

(SUGGESTED)

FREMONT RIVER DISTRIBUTION

PROGRAM FOR 1963

PREPARED BY

STATE ENGINEER'S OFFICE

MARCH 15, 1963

INTRODUCTION

The information contained in this report has been compiled for use in developing a proper temporary distribution procedure on the Lower Fremont River in Wayne County. It is assumed that the Court will retain jurisdiction of administration on the Lower Fremont River until such time as the adjudication can be completed and a final schedule prepared for the entire Fremont River.

The Office of the State Engineer will assist the court in the mechanics of choosing a commissioner, developing a budget to meet the costs of distribution, developing an assessment basis and roll, and in training and supervising the commissioner.

It is expected that the commissioner will not only distribute the water to the various rights in accordance with the tentative schedule approved by the court, but he will also make a permanent and complete record of the quantity of water delivered to each on a day-to-day basis.

Wayne D. Criddle

State Engineer

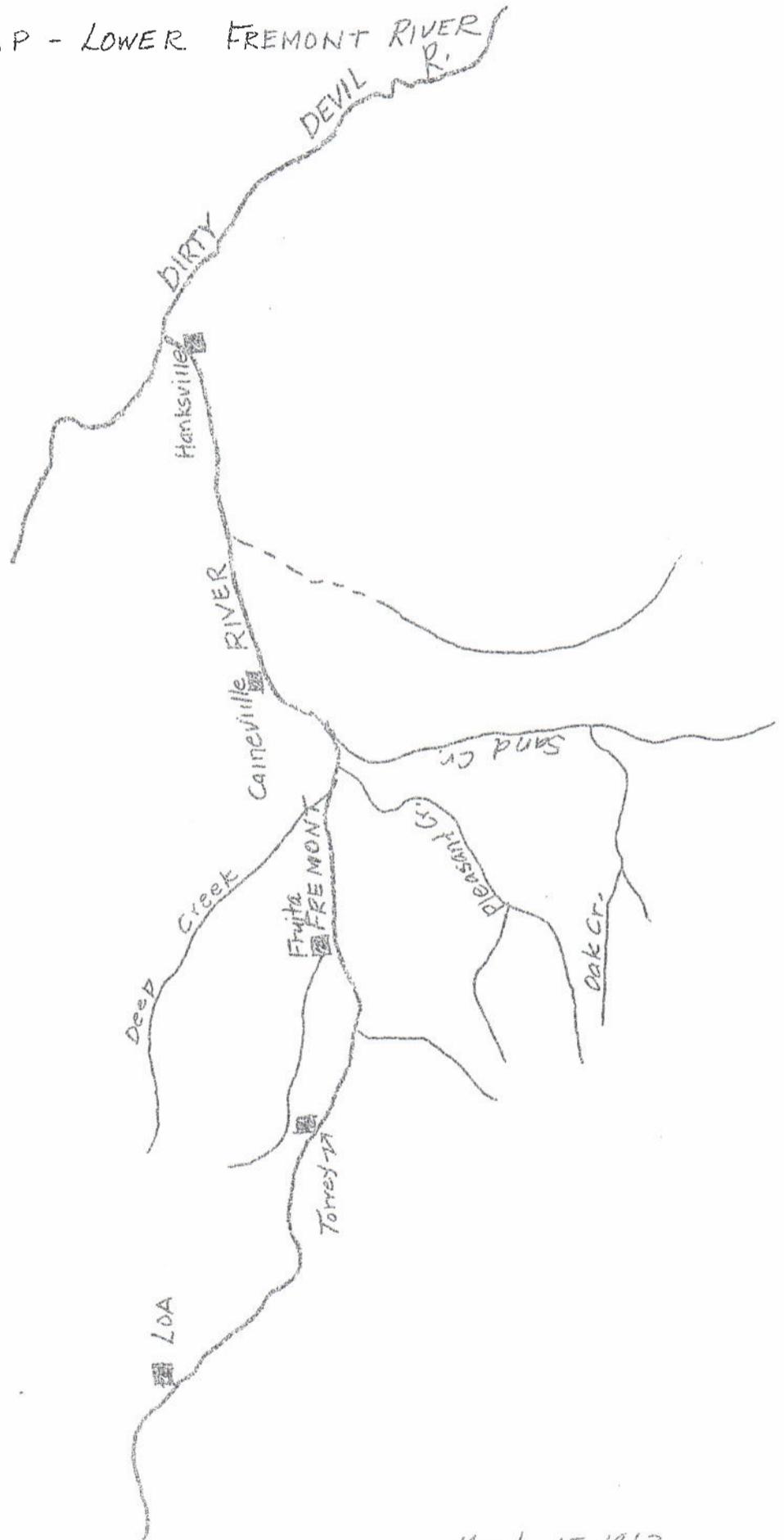
March 15, 1963

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Item 1

SKETCH MAP - LOWER FREMONT RIVER



March 15, 1963

Item 2

IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF UTAH

IN AND FOR THE COUNTY OF WAYNE

HANKSVILLE CANAL COMPANY, a corporation,

Plaintiff,

vs.

TORREY IRRIGATION COMPANY, a corporation
CAINEVILLE IRRIGATION COMPANY, a corporation,
EDMUND KING, JOSEPH HISKEY, DEZ
HICKMAN, WILLIAM HICKMAN, CHARLES COOPER,
DEWEY GIFFORD, CLARENCE MULFORD, WILLIAM
CHESTNUT, MERIN SMITH, ALBERT CHESTNUT,
M. V. OYLER, MARY ANN STEELE, Custodian of
MICHAEL STEELE, GEORGE DURFEE, RICHFIELD
COMMERCIAL & SAVINGS BANK, a corporation,
RUDOLPH COOK, ATHOL JENSEN, JAMES LANNING,
ROYAL BRINKERHOFF, A. M. MYRUP, G. T. BEAN,
EDGAR LARSEN, and DAN ADAMS,

Defendants.

DECREE

In accordance with the foregoing Findings of Fact and Conclusions of Law, and on motion of all the attorneys for the respective parties who appear in this action, jointly made, it is hereby ORDERED, ADJUDGED, and DECREED:

1.

That all rights subject to pro rated distribution, and the parties entitled thereto, are divided into two Sections, namely, Section "A" and Section "B", and the parties to this action are the owners of the right to the use of the waters of Fremont River, and the tributaries, streams, and springs arising and flowing within its drainage basin within the respective sections heretofore specified, in quantities and at times as follows, to-wit:

SECTION "A"

That the primary rights of the parties hereto in Section "A" are as follows, to:

Hanksville Canal Company	10.0 c.f.s.
Caineville Irrigation Company	12.0 c.f.s.
Joseph Hiskey	6.0 c.f.s.
Charles Cooper and William Hickman, jointly	3.5 c.f.s.
William Hickman	1.1 c.f.s.
Edmund King, H. C. Larson and Richfield Commercial and Savings Bank, jointly	5.0 c.f.s.
FRUITA RESIDENTS, namely: Clarence Mulford, Dewey Gifford, William Chestnut, Alma Chestnut, Merin Smith, M. V. Oyler and Dan Adams, a total of	8.0 c.f.s.

(According to their respective individual rights)

Edgar Larsen	1.66 c.f.s.
Edmund King	40.0 c.f.s.

(For power purposes for grist mill 3.33 c.f.s. of which may be used for irrigation purposes of his said lands near the grist mill. The said 3.33 c.f.s. for irrigation purposes is classed as primary right.)

Mary Ann Steele, custodian of Michael Steel	1.50 c.f.s.
Haskin Lyman	1.0 c.f.s.
G. T. Bean (To be used on lands in T29S, R8E, SLM	3.0 c.f.s.

Item 4

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF OREGON IN AND FOR THE COUNTY OF WAYNE

HANKSVILLE IRRIGATION COMPANY,
a corporation,

Plaintiff

-vs-

TORREY IRRIGATION COMPANY,
a corporation, et al

Defendants

ORDER

Civil No. 167

It appearing to the court in this cause that problems have arisen in that segment of the River from Torrey to Hanksville and it further appearing to the court that a Commissioner must be appointed in order that distribution can be made in conformity with Decrees heretofore entered.

IT IS THEREFORE ORDERED that the primary rights in said segment of the River shall be deemed of equal dignity and divided and distributed as said Decree provides and in the event of less water than is required to fill said rights, certain lesser amount shall be apportioned according to rights therein set out.

IT IS FURTHER ORDERED that the Court and the office of the State Engineer will collaborate and arrive at a formula for allocating the costs of distribution as may hereafter be incurred. said Commissioner shall be recommended by the office of the State Engineer and be appointed by the Court. The allocation of such costs shall, of course, be apportioned as said rights are recognized and set out.

IT IS FURTHER ORDERED that the parties involved shall be responsible for the installation of such measuring devices as will be needed to effect a distribution of said waters as herein contemplated.

Dated this 14th day of March, A.D. 1961

WILLIAM BRIDGEMAN
DISTRICT JUDGE

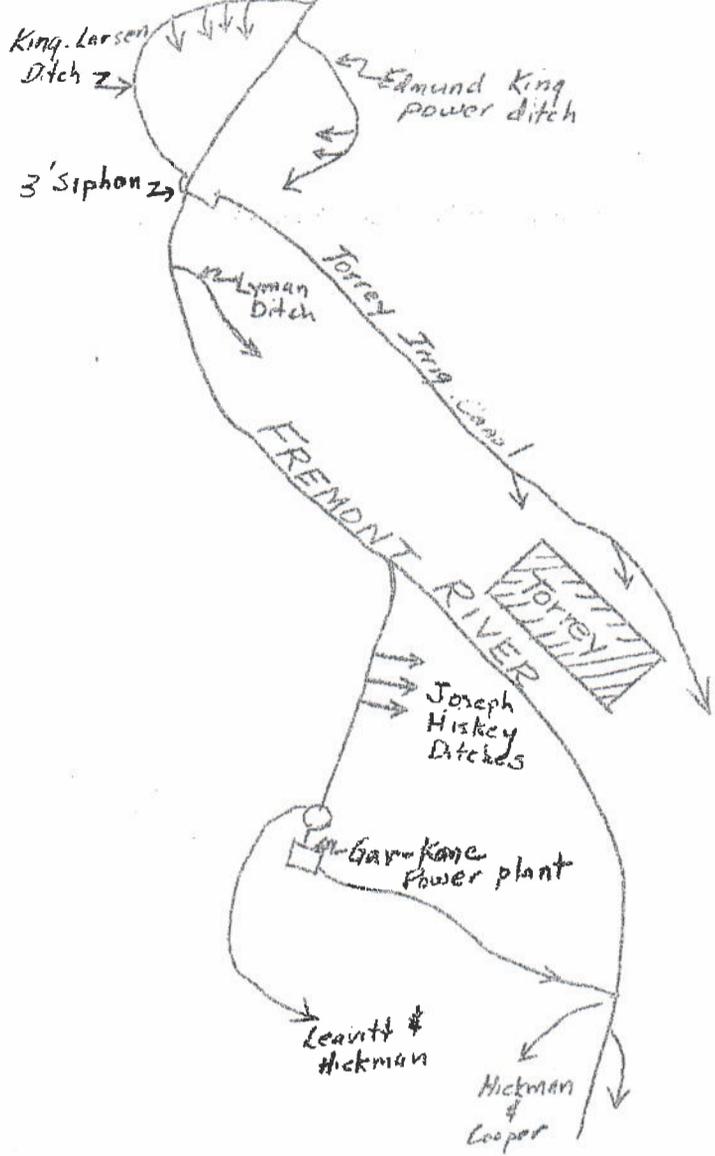
Item 5

DITCHES SERVING WATER USERS ON LOWER FREMONT RIVER

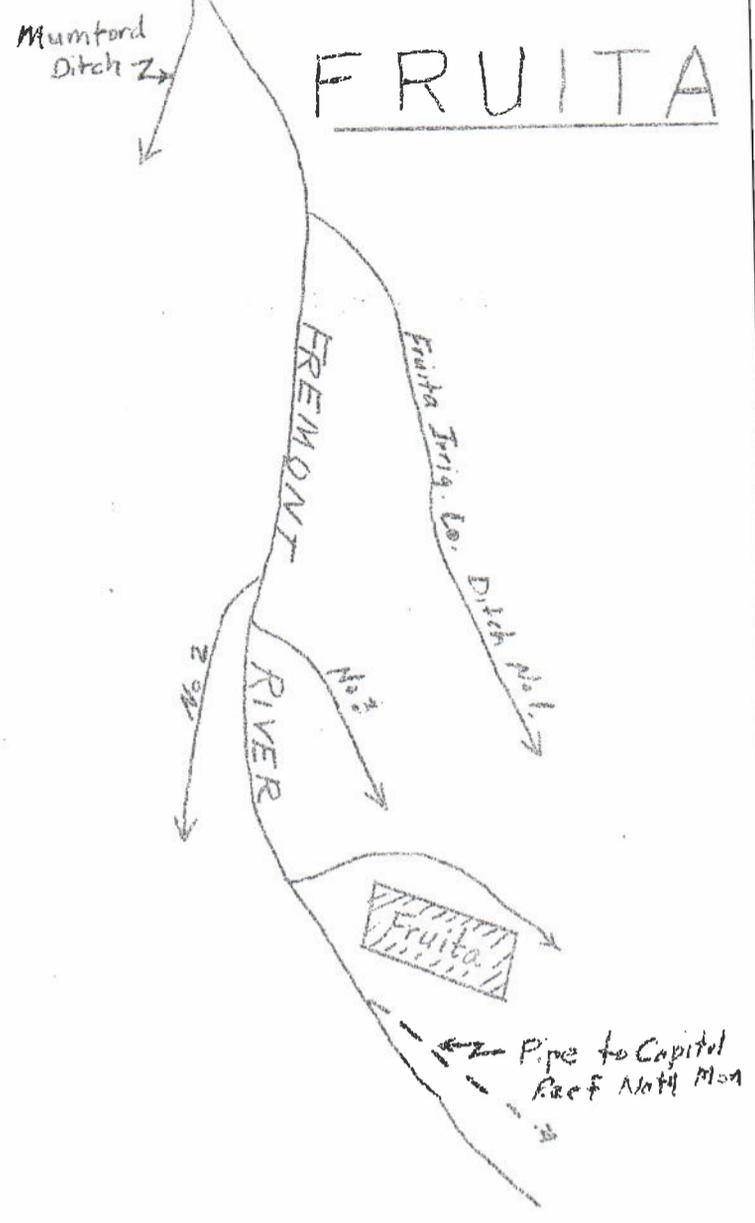
DITCH OWNER	NAME OF DITCH WATER DIVERTED THROUGH:
<u>Torrey Irrigation Company</u> (Wilcox and Blackburn utilize this diversion also)	Torrey Irrigation Canal 9.58 2.00 3.33 14.91
<u>Harold Allen</u>	Edmund King Power Canal 1.33
<u>Boyd Black</u>	Lyman Ditch 3.00
<u>Gar-Kane Power Company</u> (Several other users also utilize this diversion and canal)	Gar-Kane Power Canal 4.5
<u>Joe Hickman and Kenneth Leavitt</u>	Hickman-Cooper Ditch
<u>Fruita Residents</u> (This right is owned by numerous individuals and the U. S. Government Park Service)	(a) Mumford Ditch (b) Fruita Irrigation Co. Ditch #1 (c) " " " " #2 (d) " " " " #3 (e) Capitol Reef National Monument Diversions
<u>Caineville Irrigation Company</u>	Caineville Irrigation Co. Canal
<u>Hanksville Irrigation Company</u>	(a) Hanksville Irrigation Co. Canal (b) Johnson Ditch

Cleland Hunt Ditch

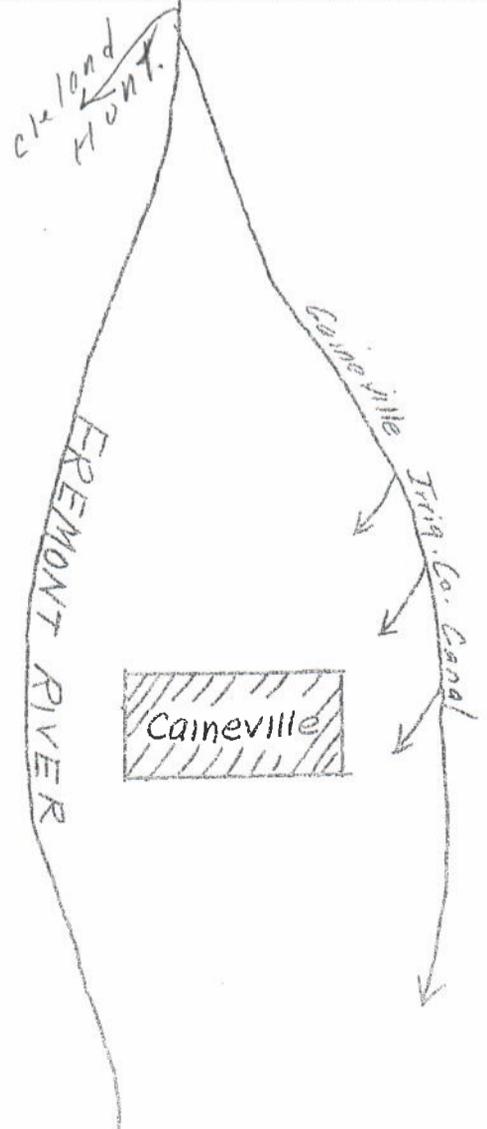
TORREY



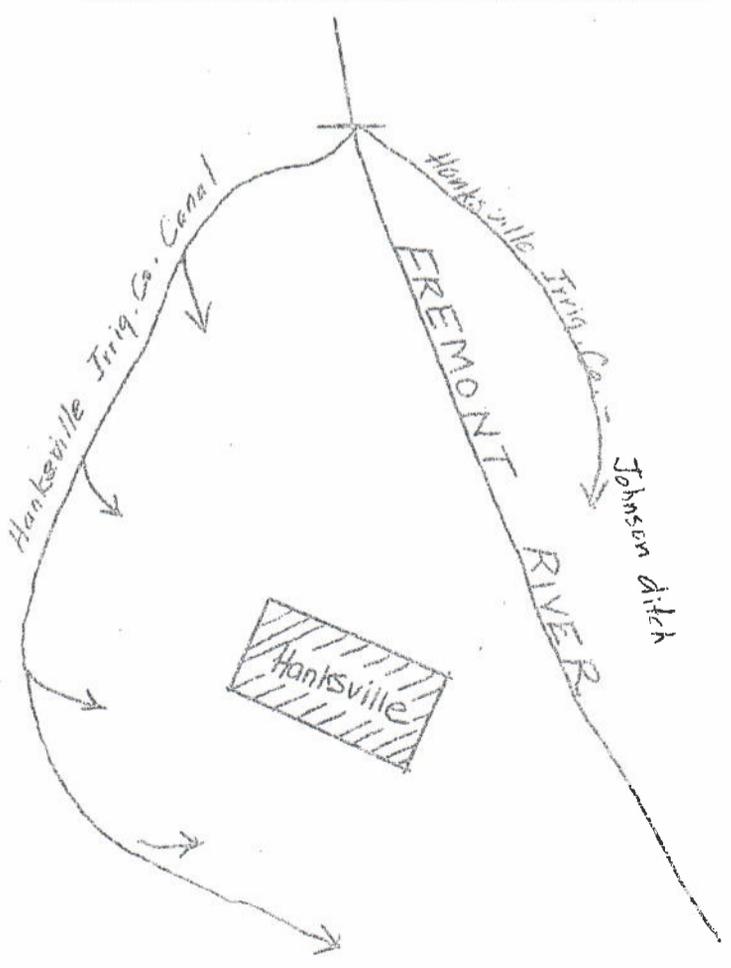
FRUITA



CAINEVILLE



HANKSVILLE



LOWER FREMONT R.
DITCHES
March 15, 1963

TENTATIVE AS OF MARCH 15, 1963-

PRESENT OWNERSHIP OF LOWER FREMONT RIVER WATER RIGHTS

Based on the 1935 Bates Decree, Applications, and other sources

No.	Decreed Rights Name	Decreed c.f.s.	Transferred to Torrey Irr. Co. c.f.s.	Other Present Owners Name	c.f.s.
<u>CLASS A</u>					
1	Edmund King, H.C. Larsen, & Richfield Commercial & Savings Bank	5.00		Arilla Maxfield Charles W. Blackburn	1.67 <u>3.33</u> 5.00
2	Edmund King, Irrigation decreed 40 cfs. Power water--3.33 cfs. of which may be used for irrigation	3.33	2.00	Harold Allen	1.33
3	Edmund King - Grist Mill power right of 40 cfs.	36.67	--	Abandoned	--
4	Edgar Larsen	1.66	0.66	Arilla Maxfield	1.00
5	Haskin Lyman	1.00	--	Boyd Black	1.00
5a	Alfred Ostbery (Diligence)	2.00	--		2.00
6	Joseph Hiskey	6.00	--	Boyd Hiskey Talmadge Jensen	6.00
7	Wm. Hickman	1.10	--	Alonzo Black (being purchased by Ken Leavitt)	1.10
8	Charles Cooper & Wm. Hickman	3.50	--	Joe & Ida Hickman Alonzo Black (being purchased by Ken Leavitt)	0.50 <u>3.00</u> 3.50
9	Mary Ann Steele, custodian of Michael Steele	1.50	--	Hanksville Irr. Co. (Glen Whitby)	1.50
10	G. T. Bean	3.00	2.75	Cleland Hunt - 1 cfs for 2 days out of 10.	0.25
11	Fruita Residents	8.00	--	Fruita Residents	8.00
12	Caineville Canal Co.	12.00	--	Caineville Canal Co. - Add 0.25 cfs of Hunt right for 8 days out of 10.	12.00
13	Hanksville Canal Co.	10.00	--	Hanksville Canal Co.	10.00
<u>CLASS B</u>					
14a	Torrey Irr. Co.	33.00	33.00		
b	Torrey Domestic & Culinary	2.00	2.00	a-1502 Cert. a-558 (95-540)	
15	Wm. Hickman	2.50	--	Dez Hickman Alonzo Black (being purchased by Ken Leavitt)	1.00 <u>1.50</u> 2.50
<u>POWER</u>					
16	Gar-Kane Power Plant Appl. 26946, Cert. 5681	--	--	Gar-Kane Power	32.00
<u>GRAND TOTALS</u>					
Total Class A	56.09	Total Class B	37.5	Total Decreed Rights	93.59
Diligence	<u>2.00</u>	Power Right	32.0	Diligence	2.00
	58.09			Power Right	<u>32.00</u>
					127.50

See proposed Fremont River Distribution Schedule for a more detailed breakdown of river percentages and rights.

NOTE: Under Par. 2, Order Civil No. 167 dated Mar. 12, 1963, Class A or primary rights are to be fully satisfied at points of diversion before any water is delivered to Class B or secondary rights, except 2 cfs used for culinary purposes by Torrey Irr. Co. is to be supreme and receive a full right at all times.

1/Revised May 17, 1963.

PROPOSED ASSESSMENT
LOWER FREMONT RIVER WATER USERS

A. Basis

Item	Right cfs.	Suggested assessment rate
1. Primary rights		
a. Class A	56.09	
b. Diligence rights (Ostberg)	3.00	
c. Class B (Domestic Permanent Flow)	2.00	
Total	60.09	
2. Secondary rights		
a. Class E (Less 2.0 cfs. don. & cul.)	35.50	
3. Power rights under Application 26946, Cert. 5881	32.00	

B. Assessment Formula:

1. $D = A_T$

2. $A_T = RW_A + \frac{D}{2} W_B + \frac{R}{2} W_P$

3. $R = \frac{D}{\frac{W_A}{2} + \frac{W_B}{2} + \frac{W_P}{2}} = \frac{60.09}{\frac{56.09}{2} + \frac{35.50}{2} + \frac{32.00}{2}} = \$ 22.72$

4. Individual assessment

(a) Class A = $W_i \times R$

(b) Class B = $W_i \times \frac{R}{2}$

(c) Power = $W_i \times \frac{R}{2}$

- D = Distribution Budget (Distribution Budget)
- A_T = Total assessment (Total Assessment)
- R = Basic rate per cfs. in dollars
- W_A = Total Class A water rights
- W_B = Total Class B water rights
- W_P = Total Power rights
- A_i = Individual right assessment
- W_i = " flow right in cfs.

Item 9

TENTATIVE ASSESSMENT ROLL

Assessment Acct.	Present owner of right	Decreed water rights 1/	CFS of Right plus domestic & diligence		Power	1963 Assessment 2/
			Class A	Class B		
			cfs.	cfs.	cfs.	Dollars
1.	Arvilla Maxfield Loa, Utah	1. Edmund King 4. Edgar Larsen Total	1.00 1.00 2.00			\$45.43
22.	<i>Wayne C.</i> Blackburn Loa, Utah	1. Edmund King (40 cfs. of which 36.67 power right abandoned)	3.33			75.65
3.	Harold Allen	2. Edmund King	1.33			30.21
4.	Boyd Black Torrey, Utah	5. Haskin Lyman 5a. Ostberg (Dil.) Total	1.00 2.00 3.00			68.15
5.	Talmadge Jensen & Boyd Hiskey	6. Joseph Hiskey	6.00			136.30
6.	Dez Hickman Torrey, Utah	7. Wm. Hickman 15. <i>Dez</i> Hickman	1.10	1.25 1.00		11.36 (24.99) (14.20) 39.19
7.	Joe Hickman & Kenneth Leavitt <i>0.50</i> <i>3.00</i> <i>average Black</i>	8. Charles Cooper & Wm. Hickman	3.50			11.36 79.51 68.16
8.	Torrey Irr. Co. c/o Clyde Behunin Torrey, Utah	1. Edmund King 2. Edmund King 4. Edgar Larsen 9. Michael Steel 10. G. T. Bean 14b. Torrey Irr. Co. (2 cfs. domestic from Class B. right 14a. Torrey Irr. Co. (33 cfs. - 2 cfs. plus dom. right shown as 14b.) Total	0.67 2.00 0.66 1.50 2.75 2.00 9.58			(217.63) <u>(374.82)</u> 592.45
9.	Caineville Canal Co. c/o Dolan Brian <i>corrected to show 0.25 cfs owned by Hunt.</i>	10. G. T. Bean 12. Caineville Canal Company Total	0.25 12.00 12.00			272.60 278.28
10.	Alonzo Black <i>(Ken Leavitt buying)</i>	15. Wm. Hickman & Dez Hickman	1.10	1.25 1.50		24.99 14.20 17.04
11.	Gar-Kane Power Co. Richfield, Utah	16. Application 26946 -C 5881			32.00	181.73
12.	Hanksville Canal Co. c/o Harold Ekker Hanksville, Utah	13. Hanksville Canal Company	10.00			227.17
13.	Fruita Residents (To be determined)	11. Fruits Residents	8.00			181.73
Totals			60.00	35.50	32.00	1,950.00

9. A. Cleland Hunt 10 G. T. Bean 0.25 5.68

1/ From the analysis and schedule of water rights from the Bates Decree dated July 15, 1935, and other sources. Numbers refer to itemized rights on previous page.

2/ All assessments must be paid to the Clerk of the Court by May 1, 1963. (2)

SECTION "B"

The second class rights to the use of waters of said river are as follows:

William Hickman and Dez Hickman, jointly	- - - - -	2.5 c.f.s.
Torrey Irrigation Company	- - - - -	35.0 c.f.s.

II.

That each of the parties hereto and herein are hereby required to construct weirs of the design approved by the State Engineer of this State, under the direction and supervision of the commissioner to be appointed by this Court and maintain the same, in their respective canals and ditches for the purpose of accurately measuring the quantities of water decreed to them; and thereafter shall maintain and keep all dams, headgates, flumes, canals, and other means by which said waters are diverted, conveyed, or used together with said weirs, in a good state of repair, to the end that no unnecessary loss from seepage or leakage shall occur, and that the waters shall be economically applied to the use for which they are awarded, and all waters diverted from said river and the streams, springs, and tributaries within its drainage basin, by any of the parties hereto, shall be measured at their respective weirs and by means thereof.

III.

That the title of the parties hereto to the right to the use of said waters, as herein decreed, is hereby quieted as against each and every other party to this action; and every party hereto, their successors and assigns, and their agents, servants, and employees, are hereby forever enjoined from in any manner or at all interfering one with the other in the full, free and unrestricted use of the quantities of water decreed to them, and from in any manner or at all interfering with each others' canals, dams, or headgates, or from in any manner or at all interfering with the distribution of said water by the commissioner of this Court, or by his agents or assistants.

IV.

That the rights herein decreed are founded upon appropriations of water for beneficial uses, and the rights herein decreed are subject to the condition that they are required and necessary for beneficial uses and such rights are subject to the limitations and conditions that the same are used for beneficial purposes, economically and without waste.

V.

For the purpose of carrying this decree into effect, according to its true intent and meaning, a commissioner will be appointed by order of this Court made from time to time, to superintend and direct the measurement and diversion of the waters of the Fremont River and the springs, streams, and tributaries within its drainage basin, according to the provisions of this decree, and to direct the construction and to supervise and inspect all means and appliances for the measurement thereof, and the diversion, conveyance, and use of the same, and to report from time to time to the Court relating to all waters and any violation of the provisions of this decree. Said Commissioner to receive such compensation to be apportioned among the parties, as may be agreed upon, if practicable, if not, to be fixed from time to time as necessary by order of this court.

VI.

That the waters involved in this action are the waters that arise in and flow into the Fremont River or basin at a point designated as the Township line between Pownship 28 and 29, Range 3 East of the Salt Lake meridian, and below said point, and does not apply to the rights that have heretofore been settled by the Court to all rights above that point.

VII.

It is further provided herein, that 2 c.f.s. of the water decreed to the Torrey Irrigation Company shall not be subject to pro rata distribution but shall be a right for culinary and domestic purposes for the use of the inhabitants of the town of Torrey, Wayne County, Utah.

VIII.

Unless otherwise limited by special provision, the primary rights herein decreed are absolute unqualified rights during the period through which they extend, and rights in any class subsequent to primary rights are available only when all rights in preceding classes have been fully supplied.

IX.

That original jurisdiction of this cause and the subject matter thereof and of the parties thereto, is hereby retained for the purpose of making all necessary supplemental orders and decrees which may be required, to make effectual the rights decreed herein.

Dated this 15 day of July, A. D. 1935.

NEPHI J. BATES

Judge.