

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT, COUNTY
OF CACHE, STATE OF UTAH

In the Matter of the GENERAL	:	AMENDED FINDINGS OF FACT AND
DETERMINATION OF ALL OF THE	:	CONCLUSIONS OF LAW IN THE
RIGHTS TO THE USE OF WATER,	:	PROPOSED DETERMINATION OF
BOTH SURFACE AND UNDERGROUND	:	WATER RIGHTS
IN THE DRAINAGE AREA OF BEAR	:	SUMMERS; EVANS; FIRTH; BERT
RIVER AND ALL OF ITS	:	FIRTH; BOX ELDER COUNTY DRAINS
TRIBUTARIES.	:	BOX ELDER COUNTY, UTAH
	:	

Civil No. 5644

The above-entitled matter having come on for hearing before the above-entitled court, Lewis Jones, Judge presiding and sitting without a jury, pursuant to a notice and order heretofore filed by said court for hearing to be held commencing with the 19th day of December, 1960, and said matter being thereafter continued to the 26th day of March, 1961, when witnesses were heard and evidence taken; and then continued for decision to Tuesday, April 11, 1961; Walter G. Mann appearing as counsel for the protestant Melvin C. Christensen, and Scott D. Allen and Glen E. Fuller appearing as counsel for W. N. Petterson, Clair J. Firth and P. C. Petterson, and Dallin Jensen appearing for the State Engineer, and no other parties appearing by counsel; and the court having heard the evidence of the respective parties herein, both oral and documentary and being fully advised in the premises and having announced its decision; and Findings of Fact and Conclusions of Law having been prepared, but thereupon objections thereto having been made and hearings held thereon on October 9, 1961, and on September 23, 1963, and a stipulation having been read into the record, and the Court having ordered that Amended Findings of Fact and an Amended Decree be entered herein; on motion of Glen E. Fuller, and the court now makes the following

AMENDED FINDINGS OF FACT

1. That prior to the year 1903 there was a certain drain ditch which drained waters from a northwesterly direction across the corner that is common to Sections 11, 12, 13 and 14 of T. 11., R. 4 W., S. 1. N., and which ditch was subsequently continued south along the west boundary of Section 13.

2. That one P. C. Petterson, on or about the year 1908, worked upon said drain ditch with a shovel and diverted said water flowing down said ditch south and eastward from the west line of Section 13.

3. That in the spring of 1931, James Henry Christensen and J. C. Christensen, his father, the predecessors in title of Melvin C. Christensen to the east half of the east half of Section 14, T. 11 N., R. 4 W., S. L. M., fixed and established permanent and substantial diversion works whereby said water was diverted south-westerly from said ditch into Section 14 from Section 13, said point of diversion being at a point approximately at the northwest corner of the southwest quarter of the northwest quarter of Section 13; and they caused laterals to be made in a southwesterly direction into said Section 14, and that from said diversion works the water then spread out and flowed south and southwesterly until it neared the section line common to Sections 13 and 14, at which time it then flowed to the southeast into the southwest quarter of Section 13 and the northwest corner of Section 24.

4. That the protestant, Melvin C. Christensen, since the said year 1931, by himself or his predecessors in title, has used adversely to P. C. Petterson, W. N. Petterson, Clair J. Pirth, and their predecessors in interest, all of the waters that have entered at the northwest corner of Section 13 and which have travelled southerly along the said boundary of Section 13 to the northwest corner of the southwest quarter of the northwest quarter of said Section 13, T. 11 N., R. 4, W., S. L. M., and then entered Section 14 at said point, for the ordinary beneficial needs of the following described lands adjacent to the east line of Section 14 of the aforesaid township, within the areas more particularly described, as follows:

Southeast 1/4 of North east 1/4 of Section 14
of T. 11 N., R. 4 W., S. L. B. M.--15.05 acres

Northeast 1/4 of Southeast 1/4 of Section 14
of T. 11 N., R. 4 W., S. L. B. M.--23.65 acres.

Southeast 1/4 of Southeast 1/4 of Section 14
of T. 11 N., R. 4 W., S. L. B. M.--21.10 acres.

(a total of 60.60 acres)

Said Melvin O. Christensen, by himself and his predecessors in interest has used said waters for said lands openly, notoriously and adversely to all rights, or claims of rights of said parties, to-wit: P. C. Petterson, W. N. Petterson, Clair J. Firth, and their predecessors in interest.

5. That when protestant Melvin O. Christensen irrigates his property there is, has been, and will be, certain waters which flow to the southeast after irrigating the above-described lands of protestant, and the same enter into and upon the west side of Section 13 and spread out for a distance of approximately 300 feet. southeasterly from the west boundary line of Section 13. The waters so entering Section 13 have been used to irrigate 28 acres of land, more particularly located in the following areas: 8.80 acres SW 1/4 NW 1/4, 9.60 acres NW 1/4 SW 1/4, 9.60 acres SW 1/4 SW 1/4, in Section 13, T. 11, N. R. 4 W. S. L. B. M.

6. That when the irrigation water applied by the protestant Melvin O. Christensen leaves his property, part of the same also goes to the southeast across the N. W. corner of Section 24 onto the property of Clair J. Firth; that it has irrigated 20 acres of land in the N. W. 1/4, N. W. 1/4 of Section 24, Township 11 N. R. 4 W., S. L. M.

7. That considering the lands in the areas affected the reasonable beneficial use of water thereon is one (1) cubic-foot per second for each fifty (50) acres of land.

8. That in order to properly distribute and allocate the waters of the respective parties hereto, and pursuant to stipulation made in open court, the parties should jointly construct a diversion works on the south side of the county road between Sections 13 and 14 so as to divide the said waters at said point; and from said diversion point Melvin O. Christensen should construct his own ditch along the east side of Section 14 to his said lands hereinabove described, and W. N. Petterson and Clair J. Firth should take their water from said diversion point along the west side of Section 13 to their said lands hereinabove set forth. The costs of constructing said diversion works should be borne by the three respective parties in proportion to the total flow of waters which each is to receive as

though there was such amount of water at all times available to satisfy their rights herein.

9. As to the waters herein which protestant Melvin O. Christensen has acquired usage rights by adverse use, and which said waters have in the past naturally coursed easterly from his lands across and into Sections 13 and 24 onto the lands of W. N. Petterson and Clair J. Firth, the same should hereafter be permitted to so flow without interference or diversion on his lands so as to naturally flow easterly onto said Sections 13 and 24 as said waters have done in the past

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From the foregoing Findings of Fact the court now makes and enters the following

CONCLUSIONS OF LAW

1. That protestant, Melvin O. Christensen has an established prior right by adverse usage to sufficient waters entering into that drainage ditch at the northwest corner of Section 13 to irrigate 60 acres of land, based upon a beneficial usage of one (1) cubic-foot per second for each fifty (50) acres of land, or a total of 1.2 cubic-feet per second of flow, to irrigate the following described lands:

Southeast 1/4 of Northeast 1/4 of Section 14 of T. 11 N., R. 4 W., S. L. B. M.-- 15.05 acres.

North east 1/4/ of Southeast 1/4 of Section 14 of T. 11 N., R. 4 W., S. L. B. M.--23.85 acres.

Southeast 1/4 of Southeast 1/4 of Section 14 of T. 11 N., R. 4 W., S. L. B. M.-- 21.10 acres.

(A total of 60.00 acres)

2. That W. N. Petterson is the owner of, and has a prior right, to sufficient waters entering into that drainage ditch in the northwest corner of Section 13 to irrigate 28 acres of land, consisting of .560 cubic-foot per second of water flow based upon a beneficial usage requirement of one (1) cubic-foot per second for each fifty (50) acres of land, to irrigate the following described lands in Section 13, more particularly described as follows: 8.80 acres

SW 1/4 NW 1/4, 9.60 acres NW 1/4 SW 1/4 9.60 acres SW 1/4 SW 1/4, in Section 13, T. 11 N., R. 4 W., S. L. B. M.

3. That Clair J. Firth is the owner of, and has a prior right to, sufficient waters entering into that drainage ditch in the northwest corner of Section 13 to irrigate 20 acres of land in the NW 1/4 of the NW 1/4 of Section 24, Township 11 N., R. 4 W., S. L. B. M., or a flow of .40 cubic-foot per second of flow based upon a beneficial usage of one (1) cubic-foot per second of flow for each fifty (50) acres of land.

4. That Melvin O. Christensen should have established in his favor a priority date of May, 1908, and W. N. Petterson and Clair J. Firth should have a subsequent priority date, but equal in order of priority as to each other, of June, 1908.

5. That the parties hereto should jointly construct a diversion works, each bearing his proportionate cost thereof in proportion to the total flow of water which each is to receive as though there was such amount of water at all times available to satisfy their rights herein, said headgate to be constructed near the county road on the line between sections 13 and 14. Claimant Melvin O. Christensen should transmit his water therefrom along his property on the west side of the section line dividing Sections 13 and 14, and claimants W. N. Petterson and Clair J. Firth should transmit their waters to their respective properties along the east side of the section line dividing Sections 13 and 14.

That the flow of water entering the headgate to be constructed will fluctuate and vary, but the same shall be so constructed so as to permit Christensen to draw off 1.2 cubic feet per second, at all times, if the water is available.

6. That claimant Melvin O. Christensen should permit all of the waters awarded to him herein to be used only on the lands hereinabove set forth, and that said waters should be permitted to flow naturally southeasterly from his lands across and into Sections 13 and 24 onto the lands of W. N. Petterson and Clair J. Firth without interference or diversion to any other lands belonging to him as are set forth hereinabove.

7. That the waters overflowing the diversion headgate between Sections 13 and 14 should flow along the west side of Section 13 for approximately one-fourth

(1/4) mile, at which point claimants Petterson and Firth should divide their waters in accordance with the flow and duty allocated to each of them as hereinbefore set forth. Any and all surplus waters should, at that point, be permitted to re-enter the original natural channel, into the Christensen property, and, the same should flow naturally and without obstruction or interference generally southerly and southeasterly and back into the Petterson and Firth properties, as supplemental to and in the manner provided for, the waters coming into the area referred to in paragraph 6.

The disposition of the surplus waters, as defined in this paragraph, should be made a part of the adjudicated rights among the three claimants herein for the use and benefit of their respective lands.

Dated this 5th day of March, 1964.

BY THE COURT

s/d Lewis Jones
Judge