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Modoc County Superior Court

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11 DANELLE A. GROVE

12 SUPERIOR COURT OF CALIFORNIA
13 COUNTY OF MODOC

14 In the Matter of the Determination of the
15 Rights to the Water of Rader Creek

16 FRANKLIN J. POWERS, also known as F. J.
17 POWERS and HAROLD J. POWERS,
18 Plaintiffs,

19 vs.

20 E. E. WOODRUFF and MRS. E. E.
21 WOODRUFF, husband and wife; ELMER M.
22 McCULLEY and LYDIA K. McCULLEY,
23 husband and wife; GEORGE HUDSPETH and
24 MRS. GEORGE HUDSPETH, husband and
25 wife; EULALIO MIURA and MRS. EULALIO
26 MIURA, husband and wife; ROBERT W.
27 MINTO and MRS. ROBERT MINTO, husband
28 and wife; DAVID H. GROVE SR. and MRS.
DAVID H. GROVE SR., husband and wife;
MRS. LILLIAN MURPHEY; GUSTAVE A.
HAASE; WALTER S. ROUNTREE, Executor
of the Estate of PAULINA K. HAASE,
deceased; LIZZIE N. BONNER; FIRST DOE;
SECOND DOE; THIRD DOE; FOURTH
DOE; FIFTH DOE; SIXTH DOE; SEVENTH
DOE; and EIGHTH DOE,

Defendants.

No. 3626 (Decree)

~~PROPOSED~~ ORDER, JUDGMENT
AND DECREE GRANTING
APPLICATION FOR MODIFICATION
OF DECREE NO. 3626

Date: June 30, 2017
Time: 1:00 p.m.
Judge: Hon. Francis W. Barclay

This Court heard the matter of Applicant DANELLE A. GROVE's Application for Modification of Decree No. 3626 ("Application") on June 30, 2017, at 1:00 p.m. Based on the Application, the supporting Memorandum of Point and Authorities, and the hearing on this matter, THE COURT FINDS that notice of the Application was duly served on all interested

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DOWNEY BRAND LLP

1 parties; that no party opposed the Application; and that granting the requested modification is in
2 the interests of equity and justice and comports with the Constitutional mandate that the waters of
3 the State be put to beneficial use to the fullest possible extent. (Cal. Const., Art. 10, sec. 2.)

4 The Court now hereby **ORDERS, ADJUDGES AND DECREES** as follows:

5 1. Water diverted from Rader Creek pursuant to the rights of Robert W. Minto and
6 Edyth Minto (Modoc Superior Court Decree No. 3626, pp. 5-6; Schedule 1, p. 2), hereinafter
7 referred to as the "Decreed Minto Rights," may be used by the holder(s) of the Decreed Minto
8 Rights and any successors in interest thereto for the irrigation of 40 acres in the SW 1/4 of the
9 SE 1/4 of Section 14, Township 40 North, Range 16 East, Mount Diablo Base and Meridian as
10 depicted on the Eagle Peak and Eagleville USGS 7.5-minute maps.

11 2. The right to use the Decreed Minto Rights on this 40-acre parcel is in addition to
12 the right to use the Decreed Minto Rights on the lands described at page 1 of Schedule 1 of
13 Decree No. 3626.

14 3. The Decreed Minto Rights will continue to be limited to the amount and rate of
15 diversion established by Decree No. 3626 (at pp. 5-6), but water subject to the Decreed Minto
16 Rights may be used on the additional 40-acre parcel identified above. All other provisions of
17 Decree 3626 shall remain in full force and effect, except to the extent they conflict with the
18 newly-established right to use the Decreed Minto Rights on the additional 40-acre parcel.

19
20
21 Date: JUL 18 2017

22 FRANCIS W. BARCLAY
23 HONORABLE FRANCIS W. BARCLAY
24 JUDGE OF THE SUPERIOR COURT
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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA,
IN AND FOR THE COUNTY OF MODOC.

Franklin J. Powers, also known as
F. J. Powers and Harold J. Powers,
Plaintiffs,

vs.

E. E. Woodruff and Mrs. E. E. Wood-
ruff, husband and wife, Elmer M. Mc-
Culley and Lydia K. McCulley, husband
and wife, George Hudspeth and Mrs.
George Hudspeth, husband and wife,
Eulalio Miura and Mrs. Eulalio Miura,
husband and wife, Robert W. Minto and
Mrs. Robert Minto, husband and wife,
David H. Grove Sr. and Mrs. David H.
Grove Sr., husband and wife, Mrs.
Lillian Murphey, Gustave A. Haase,
Walter S. Rountree, executor of the
estate of Paulina K. Haase, deceased,
Lizzie N. Bonner, First Doe, Second
Doe, Third Doe, Fourth Doe, Fifth Doe,
Sixth Doe, Seventh Doe and Eighth Doe,
Defendants

No. 3626.

JUDGMENT AND DECREE.

This cause coming on regularly for trial before the
Court sitting without a jury this 2nd day of June, 1937, C. S.
Baldwin appearing as attorney for plaintiffs, and Charles
Lederer appearing as attorney for defendants, George Hudspeth
and Mary P. Hudspeth, his wife, Eulalio Miura and Elmore Miura,
his wife, and L. C. Smith appearing as attorney for defendants,
Robert W. Minto and Edith Minto, his wife, Elmer M. McCulley
and Lydia K. McCulley, his wife, E. B. Woodruff as executor of

1 the last will and testament of E. B. Woodruff, deceased, and
2 the defendants, David H. Grove, Sr., and Lula Grove, his wife,
3 Gustave A. Haase and Walter S. Rountree as executor of the estate
4 of Paulina K. Haase, deceased and Lizzie N. Bonner being duly
5 and regularly served with Summons and having failed to appear
6 and answer or otherwise plead within the time allowed by law to
7 plaintiffs Complaint, and due and regular notice having been given
8 and said last named defendants having failed to appear at the
9 time of said hearing of said cause either in person or by attorney,
10 and evidence both oral and documentary having been introduced by
11 the respective parties hereto; and it further appearing that said
12 cause has been duly and regularly referred to the Division of
13 Water Resources of the Department of Public Works of the State
14 of California as referee by order of the above-entitled Court on
15 December 9, 1936, pursuant to the provisions of section twenty-
16 four of the Water Commission Act of the State of California, and
17 said Division of Water Resources having filed its report and
18 notice thereof having been duly and regularly given to all parties,
19 plaintiff and defendant, and defendants Robert W. Minto and Edith
20 Minto, his wife, Elmer M. McCulley and Lydia K. McCulley, his wife,
21 and the estate of E. E. Woodruff, deceased, George Hudspeth and
22 Mary P. Hudspeth, his wife, Eulalio Miura and Elmore Miura, his
23 wife, having duly and regularly filed their exceptions thereto,
24 and the parties, plaintiff and defendant, above named appearing
25 or answering plaintiffs Complaint and having stipulated by and
26 through their respective attorneys to all the facts, and it
27 further appearing to the satisfaction of the Court that the stip-
28 ulation is justified by the evidence; said Court having approved
29 and adopted said stipulated Findings of Fact and Conclusions of
30 Law; the Court now enters its judgment and decree in accordance
31 therewith as follows:

32

1 NOW THEREFORE IT IS ORDERED ADJUDGED AND DECREED,
2 that there is in said Modoc County a natural stream of water
3 known as and called "Rader Creek", which said stream arises
4 on the eastern slope of the Warner Range of mountains in the
5 southerly portion of said County, and flows thence in a general
6 easterly direction into Surprise Valley and thence in a northeast-
7 erly direction to Middle Alkali Lake, and said stream so flows
8 between well defined banks in a well defined channel to, upon,
9 and across certain of the lands of certain of the parties to
10 this action.

11 II.

12 That as to the parties herein the following is found:

13 Defendant Nettie B. Woodruff, sued herein as Mrs. E.
14 E. Woodruff, has no interest in any water right from Rader Creek
15 and has no interest in any of the lands involved in said action.

16 The true name of defendant sued herein as Mrs. George
17 Hudspeth is Mary P. Hudspeth.

18 The true name of defendant sued herein as Mrs. Eulalio
19 Miura is Elmore Miura.

20 The true name of defendant sued herein as Mrs. Robert
21 Minto is Edith Minto.

22 The true name of defendant sued herein as Mrs. David
23 H. Grove, Sr., is Luella Grove.

24 Defendant Mrs. Lillian Murphey and Lillian A. Murphey
25 are one and the same person.

26 Defendant E. E. Woodruff has died since the commence-
27 ment of this action and E. E. Woodruff is the executor of the
28 last will and testament of the defendant E. E. Woodruff, deceased.

29 Defendants Eulalio Miura and Elmore Miura, his wife,
30 have succeeded to the interests in the lands of Lizzie N. Bonner,
31 herein described.
32

1 Plaintiff Franklin J. Powers, also known as F. J.
2 Powers, has died since the commencement of this action and Harold
3 J. Powers is the duly appointed administrator of the estate of
4 said Franklin J. Powers, also known as F. J. Powers, deceased.

5
6 III.

7 That the parties to whom rights are decreed in this
8 action are:

9 Plaintiffs:

10 Harold J. Powers and Harold J. Powers, as administ-
11 rator of the estate of Frank J. Powers, deceased.

12 Defendants:

13 E. B. Woodruff, as executor of the estate of E. E.
14 Woodruff, deceased.
15 Elmer M. McCulley and Lydia K. McCulley, George
16 Hudspeth and Mary P. Hudspeth, Eulalio Miura and
17 Elmore Miura, Robert W. Minto and Edyth Minto,
18 David H. Grove, Sr., and Luella Grove, Lillian
19 A. Murphey, Lizzie N. Bonner.

20 Gustuave A. Haase and Walter S. Rountree, execut-
21 or of the estate of Paulina K. Haase.

22 IV.

23 That the names of the property owners and the descrip-
24 tions of the places of use of all water diverted and used from said
25 Rader Creek are as set forth in Schedule 1 hereunto annexed and
26 made a part hereof.

27 V.

28 That the names of the diversion conduits, the name or
29 names of the parties who are the owners of, or interested in, said
30 diversion conduits, and the descriptions of the points of diversion
31 from said Rader Creek are as set forth in Schedule 2 hereunto
32 annexed and made a part hereof.

VI.

That the duty of water on 308.8 acres of upland soils
of a gravelly loam texture irrigated from said Rader Creek is one
cubic foot per second to each 60 acres of irrigated land; that the
duty of water on 872.0 acres of lowland soils of a clay and very

1 fine sandy loam texture irrigated from said Rader Creek, where
 2 subirrigation, drainage and supplemental waters are not receiv-
 3 ed, is one cubic foot per second to each 70 acres of irrigated
 4 land; that the duty of water on 363.7 acres of subirrigated and
 5 lowland soils of clay and sandy loam texture irrigated from said
 6 Rader Creek, where subirrigation, drainage and supplemental waters
 7 are received, is one cubic foot per second to 130 acres of
 8 irrigated land; that the duties of water from Rader Creek for
 9 the respective acreages owned by each of the parties to the
 10 action are set forth after their respective names, as follows:

11 DUTIES OF WATER ON VARIOUS ACREAGE IRRIGATED FROM
 12 RADER CREEK.

Name of Owner	Irrigated Acreage			TOTAL
	Duty of Cu.Ft./Sec to 80 acres:	Duty of Cu.Ft./Sec.: to 70 acres:	Duty of Cu.Ft./Sec.: to 130 acres:	
Robert W. Minto and Edyth Minto	139.4	-----	-----	139.4
E. B. Woodruff, execu- tor of the estate of E. E. Woodruff	59.0	94.5	-----	153.5
Harold J. Powers, adm. of the estate of F. J. Powers and Harold J. Powers	47.0	616.2	-----	663.2
Eulalio Miura and Elmore Miura	41.8	161.3	-----	203.1
Elmer M. McCulley and Lydia K. McCulley	3.0	-----	221.7	224.7
George Hudspeth and Mary P. Hudspeth	12.2	-----	142.0	154.2
Gustave A. Haase and estate of Paulina K. Haase	0.6	-----	-----	0.6
Lillian A. Murphey	2.9	-----	-----	2.9
David H. Grove Sr. and Luella Grove	2.9	-----	-----	2.9
TOTALS	308.8	872.0	363.7	1544.5

1 and that said acreages and soil types are depicted on the map
 2 herein referred to as the "Division of Water Resources Soil Map",
 3 which map was prepared by the Division of Water Resources of the
 4 Department of Public Works of the State of California from its
 5 surveys made in October, 1935, is entitled, "Principal Soil Types
 6 of Lands Irrigated from Rader Creek", and is dated 1935.
 7

8 VII

9 That the allotments of water necessary to satisfy the
 10 respective water requirements of the parties to the action for
 11 the irrigated lands described under their respective names in
 12 Schedule 1 hereof are set forth after their respective names, as
 13 follows:

14 WATER REQUIREMENTS FROM RADEF CREEK

15

16	Name of Owner	Allotment-		
		Cubic Feet Per Second		
17		Domestic	General	Total
18		Irrigation		
19	Robert W. Minto and Edyth Minto	0.30	2.05	2.35
20	E. B. Woodruff, ex. of the estate of E. E. Woodruff	0.50	1.85	2.35
21	Harold J. Powers, administrator of the estate of F. J.			
22	Powers and Harold J. Powers	0.10	9.50	9.60
23	Eulalio Miura and Elmore Miura	0.20	2.80	3.00
24	Elmer M. McCulley and Lydia K. McCulley	---	1.65	1.65
25	George Hudspeth and Mary P. Hudspeth	----	1.35	1.35
26	Lizzie N. B.	0.50	----	0.50
27	Gustave A. Haase and Estate of Paulina K. Haase	0.04	----	0.04
28	Lillian A. Murphey	0.08	----	0.08
29	David H. Grove, Sr. and Luella Grove	0.08	----	0.08
30				
31	Totals	1.80	19.20	21.00
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2 That said parties divert and are entitled to divert, from said
3 Rader Creek said quantities of water set after their respective
4 names in this paragraph; that said quantities of water are for
5 use upon the acreages set forth under their respective names in
6 said Schedule 1; and that the domestic allotments set forth in
7 this paragraph are for garden and orchard irrigation and stock
8 watering purposes and the general irrigation allotments are for
9 the irrigation of all crops other than garden and orchard in ac-
10 cordance with the priorities hereinafter set forth.

11 VIII

12 That the points of measurements of all allotments of
13 water herein set forth are at the Minto Weir on said Rader Creek,
14 said Weir being located at Diversions 3, 4 and 5 as described in
15 Schedule 3 hereof, except that the allotments to the Bonner and
16 Hudspeth-McCulley Ditches shall be measured at their respective
17 points of diversion from said creek.

18 That the diversion of all domestic allotments herein
19 set forth, except those of Harold J. Powers and Harold J. Powers
20 as administrator of the Estate of F. J. Powers, Gustave A. Haase
21 and Estate of Paulina K. Haase, Lillian A. Murphey, David H. Grove,
22 Sr. and Luella Grove, is for continuous usage without regard to
23 season; provided, however, that no diversion shall be made by
24 Harold J. Powers as administrator of the estate of F. J. Powers,
25 and Harold J. Powers, Gustave A. Haase and Estate of Pauline K.
26 Haase, Lillian A. Murphey, David H. Grove, Sr. and Luella Grove,
27 whenever the total flow available for diversion from Rader Creek
28 is less than 1.20 cubic feet per second; that the season of div-
29 ersion of said allotments of Gustave A. Haase and Estate of
30 Paulina K. Haase, Lillian A. Murphey, and David H. Grove, Sr. and
31 Luella Grove, is further limited to the period from May 1st to
32 August 31st, both dates inclusive, of each year; that the season of

1 diversion of the allotments of Elmer M. McCulley and Lydia K.
2 McCulley, and George Hudspeth and Mary P. Hudspeth, herein set
3 forth, is from May 20th to September 1st, both dates inclusive,
4 of each year; provided, however, that no diversion shall be made
5 by Elmer M. McCulley and Lydia K. McCulley, and George Hudspeth
6 and Mary P. Hudspeth when their said allotments are insufficient
7 at any time during said period of May 20th to September 1st to
8 reach the point of distribution upon their respective lands; that
9 the season of diversion of the general irrigation allotment of
10 Robert W. Minto and Edyth Minto herein set forth, is May 8th to
11 September 1st, both dates inclusive, of each year; except as
12 hereinafter provided, provided, however, that no diversion for
13 general irrigation shall be made by Robert W. Minto and Edyth
14 Minto when the total net available flow of said Rader Creek is less
15 than 1.80 cubic feet per second, during said period of May 8th to
16 September 1st; and that the diversion of the general irrigation
17 allotments of E. B. Woodruff, as executor of the estate of E. E.
18 Woodruff, deceased, Harold J. Powers, as Administrator of the estate
19 of F. J. Powers and Harold Powers, Eulalio Miura and Elmore
20 Miura, is for continuous usage without regard to season whenever
21 water is available therefor.

22 IX

23 That the parties plaintiff and parties defendant in the
24 above entitled action are the owners of the lands described under
25 their respective names in Schedule 1 hereof and as described in
26 their respective pleadings; that the allotments of water from
27 Rader Creek herein set forth are for use upon the respective
28 acreages set forth in said Schedule 1; and that said lands and said
29 acreages, and the points of diversion and diversion systems set
30 forth in Schedule 2 hereof, are depicted on the map herein refer-
31 red to as the "Division of Water Resources Irrigation Map", which
32 map was prepared by the Division of Water Resources of the Depart-

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2 ment of Public Works of the State of California from its surveys
3 made in October, 1935, is entitled, "Rader Creek Showing Diversion
4 System and Irrigated Land", and is dated 1935, it being understood
5 that said map does not depict the lateral ditches on the irrigated
6 land.

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X

That plaintiffs, Harold J. Powers, as administrator of the estate of F. J. Powers and Harold J. Powers are entitled to a superior and exclusive right to divert continuously without regard to season the entire natural and developed flow of christie springs by means of the christie springs ditch described in Schedule 2 hereof for domestic and stock watering purposes and for supplemental irrigation of their lands described in Schedule 1 hereof.

XI

That although that certain agreement dated May 7, 1924, entered into by F. J. Powers, Harold J. Powers, W. F. Cockrell and Letha M. Cockrell, Robert W. Minto, George M. Hudspeth and Mary P. Hudspeth, E. E. Woodruff and Nellie B. Woodruff, and Elmer M. McCulley and Lydia K. McCulley (a copy of which is included as an appendix to Exhibit "A" to the Report of Referee filed with the Clerk of the above entitled Court on February 21, 1936) was not signed by Lizzie N. Bonner, nevertheless all of said signatory parties by their actions subsequently ratified said agreement as among themselves, and are now estopped from asserting any rights as among themselves different from those defined in said agreement insofar as said agreement determines their relative rights, said agreement being attached hereto and made a part hereof as Schedule "A".

XII

That the domestic allotments set forth in Par. VIII are entitled to be diverted by the respective owners thereof from the water flowing in said Rader Creek under rights of first and second

1 priority classes; that the domestic allotments hereinbefore set
2 after the names of Robert W. Minto and Edyth Minto, E. B. Wood-
3 ruff as executor of the estate of E. E. Woodruff, deceased,
4 Eulalio Miura and Elmore Miura, his wife, and 40 per cent of the
5 domestic allotments to Lizzie N. Bonner, to-wit 0.20 Cubic foot
6 per second, aggregating a total of 1.20 Cubic foot per second,
7 are rights of first priority class and the remaining domestic
8 allotments herein provided to Harold J. Powers and Harold J.
9 Powers, as administrator of the estate of F. J. Powers, deceased,
10 Gustave A. Haase and estate of Paulina K. Haase, Lillian A.
11 Murphey, David H. Grove, Sr., and Luella Grove, his wife, and
12 60% of the domestic allotment allocated to Lizzie N. Bonner, ag-
13 gregating a total of 0.60 cubic foot per second are rights of
14 second priority class; and all of said domestic allotments which are
15 in the same priority class are equal in priority and correlative
16 in right and at all times when the net available water supply of
17 said Rader Creek is inadequate to supply all of said allotments
18 in that class that may then be entitled to be diverted in ac-
19 cordance with the seasons of diversion hereinbefore set forth
20 in paragraph 9, then during the continuance of such shortage, the
21 owners of said domestic allotments shall pro-rate the net avail-
22 able water supply in accordance with their respective allotments
23 in that class that may then be entitled to be divert; provided
24 however, that Elmer M. McCulley and Lydia K. McCulley, and George
25 Hudspeth and Mary P. Hudspeth, collectively are entitled to divert,
26 under their rights herein provided, one-seventh of the total flow
27 of said Rader Creek measured above all diversions during the
28 season defined for their said rights in said Paragraph 9, ir-
29 respective of and notwithstanding said domestic allotments; and
30 provided further, that no diversion shall be made by Harold J.
31 Powers, administrator of the estate of F. J. Powers, deceased, and
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2 Harold J. Powers, Gustave A. Haase and Estate of Paulina K.
3 Haase, Lillian A. Murphey, and David H. Grove, Sr. and Luella
4 Grove, his wife, whenever the total flow available for diversion
5 from said Creek is less than 1.20 cubic foot per second.

6 XIII

7 That at any time during the period commencing at the
8 time that the total net available flow of said Rader Creek has
9 receded during the summer season to 1.80 cubic foot per second,
10 which time shall not be later than September 1st of each and every
11 year, and terminating on May 8th of the succeeding year, whenever
12 there is an excess of water over and above that necessary to sup-
13 ply the domestic allotments entitled to be diverted at that time
14 as hereinbefore found; then such excess shall be apportioned as
15 follows:

16 E. B. Woodruff, executor of the estate of E. E. Woodruff,
17 shall be entitled to divert 8/41 until the total amount
18 of said available excess is equal to 10.75 cubic foot per
19 second;

20 Eulalio Miura and Elmore Miura shall be entitled to
21 divert 8/41 until the total amount of said available ex-
22 cess is equal to 10.75 cubic foot per second, and 8/33
23 of said excess available between 10.75 and 13.65 cubic
24 foot per second;

25 Harold J. Powers, administrator of the estate of F. J.
26 Powers and Harold J. Powers shall be entitled to divert
27 24/41 until the total amount of said available excess is
28 equal to 10.75 cubic foot per second, 25/33 of said ex-
29 cess available between 10.75 and 13.65 cubic foot per
30 second, and all of said excess available between 13.65
31 and 14/40 cubic foot per second;

32 all of said excess over and above 14.40 cubic foot per

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second shall be pro-rated among the following named parties in accordance with the allotments of water set after their respective names:

<u>Party</u>	<u>Allotment Cubic feet per Second</u>
E. B. Woodruff, executor of the estate of E. E. Woodruff	2.35
Harold J. Powers, administrator of the estate of F. J. Powers and Harold J. Powers	9.60
Eulalio Miura and Elmore Miura	3.00

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XIV

That during the period commencing on May 8th and terminating on May 20th of each and every year, whenever there is an excess of water over and above that necessary to supply all domestic allotments as hereinbefore decreed then such excess shall be apportioned as follows:

E. B. Woodruff, executor of the Estate of E.E. Woodruff, deceased, shall be entitled to divert 8/48 until the total amount of said available excess is equal to 12.60 cubic foot per second;

Robert W. Minto and Edyth Minto shall be entitled to divert 7/48 until the total amount of said available excess is equal to 12.60 and 14.40 cubic foot per second;

Eulalio Miura and Elmore Miura shall be entitled to divert 8/48 until the total amount of said available excess is equal to 12.60 cubic foot per second, 8/40 of said excess available between 12.60 and 14.40 cubic foot per second, and 8/33 of said excess available between 14.40 and 15.80 cubic foot per second;

Harold J. Powers, administrator of the estate of F. J. Powers, deceased, and Harold J. Powers shall be entitled to divert 25/48 until the total amount of said available excess is equal to

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2 12.60 cubic foot per second, 25/40 of said excess available be-
3 tween 12.60 and 14.40 cubic foot per second, 25/33 of said excess
4 available between 14.40 cubic foot and 15.80 cubic foot per second,
5 and all of said excess available between 15.80 and 16.55 cubic
6 foot per second;

7 and all of said excess over and above 16.55 cubic foot
8 per second shall be pro-rated among the following named parties
9 in accordance with the allotments of water set after their res-
10 pective names:

<u>Party</u>	<u>Allotment Cubic foot per Second</u>
E. B. Woodruff, as ex. of the estate of E. E. Woodruff, deceased	2.35
Harold J. Powers as adm. of the estate of F. J. Powers, deceased and Har- old J. Powers	9.60
Eulalio Miura and Elmore Miura	3.00
Robert W. Minto and Edyth Minto	2.35

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17.30

20 XV

21 That during the period commencing on May 20th and
22 terminating not later than September 1st or as long as the al-
23 lotments herein provided for Elmer M. McCulley and Lydia K. Mc-
24 Culley, his wife, and George Hudspeth and Mary P. Hudspeth, his
25 wife, are sufficient at any time during said period of May 20th
26 to September 1st to reach the point of distribution upon their
27 respective lands, George Hudspeth and Mary P. Hudspeth, his wife,
28 shall be entitled to divert 36/560 and Elmer M. McCulley and Lydia
29 K. McCulley, his wife, shall be entitled to divert 44/560 of the
30 total flow of said Rader Creek measured above all diversions ir-
31 respective of and notwithstanding all other allotments of water
32 herein provided; and that the remaining 6/7 of the flow of Rader

1 Creek in excess of that necessary to supply all domestic al-
2 lotments, as hereinbefore set forth, shall be apportioned among
3 E. B. Woodruff, as executor of the estate of E. E. Woodruff,
4 deceased, and Harold J. Powers, as administrator of the estate of
5 F. J. Powers, deceased, and Harold J. Powers, Eulalic Miura and
6 Elmore Miura, his wife, Robert W. Minto and Edyth Minto, his wife,
7 in the same manner as set forth in the preceding paragraph.
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XVI

That during the period between May 20th and September
1st of each year when the allotments provided in the preceding
paragraph for Elmer M. McCulley and Lydia K. McCulley, his wife,
and George Hudspeth and Mary P. Hudspeth, his wife, are insuf-
ficient to reach the point of distribution upon their respective
lands and when the total net available flow of said Rader Creek
is in excess of 1.80 cubic foot per second, the excess of water
over and above that necessary to supply all domestic allotments,
as hereinbefore provided, shall be apportioned $\frac{8}{48}$ to E. B.
Woodruff, as executor of the estate of E. E. Woodruff, deceased,
 $\frac{25}{48}$ to Harold J. Powers, as administrator of the estate of F. J.
Powers, deceased and Harold J. Powers, $\frac{8}{48}$ to Eulalic Miura and
Elmore Miura, his wife, and $\frac{7}{48}$ to Robert W. Minto and Edyth
Minto, his wife.

XVII

The "available water supply", as herein used, shall be
construed to designate the total amount of water available for
diversion above the Minto Weir as hereinbefore described in Par.
VIII, said "available water supply" at any given time to be
determined by combining the total of all quantities of water being
diverted from said creek above said weir under the rights herein
provided with the flow of said creek at said Weir at the time.

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XVIII

It is further adjudged and decreed that nothing herein contained shall, or shall be construed to, limit or restrict the right of any two or more parties hereto from entering into an agreement or agreements, whereby said parties may pool their respective lands at a greater rate than herein provided, provided that the total use of any such parties on their lands during any thirty day period shall not exceed the allotments herein provided, and provided further that such use shall not impair or infringe the right of any other party; and nothing herein contained shall, or shall be construed to, prevent any party hereto, who has allotments to two or more ditches, from using all or any portion of his allotments through each or any number of his ditches on all or any portion of his lands, so long as the maximum quantity of water diverted shall not exceed the aggregate of all allotments to all of his ditches.

XIX

It is further adjudged and decreed that the Division of Water Resources of the Department of Public Works of the State of California, as now or hereafter constituted, or its successor in the administration of the Water Commission Act, shall supervise diversions from Rader Creek, through the agency of a water master, whenever necessity for such water master service is found to exist by said Division, and that the costs and expenses of such water master service shall be borne by the parties hereto, said costs and expenses to be apportioned among said parties in accordance with the method of apportioning the costs of water distribution by water master provided in Section 37f of the Water Commission Act of The State of California; provided, however, that the court retains jurisdiction to entertain and pass upon an application by any of the interested parties to remove any appointed water master for

1
2 cause or to modify the foregoing paragraph.

3 XX

4 It is further ordered, adjudged and decreed that the
5 owners of each ditch through which water is diverted from
6 Rader Creek as herein provided shall install, under the super-
7 vision of an engineer appointed by the Division of Water Resources,
8 such permanent diversion works, headgates and measuring devices
9 in their respective ditches as shall be reasonably required and
10 approved by said Division; such installations to be made prior to
11 October 1, 1937, or such later date as may be ordered by the
12 above entitled court. The several ditch owners shall furnish all
13 necessary labor and materials for the construction and instal-
14 lation of said diversion works, headgates and measuring devices
15 in their respective ditches, and the cost of supervision herein
16 provided shall be borne by the parties hereto, in the ratios that
17 their respective maximum continuous flow allotments, as herein
18 provided bear to the total of such maximum continuous flow al-
19 lotments herein provided.

20 XXI

21 It is further ordered, adjudged and decreed that each
22 and every party to this action, his or her agents, successors,
23 grantees and assigns, be and they are hereby perpetually enjoined
24 and restrained from doing anything in violation of the terms or
25 provisions of this decree, or diverting any water from said Rader
26 Creek at any time in violation of the terms thereof, or from do-
27 ing anything, directly or indirectly, that will obstruct or inter-
28 fere with any other right in this decree adjudged and determined.

29 XXII

30 That the amount due from the parties hereto to said
31 Division of Water Resources for expenses incurred as referee shall
32 be borne by the parties hereto in accordance with the apportionment

of said expenses set forth in the following tabulation.

Party	Portion of Expense		
	Formerly Appportioned	Additional Expense	Total
Robert W. Minto and Elyth Minto	\$49.72	\$ 2.97	\$ 52.69
E. B. Woodruff, ex- ecutor of the Estate of E. E. Woodruff	\$ 49.72	\$ 2.97	\$ 52.69
Harold J. Powers, Administrator of the estate of F. J. Powers, and Harold J. Powers	\$203.09	\$12.15	\$215.24
Eulalic Miura and Elmore Miura	\$ 63.46	\$ 3.80	\$ 67.26
Elmer M. McCulley and Lydia K. McCulley	\$ 34.90	\$ 2.09	\$ 36.99
George Hudspeth and Mary P. Hudspeth	\$ 28.56	\$ 1.71	\$ 30.27
Lizzie N. Bonner	\$ 38.08	\$ 2.28	\$ 40.36
Gustave A. Haase and Estate of Paulina K. Haase	\$.85	\$.05	\$ 1.90
Lillian A. Murphey	\$ 1.70	\$.10	\$ 1.80
David H. Grove, Sr. and Luella Grove	\$ 1.70	\$.10	\$ 1.80
Totals	\$471.78	\$28.22	\$500.00

XXIII

It is ordered, adjudged and decreed that this court retains full jurisdiction to modify said decree under the provisions of Section 36g of the Water Commission Act.

XXIV

It is further ordered, adjudged and decreed that nothing in this decree contained shall, or shall be construed to prevent the owners of the Woodruff, Minto and Miura Ditches from diverting such additional amounts of water, over and above the domestic allotments to said ditches, as is necessary to maintain adequate flows of stockwater therein during times of severe freezing weather, which are ordinarily embraced in the period of November 15th of each year to February 15th of the succeeding year.

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2 It is further ordered, adjudged and decreed that not-
3 withstanding the above and foregoing provisions of this Judgment
4 to the contrary the first flow of Rader Creek of 0.20 cubic foot
5 per second allocated to defendants Eulalic Miura and Elmore Miura,
6 his wife, and the second flow of 0.10 cubic foot per second al-
7 located to plaintiffs Harold J. Powers, as administrator of the
8 estate of F. J. Powers, deceased, and Harold J. Powers shall be,
9 together with the domestic allotment of 0.30 cubic foot per second
10 of Robert W. Minto and Edyth Minto, his wife, diverted into and
11 run through the Minto Ditch as described in Schedule 2 hereof; and
12 an equal division device shall be constructed and maintained in
13 said Minto Ditch at or near the Minto Garden, one-half of said
14 flow at said device to be used by said Minto's and the remaining
15 half to flow from said device in a direct manner into the Powers-
16 Miura Ditch; and

17 That when the flow of Rader Creek allocated herein to
18 plaintiffs Harold J. Powers, as administrator of the estate of F.
19 J. Powers, deceased, and Harold J. Powers is insufficient in
20 quantity to reach plaintiff's premises for a continuous period of
21 24 hours, then plaintiffs shall cease to divert such allocation;
22 and

23 That in the event of an early season with early growing
24 weather and early melting of the snows in Rader Creek watershed,
25 Defendants Robert W. Minto and Edyth Minto, his wife, shall have
26 the right to divert their general irrigation allotment herein pro-
27 vided between May 1st and May 8th with the consent of Plaintiffs,
28 but in the event of their inability to obtain such consent, said
29 defendants shall have the right to arbitrarily divert their said
30 general irrigation allotment on and after May 4th of each year.

31 Done in Open Court this 4th day of June, 1937.

32
15/ F. M. Jamison
Judge of the Superior Court.

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3 THIS AGREEMENT made and entered into this 7th day of May,
4 1924, by and between F. J. Powers, Harold J. Powers, W. F. Cochrell
5 and Letha M. Cockrell, his wife, Robert W. Minto, George M. Hudspeth
6 and Mary P. Hudspeth, his wife, E. E. Woodruff and Nellie B.
7 Woodruff, his wife, Elmer M. McCulley and Lydia K. McCulley, his
8 wife, all residents of Surprise Valley, Modoc County, California;
9 and Lizzie N. Bonner:

10 W I T N E S S E T H:

11 That the said parties hereto are respectively the owners
12 of the lands and appurtenances hereinafter described to wit:

13 Said Elmer M. McCulley and Lydia K. McCulley, his wife,
14 are the owners of the following lands situate in the County of
15 Modoc, State of California, to wit:

16 Northeast quarter, Southeast quarter of Northwest
17 quarter, East half of Southwest quarter, Northwest
18 quarter of Southeast quarter of Section Eleven;
19 Northwest quarter, West half of Northeast quarter,
20 Northeast quarter of Southeast quarter; South
21 half of Southeast quarter of Northeast quarter of
22 Section Twelve, all in township Forty North, Range
23 sixteen East, M.D.M., containing 620 acres, more
24 or less.

25 Said F. J. Powers and Harold J. Powers are the owners of
26 the following described lands situate in the County of Modoc, State
27 of California, to wit:

28 Lots four and five Section seven; North half, North
29 Half of Southwest quarter, and Northwest quarter of
30 Southeast quarter of Section eighteen, township
31 forty North, Range 17 East, M.D.M., North half of
32 South half of Section thirteen Township forty North,
Range Sixteen East, M.D.M., North half of Northwest
quarter, Northwest quarter of Northeast quarter of
Section 30; Fractional East half of Northeast quarter
of Section 31, Township 39 North, Range 17 East,
M.D.M., Southwest quarter of Southeast quarter of
Section 19, Township 39 North, Range 17 East, M.D.M.,
and lot two, or Southwest quarter of Northwest quarter
of Section 17 East, Township 40 North, East, M.D.M.

1 Said E. E. Woodruff and Nellie B. Woodruff, his wife, are
2 the owners of the following described lands situate in the County
3 of Modoc, State of California, to wit:

4 Southwest quarter of the Southeast quarter of
5 Section 13, and the Northwest quarter of the
6 Northwest quarter, and the North half of the
7 Northwest quarter of Section 24, and the North-
8 west quarter of the Northeast quarter and the
9 East half of the Northwest quarter, and the
10 Southwest quarter of the Northwest quarter of
11 Section 23, Township 40 North, Range 16, East,
12 M.D.M. Also beginning at a point forty and one-
13 third rods south of the northeast corner of the
14 Northeast quarter of the Northeast quarter of
15 Section 23, Township 40 North, Range 16 East,
16 M.D.M., thence south 60 feet, thence west $247\frac{1}{2}$
feet, thence north 60 feet, thence east $247\frac{1}{2}$
feet, to the place of beginning. Also begin-
ning at a point 33 feet north of the Southeast
corner of the Northeast quarter of the northeast
quarter of said Section 23, thence north thirty
and two-thirds rods, west twenty-five and one-
third rods, South twelve and two-thirds rods,
East twelve and two-thirds rods, south eighteen
rods, east twelve and two-thirds rods, to place
of beginning, all in Section 23, Township 40,
North Range 16 East, M.D.M.

17 Said Robert W. Minto is the owner of the following des-
18 cribed lands situate in the County of Modoc, State of California
19 to wit:

20 South half of the southwest quarter of Section 13,
21 township 40 North, Range sixteen East M.D.M., and
22 the southeast quarter of the southeast quarter of
23 Section 14, and the Northeast quarter of the North-
east quarter of Section 23, all in Township 40
North, Range 16 East, M.D.M.

24 Said W. F. Cockrell and wife are the owners of the fol-
25 lowing described lands situate in the County of Modoc, State of
26 California, to wit:

27 The West half of the Northeast quarter, and the
28 Northwest quarter of Section 13, and all that
29 portion of the East Half of the Northeast quarter
30 of Section 14, lying East of the County roads run-
31 ning between the Town of Eagleville, and Cedarville,
32 all in township 40 North, Range 16 East, M.D.M.

33 Said George M. Hudspeth and Mary P. Hudspeth, his wife,
34 are the owners of the following described lands situate in the County

1 of Modoc, State of California, to wit:

2 The Southwest quarter of the Southeast quarter,
3 and the East half of the Southeast quarter of
4 Section 11, and the Southwest quarter of Section
5 12, all in Township 40 North, Range 16 East,
6 M.D.M.

7 That there is in said County and State a certain natural
8 stream of water known as and called Rader Creek, which said creek
9 raises on the Eastern slope of the Warner Range of Mountains in
10 said County and State, and west of the said lands of the parties
11 hereto and flows thence in a general easterly direction in a well
12 defined channel between well defined banks over and across some of
13 the said lands of some of said parties and near the other lands
14 above described, and likewise flows over the lands of Lizzie N.
15 Bonner hereinafter described, and has so flown since the memory of
16 man.

17 That Lizzie N. Bonner is the owner of the following des-
18 cribed lands, situated in the County of Modoc, State of California,
19 to wit:

20 East half of Northwest Quarter, Northeast Quarter
21 of Southwest Quarter, West Half of Southeast
22 Quarter, Northeast Quarter of Southeast Quarter,
23 West Half of Northeast Quarter, and all that por-
24 tion of the East Half of the Northeast Quarter
25 lying West of the Eagleville-Cedarville County
26 Road; all in Section 14, Township Forty, North
27 Range 16 East M.D.M.

28 That all of the parties hereto have and claim some rights
29 to the waters of said stream, and all of said parties hereto col-
30 lectively claim the right to the use and ownership of all of the
31 waters that ever flow in said stream.

32 That at various times said parties have had misunder-
standings as to the exact and relative rights of the parties hereto
in and to the waters of said stream and it is the mutual desire of
each and all of the parties hereto, to settle and adjust their
several rights in and to said waters, and it is with that object
in mind that this agreement is made and entered into, and for the

1 purpose of so settling and adjusting the respective and relative
2 rights of the parties hereto in and to the waters of said stream,
3 and with the hope and intention of accomplishing the most good with
4 said water, it is mutually understood and agreed by and between
5 each and all of the parties hereto that from this time on the said
6 parties hereto shall own, divide, divert, and use the waters of
7 said stream, and the whole thereof, as follows:

8 It is understood and agreed that up to the 20th day of
9 May, of each year, said Lizzie N. Bonner shall not divert any
10 water from said stream, except sufficient for her said orchard and
11 garden, not exceeding fifteen inches measured under a four inch
12 pressure, during said period. Such water to be used only as needed,
13 upon the said orchard and garden.

14 And commencing with the 20th day of May of each year, and
15 running up to the first day of July of each year, said Lizzie N.
16 Bonner shall have the right during all of said last mentioned per-
17 iod, to divert and use not exceeding twenty-five inches of water
18 measured under a four inch pressure on her said lands.

19 It is further understood and agreed, that when the ir-
20 rigating season has advanced to the early part of July, that the
21 flow of waters in said stream diminishes to such an extent that
22 there is not sufficient water for the uses and needs of all the
23 parties hereto; and it is, therefore, understood and agreed that
24 when the irrigating season has advanced to that time, the water
25 flowing in said stream at a point hereinafter designated as the
26 point for calculating the amount of water flowing in said stream,
27 does not exceed sixty inches measured under a four inch pressure,
28 then and at such time all of the parties hereto except the said four
29 garden and orchard owners, agree not to divert or use any water from
30 said stream during such period of time as the flow of water in said
31 stream does not exceed sixty inches measured under a four inch
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1 pressure, then and at such time all of the parties hereto except
2 the said four garden and orchard owners, agree not to divert or
3 use any water from said stream during such period of time as the
4 flow of water in said stream does not exceed sixty inches measured
5 under a four inch pressure; and it is agreed by all the parties
6 hereto that during said time said E. E. Woodruff and wife, Robert
7 W. Minto and wife, W. F. Cockrell and wife, and Lizzie Bonner shall
8 have the right to divert and use all of the waters flowing in said
9 stream during such time as the flow does not exceed the sixty
10 inches measured under a four inch pressure; and they shall divide,
11 divert and use said water during said time as the flow does not
12 exceed sixty inches measured under a four inch pressure, as fol-
13 lows:

14 E. E. Woodruff and wife shall divert and use twenty-
15 five inches measured under a four inch pressure;

16 Robert W. Minto and wife shall divert and use fifteen
17 inches measured under a four inch pressure;

18 And W. F. Cockrell and wife and Lizzie N. Bonner shall
19 jointly divert and use twenty inches of water measured under a
20 four inch pressure, the same to be diverted and used by them
21 jointly through the ditch commonly known as the "Gloster Ditch",
22 and they shall in their use thereof, if they find it necessary,
23 rotate by one taking all of said twenty inches for a little time,
24 and the other having all of said twenty inches for a like time, and
25 so on, through the rest of the season;

26 And whenever the flow of the water in said stream during
27 said period is less than sixty inches measured under a four inch
28 pressure, then and at such times said parties so entitled under the
29 terms of this Agreement to share in said sixty inches of water,
30 shall divide the quantity less than sixty inches in the same pro-
31 portion and according to the same ratio, to the end that they each
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1 take a corresponding reduction in the amounts respectively allotted
2 to them.

3 It is further provided and agreed, that after the first
4 day of July, and until such time as the waters of said stream have
5 diminished so that there is no more than sixty inches measured
6 under a four inch pressure flowing therein, said Lizzio N. Bonner
7 shall have the right to take on to her said orchard and garden a
8 sufficient quantity of water for the same, not to exceed, however,
9 ten inches measured under a four inch pressure.

10 That subject to the foregoing rights and conditions and
11 the exceptions and conditions hereinafter set forth, the parties
12 hereto shall own, divide, divert, and use all the remainder of the
13 waters of said stream at all times as follows:

14 F. J. Powers and Harold J. Powers twenty-five fifty-
15 eighths of all water that may at any time flow in said stream;

16 W. F. Cockroll and Letha M. Cockrell, his wife, eight
17 fifty-eighths of all water that may at any time flow in said stream;

18 Robert W. Minto and wife, seven fifty-eighths of all
19 water that may at any time flow in said stream, subject to the
20 exception hereinafter specified;

21 George M. Hudspeth and Mary P. Hudspeth, his wife, four
22 and one-half fifty-eighths of all water that may at any time flow
23 in said stream, subject to the exception hereinafter specified.

24 E. E. Woodruff and Nellie B. Woodruff, his wife, eight
25 fifty-eighths of all water that may at any time flow in said stream;

26 Elmer M. McCulley and Lydia K. McCulley, his wife, five
27 and one-half fifty-eighths of all water that may at any time flow
28 in said stream subject to the exception hereinafter specified.

29 The foregoing division is based upon and subject to the
30 following exceptions and conditions:

31 It is understood and agreed that said George M. Hudspeth
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1 and wife and Elmer M. McCulley, and wife, jointly use one ditch in
2 carrying their portion of the waters of said Creek to their said
3 lands, and in the early spring they each receive some water from
4 another source; therefore, it is agreed by them on the one hand and
5 the other parties hereto on the other hand, that said George M.
6 Hudspeth and wife and Elmer M. McCulley and wife, shall not have
7 the right to, and they agree not to divert or use any water from
8 said stream before the twentieth day of May of each year, but the
9 fractional parts or percentages of the waters of said stream al-
10 lotted to them by this agreement shall apply during the irrigation
11 season of each year, starting with the twentieth day of May, and
12 not before.

13 It is further understood and agreed, by and between said
14 Robert W. Minto and wife on the one hand, and the other parties
15 hereto on the other hand, that said Robert W. Minto and wife shall
16 not, and they agree not to divert or use any water for general
17 irrigation purposes prior to the eighth day of May of each year,
18 provided, however, that they shall have the right at all times
19 prior to the said eighth day of May of each year, to divert and use
20 a sufficient amount of the waters of said stream for the irrigation
21 of their orchard and garden on their said lands, and for stock and
22 domestic water, not exceeding, however, twenty inches measured under
23 a four inch pressure, and likewise not exceeding their seven-fifty-
24 eighths of the total flow of the waters of said stream during such
25 period up to the eighth day of May of each year, only such quantity
26 of water as may reasonably be required for said garden, orchard,
27 stock and domestic purposes, subject to the foregoing limitations.

28 It is further understood and agreed that at all times
29 when said George M. Hudspeth and wife and Elmer M. McCulley and wife,
30 and said Robert W. Minto and wife, are not taking the full propor-
31 tion of water allotted to them, or whenever any of them are not
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1 taking their full allotment, that is, when said George M. Huds-
2 peth and wife are not taking four and one-half fifty-eighths of the
3 waters of said stream, or when said Robert W. Minto and wife are not
4 taking seven fifty-eighths of the waters of said stream, in the
5 early part of the irrigation season, as hereinbefore provided, that
6 at all such times the other parties to this agreement, who at such
7 time or times have the right under this agreement to exercise their
8 full right under this agreement, shall share proportionately, ac-
9 cording to their allotted rights, and as such allotted rights bear
10 to each other, in the waters flowing in said stream, subject to
11 the exceptions in this agreement specified; it being understood that
12 the parties hereto who are by this agreement agreeing not to take
13 water during given periods, are doing so in order that the re-
14 maining parties to this agreement may during such period or per-
15 iods make use of such water.

16 It is further understood and agreed by and between all
17 of the parties hereto that the point where said George M. Huds-
18 peth and wife and Elmer M. McCulley and wife, divert the water from
19 said stream, used by them, is located upon the stream a distance of
20 nearly three quarters of a mile above where the other parties hereto
21 divert water from said stream, and from the point of diversion of
22 said George M. Hudspeth and wife and Elmer M. McCulley and wife, to
23 the point of diversion of the other parties hereto, the said stream
24 runs through a very porous and gravelly country, and by virtue
25 thereof there is a very perceptible loss in the quantity of water in
26 said stream, the exact loss or percentage of loss being unknown to
27 the parties hereto, but said parties are reasonably certain that such
28 loss amounts to as much as twenty per cent, and said parties realize
29 that it is fair and equitable that such loss should fall on all
30 alike, and therefore, it is understood and agreed that for the pur-
31 pose of determining the amount of water to which said George M.
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1 Hudspeth and wife and Elmer M. McCulley and wife are entitled to
2 divert from said stream through their said ditch, which ditch is
3 used jointly by them; that a measuring device that is substantial
4 and reasonably accurate shall be installed in the channel of said
5 stream at or near their said point of diversion, by which the
6 total flow of said stream can at all times be easily ascertained
7 and determined by any of the parties hereto; and they shall like-
8 wise install a similar measuring device in the head of their ditch
9 from which the quantity of water being diverted into said ditch
10 can at all times be easily ascertained and determined by any of the
11 parties hereto, and of the quantity of water flowing in said stream
12 at the point of diversion of said Hudspeth and McCulley ditch,
13 twenty per cent thereof shall be allowed and deducted for seepage.
14 And the portions hereinbefore allotted to them shall be calculated
15 on the basis of eighty per cent of the aggregate flow at said
16 point.

17 It is further understood and agreed between all of the
18 parties hereto that for the purpose of satisfactory and harmoniously
19 carrying out the terms of this agreement, it is necessary that sub-
20 stantial measuring devices should be put in all of the diversions
21 of the parties; and, therefore, it is agreed, that such measuring
22 devices shall be put at the head of the various ditches of the
23 various parties, which said devices shall be of such character as
24 to enable the parties hereto to easily determine the quantity of
25 water being diverted by them; and such a device shall also be
26 constructed in the main channel of said Creek at a point near the
27 diversions of Cockrell, Powers, Woodruff, and Minto, which device
28 will be so constructed as to enable the parties hereto to determine
29 the quantity of water flowing in the said Creek at said point.

30 And it is further understood and agreed that all of said
31 measuring devices mentioned in this agreement shall be jointly
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1 constructed by all the parties hereto, and shall be paid for by
2 them jointly per capita.

3 It is further understood and agreed, that in the event
4 that at any time in the future any person or persons shall succes-
5 sfully lay claim to any of the waters of said Creek, as an in-
6 dependent right, and not as a successor to any of the parties
7 hereto, that any water which any such outside party should succeed
8 in securing shall be deducted from the total flow of said Creek;
9 and this contract shall operate in its entirety as to the remainder
10 of the water flowing in said Creek.

11 It is further understood and agreed between the parties
12 hereto, that this is intended as a full and complete settlement and
13 adjustment of all existing rights of said parties in and to the
14 waters of said stream; and it is the agreement of the parties that
15 a Court Decree be entered in accordance herewith, defining the
16 rights of the parties hereto in accordance with these provisions,
17 and with a mutual injunction therein; and that the proceedings now
18 pending before the Division of Water Rights of the Board of Public
19 Works of the State of California, wherein Lizzie N. Bonner as As-
20 signee and successor in interest of Daniel A. Gloster and Wife, to
21 appropriate waters from said stream is to be withdrawn by the said
22 Lizzie N, Bonner, and that the action now pending in the Superior
23 Court of the State of California, in and for the County of Modoc,
24 wherein F. J. Powers, E. E. Woodruff, and others, are Plaintiffs,
25 and Daniel A. Gloster and wife are Defendants, shall be settled by
26 this Agreement, and that a Judgment may be entered in said action
27 in accordance with the provisions herein. Each party to pay their
28 own costs in said suit and in said proceedings before the Division
29 of Water Rights.

30 It is understood and agreed, that this contract shall inure
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1 to the benefit of, and shall be binding upon the heirs, adminis-
2 trators, executors, successors, and assigns of each and all the
3 parties hereto.

4 IN WITNESS WHEREOF, the parties hereto have executed these
5 presents, the day and year first above written.

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SCHEDULE 1

DESCRIPTION OF LANDS IRRIGATED FROM RADER CREEK

Lizzie N. Bonner

0.5 acre in SE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 14, T. 40 N., R. 16 E., M.D.B. & M.
15.4 acres in SW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 14, T. 40 N., R. 16 E., M.D.B. & M.
14.2 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 14, T. 40 N., R. 16 E., M.D.B. & M.
34.2 acres in NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 14, T. 40 N., R. 16 E., M.D.B. & M.
36.7 acres in NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 14, T. 40 N., R. 16 E., M.D.B. & M.
6.5 acres in NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 14, T. 40 N., R. 16 E., M.D.B. & M.
107.5 acres - Total

David H. Grove, Sr. and Luella Grove

2.9 acres in NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 23, T. 40 N., R. 16 E., M.D.B. & M.
2.9 acres - Total

Gustave Haase, and Walter S. Rountree executor
of the Estate of Paulina K. Haase

0.6 acre in SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 14, T. 40 N., R. 16 E., M.D.B. & M.
0.6 acre - Total

George Hudspeth and Mary P. Hudspeth

*1.3 acres in SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 11, T. 40 N., R. 16 E., M.D.B. & M.
0.3 acre in NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 11, T. 40 N., R. 16 E., M.D.B. & M.
31.1 acres in NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 12, T. 40 N., R. 16 E., M.D.B. & M.
31.4 acres in NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 12, T. 40 N., R. 16 E., M.D.B. & M.
40.0 acres in SE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 12, T. 40 N., R. 16 E., M.D.B. & M.
39.9 acres in SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 12, T. 40 N., R. 16 E., M.D.B. & M.
11.6 acres in SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 11, T. 40 N., R. 16 E., M.D.B. & M.
* 9.7 acres in NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 11, T. 40 N., R. 16 E., M.D.B. & M.
* 3.4 acres in NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 12, T. 40 N., R. 16 E., M.D.B. & M.
168.6 - Total

Elmer M. McCulley and Lydia K. McCulley

5.3 acres in NW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 11, T. 40 N., R. 16 E., M.D.B. & M.
40.0 acres in NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 11, T. 40 N., R. 16 E., M.D.B. & M.
26.3 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 11, T. 40 N., R. 16 E., M.D.B. & M.
3.8 acres in SW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 11, T. 40 N., R. 16 E., M.D.B. & M.
40.0 acres in NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 12, T. 40 N., R. 16 E., M.D.B. & M.
40.0 acres in NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 12, T. 40 N., R. 16 E., M.D.B. & M.
29.3 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 12, T. 40 N., R. 16 E., M.D.B. & M.
40.0 acres in SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 12, T. 40 N., R. 16 E., M.D.B. & M.
*6.2 acres in SW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 11, T. 40 N., R. 16 E., M.D.B. & M.
* 30.6 acres in NW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 11, T. 40 N., R. 16 E., M.D.B. & M.
* 12.4 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 11, T. 40 N., R. 16 E., M.D.B. & M.
* 33.6 acres in SW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 12, T. 40 N., R. 16 E., M.D.B. & M.
* 37.7 acres in NW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 12, T. 40 N., R. 16 E., M.D.B. & M.
* 18.2 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 12, T. 40 N., R. 16 E., M.D.B. & M.
* 0.2 acre in NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 12, T. 40 N., R. 16 E., M.D.B. & M.
363.6 acres - Total

* Irrigated from drainage

Robert W. Minto and Edyth Minto

37.9 acres in SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 13, T. 40 N., R. 16 E., M.D.B. & M.
38.3 acres in SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 13, T. 40 N., R. 16 E., M.D.B. & M.
37.0 acres in SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 14, T. 40 N., R. 16 E., M.D.B. & M.
26.2 acres in NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 23, T. 40 N., R. 16 E., M.D.B. & M.
139.4 acres - Total

SCHEDULE I (CONTINUED)

DESCRIPTION OF LANDS IRRIGATED FROM RADER CREEK

Eulalio Miura and Elmore Miura

0.3 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$	Section 14, T. 40 N., R. 16 E., M.D.B. & M.
12.9 acres in NE $\frac{1}{4}$ NE $\frac{1}{4}$	Section 14, T. 40 N., R. 16 E., M.D.B. & M.
4.0 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$	Section 14, T. 40 N., R. 16 E., M.D.B. & M.
18.0 acres in SW $\frac{1}{4}$ NW $\frac{1}{4}$	Section 14, T. 40 N., R. 16 E., M.D.B. & M.
9.4 acres in NW $\frac{1}{4}$ NW $\frac{1}{4}$	Section 14, T. 40 N., R. 16 E., M.D.B. & M.
40.0 acres in NE $\frac{1}{4}$ NW $\frac{1}{4}$	Section 13, T. 40 N., R. 16 E., M.D.B. & M.
39.4 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$	Section 13, T. 40 N., R. 16 E., M.D.B. & M.
39.4 acres in SW $\frac{1}{4}$ NE $\frac{1}{4}$	Section 13, T. 40 N., R. 16 E., M.D.B. & M.
20.4 acres in NW $\frac{1}{4}$ NE $\frac{1}{4}$	Section 13, T. 40 N., R. 16 E., M.D.B. & M.
0.4 acres in NW $\frac{1}{4}$ NE $\frac{1}{4}$	Section 14, T. 40 N., R. 16 E., M.D.B. & M.
30.6 acres in NW $\frac{1}{4}$ NW $\frac{1}{4}$	Section 13, T. 40 N., R. 16 E., M.D.B. & M.
15.9 acres in SW $\frac{1}{4}$ NW $\frac{1}{4}$	Section 13, T. 40 N., R. 16 E., M.D.B. & M.
<u>250.3</u>	- Total

Lillian A. Murphey

0.8 acre in SE $\frac{1}{4}$ SE $\frac{1}{4}$	Section 14, T. 40 N., R. 16 E., M.D.B. & M.
2.1 acres in NE $\frac{1}{4}$ NE $\frac{1}{4}$	Section 23, T. 40 N., R. 16 E., M.D.B. & M.
<u>2.9</u>	acres - Total

F. J. Powers and Harold J. Powers

12.5 acres in Lot 4 of Section 7,	T. 40 N., R. 17 E., M.D.B. & M.
27.5 acres in Lot 4, Section 7,	T. 40 N., R. 17 E., M.D.B. & M.
39.2 acres in SE $\frac{1}{4}$ SW $\frac{1}{4}$	Section 7, T. 40 N., R. 17 E., M.D.B. & M.
25.2 acres in SW $\frac{1}{4}$ SE $\frac{1}{4}$	Section 7, T. 40 N., R. 17 E., M.D.B. & M.
3.9 acres in SE $\frac{1}{4}$ SE $\frac{1}{4}$	Section 7, T. 40 N., R. 17 E., M.D.B. & M.
23.9 acres in NE $\frac{1}{4}$ NE $\frac{1}{4}$	Section 18, T. 40 N., R. 17 E., M.D.B. & M.
40.0 acres in NW $\frac{1}{4}$ NE $\frac{1}{4}$	Section 18, T. 40 N., R. 17 E., M.D.B. & M.
40.0 acres in NE $\frac{1}{4}$ NW $\frac{1}{4}$	Section 18, T. 40 N., R. 17 E., M.D.B. & M.
40.2 acres in Lot 1, Section 18,	T. 40 N., R. 17 E., M.D.B. & M.
40.6 acres in Lot 2, Section 18,	T. 40 N., R. 17 E., M.D.B. & M.
40.0 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$	Section 18, T. 40 N., R. 17 E., M.D.B. & M.
40.0 acres in SW $\frac{1}{4}$ NE $\frac{1}{4}$	Section 18, T. 40 N., R. 17 E., M.D.B. & M.
31.8 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$	Section 18, T. 40 N., R. 17 E., M.D.B. & M.
40.0 acres in NW $\frac{1}{4}$ SE $\frac{1}{4}$	Section 18, T. 40 N., R. 17 E., M.D.B. & M.
40.0 acres in NE $\frac{1}{4}$ SW $\frac{1}{4}$	Section 18, T. 40 N., R. 17 E., M.D.B. & M.
37.8 acres in Lot 3, Section 18,	T. 40 N., R. 17 E., M.D.B. & M.
32.7 acres in NE $\frac{1}{4}$ SE $\frac{1}{4}$	Section 13, T. 40 N., R. 16 E., M.D.B. & M.
37.0 acres in NW $\frac{1}{4}$ SE $\frac{1}{4}$	Section 13, T. 40 N., R. 16 E., M.D.B. & M.
39.4 acres in NE $\frac{1}{4}$ SW $\frac{1}{4}$	Section 13, T. 40 N., R. 16 E., M.D.B. & M.
39.0 acres in NW $\frac{1}{4}$ SW $\frac{1}{4}$	Section 13, T. 40 N., R. 16 E., M.D.B. & M.
<u>675.7</u>	acres - Total

E. B. Woodruff

40.0 acres in SW $\frac{1}{4}$ SE $\frac{1}{4}$	Section 13, T. 40 N., R. 16 E., M.D.B. & M.
40.0 acres in NW $\frac{1}{4}$ NE $\frac{1}{4}$	Section 24, T. 40 N., R. 16 E., M.D.B. & M.
38.2 acres in NE $\frac{1}{4}$ NW $\frac{1}{4}$	Section 24, T. 40 N., R. 16 E., M.D.B. & M.
35.3 acres in NW $\frac{1}{4}$ NW $\frac{1}{4}$	Section 24, T. 40 N., R. 16 E., M.D.B. & M.
<u>153.5</u>	acres - Total

SCHEDULE 2

DESCRIPTION OF POINTS OF DIVERSION OF DITCHES
DIVERTING FROM RADER CREEK

CHRISTIE SPRINGS - F. J. Powers and Harold J. Powers

At a point (designated on Division of Water Resources Map as Diversion 23) which bears approximately N 64° 30' E, approximately 3150 feet distant from the southwest corner of Section 13, T 40 N, R 16 E, M.D.B. & M. being within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 13.

GLOSTER DITCH - Lizzie N. Bonner

At a point (designated on Division of Water Resources Map as Diversion 2) which bears approximately N 73° 30' W, approximately 800 feet distant from the southeast corner of Section 15, T 40 N, R 16 E, M.D.B. & M., being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 15.

GROVE DITCH - David H. Grove, Sr., and Luella Grove

At a point (designated on Division of Water Resources Map as Diversion 7) which bears approximately S 46° 30' W, approximately 890 feet distant from the northeast corner of Section 23, T 40 N, R 16 E, M.D.B. & M., being within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 23.

MCCULLY-HUDSPETH DITCH - Elmer M. McCulley and Lydia K. McCulley
George Hudspeth and Mary P. Hudspeth

At a point (designated on Division of Water Resources Map as Diversion 1) which bears approximately N 72° 0' W, approximately 810 feet distant from the southeast corner of Section 15, T 40 N, R 16 E, M.D.B. & M., being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 15.

MINTO DITCH - Robert W. Minto and Edyth Minto
Lillian A. Murphey and Gustavo A. Haaso

At a point (designated on Division of Water Resources Map as Diversion 3) which bears approximately S 59° 30' E, approximately 1700 feet distant from the northwest corner of Section 23, T 40 N, R 16 E, M.D.B. & M., being within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 23.

MURPHEY DITCH - Lillian A. Murphey, David H. Grove, Sr. and Luella Grove

At a point (designated on Division of Water Resources Map as Diversion 6) which bears approximately S 49° 0' W, approximately 900 feet distant from the northeast corner of Section 23, T 40 N, R 16 E, M.D.B. & M., being within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 23.

POWERS-MIURA DITCH - F. J. Powers and Harold J. Powers,
Eulalic Miura and Elmore Miura

At a point (designated on Division of Water Resources Map as Diversion 4) which bears approximately S 59° 30' E, approximately 1720 feet distant from the northwest corner of Section 23, T 40 N, R 16 E, M.D.B. & M., being within the E $\frac{1}{2}$ NW $\frac{1}{4}$ of said Section 23.

SCHEDULE 2 (CONTINUED)

DESCRIPTION OF POINTS OF DIVERSION OF DITCHES
DIVERTING FROM BADER CREEK

POWERS GARDEN DITCH - F. J. Powers and Harold J. Powers

At a point (designated on Division of Water Resources Map as Diversion 8) which bears approximately N 22° 0' W, approximately 1580 feet distant from the southeast corner of Section 13, T 40 N, R 16 E, M.D.B. & M., being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 13.

POWERS SOUTH DITCH - J. J. Powers and Harold J. Powers

At a point (designated on Division of Water Resources Map as Diversion 9) which bears approximately N 5° 30' W, approximately 1400 feet distant from the southeast corner of Section 13, T 40 N, R 16 E, M.D.B. & M., being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 13.

POWERS NORTH DITCH - F. J. Powers and Harold J. Powers

At a point (designated on Division of Water Resources Map as Diversion 10) which bears approximately due north, approximately 2230 feet distant from the southwest corner of Section 18, T 40 N, R 17 E, M.D.B. & M., being within Lot 3 of said Section 18.

POWERS LOWER DITCHES - F. J. Powers and Harold J. Powers

At points (designated on Division of Water Resources Map as Diversions 11 to 22, inclusive) between a point which bears approximately S 13° 0' E, approximately 2765 feet distant from the northwest corner of Section 18, being within Lot 3 of said Section 18, and a point which bears approximately S 79° 30' E, approximately 3680 feet distant from the northwest corner of Section 18, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 18, all in T 40 N, R 17 E, M.D.B. & M.

WOODRUFF DITCH - E. E. Woodruff

At a point (designated on Division of Water Resources Map as Diversion 5) which bears approximately S 60° 30' E, approximately 1850 feet distant from the northwest corner of Section 23, T 40 N, R 16 E, M.D.B. & M., being within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 23.