

1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
2 IN AND FOR THE COUNTY OF RIVERSIDE  
3

4  
5 ERWIN, et al,

Plaintiff

6 vs

7 GAGE CANAL CO.,

Defendants.

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)  
) NOS 75013  
75153  
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11 Proceedings before the Honorable  
12 Justice Paul Valle on January 11, 1963,  
13 County of Riverside, State of California,  
14 at the hour of 10:00 A.M.

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16  
17 AMENDED JUDGMENT

18 Appearances:

19 For the plaintiff: Alexander Yakutis, Esq., 3742 Tenth  
20 Street, Riverside, California

21 For the Defendant: Earl Redwine and Justin McCarthy,  
22 Lewis Building, Riverside, California.

23 Cheryl P. Lythgoe,  
24 Shorthand Reporter  
25  
26



1 PORTIONS OF PROCEEDINGS, AMENDED JUDGMENT

2  
3 THE COURT: The following sentence will be  
4 added to the paragraph on page three of the present Judgment,  
5 between the lines one and twelve:

6 "The declarations of the rights of the plaintiffs  
7 as set forth in this paragraph shall control over any other  
8 statements made in this judgment."  
9

10  
11 ...Paragraph IIB on page three of the judgment  
12 is stricken, and in lieu thereof the following is inserted:

13 "Every act done or contemplated by the defendant's  
14 Board of Directors is within the power of said Board of  
15 Directors, provided that such acts do not impinge on the  
16 private rights to water of the plaintiffs as such rights  
17 have been declared by this judgment.

18 Any action done or contemplated by the defendant's  
19 Board of Directors based upon a valuable consideration to  
20 settle and determine the pending condemnation suit brought  
21 by the City of Riverside and at issue in these proceedings  
22 against the defendant are not ultra vires in nature."  
23  
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REDWINE AND SHERRILL  
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Riverside, California  
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Attorneys for Defendant  
The Gage Canal Company

FILED  
RIVERSIDE COUNTY  
DEC 4 3 00 PM '62  
J. W. L. L.

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

HARRY R. ERWIN, E. K. FLEMING,  
ROBERT F. IRVING, AND R. S. MALLOCH,  
  
Plaintiffs,  
  
vs.  
  
THE GAGE CANAL COMPANY, a  
California Corporation,  
  
Defendant.

NOS. 75013 AND  
75153  
  
JUDGMENT

The above-entitled and numbered actions, having been consolidated for ~~trial~~ <sup>all purposes</sup> and disposition by stipulation, came on regularly for trial on October 15, 1962, before the undersigned, sitting as Judge of the Superior Court of the State of California in and for the County of Riverside by assignment of the Judicial Council of the State of California. The plaintiffs appeared by Walker, Sullivan, Hews, Brown and Yakutis by Alexander B. Yakutis, their counsel. The defendant appeared by Redwine and Sherrill by Earl Redwine and Justin M. McCarthy, its counsel. Evidence, oral and documentary, was presented and the matter argued and submitted, and Findings of Fact and Conclusions of Law being on file herein, and good cause appearing therefor:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

- With respect to Action No. 75013  
A. Judgment is for the defendant.

JUDGMENT

LAW OFFICES  
REDWINE AND SHERRILL  
SUITE 207-209 LEWIS BUILDING  
MAIN STREET AT TENTH  
RIVERSIDE, CALIFORNIA  
OVERLAND 4-2520



1           B. At the time of the commencement of this action,  
2 defendant was and now is the owner in fee simple absolute of  
3 all the property or interests in property, real, personal or  
4 mixed, including water rights vested of record or otherwise, in  
5 its name, and including but not by way of limitation its water  
6 rights, water source lands, the Gage Canal so known and called,  
7 and all appurtenances thereto; and that the plaintiffs,  
8 Harry R. Erwin, E. K. Fleming, Robert F. Irving and R. S. Malloch,  
9 have no right, title, interest or estate in or to said property  
10 or any part thereof.

11           C. That defendant's title to said property is hereby  
12 and forever quieted against any and all claims of the plaintiffs,  
13 and each of them, to any right, title or estate therein; and  
14 they, and each of them, are hereby forever enjoined and debarred  
15 from asserting any claim in or to said property or any part  
16 thereof adverse to the defendant.

17           D. As between the plaintiffs and the defendant, the  
18 Court declares the rights of the parties to be the following:

19           With respect to the ownership of the property  
20 of the defendant, the Court repeats the portions of this  
21 judgment set forth in subparagraphs B and C hereof.

22           Insofar as water rights are concerned, the water  
23 right owned by and belonging to the defendant consists of the  
24 right to produce, develop, take, divert, extract, transport,  
25 flow and use water from its water source lands or from sources  
26 available to it by virtue of its stock ownership or by virtue  
27 of its contracts or otherwise, through the Gage Canal, and to  
28 sell or deliver the same to those persons and entities entitled  
29 to receive the same in accordance with the laws of the State of  
30 California and the Articles of Incorporation, Bylaws, Rules  
31 and Regulations of the defendant as the same now exists or as  
32 they may from time to time be amended.



1 The water right of these plaintiffs is the right to have  
2 and receive water from the defendant or its successors, from  
3 the water sources of the defendant through the Gage Canal,  
4 at canal side, by virtue of their share ownership in accordance  
5 with the Articles of Incorporation, Bylaws, Rules and Regulations  
6 of the defendant as the same presently exist or as they may from  
7 time to time be amended and as set forth in the share certificates  
8 now held by them. Such water right is the private property of the  
9 plaintiffs individually. It is appurtenant to the land owned by  
10 each plaintiff individually. It is real property. The plaintiffs  
11 cannot be divested of this right except by their own conveyance or  
12 by operation of law.

13 2. With respect to Action No. 75153

14 A. Judgment is for the defendant.

15 B. Every act done or contemplated by the defendant's  
16 Board of Directors is within the power of said Board of  
17 Directors. Such act or acts are not ultra vires.

18 3. All injunctions heretofore issued in either of these  
19 actions are hereby dissolved.

20 4. In Action No. 75013, judgment on the cross-complaint  
21 is for the plaintiffs and cross-defendants.

22 5. The defendant is entitled to its costs reasonably  
23 incurred in the defense of Action Nos. 75013 and 75153. Plaintiffs  
24 are entitled to their costs in connection with the cross-  
25 complaint in Action No. 75013.

26 Dated: Feb 3rd, 1962.

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28 Sallie  
29 Judge Presiding

30 ENTERED  
31  
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*pure*

The following sentence will be added to the paragraph on page three of the present Judgment, between the lines one and twelve:

"The declarations of the rights of the plaintiffs as set forth in this paragraph shall control over any other statements made in this judgment."

Paragraph IIB on page three of the judgment is stricken, and in lieu thereof the following is inserted:

"Every act done or contemplated by the defendant's Board of Directors is within the power of said Board of Directors, provided that such acts do not impinge on the private rights to water of the plaintiffs as such rights have been declared by this judgment.

"Any action done or contemplated by the defendant's Board of Directors based upon a valuable consideration to settle and determine the pending condemnation suit brought by the City of Riverside and at issue in these proceedings against the defendant are not ultra vires in nature."