M. Buchanan, and Wm. J. Buhler, are trustees in fact for the Upper Big Wood River Water Users' Association. Said association is a mutual non-profit corporation organized and existing under and by virtue of the laws of the State of Idaho, the stockholders and members whereof are each and all users of the water of Big Wood River in Blaine County, Idaho, for the irrigation of their respective lands, all of which lands are located in said county. The said corporation is authorized to acquire new and additional water rights for its stockholders and members, to economically deliver waters already or hereafter acquired, and to perform the usual functions of a water corporation.

The plaintiff, Base Line Canal Company, is a non-profit corporation organized and existing under and by virtue of the laws of the State of Idaho, the stockholders and members whereof are each and all users of the waters of Big Wood River in Blaine County, Idaho, for the irrigation of their respective lands, located in said county. The said corporation is authorized to acquire new and additional water rights for its stockholders and members, to economically deliver waters already or hereafter acquired, and to perform the usual functions of a water corporation.

The plaintiff, George Allred, is an individual user of the waters of Big Wood River in Blaine County, Idaho, for the irrigation of his lands located in said county.

JUN 05 1906

2.

Qualification of Defendant

The defendant, Mans H. Coffin (otherwise Mans Coffin), is now and has been since the pendency of this action, and for more than 60 days prior to the filing thereof, the duly elected, qualified, and acting watermaster of Big Wood River and its tributaries located in Blaine, Lincoln, and Gooding counties, State of Idaho.

3.

Big Wood River Water Adjudication

The priority rights of the users of the waters of said Big Wood River and its tributaries were adjudged and determined by this court sitting in the county of Lincoln in a case entitled S. C. Frost et al. v. Alturas Water Co. et al., decree wherein, commonly known as the "Frost Decree", was entered December 17, 1909, and a copy whereof is duly recorded in the records of Blaine County in Book 6 of Judgments at pages 447-458. The plaintiffs herein have accepted said decree as binding upon them.

4.

Instant Case Supplemental to Frost Decree

This present action is supplemental to said decree, having been brought under Section 41-1305 Idaho Code Annotated, the rights herein adjudicated having been acquired subsequent to said former decree.

5.

Base Line By-Pass Decree

On the 38th day of August, 1928, this court, sitting in Lincoln County, entered a decree upon the complaint of the Upper Big Wood River Water Users' Association, a corporation, the Mutual Wood River Water Users' Association, a corporation, and the Big Wood Canal Company, a corporation, against S. H. Chapman, the then watermaster of said Big Wood River, wherein the said plaintiffs were decreed eighteen second feet of the waters of Big Wood River, being water saved and developed by said plaintiffs by reason of the so-called

JUN 05 1936

By-Pass constructed by them to divert the waters of Big Wood River around the so-called "Dry Beds". A copy of said decree appears in the records of Blaine County in Book 11 of Judgments at page 230.

For the purpose of more definitely identifying the said By-Pass, it is herein referred to as the "Base Line By-Pass", by which name it is commonly known.

6.

The said Dry Beds are situated generally in Sections 13, 14, 23, 24, 25, 26, and 35, Township 1 North, and Section 2, Township 1 South, Range 18 East, B.M., in said Blaine County.

In the portion of the river so described, the river channel and the ground underlying it are of such character that the surface waters of Big Wood River in great quantity continuously sink and disappear through gravel beds and subterranean outlets, and are unavailable for appropriation and use by the land owners and water users who divert their water from the river channel in the vicinity of and below the Dry Beds.

At times, and particularly during the latter part of the irrigation season, the entire surface flow of said river entirely so disappears and is lost, at which times the said Dry Beds, for the purposes of practical irrigation, divide the river and the flow above said portion is no longer tributary to the stream below said Dry Beds.

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The decree in said former adjudication in Upper Big Wood River Water Users' Association et al. versus S. H. Chapman, supra, recognized the appropriation of the otherwise lost waters of Big Wood River as an independent source of supply and the watermaster on Big Wood River has administered said decree whenever the flow of the river diminished to a point where the Dry Beds absorbed so much of the flow that it was no longer possible to supply the lower priorities in accordance with the Frost Decree.

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7.

Headgate and Canal No. 61

A diversion from the east side of Big Wood River in the South-east quarter of Section 8, Township 1 South, Range 18 East, B.M., is designated as Headgate No. 61, and through it are diverted into Canal No. 61 certain early priorities from said river, known as the "Black" or "Bettis" water rights, as follows, to wit:

11.80	second	feet	as	of	July	10,	1880
2.80	"	"	"	"	July	1,	1881
2.00	"	"	"	"	July	31,	1881
4.20	"	"	"	"	Dec.	19,	1882
5.60	"	"	"	"	May	1,	1883
4.40	"	"	"	"	May	15,	1883
4.90	"	"	"	"	June	26,	1883
1.60	"	"	"	"	May	15,	1884
3.00	"	"	"	"	Oct.	26,	1886.

<sup>39.70</sup> When the river becomes divided in low water season, as set forth in the preceding finding, the said priorities into Canal No. 61 are and during all the existence of the Extension By-Pass have been diverted at the headgate of the Base Line By-Pass and conveyed through said by-pass and its extension into said Canal No. 61. Nothing in these findings or in this decree is intended to impair or affect said priorities through Canal No. 61.

8.

Extension By-Pass

Between the 14th day of July, 1924, and the 24th day of July, 1924, the plaintiffs, for the purpose of effecting a further and greater saving of the waters so lost in the Dry Beds, by mutual agreement, jointly constructed a canal or ditch, with appurtenant dams and other hydraulic devices, being an extension of the Base Line By-Pass theretofore constructed in the year 1920 by the plaintiffs in said former action, and the same is commonly known as and is herein called the Extension By-Pass.

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9.

Extension By-Pass -- Location and Capacity

The said Extension By-Pass is situated in Blaine County, Idaho, on the east side of Big Wood River. It diverts from the Base Line By-Pass at a point in the NW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 36, Twp. 1 North, R. 18 East, B.M., which point is the diversion point of the Brown or Brewer ditch, and runs in a southwesterly direction to a point in the Southeast Quarter of Section 2, Twp. 1 South, R. 18 East, B.M., the point of diversion of the Black ditch, known as Canal No. 61.

The Extension By-Pass has a carrying capacity of thirty-five (35) second feet and is sufficient to carry the waters of Big Wood River saved and developed by plaintiffs as well as the waters thereof which under the Frost Decree are subject to diversion into said Canal No. 61.

10.

Diversion and Use of Waters Saved by Extension By-Pass

Since the 24th day of July, 1924, during the irrigation season of 1924 and of each succeeding year thereafter, the plaintiffs by means of said Extension By-Pass have continuously, uninterruptedly, openly, and notoriously diverted and beneficially used for irrigation, domestic and stock purposes on their respective lands, eighteen second feet of the waters of Big Wood River flowing above the Dry Beds, at all times when said flow became so diminished that it became lost in the Dry Beds and failed to flow across the surface thereof in sufficient quantity to become available for diversion and use in and immediately below the Dry Beds.

The diversion of the waters of Big Wood River by plaintiffs through the Base Line By-Pass and the said Extension By-Pass around the Dry Beds has and does effect, in addition to the adjudicated saving through the Base Line By-Pass, a further saving of said waters, which, except for such diversion, would otherwise be lost and disappear in the Dry Beds and be unavailable for use to other appropriators and users of the waters of said stream. The saving so effected amounts to eighteen second feet, in addition to the eighteen second feet heretofore adjudicated to the Base Line By-Pass.

The said diversion and use so made by the plaintiffs, owing to the saving of water theretofore lost, and which, except for such diversion and use would be lost to all users, is equivalent to the development of said water from an independent stream or source of supply. By virtue of said saving and development and the said diversion and use thereof, the said water right of eighteen second feet, with priority date of July 24, 1924, has become and is appurtenant to the said Extension By-Pass for the benefit of the lands of the plaintiff Allred and of the members and stockholders of the plaintiff corporations.

11.

Irrigation Necessary for Lands Served

All of the lands so served by the Extension By-Pass are desert in character and require water for their successful cultivation, and the said developed and saved water is necessary for their proper irrigation.

12.

Relative Interests of Plaintiffs

The plaintiffs herein are the sole and exclusive owners of the right to the use of said developed and saved water and, by virtue of their said diversion and use thereof, are the owners of and entitled to the right to use the said water in the following proportions and amounts:

The plaintiff, Upper Big Wood River Water Users' Association, 585/900 of the water saved and developed by means of the Extension By-Pass.

The plaintiff, Base Line Canal Company, 300/900 of the water saved and developed by means of the Extension By-Pass.

The plaintiff, George Allred, 75/900 of the water saved and developed by means of the Extension By-Pass.

13.

When ~~Flow~~ Flow Above Dry Beds Becomes Non-Tributary

The flow of the waters of Big Wood River, dependent upon the winter snows on its watershed and weather conditions, varies from

year to year. In average years, the river flowing above and into the Dry Beds appreciably diminishes in volume beginning usually in the month of June, followed by substantial disappearance and ultimately total loss through seepage.

In the practical administration of the waters of Big Wood River, water has been and is turned into the Base Line By-Pass whenever the flow in the river above the dry beds has diminished to the point where the capacity of the by-pass is sufficient to carry the entire flow of the river.

Water has been and is turned into the Extension By-Pass whenever the flow in the river above the Dry Beds, as then delivered through the by-pass, is insufficient to supply the right with priority of June 15, 1888, known as the Graf right, diverted in the Dry Beds below the by-pass.

#### CONCLUSIONS OF LAW

By reason of the foregoing findings, the Court concludes that plaintiffs are entitled to a decree herein substantially as prayed in the complaint.

#### DECREE

WHEREFORE, IT IS ORDERED, ADJUDGED, and DECREED:

That plaintiffs are the owners of the right to the use for irrigation, domestic and stock purposes, with priority of July 24, 1924, of eighteen second feet of the waters of Big Wood River above the Dry Beds, as described in the foregoing Findings of Fact, subject to diversion through the Extension By-Pass hereinbefore described, whenever during the irrigation season of any year the flowage in said river above the Dry Beds diminishes in amount so that on account of said losses it is insufficient to supply the prior rights diverted in or below the Dry Beds (other than the priorities in Canal No. 61, as in the Findings set forth).

JUN 05 1996



That the right herein adjudicated shall be deemed appurtenant to the said Extension By-Pass for distribution to the lands thereunder owned or served by plaintiffs in the relative proportions set forth in Finding of Fact No. 12.

That the defendant watermaster and his successors in office be and they are hereby directed to permit plaintiffs to divert the waters of Big Wood River herein adjudicated whenever the flow of said river above and into the Dry Beds so diminishes in amount that it is by reason of losses in the Dry Beds unavailable to prior appropriators.

It being difficult accurately to fix the time when the flow of the river above and into the Dry Beds becomes an independent source of supply non-tributary to the stream below the Dry Beds, during the existence of prior rights diverted in the Dry Beds the time during any irrigation season when the right herein adjudicated becomes effective shall be deemed to be when water rights in said stream with priority of June 15, 1885, are shut off; but in the event that the point of diversion of such prior rights is changed from within said Dry Bed area the time during any irrigation season when the right herein adjudicated becomes effective shall be deemed to be when the flow of the river is turned into the Base Line By-Pass and the Extension By-Pass is capable of carrying prior rights deliverable under the Frost Decree.

Dated this 18th day of July, 1941.

D. H. STEPHEN

District Judge.

JUL 05 1941