

COPY

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IN THE DISTRICT COURT OF THE NINTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO IN AND FOR THE

COUNTY OF FREMONT

FLOYD GARDNER, LELAN ANDERSON,
WILLIAM D. HOLLIST, DEAN CHAIN
YOSHIMISA UGAKI, ALBERT BIRCH,
DAVID LEROY GARDNER, MARK CLARK,
and EVA B. CUTLER,

Plaintiffs,

-vs-

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

Defendant.

CASE NUMBER 5254
DISTRICT COURT
IN THE NINTH JUDICIAL DISTRICT
County of Fremont, State of Idaho
FILED 6-4-1954
Jack A. Stone
CLERK

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND JUDGMENT

This cause came regularly on for hearing before the Court sitting without a jury at the Court Room in the Court House at St. Anthony, Fremont County, Idaho, Willard C. Burton, Attorney at Law, St. Anthony, Idaho, appeared for and on behalf of the plaintiffs and the defendant failed to appear either in person or by counsel, and it appeared that the defendant had been duly and regularly served with process herein, and that his default for failing to appear within the time allowed by law had been duly entered, it was ordered that said default entry be and the same is hereby confirmed.

It further appeared that notice had been given as required by law and by order of this court by publication in a newspaper, and that no one had appeared to enter any objections;

Competent evidence having been given in support of the complaint and it appearing therefrom that the allegations of the complaint are materially correct, and the Court being fully advised in the premises and in the law, makes its findings of fact and conclusions of law and judgment herein as follows, to wit:

I

That the plaintiffs, and each of them, are residents of the County of Fremont, State of Idaho;

II

That since on or about the 1st day of March, 1930, the defendant Lynn Crandall, has been and now is the duly elected, qualified and acting Watermaster of Water District No. 36 of the State of Idaho, which includes

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within its boundaries the county of Fremont.

III

That the Teton River is a tributary of the Snake River and flows through the south and east part of Fremont County and flows particularly through section 36, Township 7 North, Range 40 East Boise Meridian; that, in fact, near the boundary between Sections 30 and 31 of Township 7 North, Range 41 East Boise Meridian, and before it enters Section 36 of Township 7 North, Range 40 East Boise Meridian, the said river divides, and one fork thereof, commonly known as the North Fork crosses Section 36 in the north part thereof, and the other fork flows diagonally from the north-central part thereof to the south west corner; that the land described in the complaint on file herein and for which an adjudication of water rights is sought lies along the banks of said Forks of said river; that all said lands are arid in character and require artificial application of water, to make them agriculturally productive.

IV

That prior owners of the property, above mentioned, subject of this action, who settled said land in the first instance and appropriated water for the use thereof did so between the years 1895 and 1904, and that by December of 1903, all of said lands had been settled and water appropriated for the use thereof in amounts hereinafter indicated; that the use of said water since appropriation in the first instance, as aforementioned, in the respective amounts hereinafter mentioned has been continuous and for a beneficial purpose and uninterrupted;

V

(22-002073) That rights to the use of the waters of the Snake River and its tributaries were heretofore decreed in this Court in the action entitled Rexburg Irrigation Company, et al., plaintiffs vs. Teton Irrigation Canal Company, et al., defendants, and judgment was made and entered therein under date of December 16th, 1910, and appears of record in Book B of Judgments at page 109, records of Fremont County, Idaho. That H. J. Clark, owner in 1898 of property described as the South West Quarter of the South West Quarter of Section 36, Township 7 North, Range 40 E. B. M. had appropriated water for the use thereof prior to ^{May} ~~May~~ 15 of 1898 and obtained an adjudication in the case above-mentioned of 160 inches of water for property described as the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Sec. 36, T. 7 N., R. 40 EBM and SE $\frac{1}{4}$ SW $\frac{1}{4}$ of said section, township and range; that the said H. J. Clark, did not in 1898, nor at any other time

own any interest in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 36, T 7 N., R. 40 EBM so far as can be ascertained from the records, and in so far as the adjudication of water right concerned said property it was of no value, but he had acquired a right in and to the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of said section and had appropriated water therefore, and the adjudication of water right therefore in an amount of 60 inches should be confirmed and is binding on all parties.

VI

That owners of all other property subject to this action did nothing so far as can be ascertained to obtain record title to water appropriated for the use thereof, but that they had, by December 1, of 1903 appropriated water for the use thereof as hereinafter indicated; that they are entitled to an adjudication of record showing priority as of that date;

CONCLUSIONS OF LAW

From the foregoing findings of fact the Court concludes as a matter of law that Lelan Anderson, as successor in interest of H. J. Clark, in and to all that property described as the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Sec. 36, T 7 N., R. 40 EBM is entitled to priority of water right for the use thereof in an amount of 80 inches with priority date of May 15 1898, per decree already entered; that the other plaintiffs are entitled for their respective proportions in amounts hereinafter shown to a priority date of December 1, 1903;

JUDGMENT

It is hereby ORDERED, ADJUDGED and DECREED that the plaintiffs be, and each of them is hereby, awarded priority right to the use of water of the Snake River and its tributary the Teton River, in amount and as of priority date hereinafter indicated for the purpose of irrigation and domestic use:

0631 T. 2322
22-0644 FLOYD GARDNER: 160 inches 3.0 Dec. 1, 1903
The NW $\frac{1}{4}$ SW $\frac{1}{4}$ and the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Sec. 36, T 7 N., R. 40 EBM
(Successor H. J. Clark)
22-0207 LELAN ANDERSON: 80 inches 1.0 May 15 1898
The SW $\frac{1}{4}$ SW $\frac{1}{4}$ SEC. 36, T 7 N., R. 40 EBM.
0632
22-0645 WILLIAM D. HOLLIST: 100 inches 2.0 DEC. 1, 1903
That part of the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of the NW $\frac{1}{4}$ NE $\frac{1}{4}$ and of the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Sec. 36, T 7 N., R 40 EBM, which is north of the Teton River
YOSHIMISA UGAKI: 150 inches 3.0 Dec. 1, 1903
Commencing at the NE corner of the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Sec 36, T 7 N., R 40 EBM, running thence west 60 rods, thence south 53 1/3 rods, thence east 60 rods, thence south 26 2/3 rods, thence east 40 rods, thence north 20 rods, thence east 40 rods, thence north 20 rods, thence west 40 rods, thence north 11 rods, thence west 40 rods, thence north to the point of beginning.
ALSO: The west $\frac{1}{2}$ of the west 10 acres of the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Sec. 36 T 7 N., R 40 EBM
ALSO: The South 57 $\frac{1}{2}$ rods of the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Sec 36, T 7 N., R 40 EBM