

1 IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF UTAH, IN AND
2 FOR SANPETE COUNTY

3
4 THE M & M IRRIGATION COMPANY, : Civil No. 4049
5 a corporation, formerly known :
6 as the Moroni-Mt. Pleasant :
7 Irrigating Ditch Company, :
8 a corporation, : S T I P U L A T I O N
9
10 Plaintiff and :
11 Appellant, :
12 vs. :
13
14 ROCK DAM IRRIGATION COMPANY, :
15 INC., a corporation, et al, :
16
17 Defendants and :
18 Respondents. :
19

20 WHEREAS, Findings Of Fact, Conclusions Of Law and Decree
21 were made and entered herein on May 26, 1956, by the above entitled
22 Court from which the plaintiff filed its Notice Of Appeal to the
23 Supreme Court of the State of Utah, and such appeal is still pending;
24 and

25 WHEREAS, under said Decree, dated May 26, 1956, the
26 District Court decided in the main that the defendant Rock Dam
27 Irrigation Company, Inc. had the right to divert certain waters
28 from the Sanpitch River with a stated priority by year of 1874, and
29 that the defendant West Point Irrigation Company had the right to
30 divert certain waters from the Sanpitch River with a stated priority
31 by year of 1875 and that the rights of both the Rock Dam Irrigation
32 Company, Inc. and the West Point Irrigation Company are prior to the
right of plaintiff, The M & M Irrigation Company, to divert water
under what is designated as "sixth" and "tenth" class rights in
Civil No. 843 of the Fifth Judicial District Court of the State of
Utah, commonly known as the Cox Decree, such decree being a general
adjudication of the rights to the use of the waters of the Sevier
River and its tributaries. In addition thereto plaintiff, its
officers, agents and successors in interest were thereby enjoined
and restrained from diverting into its canal and irrigation system

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1 any of the waters awarded by said Cox Decree to the Moroni Irrigation
2 Company or from changing the point of diversion and place of use of
3 any water awarded by the said Cox Decree to other parties, until
4 plaintiff shall have first received the approval of the State
5 Engineer of the State of Utah so to do in compliance with the
6 provisions of Section 73-3-3, Utah Code Annotated 1953, as amended,
7 irrespective of the class or stated priority of such rights; and

8 WHEREAS, the following, some of which are parties to the
9 above entitled action and others, desire to resolve the differences
10 which have arisen and intend by this stipulation to settle the same;

11 NOW, THEREFORE, in consideration of the mutual covenants
12 and promises herein contained it is mutually understood and agreed
13 among the parties subscribed hereto as follows:

14 1. It is understood and agreed that the waters of the
15 Sanpitch River may be diverted in accordance with the priorities
16 and places of diversion stated in the Cox Decree, except as
17 specifically modified herein; that defendant Rock Dam Irrigation
18 Company, Inc. is the owner of, and is entitled to divert from the
19 Sanpitch River in Sanpete County for irrigation purposes a maximum
20 of 41.57 c.f.s. of the waters of the Sanpitch River, and a minimum
21 of 18.17 c.f.s. of such waters with a priority of 1874 as described
22 on page 118 of the Cox Decree; that the defendant West Point
23 Irrigation Company is the owner of, and is entitled to divert from
24 the Sanpitch River in Sanpete County, Utah for irrigation purposes
25 30.50 c.f.s. of water, but not to exceed 9,200 acre feet of water in
26 any one year at its present point of diversion with a priority of 1875
27 as described on pages 129 and 130 of the Cox Decree; that Bagnall
28 Ditch Company, an unincorporated association, is the owner of and is
29 entitled to divert from the Sanpitch River in Sanpete County, Utah
30 for irrigation purposes 65.00 c.f.s. of water, but not to exceed
31 19,025 acre feet of water in any one year at its present point of
32 diversion with a priority of 1875 as described on pages 129 and 130

1 of the Cox Decree; and that the defendant Rock Dam Irrigation
2 Company, Inc., to the extent of its minimum right to 18.17 c.f.s. of
3 water from the Sanpitch River, and the defendant West Point
4 Irrigation Company, to the extent of its right to 30.50 c.f.s. of
5 water from the Sanpitch River, but not to exceed 9,200 acre feet in
6 any one year, and the Bagnall Ditch Company, to the extent of its
7 right to 65.00 c.f.s. of water from the Sanpitch River, but not to
8 exceed 19,025 acre feet in any one year, are entitled to have such
9 rights satisfied in full ahead of the "sixth class" and "tenth
10 class" rights of plaintiff, The M & M Irrigation Company.

11 2. It is understood and agreed that the rights of
12 plaintiff, The M & M Irrigation Company, as specifically enumerated
13 in the following paragraphs 3 and 4, designated in said Cox Decree
14 as "first class" rights, are prior to the said rights of defendant
15 Rock Dam Irrigation Company, Inc. and defendant West Point Irrigation
16 Company and Bagnall Ditch Company described in paragraph 1 herein-
17 above irrespective of the priorities stated in said Cox Decree.

18 3. It is understood and agreed that plaintiff has filed
19 in its own name Change Application No. a-3774 in the office of the
20 State Engineer pursuant to and in accordance with the provisions of
21 Section 73-3-3, Utah Code Annotated 1953, to change the point of
22 diversion and place of use of 12.04 c.f.s. of water from the
23 Sanpitch River under the following rights designated as "first
24 class" rights in said Cox Decree on pages 104 to 108, inclusive,
25 to-wit:

26	<u>DESIGNATION BY NAME</u>	<u>QUANTITY OF WATER IN C.F.S.</u>
27	1. Moroni Irrigation Company	9.35 c.f.s. of a total of 39 3/80 c.f.s.
28		
29	1. Louis A. Peterson	15/80 c.f.s.
30	2. William L. Madsen Estate, Successor to William L.	
31	Madsen, Deceased	10/80 c.f.s.
32	3. John T. Olsen, as successor of William H. Zabriskie Estate	20/80 c.f.s.

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1	3.	Jens P. Peterson as successor of William H. Zabriskie Estate	5/80 c.f.s.	
2				
3	8.	E. W. Howell or Successor (J. H. Mikkelsen)	10/80 c.f.s.	
4				
5	9.	Soren S. Nielson	3/80 c.f.s.	
6	9.	A. F. Reynolds	1½/80 c.f.s.	
7	9.	R. Earl Hansen	1/80 c.f.s.	
8	10.	Moroni City	5/80 c.f.s.	
9	10.	E. J. Curtis	5/80 c.f.s.	
10	11.	Rodney L. Anderson	17/80 c.f.s.	
11	11.	Julius Christensen	13/80 c.f.s.	
12	22.	Henry P. Olsen (North Spring & South Spring)	80/80 c.f.s. (limited to actual quantity of flow of springs)	
13				
14	23.	Wood Brandon (Melvin MacArthur Wood Brandon Reservoir)	15/80 c.f.s.)	2/3rds of right
15) awarded in
16	23.	B. F. Seely (Melvin MacArthur Wood Brandon Reservoir)	15/80 c.f.s.)) Cox Decree
17	Total	9.35 +	215.5/80 c.f.s. =	12.04 c.f.s.

18 It is understood that upon the approval of said Change Application
19 No. a-3774 plaintiff, The M & M Irrigation Company, shall have the
20 right to divert the 12.04 c.f.s. of water under the rights enumerated
21 hereinabove into the existing M & M Canal and to distribute the same
22 therefrom for the irrigation of the lands under plaintiff's, The
23 M & M Irrigation Company, system. It is further stipulated and
24 agreed that the Utah State Engineer may approve said Change
25 Application No. a-3774.

26 4. It is understood and agreed that under the terms of
27 the said Cox Decree the Moroni-Mt. Pleasant Irrigating Ditch Company,
28 being the predecessor in interest of plaintiff, The M & M Irrigation
29 Company, was awarded the following rights to the use of 2.18 sec.
30 ft. of water, designated as "first class" rights, in trust for its
31 stockholders or persons designated therein, to-wit:
32

- 1 4. Moroni-Mt. Pleasant Irrigating Ditch Company in trust for its
2 stockholders named below as follows: 70/80
- | | | |
|----|--------------------|-------------|
| 3 | Bruce Seely | 22/80 |
| 4 | Wood Brandon | 6/80 |
| 5 | A. F. Reynolds | 2/80 |
| 6 | Charles Truskett | 3/80 |
| 7 | Lawrence Seely | 4/80 |
| 8 | Soren S. Nielson | 5/80 |
| 9 | Thomas W. Blackham | 7/80 |
| 10 | Wm. A. Morley | 3/80 |
| 11 | Niels Johanson | 8/80 |
| 12 | Mrs. Sarah Draper | 1/80 |
| 13 | Lee Nunley | 1/80 |
| 14 | Aaron Prestwitch | 4/80 |
| 15 | D. L. Olsen | 4/80 |
| 16 | | <u>4/80</u> |
| 17 | Total | 70/80 |
- 18 5. Moroni-Mt. Pleasant Irrigating Ditch Company in trust for its
19 stockholders named below as follows: 16/80
- | | | |
|----|--------------------|-------------|
| 20 | Franklin Hansen | 6/80 |
| 21 | W. A. Morley | 4/80 |
| 22 | Julius Christensen | 6/80 |
| 23 | | <u>6/80</u> |
| 24 | Total | 16/80 |
- 25 9. Moroni-Mt. Pleasant Irrigating Ditch Company in trust for its
26 stockholders named below as follows: 81½/80
- | | | |
|----|----------------------|-------------|
| 27 | Soren S. Nielson | 2/80 |
| 28 | Peter J. Peterson | 10/80 |
| 29 | Franklin Hansen | 5/80 |
| 30 | Julius Christensen | 1/80 |
| 31 | T. W. Blackham | 2/80 |
| 32 | Amasa Morley | 5/80 |
| 33 | W. L. Morley | 4/80 |
| 34 | Urvin Gee | 1/80 |
| 35 | D. L. Olsen | 8/80 |
| 36 | N. M. Jensen | 12/80 |
| 37 | C. S. Augason | 5/80 |
| 38 | Ed. M. Hansen | 3½/80 |
| 39 | Jessie L. Hansen | 8/80 |
| 40 | H. C. Hansen (BO gh) | 4/80 |
| 41 | Clarence W. Hansen | 1/80 |
| 42 | Ed. M. Hansen | 1/80 |
| 43 | C. D. Tidwell | 9/80 |
| 44 | | <u>9/80</u> |
| 45 | Total | 81½/80 |
- 46 17. Moroni-Mt. Pleasant Irrigating Ditch Company owned by
47 A. F. Reynolds 6½/80
- 48 Total 174/80 = 2.18 Sec. Ft.

49 It is understood and agreed that under the terms of the said Cox
50 Decree plaintiff, The M & M Irrigation Company, has and shall have
51 the right to divert the 2.18 c.f.s. of water under the rights
52 enumerated hereinabove into its existing canal and to distribute
the same therefrom for the irrigation of lands under its system.

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1 5. It is understood and agreed that the period of use of
2 the said 9.35 c.f.s. of the water right acquired by plaintiff from
3 Moroni Irrigation Company, as specifically described in paragraph 3
4 hereinabove, is compromised among the parties hereto as being from
5 March 15 to November 15, inclusive; that the period of use of the
6 remaining 2.69 c.f.s. of the remaining water rights, specifically
7 described in paragraph 3 hereinabove, is compromised among the
8 parties hereto as being from April 1 to October 15, inclusive; and
9 that the period of use of the 2.18 c.f.s. of the water rights,
10 specifically described in paragraph 4 hereinabove, is compromised as
11 being from March 1 to December 1, inclusive; provided, however, that
12 the periods of use in this paragraph agreed upon, and particularly
13 as to the said 9.35 c.f.s., shall be without prejudice to defendants
14 and Bagnall Ditch Company's claim against Moroni Irrigation Company
15 that the period of use of the remaining or other rights of the said
16 Moroni Irrigation Company (exclusive of the 9.35 c.f.s. herein
17 provided for) is otherwise.

18 6. It is understood and agreed that irrespective of the
19 priorities stated in the said Cox Decree the right of plaintiff,
20 The M & M Irrigation Company, to divert the total of 14.22 c.f.s.
21 of water from the Sanpitch River under the "first class" rights
22 specifically enumerated in paragraphs 3 and 4 hereinabove into the
23 existing M & M Canal is and shall be prior to the rights of defen-
24 dant Rock Dam Irrigation Company, Inc. and defendant West Point
25 Irrigation Company and Bagnall Ditch Company to divert waters from
26 the Sanpitch River under their respective rights described in
27 paragraph 1 hereinabove, and that plaintiff, The M & M Irrigation
28 Company, is and shall be entitled to have the said rights to the
29 use of the said 14.22 c.f.s. of water satisfied in full ahead of the
30 respective rights of defendant Rock Dam Irrigation Company, Inc.
31 and defendant West Point Irrigation Company and Bagnall Ditch Company
32 described in paragraph 1 hereinabove.

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1 7. Defendants West Point Irrigation Company and Rock Dam
2 Irrigation Company, Inc. agree that the time for the filing of the
3 brief on appeal by the plaintiff may be enlarged until the said
4 Change Application No. a-3774 has been finally approved or rejected.

5 8. It is agreed that if Change Application No. a-3774
6 is approved, the appeal filed herein will be dismissed forthwith.
7 In such event, it is agreed that the Findings Of Fact, Conclusions
8 Of Law and Judgment entered by the District Court on May 26, 1956
9 shall be amended to incorporate the provisions of this Stipulation.

10 9. It is agreed that if Change Application No. a-3774
11 is rejected, plaintiff, The M & M Irrigation Company, may file its
12 brief on the appeal to the Supreme Court of the State of Utah and
13 that said appeal shall be perfected.

14 10. It is agreed that each party to the above entitled
15 action shall pay its own costs and attorney fees incurred to date,
16 provided, however, that in the event that Change Application No.
17 a-3774 is not approved and the appeal to the Supreme Court is per-
18 fected the award of costs herein shall be determined by the Court.

19 Dated this 30th day of September, 1961.

20 Attest:

21 Clare Hanson
22 Secretary

THE M & M IRRIGATION COMPANY

By Rulon L. Johnson
23 President

24 Attest:

25 Wesley Morley
26 Secretary

ROCK DAM IRRIGATION COMPANY, INC.

By Perry A. Blackburn
27 President

28 Attest:

29 Stanley Price
30 Secretary

WEST POINT IRRIGATION COMPANY

By Ralph Washburn
31 President

32 Attest:

Arment Christensen
Secretary

EAGNALL DITCH COMPANY

By Lewis A. Egnall
President