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APR 13 1961

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY *[Signature]*
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT

FILED

SOUTHERN DISTRICT OF CALIFORNIA

APR 13 1961

SOUTHERN DIVISION

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY *[Signature]* DEPUTY

UNITED STATES OF AMERICA,

No. 1247-SD-C

Plaintiff,

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND INTERLOCUTORY JUDGMENT
RESPECTING

v.

NON-STATUTORY APPROPRIATIVE RIGHTS
OF THE UNITED STATES OF AMERICA IN
THE SANTA MARGARITA RIVER
FOR LAKE O'NEILL

FALLBROOK PUBLIC UTILITY
DISTRICT, et al.,

Defendants.)

Judgment # 24

FINDINGS OF FACT, CONCLUSIONS OF LAW AND
INTERLOCUTORY JUDGMENT RESPECTING LAKE O'NEILL

This Court having considered the evidence introduced in regard to the diversion and storage of Santa Margarita River waters in Lake O'Neill and the application of that water to a beneficial use, makes and enters the following findings of fact in regard to that Lake:

THE COURT FINDS;

RANCHO SANTA MARGARITA—ACQUISITION BY UNITED STATES OF AMERICA—RIGHTS IN SANTA MARGARITA RIVER

I

The Rancho Santa Margarita, situated in San Diego County, California, totaling approximately 133,000 acres, was acquired by the United States of America in the years 1942 and 1943. By that acquisition the United States of America succeeded to, among other things, all of the rights to the use of water in the Santa Margarita River, title to which was vested in the Rancho, including but not limited to the hereafter described appropriative storage right to the use of water of the Santa Margarita River for Lake O'Neill.

II

The lands comprising Rancho Santa Margarita are now utilized by the United States of America as a Naval Enclave over which the State of California has ceded Exclusive Jurisdiction. Within that Naval Enclave the United States of America maintains Camp Pendleton, the United States Naval Ammunition Depot and the United States Naval Hospital. At present the lands and water resources within the Enclave are used for military and agricultural purposes.

III

The Santa Margarita River, more fully described elsewhere in the general findings, at all times hereafter mentioned, traverses the lands of the above mentioned Naval Enclave, as it historically traversed the lands of the Rancho, generally from east to west for a distance of approximately twenty-one (21) miles.

IV

The climate in the area is semiarid with wide variation from month to month and year to year in precipitation. Rains, which are the only source of water for the Santa Margarita River, usually occur in the area during the months of November through March. However, there is no dependable repetitious pattern of rainfall within the watershed of the stream in question.

LAKE O'NEILL--AN OFF-CHANNEL RESERVOIR

V

Lake O'Neill is an off-channel artificial storage reservoir situated within Camp Pendleton in Sections Five (5) and Eight (8), Township Ten (10) South, Range Four (4) West. Water is stored in that reservoir by means of an earthen dam situated in the Northwest Quarter (NW $\frac{1}{4}$) of the last mentioned Section Eight (8).^{1/} Water from Fallbrook Creek, a tributary of the Santa Margarita River, flows into that Lake during the winter and spring months at any time that Fallbrook Creek is

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is carrying water at the point that it enters Lake O'Neill.

VI

Santa Margarita River water was first stored in Lake O'Neill in the year 1883. Since that year, water from the Santa Margarita River has been diverted into that Lake at the times and in the amounts which are found in subsequent findings.^{2/}

VII

The dam creating Lake O'Neill when constructed was approximately "twelve feet high, one thousand three hundred and forty feet long . . ." It was provided "with an outlet near the south end, consisting of a wooden opening four feet four inches wide, reaching from top to bottom, with loose plank four inches thick set one above the other (not inclined) to retain the water and enable it to be drawn off from the top by removing one plank after the other."^{3/}

VIII

Surface area of Lake O'Neill, when full, is today approximately one hundred and twenty-five (125) acres.^{4/}

IX

Storage capacity in Lake O'Neill historically and at the present time is approximately 1200 acre feet, 100 acre feet of which is dead storage.^{5/}

^{2/} U.S.A.Pl's Ex. 125A, Excerpt from the Report of California State Engineer, "Irrigation in Southern California," dated 1888, in Vol. 62, p.6981 et seq.; U.S.A.Pl's Ex. 25.

^{3/} U.S.A.Pl's Ex. 125A, Excerpt from the Report of California State Engineer, "Irrigation in Southern California," dated 1888, in Vol. 62, p.6981 et seq.

^{4/} U.S.A. Pl's Ex. 125A, Excerpt from the Report of California State Engineer, "Irrigation in Southern California," dated 1888, in Vol. 62, p.6981 et seq.; U.S.Pl's Ex. 86A; U.S.A.Pl's Ex. 88.

^{5/} U.S.A.Pl's Ex. 125A, Excerpt from the Report of California State Engineer, "Irrigation in Southern California," dated 1888, in Vol. 62, p.6981 et seq.; U.S.A.Pl's Ex. 86A; U.S.A.Pl's Ex. 88.

1 LAKE O'NEILL DIVERSION DITCH FROM SANTA
2 MARGARITA RIVER

3 X

4 Continuously, for the periods and in the amounts subsequently
5 found, since the year 1883 water has been diverted from the Santa
6 Margarita River and conducted into Lake O'Neill by means of the Lake
7 O'Neill diversion ditch.^{6/}

8 XI

9 Headworks for the Lake O'Neill diversion ditch are
10 situated in the Northwest Quarter (NW $\frac{1}{4}$) of Section (5), Township
11 Ten (10) South, Range Four (4) West, on the south bank of the Santa
12 Margarita River. That ditch in 1883 was "three quarters of a mile in
13 length . . . A part of the diverting ditch is in flume, five feet six
14 inches wide . . . twenty-two inches deep."

15 That ditch was constructed in a manner which would permit
16 waters diverted into it from the Santa Margarita River to be conducted
17 into Lake O'Neill. It was constructed, moreover, in a manner which
18 permitted waters diverted into it to by-pass Lake O'Neill entirely, for
19 release directly for irrigation and other beneficial purposes. It has
20 been the practice historically after Lake O'Neill had been filled with
21 Santa Margarita River waters, to by-pass that reservoir in the manner
22 described.^{7/}

23 XII

24 Waters from the Santa Margarita River were historically

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27 ^{6/} U.S.A.Pl's Ex. 125A, Excerpt from the Report of California State
28 Engineer, "Irrigation in Southern California," dated 1888,
29 in Vol. 62, p.6981 et seq.; Vail Ex. AB, page 41; Transcript,
30 Vol. 62, p.6987-88, Testimony of Henry W. Witman, Jr.; Tran-
31 script Vol. 62, p.8035-36, Testimony of John L. Salisbury.

30 ^{7/} U.S.A.Pl's Ex. 125A, Excerpt from the Report of California State
31 Engineer, "Irrigation in Southern California," dated 1888,
32 in Vol. 62, p.6981 et seq.; Vail Ex. AB, page 41; Transcript,
33 Vol. 62, p.6987-88, Testimony of Henry W. Witman Jr.; Trans-
34 cript, Vol. 62, p.8035-36, Testimony of John L. Salisbury.

1 diverted by the Rancho into the Lake O'Neill ditch, all as found above,
 2 by means of a temporary earthen dam constructed in the bed of that
 3 river. That dam diverted all of the surface flow of the Santa Mar- 5
 4 garita River after the winter and early spring runoff, if any. The
 5 date varied each irrigation season, when that temporary dam was con-
 6 structed. The last mentioned date depended upon the amount of rainfall
 7 during the preceding winter and spring. 8/

8
 9 XIII

10 Continuously, from the year 1883, to December 19, 1914, and
 11 from the date last mentioned to the time of the transfer of the
 12 Rancho to the United States of America, as set-forth in Finding No. I
 13 above, whenever that quantity of water was available in the Santa
 14 Margarita River, the predecessor in interest of the United States of
 15 America, after the winter and early spring runoff, if any, diverted
 16 into the headworks of the Lake O'Neill diversion ditch, Santa Mar-
 17 garita River water, at a rate not to exceed twenty (20) cubic feet
 18 per second, which was conducted to and stored in Lake O'Neill, in a
 19 quantity which did not exceed eleven hundred (1100) acre feet per
 20 year; provided however, if the dead storage in Lake O'Neill was less
 21 than one hundred (100) acre feet, there was diverted in the exercise
 22 of that appropriative right a quantity of Santa Margarita River water
 23 sufficient to bring the dead storage up to one hundred (100) acre
 24 feet, or a maximum appropriative right to the use of the waters of
 25 the Santa Margarita River of twelve hundred (1200) acre feet annually.
 26

27 XIV

28 The United States of America, successor in interest of the
 29 Rancho, and the Fallbrook Public Utility District have agreed, and
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31 8/ Transcript, Vol. 62, p.6987-88, Testimony of Henry W. Witman, Jr.
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1 that agreement is consistent with the evidence in this case, that the
2 term "after the winter and early spring runoff," relates to a period
3 as set-forth in Finding Number XIII above, generally commencing on
4 or about April 1st and continuing through October 31st of each irri-
5 gation season. It is accordingly found as a fact that the Rancho,
6 from April 1st through October 31st of each irrigation season, diverted
7 the waters of the Santa Margarita River for the period, at the rate
8 and stored that water in Lake O'Neill in the amounts, all as set-
9 forth in Finding XIII above.

XV

12 The United States of America, successor in interest of the
13 Rancho, and the Fallbrook Public Utility District, have agreed, and
14 that agreement is consistent with the evidence in this case, that
15 title resides in the United States of America to an appropriate
16 right to the use of waters of the Santa Margarita River, with a
17 priority date of 1883, entitling it to divert water from the Santa
18 Margarita River each irrigation season at the times and in the amounts,
19 and to store that water thus diverted in Lake O'Neill in the quantity,
20 all as provided in the preceding findings.

XVI

23 It has also been agreed between the United States of America
24 and the Fallbrook Public Utility District, and the agreement is con-
25 sistent with the evidence in this case, that whenever the waters were
26 in the Santa Margarita River, the United States of America adhered to
27 the practices of the Rancho of diverting the waters of the stream in
28 question and storing it in Lake O'Neill, at the times and in the
29 amounts, all as found above, and that the United States of America
30 has continuously applied those waters to beneficial uses, since
31 it acquired the Rancho.

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XVII

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The United States of America and the Fallbrook Public Utility District have agreed that the United States of America, in keeping with its practices since it acquired the Rancho, after the first (1st) of November through the thirty-first (31st) of March of each irrigation season will undertake to fill Lake O'Neill; provided further, however, if that Lake is not filled by April 1st of each irrigation season the United States of America, in the exercise of the appropriate right for that Lake, herein decreed, will continue to divert the waters of the Santa Margarita River until the Lake is filled; provided further, the United States of America in the exercise of that appropriate right, to offset seepage and evaporation losses during the irrigation season will have the right to continue to divert and impound Santa Margarita River waters for the purpose of keeping Lake O'Neill filled to capacity. These findings, the agreement between the United States of America and the Fallbrook Public Utility District relate strictly to the non-statutory appropriative storage right to the use of the waters of the Santa Margarita River for Lake O'Neill as herein decreed and do not relate to any rights to the use of the waters of the Santa Margarita River, riparian or otherwise, title to which may reside in the United States of America.

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BENEFICIAL USE OF THE SANTA MARGARITA RIVER
WATERS STORED IN LAKE O'NEILL

XVIII

The Rancho Santa Margarita and its predecessors in interest, from 1883 to December 19, 1914, continuously practiced seasonal storage of Santa Margarita River waters by impounding those waters during the spring months of the irrigation season and applying them to beneficial uses in the summer and fall months. ^{9/}

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^{9/} U.S.A.Pl's Ex. 125A, Excerpt from the Report of California State Engineer, "Irrigation in Southern California," dated 1888, in Vol. 62, p.6981 et seq.; Vail Ex. AB, page 41 et seq; Transcript, Vol. 62, p.6998 et seq., Testimony of Henry Whitman, Jr.; Transcript, Vol. 62, p.7025 et seq. Testimony of John L. Salisbury.

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XIX

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In 1883 the Rancho Santa Margarita diverted from the Santa Margarita River and stored water in Lake O'Neill for the purpose of irrigating:

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300 acres of alfalfa

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12 acres of orchard and vineyard. ^{10/}

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Several thousand head of livestock were annually raised on the Rancho Santa Margarita, dating back into the 1880's. Continuously throughout the long period the Rancho Santa Margarita was devoted to raising livestock. Waters diverted from the Santa Margarita River and stored in Lake O'Neill were used for stock-watering purposes, during the dry summer season. ^{11/}

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XXI

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Water was diverted from the Santa Margarita River by the Rancho Santa Margarita and stored in Lake O'Neill for domestic purposes throughout the period it was operated as a livestock ranch. ^{12/}

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XXII

Alfalfa, raised to feed livestock, was a principal agricultural crop produced on the Rancho Santa Margarita. Alfalfa requires periodic irrigation through the entire irrigation season, particularly during the latter months of the dry season. Water stored in Lake O'Neill was used to produce the crops of alfalfa referred to in this finding. ^{13/}

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XXIII

It was the practice to rotate the alfalfa crop to different acreage about every three years. ^{14/}

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^{10/} U.S.A.Pl's Ex. 125A, Excerpt from the Report of California State Engineer, "Irrigation in Southern California, dated 1888, in Vol. 62, p.6981, et seq.

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^{11/} Vail's Ex. AB, p.8, 41.

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^{12/} Vail's Ex. AB, p.41

^{13/} Transcript, Vol. 62, p.6998 et seq., Testimony of Henry W. Whitman, Jr.

^{14/} Transcript, Vol. 62, p.7025 et seq., Testimony of John L. Salisbury.

7-1604

1 Sugar beets were likewise raised on the Rancho Santa Margarita.
2 Like the alfalfa described above, that crop to mature required periodic
3 and late irrigation. Waters stored in Lake O'Neill were used for that
4 purpose. ^{15/}

XXV

6 Row crops including lima beans, were also raised on the Rancho
7 Santa Margarita. Source of water for those crops was Lake O'Neill. ^{16/}

XXVI

9 In the years 1911 through 1914 the following acreage and crops
10 were irrigated with the waters impounded in Lake O'Neill:
11

12 Alfalfa	150 acres
13 Sugar Beets	200 acres
14 Lima Beans	<u>200</u> acres
15	550 acres ^{17/}

XXVII

16 Historically there were irrigated on the Rancho with water
17 diverted from the Santa Margarita River and stored in Lake O'Neill,
18 between five hundred and fifty (550) to six hundred (600) acres. Those
19 lands were situated generally in an area referred to as Chappo Flats
20 lying south and east of the Santa Margarita River in Sections Thirteen
21 (13), Twenty-three (23) and Section Twenty-four (24), all in Township
22 Ten (10) South, Range Four (4) West. ^{18/}

23 THE COURT CONCLUDES:
24

CONCLUSIONS OF LAW

I

26 A storage right permits the owner of it to accumulate water in
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30 ^{15/} Transcript, Vol. 62, p.7025, et seq, Testimony of John L. Salisbury
31 ^{16/} Transcript, Vol. 62, p.7025 et seq, Testimony of John L. Salisbury
32 ^{17/} Transcript, Vol. 62, p.7025, Testimony of John L. Salisbury
^{18/} Transcript, Vol. 62, p.7025, Testimony of John L. Salisbury

1 a reservoir for future beneficial use. By the exercise of the storage
 2 right, waters available in the spring season of the year may be im-
 3 ponded and stored for use in the summer and fall season of the year,
 4 when water is not then available in a state of nature. ^{19/}

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 6 II

7 At the time when Santa Margarita River water was first diverted,
 8 stored and impounded in Lake O'Neill by Rancho Santa Margarita, it
 9 was implicit in the law of California that an appropriative right to
 10 store and apply water to a beneficial use could be acquired. ^{20/}

11
 12 III

13 The appropriative storage right to the use of water for agri-
 14 cultural purposes may be protected by injunction against invasion or
 15 injury by a junior appropriator. ^{21/}

16
 17 IV

18 By its prior, actual, completed diversion, storage and applica-
 19 tion of Santa Margarita River water to beneficial uses, all as described
 20 in the findings set forth above, the Rancho Santa Margarita acquired
 21 a non-statutory appropriative storage right in the Santa Margarita
 22 River for domestic purposes, stock watering and irrigation, with a
 23 priority of 1883, from April 1st to October 31st of each irrigation season,
 24 to divert through the headworks of the Lake O'Neill ditch, at a rate
 25 not to exceed twenty (20) cubic feet per second, and to store and im-
 26 pound annually in Lake O'Neill a quantity of Santa Margarita Riverwater
 27 not to exceed eleven hundred (1100) acre feet per year; provided, that

28 ^{19/} 2 Kinney on Irrigation and Water Rights, 2d Ed., p.1480

29 ^{20/} Lindblom v. Round Valley Water Co., 178 Cal.450,457; 173 Pac. 994
 30 (1918)

31 ^{21/} Rupley v. Welch, 23 Cal. 452, 455 (1863).
 32

1 if the dead storage in Lake O'Neill was less than one hundred (100)
2 acre feet the appropriative right permitted the diversion of water
3 from the Santa Margarita River in an amount sufficient to bring the
4 dead storage up to one hundred (100) acre feet or a maximum appro-
5 priative right of twelve hundred (1200) acre feet.

6 V

7 The non-statutory appropriative storage right to the use of
8 water of the Santa Margarita River acquired by the Rancho Santa Mar-
9 garita as described above, is prior, superior and paramount to any
10 junior or subsequent appropriative right or any riparian rights to
11 lands the patents to which issued subsequent to the acquired priority
12 date mentioned in the Conclusion of Law No. IV above.

13 VI

14 Subject to prior vested rights, if any, as determined in the
15 final decree to be entered in this case, by the acquisition of that
16 non-statutory appropriative storage right to the use of the waters of
17 the Santa Margarita River, there was vested in the Rancho Santa Mar-
18 garita, on December 19, 1914, and at the time of the transfer of the
19 Rancho to the United States of America, as found above, and there
20 resides in the United States of America as successor in interest of
21 the Rancho, the right to divert, impound and store in Lake O'Neill
22 the waters of the Santa Margarita River, with a priority date of 1883,
23 at the times and during the period and in the amounts, all as set-forth
24 in the findings and in these conclusions of law.

25 VII

26 The United States of America as owner of the above described
27 non-statutory appropriative right to the use of Santa Margarita River
28 waters for Lake O'Neill, may change the point of diversion, place of
29 use, purpose of use and manner of exercising that storage right;
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1 provided, however, in making those changes, or any of them, the United
2 States of America does so subject to any rights which were vested at
3 the time of making the changes or any of them.

4 INTERLOCUTORY JUDGMENT

5 IT IS HEREBY

6 ORDERED, ADJUDGED AND DECREED:

- 7 1. The United States of America is the owner of, and title re-
8 sides in it, to a non-statutory appropriative storage right
9 to the use of water for the purposes of military training,
10 recreation and subsequent ground water recharge and use in
11 the Santa Margarita River with a priority date of 1883, dur-
12 ing the period from April 1st through October 31st of each
13 irrigation season, to divert Santa Margarita River water
14 through the headworks of the Lake O'Neill ditch, at the rate
15 not to exceed twenty (20) cubic feet per second and annually
16 to store in Lake O'Neill a quantity of water not to exceed
17 eleven hundred (1100) acre feet per year; provided, however,
18 that if the dead storage in Lake O'Neill is less than one
19 hundred (100) acre feet, the United States of America may
20 divert a quantity of Santa Margarita River water sufficient
21 to bring the dead storage up to one hundred (100) acre
22 feet or a maximum appropriative right of twelve hundred
23 (1200) acre feet annually.
- 24 2. The United States of America in the exercise of the storage
25 right for Lake O'Neill herein decreed, in so far as possible,
26 shall attempt to fill Lake O'Neill from the winter and spring
27 runoff during the period from the first (1st) of November
28 through the thirty-first (31st) of March of each irrigation
29 season; provided, however, that if Lake O'Neill is not
30 filled on April 1st of any irrigation season, the United
31 States of America shall have the right to continue to divert
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Santa Margarita River water until Lake O'Neill is filled; provided further, that the United States of America shall have the right to divert Santa Margarita River water throughout the irrigation season in quantities sufficient to offset seepage and evaporation losses for the purpose of keeping Lake O'Neill filled to capacity.

- 3. This Interlocutory Judgment does not relate in any way to the riparian rights to the use of water or any other rights to the use of water in the Santa Margarita River, if any, title to which may be ultimately decreed in the United States of America.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED:

The United States of America, may change the point of diversion, place of use, purpose of use and manner of exercising the non-statutory appropriative storage right to the use of Santa Margarita River water for Lake O'Neill, decreed herein, subject to all rights which are vested at the time it makes those changes or any of them;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED:

The rights to the use of waters of the Santa Margarita River of the United States of America set-forth in this Interlocutory Judgment are subject to prior vested rights, if any, in the Santa Margarita River as may be finally adjudged and decreed in this case. This Court retains jurisdiction of the above decreed right for Lake O'Neill for all purposes.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED:

Based upon the decision of the United States Court of Appeals for the Ninth Circuit, California v. United States, 235 F.2d

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647 (C.A.9, 1956), this is not a final decree but is inter-
locutory 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.

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Dated: 4-13-61

James M. Carter
JAMES M. CARTER
Judge, United States District Court

*Opposed April 13, 1961
William H. Keeder*

Frank R. Baker