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JUDGE TIBBS
 Judge Tibbs signed
 Order March 25th 1995

IN THE SIXTH JUDICIAL DISTRICT COURT IN AND FOR
 SANPETE COUNTY, STATE OF UTAH

DESERET IRRIGATION COMPANY, :
 MELVILLE IRRIGATION COMPANY, :
 ABRAHAM IRRIGATION COMPANY, :
 DELTA CANAL COMPANY and CEN- :
 TRAL UTAH WATER COMPANY, all :
 non-profit corporations of the :
 State of Utah, :

Plaintiffs, :

-vs- :

ROBERT L. MORGAN, State Engi- :
 neer of the State of Utah, :
 STATE OF UTAH acting through :
 the Utah Board of Water Re- :
 sources and GUNNISON IRRIGA- :
 TION COMPANY, a Utah non- :
 profit corporation, :

Defendants. :

ORDER APPROVING
 PARTIAL SETTLEMENT STIPULATION

Civil No. 930600316

Honorable Don V. Tibbs

The Court, having reviewed the Partial Settlement Stipulation dated August 16, 1994 (the "Stipulation") by and between DESERET IRRIGATION COMPANY, MELVILLE IRRIGATION COMPANY, ABRAHAM IRRIGATION COMPANY, DELTA CANAL COMPANY and CENTRAL UTAH WATER COMPANY, all non-profit corporations of the State of Utah, (referred to herein as "DMADC"), plaintiffs in the above action; ROBERT L. MORGAN, State Engineer of the State of Utah (referred to herein as the "State Engineer"), and GUNNISON IRRIGATION COMPANY, a Utah non-profit corporation, (referred to herein as "Gunnison"), defendants, and the other pleadings and file in this action and the Court being fully advised concerning the matters covered in the parties' Stipulation, now adopts the following factual stipulations of the parties in support of the order set out below:

FACTUAL STIPULATIONS

A. The above captioned action has been consolidated for trial with other actions entitled: GUNNISON-FAYETTE CANAL COMPANY, a Utah corporation, plaintiff, -vs- ROBERT L. MORGAN, State Engineer of the State of Utah and GUNNISON IRRIGATION COMPANY, a Utah corporation and STATE OF UTAH BOARD OF WATER RESOURCES, defendants, Civil No. 930600311 and DESERET IRRIGATION COMPANY, MELVILLE IRRIGATION COMPANY, ABRAHAM IRRIGATION COMPANY, DELTA CANAL COMPANY and

CENTRAL UTAH WATER COMPANY, all non-profit corporations of the State of Utah, plaintiffs, -vs- ROBERT L. MORGAN, State Engineer of the State of Utah, and GUNNISON IRRIGATION COMPANY, a Utah non-profit corporation, defendants, Civil No. 930600418.

B. DMADC, Gunnison and the State Engineer have entered the Stipulation, as on file in this matter, in partial settlement of the Amended Complaint filed by DMADC in Civil No. 930600316, which Stipulation the Court finds to be appropriate and proper for approval.

ORDER

BASED ON THE FOREGOING FINDINGS, IT IS HEREBY ORDERED:

1. Settlement of Change Application Issues. The January 15, 1993 Memorandum Decision of the State Engineer approving Change Application No. 63-4 (a16484) (the "Memorandum Decision") shall stand, as written, supplemented in the following respects:

1.1. Paragraph 4 on page 5 of the Memorandum Decision shall be supplemented by the following:

1.1.1. A Parshall flume or other measuring device approved by the parties to the Stipulation shall be installed at the point that Gunnison diverts any water

originally diverted from Six Mile Creek into the Nine Mile Feeder Canal. DMADC may install, at no cost to Gunnison, a full time recorder on the measurement device. Said point of diversion is described in the Memorandum Decision as follows:

South 594 feet West 2574 feet from the Northeast corner of Section 3, Township 19 South, Range 2 East, Salt Lake Base & Meridian.

The actual point of diversion and the point at which the measurement device shall be installed shall be determined upon final proof under Change Application No. 63-4 (a16484).

1.1.2. A measuring device with a full-time recorder shall be installed below the outlet of Gunnison Reservoir on the Pettyville Canal at a site immediately below the confluence of Six Mile Creek and the Pettyville Canal. The measurement device shall measure and record the combined total amount of water diverted by Gunnison from both Gunnison Reservoir and from Six Mile Creek into the Pettyville Canal. The measuring device shall be installed and maintained as near as practicable to the

point at which water from Six Mile Creek is diverted into the Pettyville Canal.

1.1.3. A measurement device with a full-time recorder shall be installed between Gunnison's diversion structure on Twelve Mile Creek and the point where the water there diverted is mixed in the Highland Canal with water delivered by the Pettyville Canal. The measurement device shall be installed at a point where an effective measurement can be obtained of the total amount of water diverted by Gunnison from Twelve Mile Creek into the Highland Canal.

1.1.4. Gunnison shall install a measurement device between the outlet of Nine Mile Reservoir and the Pettyville Canal. The Parshall flume installed by Gunnison in 1993 shall be a sufficient measuring device. DMADC may install, at no cost to Gunnison, a full time recorder on any measurement device installed by Gunnison at this location. As provided in paragraph 1.1.4 of the Stipulation, Gunnison shall divert water through the Nine Mile Feeder Canal and Nine Mile Reservoir only if that water can be separately administered and accounted for

under the separate priorities and periods of use of the Gunnison Irrigation Company and Highland Canal Company rights as set out in the Cox Decree.

1.1.5. A Parshall flume or other measurement device shall be installed at the head of the New Field Canal to measure the flow of water diverted by Gunnison from Twelve Mile Creek into the New Field Canal.

1.1.6. A measurement device with full-time recorder shall be installed at the head of the Old Field Canal to measure the total amount of water diverted by Gunnison into the Old Field Canal.

1.1.7. Except as stated in paragraphs 1.1.1 and 1.1.4., each measuring and recording device installed under this provision shall be installed at no cost to DMADC and shall, to the extent practicable, be maintained in good, operable and accurate condition at all times that Gunnison diverts water.

1.1.8. Gunnison shall include an adequate description of each measuring device, along with a survey description of the location of each such device in its proof of change on Change Application No. 63-4 (a16484).

1.1.9. The Sanpitch River Commissioner shall monitor the measuring devices on a routine basis and keep an accurate record of all water diverted by Gunnison. The records of such diversions shall be deemed public records and all parties to this action shall, upon request, be entitled to inspect and copy the recording device records and all reports made by the river commissioner.

1.2. Gunnison shall not store any water in Nine Mile Reservoir except as provided under the Highland Canal Company right as set forth at pages 167 and 169 of the Cox Decree.

1.3. Gunnison shall not irrigate more total acreage through the Gunnison system under Change Application No. 63-4 (a16484) than the total acreage set out in Bacon's Proposed Determination and adopted in the Cox Decree for the Gunnison Irrigation Company, Highland Canal Company, Inc. and New Field Canal Co., Inc. rights and the individual rights described in paragraph 1.4, as limited in paragraph 1.4. Gunnison shall prepare maps for the purposes of filing proof of change showing comparison of the total irrigation acreage allowed under the Cox Decree to the acreage to be irrigated under Change Application No. 63-4 (a16484). Gunnison shall provide

DMADC a copy or copies of such final proof map or maps. DMADC shall pay the cost of reproducing the copy or copies of these maps obtained by it.

1.4. Gunnison acquired the so-called "individual water rights" listed below:

<u>Name</u>	<u>Reference in Cox Decree</u>	<u>State Engineer's Water Right No.</u>
Mary C. Funk	170	65-3361
Elmer A. Poulson	174	63-3243
Charles P. Peterson	178	63-3046
R.S. Yardley	175	63-3248
		63-3249
Orson Wilkinson	175	63-3250
Joseph Christensen	178	63-3072
W.H. Gribble	178-179	63-3077

Gunnison included these rights as part of the water rights affected by Change Application No. 63-4 (a16484). These water rights may be used by Gunnison in accordance with their respective priorities under the Cox Decree, as set out in this paragraph 1.4.

1.4.1. As agreed by the stipulating parties:

A. Under the **Funk** right, the Cox Decree and Bacon's Proposed Determination (p. 198) allow diversion of .37 c.f.s. from a spring that is tributary to the Sanpitch River as the sole supply to irrigate 18.7

acres. Under the Memorandum Decision, the point of diversion for the Funk right identified in the Cox Decree will be abandoned and the water diverted from one or more of the measured points of diversion listed above. The acreage listed in Bacon's Determination will be abandoned and may be replaced by additional acreage irrigated under the Gunnison system. Any diversion works used to deliver water to the acreage previously irrigated will also be abandoned. The Mary C. Funk right was incorrectly designated in Change Application No. 63-4 (a16484) and the Memorandum Decision as State Engineers No. 65-3348. The Memorandum Decision is hereby amended to include the correct designation of the Funk Right as Water Right No. 65-3361.

B. The Cox Decree award for the Poulson right (Cox Decree, p. 174; Bacon's, p.202) allows diversion from Twelve Mile Creek or tributaries to it as the sole supply for irrigation of 49.1 acres of land. Under the Memorandum Decision, the point of diversion identified in the Cox Decree for the Poulson

right will be abandoned and the right diverted from one or more of the measured points of diversion listed above in paragraph 1.1. The 49.1 acres identified in Bacon's Determination will be irrigated under the Gunnison system.

C. The **Wilkinson** right (Cox Decree, p. 175; Bacon's, p. 203 - listed under "Fergus Bjerregaard") allows diversion of water from Twelve Mile Creek as the sole supply to irrigate 58.4 acres. Under the Memorandum Decision, the point of diversion for the Wilkinson right as identified in the Cox Decree will be abandoned and the right diverted from one or more of the measured points of diversion listed in paragraph 1.1 above. The acreage listed in Bacon's Determination will be irrigated through the Gunnison system.

D. The **Yardley** right (Cox Decree, p. 175; Bacon's p. 203) allows diversion of water from seven springs into the Spring Ditch as the sole supply for irrigation of 38.7 acres. Under the Memorandum Decision, the points of diversion for the

Yardley right identified in the Cox Decree will be abandoned and the right diverted from one or more of the measured points of diversion listed above in paragraph 1.1. The acreage listed under this right in Bacon's Determination will be irrigated through the Gunnison system.

E. The **Peterson** right (Cox Decree, p. 178; Bacon's, pp. 205-206) allows diversion from the Sanpitch River as a supplemental supply to irrigate lands already under the Gunnison system.

F. The **Christensen** right (Cox Decree p. 178; Bacon's p. 206) allows diversion from the Sanpitch River as the sole supply for irrigation of 91.9 acres and as a supplemental supply to irrigate certain lands under the Gunnison system. Under the Memorandum Decision, the point of diversion for the Christensen right identified in the Cox Decree will be abandoned and the right diverted from one or more of the measured points of diversion listed above. The sole supply acreage listed in Bacon's

Proposed Determination will be irrigated through the Gunnison system.

G. The **Gribble** right (Cox Decree pp. 178-179; Bacon's p. 206) allows diversion from the Sanpitch River as the sole supply for irrigation of 23.1 acres and as a supplemental supply to irrigate certain lands under the Gunnison system. Under the Memorandum Decision, the point of diversion for the Gribble right identified in the Cox Decree will be abandoned and the right diverted from one or more of the measured points of diversion listed above in paragraph 1.1. The sole supply acreage listed in Bacon's Proposed Determination will be irrigated through the Gunnison system.

1.4.2. Gunnison may add the flow rate represented by the Funk, Poulson, Wilkinson, Yardley, Christensen and Gribble rights to Gunnison's total right to divert at its measured points of diversion listed above so long as and to the extent that:

A. An equal flow of water is being produced at the source from which each such respective right added

to the diversion rate was historically diverted, up to the amount provided in the Cox Decree; and

B. Gunnison has sufficient water stored in Gunnison Reservoir to satisfy Gunnison's storage right for the balance of the irrigation season.

1.4.3. Gunnison may add the acreage specified in Bacon's Proposed Determination for each of the sole supply rights, except the Funk right, to the acreage decreed for the Gunnison Irrigation Company, Highland Canal Company, Inc. and New Field Canal Co., Inc. in the Cox Decree, subject to the following:

A. The acreage historically irrigated under the Funk right and the diversion works will be abandoned and the acreage replaced as described in paragraph 1.4.1.A.

B. Based on Gunnison's representations that: (1) under its current method of operation, Gunnison has added the acreage previously irrigated under the aforesaid individual rights designated as sole supply rights to the total acreage irrigated under the Gunnison system; (2) Gunnison has proportion-

ately increased the quantity of water delivered to all of its shareholders when streamflow conditions permitted diversion of the additional water; (3) when streamflow was not sufficient to divert water under said rights, Gunnison reduced the quantity of water delivered to all of the shareholders proportionately rather than to require a few shareholders to cease irrigating; and (4) that to avoid expanding Gunnison's consumptive use of water, individual shareholders ceased irrigation of certain portions of their land and applied the available water to the balance of their land; Gunnison may continue this method of operation, subject to the following administrative requirements:

(i) If Gunnison's proof of change under Change Application 63-4 (a16484) claims the right to irrigate total acreage for all of the rights listed in Change Application 63-4 (a16484) that is less acreage than the total amount decreed to the Gunnison Irrigation Company, the High-

land Canal Company and the New Field Canal Company under the Cox Decree and Bacon's Proposed Determination, then Gunnison's current method of operation as set forth in paragraph 1.4.2(B)(1) above shall apply and nothing more shall be required with regard to the administration of the individual sole supply rights.

(ii) If Gunnison submits proof of appropriation under Change Application 63-4 (a16484) for total irrigated acreage greater than that decreed for the Gunnison Irrigation Company, Highland Canal Company and the New Field Canal Company rights under the Cox Decree, but less than or equal to the total of those rights and the acreage decreed for the individual sole supply rights, then during those periods of time when Gunnison is unable to add the individual sole supply rights to its diversion rate under the criteria set forth in paragraph 1.4.2 above, Gunnison will remove acreage from

irrigation during said periods of time and to the extent that water is not available. In order to assure that there is no unlawful expansion in the consumptive use of water, Gunnison shall, prior to June 15 of each year, provide written notice to the Sanpitch River Commissioner designating the acreage which is to be removed from irrigation as required herein.

1.4.4. The flow rate of the Peterson supplemental right shall not be added to Gunnison's diversion right. The acreage historically irrigated under the Peterson right was part of the land irrigated by the Gunnison system under the Cox Decree and may be included as part of the land so irrigated under the Memorandum Decision.

1.4.5. The Sanpitch River Commissioner shall verify that the conditions of this paragraph 1.4. have been met prior to such flow rates or acreages being added to Gunnison's water rights. The Sanpitch River Commissioner shall check the source or sources from which each of the individual rights was historically diverted at intervals

of not more than 30 days, or such shorter intervals as the State Engineer may direct, during any time that Gunnison relies on such source for an increase in its diversion right or irrigated acreage.

1.4.6. Gunnison shall comply with paragraph 1) on page 5 of the Memorandum Decision with respect to each of the foregoing individual rights. Paragraph 1) on page 5 of the Memorandum Decision states:

The flow rate, period of use, and priority of water rights distributed in this change will not be altered. The amount of water the applicant can divert under this change will be based on the period of use, and priority of the underlying rights upon which this change is based.

1.5. Based on the Stipulation:

1.5.1. The First Claim and Second Claim of the Amended Complaint filed by DMADC on or about May 10, 1993 are hereby dismissed with prejudice and on the merits.

1.5.2. The Third Claim of said complaint is hereby dismissed, with prejudice, as to claims based on water diverted or used prior to the date of the

Stipulation, but without prejudice to any claim arising after the date of the Stipulation or to any of the remaining claims of DMADC in these consolidated actions.

1.5.3. The Seventh Claim of DMADC's complaint should be and is hereby dismissed as to the State Engineer, but not as to the State of Utah acting through the Board of Water Resources.

1.6. The Court approves and adopts the statement of intent of the parties to the Stipulation as set out in paragraph 1.6 of the Stipulation.

1.7 No provision of the Stipulation shall preclude the State Engineer from issuing such orders, installing or requiring installation of water regulation or measuring devices or taking such other actions consistent with the terms of this Order as the State Engineer deems necessary to fulfill his statutory duties in administering the waters of the Sanpitch River and its tributaries. Nothing contained in the Stipulation or this Order shall constitute a waiver on the part of any party of their right to seek judicial review of

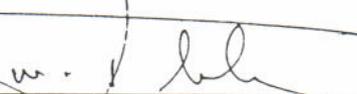
any State Engineer administrative order or regulations in a manner authorized by law.

2. **Other Issues Not Affected.** All other claims set forth in the respective pleadings in Cases No. 930600316, 930600311 and 930600418 in the above Court remain at issue and no stipulation or settlement of such issues shall be contemplated or inferred by the items set forth in this Order.

3. **Interpretation of STIPULATION.** The parties to the Stipulation drafted it as a joint effort. No inference or construction of the language should be made for or against any party should any part of the Stipulation be found to be ambiguous.

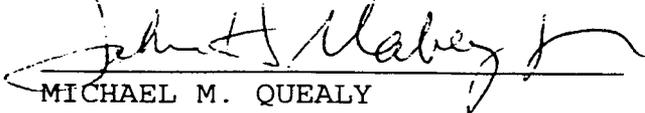
DATED this ⁷ 25 day of March, 1995.

BY THE COURT:


District Court Judge


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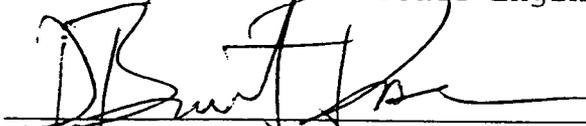


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