

Burney Creek

EDWARD M. PIERPONT
ROUTE 1, BOX 240
BURNEY, CA 96013

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

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No. 5111

EDNAH M. BLACK,
Plaintiff,

vs.

MARTHA B. GRINNELL, RICHARD W.
HAYNES, A. R. HAYNES, J. C.
ERICKSON, JOHN SNOOKS, FRED
GREER, MARY ANN CORNAZ, TIMOTHY
DESMOND, SALVE BUE, RAY VEDDER,
MRS. ELLA P. BRADEN, and THE RED
RIVER LUMBER COMPANY a corporation,
Defendants.

Dated
3/1/48

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ORDER AMENDING THE DECREE ENTERED IN THE ABOVE
ENTITLED ACTION ON JANUARY # 30, 1926

The Notice of Motion by the owners of the Greer-Cornaz
Ditch taking water out of Burney Creek at Burney, Shasta County,
California, and which Ditch is involved in the Decree and Judgment
entered in the above entitled action on January 30, 1926, for the
amendment of said Decree, came on regularly to be heard this 1st
day of March, 1948.

The Motion was made by all of the owners in said Greer-
Cornaz Ditch, to-wit: Roderick Koehler, Harry A. Lonquist, Nonie

1 Cornaz, by and through her guardian, L. B. Koehler, Howell H. Cook,
2 G. C. Estes, Ray Vedder, Ednah M. Black, and Scott Lumber Co., Inc.

3 Glenn D. Newton, L. C. Smith and Chenoweth & Leninger
4 appeared as attorneys in behalf of the respective owners in said
5 Greer-Cornaz Ditch.

6 It appearing to the Court, and the Court finds, that all
7 the other owners of water in, and users of water from, Burney Creek
8 in addition to the Greer-Cornaz Ditch are as follows: William E.
9 Hathaway and Edward Hathaway, successors of the defendants Martha
10 B. Grinnell and Salve Bue; Clara Haynes, successor of the defendants
11 Richard W Haynes and J. C. Erickson; Pansy Snooks Summers and
12 Mattie Snooks Bernal, successors of the defendant John Snooks,
13 deceased; Johanna M. Desmond, successor of the defendant Timothy
14 Desmond, deceased; and the defendant A. R. Haynes;

15 That said William E Hathaway and Edward Hathaway, Clara
16 Haynes, A. R. Haynes, and Johanna M. Desmond were served personally
17 with said Notice of Motion; that each of said persons has signed
18 an Admission of Service of said Notice of Motion and consented to
19 the amendment of said Decree;

20 That Pansy Snooks Summers and Mattie Snooks Bernal,
21 successors of the defendant John Snooks, deceased, are Indians,
22 that the land and water right in Burney Creek formerly owned by
23 John Snooks are held in Trust by the Government of the United States
24 and are under the supervision of the office of Indian Affairs, De-
25 partment of the Interior; that the Superintendent of the Sacramento
26 Indian Agency, Sacramento, California, which Agency has control of
27 said lands, was served with said Notice of Motion as shown by the
28 Affidavit of service thereof by mail on file herein;

29 That the Motion was made in pursuance to the said Notice,
30 and evidence, both oral and documentary, was introduced in support
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1 thereof; and the Motion was submitted to the Court for decision;

INDINGS 2 From the evidence introduced, the Court finds as follows:

3 That the Decree made and entered in the above entitled
4 action on January 30, 1926, did not adequately provide for the
5 maintenance and operation of said Ditch and the distribution of
6 water therefrom, and no provision was made therein for maintenance
7 of said Ditch over the lands of intervening owners who are not in-
8 terested in said Ditch;

9 For said reasons all of the owners of, and users of water
10 from, the Greer-Cornaz Ditch entered into an Agreement dated
11 October 21, 1945, for the purpose of improving said Ditch and
12 more efficiently operating the same. Thereafter, and on May 27,
13 1946, said Decree in the above entitled action was amended by in-
14 corporating therein said Agreement;

15 It was found that said Agreement did not completely cover
16 the situation and bring about the efficiency of operation antici-
17 pated by the terms therein;

18 That all the owners in said Greer-Cornaz Ditch, Roderick
19 Koehler, Harry A. Lonquist, Nonie Cornaz, by and through her guar-
20 dian, L. B. Koehler, Howell H. Cook, G. C. Estes, Ray Vedder,
21 Ednah M. Black and Scott Lumber Company, Inc., did on the 26th day
22 of January, 1948, enter into a Supplemental Agreement to further
23 amend said Decree; that an original executed copy of said Agree-
24 ment was introduced in support of said Motion, marked Exhibit "Y",
25 and ordered filed in this action;

26 That it is provided in said Supplemental Agreement
27 dated the 26th of January, 1948, that the said Decree in the
28 above entitled action be further amended by incorporating therein
29 the terms of said supplemental Agreement;

30 That it is for the best interests of said owners of said
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Greer-Cornaz Ditch and the users of water therefrom that said Decree be further amended by incorporating therein the terms of said supplemental Agreement dated the 26th day of January, 1948;

That no other users of water from Burney Creek will be affected by such amendment; that said supplemental Agreement does not change in any way the allotment of water from Burney Creek or the point of diversion of the said Greer-Cornaz Ditch;

THEREFORE, IT IS HEREBY ORDERED that the aforesaid Decree entered in the above entitled action dated January 30, 1926, be, and the same is, hereby amended by including said supplemental Agreement and the terms thereof in said Decree; that a copy of said Agreement, marked Exhibit "Y" , is attached hereto, incorporated therein and made a part of this Order.

Done in open Court this 1st day of March , 1948.

Albert F. Ross
Judge of the Superior Court

1 BY Ednah M. Black and Scott Lumber Company, Inc., a corporation,
2 Plaintiffs", filed in the above entitled action on
3 April 2nd, 1947.

4 Therefore in consideration of the foregoing atate-
5 ment of conditions and in order to accomplish the results in-
6 tended in and by said agreement of October 21, 1945, and the
7 said amendment of the Judgment and Decree herein, the under-
8 signed parties do agree as follows:

9 I

10 The Division of Water Resources is hereby given the
11 following authority and control of and over the Greer-Cornaz
12 Ditch, to-wit:

13 To order and direct the construction, reconstruction
14 and maintenance of all necessary and suitable measuring devices,
15 check gates, out-let control gates, head gates and diversion
16 structures in said Ditch and the Laterals therof.

17 To design and direct the location and operation of
18 such measuring devices, head gates, check gates, out-let gates
19 and diversion structures.

20 To construct and reconstruct, or cause to be con-
21 structed or reconstructed at the expense of the party or parties
22 entitled to be charged therefor, any of the aforesaid structures
23 when the party or parties whose duty it is to construct or re-
24 construct the same refused so to do.

25 II

26 No diversion shall be made from the Greer-Cornaz
27 Ditch without a headgate and diversion structure approved
28 by the Division of Water Resources. No change in the point
29 or place of diversion shall be made without the consent of
30 said Division of Water Resources.

1 All "unnamed Laterals" in said Ditch for the
2 former The Red River Lumber Company land (now Howell H Cook
3 and G. C. Estes) and referred to in Paragraph (3) of said
4 agreement of October 21, 1945, shall be eliminated.

5 The diversion and use of water from said Ditch by
6 the owners of said The Red River Lumber Company land (now
7 Howell H. Cook and G. C. Estes) shall be confined to the two
8 following diversions and laterals, to-wit:

9 (a) A diversion between the south line of said
10 land and the Parshall Measuring Flume situate about 100 feet
11 northerly of said south line for use on the portion of said
12 lands lying on the west side of said Ditch.

13 (b) A diversion between the south line of said
14 lands and the said Parshall Measuring Flume for use on the
15 portion of said lands lying on the east side of said Ditch.

16 IV

17 Ednah M. Black and Scott Lumber Company, Inc.
18 shall re-construct said Ditch from the Parshall Measuring
19 Flume situate about 100 feet north of the south line of the
20 lands now owned by Howell H. Cook and G. C. Estes (formerly
21 by the Red River Lumber Co.) through the said Cook and Estes
22 land to the northerly end of said Ditch. Said Ednah M Black
23 and Scott Lumber Company, Inc. shall bear such expenses of
24 reconstruction. Thereafter said portion of said Ditch shall
25 be maintained as provided in Paragraph (1) of the said Agree-
26 ment of October 21, 1945.

27 Ednah M Black and Scott Lumber Company, Inc. shall
28 have, and they are hereby given, the right by said Howell H.
29 Cook and G. C. Estes to enter upon said land for the purpose of
30 reconstruction of said Ditch.

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1 In connection with such work, said Ednah M. Black
2 and Scott Lumber Company, Inc. shall have the right to con-
3 struct fills for said Ditch at the low points therein and to
4 construct a flume thereon in place of the earth ditch. No
5 earth shall be taken from the G. C. Estes property, but said
6 G. C. Estes shall and does hereby grant an easement twenty five feet
7 wide on each side of said ditch to said Ednah M. Black and Scott
8 Lumber Company, Inc. for a right of way for the purpose of turning
9 large equipment around whenever necessary in performing work on said
10 Ditch.

11 On the completion of the reconstruction of said Ditch
12 the water shall be turned off each year during the non-irri-
13 gation season, approximately from November 1st to May 5th,
14 unless otherwise provided herein.

15 IV-A

16 If and when any portion of the lands of a present
17 owner is sold, such future owners shall assume and be res-
18 ponsible for such portion of his grantor's obligation to
19 repair and maintain said Ditch as represents his pro-rata
20 share thereof based on the interest acquired by him in said
21 Ditch.

22 V

23 Section (16) of said agreement of October 21,
24 1945, shall be amended and supplemented as follows:

25 The owners of said Ditch shall meet annually on the
26 1st day of September, at 10 o'clock A. M. , unless said day falls
27 on Sunday, in which case, the meeting shall be held on the
28 following Monday. Prior to the meeting, the Division of Water
29 Resources shall be requested to make written recommendations
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1 as to the work required to be done before the irrigation
2 season of the following year and the method of performing the
3 same. When convenient, the representative of said Division
4 shall be present at the meeting.

5 At said meeting those present shall decide what work
6 shall be done and shall appoint a Superintendent to oversee and
7 supervise the particular work decided upon

8 Also at the annual meeting an estimate of the costs
9 of work shall be made and all the owners shall pay in advance
10 their pro-rata of such expense based on their continuous flow
11 allotments in said Ditch.

12 If the expense is greater than the estimate, a pro-
13 rata contribution or payment will be made by each of the owners
14 as soon as the amount of the deficiency is determined.

15 Said superintendent need not be an owner of an interest
16 in said Ditch.

17 The superintendent shall be reimbursed for expenditures
18 made and compensated for the reasonable value of the services
19 rendered by him.

20 VI

21 G. C. Estes and Howell M Cook, so long as they
22 shall own the lands hereinabove referred to, shall have the
23 privilege of taking a small amount of water from said Ditch
24 for stock purposes during the non-irrigation season,
25 approximately from November 1st to May 5th. Such water shall
26 be taken from the point of diversion through the lands formerly
27 known as the Greer property to the south line of the Crowe
28 property. The balance of said Ditch shall remain dry through
29 said non-irrigation season, provided, however, that from and after
30 March 15th of each year said Carson Estes shall have the privilege
31 of using said ditch from the south line of the Crowe property to
32 the present Black-Parchall box near the Estes South line for such
surplus water as may develop and accrue to him under the decree in
Black vs. Grinnell as supplemented and amended

1 From the south line of the Crowe property the Ditch
2 shall be cleaned prior to turning the water into it for that
3 season's irrigation. The water in the Ditch shall be turned
4 out of the Ditch at the headgate at the Greer-Cornaz dam for at least
5 ten days before any cleaning operations commence.

6 VII

7 The representatives of the Division of Water Re-
8 sources shall have, and they are hereby given, the right to
9 enter upon the lands of the respective owners for the pur-
10 pose of carrying out the provisions and terms of this agree-
11 ment and said agreement of October 21, 1945.

12 VIII

13 Except as amended herein, this agreement shall be
14 a supplement to the aforesaid agreement of October 21, 1945,
15 and it is the intent of this agreement to give the Division
16 of Water Resources additional authority and jurisdiction to
17 carry out the terms and provisions of said agreement.

18 IX

19 The terms and provisions of this agreement shall
20 inure to the benefit of, and be binding upon the heirs, ad-
21 ministrators, executors and successors of the parties hereto.

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23 The aforesaid Judgment and Decree, made and entered
24 in the above entitled Court shall be amended to include the
25 provisions of this agreement as a parthereof.
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