

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR DESCHUTES COUNTY

CITY OF BEND, a Municipal Corporation,

Plaintiff

vs

DESCHUTES COUNTY MUNICIPAL IMPROVEMENT DISTRICT,

Defendant

FINDINGS AND JUDGMENT

Now at this time this matter coming on for trial; plaintiff appearing by its attorneys, C. S. Benson and H. H. De Armond, the defendant appearing by its attorney, N. G. Wallace, and the parties hereto having entered into and filed with the Court a stipulation of facts, and agreeing in open Court that the cause may be tried by the Court without the intervention of a jury, and upon said stipulation, and the same now being ready for trial upon said stipulation and the Court having examined said stipulation and the records and files herein, and being fully advised in the premises, finds as follows:

I

That the plaintiff is a municipal corporation, organized and existing under a charter duly adopted by the qualified electors of said corporation as provided by statute.

II

That the defendant is a municipal corporation and an irrigation district, organized and existing under and by virtue of the laws of the State of Oregon.

III

That the defendant is the owner and in possession of a vested right to the diversion and use of six (6) cubic feet per second of time of the direct, perennial flow of Tumalo Creek and its tributaries, located within Deschutes County, State of Oregon.

IV

That the plaintiff, City of Bend, Oregon, has heretofore acquired, by purchase, the water distribution system heretofore owned and operated within the City of Bend by Bend Water, Light & Power Company, and in pursuance of a general plan, has heretofore caused to be surveyed and located a line for the construction of pipe from the said Tumalo Creek to the Western city limits of Bend, and is now engaged in constructing a reservoir or reservoirs in connection with said pipe line.

V

That in order fully to complete its said plans for providing a municipally owned water system for Bend and its inhabitants, and for that purpose acquire a water supply pure in quality, sufficient in quantity and most available as to cost of diversion and transmission

by pipe into Bend, it is necessary that said City acquire the right to the perpetual use of six (6) cubic feet per second of time of the direct, perennial flow of said Tumalo Creek and its tributaries for domestic and municipal purposes for the City of Bend and the inhabitants thereof.

VI

That the use for which the plaintiff desires said water is a paramount public use, to-wit, for the municipal and domestic use of the City of Bend, Oregon, and its inhabitants.

VII

That heretofore and prior to the commencement of this action the plaintiff sought to come to an agreement with the defendant as to the compensation due the defendant from the plaintiff for the property desired by the plaintiff as herein described, but that prior to the institution of this action plaintiff had been unable to reach an agreement with the defendant as to the value of said property.

VIII

That on the 15th day of June, 1926, the Common Council of the City of Bend passed an ordinance directing the City Attorney of the City of Bend to proceed to institute condemnation proceedings against the defendant herein for the purpose of acquiring said water right, which said ordinance was approved by the Mayor of the City of Bend on said 15th day of June, 1926, said ordinance being numbered 271 and particularly referred to by title in paragraph VII of the complaint in this cause.

IX

The Court further finds that the value of the property necessary to be acquired by the City for domestic and municipal purposes, to-wit, six (6) cubic feet per second of time of the direct, perennial flow of Tumalo Creek and its tributaries, is the sum of Thirty-seven Thousand Dollars (\$37,000.00), represented by the sum of Twenty-five Thousand Dollars (\$25,000.00) in cash, and the transfer and assignment by the plaintiff to the defendant of all its right, title and interest in and to nine and one-half ($9\frac{1}{2}$) cubic feet per second of time of the direct, perennial flow of Deschutes River, the value of which said nine and one-half ($9\frac{1}{2}$) second feet above described is hereby fixed at the sum of Twelve Thousand Dollars (\$12,000.00).

X

The Court further finds that upon the payment and delivery to the defendant of the said sum of Twenty-five Thousand Dollars (\$25,000.00) in cash, and the delivery to the defendant of a proper transfer and assignment of said nine and one-half ($9\frac{1}{2}$) cubic feet per second of time of the direct, perennial flow of Deschutes River, that the right to the perpetual diversion and use of said six (6) cubic feet per second of time of the direct,

perennial flow of Tumalo Creek and its tributaries should be appropriated to and title thereto vested in the plaintiff herein for domestic and municipal purposes as hereinabove set forth, and that said six (6) cubic feet per second of time of the direct, perennial flow of Tumalo Creek and its tributaries should be diverted at such point or points upon said Tumalo Creek or any of its tributaries as said City of Bend shall hereafter determine.

XI

The Court further finds that the City of Bend, the plaintiff herein, has heretofore deposited its proper warrant, drawn in favor of the defendant upon its Treasurer, for the said sum of Twenty-five Thousand Dollars (\$25,000.00), and has also deposited a sufficient transfer of all its right, title and interest in and to nine and one-half ($9\frac{1}{2}$) cubic feet per second of time of the direct, perennial flow of Deschutes River, as hereinabove set forth.

XII

The Court further finds that the plaintiff is entitled to a judgment herein against the defendant, appropriating and condemning for its said use for domestic and municipal purposes, six (6) cubic feet per second of time of the direct, perennial flow of said Tumalo Creek or its tributaries.

WHEREFORE, it is hereby ORDERED, ADJUDGED and DECREED, That the right to the perpetual diversion and use of six (6) cubic feet per second of time of the direct, perennial flow of Tumalo Creek or its tributaries, located in Deschutes County, Oregon, for domestic and municipal purposes, be and the same is hereby appropriated to and vested in plaintiff, City of Bend, upon payment by said City of Bend to Deschutes County Municipal Improvement District, defendant herein, of the sum of Thirty-seven Thousand Dollars (\$37,000.00) in accordance with the provisions of said stipulation and the findings of fact herein;

It is further ORDERED, ADJUDGED and DECREED that said six (6) cubic feet of water per second of time may be diverted at such point or points upon said Tumalo Creek or any of its tributaries as said City of Bend shall hereafter determine;

It is further ORDERED that neither party hereto recover its costs.

Dated this 11th day of August, 1926.

/s/ D. R. Parker
Circuit Judge

State of Oregon)
) ss.
County of Deschutes)

I certify that the foregoing Findings & Judgment 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.

April 26, 1966

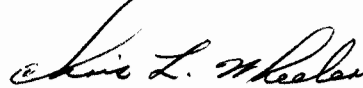
/s/ Helen M. Dacey Clerk

By /s/ Opal Sprague Deputy

STATE OF OREGON)
) ss.
County of Marion)

I, CHRIS L. WHEELER, State Engineer of the State of Oregon, do hereby certify that the foregoing certified copy of FINDINGS AND JUDGMENT of the Circuit Court for Deschutes County, dated August 11, 1926, as between City of Bend, a Municipal Corporation as Plaintiff vs Deschutes County Municipal Improvement District as Defendant, is a full and correct copy, and of the whole thereof, of a photocopy of such decree as the same was received in this office and entered of record herein this 28th day of April, 1966.

IN WITNESS WHEREOF, I have hereunto set my hand this 28th day of April, 1966.



CHRIS L. WHEELER
State Engineer