

SIXTY FIRST JUDICIAL DAY--January 22, 1962
IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF DESCHUTES

IN THE MATTER OF THE DETERMINATION)
OF THE RELATIVE RIGHTS TO THE USE)
OF THE WATERS OF DESCHUTES RIVER)
AND ITS TRIBUTARIES, A TRIBUTARY)
OF COLUMBIA RIVER.)
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O R D E R

The above entitled matter coming before the Court upon petition of the State Engineer of Oregon for the entry of a nunc-pro-tunc order directing that the consolidated Decree of this Court made and entered herein on the 30th day of September, 1958, be opened up and modified for the purpose only, of including in said consolidated Decree the water rights theretofore awarded in the names of the Deschutes Power and Light Company and the Cline Falls Power Company, which rights were inadvertently overlooked and omitted from the tabulation of water rights appearing in said consolidated Decree.

It appearing to the Court that in the original proceeding for the determination of the relative rights to the use of the waters of Deschutes River and its tributaries, the Bend Water, Light and Power Company filed its Claim No. 2-A, which was recognized in the Findings of Fact and Order of Determination of the State Engineer to the extent of 1325 cubic feet of water per second for power generation at its power plant in the City of Bend, under priority of December 21, 1905. In the Court's Decree, confirming said Findings of Fact and Order of Determination of the State Engineer, which Decree was entered of Record on February 10, 1928, said right for 1325 cubic feet of water per second for power generation under priority of December 21, 1905, was confirmed in the name of the Deschutes Power and Light Co., (page 26) successor in interest to the Bend Water, Light and Power Company. In addition to the award of 1325 cubic feet per second for power generation, 10 cubic feet per second was allowed by the Court for carrying off ice during the period of each winter, from November 20th until February 20th of the following year under priority date of December 21, 1905 (page 27). From some cause, unknown at the present time, this awarded right was not included in the tabulation of rights allowed. Subsequently, upon appeal of the Deschutes Power and Light Company, the Supreme Court allowed an additional 40 cubic feet per second for carrying away debris, during the non-irrigation season from November 1 to April 1 of the following year, at such times only as the waters of the Deschutes River are not being stored for irrigation use, (in re: waters of Deschutes River, 134 Ore. pages 664-668), thus bringing the total allowance to:

1325 c.f.s. for power generation
10 c.f.s. for carrying away ice
40 c.f.s. for carrying away debris
1375 c.f.s.

However, it appears that, since this right was not incorporated in the tabulation of rights allowed in the Decree of February 10, 1928, it was overlooked in the preparation of the consolidated tabulation of rights allowed in the Decree of September 30, 1958.

In the original Findings of Fact and Order of Determination, the State Engineer recognized a right in the name of the Cline Falls Power Company, which was confirmed in the Deschutes River Decree of February 10, 1928 and modified by Mandate dated May 2, 1931, to the extent of

14.17 c.f.s. for irrigation of 800 acres of land
90.0 c.f.s. for power to pump said irrigation water
90.0 c.f.s. for generation of electrical energy at the
Cline Falls Power Plant.

all under date of priority of February 2, 1892. The Deschutes River Decree, dated February 10, 1928 provided, under paragraph 69, commencing on page 93 "That all parties herein allowed a right to the use of water for irrigation shall be entitled to use such water for stock and domestic purposes. xxx"

It appears that the above rights allowed in the name of the Cline Falls Power Company, were subsequently acquired by the Central Oregon Irrigation District. Under date of September 22, 1942, the Central Oregon Irrigation District entered into an agreement with the Pacific Power and Light Company under which the latter company became the lessee of the power plant for the generation of electrical energy and the water right for 90.0 c.f.s. for the operation of said plant.

Embodied in said agreement as item 2 of the Central Oregon Irrigation District's Covenant, appears the following:

"(2) The District agrees that it will never call upon the Company to pump any water for the Cline Falls ranch for the purpose of irrigation, and hereby declares that it has abandoned its rights to the use of water for irrigation, and to the use of water for pumping said irrigation water, but has not abandoned its rights for the use of water for domestic use on the following described lands: The SW $\frac{1}{4}$ SE $\frac{1}{4}$ and SE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 11 and the NW $\frac{1}{4}$ NE $\frac{1}{4}$, Section 14, Township 15 South, Range 12 East, Willamette Meridian (Emphasis supplied).

It therefore appears that the right for 14.17 c.f.s. for the irrigation of 800 acres of land and 90.0 c.f.s. for pumping said irrigation water was voluntarily abandoned by the owner of said rights, the Central Oregon Irrigation District, which would leave only the 90.0 c.f.s. allowed for the generation of electrical energy at the Cline Falls Power Plant, and, by virtue of the reservation of domestic use as contained in said agreement, sufficient water for domestic use upon said certain lands, subject to the provisions of said paragraph 69 in the Deschutes River Decree.

It appears that this right was also overlooked and omitted from the tabulation of rights allowed in the Consolidated Decree dated September 30, 1958.

The Court being now fully advised in the matter, and it appearing to the Court that the vested rights allowed in the names of the Deschutes Power and Light Company and the Cline Falls Power Company, as herein-above set out, should be included in the tabulation of water rights allowed, appearing in and made a part of the Consolidated Deschutes River Decree, dated September 30, 1958.

IT IS, THEREFORE, HEREBY ORDERED, that said Decree of September 30, 1958, be, and the same hereby is opened up and modified by including in the tabulation of water rights allowed in said

Decree in proper alphabetical position, the following:

Name and Address of Appropriator	Date of Relative Priority	Amount Cubic Ft. Per Sec.	Use	Stream	Description of land or place of use
Deschutes Power & Light Company, Bend, Oregon	Dec. 21 1905	1325 10	Power Ice Removal	Deschutes River	Power Plant situated in SE $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 32, T. 17 S., R. 12 E., W.M.
Pacific Power & Light Company, Successor in interest		40	Debris removal, to be used only between Nov. 1 and April 1 and then only at such times as the waters of the Deschutes River are not being stored for irrigation.		
Cline Falls Power Co.; Central Ore. Irrigation Dist., Successor in interest	Feb. 2 1892	90	Power for generation of electrical energy	Deschutes River	Power plant situated in SW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 11, T. 15 S., R. 12 E., W.M.
Redmond, Oregon	Feb. 2 1892		Domestic	Deschutes River	SW $\frac{1}{4}$ SE $\frac{1}{4}$ and SE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 11 NW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 14 T. 15 S., R. 12 E., W.M.

IT IS FURTHER ORDERED that a certified copy of this Order be forwarded to the State Engineer of the State of Oregon by the County Clerk of Deschutes County, Oregon, and that, thereafter, the said State Engineer shall issue to the appropriators, certificates of water right confirming the water rights as hereinabove set out.

Dated this 19th day of January, 1962.

E. H. HOWELL
Circuit Judge

STATE OF OREGON)
County of Deschutes) SS.

I certify that the foregoing Order has been compared with the original, and that it is a correct transcript therefrom, and of the whole of such original, as the same appears of record at the Clerk's office in Deschutes County, Oregon.

January 22, 1962.

Helen M. Dacey
Clerk

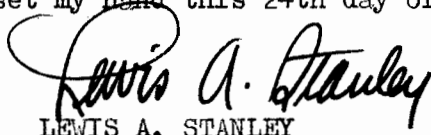
By: Rosemary Patterson
Deputy

STATE OF OREGON)
County of Deschutes)

I, LEWIS A. STANLEY, State Engineer of the State of Oregon, do hereby certify that the foregoing copy of Order of the Circuit Court for Deschutes County, In the Matter of the Determination of the Relative Rights to the Use of the Waters of Deschutes River and Its Tributaries, A Tributary of Columbia River, 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 22nd day of January 1962.

IN WITNESS WHEREOF, I have hereunto set my hand this 24th day of January, 1962.



LEWIS A. STANLEY
State Engineer