

65-2333

Decree

August 29, 1972

Office of the Governor
Room 228, Statehouse
Boise, Idaho 83707

Attention: Bill Murphy

Dear Bill:

In response to your telephone call, I am sending you a copy of the District Court decree dated June 26, 1946. As you can see from reading this decree, it is based upon an agreement between the Payette Lakes Protective Association and the Lake Reservoir Company in 1924. This agreement simply states that the reservoir company will not store water in Payette Lake above the "normal highwater line," which was agreed to be 7.05 feet on the gauge at the outlet and would not attempt to draw the water down below the normal "low water line," which was agreed to be at 1.51 feet on the gauge. The agreement further indicates that the water will be maintained insofar as practicable at the high elevation and the water will not be drawn off until the "fall" but no date is indicated. As far as I am able to determine, the Payette Lakes Protective Association does not actually exist at present, having forfeited their charter in 1956.

Last fall, we met with representatives of the McGall area Chamber of Commerce and the reservoir company to discuss complaints of the drawdown of the lake. It was pointed out that the reservoir company arbitrarily draws the water from the lake in the fall without much notice to the landowners around the lake. We suggested to them that they should use every effort to utilize the public press and radio to advise when the lake is to be drawn down.

You should also be aware that pursuant to S.B. 98 and the 18th Idaho Legislature, this department has issued water license 65-2333 to the Governor of Idaho as Trustee for the people of the state. It appropriates the water between the high and low water levels, or a total of 25,495 acre feet annually for "scenic beauty, health, and recreation purposes." This right is subsequent in time and priority to the right of the reservoir company to use the water for irrigation, and, as you know, there is some question concerning its constitutionality.

If further information is needed, please let me know.

Very truly yours,

R. KEITH HIGGINSON
Director
RKH:mjl
Enclosure

INDEXED

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Done at Boise, Idaho, this 26th day of June, 1946.

Chas. F. Koelsch
District Judge.

COMPARED	☒
INDEXED-DIRECT	☒
INDEXED-INDIRECT	☒

Recorded in Book 2 of Judgment Record at page 605.

STATE OF IDAHO,)
) ss.
County of Valley)

I, Forest E. Robb, Clerk of the District Court in and for Valley County, Idaho, DO HEREBY CERTIFY AND DECLARE that I have compared the foregoing decree with the record of such instrument in my office, which instrument is recorded in Book 2 of Judgment Record, at page 605, and that the foregoing is a true and correct copy of such record.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, this 7th day of January, 1953.

Forest E. Robb
Clerk of the District Court
Valley County, Cascade, Idaho.

By Bertha C. Patterson
Deputy

RECORDED

JUL 24 1996

65-R¹

1. DECREE -- Payette Lakes Protective Assoc. -vs- Lake Reservoir Co.

Payette

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JUL 24 1968

65-2333

August 29, 1972

Office of the Governor
Room 228, Statehouse
Boise, Idaho 83707

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Very truly yours,

R. KEITH HIGGINSON
Director
RKH:mjl
Enclosure

MAILED
JUL 24 1972

65-K

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

PAYETTE LAKES PROTECTIVE ASSOCIATION,)
A CORPORATION,)
Plaintiff,)
vs.)
LAKE RESERVOIR COMPANY, a)
corporation,)
Defendant.)

D E C R E E

Case No. 855 Inst. No. 34
DISTRICT COURT VALLEY COUNTY, IDAHO
Filed 6-26-46 19...at...M
Forest E. Robb, Clerk

THIS CAUSE Came regularly on for trial before the above entitled court, Hon. Chas. F. Koelsch, Judge, sitting without a jury, at Boise City, Ada County, State of Idaho, at the hour of 10:00 o'clock A.M., on the 7th day of January, 1946, pursuant to stipulation of the parties hereto and the order of the court, J. L. Eberle, Esq., and Carey H. Nixon, Esq., appeared as attorneys for the plaintiff, Payette Lakes Protective Association, a corporation, and T. L. Martin, Esq., and Fred M. Taylor, Esq., appeared as attorneys for the defendant, Lake Reservoir Company, a corporation; witnesses were sworn and examined on behalf of the respective parties and documentary evidence introduced, and the court having heard the evidence and the argument of counsel and considered the briefs of the parties and being fully advised in the premises and having heretofore made and filed herein its Findings of Fact and Conclusions of Law, now therefore it is hereby ORDERED, ADJUDGED AND DECREED, as follows:

L. That the rights of the defendant, Lake Reservoir Company, a corporation, to use Big Payette Lake, situated in Valley County, State of Idaho, for the storage and retarding of waters therein and withdrawal and the/diverting of waters therefrom, are subject to the terms, provisions and conditions of that certain agreement between the parties

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hereto dated November 8, 1924, recorded November 12, 1924, in Book 20 of Miscellaneous Records, at page 529, of the records of Valley County, State of Idaho, and on November 19, 1924, filed in the Department of Reclamation, State Capitol Building, Boise, Idaho, as a part of the records of said office and pertaining to Reservoir Permit No. R-216 and Use Permit No. 14689, which agreement is as follows:

"AGREEMENT

"THIS AGREEMENT, entered into this 8th day of November, 1924, by and between PAYETTE LAKES PROTECTIVE ASSOCIATION, A CORPORATION, of Boise, Idaho, and hereunto duly authorized by resolution of its directors, party of the first part and the LAKE RESERVOIR COMPANY, a corporation, of Payette, Idaho, being hereunto duly authorized by resolution of its board of directors, party of the second part;

Witnesseth:

"That for and in consideration of One Dollar and other good and valuable considerations from the party of the first part, the receipt of which is hereby acknowledged by the party of the second part, the said party of the second part agrees to and with the party of the first part:

"That under use permit Number 14689 and storage permit R 216 for the waters of Big Payette Lake, proof of completion of works for which was made on October 30, 1924, at Cascade, Idaho, the party of the second part for itself, its successors and assigns, hereby agrees that it claims and will claim no right, title, or interest of any nature whatsoever, to raise the waters of Big Payette Lake above the normal high water line or to lower the waters of Big Payette Lake below the normal low water line, and said party of the second part hereby further agrees; That it will not assert any right to the use of any waters of said Big Payette Lake except such waters as are between the normal high water line and the normal low water line and that the party of the second part will draw off

said stored waters so as to interfere as little as possible with the bathing beaches on the shores of said lake, and will also use said waters in the fall so as to interfere as little as possible with navigation and logging uses of said waters, and will at all times so use said waters in as accomodating a way as possible, so as not to interfere any more than is absolutely necessary with the natural fluctuation of said waters, that is, any more than is necessary to carry out the intents and purposes of the party of the second part under its said permits, #14689 and R 216.

"IN WITNESS WHEREOF, the respective parties, through their duly authorized officers, have hereunto affixed their corporate names on the day and year in this agreement first above written.

"ATTEST:

Bradley Sheppard
Its Secretary

PAYETTE LAKES PROTECTIVE ASSOCIATION

By Paris Martin
Its President

"ATTEST:

E. C. S. Brainard
Its Secretary

PARTY OF THE FIRST PART

"LAKE RESERVOIR COMPANY

By W. A. Coughanour
Its President

STATE OF IDAHO)
) ss.
COUNTY OF PAYETTE)

"On this 8th day of November, 1924, before me, Ed W. Murphy, a Notary Public in and for said state personally appeared W. A. Coughanour, known to me to be the President of the corporation that executed the foregoing instrument, and acknowledged to me that such corporation executed the same.

"IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

(No seal shown)

Ed W. Murphy
Notary Public
Residing at Payette, Idaho.

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"STATE OF IDAHO)
) ss.
COUNTY OF VALLEY)

" I hereby certify that this instrument was filed for record at the request of Paris Martin at no minutes past 9 o'clock A.M., this 12th day of November, 1924, in my office and duly recorded in Book 2 of miscellaneous at p. 529.

By Cora E. Hill
Deputy
Fee \$1.20

Forest E. Robb
Ex-Officio Recorder

That said agreement is the legal and valid contract of said parties thereto and is binding upon them, and each of them, and their respective officers, agents, servants, employees and their successors and assigns; that the normal high water line in said agreement specified is 4989.29 feet above mean sea level, or 7.05 feet gauge height, and the normal low water line in said agreement specified is 4983.75 feet above mean sea level, or 1.51 feet gauge height, such gauge heights to be measured on the present staff and automatic recording gauges of the United States Geological Survey as now installed at the outlet of Big Payette Lake; that the defendant, Lake Reservoir Company, together with its officers, agents, servants, employees and their successors and assigns, and all those claiming by, through or under them, or any of them, are, and each of them is, hereby perpetually restrained and enjoined from interfering with or using said Big Payette Lake for the storage and retarding of waters therein and the withdrawing and diverting of waters therefrom, in excess or violation of the terms, provisions and conditions of said agreement between the parties hereto dated November 8, 1924, as in this decree specified.

2. That the defendant, Lake Reservoir Company, together with its officers, agents, servants, employees and their successors and assigns, and those claiming by, through or under them, or any of them, are and each of them is hereby perpetually and permanently

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restrained and enjoined from:

(a) Operating or using said Big Payette Lake or its dam and diversion works near the outlet of said lake, and each of them, in such manner as to raise the waters and water level of Big Payette Lake above 4989.29 feet above mean sea level, 7.05 feet gauge height, or to lower the waters and water level of Big Payette Lake below 4983.75 feet above mean sea level, 1.51 feet gauge height, such gauge heights to be measured on the present staff and automatic recording gauges of the United States Geological Survey as now installed at the outlet of Big Payette Lake;

(b) Raising or causing to be raised the waters and water level of Big Payette Lake above 4989.29 feet above mean sea level, 7.05 feet gauge height, or lowering the waters and water level of Big Payette Lake below 4983.75 above mean sea level, 1.51 feet gauge height, such gauge heights to be measured on the present staff and automatic recording gauges of the United States Geological Survey as now installed at the outlet of Big Payette Lake;

(c) Storing, retarding, withdrawing or diverting any of the waters of Big Payette Lake, except in such manner as to actually and accurately measure the same by markers and devices of such design as to automatically and accurately measure and register the waters so stored, retarded, withdrawn, diverted or used, with particular reference to the normal high and low water lines, as in this judgment and decree specified, and the height or elevation of said lake and the water at all stages of storage and withdrawal of water.

3. That all water stored and retarded in, and all water withdrawn and diverted from Big Payette Lake by defendant be measured and registered at the outlet of said lake and that said defendant shall install and maintain suitable and efficient markers and devices at the outlet of said lake and at suitable points on the shores of said lake so as at all times to automatically and accurately measure and register the elevation of the waters of said lake at all stages of storage and withdrawal of water, and the waters drawn or

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5.

diverted from said lake; all such measuring devices and gauges, together with the premises where the same are situated, shall at all times be subject to access and inspection of either party hereto and to public officials and watermasters having jurisdiction over the storage, retarding, withdrawing and diverting of any of the waters of Big Payette Lake.

4. That the Court retains jurisdiction herein to make all reasonable rules and orders touching the manner of storing, retarding, withdrawing, diverting, measuring and registering the waters of Big Payette Lake and the devices to be installed and used for such purposes, as well as the devices to accurately measure and register the height or elevation of the waters of said lake at all stages of storage and withdrawal of the waters and to direct that the defendant, Lake Reservoir Company, keep accurate and detailed daily records of the measurements of such elevations and the amounts of water stored, diverted or withdrawn, and to require reports to be filed from time to time of the amounts of water so stored, diverted or withdrawn, and the height and elevation of said lake at all times of storage, withdrawal or diversion of water, and generally to make such orders as may be found reasonably necessary to give effect to this decree and to appoint commissioners or water masters to control the storing, diversion, measurement and withdrawal of the waters of said Big Payette Lake in accordance with the terms of this decree and to punish said defendant, Lake Reservoir Company, its officers, agents, servants, employees, their successors and assigns for any violations of the provisions of this decree.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED That the plaintiff have and recover from the defendant its costs and disbursements in this behalf incurred and expended, hereby taxed at the sum of

JUL 24 1996

Done at Boise, Idaho, this 26th day of June, 1946.

Chas. F. Koelsch
District Judge.

COMPARED	✓
INDEXED	✓
FILED	✓

Recorded in Book 2 of Judgment Record at page 605.

STATE OF IDAHO,)
County of Valley) ss.

I, Forest E. Robb, Clerk of the District Court in and for Valley County, Idaho, DO HEREBY CERTIFY AND DECLARE that I have compared the foregoing decree with the record of such instrument in my office, which instrument is recorded in Book 2 of Judgment Record, at page 605, and that the foregoing is a true and correct copy of such record.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, this 7th day of January, 1953.

Forest E. Robb
Clerk of the District Court
Valley County, Cascade, Idaho.

By Bertha C. Patterson
Deputy

JUL 24 1956