IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT, STATE OF UTAH, IN AND FOR THE COUNTY OF SALT LAKE.

Salt Lake City, a Municipal Corp., et al., Plaintiffs, v. Salt Lake City Water & Electrical Power Co., a Corporation, et al., Defendants. Hyrum Bennion, et al., Intervenors	No. 2861
Jos. Geoghegan, Receiver of the Property of Salt Lake City Water & Electrical Power Co., a Corporation, Plaintiff, v. Salt Lake City, a Municipal Corporation, Defendant.	No. 3449
Jos. Geoghegan, Receiver of the Property of Salt Lake City Water & Electrical Power Company, a Corporation, Plaintiff, v. Utah & Salt Lake Canal Company, a Corporation, et al., Defendants.	No. 3459

ORDERS AND DECREES OF THE COURT.
Hon. C.W. Morse, Judge

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(Title of Court and Cause.)

FINDINGS OF FACT AND CONCLUSIONS OF LAW.

These three causes having been consolidated by the court, came on regularly for trial on the 14th day of January, A.D. 1901, and were tried together, upon the complaints and amended complaints of the several plaintiffs, the answers and cross-complaints of the several defendants and the replies thereto, the complaints of the intervenors, the answers to said complaints and the replies thereto, said trial extending till the 13th day of April, A.D. 1901; Messrs. Frank B. Stephens and Richards and Varian, appearing for the plaintiffs; Messrs. Lindsay R. Rogers, Ogden Hiles and M.M. Warner, appearing as attorneys for the defendants, Salt Lake City Water & Electrical Power Company, the Bingham Tunnel Company, Allan G. Lemson and Joseph Geoghegan

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as receiver of the property of Salt Lake City Water and Electrical Power Company; Messrs. Rawlins, Thurman, Hurd and Hedgwood, appearing as attorneys for the East Jordan Irrigation Company; Messrs. Ferguson, Cannon and Tanner, appearing as attorneys for the South Jordan Canal Company, the Beckstead Irrigation Company, Louis H. Mousley, Rise Sophia Madsen and Johanna Sophia Hatt, Caroline Jensen, James Madsen, Margret Christine Madsen, Hyrum Bennion and Samuel R. Bennion, co-partners, doing business under the firm name of Bennion and Bennion, defendants, and for Hyrum Bennion, J.H. Bennion, Wilford Bennion, Arthur Bennion, Emma Lindsey, R.A. Sharp, Emma J. Bennion, Samuel O. Bennion, Parley Bennion, Mary Bennion, Roland Bennion, Minnie Bennion, Orson Bennion, Vincent Bennion, Mary Ann Bennion, Jennie Bennion, Effie Bennion, Adam Bennion, Henry Harker, Susannah Harker, Job Harker, Wm. Harker, Harriet Harker, Mabel Harker, Edna Harker, Benj. E. Harker, a minor, by Harriet Harker, his general guardian, Ephriam Harker, Heber Harker, Levi Harker, James Marsdon, Maria H. Harker, Angeline R. Spencer, Mary E. Calder, Ira Bennion, Samuel R. Bennion, Rachel Spencer, Geo. M. Spencer, Heber Bennion, and a co-partnership composed of Sam. R. Bennion and Hyrum Bennion, intervenors; Messrs. Brown and Henderson appearing as attorneys for the North Jordan Irrigation Company, Wm. Cooper, Jr., West Jordan Milling and Mercantile Company, Solon Richardson, Ludwig Christensen, James Peterson, Hyrum Beckstead, Albine Beckstead, David Egbert, Lafayette Egbert, John Egbert, and John Gabbot; Messrs. James H. Moyle and D.H. Wells, Jr., appearing as attorneys for Utah Mattress and Manf. Co., John H. Bailey and Henry Dinwoodey; Mr. Daniel Harrington, appearing as attorney for Annie E. Neff; Messrs. Wilson and Smith, appearing as attorneys for John T. Wilson, Absalom R. Smith, James Blame, Chas. Blake, A.C. Lunnen, A.D. Lunnen, W. R. Wellington, Henry Osborne and John Neff; Messrs. Stewart and Stewart, appearing as attorneys for Sarah E. Stewart and South Jordan Milling Company; and Messrs. Bennett, Harkness, Howat, Sutherland and Van Cott, appearing as attorneys for the United States Mining Company; the court having heard the evidence and being fully advised in the premises, finds the following facts:

FIRST.

That the Jordan river is a natural stream of water, having its source in Utah County, Utah, at the northern end of Utah Lake, and being the only outlet thereof; that from its said source, it flows in a general northerly direction through said Utah County, and through a portion of Salt Lake County, Utah, and empties into Great Salt Lake; that the lands adjacent to its banks in Salt Lake County are capable

of cultivation and irrigation, and by the use of these waters, have been redeemed from their barren state, and rendered fruitful and habitable by the parties to this action, and their predecessors in interest; that the lands so redeemed and made fruitful and habitable, lay on each side of said river, sloping downward towards it, and generally the trend of the adjacent lands and country is toward the river on either side, so that surplus, percolating and seepage waters from said lands, naturally find their way to said river; that the volume of water flowing in said river, varies one year with another, at different times in the same season; that from a point immediately below (north) of the old dam, the percolating and seepage waters from under ground sources, surface irrigation and springs begin to flow into the river channel, and so continue down and along the course of the river, to and past the lands of all the lower proprietors and claimants herein mentioned, which, in all ordinary seasons, create a continual and large and constant flow of running water, suitable and capable of being used for domestic, stock, power, and irrigation purposes, but the amount or volume thereof, at any point below said dam, cannot from the evidence, be specifically determined. That in the year 1850, Jos. Harker and others constructed a canal, and diverted water from the Jordan river at a point about 14 miles north of what is known as the old dam, for the purpose of irrigating their farms, and they and their grantees have ever since used thru said canal from the Jordan river, sufficient water to irrigate 250 acres of land.

The intervenors, Miriam Bennion, W.H. Bennion, Milford Bennion, Arthur Bennion, Emma Lindsay, R.A. Sharp, Emma J. Bennion, Sam. A. Bennion, Parley Bennion, Mary Bennion, Roland Bennion, Orson Bennion, Vincent Bennion, Mary Ann Bennion, Jennie Bennion, Minnie Bennion, Effie Bennion, Adam Bennion, Henry Harker, Susan Harker, Wm. Harker, Harriet Harker, James Marsen, Job Harker*, Ephraim Harker, Heber Harker, Levi Harker*, Maria B. Cannon, Angeline R. Spencer, Mary B. Calder, Ira Bennion, Saml. R. Bennion, Rachel Spencer, Geo. M. Spencer, Heber Bennion, and a co-partnership composed of Saml. R. Bennion and Hirum Bennion, are now the owners of said land, and of the water rights accruing by virtue of such appropriation, diversion and use.

The quantity of water necessary to irrigate said land is 5 cubic feet per sec. of time. This canal was afterwards enlarged, as set forth in Finding 13, and is known as the Bennion and Bennion mill race. The water for use on lands under this canal is taken from the river below the points where the water used by the West Jordan Flouring mill, the Mattress Factory, the South Jordan Flouring mill, the Sandy Roller mills and the Galena mill is returned to the river.

Mabel Harker, Edna Harker, Benjamin F. Harker
* James Marsden

#4-Horse Orders and Decrees

SECOND.

That in the spring of 1850, Archibald Gardner, assisted by the farmers owning farms in the vicinity, constructed a canal, which has since been known as the Gardner mill race, and diverted water from the Jordan River at a point about 10 miles north of what is known as the old dam, for the purpose of furnishing power for the operation of a flouring mill, and for the irrigation of the farms adjacent to the canal.

The defendant herein, the West Jordan Milling and Mercantile Company, as the successors in title and interest of the said Archibald Gardner, and all the persons who diverted water for the use of said mill; that the said mill was constructed and put in operation, in the year 1850, and the said predecessors in interest of the said defendant, West Jordan Milling and Mercantile Company, and the said defendant last named, has operated said mill from that time to the present, and for that purpose, the said defendant, the West Jordan Milling and Mercantile Company, and its predecessors in interest, have diverted from the waters of said river, continuously, whenever the interests of their business required it, 30 cubic feet of water per sec., measured at entrance of the pen stock, and that said use has been open, notorious, exclusive, adverse, subject only to the limitation and restrictions mentioned and set out herein; that when said mill was constructed, and since that time, it has been operated with two water wheels, known as Leffer turbine wheels, one thereof being what is known as the 20 inch wheel, the other what is known as the 26½ inch wheel; that the said mill is situated about one and a half miles north, and down the river on said mill race from the place where said water is diverted from the river.

That there has been used from the Jordan river thru said canal, from the year 1850 to the present time, water sufficient to irrigate 393.25 acres of land, which land is owned at the present time as follows:

John A. Egbert	15 acres
Albine Beckstead	31 acres
Hyrum Beckstead	22 acres
John H. Bailey and Henry Winwoodey	70 acres
W.L. Egbert	19-75/100 acres
D.A. Egbert	13 acres
Solon Richardson	90 acres
Ludwig Christensin and Js. Peterson	32-5/10 acres.

The quantity of water necessary to properly irrigate said land, is 5.5 cub. ft. per sec. of time.

#5-Morse Orders and Decree

That in the year 1855, a saw mill was built upon said mill race, which was afterwards changed to a woolen mill, and later to a Mattress Factory, which said Mattress Factory is now owned and operated by the defendant, Utah Mattress and Manf. Co., and the said Utah Mattress and Manf. Co. is the successor in title and interest of the persons who diverted water for the use of said mill and factory, and the said Utah Mattress and Manf. Co., and its predecessors in interest, have operated said factory and mill from the year 1851 to the present time, and for that purpose have diverted from the waters of said river continuously whenever the interest of their business required it, eleven cubic feet of water per second of time measured at the entrance to its pen stock, and that said use has been open, notorious, exclusive and diverse, subject only to the limitations and restrictions mentioned and set out herein.

That in the year 1853, the predecessors in interest of the defendant, the North Jordan Irrigation Company, extended the Gardiner mill race hereinbefore mentioned, from its then terminus immediately below the mill of the defendant, the West Jordan Milling and Mercantile Company, to the mill of the defendant, the Utah Mattress and Manf. Co., to a point at or near Taylorsville in Salt Lake County, and enlarged the said Gardiner mill race, and from time to time extended and enlarged said race and canal, up to the year 1881, when it was completed to its present size and capacity, and such extension has since been known as North Jordan Canal, and from the year 1853 continuously from that time down to the present, the said defendant, the North Jordan Irrigation Company, and its predecessors in interest, have used the same for the purpose of conveying water for irrigation, culinary and domestic purposes to the lands and homes of said predecessors in interest, and the stockholders of the said defendant, the North Jordan Irrigation Company. The head-gate of this canal is about one and one-half miles from the place where the Gardiner mill race takes it water from the Jordan river, and at the end of said mill race, and its capacity is one hundred twenty cubic ft. of water per sec. of time, and over 8000 acres of land are being irrigated each year, by water taken from the Jordan river, thru said Gardiner mill race, and into said canal thru its head-gate, and 10 cub. ft. of water per sec. has been used thru this canal during the winter season of each year for domestic and culinary purposes by the said predecessors, and the stockholders of said defendant last named. That from the commencement of the construction of the said North Jordan Canal in 1853, as aforesaid by the defendant, the North Jordan Irrigation Company, and its predecessors in interest, the work of enlarging and extending the said canal

was continued with reasonable diligence to the year 1881 as aforesaid, to its present capacity. That the lands on which water has been, and is now being used for irrigation purposes, was, and is, without the application of water, dry, barren and arid lands, but with the application of water, are productive, and that water to the amount of said full capcity of said canal, is necessary during the irrigation season, for the proper irrigation and cultivation of said lands, and for the domestic and culinary uses of the stockholders of said defendant company, and that during eachand every year since the completion of said canal, the same has been used to convey water from the said Jordan river, to and upon lands requiring irrigation, and owned by said defendants, stockholders in severalty, for irrigation and domestic purposes.

THIRD.

That in the year 1855, Absalom W. Smith, Isaac M. Stewart, constructed a canal, and diverted water from the Jordan river at a point about 4 miles north from what is known as the old dam, for the purpose of irrigating their lands, and in 1865, a new and larger canal was constructed at the same place by them and others, and was used by such parties to convey water upon their lands for irrigation, culinary and domestic purposes until in 1873, when the Galena Canal was constructed at that point, as set forth in Finding 9.

FOURTH.

That in the year 1859, the Beckstead Irrigation Company, constructed a canal, and diverted water from the Jordan river at a point about 5½ miles north from what is known as the old dam, and extended it from year to year, until in 1863, when it was completed to its present length, since which time, it has been used to convey water from the Jordan river to and upon the lands of the stockholders of said company, for irrigation, culinary and domestic purposes.

The quantity of land irrigated from this canal is 530 acres, and the waters required therefore, is 12 cub. ft. per sec. of time during the irrigation season, measured in the weirs in the lower bank of said canal, for waters used above the South Jordan Milling Company's mill; and in said canal at a point opposite said mill, for water used below said mill, and the amount of water used for domestic and culinary purposes during the balance of the year, is 4 cu. ft. per sec. of time.

FIFTH.

That in the year 1864, a canal known as the Mousley ditch was constructed, and water taken from the Jordan river

at a point about 2½ miles north from the old dam to irrigate the lands now owned by Louis H. Mousley, Mise S. Madsen, Johanna S. Matt, Caroline Jensen, James Madsen and Margret C. Madsen. In all, amounting to 87.5 acres, and water has been taken from it for that purpose each season since. The quantity of water required to irrigate said land is 2 cu. ft. per sec. of time.

SIXTH.

That in the year 1870, the defendant, the South Jordan Canal Company commenced the construction of a canal and the diversion and use by its stockholders, of waters for irrigation and domestic purposes from the Jordan river at a point about 2 miles north from the old dam, and during the year 1870, 1871, 1872, 1873, 1874 and 1875, the work upon said canal was diligently prosecuted, and the said canal completed in the said year 1875 to its present size and capacity, namely, 142 cu. ft. of water per sec. of time, and that during each and every year since said completion, the same has been used to convey water from said Jordan river to and upon the lands requiring irrigation, and owned by said defendant stockholders in severalty, for irrigation and domestic purposes, and by means of said canal and the waters of said Jordan river, diverted thereby, about 9000 acres of said lands have been irrigated and cultivated, and redeemed from their natural barren condition, and that all of said 142 cu. ft. of water per sec, is necessary to properly irrigate said land, that during the winter season of each and every year, 10 cub. ft. of water per sec. has been continuously used by said stockholders of said company for domestic and culinary purposes.

SEVENTH.

That in the year 1872, Salt Lake County constructed a dam in the Jordan river at a point in Sec. 26, Tp. 4 S., Range 1, West, for the purpose of facilitating the diversion of water from the Jordan river for irrigation and other beneficial uses, which dam is known by the name of, and is referred to herein, as the "Old Dam".

In April, 1883, Salt Lake County, by deeds duly authorized by the County Court of said County, and regularly executed and delivered, transferred to the Utah and Salt Lake Canal Company, and North Jordan Irrigation Company, and South Jordan Canal Company, and East Jordan Irrigation Company, and Salt Lake City, each a 1/6 interest in the said dam, which deeds also purported to convey a 1/6 interest in the waters of the Jordan river, flowing at that point to said Salt Lake City, and each of said canal companies and purported to reserve a 1/6 interest in said dam and said waters.

Thereafter, to-wit, from the date of the execution and delivery of said deeds to the present time, the Salt Lake Canal Company, the North Jordan Irrigation Company, the South Jordan Canal Company, the East Jordan Irrigation Company, and Salt Lake City, have controlled, maintained, and used said dam, that said Salt Lake County never at any time diverted or used for any purpose, any of the waters of the Jordan river, and never claimed or asserted any right to the use thereof from then to the construction of said dam, and the making and delivery of said deeds, and ever since said year 1893, the plaintiffs and said defendants last named, subject to the rights of the owners of the Mousley ditch, the Beckstead ditch, the Cooper ditch, the Galena ditch, the Garderner mill race, and the Bennion ditch, have used during the irrigation season of each and every year all of the waters flowing in the said Jordan river, for beneficiary purposes, and said use of said waters of said river has been open, notorious, peaceable, continuous, and adverse, as against said Salt Lake County, and all of the defendants in this action, except when their use thereof was interrupted by the defendant, Salt Lake City Water and Electricial Power Company in the year 1900, as set forth in Finding 25.

EIGHTH.

That in the year 1870, some of the persons who afterwards became stockholders in the Utah and Salt Lake Canal Company, constructed a canal, and diverted water for irrigation, domestic and culinary purposes, from the Jordan river at the old dam, which canal was from year to year extended, until in 1882, when it was completed to its present size and capacity, by the Utah and Salt Lake Canal Company, which was incorporated in 1880, and said canal has been used ever since in conducting the water to the lands of its stockholders, and the same has been used by them for domestic and irrigation purposes, including the watering of livestock, and during the winter season of each year, 10 cu. ft. of water per sec. in said canal has been used continuously for domestic and culinary purposes by the stockholders of said company. The capacity of said canal is 246 cub ft. of water per sec. of time, and about 16,000 acres of land have been, and are irrigated by water from said canal, and have been thereby redeemed from their natural barren condition.

NINTH.

That in the year 1873, the predecessors in title and interest of the United State Mining Co., under an arrangement with the owners thereof, enlarged the canal mentioned in Finding 3, purchased a right of way therefor, and extended the same to the total length of about 10 miles to

the Smelter and Mill owned by them, and appropriated therefor of the thereto fore unappropriated waters of the Jordan river, a sufficient quantity to supply and operate said smelter and mill, which were from that time on, operated by water power by the various owners thereof, and water diverted from the Jordan river, and conveyed thru said canal for that purpose. That the said canal has since been known as the Galena Canal.

The farmers who had theretofore conveyed water from the river to their lands thru the canal mentioned in Finding 3 thereafter conveyed the water for their use for irrigation, thru said Galena Canal.

That since the construction of the said canal, and the appropriation of water thereby, the title thereto, and the title to a right to use the waters carried thereby have been conveyed by the owners thereof, successivley with the conveyance of the land constituting the site of the Smelter and Mill aforesaid and by and thru such successive conveyances, the defendant, the United States Mining Company, has become the owners, and in the possession of the said site and Smelter and Mill thereon, and of the said canal and the waters carried thereby.

That in or about the year 1881, the then owners of the said canal and site, ceased to use the same for the purpose of supplying and operating the Smelter upon said site, and have never since said time, resumed the use thereof for any purpose, and that ever since the construction of said canal and until some time in the year 1897, the grantors and predecessors in interest of the said defendant continued to carry water thru the said canal from the said river for the use of, and to use the same for the purpose of operating and supplying the said Mills and Works incident thereto, and for such purpose, and whenever the interests of their business required it, appropriated and used 17 cu. ft. of water per sec. of time, measured at the pen stock of said mill.

That since some time in the year 1897, while the said mill has been idle, the same has been kept up, cared for and maintained, until since the commencement of this suit, when said mill was torn down, and removed, for the purpose of making place for new reduction works, and that since the year 1897, the said defendant and its grantors and its predecessors have expended large sums of money in repairing, caring for, and maintaining said canal, and have all the time claimed, and intended to resume and maintain the use of the said quantity of water at the said site.

That the following named persons and their predecessors in title and possession, have used water from the Jordan river for the purpose of irrigating their lands each year, some of these since 1868, and all of them since 1877, and have conducted the water for that purpose from the Galena Canal since its construction, being with the permission of the owners of said canal, to-wit:

James Blake -Chas. Blake	85 acres
A.W. Smith	70 acres
A.C. Lunnen, A.D. Lunnen & W.R. Wellington	35 acres
Henry Osborne	27 acres
Sarah E. Stewart	90 acres
John T. Wilson	15 acres
John Neff	18 acres

The quantity of water used by the said A.W. Smith, W.R. Wellington, A.C. Lunnen and A.D. Lunnen, James Blake and Charles Blake, collectively, for irrigation purposes, is 2.825 cu. ft. of water per sec. of time.

The quantity of water necessary to irrigate the Stewart tract of land is 1.4 cu. ft. of water per sec. of time, and the quantity of water necessary to irrigate the Osborne tract, is .54 cu. ft. per sec. of time, and the amount necessary to irrigate the Wilson tract, is .3 cu. ft. per sec. of time.
Neff tract = 0.3 cfs

TENTH.

That in the year 1877, the defendant, the East Jordan Irrigation Company, commenced the construction of a canal and the diversion and use by its stockholders of water for irrigation and domestic purposes from the Jordan river at a point immediately south of the old dam, that such use of said water was continued during the year 1878,1879,1880,1881 and 1882. That the work of constructing said canal, was prosecuted and continued with reasonable diligence during each and all of said years, and in the year 1883, said canal was completed to its present size and capacity, to-wit, a capacity to carry 170 cu. ft. of water per sec. of time, and during each and every year since its completion, the same has been used to convey water from the said Jordan river and upon lands requiring irrigation, and owned by said defendant stockholders in severalty for irrigation and domestic purposes, and by means of said canals and the waters of said Jordan river, diverted thereby, about 16,000 acres of said lands have been irrigated and cultivated, and redeemed from their natural barren condition, that during the winter season of each and every year since the construction of said canal, the stockholders of said defendant, have diverted and used for domestic and culinary purposes, 10 cu. ft. of water per sec., from said Jordan river. (16,000)

ELEVENTH.

That in the year 1878, at a point about 8 miles north of the old dam, a canal was constructed for the purpose of appropriating water from the Jordan river, for power purposes, for use in the Flouring Mill, known as Sandy Roller Mills, and the water was diverted and appropriated from said river, and conducted thru said canal, to furnish power for said mill.

The defendant, Am. Cooper Jr., is the present owner of said mill and mill race, and is the successor in interest and title of the parties who constructed said canal and appropriated said water, and he and his predecessors in title and interest have ever since conducted from the Jordan river thru said race, water for operating said mill, wherever the interests of their business required it, amounting to 23 cu. ft. per sec. of time, and said defendant, Am. Cooper Jr., and his predecessors in title and interest, have used said water for power purposes, and for the purpose of operating said mill continuously as aforesaid, and during all that time have been in the open, notorious, exclusive, and adverse possession of such right, and have appropriated and used sufficient of the said waters of said river up to 23 cu. ft. per sec. of time, as needed and required, and as the demands of the business of the mill require, and that 23 cu. ft. of water per sec. of time is required and necessary to operate said mill.

That ever since said race was constructed the following persons have taken water from the Jordan river thru said race to and upon their lands for the purpose of irrigating the same, to-wit:

John Neff.....70 acres
Annie E. Neff..80 acres
John T. Wilson.....15 acres

and the quantity of water required during the irrigation season for such purposes is as follows:

Upon the John Neff tract, 1.4 cu. ft. per sec. of time.
Upon the Annie E. Neff tract, 1.2 cu. ft. per sec. of time.
Upon the J.T. Wilson tract, .3 cu. ft. per sec. of time.

TWELFTH.

That in 1879, Salt Lake City commenced the construction of a canal, diverting water from the Jordan river, at a point where the water of the South Jordan Canal Company is diverted, and completed such canal to the city of Salt Lake, a distance of about twenty-nine miles, in 1882, and has ever since used it for conveying water to said city, for use by its inhabitants, for irrigation and municipal purposes. The cap city of this canal is 150 cu. ft. of water per sec. of time. In 1888, a portion of

the water conveyed thru said canal was exchanged by the city for Parley's Canyon Creek water, which was and is purer and better for domestic and culinary purposes, and, ever since, said water has been used, thru the waterworks system of Salt Lake City, for the domestic use of its inhabitants, for fire hydrants, sprinkling lawns and streets and other municipal purposes, and the remainder of water flowing thru said canal has been used by the city and its inhabitants for irrigation, sprinkling streets, flushing sewers and other municipal purposes, and all of said waters are necessary for said purpose.

That the water taken from the river by the city into its canal is taken at an elevation of 50 ft. lower than the point at which the East Jordan Irrigation Company takes its water, and if the city's water was taken from the river at a point where the East Jordan Irrigation Company diverts its water, it could be delivered in the city at an elevation 60 ft. above where it is delivered at present thru the city's canal. The city has had in contemplation the changing of the point of diversion of the water taken by it from the river thru its canal, to this higher level, in order to enable the city to exchange the same for waters from the Cottonwood creeks, and other mountain streams, which is purer and better for culinary and domestic purposes, and the city has already begun proceedings in the proper court to condemn a right of way for such purpose thru the East Jordan canal.

THIRTEENTH.

That in 1880, Byrum Bennion and Saml. R. Bennion, partners as Bennion and Bennion, enlarged and extended the canal, mentioned in Finding One, and diverted and have ever since used water thru it from the Jordan river, for the purpose of furnishing power for the operation of a flouring mill. The quantity of water required for the operation of their mill is 40 cu. ft. per sec. of time, and such water together with the water used by the farmers adjacent to said canal, is taken from the river below where the waters used by the West Jordan flouring mill, the mattress factory, the South Jordan flouring mill, the Sandy Roller Mills and the Celene mill, are returned to the river.

FOURTEENTH.

That in dry seasons the flow of the Jordan river became insufficient to supply the needs of the several appropriators and users, as hereinbefore set forth, and in the year 1889, Salt Lake City, the Utah and Salt Lake Canal Company, the East Jordan Canal Company, and the North Jordan Canal and Irrigation Company, entered into an arrangement, by which they jointly dredged the bed of the Jordan river, and removed natural obstructions therein, which enabled them to draw the water from Utah Lake, thru the channel of said river at a level 22 inches

lower than before such dredging; and during the year 1889, and 1890, the said city and canal and irrigation companies, constructed in the river at a point about three-quarters of a mile south and above the old dam, a new dam, to enable them to hold back and store the waters of the lake, for use when needed, the city and each of said canal and irrigation companies contributing equally to the cost and expense of such dredging, and of the construction of said new dam, which amounted to over _____ thousand dollars, and its maintenance since.

That immediately thereafter the city and said companies commenced, by means of said dam, to hold back and store the waters in said Utah Lake, and in doing so caused certain lands lying and adjacent to the lake to be flooded, in consequence of which a series of suits were commenced by the farmers of Utah County, owning such lands, against said city and canal and irrigation companies, which finally resulted in an agreement of compromise entered into in the year 1885, by the terms of which the owners of said lands granted to the said city and canal and irrigation companies, the right, so far as their interests, or the flooding of their lands was concerned, to hold back and store the waters in the lake, until they should raise to a point 3 ft. and 3½ inches above low water mark, which point has since been known as "Compromise Point," and the exact location of which has been fixed and determined by judicial decisions. Said compromise agreement provided for the election annually by the parties thereto, of a board of five persons, who have since been known as Utah Lake Commissioners, under whose directions the rights granted by said agreement should be exercised by the said city and canal and irrigation companies.

That since 1885, to the present time, the said city and said canal and irrigation companies have openly, notoriously, continuously and adversely against all the world, maintained and used said Utah Lake as a reservoir and said dam as an impounding dam, to hold back and store the waters in the lake, when necessary to do so, in order to supply their needs during seasons of scarcity of water, and the said city and canal and irrigation companies have each contributed an equal share of all costs and expenses of all matters growing out of such joint enterprises. That said right of storage has been, since the year 1885, recognized and assented to by all the parties thereto, except the Salt Lake City Water and Electrical Power Company, as necessary to preserve and save the waters of the river for the uses of all appropriators, and said right of storage was and is necessary for such purposes.

That each year, during the early part of the irrigation season, the city and each of said canal and irrigation companies have taken from the river and conveyed thru their respective canals, water to the full capacity of such canals for the use of those entitled to use water therefrom. That as such seasons

advanced and the water receded, the superintendents of the several canal and irrigation companies, and a representative of the city, would make a division of the waters so long as they could agree thereon, and later in the season when an accurate division would be called for by any of said companies, an engineer would be employed to measure the waters and divide the portion to which the city and each of said canal and irrigation companies were entitled, equally between them.

That in making such divisions, there has been allowed to flow down the channel of the river such quantity of water as would, with the accretions arising from the seepage or other sources, supply the necessities, as hereinbefore set forth, of the farms and mill upon the Bennion and Bennion mill race, the farms, mill and factory upon the Gardner mill race, the farms and mill upon the Galena Canal, the Beckstead Irrigation Company, the farms upon the Mousley Ditch, and the farms and mill upon the Cooper mill race.

That from and after the said city and said canal and irrigation companies constructed the impounding dam hereinbefore mentioned, and dredged the river, and commenced to impound the water hereinbefore set forth, in the year 1889, and continuously from thence hitherto, the said Salt Lake City, and the said Canal and Irrigation Companies, have each and all, conceded that the said Salt Lake City, and each of said Canal and Irrigation Companies were entitled to an equal amount of water in their several canals to be furnished and had at the head gates of each respectively, and that all of the efforts and practices of dividing the said water was intended by each and all thereof to effectuate that purpose and to furnish to each and all of said Canal and Irrigation Companies, and the said Salt Lake City, the said equal amount of water at their respective head gates so long as the water flowing in said river over and above what was sufficient and necessary for the prior appropriations and the mills and factories hereinbefore enumerated, did not exceed, when divided euqlly among them, the maximum capacity of said canals respectively as hereinbefore set forth. Each of said companies and said city, conceding to each an equal division of the waters remaining after said prior rights were supplied, to be furnished at their respective head gates, and that all practices and customs and divisions made, were for the purpose and object of effectuating such equal divions, and that any differences from such equal division, (if any), was the result of error, or were wrongful and without right.

FIFTEENTH.

That in 1896 the South Jordan Milling Company erected a

mill upon the Beckstead Irrigation Company's Canal, mentioned in Finding 4, and enlarged said canal, and have from said time to the present, operated said mill continuously with water appropriated from the Jordan river, and conveyed thru the said Beckstead Canal, using for that purpose, 23 cu. ft. of water per sec.

That for more than 20 years prior to said appropriation, said amount of water had during all seasons continuously, ran down the main channel of said river, to the mill owners to the north and below where said water is used.

The water thus used is returned to the river at a point above the place of division of the water by the Gardiner mill race, the Cooper mill race and the Bennion and Bennion mill race.

There is no water taken from the river for any purpose, between the head of the Beckstead Canal and the point where said water is returned to the river, and the distance from the head of the Canal to the point where the water is returned to the river, is 2 miles less by way of the Canal than by way of the channel of the river, and the water used in the operation of such mill can be conveyed thru said canal, and after being used, returned to the river undiminished in quantity and unimpaired in quality, without in any manner interfering with any rights of prior claimants.

SIXTEENTH.

The court finds that in the months of April and May, 1897, one C.M. Dull, acting for and in behalf of Allen G. Lamson, the grantor and predecessor in interest of the Salt Lake City Water & Electrical Power Company, posted, filed and recorded a notice that he had appropriated the entire flow of the Jordan river, (except the waters theretofore appropriated by the East Jordan Irrigation Company and the Utah & Salt Lake Canal Company), at a point immediately south of the old dam so called, in Sec. 28, T. 4 South of Range 1 West, for the purpose of operating a power plant for the generation of electrical power, the waters so sought to be appropriated to be returned after having been used for power purposes at such plant undiminished in quantity and unimpaired in quality to said river, and such appropriation was declared in said notice to be subject and secondary to all vested rights of prior appropriators; and in the month of June of the same year, one, C.W.L. Stephens, acting for and on behalf of Allen G. Lamson, the grantor and predecessor in interest of the said Power Company, posted, filed, and recorded a similar notice, which notice was an exact duplicate of the Dull notice, but which said notice was not verified by the affidavit of said Stephens or by anyone on his behalf.

And in December of the same year, the said Allen G. Lamson, posted, filed and recorded a notice that he had

appropriated one-sixth of the entire natural and unimpeded flow of the Jordan river at a point in Sec. 26, T. 4 South of Range 1 West, of the Salt Lake Meridian, to be by him diverted and conveyed thru the canal of the Utah & Salt Lake Canal Company to a point in Sec. 15, T. 4 South of Range 1 West; so much of said water as might be necessary to be used at that point to furnish power for an electrical power generating plant, and the residue thereof for the purpose, as stated by him in said notice, for the irrigation of about 20,000 acres of land, but the court finds that before that time all of the water of said river had been appropriated by others for beneficial uses, and the said notice and claim of appropriation by said Lamson was not effectual to appropriate any other waters of said river, and therefore no right was acquired thereunder.

That in October, 1899, the said defendant Power Company posted, filed and recorded a notice that it had appropriated the waters of Jordan River theretofore appropriated by Salt Lake City, and which said city was entitled to flow thru its canal, such water to be conveyed thru the Utah & Salt Lake Canal Company to said power plant, and after passing thru the wheels of said plant, to be returned to the city's canal and at a point opposite the power plant, undiminished in quantity and unimpaired in quality.

And in November of the same year, a similar notice was posted, filed and recorded by the said Salt Lake City Water & Electrical Power Company, giving notice of the appropriation by it of the waters of the South Jordan Canal Company, to be used in the same way for the same purpose, and returned to the South Jordan Canal in a similar manner.

In January, 1900, the Salt Lake City Water & Electrical Power Company filed and caused to be recorded in the office of the County Recorder of Salt Lake County, a notice of consolidation of its several water rights, by virtue of the various notices of appropriation, and of its change of the place of use of the same from Sec. 22, T. 4 South of Range 1 West, xxxxx to Sec. 15, same Township and Range.

In June, 1899, the said Power Company procured from the South Jordan Canal Company a license, (revocable at the pleasure of said Canal Company) to use the water to which said Canal Company was entitled, and after passing the same thru its water wheels, to return it to the South Jordan Canal Company at a point opposite the power plant, which license is still in force.

The power plant is operated by turbine wheels, which at their full capacity require 700 cu. ft. of water per sec. This plant has been in operation continuously since it started in 1899, except from Dec. 15, 1900, to Jan. 12, 1901.

When the water belonging to the city canal and South Jordan Canal was used by the Power Company, it was returned to said canals at points above where water was used for any purpose from either of said canals.

The Court further finds from the evidence that it is practicable for said defendant Power Company to use the waters of said river, the right of use of which is also in said South Jordan Canal Company and said Salt Lake City, thru the wheels and machinery to said power house of said power company, and to discharge the same undiminished in quantity and unimpaired in quality into the said canal of said South Jordan Canal Company, and that of Salt Lake City, opposite the said power house, by means of proper machinery and appliances therefor at said power plant.

That the appropriation of the use of such water for and on behalf of the Power Company in order to be completed requires the use of the City's canal by said Power Company for the purpose of discharging water after being used by the Power Co. thru a flume across the Jordan river and into the City Canal at a point about 1½ miles below the head thereof, and that without such use by the Power Co. of the City's Canal, the appropriation of the use of such water by the Power Co. cannot be made effective.

That the said Salt Lake City Water & Electrical Power Co. has commenced an action in the court to condemn the right to use the canal of Salt Lake City in the manner aforesaid, and to make effective its appropriation of the use of the city's water.

That the Salt Lake City Water & Electrical Power Co. is the owner in fee simple of the land on which the said power house and plant and its appurtenances stand, being about 20 acres of land situated on the banks of said Jordan River to the thread of the stream.

SEVENTEENTH.

That the irrigation season in ordinary years, extends from the 1st day of April to the 30th day of September.

EIGHTEENTH.

That the plaintiff, Salt Lake City, is and was at all the times mentioned in plaintiff's complaint, a Municipal Corporation in the County of Salt Lake and State of Utah.

That the plaintiff, Utah & Salt Lake Canal Company, and the defendants, East Jordan Irrigation Company, South Jordan Canal Company, North Jordan Irrigation Company, West Jordan Milling & Mercantile Company, Utah Mattress & Manufacturing Company, United States Mining Company, Beckstead Irrigation Company, South Jordan Milling Company, and Salt Lake City Water & Electrical Power Company, are and at all times mentioned in the plaintiff's complaint, and in the said defendant's answers and cross-complaints, were corporatéons organized and existing under the laws of Utah.

That the defendants, Hyrum Bennion and Saml. R. Bennion, are and at the times mentioned in their pleadings were, co-partners under the firm name of Bennion and Bennions.

NINETEENTH.

That Jos. Geoghegan, as Receiver of the Salt Lake City Water & Electrical Power Co., the plaintiff in suits Nos. 3449 and 3459, has not, nor has the said power co. nor its predecessors in interest, ever diverted or used the waters of the Jordan River, except as in these Findings expressly stated.

TWENTIETH.

That the waters of Utah Lake have not for fifty years past, during the fall season of each and every, or any year, been permitted to flow unobstructed from said lake into the Jordan river and past the power plant of said Salt Lake City Water & Electricla Power Co. and into the Great Salt Lake, except as in these Findings expressely stated.

TWENTY - FIRST.

That at the time of and prior to the commencement of suits Nos. 3449 and 3459, consolidated herein, owing to the diminished precipitation during the preceding year, the waters of Utah Lake had dried up and receded until they had almost reached low water mark, being a point on a level with the bed of the Jordan river, where it received the waters from said lake, and that in consequence thereof, in order to provide for supplying the demands and meeting the necessities of the defendants, Salt Lake City and the several canal and irrigation companies, during the following spring and summer seasons, it became and was necessary to place planks and ob-

structions in the impounding dam across the Jordan river on or about the 25th day of Oct. 1900, for the purpose of storing the waters of said Utah Lake for the purposes aforesaid.

TWENTY - SECOND.

That the Salt Lake City Water & Electrical Power Company, at the time when it made and filed its notices of appropriation, of the waters of the Jordan River, and located and constructed its power plant upon said river, had full knowledge and notice of the several rights of said Salt Lake City and the several canal and irrigation companies aforesaid, and of their several appropriations and right of storage, as aforesaid, and of the exercise of said right to store water in Utah Lake for many years prior thereto.

TWENTY - THIRD.

That on or about the 18th day of April, 1900, the said Salt Lake City Water & Electrical Power Co., by its agents, servants, and employees, entered upon the impounding dam hereinbefore mentioned in these Findings, and removed the planks therefrom and permitted the waters of Utah Lake, heretofore and then being stored and restrained, from flowing down the Jordan River, for the purposes of use by the defendants, Salt Lake City and the canal and irrigation companies, during the coming irrigating season, whereby said waters were lost for the purposes aforesaid, and thereupon the said power company commenced an action in the Fourth Judicial District Court of the Satate of Utah in and for the County of Utah, against the said city and canal and irrigation companies, and upon its verified complaint therein, procured to be issued out of and by said court, a restraining order prohbiting the said city and canal and irrigation companies from putting said planks back into said dam, and from attempting to store or impound one-sixth of the natural flow of the said river, and from in any way interfering with the use thereof by the said power company and requiring them to turn over said impounding dam, one-sixth of the natural flow, as aforesaid; and thereafter, on or about the 8th day of Aug. 1900, upon the said cause coming on for trial before said court, the said plaintiff, Salt Lake City Water & Electrical Power Co., dismissed said suit finally out of said court, thereby vacating the said restraining order; that thereafter, during the latter part of Oct. 1900, the receiver, Jos. Geoghegan, plaintiff in suits Nos. 3449 and 3459, commenced suits against said city and canal and irrigation companies, severally, in this court, and thereupon procured to be issued out of and by said court, temporary

restraining orders and orders to show cause, which said restraining orders restrained and enjoined the said city and canal and irrigation companies, from preventing four-sixths of the waters of the Jordan River from flowing continuously and uninterruptedly down said river, and thereafter, on or about the 17th day of November 1900, the said receiver, by his attorneys, without the consent or knowledge of said city and canal and irrigation companies, or their attorneys, upon motion, procured said restraining orders to be vacated and set aside, which was done by the court.

AS CONCLUSIONS OF LAW.

from the foregoing facts, the Court finds:

FIRST.

That the intervenors mentioned in the first Finding of Facts, are entitled to a decree awarding them the use during the irrigation season in each year for the purpose of irrigating their lands, amounting to 250 acres, of 5 cu. ft. of water per sec. of time, and quieting their title thereto, such water to be taken thru 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 entitled to a decree awarding to them the use of 40 cu. ft. of water per sec. for the operation of their mill race, and quieting their title thereto, such water to be measured at the entrance to the pen stock of said mill.

SECOND.

That the defendant, the West Jordan Milling & Manufacturing Co., its successors and assigns, is entitled to, and is the owner of the right to use 30 cu. ft. of water per sec. of time, by virtue of its appropriation as set forth in the findings offact herein, subject only to the limitations prescribed by law, and hereinbefore set forth, the said water to be measured at the entrance to its pen stock.

That the defendant, Utah Mattress & Manufacturing Co. and its successors and assigns, is entitled to, and is the owner of the right to use 11 cu. ft. of water per sec. of time, by virtue of its appropriation, as set forth in findings of fact herein, subject only to the limitations prescribed by law, and herein set forth, the said water to be measured at the entrance to its pen stock.

That John A. Egbert, Albine Beckstead, Myrum Beckstead, John H. Bailey, Henry Dinwoodey, A.L. Egbert, D.L. Egbert, Lolon Richardson, Ludwig Christenson, and James Peterson, are entitled to a decree awarding to them the use during the irrigation season of each year for the purposeof irrigating their lands, amounting to 293.25 acres, of 5.3 cu. ft. of water per sec. of time, such water to be taken thru the Gardiner mill race, and measured at the point of diversion from said race.

THIRD.

That Absolam E. Smith, W.R. Wellington, A.C. Lunnen, A.D. Lunnen, James Blake, and Chas. Blake, are entitled to a decree awarding to them, collectively, the use during the irrigation season of each year, for the purpose of irrigating their lands, of 3.825 cu. ft. of water per sec. of time, such water to be taken thru the Galena Canal, and to be measured at the point of diversion from said canal.

That Sarah E. Stewart is entitled to a decree awarding to her the use during the irrigation season of each year for the purpose of irrigating her land, of 1.4 cu. ft. of water per sec. of time, such water to be taken thru the Galena Canal, and to be measured at the point of diversion from said canal.

That Henry Osborne is entitled to a decree awarding to him a right to use during the irrigation season of each year, for the purpose of irrigating his land, .54 cu. ft. of water per sec. of time, such water to be taken thru the Galena Canal, and measured at the point of diversion from said canal.

That John T. Wilson is entitled to a decree awarding to him the use, during the irrigation season of each year for the purposes of irrigating his land, of .30 cu. ft. of water per sec. of time, such water to be taken thru the Galena Canal, and to be measured at the point of diversion from said canal. John Nett, irr seas, O.3cfs, Galena Canal

That the defendant, the United State Mining Company, its successors and assigns, is entitled to, and is the owner of the right to use 17 cu. ft. of water per sec. of time, by virtue of its appropriation, as set forth in the findings of fact herein, subject only to the limitations prescribed by law, and herein set forth, the said water to be measured at the entrance to its pen stock.

FOURTH.

That the Beckstead Irrigating Company is entitled to a decree awarding to it the use during the irrigation season

of each year for the purpose of irrigating the lands owned by the stockholders, amounting to 530 acres, of 12 cu. ft. of water per sec. of time, such water to be taken thru the Backstead ditch, and to be measured in the weirs in the lower part of said canal for water used above the South Jordan Milling Company's mill, and in said canal at a point opposite said mill for water used below said mill, and further, to the right to use during the winter or non-irrigation season, of 4 cu. ft. of water per sec, for domestic and culinary uses by the stockholders of said company, such water to be measured at the intake of said canal.

FIFTH.

That Louis Mousley, Rise M. Madsen, Johannah M. Hatt, Caroline Jensen, James Madsen, and Margret Madsen, are entitled to a decree awarding to them the use during the irrigation season of each year, for the purpose of irrigating their land, amounting to 87.5 acres, of 2 cu. ft. of water per sec. of time, such water to be taken thru the Mousley ditch, and to be measured at the intake of said ditch.

SIXTH.

That the defendant, Wm. Cooper, Jr., his heirs and assigns, is entitled to, and is the owner of the right to use 25 cu. ft. of water per sec. of time, by viture of his appropriation, as set forth in the findings of fact herein, subject only to the limitations prescribed by law, and herein set forth, the said water to be measured at the entrance to its pen stock.

That John Neff is entitled to a decree awarding to him the use during the irrigation season of each year, for the purpose of irrigating his land, of 1.4 cu. ft. of water per sec. of time, such water to be taken thru the Cooper mill race, and to be measured at the point of diversion from said mill race.

That Anna E. Neff is entitled to a decree awarding to her the use during the irrigation season of each year for the purpose of irrigating her land, of 1.2 cu. ft. of water per sec. of time, such water to be taken thru the Cooper mill race, and to be measured at the point of diversion from said race.

That John T. Wilson is entitled to a decree awarding to him the use during the irrigation season of each year, for the purpose of irrigating his land, of .3 cu. ft. of water per sec. of time, such water to be taken thru the Cooper mill race, and to be measured at the point of diversion from said race.

SEVENTH.

That Salt Lake City, the Utah and Salt Lake Canal Company, the East Jordan Irrigation Company, the South Jordan Canal Company, and the North Jordan Irrigation Company, are entitled to a decree awarding to them, subject to the limitations hereinafter set forth, the right to the use of all the balance of the waters of the Jordan River, for municipal, irrigation, culinary, and domestic purposes, to the extent of the capacity of their several canals, and the right to impound and store all the waters of said river in Utah Lake, and to have their title thereto quieted.

The said city and canal and irrigation companies shall at all times allow to flow unimpeded down thru the channel of the 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 Co., the Utah Mattress and Manf. Co., the United States Mining Co., Wm. 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 thru 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 thru the Gardiner mill race, the Calena Canal, the Beckstead Irrigation Company's canal, the Mousley ditch, the Bennion and Bennion mill race, and the Cooper mill race, as hereinbefore set forth; and during the winter or non-irrigation season, 4 cu. ft. of water for the use of the stockholders of the Beckstead Irrigating Co., for domestic and culinary purposes; Provided, that in all cases where the waters of the river are diverted and used for beneficial uses and after such use are delivered to the uses of any of the parties hereto, the quantity so delivered for such subsequent uses shall be, to the extent thereof so delivered, the quantity awarded by the decree to such subsequent users.

Subject to these limitations and conditions contained in the agreement of compromise entered into in 1885, between Joseph H. Coolidge and others and said city and canal and irrigation companies, the said city and canal and irrigation companies, shall 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 further use to the extent which, in their judgment, their interests 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 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 10 cu. ft. per sec. of water in their several canals, for the use of their stockholders for culinary and domestic purposes.

EIGHTH.

That the South Jordan Milling Co. is entitled to a decree awarding to it the right to use 23 cu. ft. of water per sec. of time, of the water required as herein set forth, to flow thru the channel of the river, for the use of the claimants diverting water below the location of such mill, such water to be taken thru the Beckstead canal and measured at the pen stock of said mill, and to be returned to the river at a point opposite the location of said mill.

NINTH.

That the Salt Lake City Water & Electrical Power Co. is entitled to a decree awarding to it the right to convey to its power plant and use for the purpose of operating the same, all the waters of the river required as hereinbefore set forth, to flow thru the channel of the river for the use of claimants diverting water from the river below said power plant, such water to be returned to the river undiminished in quantity and unimpaired in quality, at a point opposite the place of use by said power company; also the right to convey to its power plant and use for the purpose of operating the same, the waters which the South Jordan Canal Company is entitled to take into its canal, such waters to be delivered after such use, into the South Jordan Canal, according to the terms of the license heretofore mentioned, so long as the same remains unrevoked; also the right to convey to its power plant and use for the purpose of operating the same, the waters which the city of Salt Lake is entitled to take into its canal so long as said

city shall continue to divert its water at its present point of diversion, and use the same at its present place of use, but the right of the said Salt Lake City Water & Electrical Power Company to use the city's said water will be effective only after said power company has established, by judgment of the court in an action at law, its right to make connections with its flume and the 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 in the event that the license hereinbefore referred to as having been granted by the said South Jordan Canal Company to the said power company, should at any time be revoked, then the right of said power company to 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 the 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.

In the use by the power company of the waters herein awarded to it, it will be required to deliver, after having used the same, the proper proportions thereof, into the river, the city canal, and the South Jordan Canal, as the same shall be reported to said company by the persons authorized to determine the quantities belonging to each respectively; and in delivering such water the power company will be required to maintain such uniformity of flow as will occasion no greater fluctuations than would occur if the water was taken into the said canals direct from the river.

Subject to the limitations aforesaid, the said power company is entitled to a decree of this court quieting its title and right to the use of all the waters flowing in said Jordan River, except that part of such waters, the right of use of which is in the East Jordan Canal Company and the Utah and Salt Lake Canal Company.

TENTH.

That all persons and corporations, parties to this suit, shall construct, or cause to be constructed, at their own cost, under the direction and supervision of a competent engineer, 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, pen stocks, and other means by which the water is diverted, conveyed or used, in a good state of repair, together with the appliances for the measurement of the water, so that no unnecessary loss from seepage or leakage shall occur, and that the water shall be economically applied.

ELEVENTH.

That for the purpose of carrying into effect the decree herein, according to its true intent, the court will appoint a suitable and competent person, to be agreed upon, if possible, by the parties, otherwise to be elected by the court, at a compensation to be fixed and apportioned among the parties, to superintend and direct the measurement and division of the water, and 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 the decree.

TWELFTH.

That the court will retain original jurisdiction of this cause and the subject matter hereof, for the purpose of making all necessary orders and supplementary decrees to render effectual the rights awarded and preserved by this decree; and also in the case of necessity in seasons of extreme drouth, to preserve the lives of live-stock, orchards, and permanent improvements, for the further purpose of making a temporary re-distribution of the waters.

That the costs incurred by each party in the main suit herein, No. 2851, shall be paid by such party.

That in the injunction suits herein, Nos. 3449 and 3459, the plaintiff shall pay the costs of said suits.

THIRTEENTH.

That the injunctions prayed for in the cases of Jos. Geoghegan, Receiver, vs. Salt Lake City, and Jos. Geoghegan, Receiver, vs. Utah and Salt Lake Canal Company, South Jordan Canal Company, North Jordan Irrigation Company, and East Jordan Irrigation Company, be denied, and judgment therein be entered for the defendants, respectively, with costs.

FOURTEENTH.

That the parties to this action are entitled to a decree, perpetually enjoining the said parties, their successors and assigns, and each of their agents, servants and employees, and all persons acting for them, or in their interests, from in any manner, or at all, interfering one with another, in the full, free, and unrestricted use of the quantity of the waters of said river herein awarded to them, and from in any manner, or at all, interfering with each other's canals, dams, or head-gates, and from in any manner, or at all interfering with the distribution of the said waters by the commissioner as herein provided for.

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 M. 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

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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 F. Smith, W. R. Wellington, 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.

51-7625
25, 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 th lower bank of said ditch, and the water used below said mill shall be measured at a point in said ditch, opposite said mi and said defendant is also the owner of the right to use dur the winter or non-irrigation season of each year, four (4) cubic feet of water per second for domestic and culinary pur by the stockholders of said company, such waters to be measu 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 land amounting to eighty-seven and 5-10 (87.5) acres, such water t be taken through the Mousley ditch, and measured at the intak of said ditch.

VI.

That the defendant, ~~William Cooper, Jr.~~ J. W. 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 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 thr the Cooper mill race and measured at the point of diversion fr said race.

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

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

VII.

59-3500

That the plaintiffs, Salt Lake City, a municipal co porati and the Utah and Salt Lake Canal Company, a corporation, and th 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, culi

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.

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

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 fai necessary for such use.

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

XIII.

That for the purpose of carrying into effect this decre according to its true intent and purpose, J. Fewson Smith, J is hereby appointed as a Commissioner, at a monthly compensa of $100.00 to superintend and direct the measurement and div of all the water, distributed by this decree in accordance t with; to direct, supervise and inspect all means and appli for the diversion, conveyance and use of the same, and to re from time to time to the court, any violation of the provisi of this decree.

That the said monthly compensation of said Commissioner any other necessary expenses or costs incurred by him in the charge of his duties, as hereby directed, shall be paid mont by the following parties and in the proportion, respectively wit: One-sixth each by the City of Salt Lake, the Utah & Sal Canal Co., the South Jordan Canal Co., the East Jordan Irrig Co., the North Jordan Irrigation Co., and the Salt Lake City 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 decree which may be required to make effectual the rights awarded a preserved by this decree:

And in case of urgent necessity in seasons of extreme d or otherwise, to make all proper and necessary orders and de required to preserve the lives of livestock, orchards and ot permanent improvements of like character, and for the purpos of providing, temporarily, water for household and domestic poses.

XV.

And it is further ordered, adjudged and decre
in the case of Joseph Geoghegan, Receiver, etc., v
City, No. 3449, the plaintiff take nothing by his
and that the complaint be and the same is hereby f
missed, with costs taxed at $_____, in favo
dant.

That in the case of Joseph Geoghegan, Receive
Utah and Salt Lake Canal Company, South Jordan Can
North Jordan Irrigation Company and East Jordan Ir
Company, No. 3459, the plaintiff take nothing by h
and that his complaint be finally dismissed, with
at $_____, in favor of the defendants.

Dated this 15th day of July, 1901.

C. W. MORSE,

Judge.

346-366

(Title of Court and Cause).

SUPPLEMENTAL DECREE.

This matter coming on regularly to be heard this 10th day of Aug. 1901, upon the motion of Wilson & Smith, attorneys for defendant, John Neff, moving the court to amend and modify the findings of fact, conclusions of law, and the decree heretofore entered and filed herein, due notice of which motion was given to the attorneys for all the parties hereto, and no objection being made thereto, and it appearing to the court from the files and records herein, and from the evidence adduced at the trail of said cause; that the said defendant, John Neff, is entitled to the relief demanded in said motion; and it further appearing that the matters proposed by said amendments were omitted from said findings of fact, conclusions of law, and decree by an inadvertance.

It is ordered, adjudged, and decreed that the said findings of facts, the conclusions of law and decree be, and the same are hereby modified and amended as follows:

That at the end of line 15, paragraph 6 of the 9th finding of facts, the following words shall be and they are hereby inserted, "John Neff, 18 acres." At the end of the said 9th finding of facts the following words shall be and they are hereby inserted: "That the quantity of water necessary to irrigate the John Neff tract of land is .3 cu. ft. per sec. of time."

That at the end of paragraph 4 of the third conclusion of law, the following words shall be, and they are hereby added: "That John Neff is entitled to a decree awarding to him the use during the irrigation season of each year for the purpose of irrigating his land .3 cu. ft. of water per sec. of time, such water to be taken thru the Galena canal, and to be measured at the point of diversion from said canal.

At the end of paragraph 3 of the decree the following words shall be and they are hereby added: "That the defendant, John Neff, is the owner of the right to the use of .3 cu. ft. of water per sec. of time during the irrigation season of each year for the purpose of irrigating his land, such water to be taken thru the Galena canal, and to be measured at the point of diversion from said land."

Dated August 10, 1901.

#37-Morse Orders and Decrees

(Title of Court and Cause)

SUPPLEMENTAL DECREE.

On motion of Harrington & Senford, attorneys for intervenor, Eliza Annie Neff, and there appearing to be sufficient reasons therefor, it is hereby ordered that the decree, findings and conclusions in this case or either of them, wherein they inadvertently refer to intervenor, Eliza Annie Neff, as "Annie Eliza Neff", be corrected to read Eliza Annie Neff, the true name of the intervenor, and all rights decreed in this case to Annie Eliza Neff are intended for and hereby decreed to Elliza Annie Neff.

This order is intended as supplemental to the decree in this case, and is made for the purpose of correcting the mistake and inadvertance aforesaid.

Dated this 3rd day of Aug. 1901.

(Title of Court and Cause)

SUPPLEMENTAL FINDINGS OF FACT AND DECREE NO. 1.

The matter of confirmation of the report of J. Fewson Smith, Jr., the commissioner, heretofore appointed by the court in this cause, filed Dec. 7, 1901, came on regularly to be heard on the 21 day of Dec. 1901, and the further hearing thereon was continued until the 27 day of said month, issue being raised thereon by the objections in writing thereto of the defendants, Bennion & Bennion, who were represented by J.H. Moyle, their counsel, and of the defendant; the Beckstead Irrigation Co., who was represented by Stewart & Stewart, its counsel, and of the defendants A.W. Smith, James Blake, Chas. Blake, W.R. Wellington, A.C. Lunnen, A.D. Lunnen, Henry Osborne, John Neff, Sarah E. Stewart and John Wilson, who were represented by* Stewart & Stewart, its counsel, F.S. Richards, Esq., appearing on the part of Salt Lake City and the Utah and Salt Lake Canal Co., and E.A. Wedgwood, on the part of the East Jordan Canal Co., and John E. Cannon, on the part of the South Jordan Canal Co., there being no appearance on the part of the other parties to the action, and the court having heard the proofs produced by the respective parties, and being now fully

*Messrs. Wilson & Smith, their counsel, and of the defendant, the South Jordan Milling Company, who was represented by

advised in the premises, makes and files the following:

FINDINGS OF FACT.

I.

That a copy of the report of the commissioner, heretofore appointed by the court, which was filed with the clerk of this court on the 7 day of Dec. 1901, was duly served upon each and all of the parties to this action.

II.

That due and legal notice of the time and place of hearing upon the petition for the confirmation of said report was given to each and all of the parties to this action.

III.

That in the proper performance of the duties of his office, said commissioner has caused to be constructed, at the expense of $845.75, three gates at the impounding dam in the Jordan River, and a weir, having 2 crests of 25 ft. each, at a point in said river near the power plant in the Jordan Narrows.

IV.

That the construction of said gates and weir were necessary, and the maintenance of the same is essential to the proper and economical distribution of the waters of the said Jordan River to the parties entitled to the use of the same as provided by the decree of this court heretofore made, rendered and entered herein. That all of the parties to this action are benefited thereby, and that the allegation contained in the written objections, filed herein by the defendants, Bennion & Bennion, the Beckstead Irrigation Co., A.W. Smith, James Blake, Chas. Blake, W.R. Wellington, A.C. Lunnon, A.D. Lunnon, Henry Osborne, John Neff, Sarah E. Stewart, John Wilson and the South Jordan Milling Co., are not sustained by the evidence.

7.

That the proportion of the said $845.76, which each of the parties to this action should pay, is, as equitably as can be determined by legal evidence, as follows, to-wit:

West Jordan Milling & Merc. Co.	85.80
Utah Mattress & Manf. Co.	31.46
United States Mining Co.	48.62
Wm. Cooper, Jr.	65.78
Bennion & Bennion	112.83
Awarded farms on Gardiner mill race	15.13
Awarded farms on Galena Canal	14.50
Awarded farms on Bennion & Bennion mill race	14.30
Beckstead Irrigation Co.	34.32
Mousley ditch	5.72
Awarded farms on Cooper mill race	8.29
South Jordan Milling Co.	65.78
Salt Lake City Water & Electrical Power Co.	57.20
South Jordan Canal Co.	57.20
East Jordan Irrigation Co.	57.20
Utah & Salt Lake Canal Co.	57.20
North Jordan Irrigation Co.	57.20
Salt Lake City	57.20

And as conclusions of law from the foregoing facts, the court finds:

That a judgment and decree should be entered herein, confirming and approving the said report of said commissioner and adjudging that each of the parties to this action, within 15 days from the date of the entering of this decree herein, pay to the clerk of this court, to be by him paid to said commissioner, the sum heretofore found in finding 5, to be their equitable proportion of the said expense incurred by said commissioner:

DECREE.

In accordance with the foregoing findings of fact, it is hereby ordered, adjudged and decreed, that the report of J. Fewson Smith, Jr., the commissioner heretofore appointed

by this court, filed on the 7 day of Dec. 1901, be, and that the same is hereby confirmed and approved; and it is further ordered, adjudged and decreed that the parties to this action pay to the clerk of this court, on or before the ..... day of Jan. 1902, the same to be paid by the said clerk to the said commissioner, the sums hereinafter named, and that in default of such payment that execution issue therefor, or that such other and further process issue as may be necessary for the enforcement of the payment thereof.

West Jordan Milling & Merc. Co.	85.80
Utah Mattress & Manf. Co.	31.46
United States Mining Co.	48.82
Wm. Cooper, Jr.	65.78
Bennion & Bennion	112.83
Awarded Farms on Gardiner mill race	15.16
Awarded Farms Calens Ditch	14.30
Awarded Farms on Bennion & Bennion mill race	14.30
Beckstead Irr. Co.	34.32
Housley ditch	5.72
Awarded farms on Cooper mill race	8.29
South Jordan Milling Co.	65.78
Salt Lake City Water & Electricla Power Co.	57.20
South Jordan Canal Co.	57.20
East Jordan Irrigation Co.	57.20
Utah & Salt Lake Canal Co.	57.20
North Jordan Irr. Co.	57.20
Salt Lake City	57.20

Dated January 13, 1902.

(Title of Court and Cause)

In this cause the matters arising upon the petition of the North Jordan Canal Co., one of the defendants herein verified and filed on the 23 day of Apr. 1906, in pursuance of an order made in this cause by this court on the 20 day of Apr. 1906, and upon the answers thereto by the defendants, the Utah and Salt Lake Canal Co., the East Jordan Irrigation Co., the South Jordan Canal Co.,

and Salt Lake City, and various other of the defendants herein pursuant to adjournment, came on for hearing before this court on the 29th day of May, 1906, at which time the parties herein appeared before said court, and the hearing upon the matters arising thereon came on to be heard and the hearing thereof continued to and including the 31st day of May 1906, each of the said parties appearing by their respective attorneys.

And the court, after having heard the proofs and allegations of all the parties, and the argument of counsel thereon, and it appearing to the court that the allegations of the petition of the said North Jordan Canal Co. are true as therein set forth; and that during the irrigation season of 1904 the said North Jordan Canal Co. entered into a contract with the Utah and Salt Lake Canal Co. by which it was agreed that the North Jordan Canal Co. would transfer during said season a portion of the water decreed to it by the final decree in this cause, and directed the said commissioner of this court, J. Fewson Smith, Jr., to deliver to said Utah & Salt Lake Canal Co. the waters so assigned, and that the said commissioner refused such distribution in pursuance of said contract, but on the contrary, claimed that the said North Jordan Canal Co. had no right to make such transfer, but that if the said North Jordan Canal Co. could not use all the water so decreed to it, that such portion of said water should be equally distributed among the other canal and irrigation companies and the city of Salt Lake.

And it further appearing that since the making of the final decree herein that the various canal and irrigation companies, together with Salt Lake City, had installed four pumps at the intake of the Jordan River, with which to pump water from the common reservoir belonging to them, to-wit, Utah Lake, and that the said pumps were installed at their joint and common expense and cost in equal proportions, and that since the installation of said four pumps the said canal and irrigation companies and Salt Lake City, other than the North Jordan Canal Co., had installed a fifth pump, and it has been in operation pumping water from said Utah Lake, and that such waters so pumped have been distributed among and to Salt Lake City and the canal and irrigation companies other than the North Jordan Canal Co.

And it further appearing that the above mentioned five pumps are insufficient to furnish said city and the said four canal companies, including the North Jordan Co., with the quantity of water awarded to them under the decree, it is further ordered that said city and said canal companies, or such of them as desire to participate in the expense thereof, have the right to install a sixth pump and to operate the same. And by means thereof to pump water from Utah Lake to supply their necessities, not exceeding the amount awarded them, respectively, under said decree, when the gravity flow from said lake, is insufficient to supply them, respectively, with the amounts awarded under said decree.

And it further appearing that the North Jordan Canal Co. is now desirous of joining in said fifth pump upon condition that they should have the right to participate and have an equal share of the water so pumped from Utah Lake by said fifth pump, up to the amount awarded to it by final decree herein, to-wit, one-fifth of 600 cu. ft. per sec. over and above the prior rights decreed by the final decree herein to prior claims. And should said North Jordan Co. desire to join said city and said other canal companies in their installation of said sixth pump, it shall have the right so to do. The expense of the installation of the said fifth pump having been already paid by said city and said canal companies, other than the North Jordan Co., upon participating in the benefits thereof the North Jordan shall pay to said city and said companies one-fifth of the cost of installation thereof, less reasonable depreciation on account of use, or a pro rata share of such cost, according to the rights of said parties under said decree, as they may agree and elect. And the cost of the installation of the sixth pump shall be paid by the parties installing the same, and should all of said parties not join in the installation they may at any time hereafter become owners therein and participate in the benefits thereof by the payment of one-fifth of the cost of the installation, less reasonable depreciation on account of use, or a pro rata share, according to their respective rights under said decree, as they may agree and elect.

It is further ordered by the court that the said sale and transfer of waters so made in 1904 by said North Jordan Canal Co. to the Utah & Salt Lake Canal Co. was a valid transfer, and the said North Jordan Canal Co. had the right to make such transfer and sale, and the said Utah & Salt Lake Canal Co. had the right to make purchase thereof from said North Jordan Canal Co; that it was the duty of the Commissioner to observe and obey the directions and instructions of the said North Jordan Canal Co., to turn the said waters to the said Utah & Salt Lake Canal Co., that under

and by virtue of the terms of the decree herein, each of said canal and irrigation companies and Salt Lake City have the right to sell and to transfer the waters so decreed to them, respectively, subject only to the limitations upon such rights of transfer as are provided by law; and that it is the duty of the commissioner appointed by this court to make such transfers effective when so directed.

It if further ordered and directed that the North Jordan Canal Co. have the right to join with the other canal and irrigation companies and Salt Lake City in the pump now installed by them other than the North Jordan Canal Co., by paying their equal one-fifth part of the expense of such installation, and that the said North Jordan Canal Co. have the right to join with the said canal and irrigation companies and Salt Lake City in the installation of any pumps by which water is taken from the common reservoir belonging to them, to-wit, Utah Lake, up to the amount decreed to it by the final decree herein, to-wit, an equal undivided one-fifth of the waters of the Jordan River; and <u>at all times when the flow of said river shall not exceed 600 cu. ft. per sec. over and above the prior rights decreed by said decree to prior claims</u>, upon paying their equal one-fifth share of such installation.

And it appearing to the court that the refusal of the said J. Fewson Smith, Jr., commissioner of this court, to distribute the waters so transferred by the said North Jordan Canal Co. and the said Utah & Salt Lake Canal Co. as hereinbefore set forth, was made in good faith and only because he was doubtful as to the legal rights of the parties, to-wit, the South Jordan Canal Co. and the East Jordan Irrigation Co.

Therefore, the court adjudges that such refusal was in good faith and without intention to deprive any of the parties of their legal rights, and only because he desired the direction of this court in the premises.

This order is made without prejudice to any rights of parties to this action, other than the four canal companies and Salt Lake City, and any party to this action shall have the right at any time to apply to the court for such order as may be necessary to prevent the rights awarded them under the decree in this action being injuriously affected by the carrying into effect of the provisions of this order.

(Title of Court and Cause)

That matter of the application of the Utah & Salt Lake Canal Co., one of the plaintiffs in the above entitled cause for permission to install a seventh pump, pursuant to adjournment, coming in regularly to be heard this ..... day of Nov. 1906; the said Utah & Salt Lake Canal Co., the East Jordan Irrigation Co., the South Jordan Canal Co., the North Jordan Canal Co., and Salt Lake City, appearing by their respective counsel and the court having heard the proofs produced by said respective parties and the arguments of counsel, and having duly considered the same, find:

I.

That the above named parties were plaintiffs and defendants in this action, and by the terms of the decree herein were adjuded to be the owners of the right to the use of the following quantities of the waters of the Jordan River and Utah Lake, to-wit:

Utah & Salt Lake Canal Co.	246 sec. ft.
East Jordan Irrigation Co.	170 sec. ft.
Salt Lake City	150 sec. ft.
South Jordan Canal Co.	142 sec. ft.
North Jordan Canal Co.	120 sec. ft.

Subject to the prior rights of the other parties to this action, as adjudged by said decree; and that said city and said canal companies were also adjudged to be owners of the right to store and impound the waters of Utah Lake to a height known as Compromise Point; and to release and discharge such impounded waters at such times and in such quantities as they might deem necessary and expedient for their use.

II.

That since the making of said decree, said city and said canal companies have installed four pumps near the intake of the Jordan River from said Utah Lake, and said city and said canal companies, with the exception of the North Jordan Co., have installed a fifth pump at said point; and by order of this court duly made on or about the 22 day of June 1906, permission was granted said companies to install a sixth pump at said point, said order being made without prejudice to the rights of the other parties to this action.

III.

That said city and said canal companies are now wholly

dependent upon said pumps for water to fill their canals, and six pumps are insufficient to furnish them the quantity of water to which they are entitled under said decree. That in order to supply the said Utah & Salt Lake Canal Co. with the water to which it is entitled under said decree, and which is necessary to irrigate the lands of its stockholders, it is necessary that a seventh pump be installed.

IV.

That in order that said pump may be run economically and effectively, and be properly supervised and controlled by the commissioner of this court, it is necessary that they be operated as a single enterprise and under one management, and that the said city and said canal companies pay for the operation and maintenance of the same, in proportion to the quantity of water taken by each thru its respective canal.

Now there, in consideration of the premises and the foregoing facts, it is ordered:

That the Utah & Salt Lake Canal Co. be and it is hereby granted and given the permission to install in Utah Lake, near the intake of the Jordan River, where the other pumps heretofore installed by Salt Lake City and said canal companies are located, a seventh pump, at its individual expense; but under the express conditions, however, that said city and said East Jordan Co., South Jordan Co., and North Jordan Co. shall each have the right to equally participate in the installation thereof by paying a proportion of the cost of its installation to an amount not less than one-fifth of the cost thereof; and that each of said companies shall be entitled to the use of such proportion of the waters flowing from said pump as is represented by the proportionate costs thereof paid by them; and each of said companies shall have the the right at any time after the installation of said pump, to become equally interested in said pump by paying to the companies installing the same a proportion of the costs thereof to an amount not less than one-fifth of the same. The quantity of water to be taken by any of said companies from all of said pumps shall not at any time exceed the amount of water awarded to them respectively by the decree in said cause, as hereinbefore stated. And said pump, when installed, shall be operated in connection with the other pumps now installed and the sixth pump to be installed. And said city and said canal companies shall pay for the yearly operation, maintenance, and care of said pumps to the cost of the installation of which they have contributed in proportion to the amount of water drawn by each during such year.

And said seventh pump shall be operated under the

direction of the commissioner of this court, in such years and during such periods of time in the year as he shall deem proper and expedient, to the end that the respective parties interested in said seventh pump shall receive the quantities of water they are respectively awarded by the decree of this cause, without interfering with the rights of the parties under the terms of this decree not interested in said pump. And in case said city or either of said canal companies shall be dissatisfied with the acts of the Commissioner in this regard, they may upon three days notice to said Commissioner and the remaining companies, apply to this court for a review of the acts and orders of such Commissioner, and for such order in regard to the operation of said seventh pump as may seem just and proper.

This order is made without prejudice to any rights of the parties to this action other than the 4 canal cos. and Salt Lake City, and any party to this action shall have the right at any time to apply to the court for such order as may be necessary to prevent the rights awarded them under the decree in this action being injuriously affected by the carrying into effect of the provisions of this order.

Dated this 13th day of December 1906.

(Title of Court and Cause.)

This case coming on regularly to be heard the 29th day of May 1906, on the petition and claim of said Ida F. Neff, Carl Jensen, Tamar Anderson, Naomi Hardcastle and Jane A. Dumas, intervenors herein, for an order of this court to J. Newson Smith, (The Commissioner heretofore appointed by the Court,(among other things) to apportion, under the order of this Court, the waters of the Jordan River conducted and flowing thru the Galena Canal), authorizing him, said commissioner, to deliver to said five intervenors, during the irrigation season, irrigating water for their cultivated lands lying under said canal:

And it appearing from the report of said commissioner and the evidence submitted to the court that the number of acres heretofore cultivated and the amount of water heretofore used thereon by said 5 intervenors <u>for the irrigation of their said lands</u> respectively are as follows, to-wit:

<u>Ida F. Neff, 35 acres, with 66/100 of a cub ft. of water per sec.</u>

Carl Jensen, 14 acres with 28/100 of a cu. ft. of water per sec.

Naomi Hardcastle, Tamar Anderson and June A. Dumas (the three jointly) 10 acres with 20/100 of a cu. ft. of water per sec.

And that said 5 intervenors and their predecessors in interest have been continuously using said water on said lands since about the year 1874;

And it further appearing that the Board of Presidents and Agents of the various Canal Cos., plaintiffs, defendants and intervenors herein, have consented to the award to said 5 intervenors of 7/10 of a cu. ft. per sec. to be divided among them according and in proportion to their respective interests as aforesaid, and said 5 intervenors agree to accept said last mentioned amount of water in satisfaction of their claims:

And all of said parties being present in Court by their respective attorneys and assenting thereto,

It is ordered that J. Fewson Smith, Commissioner as aforesaid during the irrigating season of each and every year, deliver to said 5 intervenors 7/10 of a cu. ft. of water of the Jordan River thru the Jordan Canal and apportion the same among them according to their respective interests as hereinbefore mentioned and set forth.

Utah and Salt Lake Canal Co., the East Jordan Irrigation Co., the South Jordan Canal Co., and the North Jordan Irrigation Co., 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 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 cu. ft. of water per sec. of time in their several canals, for the purpose and use of their stockholders for culinary and domestic purposes.

VIII.

That the defendant, the South Jordan Milling Co., a corporation, is the owner of the right, for the operation of its mill to the use of 23 cu. ft. per sec. of the water required, as hereinbefore set forth, to flow thru the channel of the river for the use of the claimant diverting water below the location of the mill, such water to be taken thru the Beckstead canal and measured at the pen stock 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 & Electrical Power Co. is the owner of and entitled to the right to use all waters of the Jordan River flowing in and thru the channel thereof, at and above a point on said river where the power plant of said co. 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 unimpaired in quality, at a point opposite the place of use by the said co. 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 Co. is entitled by this decree and to take into its canal and to deliver back into the canal of the said South Jordan Canal Co., after such use, all of said water, undiminished in quantity and unimpaired in quality, in accordance with the terms of the license granted by