IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT, IN AND FOR THE COUNTY OF UTAH, STATE OF UTAH.

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STRAWBERRY HIGH LINE CANAL COMPANY, a corporation, plaintiff,	:
-vs-	:
PAYSON CITY, a municipal corporation, GEORGE COWAN, FRANCIS WILSON, IVAN WILSON, LYDIA MOORE, VINA MOORE, SARAH L. PERRY, CLARENCE MOORE, BERT PEERY, JESSE HAAIDAY, IVAN MONK, HYRUM WILSON, ISIAH HOLLADAY, HENRY OPENSHAW, CHARLES HOWARD HOLLADAY, MARY HOLLADAY, EDWARD L. PEERY, MILLEY G. GRIGG, JOHN H. TAYLOR, MARY A HOLLADAY, GENEVA D. MOORE HOLLADAY, jointly and as members of a vuluntary association not incorporated under the name and style of UPPER HOLLADAY FIELD DITCH, and individually; GEORGE COWAN, ISIAH HOLLADAY, MARY HOLLADAY, ZOELLA HOLLADAY JACKSON, and FRANCIS WILSON, jointly as ZOELLA HOLLADAY, and FRANCIS WILSON, jointly as members of a voluntary association not incorporated under the name and style of LOWER HOLLADAY FIELD DITCH, and individually; JAMES S. MCBETH, CHARLES H. WHITE, ARTIMESIA WHITE, NEWELL K. WHITE and CLARA HARDY, Defendants.	: FINDINGS OF FACT and CONCLUSIONS OF LAW

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This cause came on for hearing before the court his 9th day of November, A. D. 1922, on the complaint of the plaintiff, and it appearing to the Court that on motion of the plaintiff said cause has heretofore been dismissed as to the defendant, J. S. McBeth, and it appearing to the Court that the default of the defendants Charles H. White, Artimesia White, Newell K. White and Clara Hardy having duly and regularly entered for failure to answer or otherwise plead; and,

It is further appearing to the Court that Zoella Holladay Jackson has been substituted in said cause for the defendant, Bertha Jasperson, and

It further appearing to the Court that each and all of the other defendants in said cause having filed stipulations entered into by and between them and the plaintiff, settling and adjusting the rights between the plaintiff and the said defendants; and evidence having been submitted to the Court in support of the allegations of plaintiff's complaint, and the Court having examined the stipulations filed in said cause hereinbefore referred to, and the Court now being fully advised in the premises, makes the following:

FINDINGS OF FACT.

1. That the plaintiff is a corporation duly organized and existing under and by virtue of the laws of the State of Utah, and on behalf of approximately six hundred land owners in the southern part of Utah County, Utah, controls, operates and maintains what is commonly known as the Strawberry High Line System.

2. That the defendant, Payson City, is a municipal corporation of the State of Utah, whose duty it is to control, regulate and distribute a portion of the water of Spring Creek to and among its inhabitants.

3. That the defendants George Cowan, Francis Wilson, Ivan Wilson, Lydia Moore, Vina Moore, Sarah L. Peery, Clarence Moore, Bert Peery, Jesse Holladay, Ivan Monk, Hyrum Wilson, Isiah Holladay, Henry Openshaw, Charles Howard Holladay, Mary Holladay, Edward L. Perry, Milley G. Grigg, May A. Holladay, Geneva D. Moore Holladay, and John H. Taylor, jointly and as members of a voluntary association not incorporated, under the name and style

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of Upper Holladay Field Ditch, and individually as tenants in common in Upper Holladay Field Ditch, and in the right to the use of waters flowing therein, have voluntarily associated for the purposes of diverting water from Spring Creek and its sources into the Upper Holladay Field Ditch, and have assumed the name of Upper Holladay Field Ditch, and are tenants in common in said ditch and in the right to the use of the waters so diverted therein.

4. That George Cowan, Isiah Holladay, Mary Holladay, Zoella Holladay Jackson, and Francis Wilson, jointly as members of a voluntary association, not incorporated, under the name and style of Lower Holladay Field Ditch, and individually as tenants in common in the Lower Holladay Ditch, and in the right to the use of waters flowing therein, have voluntarily associated for the purpose of diverting water from Spring Creek and its sources, into the Lower Holladay Field Ditch, and have assumed the name of Lower Holladay Field Ditch and are tenants in common in said ditch and to the right to the use of water so diverted therein.

5. That the plaintiff and each of the defendants have an interest in and a right to the use of the waters of Spring Creek, or its sources, or other sources tributary thereto.

6. That Spring Creek is a natural drainage channel located in the southern part of Utah County, approximately three miles from Payson City, and lying in the trough of the valley between Payson City and the West Mountain situated in the southern part of Utah County. The said Creek consists of three branches commonly known as the East Branch, the Center Branch and the West Branch. The said East Branch, has its source in what is commonly known as Spring Lake and the springs tributary thereto. The Center Branch has its source in what is commonly known as the Ellsworth Pond or slough and the drains and springs tributary theretp; the said pond being located in the Northwest quarter, Section 30, Township 9 South, Range 2 East, Salt Lake Base and Meridian. The said West Branch of Spring Creek has its source in what is known as the DeGraw Springs and ponds and the bogs and sloughs tributary thereto, which DeGraw Springs and ponds and bogs lie in the Northeast quarter of Section 25, Township 9 South, Range 1 East, Salt Lake Base and Meridian. The said branches of Spring Creek converge in the Southeast quarter of Section 13, Township 9 South, Range 1 East, Salt Lake Base and Meridian, and along their various courses from their sources to the aforesaid point of convergence, they pass through lands which are more or less water-logged and water seeps from the land into the several channels. From the said point of convergence, Spring Creek, flows in one channel northward into Utah Lake into which lake the waters of Spring Creek naturally flow unless otherwise diverted. That during the spring time when there is excess of high water in Payson or Peteetneet Creek, a portion of such excess high water is diverted from said Creek into said East Branch of Spring Creek at a point near the confluence of its said branches, and prior to the distribution of water from the Strawberry Project by the plaintiff, the said Spring Creek was, after the high water season, ordinarily a dry creek bed, except on the west branch thereof. That since the plaintiff began the distribution of irrigation water from the Strawberry Project to lands adjacent and tributary to Spring Creek, the said Spring Creek flows water in all of its branches during the entire season due to the waste and seepage water reaching said Spring Creek from lands that are irrigated from the canal system controlled by the plaintiffs.

7. That there are approximately Ten Thousand (10,000) acres of land irrigated under the system controlled by plaintiff, which are naturally tributary to Spring Creek.

8. That beginning with the 1st day of May 1914, the stockholders of plaintiff made certain water right applications to the government of the United States for water to irrigate their farms from the said Strawberry Valley Reclamation Project, a copy of which water right application is hereto attached and marked "Exhibit 'A'." That after a certain required number of said water right applications had been made, executed and delivered to the United States Government, the said United States Government constructed the said High Line Canal and lateral system, and the said United States Government did on the 7th day of April, 1916, enter into an contract with the plaintiff,

with the plaintiff, a copy of which said contract is attached hereto and made a part hereof and marked "Exhibit 'B'" and at a later date, to-wit, on the 23rd day of May, 1921, made, executed and delivered to the plaintiff a supplemental contract to the above described contract, a copy of which said supplemental contract is hereto attached and made a part hereof and marked "Exhibit 'C'."

9. That by virtue of said water right applications and said contracts the plaintiff acquired the right to take, appropriate and use all seepage and waste water arising on or flowing from lands covered by said water right applications, and under and by virtue of said contracts it became the duty and is obligatory on the part of the plaintiff to take said seepage and waste water and to diligently take all necessary steps both physical and legal to protect and secure to the water right applicants under the said High Line Canal System, the said waste, seepage and return water.

10. That the Upper Holladay Field Ditch diverts water from the West Branch of Spring Creek at a point about 19 chains North and 18½ chains East of the center of Section 25 township 9 South, Range 1 East, Salt Lake Base and Meridian, and extends thence eastward approximately one - half mile, at which point it intersects the center hollow and diverts water therefrom, and extends thence eastward approximately one-half mile, but does not reach or divert water from the east branch of Spring Creek. That the Lower Holladay Field Ditch diverts water from the west Branch of Spring Creek at a point about 33 chains North and 26 chains East of the center of Section 25 aforesaid, and extends thence eastward about 6 chains and thence Northward about one-half mile, and does not intersect or divert water from the center or East Branch of said Spring Creek.

11. That the rights of the plaintiff and the defendants who are owners of rights in the Upper or the Lower Holladay Field Ditch are as stipulated in the following stipulation between the said parties. That the following named persons are the owners and the only owners of the water rights and rights to the use of the water that flows into or is diverted by the Upper Holladay Field Ditch, to-wit: George Cowan, Francis Wilson, Ivan Wilson, Lydia Moore, Vina Moore, Sarah L. Peery, Clarence Moore, Bart Peery, Jesse Holladay, Ivan Monk, Hyrum Wilson, Isiah Holladay, Henry Openshaw, Charles Howard Holladay, Mary Holladay, Edward L. Peery, Milley G. Grigg, John H. Taylor, Mary A. Holladay, Geneva D. Moore Holladay.

12. That the following named persons are the owners and the only owners of the water rights and right to the use of the water that flows into or is diverted by the Lower Holladay Field Ditch, to-wit: George Cowan, Isiah Holladay, Mary Holladay, Francis Wilson, and Zoella Holladay Jackson.

13. That the said defendants are the owners of and in the possession of the following described tract of land situated in Utah County, State of Utah, and particularly described as follows, to-wit: Beginning at a point which lies West 21.77 chains and south 20.99 chains from the northeast corner of Section 25, Township 9 South, Range 1 East, Salt Lake Base and Meridian; Thence North 65 deg. East, 2.94 chains; thence North 74½ deg. East, 2.73 chains; thence North 8¼ deg. East 3.40 chains; thence North 64½ deg. East 1.80 chains; thence South 1.43 chains; thence East 4.29 chains; thence East 1.72 chains; more or less to the West Boundary of the lands of Zoella Holladay Jackson, defendant; Thence South 4.15 chains to the Southwest corner of the said lands; thence South 89 deg. 22 min. East, * 5.45 chains; thence South 89 deg. East, 7.14 chains; thence South 1 deg. West, 5.60 chains; thence East along the County Road, 13.75 chains, more or less, to the Southeast corner of the lands of Hyrum Wilson, defendant; thence North 75 deg. East along the said Upper Holladay Field Ditch, 36.75 chains, more or less to the East boundary of the land of Clarence L. Moore, defendant; thence North 1-3/8 deg. East, 12.06 chains; thence North 85 deg. East, 6.13 chains; thence North 6 deg. West. 2.15 chains; thence West 12.07 chains more or less to a point 13.18 chains east of the southwest corner of the southeast quarter of Section 19, Township 9 South, Range 2 East, Salt Lake Base and Meridian; thence North 1 deg. 25 min. East, 6.28 chains; thence South 55 deg. West, 2.13 chains; thence North 75 deg. West, 2.03 chains; thence North 53 deg. West, 2.08 chains; thence North 48 deg. West, 2.22 chains; thence North 86 deg. West. 2.98 chains; thence North 50½ deg. West, 2.95 chains;

thence South 8½ deg. West, 1.00 chains; thence South 33½ deg. East, 1.10 chains; thence South 1-3/4 deg.West, 8.28 chains; thence North 67 deg. West along said Spring Creek Channel 10.60 chains; thence North 30 deg. West, along said channel 6.40 chains; thence North 10 deg. West along said channel 9.00 chains more or less to the north boundary of the land of Henry Openshaw, defendant, thence North 89-3/4 deg. West 2 chains; more or less to the northwest corner of the said lands of Henry Opensahw; thence South 7/8 deg. West 14.18chains; thence North 89 deg. 50 min. West 6.34 chains; thence North 7/8 deg. West 14.22 chains; thence North 89-3/4 deg. West, 10.26 chains, more or less to the we st boundary of the southwest quarter of Section 19, aforesaid; thence North 89-3/8 deg. West, 25.05 chains, more or less, to a point 6.66 chains East and 2.70 chains South 3/4 deg. West and South 89-3/8 deg. East, 8.29 chains from the northwest corner of the Southeast quarter of Section 24, Township 9 South, Range 1 East of Salt L ake Base and Meridian; thence South 43/4 deg. East, 11.66 chains; thence South 83¼ deg. East, 4.30 chains, more or less to the Northeast corner of the lands of John A. Johnson; thence South 7-3/4 deg. East, 7.46 chains; thence South 9 deg. East, 10.66 chains to the Southwest corner of the lands of Mary Holladay, defendant; thence North 69 deg. East along the public road to 4.37 chains, more or less, to the west boundary of the lands of George Cowan, defendant; thence South 1 deg. West, 4.84 chains; thence North 84-3/4 deg. West 0.13 chains; thence South 1 deg. West, 2.48 chains; thence West 4.96 chains; thence south 36¼ deg. West, 7.64 chains; thence south 62½ deg. West, 1.80 chains; thence South 27-3/4 deg. West 2.63 chains; thence South 9 deg. East 1.89 chains; thence South 45½ deg. East, 3.26 chains; thence South 2 deg. East, 2.90 chains; thence South 19 deg. West 2.60 chains; thence South 17 deg. East, 2.43 chains to the place of beginning. Excepting from the above the following described tract of land, beginning 10 chains East and 6.95 chains North ½ deg. West of the Southwest corner of the Southwest quarter of Section 19, township 9 South, Range 2 East Salt Lake Base and Meridian; thence North 1 deg. West, 4.76 chains; thence North 88 deg. East, 10.13 chains; thence South 1/8 deg. East, 5.13 chains; thence West 10.10 chains to the place of beginning, Area 5 acres.

14. That for more than thirty years last past, the water from the said above named ditches has been used and is now being used on the said above described tract of land and said water is appurtenant to said land, and it is stipulated and agreed by the said parties that the court in said cause may enter a decree providing that the said waters shall be perpetually used on said above described tract of land, or otherwise disposed of as provided hereinafter.

15. That the defendants have and by these presents do hereby relinquish, transfer, quit-claim, set over and assign all of their right, title and interest in and to any and all drainage, seepage, percolating or waste water which arises on or flows from or which shall hereafter arise on or flow from said above particularly described land or ditches, to the said above named plaintiff.

16. It is further stipulated and agreed by and between the parties hereto that whenever there is water in the Upper Holladay Field Ditch, which the owners thereof do not desire to use on their said lands then that portion of said water which will flow into the Lower Holladay Field Ditch shall be permitted so to flow therein, and shall be used, if desired, by the owners of the Lower Holladay Field Ditch, and that portion which will not flow into said Lower Holladay Field Ditch shall become and is the property of the plaintiff.

17. It is further stipulated and agreed by and between said parties that whenever there is water in the lower Holladay Field Ditch, which the owners thereof do not desire to use, then said water shall become and is the property of the plaintiff, and the owners thereof will divert said water into the West Branch of Spring Creek.

18. It is further stipulated and agreed between the parties hereto that the plaintiff shall and by these presents does hereby transfer, quit-claim, set over and assign to the undersigned defendants for their use and benefit, all of its right, title, and interest in and to the seepage, drainage, waste and percolating water arising on and flowing from, or which may hereafter arise on or flow from the following described tract of land situated in Utah

County, State of Utah, and particularly described as follows, to-wit: Beginning at a point which lies 21.77 chains West and 20.99 chains South of the Northeast corner of Section 25, Township 9 South, Range 1 East, Salt Lake Base and Meridian; thence West 18.23 chains, more or less, to the West boundary of the Northeast quarter of Section 25, aforesaid; thence South 80 chains, more or less, to the Strawberry High Line Canal, thence Easterly along said canal 98.00 chains, more or less, to the East boundary of the Southwest quarter of Section 31, Township 9 South, Range 2 East, Salt Lake Base and Meridian, thence North 105.00 chains, more or less, to the South boundary of the tract of land first particularly described above; thence Westerly along the South boundary of the said particularly described tract of land to the point of beginning.

19. The respective rights of the plaintiff and the defendant Payson City, a municipal corporation, in and to the waters of Spring Creek as above described have been agreed upon and settled between said parties by stipulation as follows:

(4) It is further stipulated and agreed between the plaintiff and the said defendant that the defendant, Payson City, a Municipal Corporation, shall have the right to the use of all waste, seepage, percolating or spring water arising on or flowing from, or which might or may hereafter arise on or flow from the following described tract of land situate in Utah County, State of Utah, to-wit: Beginning at a point which lies East 19.97 chains and South 1-3/8 deg. West, 24.73 chains from the Northwest corner of the Northeast quarter of Section 30, Township 9 South, Range 2 East, Salt Lake Base and Meridian, thence south 9 deg. 30 Min. East to the Strawberry High Line Canal; thence Northerly and Easterly along said canal to a point straight East from a point which lies 900 feet South and 850 feet West of the Northeast corner of Section 30, aforesaid; thence West to said point which lies 900 feet South and 850 feet West of the Northeast corner of Section 30, aforesaid; thence Southwesterly to the point of beginning. And the Strawberry High Line Canal Company hereby quit-claim and release to said Payson City, a municipal corporation, all its right, title and interest in and to all waste, seepage, drainage, percolating or spring water arising on or flowing from the above described tract of land.

(5) It is further stipulated and agreed by and between the parties hereto that the said Strawberry High Line Canal Company, may have the right to the use of and the said Payson City, a municipal corporation, does hereby quit-claim and release unto the said Strawberry High Line Canal Company, a corporation, all waste, seepage, drainage, percolating or spring water arising on or flowing from all lands, excepting the lands last described above which are tributary to Spring Creek, the East branch of which is a natural channel which leads from said Spring Lake, and which Creek is more particularly described in paragraph 8 hereof.

20. That Charles H. White, Artimesia White and Newell K. White are the owners of land in the Southeast quarter of Section 12, Township 9 South, Range 1 East of the Salt Lake Base and Meridian, and that they are entitled to use water on said land from the East Branch of Spring Creek as above described only, and that their water right is equal to the following, to-wit: 99.44 acre feet of water each year to be diverted by them from Spring Creek at the following point of diversion: 1350 feet East and 250 feet North of the center of Section 13, Township 9 South, Range 1 East, Salt Lake Base and Meridian. Said water is to be diverted according to the following schedule and in the amount named herein each year and not otherwise: From May 1st at eight o'clock A. M. to May 4th at 12:30 A. M. a three-second foot stream; from May 10th at 11:30 A. M. to May 13th at 4 A. M., a three second-foot stream; from May 19th at 3 P. M. to May 22nd at 7:30 A. M., a three second-foot strea; from May 28th at 6:30 P. M. to May 31st at 11 A. M. a three second-foot stream; from June 6th at 10 P.M. to June 9th at 2:30 P. M. a two second-foot stream; from June 16th at 1:30 A. M. to June 18th at 6:00 P. M. a two second-foot stream; from June 25th at 4:30 A. M. until June 27th at 9:00 P.M. a one second-foot stream; from July 4th at 8:00 A. M. until July 7th at 12:30 A. M. a one-half second-foot stream; from July 13th at 11:30 A. M. until July 16th at 4:00 A.M. a one-half second foot stream; from July 22nd at 3.00 P.M. until July 25th at 7:30 A. M. a one-half second-foot stream. And that the above water right is for use upon the above described land and is appurtenant thereto.

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21. That Clara Hardy is the owner of land in the Northeast quarter of Section 12, Township 9 South, Range 1 East of the Salt Lake Base and Meridian, and is entitled to the use of water on said lands from the East Branch of Spring Creek as above described only, and that her water right is equal to the following, to-wit: 13.2 acre feet of water each year, said water to be diverted by her from Spring Creek at the following point of diversion: 1350 feet East and 250 feet North of the center of Section 13 aforesaid. Said water is to be diverted by Clara Hardy in accordance with the following schedule in the following amounts, each year and not otherwise: May 4th at 12:30 A. M. to May 4th at 9 A. M. three second-feet: May 13th at 4 A. M. to May 135h at 12:30 P. M. three second-feet; May 22nd at 7:30 A. M. to May 22nd at 4 P. M. three second-feet; May 31st at 11:00 A. M. to May 31st at 7:30 P. M. three second-feet; June 9th at 2:30 P. M. to June 9th at 11:00 P. M. two second-feet; June 18th at 6:00 P. M. to June 19th at 2:30 A. M. _____ second feet: June 27th at 9 P. M. to June 28th at 5:30 A. M. one second foot; July 7th at 12:30 A. M. to July 7th at 9 A. M. one-half second-foot; July 16th at 12:30 P. M. one-half second-foot; July 25th at 7:30 A. M. to July 25th at 4:00 P. M. one-half second-foot; the said water is appurtenant to the above described land and is for use upon the same.

22. The Court further finds that the plaintiff corporation is the owner of and has under its control ditches, laterals and other irrigation works sufficient and adequate for the delivery of water from Spring Creek and other sources to the lands of the defendants Charles H. White, Artimesia White, Newell K. White and Clara Hardy.

2 23. The Court further finds that the plaintiff, the Strawberry High Line Canal Company, a corporation, is the owner of and entitled to the use of all of the waters of Spring Creek including all the branches thereof and water rights heretofore described or which may hereafter be developed, except such portion of said water as is owned by the defendants herein as above described and set forth.

24. The Court finds all of the other allegations in plaintiff's complaint to be true except as hereinabove set forth and provided.

CONCLUSIONS OF LAW

From the foregoing Findings of Fact the Court now concludes:

1. That the parties hereto are entitled to a decree of this Court quieting and defining their and each of their respective rights in and to the waters of Spring Creek as above described and defined and in accordance with the foregoing Findings of Fact.

2. That the parties hereto are entitled to a decree of this Court barring and enjoining each of said parties from asserting or claiming any right, title or interest in or to said waters, or the use thereof, to-wit: of Spring Creek or its sources, different or in addition to said rights as defined and specified and described above.

Let Judgment be entered accordingly.

Dated this 12th day of January. A. D. 1923.

ELIAS HANSEN,

Judge.

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