

DEC 28 10 36 AM '64  
STATE WATER RIGHTS BOARD  
SACRAMENTO

1 Griswold & Barrett  
552 West 20th Street  
2 Merced, California 95340

3 Telephone: 722-8126

4 Attorneys for Defendants  
and Cross Complainants

8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 IN AND FOR THE COUNTY OF MARIPOSA

11 WALTER R. OLINGHOUSE and EMMA J. )  
12 OLINGHOUSE, husband and wife, )

13 Plaintiffs, )

13 vs. )

14 CLIFFORD L. NORDMAN and LOUISE H. )  
15 NORDMAN, husband and wife, ROBERT )  
16 L. NORDMAN and HELEN D. NORDMAN, )  
17 husband and wife, ELMER G. NORDMAN )  
and COLLEEN M. NORDMAN, husband )  
and wife, FIRST DOE, SECOND DOE )  
and THIRD DOE, )

18 Defendants. )

19 CLIFFORD L. NORDMAN, LOUISE H. )  
20 NORDMAN, ROBERT L. NORDMAN, HELEN )  
21 D. NORDMAN, ELMER G. NORDMAN and )  
COLLEEN M. NORDMAN, )

22 Cross-Complainants, )

23 vs. )

24 WALTER R. OLINGHOUSE and EMMA J. )  
25 OLINGHOUSE, husband and wife, )

25 Cross-Defendants. )

No. 3701

J U D G M E N T

26 The above entitled cause came on regularly for trial on the 18th  
27 day of December 1964 before the Court, sitting without a jury, Hugh  
28 H. Griswold appearing for the defendants and cross complainants, and  
29 evidence both oral and documentary having been introduced and the  
30 cause submitted for decision, the Court finds as follows:

31 FINDINGS OF FACT

32 1. The "Report of Referee" filed herein on July 31, 1962, is

1 incorporated herein by reference.

2           2. The lands identified as Parcels C, D, and E on Plat 1 of  
3 said "Report of Referee" are the lands which belong to defendants and  
4 cross complainants, and that the portion thereof designated as  
5 Parcel E is and at all times since it was patented in the year 1893  
6 has been contiguous to, and riparian to, the main branch of Oliver  
7 Creek, and that the portion thereof designated as Parcel D is and  
8 at all times since it was patented in the year 1888 has been conti-  
9 guous to, and riparian to, the West Fork of Oliver Creek, and that  
10 the portion thereof identified as Parcel C is and at all times since  
11 it was patented in the year 1922 has been contiguous to, and ripar-  
12 ian to, the West Branch of Oliver Creek.

13           That the portion of the lands belonging to plaintiffs and  
14 cross defendants identified on said Plat 1 as Parcel I is and at  
15 all times since it was patented in 1945 has been contiguous to, and  
16 riparian to, the main channel of Oliver Creek, and that the parcel  
17 identified as Parcel J is and at all times since it was patented in  
18 the year 1895 has been contiguous to, and riparian to the main  
19 channel of Oliver Creek. That none of the other lands belonging to  
20 plaintiffs and cross defendants are or ever have been contiguous to  
21 or riparian to said Oliver Creek.

22           3. That plaintiffs suffered no damage as alleged in their  
23 complaint.

24           4. Oliver Creek is an intermittent foothill stream in the  
25 south central portion of Mariposa County. It rises on the westerly  
26 slope of the Sierra Nevada at an elevation of about 5400 feet and  
27 flows in a general southwesterly direction to its confluence with  
28 the Chowchilla River. West Fork Oliver Creek joins Oliver Creek be-  
29 low the lands of Nordman and above the lands of Olinghouse. DeLong  
30 Creek, which joins Oliver Creek downstream from the tillable lands  
31 of both Olinghouse and Nordman, is not involved in the proceeding.

32           5. Oliver Creek and West Fork Oliver Creek flow through the

1 lands of Nordman and said lands are contiguous to Oliver Creek and  
2 West Fork Oliver Creek.

3 6. Oliver Creek does not flow through or border the portion of  
4 the Olinghouse lands irrigated from the Olinghouse Ditch but certain  
5 other lands owned by Olinghouse are crossed by Oliver Creek and are  
6 contiguous to Oliver Creek downstream from the Olinghouse Ditch.

7 7. The extent to which the lands of the parties contiguous to  
8 Oliver Creek and to West Fork Oliver Creek may be riparian is de-  
9 picted on Plate 1 which shows the location of the various parcels of  
10 land withdrawn from the public domain and the dates of patent as  
11 copied from the records of the General Land Office of the United States

12 8. Olinghouse holds License No. 5105 from the State with a  
13 priority of October 28, 1949, which confirms the right to store for  
14 later release down Oliver Creek, 7.5 acre-feet per annum during the  
15 period from about October 1 of each year to about April 1 of the  
16 succeeding year from an unnamed tributary of Oliver Creek downstream  
17 from Nordman and for the direct diversion of 0.5 cubic foot per  
18 second during the period from about May 15 to about September 15 of  
19 each year from Oliver Creek, the stored water to be rediverted and  
20 the direct diversion to be made from Oliver Creek at Diversion 3  
21 for use on his lands in the SW $\frac{1}{4}$  of SW $\frac{1}{4}$  of Section 28, T5S, R20E,  
22 MDB&M.

23 9. Olinghouse also holds Permit 11662, issued by the State  
24 Water Rights Board on Application 17526 with a priority date of  
25 March 25, 1957, for direct diversion from Oliver Creek during the  
26 period from about May 1 to about October 1 of each year of 2.9  
27 cubic feet per second for use on his lands downstream from Diversion  
28 3.

29 10. Nordman constructed a reservoir on the West Fork Oliver  
30 Creek to store twenty-six acre-feet of water and on June 5, 1959,  
31 filed Application 18771 with the State Water Rights Board under the  
32 name "C.L. Nordman and Sons" for a water right permit. Action on

1 the application, which was protested by Olinghouse, has been de-  
2 layed pending completion of the referee's investigation and judg-  
3 ment by the Court in these proceedings. Water was stored in the re-  
4 servoir (referred to herein as the Nordman Reservoir) in 1960 and  
5 use made therefrom. The dam at the Nordman Reservoir was constructed  
6 across the natural channel of West Fork Oliver Creek and unless facil-  
7 ities are maintained at the reservoir capable of bypassing the na-  
8 tural flow, operation of the reservoir could deprive Olinghouse of  
9 water for which he has received the aforesaid license and permit.

10 11. Nordman, in addition to filing Application 18771 for an  
11 appropriative right for water to fill the Nordman Reservoir, in the  
12 same application and in Applications 18769 and 18770, filed on the  
13 same date, requested a right to appropriate water from numerous  
14 springs within the Oliver Creek, West Fork Oliver Creek and Delong  
15 Creek watersheds and for storage of 15 acre-feet and direct diver-  
16 sion of 0.50 cubic foot per second from Oliver Creek all upstream  
17 from Olinghouse lands. As far as is known, diversion from the  
18 springs would have an insignificant effect on the flow of Oliver  
19 Creek but storage on Oliver Creek and additional direct diversion  
20 therefrom could adversely affect the availability of water to sup-  
21 ply Olinghouse's prior appropriations.

22 12. The water supply of Oliver Creek while ample during the  
23 winter and spring months diminishes rapidly after about June 1 and  
24 very little water is available for direct diversion except from  
25 springs and occasional areas of rising water in the creek channels  
26 after about July 15. Diversion under claim of riparian right for  
27 use on the Nordman Lands and on lands of nonparties upstream from  
28 the Olinghouse Ditch (Diversion 3) can reasonably be estimated to  
29 amount to from 0.06 to 0.10 cubic foot per second and may be larger.

30 13. Natural stream channel losses between the Nordman Ditch  
31 (Diversion 2) and the Olinghouse Ditch (Diversion 3) amount to at  
32 least 0.04 cubic foot per second during the summer months.

GRISWOLD & BARRETT  
ATTORNEYS AT LAW  
SECURITY TITLE BLDG.  
552 WEST 20TH STREET  
MERCED, CALIFORNIA  
TELEPHONE 722-8126

1 14. Nordman and Olinghouse each are in possession of and own  
2 facilities and lands more than ample to divert and put to beneficial  
3 use the entire summer water supply of Oliver Creek.  
4

5 CONCLUSIONS OF LAW

6 From the above facts, the Court determines the following con-  
7 clusions of law:

8 1. Nordman is the owner of lands which are contiguous to and  
9 within the watershed of Oliver Creek, and such lands have not been  
10 severed from contact with said creek in the chain of title, and they  
11 are riparian to Oliver Creek, and Nordman has a direct diversion right  
12 to the natural flow of Oliver Creek for reasonable beneficial use on  
13 said riparian lands, prior to any appropriative rights of Olinghouse.  
14

15 2. Nordman is the owner of lands which are contiguous to and  
16 within the watershed of West Fork Oliver Creek, and such lands have  
17 not been severed from contact with said creek in the chain of title,  
18 and they are riparian to West Fork Oliver Creek, and Nordman has a  
19 direct diversion right to the natural flow of West Fork Oliver Creek  
20 for reasonable beneficial use on said riparian lands, prior to any  
21 appropriative rights of Olinghouse.

22 3. Olinghouse, subject to the foregoing rights of Nordman, is  
23 entitled to divert to storage 7.5 acre-feet per annum from an unnamed  
24 tributary of Oliver Creek during the period from about October 1 of  
25 each year to about April 1 of the following year for later release  
26 into Oliver Creek and redirection at the Olinghouse Ditch (Diversion  
27 3, Plate 1), and to divert for direct application to beneficial use  
28 0.5 cubic foot per second from Oliver Creek during the period from  
29 about May 15 to about September 15 of each year through the same ditch  
30 for irrigation use on 25 acres of his land within the SW $\frac{1}{4}$  of SW $\frac{1}{4}$  of  
31 Section 28, T5S, R20E, MDB&M.

32 4. Olinghouse, subject to the rights enumerated in paragraphs  
above  
1, 2 and 3 of this chapter, is entitled to divert 2.9 cubic feet per

1 second of the combined flow of Oliver Creek and West Fork Oliver  
2 Creek during the period from about May 1 to about October 1 of each  
3 year for irrigation use on his lands downstream from Diversion 3 in  
4 the W $\frac{1}{2}$  of Section 33, T5S, R20E, MDB&M.

5 5. Nordman has no right to divert water to storage in the  
6 Nordman Reservoir on West Fork Oliver Creek or to make any other diver-  
7 sion pursuant to Applications 18769, 18770 and 18771 until and unless  
8 the State Water Rights Board has issued permits authorizing the  
9 applicants to proceed. If and when permits are issued any right  
10 developed therefrom will be subject to and inferior to the rights  
11 enumerated in paragraphs 1, 2, 3 and 4 <sup>above.</sup> ~~of this chapter.~~

12 6. Olinghouse is entitled to divert water to storage in the  
13 Olinghouse Reservoir (Diversion 1) only during the period from about  
14 October 1 of each year to about April 1 of the following year as pro-  
15 vided in water right License 5105 and at all other times should re-  
16 lease or bypass all natural flow reaching the storage reservoir.

17 7. Nordman is not entitled to divert from Oliver Creek any  
18 water rightfully stored in the Olinghouse Reservoir as provided in  
19 paragraphs 3 and 6 <sup>above</sup> ~~of this chapter~~ and later released into the natur-  
20 al channel of Oliver Creek. Such water cannot be regarded as natural  
21 flow to which riparian rights attach.

22 8. Olinghouse should at all times when releasing water from  
23 storage in the Olinghouse Reservoir notify Nordman and other diverters  
24 from the channel of Oliver Creek of the approximate amount of water  
25 so released and of the time that release begins and ends so that ap-  
26 propriate changes can be made in diversion works and other facilities  
27 to permit the released stored water to flow freely and with the least  
28 possible interference to the Olinghouse diversion works.

29 9. Nordman should be required to release or bypass the natural  
30 flow of West Fork Oliver Creek at Nordman Reservoir in excess of his  
31 riparian entitlement to divert water during the irrigation season, in  
32 order to supply the appropriate rights of Olinghouse described in par-

1                                           above  
2   agraphs 3 and 4 ~~subchapter~~ ~~chapter~~.

3                                           10. Any underground water supply which may exist on the lands  
4   of the parties is too small in amount for development for irrigation  
5   use and has little or no relationship to the flow of Oliver Creek or  
6   West Fork Oliver Creek.

7                                           11. Plaintiffs are not entitled to recover any damages by  
8   reason of the facts alleged in their complaint and each party should  
9   pay his own costs incurred herein.

10                                          WHEREFORE, by reason of the law and the findings of fact afore-  
11   said,

12                                          IT IS ORDERED, ADJUDGED AND DECREED that said defendants and  
13   cross-complainants recover judgment herein in accordance with the  
14   above conclusions of law.

15                                          DATED:

\_\_\_\_\_  
17                                          Judge of the Superior Court

19                                          DECLARATION OF SERVICE  
20                                          BY MAIL

21                                          I am a citizen of the United States  
22   and a resident of Merced County,  
23   California. I am over the age of eight-  
24   teen years and not a party to the with-  
25   in above entitled action. My business  
26   address is 552 W. 20th Street, Merced,  
27   California. On this date I served the  
28   foregoing document, by placing a true  
29   copy thereof enclosed in a sealed envel-  
30   ope with postage thereon fully pre-  
31   paid, in the United States post office  
32   mail box at Merced, California, ad-  
    dressed in the manner set forth below.  
    I declare under penalty of perjury  
    that the foregoing is true and correct.

    Dated at  
    Merced, California, on 12/23/64  
    \_\_\_\_\_ ANN F. DI NAPOLI \_\_\_\_\_

    To: Mr. L.A. MacNicol, Attorney at Law,  
    P.O. Box 852  
    Merced, California 95341  
  
    To: Mr. Gavin M. Craig, Chief Counsel  
    State Water Rights Board  
    P.O. Box 1592  
    Sacramento, California

GRISWOLD & BARRETT  
ATTORNEYS AT LAW  
SECURITY TITLE BLDG.  
552 WEST 20TH STREET  
MERCED, CALIFORNIA  
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