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1. FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT -- Gean B. Edwards -vs- Lynn Crandall

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IN THE DISTRICT COURT OF THE NINTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF PREMONT

GEAN B. EDWARDS,

Plaintiff

-vs-

LYNN CRANDALL, As Watermaster
of Water District No. 36 of the
State of Idaho,

Defendant

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND
JUDGMENT

This cause came on regularly to be heard before the undersigned Judge of said District Court, at Chambers, at Idaho Falls, Idaho, upon plaintiff's complaint on file herein, on this 6th day of December, 1956, plaintiff appearing by her attorneys, Albaugh, Bloom, Barnard & Smith, and no appearance being made by or for the defendant, it appearing from the files and records of said cause that the defendant has been duly served with the summons in said action by personal service of a copy thereof, attached to which was a true copy of the complaint in said cause, that the time allowed by law for answering said complaint has expired, and that no answer, demurrer or other appearance has been made by the defendant herein, and that the default of the defendant has been duly entered by the Clerk of this Court, and it further appearing that the plaintiff has caused a notice of the pendency of this action to be published in the manner and for the time provided by law, and as heretofore ordered by the Court; and the Court having heard the evidence introduced by and on behalf of the plaintiff and having duly considered the law and the evidence, and being fully advised in the premises, the Court makes the following Findings of Fact.

FIRST CAUSE OF ACTION

FINDINGS OF FACT

I

That plaintiff is a single woman and the owner and in possession of the following described land situated in Premont County, Idaho, to-wit:

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The South Half of the North Half of the Southeast Quarter (S $\frac{1}{2}$ N $\frac{1}{2}$ SE $\frac{1}{4}$) and the North Sixty (60) Rods of the South Half of the Southeast Quarter (S $\frac{1}{2}$ SE $\frac{1}{4}$) of Section Twenty-two (22), Township Fifteen (15) North, Range Forty-two (42), East of the Boise Meridian,

which lands and premises are situated within the boundaries of Water District No. 36 of the State of Idaho.

II

That the defendant, Lynn Crandall, is the duly elected, qualified and acting Watermaster of said District No. 36 of the State of Idaho, which District includes within its boundaries the County of Fremont of the State of Idaho.

III

That the waters of the Snake River and its tributaries were heretofore decreed in this Court in that certain action entitled Rexburg Irrigation Company, et al., plaintiffs, vs. Teton Irrigation Canal Company, et al, defendants, judgment therein being made and entered under date of December 16, 1910, and recorded in Book B of Judgments at page 449, of the records of said Fremont County, Idaho, and that the plaintiff herein was not a party to said action and did not appear therein.

IV

That the plaintiff admits as binding upon her and accepts the provisions of said Decree of the waters of Snake River and its tributaries and of any decrees supplemental thereto.

V

That the South Fork of Duck Creek is a natural stream situate in said Water District No. 36 rising on lands near plaintiff's said lands and premises and flows and empties into and becomes a tributary of the said Snake River.

VI

That on or about the first day of June, 1915, plaintiff's immediate predecessors in interest in the above entitled land appropriated and diverted from said South Fork of Duck Creek 1.2 cubic feet per second of the unappropriated waters of said South Fork of Duck Creek at a point in the Northwest Quarter of the Northwest Quarter (NW $\frac{1}{4}$ NW $\frac{1}{4}$) of Section

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Twenty-seven (27), Township Fifteen (15), North, Range Forty-two (42), East of the Boise Meridian, and by means of canals and ditches conducted said water to and upon the above described lands and premises now owned by the plaintiff and applied the same to beneficial use for agricultural and stock watering purposes, and ever since said date the plaintiff and her said predecessors in interest have continued to divert said water of said South Fork of Duck Creek in said amount and have continued to apply the same to beneficial use for agricultural and stock watering purposes, so long as such diversion and use did not interfere with priorities earlier than June 1, 1915, as determined by said decree of the waters of said Snake River and its tributaries.

VII

That all of plaintiff's said lands and premises lying under plaintiff's said ditches and canals are naturally arid in character and require the artificial application of water for the purpose of producing pasturage and profitable agricultural crops therein, and that all of the waters appropriated as set forth in Paragraph VI hereof are necessary for the development, reclamation and use of said lands.

VIII

That the said appropriation of said waters of said South Fork of Duck Creek by plaintiff and her predecessors in interest have never been denied and have never lapsed for any reason whatsoever, and the rights acquired thereby have never been decreed or adjudicated (except as aforesaid) and that certain difficulties are likely to arise regarding the distribution thereof to the plaintiff unless the same are adjudicated by a summary decree of this Court.

IX

That users of water from Snake River and its tributaries have rights inferior in time and subsequent and subject in priority to the rights claimed by the plaintiff, and likewise, there are many users of water whose claims are prior and superior to the rights of the plaintiff to said 1.2 cubic feet per second appropriated by plaintiff's predecessors in interest on that date.

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SECOND CAUSE OF ACTION

FINDINGS OF FACT

I

The Court hereby adopts Paragraphs I, II, III, IV and VII of the Findings of Fact on the First Cause of Action herein set forth, and by reference makes said Paragraphs a part of the Findings of Fact in this Second Cause of Action as fully and to the same extent as if again set forth herein.

II

That an unnamed natural stream flows in a Southerly direction on or near the North-South center line of Section Twenty-two (22), Township Fifteen (15) North, Range Forty-two (42), E¹st Boise Meridian, which stream is a tributary of Duck Creek, a tributary of the said Snake River.

III

That on or about the 1st day of June, 1915, plaintiff's immediate predecessors in interest in the above entitled land appropriated and diverted from said unnamed stream 1 cubic foot per second of the unappropriated waters of said unnamed stream at a point in the Northwest Quarter of the Southeast Quarter (NW $\frac{1}{4}$ SE $\frac{1}{4}$) of Section Twenty-two (22), Township Fifteen (15) North, Range Forty-two (42), East Boise Meridian, and by means of a ditch and pipeline conducted said waters to and upon the above described land now owned by plaintiff, and applied the same to beneficial use for domestic, stock watering and agricultural purposes and ever since said date, the plaintiff and her said predecessors in interest have continued to divert said waters of said unnamed stream in said amount, and to apply the same to beneficial use for the purposes aforesaid, so long as such diversion and use did not interfere with priorities earlier than June 1, 1915, determined by said decrease of the waters of said Snake River and its tributaries.

IV

That the said appropriation of said waters of said unnamed stream by plaintiff and her predecessors has never been denied and has never lapsed for any reason whatsoever, and the rights acquired thereby

have never been decreed or adjudicated (except as aforesaid) and that certain difficulties are likely to arise regarding the distribution thereof to the plaintiff unless the same are adjudicated by summary decree of this Court.

V

That users of water from Snake River and its tributaries have rights inferior in time and subsequent and subject in priority to the rights claimed by the plaintiff, and likewise there are many users of water whose claims are prior and superior to the rights of the plaintiff, but that all rights and priorities of said users whose rights were initiated subsequent to June 1, 1915, are inferior and subject to the rights of the plaintiff to said 1 cubic foot per second appropriated by plaintiff's predecessors in interest on that date.

VI

That all the allegations contained in plaintiff's complaint and each Cause of Action therein set forth are true and that no interested party has pled to or answered said complaint and that the default of the defendant and all interested parties has been entered herein.

From the foregoing Findings of Fact, the Court makes the following Conclusions of Law.

CONCLUSIONS OF LAW

FIRST CAUSE OF ACTION

That the plaintiff is entitled to a judgment herein granting her a summary decree and adjudication of the waters of the South Fork of Duck Creek in the amount of 1.2 cubic feet per second, with date of priority of June 1, 1915, prior and superior to all appropriations by users of the Snake River and its tributaries with dates of priority subsequent to said date, and debarring the defendant and all interested parties from asserting any right, claim, or claims, to the use of said waters under priority dates subsequent thereto.

CONCLUSIONS OF LAW

SECOND CAUSE OF ACTION

That the plaintiff is entitled to a judgment herein granting

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her a summary decree and adjudication of the waters of an unnamed stream, which flows in a Southerly direction on or near the North-South center line of Section 22, Township 15 North, Range 42, East of the Boise Meridian, which stream is a tributary of Duck Creek, a tributary of said Snake River, in the amount of 1 cubic foot per second, with date of priority of June 1, 1915, prior and superior to all appropriations by users of the Snake River and its tributaries with dates of priority subsequent to said date, and debarring the defendant and all interested parties from asserting any right, claim or claims to the use of said waters under priority dates subsequent thereto.

JUDGMENT
ON
FIRST CAUSE OF ACTION

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED as follows:

21 000/1. That the plaintiff be, and she is hereby adjudicated 1.2 cubic feet per second of the waters of the South Fork of Duck Creek, a tributary of Snake River with date of priority of June 1, 1915.

2. That the plaintiff has the right to divert and use said quantity of water with said priority of June 1, 1915, subject however to the terms of said Decree of December 16, 1910, for use for agricultural, domestic and stock watering purposes upon the following described land situated in the County of Fremont, Idaho, to-wit:

The South Half of the North Half of the Southeast Quarter (S $\frac{1}{2}$ N $\frac{1}{2}$ SE $\frac{1}{4}$) and the North Sixty (60) Rods of the South Half of the Southeast Quarter (S $\frac{1}{2}$ SE $\frac{1}{4}$) of Section Twenty-two (22), Township Fifteen (15) North, Range Forty-two (42), East of the Boise Meridian.

3. Said waters are to be diverted from the South Fork of Duck Creek at a point in the Northwest Quarter of the Northwest Quarter (NW $\frac{1}{4}$ NW $\frac{1}{4}$) of Section Twenty-seven (27), Township Fifteen (15) North, Range Forty-two (42), East of the Boise Meridian, and conducted to said lands by means of ditches and canals.

4. That the defendant, and all interested parties, be, and they hereby are, debarred from asserting any right, claim or claims to the use of said water under priority dates subsequent to June 1, 1915.

5. That this summary adjudication of water rights be made un-

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der authority and in accordance with Section 42-1405, Idaho Code, and that the plaintiff pay her own costs incurred herein.

JUDGMENT
ON
SECOND CAUSE OF ACTION

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED as follows:

21 0002 1. That the plaintiff be, and she is hereby adjudicated 1 cubic foot per second of the waters of an unnamed natural stream flowing in a Southerly direction on or near the North-South center line of Section Twenty-two (22), Township Fifteen (15) North, Range Forty-two (42), East Boise Meridian, which stream is a tributary of Duck Creek, a tributary of the said Snake River, with date of priority of June 1, 1915.

2. That the plaintiff has the right to divert and use said quantity of water with said priority of June 1, 1915, subject however, to the terms of said Decree of December 16, 1910, for use for agricultural, domestic and stock watering purposes upon the following described land situated in the County of Fremont, Idaho, to-wit:

The South Half of the North Half of the Southeast Quarter (S $\frac{1}{2}$ N $\frac{1}{2}$ SE $\frac{1}{4}$) and the North Sixty (60) Rods of the South Half of the Southeast Quarter (S $\frac{1}{2}$ SE $\frac{1}{4}$) of Section Twenty-two (22), Township Fifteen (15) North, Range Forty-two (42), East of the Boise Meridian.

3. Said waters are to be diverted from said unnamed stream at a point in the Northwest Quarter of the Southeast Quarter (NW $\frac{1}{4}$ SE $\frac{1}{4}$) of Section Twenty-two (22), Township Fifteen (15) North, Range Forty-two (42), East Boise Meridian, and conducted to said lands by means of ditches and canals.

4. That the defendant, and all interested parties, be, and they hereby are, debarred from asserting any right, claim or claims to the use of said water under priority dates subsequent to June 1, 1915.

5. That this summary adjudication of water rights is made under authority and in accordance with Section 42-1405, Idaho Code, and that the plaintiff pay her own costs incurred herein.

Dated at Idaho Falls, Idaho, this 6th day of December, 1956.

HENRY S. MARTIN
District Judge

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