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MAR 31 1953

BOOK 2095 PAGE 434

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ENDORSED
FILED
MAR 25 1953
W. T. PAASCH, County Clerk
CONTRA COSTA COUNTY
BY H. G. ESTES Deputy

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF CONTRA COSTA

- - - -

WILLIAM FORD and ANNIE H. FORD, his wife, on behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

LAURENCE CURTOLA and FIRST DOE to TENTH DOE, inclusive,

Defendants.

No. 52,316

JUDGMENT

Upon reading and filing the stipulation herein of the above named plaintiffs individually and all other persons who are owners of property riparian to Pine Creek in Contra Costa County, California, or whose lands overlie the basin of said Creek, including, without limitation, all those persons on whose behalf or for whose benefit this action has been brought by the above named plaintiffs and all those persons who have or may hereafter appear herein to seek relief in this action and all those persons signatory and parties to that certain agreement which is attached to said stipulation and marked Exhibit "A" and filed herewith, all of whom are hereinafter collectively referred to as "plaintiffs", and Laurence Curtola, defendant above named, and Diablo Country Club, Inc., a corporation, intervenor herein, by their respective attorneys, and

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Good cause appearing therefor,

NOW, THEREFORE, the Court does hereby find and determine that:

1. The plaintiffs are the owners of lands riparian to Pine Creek in Contra Costa County, California, or of lands overlying the basin of said Creek. The defendant is the owner of a dam (hereinafter referred to as "the lower dam") situated in the channel of Pine Creek and of lands upon which said dam and the reservoir above the same are situated and of certain rights of access to said dam and reservoir over the lands of others. The intervenor herein is the lessee of certain lands outside the watershed of Pine Creek.

2. The parties hereto have stipulated that each and every one of the following orders and decree may be made and entered and that the same shall be binding upon and inure to the benefit of the parties hereto and each of them, respectively, and of the successors in title and interest in and to the said lands of each of the parties hereto and now respectively owned or held by each of them, and that the provisions of said stipulation and of this judgment and decree shall run with said lands and shall bind and benefit the successors, grantees and assigns of each of the said parties, respectively.

3. That the second cause of action in plaintiffs' complaint on file herein has been dismissed with prejudice.

4. As used in this judgment, the words "flood waters" are deemed to mean those waters naturally flowing in the channel of Pine Creek at the upper dam during such times as Pine Creek water is wasting at the mouth of Pine Creek into Walnut Creek and when Pine Creek is a live stream throughout its course and Pine Creek water within the meaning of this judgment shall not include any water from the Contra Costa Canal or from any other source except

natural courses.

WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. Defendant Laurence Curtola and all persons acting for him or in his behalf and his agents, grantees, successors and assigns be, and each of them is hereby, permanently enjoined and restrained from diverting out of the watershed of Pine Creek or otherwise from obstructing or diminishing the waters naturally flowing in the channel of Pine Creek or any part thereof at any point above the lands of plaintiffs or from introducing into the channel of Pine Creek the waters of Contra Costa Canal or any other waters and from doing any act which will prevent the whole or any part of the waters naturally in Pine Creek from flowing down their natural course unadulterated by mixture with other waters, except as herein specifically provided.

(a) Defendant shall have the right to use, control, maintain and repair the said lower dam in accordance with all of the provisions of this judgment and decree for the purpose of capturing, impounding and storing in the reservoir above the said lower dam flood waters as the same are hereinabove defined and of impounding and storing waters pumped into said reservoir from the Contra Costa Canal System. The aforesaid rights of the defendant shall be subject, however, to the condition that defendant shall cause to be constructed in a good and workmanlike manner and without cost or expense to plaintiffs a dam and diversion installation and works (hereinafter referred to as "the upper dam" and "diversion works") at the location shown on and in accordance with those certain plans entitled, "Preliminary Design of Diversion Dam", approved by K. K. Blackie on June 9, 1952, and in accordance with detailed working plans and specifications to be prepared by K. K. Blackie, engineer, or some other engineer who may hereafter

by order of court be designated. Construction of the upper dam and diversionary conduit shall be completed not later than October 1, 1953.

(b) Defendant shall have the rights herein set forth only on condition that defendant constructs the upper dam and diversion works as above provided and thereafter only so long as defendant shall at his own cost and expense and at no cost and expense to plaintiffs keep and maintain the upper dam and diversion works in good order, condition and repair so that the same shall be effective to the full capacity of the diversion works for the purpose of diverting the waters of Pine Creek flowing from above the upper dam around the aforementioned reservoir and lower dam back into the natural channel of Pine Creek.

(c) The diversion works shall be provided with a gate as indicated on the said plans and specifications on file herein for use in passing flood waters of Pine Creek and its tributaries into the reservoir behind the lower dam. Said gate shall be kept securely locked and in position at all times so as to pass the flow of Pine Creek through the diversion works and around said reservoir and lower dam into the channel of Pine Creek below said lower dam except when in actual use for the purpose of permitting said flood waters to flow into said reservoir. The only keys to said lock shall at all times be in the exclusive possession and control of a watermaster regularly employed by Contra Costa County Water District, or any other person who may hereafter by order of court be designated from time to time in lieu of the said watermaster, which person shall not be any of the parties hereto. Said gate shall be unlocked and placed into position by said watermaster, or other person designated as aforesaid, to permit flood waters, as the same are hereinabove defined, to flow into the reservoir behind the lower dam

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whenever such flood waters are flowing in Pine Creek at the upper dam and there is available capacity in the reservoir behind the lower dam. The Court expressly reserves jurisdiction and the right to discharge said watermaster so designated by it at any time and to appoint any other person, not a party hereto, in the place of the one so discharged upon a proper showing that said watermaster then having possession of said keys has failed or refused or is failing or refusing to perform any one or more of the duties herein provided to be performed by such watermaster. The compensation of said watermaster and all other costs incurred by him in connection with his duties hereunder shall be paid by defendant.

(d) Defendant shall have the right to introduce into the reservoir behind the lower dam waters pumped from the Contra Costa Canal System and store the same in said reservoir and remove the same therefrom by pipeline, but defendant shall take all reasonable precautions to assure that said waters shall not flow down the natural channel of Pine Creek below the lower dam. If it becomes reasonably apparent that any appreciable quantity of said canal water must inevitably pass from said reservoir into the natural channel of Pine Creek, defendant shall cause said quantity of said water to be chlorinated to the extent necessary to make the same potable within the standards of potability approved by the U. S. Public Health Service.

(e) Defendant shall have the right to divert flood waters, as the same are hereinabove defined, from the reservoir behind the lower dam by a pipeline to a point outside the watershed of Pine Creek. Such diversions may be made at such times and in such quantities as defendant shall determine, provided, that during each period of time when the said gate of the diversion works is in position as aforesaid so as to pass said flood

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waters into said reservoir defendant shall have the right to divert from the reservoir behind the lower dam only those quantities of flood waters as the same are hereinabove defined, which were in said reservoir at the time the said gate was put in said position and in no case more than 47 acre feet during any one of said periods of time that said gate of the upper dam is in position to pass said flood waters into said reservoir.

2. The preliminary injunction against defendant granted by order made herein on October 22, 1952, is hereby vacated and set aside, and the bond heretofore given on issuance of said injunction is hereby exonerated and the sureties named therein are and each of them is hereby discharged from all liability under said bond.

3. A representative of plaintiffs may go upon the property of defendant, including the lower dam, at any reasonable time hereafter for the purpose of inspecting said dam and diversionary works, and defendant shall permit such representative of plaintiffs ingress and egress over any rights of way or easements owned or controlled by defendant insofar as such rights or easements shall by their terms permit.

4. From the date of this judgment until the construction of the upper dam and diversion works is completed and the same are put in operation in the manner herinabove provided the defendant shall maintain and operate the lower dam in accordance with the following:

(a) The twelve inch pipe line through the lower dam shall be kept open at all times except as hereinafter specifically provided so that the lower dam shall cause no obstruction or diminution of the waters, other than flood waters, naturally flowing in the channel of Pine Creek.

(b) In the event that at any time prior to the

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completion of construction of the upper dam and diversion works E. E. Blaskie shall determine that there are flood waters, as the same are hereinbefore defined, flowing at the lower dam, defendant may upon the prior authorization of E. E. Blaskie close said twelve inch pipe through the lower dam and keep the same closed during such time as E. E. Blaskie shall approve. Defendant shall have the right to divert from the watershed of Pine Creek such waters of Pine Creek which are thereby impounded in the reservoir behind said dam and are determined to be flood waters by E. E. Blaskie.

(c) During all times when said twelve inch pipe through the lower dam is closed as aforesaid and flood waters, as the same are hereinabove defined, are not flowing at the lower dam, defendant shall from time to time cause to be released from said reservoir through or over the lower dam such quantities of water at such rates of flow as E. E. Blaskie shall determine to be equal to the water which would have flowed naturally in the channel of Pine Creek in the vicinity of the lower dam on and under the surface of the ground in all respects as if the lower dam had not been constructed.

(d) However, the aforesaid provisions as to defendant's interim operation found in paragraph 4 in sections (a), (b), and (c) thereof of this judgment are to apply only until October 1, 1953, and become void and inoperative on that date.

5. This judgment and decree and all the provisions hereof having been stipulated, covenanted and agreed to by each and all of the parties hereto, the same shall bind and benefit the successors, grantees and assigns of each of them, and shall run with the lands of the parties hereto upon a copy of this judgment being recorded in the office of the Recorder of the County of Contra Costa. Said lands are described in, and the ownership

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thereof is shown by, the Official Records of said County, to which reference is hereby expressly made.

6. Each party shall pay its own costs incurred herein.

Done in open court this 24th day of March 1953.

THOMAS F. KEATING
Judge of the Superior Court

The foregoing instrument is a correct copy of the original on file in this office.
ATTEST: MAR 26 1953
W. T. CRAIG,
County Clerk of the Superior Court of the State of California in and for the County of Contra Costa.
By _____ Deputy Clerk

RECORDED AT REQUEST OF
RICHMOND MARITIMES
TITLE COMPANY
MAR 31 1953
At 10 min. past 8 o'clock A. M.
in Vol. Page
OFFICIAL RECORDS OF
CONTRA COSTA COUNTY
Ralph Cunningham
COUNTY RECORDER
FEE $3.80

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