

MEMORANDUM

To: File
From: Chris M. Bromley, deputy attorney general
Date: June 30, 2004
Re: Scott Slough--Basins 01 and 25

In the late 19th century, a dam was placed on Scott Slough, a natural channel, to capture water that would otherwise flow into the Snake River. Beginning June 1, 1884, stockholders of the Independent Irrigation Company ("Company") began to beneficially use forty-four cubic feet per second of water from the slough for irrigation purposes.

In 1910, the Rexburg Decree was entered. The decree did not include Scott Slough as a tributary to the Snake River.

In 1922, a local watermaster, John Empy, sought to prevent the diversion of water from Scott Slough, asserting that the Company did not have a water right. The Company moved for a restraining order against the watermaster, which was granted by a Jefferson County district court, and the matter was set for trial.

When the watermaster did not appear for trial on October 9, 1922, the district court, after taking evidence and hearing testimony, entered an injunction, on the basis of default, in favor of the Company, preventing the watermaster from interfering with its water right. According to the court, "the plaintiffs are entitled to Decree of this Court, decreeing to the said plaintiffs . . . forty-four (44) cubic feet per second of natural water, arising and flowing in what is known as Scott Slough . . . with a priority date of . . . June 1st, 1884. . . ." Moreover, the court stated that "this Decree is supplemental to, and in addition to that certain decree entered in the Sixth Judicial District of the State of Idaho, in and for Freemont County, on or about the 16th day of December, 1910, in that certain

cause wherein the Rexburg Irrigation Company, et al., were the plaintiffs, and the Teton Irrigation Canal Company, et al., were the defendants”

Following entry of the judgment, various water using entities asserted that Scott Slough was tributary to the Snake River and moved the court to intervene. The entities’ motions to intervene were granted and the court took evidence and heard testimony regarding the tributary nature of Scott Slough. On December 16, 1922, the court “vacated, annulled and held for naught” the October 9, 1922 injunction.

The Company appealed the December 16, 1922 decision to the Idaho Supreme Court, seeking to enjoin the watermaster from preventing the diversion of waters in Scott Slough. In reversing the trial court’s December 16, 1922 decision dissolving the injunction, the supreme court found that the injunction was not improperly issued because the record supported the conclusion that Scott Slough was not tributary to the Snake River:

The evidence further shows that from the date of the construction of the dam by appellants Scott slough ceased to be a tributary of the Snake river. There is also evidence in the record to the effect that when the so-called Snake river water suit was tried, the waters in Scott slough were not considered to be part of the river, were not involved in the suit, and were not decreed as part of the waters of Snake river, but the waters of the slough remained an independent water supply owned and applied to a beneficial use by appellant company and its stockholders

Independent Irrig. Co. et al. v. Baldwin, Watermaster of Dist. No. 36 et al., 43 Idaho 371, 252 P. 489 (1926).

Therefore, for purposes of the Snake River Basin Adjudication, Scott Slough should be included in the SRBA’s separate stream list and included as a general provision in basins 01 and 25.