

Bryan Decree

(39)

637

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR CANYON COUNTY

PIONEER IRRIGATION DISTRICT,
An Irrigation District,

Plaintiff

vs

AMERICAN DITCH ASSOCIATION,
a corporation,

BOISE CITY CANAL COMPANY,
a corporation,

BOISE RAPID TRANSIT COMPANY
a Corporation

BOISE VALLEY IRRIGATING DITCH
COMPANY, a Corporation,

BARBER LUMBER COMPANY, a
Corporation,

CANYON DITCH COMPANY, a
Corporation,

CANYON COUNTY CANAL COMPANY,
a Corporation,

CANYON COUNTY WATER COMPANY,
A Corporation,

CANYON COUNTY IRRIGATION COMPANY,
a Corporation,

CANYON IRRIGATION COMPANY, a
Corporation,

DRY CREEK DITCH COMPANY, a
Corporation,

EUREKA DITCH COMPANY, A
Corporation,

EUREKA DITCH COMPANY NO. 2,
a Corporation,

EUREKA WATER COMPANY, a
Corporation,

DECREE

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FARMERS' CO OPERATIVE DITCH COMPANY,
LTD. a corporation,

FARMERS' UNION DITCH COMPANY,
a corporation,

FRANKLIN DITCH COMPANY,
a Corporation

HILL CREST IRRIGATION DISTRICT,
An Irrigation District,

JACOBS' CANAL COMPANY
a Corporation,

LOWER BOISE DITCH COMPANY
a corporation,

LOWER CENTER POINT DITCH COMPANY,
a Corporation,

MIDDLETON CANAL COMPANY, a
corporation,

MIDDLETON MILL DITCH COMPANY,
a Corporation,

MIDDLETON WATER COMPANY, a
Corporation,

MASON CREEK DITCH COMPANY
a Corporation,

NAMPA MERIDIAN IRRIGATION DISTRICT,
An Irrigation District,

NEW YORK CANAL COMPANY, A
Corporation,

NEW DRY CREEK DITCH COMPANY
A corporation,

PIONEER DIXIE DITCH COMPANY
a Corporation,

RIVERSIDE IRRIGATION DISTRICT,
LTD., a Corporation,

SETTLERS' CANAL COMPANY,
a corporation,

SETTLERS' IRRIGATION DISTRICT
an Irrigation District,

SIEBENBERG CO-OPERATIVE DITCH COMPANY
a Corporation

SOUTH BOISE MUTUAL IRRIGATION COMPANY
a Corporation,

UPPER CENTER POINT DITCH COMPANY ,
a corporation,

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UNION DITCH COMPANY,
a corporation,

PAYETTE-BOISE WATER USERS' ASSOCIATION,
a Corporation,

C. H. ALLEN, THOS. AIKEN, THOS

ANDREWS, J. T. BARBER, ISAAC BEDAL,

JAS. B. BELL, BERT BLACK, W. A. BLACK

BERT BOWMAN, Heirs of EDWARD AND MARY

CLARK, (Mary J. Clark, Daniel Clark,

Annie D. Clark, Lewis D. Clark) CUDDY &

PERKINS, JOHN COFFEY, JOHN CECIL, D. D.

CAMPBELL, T. C. CATLIN, GRACE CALL,

SAMUEL H. CANFIELD, W. U. CONWAY, EDGAR

DILLEY, THOMAS DAVIS, MARY G. DAVIS,

ANNA H. FOGARTY, WALTER GRIFFITHS, H.A.

GRIFFITHS, H. D. GOODMAN, AND DORA GOODMAN,

JAS L. GRAHAM, LEWIS T. GRAHAM, FRANK N.

GRAHAM, WM. GILBERT, Est. of JAMES H.

GALLAGHER, JOSEPH GOBLE, W. J. HAMMING,

LOOMIS H. HOSELEY, EDWARD N. HART, ANDREW

J. JOPLIN, SONORA JOPLIN, ISHAM JOPLIN,

J. M. JOHNSON, RICHARD JOHNSON, WILLIAM

KENNEDY, JANE KEOGH, FRANK LEONARD, A.V.

LINDER , et al, CHARLES S. MILLER, MRS. A.

MILLER, JOHN MAMMON, JULIA MAMMON, J.D.S.

MANVILLE, MARTHA E. MCCARTHY, CHARLES

OAKES, JOSEPH PERRAULT, PERRY PARISH,

W. H. ROSS, O. B. ROSS, MARY ROE, OLLIE

RIFE, CHARLES REIN, PETER MEVES, W. H.

RIDENBAUGH, A. R. ROSSI, _____

RICE, Estate of ALBERT SHERWIN, MARTHA

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GILGAN SARCHET, SMITH STOCKTON, R.H.
STOCKTON, JOHN TUCKER, Adm, Estate of
J.N. TUCKER, deceased, C.B. TAYLOR,
STEPHEN UTTER, JOHN UTTER, ALLEN VWEBSTER,
____ WILSON, J. R. YARYAN, ESTELLA YOUNG, LIZZIE YOUNG
WILLIAM C. YOUNG

DEFENDANTS

This cause heretofore came regularly
on for trial before the Court sitting without a jury.
J. M. Thompson and Frank T. Wyman appeared as attorneys
for the plaintiff, Pioneer Irrigation District;
Fremont Wood and Scatterday & Stone appeared for the
Farmers' Co-Operative Ditch Company; Rice & Bicknell
for the defendant, Riverside Irrigation District;
Oppenheim & Lampert and Charles P. McCarthy, for the
defendant, New York Irrigation District; G. W. Grebe,
for the defendant, Boise-Kuna Irrigation District;
T. L. Martin for the defendants, South Boise Mutual
Irrigation Company, Stephen Utter, John Utter, and
C. B. Taylor and Farmers' Union Ditch Company, Limited,
and B. E. Stoutemyer, H. E. Ray, John C. Rice and G. W.
Grebe for the intervenor, United States of America.
It appearing to the Court that all of the other
defendants to this action have been duly and regularly
served within the State of Idaho with summons issued out
of this Court in this cause and have been duly and regular-
ly served with the cross-complaints of the several de-
fendants and of the intervenor, and that none of said

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defendants

has filed any answer to any of them, and that the time for such answer had heretofore expired, the default of each and every of said defendants, both as to the complaint, the cross-complaints and the complaint in intervention was duly and regularly entered.

Whereupon, the parties to this cause not in default being present in Court and represented by counsel, evidence was offered on behalf of each of said parties on the issues in the said cause and certain stipulations appearing in the Reporter's Transcript and upon the minutes of the Court were duly entered into, and the taking of evidence was duly closed and, after argument of counsel, the cause was submitted to the Court for decision; that it was stipulated upon the trial of this cause, by and between counsel for the respective parties, that the complaint, answers, cross-complaints and complaints in intervention and all pleadings filed in this cause should be deemed to be amended to conform to the proof offered by the respective parties, and, based upon said stipulation, it was so ordered by the Court;

And the Court having considered the evidence and being fully advised in the premises, made and filed its Findings of Fact and Conclusions of Law herein and directed that decree should be entered in accordance therewith.

WHEREFORE, In consideration of the premises, it is ORDERED, ADJUDGED AND DECREED as follows:-

1-

That all of the lands affected by this

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litigation under the several canals and ditches of the parties to this action are arid in character, and require water artificially applied for their successful reclamation and irrigation and the reising of crops thereon, and that the only source of water for the irrigation of said lands is from the Boise River.

11-

That the several parties to this suit are the owners of the respective ditches and canals, headgates, diversion works, reservoirs, including their entire irrigation system claimed by them, as shown by their respective pleadings and the evidence in this cause; that corporations or associations which are parties to this action are, and each of them is, a unit, or as a single claimant, and that the findings, conclusions and decree in this case shall run to such corporation or association rather than to the individuals who take or receive water under the same.

111-

That this suit was brought and prosecuted to this decree for the purpose of determining the rights of the several parties to such waters of Boise River as remained after satisfying the awards made in that certain decree rendered on January 18, 1906, in this Court in the suit brought by Farmers' Co-Operative Ditch Company, vs Riverside Irrigation District, Ltd., et al, known and hereinafter referred to as the Stewart Decree; and all rights and amounts of water herein awarded are and are hereby decreed to be subject, subsequent and inferior to all the rights and priorities established

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by and awarded in said Stewart Decree.

IV-

That the quantity of water to which each of the parties of this action is awarded under this decree shall be measured at the points of diversion thereof in each instance, except that in the case of water to be impounded in Arrowrock Reservoir, the same shall be measured at the head, or where the water flows into the same. That the duty of water (being the amount of water required successfully to irrigate said lands) under this decree is hereby decreed to be as follows:-

That, so long as the natural flow of the Boise River is sufficient to supply the waters decreed in this case and the rights heretofore decreed from the Boise River at the rate of one miner's inch per acre, measured at the respective points of diversion, the duty of water shall be determined and decreed to be one miner's inch per acre, measured at the points of diversion of the parties hereto;

That, as the season advances and the flow of the river drops, and on account of the longer nights and cooler weather, rising water table and other conditions, a higher duty of water is practical, and when the natural flow of the Boise River becomes insufficient to supply the waters herein decreed, and the rights prior thereto, at the rate of one miner's inch per acre at the points of diversion, the Court decrees that the amount of water required for the irrigation of the said lands is and the amount delivered to each appropriator

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under this decree in this action shall be cut to the basis of .75 of a miner's inch per acre at the points of diversion, beginning at the latest right, and then cutting, in succession, each right to the earliest right involved herein;

That, thereafter, when the natural flow of the Boise River becomes insufficient to supply the rights involved in this case, and the rights prior thereto, at the rate of .75 of a miner's inch, measured at the points of diversion, another cut shall be made to and the Court decrees that the amount of water required for the irrigation of said lands is .6 of a miner's inch per acre, measured at the points of diversion, said cut to begin with the latest right, and then cutting, in succession, each right to the earliest right involved herein, and that the distribution of water to supply the rights involved in this case shall be continued on a basis of .6 of a miner's inch per acre, measured at the points of diversion, so long as the natural flow of the Boise River is sufficient in volume to supply water to any of the rights involved in this case.

And the Court further decrees with respect to the duty of water as herein established and decreed that the Arrowrock Reservoir right, under License No. 7180, shall not be subject to cut until the flow of the Boise River is insufficient to supply the said right and all rights prior thereto, and that, after the flow of the Boise River becomes insufficient to supply the said right, under License No. 7180, and all rights prior thereto, then the said right, under License

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No. 7180, shall be cut in its entirety, before any right prior thereto shall be cut.

That in making the respective cuts to seventy-five per cent and to sixty per cent, it is meant that the reasonable amount of water so required for the irrigation of lands involved herein is such that when the cut to seventy-five per cent is made, the amount of water so required and to be delivered, respectively, shall be seventy-five per cent of the amount to which each claimant is decreed to be entitled herein; and, further, that when the cut to sixty per cent is made, the amount of water so required and to be delivered shall be sixty per cent of the respective amounts to which each claimant is decreed to be entitled herein, regardless of the number of acres upon which the said waters may be spread or used by each claimant.

V-

It is further ORDERED, ADJUDGED AND DECREED that none of the parties hereto, or their successors in interest, shall have the right to the use of the waters of Boise River herein awarded, except for a beneficial purpose; and that whenever the beneficial use has ceased, such party or parties shall cease to divert and have no right to divert the said waters; that each and every of the parties hereto, their servants, attorneys, employees, privies and successors in interest, are hereby enjoined and restrained from any and all interference with or diversion or use of the waters of said Boise River which are herein decreed except as provided in the said Stewart Decree,

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whenever such interference, diversion or use would in any manner interfere with with the quantity of water awarded by this decree to any of the other parties to this suit.

Vl-

That each of the parties to this suit or their predecessors in interest, whose rights are adjudicated hereby, did by actual appropriation and diversion from Boise River or by compliance with the statutes of this State become entitled to the quantities of water hereinafter decreed and used such waters for a beneficial purpose and such parties are now entitled to the same as hereinafter set forth.

Vll-

That each party hereto shall pay his own costs and disbursements.

Vlll-

That subject to the duty of water and the limitations upon its use as provided in paragraph.IV hereof, each of the parties to this suit is entitled to the use of the said waters of the said Boise River (subject to the awards made in the Stewart Decree) in the quantity and of the date of each appropriation or right as follows, to-wit:

PIONEER IRRIGATION DISTRICT.

That, subject to the awards made in the said Stewart Decree, the plaintiff Pioneer Irrigation District is entitled to and is hereby awarded the said use of the waters of the Boise River diverted through its canals commonly known as the Phyllis and Caldwell Highline

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Canals for domestic purposes and for use upon lands lying under the same in the following amounts from the following dates:

63 0294	306.56	second	feet	from	April 1, 1905
63 0295	54.5	"	"	"	1, 1908

FARMERS' CO-OPERATIVE DITCH COMPANY

That, subject to the awards made in the Stewart Decree, the defendant Farmers' Co-Operative Ditch Company is entitled to and is hereby awarded the ^{said} use of the waters of the Boise River diverted through its canal commonly known as the Farmers' Co-Operative Canal for domestic purposes and for use upon lands lying under the same in the following amount from the following date:

63 0290	154.455	second	feet	from	April 1, 1905.
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NEW YORK IRRIGATION DISTRICT
BOISE-KUNA IRRIGATION DISTRICT.

That neither the defendant New York Irrigation District nor the defendant Boise-Kuna Irrigation District is entitled to any waters /whatsoever (in addition to that awarded thereunder in the Stewart Decree) under or by virtue of the water filing of W.C. Annett made on March 23, 1900.

FARMERS' UNION DITCH COMPANY

That, subject to the awards made in the said Stewart Decree, the defendant Farmers' Union Ditch Company is entitled to and is hereby awarded the said use of the waters of the Boise River diverted through its canal commonly known as the Farmers' Union Canal for domestic purposes and for use upon lands lying

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under the same in the following amount from the following date;

54.46 second feet from July 2, 1894.

63 0297

SOUTH BOISE MUTUAL DITCH COMPANY

That, subject to the awards made in the said Stewart Decree, the defendant South Boise Mutual Ditch Company is entitled to and is hereby awarded the said use of the waters of the Boise River diverted through its canal commonly known as the South Boise Mutual Canal for domestic purposes and for use of lands lying below the same in the following amount from the following date:

63 0298

5.4 second feet from April 1, 1905

RIVERSIDE IRRIGATION DISTRICT, LIMITED.

That, subject to the awards made in the said Stewart Decree, the defendant Riverside Irrigation District. Limited, is entitled to and is hereby awarded the said use of the waters of the Boise River diverted through its canal commonly known as the Riverside Canal for domestic purposes and for use upon lands lying under the same in the following amounts from the following dates;

63 0299

63 0300

63.78 second feet from April 1, 1910
17.70 " " " " 1, 1914

UNITED STATES OF AMERICA

That the intervenor United States of America is not entitled to any waters whatsoever (in addition to that awarded thereunder in the Stewart Decree) under or by virtue of the water filing of W.C.

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Annett made on March 23, 1900/ but subject to the awards made in the said Stewart Decree it is entitled to the use of the waters of said Boise River diverted through what is commonly known as the New York Canal for domestic purposes and (except as herein specifically limited) for use of lands lying under the same in the following amounts from the following dates:

[63 0201	1062.08 second feet from Dec 14, 1903]	Superseded by
63 0302	634.00 " " " June 16 1909	Sutton Order dated
		1-30-1932,

That subject to the awards made in
→ said Decree it is entitled to (1500.00 second
63-0367) feet from June 16, 1909 for power purposes only at
the Government power plant at its diversion dam
at the head of the New York Canal; and to
63 0302 8000.00 second feet from January 13,
1911, for storage in Arrowrock Reservoir during the
flood water season only and thereafter to be drawn
out and used in the irrigation of lands of the
Boise Project, and other lands entitled to the same.

And subsequent
continuation
by Eumstead
filed June 23,
1933. Watermaster
records indicate
that 1354.58 cfs
are delivered
under this order,
as defined in
the Sutton Order
DRT
1-27-83

Dated February 14th, 1929

Ed L. Bryan
District Judge

Entered and Filed
9:30 A.M. Feb 16, 1929
Myrtle Bernard, Clerk
Rose Edwards, Deputy

11-529
Compared

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STATE OF IDAHO, }
County of Canyon, } ss.

I, Myrtle Bernard, Clerk of the District Court and Ex-officio Recorder of the County of Canyon, State of Idaho, do hereby certify that the foregoing copy of Duress
..... has been compared by me with the original, and that
it is a correct transcript therefrom, and of the whole of such original.....

Duress as the same appears
in file 7 in Book 11 Judgments Page 529 in my office
In TESTIMONY WHEREOF I have hereunto set my hand and affixed my seal this 26th
day of Feb, 1929.

Myrtle Bernard
Clerk of the District Court and Ex-officio Recorder.
By Joe Edwards Deputy.

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