

2

✓ 63-7

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

-----;-----

BENJAMIN P. WEAVERLING,
Plaintiff,

v.

A. V. TALLMAN, Water Master
on the Boise River,

Defendant.

JUDGMENT AND DECREE.

-----;-----

This cause came on for hearing in open court on the 26th day of April, 1920, Messrs. Oppenheim & Lampert appearing for the plaintiffs and neither the defendant nor anyone else appearing in person or by attorney in opposition to the plaintiff. The court having heard all of the evidence and proof adduced herein, having examined the files and duly considered the same, and being fully advised in the premises and it appearing therefrom to the satisfaction of the court:

1. That the summons in this action, together with a copy of the complaint herein, was duly and personally served upon the defendant in this action, that the time within which the said defendant may appear herein has expired, and that the defendant has made default in that behalf, and that the default of said defendant for not appearing and answering plaintiff's complaint has been duly and regularly entered herein;

2. That the plaintiff has caused to be published once a week for three weeks, that is to say, in four consecutive issues, a notice of the pendency and purpose of this action in the Meridian Times, a newspaper published in Ada County, State of

SCANNED
MAY 25 2006
New file!

JUN 21 1996

Idaho, as ordered by the judge of this court, which notice contained the title of this court and of this cause and the name of the stream, to wit, the Boise river, in whose waters the plaintiff claims an interest, with the date of priority so claimed by him, and the date and short title of the decree heretofore entered in this court fixing the permanent rights in the waters of the said Boise river; that the time fixed by the judge of this court for the publication of said notice in his said order has expired and no interested party or anyone else has appeared and defended against the right claimed by the plaintiff;

3. That the allegations of the complaint are true and in particular that water from the Boise river in an amount sufficient for the irrigation of the land hereinafter described measured under a 4-inch pressure at its point of diversion from said stream was appropriated by the plaintiff and his predecessors in interest and by means of dams and ditches was diverted and used in the irrigation of the land hereinafter described, beginning on or about the 1st day of May, 1909, and continuously during the irrigation season since the date of the appropriation said water has been so used on said land and said amount is actually necessary to be used in the irrigation thereof:

NOW, WHEREFORE, On motion of Messrs. Oppenheim & Lampert, IT IS ORDERED, ADJUDGED AND DECREED, That the plaintiff be, and he hereby is, awarded the use of the waters of the Boise river to the amount of 63 inches measured under a 4-inch pressure at its point of diversion from said stream as of priority date of May 1, 1909, for use upon the following described land in Ada county, state of Idaho, to wit: The south half (S $\frac{1}{2}$) of the northeast quarter (NE $\frac{1}{4}$) of section eighteen (18), township four (4) north, range one (1) east, Boise Meridian, containing eighty (80) acres.

JUN 21 1996

That the quantity of water required for the successful irrigation and cultivation of plaintiff's land which in character is commonly termed, "Boise River Bottom Lands" for which a water right is hereby decreed measured at its point of diversion from Boise river is _____ inches per acre.

That neither the plaintiff nor his predecessors in interest shall have any right to the use of the waters of Boise river herein awarded except for a beneficial purpose and that whenever the beneficial use thereof has ceased such party shall cease to divert and have no right to divert said water.

That the waters herein decreed to plaintiff shall be distributed to him and his successors in interest in the same manner as though he and they had had their rights included in that certain decree heretofore entered in this court adjudicating the waters of the Boise river dated January 18, 1906, in that action entitled, "In the District Court of the Third Judicial District of the State of Idaho, in and for Canyon County, Farmers' Cooperative Ditch Company, Plaintiff, versus Riverside Irrigation District, Ltd., et al., Defendants," the provisions of which decree and the findings of fact and conclusions of law upon which it was based as well as any subsequent modifications which have been or may hereafter be made in the terms thereof the plaintiff in this action has accepted as binding upon him.

That the number of inches of water per acre required for irrigation and hereby decreed and the corresponding total number of inches of water hereby awarded shall be in accordance with the duty of water for Boise river bottom lands as the same shall be hereafter determined in the above entitled action now pending in this court and when the duty of water is so determined in said

JUN 21 1996

suit on motion of plaintiff the blanks left in this decree for the insertion of the number of inches so herein awarded shall be filled and completed to accord with the duty of water as found in said suit.

All costs herein shall be paid by the plaintiff.

Done in open court this 26th day of April, 1920.

Ed. L. Bryan
District Judge.

STATE OF IDAHO, }
County of Canyon, } ss.

I, L. C. Knowlton, Clerk of the District Court and Ex-officio Recorder of the County of Canyon, State of Idaho, do hereby certify that the foregoing copy of Decree

has been compared by me with the original, and that it is a correct transcript therefrom, and of the whole of such original Decree

as the same appears on file & of record in my office.

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed my seal this 1st

May day of 1920
L. C. Knowlton
Clerk of the District Court and Ex-Officio Recorder.

By _____ Deputy.

MICROFILMED

JUN 21 1996