IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

OF THE STATE OF UTAH, IN AND FOR UINTAH COUNTY

The Dry Gulch Irrigation Company A Corporation. Plaintiff. vs. William H. Coltharp, Edwin C. Simms, George Q. Alred, Odis Pappas, Josiah Simms and James R. Garfield, Secretary of the Interior of the United States, Defendants	DECREE

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This cause having come on regularly for hearing this 11th day of June, A. D., 1908, upon the complaint of the plaintiff, being taken as confessed by William H. Coltharp, Edwin C. Simms, George Q. Alred, Odis Pappas, and Josiah Simms, whose default for not answering has been duly entered, and the defendant James R. Garfield having appeared in this cause by his Attorney, Hiram E. Booth, District Attorney of the United States for the District of Utah, and waiving findings of fact herein, and consenting in open court to the entering of this Decree, and the court having acquired jurisdiction of all of the parties herein by personal service upon those who have not made a personal appearance, and having heard the evidence offered by the plaintiff respecting the matters alleged in the complaint, and being fully advised in the premises; how, on motion of D. D. Houtz, Attorney for the plaintiff.

The Court does hereby consider, adjudge and decree that the United States of America has heretofore constructed, and there now extends over the course hereinafter described, in Uintah County, State of Utah, a portion of a canal known as Canal No. 1, extending from the Uintah River into Wasatch County, and there branching into a system of canals, respecting which system this court has made its decree by consent authorizing the enlargement thereof, and joint use of the same by the plaintiff herein, which said Canal No. 1, and the branches thereof in Wasatch County, were constructed for the purpose of conveying water from the Uintah River, at the point hereinafter described, to and upon lands

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allotted to the Indians of the former Uintah Indian Reservation, and the said Canal No. 1, and the branches thereof, are so constructed that the same may be enlarged, as provided by the laws of the State of Utah, and increased in its carrying capacity without material detriment or injury to said canal, or interference with its use for the purpose of its original construction.

2nd. That the plaintiff herein is the owner of 260 cubic feet of water per second of time with the right to use the same for irrigation and domestic use, which water is a part of the waters of the Uintah River, Uintah County, State of Utah, and can be conveyed through the said system of canals to the lands of the plaintiff's stockholders, and there used upon their several lands for irrigation and domestic purposes, and the plaintiff and its stockholders have no other means or way for conveying the said waters to their said lands for such purposes, except to enlarge the system of canals aforesaid to such an extent as will enable them to convey water therethrough in addition to the waters running therein owned by the said Indians.

3rd. That a line extending through the center of said canal No. 1, from a point where it intersects the Uintah River down to where the said canal passes into Wasatch County, State of Utah, and outside the jurisdiction of this court sitting in Uintah County is described as follows, to-wit:

Beginning at a point 57° 45' E. 816 feet from the SE. corner of Sec. 23, Tp. 1 N., R. 1 W. Uintah Base Meridian, on the West bank of the Uintah River, and running thence S. 3° 15' E. 300 ft. S. 20° 30' E. 200 ft; S. 24° 15' W. 300 ft.; S. 41°15' W. 200 ft.; S. 80° 30' W. 400 ft.; S. 35° 30' W. 600 ft.; S. 38° 45' W. 75 ft., through Indian grazing land to a point 600 ft. N. of W.¼ cor. Sec. 25, Tp. 1 N., R. 1 W., Uintah Base Meridian, and running thence S. 38° 45' W. 25 ft., S. 60° 30' W. 500 ft; S. 43° W. 525 ft; S. 39° 30' W. 275 ft; S. 49° W. 300 ft, through the land of the defendant, William H. Coltharp, to a point 270 ft. S. NW. Cor. NE¼, SE¼ Sec. 26, Tp. and R. aforesaid; and running thence S. 63° W. 400 ft.; S. 40° 15' W. 565 ft; S. 32° 15' W. 335 ft. through the land of the defendant Edwin C. Sims, to a point 300 ft. E. NE. cor. SW.¼, SE¼ Sec. 26 aforesaid, and running thence S. 49° 15' W. 200 ft; S. 59° W. 500 ft.; S. 51° W. 350 ft.; S. 40°15' W. 350 ft.; S. 32° W. 300 ft.; S. 68° W. 400 ft; S. 52° W. 300 ft. through the land of the defendant George Q. Alred, to a point 100 ft. W., SE. cor.

N.W. ¼, S.W. ¼, Sec. 26 aforesaid, and running thence S. 39° W. 300 ft; S. 50° 30' W. 900 ft; S. 60° W. 900 feet, through the land of the defendant, Odis Pappas, to a point 90 ft. N. of the S.W. cor. N.W. ¼, N.W. ¼, Sec. 35, Tp. and R. aforesaid; thence 60° W. 200 ft.; S. 67° W. 700 ft; S. 35° W. 600 ft; S. 62° 45' W. 500 ft; S. 45° 15' W. 100 ft. through the land of the defendant, Josiah Simms, to a point 195 feet E. of the center of Section 34, Tp. and R. aforesaid, where said canal continued on into Wasatch County, State of Utah.

That the said canal No. 1, the center of which is above given, from the point of its intersection with the said Uintah River down to where it enters into the County of Wasatch, as above stated, is 8 feet wide on the bottom, and will carry 2-½ feet in depth flow of water, with a fall of 15 feet per mile, and the height of the lower bank of the said canal is four feet above the bottom there which height it is necessary to maintain in order to preserve a sufficient strength for the said canal, and in order to carry the aforesaid 260 second feet of water belonging to plaintiff, as above stated, it is necessary to enlarge said canal as follows, to-wit: To widen the same to 22 feet on its present bottom, and to maintain the lower bank of the said canal at the height of not less than four (4) feet above the bottom thereof,

4th. That the easement and right-of-way sought by the plaintiff through the said canal and over the lands above described is for a public use, namely, that of conveying water therethrough and thereover for irrigation and domestic purposes, and the way above described is the only practical way by which plaintiff may obtain water for the irrigation of the lands of its stockholders, and the condemnation of the land over which said canal extends, to the width on either side of said center line, necessary for the enlargement of said canal to the extent aforesaid is authorized by law, as well as is the right to enlarge the said canal, and this is a proper case for the condemnation of said land to the extent aforesaid, and the establishment of the right on the part of the plaintiff to enlarge the said canal.

5th. It is further Ordered, Adjudged and Decreed, that a strip of land 50 feet wide, the center line of which is hereinbefore described, is necessary for the said canal purposes, and the same is hereby condemned for said use

to and for the plaintiff, and James R. Garfield, Secretary of the Interior of the United States, for the uses and purposes for which he holds title to the said canal under the laws of the United States, reserving, nevertheless, to the said Secretary of the Interior of the United States, all rights he, and those he represents, have in and to said canal, to the full water-carrying capacity of said canal as above stated, and as contained within the said canal as now constructed.

6th. It is further considered, Adjudged and Decreed, that the plaintiff at any time after the first day of October, 1908, and before the first day of April, 1909, and within the same dates of the year 1909 and 1910, or at any time when consented to by the defendants, and said canal is not used for carrying water, may, and it is hereby authorized to enter on to the said land above described and condemn for canal purposes, and enter into the canal thereon constructed, and enlarge the same to the following dimensions, to-wit:- Said Canal No. 1 through the course above stated to a width of 22 feet on the present bottom and grade of said canal, maintaining the lower bank of the said canal to be not less than four (4) feet above the bottom thereof, and any and all portions of the said canal containing flumes, pipes, or other constructions than earth and rock shall in such enlargement be constructed in manner and size to conform to plans and specifications for such construction to be furnished by Captain C. G. Hall, Acting Indian Agent of Whiterocks, Utah, and said plaintiff shall in the enlargement of the said canal, as herein authorized, complete the same in a good and substantial and finished state so it will conform in efficiency, margin of safety and completeness with the plan of the original construction of said canal.

7th. It is further Ordered, Adjudged and Decreed that any and all gates, dams, and means for letting water into the said canal, and all dividing gates, weirs, dams, devices, and openings of every kind for drawing water into or out of said canal and dividing the same which may require removal in said enlargement, and all such construction of every nature necessary to be placed in said canal, or at the head thereof, for the use of the plaintiff, shall be placed therein and thereon by the plaintiff to correspond with plans and specifications to be furnished by the said Captain C. G. Hall, Acting Indian Agent,

according to whose approval the whole work of the said enlargement and means of controlling the water to be placed therein by the plaintiff shall be made to correspond, provided, however, that if the said Captain C. G. Hall, Acting Indian Agent, shall neglect or refuse to provide said plans and specifications at such time as to enable the plaintiff to pursue the operation of enlarging the said canal at the opening of the time in this decree provided for, or if such plans and specification that may be furnished should be deemed unreasonable, the plaintiff may, upon notice to the defendant, apply to the Court for further order herein respecting the same.

8th. It is further ordered, Adjudged and Decreed, that the plaintiff shall construct and maintain at its own cost and expense the gates, dams, weirs, measuring and dividing devices, and other constructions required by it for the control and withdrawing of any water which it may flow through the said canal, and shall be responsible for the repair, rebuilding and maintenance of the said canal in addition thereto in the ratio and proportion that the amount of water flowing through said canal from year to year belonging to it, stands to the amount of water running through said canal to which the plaintiff has no right, and it shall be responsible for the expense of dividing and separating the water of plaintiff from the other waters of the said canal.

9th. It is further Ordered, Adjudged, and Decreed, that the plaintiff execute and file in this Court a good and sufficient undertaking in the sum of Three Thousand (3000) Dollars, to be approved by the Clerk of this Court, payable to the Secretary of the Interior of the United States of America, and his successors in office, and his successors in title and interest in said canal and conditioned for the proper execution of the enlargement of the said canal and the maintenance thereof hereafter, according to the provisions of this Decree and the requirements of law and for the payment of any damages sustained by the defendants, or either of them, through any act or omission of the plaintiff or its agents regarding the use of the said canal, in violation of any rights of the defendant.

10th. It is further Ordered, Adjudged, and Decreed, that the plaintiff shall at no time be entitled to any other interest in said canal, except to the extent of its enlargement thereof, and it shall be entitled to draw no water from the said canal whatever, except when the flow in said canal, as enlarged, exceeds the carrying capacity of the said canal as now constructed, unless the flow of

water required for the said Indians, and their successors, is less than the amount of the full carrying capacity of the said canal as now constructed; it being intended by this Decree to secure to the plaintiff only the right to flow water in the said canal to the extent of its interest in said canal as it may be created by the enlargement thereof under this decree, and that said Indian allottees' water rights shall in no manner be impaired hereby, but the waters to be used by the plaintiff through the said canal shall be such only as is above and exceeds the rights of the said allottees, and any water used through the said canal by the plaintiff or its successors, other than such as is in excess of the carrying capacity of the said canal as now constructed, shall be deemed as used not adversely to the said allottees.

11th. It is further Ordered, Adjudged, and Decreed that the value of the property sought to be condemned in this action shall be determined hereafter, and the damages for the taking of the same be assessed and be paid into Court for the defendants, according to order and judgment hereinafter and further to be made and rendered concerning the same.

12th. It being intended by the Court to preserve inviolate to their full extent the rights of the defendants in the said canal as now constructed, and their rights to the full and free use thereof, as they now exist, for carrying and conveying water therein, and to preserve against encroachment and from loss the water-rights of the Indians interested in the said canal, by adverse use or otherwise; and the Court having decreed to the plaintiff the right to enlarge the said canal, in manner and from herein stated, and that only the Court further retains Jurisdiction herein, and reserves power, upon application of the defendants, or either of them, with notice to the plaintiff, to modify or vacate this Decree upon showing proper cause therefor, or for failure of the plaintiff to comply with the terms and conditions of its right to so enlarge the said canal and flow of water therein; and plaintiff may in like manner, and upon notice, apply for a modification of this Decree.

It is further Ordered, Adjudged, and Decreed, that upon the plaintiff furnishing the bond above stated, and the approval thereof by the Clerk of this Court, this Decree shall be its warrant for the possession of the said premises, for the purposes aforesaid.

J. E. Booth, Judge

Dated this 30th day of October, A.D., 1908
Filed Nov. 2, 1908, James C. Hacking, Clerk

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The Dry Gulch Irrigation Company, A Corporation, Plaintiff. vs. William H. Coltharp, Edwin C. Simms, George Q. Alred, Odis Pappas, Josiah Simms, and James R. Garfield, Secretary of the Interior of the United States, Defendants.	STIPULATION No. 312

It is hereby Stipulated and Agreed by and between D. D. Houtz, Attorney for the plaintiff in the above entitled action, and Hiram E. Booth, United States Attorney, and William M. McCrea, Assistant United States Attorney, representing James R. Garfield, Secretary of the Interior, defendant herein, that the hereto attached Decree may be signed by the Judge of the above entitled Court in Chambers and filed and entered with the Clerk of said Court.

D. D. Houtz

Attorney for Plaintiff.

Hiram E. Booth,

United States Attorney

Wm. M. McCrea

Assistant United States Attorney,

Attorneys for the defendant,

James R. Garfield.

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