

DEC 28 10 36 AM '64
STATE WATER RIGHTS BOARD
SACRAMENTO

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4 Attorneys for Defendants
and Cross Complainants

8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF MARIPOSA

11 WALTER R. OLINGHOUSE and EMMA J.)
12 OLINGHOUSE, husband and wife,)

13 Plaintiffs,)

13 vs.)

14 CLIFFORD L. NORDMAN and LOUISE H.)
15 NORDMAN, husband and wife, ROBERT)
16 L. NORDMAN and HELEN D. NORDMAN,)
17 husband and wife, ELMER G. NORDMAN)
and COLLEEN M. NORDMAN, husband)
and wife, FIRST DOE, SECOND DOE)
and THIRD DOE,)

18 Defendants.)

19 CLIFFORD L. NORDMAN, LOUISE H.)
20 NORDMAN, ROBERT L. NORDMAN, HELEN)
21 D. NORDMAN, ELMER G. NORDMAN and)
COLLEEN M. NORDMAN,)

22 Cross-Complainants,)

23 vs.)

24 WALTER R. OLINGHOUSE and EMMA J.)
OLINGHOUSE, husband and wife,)

25 Cross-Defendants.)

No. 3701

J U D G M E N T

26 The above entitled cause came on regularly for trial on the 18th
27 day of December 1964 before the Court, sitting without a jury, Hugh
28 H. Griswold appearing for the defendants and cross complainants, and
29 evidence both oral and documentary having been introduced and the
30 cause submitted for decision, the Court finds as follows:

31 FINDINGS OF FACT

32 1. The "Report of Referee" filed herein on July 31, 1962, is

1 incorporated herein by reference.

2 2. The lands identified as Parcels C, D, and E on Plat 1 of
3 said "Report of Referee" are the lands which belong to defendants and
4 cross complainants, and that the portion thereof designated as
5 Parcel E is and at all times since it was patented in the year 1893
6 has been contiguous to, and riparian to, the main branch of Oliver
7 Creek, and that the portion thereof designated as Parcel D is and
8 at all times since it was patented in the year 1888 has been conti-
9 guous to, and riparian to, the West Fork of Oliver Creek, and that
10 the portion thereof identified as Parcel C is and at all times since
11 it was patented in the year 1922 has been contiguous to, and ripar-
12 ian to, the West Branch of Oliver Creek.

13 That the portion of the lands belonging to plaintiffs and
14 cross defendants identified on said Plat 1 as Parcel I is and at
15 all times since it was patented in 1945 has been contiguous to, and
16 riparian to, the main channel of Oliver Creek, and that the parcel
17 identified as Parcel J is and at all times since it was patented in
18 the year 1895 has been contiguous to, and riparian to the main
19 channel of Oliver Creek. That none of the other lands belonging to
20 plaintiffs and cross defendants are or ever have been contiguous to
21 or riparian to said Oliver Creek.

22 3. That plaintiffs suffered no damage as alleged in their
23 complaint.

24 4. Oliver Creek is an intermittent foothill stream in the
25 south central portion of Mariposa County. It rises on the westerly
26 slope of the Sierra Nevada at an elevation of about 5400 feet and
27 flows in a general southwesterly direction to its confluence with
28 the Chowchilla River. West Fork Oliver Creek joins Oliver Creek be-
29 low the lands of Nordman and above the lands of Olinghouse. DeLong
30 Creek, which joins Oliver Creek downstream from the tillable lands
31 of both Olinghouse and Nordman, is not involved in the proceeding.

32 5. Oliver Creek and West Fork Oliver Creek flow through the

1 lands of Nordman and said lands are contiguous to Oliver Creek and
2 West Fork Oliver Creek.

3 6. Oliver Creek does not flow through or border the portion of
4 the Olinghouse lands irrigated from the Olinghouse Ditch but certain
5 other lands owned by Olinghouse are crossed by Oliver Creek and are
6 contiguous to Oliver Creek downstream from the Olinghouse Ditch.

7 7. The extent to which the lands of the parties contiguous to
8 Oliver Creek and to West Fork Oliver Creek may be riparian is de-
9 picted on Plate 1 which shows the location of the various parcels of
10 land withdrawn from the public domain and the dates of patent as
11 copied from the records of the General Land Office of the United States

12 8. Olinghouse holds License No. 5105 from the State with a
13 priority of October 28, 1949, which confirms the right to store for
14 later release down Oliver Creek, 7.5 acre-feet per annum during the
15 period from about October 1 of each year to about April 1 of the
16 succeeding year from an unnamed tributary of Oliver Creek downstream
17 from Nordman and for the direct diversion of 0.5 cubic foot per
18 second during the period from about May 15 to about September 15 of
19 each year from Oliver Creek, the stored water to be rediverted and
20 the direct diversion to be made from Oliver Creek at Diversion 3
21 for use on his lands in the SW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 28, T5S, R20E,
22 MDB&M.

23 9. Olinghouse also holds Permit 11662, issued by the State
24 Water Rights Board on Application 17526 with a priority date of
25 March 25, 1957, for direct diversion from Oliver Creek during the
26 period from about May 1 to about October 1 of each year of 2.9
27 cubic feet per second for use on his lands downstream from Diversion
28 3.

29 10. Nordman constructed a reservoir on the West Fork Oliver
30 Creek to store twenty-six acre-feet of water and on June 5, 1959,
31 filed Application 18771 with the State Water Rights Board under the
32 name "C.L. Nordman and Sons" for a water right permit. Action on

1 the application, which was protested by Olinghouse, has been de-
2 layed pending completion of the referee's investigation and judg-
3 ment by the Court in these proceedings. Water was stored in the re-
4 servoir (referred to herein as the Nordman Reservoir) in 1960 and
5 use made therefrom. The dam at the Nordman Reservoir was constructed
6 across the natural channel of West Fork Oliver Creek and unless facil-
7 ities are maintained at the reservoir capable of bypassing the na-
8 tural flow, operation of the reservoir could deprive Olinghouse of
9 water for which he has received the aforesaid license and permit.

10 11. Nordman, in addition to filing Application 18771 for an
11 appropriative right for water to fill the Nordman Reservoir, in the
12 same application and in Applications 18769 and 18770, filed on the
13 same date, requested a right to appropriate water from numerous
14 springs within the Oliver Creek, West Fork Oliver Creek and Delong
15 Creek watersheds and for storage of 15 acre-feet and direct diver-
16 sion of 0.50 cubic foot per second from Oliver Creek all upstream
17 from Olinghouse lands. As far as is known, diversion from the
18 springs would have an insignificant effect on the flow of Oliver
19 Creek but storage on Oliver Creek and additional direct diversion
20 therefrom could adversely affect the availability of water to sup-
21 ply Olinghouse's prior appropriations.

22 12. The water supply of Oliver Creek while ample during the
23 winter and spring months diminishes rapidly after about June 1 and
24 very little water is available for direct diversion except from
25 springs and occasional areas of rising water in the creek channels
26 after about July 15. Diversion under claim of riparian right for
27 use on the Nordman Lands and on lands of nonparties upstream from
28 the Olinghouse Ditch (Diversion 3) can reasonably be estimated to
29 amount to from 0.06 to 0.10 cubic foot per second and may be larger.

30 13. Natural stream channel losses between the Nordman Ditch
31 (Diversion 2) and the Olinghouse Ditch (Diversion 3) amount to at
32 least 0.04 cubic foot per second during the summer months.

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1 14. Nordman and Olinghouse each are in possession of and own
2 facilities and lands more than ample to divert and put to beneficial
3 use the entire summer water supply of Oliver Creek.
4

5 CONCLUSIONS OF LAW

6 From the above facts, the Court determines the following con-
7 clusions of law:

8 1. Nordman is the owner of lands which are contiguous to and
9 within the watershed of Oliver Creek, and such lands have not been
10 severed from contact with said creek in the chain of title, and they
11 are riparian to Oliver Creek, and Nordman has a direct diversion right
12 to the natural flow of Oliver Creek for reasonable beneficial use on
13 said riparian lands, prior to any appropriative rights of Olinghouse.
14

15 2. Nordman is the owner of lands which are contiguous to and
16 within the watershed of West Fork Oliver Creek, and such lands have
17 not been severed from contact with said creek in the chain of title,
18 and they are riparian to West Fork Oliver Creek, and Nordman has a
19 direct diversion right to the natural flow of West Fork Oliver Creek
20 for reasonable beneficial use on said riparian lands, prior to any
21 appropriative rights of Olinghouse.

22 3. Olinghouse, subject to the foregoing rights of Nordman, is
23 entitled to divert to storage 7.5 acre-feet per annum from an unnamed
24 tributary of Oliver Creek during the period from about October 1 of
25 each year to about April 1 of the following year for later release
26 into Oliver Creek and redirection at the Olinghouse Ditch (Diversion
27 3, Plate 1), and to divert for direct application to beneficial use
28 0.5 cubic foot per second from Oliver Creek during the period from
29 about May 15 to about September 15 of each year through the same ditch
30 for irrigation use on 25 acres of his land within the SW $\frac{1}{4}$ of SW $\frac{1}{4}$ of
31 Section 28, T5S, R20E, MDB&M.

32 4. Olinghouse, subject to the rights enumerated in paragraphs
above
1, 2 and 3 of this chapter, is entitled to divert 2.9 cubic feet per

1 second of the combined flow of Oliver Creek and West Fork Oliver
2 Creek during the period from about May 1 to about October 1 of each
3 year for irrigation use on his lands downstream from Diversion 3 in
4 the W $\frac{1}{2}$ of Section 33, T5S, R20E, MDB&M.

5 5. Nordman has no right to divert water to storage in the
6 Nordman Reservoir on West Fork Oliver Creek or to make any other diver-
7 sion pursuant to Applications 18769, 18770 and 18771 until and unless
8 the State Water Rights Board has issued permits authorizing the
9 applicants to proceed. If and when permits are issued any right
10 developed therefrom will be subject to and inferior to the rights
11 enumerated in paragraphs 1, 2, 3 and 4 ^{above.} ~~of this chapter.~~

12 6. Olinghouse is entitled to divert water to storage in the
13 Olinghouse Reservoir (Diversion 1) only during the period from about
14 October 1 of each year to about April 1 of the following year as pro-
15 vided in water right License 5105 and at all other times should re-
16 lease or bypass all natural flow reaching the storage reservoir.

17 7. Nordman is not entitled to divert from Oliver Creek any
18 water rightfully stored in the Olinghouse Reservoir as provided in
19 paragraphs 3 and 6 ^{above} ~~of this chapter~~ and later released into the natur-
20 al channel of Oliver Creek. Such water cannot be regarded as natural
21 flow to which riparian rights attach.

22 8. Olinghouse should at all times when releasing water from
23 storage in the Olinghouse Reservoir notify Nordman and other diverters
24 from the channel of Oliver Creek of the approximate amount of water
25 so released and of the time that release begins and ends so that ap-
26 propriate changes can be made in diversion works and other facilities
27 to permit the released stored water to flow freely and with the least
28 possible interference to the Olinghouse diversion works.

29 9. Nordman should be required to release or bypass the natural
30 flow of West Fork Oliver Creek at Nordman Reservoir in excess of his
31 riparian entitlement to divert water during the irrigation season, in
32 order to supply the appropriate rights of Olinghouse described in par-

1 above
2 agraphs 3 and 4 ~~subchapter~~ chapter.

3 10. Any underground water supply which may exist on the lands
4 of the parties is too small in amount for development for irrigation
5 use and has little or no relationship to the flow of Oliver Creek or
6 West Fork Oliver Creek.

7 11. Plaintiffs are not entitled to recover any damages by
8 reason of the facts alleged in their complaint and each party should
9 pay his own costs incurred herein.

10 WHEREFORE, by reason of the law and the findings of fact afore-
11 said,

12 IT IS ORDERED, ADJUDGED AND DECREED that said defendants and
13 cross-complainants recover judgment herein in accordance with the
14 above conclusions of law.

15 DATED:

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Judge of the Superior Court

 DECLARATION OF SERVICE
 BY MAIL
 I am a citizen of the United States
 and a resident of Merced County,
 California. I am over the age of eight-
 teen years and not a party to the with-
 in above entitled action. My business
 address is 552 W. 20th Street, Merced,
 California. On this date I served the
 foregoing document, by placing a true
 copy thereof enclosed in a sealed envel-
 ope with postage thereon fully pre-
 paid, in the United States post office
 mail box at Merced, California, ad-
 dressed in the manner set forth below.
 I declare under penalty of perjury
 that the foregoing is true and correct.

 Dated at
 Merced, California, on 12/23/64

 ANN F. DI NAPOLI

To: Mr. L.A. MacNicol, Attorney at Law,
 P.O. Box 852
 Merced, California 95341

To: Mr. Gavin M. Craig, Chief Counsel
 State Water Rights Board
 P.O. Box 1592
 Sacramento, California

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