

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR LAKE COUNTY.

IN THE MATTER OF THE DETERMINATION OF THE )  
RELATIVE RIGHTS TO THE USE OF THE WATERS )  
OF WARNER LAKES AND THEIR TRIBUTARIES. )  
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DECREE MODIFYING THE FINDINGS AND  
ORDER OF DETERMINATION OF THE STATE  
ENGINEER, AND DECREE AFFIRMING SAME  
AS MODIFIED.

The State Engineer of the State of Oregon, having heretofore filed in this cause his Findings of Fact and Order of Determination, and exceptions thereto having been duly made, served and filed by Jeremiah P. Egan, which, omitting the title of the cause, read as follows, to-wit:

"Comes now Jeremiah P. Egan, one of the claimants in the above entitled proceedings and files herein these his exceptions to the Findings of Fact and Order of Determination of the State Engineer of Oregon, on file in the above entitled proceedings, and to the several parts of said Findings of Fact and Order of Determination, as follows:

I

Said claimant excepts to that portion of said Findings of Fact and Order of Determination in the last sentence of Paragraph 19 at Page 24 of said Findings of Fact, which reads as follows:

"The dividing point between the two is hereby fixed as the Narrows, or more particularly, the location of the "Stone Bridge", near the northwest corner of Section 19, Township 37 South, Range 35 East, W.M.",

for the reason that the location of said Stone Bridge is inadvertently and erroneously fixed at a point 60 miles east of the point where said Stone Bridge is actually located, as shown by the State Engineer's map of his survey on file in said proceedings, and claimant alleges that said sentence above quoted should be modified by the Court for the purpose of correcting such error in said Findings, by a proper Order making such sentence, when modified by the Court, to conform to the facts as shown by the records and files herein, to read as follows:

"The dividing point between the two is hereby fixed as the Narrows, or more particularly, the location of the "Stone Bridge", near the northwest corner of Section 19, Township 37 South, Range 25 East.W.M."

II

Said claimant excepts to that portion of Paragraph 24 of said Findings of Fact and Order of Determination appearing in the tabulation on Page 49 thereof, relating to Proof No. 48, filed by said claimant in said proceedings, fixing 133.7 acres as the total acres or area for which said claimant is awarded by the State

Engineer in said proceedings under said Proof No. 48, a right to the use of the waters of Honey Creek for irrigating his lands located in Section 28, T. 36 S.R. 24 E. W. M., for the reason that such Order of Determination is contrary to said Proof of Claim No. 48 of said claimant on file herein, and contrary to the evidence herein relating thereto, and not supported either by the law or by the evidence taken in said proceedings, and is contrary to the affirmative Findings of said State Engineer in these proceedings, set forth in Paragraph 16 at pages 11 and 12 thereof, relating to said Proof No. 48, which Findings, in part, read as follows:

"The area claimed under Proof #48 is in excess of that shown to be irrigated by the state maps, but the testimony introduced shows that the area claimed has been beneficially irrigated, either naturally or through the construction of artificial works within a reasonable time after settlement, and the right for this land is therefore allowed as claimed."

and therefore, on Page 49 of said tabulation, under the heading "Number Acres", the acreage for which said claimant is awarded a right to the use of the waters of Honey Creek for the irrigation thereof, should be modified and changed so as to conform to the affirmative Findings of said State Engineer set forth therein at Pages 11 and 12 of said Findings, as above quoted, and the figures "133.7", under the heading "Number Acres", should be made to read "158."

### III

Said claimant excepts to that portion of the tabulation in said Findings of Fact and Order of Determination, shown at Page 49 thereof, relating to said Proof No. 48 of said claimant, under the heading on said Page 49, "Description of Land or Place of Use", for the reasons and upon the grounds that the same is contrary to said Proof of Claim No. 48 of this claimant on file herein, and is contrary to the evidence taken in the above entitled proceedings, and is contrary to law and in conflict with and contrary to the affirmative Finding of said State Engineer, as the same appears and is set forth in Paragraph 16 at Pages 11 and 12 thereof, in this, that the acreage for which said claimant is awarded a right to the use of the waters of Honey Creek for irrigating his lands in said Section 28, under his said Proof No 48, is erroneously and inadvertently given and set forth under the heading "Description of Land or Place of Use", on said Page 49, as follows:

"21.2 acres in NE $\frac{1}{4}$ NE $\frac{1}{4}$   
17.7 acres in NW $\frac{1}{4}$ NE $\frac{1}{4}$   
26 acres in SW $\frac{1}{4}$ NE $\frac{1}{4}$   
29.2 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$   
3 acres in NE $\frac{1}{4}$ NW $\frac{1}{4}$   
36.6 acres in NE $\frac{1}{4}$ SE $\frac{1}{4}$   
Section 28, T.36 S.R.24 E.W.M.";

that in order to correctly show the location and area of the lands for which said claimant, under his said Proof of Claim No. 48, and under the evidence taken in the above entitled proceedings, and in accordance with the affirmative Finding of the State Engineer set forth in Paragraph 16 at Pages 11 and 12 thereof, is entitled to

be awarded a right to the use of the waters of Honey Creek for irrigating his lands, as claimed by him under said Proof No. 48, the said tabulation at Page 49 of said Findings and Order of Determination, under the heading "Description of Land or Place of Use", relating to said Proof No. 48, should be modified by the Court so that when modified the same shall read as follows:

"27 acres in the NE<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub>  
20 acres in NW<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub>  
36 acres in SW<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub>  
32 acres in SE<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub>  
3 acres in NE<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub>  
40 acres in NE<sup>1</sup>/<sub>4</sub>SE<sup>1</sup>/<sub>4</sub>  
Section 28, T. 36 S.R.24 E.W.M. !.

WHEREFORE, said claimant moves the Court to so modify the Findings of Fact and Order of Determination of the State Engineer in said proceedings so excepted to, that when the same are modified such Findings and Order shall show (a) that said Stone Bridge is located near the northwest corner of Section 19, T.37 S.R. 25 E.W.M.; (b) that the area for which a right to the use of the waters of Honey Creek for irrigation thereof under said Proof No. 48, as shown at Page 49 of the tabulation of the said Findings of Fact and Order of Determination under the heading "Number Acres", be made to read "158" instead of "133.7"; and (c) that the tabulation at Page 49 of said Findings of Fact and Order of Determination under the heading "Description of Land or Place of Use", in so far as the same pertains or relates to said Proof No. 48 of said claimant, be made to read as follows:

"27 acres in NE<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub>  
20 acres in NW<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub>  
36 acres in SW<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub>  
32 acres in SE<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub>  
3 acres in NE<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub>  
40 acres in NE<sup>1</sup>/<sub>4</sub>SE<sup>1</sup>/<sub>4</sub>  
Section 28, T. 36 S.R.24 E.W.M.",

so that the same shall be in conformity with the claim or right asserted by said claimant under his said Proof No. 48, as well as in conformity with the evidence adduced in said proceedings in support of said claim, and also in conformity with the affirmative Finding of Fact and Order of Determination of said State Engineer, as the same is set forth in Paragraph 16 at Pages 11 and 12 thereof; and further, said claimant prays that he may have a decree of this Court modifying said Findings of Fact and Order of Determination so as to correct the several errors therein hereinbefore specified and pointed out, and confirming such Findings and Order as so modified, and that this claimant have such other, further and general relief herein as shall be just and equitable in the premises.

L. F. Conn

Attorney for Jeremiah P. Egan, the  
above named Claimant and Exceptor."

And it appearing to the Court that the following Stipulation was entered

into by Lake County Land & Livestock Company and Cornelius Lynch, on the one part, and Jeremiah P. Egan on the other part, which Stipulation, omitting the title of the cause, reads as follows:

"IT IS STIPULATED by the Lake County Land & Livestock Company and Cornelius Lynch, two of the parties to the above entitled proceeding that the following exceptions to the findings of fact and order of determination of the State Engineer of Oregon in the above entitled proceeding, filed by Jeremiah P. Egan, one of the claimants in said proceeding, are well taken and should be allowed by the court, to-wit:

I

Exception No. 1 to that portion of said findings and order of determination which locates the Narrows or more particularly the Stone Bridge near the Northwest corner of Section Nineteen (19) Township Thirty-seven (37) South Range Thirty-five (35) East of the Willamette Meridian, for the reason stated in said exception.

II

The exception to the allowance of only 133.7 acres as the total area for which claimant Jeremiah P. Egan is awarded a water right by the State Engineer under proof No. 48 is well taken and is manifestly an error because it appears that the State Engineer intended to allow the full amount, to-wit: 158 acres.

III

Exception No. 3 should be allowed as claimed in said Exception in the interest of accuracy.

The foregoing stipulation is based on the understanding that the relative priorities between Lake County Land & Livestock Company and the said Jeremiah P. Egan will be in no wise affected or disarranged, but that the prior right of Lake County Land & Livestock Company to the waters involved is conceded as allowed by the State Engineer.

McCamant & Thompson

Attorneys for Lake County Land & Livestock Company and Cornelius Lynch.

L.F.Conn  
Attorney for Jeremiah P. Egan."

And the Court having duly considered said Exceptions of Jeremiah P. Egan, and the foregoing Stipulation entered into between said Lake County Land & Livestock Company and the said Cornelius Lynch, by and through their attorneys, McCamant & Thompson, and Jeremiah P. Egan, by and through his attorney, L. F. Conn, which Stipulation was filed herein on May 9, 1928, finds that each of said exceptions is good and valid, and that said Findings of Fact and Order of Determination should be corrected and modified as prayed for in said exceptions and in accordance with said Stipulation:

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that said Findings and Order of Determination of said State Engineer be, and the same hereby are, corrected and modified in the following particulars:

(a) The last sentence of Paragraph 19, at Page 24, of said Findings of Fact are hereby amended and modified so as to read as follows:

"The dividing point between the two is hereby fixed as the Narrows, or more particularly, the location of the "Stone Bridge", near the northwest corner of Section 19, Township 37 South, Range 25 East, W.M.";

(b) That the area for which a water right to the use of the waters of Honey Creek for the irrigation of the lands of Exceptor Jeremiah P. Egan, under his said Proof of Claim No. 48, shown at Page 49 of the tabulation in said Findings of Fact and Order of Determination, under the heading "Number Acres", be, and the same is hereby, corrected and modified by striking out the figures "133.7", and inserting in lieu thereof the figures "158";

(c) That the tabulation at Page 49 of said Findings of Fact and Order of Determination, under the heading "Description of Land or Place of Use", in so far as the same pertains or relates to said Proof No. 48 of said claim of Jeremiah P. Egan, be, and the same is hereby, amended so as to read as follows:

"27 acres in NE<sup>1</sup>/<sub>4</sub> NE<sup>1</sup>/<sub>4</sub>  
20 acres in NW<sup>1</sup>/<sub>4</sub> NE<sup>1</sup>/<sub>4</sub>  
36 acres in SW<sup>1</sup>/<sub>4</sub> NE<sup>1</sup>/<sub>4</sub>  
32 acres in SE<sup>1</sup>/<sub>4</sub> NE<sup>1</sup>/<sub>4</sub>  
3 acres in NE<sup>1</sup>/<sub>4</sub> NW<sup>1</sup>/<sub>4</sub>  
40 acres in NE<sup>1</sup>/<sub>4</sub> SE<sup>1</sup>/<sub>4</sub>  
Section 28, T. 36 S. R. 24 E. W. M.";

And it further appearing that exceptions have been duly filed thereto by Maude I. Rambo, wherein said Maude I. Rambo excepted to the Findings of Fact and Order of Determination of the State Engineer, awarding to Nehemiah Fine and Rosa A. Fine, a right to the use of 1,000 gallons per day of the waters of Anderson Spring, and further excepted to the failure of said State Engineer to award to said Maude I. Rambo the exclusive right to the use of the waters of said Spring, and also excepted to the failure of the State Engineer to award to certain lands of the said Maude I. Rambo a priority date as of January 1, 1900, such lands so affected being described as follows:

"38.3 acres in the Southwest quarter of the Southwest quarter,  
40 acres in the Southeast quarter of the Southwest quarter,  
Section Eleven;  
160 acres in the Northwest quarter,  
14.2 acres in the Northeast quarter of the Southwest quarter,  
27.4 acres in the Northwest quarter of the Southwest Quarter,  
12.2 acres in the Southwest quarter of the Southwest quarter,  
Section Fourteen;  
34 acres in the Northeast quarter of the Southeast quarter,  
40 acres in the Northwest quarter of the Southeast quarter,  
39.9 acres in the Southeast quarter of the Southeast quarter,  
Section Fifteen;  
35.8 acres in the Northeast quarter of the Northeast quarter,  
Section Twenty-two;  
21.6 acres in the Northwest quarter of the Northwest quarter,  
Section Twenty-three,  
all in Township Thirty-six South Range Twenty-four, E.W.M.";

and further excepted to said Findings of Fact and Order of Determination of the State Engineer, awarding to the Lake County Land & Livestock Company a right to the use of the waters of DeGarmo Creek for the irrigation of 89.4 acres equal in time and right to the Exceptor's right to irrigate an equal area, and to the State Engineer's failure to limit such right of the Lake County Land & Livestock Company to only 52 acres, with a right subsequent to the right of Exceptor as to any additional acreage, and the said Maude I Rambo having filed amendatory and supplemental exceptions to her exception regarding the award to said Nehemiah Fine and Rosa A. Fine, hereinbefore mentioned, and the Court having heard arguments upon said exceptions, and amendatory and supplemental exceptions, so made and filed by said Maude I. Rambo, and the matter of such exceptions having been duly continued for hearing by all parties in interest, and having heretofore been heard upon such exceptions at a date consented to by all parties in interest, the said Maude I. Rambo appearing by Percy A. Cupper, her attorney, Lake County Land & Livestock Company appearing by McCamant & Thompson, its attorneys, and Nehemiah Fine and Rosa A. Fine appearing by McCamant & Thompson, their attorneys, and the Court having heard the argument of counsel, and having taken all such exceptions and amendatory and supplemental exceptions of said Maude I. Rambo filed herein and the record pertaining thereto, under advisement, and now being fully advised in the premises, finds that said Findings and Order of Determination of said State Engineer, relating to the Statement and Proof of Claim No. 119 of said Maude I. Rambo, should be, and the same hereby is, corrected and modified by adding thereto, under the heading "Date of Relative Priority", the figures "1881", and by adding thereto, under the heading "Amount Cubic Feet per Second", the figures and words "1,000 gallons per day", and by adding thereto, under the heading "Use", the word "Domestic", and by adding thereto, under the heading "Stream", the words "Anderson Spring";

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that each and every of such exceptions and supplemental exceptions heretofore filed herein by Maude I. Rambo, not hereinbefore specifically modified, be, and the same hereby are, denied and overruled.

And it further appearing from the records and files herein that Michael Joseph Barry and one Mary Barry Buckley filed Proof of Claim herein, being Proof of Claim No. 9, claiming a right to the use of the waters of Hart Lake for irrigation, stock and domestic purposes, for and upon the following described lands, to-wit:

40 acres in the Northwest quarter of the Southwest quarter,  
38.5 acres in the Northwest quarter of the Southwest quarter,  
40 acres in the Northwest quarter of the Southeast quarter,  
40 acres in the Southwest quarter of the Southeast quarter, Section 11;  
10.7 acres in Lot 7, Section 13;  
40 acres in the Northwest quarter of the Northeast quarter,  
40 acres in the Southwest quarter of the Northeast quarter,  
40 acres in the Southeast quarter of the Northeast quarter,

6.7 acres in the Northwest Quarter of the Southeast quarter,(Lot 2),  
.1 acres in the Northeast quarter of the Southeast quarter,(Lot 1),  
Section 14;

All in Township 36 South of Range 24 East W.M.;

and that since the filing of said Proof of Claim No. 9 the said Michael Joseph Barry has acquired all the right, title and interest of the said Mary Barry Buckley in and to the above described lands, and each and every part and parcel thereof, including all water rights therewith connected, and is now the owner of said lands and all water rights therewith connected, and that said Michael Joseph Barry did, on May 5, 1928, duly file herein exceptions to such Findings and Order of Determination, in awarding him a priority date of 1900 for the use of the waters of Hart Lake for the irrigation of said lands, and not awarding him a date of priority for such purposes as of the year 1891, and the Court having duly considered said exceptions and the record in this cause, finds that no error was committed herein by the State Engineer in so finding and fixing said priority date for such purposes, as of the year 1900, and the Court at this time being fully advised in the premises,

IT IS THEREFORE CONSIDERED, ORDERED AND DECREED that such exceptions so filed herein to said Findings and Order of Determination by said Michael Joseph Barry, be, and the same hereby are, denied and overruled.

IT IS FURTHER CONSIDERED, ORDERED, ADJUDGED AND DECREED, that, as modified in this Decree, the Findings of Fact and Order of Determination of the State Engineer in this cause, be, and the same hereby are, **AFFIRMED**.

Said Findings and Order, as modified by Orders of this Court heretofore entered, are adopted as the final Decree in this cause, and all persons filing claims in said adjudication, their successors, agents and assigns, and all other persons, are enjoined from using the water of said Lakes, streams or tributaries, or any thereof, other than as herein provided.

ENTERED in open Court this 30th day of September, 1929.

Orlando M. Corkins  
Orlando M. Corkins- Circuit Judge

Whereupon at the time of the rendition of the above Decree in open court the following oral notice of appeal was given:

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR LAKE COUNTY

IN THE MATTER OF THE DETERMINATION )  
OF THE RIGHTS TO THE USE OF THE )  
WATERS OF WARNER LAKE AND ITS )  
TRIBUTARIES. )

Maude I. Rambo by her attorney, Herbert P. Welch, hereby gives oral notice of the appeal to the Supreme Court of the State of Oregon from those parts of the decision of the Circuit Court made in this cause at this time, wherein said Court confirmed the order of determination of the State Engineer of the State of

Oregon in this cause, and thereby found and determined that the Lake County Land & Livestock Company has a right to irrigate 89.4 acres of land with the waters of DeGarmo Creek with a priority of 1877, and failed to find that said Lake County Land & Livestock Company is entitled to a right to irrigate only 52.5 acres of land from DeGarmo Creek with a priority of 1877 equal in time and right to the said Maude I. Rambo's to irrigate an equal area with the waters of said stream, and that the Lake County Land & Livestock Company's right to irrigate the remainder of said 89.4 acres is subsequent in time and right to the year 1881 and partially irrigated from sources other than DeGarmo Creek; and

WHEREIN, Said court found and determined that the right of the said Maude I. Rambo to irrigate 10 acres of land with the waters of Anderson Springs subsequent in time and right to the right allowed Nehemiah Fine in and to the waters of said Spring with a priority of 1884 and failed to find that the priority of said right was 1881 and further failed to find that the said Maude I. Rambo had an exclusive right to the waters of Anderson Springs, and further failed to find that Nehemiah Fine has no rights to the waters of said spring.

Filed September 30th, 1929

Carl W. Pendleton,  
County Clerk.

Recorded in Volume 14,  
Pages 315-320 inclusive.  
Circuit Court Journal for  
Lake County, Oregon.

STATE OF OREGON        )  
                              ) ss  
County of Lake         )

I, Carl W. Pendleton, County Clerk, and ex-officio Clerk of the Circuit Court, in and for said County and State do hereby certify that the annexed copy of Decree Modifying the Findings and Order of Determination of the State Engineer, and Decree Affirming same as modified in the Matter of the Determination of the Relative Rights to the Use of the Waters of Warner Lakes and their Tributaries is a full, true and correct transcript of the original Decree as the same appears on file and of record in my office and in my custody.

IN TESTIMONY WHEREOF, I have hereunto set my hand and the seal of the Circuit Court, this 22nd day of November, 1929.

Carl W. Pendleton,  
County Clerk

STATE OF OREGON        )  
                              ) ss  
County of Marion       )

I, RHEA LUPER, State Engineer of Oregon, do hereby certify that the foregoing copy of Decree Modifying the Findings and Order of Determination of the State Engineer, and Decree Affirming same as modified in the matter of the Determination of the Relative Rights to the Use of the Waters of Warner Lakes and their



X  
tributaries, was received in the office of the State Engineer on November 25, 1929  
and entered of record herein on this 8th day of January, 1930.

IN WITNESS WHEREOF, I have hereunto set my hand this 8th day of January,  
1930.

*Rhea Luper*

RHEA LUPER,  
State Engineer.