

ENDORSED
FILED

AUG 19 1977

MELBA J. POLGLASE

Nevada County Clerk

By _____

Deputy Clerk

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF NEVADA

SAN JUAN RIDGE COUNTY WATER DISTRICT,)
a county water district, as Successor)
to FRENCH CORRAL COUNTY WATER DISTRICT,)
a county water district,)

No. 16318

Plaintiff,)

JUDGMENT

vs.)

BERT L. BURDA, KENNETH DORRIS, As)
Successor to L. B. DORRIS, H. F.)
PHILLIPS, JAMES W. WRIGHT, ALF. B.)
NORDBERG, BEULAH NORDBERG, GLENN C.)
NORDBERG, SHIRLEY L. NORDBERG,)
LENNIE C. FANNING, VIOLET FANNING,)
WELLS FARGO BANK AS EXECUTOR OF THE)
ESTATE OF WENDELL C. HAMMON, FRENCH)
CORRAL LAND COMPANY, AND DOES ONE)
to ONE HUNDRED,)

Defendants.)

The above case came on for hearing on objections
to the report of referee on November 24 and 25, and December 4,
1976, before the Court without a jury. Martin McDonough
appeared as attorney for plaintiff; Victor L. Huber appeared
as attorney for defendants Bert L. Burda and Francis J. Yolanda,

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1 and Eunice L. Reader; George Basye appeared as attorney for
2 defendant Kenneth Dorris, Successor in interest to defendant
3 Langlie B. Dorris, and Muir J. Woolley appeared as attorney
4 for the referee State Water Resources Control Board. E. A.
5 Hollingsworth, attorney for defendants Gladys A. Cafferata,
6 Allen J. Stewart, and Theodore E. Selden, attended the hearing
7 though he did not participate; and by stipulation among counsel
8 the defense and claim for the defendant Bert L. Burda was deemed
9 to be also the defense and claim for the defendant H. L. Phillips.

10 The Court received and examined the report of the
11 State Water Resources Control Board as referee, and also heard
12 the testimony and examined the proofs offered by the parties,
13 and the cause was submitted for decision. The Court being fully
14 advised, and having already made and filed its findings of
15 fact and conclusions of law, IT IS ADJUDGED:

16 1. Plaintiff San Juan Ridge County Water District,
17 as successor to French Corral County Water District, has a right
18 to divert water from Shady Creek at Ponderosa Dam through the
19 Shady Creek Ditch for storage each year of the full capacity
20 of Pine Grove Reservoir of 155 ac-ft and for direct diversion of
21 2.3 cfs, plus reasonable ditch loss to the point of measurement
22 as specified hereafter. Such right was initiated by J. H. Eddy
23 in 1852 and has descended by mesne conveyances including a lease
24 from the Eureka Lake and Canal Company Consolidated and River
25 Mines Company, dated June 6, 1926, to plaintiff. Plaintiff
26 also has the right to make use of such additional flows as may
27 from time to time exist in Shady Creek Ditch in excess of 2.3 cfs.
28 Changes in point of diversion and purpose of use of the water
29 by plaintiff's predecessors did not result in any loss of
30 plaintiff's rights. Plaintiff's right is higher in priority than
31 the rights of the defendants Readers to 0.40 cfs from Shady
32 Creek below plaintiff's diversion, and is equal in priority to

1 the rights of defendants Burda and Phillips, on Shady Creek
2 Ditch, of 0.25 cfs one day a week together.

3 2. Defendant Burda has a right to divert 0.15 cubic
4 feet per second one day each week from Shady Creek Ditch for
5 reasonable beneficial use, for irrigation, with a priority
6 equal to that of plaintiff.

7 3. Defendant Phillips has a right to divert 0.10
8 cubic feet per second of water from Shady Creek Ditch on the
9 same day of each week as defendant Burda, for reasonable benefi-
10 cial use, for irrigation, with a priority equal to that of
11 plaintiff.

12 4. Defendants Readers have a riparian right for
13 the land now owned by them to the water of Shady Creek below
14 plaintiff's point of diversion of 0.40 cubic feet per second,
15 which right is lower in priority than the right of plaintiff.

16 5. Defendant Kenneth Dorris, successor in interest
17 to defendant Langlie B. Dorris, has no right in the water
18 of Shady Creek or Shady Creek Ditch except as one of the
19 beneficiaries of the right held in trust by Plaintiff for
20 water users on the San Juan Ridge. The Court reserves juris-
21 diction on the issue of the reasonableness of the charges
22 initially made by Plaintiff for use of water by Defendant Dorris.
23 Defendant Dorris has not obtained a right against Plaintiff by
24 prescription; in addition Defendant Dorris had no standing to
25 assert a prescriptive right against the other beneficiaries
26 of plaintiff's right.

27 6. There is no water right in any defendant to
28 the waters of Shady Creek or Shady Creek Ditch which are either
29 higher than or equal to the priority of the water rights of
30 plaintiff except in defendants Burda and Phillips as set out
31 hereinabove.

32 7. The following provisions should be made to

1 provide for the administration of this judgment. References
2 to numbered Diversions are to those points shown on the map
3 attached to the Report of Referee, Plaintiff's Exhibit 1, in
4 this proceeding.

5 I

6 The allotment to Plaintiff by storage should be
7 measured in Pine Grove Reservoir and by direct diversion at
8 Diversion 7.

9 II

10 The allotment to Defendants Readers should be measured
11 in Shady Creek at the head of the Reader Ditch (Diversion 9)
12 even though a portion or all of the total allotment may be
13 diverted at Diversion 10.

14 III

15 No water should be diverted under a lower priority
16 until all higher priorities are fulfilled. If streamflow is
17 insufficient to fulfill all rights in a priority class, the
18 water should be prorated between the rights in that class in
19 accordance with the magnitude of each right in that class.
20 When the allotment to the District is insufficient to provide
21 a visible surface flow to Pine Grove Reservoir, said allotment
22 may be shared by Burda and Phillips, in accordance with their
23 priorities and allotments.

24 IV

25 The ditch loss of 0.5 cfs is estimated to be required
26 to deliver the full District direct diversion allotment to Pine
27 Grove Reservoir from Diversion 7 when the ditch is well main-
28 tained but should be verified by the referee by field measurement.

29 V

30 Burda and Phillips should be limited to two turnouts
31 each. Turnouts should be constructed so as to allow free flow
32 of water in the ditch past the turnout point. They shall notify

1 the District in advance of which day of the week they select
2 to make their diversion under the Hunt right.

3 VI

4 As a condition to diverting water, Phillips and
5 Burda should be required to pay the District a proportionate
6 share of the District's maintenance and repair costs on Shady
7 Creek Ditch from its head to each user's turnout point and on
8 Ponderosa Dam for water diverted under the Hunt agreement. Such
9 costs should be apportioned according to the ratio between
10 each user's direct diversion allotment and the total ditch
11 direct diversion allotment.

12 VII

13 Decisions on expenditures of money for maintenance
14 or repair of Ponderosa Dam and Shady Creek Ditch may be made
15 unilaterally by the District subject to the requirement that
16 they be reasonable.

17 VIII

18 Nonpayment of maintenance and repair assessments
19 within 60 days of billing by the District should be cause for
20 closing off a turnout point until the bill is paid.

21 IX

22 Maintenance and repair costs on Ponderosa Dam
23 and Shady Creek Ditch to be apportioned shall consist of total
24 costs incurred by the District for labor and material and shall
25 not include any District overhead expenses. Accurate books
26 should be kept by the District of all such costs and should be
27 kept available for inspection by the defendants entitled to
28 divert water from Shady Creek Ditch.

29 X

30 District personnel should have right of access to
31 all points on Shady Creek Ditch through lands of defendants
32 for performing maintenance work, inspecting turnout points, and

1 determining if any unauthorized turnouts have been constructed.
2 Defendant Dorris may maintain a fence, including an electric
3 fence, along the District's ditch bank so long as the District
4 personnel are provided with reasonable access points through
5 said fence, and with independent means to achieve this access.
6 The Court reserves jurisdiction on this issue pending a satis-
7 factory resolution by the parties.

8 XI

9 Defendants' turnout structures should be con-
10 structed so as to permit easy control and to be turned off. A
11 measuring device should be constructed in each turnout. Pump
12 diversions should be metered. All construction costs of turn-
13 outs and measuring devices should be paid by each individual
14 owner.

15 XII

16 The District ditch tender should have the right to
17 regulate and adjust all turnouts so that the proper amount of
18 water is being diverted.

19 8. Defendants J. June Allen, Robert J. Allen, Scott
20 Beamer, George W. Berdan, Marian J. Berdan, William C. Bishop,
21 Jr., Gladys A. Cafferata, Dewey Childs, Euphadell Childs, Lennie
22 C. Fanning, Violet C. Fanning, French Corral Land Company, James
23 Heron, James Hubbard, George Male, Susan E. Male, Alf. F.
24 Nordberg, Beulah Nordberg, Glenn C. Nordberg, Shirley L. Nordberg,
25 H. Schoenfeld, Theodore E. Selden, Allen J. Stewart, Marguerite
26 C. Stuart, S. E. Stuart, A. W. Switzer, O. L. Taylor, and Wells
27 Fargo Bank as Executor of the Estate of Wendell C. Hammon, and
28 their heirs, successors and assigns since July 31, 1969, have,
29 and each of them has, no right to divert water from Shady Creek
30 or Shady Creek Ditch, and each of them is hereby restrained
31 and enjoined from any such diversion.
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9. Defendants Bert L. Burda, H. L. Phillips, Francis J. Reader, Yolanda Reader, Eunice L. Reader, and Kenneth Dorris, and each of them, and each of their heirs, successors and assigns since July 31, 1969, is hereby restrained and enjoined from making any diversion of water from Shady Creek or Shady Creek Ditch except as specifically provided in this judgment. The same defendants are, and each of them is, hereby restrained and enjoined from interfering in any way with the plaintiff or its employees and agents in performing the duties involved in operation and maintenance of the Plaintiff's system, including those imposed by the Administrative Provisions of this judgment.

10. The costs of the referee shall be determined and apportioned by separate order, in accordance with section 2048 of the Water Code; otherwise the parties are to bear their own costs.

Dated: AUG 16, 1977

William A Newsom
Judge of the Superior Court