

D I S T R I B U T I O N .

1 9 1 5 .

1. In March of this season the parties to this action by their representative council entered into a stipulation for the distribution of the waters of the Provo River for the season of 1915, on this stipulation the Court made the order of April 2nd.

This order defined the highwaters in the Wasatch division as all of the waters in excess of the quantities distributed under the Fulton Decree, exclusive of the waters added to the river by the plaintiff company and made the distribution of the highwater over this district and including the plaintiff in Utah County equal according to the number of acres irrigated, with the provision, that should it be determined by the commissioner upon complaint of any defendant to this action that he was not receiving sufficient water for his reasonable necessities, then the commissioner was authorized to supply a sufficient amount of water to that party.

2. It is very evident, at this time, that the order was intended to define the distribution at a time should the condition occur as it did in May 1915.

The commissioner fully understood the order, and knew that in the middle of May, the Canals in the Wasatch District were loaded to overflowing, using water on a 20 acre duty, and the plaintiff company was down to a quantity higher than a 300 acre duty, without a second thought this statement--you may call it a confession if you desire, appears to place the writer in direct disregard of the order; but the second thought and the knowing of the conditions and the season clearly bring out the

necessity for this step, as outlined in another section of this report, it was absolutely essential and paramount to bring the Provo Valley to a point of storage capacity to that of a normal year, and also it was thought that by this method, the waters in the lower valley available to the plaintiff company would continue longer, and whatever the deficiency or loss that occurred during this period would be offset by the quantity supplied at the later date. This step was taken without the complaint of any party in the Wasatch district, and without persistent complaint by the plaintiff, but strange to say the defendant companies in the Utah Valley voiced great dissatisfaction.

3. When the waters in the Wasatch division receded to the quantities specified in the Fulton decree they were distributed according to the terms of the said Fulton decree as specified in the order.

4. In the Provo district the order outlined the distribution as shown by commissioners summary of May 4, 1915 and which is as follows:

Provo, Utah, May 4, 1915.

Disposition of Flow under the Court Order of
April 2, 1915.

Paragraph 8 of the Order is as follows:

"It is further ordered that whenever the natural flow of the waters of Provo River shall recede in volume to a quantity not exceeding 17,960 cubic feet per minute of time, measured at the measuring gates of the parties using water in Utah County under former decrees of this court, said flow of 17,960 feet per minute of time-----then the plaintiff shall cease to use any of said waters, except such as has

been heretofore decreed by this Court and succeeded to by the plaintiff herein-----"

And by Paragraph 9 "-----and that the plaintiff be allowed two second feet at the head of its canal, to represent the water it owns coming from the Wright Estate and the Round Valley Creek and Springs."

And by paragraph 10. "It is further ordered that John D. Dixon shall continue to use the water--- two and one-half second feet"

John D Dixon allotment is based on the purchase of the following:

J H. Snider	40	minute	feet	class	"A"
J. Mecham	20	"	"	"	"
J. W. Hoover	100	"	"	"	"
Hyrum Heiselt	8	"	"	"	"

And there remains in class "A" and "B" the following; (In Utah County)

Hyrum Heiselt	1	minute	foot.	
Springdell R. Co.	60	"	feet.	
George Duke	30	"	"	
Ed Mecham	40	"	"	(Now owned by Thomas & Giles.)
C. S. Conrad	74	"	"	
J. R. Hooks	30	"	"	
S. Fork Cattle Co.	22	"	"	
George Taylor	16	"	"	Total to this line 303
Wright Estate	120	"	"	M ft. = 5.05 sec. ft. (Under order)
Blue Cliff	69	"	"	(" ")

17,960 minute feet equals 299.33 second feet.

And of this amount John D. Dixon is entitled to 2.50 second feet, Hyrum Heiselt et al in the Canyon entitled to 5.78 second feet, The Provo Reservoir Company (Blue Cliff and Wright Estate) entitled to 3.15 second feet, a total of 10.70 second feet.

Then:

288.40 299.33 second feet less ^{10.93} 10.70 second feet equals
 288.63 second feet the amount to be distributed to the
 defendant rights below the Mouth of the Provo Canyon,
 in the Utah Lake Valley.

Tabulated as follows:

Provo City etal below the Mouth of Provo Canyon	288.63	sec. ft.	
John Dixon (Through the Provo Reservoir Canal)	2.50	"	"
Provo Reservoir Company (Blue Cliff & Wright Water	3.15	"	"
Canyon Rights (In Utah County)	5.05	"	"
Total	299.33	"	"

Under this summary distribution will be made
 for the season of 1915.

(signed) T. F. Wentz.

Commissioner Provo River.

5. The interpretations of this order you will note
 reserves to the defendant rights situated below the
 Mouth of the Provo Canyon in the Utah Valley 288.63
 second feet, and upon this amount and the irrigated
 areas available at that time a sheet ^{of} Proposed
 distribution was made on April 5, 1915, showing the
 proposed distribution, as follows:

Provo, Utah. 5-5-15.

Sheet showing distribution (Proposed) in Utah Valley,
 at the 17,960 minute feet stage

	Acres Irrigated	Duty	to	Entitled to Sec. ft.
Canyon Rights				5.05 ^{5.28}
Provo Res. Co				5.65 Wright, Dixon & B. Cliff.

	Acres Irrigated	Duty	Entitled to Sec. ft.
Provo City			
Municipal Right			24.00
Factory Race			19.30
Lake Bottoms	12.75	100	12.75
Fort Field	574	80	7.18
Partial Total	1849		73.93
<hr/>			
Timpanogos C.Co.	847	52.28	16.20
Provo Bench	4333	52.28	82.87
West Union etal	1900	52.28	36.34 .
River Bot. E.Side	393	52.28.	7.52 .
Barton & Young D	54	52.28	1.03
Park & Nuttal	69	52.28	1.32
U.E.Union & F.F.	871	52.28	16.66 (Total of two)
U.E.Union	762	52.28	14.57
Faucett Field	109	52.28	2.09 .
Provo City			
Acreage	2454	52.28	46.94
Young Ditch	40	52.28	0.78
Dixon Ditch	40	52.28	0.78
Little Dry Creek	506	52.28	9.68
Spring Creek	276	52.28	5.28
<hr/>			
Total of Acreage	11783	52.28	225.40
<hr/>			
Grand Total	13632		299.33

Note: Unless later noted, the foregoing will be the basis of distribution, under paragraph 8 of the order of April 2, 1915.

(signed) T. F. Wentz.

6. And following this sheet the distribution was outlined for the river above the time of scarcity and with a footnote covering the time of scarcity this sheet of proposed distribution is as follows:

Sheet showing distribution, (Proposed) Class "A",
above time of Scarcity, by Prop.

Canal Name	
Provo Res. Co.	5.65 (Constant) W.D.&B.C.
Provo CityMunicipal Right	24. (Constant)
Factory Race	<u>19.30</u> (Constant), subject to time of scarcity)
Partial Total	48.95
Timpanogos C.Co.	16.20/249.55
Provo Bench	82.87/249.55
West Union et al	36.34/249.55
River Bottom E. Side	7.52/249.55
Barton & Young D,	1.03/249.55
Park & Nuttal Ditch	1.32/249.55
U.E.Union & Faucett Field (total of two)	16.66/249.55
U. E. Union	14.57/249.55
Faucett Field	2.09/249.55
Provo City Acreage	46.94/249.55
Young Ditch	.78/249.55
Dixon Ditch	.78/249.55
Little Dry Creek	9.68/249.55
Spring Creek	5.28/249.55
Lake Bottoms	12.75/249.55
Fort Field	7.18/249.55
Canyon Rights	<u>4.22/249.55</u>
Total	249.55/249.55

Note: When the river recedes to "Time of Scarcity",
continue the Provo Reservoir constant of 5.65 second
feet, and the Provo City Municipal constant of 24.
second feet, eliminate the Factory Race 19.3 second
feet, and use the proportions as shown on the other
systems.

(Signed) T. F. Wentz.

7. During the time when we were supplying the amounts of water as shown by the foregoing proposed sheets of distribution and when the ^{288.40} 288.63 second feet was distributed to the defendant companies we were able to satisfy the needs for water.

8/ When the river receded to below this amount plus the carrying capacity of the Provo Reservoir canal, then the Provo Reservoir canal was reduced and the specified amount maintained to the defendant rights as long as the natural flow of the river was sufficient to maintain this amount.

9. Before going into the details of the distribution the question is probably in the mind of the reader; Are there no priorities in the Utah Valley in the defendant rights? In answer to this question I give my understanding of this subject:

10. The ^{288.40} 288.63 second feet reserved for all the defendant rights in the Utah Valley was considered to be sufficient for all the needs of the said defendants. If not, then why was this amount designated to, and imposed upon the commissioner? Surely in this amount the parties ought not to place upon their agent any burden. The commissioner admitted this to be the quantity of necessity, and with the average low water mean of the month of August being 285 second feet, substantially the amount specified as the amount of necessity, and by section 1288x27---"that whenever the natural flow of any stream shall have receded in volume in the annual low water stage, the rights of all users to such flow at such stage shall be deemed to be equal as to priority and the water, when at or below such stage, shall be apportioned pro rata among said users.****"

Then the Provo River in its low water stage is sufficient to supply substantially the amount of necessity and the rights of all users to such flow at such stage and below such stage are equal in priority and the flow shall be divided pro rata among such users.

11. And now returning to the order of April 2nd--- not a word do we find relative to the distribution of the ^{288.40} 288.63, as among the defendants rights of the Utah Valley, presumably the same interpretation that the commissioner placed upon the order was intended by the parties interested.

12. The foregoing sets out the intent of distribution and which with very slight deviation was followed during the season.

13. In the distribution of waters in the Utah Valley 24 second feet was maintained as a constant "Municipal right" to Provo City, this quantity was assumed, or more properly speaking, taken from the Wentz Report of 1914, this may, or may not be near the final allotment in this case, this was an assumption by the commissioner for a working basis for 1915, it was considered solely the duty of the parties in this action to establish or disprove the necessity of this amount, the commissioner directed special attention to this matter in 1914 relative to determining the amount, and took the view that the factor of constancy was admissable.

14. An amount of 19.3 second feet was designated as the title of the Factory Race (19.3 second feet continuous flow being equal to 45 second feet, used for 12 hours of the six working days of the week)

you will note by the daily sheets this amount was allotted to the time when the other users, except River bottoms, Faucett Field, Young Ditch, and Baum Ditch, in the Utah Valley were reduced in quantity to a 70 acre duty, at this stage and continuing the remainder of the season the 70 acre duty was maintained, and the reduction in flow was borne by the Factory Race.

15. In order to plainly show the outline of distribution I insert herewith copies of daily sheets;

Provo, Utah June 23, 1915.			
Canal Name	Acres Irrigated	entitled to Sec. ft.	Duty.
Provo City Municipal right		24.00	
Machine interests Factory Race		19.30	
Timpanogos	847	16.94	50
Provo Bench	4333	86.66	50
West Union Canal	1900	38.00	50
River Bottoms E Side	500	12.50	40
Barton & Young	54	1.35	40
Park & Nuttal	100 (Est.)	2.50	40
U. East Union	762	15.24	50
Faucett Field	109	2.70	40
Provo City Acreage	2454	49.08	50
Young, Dixon &			
Baum Ditch	120 (est)	3.00	40
Little Dry Creek	506	10.12	50
Lake Bottoms	1275	1275	100
Fort Field	574	7.18	80
Spring Creek	276	6.90	40
Reserve		6.78	
Balance to Provo Reservoir Co.		70.00	
Total	13,810	385.00	

Note: This sheet is made for approximate early morning adjustment. The amounts given on the 40 acre duty basis, are systems of very poor regulation, and are not under proper control.

(signed) T. F. Wentz.

Delivered copy to I. H. Jacobs, and copy to T. C. Thompston, at 10.12 P.M.

(signed) T. F. Wentz.

16. The sheet is self explanatory, you will note later in the season some of the areas are changed.

17. Provo, Utah July 1, 1915.

Canal Name	Acres irrigated	entitled to Sec. ft. to 24.	Amount to allow of 19	total	duty
Provo City Mun. right.					
Machine interests		19.30			
Lake Bottoms	1275	12.75			100.
Fort Field	574	7.18			80.
Timpanogos	847	14.10			60.
Provo Bench	4333	72.30			60
West Union	1900	31.70			60
E. River Bottoms	500 est.	8.30	6.00	14.30	60
Barton & Young	54	0.90	.40	1.30	60
Park & Nuttal	100 est.	1.70	.80	2.50	60
Upper East Union					
& Faucett Field	871	14.50	4.50	19.00	60
Provo City Acreage	2454	40.90			60
Young Dixon & Baum	120 est.	2.00	1.00	3.00	60
Little Dry Creek	506	8.40			60
Spring Creek	276	4.60			60
Canyon Rights assumed		5.05			
Provo Reservoir Co. constant		5.65			
Holding in reserve for lack of control and a possible drop		26.00			
Total		299.33	12.70		
Reserve for possible drop			13.30		
Total			26.00		

13, 810

Note: Of the amount of water found in Utah Valley below the mouth of Provo Canyon, (Of the natural flow of Provo River) give to the Provo Reservoir Co. the amount above 288.63 second feet. If the natural flow is below estimate give the Provo Reservoir 5.65 plus tunnel water 16.00 second feet.

For "Before breakfast adjustment" base estimate of river at 320 second feet.

17B July 6 is a duplicate of July 2, with main canals on 60 acre duty.

18.

Canal Names	Acres Irrigated	Provo, Utah, July 12, 1915. entitled to sec. ft. Duty.	
Provo City Mun Right.		24.00	
Machine interests		19.30	
Lake Bottoms	1275	12.70	100
Fort Field	574	5.70	100
Provo Res. Co		29.00	
Timpanogos	847	13.00	65
Provo Bench	4333	66.70	65
West Union	1900	29.20	65
E.River Bottoms	500	est. 12.50	40
Barton & Young	54	1.50	40
Park & Nuttal	100	est. 2.50	40
U.E.U. & F. Field	871	17.00	65 * 36 ft.
Provo City Acreage	2454	37.80	65
Young Dixon & Baum	120	est. 3.00	40
Little Dry Creek	506	7.80	65
Spring Creek	276	6.90	40

Sego

Total

13,810

2.88

291.48

(Signed)

T. F. Wentz.

You will note the main canals are now operating on 65 acre duty, with constants maintained, and the smaller users not under proper control are using a 40 acre duty, and by measurement of July 15th you may see the actual conditions, and the nearness to this distribution the system was running.

19. By sheet of July 29-30 the total of all water in Utah Valley had receded to 277.52 second feet and the distribution is shown as follows:

Provo, Utah, July 30, 1915.

Canal Names	Acres Irrigated.	entitled to ft. sec.	Duty.
Total River yesterday 277.52, by today's gage readings river is 28 second feet lower, then today's river is 275. second feet.			
Provo Reservoir Co	20 less 4%	19.20	
O. Tunnel Water	10.50 " 4%	10.08	
Primary Rights on rec.		<u>5.65</u>	
		<u>34.93</u>	second feet,
of this amount 6. second feet is diverted through the Provo Bench Canal and 28.93 through Provo Res. Canal.			
Provo City Mun. Rights		24.00	
Machine interests		12.36	
Spring Creek & Lake bottoms canal not changed		<u>21.71</u>	
Partial total		99.94	93.00
Balance		<u>175.06</u>	182.00
Fort Field	574	5.74	100
E. River bottoms	500	12.50 (temporary)	40
Faucett Field	109	4.00	"
Park & Nuttal	100	2.00	"
Barton & Young	54	0.90	"
Young Dixon & Baum		<u>2.50</u>	
		<u>27.64</u>	

Canal Names	Acres irrigated.	July 30, 1915 (Con.) entitled to sec. ft.	Duty
Timpanogos	847	12.10	70
Provo Bench	4333	61.90	70
West Union	1900	27.10	70
U. East Union	762	10.90	70
Provo City acreage	2454	35.10	70
Little Dry Creek	506	<u>7.20</u>	70
		154.30	
Grand total		275.00	

Total to be diverted to Provo Bench 61.90 x 6=67.90
Divert to Provo Reservoir Co. 28.94

This sheet is made for distribution for last of this week.

(signed) T. F. Wentz.

20. The main canals have raised to a 70 acre duty, amounts marked "temporary" are given to the lands lying in the river bottoms, and the Factory Race is reduced to 12.36 second feet continuous, or 28.84 second feet of flow for 12 hours of the six working days of the week. By comparison of the two sheets and not including the drop that occurred on the 30th, the Provo Bench, the Provo Reservoir Canal and Provo City including the Factory Race were out of adjustment about 10 per cent.

By the increase in flow of river on August 3rd the outlined distribution was able to be made giving to the Factory Race the 19.3 second feet, and also holding 6 second feet in reserve. Sheet of August 3 distribution is as follows:

Provo, Utah August 3, 1915.

By todays gage reading and comparing with

7-30-15 discharge is 285. second feet.

Canal Name	acres irrigated	entitled to sec. ft.	Duty.
Timpanogos	847	12.10	70
Provo Bench	4333	61.90	70
West Union	1900	27.10	70
U. E. U & F. Field		16.00	70
Provo City Acreage	2454	35.10	70
Little Dry Creek	506	7.20	70
Provo Reservoir Co.		34.93	
Provo City Mun. right		24.00	
Machine interests		19.30	
Spring Creek & Lake bottom canal		17.75	
Fort Field	574	5.74	100
E. River bottoms Water Co.		12.50 (Temporary)	
Park & Nuttal		2.00	"
Barton & Young		0.90	"
Young Dixon & Baum		2.50	"
Held for Possible drop		<u>6.00</u>	
		285.00	

Of Provo Reservoir to Provo Bench Canal 6.00
second feet = 67.90. and in Provo Reservoir Canal
divert 28.93

(Signed) T. F. Wentz.

21. By sheet of August 11, you may see the condition
of the system as found by actual measurement, and
again on September 7th.

22. Taking the average of 12 observations in the
month of August the Factory Race discharge was
31, second feet, equal to a continuous flow of 13.3
second feet, more properly speaking, with the
system on a 70 acre duty were able to supply to

the Factory Race the stated amount. For list of all observations you will find in the files submitted herewith properly indexed list of all diversions.

"22B"

TABLE SHOWING OUTLINE OF DISTRIBUTION
SEASON 1915.

Canal Name.	Acres Irrig.	June 23		July 2-6		July 12		July 29 to end.	
		Sec.	Ft. Duty.	Sec.	Ft. Duty	Sec.	Ft. Duty.	Sec.	Ft. Duty.
Provo City Mun.		24.		24.		24.		24.	(Constant)
Machine Rights.		19.30		19.30		19.30		19.30*	
Lake Bottoms.	1275	12.75	100	12.75	100	12.70	100	12.70	100
Fort Field	574	7.18	80	7.18	80	5.70	100	5.74	100
Timpanogus	847	16.94	50	14.10	60	13.00	65	12.10	70
Provo Bench	4333	86.66	50	72.30	60	66.70	65	61.90	70
West Union etal	1900	38.00	50	31.70	60	29.20	65	27.10	70
Provo City Acreage	2454	49.08	50	40.90	60	37.80	65	35.10	70
Little Dry Creek	506	10.12	50	8.40	60	7.80	65	7.20	70
U. East Union	762	15.24	50	12.70	60	11.70	65	10.90	70
Faucett Field	109	2.70**	40	<u>19.00</u> 6.30**	**	<u>17.00</u> 5.30**	**	4.00**	**
East River Bottoms W.CO.	500	12.50	40	14.30	**	12.50	40	12.50	40
Barton & Young	54	1.35	40	1.30	40	1.50	40	0.90	60
Park & Nuttall	100	2.50	40	2.50	40	2.50	40	2.00	50
Young, Dixon & Baum Ditch	120	3.00	40	3.00	40	3.00	40	2.50	50
Spring Creek	276	6.90	40	<u>(6.90)</u>		6.90	40	6.90	40
<i>Total</i>	<i>12,810</i>	<i>308.22</i>		<i>277.63</i>		<i>259.60</i>		<i>244.84</i>	
Provo Res. Co.	7000H 4800L	70.00	100	30.00		30.00		35.	
Reserved		6.78		13.30					
<i>Total</i>		<i>385.00</i>		<i>370.93</i>		<i>289.60</i>		<i>279.84</i>	

In the column, July 29 to end of season, the 19.30 second feet to Machine Interests was made subject to the other rights with their respective quantities.

The amounts and duties marked ** signifies 'not under control'.

The Young and Baum ditches disregarded schedules and amounts, continously.

The Amounts underscored ~~xxx~~^{is} total allowed to the Upper East Union and Faucett Field pending arrangement of a definite amount to the Faucett Field Company.

The amounts to Provo Reservoir Company under columns July 12, and July "29 to end of season" represents 5.65 second feet of primary rights and storage and tunnel water.

23. A great many questions arise in a persons mind at this time, probably the main one being: For what reason and upon what grounds did the commissioner cease reducing the canals when they had reached the 70 acre duty, and allow the deficiency to be borne by the Factory Race?

Answer: "In times of scarcity, use for agricultural purposes shall have preference over use for any other purpose except domestic use" 1288x27 present code.

24. If at any time in the season of 1915 the systems had been reduced in quantity to an amount less than a 70 acre duty, (and dependant upon natural flow) for a period of one rotation, then the reduction in the moisture contents of the soils would have been lowered to points that would of required a lower duty than 70 acres, and the flow not sufficient to supply that lower duty, "a time of scarcity" would of been the result, and by holding to uniformity and a 70 acre duty, the preference rights were able to maintain continuous flow on a safe basis.

25. The commissioner wrote August 10th; "I desire to maintain the lower river at G.H. 74, and am of the opinion that no exceedingly low duties should be allowed at this time of year in the Provo Valley when the Utah Valley is working on a duty as high as 70 acres." We were working through an abnormal season, our water plane in the upper Valley lowering, there were no summer rains, there was some fifteen thousand acres of crops dependant on this flow; at this time the desire was written for sufficient water to maintain a 70 acre duty, for with this amount we would be able to mature

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the crops of 1915 without loss. And by maintaining to the lower valley that amount of water the whole river system as a unit must not exceed reasonable necessities and must not ignore the rights of a lower user, and especially when that lower user regardless of his deficiency in the early season, allows the right higher up the stream, quantities without limit.

26. With the one object in view, that of maintaining sufficient water for maturing all of the crops, our attention beginning in early summer, was almost wholly directed to maintaining the uniform distribution, and endeavoring to draw of the storage all the available amount. Canals drawing low duties were cut, ponds and sloughs were tapped and drawn off, and diversions with no title were closed.

27. The Utah Valley defendants, had been accustomed to division of water along the lines of a decree that was based on a 167 second^{foot}/river, a decree that held out in bold relief priorities in the tabulated portions but in the text defined the right and limit to only the extent of beneficial use, and on the tabulated sections the users were accustomed to receive water. The stipulation and order of April 2nd 1915 ignored for a season the old form, and from the outset the system of division according to area irrigated was in vogue, without question in my mind, had 1915 been a normal season, the users in this district would of been fully satisfied with the new regime, and now looking back, we are forced to admit, that if this system of distribution does approach nearly to

desired results in the abnormal 1915 season, it surely is safe, and practical, and sane, for the average year.

28. The abnormal conditions demanded strict regulations, and uniformity. In the early part of the season we were subject to many interruptions by parties that have not in former years been accustomed to specified amounts, to offset these breaks and to insure to the tail end user his supply, an amount of water was set out from the whole. This method did not bring the desired results, and the time was approaching when the discharge volume would not permit of any amount of margin for this use. There was but one solution: set out to those parties an amount of water and exercise the supervision necessary to establish regularity of diversion. The necessity for relief in this matter was called to the attention of the litigants in the Report of Mr. Demming in 1914, without consideration the attorneys pass^{ed}/it, and it went the same road with the other recommendations.

39. At the beginning the Commissioner wrote the parties for the areas irrigated, no reply came; the commissioner ordered measuring devices installed and repaired - without effect; then the Commissioner after spending a great deal of time in trying to get these users to proper regulation, with failure, delivered the letter of July 14th (enclosed herewith) this request did not bring results, and on July 26th the commissioner purchased material, repaired

the measuring devices, set gage points and locked the gates, installed a watermaster, and assumed the control. During the first ten days of this supervision, we did not follow the schedule all the time, but after this period the water was diverted on time, gates were set and locked, and closed locked and leakage stopped. This method has saved to the other users the loss by leakage of gates, it has established a dependable supply to the lower user. it has obviated the use of holding an amount of water for safety in distribution, it has not worked a hardship on the irregular user but the regularity of application has been baneficial.

30. Whatever may be the interpretations placed upon the distribution made by the commissioner in the season of 1915, the material factors controlling are to be considered before the final conclusions are reached.

31. And whatever the judgement may have been on the necessary and economic amounts of water for use to the defendants in the Utah Valley, that judgement might be, by natural causes, or by the desires of the parties, or by the existing status of this case, prohibited being fully exercised.

You will observe the total of the low duties allowed in the normal season is 26.40 second feet, and during this time the question of the amount of necessity to these parties, was bearing directly upon the Factory Race.

This quantity of 26.40 second feet may have been reduced, (1) by combining the Park & Nuttal and the Barton & Young ditches; (2) by the East River Bottoms water Company using their amount in two streams instead of three; (3) by using larger

streams on the Spring Creek, these larger heads would have given more satisfactory results.

The Faucett Field problem has some legal points to be determined.

On each of these diversions a commissioner is regarded as an invader, and ^{the} wide ~~the~~ difference in duties appeared the practical way, considering customs and the questions involved.

32. Had the commissioner reduced the parties that were on the low duties with their present system of irrigation, to amounts equal to the larger systems, or had the commissioner considered that when the supply had receded to the 60 acre duty stage, that a time of scarcity existed, and the agricultural interests were entitled to all of the flow, and the machine interests deprived of all water, it is probable each of these interests would have been dissatisfied with the distribution made by the commissioner and appealed to the court, from the decision of the Commissioner.

33. An appeal to the Court by any party during the season, really meant an opening and trial of the case, an establishment by that party of his rights.

34. The trial had been set for November 1st, and deviation from a line, that was a question of controversy was permissible.

35. The Commissioner by the letters submitted herewith and marked "Correspondence Relative to the determination of Water requirements, soils etc.," was endeavoring to interest the parties in securing affirmative evidence for use in the season and for the adjudication, excepting the Plaintiff, this

information was not desired of the commissioner, it was then not the duty of the commissioner to collect evidence to establish the rights of any party in the case.

36. The commissioner was simply the officer of the Court, assuming the control of the problem pending the time when the Court would hear the facts make the finding and issue the decree, this system of procedure was the choice of the Plaintiff and defendants. Whether it has or has not met all expectations it has given time for more mature thought, it has seen the Provo River on an off year, it has brought to light many of the legal points of controversy, it has given us more complete understanding, and we are better able to reach an equitable solution.

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