

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF LINN

IN THE MATTER OF THE DETERMINATION )  
OF THE RELATIVE RIGHTS TO THE USE )  
OF THE WATERS OF CALAPOOYA RIVER )  
AND ITS TRIBUTARIES )

Case No. 26,405

DECREE

The above entitled cause having come on for hearing on the 20th day of June, 1957, upon the Findings of Fact and Order of Determination made and entered by the State Engineer of the State of Oregon on December 20, 1956, and upon exceptions filed thereto by Chester A. Page, by O. M. Thompson and M. C. Thompson, dba Thompson's Flouring Mills, and by Mack M. Slate, Jr., the State Engineer of the State of Oregon appeared by Mr. George B. Naderman, Assistant State Engineer of the State of Oregon, Contestant Kenneth Groves appeared in person and by Harold W. Adams, Jr., his attorney, O. M. and M. C. Thompson each appeared in person and by Orval N. Thompson, one of their attorneys, and Mack M. Slate, Jr., appeared in person and by Orval N. Thompson, one of his attorneys, and Chester A. Page failed to appear, either in person or by his attorneys, and was adjudged in default.

On said 20th day of June, 1957, the Court did hear the testimony of witnesses produced on behalf of O. M. and M. C. Thompson, dba Thompson's Flouring Mills, in support of their exceptions, and the Court did hear witnesses on behalf of Mack M. Slate, Jr., in support of his exceptions, and Contestant Kenneth Groves advised the Court that he did not desire to present any evidence, and the Court thereafter took said matter under advisement, and thereafter counsel for O. M. and M. C. Thompson, dba Thompson's Flouring Mills, submitted a memorandum to the Court, and counsel for Mack M. Slate, Jr., also submitted a memorandum to the Court, and the Court having fully considered the evidence, and the Findings and Order of Determination of the State Engineer, and now being fully advised in the premises,

INSOFAR AS CONTEST No. 3, ENTITLED KENNETH GROVES, CONTESTANT, vs. O. M. and M. C. Thompson, dba Thompson's Flouring Mills Contestee, which said contest is set forth as Section 16, on Pages 26 to 34, inclusive, of the Findings of Fact and Order of Determination of the State Engineer, is concerned,

IT IS ORDERED, ADJUDGED, AND DECREED BY THE COURT as follows:

(a) That said Order of Determination be, and the same hereby is modified by increasing the maximum water surface elevation to which said claimants, O. M. Thompson and M. C. Thompson, dba Thompson's Flouring Mills, are allowed to store water in the forebay to the mill, including the channel of Courtney Creek, the diversion canal, and the Calapooya River, as said channels presently exist, from an elevation 260.005 feet m.s.l., to a maximum water surface elevation of 261.005 feet m.s.l.

(b) That said Order of Determination be, and hereby is, modified by decreasing the quantity of water that shall at all times be allowed to flow in Sodom Ditch, immediately below the control structure or dam near its head, from 2.5 cubic feet per second to 0.25 cubic feet per second.

(c) That said Order of Determination be and the same hereby is further

modified by reducing the quantity of water that shall at all times remain in the original channel of the Calapooya River immediately below said Shearer's Dam for stock water from one second foot of water to 0.25 second foot of water.

(d) That as hereinabove modified, said Order of Determination be, and the same hereby is approved and confirmed in all respects.

INSOFAR AS CONTEST No. 4, ENTITLED KENNETH GROVES, CONTESTANT, vs. MACK M. SLATE, JR., CONTESTEE, which said contest is designated as Section 17 and set forth on pages 34 to 37, inclusive, of the Findings of Fact and Order of Determination of the State Engineer, is concerned,

IT IS ORDERED, ADJUDGED, AND DECREED BY THE COURT as follows:

(a) That said Findings of Fact and Order of Determination of the State Engineer be, and the same hereby are modified as follows: That the predecessors in interest of Mack M. Slate, Jr., commenced using water from the Calapooya River for the purpose of irrigating 50 acres of land in the Southwest quarter of the Northwest quarter, the Northwest quarter of the Southwest quarter, the Northeast quarter of the Southwest quarter of Section 24, and the Southeast quarter of the Northeast quarter, the Northeast quarter of the Southeast quarter of Section 23, and 40 acres of land in the Northwest quarter of the Northwest quarter of Section 24, all in Township 12 South Range 4 West of the Willamette Meridian, Linn County, Oregon, prior to 1905, and that said Mack M. Slate, Jr., and his predecessors in interest, have continuously used water from the Calapooya River to irrigate said lands from that time to the present, and said Mack M. Slate, Jr., has established a vested right to use water from the Calapooya River to irrigate the lands above described.

the  
(b) That/said Order of Determination of the State Engineer be, and the same hereby is further modified as follows: That the Order denying the application of said Mack M. Slate, Jr., for a water right for irrigation purposes be, and the same hereby is set aside, and the said Mack M. Slate, Jr., be, and he hereby is granted the right to use water from the Calapooya River for the purpose of irrigating 50 acres of land in the Southwest quarter of the Northwest quarter, the Northwest quarter of the Southwest quarter, the Northeast quarter of the Southwest quarter of Section 24, and the Southeast quarter of the Northeast quarter, the Northeast quarter of the Southeast quarter of Section 23, and 40 acres of land in the Northwest quarter of the Northwest quarter of Section 24, all in Township 12 South, Range 4 West of the Willamette Meridian, Linn County, Oregon, with a priority date of 1905, with duty of water as set forth in Section 25 of said Findings of Fact and Order of Determination of the State Engineer.

(c) That as hereinabove modified, said Findings of Fact and Order of Determination of the State Engineer be, and the same hereby are approved and confirmed.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED by the Court that the Findings of Fact and Order of Determination of the State Engineer of the State of Oregon, dated December 20, 1956, as hereinabove modified, be, and the same are hereby approved and confirmed.

Dated this 12th day of September, 1957.

VICTOR OLLIVER

J U D G E

CLERK'S CERTIFICATE

STATE OF OREGON )  
County of Linn ) ss.

I, R. M. Russell, County Clerk of Linn County, Oregon, and Ex-Officio Clerk of the Circuit Court of the State of Oregon, for Linn County, do hereby certify that the foregoing and attached copy of IN THE MATTER OF THE DETERMINATION OF THE RELATIVE RIGHTS TO THE USE OF THE WATERS OF CALAPOOYA RIVER AND ITS TRIBUTARIES Case #26405 has been by me compared with the original as above listed now on file and of record in my office and that it is a true, full and correct copy and transcript therefrom and of the whole thereof of such original as above listed.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Circuit Court this 12th day of September, 1957.

R. M. Russell, Clerk

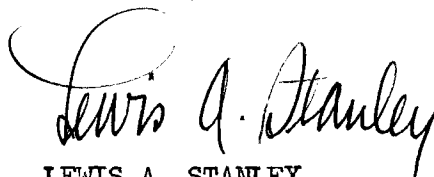
By /s/ Geo. Magart, Deputy

S E A L

STATE OF OREGON )  
County of Marion ) ss.

I, LEWIS A. STANLEY, State Engineer of the State of Oregon, do hereby certify that the foregoing copy of decree of the Circuit Court for Linn County, Oregon, in the matter of the determination of the relative rights to the Use of the Waters of Calapooya River and its tributaries, is a true and correct copy of the certified copy of such decree as the same was received in this office and entered of record herein this 13th day of September, 1957.

IN WITNESS WHEREOF, I have hereunto set my hand this 16th day of September, 1957.

  
LEWIS A. STANLEY  
State Engineer