

DIRECT EXAMINATION by Mr. Cluff.

Q. Mr. Wentz, you have heard the statement here relative to the rights of the parties in Provo Canyon above the intake of the Telluride Power Company, and in the Provo division such as the South Fork?

A. Yes.

Q. And the manner in which the decree as it is tentatively proposed would work out with reference to them pro rating. Will you explain to the court just how that can be varied, or how it can be arranged so that they will not be cut down, but that they will pro rate equally with the water users of water down below the tail race?

A. Well, that is the system I have been using this year, a total of all the rights in this division, in the Provo Division, and keeping them all on the same percentage. We first dropped to 85 then 70 and down as low as 55. Those rights above the Olmstead dam were kept on the same percentage of <sup>the</sup> rights as the rights in the Utah Valley. That is the total we passed over the dam, was the Dixon water of two and a half second feet, passing that over the dam. At fifty-five per cent we only passed over fifty-five per cent of the two and a half, making the canyon rights and Utah Valley rights all on the same ratio, and that does not in any way conflict with the Utah Power & Light.

Q. So that can be worked out then?

A. Yes, it works out all right, and the sheets of distribution as made during the summer will show that. I haven't one with me.

Q. You have not then been following exactly the terms of the decree this year in relation to that, have you?

A. Yes, pro rating in the whole division all the consuming rights.

MR. A. C. HATCH: But the power rights have you pro rated-- just taken the power right by itself-- pardon me-- and pro rated it with the people above?

A. No, the power right does not interfere in any way with the pro rating.

- MR. A. C. HATCH: You have not pro rated with the Power Company, or treated it as one who are entitled to pro rate?
- A. No, it is not necessary, doesn't enter into the pro rating provision.

- MR. A. C. HATCH: Assume that it has its full 250 second feet, would it necessitate then reducing the people above when it fell a little below the 250 feet?
- A. No, then all the rights below the tail race of the Olmstead plant would be a hundred per cent, and the people above would be held at a hundred per cent.

CROSS EXAMINATION by Mr. MacLane.

- Q. Mr. Wentz, as a matter of fact, some of the rights below the tail race of the Olmstead plant is in excess, that is, some of the class A rights is in excess of the right at present accorded the Power Company by the tentative decree, isn't it?
- A. No, the present right of the Power Company when it is at a hundred percent is in excess of the rights below the tail race.
- Q. That is exclusive of the Blue Cliff right, however, as now agreed upon?
- A. Yes.
- Q. But if you include the Blue Cliff right as now agreed upon, the statement is correct, isn't it?
- A. Yes, I would say yes with this reservation. Now, there is a great deal of inflow below the tail race, amounts to 40 or 50 second feet. Your statement would be right at some seasons of the year and be wrong in the later season.
- Q. In the low water stage it is correct, isn't it?
- A. That depends on the season. Our inflow below there is different different seasons, but usually I think your statement is right, generally speaking.
- Q. And consequently, of course, when you prorate on the basis of the consuming uses between the users both above and below or above the dam and below the tail race, the Power Company suffers its out in the same way that the consuming users suffer theirs?
- A. Yes, though not in the same ratio.

CROSS EXAMINATION by Mr. Story.

Q. In other words, you prorate between the consuming uses and let go down through the Power Company's flume such an amount of water as the lower users of water were entitled to under the prorating, did you not?

A. Yes.

Q. We automatically suffer a cut which the others suffer?

A. Yes.

REDIRECT EXAMINATION by Mr. Cluff.

Q. As a matter of fact you did not prorate the Power Company at all?

A. No, I didn't keep them on the same ratio. In fact, I didn't keep any record of their flow at all through the flume this year. It is not necessary, it does not interfere in any way with the other rights.

CROSS EXAMINATION by Mr. A. C. Hatch.

Q. Then, if you didn't keep any record, how can you tell whether they were prorated, or whether they were not, according to the water?

A. Well, they were always a hundred per cent. I said they were not prorated on the same ratio.

Q. Now, if they were prorated on the same ratio with the people above, what would be the result, if you can tell. If you can take that under consideration and answer the question after awhile, Mr. Wentz-- I don't think anyone could ~~gx~~ do it off hand.

A. That is, taking a division in the Canyon and prorating it?

Q. Taking a division in the Canyon at the Telluride dam and prorating it, and what effect would it have on the users of water below and above; that is, whether they would be operating upon the same basis if you prorated the Telluride Power Company according to its award in the decree with the rights above?

A. Well, they would not be--

Q. What I mean is this, to make it plain, that when you do that you cut down the rights above much more than you cut down the rights below, that is my theory of it?

- A. No, I think you are wrong about that.
- Q. I may be.
- A. I think it will work the opposite to that.
- Q. I wish you would figure it out.
- A. I will get that.
- Q. And give us the mathematical demonstration of it some time during the day.

CROSS EXAMINATION by Mr. Jacob Evans.

- Q. I would like to ask one question. Mr. Wentz, assuming that all the Class A water rights, including the Power Company, and the rights above the dam of the Power Company and the rights below the Power Company were prorated on the same basis, is there at any time any condition of the river using the prorating basis whereby the rights above the dam would be required to prorate a portion of their water with the Power Company to make up their rights which would in effect deprive the person using water above the dam of the same prorata quantity of water, and add some quantity of water to the rights of the irrigators below the dam?
- A. No.
- Q. Is there any condition of the river that would cause that condition?
- A. No, I think not.

MR. WEDGWOOD: You are referring to the Provo Division exclusively?

- A. Yes.

THE COURT: Now, Mr. Cluff, do you make some objection to the way this has been prorated during the season?

MR. CLUFF: No, I just had the idea, if the court please, that by prorating with the Power people-- I understood that he had not been doing it this year.

THE COURT: He has not been prorating with them on the strict basis of proration. Of course, they have suffered a loss by reason of the fact that the water that goes below has been reduced.

MR. CLUFF: I understand that.

THE COURT: That is the suggestion I understood Judge Hatch to make a moment ago.

MR. A. C. HATCH: Yes.

THE COURT: It has been done this year just as you contended it should be done.

MR. A. C. HATCH: As it should be.

THE COURT: Have you anything to say about this?

MR. MACLANE: No, we think we are not satisfied with the quantity of water we got this year, of course, but there are other questions, but we think so far as the acts of the Water Commissioner are concerned, and as explained by him that he has done the proper thing.

THE COURT: So far as the element of proration is concerned?

MR. MACLANE: Yes.

THE COURT: I do not see there is anything to do with that.

MR. JACOB EVANS: His explanation is perfectly satisfactory to all parties all around, method of prorating this year.

MR. A. C. HATCH: Then, if it is satisfactory, the decree ought to be worded somewhat definitely, and say the water should be prorated as between the consumers--

THE COURT: Consuming users.

MR. A. C. HATCH: And awarding to the Telluride people the rights of the users that the decree now provided, the users below.

MR. STORY: We cannot agree to that.

THE COURT: I would not want to make that change in the terms of the decree, but I think your first suggestion, the proration in times of scarcity should be made among the consuming users, and, of course, that means that it has certain effects upon the Power Company.

MR. MACLANE: On the consuming users as decreed by the decree.

THE COURT: Certainly, but I don't think I ought to limit the rights of the parties any further than that. Now, does that dispose of this matter for the present?

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