

BRUSH CREEK

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

BURNS BENCH IRRIGATION COMPANY,

Plaintiff,

-vs-

MARVIN JACKSON, LEO WILD, SAMUEL

J. HATCH, ROBERT SHINER, NELDON SHINER, ORIAL SHINER, MARTIN EVANS, LEON AINGE, HOWARD AINGE, SAM SESSIONS, ALBERT MURRAY, WARD MURRAY, ZINNA MURRAY, CHARLES WISE, N. J. MEAGHER, KATHERINE MEAGHER, N. J. MEAGHER, JR., KATHERINE C. MEAGHER IVERS, MARY ALICE MEAGHER ARENTZ, MARGARET FRANCIS MEAGHER PRICE, ROSS B. SNOW, CARWIN SNOW and ALBERT SNOW,
BURTON DITCH COMPANY and MURRAY DITCH COMPANY,

Defendants.

Civil No. ~~17~~ 3315

See Page 2015
243 per 1989
Assessment
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6-18-59

ORDER

The plaintiff, the Burns Bench Irrigation Company, and the defendants, the Burton Ditch Company and the Murray Ditch Company, hereinafter referred to as the moving parties, filed an affidavit for temporary restraining order against the defendants, N. J. Meagher, Katherine Meagher, N. J. Meagher, Jr., Katherine C. Meagher Ivers, Mary Alice Meagher Arentz, Margaret Frances Meagher Price, Ross B. Snow, Carwin Snow and Albert Snow, hereinafter referred to as the Sunshine Canal users, and the affidavit coming on regularly before the above entitled Court on the 26th day of May, 1959, the moving parties being represented by Hugh W. Colton and Whitney D. Hammond, and the Sunshine Canal users being represented by Clayton L. Simmons, and N. J. Meagher, Jr., the other defendants being represented by Mr. R. Earl Dillman, and it being reported to the Court that the matter is of a controversial nature and the Court

having determined that testimony should be taken before the issuing of the temporary order, the Court thereupon heard the various parties in the matter and after considerable discussion, stipulation was made in open Court and agreed to by the moving parties, by and through their attorneys, and the Sunshine Canal users by and through their attorneys, that Donald C. Norseth, Distribution Engineer of the State Engineer's office of the State of Utah, should be appointed as water commissioner of the Brush Creek drainage area from the 26th day of May, 1959 to and including the 15th day of June, 1960; that all parties hereinabove mentioned, submit to the jurisdiction of this Court and the commissioner above named as appointed by this Court. That the waters of Brush Creek be administered and distributed under the laws of the State of Utah and rules, regulations and orders set up by this Court under the direction of the commissioner; that the expenses involved in the administration and distribution of the waters of Brush Creek be paid as follows:

<i>J. D. Danner Dudley</i>	Burns Bench Irrigation Company	<i>Jensen</i>	40% (No. 3)
<i>President</i>	Burton Ditch Company	<i>1/2</i>	17% (No. 2)
	Murray Ditch Company	<i>11</i>	12% (No. 1)
	Upper Brush Creek		11% (No. 5 - Master)
<i>J. W. Meagher</i>	Sunshine Canal users	<i>Verneal</i>	20% (No. 4)

ASSESSMENT
That the estimated cost of administering and distributing the waters of Brush Creek is \$650.00, which amount is to be paid by the above mentioned parties to this action, according to the percentage above set forth, which amount shall be paid immediately to the State Engineer of the State of Utah, to be held in a trust account, to be expended under the direction of the commissioner and a report thereof submitted by the commissioner to this Court at the end of the 1959 irrigation season.

Report to Court
 That the parties hereto will not interfere with the distribution of the waters of Brush Creek in any way except as directed by the water commissioner or his duly appointed agents.

NOW, THEREFORE, in keeping with the said stipulation, IT IS HEREBY ORDERED as follows:

1. That Donald C. Norseth, Distribution Engineer of the State Engineer's Office of the State of Utah, is hereby appointed Commissioner of the waters of

Brush Creek, tributary of the Green River, in Uintah County, State of Utah, for the period beginning May 26, 1959 and ending June 15, 1960, and is hereby directed to distribute the waters of said Brush 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, which by reference are made parts hereof.

2. That the Commissioner shall name and appoint such deputy or deputies as he may need in distributing the waters involved in this matter and he is authorized to pay reasonable monthly salaries and automobile mileage to such persons as may be employed to assist in this matter, the total expenditures of which shall not exceed, without further order of this Court, the sum of \$650.00, and that the said amount shall be paid as follows:

Burns Bench Irrigation Company	40%	\$ 260.00
Burton Ditch Company	17%	110.50
Murray Ditch Company	12%	78.00
Upper Brush Creek	11%	71.50
Sunshine Canal users	20%	130.00

said amount to be paid 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 salary of necessary deputies and mileage at the rate of 8¢ per mile for miles actually travelled by motor vehicles in distributing the waters of Brush Creek.

3. That in accordance with the terms of the Decree in this matter, waters shall be divided among the parties hereto in the following manner, on and after June 15, 1959:

Burns Bench Irrigation Company	- 50%	of the waters of Brush Creek
Burton Ditch Company	22%	of the waters of Brush Creek
Murray Ditch Company	15%	of the waters of Brush Creek

the above amount of water to be distributed at the weir used by the above mentioned parties.

The remaining 13% of said waters, to be divided among the defendants on Upper Brush Creek, at their respective weirs, provided however, that in the use of the said 13% the defendants may have the same divided in any way they desire, provided they shall not divert their share of water in more than two

streams at any one time in accordance with the original Decree filed herein, and in no event shall the total of the two streams that their shares may be divided into, exceed 13% of the waters of Brush Creek.

It is further ordered that the defendants, the Sunshine Canal users, shall install measuring devices on Little Brush Creek, upstream from its confluence with Big Brush Creek, and a headgate and measuring device in the Sunshine Canal near where the waters belonging to said parties are diverted from Brush Creek. These installations to be made at once. After June 15, the Commissioner shall deliver to the Sunshine Canal users such water as may be turned into Big Brush Creek from what is known as the East Park Reservoir, belonging to the Sunshine Canal users, through Little Brush Creek, less channel losses. Prior to June 15, or until such time as an adjudication of the waters of Brush Creek has been made by the Utah State Engineer, the waters of Brush Creek shall be distributed in accordance with the rights the respective parties may establish before the Commissioner.

4. That if any of the defendants use any of the waters of Brush Creek for domestic or culinary uses, then the amount so used shall be charged to their respective shares which they are entitled to use.

5. That each of the defendants shall, at their own expense, install at the head of their ditch a headgate of a design to be approved by the Commissioner which will mechanically shut off water for the respective ditches.

6. That each of the parties hereto shall, at his 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.

7. That each of the parties hereto will provide a roadway whereby the commissioner or his deputies may get to the respective defendant's headgate, the termination of which will be within 300 feet of the said headgate, *EXCEPT* in the case of the headgate used by the defendants, Leo Wild and S. I. He and in this case the existing roadway may be used.

8. That when the head of the diversion ditch is on the opposite side of Brush Creek from where the roadway terminates, then a suitable bridge

provided at the head of each ditch for the Commissioner or his deputies to cross the stream to the headgate.

9. That the parties hereto are hereby ordered to comply with the schedule of terms and other rules and regulations as they may be given by the Commissioner in the use of the waters they are entitled to use under the terms of the Decree and other orders issued herein.

10. 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 Brush Creek until further order of this Court.

Dated this 26th day of May, A.D., 1959.

JOSEPH E. NELSON, JUDGE

*Placed Mr. Morris Cook County Clerk
at 7:30 P.M. 8-27-59
for certified copy of Court Order No.*

Frank Cook