

2183
P.D.

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

The Wasatch Irrigation Company, The Charleston Irrigation Company The
North Field Irrigation Company, Wasatch County, Heber School District,
Heber Town Corporation, The Wasatch Stake of the Church of Jesus Christ of
Latter Day Saints; Lake Creek Irrigation Company; William McDonald, A.C.
Hatch, Joseph Hatch, Abram Hatch, Ludvig Andersen, Joseph Fisher, John C.
Fortie, Jacob Berg, Herbert Clegg Mary McComie Henry Chatwin, Joseph A.
Murdock, John A. Fortie, Gabriel Gabrielson, Mary M. Duke, Ellen Lee,
Franklin Fraughton, Mrs. Olsen, Andrew Olsen, William Ryan, Frederick
Phillips; D.M. Lindsay, Joseph S. Murdock, James Moore, John Baird, Julia
Lindsay Ola J. Johnson, James Sharp, Robert Turner; Lacy Fransworth,
William Coleman, William M. Giles, Hannah Gallagher, George T. Giles,
Lawrence, Alfred Daillman, James W. Clyde, William H. Murdock, Joseph
Campbell, Margaret Stevensen, John Hicken, Sarah A. Jones, David Fisher,
Janette Wing, Jane Baird, Thomas C. Smith; Henry Ohlwiler, Jane Shelton,
Joseph A. Smith, Robert Montgomery A. Hatch & Co.

PLANTIFFS.-

- vs -

Edward Fulton, Emil Sackerson, Albert Potts, George Potts, J. D. Jones,
R. L. Jones, Carl V. Wilkens; William Paul, James Ore, John Peterson,
Ernest White, John Jones, The Sun Rise Irrigation Company, Teh South Kamas
Irrigation Company, The Washington Irrigation Company; The Midway Irriga-
tion Company, John Phillips, Thomas White, John Leffler, Alvin Leffler,
T. A. White Peter Duncan, John T. Moon, Mary A. Moon; Roger Horrocks Henry
Bisell, Robert Mitchie, Marshall Leffler, Freeman P. Bowers, Fred Peterson
Eldora Rose, Ephraim Lambert Henry Parry, John M. Reed, Hans Larson, A. E.
Keeler, George O. Ellis, Thomas R. Potts, John Benson, William Potts, Milton
O. Turnbow, Charles Murphy, Samuel Gines, James A. Knight, William R. Smith,
William Clarke John Richardson, Isaac Hunter, John O. Driscoll, Riley Fitz-
gerald, J. J. Jenkins, Daniel Mitchell, Henry Fraughton Joseph Ketchum,
Daniel Simpser, Ace Duncan, Ether Webb, Jack Bates, John Swift, John Doe-
Snepe, Phillip Margetts, J. M. Walker, Lydia Walker, William H. Walker,
William H. Walker Jr., Walkie; Edward Dillon, John Buttrey, Eliza Kinsie,
Mary Davis, Moroni Morris, Joseph Morris, Henry Morris, Benjamin A. Norris,
John J. Jordon, Allen Jordon, George B. Jordon, Isaac R. Baum, Samuel Lee,
Phillip Smith, Ritchard Smith John Clyde, James W. Thomas,

DEFENDANTS.

DECREE.

This cause came on for trial before the court on the ---- day of August
A.D. 1898, at Heber City, Wasatch County, Utah upon the complaint of
the plaintiffs, and the answers and cross complaints of the several defend-
ants, Messrs A. C. Hatch and S. R. Thurman, appearing as counsel for the
plaintiffs Messrs, Moyle, Zane and Costigan and Henry Shields for the def-
endants. Washington Irrigation Company, South Kamas Irrigation Company,
Samuel Gines, James A. Knight William R. Smith, William Lark, sued as William
Clark, John O' Driscoll John Phillips, T. P. Potts, Thomas White Eldora Rose,
Ernest White, A.S. Potts; M. A. Moon, John Benson, George potts; John M.
Reed, John L. Larson, Sued as Hans Larson, Fred Peterson, E. P. Bowers,
E. B. Leffler, Sued as Alvin Leffler, George O. Ellis and, J. R. Leffler,
Sued as John Leffler; Ans Messrs A. A. King M.M. Warner William Buys and
John H. McDonald as Counsel for the defendants, Emil Sackerson, Carl H.
Wilcken, William Paul, John Peterson the Sun Rise Irrigation Irrigation
Company, Riley Fitzgerald, Henry Fraughton, Joseph Ketchum, Ether Webb,
Daniel Simpser, Jack Bates, John Swift William H. Walker, H. W. Walkie,
William H. Walker Jr, John Buttrey, Ed. Dillon, Eliza Kinsie, Joseph Morris
Isaac R. Baum, Samuel Lee Daniel Mitchell. T. A. White; Milton O. Turnbow
Robert Mitchie Henry E. Parry, Ephraim Lambert, Marshall Leffler, Henry
Bisell John Jones, B. A. Norris, Hyrum Moon, J. J. Jordan Allen Jordan, and
George B. Jordan and Midway Irrigation Company and Mary Davis; and Jacob
Evans, Esq. as counsel for defendants, R. L. Jones Sued as R. L. Davis and
J. D. Jones, and for Abram Hatch Joseph Hatch and A.C. Hatch, as intervenors,
The Court heard the testimony of the respective parties and the argu -

Ments of counsel thereon, and having filed its findings of fact, and conclusions of law thereon;

1. It is therefore ordered, Adjudged and Decreed, that all of the waters of Provo River, and its tributaries at and above the head of the Plaintiffs canal, known as the Wasaton Canal, except in the extraordinary seasons of High Water, when therein more water in said river than the aggregate quantity distributed herein, be and the same is hereby awarded to and distributed among the following named classes and persons, to-wit:-

To the plaintiffs in common a quantity of water aggregating Eighty three cubic feet per second; to the defendants, The South Kamas Irrigation Company, Sixteen and two thirds cubic feet of water per second; John Benson one half of one cubic foot of water per second; Thomas P. Potts one half of one cubic foot of water per second; William Lark sued as William Clark four sevenths of one cubic foot of water per second; Thomas White one fifteenth of one cubic foot of water per second; Mary A Moon four Sevenths of one cubic foot of water per second; John Phillips three Sevenths of one cubic foot of water per second; Fred Peterson four thirty fifths of one cubic foot of water per second; F. P. Bowers four thirty fifths of one cubic foot of water per second; J. L. Larson sued as Hans Larson three sevenths of one cubic foot of water per second; James A Knight one and three sevenths of one cubic foot of water per second; G. O. Ellis one and three sevenths of one cubic foot of water per second; John M Reed five Sevenths of one cubic foot of water per second; E. B Leffler, Sued as Alvin Leffler two Sevenths of one cubic foot of water per second; Marshall Leffler, one-fifty Sixth of one cubic foot of water per second; Henry Fraughton one-Seventh of one cubic foot of water per second; Ephraim Lambert one-fifty-sixth of one cubic foot of water per second; T. A. White, Seventeen, seventieths of one cubic foot of water per Second; H. Moon three Seventiths of one cubic foot of water per second; John O'Driscoll Two sevenths of one cubic foot of water per Second; Daniel Sippers Six Sevenths of one cubic foot of water per Second; Samuel Gines one and eleven fourteenths of one cubic foot of water per Second; Robert Mitchie Thirteen Seventieths of one cubic foot of water per second. Milton O. Turnbow three fourteenths of one cubic foot of water per second; Daniel Mitchell five-fourteenths of one cubic foot of water per Second; H Bisell, one thirty-fifth of one cubic foot of water per second; Joseph Ketchum one and two- Sevenths cubic foot of water per second; Riley Fitzgerald's two- Sevenths of one cubic foot of water per second; Ether Webb, two sevenths of one cubic foot of water per second; Jack Bates, three fourtenths of one cubic foot of water per second; W. H. Walker, three sevenths of one cubic foot of water per second; Henry W. Walkey one fourteenth of one cubic foot of water per second; Ed Dillon one half of one cubic foot of water per second; John Swift, two sevenths of one cubic foot of water per second, Isaac R. Baum, one and nine fourteenths cubic feet of water per second, Joseph Morris one and six sevenths cubic feet of water per second, Abram Hatch, Joseph Hatch and A.C. Hatch in common, one fourteenth of one cubic foot of water per second; Abraham Hatch five sevenths of one cubic foot of water per second; John D. Jones and R. L. Jones, sued as R. L. Davis one cubic foot of water per second; John Buttrey, one fifth of one cubic foot of water per second; Samuel Lee one seventh of one cubic foot of water per second, Mary Davis five sevenths of one cubic feet per second; George B. Jordan, John J. Jordan, and Allen Jordan, in common, three sevenths of one cubic feet of water per second,

The foregoing parties constitute what is known as the first class in the distribution of said water;

2. It is further ordered Adjudged and Decreed, That wherever the water flowing in said River, and the canals of the parties of this action, exceed in volumity the aggregate quantity of water herein before awarded, to and distributed among the parties of the first class, such excess of said waters be, and the same is hereby awarded to and distributed among the following named parties to-wit:

To the defendants, the South Kamas Irrigation Company, eleven and two thirds cubic feet per second, John Jones, Five fourtenths of one cubic foot of water per second, Eliza Kenzie, Three f urteenths of one cubic foot of water per second, Henry E. Parry one and three seventeenths cubic feet, of water per second,

The foregoing parties last above named constitute what is known as the second Class in the distribution of said waters.

3. It is further Ordered, Adjudged and Decreed That whenever the waters flowing in said river and the canals of the parties to this action exceed in volume the aggregate quantity of water herein before awarded to and distributed among the parties of the first and second classes, such excess of said water be, and the same are hereby awarded to and distributed among the following named parties to-wit:-

To the Defendant Jack Bates, Three Fourteenths of one cubic foot of water per second ; Emil Sackerson five sixteenths of one cubic foot of water per second ; John Peterson, Three fourths of one cubic foot of water per second;

The foregoing parties last above named constitute what is known as the third Class in the Distribution of said waters,

4. It is Further Ordered, Adjudged and Decreed, that whenever the waters flowing in said river and the canals of the parties to this action exceed in volume the aggregate quantity of water herein before awarded to and distributed among the Classes above named Such excess of said water is awarded to the following named party to-wit: John Buttrey eight thirty fifths of one cubic foot of water per second.

The foregoing party last above named, constitutes what is known as the fourth class in the distribution of said water.

5. It is further ordered, adjudged and decreed, that when ever the waters flowing in said river and in the canals of the parties to this action exceed in volume the aggregate quantity of water herein before awarded to and distributed among the classes above named such excess be and the same is hereby awarded to and distributed among the following named parties, to wit:- The defendants, Washington Irrigation Company, twenty-one and one thirtieth cubic feet of water per second, A. S. Potts, William Potts, George Potts, and T. P. Potts in common on what is known as the A. S. Potts entry, three-fourths of one cubic foot of water per second, Jack Bates, five-fourteenths of one cubic foot of water per second, Carl H. Wilckins three-thirty-fifths of one cubic foot of water per second; William Paul, six-thirty fifths of one cubic foot of water per second.

The foregoing parties last above named, constitute what is known as the fifth class in what is known in the distribution of said water,

6 It is further ordered, adjudged and decreed that whenever the waters flowing in said river and in the canals of the parties to this action exceed in volume the aggregate quantity of water herein before awarded to and distributed among the classes above named, Such excess be and the same is hereby awarded to and distributed among the following named parties, to-wit:- To the defendants, Samuel Lee, two-sevenths of one cubic foot of water per second, Carl H. Wilcken, thirty-seven-seventieths of one cubic foot of water per second; John O'Driscoll, three fourteenths of one cubic foot of water per second.

The foregoing parties last above named constitute what is known as the sixth class in the distribution of said waters.

7 It is further ordered, adjudged and decreed, that whenever the waters flowing in said river and in the canals of the parties to this action exceed in volume the aggregate quantity of water herein before awarded among the classes above named, such excess be, and the same is hereby awarded to and distributed among the following named parties to wit.

To the defendants William Paul nine-thirty-fifths of one cubic foot of water per second; John O'Driscoll one-fourteenth of one cubic foot of water per second.-

The foregoing parties last above named constitute what is known as the seventh class in the distribution of said waters,

8 It is further ordered, adjudged and decreed, that whenever the waters flowing in said river and in the canals of the parties to this action exceed in volume the aggregate quantity of water herein before awarded to and distributed among the classes above named, such excess be, and the same is hereby awarded to the following named party, to-wit: To the defendant Carl H. Wilcken, three-thirty-fifths of one cubic foot of water per second.

The foregoing party last above named constitutes what is know as the eighth class in the distribution of said water.

9 It is further ordered, adjudged and decreed that, whenever the waters flowing in said river and the canals of the parties to this action exceed in volume the aggregate quantity of water herein-before awarded to and distributed

among the classes above named, such excess be, and the same is, hereby awarded to and distributed among the following named parties, to-wit:

The defendants, Ernest White, five-fourteenths of one cubic foot of water per second; Ether Webb, one-fourteenth of one cubic foot of water per second.

The foregoing parties last above named constitute what is known as the ninth class in the distribution of said water

10 It is further ordered, adjudged and decreed that whenever the water flowing in said river and the canals of the parties to this action exceeds in volume the aggregate quantity of water herein before awarded to and distributed among the classes above named such excess be and the same is, hereby awarded to and distributed among the following named party to-wit:

To the defendant, John Buttery, eleven, seventieths of one cubic foot of water per second.

The foregoing party last above named constitutes what is known as the tenth class in the distribution of said water

11 It is further ordered, adjudged and decreed that whenever the same party is entitled to water in different classes as defined in the findings and in this decree, the quantity to which said party is entitled is determined by ascertaining the aggregate quantity which he is entitled to in all said classes.

12 It is further ordered, adjudged and decreed that whenever the quantity of water flowing in said river and in the canals of the parties entitled thereto, is insufficient to supply the quantity of water awarded to any class by these findings, then the person and parties entitled thereto, as herein before stated shall have the same distributed to them pro rata according to the quantities to which they are entitled, as herein before stated

13. It is further ordered adjudged and decreed, that the classes, and parties herein named are entitled to a right to use the waters of said river in the order above named, and no class or party in said class shall be entitled to the use of any of said waters so long as the water flowing in said river and in said canals is insufficient to supply preceding classes and parties herein with the quantity of water to which they are entitled, as herein before provided.

14. It is further ordered adjudged and decreed that the defendants, John Clyde, Henry Morris, Moroni Morris, Richard Smith, Phillip Margetts, Roger Horrocks Edward Fulton, Phillip Smith, J. J. Jenkins, J. M. Walker Lydia a. Walker, Charles Meurphy, Ace Duncan, John Richardson, and A.E. Keeler are not entitled to divert or use any of the waters of said river,

15. It is further ordered adjudged and decreed, that for the purpose of making an equitable division and distribution of said water among all the parties entitled thereto, as herein before provided, a commission is hereby constituted, consisting of three persons, two of whom shall be elected annually on or before the first day of June in each year, as follows, to wit:

One of said commissioners shall be elected by the parties plaintiffs, and one by the parties defendants and the intervenors, and the third shall be the State Engineer or some competent person whom said engineer may designate or appoint, not interested in the waters herein distributed.

The plaintiffs shall provide for the compensation of the commissioner elected by them and the defendants and intervenors shall provide for the compensation of the commissioner elected by them, and the compensation of the state engineer or the person whom he may appoint as the third commissioner shall be paid one half by the plaintiffs and one half by the defendants and intervenors:

It is further ordered adjudged and decreed, that it shall be and is the duty of the two commissioners elected by the plaintiffs and defendants, and intervenors, to accurately measure and distribute the waters of said river and the canals of the parties herein, including the seepage arising from irrigation, or such part of said waters as may be necessary, when ever requested to do so by any party interested herein; provided that if upon such measurement it be ascertained, that the same was unnecessary, and that the party requesting the measurement to be made, had the quantity of water to which he is entitled in this decree at the time of such request, then such party so requesting the measurement, shall pay the compensation of such commissioners, and all the expenses incident thereto unless it appear to such commissioners that such request was made in good faith, and under an honest impression that such measurement was necessary

The State Engineer, or person appointed by him as the third commissioner in said commission, shall not be called upon to act as a member of

said commission in any measurement of said water, or question incident thereto, until after said measurement is made by the two commissioners aforesaid and he shall not then be called upon to act as a member of said commission, unless requested to do so by the party requesting said measurement or one of the afore said commissioners elected by plaintiffs and defendants and intervenors, except as hereinafter provided.

The provisions of this decree providing for the payment of the expenses of said commissioners shall be applicable only in cases where there is a dispute as to the measurement of said water between the plaintiffs on one side, and the defendants and intervenors on the other.

Whenever a measurement is required between or among the parties plaintiff, in which the defendants or intervenors are not interested, the defendants and intervenors shall not be required to pay any portion of the compensation of said commissioners, or expenses incident thereto; and whenever any dispute arises between or among the defendants or intervenors in which the plaintiffs are not interested the plaintiffs shall not be required to pay the compensation of said commissioners or the expenses incident thereto.

It shall be the duty of said commissions appointed by the plaintiffs on the one side and the defendants and intervenors on the other, as hereinbefore provided, whenever requested as aforesaid to proceed to measure and distribute said water or part thereof, as the case may be, as in this decree provided; and in the event that either of said commissioners shall refuse or neglect to participate or join in said measurement the other commissioner is authorized to call upon the State Engineer or any competent person whom he may appoint, as herein provided, to participate in said measurement in lieu of the other commissioner and such measurement when made shall be valid and binding as if made by the commissioners elected by the parties hereto, as herein provided, and in such case the compensation of the State Engineer or other competent person appointed by him, as herein provided, shall be paid by the parties whose commissioner refuses or neglects to participate in said measurement, as hereinbefore stated.

Whenever the State Engineer or other competent person designated or appointed by him, as herein provided, shall be called upon, as provided in this decree, to participate in the measurement of said water, or any matter incident thereto as herein provided, his decision thereon shall be final and binding upon all the parties hereto.

16. It is further ordered, adjudged and decreed, that for the purpose of equitable dividing and distributing the waters of said river, so that the parties interested therein, as herein provided may receive the quantity to which they are entitled none of the parties hereto shall have the right to extend the use of the waters herein awarded to them upon other lands than those now irrigated so as to cause the seepage or drainage therefrom to be diverted away from the channel of said river, or from the lands heretofore irrigated thereby.

17. It is further ordered, adjudged and decreed, that so long as the waters of said river in any season of the year exceed in volume the aggregate quantity awarded to the several parties to this action, as herein provided, said parties shall not be restricted by any measurement of said water provided herein, but may extend the application of said waters upon any lands they may own or possess, according to their necessities.

18. It is further ordered, adjudged and decreed, that the rights of the parties hereto respectively, both plaintiffs and defendants and intervenors, to the use of the waters of the said river as herein provided, be, and the same are hereby quieted and affirmed, and each of said parties, their agents, servants and employees, and the agents, servants and employees of each of them are hereby enjoined and restrained from diverting or using any of the waters of said river or its tributaries, to which they are not entitled as herein provided, and from interfering with the rights of any other party as herein defined, and from asserting any claim or right to any of the waters of said river except such rights as are herein awarded to them respectively.

19. It is further ordered, adjudged and decreed, that neither party hereto shall tax any costs against any other parties on account of witnesses in said cause, mileage or per-diem; but the costs of court, officers costs, and stenographers fees shall be apportioned as follows, the plaintiffs shall pay on half thereof the defendants represented by Messrs. Moule Zane & Costigan and Henry Shields one third thereof, and the defendants represented by Messrs. King, Warner, Buys and McDonald one-sixth thereof less \$3.00 to be paid by the defendants and intervenors represented by Jacob Evans Esq.

It is further ordered, adjudged and decreed that the Stenographers fees

herein provided for shall include per diem at the trial, transcribing the notes, and per diem in transcribing testimony for the court and preparation of the decree, the whole of said costs to be ascertained and taxed by the plaintiffs notice of which shall be given by plaintiffs to Counsel for the defendants and intervenors within ten days from date hereof, in the event that said costs are not paid by the parties hereto as above provided, execution therefor may be issued in favor of plaintiffs and the account collected as provided by law.

Dated Heber City
Wasatch County, Utah
May 6, 1899
Recorded May 15 1899

Warren N Dusenberry

State of Utah, ss
County of Wasatch,

I, Alfred Sharp County Clerk and exofficio Clerk of the District Court of the Fourth Judicial District of the State of Utah, in and for Wasatch County, hereby Certify that the foregoing is a full, true and correct copy of the Wasatch Irrigation Company et al VS. Edward Fulton et al. and now on file and of record in my office.

In witness whereof I have hereunto set my hand and affixed the official seal of said district court this 6th day of Jan. 1917.

Alfred Sharp
Clerk.

