

Logan Court

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE
OF UTAH, IN AND FOR THE COUNTY OF CACHE.

LOGAN CITY, A Municipal
Corporation,

Plaintiff,

Civil No. 9370

-vs-

LOGAN, HYDE PARK and SMITHFIELD
CANAL COMPANY, etal.,

Defendants.

LOGAN CITY, A Municipal
Corporation,

Plaintiff,

Civil No. 9307

-vs-

LOGAN HYDE PARK and SMITHFIELD
CANAL COMPANY, etal.,

Defendants.

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

UTAH POWER AND LIGHT CO., A
Corporation,

Plaintiff,

Civil No. 1772

-vs-

RICHMOND IRRIGATION CO., etal.,

Defendants.

These Findings shall apply to and become the Findings
of Fact and Conclusions of Law in each of the three above number-
ed cases.

These proceedings were initially commenced by Logan, Hyde Park and Smithfield Canal Company filing in Cause No. 1772, known as the Utah Power & Light Company vs. Richmond Irrigation Company, hereinafter referred to as the "Kimball Decree," 1898 petition for an Order to Show Cause directed against Logan City for allegedly violating the terms and provisions of Schedule "A" of said Kimball Decree. Logan City joined the issue by filing its Answer and Cross-Complaint in which it alleged that it had acquired rights in addition to the rights accorded to it under said Schedule "A" by adverse use prior to 1939 and by forfeiture and abandonment for a period in excess of 5 years, and by filing its application with the State Engineer to appropriate said additional waters, and it prayed that title to said additional waters be quieted in Logan City. Thereafter, by stipulation, each and all of the corporate water companies, as well as the Logan River Water Users Association and the Utah Power and Light Company intervened in said action, thereby changing said action into a suit in law and equity.

The State Engineer denied the City's application and notified all of the parties that unless restrained by a Court order, he would immediately enforce the provisions of Schedule "A", which would have left Logan City without sufficient water for its needs. By stipulation of all parties, Logan City thereupon filed a new Action No. 7370 in two counts. One in equity to try title which raised the same issues as were raised in the Kimball Decree case, and a second count in condemnation, thereby permitting Logan City to obtain a temporary order of occupation and preventing the State Engineer from further proceedings. It was further stipulated that the condemnation proceedings would be abated until the equity suit was finally determined.

Logan City also filed a new action No. 9370, seeking a Plenary review of the decision of the State Engineer denying said application. Whereupon, each and all of the above entitled actions (except only the condemnation suit) by stipulation were consolidated for trial and having come on regularly for trial on the 27th day of November, 1961, and the trial thereof having concluded on the 7th day of March, 1962, before the Court sitting without a jury; LeRoy B. Young, Esq., George D. Preston, Esq., Harvey A. Sjoestrom, Esq., and H. Preston Thomas, Esq., appearing as counsel for Plaintiff, LOGAN CITY, and E. J. Skeen, Esq., appearing as counsel for the Defendant, LOGAN RIVER WATER USERS ASSOCIATION as well as the above named individual irrigation companies, and Robert B. Porter, Esq., appearing as counsel for the Defendant, Utah Power & Light Company, and Dallin Jensen, Esq., appearing as counsel for the Defendant Wayne . Criddle, State Engineer of the State of Utah; and the Court having heard the testimony and having examined the proofs offered by the respective parties and the cause having been submitted after arguments and upon briefs on file herein; and the Court being fully advised in the premises, now makes and enters the following:

INDEXES OF FACT

1. Logan City is a municipal corporation organized and existing pursuant to the laws of the State of Utah.
2. The Logan River Water Users Association is an unincorporated association organized and existing for the purpose of regulating and distributing the water rights belonging to its individual members. The Logan, Hyde Park, and Smithfield Canal Company, Logan and Northern Irrigation Company, Hyde Park Irrigation Company, Logan Northwest Field Irrigation Company Southwest Field Irrigation Company, Providence, Logan, Irrigation Company, Providence Pioneer Irrigation Company, Logan North Field Irrigation Company, Benson Irrigation Company, Logan Island Irrigation Company, Seventh Ward Irrigation Company, Logan Hollow Irrigation Company, Central Milling Company and Thatcher Association, are corporations organized and existing under the laws of the State of Utah, and Utah Power and Light Company is a corporation organized under the laws of the State of Maine and qualified to do business in the State of Utah.
3. Wayne D. Criddle is the duly qualified, appointed and acting State Engineer of the State of Utah.
4. On February 21, 1922, the above Court made and entered a final decree in the case of Utah Power and Light Company vs. Richmond Irrigation Company, et al, Civil No. 1772, hereinafter referred to as the Kimball Decree, adjudicating the rights of the use of water of Logan River and tributaries and other sources including the rights of Logan City and the rights of the other parties hereto with the exception of the Logan River Water Users Association and Wayne D. Criddle, State Engineer, who are parties to this litigation, but who have no water right, all of whom are hereinafter referred to as the Defendants, which said Decree sets out and defines the rights of the parties hereto the use of the water of Logan River and tributaries.
5. Logan City has, since February 21, 1922, and had, for several years prior thereto, diverted water from DeWitt Spring, a tributary of Logan River, and conveyed its water in a pipeline from said Spring to Logan City where it is used for municipal purposes. The pipeline had a capacity of 9.3 second feet during the period from 1922 to 1931. In 1931 it was enlarged to a capacity of 10 second feet. In 1947 it was enlarged to a capacity of 13.5 second feet, and in 1949 it was enlarged to carry a maximum of 19.5 second feet. At all times since 1922 the spring area and diversion work at the spring have been enclosed by a substantial building, which has been kept locked. The building over the spring was enlarged in 1949. The pipeline carried water down Logan Canyon a distance of several miles to the City reservoir located on the high bench at the mouth of the Canyon. From 1922 to 1949 the reservoir had a capacity of one million

gallons and in 1949, the reservoir unit of two million gallon capacity was added. Overflow, if any, from the reservoir, runs into the Logan, Hyde Park and Smithfield Canal Company, which canal is used to carry water to farmlands in Logan and in the area Northward to Hyde Park and Smithfield.

6. That between the years 1922 and 1939 (both years inclusive) Logan City diverted through its pipelines and applied to beneficial use, a constant flow of 10 cubic feet per second of water from DeWitt Spring, during the irrigation season, which use was hostile, notorious, adverse, uninterrupted and continuous, and which was asserted under a claim of title with the knowledge and acquiescence of each and all of the named water companies having rights on the Logan River and the Utah Power and Light Company.

7. During the period from 1947 to and including 1961, Logan City diverted water from DeWitt Spring into its pipeline to the full extent of the yield of the Spring and capacity of its pipeline (maximum 19.5 second feet). A portion of the water so diverted overflowed at times from the Logan City reservoir into the Logan, Hyde Park and Smithfield Canal. That during the years 1950, 1951, 1952 and 1956 the flow of Logan River was at all times sufficient to fill the needs of the Defendants under weather conditions then prevailing and since the enlargement of the Logan City pipeline in 1947, there is no evidence of a continuous period of five years during which the Defendants or any of them ceased to beneficially use water to which they were entitled. There is likewise no evidence that the Defendants or any of them intended to desert, forsake or abandon any water right or any part thereof.

8. Logan City filed application No. 32383 on October 3, 1960, to appropriate 14.9 second feet of water from said DeWitt Spring for municipal purposes for use throughout each year. Such application was protested by the Defendants, and after hearing was rejected by Wayne D. Criddle, State Engineer. Logan City thereupon filed Civil action No. 9307, one of the cases consolidated for trial for plenary review of the State Engineer's decision pursuant to the provisions of Section 73-3-14 UCA 1953.

9. There is no unappropriated water in DeWitt Spring to satisfy Application No. 32383 and no evidence was adduced to meet conditions for approval of said application required by Section 73-3-8 UCA 1953.

10. The parties hereto stipulated in open Court that in the case of Logan City vs. Logan, Hyde Park and Smithfield Canal Company, a Corporation, et al, Civil No. 9370 there would be two issues presented to the Court: FIRST: the issue as to the extent and nature of the rights of Logan City to the use of the water of Logan River and its tributaries, and SECOND: the issue as to the fair market value of the difference of the flow of water awarded by the Court to Logan City and the flow to be

... AND THOMAS
ATTORNEYS AT LAW
... CACHE VALLEY
... BANK BUILDING
... LOGAN, UTAH

condemned by Logan City, and that the first issue mentioned above would be fully tried and determined by the Court, and the second issue, as to the fair market value of the water taken, would be reserved for further trial.

11. That ever since its entry in 1932 neither Logan City nor the Logan, Hyde Park and Smithfield Canal Company have complied with the requirements of the Kimball Decree in all particulars.

From the foregoing findings of fact the Court now draws the following:

CONCLUSIONS OF LAW

1. When the flow of Logan River measured as provided in the Kimball Decree is 220 second feet or less, Logan City is, at all times, entitled to divert and use 10 second feet of water in lieu of the flow specified in Schedule "A" of said Decree, and Logan City is entitled to a Decree modifying said Schedule "A" by inserting therein figures "10" in lieu of the present figures under each of the headings 120, 130, 140, 150, 160, 170, 180, 190, 200, 210, and 220; and decreasing the awards of the others listed on Schedule "A" in a proper proportion.
2. The Defendants are entitled to a Decree permanently restraining and enjoining the Plaintiff from diverting from Devitt Spring water in excess of the Logan City water rights set out in the Kimball Decree as modified in accordance with the conclusion of Law No. 1. hereof.
3. That all of the parties to this action should be ordered to permit the State Engineer and the Commissioner appointed by this Court to have access to all weirs and measuring devices maintained by any and all of the parties.
4. That all parties to this action shall be ordered to comply with the Kimball Decree as it is herein modified and that all parties should be enjoined from interfering with each other's rights as set forth in the Kimball Decree as modified herein.
5. That as to Civil No. 9307 the Defendants herein are entitled to a Decree of this Court affirming the action of the State Engineer in rejecting application No. 32383, but that it should be decreed that nothing in the Decree shall be res adjudicata as to any such future application based on changed conditions or action thereon.
6. The trial of the issue of the fair market value of the water condemned in Civil No. 9370 is reserved pursuant to the stipulation of the parties hereto and it should be decreed that none of the findings herein made shall be admissible in the trial of that action.

Dated this 8 day of July, 1963.

W Lewis Jones
District Judge

CERTIFIED THIS 9 DAY OF July 1963
AS A TRUE COPY OF THE WITHIN INSTRUMENT
ON FILE IN THIS OFFICE.

FILE NO. 9271 2302 1722

BY VER LARSEN, CLERK OF THE FIRST DISTRICT COURT OF UTAH.

Linda Pedfrey