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Fruitvale Mutual Water Company

FILED  
RIVERSIDE COUNTY

1954 JUN 4 PM 2:50

G. A. Pequegnat, Clerk  
By Doris Darsey  
Deputy

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF RIVERSIDE

THE CITY OF SAN JACINTO, HOWARD ROSE  
COMPANY, HEMET NURSERY COMPANY, PAUL  
W. HOWARD, as executor of the Estate  
of C. W. HOWARD, Deceased, HARVEY D.  
ALLEN, STELLA H. ALLEN, DALE W. REASER,  
E. S. ALSTER, CHARLES S. HOWARD, HENRY  
BEHNICK, GERTRUDE BEHNICK, FRANK MILLER,  
MILTON A. BAILEY, ALICE M. BAILEY, HAROLD  
F. SANDALL, MARION E. SANDALL, EDWIN A.  
MEYER, EULA M. MEYER, G. E. CONKLINE,  
SUSIE E. CONKLINE, HARVEY C. JOHNSTON,  
MAYBELL JOHNSTON, WILLIAM N. CORWIN, AND  
WILBUR J. CORWIN, as Co-Partners, doing  
business under the name and style of  
Corwin Ranch, ROBERT D. GRABER and DONALD  
G. CURRIE, as Co-Partners, doing business  
under the name and style of C. C. Graber  
Company, GERARD HALMAN, RUTH HALMAN,  
HARRY S. MINNICK, JOSEPH E. RAMLJAK,  
KATARINA RAMLJAK,

Plaintiffs,

vs.

FRUITVALE MUTUAL WATER COMPANY, JOHN ONE,  
JOHN TWO, JOHN THREE, JOHN FOUR, JOHN  
FIVE, JOHN SIX, JOHN SEVEN, JOHN EIGHT,  
JOHN NINE, JOHN TEN, JOHN ELEVEN, as the  
personal representative of John Twelve,  
deceased, JANE ONE, JANE TWO, JANE THREE,  
JANE FOUR, JANE FIVE, JANE SIX, JANE  
SEVEN, JANE EIGHT, JANE NINE, JANE TEN,  
JOHN TWELVE COMPANY, a Co-partnership,  
JOHN THIRTEEN COMPANY, a corporation,  
JOHN FOURTEEN COMPANY, a corporation,  
JOHN FIFTEEN COMPANY, a corporation, and  
JOHN SIXTEEN COMPANY, a corporation,

Defendants.

No. 51 546

JUDGMENT

AND

DECREE

In the above entitled action, it appearing to the Court that said action has been dismissed as to plaintiffs, M. W. Myers, Arba C. Myers, Harvey A. Dunn, Joseph Buldra, Mary Buldra and Letha Minnick and as to defendants, Lake Hemet Water Company and Fairview Land and Water Company, pursuant to a request therefor signed by Courtney Lacey, Esq., as attorney of record for all of the plaintiffs, and by Ray W. Bruce, Esq., as attorney of record for the defendant Fruitvale Mutual Water Company, and that all of the now plaintiffs of record and the defendant, Fruitvale Mutual Water Company, individually and by and through their respective attorneys of record, have signed and filed herein a stipulation and consent that the following judgment and decree may be signed, filed and entered in said action,

NOW THEREFORE, the Court being fully advised in the premises, and pursuant to said stipulation,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

I

The Department of Public Works of the State of California, acting through the State Engineer as Referee, is hereby ordered to cease completely from this time forth, the carrying on of its investigation of the physical facts involved in the above action as heretofore required by the Order of the Court dated September 17, 1951, and filed herein.

It is further ordered that said Referee shall prepare a report summarizing the data already collected and turn over copies of said report to:

- (a) The Court;
- (b) Plaintiff, the City of San Jacinto;
- (c) All other plaintiffs than said plaintiff the City of San Jacinto, by delivering a copy to plaintiff Charles S. Howard, who is now the secretary of the association comprising each of said plaintiffs, or any other person duly acting as secretary of

said association;

(d) Defendant, Fruitvale Mutual Water Company.

II

The "Entire Basin" referred to herein shall be that area within the orange line on the map attached hereto entitled "Division of Water Resources, South Coastal Basin Investigation, San Jacinto Area, Riverside County, General Maps\*. Upper San Jacinto Basin Ref., \*To Accompany Memo. Rep't. Re. Meeting with Parties. . . . May 20, '52, and made a part of this Judgment and Decree as though set forth in full herein and for reference purposes marked Exhibit A.

The Fruitvale Mutual Water Company, one of the defendants herein, until its right to take more, or less, is determined by a court of competent jurisdiction, may divert from the surface stream flow of the San Jacinto River at any place within the Entire Basin, for direct use or storage, without limit, and may extract from the subsurface waters in that portion of the Entire Basin east of the east section line of Section 6, Township 5 South, Range 1 East, San Bernardino Base and Meridian, in Riverside County, State of California, and the northerly and southerly extensions of said east section line, which said portion of said Entire Basin is hereinafter referred to as Canyon Basin, without restriction or limit so long as the static level of the subsurface water therein at the present location of said defendant's well number seven is not over 25 feet below the elevation of 1665.42 feet above sea level, the elevation of the present well blade at said well number seven, said elevation as established, to be based on the United States Geological Survey Bench Mark at the southwest corner of the school grounds at Valle Vista, California, at elevation 1765.967 feet, or based on some other alternative United States Geological Survey Bench Mark; and said

water may be used either over or outside of said Entire Basin, and, subject to the limitation of 12,000 acre feet hereinafter specified until its right to take more, or less, is determined by a court of competent jurisdiction, said defendant shall limit its extraction of subsurface water from the said Canyon Basin, at all times when said static level of the subsurface waters at the present location of said well number seven is 25 feet, or more, below the said elevation of 1665.42 feet above sea level, to 4,500 acre feet of water during any period from November 1st of one year to October 31st of the following year, starting November 1st, 1953, said periods to be hereinafter referred to as the fiscal year.

Said static level of the subsurface waters at the present location of said well number seven shall be ascertained and established by a committee consisting of one representative of plaintiffs, one representative of defendant, Fruitvale Mutual Water Company, and one licensed civil engineer of Eastern Municipal Water District, by measurements with a continuous automatic water recorder of a test well, or any replacement thereof, located on property owned or controlled by Fruitvale Mutual Water Company, and within said Canyon Basin, at a point agreed upon by a majority of said committee, and a correlation approved by a majority of said committee, of the measurements in said test well and measurements made at the present location of said well number seven. Said committee shall have access at any and all times to the property in the Canyon Basin owned or controlled by Fruitvale Mutual Water Company which may be required to make correlations of the water levels in said test well and said well number seven; and said committee shall have access to said test well at any and all times. Said committee shall have access to said well number seven for further tests at any time when the pumps of the Fruitvale Mutual Water Company in said Canyon Basin are not

operating, and at such other times as may be mutually agreeable on the part of the committee and the Fruitvale Mutual Water Company. Said committee shall determine the depth of said test well, which shall not exceed 200 foot. The cost of said test well, equipment and operation shall be paid: One-ninth by the City of San Jacinto, three-ninths by the plaintiffs other than the City of San Jacinto, and five-ninths by Fruitvale Mutual Water Company. The findings of the committee and readings from the test well shall be kept on file at the offices of the Fruitvale Mutual Water Company and may be inspected and copied at said office by plaintiffs at any time during office hours.

Said defendant, Fruitvale Mutual Water Company, may until its right to take more, or less, is determined by a court of competent jurisdiction, extract from said Entire Basin, by pumping, for use outside of said Entire Basin, a total of not more than 12,000 acre feet of water during any fiscal year, and shall limit such extraction by pumping from any part of said Entire Basin, whether from above or below said static level in said Canyon Basin, above specified, to not more than 12,000 acre feet of water during any one fiscal year for use outside of said Entire Basin, and further provided, however, that not more than 4,500 acre feet of water shall be extracted by defendant, Fruitvale Mutual Water Company, from said Canyon Basin in any one fiscal year while the said static level of the subsurface water in said Canyon Basin is 25 feet, or more, below the said elevation of 1665.42 feet above sea level.

Said defendant, Fruitvale Mutual Water Company, until its right is restricted by determination of a court of competent jurisdiction, may take without limit any waters which it may recover from the subsurface waters of said Entire Basin, for use on lands over said Entire Basin, subject only to the

limitation that not more than 4,500 acre feet of water may be extracted from the subsurface waters of Canyon Basin during any fiscal year, while the said static level of the subsurface waters therein are 25 feet, or more, below the said elevation of 1665.42 feet above sea level.

### III

On or before sixty days after the last day of October of each year, beginning October 31st, 1954, the defendant, Fruitvale Mutual Water Company, shall transmit to plaintiff, the City of San Jacinto, two (2) copies, and to the other plaintiffs by mailing to Charles S. Howard, the present secretary of the association comprising said plaintiffs, or any future secretary of said association or its authorized representative two (2) copies of a statement, certified as hereinafter provided, setting forth for the preceding year ending on such October 31st:

(a) The actual number of acre feet of water pumped from said Canyon Basin when the static level of the underground level therein is 25 or more feet below said elevation of 1665.42 feet above sea level, and shall state the approximate date that said static level at said location of said well number seven was 25 feet below said elevation of 1665.42 feet above sea level.

(b) The actual number of acre feet pumped from said Entire Basin and transported by said defendant outside of said Entire Basin.

### IV

Each statement referred to in Paragraph III hereof shall be certified to under the corporate seal of defendant, Fruitvale Mutual Water Company, as being correct according to the

best information and belief of the then President or Vice-President of said defendant, who shall cause said statements to be prepared and mailed. Each delivery of said statement required to be given, shall be sufficient and complete when deposited in an envelope in the United States mail with postage prepaid and addressed to plaintiff, the City of San Jacinto, at San Jacinto, California, and to all other plaintiffs when addressed to plaintiff, Charles S. Howard, c/o Howard Rose Company, Hemet, California, or to such other addresses or persons as either of them may from time to time hereafter specify in writing.

V

None of the provisions of this judgment and decree shall be considered as construing, declaring or setting forth in any way, any of the rights to or limitations upon any of the rights to water of any person whether presently parties hereto, as such rights existed on December 29, 1950, and the rights of any and all parties hereto, to the use of water from said San Jacinto River or said Entire Basin, as they existed on December 29, 1950, are not in any manner or to any extent enlarged, diminished, amended, altered or changed by this stipulated Judgment and Decree; provided, however, that no party to this action shall acquire any rights as against any other party to this action, to the use of water from said San Jacinto River or said Entire Basin or any part thereof, by any adverse use of water therefrom subsequent to December 29, 1950, whether for use or used outside of said Entire Basin or over any part of said Entire Basin.

VI

The rights of the parties to this action, and each of them, to the use of the water from said Entire Basin, acquired by reason of riparian ownership, appropriation or adverse use,

prior to December 29, 1950, by extraction from the underground waters of said Entire Basin or by direct diversion from the stream flow for direct use or storage, and as they existed on December 29, 1950, shall not be lost or gained or augmented by reason of any use of water from said Entire Basin, or any part thereof, after December 29, 1950, by any of the parties to this action, and in any future trial or reopening of this action, the rights of the parties, and each of them, shall be determined in accordance with the facts existing on December 29, 1950.

#### VII

The Court reserves jurisdiction of this action and of the parties to it, and any of said parties, or any other persons who may be or become parties to this action, at any future time, may reopen the litigation for further proceedings therein to have adjudicated any and all their respective rights, subject to the provisions of Paragraph VI hereof.

#### VIII

The Department of Public Works of the State of California, acting through the State Engineer, referee, is hereby ordered to submit to the Court a statement of the total expenses incurred by it in its investigation herein prior to this Judgment and Decree, and the making of the report required by this Judgment and Decree, which should be paid by the persons presently parties to this action, and that a copy thereof, together with a notice of the date of filing such statement be mailed to each of the attorneys of record for any of said parties, and to Charles S. Howard, for all other plaintiffs except the City of San Jacinto, within two days after such filing. Objections to the amount of expenses claimed, or the allocation thereof, may be made to the Court at any time within thirty days after the filing of said state-



ment and the amount of the expenses claimed and the allocation thereof shall be subject to modification by the Court pursuant to the provisions of Article 3, Chapter 1, Part 3, of Division 2 of the Water Code of California.

IX

The expenses of the investigation by the referee, incurred prior to the entry of this Judgment and Decree, and the cost of preparing the report summarizing the data already collected, ascertained and fixed as provided in Paragraph VIII hereof, shall be apportioned among and paid by the parties as follows:

One-ninth thereof by the City of San Jacinto;

Five-ninths thereof by the defendant, Fruitvale Mutual Water Company;

Three-ninths thereof among the plaintiffs, other than the City of San Jacinto, to be apportioned by the Court to and paid by each of such plaintiffs, according as their respective acreages bear to the total acreages held by such plaintiffs, as follows:

Howard Rose Company.....	440	acres
Hemet Nursery Company.....	250	"
Paul W. Howard, as Executor of the Estate of C. W. Howard, Deceased.....	220	"
Harvey D. Allen and Stella H. Allen.....	125	"
Dale W. Reaser.....	135	"
E. S. Galster.....	160	"
Charles S. Howard.....	30	"
Henry Behnken and Gertrude Behnken.....	10	"
Frank Millor.....	15	"
Milton A. Bailey and Alice M. Bailey.....	2	"
Harold F. Sandall and Marion E. Sandall.....	2	"
Edwin B. Meyer and Eula M. Meyer.....	10	"

G. E. Conkline and Susie E. Conkline.....	10	acres
Harvey C. Johnston and Maybell Johnston.....	14	"
William N. Corwin and Wilbur J. Corwin, as Co-Partners, doing business under the name and style of Corwin Ranch.....	250	"
Robert J. Graber and Donald G. Currie, as Co-Partners, doing business under the name and style of C. C. Graber Company.....	100	"
Gerard Halman and Ruth Halman.....	100	"
Harry S. Minnick.....	10	"
Joseph E. Ramljak and Katarina Ramljak.....	35	"

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Total 1918 Acres

X

Each of the parties to this action shall bear his, her or its respective costs of suit not herein otherwise expressly provided for.

DATED at Riverside, California, this 3rd day of June, 1954.

          /s/           JOHN G. GABBERT  
Judge of the Superior Court

ENTERED  
JUN 4 1954  
Judgment Book 72 pg 164

(SEAL)