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file 7-135-82
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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF BLAINE

* * * * *

MARTIN ALERETHSEN, in behalf of himself
and other persons similarly situated with
him,

PLAINTIFF

vs

WOOD RIVER LAND COMPANY, a Corporation

DEFENDANT

BIG WOOD RIVER RESERVOIR AND CANAL COMPANY,
LIMITED, a Corporation

INTERVENOR,

IDAHO IRRIGATION COMPANY,
a Corporation,

INTERVENOR,

JAMES FARMER, and all other users of water
from Big Wood River similarly situated
with him,

INTERVENOR.

JUDGMENT ON REMITTITUR

* * * * *

This cause came on regularly for hearing the 19th day of June, 1925, before Hon. Dana E. Brinck, Judge presiding, in open court, under the instructions of the Supreme Court contained in its Remittitur heretofore filed herein, and all parties having been heretofore duly notified of the time of this hearing, the Court ordered the hearing to proceed and testimony to be taken: Sullivan, Sullivan & Van Winkle appearing as counsel for the plaintiff, and all other parties failing to appear at the trial, oral testimony was introduced and heard, and, the evidence being closed, the cause was thereupon submitted to the Court for decision; and

It appearing to the Court that on the 29th day of January, 1921, a judgment was entered in this court and cause wherein it was adjudged that the plaintiff take nothing by his complaint; and,

That thereafter plaintiff duly appealed from said judgment to the Supreme Court of the State of Idaho; and,

That thereafter, on the 8th day of February, 1924, by the opinion and decision of said Supreme Court said judgment of said District Court was duly reversed and said cause remanded to the above entitled Court with instructions to this court to set aside its said judgment theretofore made

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and entered in this cause, and to adjudge and decree that all right, title and interest of the defendant, Wood River Land Company, a corporation, in and to the water of Big Wood River in excess of 3,863 inches has been abandoned and forfeited by said Wood River Land Company; and,

That the petition for rehearing of said decision of said Supreme Court made by said Wood River Land Company was denied and the decision of the Supreme Court of February 8, 1924, was adhered to with this modification, to-wit: that this cause be remanded to this court with instructions to take evidence and make findings upon the single question as to the amount of loss by seepage and evaporation in the canal of Wood River Land Company between the headgate or intake of said canal and a point in said canal approximately 900 feet below said headgate or intake aforesaid, and that this loss, if any, be added to the amount of water to which said Wood River Land Company is entitled as fixed by the former opinion of the Supreme Court under date of February 8, 1924, and with this modification, to enter judgment herein in accordance with said former opinion of February 8, 1924;; and,

This Court now being fully advised in the premises, finds that the loss by seepage and evaporation in said canal from the headgate or intake thereof to a point approximately 900 feet down said canal amounts to 137 inches of water;

Now, Therefore, it is hereby adjudged and decreed that all right, title, and interest of the defendant, Wood River Land Company in and to the 5595 inches of the waters of Big Wood River, with priority dating from March 24, 1883, decreed to its predecessor in interest, W. T. Riley, in the case of S. C. FROST, et al, vs. Alturas Water Company, et al., by the District Court of the Fourth Judicial District of the State of Idaho, in and for Lincoln County, in excess of 4000 inches thereof, to-wit, 1595 inches of said decreed right, has been abandoned and forfeited by said Wood River Land Company, by its failure to apply more than 4000 inches of said decreed water, during the years 1910 to 1914, both inclusive, to the beneficial use for which it was appropriated.

It is ordered that no costs be awarded herein.

DATED: June 27, 1925

(Signed) Dana E. Brinck
District Judge Presiding

Received and filed for record in the Department of Reclamation at Boise, Idaho, at 10:00 A.M. July 7, 1925.

W. G. Swendsen
Commissioner of Reclamation