

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

EBENEZER G. DEFRIEZ, et al,

Plaintiffs,

vs.

ASHLEY CENTRAL IRRIGATION COMPANY, et al,

Defendants,

and

ASENITH CHADWICK, et al,

Intervenors,

and

HIGHLINE CANAL COMPANY, ASHLEY
VALLEY RESERVOIR COMPANY, DRY FORK
IRRIGATION COMPANY, PITT DITCH COMPANY,
DUAYNE T. JOHNSON, MORGAN MERKLEY,
WILLIAM H. HULLINGER, CLARENCE E. JONES,
HENRY PELTIER and GLEE C. PELTIER,
VIRTUS McCONKIE and SADIE A. McCONKIE,
ARUS CALDWELL, LAWRENCE CALDWELL and
UNITED STATES BUREAU OF RECLAMATION,

Defendants.

ORDER APPOINTING
COMMISSIONER

Civil No. 18

now

Civil No. 3197

The Motion of the Ashley Upper Irrigation Company on behalf of itself and other parties, Plaintiffs, Defendants and Intervenors, Users of the waters of Ashley Creek and its tributaries, in the above entitled action came on regularly for hearing this 7th day of April, 1964, praying for the Appointment of a Water Commissioner to distribute the waters of Ashley Creek for the year beginning April 7, 1964, and ending April 6, 1965.

And it appearing to the Court that all of the users of the waters of Ashley Creek and its tributaries heretofore made parties to this said action had 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 distribution of the waters of Ashley Creek and its tributaries by reason of the Decree entered herein on November 17, 1897, as amended on May 15, 1962, to direct the administration and distribution of the waters of said Ashley Creek.

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

And it further appearing that the said users of the waters of Ashley Creek, the parties in this action, have by agreement among themselves made by their duly appointed representatives agreed and stipulated that David Rasmussen is a person qualified to act as said Commissioner and has agreed to so act.

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

1. That David Rasmussen be, and he 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 a period of one (1) year beginning April 7, 1964, and ending April 6, 1965, or until further order of this Court; and he is hereby directed to administer and distribute the waters of Ashley Creek and its tributaries by himself or duly appoint deputies in accordance with the Laws of the State of Utah and the Decrees of this Court which by reference are made a part hereof, to the parties hereto in accordance with their respective rights. The rights of the parties hereto shall be, until further Order of this Court, as they were established by the Commissioner during the 1963 irrigation season.

2. That the said Commissioner shall confer and counsel with the Chairman of a committee representing the water users of Ashley Creek and its tributaries, provided said Chairman shall act in an advisory capacity only and that the Commissioner shall be responsible only to this Court.

3. That the said Commissioner shall name and appoint such deputy or deputies as he may need in the distribution of the waters of said Ashley Creek and he is hereby authorized to pay a reasonable salary or wages and automobile mileage to himself and such persons as he may employ in carrying out the provisions of this Order. That said Commissioner shall obtain the approval of the Chairman of the above mentioned water users committee in writing of the salary to be paid himself, his deputies and mileage allowances.

4. That the said Commissioner shall immediately submit for the approval of this Court an estimate of the expenses involved in carrying out the provisions of this Order and notify the respective water users of their proportionate share of this expense and the parties hereto are hereby directed to pay to the Clerk of this Court on or before July 1, 1964, their pro-rated share of said expenses. This money, when collected by the Clerk, shall be forwarded by him to the Commissioner to be held by him in a trust fund account and disbursed under the direction of the Commissioner for paying the expenses involved in carrying out the provisions of this Order.

5. The expense of carrying out the provisions of this Order as estimated by the said Commissioner shall be paid by the parties hereto in the following proportions:

1. Primary Water Users		55%
Primary Water Users to pay the 55% in the following proportions:		
Ashley Upper Irrigation Company	.327	
Colton Ditch Company	.036	
Steinaker Ditch Company	.02	
Ashley Central Irrigation Company	.335	
Hardy Ditch Company (out of Ashley Central Irrigation Company)		
Island Ditch Company	.074	
Dodds Ditch Company	.01	
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	
Dry Fork Irrigation Company	.15	
Mosby Irrigation Company	.25	
Pitt Ditch Company	.05	
Duayne T. Johnson	.05	

Morgan Merkley	.05
William H. Hullinger	.05
Clarence E. Jones	.05
Henry Peltier and Glee C. Peltier	.05
Virtus McConkie and Sadie A. McConkie	.05

Provided further, that in the event the said Commissioner shall over-estimate the actual expenses incurred during the above period, then the remaining balance shall be carried forward to cover expenses for the next irrigation season; and that in the event the said Commissioner shall underestimate the actual expenses incurred during the above period, then he shall report the same to this Court and a further assessment will be made to meet the expenses incurred.

6. That said Commissioner shall distribute the waters of said Ashley Creek 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, it is hereby ordered that they shall 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 they will shut off the waters of the respective ditches and canals when directed by the Commissioner.

7. It is further ordered that each party 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.

8. 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.

9. 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.

10. That the said Commissioner is hereby directed to file a written report of his actions and activities in the distribution of the waters of Ashley Creek for the 1964 irrigation season which said report shall be filed as soon after January 1, 1965, as may be practical.

11. It is further provided that in the event any of the parties hereto shall disagree with the Chairman of the said water users committee, then he is hereby authorized to confer directly with the Commissioner or his deputy concerning any distribution problem and in the event the Commissioner or his deputy can not settle such controversy, such person may present his problem to this Court for final determination.

DATED this 7th day of April, 1964.

/s/ Maurice Harding

District Judge