

IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF UTAH
IN AND FOR UINTAH COUNTY

OLLIE W. JUSTICE, DEEP CREEK IRRIGATION COMPANY, A Corporation,

Case No. 3444

Plaintiffs,

vs.

TEMPORARY ORDER

MOSBY IRRIGATION COMPANY, a corporation, EDGAR JONES, DAVE JENKINS, FLOYD WARBURTON,

Defendants.

This matter came on regularly for hearing before the court on the 26th day of June, 1956, before the Honorable Joseph E. Nelson, Judge. The matter was brought to the attention of the court upon an order to show cause, and motion for a temporary restraining order brought by the defendants. The plaintiff, Ollie W. Justice, appeared in person and by counsel, George E. Stewart, Esq., of Roosevelt, Utah; the plaintiff, Deep Creek Irrigation Company, a corporation, appeared by Ollie W. Justice, and by counsel, George E. Stewart, of Roosevelt, Utah. The defendant, Mosby Irrigation Company, a corporation, appeared by its president, Loris Woolley, and by counsel, Phillip V. Christenson and Joseph Novak, of the firm of Christenson, Novak & Paulson, of Provo, Utah, and the other defendants appeared by counsel, Phillip V. Christenson, and Joseph Novak, of the firm of Christenson Novak & Paulson. Evidence was introduced by the defendants in support of their motion for a temporary restraining order, but during the course of the proceedings, the parties hereto advised the court that they had entered into an agreement as to a temporary order which should be made in connection with the

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matter, and thereupon the court having heard the stipulation entered into in open court, and being fully advised in the premises, and based upon such stipulation, makes the following:

ORDER

1. The defendant, Mosby Irrigation Company, on or before July 6, 1956, is ordered to install an adequate measuring device at a point approximately forty feet above the confluence of Deep Creek and Mosby Creek on Deep Creek. - Cc

2. That the plaintiffs, Ollie W. Justice, and Deep Creek Irrigation Company, on or before July 6, 1956, are ordered to install adequate measuring devices at two diversion points on the ditches which divert water on the land of the plaintiff, Ollie W. Justice. It is ordered that these measuring devices be adequate for measuring the flow of water through the two diversions.

3. When the measuring devices are installed, the defendant, Mosby Irrigation Company, is ordered to measure the water flowing down Deep Creek above the confluence of Deep Creek and Mosby Creek, and shall allow the plaintiff, Ollie W. Justice and the Deep Creek Irrigation Company to divert the same amount of water that flows over the measuring device above the confluence of Mosby Creek and Deep Creek.

4. It is ordered that the plaintiffs, Ollie W. Justice and the Deep Creek Irrigation Company maintain only two diversion points diverting water to the land of the plaintiff, Ollie W. Justice, until the further order of the court. The diversion points through which such diversion may be made shall be the upper diversion point now maintained by the plaintiff, Ollie W.

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4 Justice, and the next to the last diversion point now maintained
5 by him, it now being understood that the plaintiff, Ollie W.
6 Justice, maintains four diversion points. It is ordered that
7 the plaintiffs, Ollie W. Justice and the Deep Creek Irrigation
8 Company, divert no water from the diversion point now maintained
9 second from the top, nor shall the plaintiffs divert any water
10 from the last diversion point as now maintained, and it is ordered
11 that the plaintiffs maintain no more than the two diversion
12 points referred to in this paragraph.

13 5. It is ordered that the measuring device above
14 the confluence of Mosby Creek and Deep Creek be installed at the
15 expense of defendant Mosby Irrigation Company, and that the
16 measuring devices at the diversion points of the plaintiffs,
17 be installed at the expense of plaintiffs.

18 6. It is ordered that both the plaintiffs and defen-
19 dants, at all times herein, without interference of either the
20 plaintiffs or defendants, shall have the right to inspect and
21 measure the water flowing down Deep Creek above the confluence
22 of Mosby Creek and Deep Creek, and at the two diversion points
23 of the plaintiff upon which measuring devices are to be in-
24 stalled.

25 7. That in the event the parties cannot agree as to
26 the amount of water flowing down Deep Creek, and being diverted
27 to the plaintiff Ollie W. Justice, and the Deep Creek Irrigation
28 Company, then it is ordered that Gilbert Anderson, of LaPoint,
29 Uintah County, Utah, shall be engaged to measure the flow of water
30 flowing down Deep Creek above the confluence of Mosby Creek and
31 Deep Creek, and shall measure the water being diverted at the
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diversion points of plaintiffs, and it is ordered that the findings of Gilbert Anderson shall be binding upon both parties for this temporary order. It is further ordered that the said Gilbert Anderson, when his findings are made as to the flow of water at the points mentioned herein, that he shall submit in writing such findings to the Clerk of the court with a copy to counsel for plaintiffs and defendants.

8. It is ordered that the compensation of Gilbert Anderson, for his work, if any, shall be paid half by the defendants, and half by the plaintiffs.

9. It is further ordered that the Mosby Irrigation Company may use Deep Creek as a conveying channel for its water brought from Dry Fork through the trans-mountain diversion into Mosby Creek.

10: The plaintiffs, 'Ollie W. Justice, and the Deep Creek Irrigation Company, until the further order of the court, are enjoined and restrained from diverting at either or both of plaintiffs' diversion points from Deep Creek, anymore water than that which flows concurrently through the measuring device on Deep Creek about the confluence of Mosby Creek and Deep Creek, which measuring device is ordered to be installed by the defendant, Mosby Irrigation Company, herein.

Dated this 5th day of July, 1956.

BY THE COURT.

Joseph E. Nelson
J U D G E

FILED
DISTRICT COURT
UTAH COUNTY, UTAH
JUL 7 1956

Charles D. Lopez Clerk

Recorded in Civil Docket
Record 9 Page 322-323
Charles D. Lopez Clerk.
Edith G. Bennett Deputy Clerk.

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