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IN THE DISTRICT COURT OF SANPETE COUNTY, STATE OF UTAH

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GUNNISON-FAYETTE CANAL COMPANY, A Utah Corporation, Plaintiff,	)	
-vs-	)	COMPLAINT
GUNNISON-IRRIGATION COMPANY, A Utah Corporation, and if the following Defendants have not been merged therein, HIGHLAND CANAL COMPANY, INC., and NEWFIELD CANAL COMPANY, both Utah Corporations, Defendants.	)	Civil No. 5444

Douglas Ferguson

Donna L. Nielson

* * * * *

The Plaintiff complains of the Defendants and for cause of action alleges:

1. That the Plaintiff is a Utah Non-Profit Corporation having its principal place of business in Fayette, Sanpete County, Utah, and is organized for the purposes of holding, owning, administering, and distributing water for irrigation purposes.

2. That the Defendant Gunnison Irrigation Company is a Utah Corporation with its principal place of business at Gunnison, Sanpete County, Utah, and Plaintiff is informed and believes and upon the basis thereof alleges that Defendants Highland Canal Company, Inc., and Newfield Canal Company are corporations which through merger or consolidation have become a part of or wholly owned by the Defendant Gunnison Irrigation Company.

If Highland Canal Company, Inc., and Newfield Canal Company have not been merged into and absorbed by Gunnison Irrigation Company as the surviving corporation, then the allegations of this Complaint run to and against each and all of the named corporations. If Highland Canal Company, Inc., and Newfield Canal Company have been merged into Gunnison Irrigation Company which was the surviving corporation then reference to the other Defendants in this Complaint shall be deemed to have reference only to Gunnison Irrigation Company.

3. That Plaintiff was adjudicated certain rights in the case of Richland Irrigation Company, a corporation, Plaintiff vs. Westview Irrigation Company, a corporation, et al., Defendants, Case No. 843 in the Fifth Judicial District Court

of the State of Utah in and for Millard County in which proceeding not only was Plaintiff a party but also was all of the Defendant corporations.

4. That among the rights decreed to Plaintiff was the right appearing on Page 198 of the Progress Printing Edition of the Decree emerging from the aforesaid litigation which is commonly known as and will hereinafter be referred to as the "Cox Decree" awarding to Plaintiff 40 cubic feet per second of water yielded by the Sanpitch River above the intersection of Gunnison-Fayette Canal and Sanpitch River after all prior rights are satisfied above the said intersection to be used from March 1st to October 1st on lands under the Gunnison-Fayette Canal System north of the Sanpitch River.

5. That on Page 167 of the same edition of the Cox Decree, 25 c.f.s. of the 40 c.f.s. awarded on Page 198 are given a priority over the right of Highland Canal Company to divert water from Six Mile Creek and Twelve Mile Creek, which creeks are tributary to the Sanpitch River which is tributary to Sevier River and the provision subordinating the right of Highland Canal Company, Inc., reads as follows:

> "IRRIGATION: (C) * * * (2) Twelve Mile Creek at a point South 46°48' West 750 feet from the Northeast Corner of the Southwest Quarter of the Northeast Quarter of Section 32, Township 18 South, Range 2 West, into the Highland No. ____ Canal."
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> It is provided, however, that all of the rights of the Highland Canal Company to the use of the water from Sanpitch River and its tributary Six Mile Creek and Twelve Mile Creek are subject to the right of the Gunnison-Fayette Canal Company to 25 c.f.s out of the 40 c.f.s. awarded to said Gunnison-Fayette Canal Company.

6. That for many years last past the Defendant Gunnison Irrigation Company, and prior to the merger, if a merger were legally effected, the predecessor to Gunnison Irrigation Company, Highland Canal Company, Inc., has deprived Plaintiff of all of its water decreed under Page 198 of the Cox Decree by wrongfully diverting the water from Six Mile Creek and from Twelve Mile Creek into ditches and canals of those Defendants and prevent the water from reaching the intersection of the Sanpitch River with the canal of Gunnison-Fayette Canal Company.

7. That the right of Gunnison-Fayette Canal Company, the Plaintiff, to 40 c.f.s. of water is subordinate to rights of Defendants when there is insufficient water in the Sanpitch River to satisfy the last 15 c.f.s. of water awarded to Plaintiff on Page 198 of the Decree; however, at all times the right of Plaintiff to 25 c.f.s. is prior to any rights of Defendants by virtue of the award to Plaintiff on Page 167 of the Cox Decree.

8. That further during periods of high water Plaintiff is entitled to the entire 40 c.f.s. of water provided all rights are filled to their decreed capacity whereupon Plaintiff is entitled to 25 c.f.s. before any water from Twelve Mile or Six Mile Creek is delivered to Highland Canal Company, Inc., or its successors and assigns and is entitled to 15 c.f.s. after all other rights are filled.

9. That within the past four years the Defendant has wrongfully deprived the Plaintiff of water in the following amounts and volumes by diverting water upstream, refusing to recognize the rights and proportions of the Plaintiff and by depleting the flow of Sanpitch River to no flow whatsoever at Plaintiff's diversion points:

2,500 acre feet in the year 1965
700 acre feet in the year 1964
500 acre feet in the year 1963
500 acre feet in the year 1962

For a total of 4,200 acre feet which has a value of $20.00 per acre foot and Plaintiff has been damaged in the amount of $84,000.00.

10. That there is as of the date of this Complaint substantially more water flowing in the Sanpitch River than is required to fill all the rights of the Defendants, their predecessors in interest and the assigns and successors of their predecessors in interest and nevertheless the Defendants continue to deprive Plaintiff of the water decreed to Plaintiff out of the Sanpitch River.

11. That Plaintiff has made repeated demand upon the Defendants for delivery to it of the water decreed to Plaintiff under the Cox Decree and Defendants have refused and continue to refuse to deliver any water to Plaintiff at the confluence of the Sanpitch River and the Plaintiff's Canal in Sanpete County and that the

Plaintiff is suffering irreparable harm, injury and damage for which Plaintiff cannot be compensated in money; that the Plaintiff and its stockholders will suffer irreparable damages for which they cannot be compensated in money by reason of the fact that lands under cultivation and irrigation to which water available under the Cox Decree should be applied cannot be irrigated to produce crops and the land itself will suffer irreparable harm, injury and damage by not having water applied thereto and all the damages which will accrue will not be determinable nor liquidetable through computation but the total damages cannot be assessed for many years yet to come and the Plaintiff is entitled to a Preliminary Injunction and Injunction Pendente Lite preventing and restraining the Defendant, its agents or officers, watermasters and ditch riders from depriving the Plaintiff of its decreed water right directing all officers or officials having in their charge the responsibility to administer said stream to deliver to the Plaintiff at the confluence of Plaintiff's canal and the Sanpitch River 40 c.f.s. of water until such time as the flow of Sanpitch River recedes below the existing primary rights, then to accord to Plaintiff 25 c.f.s. of water at all times until the other rights are filled thereafter to award Plaintiff, Gunnison-Fayette Canal Company, its additional right up to a total of 15 c.f.s.

WHEREFORE, Plaintiff prays Judgment as follows:

A. For damages in the sum of $84,000.00.

B. For a Judgment of this Court adjudicating and decreeing that the Plaintiff is entitled to a delivery at the confluence of the Sanpitch River and the Plaintiff's canal 40 c.f.s of water to be accorded a priority of 25 c.f.s. over and above any water taken after the additional rights are filled which Judgment shall decree that Plaintiff has a priority over Highland Canal Company, Inc., for said 25 c.f.s. of water and that all the Defendants are limited to the rights expressed in the Decree and any surplus water shall go to make up the total and additional right of Gunnison-Fayette Canal Company found on Page 19 of the Decree.

C. An Injunction Pendente Lite and a Preliminary Injunction restraining, preventing and enjoining the Defendants and each and all of them from interfering with the decreed rights of the Plaintiff."

OLSEN AND CHAMBERLAIN

By _____
Attorneys for Plaintiff
Address: 76 South Main
Richfield, Utah

STATE OF UTAH)
: SS.
COUNTY OF SANPETE)

RENDELL HENDRICKSON and DEAN BARTHOLOMEW, being each first duly sworn upon oath, depose and say:

That they are the President and Secretary respectively of Gunnison-Fayette Canal Company, the Plaintiff in the foregoing action; that they have read the Complaint and know the contents thereof and that the same are true of their own knowledge except as to matters therein alleged upon information and belief and as to those matters they believe them to be true.

_____
Rendell Hendrickson, President

_____
Dean Bartholomew, Secretary

Subscribed and sworn to before me this ___ day of June, A. D. 1965.

_____
Notary Public

Residing At: _____

My Commission Expires: _____