DECREE

The court having made and entered the foregoing Findings of Fact and Conclusions of Law in the above entitled action, and being fully advised in the premises:

IT IS ORDERED, ADJUDGED AND DECREED.

I.

That the intervenors, Hyrum Bennion, W. H. Bennion, Wilford Bennion, Arthur Bennion, Emma Lindsay, R. A. Sharp, Emma J. Bennion, Samuel A. Bennion, Parley Bennion, Mary Bennion, Roland Bennion, Orson Bennion, Vincent Bennion, Mary Ann Bennion, Jennie Bennion, Minnie Bennion, Effa Bennion, Adam Bennion, Henry Harker, Susan Harker, Job Harker, William Harker, Harriet Harker, Mabel Harker, Edna Harker, Benjamin E. Harker, Ephraim Harker, Heber Harker, Levi Harker, James Marsden, Maria B. Cannon, Angeline R. Spencer, Mary B. Calder, Ira Bennion, Samuel R. Bennion, Rachel Spencer, George L. Spencer, Heber Bennion, and a co-partnership composed of Samuel R. Bennion and Hyrum Bennion, are the owners of the right to the use of five (5) cubic feet of water per second of time, during the irrigation season of each year, for the irrigation of their lands, amounting to two hundred and fifty (250) acres, such water to be taken through the Bennion and Bennion mill race, and to be measured at the point of diversion from said race. And that Hyrum Bennion and Samuel R. Bennion, partners as Bennion and Bennion, are the owners of the right to the use of forty (40) cubic feet of water per second of time, for the operation of their mill upon said mill race, during the times when their said mill is in operation, to be measured at the entrance to the penstock of said mill.

II.

That the defendant, ~~West Jordan Milling and Mercantile Company~~ Kennecott Copper Corp., a corporation, is the owner of the right to the use of thirty (30) cubic feet of water per second of time, for the operation of its mill, to be taken through the Gardner mill race and measured at the entrance to the penstock of said mill.

That the defendants, John A. Egbert, Albine Beckstead, John H. Bailey, Henry Dinwoodey, W. L. Egbert, D. A. Egbert, Solon Richardson, Ludwig Christensen and James Peterson, are the owners of the right to the use of five and three-tenths (5.3) cubic feet of water per second of time, during the irrigation season of each year, for the purpose of irrigating their lands, amounting to two hundred and ninety-three and 25-100 (293.25) acres, such water to be taken through the Gardner mill race and measured at the point of diversion from said race.

That the defendant, Utah Mattress and Manufacturing Company, a corporation is the owner of the right to the use of eleven (11) cubic feet of water per second of time, for the operation of its

factory, such water to be taken through the Gardner mill race and measured at the entrance to the penstock of said factory.

III.

That the defendants, Absolam M. Smith, W. R. Bellington, A. C. Lunnen, A. D. Lunnen, James Blake and Charles Blake, are the owners of the right to the use, collectively, of two and 825-1000 (2.825) cubic feet of water per second of time, during the irrigation season of each year, for the purpose of irrigating their lands, such water to be taken through the Galena canal and measured at the point of diversion from said canal.

That the defendant, Sarah E. Stewart is the owner of the right to the use of one and four tenths (1.4) cubic feet of water per second of time, during the irrigation season of each year, for the purpose of irrigating her land, such water to be taken through the Galena canal and measured at the point of diversion from said canal.

That the defendant, Henry Osborne, is the owner of the right to the use of 54-100 (.54) of a cubic foot of water per second of time, during the irrigation season of each year, for the purpose of irrigating his land, such water to be taken through the Galena canal and measured at the point of diversion from said canal.

That the defendant, John T. Wilson, is the owner of the right to the use of three-tenths (.3) of a cubic foot of water per second of time, during the irrigation season of each year, for the purpose of irrigating his land, such water to be taken through the Galena canal and measured at the point of diversion from said canal.

57-7625 ~~28~~, 57-7626 That the defendant, United States ~~Mining~~ Smelting Company, a corporation, is the owner of the right to the use of seventeen (17) cubic feet of water per second of time, for the operation of its mill, such water to be taken through the Galena canal and measured at the entrance of the penstock of said mill.

IV.

That the defendant, the Beckstead Irrigation Company, a corporation, is the owner of the right to the use of twelve (12) cubic feet of water per second of time, during the irrigation season of each year, for the purpose of irrigating the lands owned by its stockholders, amounting to five hundred and thirty (530) acres, such water to be taken through the Beckstead ditch, and measured as follows:

The water taken from said ditch, above the South Jordan Milling Company's mill, shall be measured in the weirs in the lower bank of said ditch, and the water used below said mill, shall be measured at a point in said ditch, opposite said mill, and said defendant is also the owner of the right to use during the winter or non-irrigation season of each year, four (4) cubic feet of water per second for domestic and culinary purposes by the stockholders of said company, such waters to be measured at the intake of said ditch.

V.

That the defendants, Louis H. Mousley, Rise S. Madsen, Johanna S. Hatt, Caroline Jensen, James Madsen and Margaret C. Madsen, are the owners of the right to the use of two (2) cubic feet of water per second of time, during the irrigation season of each year, for the purpose of irrigating their lands amounting to eighty-seven and 5-10 (87.5) acres, such water to be taken through the Mousley ditch, and measured at the intake of said ditch.

VI.

That the defendant, ~~William Cooper, Jr.~~ J. W. Fitzgerald, is the owner of the right to the use of twenty-three (23) cubic feet of water per second of time, for the operation of his mill upon the Cooper mill race, such water to be taken through said race and measured at the entrance to the pehstock of said mill.

That the defendant, John Neff, is the owner of the right to the use of one and four-tenths (1.4) cubic feet of water per second of time, during the irrigation season of each year, for the purpose of irrigating his land, such water to be taken through the Cooper mill race and measured at the point of diversion from said race.

That the defendant, Anna E. Neff is the owner of the right to the use of one and two-tenths (1.2) cubic feet of water per second of time, during the irrigation season of each year, for the purpose of irrigating her land, such water to be taken through the Cooper mill race and measured at the point of diversion from said race.

That the defendant, John T. Wilson, is the owner of the right to the use of three-tenths (.3) of a cubic foot of water per second of time, during the irrigating season of each year, for the purpose of irrigating his land, such water to be taken through the Cooper mill race and measured at the point of diversion from said race.

VII.

That the plaintiffs, Salt Lake City, a municipal corporation, and the Utah and Salt Lake Canal Company, a corporation, and the defendants, East Jordan Irrigation Company, South Jordan Canal Company and the ~~North Jordan Irrigation Company~~, corporations, are the owners of the right to the use of all of the balance of the waters of the Jordan River, for municipal, irrigation, culinary

59-3496

→ all canal co's have equal priority to waters remaining after WR listed in previous paragraphs are satisfied

and domestic purposes, to the extent of the capacity of their several canals, and of the right to impound and store all of the waters of said river in Utah Lake, subject to the limitations hereinafter set forth.

That the said city and canal and irrigation companies shall, at all times, allow to flow unimpeded down through the channel of said river, a sufficient quantity of water, which, when added to the accretions to the river from seepage and other sources, will furnish at the various points of diversion and measurement, the several quantities of water herein awarded to the West Jordan Milling and Mercantile Company, the Utah Mattress and Manufacturing Company, the United States Mining Company, William Cooper, Jr., and Bennion and Bennion, for the operation of their several mills and factories; and, during the irrigation season of each year, shall allow to flow unimpeded through the channel of the river such additional quantity of water as will, when added to the accretions from seepage and other sources, supply, at the various points of diversion and measurement, the quantity of water herein awarded to the several farmers and land owners taking water for irrigation purposes through the Gardner mill race, the Galena canal, the Beckstead Irrigation Company's canal, the Mousley ditch, Bennion and Bennion mill race and the Cooper mill race, as hereinbefore set forth; and during the winter of non-irrigation season, four (4) cubic feet of water, for the use of the stockholders of the Beckstead Irrigating Company, for domestic and culinary purposes; Provided, however, that in all cases where the waters of the river are diverted and used for beneficial uses, and after such uses are delivered to the uses of any of the parties hereto, the quantity so delivered for subsequent uses, shall be to the extent thereof so delivered, the quantity awarded by this decree to such subsequent uses.

Canal Co have the right to store all the water of the Jordan R in Ut Lk provided non impeded flow is provided to WR in prev. para amt. of water stored is limited to compromise point

That subject to these limitations and to the limitations and conditions contained in the agreement of compromise entered into in 1885, between Joseph H. Colladge and others and said city and canal and irrigation companies, the said city and canal and irrigation companies have the right, at all times, to shut off, impound and store the entire flow of the Jordan River, and hold and save the same for future use, to the extent which, in their judgment their interest may require, and, as between themselves, the said city, the Utah and Salt Lake Canal Company, the East Jordan Irrigation Company, the South Jordan Canal Company, and the North Jordan Irrigation Company, shall have an equal right to the use of all such waters, to the extent of the capacity of their several canals, and, while there is sufficient water for that purpose, may each take the full quantity of water their respective canals will carry, and, when, the water is insufficient to fill all the canals to their maximum capacity, then the city and canal and irrigation companies shall be entitled to an equal division thereof; Provided, that if by such division one-fifth of the water should exceed the capacity of any of the canals, such excess may be used by such remaining canals as have the

combined accretions from seepage + other sources

If there is insuffient water, each can is entitled to an equal amt. of the water

If the water in the Jord River exceeds the capacity of any canal by 1/5, the excess is divided equally among the canals which can use the excess.

capacity to take the same in equal proportions; and during the winter or non-irrigation season, each of said canal companies shall have the right to the use of ten cubic feet of water per second of time in their several canals, for the use of their stockholders for culinary and domestic purposes.

VIII.

That the defendant, the South Jordan Milling Company, a corporation, is the owner of the right, for the operation of its mill, to the use of twenty-three (23) cubic feet per second of the water required, as hereinbefore set forth, to flow through the channel of the river for the use of the claimants diverting water below the location of such mill, such water to be taken through the Beckstead canal and measured at the penstock of said mill and to be returned to the river at a point opposite the location of said mill.

IX.

That the Salt Lake City Water and Electrical Power Company is the owner of and entitled to the right to use all the waters of the Jordan River flowing in and through the channel thereof, at and above a point on said river where the power plant of said company is situated, to the use of which the several persons and claimants diverting the waters of the river north and below the said power plant are entitled, as appropriators, with fixed and primary rights, as awarded by this decree, and to convey such water to its power plant for use in the operation of the same, and to deliver the same, after such use back into the river, undiminished in quantity and unimparied in quality, at a point opposite the place of use by the said company. Also in the same manner the right to convey to its said power plant, and use for the purpose of operating the same, all the waters of the river to which the South Jordan Canal Company is entitled by this decree and to take into its canal and to deliver back into the canal of the said South Jordan Canal Company, after such use, all of said water, undiminished in quantity and unimpaired in quality, in accordance with the terms of the license granted by said South Jordan Canal Company to the said Power Company, so long as the same shall remain unrevoked. Also in the same manner, the right to convey to its said power plant, and use for the purpose of operating the same, all the waters of the river to which Salt Lake City is entitled by this decree, and to take into its canal, and to deliver back into the canal of the said Salt Lake City, after such use, all of said water, undiminished in quantity and unimpaired in quality, so long as said Salt Lake City shall continue to divert its water at its present point of diversion, and to use the same at its present place of use, provided however, that the right of the said Salt Lake City Water and Electrical Power Company to so take and use the City's said water, shall be effective only after said Power Company established by judgment of the court in an action at law, its right to make connections with its flume and the said city's canal, and shall have paid to said city any sum which may

be awarded to said city by such judgment, by way of damages therefor, and provided further that in the event, the license hereinbefore referred to as having been granted by the said South Jordan Canal Company to the said Power Company to take and use the waters of said South Jordan Canal Company, shall only be effective when said Power Company shall have obtained a judgment in an action at law condemning and giving it the right to connect its flume with the canal of said South Jordan Canal Company, and shall have paid to said South Jordan Canal Company any sum which may be awarded to it by said judgment.

X.

That the Salt Lake City Water and Electrical Power Company shall, at all times, deliver into the Jordan River and into the South Jordan Canal, so long as the license to use waters of the South Jordan Canal Company shall remain unrevoked, and into the Salt Lake City's canal after it shall have established its right to connect its flume with said City's canal, all the waters, the use of which is awarded to it by this decree, in proper proportions thereof, respectively, as the same shall be determined and reported by the persons authorized to determine the quantities to go into the river and into the said canals, respectively, and in delivering such water, the said Salt Lake City Water and Electrical Power Company shall maintain such uniformity of flow as will occasion no greater fluctuations thereof than would occur if the water was taken direct from the river by the said South Jordan Canal Company and Salt Lake City, into their own canals, or suffered to flow directly down the channel thereof from the dam to the claimants and appropriators below.

XI.

That all persons and corporations, parties to this suit, shall, respectively, construct, or cause to be constructed, at their own cost and under the direction or supervision of the commissioner appointed by the court, proper appliances for the accurate measurement of the waters awarded to them, respectively, and thereafter shall maintain and keep in place, all dams, headgates, flumes, canals, penstocks and other means by which said water is diverted, conveyed or used, in a good state of repair, together with appliances for the measurement of such water, to the end that no unnecessary loss from seepage or leakage shall occur, and that the water shall be economically applied to the uses for which it is awarded.

XII.

That all the rights, declared and decreed herein, are founded upon appropriation of water, necessary for beneficial uses, and that all such rights hereby decreed and provided for in this decree, are subject in the exercise of such rights,

to the conditions that they are required and necessary for some beneficial use, and that all such rights are expressly subject to the limitations and conditions; that such waters are used for some beneficial use, and are used economically, without waste, and with due care, and are reasonably and fairly necessary for such use.

And each of the parties to this action, and their successors and assigns, and they, and each of their agents, servants and employees, and all persons acting for them, or in are hereby forever enjoined and restrained from at all, interfering one with the other, in the unrestricted use of the quantity of the waters o herein awarded to them, and from in any manner, or at a terfering with each other's canals, dams or headgates, and in any manner, or at all, interfering with the distribution o the said waters by the commissioner herein appointed.

XIII.

That for the purpose of carrying into effect this decree, according to its true intent and purpose, J. Fewson Smith, Jr., is hereby appointed as a Commissioner, at a monthly compensation of $100.00 to superintend and direct the measurement and division of all the water, distributed by this decree in accordance therewith; to direct, supervise and inspect all means and appliances for the diversion, conveyance and use of the same, and to report from time to time to the court, any violation of the provisions of this decree.

That the said monthly compensation of said Commissi any other necessary expenses or costs incurred by h charge of his duties, as hereby directed by the following parties and in the pro wit: One-sixth each by the City of Salt Canal Co., the South Jordan Canal Co., the Ea Co., the North Jordan Irrigation Co., and the Sal Water & Electrical Power Co.

XIV.

And it is further ordered, adjudged and decreed, that original jurisdiction of this cause and the subject matter thereof and of the parties thereto, is hereby retained, for the purpose of all necessary supplementary orders and decrees which may be required to make effectual the rights awarded and preserved by this decree:

And in case of urgent necessity in seasons of extreme drouth, or otherwise, to make all proper and necessary orders and decrees required to preserve the lives of livestock, orchards and other permanent improvements of like character, and for the purpose of providing, temporarily, water for household and domestic purposes.

XV.

And it is further ordered, adjudged and decreed, that in the case of Joseph Geoghegan, Receiver, etc., vs Salt Lake City, No. 3449, the plaintiff take nothing by his said suit, and that the complaint be and the same is hereby finally dismissed, with costs taxed at $_____, in favor of the defendant.

That in the case of Joseph Geoghegan, Receiver, etc., vs. Utah and Salt Lake Canal Company, South Jordan Canal Company, North Jordan Irrigation Company and East Jordan Irrigation Company, No. 3459, the plaintiff take nothing by his said suit, and that his complaint be finally dismissed, with costs taxed at $_____, in favor of the defendants.

Dated this 10th day of July, 1901.

C. W. NORSE,

Judge.

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