

IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF UTAH

IN AND FOR MONTANA COUNTY

EENEZER G. DEFRIZ, et al,

Plaintiffs,

vs.

ASHLEY CENTRAL IRRIGATION COMPANY,
et al,

Defendants,

and

ASHLEY CHADWICK, et al,

Interveners,

and

HUNLENE CANAL COMPANY, ASHLEY
VALLEY RESTRICTOR COMPANY, DRY WORK
IRRIGATION COMPANY, BITT DITCH COMPANY,
DUAYNE T. JOHNSON, MORAN MERKLEY,
WILLIAM H. HULLINGER, CLARENCE F. JONES,
HENRY PELTZER and GENE C. PELTZER,
VIRNUS McSWAIN and SARIE A. McSWAIN,
ARUS CALDWELL, LAWRENCE CALDWELL and
UNITED STATES BUREAU OF RECLAMATION.

Defendants.

DECREE ADDING PARTIES
AND ORDER APPOINTING
WATER COMMISSIONER

Civil No. 3197

The Motion of the Ashley Water Irrigation Company, the Colton Ditch Company, the Steinkaker Ditch Company, the Ashley Central Irrigation Company, the Hardy Ditch Company, the Island Ditch Company, the Dodds Ditch Company and the Rock Point Irrigation Company representing the Plaintiffs and Defendants, or their successors in interest, in the above entitled action, hereinafter referred to as the owners of the primary water rights of Ashley Creek and its tributaries requesting that other users and persons claiming the right to use water out of Ashley Creek and its tributaries be made parties defendant to this action and that the State Engineer be appointed as Water Commissioner of Ashley Creek and

its tributaries to administer and distribute the waters thereof in accordance with the Decree of this Court in this case and the respective rights of the parties hereto, came on regularly for hearing this 15th day of May, 1962.

And it appearing to the Court that all of the parties above mentioned have been given due and legal notice of the said Motion in the manner and for the time required by the laws of the State of Utah.

And it further appearing that this Court has jurisdiction of the waters of Ashley Creek and its tributaries by reason of the Decree entered in this case on November 17, 1897, and to direct the administration and distribution of the waters of said Ashley Creek.

And it further appearing that since the date of the said Decree, the parties hereto, who were not parties to the original action, have acquired, developed or claim a right to use some of the waters of Ashley Creek and its tributaries and that it is necessary that all parties having, or claiming rights in and to the waters of Ashley Creek or its tributaries be made parties to this action in order that all rights of the respective parties may be protected.

And it further appearing that in order to properly protect the rights of all parties hereto, administer and distribute the waters of Ashley Creek and its tributaries in a proper manner that it is necessary to have a Water Commissioner of Ashley Creek.

And it further appearing that the State Engineer of the State of Utah is competent and qualified to act as Water Commissioner of Ashley Creek and that due to the diversity of interest in the said waters, it is for the best good and welfare of all users thereof that the State Engineer be appointed as Water Commissioner of Ashley Creek.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. That the Distribution Engineer of the State Engineer's Office of the State of Utah, is hereby appointed Commissioner of the waters of Ashley Creek and its tributaries which said creek is a tributary of Green River in

Uintah County, State of Utah, for the period of one (1) year beginning May 15, 1962, or until further order of this Court and he is hereby directed to administer and distribute the waters of said Ashley Creek by himself or duly appointed deputies to the persons entitled to the use thereof in accordance with the laws of the State of Utah and the Decrees of this Court by which reference are made a part hereof.

2. That the said Commissioner shall name and appoint such deputy or deputies as he may need in distributing the water involved in this matter and he is hereby authorized to pay reasonable salary or wages and automobile mileage to such persons as he may employ in carrying out the provisions of this Decree and Order. Said Commissioner shall immediately submit for the approval of this Court, an estimate of the expense involved in carrying out the provisions of this Order which amount shall be paid to the Clerk of this Court on or before July 1, 1962, and forwarded by the Clerk to the State Engineer of the State of Utah to be placed in a Trust Fund Account and Disbursed under the direction of the Commissioner above named for paying the expenses involved in carrying out the provisions of this Decree and Order. The said amount shall be paid by the parties hereto in the following proportions:

- 1. Primary Water Users 55%
- The primary Water Users to pay the 55% in the following proportions:

 - o Ashley Upper Irrigation Company .327
 - o Colton Ditch Company .036
 - o Steinaker Ditch Company .020
 - o Ashley Central Irrigation Company .335
 - o Hardy Ditch Company (out of Ashley Central Irrigation Company) .
 - o Island Ditch Company .074
 - x Dodds Ditch Company .010
 - x Rock Point Irrigation Company .198

- 2. Ashley Valley Reservoir Company 20%
- 3. United States Bureau of Reclamation 15%
- 4. All Other Users 10%

All other users to pay the 10% in the following proportions:

- Highline Canal Company .25
- x Dry Fork Irrigation Company .15
- o Masby Irrigation Company *Don't know* .25
- x Pitt Ditch Company .05
- x Duayne T. Johnson .05
- x Morgan Merkley .05
- x William H. Hullinger .05
- x Clarence E. Jones .05
- x Henry Peltier and Glee C. Peltier .05
- x Virtus McConkie and Sadie A. McConkie .05

LaPoint

3. That the said Commissioner shall distribute the waters of Ashley Creek and its tributaries in accordance with the terms of this Decree and the respective rights of the parties hereto as shown on the records of the State Engineer and as have been tentatively established by the State Engineer in his adjudication of the respective rights of the parties hereto. The rights of all parties, excepting those heretofore decreed by this Court, shall be temporarily established for the irrigation season of 1962 only and to be definitely established as soon as practical thereafter.

4. The said waters of Ashley Creek to be distributed at the weirs or points of diversion heretofore constructed by the respective parties and approved by this Court and where the said parties do not have proper weirs and measuring devices, they are hereby ordered to install the same in a manner to be approved by the said Commissioner which said devices shall be mechanical and constructed in a manner that will shut off the water from the respective ditches or canals when directed by the Commissioner to do so.

5. Each of the parties hereto shall at his or its own expense install a Parshall flume or other measuring device at the head of his or its ditch at a place and in a manner to be approved by the Commissioner.

6. That the respective parties hereto are hereby ordered to comply with the schedule of terms and other rules and regulations as they may be given by the said Commissioner and approved by this Court in the use of the waters they are entitled to under the terms of this Decree and the laws of the State of Utah.

7. The Commissioner and his deputies are hereby ordered and directed that in the event any of the parties hereto fail to comply with this order, to shut off the water of the said party and report the failure to this Court and such party shall not be permitted the use of any of the waters of Ashley Creek and its tributaries until further order of this court.

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8. The Commissioner is hereby directed to file a report of his action concerning waters of Ashley Creek with this Court as soon after January 1, 1963, as may be practical.

DATED this 15th day of May, 1962.

District Judge