

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 Con-
clusions 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.

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	

National Park Service

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 Steele -----	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.

SECTION "B"

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

<i>See letter of 4/9/62</i> William Hickman and Dez <u>Hickman</u> , jointly -----	<i>Dez Hickman</i> <i>Alvaro Oluch</i> 1.25 1.25 -----	2.5 c.f.s.
Torrey Irrigation Company -----		35.0 c.f.s.

11.

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.

111.

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.

1V.

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 Township 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.