

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF LINN

Case No. 52090

In the Matter of the Determination of the )  
Relative Rights to the Use of the Waters )  
of the Santiam and South Santiam Rivers )  
and their Tributaries, Linn and Marion )  
Counties. )

DECREE

On October 20, 1978, this cause came on regularly for entry of a Decree based upon "Findings of Fact and Order of Determination of the Santiam and South Santiam Rivers and their Tributaries" and supporting evidence previously filed by the Water Resources Director in the Circuit Court of Linn County on March 8, 1978. The Water Resources Director appearing through Clarence R. Kruger, Assistant Attorney General; John S. Kennel and Anna M. Kennel, having filed exceptions to the proposed Findings, and Jacob Leichty and Norma Jean Leichty, having filed exceptions to the proposed Findings, were represented by John S. Horton, of their attorneys; Pacific Power & Light Company, having filed exceptions to the proposed Findings, was represented by Richard D. Bach, of its attorneys; and the United States having filed exceptions to the proposed Findings, appeared not.

And it appearing to the Court that there has been filed with the Clerk of this Court on March 8, 1978, the original evidence filed with the Water Resources Director, and certified copies of maps and records in the Water Resources Director's office in connection with this determination, and a copy of the Findings of Fact and Order of Determination of the Water Resources Director, as the same appears of record in his office, and the Water Resources Director having thereon procured from this Court an Order fixing May 1, 1978 as a time in which the determination herein would be heard by this Court, and notice of said hearing and the time fixed therefore having been duly and regularly given, in the manner required by law, to all parties interested, and the Court further allowed the United States sixty days in which to file exceptions, and it appearing to the Court that the following exceptions have been filed herein:

(1) United States excepts to the statement on page 130 beginning at line 6, which was taken from Cappaert, et al v. United States, 426 US 128 (1976):

"No cases of the United States Supreme Court have applied the doctrine of implied reservation of water rights to ground water."

(2) Jacob Leichty and Norma Jean Leichty except to Finding No. 48-I, on page 145, and the corresponding tabulation on page 168, in which they were allowed 0.005 cfs for stock. Leichty's requested .0125 cfs for stock and farm purposes.

(3) John S. Kennel and Anna M. Kennel except to Finding No. 48-H on page 145 which, in effect, denied their claim. The Kennels' statement and proof of claim requested 100 gallons per day for stock use of twelve cattle by means of a 3-inch pipe from the Albany-Santiam Canal.

(4) Pacific Power & Light Company except as follows:

"EXCEPTION NO. 1: Claimant takes exception to the denial by the Director of Claimant's claim to the right to divert water for carriage purposes to insure potability of water used for municipal uses in and about the Cities of Lebanon and Albany. (Finding 48 (J), page 147).

"EXCEPTION NO. 2: Claimant takes exception to the denial by the Director of Claimant's claim to the right to 29.0 cubic feet per second of water for municipal use, for anticipated needs to the year 2000, in and about the City of Albany. (Finding 48 (J), page 147).

"EXCEPTION (sic) NO. 3: Claimant takes exception to the denial by the Director of Claimant's claim to the right to 18.0 cubic feet per second of water for municipal use, for anticipated needs to the year 2000, in and about the City of Lebanon. (Finding 48 (J), page 147)."

The Court having reviewed the files and records herein, heard the testimony of witnesses at this hearing and argument of counsel, makes the following disposition of the exceptions filed:

- (1) The exception of the United States is sustained.
- (2) The exception of Jacob Leichty and Norma Jean Leichty is denied.
- (3) The exceptions of John S. Kennel and Anna M. Kennel are sustained.
- (4) The exceptions of Pacific Power & Light Company are denied.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

(1) The Findings of Fact and Order of Determination of the Water Resources Director filed herein relating to the Santiam and South Santiam Rivers and their Tributaries be, and hereby is, affirmed and made final, except for the following changes:

(a) On page 130 of the Findings of Fact and Order of Determination, beginning on line 6, the following statement be and hereby is deleted:

"No cases of the United States Supreme Court have applied the doctrine of implied reservations of water rights to ground water."

(b) John S. Kennel and Anna M. Kennel be, and hereby are, allowed the right to the use of .005 cfs of water through a 2-inch pipe from the Albany-Santiam Canal for stock drinking directly from Cox Creek in the SW $\frac{1}{4}$  NE $\frac{1}{4}$  and NW $\frac{1}{4}$  SE $\frac{1}{4}$ , Section 15, Township 11 South, Range 3 West, W.M., subject to Finding No. 55, under date of priority of 1900.

(2) None of the parties hereto shall recover costs or disbursements in these proceedings.

DATED this 22nd day of December, 1978.

/s/ Wendell H. Tompkins  
Circuit Judge

I hereby certify this copy to be a true, full and correct copy of the original now on record in my office.

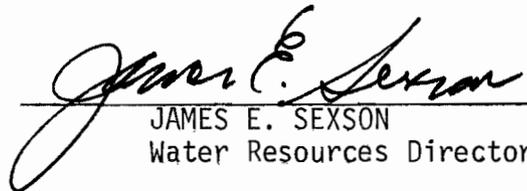
DEL W. RILEY, Linn County Clerk

By /s/ Pat Roehrick Deputy

STATE OF OREGON        )  
                              )        ss.  
County of Marion        )

I, JAMES E. SEXSON, Water Resources Director of the State of Oregon, do hereby certify that the foregoing copy of Decree in re: Adjudication of the Santiam and South Santiam Rivers and their Tributaries, Linn and Marion Counties, is a full and correct copy of such decree as the same was received in this office and entered of record herein on this 20th day of April, 1979.

IN WITNESS WHEREOF, I have hereunto set my hand this 2nd day of May, 1979.

  
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JAMES E. SEXSON  
Water Resources Director