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JUDGMENTS
VOL. 34
PAGE 256

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DEPUTY

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

A. J. SYLVA,)
) NO. 2 4 4 8 2
Plaintiff,)
)
v.)
) J U D G M E N T
WILLIAM J. GUARDIA, MARY SYLVIA)
GUARDIA, CYRIL COOK, JUNE COOK)
DEPARTMENT OF VETERANS AFFAIRS)
OF THE STATE OF CALIFORNIA,)
STATE OF CALIFORNIA, DOES I)
through V, inclusive,)
)
Defendants.)

This cause came on regularly for trial on September 1, 1971, in the above entitled Court, with the Honorable Frank S. Petersen, Judge, presiding, and sitting without a jury, a jury having been duly waived. Plaintiff appeared by his counsel Messrs. Correia & Bacon, represented by J. P. Correia, and the defendants, William J. Guardia and Mary Sylvia Guardia, by their counsel Messrs. Kronick, Moskovitz, Tiedemann & Girard, represented by Edward J. Tiedemann; defendant Department of Veterans Affairs of the State of California did not appear, it having been stipulated that any judgment entered herein with respect to defendants

1 William J. Guardia and Mary Sylvia Guardia shall be binding on the
2 Department of Veterans Affairs of the State of California; and a
3 dismissal without prejudice was entered as to defendants Cyril Cook
4 and June Cook. Evidence both oral and documentary having been
5 presented by the respective parties, a view of the premises
6 having been had by the Court, and the cause having been argued,
7 briefed and submitted for a decision and the Court having made and
8 caused to be filed its written Findings of Fact and Conclusions
9 of Law,

10 IT IS ORDERED, ADJUDGED AND DECREED as follows:

11 1. Plaintiff now is and he and his predecessors have
12 been for more than twenty years immediately preceding the commence-
13 ment of this action, the owner of and in possession of the follow-
14 ing described property in the County of Siskiyou, State of Cali-
15 fornia; which is hereinafter referred to as "the Sylva Ranch":

16 Section 33, the Northeast quarter and the East
17 half of the Northwest quarter of Section 32
18 and the North half of the Southeast quarter of
19 Section 32, Township 46 North, Range 4 West,
M.D.M., together with all water rights, ditches
and canals appertaining or belonging thereto.

20 2. Defendants Department of Veterans Affairs of the
21 State of California, William J. Guardia and Mary Sylvia Guardia
22 are the owners, subject to the easements and rights of way herein-
23 after described, of the following described property in the County
24 of Siskiyou, State of California which is hereinafter referred to
25 as "the Guardia Ranch":

26 The West half of Section 21; the Northwest quarter
27 of the Northeast quarter, the South half of the
28 Northeast quarter, the Northwest quarter, and the
South half of Section 27; and all of Section 28,
all in Township 46 North, Range 4 West, M.D.M.

1 3. Willow Creek is and has been from time immemorial a
2 natural stream and water course flowing generally in a south-
3 easterly direction through the lands hereinabove described.

4 4. That certain written agreement dated June 30, 1955,
5 between R. W. Thomason and Pearl O. Thomason, his wife, A. J.
6 Sylva and Mary J. Sylva, his wife, and B. H. Hager and M. M. Hager
7 his wife, recorded December 20, 1955, at page 88 of Volume 361
8 of the official records of Siskiyou County is a valid, existing
9 agreement binding upon the plaintiff and upon defendants, Depart-
10 ment of Veterans Affairs, William J. Guardia and Mary Sylvia
11 Guardia, as successors in interest to R. W. Thomason and Pearl
12 O. Thomason, and as between plaintiff and said defendants their
13 rights to the waters of Willow Creek are as set forth in that
14 agreement.

15 5. The judgment entered in this Court on September 26,
16 1918 in Action No. 4218 entitled A. J. Sylva, plaintiff, and
17 Nora Combs, et al., defendants, has been superseded by the 1955
18 agreement insofar as it affects the rights to the waters of Willow
19 Creek appurtenant to the property of plaintiff and defendants
20 described in Paragraphs 1 and 2 above.

21 6. Plaintiff is the owner of a prescriptive easement
22 to use that certain ditch known as the "Thomason Ditch" which runs
23 through the Guardia ranch and is more particularly described as:

24 A certain ditch having its headworks or place of
25 diversion in the Southeast quarter of the Northeast
26 quarter of Section 28, Township 46 North, Range 4
27 West, M.D.M., commonly known as the head of the
28 Thomason Ditch, and running thence Northwesterly
approximately 553 feet to a point on or about the
centerline of the Northeast quarter of Section 28,

1 Township 46 North, Range 4 West, M.D.M.; thence
2 Southwesterly through the Northeast quarter of said
3 Section 28 through and across the Northwest quarter
4 of the Southeast quarter of said Section 28; thence
5 through and across the Southwest quarter of said
6 Section 28.

7 This easement is for the purpose of conveying waters which
8 plaintiff is entitled to from Willow Creek to the Sylva Ranch and
9 includes the right of plaintiff to maintain said ditch for said
10 purpose to the extent that such maintenance can be done in a
11 reasonable manner so as not to increase injuriously the burden
12 upon the servient tenement.

13 7. The plaintiff is the owner of a prescriptive ease-
14 ment to use that certain road that commences at a point at approx-
15 imately the Southeast corner of Section 29, Township 46 North,
16 Range 4 West, M.D.M., and the Southwest corner of Section 28 in
17 said Township and Range and runs thence generally along the line
18 between said sections to a point at or near the Southeast corner
19 of the Northeast quarter of the Southeast quarter of said Section
20 29 and the Southwest corner of the Northwest quarter of the
21 Southwest quarter of said Section 28 thence across the South half
22 of the North half of said Southwest quarter of the said Section 28
23 and the Northwest quarter of the Southeast quarter of said Section
24 28 in a Northeasterly direction to and into the South half of the
25 Northeast quarter of said Section 28. This easement is for the
26 purpose of ingress and egress to the points on Willow Creek from
27 which plaintiff and defendants divert water to police such div-
28 ersions and for ingress and egress to the Thomason Ditch for the
purpose of doing maintenance thereon. This easement must be
exercised in a reasonable manner so as not to increase injuriously

1 the burden upon the servient tenement.

2 8. Defendants Department of Veterans Affairs of the
3 State of California, William J. Guardia and Mary Sylvia Guardia
4 are the owners of a prescriptive right to divert water from the
5 Thomason Ditch through two pipes of approximately 1-1/2 inches
6 diameter during such times as the plaintiff is using the Thomason
7 Ditch to convey water to the Sylva Ranch for the purpose of
8 watering the yard adjacent to the present farm house on the
9 Guardia ranch and for the purpose of watering livestock in the
10 corral and area adjacent to said house.

11 9. Defendants Department of Veterans Affairs of the
12 State of California, and William J. Guardia and Mary Sylvia Guardia
13 may divert water to which they are entitled from Willow Creek at
14 their present point of diversion in the Southwest quarter of the
15 Northwest quarter, Section 27, Township 46 North, Range 4 West,
16 M.D.M., approximately 1320 feet easterly of the head of the
17 Thomason Ditch, and from other places than at the head of the
18 Thomason Ditch, as well as through said ditch.

19 10. Whenever the waters of Willow Creek get sufficiently
20 low that the plaintiff and defendants Department of Veterans
21 Affairs of the State of California, William J. Guardia and Mary
22 Sylvia Guardia are entitled to divide the waters equally, pursuant
23 to the provisions of the 1955 agreement, the use by plaintiff and
24 said defendants, or their successors, shall be rotated consecu-
25 tively in successive periods of five days with one party taking
26 all of the water for a period of five consecutive days and the
27 other party taking all of the water for the next succeeding five
28 consecutive days, with the plaintiff, or his successors, being


1 entitled to divert during the first such five-day period in each
2 even-numbered year and said defendants, or their successors,
3 being entitled to divert during the first such five-day period
4 in each odd-numbered year. The diversions during such periods
5 of rotation shall commence and end at 8:00 a.m. on each fifth
6 day and on the days upon which said defendants, or their succes-
7 sors, are to terminate their diversions, they shall remove their
8 diversion pipes from Willow Creek and close all diversion
9 outlets on or before 8:00 a.m., and if they fail to remove such
10 pipes or close such outlets by this prescribed time, the
11 plaintiff or his successors may do so.

12 11. To assure the peaceable and equitable exercise
13 by the parties of their respective rights and uses of the
14 waters of Willow Creek, the diversions of such waters from Willow
15 Creek should be supervised by the Department of Water Resources
16 of the State of California through a watermaster and to that
17 end, this Court hereby appoints the Department of Water Resources
18 of the State of California to supervise such diversions in
19 accordance with the respective rights of the parties as estab-
20 lished by the 1955 agreement and the decrees of this Court with
21 the costs and expenses of such supervision to be allocated by
22 said Department of Water Resources among the parties in accordance
23 with the provisions of the Water Code of the State of California
24 and the parties' respective ownerships of said waters, with this
25 Court reserving jurisdiction to make such other and further
26 orders as may be required to effect the supervision provided
27 for herein.

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1 12. Each party shall bear his, her or its own costs
2 of suit.

3 Dated: April 28, 1972.

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6 JUDGE OF THE SUPERIOR COURT

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