

said permit.

2. This Court has jurisdiction pursuant to 28 U.S.C. §1332 in that Plaintiffs, Reichles, are residents of the State of California, Plaintiff, Tom Greer Murphy, is a resident of the State of Arizona, the Defendants are residents of the State of Utah and the damages incurred by the Plaintiffs is in excess of \$10,000.00.

3. This Court also has jurisdiction pursuant to 28 U.S.C. §1346 in that an agency of the United States is a Defendant and damages are requested from that agency.

4. This Court also has jurisdiction pursuant to 28 U.S.C. §1343 in that part of the relief requested is damages resulting from the violation of the Plaintiffs' constitutional and civil rights and conspiracy between the Defendants to deprive the Plaintiffs of certain civil and constitutional rights.

PARTIES

5. Plaintiffs, Reichles, are residents of the State of California. Plaintiff, Murphy, is a resident of the State of Arizona.

6. Plaintiffs are the owners of certain real property located in Uintah County, Utah, which real property is farm land.

7. Plaintiffs are also the owners of 50 shares of capital stock in Mosby Irrigation Company which entitles them to receive irrigation water used to irrigate their real property.

8. Defendant, Raymond Murray, is a resident of Uintah

County, Utah, is the owner of certain real property adjacent to the Plaintiffs' real property in Uintah County, Utah and jointly uses an irrigation ditch with the Plaintiffs to provide water to his real property.

9. Mosby Irrigation Company is an irrigation company organized under the laws of the State of Utah and is responsible for the distribution of water to its various shareholders.

10. Defendant, Robert W. Leake, is an engineer for the Division of Water Rights in the State of Utah and in his position as engineer is obligated to direct the distribution of water in Uintah County, Utah, including the hiring of a commissioner and the directing of that commissioner on the distribution of water by the Mosby Irrigation Company.

11. Defendant, Carol Lyle, is the District Ranger for the United States Forest Service, working in the Vernal Ranger District and is responsible for the United States Forest Service property which is traversed by the irrigation ditch which delivers water to the Plaintiffs.

12. Defendant, Jason Cuch, is the Director of Resources for the Ute Indian Tribe.

GENERAL ALLEGATIONS

13. Plaintiffs are the owners of approximately 90 acres of land located in Uintah County, Utah which they use for producing alfalfa hay.

14. The real property owned by the Plaintiffs is in an arid

area and therefore, irrigation water is required to produce the alfalfa crops.

15. Without irrigation water, Plaintiffs' real property has very little value.

16. Plaintiffs own 50 shares of capital stock in Mosby Irrigation Company which entitles them to sufficient irrigation water to irrigate their real property and raise alfalfa hay.

17. For many years irrigation water has been delivered by Mosby Irrigation Company to Plaintiffs, and the predecessor owners of the property, from Burton Reservoir through a canal which traverses U.S. Forest Service property before it reaches Plaintiffs' property.

18. Defendant, Raymond Murray, owns real property which is adjacent to the property of Plaintiffs.

19. Plaintiffs and Defendant, Murray, use the same ditch from Burton Reservoir to irrigate their respective properties.

20. The irrigation ditch also traverses part of Defendant, Murray's, property and Plaintiffs' property before water can be delivered to both the Plaintiffs and Defendant, Murray.

21. Defendant, Murray, has made repeated offers to purchase the Plaintiffs' property which offers have been refused by the Plaintiffs.

22. When Plaintiffs refused Defendant, Murray's, offer to buy the property, Defendant, Murray, entered into a conspiracy with the other Defendants to prevent Plaintiffs from receiving

irrigation water, thereby, rendering their property useless and forcing them to sell the property to Defendant, Murray.

23. Defendant, Murray, contacted Defendants, Robert Leake, State Engineer for the Division of Water Rights, and Jason Cuch, Director of Resources with the Ute Indian Tribe, and claimed that Plaintiffs had no right to use the irrigation ditch and that water should not be distributed to the Plaintiffs.

24. Defendant, Leake, then directed the commissioner of Mosby Irrigation Company that it was not to deliver water to the Plaintiffs until the question as to whether Plaintiffs had a right to use the ditch had been resolved.

25. This action was taken despite the fact that the ditch had been used jointly by both parties for numerous years, that there had been sufficient capacity in the ditch for the individuals' water and no other entity had complained about the use of the ditch.

26. Plaintiffs then contacted Defendant, Carol Lyle, District Ranger and filed an application for a special use permit for the ditch.

27. The application has been pending before Defendant, Lyle, for many months. She has failed and refused to act on said permit.

28. Defendant, Jason Cuch, has also contacted Defendant, Lyle, and claimed that the Ute Indian Tribe objected to Plaintiffs' use of the ditch which traversed the Forest Service

property.

29. As a result of the action of these Defendants, the Plaintiffs have had no irrigation water for the summer of 1987 and the summer of 1988 and therefore, have not been able to raise their alfalfa crop.

30. Because of the actions of the Defendants, Plaintiffs have lost their cash alfalfa crop for the past two summers. The alfalfa itself has died and will need to be replanted and the value of their property has been substantially reduced.

FIRST CAUSE OF ACTION

Order Requiring Mosby Irrigation Company
And Robert Leake to Deliver Water

31. Plaintiffs are the owners of 50 shares of capital stock in Mosby Irrigation Company which entitles them to the delivery of certain water each year.

32. Defendant, Leake, is responsible for the appointment of the commissioner which delivers the water from Mosby Irrigation Company.

33. Defendants, Leake and Mosby Irrigation Company, have refused and failed without good cause to deliver water to the Plaintiffs.

34. It is requested that the Court enter an Order directing said Defendants to deliver water to the Plaintiffs at the point of diversion that it has been delivered in the past years to Plaintiffs and to the predecessor owners of the property.

SECOND CAUSE OF ACTION

Order Directing Lyle to Issue a Special Use Permit

35. Plaintiffs have had pending before Defendant, Lyle, an application for a special use permit to use the irrigation ditch.

36. Plaintiffs have filed this application despite the fact that they and the predecessor owners of the property have used the ditch for numerous years and pursuant to law have an established right in said ditch.

37. Defendant, Lyle, has failed and refused to act upon the application.

38. It is requested that an Order issue directing Defendant, Lyle, to approve the application and issue a special use permit to the Plaintiffs.

THIRD CAUSE OF ACTION

Establish Right-of-Way

39. Defendant, Murray, has claimed that Plaintiffs have no right to use the ditch at the point it traverses his property.

40. Defendants have also claimed that Plaintiffs do not have a right to use the ditch from the point of diversion by the Mosby Irrigation Company to the point of delivery to Plaintiffs' property.

41. Said ditch has been used by Plaintiffs and predecessor owners of the property in excess of 20 years and therefore, an easement has been established by Plaintiffs.

42. Federal law, including 43 U.S.C. §946 provides that

Plaintiffs or Defendant, ~~Mosby Irrigation Company,~~ are entitled to a right-of-way across the U.S. Forest Service lands to deliver water to the Plaintiffs.

43. Utah Code Ann. §73-1-6 and the cases decided thereunder provide that Plaintiffs are entitled to a right-of-way for the delivery of their water.

44. Plaintiffs are entitled to an Order of this Court directing that Plaintiffs have an easement along the existing ditch for the delivery of their water.

FOURTH CAUSE OF ACTION

Conspiracy - Damages

45. Defendant, Murray, undertook action to prohibit Plaintiffs from receiving water for their property in an effort to force Plaintiffs to sell their property to him at an extremely low price.

46. Defendants, Mosby Irrigation Company, Leake, Lyle and Cuch, were all informed that Defendant, Murray, was undertaking these actions to force Plaintiffs to sell their property and despite being informed of the illegal actions of Murray, said Defendants have cooperated and assisted Defendant, Murray, by refusing to deliver water to the Plaintiffs, by refusing to act on the application for a special use permit and by taking other action to delay and prohibit Plaintiffs from receiving their water.

47. The actions of Defendants is a conspiracy, violates the

civil and constitutional rights of the Plaintiffs, including attempting to force the Plaintiffs to sell their property for less than fair compensation and depriving Plaintiffs without due process of their property rights including their water and the crops they would have grown on the property.

48. The actions by the Defendants have been intentional and malicious and have caused substantial loss and hardship to the Plaintiffs.

49. The government Defendants have conceded that their failure to act has been as a result of fear in dealing with the Ute Indian Tribe and Raymond Murray who claims to be member of said tribe and that said Defendants are willing to jeopardize and harm the rights of the Plaintiffs out of fear of taking action adverse to the desires of the Ute Indian Tribe and Defendant, Murray.

50. Plaintiffs have incurred substantial damages including loss of the use of their water for the past two summers, loss of their hay crop for the past two summers, loss of their growing crop which will need to be reestablished, reduced the value of their real property, emotional distress from the financial hardships that have been caused to the Plaintiffs and their costs and legal fees in attempting to resolve these matters.

WHEREFORE, the Plaintiffs request that the Court enter the following Orders and Judgments:

1. That the Court Order Defendants, Mosby Irrigation

Company and Robert W. Leake, to deliver to Plaintiffs the water they are entitled to as a result of their shares in Mosby Irrigation Company.

2. That the Court Order Defendant, Lyle, to grant Plaintiffs' special use permit application.

3. That the Court Order that the Plaintiffs have an easement for an irrigation ditch for the delivery of their water which easement is the irrigation ditch which has been used by the Plaintiffs and the predecessor owners of the property for numerous years.

4. That the Court enter an injunction prohibiting the Defendants from interfering any further with the Plaintiffs' water rights and the use of their water.

5. That the Court award the Plaintiffs damages against Defendants for all loss and injury they have incurred which damages are in excess of \$100,000.00 together with punitive damages, costs and attorney fees.

6. Such other relief as the Court deems just and proper.

DATED this day of September, 1988.

NIELSEN & SENIOR
Attorneys for Plaintiffs

By: _____
Clark B. Allred

By: _____
Gayle F. McKeachnie