

M'ELMD

ENTERED

MAY 24 1961

1 SACHSE and PRICE
2 Attorneys at Law
3 1002 S. Main Street
4 Fallbrook, California
5 RA 8-1154

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY *William M. Kelly*
Deputy Clerk

LODGED

MAY 8 - 1961

CLERK, U. S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY *William M. Kelly*
Deputy Clerk

7
8 IN THE UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10 SOUTHERN DIVISION

FILED

MAY 24 1961

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY *William M. Kelly*
DEPUTY

11 UNITED STATES OF AMERICA,)
12 Plaintiff,)

No. 1247-SD-C

13 v.)

FINDINGS OF FACT, CONCLUSIONS
OF LAW and INTERLOCUTORY
JUDGMENT NUMBER 28

14 FALLBROOK PUBLIC UTILITY)
15 DISTRICT, et al.,)

MISCELLANEOUS SURFACE
IMPCUNDMENTS

16 Defendants.)

17 FINDINGS OF FACT

18 I

19 There are within the watershed of the Santa Margarita
20 River many structures used for the impoundment of limited
21 amounts of surface run-off for the purpose of providing stock
22 water. Such impoundments customarily intercept limited
23 amounts of winter run-off in ponds, and under normal conditions
24 of climate and weather, such surface impoundments will continue
25 to exist through the dry season, or at least as long as
26 adequate grazing is available. Such structures are not main-
27 tained under the authority of any Permit or License of the
28 State of California.

29 II

30 There are within the watershed of the Santa
31 Margarita River many structures, both on and off-channel,
32

1 used for the temporary and non-seasonal impoundment of
2 surface run-off for the purpose of providing a head for
3 irrigation, or for the purpose of temporarily accumulating
4 sufficient water to make possible efficient irrigation,
5 which structures are not maintained under the authority of
6 any Permit or License of the State of California.

7 III

8 There are within the watershed of the Santa
9 Margarita River many structures used for the impoundment of
10 surface run-off for soil conservation, recreation, or other
11 beneficial purposes, which structures are not maintained
12 under any Permit or License of the State of California.

13 IV

14 There is no evidence that any of such structures
15 or impoundments presently constitute an unreasonable, wasteful
16 or non-beneficial use of water.

17 V

18 Such structures and impoundments intercept surface
19 run-off of the waters of the Santa Margarita River system,
20 which run-off would, in a state of nature, contribute to the
21 volume of stream flow and to the re-charge of the underground
22 basins of the stream system. While the impact of any such
23 individual impoundment on the available water supply of the
24 Santa Margarita River system is de minimis, the cumulative
25 effect of such structures and impoundments may at a future
26 date become substantial and require regulation or control.

27 VI

28 Except in situations covered elsewhere in other
29 findings in this case in which this Court has specifically
30 found a right to maintain such structures, none of such
31 structures or impoundments have been maintained adversely
32 to any other water user downstream therefrom.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

CONCLUSIONS OF LAW

I

The impoundment by riparian owners of limited quantities of surface run-off for the purpose of providing stock water is a proper riparian use of water. The question of whether or not the amount any such individual use is reasonable or unreasonable under the circumstances has not been determined in these proceedings.

II

The temporary and non-seasonal impoundment by riparian owners of surface run-off for the purpose of providing a head for irrigation, or for the purpose of temporarily accumulating sufficient water to make possible efficient irrigation, is a proper riparian use of water. The question of whether or not any such individual use is reasonable or unreasonable under the circumstances has not been determined in these proceedings.

III

The possible necessity of future regulation and control of such structures and impoundments in the interest of all water users of the Santa Margarita River system requires that this Court retain continuing jurisdiction of this cause and of the owners or operators of any such structures or impoundments, for the purpose of regulating, controlling, restricting or prohibiting if necessary, any future impoundment or diversion of surface waters of the Santa Margarita River system upon proper showing by any party hereto or his successor in interest.

IV

Excepting as may have been specifically found elsewhere in other Findings in this case, none of such structures or impoundments have given rise to any right

to maintain them or impound water therein by reason of
1 prescription or adverse user.

2 IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

3 I

4 The construction or maintenance of any structure for
5 the impoundment of surface run-off of the waters of the Santa
6 Margarita River system as the same has been herein defined has
7 not resulted in the acquisition of any prescriptive right or
8 any right by reason of adverse user against any party to this
9 cause, excepting as such prescriptive or adverse rights have
10 been specifically determined to exist elsewhere in the judgment
11 of this Court, and the continued maintenance of such structures,
12 or the impoundment of water therein shall not in the future give
13 rise to any prescriptive right or right by adverse user against
14 any other party to this cause, his heirs, successors or assigns.

15 II

16 This Court retains continuing jurisdiction of this
17 cause and of the parties hereto, their heirs, successors and
18 assigns, for the purpose of regulating controlling, restricting
19 or prohibiting any impoundment or diversion of the surface
20 waters of the Santa Margarita River system.

21 IT IS FURTHER ORDERED, ADJUDGED AND DECREED, based
22 upon the decisions of the United States Court of Appeals for the
23 Ninth Circuit, California v. United States, 235 Fed (2) 647
24 (CA 9 1956), that this is not a final decree but is interlocu-
25 tory in character and by reason of the declaration by this Court
26 that all parties are adverse one to another, thus dispensing
27 with cross-pleadings, all other parties to this proceeding may
28 object to these Findings of Fact, Conclusions of Law and Inter-
29 locutory Judgment and will be given full opportunity upon due
30 notice to interpose their objections to these Findings of Fact,
31 Conclusions of Law and Interlocutory Judgment.

32 Dated: May 13, 1961.

James M. Carter
James M. Carter
United States District Judge