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ENTERED

AUG 4 1961

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

FILED

AUG 4 1961

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SOUTHERN DIVISION
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY *William A. King*
DEPUTY

UNITED STATES OF AMERICA,

Plaintiff,

v.

FALLBROOK PUBLIC UTILITY
DISTRICT, et al.,

Defendants.

No. 12,7-SD-C
DELUZ CREEK SUB-WATERSHED
INTERLOCUTORY JUDGMENT
NO. 32A

FINDINGS OF FACT, CONCLUSIONS OF LAW AND INTER-
LOCUTORY JUDGMENT NO. 32 A, RESPECTING LANDS IN
DELUZ CREEK SUB-WATERSHED WHICH DO NOT OVERLIE
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 appropria-
tive 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 v. United States, 235 F.2d 647,663 (C.A. 9,1956)

1 Parcel 85N/13--89 Faul & E. Jean Koch

2 Parcel 85N/13--90 G. R. Gough, Trustee for Lawrence B.
Johnson (life tenant)

3 Parcel 94N/2--72 Alfred & Helen E. Holsworth

4 The names of the above listed apparent owners and the
5 parcel numbers are taken from Exhibit 216-B in this case.

6
7 b. Attached to these Findings of Fact, Conclusions of Law
8 and Interlocutory Judgment, marked Exhibit A and made
9 a part of it, is a map, U.S.A.Pl's Exhibit 67, DeLuz
10 Creek Watershed, Geology, disclosing the geology and
11 general location of the lands in question.

12 c. Also attached to these Findings of Fact, Conclusions
13 of Law and Interlocutory Judgment, marked Exhibit B
14 and made a part of them by reference, are the land
15 descriptions of the properties referred to in this
16 Finding. Exhibit B is a portion of U.S.A.Pl's Ex-
17 hibit 216-B in this case.

18 V

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

22 CONCLUSIONS OF LAW

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

26 I

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

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.

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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 DeLuz 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,

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 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 DeLuz 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,
12 Conclusions of Law and Interlocutory Judgment, their heirs, executors,
13 administrators, successors or assigns.

14 IV

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

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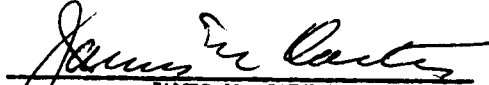
V

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: 8/4/61


JAMES M. CARTER
Judge, United States District Court