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FEB 6 - 1963

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
By *William H. ...* DEPUTY

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7 UNITED STATES DISTRICT COURT
8 SOUTHERN DISTRICT OF CALIFORNIA
9 SOUTHERN DIVISION

ENTERED

FEB 6 - 1963

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11 UNITED STATES OF AMERICA,
12 Plaintiff,
13 vs.
14 FALLBROOK PUBLIC UTILITIES
DISTRICT, et al.,
15 Defendants.
16

Civil No. 1247

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
By *William H. ...* DEPUTY

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND INTERLOCUTORY
JUDGMENT NO. 43
REGARDING GIBBON
AND COTTLE LANDS

17 FINDINGS OF FACT

18 1. That the lands of defendants Katherine C. Gibbon
19 and William W. Cottle are located in general in southern
20 Riverside County, upstream from Vail Dam; that said lands
21 apparently owned by Katherine C. Gibbon are as follows:

- 22 1. The Southeast 1/4 of the Northwest 1/4 of the
- 23 Southeast 1/4;
- 24 2. The South 1/2 of the Northeast 1/4 of the Northwest
- 25 1/4 of the Southeast 1/4;
- 26 3. The East 1/2 of the Southwest 1/4 of the Southeast 1/4;
- 27 4. The Northeast 1/4 of the Southeast 1/4 except that
- 28 portion lying northeasterly of the center line of
- 29 the State Highway;
- 30 5. The Southeast 1/4 of the Southeast 1/4, all in
- 31 Section 19, Township 8 South, Range 1 East, S.B.B.M.;

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- 1 6. That portion of the Northwest 1/4 of the Southwest
- 2 1/4 of Section 20, Township 8 South, Range 1 East,
- 3 S.B.B.M. lying southwesterly of the center line of
- 4 the State Highway;
- 5 7. The Southwest 1/4 of the Southwest 1/4 of Section
- 6 20, Township 8 South, Range 1 East, S.B.B.M.;
- 7 8. The Northwest 1/4 of the Northwest 1/4; and
- 8 9. The Southwest 1/4 of the Northwest 1/4 of Section
- 9 29, Township 8 South, Range 1 East, S.B.B.M.;
- 10 10. The North 1/2 of the Northeast 1/4; and
- 11 11. The Southeast 1/4 of the Northeast 1/4 of Section
- 12 30, Township 8 South, Range 1 East, S.B.B.M.

13 That said lands apparently owned by William W. Cottle are as
14 follows:

15 All that certain real property situated in the
16 County of Riverside, State of California, and particu-
17 larly described as follows, to wit:

18 That portion of the Southwest quarter of the
19 Northeast quarter of Section 19 lying Southerly of
20 the State Highway.

21 That portion of the Southeast quarter of the
22 Northwest quarter of Section 19 lying Southerly of
23 the State Highway.

24 That portion of the East half of the Southwest
25 quarter of Section 19 lying Southerly of the State
26 Highway.

27 The West half of the West half of the Southeast
28 quarter of Section 19.

29 The North half of the Northeast quarter of the
30 Northwest quarter of the Southeast quarter of Section 19.

31 All in Township 8 South, Range 1 East, San Bernardino
 Base and Meridian.

1 The lands of Katherine C. Gibbon contain approximately 347.5
2 acres, of which approximately 107.6 are irrigable; the lands of
3 William W. Cottle contain approximately 133.6 acres, of which
4 approximately 62 acres are irrigable.

5 2. That all of said lands abut upon or are traversed
6 by Temecula Creek, a tributary of the Santa Margarita River,
7 and said lands are riparian to Temecula Creek.

8 3. That said lands described above are within the
9 Aguanga Ground Water Area as determined in Findings of Fact,
10 Conclusions of Law, and Interlocutory Judgment No. 40, and this
11 Court herein incorporates by reference those findings of fact
12 set forth in said Interlocutory Judgment No. 40.

13 4. That incorporated herein by reference is United
14 States Exhibit 275, which depicts the areas of younger and older
15 alluvium deposits which comprise said Aguanga Ground Water Area;
16 that all ground waters contained within the younger alluvial
17 deposits on all lands described in Finding 1 above are a part
18 of the flow of Temecula Creek; that all ground waters contained
19 within the older alluvial deposits are not a part of the flow of
20 Temecula Creek, but said ground waters add to, contribute to,
21 and support the Santa Margarita River stream system.

22 5. The evidence in this case shows that the younger
23 alluvial deposits within the lands described in Finding 1 above
24 extend to a depth of approximately 40 feet from land surface and
25 rest upon older alluvial deposits which extend to an estimated
26 depth of approximately 365 feet from land surface. At the
27 present time, there are two water producing wells on the property
28 apparently owned by defendant William W. Cottle, and five water
29 producing wells on the property apparently owned by defendant
30 Katherine C. Gibbon. In addition to these wells, there is one
31 other water producing well which is located near or upon the

1 streambed of Temecula Creek, and was drilled upon lands described
2 in Finding 1 above. The defendants William W. Cottle and
3 Katherine C. Gibbon both contend that this well is located upon
4 their specific property separately described in Finding 1.
5 This Court has heard no evidence on the issue as to the owner-
6 ship of this well and makes no finding or determination on this
7 issue. All of the wells referred to herein are drilled to
8 depths substantially in excess of 40 feet and pump waters con-
9 tained within the older alluvial deposits.

10 6. That during the trial of this case, defendant
11 Katherine C. Gibbon has constructed a reservoir lined and
12 banked with clay in the easterly portion of the southwest
13 quarter of the southeast quarter of Section 19, Township 8
14 South, Range 1 East, which has a storage capacity of approxi-
15 mately 10 acre feet. It does not appear in this record whether
16 in the operation of this reservoir it will be used for the pur-
17 pose of obtaining a head for irrigation, or whether it will be
18 used for the purpose of storage of water seasonally. There is
19 no appropriative or prescriptive right to use said reservoir
20 for seasonal storage.

21 7. Except as set forth in Finding 6 above, all uses
22 of the waters of Temecula Creek, or ground waters which add to
23 and contribute to the Santa Margarita River stream system on
24 the lands described above, have been for reasonable and benefi-
25 cial riparian or overlying purposes.

26 8. Of the 107.6 irrigable acres on the Gibbon land,
27 5.4 acres bear a reasonable average annual diversion duty of
28 4.2 acre feet per acre, and the remaining 102.2 acres bear a
29 reasonable average annual diversion duty of 4.4 acre feet per
30 acre. The annual average diversion duty for the irrigable
31 acreage on the Gibbon land is 472.5 acre feet. Of the 62

1 irrigable acres on the Cottle land, 59.1 acres bear a reasonable
2 average annual diversion duty of 4.4 acre feet per acre, and
3 the remaining 2.9 acres bear a reasonable average annual diver-
4 sion duty of 4.2 acre feet per acre. The average annual diver-
5 sion duty of the irrigable acreage on the Cottle land is 272.25
6 acre feet. In addition to the above, use of the waters of
7 Temecula Creek for domestic and other non-irrigation riparian
8 purposes would be a reasonable and beneficial use of water.

9 That the facts as stated herein in this finding and
10 those concerned with irrigable acreage in Finding 1 are made at
11 this time where the issue of apportionment has not been presented,
12 and this Court has taken no evidence directed to establishing
13 whether any water uses are reasonable or unreasonable as to
14 amount of water used in the light of rights which may exist as
15 to such water, and this issue is left open, is not decided
16 herein, and shall be litigated if and when in the future it
17 becomes necessary to do so. Such facts concerned with irrigable
18 acreage and water duty shall be prima facie evidence as to such
19 factors in subsequent proceedings before this Court in this
20 cause. As used herein, prima facie evidence is that which
21 shall suffice for the proof of a particular fact until contra-
22 dicted or overcome by other evidence.

23 9. That upstream from the land described in Finding 1
24 above and on Temecula Creek in the northeast corner of the south-
25 west quarter of the southwest quarter of Section 29, Township 8
26 South, Range 1 East, a small weir or diversion structure has
27 been constructed. As a result thereof, water from said Temecula
28 Creek is diverted into an unlined open ditch and for short dis-
29 tances a steel pipeline, which ditch and pipeline parallel
30 Temecula Creek onto the lands described in Finding 1 above.
31 That said diverted waters are then applied to said lands for

1 irrigation purposes, either directly or by sprinkler irrigation.
2 That in irrigating said lands, as found herein, there are three
3 storage reservoirs or ponds having a storage capacity of 1.3,
4 1.6, and 3 acre feet respectively. That in using these three
5 small reservoirs or ponds, there is no seasonal storage, but
6 said reservoirs or ponds have been used and are being used for
7 the purpose of obtaining a head for immediate irrigation.

8 10. That the diversion of the waters of Temecula Creek,
9 as set forth in Finding 9 above, commenced in 1885, and that at
10 the time of the initial diversion, the point of diversion was
11 located on government lands, which at that time had not been
12 patented. From 1885 until 1955, the water was diverted from the
13 surface flow of Temecula Creek by the use of temporary earthen
14 embankments which were washed away each year that run-off occurred,
15 and then immediately replaced. These earthen embankments were
16 constructed on the sandy alluvium on the bed of Temecula Creek
17 and did not prevent water from passing through said embankment
18 or from flowing through the sandy alluvium upon which they were
19 constructed. During this period, there was both surface flow
20 and rising waters in Temecula Creek immediately downstream from
21 said diversion point. In 1955 and thereafter, the diversion has
22 been accomplished by the construction of a clay embankment
23 extending through the sandy alluvium of Temecula Creek down to
24 bed rock, which clay embankment is covered with rock and which
25 has been sufficient to withstand the winter run-off flows. That
26 as a result of said change in the physical diversion works,
27 there has been a substantial decrease in the amount of water
28 that moves through said diversion works, and since 1955 almost
29 the entire flow of Temecula Creek at said point of diversion is
30 effectively contained.

31 11. That no diversion or use of either surface or

1 ground water by Katherine C. Gibbon or William W. Cottle or
2 their predecessors, prior to 1955, has been open, notorious,
3 adverse, or hostile to any party in this cause, and no pre-
4 scriptive right to the use of surface or ground waters from any
5 diversion or extraction accomplished by Katherine C. Gibbon
6 or William W. Cottle or their predecessors exists.

7 12. The evidence in this case is insufficient to
8 determine the amount of water actually diverted from Temecula
9 Creek by the diversion works at said point of diversion speci-
10 fically described in Finding 9, but the evidence does show that
11 whatever amount of water was diverted was used on lands riparian
12 to Temecula Creek, and that said waters were used for reasonable
13 and beneficial riparian purposes on said lands.

14 13. At no time during any period, including the
15 irrigation season, did said diversion works impound the entire
16 flow, nor is it possible from this record for this Court to
17 determine the amount of waters which were diverted through the
18 diversion facilities onto the lands.

19 14. That the actual use of the waters through said
20 diversion works, as herein found above, was identical to a
21 reasonable and beneficial riparian use of said waters on
22 riparian lands, and this Court finds that said use of said
23 waters on said lands was not a use under the appropriation doc-
24 trine, but was in fact and has at all times been a proper ripar-
25 ian use.

26 15. That there are no appropriate rights to the use
27 of surface waters or underground flow of Temecula Creek on the
28 lands described in Finding 1 above or to ground waters contained
29 within the older alluvial deposits within said lands.

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1 CONCLUSIONS OF LAW

2 1. That all surface waters which flow over and upon
3 lands described in Finding 1 above are a part of the Santa
4 Margarita River stream system, and the use of said waters is
5 subject to the continuing jurisdiction of this Court.

6 2. That all ground waters contained within the younger
7 alluvial deposits on the lands described in Finding 1 above are
8 a part of the underground flow of Temecula Creek, and the use
9 of such waters is subject to the continuing jurisdiction of
10 this Court.

11 3. That all ground waters contained within the older
12 alluvial deposits on the lands described in Finding 1 above are
13 not a part of the underground flow of Temecula Creek, but said
14 ground waters add to, contribute to, and support the Santa
15 Margarita River stream system, and the use of said waters is
16 subject to the continuing jurisdiction of this Court.

17 4. That all lands described in Finding 1 above are
18 riparian to Temecula Creek, a tributary of the Santa Margarita
19 River.

20 5. The owners of the lands described in Finding 1
21 above have a correlative riparian right to the use of the
22 waters of Temecula Creek on said lands.

23 6. The owners of the lands described in Finding 1
24 above have a correlative overlying right to the use of the
25 ground waters contained within the older alluvial deposits on
26 said lands.

27 7. That no prescriptive right to the use of the
28 surface or underground flow of Temecula Creek or its tribu-
29 taries on the lands described in Finding 1 exists; that no pre-
30 scriptive right to the use of ground waters contained within
31 the older alluvial deposits on said lands exists.

1 8. There are no appropriative rights to use on the
2 lands described in Finding 1 above the surface waters which flow
3 over and upon any of those lands or the ground waters contained
4 within the younger or older alluvial deposits on said lands.

5 9. All uses past and present (except as to the
6 reservoir described in Finding 6 above) of the waters of
7 Temecula Creek and its tributaries, or the waters contained
8 within the older alluvial deposits on the lands described in
9 Finding 1 above have been reasonable and beneficial riparian or
10 overlying uses.

11 10. There is no appropriative or prescriptive right
12 to use the waters of Temecula Creek or its tributaries by
13 storage in the reservoir described in Finding 6 above.

14 INTERLOCUTORY JUDGMENT

15 1. IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that
16 all interlocutory judgment provisions set forth in Interlocutory
17 Judgment No. 40 are incorporated into this Interlocutory Judgment
18 by reference.

19 2. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that
20 the owners of the lands described in Finding 1 above have a
21 correlative riparian right to the use of the surface and under-
22 ground flow of Temecula Creek.

23 3. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that
24 the owners of the lands described in Finding 1 above have a
25 correlative overlying right to the use of ground waters con-
26 tained within the older alluvial deposits, which underlie said
27 lands; it is further ordered, adjudged, and decreed that said
28 ground waters contained within said older alluvial deposits add
29 to, contribute to, and support the Santa Margarita River stream
30 system, but that said waters are percolating waters and not in
31 a known and definite channel.

1 4. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that
2 the use of the waters of Temecula Creek and the ground waters
3 contained within the older alluvial deposits which underlie the
4 lands described in Finding 1 above are subject to the continuing
5 jurisdiction of this Court.

6 5. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that
7 the issue of apportionment has not been presented, and this
8 Court has taken no evidence directed to establishing whether
9 the use of any waters on the lands described in Finding 1 are
10 reasonable or unreasonable as to the amount of water used in the
11 light of correlative rights which may exist as to such waters,
12 and this issue is left open, is not decided herein, and shall
13 be litigated by this Court if and when in the future it becomes
14 necessary to do so.

15 6. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that
16 there is no prescriptive right to use the surface or underground
17 flow of Temecula Creek or its tributaries on any lands described
18 in Finding 1 above, nor is there any prescriptive right to use
19 ground waters contained within the older alluvial deposits on
20 any of said lands.

21 7. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that
22 there are no appropriative rights to use the ground waters con-
23 tained within the older alluvial deposits or the surface or
24 underground flow of Temecula Creek or its tributaries upon any
25 lands described in Finding 1 above.

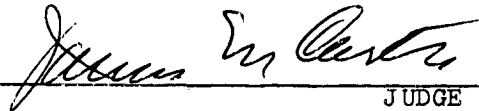
26 8. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that
27 based upon the decision of the United States Court of Appeals
28 for the Ninth Circuit, California v. United States, 235 F.2d
29 647, this is not a final decree, but is interlocutory in char-
30 acter and by reason of the Order of this Court that all parties
31 are adverse one to the other, thus dispensing with cross pleadings,

1 all parties to this proceeding may object to these Findings of
2 Fact, Conclusions of Law, and Interlocutory Judgment, and will
3 be given full opportunity upon due notice to interpose their
4 objections to these Findings of Fact, Conclusions of Law, and
5 Interlocutory Judgment prior to the entry of final judgment in
6 this cause.

7 9. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that
8 this Interlocutory Judgment is not appealable, is not final, and
9 shall not be operative until made a part of the final judgment,
10 and this Court expressly reserves jurisdiction to modify or
11 vacate it either upon its own motion or upon motion of any party
12 to this proceeding until such time as final judgment in this
13 cause is entered.

14 DATED: Feb 6th, 1963.

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JUDGE