

63-T-1

1. DECREE -- Carl E. Nicholson, et al. -vs- Reynolds Irrigation District
2. STIPULATION -- Carl E. Nicholson, et al. -vs- Reynolds Irrigation District

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INSTRUMENT NO. 434650

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

F I L E D

CARL E. NICHOLSON and
BLANCHE NICHOLSON,
husband and wife,

A.M. 3:30 P.M.
JUN 11 1956
S. S. FOOTE, CLERK
Lavona Sayre, DEPUTY

Plaintiffs

vs.

REYNOLDS IRRIGATION DISTRICT
a quasi-public corporation of
Owyhee County, Idaho; and

ELLEN T. SPROAT,

Defendants.

THIS CAUSE came regularly on for hearing and disposition before the Court without a jury, on the 11th day of June, 1956; Edwin Snow and Homer E. Martin, of Boise, Idaho, appearing as attorneys for plaintiffs; Maurice H. Greene and David Doane, of Boise, Idaho, appearing as attorneys for the defendant Reynolds Irrigation District; and Laurel E. Blam, of Boise, Idaho, appearing as attorney for the defendant Ellen T. Sproat.

The parties presented to the Court a stipulation in writing, signed by their respective attorneys of record, thereunto duly authorized, which stipulation had been duly filed herein; and wherein were set out and agreed upon the ultimate facts with respect to the beneficial use of the waters involved in the suit by the respective parties hereto, and also the amount and the date of priority of the water right to which each party was entitled based upon its said use; and the Court having examined and approved the said stipulation. And the parties having also presented to the Court this decree based upon such stipulation, upon which decree is endorsed the written consent and approval of the attorneys of record for the respective parties;

NOW, THEREFORE, in conformity with said stipulation and said consent, and all the parties having waived Findings of Fact and Conclusions of Law in connection with such decree, it is hereby ORDERED and DECREED as follows:

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1.

The water supply, the rights to the use of which are hereby adjudicated, consists of the waters flowing in the drain ditch from which all the parties hereto divert their water; and the waters flowing in said drain and its branches, whether said waters are derived from surface waste, or percolation into the drain, or from any existing wells, including the well of plaintiffs, the wells of the defendant Reynolds Irrigation District, and a well known as the "Simpson Well", situated at the head of one branch of the main drain ditch from which the parties hereto divert their water, constitute a common and interdependent source of supply; and the withdrawal of water from said main drain, or any of its said contributing sources of supply, depletes the water rights and supply of each of the parties hereto.

11.

The defendant Ellen T. Sprout is hereby decreed the right to the use of the following amounts of waters of the drains and wells involved in this suit:

~~63 0353~~

(a) 120 miners inches of said waters during the month of April of each irrigation season;

~~63 0354~~

(b) 140 miners inches of said waters during the months of May and June of each irrigation season;

~~63 0355~~

(c) 175 miners inches at all times after July 1st of each irrigation season;

The priority of all of said defendant's rights dates from April 1, 1947.

Said water is decreed for irrigation, livestock, and domestic uses upon said defendant's lands, to-wit:

The $W\frac{1}{2}$ of the $SW\frac{1}{4}$, Section 9;
Lots 1, 2, 3 and 4;
The $SE\frac{1}{4}$, $SW\frac{1}{4}$, and the $NW\frac{1}{4}$ $SE\frac{1}{4}$, of Section 8;
All in Twp. 1 S., R 2, W. B. M.

The point of diversion of said water is, as it has been for a long time heretofore, at a point in Section 10, Twp. 1 S., R. 2, W. B. N., where an irrigation ditch belonging to said defendant and to plaintiffs has its heading in said drain.

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The plaintiffs, Carl E. Nicholson and Blanche Nicholson, husband and wife, are hereby decreed the right to the use of the following amounts of the waters of the drains and wells involved in this suit:

- 63 0356** (a) 390 miners inches during the month of April of each irrigation season;
- 63 0357** (b) 420 miners inches of said waters during the months of May and June of each irrigation season;
- 63 0358** (c) 475 miners inches of water at all times after July 1st of each irrigation season.

The priority of all of said plaintiffs' rights dates from April 1, 1948.

Said water is decreed for irrigation, livestock, and domestic uses upon said plaintiffs' lands, to-wit:

$E\frac{1}{2}$ $SE\frac{1}{4}$, Section 4;
 $N\frac{1}{2}$ $NE\frac{1}{4}$, $E\frac{1}{2}$ $NW\frac{1}{4}$, $SW\frac{1}{4}$ $NE\frac{1}{4}$, Section 9;
 Township 1 South, Range 2 W. B. M.

ALSO:

Lots 8 and 9, Section 22;
 $SW\frac{1}{4}$ $SW\frac{1}{4}$, Section 25;
 Lots 2, 3 and 4; $S\frac{1}{2}$ $SE\frac{1}{4}$, $NW\frac{1}{4}$ $SE\frac{1}{4}$, $NE\frac{1}{4}$ $SW\frac{1}{4}$,
 and the $SE\frac{1}{4}$ $NW\frac{1}{4}$, $NW\frac{1}{4}$ $NW\frac{1}{4}$, Section 26;
 Lot 4, Section 27;
 Lots 5 and 6, Section 35;
 Lots 5, 6 and 7, and the $NE\frac{1}{4}$ $NW\frac{1}{4}$, Section 36;
 All in Township 1 North, Range 3, W. B. M.

The point of diversion of said water is, as it has been for a long time heretofore, at a point located in Section 10, Twp. 1 S., R. 2, W. B. M., where an irrigation ditch belonging to plaintiffs and to said defendant Ellen T. Sprout has its heading in said drain.

IV.

63 0359 The defendant Reynolds Irrigation District is hereby decreed the right to the use of 1300 miners inches of the waters of the drains and wells involved in this suit, with priority dating from April 1, 1950. Said water is decreed for irrigation, livestock and domestic uses upon the lands embraced in the boundaries of said defendant Reynolds Irrigation District, in Owyhee County, Idaho, located and being in Sections 11, 12 and 13, Twp 1 South, Range 3, West Boise Meridian, and in Sections 6, 17, 18, 19, 20, 21, 28 and 29 in Twp. 1 South, Range 2 West Boise Meridian.

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The point of diversion of said water is, as it for a long time heretofore has been, at a point in Section 10, Twp. 1 S., R. 2, W.B.M., where an irrigation ditch belonging to said defendant has its heading in said drain.

V.

All the said lands of each of the parties hereto upon which water for irrigation is herein allotted are arid lands requiring irrigation; and the amount of water herein allotted to each party for use upon such lands is required and necessary for the proper growing of crops thereon, in addition to any water used from any other source, including Snake River, Reynolds Creek in Owyhee County, Idaho, and Warm Springs Creek in Canyon County, Idaho.

VI.

A miners inch of water as that term is herein used shall be deemed equivalent to one-fiftieth of a cubic foot per second; and the water herein allotted shall be measured at, or as nearly as practicable at, the head of the ditch whereby it is diverted by the party to whom its use is allotted herein.

In and near the head of the main drain from which plaintiffs and the defendant Ellen T. Sproat divert their water, said last named parties shall maintain a suitable and accurate measuring device whereby the water diverted for their use may be measured. The plaintiffs shall bear two-thirds of the expense of maintaining such measuring device and the defendant Ellen T. Sproat one-third thereof.

At the place where the defendant Reynolds Irrigation District diverts its water from the drain, a headgate and, if desirable or necessary, an accurate and suitable measuring device shall be installed by said defendant district at its expense in the drain so as to permit a constant flow of water down the drain to the point where plaintiffs and the defendant Ellen T. Sproat divert their water. The purpose of the above provision is to avoid fluctuations in the water supply available to plaintiffs and to Ellen T. Sproat at the head of their ditch just above mentioned; the said device or devices to be so installed, and the operation

thereof, shall be as prescribed by the State Reclamation Engineer of the State of Idaho and satisfactory to him.

VII.

The enforcement of this decree is hereby committed in the first instance, pending the creation, as provided by law, of a Water District comprising the sources of supply of the water rights herein decreed, to the State Reclamation Engineer of Idaho. He is hereby appointed to Commissioner of this Court, for that purpose, to serve without compensation during the remainder of the 1956 irrigation season, he having consented so to do. Said State Reclamation Engineer is hereby directed during such period to regulate and distribute the waters of said drain in accordance with the terms of this decree, and thereafter to supervise such distribution by the Water Master as provided by law.

VIII.

Each of the parties hereto and their respective servants, attorneys, employees, and successors in interest, are hereby enjoined and restrained from any and all use of the waters constituting the source of supply here involved, except to the extent and for the purposes herein provided.

IX.

Each of the parties herein shall bear his own costs.

Dated: June 11th 1956

Gilbert C. Norris
District Judge

We hereby consent to the foregoing decree.

Edwin Snow

State of Idaho) ss
County of Canyon)

Homer E. Martin by Snow
Attorneys for Plaintiffs

Maurice H. Greene

I hereby certify the foregoing)
instrument is a true and correct)
copy of the original as the same)
appears in this office,
DATED

David Doane
Attorneys for Defendant
Reynolds Irrigation Dist.

April 2, 1957
S. S. Foote, Clerk of the District
Court and Ex Officio Recorded

Laurel E Elam
Attorney for Defendant
Ellen T. Sproat

By s/ Lavona Sayre
Deputy.

JUL 24 1956

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63-7-1

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

CARL E. NICHOLSON and
BLANCHÉ NICHOLSON,
Husband and wife,

Plaintiffs,

vs.

REYNOLDS IRRIGATION DISTRICT,
a quasi-public corporation of
Owyhee County, Idaho; and
ELLEN T. SPROAT,

Defendants.

STIPULATION

FILED
JUN 11 1956
S. S. FOOTE, CLERK
Deanna J. Jure
Deputy

IT IS HEREBY STIPULATED AND AGREED as follows by
the parties to the above entitled cause, each party acting
by his attorney of record thereunto duly authorized:

I.

That the defendant Ellen T. Sproat may be deemed
to have filed herein her answer to plaintiffs' amended and
supplemental complaint; and to have also filed herein her
cross-complaint against plaintiffs and against her co-defendant
Reynolds Irrigation District, alleging the beneficial use by
her for irrigation purposes upon her lands hereinafter described,
ever since April 1, 1947, of the following amounts of the waters
of the drains and wells involved in this suit:

- (a) 120 miners inches of said waters during the
month of April of each irrigation season;
- (b) 140 miners inches of said waters during the
months of May and June of each irrigation
season;
- (c) 175 miners inches at all times after July 1st
of each irrigation season;

And claiming rights in said waters in accordance with
said allegations.

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II.

That the defendant Reynolds Irrigation District may be deemed to have filed herein its answer to plaintiffs' amended and supplemental complaint; and to have also filed herein a cross-complaint against plaintiffs and its said co-defendant Ellen T. Sproet, alleging the beneficial use by it ever since May 1, 1950, of 1300 miners inches of the waters of the drains and wells involved in this suit, in the irrigation of the lands within its boundaries in Owyhee County, Idaho; And claiming rights in said waters in accordance with said allegations.

III.

That the defendants herein admit the allegations of plaintiffs' complaint to the following extent: That plaintiffs have continuously since May 1, 1948, beneficially used in the irrigation of their lands hereinafter described, the waters of the drains and wells involved in this suit to the following extent:

390 miners inches during the month of April of each irrigation season;

480 miners inches of said waters during the months of May and June of each irrigation season;

475 miners inches of water at all times after July 1st of each irrigation season.

And all the parties hereto hereby agree that the allegations of the defendants herein as to their use of water and claiming water rights in accordance with their respective cross-complaints as set out in paragraphs I and II hereof, respectively, are true and correct.

IV.

It is hereby stipulated and agreed that all the waters constituting the water supply of the drain and its

branches, from which the parties hereto have been diverting the water involved in this suit whether said waters are derived from percolation into the drain or from any existing well, including the well of plaintiffs, the wells of the defendant Reynolds Irrigation District, and a well known as the "Simpson Well", situated at the head of one branch of the main drain ditch from which the parties hereto divert their water, constitute a common and inter-dependent source of supply; and the withdrawal of water from said main drain or any of its said contributing sources of supply depletes the water rights and supply of each of the parties hereto.

And the parties hereby request the Court that the provisions of this paragraph of this stipulation be included in the decrees to be entered herein.

V.

In and near the head of the main drain from which plaintiffs and the defendant Ellen T. Sproat divert their water, said last named parties shall maintain a suitable and accurate measuring device whereby the water diverted for their use may be measured. The plaintiffs shall bear two-thirds of the expense of maintaining such measuring device and the defendant Ellen T. Sproat one-third thereof.

At the place where the defendant Reynolds Irrigation District diverts its water from the drain, a headgate and, if desirable or necessary, an accurate and suitable measuring device shall be installed by said defendant district at its expense in the drain so as to permit a constant flow of water down the drain to the point where plaintiffs and the defendant Ellen T. Sproat divert their water. The purpose of the above provision is to avoid fluctuations in the water supply available to plaintiffs and to Ellen T. Sproat at the head of their ditch

just above mentioned; the said device or devices to be so installed, and the operation thereof, shall be as prescribed by the State Reclamation Engineer of the State of Idaho and satisfactory to him.

VI.

The lands belonging to Plaintiffs upon which the water right herein claimed by them has been used are as described in paragraph I of the First Cause of Action of Plaintiffs' Amended and Supplemental Complaint on file herein;

The lands belonging to defendant Ellen T. Sprent upon which the water right herein claimed by her has been used are as described in paragraph III of the First Cause of Action of Plaintiffs' Amended and Supplemental Complaint on file herein;

The lands comprising the lands of the defendant Reynolds Irrigation District, upon which the water right claimed by it has been used, are those lands in Owyhee County, Idaho, included within its exterior boundaries and lying and being in Sections 11, 12 and 13, Twp. 1 South, Range 3 West Boise Meridian, and in Sections 6, 17, 18, 19, 20, 21, 28 and 29 in Twp. 1 South Range 2, W. B. M.

All the said lands of each of the parties hereto are arid lands requiring irrigation; and the water rights herein claimed by each are required and necessary for the proper growing of crops thereon in addition to any water used from any other sources including Snake River, Reynolds Creek in Owyhee County, and Warm Springs Creek in Canyon County, Idaho.

VII.

It is stipulated and agreed that decrees may be entered herein in accordance with this stipulation.

JUL 24 1996

Findings of Fact and Conclusions of Law in
connection therewith are hereby expressly waived.

Dated: June 11th 1966.

Edwin Smead

Howe & Martin & Smead

Attorneys for Plaintiffs

Maurice H. Greene

David Doane

Attorneys for Defendant
Reynolds Irrigation District

Laurel E. Allen
Attorney for Defendant Ellen
T. Sproat

State of Idaho)
County of Canyon) SS.

I hereby certify that the foregoing instrument is a true and correct
copy of the original as the same appears in this office.

Date May 26, 1963

S. S. Foote, ExOfficio Recorder
BY Deborah Layle
Deputy

JUL 24 1966