

IN THE DISTRICT COURT OF THE NINTH JUDICIAL DISTRICT OF IDAHO,

IN AND FOR THE COUNTY OF BUTTE

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FOX CREEK IRRIGATION COMPANY,
a Corporation,

Plaintiff,

- vs -

Lynn Grandall, Internaster,
District 36 Idaho.

Defendant.

J U D G M E N T.

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This cause coming on to be heard and tried by the Court this 16th day of November, 1937, P. A. Miller, of St. Anthony, Idaho, appearing as counsel for the plaintiff, and it appearing to the satisfaction of the Court that the defendant was served with a copy of the Summons and a copy of the Complaint in this action, and that he failed to appear and plead to said complaint, and that the default of the said defendant has been entered, and, -

It further appearing that an order was made on the 14th day of November, 1937, directing the publication of a Notice, once a week for not less than three weeks, in the Teton Valley News, a weekly newspaper published at Briggs, Teton County, Idaho, containing the title of the court and cause, the name of the stream in the waters of which the plaintiff claims an interest, the date of priority claimed by it, as required, and the date and short title of the decree of this court heretofore entered, fixing the permanent rights in and to the waters of Snake River and its tributaries; that the said notice was published in accordance with said order and the proof of publication has been filed in this action; that no person or persons have appeared to defend against said action.

The plaintiff introduced oral and documentary proof in support of its complaint and the court, after hearing the evidence and examining the proof submitted, finds as follows:

That the plaintiff is a corporation, organized and existing under the laws of the State of Idaho, with its principal place of business in Teton County, Idaho, the sole object and purpose of its organization is for the benefit of its several stockholders in the diversion and conveyance of agricultural and domestic waters for the irrigation of their lands and domestic purposes, and that the stockholders of the said corporation are entitled to the use of the quantity of water diverted by the said corporation in proportion to the amount of capital stock or acreage of land owned by them.

That the stockholders of the plaintiff are the owners of, and the lands irrigated under the ditch or canal system of the plaintiff, are situated in Teton County, Idaho, and particularly described, to-wit:

NE $\frac{1}{4}$; NE $\frac{3}{4}$ SW $\frac{1}{4}$; NE $\frac{1}{4}$ W $\frac{1}{2}$ and SW $\frac{1}{4}$ SW $\frac{1}{4}$ in section 33;

All of sections 34, 25 and 26;

The NE $\frac{1}{4}$; NE $\frac{1}{2}$ NE $\frac{1}{4}$; SW $\frac{1}{4}$ of section 27;

NE $\frac{1}{4}$; NE $\frac{1}{4}$ SE $\frac{1}{4}$ of section 34;

NE $\frac{1}{4}$ SW $\frac{1}{4}$ of section 35 in township 4 north of range 45 E.B.M.

The SE $\frac{1}{4}$ SW $\frac{1}{4}$ of section 18;

SW $\frac{1}{4}$ SW $\frac{1}{4}$; NW $\frac{1}{4}$ and SE $\frac{1}{4}$ of section 19;

The SW $\frac{1}{4}$ SW $\frac{1}{4}$ of section 20;

NE $\frac{1}{4}$ NE $\frac{1}{4}$ and NE $\frac{1}{4}$ and section 30, township 4 north of range 46 E.B.M.

That the lands are arid in character and require artificial application of water by irrigation to produce agricultural crops; that the plaintiff, through its stockholders and predecessors in interest, ever since the 23 day of January, 1916, have diverted 95.2 cubic feet per second, or 4,150 miner's inches of the unappropriated waters of Fox Creek: that the diversion works or the canals or ditches of this company are located in the following legal subdivisions, to-wit:

One of the said diversion in the SW $\frac{1}{4}$ SE $\frac{1}{4}$, section 29, township 4 north, range 46 E. B. M.

One located in the NE $\frac{1}{4}$ NE $\frac{1}{4}$, section 30, township 4 north, range 46 E. B. M., and, -

One located on the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of section 30, township 4 north, range 46 E. B. M., on said Fox Creek; that ever since the said

22d day of January, 1916, have applied said quantity of water, during the irrigating seasons, to beneficial use in the irrigation of the crops ^{now} upon the above described lands, and which said quantity or stream flow has been in addition to any other rights fixed, decreed or in any manner granted to the plaintiff through its stockholders and/or predecessors in interest.

From the above findings the Court concludes that the plaintiff is entitled, and, -

42 1111 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the plaintiff, for the use of its stockholders, and for the irrigation of the hereinafore described lands, is awarded the use of 83.2 cubic feet per second of time, with a priority date of January 22, 1916, of the unappropriated waters of Fox Creek.

IT IS FURTHER ORDERED, That the rights awarded and decreed in that certain decree commonly known as the "Rexburg or Snake River Decree", made and entered in this Court December 16, 1910, both as to dates of priority and the amounts of the rights awarded, are binding upon the plaintiff in this action.

Done in open Court this 16th day of November, 1937.

C. J. Taylor
District Judge

Filed for record Jan. 4, 1938
at 2:25 P.M.

L. Kingsford, Recorder