

IN THE CIRCUIT COURT FOR THE STATE OF OREGON

HARNEY COUNTY

IN THE MATTER OF THE DETERMINATION )  
OF THE RELATIVE RIGHTS TO THE USE )  
OF THE WATERS OF MILL CREEK AND )  
COFFEE POT CREEK AND THEIR TRIBU- )  
TARIES. )

DECREE MODIFYING THE  
FINDINGS AND ORDER OF  
DETERMINATION OF THE  
STATE ENGINEER, AND  
AFFIRMING SAME AS  
MODIFIED

The State Engineer of the State of Oregon, having heretofore filed in this cause his Findings and Order of Determination, and exceptions thereto having been duly made, served and filed by Ralph E. Reed, which, omitting the title of the cause, reads as follows, to-wit:

"Now comes Ralph E. Reed, by Pat H. Donegan, Esq., his attorney, and excepts to the Findings and Order of Determination of the State Engineer on the above entitled adjudication as follows:

I.

"The above named exceptor excepts to Paragraph Twelve of said Findings, and the whole thereof, wherein the exceptor was denied a water right to four acres in the Southeast Quarter of the Southwest Quarter ( $SE\frac{1}{4}SW\frac{1}{4}$ ) of Section Fourteen (14), 19.9 acres in the Northeast Quarter of the Northwest Quarter ( $NE\frac{1}{4}NW\frac{1}{4}$ ), and 16.1 acres in the Southeast Quarter of the Northwest Quarter ( $SE\frac{1}{4}NW\frac{1}{4}$ ) of Section Twenty-three (23), all in Township Twenty-Two (22), South of Range Thirty-two (32), E.W.M., in Harney County, Oregon, wherein the State Engineer found that the water rights accruing to said land had been forfeited by non-user, upon the grounds and for the reason that the State of Oregon owned said land during the period of said non-user and that the non-user statute does not operate against the State or its grantees.

II.

"The exceptor excepts to that part of Paragraph Nineteen reading as follows: "It appears that two diversion points have been maintained for the diversion of water from the main channel of Coffee Pot Creek for the irrigation of the lands under this claim. The upper diversion being at the line fence approximately 500 feet east of the approximate northwest corner of the  $NE\frac{1}{4}NW\frac{1}{4}$  of Section 23, Township 22 South, Range 32 East, W. M., from which point a ditch runs west along the line fence." Upon the grounds and for the reasons that said point of diversion as so fixed by the State Engineer will not permit the exceptor to irrigate his land upon the west side of Coffee Pot Creek for the reason that it is below the elevation of a portion of his land entitled to the use of water and the exceptor will not be able to irrigate that portion of his land situate higher than the point of diversion. That the engineer should have found that the following are proper points of diversion to take the waters from the above captioned creeks to irrigate his lands in Sections Fourteen and Twenty-three, to-wit:

1. At a point on Coffee Pot Creek located 550 feet North and 900 feet West from the center of Section Twenty-three, township and range as before stated;

2. At a point on Mill Creek located 670 feet North and 1500 feet East of the Southwest corner of Section Fourteen, township and range as before stated.

III.

"That the exceptor excepts to Paragraph Thirty-one of said Findings and Order of Determination for the reason that it fails to tabulate the rights of the exceptor to irrigate the forty acres of land described in Paragraph I of these exceptions.

(sgd.) Pat H. Donegan  
Pat H. Donegan  
Attorney for the exceptor Ralph E. Reed."

And it appearing to the court that two stipulations were entered into by Earl Withers and Edna G. Withers, his wife, and William H. Huggard and Blanche Alice Hahn, on the one part, and Shelby Petersen, George H. Burns and Almeda M. Burns, his wife, W. W. Thomson, J. R. Thomson, Ralph E. Reed, Darrell L. Howser, Lola M. Thayer, John Morgan, D. L. Bailey, and Hazel C. Bailey, his wife, and Glen Clemens, on the other part, which stipulations, omitting the title of the cause, read as follows, to-wit:

"In connection with the exception of Ralph E. Reed heretofore filed in this Court, and referring to exception number 1, it is hereby stipulated between all of the parties through their respective attorneys, to-wit, Pat H. Donegan, attorney for Ralph E. Reed; Leland S. Duncan, attorney for Duane L. Bailey and Hazel C. Bailey, Almeda M. Burns and George H. Burns, William H. Huggard and Blanche Alice Hahn, and Earl W. Withers and Edna G. Withers; and C. B. McConnell, attorney for Darrell Howser and Lola M. Thayer, J. R. Thomson and W. W. Thomson:

"That the stipulation of the parties, dated August 29, 1949 and filed with the State Engineer shall constitute the record before this Court for the purpose of determining the exception number 1 of Ralph E. Reed to the findings and order of determination of the State Engineer, which aforesaid question refers purely to a legal point as to whether the State of Oregon, as the one-time owner of the lands described in exception number 1 and the aforesaid stipulation which was filed with the State Engineer, dated August 29, 1949, can forfeit any of its rights to the use of water upon the lands therein described by non-use or abandonment.

"IN WITNESS WHEREOF, the respective attorneys for the parties hereto have signed this stipulation at Burns, Oregon, this 13th day of July, 1950.

(sgd.) Pat H. Donegan  
Attorney for Ralph E. Reed

(sgd.) Leland S. Duncan  
Attorney for Duane L. Bailey and Hazel C. Bailey, Almeda M. Burns and George H. Burns, William H. Huggard and Blanche Alice Hahn, and Earl W. Withers and Edna G. Withers.

(sgd.) C. B. McConnell  
Attorney for Darrell Howser and Lola M. Thayer, J. R. Thomson and W. W. Thomson"

"IT IS HEREBY STIPULATED between the parties upon exceptions of Ralph E. Reed that exception number 2 shall be allowed by the Court, and the point of diversion changed in accordance with the exception.

"IT IS FURTHER STIPULATED that paragraph number II in the exception number 2, referring to "1500 feet East of the southwest quarter corner of Section Fourteen" be amended to read as follows: "1500 feet East of the southwest corner of Section Fourteen," and not southwest quarter corner.

"IN WITNESS WHEREOF, the respective attorneys for the parties hereto have signed this stipulation at Burns, Oregon this 13th day of July, 1950.

(sgd.) Pat H. Donegan  
Attorney for Ralph E. Reed.

(sgd.) Leland S. Duncan  
Attorney for Duane L. Bailey and Hazel C. Bailey, Almeda M. Burns and George H. Burns, William H. Huggard and Blanche Alice Hahn, and Earl W. Withers and Edna G. Withers.

(sgd.) C. B. McConnell  
Attorney for Darrell Howser and Lola M. Thayer, J. R. Thomson and W. W. Thomson."

And the Court having duly considered said Exceptions of Ralph E. Reed, and the foregoing stipulations entered into between Earl Withers and Edna G. Withers, his wife, and William H. Huggard and Blanche Alice Hahn, on the one part, and Shelby Petersen, George H. Burns and Almeda M. Burns, his wife, W. W. Thomson, J. R. Thomson, Ralph E. Reed, Darrell L. Howser, Lola M. Thayer, John Morgan, D. L. Bailey, and Hazel C. Bailey, his wife, and Glen Clemens, on the other part, finds as follows:

That Exception I. be overruled upon the ground that the statute of limitations had run against the State of Oregon during the period of non-use involved;

That Exception II. relating to the points of diversion of Mr. Reed be allowed, and that said Findings and Order of Determination of the State Engineer should be corrected and modified as prayed for in said Exception and in accordance with said Stipulation relating thereto;

That Exception III. be denied.

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

The third paragraph of Finding 19, page 15, of said Findings and Order of Determination are hereby amended and modified so as to read as follows:

It appears that two diversion points have been maintained for the diversion of water for the irrigation of the lands under this claim, said points of diversion being described as follows, to-wit:

1. At a point on Coffee Pot Creek located 550 feet North and 900 feet West from the center of Section Twenty-three, township and range as before stated;
2. At a point on Mill Creek located 670 feet North and 1500 feet East of the Southwest corner of Section Fourteen, township and range as before stated.

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

It is further CONSIDERED, ORDERED, ADJUDGED AND DECREED that, based upon the said Findings and Order of Determination of the State Engineer as modified herein, the various claimants are entitled to the use of water as contained in these findings and this decree; and they, and each of them, their successors and assigns, and all persons claiming under them, are hereby enjoined and prohibited from the use of water in any other amounts, manner or priorities than herein found.

ENTERED in open Court this 5th day of October, 1950.

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M. A. Biggs - Circuit Judge

STATE OF OREGON )  
County of Harney ) ss

I, WM. M. CARROL, County Clerk and Clerk of the Circuit Court of the County and State aforesaid, do hereby certify that the foregoing copy of DECREE Modifying the Findings and Order of Determination of the State Engineer, and Affirming Same as Modified in the Matter of the Determination of the Relative Rights to the Use of the Waters of Mill Creek and Coffee Pot Creek and Their Tributaries has been by me compared with the original, and that it is a correct transcript therefrom, and of the whole of such original Decree as the same appears of record at my office and in my custody.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, this 12th day of ~~September~~ October, 1950.

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Wm. M. Carroll  
County Clerk

By Opal Dunn  
Deputy