

7/28/61

7/28/61

1

11/40

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

ENTERED

AUG 1 1961

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY *William A. Reed, Jr.*
Deputy Clerk

FILED

IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

AUG 1 1961

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY *William A. Reed, Jr.*
Deputy

UNITED STATES OF AMERICA,
Flaintiff,
v.
FALLBROOK PUBLIC UTILITY
DISTRICT, et al.,
Defendants.

No. 1247-SD-C
SANDIA CREEK SUB-WATERSHED
INTERLOCUTORY JUDGMENT
NO. 29A

FINDINGS OF FACT, CONCLUSIONS OF LAW AND INTER-
LOCUTORY JUDGMENT NO. 29A, RESPECTING LANDS IN
SANDIA CREEK SUB-WATERSHED WHICH DO NOT OVER-
LIE ANY GROUND WATERS WHICH FEED OR CONTRIBUTE
TO THAT STREAM OR ITS TRIBUTARIES

This Court, based upon the record before it in the subject
case, makes and enters the following Findings of Fact:

I

The United States Court of Appeals for the Ninth Circuit
remanded this case for trial, declaring that: "The only proper method
of adjudicating the rights on a stream, whether riparian or appropri-
ative or mixed, is to have all owners of land on the watershed and all
appropriators who use water from the stream involved in another water-
shed in court at the same time." 1/

1/ State of California vs. United States, 235 F.2d 647,663 (C.A.9,1956)

Sandia

2

II

1
2 Proceeding in accordance with that mandate, the Complaint
3 and Amendatory and Supplementary Complaint in this cause was served
4 upon the owners of the lands within the watershed of the Santa Mar-
5 garita River and all appropriators who used water from that stream in
6 any other watershed. Moreover, those parties named in the cause who
7 could not be served personally were served by publication.

III

8
9 The subject matter of this case, based upon the pleadings
10 and the issues joined in it, relates only to the rights to the use of
11 the waters of the Santa Margarita River, its tributaries and to the
12 ground waters which feed, add to, support and contribute to the waters
13 of the Santa Margarita River and its tributaries.

IV

14
15 There are situated within the sub-watershed of Sandia Creek
16 certain parcels or tracts of lands which do not overlie any of the
17 ground waters which feed, add to, support or contribute to the waters
18 of the Santa Margarita River or its tributaries. Those lands are com-
19 prised of basement complex or weathered basement complex, the ground
20 waters of which, if any, are vagrant, local and percolating, not a
21 part of the surface or sub-surface flow of Sandia Creek or any of its
22 tributaries, nor do these ground waters feed, add to, support or con-
23 tribute to the waters of the Santa Margarita River or any of its
24 tributaries.

25 There follows a list of the names of the apparent owners and
26 parcel numbers of the tracts of land within the category described
27 above:

- 28 a. Parcel 83W/31—59 Edward H. Goodwin
29 Parcel 83W/31—63 Ivey, W. H.
30 Parcel 83W/31—64 Elmer P. & Grace E. Bieck
31 Parcel 83W/31—65 Madelyn Shafer
32

1 Parcel 94W/1-73 John W. Day
 2 Parcel 94W/11-84 Samuel S. Schier
 3 Parcel 94W/12-86 John W. Day

4 The names of the above listed apparent owners and the
 5 parcel numbers are taken from Exhibit 212-B in this case.

6 b. Attached to these Findings of Fact, Conclusions of Law
 7 and Interlocutory Judgment, marked Exhibit A and made
 8 a part of it, is a map, U.S.A.Pl's Exhibit 69, Sandia
 9 Creek Watershed, Geology, disclosing the geology and
 10 general location of the lands in question.

11 c. Also attached to these Findings of Fact, Conclusions
 12 of Law and Interlocutory Judgment, marked Exhibit B
 13 and made a part of them by reference, are the land
 14 descriptions of the properties referred to in this
 15 Finding. Exhibit B is a portion of U.S.A.Pl's Ex-
 16 hibit 212-B in this case.

17 V

18 This Court retains continuing jurisdiction over all surface
 19 waters within the drainage area of the sub-watershed of Sandia Creek
 20 and its tributaries.

21 CONCLUSIONS OF LAW

22 This Court makes the following Conclusions of Law respecting
 23 the lands referred to in Finding IV above and which are described in
 24 Exhibit B:

25 I

26 The defendants referred to in Finding IV, their successors,
 27 heirs, executors, administrators and assigns, have no rights to the
 28 use of ground waters which feed, add to, support or contribute to the
 29 waters of Sandia Creek or its tributaries, or of the Santa Margarita
 30 River and its tributaries, in connection with the lands referred to in
 31 Finding IV, which are described with particularity in Exhibit B.
 32

II

1
2 There is not at issue before this Court in this cause and
3 there is not decreed, determined or adjudged, inter sese, as to the
4 lands or owners of land referred to in Finding IV in this cause, the
5 rights, if any, to the use of the vagrant, local, percolating waters
6 which may underlie any of the lands referred to in the above set forth
7 Finding IV, and which are described with particularity in Exhibit B of
8 these Findings of Fact, Conclusions of Law and Interlocutory Judgment.

III

9
10 The United States of America, and all other parties to this
11 action, having rights to the use of waters of the Santa Margarita River
12 or its tributaries, as those rights are or may hereafter be determined
13 by the final judgment of this Court, are entitled to have quieted their
14 title in and to those rights against any and all adverse claims of the
15 defendants referred to in Finding IV of these Findings of Fact, Con-
16 clusions of Law and Interlocutory Judgment, their heirs, successors,
17 executors, administrators and assigns, asserted by reason of their owner-
18 ship of the lands described with particularity in Exhibit B of these
19 Findings of Fact, Conclusions of Law and Interlocutory Judgment.

IV

20
21 The defendants referred to in Finding IV, the apparent owners
22 of the lands described with particularity in Exhibit B of these Findings
23 of Fact, Conclusions of Law and Interlocutory Judgment, their heirs,
24 successors, administrators, executors and assigns, are entitled to have
25 quieted their titles in and to their rights to the use of the vagrant,
26 local and percolating ground waters, if any, underlying those lands des-
27 cribed in Exhibit B, against the adverse claims, if any, of the United
28 States of America and all parties to this cause, their heirs, successors,
29 administrators, executors and assigns, by reason of rights asserted
30 by the United States of America and all parties to this cause, their
31 heirs, successors, administrators, executors and assigns, in and to the
32 use of the waters of the Santa Margarita River and its tributaries.

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

V

This Court retains continuing jurisdiction with respect to surface waters, if any, found on those lands described in Exhibit B of these Findings of Fact, Conclusions of Law and Interlocutory Judgment.

INTERLOCUTORY JUDGMENT

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that:

I

The defendants referred to in Finding IV, the apparent owners of the lands described with particularity in Exhibit B of these Findings of Fact, Conclusions of Law and Interlocutory Judgment, their heirs, successors, executors, administrators and assigns, by reason of their ownership of those lands, have no right, title or interest in or to the ground waters which feed, add to, support or contribute to the waters of Sandia Creek or its tributaries, or of the Santa Margarita River and its tributaries.

II

The titles to the rights of the United States of America and all other parties in this action having rights in and to the surface and ground waters of the Santa Margarita River and its tributaries, as they are adjudicated, decreed and determined by the final judgment of this Court, shall be and they are forever quieted against any and all adverse claims of the defendants referred to in Finding IV, their heirs, successors, administrators, executors and assigns, who assert rights by reason of their ownership of the lands described in Exhibit B of these Findings of Fact, Conclusions of Law and Interlocutory Judgment; and those defendants, and each of them, and their heirs, successors, executors, administrators and assigns, who by reason of their ownership of the lands described in Exhibit B assert rights in the vagrant, local, percolating waters therein, are forever restrained from asserting,

6

1 claiming or setting up any right, title or interest in or to the waters
 2 of the Santa Margarita River or its tributaries, by reason of their
 3 ownership of those lands described in said Exhibit B.

4 III

5 The ground waters, if any, which underlie the lands referred
 6 to in Finding IV, and described with particularity in Exhibit B of these
 7 Findings of Fact, Conclusions of Law and Interlocutory Judgment, are
 8 vagrant, local and percolating, not a part of the waters of Sandia Creek
 9 or its tributaries or of the Santa Margarita River and its tributaries
 10 and are not in this cause adjudged, determined or decreed, inter sese,
 11 among the defendants listed in Finding IV of these Findings of Fact, Con-
 12 clusions of Law and Interlocutory Judgment, their heirs, executors, ad-
 13 ministrators, successors or assigns.

14 IV

15 The titles to the rights of the defendants listed in Finding IV,
 16 their heirs, executors, administrators, successors or assigns, in and to
 17 the vagrant, local, percolating ground waters, if any, to which these
 18 Findings of Fact, Conclusions of Law and Interlocutory Judgment pertain,
 19 which are not a part of the waters of the Santa Margarita River and its
 20 tributaries, underlying the lands described in Exhibit B of these Find-
 21 ings of Fact, Conclusions of Law and Interlocutory Judgment, shall be
 22 and they are forever quieted against any and all adverse claims, if any,
 23 of the United States of America and all parties to this cause, their
 24 heirs, successors, administrators, executors and assigns, having or claim-
 25 ing rights in and to the surface and ground waters of the Santa Margarita
 26 River and its tributaries, and the United States of America and all other
 27 parties to this cause, their heirs, successors, administrators, executors
 28 and assigns, having or claiming rights in and to the surface and ground
 29 waters of the Santa Margarita River and its tributaries, are forever
 30 restrained from asserting, claiming or setting up any right, title or
 31 interest in or to those vagrant, local, percolating ground waters.
 32

Sandra

7

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

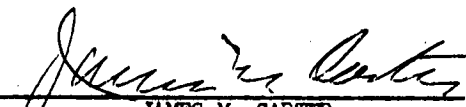
V

This Court retains continuing jurisdiction with respect to surface waters, if any, found on those lands described in Exhibit B of these Findings of Fact, Conclusions of Law and Interlocutory Judgment.

VI

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, based upon the decision of the United States Court of Appeals for the Ninth Circuit, California vs. United States, 235 F2d 647 (C.A. 9, 1956), that this is not a final decree but is interlocutory in character and by reason of the Order by this Court that all parties are adverse one to another, thus dispensing with cross-pleadings, all other parties to this proceeding may object to these Findings of Fact, Conclusions of Law and Interlocutory Judgment and will be given full opportunity upon due notice to interpose their objections to these Findings of Fact, Conclusions of Law and Interlocutory Judgment.

Dated: 8/1/61


JAMES M. CARTER
Judge, United States District Court

Santa Margarita River Watershed Below Temecula Gorge
And Above Deluz Creek Confluence

Parcel: 83W-31-59

The Southeast Quarter of the Northeast Quarter of Section Thirty-one (31), Township Eight (8) South, Range Three (3) West, San Bernardino Base and Meridian, in the County of Riverside, State of California.

OWNERS:

GOODWIN, Edward H. (m/m sep.prop)

~~Parcel: 83W 31 & 93W 6 60~~

The West Half of the Southeast Quarter; the South Half of the Southwest Quarter; the Northeast Quarter of the Southwest Quarter; and the Southeast Quarter of the Northwest Quarter of Section Thirty-one (31), Township Eight (8) South, Range Three (3) West, San Bernardino Base and Meridian, in the County of Riverside, State of California EXCEPT the Westerly 165 feet of the Northeast Quarter of the Southwest Quarter. Also, Lots Two (2), Three (3), Five (5), Six (6) and Seven (7), and the Southeast Quarter of the Northwest Quarter of Section Six (6), Township Nine (9) South, Range Three (3) West, San Bernardino Base and Meridian, in the County of San Diego, State of California EXCEPT therefrom that portion of Lot Seven (7) described as follows: Beginning at the Southwest Corner of said Lot Seven (7) (being the Southwest Quarter of the Southwest Quarter of said Section Six (6)); thence Northerly along West line of said Lot Seven (7), 215.84 feet; thence North $44^{\circ}18'40''$ East, 1103.01 feet; thence North $83^{\circ}02'35''$ East, 588.21 feet to East line of said Lot Seven (7); thence Southerly along said East line 1090.0 feet to the Southeast Corner of said Lot Seven (7); thence along Southerly line thereof 1327.97 feet to point of beginning.

OWNERS:

SAWDAY, Charles F. (hus)
SAWDAY, Ruth Cornell (wife)
~~CAREY, Arthur W. (hus)~~

Santa Margarita River Watershed Below Temecula Gorge

And Above Deluz Creek Confluence

~~Parcel: 83W-31 & 93W-6-60 Continued~~

CAREY, Inez Wagner (wife)
GOODWIN, Ewart W. (hus)
GOODWIN, Mary Alice (wife)
BRADSHAW, Paul D. (hus)
BRADSHAW, Margaret (wife)
CONNECTICUT MUTUAL LIFE INSURANCE CO (TDBen)
SOUTHERN TITLE & TRUST CO (TTr)

Parcel: 83W-31-61

The South Ten acres of Lot Three (3), (being the South Half of the South Half of the Northeast Quarter of the Northwest Quarter), of Section Thirty-one (31), Township Eight (8) South, Range Three (3) West, San Bernardino Base and Meridian, in the County of Riverside, State of California.

OWNERS:

DI SILVESTRO, I. (s/m)
LONG, C. R. (m/m)

Parcel: 83W-31-62

The East Half of the North Half of the South Half of Government Lot Three (3), (being the Northeast Quarter of the Northwest Quarter), of Section Thirty-one (31), Township Eight (8) South, Range Three (3) West, San Bernardino Base and Meridian, in the County of Riverside, State of California.

OWNERS:

CASERTA, Anna. (m/w)

Parcel: 83W-31-63

The East Half of the North Half of the Northeast Quarter of the Northwest Quarter of Section Thirty-one (31), Township Eight (8) South, Range Three (3) West, San Bernardino Base and Meridian, in the County of Riverside, State of California.

Santa Margarita River Watershed Below Temecula Gorge

And Above Deluz Creek Confluence

Parcel: 83W-31-63 Continued

OWNERS:

IVEY, W. H. (m/m)

Parcel: 83W-31-64

The Northwest Quarter of Government Lot Three (3) of Section Thirty-one (31), Township Eight (8) South, Range Three (3) West, San Bernardino Base and Meridian, in the County of Riverside, State of California.

OWNERS:

BIECK, Elmer P (hus)

BIECK, Grace E. (wife)

Parcel: 83W-31-65

The West Half of the North Half of the South Half of Government Lot Three (3) of Section Thirty-one (31), Township Eight (8) South, Range Three (3) West, San Bernardino Base and Meridian, in the County of Riverside, State of California.

OWNERS:

SHAFER, Madelyn (s/w)

~~Parcel: 83W-30&31, 84W-25-66~~

~~Lot One (1), Section Thirty (30), Township Eight (8) South, Range Three (3) West, San Bernardino Base and Meridian, in the County of Riverside, State of California. Also, Lots Four (4) and Five (5), (being the Northwest Quarter of the Northwest Quarter, and the Southwest Quarter of the Northwest Quarter) of Section Thirty-one (31), said Township and Range. Also, Lots One (1), Two (2), Three (3), Four (4), Five (5) and the South Half of the Southwest Quarter of Section Twenty-five (25), Township Eight (8) South, Range Four (4) West, San Bernardino Base and Meridian, in the County of Riverside, State of California.~~

Santa Margarita River Watershed Below Temecula Gorge

And Above Deluz Creek Confluence

Parcel: 84W-36-71 Continued

East, 1279.37 feet to said South line of said Section; thence Easterly along said South line 693.50 feet to point of beginning.

OWNERS:

TAYLOR, Millicent Y. (widow)

BANK OF AMERICA (TDTr)

HANSEN, Alex F. dec'd., Heirs or devisees (TDBen)

Parcel: 94W-1&2-72

Lots Three (3) and Four (4), Section One (1), Township Nine (9) South, Range Four (4) West, San Bernardino Base and Meridian, in the County of San Diego, State of California. Also, Lots One (1) and Two (2), Section Two (2), said Township and Range.

OWNERS:

WILDIN, William H.

LUBIC, Frank J.

GUTHRIE, Suzanne

~~CALKINS, Leon Clifton~~

Parcel: 94W-1-73

The South Half of the Northwest Quarter of Section One (1), Township Nine (9) South, Range Four (4) West, San Bernardino Base and Meridian, in the County of San Diego, State of California, EXCEPT that portion described as follows: Beginning at the Southeast Corner of said South Half of the Northwest Quarter; thence South $89^{\circ}56'32''$ West along South line thereof 660 feet; thence North $1^{\circ}41'44''$ East, 600 feet; thence North $89^{\circ}56'32''$ East, 660 feet to East line of said Northwest Quarter; thence South $1^{\circ}41'44''$ West, 600 feet to point of beginning.

OWNERS:

DAY, John W.

Santa Margarita River Watershed Below Temecula Gorge
And Above Deluz Creek Confluence

Parcel: 94W-11-84

That portion of Section Eleven (11), Township Nine (9) South, Range Four (4) West, San Diego Base and Meridian, in the County of San Diego, State of California, described as follows: Beginning at the Southeast Corner of Fractional Section Eleven (11), thence Westerly along Southerly line thereof 1245.72 feet; thence North-erly parallel with West line of the Northeast Quarter of the South-east Quarter to North line of said Northeast Quarter of the South-east Quarter; thence Easterly along Northerly line thereof 1220 feet more or less to East line thereof; thence Southerly along East line to point of beginning.

OWNERS:

SCHIER, Samuel S.

Santa Margarita River Watershed Below Temecula Gorge

And Above Deluz Creek Confluence

Parcel: 94W-12-85

The Southwest Quarter of the Northwest Quarter, and Lot Three (3) of Section Twelve (12), Township Nine (9) South, Range Four (4) West, San Bernardino Base and Meridian, in the County of San Diego, State of California.

OWNERS:

SCHIER, Samuel S.

Parcel: 94W-12-86

The Southwest Quarter of the Northeast Quarter of the Northwest Quarter of Section Twelve (12), Township Nine (9) South, Range Four (4) West, San Bernardino Base and Meridian, in the County of San Diego, State of California.

OWNERS:

DAY, John W

Parcel: 94W-12-87

Lot Two (2), Section Twelve (12), Township Nine (9) South, Range Four (4) West, San Bernardino Base and Meridian, in the County of San Diego, State of California; Also, the Southerly 20 feet of the Westerly 104 feet of the Southeast Quarter of the Northeast Quarter of said Section Twelve (12).

OWNERS:

BRAY, Richard (hus)

BRAY, Cora B. (wife)

Parcel: 94W-12-88

The Northwest Quarter of the Southeast Quarter; and the Southwest Quarter of the Northeast Quarter of Section Twelve (12), Township Nine (9) South, Range Four (4) West, San Bernardino Base and Meridian, in the County of San Diego, State of California.

OWNERS:

WAGENAAR, John L (hus)

WAGENAAR, Mary Agnes (wife)