

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SHASTA

-0-

F. A. COLBY, J. D. COOK, A. R. COOK,
R. M. MURPHY and M. M. MURPHY,

Plaintiffs,

vs.

L. O. KEATYER, JAMES W. BALLARD, JOHN
W. COX, WILFORD N. HOGG, E. C. ANGLER,
HENRY LEE MARTIN, J. L. MCGARY, ISAAC
NELSON, WALTER NELSON, First Doe, Second
Doe, Third Doe, Fourth Doe and Fifth Doe,
Defendants.

No. 5701

JUDGMENT

AND

DECREE

The above entitled cause having been referred to the Division of Water Rights (now Division of Water Resources) of the Department of Public Works of the State of California, as referee, by an order of the Court, entered on April 23, 1923, and made under authority of law as conferred by Section 24 of the Water Commission Act of the State of California, Statutes 1913, Chapter 286, as amended; said referee having made its investigation, the parties hereto having thereafter entered into a written stipulation and agreement, said stipulation providing that said referee might report to the above entitled Court a decree in accordance with the provisions of said stipulation, said parties having further stipulated that findings of fact and conclusions of law be waived, said Division, as referee, having filed its report herein, which report embodies said stipulation of the parties, and said matter being finally submitted to this Court on said report, including said stipulation, and it appearing that said stipulation is signed by all of the parties who have appeared in said action or by their successors in interest and that said parties who have signed said stipulation are the owners of the rights as agreed upon and set forth in said stipulation, and it further appearing as follows:

1 (a) Plaintiff J. B. Cook has died since the commencement of this action and
2 that the Heirs of the Estate of J. B. Cook, deceased, are the owners of the
3 rights set forth under his name in said stipulation.

4 (b) Joe Insley, successor in interest of E. D. Harrick, has been regularly
5 substituted as a defendant herein in the place and stead of L. O. Strayer.

6 (c) Edward Rice has been regularly substituted as a defendant herein in the
7 place and stead of John W. Cox whose true name is John G. Cox.

8 (d) Edward Rice, successor in interest of J. A. Rainey and the J. B.
9 Cornwall Estate, has been regularly substituted as a defendant herein in the
10 place and stead of Henry Lee Martin.

11 (e) Laurence A. Downing and Harvin A. Downing have been regularly sub-
12 stituted as defendants herein in the place and stead of Isaac Melton.

13 (f) G. H. Durrak has been regularly substituted as a defendant herein in
14 the place and stead of Robert O. Winters who entered an appearance in said action
15 as First See.

16 NOW THEREFORE IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS,
17 TO-WIT:

18 (1st) There is in said Shasta County a natural stream of water known as and
19 called "Oak Run Creek, which said creek arises southwest of Snow Mountain in
20 Shasta County, State of California, and flows thence in a general southwesterly
21 direction between well defined banks in a well defined channel to, upon, and
22 across some of the lands of some of the parties to this action, which lands are
23 hereinafter described, to its confluence with Old Cow Creek in said Shasta County
24 and has so flowed since the memory of man.

25 (2nd) The parties plaintiff and the parties defendant in the above entitled
26 action are the owners of the lands described in their respective pleadings, and
27 as amended and pleaded by them; that the allotments of water from said Oak Run
28 Creek and its tributaries as hereinafter set forth are for use upon the acreages
29 described in Schedule I hereunto annexed and made a part hereof; that the
30 respective parties are the owners of the acreages set forth under their respective
31 names and of all the lands embraced in the legal subdivisions in said Schedule I;

1 and that said lands are depicted on the map herein referred to as the "Division
2 of Water Rights Map", which map is entitled, "Map of North Cow and Oak Run
3 Creek Watersheds Showing Diversion Systems and Irrigated Areas, Shasta County,
4 California", which map is dated 1934, and is filed with the records of the above
5 entitled action as Exhibit "C" of the report of referee.

6 (3rd) The parties plaintiff and the parties defendant are the owners of,
7 or interested in, the ditches, conduits, pipe lines and other means of diversion
8 described in their respective pleadings, and as amended and pleaded by them,
9 and as depicted on said Division of Water Rights Map and are entitled to divert
10 water, as hereinafter set forth, through said means of diversion at the points
11 of diversion depicted on said map.

12 (4th) M. M. Murphy and R. M. Murphy, jointly, are at all times entitled to
13 divert, either from an unnamed spring situated on their lands in the NE $\frac{1}{4}$ SW $\frac{1}{4}$
14 Section 25, T. 33 N., R. 2 E., N.D.S. & M., or from the Murphy-Matop Branch of
15 Oak Run Creek, or partly from both sources, through either the Murphy Spring
16 Ditch, or the Murphy Slough Ditch, or both of said ditches,
17

18 0.25 cubic foot per second,

19 said water to be used for domestic and stock watering purposes and for the ir-
20 rigation of their lands as described in Schedule I hereof.

21 (5th) C. E. Darrak is at all times entitled to divert

22 0.025 cubic foot per second

23 from an unnamed spring situated on his lands in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 25, T. 33 N.,
24 R. 2 E., N.D.S. & M., said water to be used for domestic and stock watering
25 purposes and for the irrigation of his lands as described in Schedule I hereof.

26 (6th) At all times when the flow of Oak Run Creek, including the foreign
27 water conveyed to said Oak Run Creek from Mill Creek through the Welch and
28 Strayer Ditch, is ample to permit, the ditches of the various parties to this
29 action are entitled to continuous flow allotments from said Oak Run Creek and
30 its tributaries, as set forth in Schedule II hereunto annexed and made a part
31 hereof, said allotments to be used by the said parties for domestic and stock

1 watering purposes, and for the irrigation of their respective lands as set
2 forth in Schedule I hereof.

3 of
4 (7th) Whenever the flow/Oak Run Creek, including the foreign water con-
5 veyed thereto from Mill Creek through the Welch and Strayer Ditch, measured
6 at a point immediately above the intake of the Welch and Strayer Ditch in
7 the NW 1/4 Section 18, T. 38 N., R. 1 W., M.D.S. & M., is less than 2.40
8 cubic feet per second, then said flow shall be divided at said intake, 43 per
9 cent of the same to be diverted into the Welch and Strayer Ditch, and 57 per
10 cent of the same to remain in Oak Run Creek and be permitted to flow down said
11 stream past said intake to the lower users.

12 (8th) Should the flow of Oak Run Creek below the Welch and Strayer Intake
13 be insufficient at any time to supply the allotments hereinabove provided for
14 in paragraph (8th) from said creek below said intake, then, during the continu-
15 ance of such shortage, the users below the Welch and Strayer Intake shall divide
16 the water supply available for them in the ratios that their respective maximum
17 irrigation allotments as specified in Schedule II hereof bear to the total of
18 their irrigation allotments provided in said Schedule II.

19 (9th) Subject to all of the foregoing rights and provisions, G. E. Barrish
20 is entitled to divert from Oak Run Creek, through the Winters Ditch,

21 0.27 cubic feet per second,

22 said water to be used for domestic and stock watering purposes and for the ir-
23 rigation of his lands as described in Schedule I hereof.

24 (10th) The points of measurement of all allotments of water hereinbefore
25 provided in this decree shall be at the respective points of diversion from
26 Oak Run Creek and its tributaries.

27 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS, TO-WIT:

28 (11th) The owners of the Welch and Strayer Ditch which diverts water from
29 Mill Creek and conveys it to the natural channel of Oak Run Creek, to-wit:
30 Wilford L. Ross, James H. Ballard, Joe Amloy, Edward Rice, and E. C. English
31 shall jointly maintain that ditch in such condition of repair that the net loss

1 of water between the flume crossing on the South Fork of Mill Creek and the
2 point of delivery into the natural channel of Oak Run Creek, shall not exceed
3 0.70 cubic foot per second.

4 (12th) Upon request of any party hereto, the Division of Water Resources
5 of the Department of Public Works of the State of California, or its successor,
6 as the same is now or may hereafter be constituted, may investigate, and if
7 upon investigation it appears to said Division that necessity therefor exists,
8 said Division, or in case said Division shall fail to act, then the judge of
9 the Superior Court of Shasta County, may appoint a water master to distribute
10 the waters of Oak Run Creek and its tributaries in accordance with this decree,
11 and said water master, when so appointed, shall have power and authority to
12 inspect and regulate the diversions of all the parties hereto in accordance
13 with this decree, and in the exercise of such authority may enter upon the
14 lands of said parties for the purpose of such inspection and regulation and
15 may establish and maintain such gaging stations and measuring devices, and
16 require such diversion works to be constructed in such streams and such head-
17 gates to be installed in the diversion ditches, as may be necessary or convenient.
18 The water master, when so appointed, or his successor, shall continue in author-
19 ity until October first of the irrigation season for which he was appointed un-
20 less otherwise agreed to by all parties hereto, but shall not hold over from
21 one irrigation season to another. All costs and expense of distribution of
22 water through the agency of such water master, incurred by the said Division of
23 Water Resources, or by the water master in the event that his appointment is
24 made by the judge of the Superior Court of Shasta County, shall be borne by the
25 parties hereto, in the ratios that their respective allotments, as provided in
26 Schedule IV, herewith annexed and made a part hereof, bear to the total of the
27 allotments provided in said Schedule IV.

28 (13th) The owners of each ditch through which water is diverted from Oak
29 Run Creek or its tributaries as herein provided, shall install, under the super-
30 vision of an engineer appointed by the Division of Water Resources, such
31

1 permanent headgates and measuring devices as shall be required and approved by
 2 said Division of Water Resources; such installations to be made within six
 3 months of the date of entry of this decree, or such later date as may be order-
 4 ed by the above entitled court. The several ditch owners shall furnish all
 5 necessary labor and material for the construction and installation of said
 6 headgates and measuring devices in their respective ditches, and the cost of
 7 supervision as herein provided shall be borne by the parties hereto, in the
 8 ratio that their respective allotments, as provided in Schedule IV, hereof,
 9 bear to the total of the allotments provided in said Schedule IV.

10 (14th) Each and every party to this action, his or her agents, successors,
 11 grantees and assigns, do, and they are hereby perpetually enjoined and restrain-
 12 ed from doing anything in violation of the terms or provisions of this decree,
 13 or diverting any water from said Oak Run Creek and its tributaries at any time
 14 in violation of the terms hereof, or from doing anything that will obstruct
 15 or interfere with any other right in this decree adjudged and decreed.

16 (15th) FINALLY IT IS ORDERED, ADJUDGED, AND DECREED that each party hereto
 17 shall pay his own costs and that the expenses incurred by the Division of Water
 18 Rights (now Division of Water Resources) of the Department of Public Works of
 19 the State of California, as referee, as set forth in Schedule III hereunto an-
 20 nexed and made a part hereof, shall be borne by the parties hereto in the follow-
 21 ing proportions:

<u>Name</u>	<u>Portion of Expense</u>
J. A. Colby	\$65.00
A. M. Cook and Heirs of Estate of J. B. Cook	91.80
M. M. Murphy and A. M. Murphy	118.70
Walter L. Melton	25.40
Laurence A. Downing and Marvin A. Downing	40.80
E. E. Ross	33.00
Edward Rice	22.80
James T. Ballard	36.80
Joe Knisley	38.80 (paid)
Edward Rice	30.00
E. C. English	38.00
J. L. McCarty	10.12
G. H. Barran	40.00
Total	<u>\$12.82</u>

SCHEDULE I

DESCRIPTION OF LANDS INTERESTED

JAMES W. HALLAND:

5.3 acres in SW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 30, T. 33 N., R. 1 W., M.D.B. & M.
6.3 acres in NE $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 30, T. 33 N., R. 1 W., M.D.B. & M.
11.6 acres - Total

NEWARK HIGH:

25.8 acres in Lot 3 of Sec. 30, T. 33 N., R. 1 W., M.D.B. & M.
14.4 acres in NE $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 30, T. 33 N., R. 2 W., M.D.B. & M.
0.5 acre in NW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 35, T. 33 N., R. 2 W., M.D.B. & M.
39.7 acres - Total

F. A. COLBY:

3.3 acres in NW $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 24, T. 33 N., R. 2 W., M.D.B. & M.
3.2 acres in NE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 24, T. 33 N., R. 2 W., M.D.B. & M.
20.0 acres in SW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 24, T. 33 N., R. 2 W., M.D.B. & M.
26.5 acres - Total

A. R. COOK AND ESTATE OF J. D. COOK:

6.4 acres in NW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 19, T. 33 N., R. 1 W., M.D.B. & M.
13.9 acres in Lot 3 of Sec. 19, T. 33 N., R. 1 W., M.D.B. & M.
33.3 acres in Lot 3 of Sec. 19, T. 33 N., R. 1 W., M.D.B. & M.
0.1 acre in NE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 24, T. 33 N., R. 2 W., M.D.B. & M.
0.3 acre in SW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 24, T. 33 N., R. 2 W., M.D.B. & M.
53.8 acres - Total

E. C. WELLS:

13.4 acres in NW $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 35, T. 33 N., R. 2 W., M.D.B. & M.
13.3 acres in NW $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 35, T. 33 N., R. 2 W., M.D.B. & M.
3.9 acres in SW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 35, T. 33 N., R. 2 W., M.D.B. & M.
30.6 acres - Total

JOS. BRADY:

9.7 acres in NE $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 35, T. 33 N., R. 2 W., M.D.B. & M.
1.5 acres in SW $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 35, T. 33 N., R. 2 W., M.D.B. & M.
11.2 acres - Total

J. L. McGARRY:

2.1 acres in Lot 3 of Sec. 30, T. 33 N., R. 1 W., M.D.B. & M.

WALTER L. WELTON:

7.7 acres in SW $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 20, T. 33 N., R. 1 W., M.D.B. & M.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

APPENDIX I, (Continued)

LAURENCE A. DOWNING AND MARVIN A. DOWNING:

3.3 acres in NW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 19, T. 35 N., R. 1 W., M.D.B. & M.
5.2 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 19, T. 35 N., R. 1 W., M.D.B. & M.
5.2 acres in NE $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 19, T. 35 N., R. 1 W., M.D.B. & M.
1.0 acres in NW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 19, T. 35 N., R. 1 W., M.D.B. & M.
3.0 acres in NW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 19, T. 35 N., R. 1 W., M.D.B. & M.
1.8 acres in NE $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 19, T. 35 N., R. 1 W., M.D.B. & M.
20.5 acres - Total

H. M. MURPHY AND R. M. MURPHY:

2.3 acres in Lot 4 of Sec. 19, T. 35 N., R. 1 W., M.D.B. & M.
30.6 acres in SE $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 20, T. 35 N., R. 2 W., M.D.B. & M.
10.2 acres in NE $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 20, T. 35 N., R. 2 W., M.D.B. & M.
42.9 acres - Total

WILSON A. COOK:

24.3 acres in Lot 2 of Sec. 20, T. 35 N., R. 1 W., M.D.B. & M.
24.3 acres - Total

G. H. MURPHY:

0.2 acre in SW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 25, T. 35 N., R. 2 W., M.D.B. & M.
18.3 acres in SW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 25, T. 35 N., R. 2 W., M.D.B. & M.
3.2 acres in SW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 25, T. 35 N., R. 2 W., M.D.B. & M.
19.7 acres - Total

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

SCHEDULE II

CONTINUOUS FLOW ALLOTMENTS OF WATER
EXPRESSED IN CUBIC FEET PER SECOND.

Property Owner	Ditch	Acreage To Be Supplied	Continuous Flow Allotment (Cfs. Ft.)
F. A. Colby	Mirkondahl	31.6	0.65
A. H. Cook and Estate of J. D. Cook	Producers	53.3	1.80
H. W. Murphy and R. W. Murphy	Producers	37.5	
Walter L. Helton	(Upper North Side)	7.7	0.25
	(Lower North Side)		
Lawrence A. Downing and Marvin A. Downing	Alpaugh	22.9	0.40
J. L. McCarty	Welch and Strayer	2.1	3.30
James W. Ballard	Welch and Strayer	12.1	
Joe Knaley	Welch and Strayer	11.2	
Edward Sice	Welch and Strayer	48.7	
E. C. English	Welch and Strayer	41.6	
		292.8	3.40
		282.8	

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

SCHEDULE III

STATEMENT OF EXPENSES INCURRED BY DIVISION OF WATER
METERS, (NOW DIVISION OF WATER RESOURCES) IN THE OAK
HILL CREEK REFERENCE.

Salaries & Wages	\$481.19
Automobile Expense	47.88
Board & Lodging	99.73
Travel Expense	1.50
Printing & Blue Printing	38.23
Miscellaneous Expense	<u>4.57</u>
Total - - - - -	\$612.82

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

SCHEDULE IV

CONTINUOUS FLOW ALLOCMENTS FROM OAK CREEK
DRAINAGE AND TRIBUTARIES TO BE USED AS A
BASIS FOR APPROPRIATION OF ANY EXPENSES
THAT MAY BE INCURRED FOR WATER MAINS
SERVICE IN THE FUTURE.

NAME	CONTINUOUS FLOW WATER ALLOTMENT CUBIC FEET PER SECOND
F. A. Selby	0.860
A. H. Cook and Estate of J. D. Cook	0.900
M. M. and H. M. Murphy	1.180
Walter L. Helton	0.810
Laurence A. Downing and Marvin A. Downing	0.400
W. E. Ross	0.3836
James W. Ballard	0.388
Joe Enslay	0.388
Edward Rice	0.7168
E. C. English	0.388
J. L. McCarty	0.100
G. H. Harrah	0.588
TOTAL	6.044