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IN THE DISTRICT COURT FOR THE FIRST JUDICIAL DISTRICT
UTAH TERRITORY.

Salt Lake City, et al.,
Plaintiffs,

vs.

Joseph H. Colladge, et al.,
Defendants.

DECISION OF THE COURT

*****and now on this the 3rd day of
January 1896, the Court having heard and examined the evidence in-
troduced, heard the arguments of Counsel, and being fully advised
in the premises doth find the following

FACTS

1. That the plaintiff Salt Lake City, is, and at all the times
mentioned in the plaintiffs' complaint was a municipal corporation
created and existing under the laws of Utah Territory and that
each and all of the other plaintiffs are, and at all the times men-
tioned herein were Corporations, duly organized and existing under
the laws of said Territory.

2. That in the year 1880 the said plaintiff, Salt Lake City,
at a cost of about two hundred and fifty/^{thousand}(\$250,000) dollars, con-
structed an irrigating canal from the Jordan River, at a point
near the boundary line between Salt Lake County and Utah County,
in Utah Territory, to the City of Salt Lake, a distance of about
thirty miles. That the said canal is, and was at the time of its
completion in 1882, eighteen feet wide at the bottom and three
feet deep, and that it was and is of sufficient capacity to convey
enough of the waters of the Jordan River to said Salt Lake City

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to irrigate seven thousand acres of land. That during the Month of May, 1882, the said plaintiff, Salt Lake City, appropriated and diverted from said Jordan River, by means of said canal, enough water to fill the same, and that the water so diverted was, during the irrigating season of 1882, and during the irrigating season of each and every year since, has been used by the said plaintiff, Salt Lake City, and its inhabitants and grantees, for the irrigation of lands in Salt Lake County for the purpose of growing crops of hay, grain and vegetables thereon, and for domestic use. That the water so diverted and appropriated was then, and now is necessary for domestic purposes and for the irrigation of said lands, and that the same would be comparatively valueless without said water.

3rd. That in the year 1872 the plaintiff, The Utah and Salt Lake Canal Company, at a cost of about two hundred and twenty thousand (\$220,000) dollars, constructed and irrigating canal from the Jordan River, at a point near the boundary line between Salt Lake County and Utah County, in Utah Territory, to Pleasant Green Precinct, in said Salt Lake County, a distance of about thirty-one miles. That the said canal is, and was at the time of its completion in 1882, twenty feet wide at the bottom and four feet deep, and that it was and is of sufficient capacity to convey enough of the waters of the Jordan River to irrigate ten thousand acres of land. That during the month of June, 1882, the said plaintiff, The Utah and Salt Lake Canal Company, appropriated and diverted from said Jordan River, by means of said canal, enough water to fill the same, and that the water so diverted was, during the irrigating season of 1882, and during the irrigating season of

each and every year since, has been used by the said plaintiff, The Utah and Salt Lake Canal Company, and its stockholders and grantees, for the irrigation of land in Salt Lake County, for the purpose of growing crops of hay, grain and vegetables thereon, and for domestic use. That the water so diverted and appropriated was then, and now is, necessary for domestic purposes and for the irrigation of said lands, and that the same would be comparatively valueless without said water.

4th. That in the year 1872, the plaintiff, The South Jordan Canal Company, at a cost of about one hundred and ten thousand (\$110,000) dollars, constructed an irrigating canal from the Jordan River, at a point near the boundary line between Salt Lake County and Utah County, in Utah Territory, to Hunter Precinct, in Salt Lake County, a distance of about twenty miles. That the said canal is, and was at the time of its completion in 1875, fourteen feet wide at the bottom and three and a half feet deep, and that it was and is of sufficient capacity to convey enough of the water of the Jordan River to irrigate six thousand acres of land. That during the month of May, 1875, the said plaintiff, The South Jordan Canal Company, appropriated and diverted from said Jordan River, by means of said canal, enough water to fill the same, and that the water so diverted was, during the irrigating season of 1875 and during the irrigating season of each and every year since, has been used by said plaintiff, The South Jordan Canal Company, and its stockholders and grantees, for the irrigation of lands in

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Salt Lake County for the purpose of growing crops of hay, grain and vegetables thereon, and for domestic use. That the water so appropriated and diverted was then and now is necessary for domestic purposes and for the irrigation of said lands, and that the same would be comparatively valueless without said water.

5th. That in the year 1878, the plaintiff, The North Jordan Canal Company, at a cost of about eighty thousand (\$80,000) dollars, constructed an irrigating canal from the Jordan River, at a point near the boundary line between Salt Lake County and Utah County, in Utah Territory, to Brighton Precinct, in said Salt Lake County, a distance of about twenty miles. That the said canal is and was at the time of its completion in 1881, fourteen feet wide at the bottom and three feet deep, and that it was and is of sufficient capacity to convey enough of the waters of the Jordan River, to irrigate six thousand acres of land. That during the month of May, 1881, the said plaintiff, The North Jordan Canal Company, appropriated and diverted from said Jordan River, by means of a canal, enough water to fill the same, and that the water so diverted was, during the irrigating season of 1881, and during the irrigating season of each and every year since, has been used by the said plaintiff, The North Jordan Canal Company, and its stockholders and grantees, for the irrigation of lands in Salt Lake County, for the purpose of growing crops of hay, grain and vegetables thereon, and for domestic use. That the water so appropriated

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and diverted was then, and now is necessary for domestic use and for the irrigation of said lands, and that the same would be comparatively valueless without said water.

6th. That in the year 1877 the plaintiff, The Draper or East Jordan Canal Company, at a cost of about one hundred and forty-five thousand (\$145,000) dollars, constructed an irrigating canal from the Jordan River, at a point near the boundary line between Salt Lake County and Utah County, in Utah Territory, to Little Cottonwood Creek, Union Precinct, in said Salt Lake County, a distance of about twenty miles. That the said canal is, and was at the time of its completion in 1883, fifteen feet wide at the bottom and five feet deep, and that it was and is of sufficient capacity to convey enough of the waters of the Jordan River to irrigate eight thousand acres of land. That during the month of May 1883, the said plaintiff, The Draper or East Jordan Canal Company, appropriated and diverted from said Jordan River, by means of said canal, enough water to fill the same, and that the water so diverted was, during the irrigating season of 1883, and during the irrigating season of each and every year since, has been used by the said plaintiff, The Draper or East Jordan Canal Company, and its stockholders and grantees, for the irrigation of lands in Salt Lake County, for the purpose of growing crops of hay, grain and vegetables thereon, and for domestic use. That the waters so appropriated and diverted were then, and now are necessary for

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domestic purposes and for the irrigation of said lands, and that the same would be comparatively valueless without said water.

7th. That in the year 1872 Salt Lake County constructed a dam in Jordan River, near the boundary line between Salt Lake County and Utah County, for the purpose of diverting the waters of said Jordan River from their natural channel and causing the same to flow through the said several canals of the plaintiffs for the uses and purposes aforesaid, and that in 1884 the said Salt Lake County transferred five-sixths undivided interest in said dam to the plaintiffs, who have ever since maintained the same for said purpose, and that its maintenance during all of said time has been and now is necessary to enable the plaintiffs to divert and use the said waters from the Jordan River so appropriated as aforesaid.

8th. That Utah Lake is a body of fresh water about thirty miles in length north and south, by fifteen miles in width east and west, situate between the Wasatch range of mountains on the east and the Oquirrh range on the west. It is in a basin between said ranges of mountains, and received the waters which flow therefrom. From the Wasatch range of mountains there is more copious drainage. The waters from the Wasatch range find their way to said lake through several water courses, among which are Provo and Spanish Fork Rivers. The only outlet from said lake is through said Jordan River. The cities of Provo, Springville and Spanish Fork are situate between said Utah Lake and the Wasatch Mountains, and between said

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lake and said last named mountains is a large tract of arable and pasture land; all, or nearly all, of the same annually needs irrigation to render it productive, and said cities also depend on said streams for water supply. North of said lake for fifty miles or more, to the width on both sides of said Jordan River, of twenty miles on an average, the country consists of fertile lands largely occupied by cities and by cultivators of the soil. There are mountain streams running from the said Wasatch range of mountains to said Jordan River, but none from the west. All of said country needs the water of said lake for irrigation, and depends and has immemorially depended altogether thereon by means of plaintiffs' said canals or in addition to the partial supply by the other said streams. During the thirty years last past the population east and north of said lake has been constantly increasing. The settlers east of said lake during said period have diverted a portion of the waters of Provo and Spanish Fork Rivers for irrigation and other purposes, and this diversion has increased from year to year according to the advance of population and land improvement, and to maintain the water supply in said lake, dams have been maintained by said plaintiffs in said Jordan River,

9th. To confirm and regulate the rights of those interested in said water, on or about the --day of January, 1885, the land owners on the east side of said lake, of one part, and said plaintiffs for their own interests and to subserve the interests of the large population north of said lake, and having a right to and needing the waters of said lake, entered into the following contract in writing

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THIS INDENTURE, made thisday of January, in the year of our Lord one thousand, eight hundred and eighty-five, between Joseph H. Colledge, et al, all of Utah County, Territory of Utah, the parties of the first part, and Salt Lake County, Salt Lake City, The Utah and Salt Lake Canal Company, The South Jordan Canal Company, The North Jordan Canal Company, and the East Jordan Irrigation Company, all corporations in Salt Lake County, in said Territory, the parties of the second part, WITNESSETH: That the said parties of the first part and each of them, for and in consideration of the covenants and agreements hereinafter contained, and the sum of eight thousand dollars to them in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, conveyed and confirmed unto the said parties of the second part, and to their and each of their successors and assigns forever, the right to maintain the dam in the Jordan River, known as the "Jordan Dam," situated at or near the boundary line between Salt Lake and Utah Counties, as at present constructed, an opening or water way through said dam, to be left at all times free and open, except as hereinafter specified, for the passage of water, as follows, to-wit: The width of said opening to be as at present established, including supports and uprights, the whole width, including such supports, being seventy-two feet more or less, the bottom of such opening or water way in said dam to be six inches above or higher than the bottom of the opening or water way in said dam as at present constructed, when free from boards or temporary obstructions. Also the right, free from interference or liability for damage, to flow the lands of the said

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parties of the first part or either of them, to the extent which the dam as above described may cause the same to be flowed by the waters of the said Jordan River, Utah Lake, or otherwise. Also the right, in addition to the foregoing, free from liability for damage, to flow the lands of the said parties of the first part, or either of them, to the extent which may be caused by placing obstructions in the water way in said dam hereinbefore mentioned, according to the limitations hereinafter specified, for the purpose of holding back or maintaining the waters in Utah Lake at an elevation or height not to exceed three feet and three and one-half inches above the points heretofore established and recognized as low water mark in said lake, when the waters in said lake would otherwise naturally fall below such height or elevation that the water so held back might be saved for use by the said parties of the second part when needed. The lands as severally owned by the said parties of the first part hereinbefore mentioned, and which may be affected by these grants are situated in Utah County, adjacent or near the Utah Lake, in the Territory of Utah, and are more particularly described in "Exhibit A," hereto annexed and made a part of this indenture.

To have and to hold the said granted rights, easements and servitudes, together with all the rights and privileges in anywise pertaining thereto unto the said parties of the second part, and to their and each of their successors and assigns forever.

For the purpose of better carrying the foregoing into effect, it is hereby mutually agreed by and between the parties hereto, that

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on or before the first day of January in each year the parties hereto shall each respectively appoint two persons, and the four persons thus appointed shall meet together on or before the first day of February in each year and select an umpire, a disinterested person, who must not be a resident of either Salt Lake or Utah Counties, and each of said persons before entering upon the duties herein specified, shall enter into bonds in the sum of two thousand dollars for the faithful performance thereof, to the satisfaction or acceptance of the Probate Judge of either Salt Lake or Utah Counties. The persons so appointed shall continue to act until others are appointed and qualified to succeed them.

The said persons shall constitute a Board, and are hereby empowered, as the legally constituted agents of the parties hereto, to determine and direct when and to what extent obstructions may be placed in the said water way of the dam, for the purpose of storing the lake with water for future use, not to exceed the highest elevation hereinbefore specified; Provided, That if in any year on or after the 15th day of March, it shall be ascertained by said Board that the fall of snow during the past winter has been light, and if the said Board are of the opinion that the water of Utah Lake will probably not rise during the current season to the highest level hereinbefore mentioned, then the said Board shall permit the said parties of the second part to raise said dam to a height to be fixed by said Board, which will cause the water of said lake to rise to said level, and if it shall be ascertained by experience

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and observation that the said parties of the second part can obtain all the water necessary for irrigation purposes by keeping the water way of the dam open until the waters of Utah Lake shall have receded below the highest level mentioned, then the said Board shall require the water way to be kept open until the water recedes to such level as the Board shall deem sufficient to supply the said parties of the second part with water; and, Provided, further, That when at any time in each year, to be fixed by said Board, the high water of Utah Lake shall have receded to the highest elevation above herein specified, the parties of the second part shall have the right, without hindrance from any person or persons, to cause the waters of said Utah Lake to be held back by regulating said dam not to exceed the elevation above mentioned, and to use the said water as they may desire until such date, on or after the first day of October, as the said Board shall decide, at which date the said parties of the second part shall open the entire water way of said dam (excepting the uprights) down to the sill or base thereof, and permit the said waters to run free.

That the members of the said Board shall each receive compensation at the rate of four dollars per day, with actual traveling expenses, which the parties of the second part hereby agree to pay.

It is further agreed that the said parties of the second part shall have the privilege of cutting through the bar in the lake at the head of the said Jordan River, and of lowering the same to such a depth as by an accurate survey shall be considered proper, so as to permit a more rapid flow of water and to secure to themselves

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a more reliable supply of water by being enabled to draw it from a lower level in the lake than is at present possible, provided a gate or dam is put in at a suitable place in the river, or at the bar, and thus be able to make and maintain a reservoir in the interest of the parties of the second part that shall be permanent; also to have a right to use Utah Lake as a reservoir, with full right to maintain their dam as at present constructed and subject to the foregoing regulations.

IN WITNESS WHEREOF, the parties of the first part have hereunto set their hands and seal, and the said parties of the second part have each caused its corporate name and seal to be subscribed and affixed the day and year first above written.

10. That said plaintiffs paid the consideration of Eight Thousand Dollars to the other parties to said contract; that a part of said defendants executed said agreement and all the others of said defendants claim under and through other parties to said contract who executed the same, and hold lands subject thereto.

11. And by consent of all the parties to this action the Court further finds that the elevation of three feet three and one-half inches above low water mark referred to in the foregoing contract, is at a point four feet and six inches below the top of the stone monument near the head of Jordan River, which was established by the Utah Lake Commission in 1885, as testified in this case by Israel Evans, Francis Armstrong, Elias A. Smith and others, and the said elevation is by consent of the parties hereto hereby fixed

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as being the point referred to in said contract "as three feet three and one-half inches above the point heretofore established and recognized as low water mark in said lake"; and by consent of the parties hereto a survey shall be made and a permanent monument shall hereafter be established and maintained at the expense of the plaintiffs in said Utah Lake, at a point to be hereafter agreed upon by the parties hereto or fixed by the Court, between a point one mile north of Provo River and a point five miles south of the mouth of said river, where it will be least subject to temporary fluctuations of the height of the water by winds, or the influx of Spanish Fork and Provo Rivers, to perpetuate said agreed elevation, and that said monument when so established shall be maintained as the controlling evidence of the elevation at which the water of said lake is authorized to be maintained by said contract.

12. That the plaintiffs, in the years 1888, 1889, and 1890 removed bars and other obstructions which naturally existed in the bed of the Jordan River at the new dam and at the point known as "New Bar", in the neighborhood of one mile above the new dam erected by said plaintiffs in said river, and in such removal removed permanent natural obstructions then in said river above said dam, and permanently lowered the bed thereof fourteen inches, thus increasing the capacity of said river and thereby enabling said plaintiff to utilize fourteen inches more in depth of the waters of said lake, over the entire surface thereof, in seasons of low water. That said plaintiffs by reason of the removal of said bars

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and other obstructions to the depth aforesaid, are entitled to at all times keep and maintain planks or other obstructions on the floor or sill of the new dam erected by them to the height of fourteen inches above the floor or sill of said dam and no more, and the Court finds that said planks to the height of fourteen inches above the floor of the new dam are no more or greater obstruction to the flow of the water in said river than were said bars and other natural obstructions before their removal as aforesaid. **"The floor of said new dam is found to be six inches lower than the top of the sill of the old dam as fixed by said contract."

13. That the plaintiffs have maintained planks to the height of twenty-two inches and more above the floor of the new dam, by reason of which the defendants appearing and answering hereto, except George T. Peay, sustained damages to the amount of Six thousand dollars, which have been fully paid by the plaintiffs to the said defendants so appearing hereto, except said George T. Peay, which have been paid by the plaintiffs and accepted by said defendants except George T. Peay as full compensation for all damages heretofore sustained by the said defendants, except George T. Peay, by reason of any and all obstructions placed by the said plaintiffs in the said Jordan River at said dam or elsewhere.

14. That when at any time in each year the high water of Utah Lake shall have receded to the elevation hereinbefore fixed at

**"The above starred sentence was written in long hand on original copy."*

W.A.K.

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at a point four feet and six inches below the top of the stone monument near the head of Jordan River, and being the point referred to in said contract "as three feet three and one-half inches above the point heretofore established and recognized as low water mark in said lake", the plaintiffs have the right, without hindrance from any person or persons to keep and maintain planks and other obstructions in either or both of their said dams in Jordan River, and cause the waters of Utah Lake to be held back by regulating said dams to a height not to exceed the elevation hereinbefore designated, and keep said planks or other obstructions in said dams until the same are ordered out by the commissioners referred to in said contract; but said commissioners have no right to order the plaintiffs to remove said planks or other obstructions prior to the first day of October in each year, and that if the said commissioners order the removal of said planks or other obstructions after the first day of October in any year, the plaintiffs shall not have leave to replace the same until the 15th day of March of the following year, nor at that time unless the commission shall so decide, but whenever the water of Utah Lake recedes down to the elevation before designated, the plaintiffs shall have the right to place said obstructions in the river at the dams without the permission of said commissioners. But when at any time on or after the first day of October in any year the said commissioners shall have ordered the plaintiffs to remove said planks or obstructions in said dams, the said plaintiffs shall remove the same, and the waters of

The above starred sentence was written in long hand on original copy.

said river shall be permitted to run free and unobstructed from such obstructions until on or after the fifteenth day of March in the following year, and until the commission shall decide that obstructions may be placed in said dams or until said waters shall have receded to the elevation hereinbefore designated. The planks and obstructions mentioned in this finding do not refer to the fourteen inches of planks that the plaintiffs are authorized to keep and maintain upon the floor or sill of the new dam at all times, as hereinbefore found, but are in addition thereto.

15th. That the said dams heretofore erected by the plaintiffs in said Jordan River and the fourteen inches of planks hereinbefore authorized to be maintained by the plaintiffs upon the floor or sill of the new dam, and the planks and other obstructions in addition thereto that the plaintiffs are hereinbefore found authorized to put in said river at said dams whenever the water recedes to the elevation hereinbefore designated, are not unlawful obstructions to the flow of said river, but are obstructions that the plaintiffs are lawfully entitled to maintain.

CONCLUSIONS OF LAW

Upon the foregoing facts the Court finds the law to be:

1st. That the plaintiffs have the right to maintain the waters of Utah Lake to an elevation four feet and six inches below the top of the stone monument, near the head of Jordan River, which was established by the Utah Lake Commission in 1885; and said elevation is the point referred to in said contract as "three feet three and one half (3ft. 3½ in.) inches above the point

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heretofore established and recognized as low water mark in said lake."

2nd. That a survey shall be made and a permanent monument shall hereafter be established and maintained at the expense of the plaintiffs in said Utah Lake at a point to be hereafter agreed upon by the parties hereto or fixed by the Court, between a point one miles north of Provo River, and a point five miles south of the mouth of said river, where it will be least subject to temporary fluctuations of the height of the water by winds or the influx of Spanish Fork and Provo Rivers, to perpetuate said agreed elevation; and that said monument when so established shall be maintained as the controlling evidence of the elevation at which the water of the said lake is authorized to be maintained by the said plaintiffs under said contract.

3rd. That the plaintiffs are entitled to at all times keep and maintain planks or other obstructions on the floor or sill of the new dam erected by them in the Jordan River to the height of fourteen (14) inches above the floor or sill of the said dam, and no more.

4th. That when at any time in each year the high water of Utah Lake shall have receded to the elevation fixed in the findings of "fact as four feet and six inches below the top of the said stone monument near the head of Jordan River, the same being* the point referred to in said contract as "three feet three and one-half inches (3 ft. 3½ in.) above the point heretofore established and recognized as low water mark in said lake", the plaintiffs have the right without hindrance from any person or persons, to keep

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and maintain planks or other obstructions in either or both of their said dams in Jordan River, to cause the waters of Utah Lake to be held back by regulating said dams to a height not to exceed the elevation hereinbefore designated, and keep said planks or other obstructions in said dams until the same are ordered out by the commissioners referred to in said contract; but said commissioners have no right to order the plaintiffs to remove said planks or other obstructions prior to the first day of October in each year, and if the said commissioners order the removal of said planks or other obstructions after the first day of October in any year, the plaintiffs shall not have leave to replace the same until the fifteenth day of March of the following year, nor at that time unless the commission shall so decide; but whenever the water of Utah Lake recedes down to the elevation before designated, the plaintiffs shall have the right to place said obstructions in the river at the dams, without the permission of said commissioners. But when, at any time on or after the first day of October in any year, the said commissioners shall have ordered the plaintiffs to remove said planks or obstructions in said dams the said plaintiffs shall remove the same and the waters of the said river shall be permitted to run free and unobstructed from such obstructions until on or after the fifteenth day of March in the following year and until the commission shall decide that obstructions may be placed in said dams, or until the said waters

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shall have receded to the elevation hereinbefore designated. The planks and obstructions mentioned herein do not refer to the fourteen inches of planks that the plaintiffs are authorized to keep and maintain upon the floor or sill of the new dam at all times, as found in the findings of fact herein, but are in addition thereto.

5th. That the plaintiffs are entitled to an injunction perpetually enjoining and restraining each and all of the defendants to this suit, except George T. Peay, from bringing, maintaining or prosecuting any suit for any damages heretofore sustained by them or any of them by reason of any acts of the plaintiffs or any of them in placing obstructions in the Jordan River at the new dam or elsewhere, or in any way causing the waters of Utah Lake to overflow or otherwise injure the lands or other property of the said defendants or any of them, except George T. Peay, or by causing any damage to the defendants or any of them in any way whatever; Provided, that this conclusion shall not be so construed as to prevent the defendants or either of them from bringing any suits against the plaintiffs or either of them for any future violation of the terms of the contract, or of the decree herein.

6th. That each party shall pay their own witness fees, and the balance of the costs shall be apportioned as follows: the plaintiffs shall pay one half ($\frac{1}{2}$) of all other costs, including costs of serving summons on the defendants, clerks costs and reporters fees, and the defendants shall pay the other half ($\frac{1}{2}$) of said costs.

Dated January 3, 1896

Signed William H. King
Judge

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DECREE.

The Court having found and filed herein the foregoing decision and findings of fact and conclusions of law thereon,

It is therefore ordered, adjudged and decreed, that the plaintiffs have the right to maintain the waters of Utah Lake at an elevation four feet six inches (4 ft. 6 in.) below the top of the stone monument near the head of Jordan River which was established by the Utah Lake Commission in 1885, said elevation being the point referred to in the contract set out in the findings of fact herein as "three feet three and one-half inches (3 ft. 3½ in.) above the point heretofore established and recognized as low water mark in said lake".

It is further ordered, adjudged and decreed that a survey shall be made and a permanent monument shall hereafter be established and maintained at the expense of the plaintiffs in said Utah Lake at a point to be hereafter agreed upon by the parties hereto or fixed by the Court, between a point one mile north of Provo River and a point five miles south of the mouth of said river, where it will be least subject to temporary fluctuations of the height of the water by winds or the influx of Spanish Fork and Provo Rivers, to perpetuate said agreed elevation, and that said monument when so established, shall be maintained as the controlling evidence of the elevation at which the water of said lake is authorized to be maintained by the plaintiffs under said contract.

It is further ordered, adjudged and decreed, that the plaintiffs are entitled to at all times keep and maintain planks or other obstructions on the floor or sill of the new dam erected by them in the Jordan River, to the height of fourteen (14) inches above the

floor or sill of the new dam, and no more.

It is further ordered, adjudged and decreed, that when at any time in each year the high water of Utah Lake shall have receded to an elevation four feet and six inches (4 ft. 6 in.) below the top of the stone monument near the head of Jordan River which was established by the Utah Lake Commission in 1885, and said elevation being the point referred to in the said contract, as "three feet three and one half inches (3 ft. 3½ in.) above the point heretofore established and recognized as low water mark in said lake", the plaintiffs have the right, without hindrance from any person or persons, to keep and maintain planks or other obstructions in either or both of their dams in Jordan River and cause the waters of Utah Lake to be held back by regulating said dams to a height not to exceed the elevation hereinbefore designated, and to keep said planks or other obstructions in said dams until the same are ordered out by said Commissioners, but said commissioners have no right to order the plaintiffs to remove said planks or other obstructions prior to the first day of October in each year, and if the said commissioners order the removal of said planks or other obstructions after the first day of October in any year, the plaintiffs shall not have leave to replace the same until the fifteenth day of March of the following year, nor at that time unless the commission shall so decide, but when the water of Utah Lake recedes down to the elevation before designated, the plaintiffs shall have the right to place said obstructions in the river at the dams without the permission of said commissioners. But when at any time, on or after the first day of October, in any year, the said commissioners shall have ordered the plaintiffs to remove said planks or

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obstructions from said dams, the said plaintiffs shall remove the same, and the waters of said river shall be permitted to run free and unobstructed from such obstructions until on or after the fifteenth day of March, of the following year, and until the said commission shall decide that obstructions may be placed in said dams, or until the said waters shall have receded to the elevation hereinbefore designated. The planks and obstructions mentioned herein do not refer to the fourteen inches of plank that the plaintiffs are authorized to keep and maintain upon the floor or sill of the new dam at all times, but are in addition thereto.

It is further ordered, adjudged and decreed that the said defendants and each of them, except George T. Peay, be and they hereby are perpetually enjoined and restrained from bringing, maintaining or prosecuting any suit for any damage heretofore sustained by them or any of them, by reason of any acts of the plaintiffs or any of them in placing obstructions in the Jordan River at the new dam or elsewhere, or in any way causing the waters of Utah Lake to overflow or otherwise injure the lands or other property of said defendants or any of them, except said George T. Peay, or by causing any damage to the defendants or any of them, except said George T. Peay, in any way whatever; but this decree shall not in any way prevent the defendants or any of them from bringing any suits against the plaintiffs or any of them for any future violation of the terms of the said contract or of this decree.

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It is further ordered and adjudged that the parties plaintiff and defendant shall each pay their own witness fees, and the balance of the costs shall be apportioned as follows, to-wit: *the plaintiffs shall pay one half ($\frac{1}{2}$) of all other costs including costs of serving summons on the defendants, clerks costs and reporter's fees, said one half of said costs being taxed at One Hundred and Fifty One dollars, and the defendants shall pay the other half of said costs taxed at One Hundred and Fifty and 95/100 dollars.**

Dated January 3, 1896.

Signed William H. King

Judge

Recorded Judgment Record

No. 5 pages 178 to 195 inclusive

"The above starred was written in long hand on original copy."
W.A.K.