IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT,

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH.

- - - - -

MARTHA YOUNG, Administratrix of the estate of James Young, deceased,	4449
vs.	ORDER.
WILLIAM GORDON, Executor of the estate of Daniel Lund, deceased, et al.,	
Defendants.	

- - - - - -

For good cause shown, it is hereby ordered that the order to show cause made returnable this date at ten o'clock A. M. and the hearing thereon be and is hereby continued to February 28th, 1930, at ten o'clock A. M.

ATTEST
ALONZO MACKAY,
CLERK
By M H Kriebel
Deputy Clerk

Wm H. Bramel
JUDGE.

Dated this 14th day of February, 1930.

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT,

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH.

- - - - -

MARTHA YOUNG, Administratrix of
the estate of James Young,
deceased,

vs.

WILLIAM GORDON, Executor of the
estate of Daniel Lund, deceased,
et al.,

Defendants.

- - - - -

FILED IN THE CLERK'S OFFICE
Salt Lake County, Utah
FEB 14 1930
ALONZO MACKAY, Clerk Sal. Dist. Court
By M. H. Kriebel
Deputy Clerk

For good cause shown, it is hereby ordered that the order to show cause made returnable this date at ten o'clock A. M. and the hearing thereon be and is hereby continued to February 28th, 1930, at ten o'clock A. M.

ATTEST
ALONZO MACKAY
CLERK
By M. H. Kriebel
Deputy Clerk

JUDGE.

Dated this 14th day of February, 1930.

4449

Book 38

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT,

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH.

- - - - -

MARTHA YOUNG, Administratrix of the estate of James Young, deceased, Plaintiff,	)	4449
vs.	)	ORDER.
WILLIAM GORDON, Executor of the estate of Daniel Lund, deceased, et al., Defendants.	)	

- - - - - -

For good cause shown, it is hereby ordered that the order to show cause made returnable this date at ten o'clock A. M. and the hearing thereon be and is hereby continued to February 28th, 1930, at ten o'clock A. M.

ATTEST
ALONZO MACKAY,
CLERK
By M H Kriebel
Deputy Clerk

Wm H. Brunel
JUDGE.

Dated this 14th day of February, 1930.

4449

Book 38

MARTHA YOUNG, Administratrix of
the estate of James Young,
deceased,

Plaintiff,

vs.

MILLIAM GORDON, Executor of the
estate of Daniel Lund, deceased,
et al.,

Defendants.

ORDER.

FILED IN THE CLERK'S OFFICE
Salt Lake County, Utah
FEB 14 1930
ALONZO MACKAY, Clerk 3rd Dist. Court
M. H. Arnold
Deputy Clerk

PROBATE DIVISION
Third Judicial District
County of Salt Lake

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

For good cause shown, it is hereby ordered that the
order to show cause made returnable this date at ten o'clock
A. M. and the hearing thereon be and is hereby continued to
February 28th, 1930, at ten o'clock A. M.

Dated this 14th day of February, 1930.

TODGE.

ALONZO MACK,
ATTEST

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT, IN AND FOR

SALT LAKE COUNTY, STATE OF UTAH

MARTHA YOUNG, Administratrix of the Estate of James Young, deceased, Plaintiff,	)	
	(	NO. 4449
vs.	(	
	)	O R D E R
WILLIAM GORDON, Executor of the Estate of Daniel Lund, deceased, et al.,	(	
	(	
DEFENDANT.		

Upon the petition of William Carlson, Water Commissioner for and on the Mill Creek Stream, Salt Lake County, Utah, and after proper hearing had and upon the recommendation of an engineer duly appointed by the court to make recommendations to the court and for good cause shown, it is hereby ordered that the owners and users of water of the Mill Creek Stream as the same is diverted therefrom, must forthwith and expeditiously make such repairs of weirs, headgates and dams in and near the heads of their respective ditches and such improvements in connection therewith as are reasonably necessary to enable, during the irrigation season of 1930, ready and accurate measurement and distribution of waters from said Mill Creek Stream and through the ditches which divert water therefrom, provided, however, that before such repairs and improvements are made or installed, the character, extent and plan of the same shall be first submitted to and approved by A. Z. Richards, an engineer appointed by the court, and then such repairs and improvements shall be made and installed in such way and manner as meets the approval of said engineer.

And it is further ordered that the Commissioner, William Carlson, be and is hereby directed to clean or cause to be cleaned, the main channel of the Mill Creek Stream to a reasonable extent and so as to remove therefrom rubbish, obstructions, and vegetation and the channel made reasonably sufficient for the conveying of the waters of the Mill Creek Stream, the cost of said cleaning to be hereafter taxed and allocated by the court as costs.

And it is still further ordered that the Utah Power & Light Company, pursuant to its own stipulations, be and is permitted to construct, at its own expense, a concrete weir at or near the tailrace of its power plant and in

connection with said weir, to install and maintain a continuous recording device by which an accurate record of the flow of the water passing through the Utah Power & Light Company's power plant shall be kept, provided, however, that whatsoever is installed by the Utah Power & Light Company, as aforesaid, shall meet the approval of the said A. Z. Richards, engineer appointed as aforesaid, and provided also that a copy of the record of the flow of the water passing and measured, as aforesaid, shall be available at all times to the court, the Water Commissioner of the Mill Creek Stream and Salt Lake City, Utah, and provided still further that the said weir and recording device be constructed and installed forthwith and completed as soon as reasonably possible so that the same may be used to measure the water during the irrigation season of 1930, and it is still further ordered that the Utah Power & Light Company forthwith install and then maintain a proper weir and measuring device for the proper measurement of any water or waters used by the Utah Power & Light Company and which does not pass through the said tailrace of its power plant, provided, however, that such weir and measuring device and the installation thereof meet the approval of the said A. Z. Richards as engineer aforesaid.

And it is still further ordered that said measuring devices to be installed by Utah Power & Light Company as aforesaid, together with Salt Lake City's stream flow gaging station, which is now satisfactorily installed above all diversions upon said Mill Creek Stream, be in lieu of all other measuring devices for determining the total flow of said stream, and that the measurements taken in and by said measuring devices be used during the 1930 season and hereafter for the purpose of determining the flow of Mill Creek Stream in all its stages.

Dated at Salt Lake City, Utah, this 8th day of April, 1930.

By the Court:

ATTEST
ALONZO MACKAY,
CLERK
By M H Kruebel
Deputy Clerk

Wm H. Bramel
Judge.

4449

FILED IN THE CLERK'S OFFICE
Salt Lake County, Utah
APR 8 1930
ALONZO ROCKAY, Dist. Court
By [signature]
Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

----------ooOOOoo----------

MARTHA YOUNG, Administratrix of the Estate of James Young, deceased,	:	
Plaintiff	:	
vs.	:	OBJECTIONS TO ENGINEER'S
WILLIAM GORDON, Executor of the estate of Daniel Lund, deceased, et al	:	REPORT
Defendant	:	

----------ooOOOoo----------

Come now the owners of the Crismon and Russell ditch, the Stillman and Russell ditch, Chamberlain ditch, except Utah Power & Light Company, the Osguthorpe and Skidmore ditch, Stillman and Hussey ditch, Keller ditch, James Russell house use stream, Frank Russell and the other house use streams in upper Mill Creek effected by the report, and object to the report of the engineer A. Z. Richards, and object to the adoption thereof by the court on the following grounds:

1. The statement that all power rights have been removed from the stream by purchase or abandonment is incorrect in that, although the Osguthorpe power right has been purchased by lower Mill Creek interests in order to permit of the exchange of water with Salt Lake City, yet under the terms of the contract Thomas Osguthorpe has the right to use the power plant during his life at times when the lower Mill Creek water is not diverted from the stream by Salt Lake City, and under his lease and right he operates the said power plant at frequent intervals during the year.

2. It is impractical to close one of the channels along the lower part of the Osguthorpe millrace and it is impracticable to close one of these old channels as recommended by the engineer for the following reasons:

(a) During the high water season the Osguthorpe millrace will not carry the entire flow of the water.

ALLEN T. SANFORD, LAWYER
404-8 BOSTON BLDG.
SALT LAKE CITY, UTAH

(b) In order to operate the mill it is necessary to have the spillway channel.

(c) During the high water the entire flow of the stream will not pass the penstock of the Osguthorpe mill.

(d) The water has, for many years, been permitted to flow through the Russell land and back into the main channel, and in the course of time has created a channel that is as good or better than the original channel. As it runs now it adds materially to the value of the Russell estate from the artistic standpoint, and flowing as it does, does not cause any increase in loss through seepage and evaporation, and nothing would be gained by stopping of this channel, and further, this same proposition was submitted at the time of the trial of this case, and request at that time was made similar to the request now made in the engineer's report. At that time the request and suggestion of the lower Mill Creek was not followed by Judge Morse, and the water was, by him, permitted to flow as it had flowed for many years.

3. With reference to the recommendations c,d, f, h, i, j, k, and r, these parties objected to said recommendations or the adoption thereof on the following grounds:

(a) The estimates given by the engineer for the cost of constructing the devises recommended is too low, as they will cost considerably more than the estimate given by the engineer.

(b) At the present time Salt Lake City has entered into an exchange contract with the owners of approximately 80% to 83% of the primary water of said Mill Creek; that is, the exchange contract covers the rights of the Hoagland and Murphy ditch, the White ditch, the Brigham Young ditch, Amos H. Neff ditch, and the Franklin and John Neff ditch; and Salt Lake City now has under consideration some arrangements with the other users of the water of said Mill Creek by which they propose to divert the exchange water to which they are entitled at the dam of Utah Power & Light Company in order to force a larger volume through the conduit, and if they should do this it has been proposed that they will deliver to the other users of the water, or at least a part of them, the water to which they are entitled through pipes, the intake of which shall be at the Utah Power & Light Company dam, in which event the concrete headgates would be useless.

(c) Wooden headgates and wood bases for cippoletti weirs may be constructed for a small fractional part of the cost of the concrete head gates and bases, and such wooden head gates and bases, if watched and kept in a reasonable state of repair, will last for a period of fifteen to twenty-five years, and during the next fifteen years to twenty-five years it may be that Salt Lake City will adquire substantially the entire flow of said Mill Creek, in which event the concrete headgates and bases for weirs would be useless. The engineer has recommended that the headgates and weirs in the Hoagland and Murphy ditch and the White ditch, be allowed to stand. These are of wooden construction. If they shall be permitted to stand there is no reasonable objection why wooden headgates and bases for weirs should not be permitted in the ditches at the head of the stream.

(d) That there is already installed in all of the ditches head gates and cippoletti weirs. These weirs and headgates were installed under the direction or under the approval of A. F. Doremus, who acted as commissioner under an order of the court made by Judge Morse about twenty years ago, and said weirs and headgates have served for approximately twenty years, although most of them are in need of repair, that is the cleaning out of the approaches to the weir and the weir itself needs repair, as also does the headgate, but frame headgates and foundations for the weir may be constructed at a cost of not more than 10% to 20% of the amount required to install the concrete headgates.

4. With reference to recommendations p and q, the owners of these ditches object to the change being made for the following reasons:

(a) That during the normal flow of the water the entire flow of the stream has for sixty or seventy years been diverted through the Neff Millrace, and at some distance below the mouth of this millrace the water has been taken out for the Keller ditch and the balance of the water has flowed through the millrace, and the various owners of house use streams have diverted the water from the millrace, which is adjacent to the homes, and the point of use of said water, and a good deal of money has been expended in putting this channel in good condition for carrying water and beautifying the grounds and premises through which it runs, and for many years the water going through the Brigham Young ditch and lower Mill Creek, including the Hogle and Murphy ditch and the White ditch, has been divided through a headgate at the point where it is now divided. This headgate has proved a satisfactory headgate for the division of the water for many years, although it may be in need of repair, and these parties believe that the system which has been in practice for many years is better than that which has been recommended. Under the system which has been in practice the water for the various house use streams is diverted from the channel so that it is conducted a very short distance, and as is proposed by the engineer's report the water would be necessarily transported in the small ditches for a greater distance than is required now for it to be transported in the small ditches.

(b) While these parties have no interest in the house use streams they join in objections which may be made by the owners of said house use streams that the cost of the diverting devises as recommended by the engineer, creates an unnecessary burden upon the owners of said house use streams, and they further say that said water may be diverted to these house use streams and measured over cippolletti weirs in said streams at a cost not more than 10% or 15% of the cost which is proposed in the engineer's report.

5. With respect to recommendation "a" your petitioners deem such recommendation undesirable at this time for the reason that within a short period of time the high water will be running in Mill Creek, and if all the little dams which nature has constructed and other devices for checking and breaking the flow of water should be taken out, then during the high water there would

be no restraint whatsoever, upon the force of the water, and it will, in many instances, wash out banks and dig a deeper channel in the bottom through the gravel and leave the bottom which causes larger seepage than the channel which has now been used for many years, and your petitioners believe that such a cleaning out of the channel just prior to high water would be detrimental to all parties concerned.

6. These petitioners object to the construction of the concrete intake structure controlled by a water-tight cast iron gate operated by a screw and hand wheel which can be set and locked at any position of gate opening required. If your petitioners understand this recommendation, it is proposed to have the headgate so constructed that it will be raised and lowered vertically. Under such a device the said gate would be raised a few inches and in a stream in which there is more or less brush and pebbles and rocks flowing, such a deviceis not practical because brush and rock will accumulate against the opening of the head gate and cut off the flow of the water through the headgate. There is now installed in the lower ditches, and also there was originally installed in the upper ditches, and yet there, although not now all in good working order, gates so devised that they are opened at the side so that they are opened for a certain width without any obstruction at the top, and this is a better device and less apt to be clogged by rocks and brush than is the device recommended by the engineer, and better suitable for a stream such as Mill Creek, and it is similar to the device recommended by Doremus when he installed the weirs and headgates, also they are much less expensive . The devices recommended by the engineer are too expensive for a stream such as Mill Creek with the number of ditches or laterals, and with the small amount of water flowing through each. Further, Mill Creek is a stream that fluctuates, and if the headgate is opened laterally, then the ditch to which said water flows through the said headgate participates in the fluctuations of the stream, whereas, with the headgate such as recommended by the engineer the flow to the ditch would be constant, except as it

might be interrupted through brush or rock obstructing the headgate. It may be that a device such as recommended by the engineer, were it not so expensive, would be proper for house use streams, which are allotted a definite flow of water, but they are not suitable to streams which are allowed a proportion of the entire flow of the water. But for many years the house use streams have been apportioned a definite and fixed flow by means other than the costly steel vertical headgate.

WHEREFORE, these defendants pray that the recommendation of the engineer A. Z. Richards which are objected to herein be not adopted by the court, and defendants pray for such other relief as may be equitable and proper.

Attorney for Defendants
answering herein.

STATE OF UTAH :
: ss
COUNTY OF SALT LAKE :

GEORGE F. TAYLOR being first duly sworn, deposes and says: That he is one of the defendants above named; that he has read the foregoing Objections and Answer; that the matters therein stated are true according to his best knowledge, information and belief.

Geo. F. Taylor

Subscribed and sworn to before me this 21st day of April, 1930.

Allen D. Sanford
Notary Public
Residing at Salt Lake City, Utah.
My commission expires

Copy rec'd apr 30 - 1931

O. W. Carlson

Bagley Judd & Lay
Attys for Mrs. W. J. O'Connor
Geo. R. Corey & A. C. Inman
Atty. for Utah Power & Lt. Co.

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT, IN AND FOR

SALT LAKE COUNTY, STATE OF UTAH

* *

MARTHA YOUNG, Administratrix of the estate of James Young, deceased, Plaintiff,	)	
-vs-	)	
WILLIAM GORDON, Executor of the estate of Daniel Lund, deceased, et al, Defendant.	)	NOTICE

* *

To: The users and owners of waters of the Mill Creek Stream and to the following attorneys for the respective users and owners of such waters, namely: SHIRLEY P. JONES, City attorney for Salt Lake City; ALLAN T. SANFORD, attorney for Upper Ditches; COREY & INMAN, attorneys for Utah Power & Light Company; BAGLEY JUDD & RAY, attorneys for Mrs. O'Connor; and MORRIS & CALLISTER, attorneys for Barry:

You and each of you will please take notice that a hearing, upon the petition heretofore filed in the above entitled cause by William Carlson, Water Commissioner for the Mill Creek Stream, will be held and had before the Honorable William H. Bramel, Judge of the Third Judicial District Court, at the City & County Building, Salt Lake City, Utah, on Thursday, May 22nd, 1930, at the hour of 10 o'clock A.M. for the purpose of considering, fixing and ordering the payment, as taxable costs, of such sums of money as may be deemed necessary to cover the costs and expenses of work done and to be done on the said Mill Creek Stream pursuant to the order of the court hereinbefore made and entered and also for the purpose of determining and ordering, as further taxable costs, what amount should be paid A. Z. Richards, as engineer, and attorneys fees that may and should be allowed to the attorney for his services in

representing the said Water Commissioner in connection with his said petition and proceedings thereunder and in consequence thereof.

O. W. Carlson
Attorney for William Carlson,
Water Commissioner.

Received copy of the above Notice this 19th day of May, 1930.

Bagley Judd & Ray
Attorney for Mrs. O'Connor.

A. T. Sanford By Abb
Attorney for Upper Ditches

Geo. R. Corey & Arthur C. Inman
Attorneys for Utah Power & Light Co.

Shirley P. Jones A. W. Watson & W. A. Fraser
Attorneys for Salt Lake City.

Morris & Callister
Attorneys for Barry

4449

File

RECEIVED
MAY 19 1929

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

MARTHA YOUNG, Administratrix of the Estate of James Young, deceased,	)	
Plaintiff,	)	
-vs-	)	ANSWER TO ORDER TO SHOW CAUSE
WILLIAM GORDON, Executor of the Estate of Daniel Lund, deceased, et al,	)	CASE NO. 4449
Defendants.	)	

Comes now Ed Barry, one of the defendants in the above entitled matter, and for Answer to the Order to Show Cause in said matter issued by the above entitled Court under date of January 23, 1930, alleges:

That, for the proper and economical distribution of water from Mill Creek stream, it is necessary that old weirs and measuring devices be either repaired, where the same can be properly repaired and new weirs and measuring devices installed where repairs cannot be successfully made, but this defendant alleges that such repair work or installation of new weirs or measuring devices should not be under the control or management of the water commissioner nor should such work or installation be so costly that the same will be a burden upon the water users of said stream, and this defendant further alleges that all such necessary repair work or new installation should be done and accomplished by a competent engineer to be appointed by the Court and under the direction of the Court and that the cost of the same be equitably apportioned among the several water users as the Court shall deem proper.

Morris & Ballistera
ATTORNEYS for defendant,
Ed Barry.

Copy of foregoing Answer received this 1st day of March, 1930.

Oscar W Carlson
ATTORNEY for plaintiff.

4449

Book 38

FILED IN THE CLERK'S OFFICE
Salt Lake County, Utah
MAR 4 - 1930
ALONZO MACKAY, Clerk 3rd Dist. Court
By _____ Deputy Clerk

IN THE DISTRICT COURT OF SALT LAKE COUNTY,

STATE OF UTAH.

- - - - -

MARTHA YOUNG, Administratrix of the estate of James Young, deceased, Plaintiff, vs. WILLIAM GORDON, Executor of the estate of Daniel Lund, deceased, et. al. Defendant.	A N S W E R.

4449

- - - - -

Comes now Salt Lake City, a municipal corporation of the State of Utah, and answering the petition of William Carlson, Water Commissioner for the Mill Creek stream in Salt Lake County, Utah, admits, denies and alleges as follows:

1. That by virtue of certain exchange contracts made with the owners thereof, Salt Lake City is entitled to the use of the water in Franklin and John Neff, Amos H. Neff and Brigham Young Ditches; the White Ditch; and the Hoagland and Murphy Ditches; with the right reserved by the grantors to certain culinary water for their own use; that Salt Lake City therefore assumes the responsibility for the weirs and measuring devices for said ditches.

2. Admits the allegations of paragraph one of said petition.

3. Admits the allegations of paragraph two of said petition.

4. Admits the allegations of the first sentence of paragraph three and of the first three lines of the second sentence, but for lack of information upon which to form a belief denies the allegations of the remainder of said paragraph three.

5. Admits the allegations of paragraph four of said petition.

6. For lack of information upon which to form a belief denies the allegations of paragraph five.

7. For lack of information upon which to form a belief

denies the allegations of paragraph six.

8. For lack of information upon which to form a belief denies the allegations of paragraph seven.

Further answering said petition said Salt Lake City alleges:

9. That the weirs and measuring devices in the Franklin and John Neff and Amos H. Neff ditches and in the Hoagland and Murphy ditches are adequate and proper and are not in need of repair or replacement.

10. That Salt Lake City has already completed plans for the installation of a new weir on the Brigham Young ditch and the same will be installed as soon as weather conditions will permit; that the headgate on said ditch is in proper condition.

11. That Salt Lake City has but recently completed its exchange upon the White Ditch and has prepared plans and specifications for a new weir and measuring device on the said White Ditch which will be installed as soon as weather conditions will permit.

12. That Salt Lake City has installed and intends to immediately install where necessary proper and adequate weirs and measuring devices upon all of said ditches as aforesaid.

13. That the weir in the main stream just below the Utah Power & Light Company's power plant should be replaced and reconstructed above all the ditches on said Mill Creek stream and that Salt Lake City is willing and hereby offers to bear its fair share of the cost of such replacement.

14. That the cost and expense of this proceeding was not made necessary by any act or omission on the part of Salt Lake City and that the said city has at all times reasonably complied with the said decree aforesaid and the proper orders and requests of the said water commissioner.

WHEREFORE, Salt Lake City prays that as to it the said petition be dismissed with the exception of an order fixing its fair share of the cost of replacement of the weir in the main

stream aforesaid, and that otherwise it go hence without cost.

Shirley P. Jones, and Watson Wallace
Attorneys for Salt Lake City.

STATE OF UTAH)
) (SS.
COUNTY OF SALT LAKE)

SHIRLEY P. JONES, being first duly sworn, on oath deposes and says: That he is an officer of Salt Lake City, a municipal corporation, to-wit, City Attorney, and makes this verification for and on behalf of said Salt Lake City; that he has read the foregoing Answer and knows the contents thereof; and the same is true of his own knowledge, except as to matters therein stated upon information and belief, and as to such he believes it to be true.

Shirley P. Jones

Subscribed and sworn to before me this 4th day of March, A. D. 1930.

Elsie M. DeBray
Notary Public, residing at
Salt Lake City, Utah.

My commission expires:
Oct. 6-1931

Received copy of the foregoing answer
March 4, 1930
O. W. Carlson
Attorney for Water Commissioner

stream aforesaid, and that otherwise it go hence without cost.

Shirley P. Jones Orrington W. Fraser
Attorneys for Salt Lake City.

STATE OF UTAH)
) SS.
COUNTY OF SALT LAKE)

SHIRLEY P. JONES, being first duly sworn, on oath deposes and says: That he is an officer of Salt Lake City, a municipal corporation, to-wit, City Attorney, and makes this verification for and on behalf of said Salt Lake City; that he has read the foregoing Answer and knows the contents thereof; and the same is true of his own knowledge, except as to matters therein stated upon information and belief, and as to such he believes it to be true.

Shirley P. Jones

Subscribed and sworn to before me this 4th day of March, A. D. 1930.

Clare W. Hickey
Notary Public, residing at
Salt Lake City, Utah.

My commission expires:
Oct. 6-1931

FILED IN THE CLERK'S OFFICE
Salt Lake County, Utah
MAR 5 - 1930
ALONZO MACKAY, Clerk 3rd Dist. Court
By [signature]
Deputy Clerk

Book 38

4449

Received copy of the foregoing answer
March 4, 1930
[signature]
Attorney for Water Commission

IN THE DISTRICT COURT OF THE STATE OF UTAH

Third Judicial District

IN AND FOR THE COUNTY OF SALT LAKE

-------- ooOoo --------

MARTHA YOUNG, Administratrix of the Estate of James Young, deceased,	:	
Plaintiff,	:	
-vs-	:	A N S W E R
WILLIAM GORDON, Executor of the Estate of Daniel Lund, deceased, et al,	:	
Defendant.	:	

-------- ooOoo --------

Comes now Mrs. W. J. O'Connor for herself and as guardian of Joe Houston Lamb, Susanna B. Lamb, and Harold B. Lamb, Minors, and answering the petition filed herein by the Water Commissioner, William Carlson, admits, denies and alleges:

1. Admits that William Carlson is the Water Commissioner on Mill Creek stream in Salt Lake County, Utah.

2. Answering paragraph 2 of said petition these answering defendants admit that on the 1st day of August, 1913, the Third Judicial District Court of Utah, in and for Salt Lake County, Honorable C. W. Morse sitting, entered its decree in the above entitled case wherein and whereby said court adjudicated the right of these answering defendants and others in and to the waters of Mill Creek; that by said decree Susan Emery Holmes was adjudged to have certain rights in and to the said water of Mill Creek, which rights are fully and specifically set forth in said decree; that these answering defendants have succeeded to and now are the owners of all the rights by said decree adjudged and awarded to said Susan Emery Holmes.

3. Answering paragraph 3 of said petition these answering defendants deny that they have ever been requested or demanded to install any weirs or measuring devices and allege that good and sufficient weirs and measuring devices are already installed and in use upon their property; that the same are sufficient to measure

all of the water adjudged to belong to these answering defendants.

4. Answering paragraph 4 of said petition these answering defendants say that they are not advised and do not know whether it may be necessary for other persons to install and maintain weirs for the use and convenience of said petitioner, but defendants deny that it is necessary or will be useful for these defendants to either install and maintain or have installed and maintain any other different devices for measuring or different weirs than those that now exist on their property.

5. Defendants deny paragraphs 5 and 6 of petitioner's petition.

6. These answering defendants say that they are the owners of the water rights adjudged in said decree to belong to Susan Emery Holmes; that they are now entitled to all of the water so adjudged and have been and have the right to continue to divert and use said water in accordance with the terms of said decree.

Further answering said petition and by way of cross petition these defendants allege:

1. That this court heretofore, to-wit, on the 1st day of August, 1913, in the above entitled matter adjudicated and awarded certain rights in and to the waters of Mill Creek to Susan Emery Holmes, which rights more particularly appear in the decree hereinbefore referred to.

2. These defendants allege that they reside at Mill Creek, Salt Lake County, Utah, upon the property formerly owned and occupied by Susan Emery Holmes; that they have succeeded to and are now the owners of all the rights in and to the waters of said creek so decreed and awarded to Susan Emery Holmes.

3. That sometime during the month of December, 1929, petitioner, William Carlson, constructed or caused to be constructed a certain device or dividing weir on the property of J. O. Smith about 400 feet east of the property of these answering defendants; that said weir or measuring device was constructed in the stream by which waters are necessarily conveyed to the property of these

answering defendants; that the same is built of steel and concrete and so designed and operated that the same interferes and will continue to interfere with the enjoyment by these defendants of the rights heretofore awarded to Susan Emery Holmes, which rights are now the property of these defendants.

4. These defendants allege that said weir so constructed by petitioner was constructed without the consent or knowledge of these defendants; that said weir or device is so built that during low water or extreme cold weather it is impossible for sufficient water to find its way onto these defendants' property to give these defendants the water to which they are entitled; that during a part of the time since said weir was so constructed these defendants have been unable to get any water whatsoever notwithstanding sufficient water would have been available to these defendants except for the construction and maintenance of said weir.

5. These defendants further allege that said weir as constructed can serve no useful purpose in connection with the use and enjoyment by others of rights in and to the waters of Mill Creek; that its only purpose is now and in the future can be to hinder and interfere with these defendants in the use and enjoyment of their water rights. And these answering defendants allege that petitioner above named acting in concert with the lower Mill Creek Water Company constructed and built said weir for the purpose of preventing these defendants from enjoying their full rights to which they are entitled; that said weir is so constructed that two-thirds of the water in said stream is necessarily diverted away from the ditch which supplies these defendants with the result that when the water in said stream is low, or the temperature is very cold, the amount of water which is permitted to flow in the ditch which supplies these defendants is insufficient to permit the right amount or any amount of water to become available for use by these defendants, and these defendants allege that said weir is so constructed that it diverts two-thirds of the water flowing above said weir into a channel which does not and cannot be of any use or value to any other owner of water in said stream.

6. Defendants further allege that they use and employ said water in their home for domestic use and particularly for use in the boiler by which these defendants heat their home in the winter; that during the past winter the presence of said weir has defeated the rights of these defendants to use said water in their home thereby rendering the use in said boiler dangerous and depriving these defendants of the enjoyment of the water to which they are entitled. And these answering defendants allege that unless said weir or measuring device is removed and taken from said stream it will deprive these answering defendants of the enjoyment of the rights which they possess to their irreparable damage.

W H E R E F O R E, these answering defendants pray:

1. That petitioner take nothing by his said petition, and that the same be dismissed.

2. That petitioner be required to show cause why he should not be ordered and directed by this court forthwith to take up and remove said weir and measuring device as above set out on the property of J. O. Smith.

3. These answering defendants pray for such other relief as to the court may seem just and equitable.

Bagley Judd & Ray
Attorneys for Defendants
Mrs. W. J. O'Connor for herself and as Guardian of Joe Houston Lamb, Susanna B. Lamb and Harold B. Lamb, Minors.

STATE OF UTAH)
: ss.
COUNTY OF SALT LAKE)

MRS. W. J. O'CONNOR, being first duly sworn, deposes and says:

That she is one of the defendants in the above entitled action, that she has read the foregoing Answer and knows the contents thereof; that the same is true of her own knowledge except as to matters therein stated upon information and belief, and as to those matters she believes it to be true.

Mrs. W. J. O'Connor

Subscribed and sworn to before em this 4 day of February, 1930.

Paul Ray
.. NOTARY PUBLIC ..

Residence: Salt Lake City, Utah

My Commission expires July 21-1932

Received copy this 5th day of March, 1930.

O. W. Carlson By V. Harris
Attorney for Plaintiff.

pd 50/2

4449

Box 38

-4-

STATE OF UTAH)
: ss.
COUNTY OF SALT LAKE)

MRS. W. J. O'CONNOR, being first duly sworn, deposes and says:

That she is one of the defendants in the above entitled action, that she has read the foregoing Answer and knows the contents thereof; that the same is true of her own knowledge except as to matters therein stated upon information and belief, and as to those matters she believes it to be true.

Mrs. W. J. O'Connor

Subscribed and sworn to before em this 4 day of February 1930.

[signature]

NOTARY PUBLIC

Residence: Salt Lake Ot

My Commission
July 31-1932

FILED IN THE CLERK'S OFFICE
Salt Lake County, Utah
MAR 5 - 1930
ALONZO MACKAY, Clerk 3rd Dist. Court
By [signature] Deputy Clerk

Received copy this 5th day of March 1930.

O. W. Cohlmer - Pty Hatton
Attorney for Plaintiff

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT, IN AND FOR

SALT LAKE COUNTY, STATE OF UTAH

* *

MARTHA YOUNG, Administratrix of the estate of James Young, deceased, Plaintiff,	:	
-vs-	:	ORDER TO SHOW CAUSE
WILLIAM GORDON, Executor of the estate of Daniel Lund, deceased, et al, Defendant.	:	4449

* *

WHEREAS, William Carlson, as Water Commissioner for the Mill Creek stream, has filed in the above entitled cause, his petition wherein he prays that said court direct and command the owners of and users of water through the ditches of and from the Mill Creek stream in Salt Lake County, Utah, to install and maintain necessary and proper weirs and measuring devices in the said Mill Creek stream and in connection with the ditches of and from the same or that he be authorized to install such weirs and measuring devices at the expense and cost of said owners and users and that such expense and cost be assessed and taxed by the court herein and that the payment of the same be directed to be made on or before a certain day and in the event that such payment is not so made that said commissioner be authorized to and directed to withhold the distribution of water from those that may be delinquent in making payment of said cost and expense until the same are fully paid and that the withholding of distribution for such purpose be a cummulative remedy in addition to the right to have execution issue and

WHEREAS, it appears from said petition that the following are the owners of and users of water through the ditches of and from the said Mill Creek stream, to-wit:

CRISMON & RUSSELL DITCH:

Jas. Russell estate, by Mrs. Jas. Russell - Sugar R D # 1
Pleasant View Park Co., E. W. Kelly - 1475 Princeton Ave., City

CHAMBERLAIN DITCH:

Joseph Stillman - Sugar R D # 1, Salt Lake County, Utah
Utah Power & Light Company - Salt Lake County, Utah

STILLMAN & HUSSY DITCH:

Joseph Stillman - Sugar R D # 1, Salt Lake County, Utah
Samuel Stillman - Sugar R D # 1, Salt Lake County, Utah

OSGUTHORPE - SKIDMORE DITCH:

Thos. Osguthorpe - Sugar R D # 1
B. J. Hardy - % Geo. H. Hardy - 1117 East 21st South, City
Nellie & Mabel Brown - 1421 South Main Street, City
Jas. Young estate, by Jas. Young - Sugar R D # 1
Oscar Capson " " 1
Jos. G. Rank estate by Jos. G. Rank, Jr. - Sugar R D # 1
Jos. Osguthorpe " " 1
Albert Osguthorpe " " 1
Mrs. Carl Capson " " 1
Albert Capson " " 1
Andrew Godwin " " 1

STILLMAN - RUSSELL DITCH:

Matilda S. Taylor Sugar R D # 1
Geo. Taylor " " 1
Brigham Stillman " " 1
Mrs. Forest Stillman " " 1
Samuel Stillman " " 1
Mrs. Cyrus Stillman Richfield, Utah
Barbara M. Cummings 1030 East 1st South Street, City
Albert Swain 240 South 8th East Street, City
Franklin Russell Sugar R D # 1
Jas. Russell estate, by Mrs. Jas. Russell -Sugar R D # 1
Bryant S. Hinckley 840 East 7th South Street, City
F. C. Capson State Prison Farm, Salt Lake City
Miss Henderson Salt Lake City
Mrs. Minnie Johnson Sugar R D # 1
Nathaniel Baldwin " " 1
A. B. Irvine " " 1
Mrs. W. H. Child " " 1
Geo. E. Airis " " 1
D. Folker " " 1
J. O. Smith " " 1

TRIPP DITCH:

Mrs. Minnie Johnston Sugar R D # 1
Nathaniel Baldwin " " 1

FRANKLIN-JOHN NEFF-AMOS H. NEFF-BRIGHAM YOUNG DITCHES:

East Mill Creek Water Co.-Albert Capson, Pres.- Sugar R D # 1

KELLAR DITCH:

Kellar estate, by Mrs. Eliza Kellar and A. W. Kellar		Sugar R D # 1
Andrew Bagley		" " 1
J. H. Osguthorpe		" " 1
Logan Wiseman		" " 1
Joseph Oliver		" " 1
Wm. Berg		" " 1
B. H. Jacobson	3361 Hyland Drive, Salt Lake City	" " 1
E. S. Rich	249 Douglas Street, Salt Lake City	
Alfred Pritchard		Sugar R D # 1
Mrs. Augusta M. Last		" " 1
Wm. Trublood		" " 1
C. J. Collyer		" " 1
Ed. Barry		" " 1
Mrs. Freda Knudsen		" " 1
Edgar Debenham		" " 1

WHITE DITCH;

White Ditch Irrigation Co.-Mathew White, Pres.-3067 So. 17th East

HOAGLAND-MURPHY DITCHES:

Lower Mill Creek Irrigation Co.-D. J. Davis-1635 East 33rd So., City

AMOS H. NEFF HOUSE USE STREAM:

Samuel Neff — Sugar R D # 1

AMOS H. NEFF-SUSAN EMERY HOLMES HOUSE USE STREAM:

David Neff	Sugar R D # 1
Samuel Neff	" " 1
Mrs. Wm. J. O'Connor	" " 1

SUSAN EMERY HOLMES HOUSE USE STREAMS:

Mrs. Wm. J. O'Connor — Sugar R D # 1

SEYMOUR H. NEFF HOUSE USE STREAMS (Two):

L. L. Bagley	1087 So. 11th East Street, City	
Jeremiah Stokes		Sugar R D # 1
Eugene J. Neff		" " 1

AMOS B. NEFF HOUSE USE STREAM:

Amos B. Neff estate by Ferris Neff - 2690 Dearborn Street, City

JAMES RUSSELL HOUSE USE STREAM:

James Russell estate, by Mrs. Jas. Russell, — Sugar R D # 1

NOW, THEREFORE, you, and each of you are hereby ordered to show cause before this court in the above entitled action at the City and County Building, Salt Lake City, Utah and before the Honorable Wm H Brand Judge of said court on Friday the 14th day of February 1930, and at the hour of ten o'clock A.M. of said day, why you and each of you should not be directed and commanded to install and maintain proper and necessary

weirs and measuring devices in and on the Mill Creek stream for the proper measuring and distribution of the water of said Mill Creek stream into and through the ditches on and extending from the same in pursuance of a Decree of this court made, filed and entered August 1st, 1913 or show cause at said time and place why the Water Commissioner of the said Mill Creek stream should not be authorized and directed to install such weirs and measuring devices on said stream and for the purpose as aforesaid at your expense and cost and that such expense and cost be assessed and taxed by the court and that the payment of same be made on or before a certain day and in the event that payment is not so made the Water Commissioner be authorized and directed to withhold the distribution of water to whomsoever may be delinquent in the payment of said costs and expenses until the same shall be fully paid and that the withholding of the distribution of water as aforesaid be a cummulative remedy in addition to the right to levy execution in the premises and also show cause at said time and place why attorney's and engineering fees and other expenses occasioned by the proceedings herein should not be taxed as costs herein.

It is further ordered that this order show cause may be served by the said Petitioner or by whomsoever he may employ and that reasonable compensation shall be allowed for the services of this order and such compensation may be taxed as costs herein.

David M. Hoffman
Judge

Done in open court this
23rd day of January, 1930.

ATTEST
ALONZO MACKAY
CLERK
By Fred L. Russell
Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT, IN AND FOR

SALT LAKE COUNTY, STATE OF UTAH

MARTHA YOUNG, Administratrix of the estate of James Young, deceased,	)	
Plaintiff,	)	
-vs-	)	A F F I D A V I T
WILLIAM GORDON, Executor of the estate of Daniel Lund, deceased, et al,	)	#4499
Defendant.	)	

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

CHARLES W. FAGG, being first duly sworn deposes and says: That he is a resident and citizen of Salt Lake County, Utah; that he is over twenty one years of age and has been such resident and citizen for several years continuously last past; that he now resides and for a long time last past has resided at 3199 Hyland Drive, Salt Lake County, Utah; that on or about the 24th day of January,, 1930, he was requested and employed for and on behalf of and by William Carlson, Water Commissioner for the Mill Creek Stream, to serve that certain "Order To Show Cause" made and issued in the above entitled case, by David W. Moffatt, Judge, on the 23rd day of January, 1930; that pursuant to said employment he served said "Order To Show Cause" upon each and every party and person named and recited in said "Order To Show Cause" as owners and users of water by showing to said parties and persons the original "Order To Show Cause" as made and issued as aforesaid, and by leaving a copy of such Order with each and every one of said persons and parties with the exception of three such parties, to-wit:

Ed Barry
C. J. Collyer
Mrs. Cyrus Stillman

which said three parties reside outside of Salt Lake County, Utah;

that to the said Ed Barry, who resides at Butte, Montana, and the said C. J. Collyer, who resides at Kirtland, New Mexico, a copy of said "Order To Show Cause" made and issued as aforesaid was mailed by and in a duly and properly registered envelope and letter addressed to the said Ed Barry at 610 Metals Bank Building, Butte, Montana and the said C. J. Collyer at Kirtland, New Mexico; that service of said "Order To Show Cause" was made, as aforesaid, on said parties and persons, owners and users of water, as aforesaid, between the dates of January, 25th, 1930, and March 10th, 1930; that a copy of said "Order To Show Cause" served as aforesaid, is attached hereto.

Charles W. Fogg

Subscribed and sworn to before me this 28th day of February, 1930.

Grant Iverson
Notary Public, residing at Salt Lake City, Utah.

My Commission Expires:

July 12 1932

that to the said Ed Barry, who resides at Butte, Montana, and the said C. J. Collyer, who resides at Kirtland, New Mexico, a copy of said "Order To Show Cause" made and issued as aforesaid was mailed by and in a duly and properly registered envelope and letter addressed to the said Ed Barry at 610 Metals Bank Building, Butte, Montana and the said C. J. Collyer at Kirtland, New Mexico; that service of said "Order To Show Cause" was made, as aforesaid, on said parties and persons, owners and users of water, as aforesaid, between the dates of January, 25th, 1930, and March 10th, 1930; that a copy of said "Order To Show Cause" served as aforesaid, is attached hereto.

[signature]

4449

Subscribed and sworn to before me this 21 day of February,

[signature]
Notary Public, residing at Salt Lake City, Utah.

My Commission Expires:

[handwritten date]

FILED IN THE CLERK'S OFFICE
Salt Lake County, Utah
MAR 21 1930
[illegible] Clerk 3rd Dist. Court
By [signature]
Deputy Clerk

IN THE DISTRICT COURT OF SALT LAKE COUNTY, STATE OF UTAH

MARTHA YOUNG, Administratrix of the Estate of James Young, Deceased,

Plaintiff,

vs.

WILLIAM GORDON, Executor of the Estate of Daniel Lund, Deceased, et al.,

Defendants.

REPLY OF UTAH POWER & LIGHT COMPANY TO RICHARDS REPORT OF MARCH 17, 1930.

4449

Comes now UTAH POWER & LIGHT COMPANY, one of the interested parties herein, and files this its reply to the report of A. Z. Richards dated March 17, 1930, which said report was prepared and filed herein by virtue of the appointment by the court of said A. Z. Richards, and by virtue of the order of this court.

I.

Utah Power & Light Company, hereinafter called "Power Company," respectfully shows to the court and alleges:

That it is the owner of and operates a certain hydro-electric generating station at the mouth of Mill Creek Canyon on Mill Creek Stream in Salt Lake County, Utah; that the water used in operating said plant is obtained by means of a pipe line which diverts said water from the main stream aforesaid at a point approximately five (5) miles above the mouth of the canyon and at a point above which there are no irrigation diversions from said stream; that said water is conducted from said diverting point to the Power Plant by means of a pipe line and that all of said water, except a small portion used for culinary and household purposes, is returned to said stream after passing through the plant; that immediately below the tailrace of said plant there exists a small reservoir, the outlet of which is a concrete spillway structure; that the main stream of said Mill Creek enters said reservoir from the east and at a point just above the tailrace of said Power Company's plant;

II.

That at the aforesaid tailrace of its plant the Power Company owns, operates, and maintains a weir installed for the purpose of measuring the total flow of the water passing through said plant; that the Power Company is ready and willing and intends to make all reasonable and necessary improvements and repairs to said weir, and to install an efficient recording device, to the end and so that the total flow of water passing through said plant may be accurately and correctly measured and so that records of said water and the quantity thereof may be kept at all times; that if the aforesaid proposal of the Power Company meets with the approval of this court, said Company is ready and willing to proceed with the repairs and improvements aforesaid necessary to constitute such a measuring and recording device, as soon as weather conditions and the flood water conditions of said stream permit;

III.

That Salt Lake City has installed and does at all times maintain a stream flow gaging station equipped with an Au water stage recorder, which said devices accurately measure and record the total flow of water in said stream at that location; that the City's water gaging station aforesaid is located on said stream at a point approximately one quarter of a mile above the mouth of the canyon and one quarter of a mile down the canyon from Boundary Spring; and that said station is located at a point upstream above all irrigation diversions on said stream;

IV.

That by combining and adding the records of the City's said stream flow gaging station with the records of the proposed measuring and recording devices to be installed by the Power Company at its plant tailrace as aforesaid, there can be determined accurately at all times the total flow of the waters of said stream;

V.

That because of all the aforesaid, it is unnecessary to interfere with or impair the present concrete spillway structure at the outlet of said

reservoir, which is necessary and valuable property of said Power Company; and that a Cippoletti weir on the spillway structure of said reservoir as recommended in Paragraph (a) of said report is unnecessary as a measuring device to measure the total flow of said stream, and would only result in a duplication of records;

VI.

That a short distance below the City's stream flow gaging station aforesaid, and above the proposed Cippoletti weir which is recommended in said report, there exist three irrigation ditches, namely, the Crismon & Russell Ditch, the Chamberlain Ditch, and the Stillman & Hussy Ditch, together with diverting works; and that all three of said ditches divert and take water from said stream above the Power Company's spillway structure in said reservoir, and above the proposed location of said recommended Cippoletti weir; that said Cippoletti weir, constructed as and where recommended in said report, would not in itself indicate the total flow of said stream, and to determine said total flow it would be necessary to add thereto the amount of water diverted by the irrigation ditches aforesaid;

WHEREFORE, Utah Power & Light Company respectfully prays that this court make its order authorizing said Power Company to proceed with the repairs and improvements to its present tailrace weir and with the installation of an accurate recording device in connection therewith, as more specifically set forth in Paragraph II aforesaid, and that said weir and measuring device, together with the City's stream flow gaging station as described in Paragraph III aforesaid, be accepted in lieu of any other or further measuring stations or devices for measuring the total flow of the waters of said stream.

Geo. R. Corey
Arthur C. Inman.
Attorneys for Utah Power & Light Company.

STATE OF UTAH (
) ss.
COUNTY OF SALT LAKE (

J. A. HALE, being first duly sworn, deposes and says: That he is Chief Engineer of Utah Power & Light Company; that he makes this verification for and on behalf of said Company and is duly authorized so to do; that he has read the foregoing reply, knows the contents thereof, and the same is true.

J. A. Hale

Subscribed and sworn to before me this 28 day of March, 1930.

Notary Public.

Residing at Salt Lake City, Utah.

My Commission expires:

Commission Expires January 5, 1934

3/28
Received copy:
Shirley P. Jones

4449

Bc 38

FILED IN THE CLERK'S OFFICE
Salt Lake County, Utah
MAR 23 1900

IN THE DISTRICT COURT OF SALT LAKE COUNTY,

STATE OF UTAH.

- - - - -

MARTHA YOUNG, Administratrix of the estate of James Young, deceased, Plaintiff, vs. WILLIAM GORDON, Administrator of the estate of DANIEL LUND, deceased, et. al., Defendant.	**REPLY TO REPORT.** 4449

- - - - - -

Comes now Salt Lake City and replies to the report, dated March 17, 1930, of A. Z. Richards, Esq., under appointment by this court to examine Mill Creek stream and various pipelines, irrigation ditches and house use streams diverting water from said creek as follows:

(a) Instead of the recommendations suggested in paragraph (a) of the report it is suggested and recommended that the stream flow of the creek be determined by adding the flow as measured at the present measuring station of the city in the canyon to the flow as measured by a measuring weir in the tail race at the Utah Power & Light plant and that said last mentioned weir be replaced by a proper and accurate measuring weir in the tail race and that the channel be extended. By this method the entire stream flow can readily be determined, whereas it is believed that the entire stream flow cannot be accurately measured as recommended in said paragraph (a) since several ditches take water out of the stream at points which would prevent such draught being recorded by the device recommended in paragraph (a); that the said measuring weir in the tail race and the work of extending the channel be done at the sole cost of the said Utah Power & Light Company.

(b) In the event the aforesaid recommendation is adopted, the recommendations in paragraph (f) of the said report would be unnecessary.

(c) Salt Lake City requests more definite and specific information as to the source of the right of Frank Neff covered by the recommendations in paragraph (j) of the said report.

(d) Salt Lake City asserts that the measuring weir in the Franklin and John Neff Ditch is adequate and proper and does not need replacing and alleges that the diversion dam for said ditch will be constructed by Salt Lake City and has been planned and provided for prior to the said report.

(e) Salt Lake City asserts that the measuring weir in the Amos H. Neff Ditch is adequate and proper and does not need replacing and alleges that the diversion dam for said ditch will be constructed by Salt Lake City and has been planned and provided for prior to the said report.

(f) There is no recommendation as to the proportionate division of costs in complying with the recommendations of paragraph (q) of the said report, and in the absence of such recommendation Salt Lake City is unable to concur fully in the recommendations contained in said paragraph.

(g) Salt Lake City alleges that all of the work specified in paragraph (t) of the said report has already been done.

In conclusion Salt Lake City cannot concur in the recommendation that all the work on said streams and ditches be let to competitive bid since the work on the ditches in which it is interested has been or is in the course of construction by its own engineering department which is competent and adequate to do and perform said work on behalf of said city.

Shirley P. Jones
Attorney for Salt Lake City.

Received copy of the foregoing this _____ day of March, A. D. 1930.

_____
Attorney for petitioner.

Received copy of above this 29th day of Mar. 1930
O. W. Carlson

(c) Salt Lake City requests more definite and specific information as to the source of the right of Frank Neff covered by the recommendations in paragraph (l) of the said report.

(d) Salt Lake City asserts that the measuring weir in the Frankfin and John Neff Ditch is adequate and proper and does not need alteration and alleges that the diversion dam for said ditch will be constructed by Salt Lake City and has been planned and provided for in the said report.

(e) Salt Lake City asserts that the measuring weir in the Samuel H. Neff Ditch is adequate and proper and does not need alteration and alleges that the diversion dam for said ditch will be constructed by Salt Lake City and has been planned and provided for in the said report.

(1) There is no recommendation as to the proportionate share of costs in completing with the recommendations of paragraph (p) of the said report, and in the absence of such recommendation Salt Lake City is unable to consent fully in the recommendations contained in said paragraph.

(2) Salt Lake City alleges that all of the work specified in paragraph (j) of the said report has already been done.

In conclusion Salt Lake City cannot consent in the recommendation that all the work on said streams and ditches be left to the competent and adequate engineering department which is competent and adequate to do the work on behalf of said city.

Attorney for Salt Lake City.

Received copy of the foregoing this _____ day of March.

FILED IN THE CLERK'S OFFICE
Salt Lake County, Utah
MAR 28 1900
Clerk of the District Court

4449

Bk 38

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

----------ooOOooo----------

MARTHA YOUNG, Administratrix of the Estate of James Young, deceased,	:	
Plaintiff	:	
vs.	:	ANSWER OF UPPER DITCHES
WILLIAM GORDON, Executor of the estate of Daniel Lund, deceased, et al:	:	No. 4449
Defendants	:	

----------ooOOOoo----------

Comes now the owners of the Crismon & Russell Ditch, the Stillman & Russell Ditch, the Chamberlain Ditch, except the interest of the Utah Power & Light Company therein, the Osguthorpe & Skidmore Ditch, the Stillman & Hussey Ditch, the James Russell house stream, and the Keller Ditch, and for their answer to the petition of the water master herein, allege as follows:

1. This action was commenced in the District Court about 1904. About 1907 Judge Morris appointed a water master, who was a skilled engineer, for said Mill Creek, with instructions to make a careful survey and to have installed at the various laterals, from said Creek proper, cippoletti or trapezoidal weirs for the measurement of water into the various laterals of said Mill Creek; that pursuant to said instructions, said weirs were installed by George F. Taylor, an engineer designated by the State Engineer's Office of the State of Utah, and also A. F. Doremus, a competent engineer, was appointed by Judge Morris as water commissioner, with full power to make all weirs installed to conform with the necessary re-

quirements for properly measuring the water of the various laterals and of the Mill Creek stream. That at the time the decree was entered in this case, there had been installed headgates and weirs in all the laterals taking water from said Mill Creek stream, which were installed in accordance with the rules laid down by water engineers in order to properly measure the water flowing in said respective laterals.

2. That through the neglect of the water commissioner in exercising proper supervisory power over said laterals and the headgates and weirs therein, the said weirs and headgates have in the last few years fallen in disrepair and it will be necessary to clean out the ditches and repair the banks of the approaches to the trapezoidal weirs and restore them to the condition in which they were when originally installed, and also to make proper repairs to the headgates diverting the water from the stream into the laterals.

3. George F. Taylor, who originally installed most of said weirs on said stream, now resides in East Mill Creek and has been employed by the owners of the ditches herein answering, to take charge of the installation of proper headgates and trapezoidal weirs for the measurement of water flowing into the said respective ditches, and said Taylor is authorized and directed under his employment, at the earliest practical date to start the work of repairing said headgates and weirs and the approaches thereto and he will as soon as the weather permits start said work.

4. It appearing that the weirs have been installed, and that the city has expressed the willingness to make said weirs comply with all the requirements of a water engineer, in the Hogle & Murphy Ditch, the Brigham Young Ditch, the Amos H. Neff Ditch and the Franklin John Neff Ditches, and the petitioners herein representing substantially all the other ditches

diverting water from said stream, these defendants represent that it would be to the best interest of all the owners of said streams and the most economical method, to permit these parties to have their headgates, weirs and approaches thereto, put in proper condition under the direction of George F. Taylor, an engineer, and your petitioners believe that they themselves can perform most of the labor that will be required to be done in order to put said weirs and head gates in proper condition for measuring and apportioning the water of said stream. After said weirs shall have been installed under the direction of George F. Taylor, then if any of the parties to said stream shall have any fault to find with the installation of said weirs or allege and contend that they do not properly measure the water of said laterals, then the court may appoint a competent engineer to pass upon the matter and make recommendations as to what needs to be done to put said weirs and headgates in proper condition.

5. These defendants further allege that there was originally installed above the reservoir of the Utah Power & Light Company a weir which was 150 inches in width, over which all of the water of said stream flowed, except what was diverted through the Crismon & Russell Ditch, the headgate for this ditch being above this weir, and under the decree of this court, the right of surplus users began when there was more than a certain amount of water flowing over this weir, including that diverted in the Crismon & Russell Ditch, and also the right of second-class users began when a certain amount of water was flowing over this weir, and it is important that this weir be kept in proper condition for the measurement of water passing over there; that some years ago the Utah Power & Light Company, in furtherance of its purposes,

changed the channel of the stream leading into its reservoir so that the weir which had been constructed was left in a dry channel and the Utah Power & Light Company constructed another weir. The weir which was there prior to that time had been installed under the direction of A. F. Doremus and was a trapezoidal weir 150 inches in width and most of the dividing weirs down the stream were trapezoidal weirs of a width in proportion to the amount of water the respective ditches were entitled to take, that is, if a ditch was entitled to take one-tenth of the water, its trapezoidal weir was 15 inches in width. In this way it made the measurement and distribution of the water simpler and easier and it made it possible for those taking water from the stream to make check upon the measurements, but the Utah Power & Light Company constructed the new weir, rectangular in form, and 120 inches in width. Also they have allowed the banks and earth at the ends of the weir to become open, so that water passes through and the water flowing in the stream does not all pass over said weir, but much of it passes around said weir and due to the fact that it is not kept tight and is rectangular in form, instead of trapezoidal, it interferes with the proper measurements and adjustment of the water in said stream.

WHEREFORE, these answerers pray that they may be permitted under the direction of George F. Taylor, a competent engineer, to put their headgates and weirs in proper condition for measuring, and further that the Utah Power & Light Company be required to install a proper weir such as had been installed originally and to keep it in good condition for measuring the water which may pass over it, and for such other relief as may be just and equitable.

Allen T. Dunyon
Attorney for Answering Defendants.

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

George F. Taylor, being first duly sworn, deposes and says: That he is one of the defendants above named; that he has read the foregoing answer, knows the contents thereof and the matters therein stated are true according to his best knowledge, information and belief.

Geo. F. Taylor

Subscribed and sworn to before me this 5th day of March, 1930.

Allen T. Sanger
Notary Public

Residing at Salt Lake City, Utah.

Received copy of the foregoing Answer

this_____day of March, 1930.

_____
Attorney for Petitioner.

4449 Bk 38

FILED IN THE CLERK'S OFFICE
Salt Lake County, Utah
MAR 28 1960
ALONZO MACKAY, Clerk and Ex. Officer
M H Knubel
Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

----------ooOOOoo----------

MARTHA YOUNG, Administratrix of the Estate of James Young, deceased,	:	
Plaintiff	:	
vs.	:	OBJECTIONS TO ENGINEER'S REPORT
WILLIAM GORDON, Executor of the estate of Daniel Lund, deceased, et al	:	449
Defendant	:	

----------ooOOOoo----------

Come now the owners of the upper ditches as hereinbefore named and object to the report of the engineer A. Z. Richards, and object to the adoption thereof by the court on the following grounds:

1. The statement that all power rights have been removed from the stream by purchase or abandonment is incorrect in that, although the Osguthorpe power right has been purchased by lower Mill Creek interests in order to permit of the exchange of water with Salt Lake City, yet under the terms of the contract Thomas Osguthorpe has the right to use the power plant during his life at times when the lower Mill Creek water is not diverted from the stream by Salt Lake City, and under his lease and right he operates the said power plant at frequent intervals during the year.

2. It is impracticable to close the old channels as recommended by the engineer for the following reasons:

(a) During the high water season the Osguthorpe mill race will not carry the entire flow of the water.

(b) In order to operate the mill it is necessary to have the spillway channel.

3. The Russell estate objects to the closing of either of said channels for the reason that the water has flowed through said channels for many years and the house stream of the Russell estate is diverted from one of these channels, and finally, they object for the reason that the closing of the channels would not cause any saving of the water, as there is no diminution of the

ALLEN T. SANFORD, LAWYER
404-8 BOSTON BLDG.
SALT LAKE CITY, UTAH

Water through the flowing through the two channels as they now do, and particularly as to the recommendations made, the parties hereto object to the following recommendations:

(a) A 10½ inch cippoletti weir should not be installed. The weir should be installed 150 inches for the reason that the rights are apportioned upon the basis of 1/10 of the flow of the stream and cippoletti weirs had been purchased 15 inches wide and installed in a number of the ditches, and by having the main weir 150 inches and the weirs in the ditches 15 inches it makes the division of the water more simple, and furthermore the crest of the weir should not be installed in the present concrete spillway of the dam because:

1. The dam is so constructed that there is a gate in the bottom of the dam which may be opened and is opened during high water in order to permit the water to flow through it, as it would be dangerous for it all to flow over the top of the dam, and with the water flowing through the gate in the bottom of the dam the weir would be useless because not all of the water would be measured over it.

2. In order for a 10½ inch weir to be constructed in the top of the dam so as to measure properly, the water would have to rise several feet above the crest of the weir and this would cause the water to reach a point which would be practically even, or maybe overflow the top of the banks of the dame; also, in order to measure accurately over the cippoletti weir the water should not flow over at a depth greater than approximately 2 feet, and in order for all the water to flow over this weir of this width it would raise it to a point higher than two feet so that it would not measure accurately.

4. As originally installed the intake of the Stillman and Hussey ditch was upstream at a point considerably above the present dam of the Utah Power & Light Company, and the water passes through a 10 inch pipe, and in order to get the amount of water to which the parties using through said ditch are entitled it is necessary for the water to enter into this pipe under a pressure or head, and after the Utah Power & Light Company installed its dam the matter was taken up in court, and the Utah Power & Light Co. appeared and the owners of the Stillman and Hussey ditch appeared and Judge Morris made an order in substance

ALLEN T. SANFORD, LAWYER
404-8 BOSTON BLDG.

and effect that the Utah Power & Light Company should install the present device, and under the present device the parties using the water through the Stillman and Hussey ditch are enabled to get substantially the amount of water to which they are entitled, but under the device as recommended by the engineer the water could not go into the said pipe under pressure and it would be impossible to pass through it the amount of water to which they are entitled because of the fact that said pipe has an inverted syphon. With reference to recommendations c, d, e, g, h, i, j, and k, these parties object to said recommendations for the following reasons.

a. The estimates given by the engineer for the cost of constructing the devices recommended is too low. It will cost considerably more than the estimate given by the engineer.

b. In many cases the amount of water passing through these ditches and weirs is small and the burden upon the users of the water is too great.

c. There are already installed in the intakes of the large ditches in the lower part of the stream wooden headgates and cippoletti weirs placed on wooden foundations. If the wooden headgates and weirs are ample for the large streams they certainly should be for the small streams, and they have apparently been approved by the engineer.

d. There is already installed in all of the ditches headgates and cippoletti weirs. These weirs and headgates were installed under the direction or under the approval of A. F. Doremus who acted as commissioner under an order of the court by Judge Morris about twenty years ago, and said weirs and headgates have served for approximately twenty years, although some of them are now in use, and in need merely of cleaning out the approaches and making repairs to the weirs and headgates to put them in good condition. The cost of this work would be not more than 10% of the engineer's estimate of the cost of the installation of the concrete headgates.

5. Salt Lake City has entered into exchange contracts with the users of approximately 85% of the primary water of Mill Creek, and your petitioners are informed and believe that Salt Lake City has under consideration a plan for taking water from the reservoir of the Utah Power & Light Company and piping it to its conduit in order to put the water in the conduit under pressure, to the end that a great amount of water will pass through the conduit, and they propose, in order to do this, to pipe the

ALLEN T. SANFORD, LAWYER
404-8 BOSTON BLDG.

water to the ditches to which the remaining 15% are entitled and under this plan the headgates would be useless and it would be a waste of money to install them in the event the cith shall consummate the plan which is now proposed, and any installation of the headgates, other than repairing the present ones and putting them in workable order should be deferred until it should be definitely determined what the plan of Salt Lake City may be

6. With respect to recommendation "u" your petitioners deem such recommendation undesirable at this time for the reason that within a short period of time the high water will be running in Mill Creek, and if all the little dams which nature has constructed and other devices for checking and breaking the flow of water should be taken out, then during the high water there would be no restraint whatsoever, upon the force of the water, and it will, in many instances, wash out banks and dig a deeper channel in the bottom through the gravel and leave a bottom which causes larger seepage than the channel which has now been used for many years, and your petitioners believe that such a leaning out of the channel just prior to high water would be detrimental to all parties concerned.

7. These petitioners object to the construction of the concrete intake structure controlled by a water tight cast iron gate operated by a screw and hand wheel which can be set and locked at any position of gate opening required. If your petitioners understand this recommendation, it is proposed to have the headgate so constructed that it will be raised and lowered vertically. Under such a device the said gate would be raised a few inches and in a stream in which there if more or less brush and pebbles and rocks flowing, such a device is not practical because brush and rock will accumulate against the opening of the head gate and cut off the flow of the water through the headgate. There is now installed in the lower ditches, and also there was originally installed in the upper ditches, and yet there, although not now all in good working order, gates so devised that they are opened at the side so that they are opened for a certain width without any obstruction at the top, and this is a better

ALLEN T. SANFORD, LAWYER

device and less apt to be clogged by rocks and brush than is the device recommended by the engineer, and better suitable for a stream such as Mill Creed, and it is similar to the device recommended by Doremus when he installed the weirs and headgates, also they are much less expensive. The devices recommended by the engineer are too expensive for a stream such as Mill Creek with the number of ditches or laterals, and with the small amount of water flowing through each.

WHEREFORE these petitioners pray that the recommendations of the engineer may not be adopted.

Attorney for the owners of
Upper Ditches

STATE OF UTAH :
: ss
COUNTY OF SALT LAKE :

George F. Taylor, being first duly sworn, deposes and says: That he is one of the defendants above named; that he has read the foregoing answer, knows the contents thereof and the matters therein stated are true according to his best knowledge, information and belief.

Subscribed and sworn to before me this 28 day of March, 1930.

Notary Public
Residing at Salt Lake City, Utah.

Received copy of the foregoing objections
to engineer's report this _____ day of March, 1930.

_____

device and less apt to be clogged by rocks and brush than is the device recommended by the engineer, and better suitable for a stream such as Mill Creed, and it is similar to the device recommended by Doremus when he installed the weirs and headgates, also they are much less expensive. The devices recommended by the engineer are too expensive for a stream such as Mill Creek with the number of ditches or laterals, and with the small amount of water flowing through each.

WHEREFORE these petitioners pray that the recommendations of the engineer may not be adopted.

Attorney for the owners
Upper Ditches

FILED IN THE CLERK'S OFFICE
Salt Lake County, Utah
MAR 28 1930
CLERK'S MAIL, Clerk and Ex. Dept.
MAR 28 1930

STATE OF UTAH :
: ss
COUNTY OF SALT LAKE :

George F. Taylor, being first duly sworn, deposes and says: That he is one of the defendants above named; that he has read the foregoing answer, knows the contents thereof and the matters therein stated are true according to his best knowledge, information and belief.

Subscribed and sworn to before me this 26 day of March, 1930.

Notary Public

Residing at Salt Lake City, Utah.

Received copy of the foregoing objections to engineer's report this ____ day of March, 1930.

4449

Rec 38

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

* *

MARTHA YOUNG, Administratrix of the estate of James Young, deceased, Plaintiff,	)	#4449
-vs-	)	N O T I C E
WILLIAM GORDON, Administrator of the estate of DANIEL LUND, deceased, et al, Defendant.	)	

* *

To ALLAN T. SANFORD, attorney for Upper Ditches; BAGLEY JUDD & RAY, attorneys for Mrs. O'Connor; GEORGE CORREY & ARTHUR INMAN, attorneys for Utah Power & Light Company; SHIRLEY P. JONES, City Attorney of Salt Lake City; and MORRIS & CALLISTER, attorneys for Barry:

You and each of you will please take notice that A. Z. Richards, appointed and directed by the Court herein to make a report and recommendations respecting the necessity of installation of weirs and measuring devices and the making of improvements on the Mill Creek Stream, did file his report with the Court on March 20th, 1930, in the above entitled matter, and the Court, upon good cause shown, shortened notice to five days and ordered that a hearing upon said report be set for and held on the 28th day of March, 1930 at the hour of 10 o'clock A.M. before the Honorable William H. Bramel, Judge of said Court, City & County Building, Salt Lake City, Utah.

O. W. Carlson
Attorney for Petitioner

Together with copy of engineer's report

Received copy of the foregoing notice this 30th day of March, 1930.

Allan T. Sanford
Attorney for Upper Ditches

Bagley, Judd & Ray
Attorneys for Mrs. O'Connor

Geo R Corey
Attorneys for Utah Power & Light Co.

Shirley P Jones
Attorney for Salt Lake City

Morris & Callister
Attorneys for Barry

4449

FILED IN THE CLERK'S OFFICE
Salt Lake County, Utah
MAR 21 1930
ALBERT MACKAY Clerk, 3rd Dist. Court
Fred le Cassett
Deputy Clerk

IN THE DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

* * * * * * * * * * * * * * * * * *

MARTHA YOUNG, Administratrix of the estate of James Young, deceased,	)	
Plaintiff,	)	#4449
-vs-	)	ADMISSION OF SERVICE
WILLIAM GORDON, Executor of the estate of Daniel Lund, deceased, et al,	)	
Defendant.	)	

* * * * * * * * * * * * * * * * * *

Now come the undersigned attorneys for the respective parties hereinafter mentioned and admit receipt this 3rd day of April, 1930, of copy of Engineer A. Z. Richards supplemental report bearing date of April 2nd, 1930.

Ingebretsen Ray & Rawlins
Attorneys for Child & Airis, et al

Allen T Sanford (Hm)
Attorney for Upper Ditch

Bagley Judd & Ray
Attorneys for O'Connor

Jones, Watson & Fraser
City Attorney of Salt Lake City

Geo R Corey - A C Inman
Attorneys for Utah Power & Light Co.

4449

FILED IN THE CLERK'S OFFICE
Salt Lake County, Utah
APR 3 1930
ALBERTO MASKAY, Clerk 3rd Dist. Court
By [signature] Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT, IN AND FOR

SALT LAKE COUNTY, STATE OF UTAH

MARTHA YOUNG, Administratrix of the estate of James Young, deceased,	)	
Plaintiff,	)	4449
vs.	)	ADMISSION OF SERVICE
WILLIAM GORDON, Executor of the estate of Daniel Lund, deceased, et al,	)	
Defendant.	)	

Come now the parties to hearings upon the petition of William Carlson, Water Commissioner for and on the Mill Creek Stream and by their respective attorneys admit receipt this 8th day of April, 1930, of copy of the hereto attached order which is to be submitted to the Honorable W. H. Bramel, Judge of the Third Judicial Court, for him to sign and make and cause to be entered as the order of the court in the above entitled cause.

A. C. Inman
Attorney for Utah Power & Light Co.

Allen Sanford (Hm)
Attorney for Upper Ditches

Ingebretsen Ray & Rawlins
Attorney for Airis & Childs

Jones Waldo & Holman
City Attorney of Salt Lake City

Bagley Judd & Ray
Attorneys for O'Connor

4449

FILED IN THE CLERK'S OFFICE
Salt Lake County, Utah
APR 8 1930
ALBERT [illegible] Clerk of Dist. Court
By [illegible]
Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT IN AND FOR

SALT LAKE COUNTY, STATE OF UTAH

* *

MARTHA YOUNG, Administratrix of the estate of James Young, deceased, Plaintiff,	)	Bk 38 P. 581
-vs-	)	#4449
WILLIAM GORDON, Executor of the estate of Daniel Lund, deceased, et al, Defendant.	)	O R D E R

* *

Upon the verified petition of William Carlson, Water Commissioner for the Mill Creek Stream, and for good cause shown and also with the consent of parties representing approximately three-fourths of the aggregate water rights in the Mill Creek Stream, it is hereby ordered that A. Z. Richards, of Salt Lake City, Utah, an engineer, be and is hereby appointed, authorized and directed to examine and inspect the said Mill Creek Stream for the purpose of determining what weirs, measuring devices and improvements are or may be necessary for the correct and proper distribution and regulation of the waters of said Mill Creek Stream pursuant to the terms and purposes of the decree of this court entered in the above entitled cause on August 1st, 1913 and then report and recommend to the court as to what weirs, measuring devices, improvements, etc. are or may be by him considered necessary and proper and also give the approximate cost thereof. The cost of the services of said engineer rendered pursuant to this order shall not exceed the sum of $100.00

Done in open court March 8th, 1930.

Wm H. Bromel
Judge.

Received copy of above Order March 8th, 1930.

Shirley P. Jones A. N. Watson & W. A. Fraser
Attorneys for Salt Lake City

Allan T. Sanford
Attorney for Upper Ditches

Geo R Corey
Attorney for Utah Power & Light Co.

Bagley, Judd & Ray
Attorney for O'Connors

Moran & Sallister
Attorney for Barry

ATTEST
ALONZO MACKAY,
CLERK

By M H Kribel
Deputy Clerk

FILED IN THE CLERK'S OFFICE
Salt Lake County, Utah
MAR 8 - 1930
ALONZO [illegible], Clerk, Dist. Court
By [illegible]
Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT, IN AND FOR

SALT LAKE COUNTY, STATE OF UTAH

MARTHA YOUNG, Administratrix of the estate of James Young, Deceased, Plaintiff.	)	#2449
-vs-	)	N O T I C E
WILLIAM GORDON, Executor of the estate of Daniel Lund, Deceased, et al, Defendant.	)	

* *

To Correy & Inman, attorneys for Utah Power & Light Company; Ingebretsen Ray & Rawlins, attorneys for defendants Maud O. Airis, George E. Airis, and Alice B. Child; Allen T. Sanford, attorney for Upper Ditches; Bagley Judd & Ray, attorneys for Mrs. O'Connor; and Shirley P. Jones, City Attorney of Salt Lake City:

You and each of you will please take notice that on April 8th, 1930, the Honorable W. H. Bramel, Judge of the above entitled Court, duly made, signed, and caused to be entered, an Order in the above entitled cause, a copy of which is attached hereto, and said Order made and signed as aforesaid, was duly entered on said date of April 8th, 1930.

O. W. Carlson
Attorney for Petitioner William Carlson.

Received copy of the above Notice this 24th day of April, 1930, together with copy of said Order.

A. C. Inman
Attorneys for Utah Power & Light Co.

Ingebretsen Ray & Rawlins
Attorneys for defendants Maud O. Airis, George E. Airis and Alice B. Child.

Allen T. Sanford
Attorney for Upper Ditches

Bagley Judd & Ray
Attorneys for Mrs. O'Connor

Shirley P. Jones, A. W. Watson & W. A. Fraser
Attorneys for Salt Lake City

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT, IN AND FOR

SALT LAKE COUNTY, STATE OF UTAH

Copy

MARTHA YOUNG, Administratrix of the estate of James Young, deceased, Plaintiff.	)	
-vs-	)	#4449
	)	O R D E R
WILLIAM GORDON, Executor of the estate of Daniel Lund, deceased, et al, Defendant.	)	

* * * * * * * * * * * * * * * * * * *

Upon the petition of William Carlson, Water Commissioner for and on the Mill Creek Stream, Salt Lake County, Utah, and after proper hearing had and upon the recommendation of an engineer duly appointed by the court to make recommendations to the court and for good cause shown, it is hereby ordered that the owners and users of water of the Mill Creek Stream as the same is diverted therefrom, must forthwith and expeditiously make such repairs of weirs, headgates and dams in and near the heads of their respective ditches and such improvements in connection therewith as are reasonably necessary to enable, during the irrigation of 1930, ready and accurate measurement and distribution of waters from said Mill Creek Stream and through the ditches which divert water therefrom, provided, however, that before such repairs and improvements are made or installed, the character, extent and plan of the same shall be first submitted to and approved by A. Z. Richards, an engineer appointed by the court, and then such repairs and improvements shall be made and installed in such way and manner as meets the approval of said engineer.

And it is further ordered that the Commissioner, William Carlson, be and is hereby directed to clean or cause to be cleaned, the main channel of the Mill Creek Stream to a reasonable extent and so as to remove therefrom rubbish, obstructions, and vegetation and the channel made reasonably sufficient for the conveying of the waters of the Mill Creek Stream, the cost of said cleaning to be hereafter taxed and allocated by the court as costs.

And it is still further ordered that the Utah Power & Light Company, pursuant to its own stipulations, be and is permitted to construct, at its own expense, a concrete weir at or near the tail-race of its power plant and in connection with said weir, to install and maintain a continuous recording device by which an accurate record of the flow of the water passing through the Utah Power & Light Company's power plant shall be kept, provided, however, that whatsoever is installed by the Utah Power & Light Company, as aforesaid, shall meet the approval of the said A. Z. Richards, engineer appointed as aforesaid, and provided also that a copy of the record of the flow of the water passing and measured, as aforesaid, shall be available at all times to the court, the Water Commissioner of the Mill Creek Stream and Salt Lake City, Utah, and provided still further that the said weir and recording device be constructed and installed forthwith and completed as soon as reasonably possible so that the same may be used to measure the water during the irrigation season of 1930, and it is still further ordered that the Utah Power & Light Company forthwith install and then maintain a proper weir and measuring device for the proper measurement of any water or waters used by the Utah Power & Light Company and which does not pass through the said tailrace of its power plant, provided, however, that such weir and measuring device and the installation thereof meet the approval of the said A. Z. Richards as engineer aforesaid.

And it is still further ordered that said measuring devices to be installed by Utah Power & Light Company as aforesaid, together with Salt Lake City's stream flow gaging station, which is now satisfactorily installed above all diversions upon said Mill Creek Stream, be in lieu of all other measuring devices for determining the total flow of said stream, and that the measurements taken in and by said measuring devices be used during the 1930 season and hereafter for the purpose of determining the flow of Mill Creek Stream in all its stages.

Dated at Salt Lake City, Utah, this 8th day of April, 1930.

By the court:

W. H. Bramel

Judge.

4449

FILED IN THE CLERK'S OFFICE
Salt Lake County, Utah
APR 24 1930
ALONZO MACKAY, Clerk 3rd Dist. Court
By [illegible]
Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT, IN AND FOR

SALT LAKE COUNTY, STATE OF UTAH

* *

MARTHA YOUNG, Administratrix of the estate of James Young, deceased, Plaintiff,	)	
-vs-	)	O R D E R
WILLIAM GORDON, Administrator of the estate of Daniel Lund, deceased, et al. Defendant.	)	4449

* *

WHEREAS, the Court in the above entitled matter, made and entered an Order under date of March 8th, 1930, appointing and directing A. Z. Richards, an engineer, to make a report and recommendations respecting the necessity of installation of weirs, and measuring devices and the making of improvements on the Mill Creek Stream, and

WHEREAS, the report of the said A. Z. Richards is now filed with the Court pursuant to said Order made and entered as aforesaid, and

WHEREAS, it appears necessary to have an early and expeditious hearing upon said report.

NOW, THEREFORE, IT is hereby ordered that notice of the filing of said report and a hearing thereon is shortened to five days and that a hearing upon said report is hereby set for and will be held on the 28th day of March, 1930, at the hour of 10 o'clock A.M. before the Honorable Wm H Bramel, Judge of the Third Judicial District Court In and For Salt Lake County, Utah.

ATTEST
ALONZO MACKAY.
CLERK
By [signature]
Deputy Clerk

Wm H Bramel
Judge.

Done in open Court this 20th day of March, 1930.

4449

FILED IN THE CLERK'S OFFICE
Salt Lake County, Utah
MAR 21 1930
[illegible] Dist. Court
By [illegible]
Deputy Clerk

Please file

IN THE DISTRICT COURT OF THE STATE OF UTAH
Third Judicial District
IN AND FOR THE COUNTY OF SALT LAKE

-------- ooOoo --------

MARTHA YOUNG, Administratrix of the Estate of James Young, Deceased,	:	
Plaintiff,	:	
-vs-	:	PROTEST AND ANSWER
WILLIAM GORDON, Executor of the Estate of Daniel Lund, Deceased, et al.,	:	
Defendants.	:	

-------- ooOoo --------

Comes now Grizzelle Houston O'Connor, for herself and as guardian of the persons and estates of Joe Hounton Lamb, Susanna B. Lamb, and Harold B. Lamb, minors, and by way of objection and protest to the report of the engineer filed herein alleges as follows;

(a) To paragraphs P and Q objects to the diversion of the waters of the Keller, White and Hoagland & Murphy ditches from the Neff Mill Race over the newly constructed steel weir crest down the old Mill Creek channel.

(b) Objects to any change in the point of diversion of the waters of the Brigham Young ditch.

It is alleged that all waters of the Keller, White and Hoagland & Murphy and Brigham Young ditches have for more than thirty years last past flowed through the Neff Mill Race through the property of these defendants and their predecessors in interest and that no benefit can accrue to any of the users of said waters by their diversion from the course through which they have for many years flowed.

These defendants allege that thousands of dollars have been spent in the landscaping and improving of their property in reliance upon the passage through their property of said waters in the manner in which they have for many years been flowing, and that the diversion of said waters down the ~~the~~ old Mill Creek channel will result in irreparable damage to these defendants.

These defendants state that they are willing to comply with the suggestions of engineer A. Z. Richards with respect to the construction of exact measuring devices at a point near to the Neff Mill Pond, and will waive their objection to the maintenance of the newly constructed steel weir crest immediately above the concrete dam at the head of Neff Mill Race, provided it is understood by all parties interested that the waters will continue to flow thereover into the same course and channel into which they have flowed for many years last past.

If this court should find that the waters of the Brigham Young ditch cannot be without some improvement or modification in the channel these defendants agree that they will pay a reasonable sum for such modification, but these defendants allege there is no reason for, and no good result can be reached by a diversion of the waters of Keller, White and Hoagland and Murphy ditches from their old course into the channel of Mill Creek.

These defendants allege that the water commissioner and/or the engineer have failed to show any good reason for the diversion recommended in paragraphs P and Q.

WHEREFORE, these defendants pray that the recommendations of the engineer in paragraphs P and Q as to the diversion of said waters be rejected, and for such other and further relief as may be just and equitable.

Bagley Judd & Ray

Attorneys for Defendants
Grizzelle Houston O'Connor for herself and as guardian of the persons and estates of Joe Houston Lamb, Susanna B. Lamb and Harold B. Lamb, Minors.

STATE OF UTAH)
: ss.
COUNTY OF SALT LAKE)

W. J. O'CONNOR, being first duly sworn upon oath deposes and says:

That he is the husband of Grizzelle Houston O'Connor, one of the defendants above named; that he has read the foregoing objection and answer and that he is fully familiar with all of the facts therein and that the same is true of his own knowledge, and verifies this answer for and on behalf of Grizzelle Houston O'Connor at the request of said Grizzelle Houston O'Connor.

W. J. O'Connor

Subscribed and sworn to before me this 26th day of April, 1930.

Vila R. Christensen
.. NOTARY PUBLIC ..

Residence: Salt Lake City, Utah.

Received a copy of the foregoing Protest and Answer the 26th day of April, 1930.

O. W. Larson
Attorney for Plaintiff.

STATE OF UTAH }
: ss.
COUNTY OF SALT LAKE }

W. J. O'CONNOR, being first duly sworn upon oath deposes and says:

That he is the husband of Grizzelle Houston O'Connor, one of the defendants above named; that he has read the foregoing objection and answer and that he is fully familiar with all of the facts therein and that the same is true of his own knowledge, and verifies this answer for and on behalf of Grizzelle Houston O'Connor at the request of said Grizzelle Houston O'Connor.

FILED IN THE CLERK'S OFFICE
Salt Lake County, Utah
APR 28 1930
ALONZO MACKAY, Clerk 3rd Dist. Court
Deputy Clerk

Subscribed and sworn to before me this 26th day of April, 1930.

.. NOTARY PUBLIC ..

Residence: Salt Lake City, Utah.

Received a copy of the foregoing protest with Answer the 26th day of April 1930.

[illegible]
Notary for plaintiff.

4449

BAGLEY, JUDD & RAY
400 Kearns Building
Salt Lake City

R. E. CALDWELL
A. Z. RICHARDS
H. G. HALL

OFFICES
SALT LAKE CITY, UTAH
LOS ANGELES, CALIFORNIA

4449

CALDWELL & RICHARDS
CIVIL ENGINEERS
TEMPLETON BLDG.
SALT LAKE CITY, UTAH

April 2, 1930.

Hon. Wm. H. Bramel,
Judge Third Judicial District Court,
Salt Lake County, Utah.

Dear Sir:

After having spent March 31st, 1930, in Court, listening to testimony, suggestions, arguments, and objections to my report made to Your Honor, and dated March 17th, 1930, I wish to make the following modifications to said report:

The last sentence of the 2nd paragraph on page 2, of said report, I desire to read as follows: The sum of the two measurements plus the measurement of the power company's house use stream which is diverted from said company's power pipe line, will determine the primary, secondary and surplus stages of the creek's flow.

I wish to add the following to paragraph 1 of page 3, of said report: However, on account of the fact that these structures, dams, or spillways, which are built across the channel of Mill Creek stream, are placed there for the special convenience and use of the owners of the ditch into which the respective structure is used to divert water, and on account of the fact that some of the ditches mentioned in the decree are entitled to surplus water only or to a very small continuous or intermittant flow, and, furthermore, on account of the fact that the bed of the stream, where these dams are located, is of a rather stable or permanent nature in some instances, I have not recommended that all of these devices across Mill Creek stream be replaced by permanent concrete structures.

On page 3 of the report under recommendation (a) I wish to eliminate the entire paragraph and substitute the following: That inasmuch as the Utah Light & Power Company, which is the owner of the "16½ ft. horizontal spillway structure" referred to in (a), object to the lowering of the spillway crest and the installation of a 10½ ft. Cippoletti weir thereon, and inasmuch as said Company has, through its representatives, proposed to Your Honor that it is willing to construct, at its own expense, a concrete weir structure which is satisfactory to the court and the court's engineer, and provide said weir with a continuous recording device by which an accurate record of the flow of the water passing through said Company's power plant at the mouth of Mill Creek Canyon shall be kept, that said Company be ordered to build such a structure at its

own expense; also that said record shall be available at all times to the Court, to the Water Commissioner of Mill Creek stream and to Salt Lake City; and that this weir and recording device be constructed and installed as soon as possible this spring so that it may be used to measure the water during the coming irrigation season.

On page 4 of the report I wish to eliminate paragraph (b).

On page 4 I wish to add to paragraph (e) as follows: and that this structure be installed before April 15th, 1930.

On page 4 I wish to strike out all of paragraph (f) of said report and recommend that the sum of the three measurements described in the second paragraph of this communication be used during the 1930 season and in the future as the measurement of the flow of Mill Creek stream for the purpose of determining the primary, secondary, and surplus stages of its flow.

Paragraph (g) on page 4 of the report suggests moving the head of the Osgathorpe Skidmore ditch up stream about 170 ft. and thereby utilizing a concrete structure and valve already built. In case this is found not to be practicable, I recommend the construction of a concrete dam and headgate and concrete weir at and near the present location of the head of said ditch.

I wish to correct an error in paragraph (j) on page 4, of the report, by substituting the name of Frank Russell for Frank Neff.

On page 5 of the report I wish to add the following to paragraph (q): provided, however, that the Amos H. Neff house use stream which is described in the Court Decree as being entitled to 0.15 of a second ft. and which shall not be taken out of the ditch for irrigation purposes, shall be piped from said measuring structure to the ditch into which said water was running at the time the decree was rendered, and that said water shall be returned to the creek as specified in said decree.

On page 5 of the report I wish to add to paragraph (t), this statement: that since said report was made to the Court I have examined the structure which Salt Lake City has built at the head of the White Ditch and it is satisfactory as far as an accurate measuring and dividing device is concerned. I therefore recommend that it be used during the coming irrigation season and if it proves to be satisfactory in other respects and does not cause the water in the creek channel to be held up unnecessarily high and thereby cause undue spreading out in the creek bottom and consequent seepage and evaporation during the irrigation season of 1930, I recommend that it be accepted as the permanent means of dividing the White Ditch and the Hoagland & Murphy Ditch waters as contemplated in the Court Decree.

In paragraph (u) of the report, I have recommended that the creek channel be "cleared of all rubbish and obstructions as hereinbefore suggested and that this work be done before April 15th, 1930.". "Hereinbefore suggested" refers to paragraphs 2, 4, and 5 of page 3 of the report in which I have called attention to the fact that the condition of the creek channel for conveying water economically is bad, and that it should be improved. Objection was made to this recommendation and a further explanation was requested.

In answer to said request, I desire to say that the channel of Mill Creek has been used for many years in a similar manner to many irrigation channels and canals, and it is usual each year, under similar conditions, for irrigation companies having efficient management, to make it a special matter of business each spring, before the irrigation season commences, to make an inspection of the distribution system and to clean out all canals and waterways so that a more economical use of the water may be had. Mill Creek Channel, like many other streams, has been a dumping ground for rubbish and an accumulating place for brush and waste material which sometimes is more convenient to throw down in the wash than to burn. Overhanging willows and fallen brush provide places for lodgement for floating material. After many years of neglect to clear the channel of such obstructions, where gravel may build up a bar and grass and weeds find root, and where the high water each year is not sufficient to clear out such places in the channel; but rather to aggravate them, as in the case of Mill Creek; I consider it very important that this cleaning be done, and rather thoroughly this year. I suggest that an inspection be made of the channel each spring and the necessary cleaning be done for the benefit of all of the irrigation water users on the stream, because any loss which is found to exist in this part of the system must be borne by these users.

I wish to eliminate items (a), (b), and (t) on page 6 of the report.

At the request of Salt Lake City and others interested in the waters proposed to be divided at a common measuring device in the Neff Mill Race, I wish to suggest the following as a fair and equitable allocation of the estimated cost of this measuring device as given in item (q) on page 6 of the report:

The Brigham Young Ditch	$324.00
The Susan Emery Holmes interests	110.00
The Seymour H. Neff & A. M. Selley interests	97.00
The Amos H. Neff interest	82.00
The Amos B. Neff interest	77.00
The Seymour H. Neff Pipe Line interest	60.00
	$750.00

Objection

In conclusion, I wish to make the same suggestion as contained in the concluding paragraph of the former report, and add the following statements: -

Any reference to any of the work outlined in my former report, which work is eliminated from, or modified by, this amended report, shall be disregarded.

At the Court hearing on March 31st, Mr. Sanford, representing the Stillman Russell, and Stillman-Hussey, and other ditches, requested that Mr. Taylor, also representing these ditches, be permitted by the Court to make certain improvements in and about the diverting structures or measuring weirs in these ditches, so that the present structures may be used to measure the water during the coming season.

In answer to said request, the Writer met with Mr. Taylor and it was mutually agreed that inasmuch as the irrigation season was so near at hand, anything that could be done in connection with these structures that would make them usable as regulating and measuring devices with a fair degree of accuracy for this season would be desirable.

This agreement was made with the understanding that whatever was done in this matter was temporary only, and was not to be of such a character as to provide a reason for not installing the permanent structures as recommended in these reports. In other words, a few dollars expended on the present structures may be acceptable at this time to be used for the coming irrigation season only.

At the same hearing, City Attorney Shirley P. Jones suggested that the City had installed, shortly prior to 1929, in the Franklin & John Neff & Amos H. Neff ditches, substantial and adequate lumber weirs, and, consequently, the City should not be required to replace these with concrete structures at this time. In consequence of this condition, of which the Writer is aware, I recommend that these structures continue to be used as long as they are kept in first class condition, but when it becomes necessary, in the judgment of the Court Commissioner, to rebuild said weirs, that they be replaced with concrete structures conforming to the general scheme herein suggested.

The City Attorney also suggested to the Court that the engineering department of the City had, previous to this time, prepared plans for the reconstruction, with concrete, of the dams and headgate structures at the heads of the aforesaid Neff ditches and that it would be an unnecessary duplication of work to have other plans made if the present ones are acceptable.

I am entirely in accord with this suggestion, but think that there should be no objection to having these plans, with

accompanying specifications, along with other plans and specifications for the other structures contemplated herein, used in receiving bids as recommended in this report.

I further recommend that each ditch which takes water from the creek during this season be ordered to put their old weirs in as fair and usable condition as is practicable for this season's measurements, and that the Court's engineer advise how this may be done at a small cost. This recommendation is made with the distinct understanding that the slight amount of work which may be required to be done on these devices at this time shall not be interpreted to mean that the devices may continue to be used after the 1930 irrigation season.

Very respectfully submitted,

A. Z. Richards,

AZR:BMc

4449

FILED IN THE CLERK'S OFFICE
Salt Lake County, Utah
APR 3 1930
ALONZO HACKAY, Clerk of Dist. Court
By [signature]
Deputy

R. E. CALDWELL
A. Z. RICHARDS
H. G. HALL

OFFICES
SALT LAKE CITY, UTAH
LOS ANGELES, CALIFORNIA

CALDWELL & RICHARDS
CIVIL ENGINEERS
TEMPLETON BLDG.
SALT LAKE CITY, UTAH

March 17, 1930

Honorable W. H. Bramwell,
Judge Third Judicial District Court
Salt Lake County, Utah

Dear Sir:

In response to the appointment received and in compliance with the directions given in your order of March 8th, 1930, the writer has made an examination of the natural channel of Mill Creek stream and all of the pipe lines, irrigation ditches and house use streams diverting water from said creek under the Morse Decree dated August 1st, 1913, and respectfully reports as follows:

That under paragraph 9 of said decree, the right of certain parties is quieted and confirmed to the use of the water of said creek for power purposes with the understanding that the water so used shall be returned to the stream undiminished in quantity and unimpaired in quality.

I understand that all of these power rights, with the exception of that of the Mill Creek Power Co., which is now owned by the Utah Power & Light Co., have been removed from the stream by purchase or abandonment.

Previous to the construction of the present power plant, a weir had been installed in the channel of Mill Creek approximately ¼ mile above the mouth of the canyon and ¼ mile down the canyon from Boundary Spring. This weir was used to measure the entire flow of Mill Creek but was rendered useless for said purpose when the power plant was built.

In 1912 or 1913, the Power Company constructed a lumber weir about 100 yards downstream from the power plant and immediately below said Company's regualating reservoir. This weir was intended to serve the purpose of the one previously located in the canyon and it has been used for said puppose up until the present time.

Pltf.

EXHIBIT "B"
CASE NO. 4449

In the writer's judgment, this weir is not a satisfactory measuring device and should be abandoned.

In 1929, Salt Lake City reestablished the old measuring station in the canyon and equipped the same with a continuous measuring device by which the hourly fluctuations of the stream flow at that point are being recorded. This, however, only measures that portion of the stream flow at the mouth of the canyon which does not pass through the power plant. A similar continuous recording device, set to measure the water passing through the power plant, should be installed. The sum of the two measurements will determine the total amount of water which the Court Commissioner is required to distribute to the users along the stream.

The decree specifies that this water must be distributed into 19 separate ditches and pipe lines carrying varying quantities of water, ranging from approximately 1/10 of 1% of the stream to 42% of the stream, and from a very small constant flow to a comparatively large fluctuating flow.

The ditches and pipe lines are situated along the stream from the mouth of the canyon to a point about 2½ miles to the west. On account of their widely separated locations, the frequent transfer of water from one ditch to another and the consequent necessity for readjusting the flow in the whole system whenever a transfer is made, the problem of the accurate distribution of the water is a complicated one.

It is further complicated by the fact that at three different stages of the stream flow, different proportions of the stream are required to be distributed to the ditches. Consequently any attempt to design a system of dividing and measuring devices which will automatically divide the water as the stream fluctuates, leads to complicated structures which are expensive and require technical skill to adjust.

On account of the difficulties pointed out above, the writer has concluded that the simplest and most effective method that can be employed in this case is to construct at the head of each ditch and pipe line a concrete intake structure controlled by a water tight cast iron gate, operated by a screw and hand wheel which can be set and locked at any position of gate opening required, to let the necessary amount of water pass into the ditch. Also to construct in the ditch, as near as possible to said headgate, a small concrete structure provided with a sharp crested steel weir plate of the cippoletti type, over which the water regulated by the headgate can be accurately measured.

At the points of diversion of several of the ditches, old lumber structures, log and brush obstructions and loose rock and brush dams are built across the creek channel to maintain a water level in the creek sufficiently high to insure a flow into the ditches. Practically all of these are old and dilapidated, and to secure a positive and permanent means of diverting and measuring the water into these ditches, these temporary devices should be replaced by permanent concrete structures.

The creek channel itself is in poor condition to assist in the proper and efficient distribution of the water.

Along the lower part of the Osgathorpe Mill race there are two old channels which have in times past been used as spillway and overflow channels. These should be closed up and the water confined to the mill race proper throughout its entire length and returned to the creek channel at the Osgathorpe saw mill, with a free and unobstructed flow through the old wheel pit.

The entire length of the creek channel from this point to the lower ditches should be thoroughly gone over and cleared of rubbish and all obstructions which tend to check the flow of the stream and cause it to spread out over the wide creek channel.

The foregoing improvements will save considerable water from seepage and evaporation and will assist greatly in transfering water from one part of the system to another as the adjustments of the headgates are made from day to day in distributing the water.

Following is a detailed statement of the writer's recommendations to the Court concerning necessary weirs, measuring devices and improvements. Not having been especially directed to report on the effect of the operation of the power plant on the stream flow as mentioned in the decree, no recommendation relative there to is herein offered.

It is recommended:

Amendment proposed -

(a) That a 10½ ft. cippoletti weir be installed on the upper face of the 16½ ft horizontal spillway structure forming the outlet of the regulating reservoir at the power plant. That the crest of said weir be 24 inches lower than the present concrete spillway crest and that the south portion of the regulation reservoir be done away with and a direct channel from the creek and tail race of the power plant be maintained to this weir.

At the points of diversion of several of the ditches, old lumber structures, log and brush obstructions and loose rock and brush dams are built across the creek channel to maintain a water level in the creek sufficiently high to insure a flow into the ditches. Practically all of these are old and dilapidated, and to secure a positive and permanent means of diverting and measuring the water into these ditches, these temporary devices should be replaced by permanent concrete structures.

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Amendment proposed

(a) That a 10½ ft. cippoletti weir be installed on the upper face of the 16½ ft horizontal spillway structure forming the outlet of the regulating reservoir at the power plant. That the crest of said weir be 24 inches lower than the present concrete spillway crest and that the south portion of the regulation reservoir be done away with and a direct channel from the creek and tail race of the power plant be maintained to this weir.

Proposed amended

(b) That the intake of the 12-in pipe at the head of the Stillman-Hussy ditch in said reservoir be closed up and that the water be allowed to spill over the proposed 10½ ft weir into a box and thence into the pipe line through the 12-in valve which controls the flow into said pipe line.

(c) That a concrete headgate and weir be placed at and near the head of the Crismon-Russell ditch.

(d) That a concrete headgate and weir be placed at and near the head of the Chamberlain ditch.

(e) That a concrete weir structure be installed to measure the house use stream which the Power Company diverts from the power plant pipe line for culinary purposes.

Proposed modification

(f) That the above work be done before April 15, 1930, and that these four weirs together with the measuring device established by Salt Lake City in the canyon be used during the 1930 season to determine the flow of Mill Creek stream for distribution to the water users.

(2)

(g) That the head of the Osgathorpe-Skidmore ditch be moved up stream about 170 feet to the location of the 12-in valve on the north and lower side of the proposed 10½ ft weir and that a concrete weir be placed in said Osgathorpe ditch near its head.

(h) That a concrete weir be installed in the Stillman-Hussy ditch near the lower end of the 12-in wood pipe which discharges its water into said ditch.

(i) That a concrete dam and headgate and concrete weir be built at and near the head of the Stillman-Russell ditch.

✓

(j) That where Mr. Frank ~~Neff~~ Russell diverts water from the main stream on the west side of the wagon bridge approximately 100 ft upstream from the head of the Stillman-Russell ditch a concrete headgate and weir be installed to measure the irrigation water which is diverted at said point. Objection

(k) That a concrete headgate and weir be built at and near the head of the James Russell house use ditch.

(l) That all low places or old spillways and overflow channels leading from the Osgathorpe mill race be closed up so that no water may escape from said race, and that any obstructions in the mill race or flume adjacent to the old mill be removed so that the water will have free passage through the same into Mill Creek channel and that this be done before April 15, 1930.

(m) That a concrete headgate and weir be built at and near the head of the Tripp ditch.

(n) That a concrete dam and headgate and a concrete weir be built at and near the head of the Franklin and John Neff ditch.

(o) That a concrete dam and headgate and a concrete weir be built at and near the head of the Amos H. Neff ditch.

(p) That the waters of the Kellar, White and Hoagland & Murphy ditches be allowed to flow over the newly constructed steel weir crest built across the creek channel immediately above the concrete dam at the head of the Neff Mill Race and down Mill Creek channel to the heads of these respective ditches, and that the waters of the Brigham Young ditch, the Seymour H. Neff house use pipe, the Seymour H. Neff & A. M. Seeley house use ditch, the Susan Emery Holmes house use streams, the Amos H. Neff & Susan Emery Holmes house use pipe, the Amos B. Neff house use ditch and the Amos H. Neff house use ditch be allowed to flow over the aforesaid newly constructed steel weir crest and down the Neff Mill Race to a point immediately east of the Neff Mill Pond. objection

(q) That said water flowing down the Neff Mill Race be conveyed to a concrete structure built in said mill race at a point approximately 60 feet east of said Mill Pond and that said Brigham Young and other waters be therein and thereby divided and measured, by means of screens, valves, boxes and weirs, in strict accordance with the Court Decree now in effect. That the water decreed to each ditch be measured in to a separate compartment of the structure and that said separate compartments shall be considered the respective heads of the ditches from which the owner or owners of each ditch shall arrange to conduct the water as desired. objection

(r) That a concrete headgate and dam and concrete weir be installed at and near the point where the Kellar ditch diverts its water from Mill Creek channel.

(s) That the existing measuring device which has been used to measure the waters of the White and Hoagland & Murphy ditches as described in the decree, continue to be used for said purpose as long as it is kept in repair and will measure accurately.

(t) That a suitable steel weir crest be built in conjunction with the present concrete dam and diverting works at the head of the White ditch to divide and measure the White and Hoagland & Murphy ditch waters.

(u) That the entire channel through which the waters pass from the mouth of the canyon to the head of the Hoagland & Murphy ditches be cleared of all rubbish and obstructions as

hereinbefore suggested and that this work be done before April 15, 1930.

The following tabulation shows the estimated cost of the work proposed to be done prior to April 15, 1930.

ITEM	ESTIMATED COST
a	$250.00
b	90.00
c	150.00
d	150.00
e	40.00
I	40.00
u	150.00
Total	$875.00

The work represented by the above items can be done before the date mentioned if arrangements can be made for finances, but the remainder of the work herein recommended cannot, in the judgment of the writer, be done until the fall of 1930 without increasing the cost and seriously interfering with the irrigation water during the coming summer.

The following tabulation shows the estimated cost of the remainder of the work herein recommended:

ITEM	ESTIMATED COST
g	$260.00
h	60.00
i	360.00
j	75.00
k	100.00
m	150.00
n	400.00
o	400.00
q	750.00
r	240.00
t	250.00
Total	$3,045.00

In conclusion, the writer suggests that in order to have this work done in the most economical and expiditious manner, complete plans and specifications should be prepared

and competitive bids received for furnishing the materials and completing the work. This could be done during the summer, an accurate cost determined and sufficient time given each party or ditch to provide the finances with which to do the work. The work should then proceed immediately after the irrigation season is over.

Very respectfully submitted,

A. Z. Richards

AZR:REL

4 x 4 9

Book 38

Pltf

EXHIBIT B

SE NO. 449

March 17

Fred L. Bassett

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT IN AND FOR

SALT LAKE COUNTY, STATE OF UTAH

MARTHA YOUNG, Administratrix of the estate of James Young, deceased, Plaintiff,	)	#4449
-vs-	)	
WILLIAM GORDON, Executor of the estate of Daniel Lund, deceased, et al, Defendant.	)	ORDER

Upon the verified petition of William Carlson, Water Commissioner of the Mill Creek Stream, and after hearing thereon duly had on the 22nd day of May, 1930 and it appearing to the court to be advisable and necessary that the costs and expenses of work heretofore ordered upon the Mill Creek Stream by the court in the above entitled matter be taxed as costs and promptly paid and collected and it still further appearing that said costs and expenses are as follows:

$300.00 for the cleaning of the Mill Creek Stream Channel.
$100.00 for services of engineer
6.00 for multipressing of "Order To Show Cause"
48.00 for the cost of serving of the $Orders to Show Cause" upon users and owners of water from the Mill Creek Stream.
2.50 for the Clerk's fee for the issuance of the "Order To Show Cause"
30.00 for collection and miscellaneous items.

NOW, THEREFORE, it is hereby ordered that the said costs and expenses aggregating the sum of $486.50 be and are hereby taxed as costs against all parties hereto and the owners and users of water from the Mill Creek Stream during the Primary Stage thereof. The said amount is divided, allocated and prorated as follows, to-wit:

DITCH	AMOUNT
Chamberlin	$2.40
Osgathorpe-Skidmore	3.20
Stillman-Hussy	2.15
Stillman-Russell	37.10
James Russell	4.90
F.&J. Neff	20.30
Amos H. Neff	26.30
Kellar	32.20
Seymour H. Neff Pipe Line	2.70
Seymour H. Neff & A. M. Seeley	0.90
Susan Emery Holmes, estate	4.60
Amos B. Neff	0.70

DITCH	AMOUNT
Amos H. Neff (pipe)	$0.45
Brigham Young	100.20
White	36.40
Hoagland & Murphy	182.00
Utah Power & Light Company	30.00
	$486.50

It is further ordered that said sums of money taxed, allocated and prorated as aforesaid be forthwith paid to William Carlson, the said Water Commissioner and that in the event the same are not paid on or before the first day of July, 1930, the said Water Commissioner is hereby authorized to withhold distribution of water to those who fail to make payment as aforesaid until said costs taxed, allocated and prorated as aforesaid are paid and the withholding of distribution of water as aforesaid shall be considered a cumulative remedy and in addition to the right to have execution issue herein.

ATTEST
ALONZO MACKAY,
CLERK
By M H Kriebel
Deputy Clerk

Wm H. Bramel
Judge.

Done in open court this 23rd day of June, 1930.

4449

FILED IN THE CLERK'S OFFICE
Salt Lake County, Utah
JUN 27 1930
ALONZO [illegible] Clerk 3rd Dist. Court
By [illegible] Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT IN AND FOR

SALT LAKE COUNTY, STATE OF UTAH

MARTHA YOUNG, Administratrix of the estate of James Young, deceased, Plaintiff,	)	
-vs-	)	
WILLIAM GORDON, Executor of the estate of Daniel Lund, deceased, et al, Defendant.	)	N O T I C E

TO: The Utah Power & Light Company and its attorneys, Correy & Inman; Upper Ditches and its attorney, Allan T. Sanford; Salt Lake City and its City Attorney, Shirley P. Jones; Mrs. O'Connor and her attorneys Bagley Judd & Ray; East Mill Creek Water Company and its attorneys MacFarlane & Cornwall:

You and each of you will please take notice that on June 23rd, 1930, the Honorable Wm. H. Bramel, Judge of the Third Judicial District Court, Salt Lake County, Utah, made, entered, and signed, an Order in the above entitled cause, a copy of which is attached hereto and made a part hereof.

O. W. Carlson
Attorney for William Carlson,
Water Commissioner.

Received copy of the above notice together with copy of said Order attached this 30th day of June, 1930.

Correy & Inman
Attorneys for Utah Power & Light Co.

Allan T. Sanford
Attorney for Upper Ditches
by [illegible]

Shirley P. Jones A. W. Watson W. A. Fraser
Attorney for Salt Lake City,

Bagley Judd & Ray
Attorneys for O'Connor

MacFarlane & Cornwall
Attorneys for East Mill Creek
Water Company.
By [illegible]

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT IN AND FOR

SALT LAKE COUNTY, STATE OF UTAH

MARTHA YOUNG, Administratrix of the estate of James Young, deceased, Plaintiff,	)	
-vs-	)	
WILLIAM GORDON, Executor of the estate of Daniel Lund, deceased, et al, Defendant.	)	N O T I C E

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Carey Ed Inman.
Attorneys for Utah Power & Light Co.

Allan T. Sanford
Attorney for Upper Ditches
by [illegible]

Shirley P. Jones A. W. Watson W. A. Fraser
Attorney for Salt Lake City,

Bagley Judd & Ray
Attorneys for O'Connor

MacFarlane & Cornwall
Attorneys for East Mill Creek
Water Company.
By [illegible]

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT IN AND FOR

SALT LAKE COUNTY, STATE OF UTAH

MARTHA YOUNG, Administratrix of the estate of James Young, deceased, Plaintiff,	)	
-vs-	)	
WILLIAM GORDON, Executor of the estate of Daniel Lund, deceased, et al, Defendant.	)	O R D E R #4449

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48.00 for the cost of serving of the "Orders To Show Cause" upon users and owners of water from the Mill Creek Stream.
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White	36.40
Hoagland & Murphy	182.00
Utah Power & Light Company	30.00
	$486.50

It is further ordered that said sums of money taxed, allocated and prorated as aforesaid be forthwith paid to William Carlson, the said Water Commissioner and that in the event the same are not paid on or before the first day of July, 1930, the said Water Commissioner is hereby authorized to withhold distribution of water to those who fail to make payment as aforesaid until said costs taxed, allocated and prorated as aforesaid are paid and the withholding of distribution of water as aforesaid shall be considered a cumulative remedy and in addition to the right to have execution issue herein.

Wm. H. Bramel
Judge.

Done in open court this 23rd day of June, 1930.

4449

FILED IN THE CLERK'S OFFICE
Salt Lake County, Utah
JUN 30
ALONZO MACKAY, Clerk, 3rd Dist. Court
By [illegible]
Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT, IN AND FOR

SALT LAKE COUNTY, STATE OF UTAH

MARTHA YOUNG, Administratrix of the estate of James Young, deceased, Plaintiff,	)	
-vs-	)	
WILLIAM GORDON, Executor of the estate of Daniel Lund, deceased, et al, Defendant.	)	P E T I T I O N

Comes now the Lower Mill Creek Irrigation Company, a corporation of the State of Utah, and respectfully shows and represents as follows, to-wit:

1. That your petitioner is now and at all times herein was a corporation duly organized and existing under and pursuant to the laws of the State of Utah and has its principal office and place of business in Salt Lake County, Utah.

2. That on August 1st, 1913, this court duly made and entered a decree in the above entitled cause, by the terms of which decree it was adjudged that the owners of the Hoagland & Murphy Ditches of the Mill Creek Stream in Salt Lake County, Utah, were and are entitled, during what is known as the Primary stage of said Mill Creek Stream, to five twelfths (5/12) of the waters of said Mill Creek Stream, and during what is known as the Secondary stage, to .3324 of the waters of said Mill Creek Stream, and during what is known as the Surplus stage, to .2432 of the waters of said Mill Creek Stream, measured and determined in the manner and under the conditions in said decree provided.

3. That your petitioner is now and ever since the making and entering of said decree has continually been the owner and beneficial user of all the waters of said Hoagland & Murphy Ditches, and in the amounts as in said decree adjudged and allocated to said ditches as aforesaid.

4. That your petitioner owns, beneficially uses, and distributes the said waters of the Hoagland & Murphy Ditches to its stockholders in Salt Lake County and in the vicinity of the said Mill Creek Stream, That all the waters of the said Hoagland & Murphy Ditches adjudged and decreed as aforesaid, have been for more than twenty years continuously last past, and are now, beneficially used for the irrigation of valuable crops, fruit bearing plants and shrubbery, and fruit orchards owned and cultivated by stockholders of your petitioner.

5. That the Utah Power & Light Company, a corporation of the State of Utah, owns and operates a hydro-electric plant near the mouth of Mill Creek Canyon in Salt Lake County, Utah, and on said Mill Creek Stream. That in connection with the said hydro-electric plant, said Utah Power & Light Company owns and operates a wood stave pipe line which traverses Mill Creek Canyon for a distance of several miles, through which pipe line the waters of the Mill Creek Stream are conveyed to and through said hydro-electric plant for the purpose of producing electrical energy.

6. That said power plant and said wood stave pipe line were installed in about the year 1907 by a predecessor in interest of the said Utah Power & Light Company. That at about the time of the installation of said pipe line and said hydro-electric plant, it was agreed by the predecessor in interest of the Utah Power & Light Company, to-wit: The Mill Creek Power Company, that all waters of the Mill Creek Stream, with the exception of the so-called Boundary Spring, would be conveyed continuously during the Primary stage of the Mill Creek Stream through said pipe line and without waste or loss of waters of the Mill Creek Stream and that whatsoever water arose or flowed at such an elevation in Mill Creek Canyon and below the intake of said pipe line, as would not flow by gravity into said pipe line, would be continuously pumped into and then conveyed by said pipe line without loss or waste.

7. That during several years last past, the said Utah Power & Light Company has failed and neglected to maintain said pipe line in a reasonable state of repair and that in consequence of such neglect and failure, large quantities of water of the Mill Creek Stream have been lost and wasted in Mill Creek Canyon and said petitioner and its stockholders have been deprived of the use thereof. That the amount wasted and lost as aforesaid, has been equivalent to a continuous stream of two cubic feet per second. That the said Utah Power & Light Company has failed and neglected, for more than four years last past, to pump waters from Mill Creek Canyon into its pipe line pursuant to said agreement made by its predecessor in interest as aforesaid.

8. That in consequence of such failure to pump waters of Mill Creek Canyon into said pipe line as aforesaid, large quantities of water arising and flowing in Mill Creek Canyon below the intake of said pipe line have been wasted and lost for more than four years last past in said Mill Creek Canyon and of the use of such waters, your petitioner and its stockholders have been deprived during said period of time.

9. That in the operation of its said hydro-electric plant at the mouth of Mill Creek Canyon, the said Utah Power & Light Company has caused, for more than four years last past, an irregular flow of the waters of Mill Creek Stream by holding back the natural flow of the water of said stream through said pipe line at intervals and then releasing the same in such manner as to cause a temporarily increased flow with the natural consequence that some of the stockholders of your petitioner were, at times, deprived of their water turns and others were subjected to destructive floods.

10. That said decree made and entered by this Court in the above entitled cause on August 1st, 1913, aforesaid, provided as follows:

"The Mill Creek Power Company is hereby enjoined and restrained from impairing the quality or diminishing the quantity of the flow of said stream or interfering with or interrupting the natural, steady, and equal flow of the water of said stream."

11. That said stream referred to in said decree as aforesaid, is and was the said Mill Creek Stream.

12. That the Utah Power & Light Company is now and at all times herein has been a corporation organized and existing under and pursuant to the laws of the State of Utah. That it is the successor in interest of the said Mill Creek Power Company mentioned in said decree as aforesaid. That the said Utah Power & Light Company acquired not only all the rights and interests of the said Mill Creek Power Company in said Mill Creek Stream, but acquired such rights and interests subject to the terms and conditions of the agreement referred to in paragraph six hereof and also subject to the terms, provisions, and conditions of said decree of August 1st, 1913, made and entered in this Court as aforesaid. That the said Utah Power & Light Company, at the time of acquiring the rights and interests of the said Mill Creek Power Company, knew of and was familiar with, and ever since such time has continuously been familiar with and had notice of the terms, provisions, and conditions of said decree of August 1st, 1913, made and entered by this Court in the above entitled cause, and particularly that provision of said decree alleged and set out in paragraph ten hereof.

13. That the said Utah Power & Light Company is now and for several years last past has been unlawfully and wrongfully appropriating to its own use, some of the waters of the said Mill Creek Stream for sprinkling, garden, and domestic purposes both at a plant located in Mill Creek Canyon, about five miles from the mouth thereof and at and near its plant located near the mouth of Mill Creek Canyon as aforesaid.

14. That in consequence of the said Utah Power & Light Company's failure and neglect to maintain its pipe line in a reasonably good state of repair and because of the loss and waste of water in consequence thereof, as aforesaid, and because of the failure of the said Utah Power & Light Company to pump water into its pipe line as aforesaid, and on account of the irregularity in flow ocassioned as aforesaid by the operation of the hydro-electric plant of the Utah Power & Light Company, and the wrongful and unlawful appropriating of water of the Mill Creek Stream as aforesaid, your petitioner and its stockholders have been damaged. During the last three years they have been damaged in the sum of Ten Thousand Dollars ($10,000.00).

15. That the said Utah Power & Light Company will, so your petitioner is informed and believes and therefore upon information and belief alleges, continue to waste waters of the Mill Creek Stream in the manner aforesaid and to interrupt and interfere with the natural, steady and equal flow of the Mill Creek Stream, and also to wrongfully and unlawfully appropriate waters from the said Mill Creek Stream unless restrained and enjoined by this Court. That a continuation of the loss and waste of water by the Utah Power & Light Company in the manner aforesaid and a continuation also of the interrupting and interfering of the natural, steady and equal flow of the Mill Creek Stream by the Utah Power & Light Company and the wrongful and unlawful appropriation of the Mill Creek Stream waters by the Utah Power & Light Company, will necessarily occasion the bringing of a multiplicity of suits by your petitioner and will work irreparable damage to your petitioner and its stockholers.

16. That your petitioner brings this proceeding for and on behalf of itself and its stockholders.

17. That your petitioner has not a plain, speedy, and adequate remedy at law.

WHEREFORE, your petitioner prays that the Utah Power & Light Company show cause before this Court, at a time and place to be fixed by this Court, why it should not be found to be in contempt of Court on account of its violating the terms and provisions of said decree of August 1st, 1913 as in said petition alleged, and also to show cause why it should not pay all damages occassioned petitioner and its stockholders as in said petition alleged, and further, why it should not be required to so repair its pipe line or make a new installation thereof as will prevent and obviate the waste and loss of water and to pump into its pipe line between the intake of its pipe line and its said plant near the mouth of Mill Creek Canyon, all waters excepting the so-called Boundary Spring, which do not and cannot run into its pipe line by gravity, and further, show cause why it should not be restrained from appropriating waters from the said Mill Creek Stream to its own use for culinary or domestic purposes at or near either of its said plants and why such other and further relief should not be accorded petitioner as may be deemed proper and equitable in the premises.

LOWER MILL CREEK IRRIGATION COMPANY

By W. J. Harris, Pres.
Petitioner

O. W. Carlson
Attorney for Petitioner

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

D. J. DAVIS, being first duly sworn, deposes and says: That he is the President of the Lower Mill Creek Irrigation Company; That as such officer of said company, he makes this verification for and on behalf of said company; That he has read the foregoing Petition, knows the contents thereof, and that the same is true to the best of his knowledge, information, and belief.

D. J. Davis

Subscribed and sworn to before me this 2nd day of Sept., 1930.

Grant Larson
Notary Public, residing at
Salt Lake City, Utah.

My Commission Expires:
July 12, 1932

4449

FILED IN THE CLERK'S OFFICE
Salt Lake County, Utah
SEP 3 1930
[illegible], Clerk 3rd Dist. Court
By [illegible] Deputy Clerk

S.B. #2065

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

MARTHA YOUNG, Administratrix of the estate of James Young, deceased, Plaintiff,	)	
-vs-	)	ORDER TO SHOW CAUSE
WILLIAM GORDON, Executor of the estate of Daniel Lund, deceased, et al, Defendant.	)	# 4449

Upon the verified petition of the Lower Mill Creek Irrigation Company, a copy of which is attached hereto, it is ordered that the said Utah Power & Light Company show cause before said Court in the above entitled cause and the Honorable Orson W. McCorkle Judge thereof, at the City & County Building, Salt Lake City, Utah, on Thurs., the 11th day of September, 1930, at the hour of 10 a. M., why it should not be held and adjudged to be in contempt of the court in failing to comply with and in violating the terms and provisions of that certain decree entered by this Court in the above entitled cause on August 1st, 1913 as in said petition alleged, and also to show cause at said time and place, why it should not pay all damages occasioned said petitioner and its stockholders as in said petition alleged, and why it should not be required to so repair its pipe line or make a new installation thereof as will prevent and obviate the waste and loss of water therefrom in Mill Creek Canyon and further, why it should not be required to pump into its said pipe line, between the intake thereof and the hydro-electric plant near the mouth of Mill Creek Canyon, all waters, excepting the so-called Boundary Spring, which do not and cannot run into its pipe line by gravity, and further, show cause at said time and place why it should not be restrained from appropriating waters from the said Mill Creek Stream to its own use

for culinary or domestic purposes at or near either of its hydro-electric plants, and why such other and further relief should not be accorded petitioner as may be deemed proper and equitable in the premises.

Judge

Done in open Court this 3rd day of Sept., 1930.

ATTEST
ALONZO MACKAY,
CLERK
By
Deputy Clerk

90774

SHERIFF'S OFFICE
SALT LAKE COUNTY
SEP 3 4 34 PM '30
SALT LAKE CITY, UTAH
BY _____

Return on Order

STATE OF UTAH }
COUNTY OF SALT LAKE } ss. SHERIFF'S OFFICE.

I hereby certify and return that I received the within and hereto annexed Order on the 3rd day of September, 1930, and served the same upon the Utah Power and Light Company, ~~the within named Defendant, personally~~, by showing the original and delivering to and leaving with J. W. Twelves, Treasurer, ~~said Defendant~~, in Salt Lake City, Salt Lake County, State of Utah, a true copy of said Order

on the 3rd day of September, 1930

Dated at Salt Lake City, Utah, this 4th day of September, 1930.

CLIFFORD PATTEN, Sheriff of Salt Lake County, State of Utah.

By A. S. Nichols Deputy Sheriff

SHERIFF'S FEES.

Service $ 1.00

Mileage $ .20

Total $ 1.20

B38
P612

4449

SEP 5 1930

LERK'S OFFICE
County, Utah
SEP 5 1930
Clerk 3rd Dist Court
Deputy Clerk

IN THE DISTRICT COURT OF THE STATE OF UTAH

Third Judicial District

IN AND FOR THE COUNTY OF SALT LAKE

-------- ooOoo --------

MARTHA YOUNG, Administratrix of the estate of James Young, deceased,	:	
Plaintiff,	:	
-vs-	:	O R D E R
WILLIAM GORDON, Executor of the estate of Daniel Lund, deceased; UTAH POWER and LIGHT COMPANY, a corporation, et al.,	:	
Defendants.	:	

-------- ooOoo --------

On motion of Bagley, Judd & Ray, and good cause being shown therefore, it is hereby Ordered that the Utah Power and Light Company may have to and including the 25th day of September, 1930, to answer or otherwise plead to the petition of the Lower Mill Creek Company filed herein on the 3rd day of September, 1930, and to the Order to Show Cause signed by this court on the 3rd day of September, 1930.

Dated this 9th day of September, 1930.

.. JUDGE ..

4 2 19

Salt Lake County, Utah
SEP 27 1920
Deputy Clerk

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

----oooOooo----

MARTHA YOUNG, Administratrix of the Estate of James Young, Deceased,	:	
Plaintiff,	:	PETITION FOR ORDER TAXING COSTS.
vs.	:	Case #4449. Year 1930.
WILLIAM GORDON, Executor of the Estate of Daniel Lund, Deceased, et al,	:	
Defendant.	:	

----oooOooo----

Comes now William Carlson of Salt Lake County, Utah, petitioner herein, and respectfully represents to the court as follows:

1. That your petitioner was appointed by this court water master of water commissioner in the above entitled case for the year 1930 at the fixed salary of Five Hundred ($500.00) Dollars.

2. That in pursuance of said appointment your petitioner has diligently and continuously from the time of his appointment to the date hereof performed his duties as water master of the waters of Mill Creek Canyon Stream.

3. That the irrigation season for the water users of the waters of Mill Creek Canyon Stream for the year 1930 is now closed.

4. That the sum of $25.00 is a reasonable attorney's fee for the preparation of this petition and the rendering of legal services in the prosecution of the same.

5. Attached hereto and made a part hereof is a list of the users of the waters of said Mill Creek Stream and the equitable share or amount of the costs and said salary that should be borne by each user.

WHEREFORE, your petitioner prays that the parties using the waters of Mill Creek Canyon Stream shall be ordered to pay such amounts respectively as may be necessary for the payment of the said salary of your petitioner and an attorney's fee for the preparation and presentation of this petition and services in the prosecution of the same; and that each user be taxed the amount set opposite his or its name in the list hereto attached; and that your petitioner be continued as water commissioner for the year 1931.

William Carlson
Petitioner.

James M. Carlson
Attorney for Petitioner.

STATE OF UTAH)
: ss.
COUNTY OF SALT LAKE)

William Carlson, being first duly sworn, deposes and says: That he is the petitioner above named, and that he has read the foregoing petition, knows the contents thereof; that the same is true of his own knowledge, except as to matters therein stated on information and belief, and as to those matters he believes them to be true.

William Carlson

Subscribed and sworn to before me this 31st day of October, 1930.

J. M. Carlson
Notary Public, residing at
Salt Lake City, Utah.

My commission expires
September 16, 1932.

Utah Power & Light Company	$105.00
Pleasant View Park Company and E. W. Kelley	4.00
Stillman Estate and Successors, Joseph Stillman, Mrs. Brigham Stillman and Elizabeth Stillman	6.30
Moses Estate and Successors, Mrs. E. B. Swain and Mrs. Cummings	9.16
Frank Russell and Brigham Stillman	2.94
James Russell	5.50
J. E. Morris and Successors	2.40
Ferry Young and B. S. Hinckley, successors to Salt Lake County, each one-half	.60
The following parties as successors to the Alexander Estate right:	
A. B. Child	1.90
Edward Kersley	.63
George E. Airis	1.90
A. B. Irvine	1.26
J. E. Burbidge	.63
Caroline Soderland	2.90
George Airis, successor to B. A. M. Forseith	1.23
Brigham Stillman and Brigham Stillman etc., successor to Daniel Hussey	.80
Samuel Stillman	2.73
Thomas Osguthorpe	.60
B. S. Hardy, and successors to H. B. Skidmore	.60
E. F. Chamberlain and successor, Joseph Stillman	2.22
D. C. Brown	.60
Osguthorpe and Skidmore, Surplus	6.30
Franklin & John Neff Ditch, Amos H. Neff and Neff Ditch and Brigham Young Ditch and their successors, the East Mill Creek Water Co.	136.70
Keller Ditch	28.25
Lower Mill Creek Irrigation Company & Salt Lake City	159.26
White Ditch Irrigation Company or Salt Lake City	39.95
The following parties successors to the Tripp Ditch:	
A. B. Irvine	.21
J. E. Burbidge	.11
George E. Airis and Minnie Jackson	.21
A. B. Child	.11

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

----oooOooo----

MARTHA YOUNG, Administratrix of the Estate of James Young, Deceased,	:	
Plaintiff,	:	
vs.	:	N O T I C E.
	:	4449
WILLIAM GORDON, Executor of the Estate of Daniel Lund, Deceased, et al,	:	
Defendant.	:	

----oooOooo----

To the Utah Power & Light Co., the East Mill Creek Water Co., The Lower Mill Creek Irrigation Co., Salt Lake City, The White Ditch Irrigation Co., and Users of Water on the Keller Ditch:

You and each of you will please take notice that on the 8th day of November, 1930, at the hour of 10 A. M. of said day or as soon thereafter as counsel can be heard, William Carlson, water commissioner of the Mill Creek stream will request an order in accordance with his petition on file in the above entitled cause fixing the amount that each of you shall pay toward defraying the expenses of the said water commissioner's salary for the year 1930.

James M. Carlson
Attorney for William Carlson
Water Commissioner.

CORRECTION

m AR-27

Utah Power & Light Company	$105.00
Pleasant View Park Company and E. W. Kelley	4.00
Stillman Estate and Successors, Joseph Stillman, Mrs. Brigham Stillman and Elizabeth Stillman	6.30
Moses Estate and Successors, Mrs. E. B. Swain and Mrs. Cummings	9.16
Frank Russell and Brigham Stillman	2.94
James Russell	5.50
J. E. Morris and Successors	2.40
Ferry Young and B. S. Hinckley, successors to Salt Lake County, each one-half	.60
The following parties as successors to the Alexander Estate right:	
A. B. Child	1.90
Edward Kersley	.63
George E. Airis	1.90
A. B. Irvine	1.26
J. E. Burbidge	.63
Caroline Soderland	2.90
George Airis, successor to B. A. M. Forseith	1.23
Brigham Stillman and Brigham Stillman etc., successor to Daniel Hussey	.80
Samuel Stillman	2.73
Thomas Osguthorpe	.60
B. S. Hardy, and successors to H. B. Skidmore	.60
E. F. Chamberlain and successor, Joseph Stillman	2.22
D. C. Brown	.60
Osguthorpe and Skidmore, Surplus	6.30
Franklin & John Neff Ditch, Amos H. Neff and Neff Ditch and Brigham Young Ditch and their successors, the East Mill Creek Water Co.	136.70
Keller Ditch	28.25
Lower Mill Creek Irrigation Company & Salt Lake City	159.26
White Ditch Irrigation Company or Salt Lake City	39.95
The following parties successors to the Tripp Ditch:	
A. B. Irvine	.21
J. E. Burbidge	.11
George E. Airis and Minnie Jackson	.21
A. B. Child	.11

1449

FILED IN THE CLERK'S OFFICE
Salt Lake County, Utah
[illegible] 1930
[illegible] Dist. Ind.
Deputy Clerk

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

----oooOooo----

MARTHA YOUNG, Administratrix of the Estate of James Young, Deceased,	:	
Plaintiff,	:	
vs.	:	N O T I C E.
	:	4449
WILLIAM GORDON, Executor of the Estate of Daniel Lund, Deceased, et al,	:	
Defendant.	:	

----oooOooo----

To the Utah Power & Light Co., the East Mill Creek Water Co., The Lower Mill Creek Irrigation Co., Salt Lake City, The White Ditch Irrigation Co., and Users of Water on the Keller Ditch:

You and each of you will please take notice that on the 8th day of November, 1930, at the hour of 10 A. M. of said day or as soon thereafter as counsel can be heard, William Carlson, water commissioner of the Mill Creek stream will request an order in accordance with his petition on file in the above entitled cause fixing the amount that each of you shall pay toward defraying the expenses of the said water commissioner's salary for the year 1930.

James M. Carlson
Attorney for William Carlson
Water Commissioner.

STATE OF UTAH)
: ss.
COUNTY OF SALT LAKE)

J. M. Carlson being first duly sworn, says: That he is the attorney for William Carlson, Water Commissioner of Mill Creek Stream; that he caused a correct copy of the attached notice to be mailed to the Utah Power & Light Company, the East Mill Creek Water Company, the Lower Mill Creek Irrigation Company, Salt Lake City, the White Ditch Irrigation Company, and Users of Water on the Keller Ditch; that copies of said notice were properly directed to the officers of said corporations, and properly stamped, and were mailed on the 1st day of November 1930, at Salt Lake City, Utah. Affiant further says that he caused a copy of said attached notice to be posted in a conspicuous place upon the Keller Ditch named in the petition herein, on the 1st day of November, 1930.

J. M. Carlson

Subscribed and sworn to before me this 1st day of November 1930.

Notary Public, residing at
Salt Lake City, Utah.

My commission expires
Nov. 16-1931.

B

4449

FILED IN THE CLERK'S OFFICE
Salt Lake County, Utah
NOV 1 1920
[illegible] Clerk, Sixth Ord Dist. Court
By [illegible]
Deputy Clerk

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

----oooOooo----

MARTHA YOUNG, Administratrix of the Estate of James Young, Deceased, Plaintiff,	:	
vs.	:	ORDER TAXING COSTS FOR THE YEAR 1930.
WILLIAM GORDON, Executor of the Estate of Daniel Lund, Deceased, et al, Defendant.	:	No. 4449.

----oooOooo----

The court having heretofore appointed William Carlson water master in the above entitled case for the year 1930, at the fixed salary of Five Hundred Dollars, and it appearing that William Carlson has employed James M. Carlson as attorney to prepare his petition herein and this order, and that Twenty-five Dollars is a reasonable attorney's fee in preparing the petition and order and presenting the same to the court.

NOW, THEREFORE, it is hereby ORDERED and ADJUDGED, that the petition of said William Carlson be granted, and that the parties using water of Mill Creek Canyon Stream shall pay the amount set after their respective names for the costs of a water master and attorney's fee for the year 1930, and judgment is hereby entered against the said parties for said amount, viz.:

Utah Power & Light Company	$105.00
Pleasant View Park Company and E. W. Kelley	4.00
Stillman Estate and Successors, Joseph Stillman, Mrs. Brigham Stillman and Elizabeth Stillman	6.30
Moses Estate and Successors, Mrs. E. B. Swain and Mrs. Cummings	9.16
Frank Russell and Brigham Stillman	2.94
James Russell	5.50
J. E. Morris and Successors	2.40
Ferry Young and B. S. Hinckley, successors to Salt Lake County, each one-half	.60

The following parties as successors to the Alexander Estate right:	
A. B. Child	$ 1.90
Edward Kersley	.63
George E. Airis	1.90
A. B. Irvine	1.26
J. E. Burbidge	.63
Caroline Soderland	2.90
George Airis, successor to B. A. M. Forseith	1.23
Brigham Stillman and Brigham Stillman etc., successor to Daniel Hussey	.80
Samuel Stillman	2.73
Thomas Osguthorpe	.60
B. S. Hardy, and successors to H. B. Skidmore	.60
E. F. Chamberlain and successor, Joseph Stillman	2.22
D. C. Brown	.60
Osguthorpe and Skidmore, Surplus	6.30
Franklin & John Neff Ditch, Amos H. Neff and Neff Ditch and Brigham Young Ditch and their successors, the East Mill Creek Water Company	136.70
Keller Ditch	28.25
Lower Mill Creek Irrigation Company and Salt Lake City	159.26
White Ditch Irrigation Company or Salt Lake City	39.95
The following parties successors to the Tripp Ditch:	
A. B. Irvine	.21
J. E. Burbidge	.11
George E. Airis and Minnie Jackson	.21
A. B. Child	.11

It is further expressly ORDERED and ADJUDGED, that in the event any of the parties shall fail to pay the amount of costs taxed against them herein, or the costs heretofore taxed under the orders and decree of the court heretofore made, the payment of which they are delinquent herein, that no water shall be delivered to such person or persons until the entire amount of costs taxed herein and heretofore shall have been paid in full, and where costs are taxed against a ditch or company in this order and the orders and decree heretofore entered and the full amount of costs taxed against such ditch or company in this order and the orders and decree heretofore entered shall not have been paid, then no water shall be delivered to such ditch until said costs taxed herein and heretofore are paid

in full, and in the event any person entitled to water from said ditch shall fail to pay the portion of costs fixed herein and heretofore, and the others using water from said ditch shall pay such portion, then no water shall be delivered to such delinquent person, but the portion which such delinquent person is entitled to, shall be delivered to the others on said ditch who shall have paid such cost, in the proportion in which they shall pay the same; and it is further ordered that the rights to discontinue the distribution of the water as herein provided shall be considered a cumulative remedy in addition to the right to have execution issued on this order and the orders heretofore entered.

Wm H. Brand
Judge.

Done in open court this 8th day of November, 1930.

M H Kriebel

4449

File

[illegible] THE CLERK'S OFFICE
Salt Lake County, Utah
NOV 8 1930
ALONZO MACKAY, Clerk 3rd Dist. Court
By [illegible]
Deputy Clerk

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

MARTHA YOUNG, Administratrix of the estate of James Young, deceased, Plaintiff,	)	
-vs-	)	
WILLIAM GORDON, Executor of the estate of Daniel Lund, deceased, et al, Defendant.	)	N O T I C E

To The Utah Power & Light Company and Correy & Inman, its attorneys; the O'Connors and Bagley Judd & Ray, their attorneys; the Upper Ditches and Allan T. Sanford, their attorney; Edward Barry and Morris & Callister, his attorneys, and Salt Lake City and Shirley P. Jones, City Attorney.

You and each of you will please take notice that the Petition of William Carlson, filed by him in the above entitled cause as Water Commissioner for the Mill Creek Stream, will come on for further hearing in the Third Judicial District Court, City & County Building, Salt Lake City, Utah and before the Honorable Wm. H. Bramel, Judge thereof, on Friday, December 19th, 1930 at the hour of 10 o'clock A.M. At said time and place and pursuant to the said Petition, the said William Carlson, as petitioner and Water Commissioner as aforesaid, will ask the Court to direct and command the installation and maintenance of necessary and proper weirs and measuring devices in the Mill Creek Stream as prayed for in said Petition.

Oscar W. Carlson
Attorney for Petitioner

Received copy of the above Notice this 10th day of December, 1930.

Geo. R. Corey
R. B. Inman
Attorneys for Utah Power & Light Co.

Bagley, Judd & Ray
Attorneys for O'Connors

Allen T. Sanford
Attorneys for Upper Ditches

Morris & Callister
Attorneys for Edward Barry

Jones Walden & Fraser
Attorney for Salt Lake City

4449

File

FILED IN THE CLERK'S OFFICE
Salt Lake County, Utah
DEC 10 1930
ALONZO McKAY, Clerk 3rd Dist. Court
By E. Warner
Deputy Clerk

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

Martha Young, Administratrix of the Estate of James Young, Deceased, Plaintiff, -vs- William Gordon, Executor of the Estate of Daniel Lund, Deceased, et al, Defendants.	PETITION 4449

Comes now East Mill Creek Water Company, and respectfully represents as follows, to-wit:

1. That it is a corporation organized and existing under and pursuant to the laws of the State of Utah.

2. That it is the owner, and through its stockholders, the beneficial user of a portion of the waters of the Mill Creek stream, the same being represented by the waters of the Brigham Young Ditch; the Amos Neff Ditch, and the Franklin-John Neff Ditch.

3. That heretofore the court has from year to year appointed a commissioner for the purpose of measuring and apportioning the waters of the said stream, between the parties entitled thereto, according to the terms of a certain decree heretofore made and filed in the above-entitled action.

4. That heretofore the said commissioner has been appointed upon ex parte application, and without notice to petitioner, and without an opportunity to be heard.

5. That your petitioner verily believes and alleges that William Carlson, who has been heretofore appointed as commissioner for the measurement of the waters of the said stream is not a proper and suitable person to conduct such measurement and apportionment for the year 1931, for the reason that said William Carlson is biased and prejudiced against your petitioner and in favor of divers other users of the waters of the said stream including the Lower Mill Creek Irrigation Company, and the White Ditch Irrigation Company. That such bias and prejudice precludes petitioner and its stockholders from receiving the proportion and amount of water in the said stream to which they are entitled under the said decree, and prevents the strict and complete enforcement of the terms of the said decree.

6. That on or about the 15th day of August, 1930 the said commissioner, according to the best knowledge, information and belief of petitioner, against the will and without the consent of petitioner, changed the point of diversion and measurement of the waters of the said stream beneficially used by petitioner; that the said change in the point of diversion and measurement caused a great and irreparable loss to petitioner and its stockholders, and deprived petitioner and its stockholders of the waters to which they were entitled under the said decree in the said stream.

7. That the said change of point of measurement and diversion by the said commission William Carlson, according to the best knowledge, information and belief of petitioner was without the

order or sanction of the court in the above-entitled matter.

8. That the said commissioner Willaim Carlson does not possess the necessary technical and engineering knowledge and training to enable him to properly and accurately measure the waters of the said stream.

9. That it is necessary for the protection of the interests of all the parties in the said stream that the waters of the same be accurately and properly measured by a competant and impartial commissioner.

WHEREFORE, petitioner prays that a day of court be fixed for the hearing of the appointment of the said water commissioner for the year 1931; that petitioner and other parties interested in the apportionment and division of the said waters be given proper notice of such meeting; and that upon such hearing and the proofs there made, that a competant disinterested party be appointed by this court to apportion and measure the said waters.

Sid N. Cornwall
Attorney for Petitioner

State of Utah, (
:ss.
County of Salt Lake.)

Albert A. Capson, being first duly sworn deposes and says:

That he is the President of East Mill Creek Water Company, the petitioner above named; that he has read the above and foregoing complaint, knows the contents thereof, and that the same is true of his own knowledge, except as to matters therein stated on information and belief, and as to those matters he believes it to be true.

Albert A Capson

Subscribed and sworn to before me this 26 day of December, A. D. 1930.

Sid N. Cornwall
Notary Public, Residing at
Salt Lake City, Utah.

My Commission expires July 21, 1931.

Received a copy of the above and foregoing petition this 26th day of December A. D. 1930.

Attorney for:

Lower Mill Creek Irrigation Company

White Ditch Irrigation Company

Jones Wolsen & Frost
Salt Lake City Corporation

James M. Carlson
William Carlson

IN THE THIRD JUDICIAL DISTRICT COURT, IN AND FOR SALT LAKE COUNTY,

STATE OF UTAH

Martha Young, Administratrix of the Estate of James Young, Deceased,	(:)	
-vs-	:	A F F I D A V I T
William Gordon, Executor of the Estate of Daniel Lund, Deceased.	(:)	

State of Utah, (: ss.
County of Salt Lake.)

Sid N. Cornwall, being first duly sworn deposes and says:

That he is the attorney for the petitioner East Mill Creek Water Company, the petitioner named in the hereunto attached petition.

That on the 26th day of December, 1930 he personally delivered a copy of the said petition to O. W. Carlson, whom affiant is advised and believes is attorney for Lower Mill Creek Irrigation Company, and to D. J. Davis, whom affiant is advised and believes is President of Lower Mill Creek Irrigation Company, and each of said parties refused to accept service of the said petition. That said copies were delivered to the said parties at their respective offices in Salt Lake City, Utah.

Sid N. Cornwall

Subscribed and sworn to before me this 26th day of December, A. D. 1930.

S. H. Thomas
Notary Public, ~~Residing~~ at
Salt Lake City, Utah.

My Commission expires July 30-1932

4449

FILED IN THE CLERK'S OFFICE
Salt Lake County, Utah
DEC 26 1930
ALONZO [illegible] 3rd Dist. Court
By [illegible] Deputy

We, the undersigned, water owners and water users on Mill Creek, in Salt Lake County, Utah, do hereby petition the Third District Court to appoint Peter M. Hixson as Water Commissioner to measure, regulate division and distribute the waters of said stream for the irrigation season of 1931. Mr. Hixson is fully competent to act as commissioner and we believe that it is for the best interests of all concerned that he be appointed:

Albert A Capson	Ed. Keller
President of	T. L. Irvine
East Mill Creek	Geo. H. Taylor
Irrigation Co.	Samuel Neff
Thos. Orgathorpe	L. C. Hengy
J. H. Orgathorpe	Eugene J. Neff
Amanda K. Taylor	E. S. Rich
Maud P. Ainis	Erma Keller
G. E. Ainis	Arthur A. Woods
Luella Orgathorpe	Mark Hixson

We, the undersigned, water owners and water users on Mill Creek, in Salt Lake County, Utah, do hereby petition the Third District Court to appoint Peter M. Hixson as Water Commissioner to measure, regulate division and distribute the waters of said stream for the irrigation season of 1931. Mr. Hixson is fully competent to act as commissioner and we believe that it is for the best interests of all concerned that he be appointed:

Ebbie Johnston — A. W. Keller

F. L. Russell

Eliza Russell

Joseph Arguthorpe

S. A. Cornwall

J. A. Smith

Matthew White — Pres. of White Ditch Co

J. S. Oliver

Zina Oliver

Lee Witt Clothier

4449

FILED IN THE CLERK'S OFFICE
Salt Lake County, Utah
DEC 30 1930
ALONZO MACKAY, Clerk 3rd Dist. Court
By M N Kirby
Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT, IN AND FOR

SALT LAKE COUNTY, STATE OF UTAH

MARTHA YOUNG, Administratrix of the estate of James Young, deceased, Plaintiff,	)	
-vs-	)	
WILLIAM GORDON, Executor of the estate of Daniel Lund, deceased, et al, Defendant.	)	**NOTICE**

To the Utah Power & Light Company and Correy & Inman, its attorneys; the O'Connors and Bagley Judd & Ray, their attorneys; the Upper Ditches and Allan T. Sanford, their attorney; Edward Barry and Morris & Callister, his attorneys; and Salt Lake City and Shirley P. Jones, City Attorney.

You and each of you will please take notice that the Petition of William Carlson, filed by him in the above entitled cause as Water Commissioner for the Mill Creek Stream, will come on for further hearing in the Third Judicial District Court, City & County Building, Salt Lake City, Utah and before the Honorable Wm. H. Bramel, Judge thereof, on Saturday, February 7th, 1931 at the hour of 10 o'clock A.M. At said time and place and pursuant to the said Petition, the said William Carlson, as petitioner and Water Commissioner as aforesaid, will ask the Court to direct and command the installation and maintenance of necessary and proper weirs and measuring devices in the Mill Creek Stream as prayed for in said Petition.

O. W. Carlson
Attorney for Petitioner.

Received copy of the above and foregoing Notice this 4th day of February, 1931.

Geo. R. Corey & C. C. Inman
Attorneys for Utah Power & Light Co.

Bagley Judd & Ray
Attorneys for O'Connors.

Allen T. Sanford
Attorneys for Upper Ditches.

Morris & Callister
Attorneys for Edward Barry.

Jones Watson & Fraser
Attorney for Salt Lake City.

4449

Filed in the Clerk's Office
Salt Lake County, Utah
FEB 4 1931
Fred Bassett
Deputy Clerk

T. F. McDonald
CITY ENGINEER

Murray City Corporation

Murray City, Utah

March 19 1931

Hon. Wm. H. Bramel
Judge Third Judicial Dist.
Salt Lake City, Utah

Dear Judge Bramel;

If a Court Water Commissioner for Mill Creek is to be appointed soon, kindly consider me an applicant for the position.

As I am Court Commissioner of Big Cottonwood Creek, I can conveniently take care of Mill Creek also. I am not interested in any material way in Mill Creek System and have had lots of experience and feel well qualified for the position.

Yours truly

T. F. McDonald.
Irrigation Engineer.

1865 Wasatch St

4449

FILED IN THE CLERK'S OFFICE
Salt Lake County, Utah
MAR 25 1931
ALONZO MACKAY, Clerk 3rd Dist. Court
By M. H. Kriebel
Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT, IN AND FOR

SALT LAKE COUNTY, STATE OF UTAH

MARTHA YOUNG, Administratrix of the estate of James Young, deceased, Plaintiff,	) *)	
-vs-	*	NOTICE
WILLIAM GORDON, Executor of the estate of Daniel Lund, deceased, et al, Defendant.	) *)	

TO THE USERS AND OWNERS OF WATERS OF THE MILL CREEK STREAM AND TO THE FOLLOWING ATTORNEYS FOR THE RESPECTIVE USERS AND OWNERS OF SUCH WATERS, Namely: SHIRLEY P. JONES, City Attorney for Salt Lake City; ALLAN T. SANFORD, attorney for Upper Ditches; COREY & INMAN, attorneys for Utah Power & Light Company; BAGLEY JUDD & RAY, attorneys for Mrs. O'Connor; and MORRIS & CALLISTER, attorneys for Barry:

You and each of you will please take notice that a hearing upon the petition heretofore filed in the above entitled cause by William Carlson, water commissioner for the Mill Creek Stream, will be held and had before the Honorable D. W. Moffat, Judge of the Third Judicial District Court, in and for Salt Lake County, State of Utah, at the City & County Building, Salt Lake City, Utah, on Wednesday, April 15th, 1931 at the hour of ten o'clock A.M. for the purpose of seeking and obtaining an order pursuant to the prayer of said petition for the providing and instaling of weirs and measuring devices in the Mill Creek Stream.

D. W. Carlson
Attorney for William Carlson,
Water Commissioner.

Received copy of the above and foregoing Notice this 10th day of April, 1931.

Jones Watson + Fraser
Attorneys for Salt Lake City

Allan T. Sanford
Attorney for Upper Ditches

L. R. Corey and A. C. Inman
Attorneys for Utah Power & Light Co.

Bagley, Judd + Ray
Attorneys for Mrs. O'Connor

Morris + Callister
Attorneys for Barry

4449

FILED IN THE CLERK'S OFFICE
Salt Lake County, Utah
APR 10 1931
ALONZO B. BASSETT, Clerk of Dist. Court
By Fred L. Bassett
Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

----------ooOOOoo----------

MARTHA YOUNG, Administratrix of the Estate of James Young, deceased,	:	
Plaintiff,	:	
vs.	:	OBJECTIONS TO ENGINEER'S
WILLIAM GORDON, Executor of the Estate of Daniel Lund, deceased, et al.	:	REPORT
Defendant.	:	

----------ooOOOoo----------

Come now Eugene J. Neff the successor in interest of the right decreed to A. M. Seeley and Seymour H. Neff, and Samuel Neff, the successor in interest to the Amos H. Neff house use and pipe streams

and object to the report of the engineer A. Z. Richards, and object to the adoption thereof by the court in the following particulars on the following grounds:

1. With reference to recommendations p and q the owners of these rights object to the change being made for the following reasons:

(a) That during the normal flow of the water the entire flow of the stream has for sixty or seventy years been diverted through the Neff millrace, and at some distance below the mouth of this millrace the water has been taken out for the Keller ditch and the balance of the water has flowed through the millrace, and the various owners of house use streams have diverted the water from the millrace, which is adjacent to the homes, and the point of use of said water, and a good deal of money has been expended in putting this channel in good condition for carrying water and beautifying the grounds and premises through which it runs, and for many years the water going through the Brigham Young ditch and lower Mill Creek, including the Hoagland and Murphy ditch and the White ditch,

ALLEN T. SANFORD, LAWYER
404-8 BOSTON BLDG.

has been divided through a headgate at the point where it is now divided. This headgate has proved a satisfactory headgate for the division of the water for many years, although it may be in need of repair, and these parties believe that the system which has been in practice for many years is better than that which has been recommended. Under the system which has been in practice the water for the various house use streams is diverted from the channel so that it is conducted a very short distance and as is proposed by the engineer's report the water would be necessarily transported in the small ditches for a greater distance than is required now for it to be transported in the small ditches.

(b) That the amount of water to which the parties herein are entitled is small and the construction of headgates and devices for diverting the water such as are recommended by the engineer would cast a heavier burden on these defendants than they can afford to carry. Furthermore, the water can be properly diverted to these defendants and measured over cippoletti weirs at a cost of not more than 10% or 15% of the cost of the devices which are proposed to be installed under the engineer's report. While the wooden devices which may be constructed for the diversion of said water will not last as long as will the concrete devices recommended by the engineer, yet, when you take into consideration the smallness of the water rights on this stream these defants believe that they should not be required to do more than install proper wooden devices.

(c) That the recommendation of the engineer that the concrete structure be built in the millrace at a point approximately 60 feet east of the mill pond is impracticable for the reason that such a headgate would necessarily widen the stream on the approach side of it, and if the stream is widened at that point it will encroach upon the public highwat at a point where the highway is very narrow, and it is doubtful if the County authorities would permit such encroachement. And furthermore, at the point where it is proposed to install said concrete headgate the channel is shallow and narrow, and the contour is such that there is no room for damming the water in order to make a proper approach to the end that the water may be properly measured as it goes over the weir.

2. There was installed in said millrace proper headgates and measuring devices for the diversion of the water to which these defendants were entitled. It may be that some of said headgates and devices are in a poor state of repair, but these defendants are willing to put everything in a good state of repair to the end that the water to which they are entitled may be properly approached and measured to them.

WHEREFORE these defendants pray that the recommendations of the engineer insofar as the same are objected to by these defendants may not be adopted by the court and that these defendants have such other and further relief as may be just and equitable.

Allen T. Sanford
Attorney for defendants answering herein.

ALLEN T. SANFORD, LAWYER

STATE OF UTAH :
: ss
COUNTY OF SALT LAKE :

Samuel Neff, being first duly sworn, deposes and says: That he is one of the defendants above named; that he has read the foregoing objections to engineer's report; that the matters therein stated are true according to his best knowledge, information and belief.

Samuel Neff

Subscribed and sworn to before me this 18th day of Feb., 1931

Allen T. Dougan
Notary Public
Residing at Salt Lake City, Utah.

STATE OF UTAH)
: ss.
COUNTY OF SALT LAKE)

Della Rose, being first duly sworn, deposes and says:

That she is a stenographer in the office of Allen T. Sanford; that on the 19th day of February, A.D. 1931 she mailed one copy of the hereto attached Objection to Engineer's Report to each of the following by enclosing one copy in each of four envelopes and addressing the same as follows:

Bagley, Judd & Ray, Kearns Building, Salt Lake City, Utah;
Corey & Inman, Attorneys, Utah Power & Light Co., Salt Lake City, Utah
Mr. Shirley P. Jones, City Attorney, City & County Bldg., Salt Lake City, Utah; and
Mr. Oscar W. Carlson, Deseret Bank Building, Salt Lake City, Utah;

and deposited the said envelopes in the United States Post Office, Salt Lake City, Utah, postage prepaid.

Della Rose.

Subscribed and sworn to before me this
19th day of February, A.D. 1931.

Allen T. Sanford
Notary Public

Residing at Salt Lake City, Utah.

4449

FILED IN THE CLERK'S OFFICE
Salt Lake County, Utah
APR 14 1931
ALONZO MACKAY, Clerk 3rd Dist.Court
By [illegible]
Deputy Clerk

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

MARTHA YOUNG, Administratrix of the Estate of James Young, deceased, Plaintiff, vs. WILLIAM GORDON, Executor of the Estate of DANIEL LUNN, deceased, et al, Defendants.	ORDER 4449

Pursuant to stipulation by all parties herein interested,

It is ORDERED that T. F. McDONALD be and he is hereby appointed Water Commissioner in the above entitled cause to have charge of the distribution of all waters according to the decree heretofore entered and filed in the above entitled cause and to act as said Water Commissioner during the year 1931, or until the further order of this Court.

DATED: APRIL 21st 1931.

ATTEST
ALONZO MACKAY.
CLERK
By [signature]
Deputy Clerk

David W. Moffat
JUDGE.

4449

FILED IN THE CLERK'S OFFICE
Salt Lake County, Utah
APR 21 1931
ALONZO [illegible] 3rd Dist.Court
By [illegible]
Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

- - - - - - - - - - - - -

MARTHA YOUNG, Administratrix of the Estate of James Young, Deceased, Plaintiff vs. WILLIAM GORDON, Executor of the Estate of Daniel Lund, Deceased, et al, Defendants	Petition for ORDER TAXING COSTS FOR THE YEAR BEGINNING APRIL 15, 1931 No. 4449.

- - - - - - - - - - - - - - - - -

Comes now T. F. MCDONALD of Salt Lake County, Utah, petitioner herein, and respectfully represents to the court as follows:

1. That your petitioner was appointed by this Court, water commissioner in the above entitled case for the year beginning April 15, 1931.

2. And in pursuance of said appointment your petitioner has diligently and continuously from the time of his appointment performed his duties as water commissioner of Mill Creek Canyon Stream, also, served as engineer, in designing and constructing weirs and supervising the installation of the same and incurring expense notifying the several owners interested in the several ditches needing measuring devices, also having the Mill Creek Channel cleaned in order to save water.

3. That the irrigation season for the water users of the waters of Mill Creek Canyon Stream for the year 1931 is now closed.

4. Attached hereto and made a part thereof is a list of the expenses incurred with the commissioner's salary and engineer's services, also a list of the users of water of Mill Creek Stream and the equiable share or amount of the cost of said Expenses and salary that should

be born by each user.

Court Commissioner's salary	$500.00
Engineering services, T. F. McDonald	60.00
Stenographic expense, in connection with this petition and court order	6.00
Stenographic expanses, notices to water users of Mill Creek, & stamps, etc.	15.00
Albert Capson, 4 days in June, cleaning Creek Channel	16.00
Joseph Osguthorpe, 4 days, in June; 1 day in July; 1 day in August, cleanin Creek Channel	21.00
E.W Hoffer, S. L. Billings and Other (W. J. O'Connor water, in Porter Fork)	10.00
TOTAL	$628.00

Proportion of cost for water users:

Utah Power and Light Company	$116.14
Pleasant View Park Company & E. W. Kelley	4.40
Stillman Estate and Successors, Joseph Stillman, Mrs. Brigham Stillman and Elizabeth Stillman	7.46
Moses Estate and Successors, Mrs. E. B. Swain and Mrs. Cummings	10.87
Frank Russell and Brigham Stillman	3.48
James Russell	6.93
J. E. Morris and Successors	2.85
Ferry Young and B. S. Hinckley, Successors to Salt Lake County, each one-half	.72
The following parties as successors to the Alexander Estate right:	
A. B. Child	2.26
Edward Kersley	.75
George E. Airis	2.26
A. B. Irvine	1.49
J. E. Burbidge	.75
Caroline Soderland	3.44

George Airis, Successor to B. A. M. Froseith	$ 1.45
Brigham Stillman and Brigham Stillman, etc., successor to Daniel Hussey	1.05
Samuel Stillman	3.03
Thomas Osguthorpe	.75
B. S. Hardy and successors to H. B. Skidmore	.75
E. F. Chamberlain and successor, Joseph Stillman	2.65
D. C. Brown	.84
Osguthorpe and Skidmore, Surplus	6.95
Frank and John Neff Ditch, Amos H. Neff and Neff Ditch and Brigham Young Ditch and their successors, the East Mill Creek Water Company	163.00
Seymour H. Neff and A. M. Seeley, Eugene Neff	.08
Keller Ditch	34.54
Amos. H. Neff pipe line	.22
Lower Mill Creek Irrigation Company and Salt Lake City	189.82
Susan Emery Holmes	.37
White Ditch Irrigation Company or Salt Lake City	47.50
Amos B. Neff	.10
The following parties successors to the Tripp Ditch:	
A. B. Irvine	.23
J. E. Burbidge	.12
George E. Airis and Minnie Johnston	.23
A. B. Child	.12
S. L. Billings and Others (W.J. O'Connor water, in Porter Fork)	10.00

WHEREFORE, your petitioner prays that the parties using the waters of Mill Creek Canyon Stream shall be ordered to pay such amounts respectfully as may be necessary for the payment of the said salary of your petitioner including the preparation and presentation of this petition, and that each user be taxed the amount set opposite his or its name in the foregoing list.

T. F. McDonald
Petitioner.

STATE OF UTAH)
) SS.
COUNTY OF SALT LAKE)

T. F. MCDONALD, having first been duly sworn upon oath deposes and says that he is the petitioner above named and that he has read the foregoing petition and knows the contents thereof, that the same is true of his own knowledge, except as to those matters therein stated on his information and belief and as to such matters he believes the same to be true.

T. F. McDonald

Subscribed and sworn to before me this 6 day of November, 1931.

Glen E. Howe
Notary Public
Commission expires: 12-9-33
Residence: Murray, Utah.

4449

FILED IN THE CLERK'S OFFICE
Salt Lake County, Utah
NOV 10 1931
ALONZO MACKAY, Clerk 3rd Dist. Court
By Fred C. Bassett
Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH.

-------- ooOoo --------

MARTHA YOUNG, Administratrix of the Estate of James Young, Deceased,	)	
Plaintiff,	)	
VS	)	AFFIDAVIT OF MAILING
WILLIAM GORDON, Executor of the Estate of Daniel Lund, Deceased, et al,	)	NOTICES.
Defendants.	)	4449

-------- ooOoo --------

STATE OF UTAH,)
: SS
COUNTY OF SALT LAKE.)

O. A. Olmstead, being duly sworn, deposes and says: that I am a Deputy Clerk of the District Court in and for Salt Lake County, State of Utah; that on the 10th day of November, A. D. 1931, I enclosed seven copies of the attached notice in seven envelopes addressed as follows, to-wit:

BAGLEY JUDD & RAY	Kearns Bldg., City
Allen T. Sanford	Boston Bldg., City
A. C. Inman,	Kearns Bldg., City
Shirley P. Jones	City & Co.Bldg., City
Morris & Callister	Continental Bank Bldg., City
Ingebretsen Ray & Rawlins	Walker Bank Bldg., City
Macfarlane & Cornwall	Templeton Bldg., City

and that I fully prepaid the postage upon said envelopes and enclosure therein, and that I deposited said envelopes so addressed, sealed and postpaid, in the Post Office at Salt Lake City, of the State of Utah, on said day.

Subscribed and sworn to before me this 10th day of November, 1931.

ALONZO MACKAY, CLERK,

BY E R Warner
DEPUTY CLERK.

O. A. Olmstead

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH.

--------mooOoo--------

MARTHA YOUNG, Administratrix of the Estate of James Young, Deceased, Plaintiff,	)	
VS	)	N O T I C E.
WILLIAM GORDON, Executor of the estate of Daniel Lund, Deceased, et al, Defendants.	)	

-------- ooOoo --------

TO: The users and owners of waters of the Mill Creek Stream and to the following attorneys for the respective users and owners of such waters, namely: SHIRLEY P. JONES, City Attorney for Salt Lake City: ALLAN T. SANFORD, attorney for Upper Ditches; DOREY & INMAN, attorneys for Utah Power & Light Company; BAGLEY, JUDD & RAY, attorneys for Mrs. O'Connor and MORRIS & CALLISTER, attorneys for Barry:

You, and each of you will please take notice that a hearing upon the petition heretofore filed in the above entitled cause by T. F. McDonald, Water Commissioner for the Mill Creek Stream will be held before the Honorable David W. Moffat, one of the judges of the above entitled Court, at the City and County Building, Salt Lake City, Utah, on Saturday, November 21st, 1931, at the hour of ten o'clock, A. M., for the purpose of fixing and ordering the payment as taxable costs of such sums of money as set out in the said petition, deemed necessary to cover the costs and expenses of work done, for the year beginning April 15th, 1931.

Dated this 10th day of November, A. D. 1931.

ALONZO MACKAY,
Clerk, Third Dist. Court,

By C. A. Christrod

Deputy Clerk.

4449

FILED IN THE CLERK'S OFFICE
Salt Lake County, Utah
NOV 10 1931
ALONZO [illegible], Clerk, Dist. Court
By [signature]
Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

- - - - - - - - - - - - - - - - - - - -

MARTHA YOUNG, Administratrix of the Estate of James Young Deceased, Plaintiff vs. WILLIAM GORDON, Executor of the Estate of Daniel Lund, Deceased, et al, Defendants	ORDER TAXING COSTS FROM APRIL 15, 1931 TO APRIL 15, 1932. NO. 4449

- -

The court having appointed T. F. MCDONALD, Court Commissioner in the above entitled case at a salary of $500.00 (Five Hundred) Dollars for the period of one year beginning on the 15th day of April, 1931 and allowing reasonable costs and expenses for engineering and other items necessary for the proper execution of the work of court commissioner.

Aside from the above mentioned salary of $500.00 (Five Hundred) Dollars the following costs are included as follows:

Albert Capson, 4 days in June, cleaning Creek Channel	$16.00
Joseph Osguthorpe, 4 days, in June; 1 day in July; 1 day in August, cleaning Creek Channel	21.00
Engineering services, T. F. McDonald	60.00
Stenographic expenses, notices to water users of Mill Creek, & stamps, etc.	15.00
Stenographic expense, in connection with this petition and court order	6.00
S. L. Billings and Others (W.J.O'Connor water in Porter Fork)	10.00
TOTAL	$128.00

Proportion of cost of water users:

Utah Power and Light Company	$116.14
Pleasant View Park Company & E. W. Kelley	4.40

Stillman Estate and Successors, Joseph Stillman, Mrs. Brigham Stillman and Elixabeth Stillman	$ 7.46
Moses Estate and Successors, Mrs. E.B. Swain and Mrs. Cummings	10.87
Frank Russell and Brigham Stillman	3.48
James Russell	6.93
J. E. Morris and Successors	2.85
Ferry Young and B. S. Hinckley, Successors to Salt Lake County, each one-half,	.72
The following parties as successors to the Alexander Estate right:	
A. B. Child	2.26
Edward Kersley	.75
George,E. Airis	2.26
A. B. Irvine	1.49
J. E. Burbidge	.75
Caroline Soderland	3.44
George E. Airis, Successor to B. A. M. Froseith	1.45
Brigham Stillman and Brigham Stillman, etc., successor to Daniel Hussey	1.05
Samuel Stillman	3.03
Thomas Osguthorpe	.75
B. S. Hardy and successors to H. B. Skidmore	.75
E. F. Chamberlain and successor, Joseph Stillman	2.65
D. C. Brown	.84
Osguthorpe and Skidmore, Surplus	6.95
Frank and John Neff Ditch, Amos H. Neff and Neff Ditch and Brigham Young Ditch and their successors, the East Mill Creek Water Company	163.00 Salt Lake City Corp
Seymour H. Neff and A. M. Seeley, Eugene Neff	.08
Keller Ditch	34.54 T.F. McDonald 1065 Roseville St Murray
Amos H. Neff pipe line	.22

Lower Mill Creek Irrigation Company and Salt Lake City	$189.82 Salt Lake City Corp
Susan Emery Holmes	.37
White Ditch Irrigation Company or Salt Lake City	47.50 Salt Lake City
Amos B. Neff	.10
The following parties successors to the Tripp Ditch:	
A. B. Irvine	.23
J. E. Burbidge	.12
George E. Airis and Minnie Johnston	.23
A. B. Child	.12
S. L. Billings and Others (W.J.O'Connor water in Porter Fork)	10.00

It is further expressly ORDERED and ADJUDGED, that in the event any of the parties shall fail to pay the amount of costs taxed against them herein, or the costs heretofore taxed under the orders and decree of the court heretofore made, the payment of which they are delinquent herein, that no water shall be delivered to such person or persons until the entire amount of costs, taxes herein and heretofore shall have been paid in full, and where costs are taxed against a ditch or company in this order and the orders and decree heretofore entered and the full amount of costs taxed against such ditch or company in this order and the orders and decree heretofore entered shall not have been paid, then no water shall be delivered to such ditch until said costs taxed herein and heretofore are paid in full, and in the event any person entitled to water from said ditch shall fail to pay the portion of costs fixed herein and heretofore, and the others using water from said ditch shall pay such portion, then no water shall be delivered to such delinquent person, but the portion which such delinquent person is entitled to, shall be

delivered to the others on said ditch who shall have paid such cost, in the proportion in which they shall pay the same; and it is further ordered that the rights to discontinue the distribution of the water as herein provided shall be considered a cumulative remedy in addition to the right to have execution issued on this order and the orders heretofore entered.

Done in open court this 21st day of November, 1931.

David W. Moffat
JUDGE.

ATTEST
ALONZO MACKAY,
CLERK
By Jaabot
Deputy Clerk

4449

File

FILED IN THE CLERK'S OFFICE
of Salt Lake County, Utah
NOV 23 1931
ALONZO McKAY, Clerk 3rd Dist. Court
By L.A. Abbott
Deputy Clerk

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

MARTHA YOUNG, Administratrix of the Estate of James Young, Deceased, Plaintiff, vs. WILLIAM GORDON, Executor of the Estate of DANIEL LUNN, deceased, et al, Defendants.	ORDER Case No. 4449.

Pursuant to application on file herein, and good cause appearing therefor,

IT IS HEREBY ORDERED that T. F. McDONALD be, and he hereby is, appointed Water Commissioner in the above entitled cause to have charge of the distribution of all waters according to the decree heretofore entered and filed in the above entitled cause and to act as said Water Commissioner during the year 1932, or until further order of this Court.

DATED APRIL 11th 1932.

BY THE COURT:

David W. Moffat
JUDGE.

ATTEST:
ALONZO MACKAY,
CLERK
By [illegible]
Deputy Clerk

4449

FILED IN THE CLERK'S OFFICE
Salt Lake County, Utah
APR 11 1932
ALONZO MACKAY, Clerk 3rd Dist. Court
By [illegible] Deputy Clerk

March 27 1932

Honorable D.W.Moffatt,
Judge Third Judicial District,
Salt Lake City Utah

Dear Judge Moffatt;

Kindly consider my application for Court Commissionership of Millcreek for the year beginning April 15, 1932. During the last year I have had installed a number of measuring weirs,became acquainted with the conditions of the Millcreek stream, corrected some violations of the Court Decree, and have given satisfaction to the water companies,and individuals(except one0). My records of all my work on the stream are available,and in good condition.

Respectfully

T.F. McDonald
Hydraulic Engineer.

4449

FILED IN THE CLERK'S OFFICE
Salt Lake County, Utah
MAR 31 1932
ALONZO MACKAY, Clerk 3rd Dist. Court
By E. H. Warner
Deputy Clerk

S. N. CORNWALL
ATTORNEY AT LAW
~~McINTYRE BLDG.~~
~~TEMPLETON BLDG.~~
SALT LAKE CITY, UTAH

May 7, 1932.

Honorable David W. Moffat,
Judge Third District Court,
City.

Dear Sir:-

Mr. T. F. McDonald, the water commissioner on the Mill Creek Stream has suggested and recommended to the East Mill Creek Water Company, that suitable head-gates be installed at the heads of the various ditches on the stream, so that the proportion of the stream flow, to which the various ditches are entitled, could be accurately divided and the divisions preserved as made, in the absence of the commissioner.

This is accordingly to advise you, that the East Mill Creek Water Company concurs in the recommendations of the commissioner, and itself recommends that suitable head gates be installed on the stream, under the direction of the commissioner, and that in the installation of such gates, the work proceed from the mouth of Mill Creek Canyon downward; as much of such installation being completed this year as may be carried out, and the remainder finished during the following year.

Yours truly,

East Mill Creek Water Company,

By S. N. Cornwall
Its Attorney

SNC:A

4449

File

FILED IN THE CLERK'S OFFICE
Salt Lake County, Utah
MAY 12 1932
ALONZO MACKAY, Clerk 3rd Dist. Court
By Norm L. Tay
Deputy Clerk

R. E. CALDWELL
A. Z. RICHARDS
H. G. HALL

OFFICES
SALT LAKE CITY, UTAH
LOS ANGELES, CALIFORNIA

CALDWELL, RICHARDS & HALL
CIVIL ENGINEERS
TEMPLETON BLDG.
SALT LAKE CITY, UTAH

May 27, 1932

David W. Moffat, Judge
Third Judicial District Court
Salt Lake County, Utah

Dear Sir:

For many years past the water commissioner appointed by the Court to distribute the waters of Mill Creek has been at a very great disadvantage in his effort to make a proper and satisfactory distribution of these waters, because of the fact that the headgates and weirs have been in such a bad condition that there was no practical way of doing it.

After repeated attempts on his part from year to year to have this condition corrected and realizing that his efforts were not effective, William Carlson who was then the commissioner, requested the writer in Dec. 1929 to assist him in gathering information to present to the Court and be prepared to show that the existing devices were of very little value in dividing the water.

Because of the objections that had always been made to the necessary improvements, the commissioner realized that Court action would be necessary to get the work done. Order to Show Cause, Case No. 4449, was consequently entered in the District Court Jan., 23, 1930.

Subsequent to said date the writer appeared in Court on behalf of the commissioner, four times before the matter was finally heard on March 7, 1930. On Mar. 8, the court issued an order directing the writer "to examine and inspect the Mill Creek Stream for the purpose of determining what weirs, measuring devices and what improvements are or may be necessary for the correct and proper distribution and regulation of the waters of said Mill Creek stream pursuant to the terms and purposes of

the decree of this Court of Aug. 1st, 1913, and then report and recommend to the Court as to what weirs, measuring devices, improvements etc. are or may be by him considered necessary and proper and also give the approximate cost thereof." The cost of engineering not to exceed $100. On Mar.17 the report was submitted and added information requested. On Mar. 28 and 31 the matter was heard in Court again and on April 1st the report on the additional information was submitted to Judge Bramel recommending that in as much as the matter had been delayed so long and the season was too far advanced to make all of the permanent improvements that year that most of them be defered until after the irrigation season of 1930, but that immediately the Power Company be required to install a measuring device for measuring their culinary water and a concrete weir provided with an automatic registering device for keeping a continuous record of the flow of the stream passing thru the power plant at the mouth of the canyon, and that the water users be required to thoroughly clean up the creek channel from the mouth of the canyon to the head of the Hoogland and Murphy ditch, which comprises a distance of approximately 2¾ miles.

It was also recommended that the old headgates and weirs on all of the ditches be put in as usable a condition as possible at a small expense and that they be used for the season of 1930 only.

On April 4, a hearing was had on the second report and as a result of said hearing, an order dated April 8, 1930 was made, putting into effect the recommendations of the report relating to the work to be done during the irrigation season and leaving the balance for future determination.

The work which was ordered to be done was all done under the supervision of the writer as specified in the order.

Excellent measuring devices were installed by the Power Company and since their installation a complete and continuous record on the flow of the stream has been kept.

Besides the time spent in supervising the work ordered to be done during the irrigation season of 1930, the water commissioner called on the writer occasionally to go with him and examine various conditions on the stream relative to these matters or in response to requests of the water users on the various ditches who were not entirely satisfied with the division of their water.

I desire to say that on every occasion I found that Mr. Carlson had the water regulated and divided as nearly correct as it was possible for any one to do with the devices used.

The distribution of the water to the various users on the stream is a complicated one.

The stream is divided into the upper ditches which are entitled to 50% of the irrigation water and the lower ditches which are entitled to 50% of the irrigation water.

The upper ditches consist of 13 separate diversions from the stream and cover a distance of approximately 9000 ft. along its course. There are also several house use streams diverting water from the stream and all are taken out above the lower ditches.

In 1930 there was only one of all these which was controled by a headgate that could be locked, and so it was impossible for the water commissioner to guarentee a proper division of the water.

The lower ditches which also represent 50% of the irrigation water had in 1930 and have at the present time first class automatic dividing and measuring weirs at each of their points of diversion from the stream.

On April 30, 1932 the writer went over the entire system with Mr. McDonald, the present commissioner, and some of the water users and we observed that in almost all of the irrigation ditches Mr. McDonald has installed measuring weirs.

However the only ditch on the entire system which has had a proper headgate installed in it since 1930 is the Jas. Russell house use stream.

This is the same type a gate as was recommended by the writer to the Court and after studying the stream for one entire season I believe that Mr. McDonald has come to the conclusion that it is impossible to distribute the water satisfactorilly with out proper headgates and other controling and dividing devices.

While I was working under the instruction of the Court in 1930 I designed certain structures which were anticipated would be built after the irrigation season was over and which I shall turn over to Mr. McDonald in hopes that they will be of service to him in designing and installing the necessary works.

On April 15, 1931 the matter of appointment of a water commissioner was heard befor Your Honor, and later Mr. McDonald was appointed. Immediately after his appointment the writer got in touch with Mr. McDonald and went over the situation with him, explaining in a general way the difficulties which had been experienced in the past and offered any assistance which he felt we might render.

We have kept in touch with Mr. McDonald and know that he has rendered valuable service to the water users but feel that until he is able to get the remainder of the necessary structures installed he can not make his services most efficient.

For the services rendered persuant to the order of March 8, 1930 the writer has recieved $100 . In addition to this we have rendered in this case service to the extent of $270. We realize the difficulty of raising means in cases of this kind but in as much as the work was done in the interests of the entire stream we feel that the cost should be allocated to the water users in proportion to the amount of water owned at the average flow of the stream during the irrigation season which would be as follows:

Chamberlain ditch	2.2%	.....	$ 6.00
Osgathorpe "	1.6%	.....	4.40
Stillman-Hussy ditch	2.4%	.....	6.50
Stillman-Russel "	7.6%	.....	20.60
Jas. Russel "	1.4%	.....	3.80
Holmes Estate "	1.3%	.....	3.50
Seymour Neff and A. M. Seeley	0.3%	.....	0.75
Seymour Neff Pipe Line	0.1%	.....	0.25
Amos H. Neff Pipe line	0.2%	.....	0.50
Franklin & John Neff ditch	4.1%	.....	11.00
Amos H. Neff ditch	5.2%	.....	14.10
B. Y. ditch	21.1%	.....	57.00
Kellar ditch	6.5%	.....	17.50
White ditch	7.6%	.....	20.60
Lower Mill Creek Irrigation Co.	38.4%	.....	103.50
	100.0%		$270.00

and that the same be assessed against these interests and collected at the time the balance of the structures are installed for distribution of the water, and we trust that the same will be done this spring.

Respectfully submitted
CALDWELL, RICHARDS & HALL

By A. L. Richards

4449

FILED IN THE CLERK'S OFFICE
Salt Lake County, Utah
JUN 13 1932
ALONZO MACKAY, Clerk and Dist. Court
By [signature]
Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

MARTHA YOUNG, Administratrix of the Estate of of James Young, Deceased,	:	
Plaintiff,	:	
vs.	:	ORDER SETTING PETITION FOR HEARING
WILLIAM GORDON, Executor of the Estate of Daniel Lund, Deceased, et al,	:	Case No. 4449
Defendants.	:	

The petition of T. F. McDONALD, Water Commissioner for the Mill Creek Stream, having been duly filed, praying for an order taxing costs for the year beginning April 15, 1932,

IT IS HEREBY ORDERED that the time for the hearing of the said petition be and it is hereby fixed at the hour of 10:00 o'clock on the 19th day of November, 1932, before the Honorable DAVID W. MOFFAT, Judge, in the courtroom of the above entitled Court at Salt Lake City, Utah.

It is further ordered that five (5) days' notice of said hearing be given in writing to the respective water users to be taxed.

Dated: November 9th, 1932.

ATTEST
ALONZO MACKAY,
CLERK
By Fred C. Bassett
Deputy Clerk

David W. Moffat
DISTRICT JUDGE.

Corey & Inman
Oscar Carlson
Fisher Harris

4449

FILED IN THE CLERK'S OFFICE
Salt Lake County, Utah
NOV 10 1992
ALONZO MACIAS, Clerk, Distrikt
By [signature]
Deputy Clerk

4449

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

- - - - - - - - - - - - - - - -

MARTHA YOUNG, Administratrix of the Estate of James Young, Deceased, Plaintiff vs. WILLIAM GORDON, Executor of the Estate of Daniel Lund, Deceased, et al, Defendants	Petition for ORDER TAXING COSTS FOR THE YEAR BEGINNING April 15, 1932 No. 4449.

- - - - - - - - - - - - - - - - - -

Comes now T. F. MCDONALD of Salt Lake County, Utah, petitioner herein, and respectfully represents to the court as follows:

1. That your petitioner was appointed by this Court, water commissioner in the above entitled case for the year beginning April 15, 1932.

2. And in pursuance of said appointment your petitioner has diligently and continuously from the time of his appointment performed his duties as water commissioner of Mill Creek Canyon Stream, also, served as engineer, in designing and constructing weirs and supervising the installation of the same and incurring expense notifying the several owners interested in the several ditches needing measuring devices, also having the Mill Creek Channel cleaned in order to save water.

3. That the irrigation season for the water users of the waters of Mill Creek Canyon Stream for the year 1932 is now closed.

4. Attached hereto and made a part thereof is a list of the expenses incurred with the commissioner's salary and engineer's services, also a list of the users of water of Mill Creek Stream and the equiable share or amount of the cost of said salary that should

be born by each user.

Court Commissioner's salary	$500.00
Engineering services, T.F. McDonald	40.00
Stenographic expense, in connection with this petition and court order	4.00
Stenographic expenses, notices to water users of Mill Creek, & stamps, Etc.	12.50
Lee Anderson, 6 days, cleaning Creek Channel, etc.	19.25
TOTAL	$575.75

Proportion of cost for water users:

Utah Power and Light Company	$108.50
Pleasant View Park Company & E. W. Kelley	1.66
Stillman Estate and Successors, Joseph Stillman, Mrs. Brigham Stillman and Elizabeth Stillman, etc.	7.80
Moses Estate and Successors, Mrs. E. B. Swain and Mrs. Cummings, etc.	11.40
Frank Russell and Brigham Stillman	3.25
James Russell	6.20
J. E. Morris and Successors	2.40
Ferry Young and B. S. Hinckley, Successors to Salt Lake County, each one-half	.60
The following parties are successors to the Alexander Estate right:	
A. B. Child	2.25
Mitchell	.45
George E. Airis	2.25
A. B. Irvine	1.50
J. E. Burbidge & Minnie Johnson	1.60
Caroline Soderland & Successors	3.00

George Airis, Successor to B. A. M. Troseith	1.50
Brigham Stillman and Brigham Stillman, etc., successor to Daniel Hussey	.90
Samuel Stillman	2.73
Thomas Osguthorpe	.90
B. S. Hardy and successors to H. B. Skidmore	1.80
E. F. Chamberlain and successor, Joseph Stillman	2.70
D. C. Brown	.90
Frank and John Neff Ditch, Amos H. Neff and Neff Ditch and Brigham Young Ditch and their successors, The East Mill Creek Water Company	150.00
Seymour H. Neff and Successors	.20
Seymour H. Neff & A. M. Seeley, Eugene Neff, etc.	.96
Keller Ditch	33.60
Amos H. Neff pipe line, David Neff, etc.	.20
Lower Mill Creek Irrigation Company and Salt Lake City	180.00
Susan Emery Holmes	1.00
White Ditch Irrigation Company or Salt Lake City	45.00
Amos B. Neff, John S. Neff, etc.	.50

WHEREFORE, your petitioner prays that the parties using the waters of Mill Creek Canyon Stream shall be ordered to pay such amounts respectfully as may be necessary for the payment of the said salary of your petitioner including the preparation and-presentation of this petition, and that each user be taxed the amount set opposite his or its name in the foregoing list.

T. F. McDonald.
Petitioner.

STATE OF UTAH }
COUNTY OF SALT LAKE } SS.

T. F. MCDONALD, having first been duly sworn upon oath deposes and says that he is the petitioner above named and that he has read the foregoing petition and knows the contents thereof, that the same is true of his own knowledge, except as to those matters therein stated on his information and belief and as to such matters he believes the same to be true.

T. F. McDonald.

Subscribed and sworn to before me this 9 day of November, 1932.

Fred L. Barrett
Notary Public
Commission expires:
Residence:

4449

FILED IN THE CLERK'S OFFICE
Salt Lake County, Utah
NOV 9 1982
ALONZO MACKAY, Clerk 3rd Dist. Court
By E. C. Warner
Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

- - - - - - - - - - - - - - -

MARTHA YOUNG, Administratrix to the Estate of James Young, Deceased,	:	
Plaintiff,	:	
vs.	:	AFFIDAVIT OF
WILLIAM GORDON, EXECUTOR of the Estate of Daniel Lund, Deceased, et al,	:	MAILING NOTICES
Defendants.	:	

- - - - - - -

STATE OF UTAH }
COUNTY OF SALT LAKE } SS.

* - - - - -

T. F. McDonald being duly sworn, deposes and says that, I am Court Commissioner of Mill Creek Stream, That on the 12th day of November, 1932, I enclosed six (6) copies of the attached letter in six (6) envelopes to wit:

Ernest E. Randall, Attorney for Stillman Estate
Fisher Harris, Attorney for Salt Lake City
Allen T. Sanford, Attorney for Upper Ditches
Corey and Inman, Attorneys for Utah Power & Light Co.
Bagley Judd and Ray, Attorneys for Mrs. O Connor
Morris and Callister, Attorneys for Barry

And that I fully prepaid the postage upon said envelopes and enclosures therein, And that I deposited said envelopes so addressed, sealed, and postpaid in the post office at Salt Lake City of the State of Utah.

T. F. McDonald

Subscribed and sworn to before me this 19th day of November, 1932.

W. B. Farr
Notary Public

My commission expires 12 day of June, 1936

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

MARTHA YOUNG, Administratrix of the Estate of James Young, Deceased,	:	
Plaintiff,	:	
vs.	:	N O T I C E
WILLIAM GORDON, Executor of the Estate of Daniel Lund, Deceased, et al,	:	Case. No. 4449
Defendants.	:	

To the Users and Owners of the Mill Creek Stream and to the following Attorneys for the respective users and owners of such waters. Namely:

ERNEST E. RANDALL, ATTORNEY for STILLMAN ESTATE
FISHER HARRIS, ATTORNEY for SALT LAKE CITY
ALLEN T. SANFORD, ATTORNEY for UPPER DITCHES
COREY AND INMAN, ATTORNEYS for UTAH POWER & LIGHT CO.
EAGLEY JUDD, AND RAY, ATTORNEYS for MRS. O CONNOR
MORRIS AND CALLISTER, ATTORNEYS for BARRY

You and each of you will please take notice that the hearing upon the petition heretofore filed on the above entitled cause by T. F. McDonald, Water Commissioner for the Mill Creek Stream, will be held before the Honorable David W. Moffat, one of the Judges of the above entitled Court at the City and County Building, Salt Lake City, Utah, at the hour of 10 o'clock on the 19th day of November, for the purpose of fixing and ordering the payment as taxable costs of such sums of money as set out in the said petition, deemed necessary to cover the costs and expenses of work done for year beginning April 1, 1932.

Dated this 12th day of November A. D. 1932.

Alonzo P. MacKay
CLERK OF THIRD DISTRICT COURT
By Fred C Bassett Dep

4249

FILED IN THE CLERK'S OFFICE
Salt Lake County, Utah
NOV 19 1932
ALONZO MACKAY, Clerk 3rd Dist. Court
By E. P. Warner
Deputy Clerk

Murray
19 W

T F McDonald
4865 Wasatch St
Murray Ut

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

- - - - - - - - - - - - - - - - - -

MARTHA YOUNG, Administratrix of the Estate of James Young Deceased, Plaintiff, vs. WILLIAM GORDON, Executor of the Estate of Daniel Lund, Deceased, et al, Defendants.	ORDER TAXING COSTS FROM APRIL 15, 1932, TO APRIL 15, 1933. NO. 4449

* - - - - - - - - - - - - -

The court having appointed T. F. MCDONALD, Court Commissioner in the above entitled case at a salary of $500.00 (Five Hundred) Dollars for the period of one year beginning on the 15th day of April, 1932 and allowing reasonable costs and expenses for engineering and other items necessary for the proper execution of the work of court commissioner.

Aside from the above mentioned salary of $500.00 (Five Hundred) Dollars the following costs are included as follows:

Court Commissioner's Salary	$500.00
Engineering services, T.F. McDonald	40.00
Stenographic expenses, in connection with this petition and court order	4.00
Stenographic expenses, notices to water users of Mill Creek, & stamps, etc.	12.50
Lee Anderson, 6 days, cleaning Creek Channel, etc.	19.25
TOTAL	$575.75

Proportion of cost for water users:

Utah Power and Light Company	$108.50
Pleasant View Park Company & E. W. Kelley	1.66
Stillman Estate and Successors, Joseph Stillman, Mrs. Brigham Stillman and Elizabeth Stillman, etc.	7.80

Moses Estate and Successors, Mrs. E. B. Swain and Mrs. Cummings, etc.	$ 11.40
Frank Russell and Brigham Stillman	3.35
James Russell	6.20
J. E. Morris and Successors	2.40
Ferry Young and B. S. Hinckley, Successors to Salt Lake Coutny, one-half each	.60
The following parties are successors to the Alexander Estate Right:	
A. B. Child	2.25
Mitchell	.45
George E. Airis	2.25
A. B. Irvine	1.50
J. E. Burbidge & Minnie Johnson	1.60
Caroline Soderland & Successors	3.00
George Airis, Successor to E.A.M. Froseith	1.50
Brigham Stillman and Brigham Stillman, etc., successor to Daniel Hussey	.90
Samuel Stillman	2.73
Thomas Osguthorpe	.90
B. S. Hardy and successors to H. B. Skidmore	1.80
E. F. Chamberlain and successor, Joseph Stillman	2.70
D. C. Brown	.90
Frank and John Neff Ditch, Amos H. Neff and Neff Ditch and Brigham Young Ditch and their successors, The East Mill Creek Water Company	150.00
Seymour H. Neff and successors	.20
Seymour H. Neff & A. M. Seeley, Eugene Neff, etc.	.96
Keller Ditch	33.60
Amos H. Neff pipe line, David Neff, etc.	.20
Lower Mill Creek Irrigation Company and Salt Lake City	180.00

Susan Emery Holmes	$ 1.00
White Ditch Irrigation Company or Salt Lake City	45.00
Amos B. Neff, John S. Neff, etc.	.50

It is further expressly ORDERED and ADJUDGED, that in the event any of the parties shall fail to pay theamount of costs taxed against them herein, or the costs heretofore taxed under the orders and decree of the court heretofore made, the payment of which they are delinquent herein, that no water shall be delivered to such person or persons until the entire amount of costs, taxes herein and heretofore shall have been paid in full, and where costs are taxed against a ditch or company in this order and the orders and decree heretofore entered and the full amount of costs taxed against such ditch or company in this order and the orders and decree heretofore entered shall not have been paid, then no water shall be delivered to such ditch until said costs taxed herein and heretofore are paid in full, and in the event any person entitled to water from said ditch shall fail to pay the portion of costs fixed herein and heretofore, and the others using water from said ditch shall pay such portion, then no water shall be delivered to such delinquent person, but the portion which such delinquent person is entitled to, shall be delivered to the others on said ditch who shall have paid such cost, in the proportion in which they shall pay the same; and it is further ordered that the rights to discontinue the distribution of the water as herein provided shall be considered a cumulative remedy in addition to the right to have execution issued on this order and the orders heretofore entered.

Done in open court this 19th day of November, 1932.

ATTEST
ALONZO MACKAY
CLERK
By L. Bryant Norton
Deputy Clerk

David W. Hoyt
JUDGE

(Civil) 4449

ILED IN THE CLERK'S OFFICE
Salt Lake County, Utah
NOV 1 9 1932
ALONZO MACKAY, Clerk, Salt Lake County
By Norma L. Lohr
Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

- - - - - - - - - - - - - -

MARTHA YOUNG, Administratrix of the estate of James Young, Deceased. Plaintiff vs. WILLIAM GORDON, Executor of the estate of Daniel Lund, Deceased, et al, Defendants	ORDER TXING COSTS FOR THE YEAR BEGINNING APRIL 15, 1933 No. 4449.

- - - - - - - - - - - - - - - - - -

Comes now T. F. MCDONALD of Salt Lake County, Utah, petitioner herein, and respectfully represents to the court as follows:

1. That your petitioner was appointed by this Court, water commissioner in the above entitled case for the year beginning April 15, 1933.

2. And in pursuance of said appointment your petitioner has diligently and continuously from the time of his appointment performed his duties as water commissioner of Mill Creek Canyon Stream, also, served as engineer, in designing and constructing weirs and supervising the installation of the same and incurring expense notifying the several owners interested in the several ditches needing measuring devices, also having the Mill Creek Channell cleaned in order to save water.

3. That the irrigation season for the water users of the waters of Mill Creek Canyon Stream for the year 1933 is now closed.

4. Attached hereto and made a part thereof is a list of the expenses incurred with the commissioner's salary and engineer's services, also a list of the users of water of Mill Creek Stream and the equiable share or amount of the cost of said salary that be born by each user.

Court Commissioner's Salary	$500.00
Engineering services, T. F. McDonald	40.00
Stenographic expenses, in connection with this petition and court order	4.00
Stenographic expenses, notices to water users of Mill Creek, & stamps, etc.	12.60
Lee Anderson, 6 days, cleaning Creek Channel, etc.	19.25
TOTAL	$575.75

Proportion of cost for water users:

Utah Power and Ligh Company	$108.50
Pleasant View Park Company & E. W. Kelley	1.66
Stillman Estate and Successors, Joseph Stillman, Mrs. Brigham Stillman and Elizabeth Stillman, etc.	7.80
Moses Estate and Successors, Mrs. E. B. Swain, and Mrs. Cummings, etc.	11.40
Frank Russell and Brigham Stillman	3.25
James Russell	6.20
J. E. Morris and Successors	2.40
Ferry Young and S. S. Hinckley, Successors to Salt Lake County, One-half each	.60
The following parties are successors to the Alexander Estate Right:	
A. B. Child	2.25
Mitchell	.46
George E. Airis	2.25
A. B. Irvine	1.50
J. E. Burbidge & Minnie Johnson	1.60
Caroline Soderland & Successors	3.00
George Airis, Successor to B. A. M. Froiseith	1.50
Brigham Stillman and Brigham Stillman, etc., successor to Daniel Hussey	.90

Samuel Stillman	$ 2.73
Thomas Osguthorps	.90
B. S. Hardy and successors to H. B. Skidmore	1.80
E. F. Chamberlain and successor, Joseph Stillman	2.70
D. C. Brown	.90
Frank and John Neff Ditch, Amos H. Neff and Neff Ditch and Brigham Young Ditch and their successors, The East Mill Creek Water Company	150.00
Seymour H. Neff and successors	.20
Seymour H. Neff & A. M. Seeley, Eugene Neff, etc.	.96
Keller Ditch	33.60
Amos H. Neff pipe line, David Neff, etc.	.20
Lower Mill Creek Irrigation Company and Salt Lake City	180.00
Susan Emery Holmes	1.00
White Ditch Irrigation Company or Salt Lake City	45.00
Amos B. Neff, John S. Neff, etc.	.50

WHEREFORE, your petitioner prays that the parties using the waters of Mill Creek Canyon Stream shall be ordered to pay such amounts respectfully as may be necessary for the payment of the said salary of your petitioner including the preparation and presentation of this petition, and that each user be taxed the amount set opposite his or its name in the foregoing list.

W. F. McDonald
Petitioner.

STATE OF UTAH)
)
COUNTY OF SALT LAKE) SS.

T. F. MCDONALD, having first been duly sworn upon oath deposes and says that he is the petitioner above named and that he has read the foregoing petition and knows the contents thereof, that the same is true of his own knowledge, except as to those matters therein stated on his information and belief and as to such matters he believes the same to be true.

T. F. McDonald

Subscribed and sworn to before me this 23 day of Oct 1933.

Fred W. Bassett
Notary Public
Commission expires: June 6, 1937
Residence:

4449

FILED IN THE CLERK'S OFFICE
Salt Lake County, Utah
OCT 23 1933
ALONZO MACKAY, Clerk 3rd Dist. Court
By [illegible]
Deputy Clerk

IN THE DISTRICT COURT OF THT THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

- - - - - - - - - - - - - -

MARTHA YOUNG, Administratrix of the Estate of James Young, Deceased, Plaintiff vs. WILLIAM GORDON, Executor of the Estate of Daniel Lund, Deceased, et al, Defendants	NOTICE Case No. 4449

- - - - - - - - - - - - - - - - - - -

To the Users and Owners of the Mill Creek Stream and to the following Attorneys for the respective users and owners of such waters. Namely:

ERNEST E. RANDALL, ATTORNEY for STILLMAN ESTATE
FISHER HARRIS, ATTORNEY FOR SALT LAKE CITY
ALLEN T. SANFORD, ATTORNEY FOR UPPER DITCHES
COREY AND INMAN, ATTORNEYS FOR UTAH POWER AND LIGHT CO.
BAGLEY, JUDD, AND RAY, ATTORNEYS FOR MRS. O'CONNOR
MORRIS AND CALLISTER, ATTORNEY FOR BARRY

You and each of you will please take notice that the hearing upon the petition heretofore filed on the above entitled cause by T. F. MCDONALD, Water Commissioner for the Mill Creek Stream, will be held before the Honorable Roger I. McDonough, one of the Judges of the above entitled Court at the City and County Building, Salt Lake City, Utah, at the hour of 10 o'clock on the 4th day of November, for the purpose of fixing and ordering the payment as taxable costs of such sums of money as set out in the said petition, deemed necessary to cover the costs and expenses of work done for year beginning April 1, 1933.

Dated this 24th day of October A. D. 1933.

Alonzo MacKay Clerk

Clerk of Third District Court.

By Fred C Grossett Def

1149

FILED IN THE CLERK'S OFFICE
Salt Lake County, Utah
OCT 28 1933
ALONZO MACKAY, Clerk 3rd Dist. Court
By E R Warner
Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

- - - - - - - - - - - - - - - - - - - -

MARTHA YOUNG, Administratrix to the Estate of James Young, Deceased,	:	
Plaintiff,	:	
vs.	:	AFFIDAVIT OF
WILLIAM GORDON, Executor of the Estate of Daniel Lund, Deceased, et al,	:	MAILING NOTICES.
Defendants.	:	

- -

STATE OF UTAH)
COUNTY OF SALT LAKE) SS.

T. F. MCDONALD being duly sworn, deposes and says that, I am Court Commissioner of Mill Creek Stream, That on the 24th day of October, 1933, I enclosed six (6) copies of the attached letter in six (6) envelopes to wit:

ERNEST E. RANDALL, Attorney for Stillman Estate
FISHER HARRIS, Attorney for Salt Lake City
Allen T. Sanford, Attorney for Upper Dithces
Corey and Inman, Attorneys for Utah Power & Light Co.
Bagley, Judd and Ray, Attorneys for Mrs. O'Connor
Morris and Callister, Attorneys for Barry

And that I fully prepaid the postage upon said envelopes and enclosures therein, And that I deposited said envelopes so addressed, sealed, and postpaid in the post office at Salt Lake City, of the State of Utah.

T. F. McDonald

Subscribed and sworn to before me this 24 day of October, 1933.

Fred S. Bassett
Notary Public

Commission expires June 6. 1937

4449

FILED IN THE CLERK'S OFFICE
Salt Lake County, Utah
OCT 28 1933
ALONZO MACKAY, Clerk 3rd Dist. Court
E. R. Warner
Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

- - - - - - - - - - - - - - - - -

MARTHA YOUNG, Administratrix of the Estate of James Young Deceased,	)	
Plaintiff,	)	ORDER TAXING COSTS FROM APRIL 15, 1933, to APRIL 15, 1934.
vs.	)	
WILLIAM GORDON, Executor of the Estate of Daniel Lund, Deceased, et al,	)	No. 4449
Defendants.	)	

- - - - - - - - - - - - - - - - - - -

The court having appointed T. F. McDONALD, Court Commissioner in the above entitled case at a salary of $500.00 (Five Hundred) Dollars for the period of one year beginning on the 15th day of April, 1932 and allowing reasonable costs and expenses for engineering and other items necessary for the proper execution of the work of court Commissioner.

Aside from the above mentioned salary of $500.00 (Five Hundred) Dollars the following costs are included as follows:

Court Commissioner's Salary	$500.00
Engineering services, T. F. McDonald	40.00
Stenographic expenses, in connection with this petition and court order	4.00
Stenographic expenses, notices to water users of Mill Creek, & Stamps, etc.	12.60
Lee Anderson, 6 days, cleaning Creek Channel, etc.	19.25
TOTAL	$575.75

Proportion of cost for water users:

Utah Power and Light Company	$108.50
Pleasant View Park Company & E. W.Kelley	1.66
Stillman Estate and Successors, Joseph Stillman, Mrs. Brigham Stillman and Elizabeth Stillman, etc.	7.80
Moses Estate and Successors, Mrs. E. B. Swain and Mrs. Cummings, etc.	11.40

Frank Russell and Brigham Stillman	$ 3.25
James Russell	6.20
J. E. Morris and Successors	2.40
Ferry Young and B. S. Hinckley, Successors to Salt Lake County, onehalf each	.60
The following parties are successors to the Alexander Estate Right:	
A. B. Child	2.25
Mitchell	.45
George E. Airis	2.25
A. B. Irvine	1.50
J. E. Burbidge & Minnie Johnson	1.60
Caroline Soderland & Successors	3.00
George Airis, Successor To B.A.M. Froiseith	1.50
Brigham Stillman and Brigham Stillman, etc., Successor to Daniel Hussey	.90
Samuel Stillman	2.73
Thomas Osguthorpe	.90
B. S. Hardy and successors to H. E. Skidmore	1.80
E. F. Chamberlain and successor, Joseph Stillman	2.70
D. C. Brown	.90
Frank and John Neff Ditch, Amos H. Neff and Neff Ditch and Brigham Young Ditch and their successors, The East Mill Creek Water Company	150.00
Seymour H. Neff and successors	.20
Seymour H. Neff & A. M. Seeley, Eugene Neff, etc.,	.96
Keller Ditch	33.60
Amos H. Neff Pipe line, David Neff etc.	.20
Lower Mill Creek Irrigation Company and Salt Lake City	180.00
Susan Emery Holmes	1.00
White Ditch Irrigation Company or Salt Lake City	45.00
Amos B. Neff, John S. Neff etc.,	.50

It is further expressly ORDERED and ADJUDGED, that in the event any of the parties shall fail to pay the amount of costs taxed against them herein, or the costs heretofore taxed under the orders and decree of the court heretofore made, the payment of which they are delinquent herein, that no water shall be delivered to such person or persons until the entire amount of costs, taxes herein and heretofore shall have been paid in full, and where costs are taxed against a ditch or company in this order and the orders and decree heretofore entered and the full amount of cots taxed against such ditch or company in this order and the orders and decree heretofore entered shall not have been paid, then no water shall be delivered to such ditch until said costs taxed herein and heretofore are paid in full, and in the event any person entitled to water from said ditch shall fail to pay the portion of costs fixed herein and heretofore, and the others using water from said ditch shall pay such portion, then no water shall be delivered to such delinquent person, but the portion which such delinquent person is entitled to, shall be delivered to the others on said ditch who shall have paid such cost, in the proportion in which they shall pay the same; and it is further ordered that the rights to discontinue the distribution of the water as herein provided shall be considered a cumulative remedy in addition to the right to have execution issued on this order and the orders heretofore entered.

Done in open court this 6th day of Nov. 1933

Roger S. McDonough
JUDGE.

ATTEST
ALONZO MACKAY
Clerk
By Fred C. Bassett
Deputy Clerk

4449

FILED IN THE CLERK'S OFFICE
Salt Lake County, Utah
NOV 6 - 1933
ALONZO MACKAY, Clerk, 3rd Dist. Court
by _____ Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

MARTHA YOUNG, Administratrix of the estate of James Young, Deceased, Plaintiff vs. WILLIAM GORDON, Executor of the Estate of Daniel Lund, Deceased, et al, Defendants.	NOTICE ON PETITION FOR HEARING Case No.4449

The petition of T. F. MCDONALD, Water Commissioner for the Mill Creek Stream, having been duly filed, praying for an order taxing costs for the year beginning April 15, 1933.

IT IS HEREBY ORDERED that the time for the hearing of the said petition be and it is hereby fixed a[redacted] of 10 o'clock A.M. on the 4th day of Nov, 1933 before the Honorable ROGER I. MCDONOUGH, Judge, in the courtroom of the above entitled Court at Salt Lake City, Utah.

It is further ordered that five (5) days' notice of said hearing be given in writing to the respective water users to be taxed.

Dated: Oct. 23, 1933.

Roger I. McDonough
DISTRICT JUDGE

ATTEST:
ATTORNEY FOR PLAN
By Fred C. Bassett

4449

FILED IN THE CLERK'S OFFICE
Salt Lake County, Utah
OCT 23 1933
ALONZO MACKAY, Clerk 3rd Dist. Court
By Fred C. Barnett
Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

- - - - - - - - - - - - - - -

MARTHA YOUNG, Administratrix of the estate of James Young, Deceased, Plaintiff	)	Petition for ORDER TAXING COSTS FOR THE YEAR BEGINNING April 15, 1934
vs.	)	
WILLIAM GORDON, Executor of the estate of Daniel Lund, Deceased, et al, Defendants	)	No. 4449

- - - - - - - - - - - - - - - - - -

Comes now T. F. MCDONALD of Salt Lake County, Utah, petitioner herein, and respectfully represents to the court as follows:

1. That your petitioner was appointed by this Court, water commissioner in the above entitled case for the year beginning April 15, 1934.

2. And in pursuance of said appointment your petitioner has diligently and continuously from the time of his appointment performed his duties as water commissioner of Mill Creek Canyon Stream, also, served as engineer, in designing and constructing weirs and supervising the installation of the same and incurring expense notifying the several owners interested in the several ditches needing measuring devices, also having the Mill Creek Channell cleaned in order to save water.

3. That the irrigation season for the water users of the waters of Mill Creek Canyon Stream for the year 1934 is now closed.

4. Attached hereto and made a part thereof is a list of the expenses incurred with the commissioner's salary and engineer's services, also a list of the users of water of Mill Creek Stream and the equiable share or amount of the cost of said salary that be born by each user.

Court Commissioner's Salary	$500.00
Assistant, Joel Anderson	51.00
Stenographic expenses, in connection with this petition and court order	4.00
Stenographic expenses, notices to water users of Mill Creek, & Stamps, etc.	12.50
Lee Anderson, 3 days, cleaning Creek Channel, etc.	8.25
Total	$575.75

Proportion of cost for water users:

Utah Power and Light Company	$108.50
Pleasant View Park Company & E. W. Kelley	1.66
Stillman Estate and Successors, Joseph Stillman, Mrs. Brigham Stillman and Elizabeth Stillman, etc.	7.80
Moses Estate and Successors, Mrs. E. B. Swain and Mrs. Cummings, etc.	11.40
Frank Russell and Brigham Stillman	3.25
James Russell	6.20
J. E. Morris and Successors	2.40
Ferry Young and B. S. Hinckley, Successors to Salt Lake County, one-half each	.60
The following parties are successors to the Alexander Estate Right:	
A. B. Child	2.25
Mitchell	.45
George E. Airis	2.25
A. B. Irvine	1.50
J. E. Burbidge & Minnie Johnson	1.60
Caroline Soderland & Successors	3.00
George Airis, Successor to B.A.M. Froiseith	1.50
Brigham Stillman and Brigham Stillman, etc., Successor to Daniel Hussey	.90
Samuel Stillman	2.73
Thomas Osguthorpe	.90
B. S. Hardy and successors to H. B. Skidmore	.90
E. F. Chamberlain and successor, Joseph Stillman	2.70
D. C. Brown	1.80
Frank and John Neff Ditch, Amos H. Neff and Neff Ditch and Brigham Young Ditch and their successors, the East Mill Creek Water Company	150.00
Seymour H. Neff and successors	.20
Seymour H. Neff & A. M. Seeley, Eugene Neff, etc.	.96
Keller Ditch	33.60
Amos H. Neff Pipe Line, David Neff, etc.	.20
Lower Mill Creek Irrigation Company and Salt Lake City	180.00
Susan Emery Holmes	1.00
White Ditch Irrigation Company or Salt Lake City	45.00
Amos B. Neff, John S. Neff, etc.	.50

WHEREFORE, your petitioner prays that the parties using the waters of Mill Creek Canyon Stream shall be ordered to pay such amounts respectfully as may be necessary for the payment of the said salary of your petitioner including the preparation and presentation of this petition, and that each user be taxed the amount set opposite his or its name in the foregoing list.

T. F. McDonald
Petitioner

STATE OF UTAH)
COUNTY OF SALT LAKE) SS.

T. F. MCDONALD, having first been duly sworn upon oath deposes and says that he is the petitioner above named and that he has read the foregoing petition and knows the contents thereof, that the same is true of his own knowledge, except as to those matters therein stated on his information and belief and as to such matters he believes the same to be true.

T. F. McDonald

Subscribed and sworn to before me this 17 day of October, 1934.

Ella Gallacher
Notary Public
Commission expires: April 17, 1935.
Residence: Salt Lake City, Utah

4449

FILED IN THE CLERK'S OFFICE
Salt Lake County, Utah
OCT 17 1934
ALONZO MACKAY, Clerk 3rd Dist. Court
Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

MARTHA YOUNG, Administratrix of the estate of James Young, Deceased, Plaintiff vs. WILLIAM GORDON, Executor of the Estate of Daniel Lund, Deceased, et al, Defendants.	NOTICE ON PETITION FOR HEARING Case No. 4449

The petition of T. F. MCDONALD, Water Commissioner for the Mill Creek Stream, having been duly filed, praying for an order taxing costs for the year beginning April 15, 1934.

IT IS HEREBY ORDERED that the time for the hearing of the said petition be and it is hereby fixed at the hour of 10 A. M. on the 27th day of October, 1934 before the Honorable ROGER I. MCDONOUGH, Judge, in the courtroom of the above entitled Court at Salt Lake City, Utah.

It is further ordered that five (5) days' notice of said hearing be given in writing to the respective water users to be taxed.

Dated: Oct. 17, 1934.

Roger I. McDonough
District Judge

ATTEST
ALONZO MACKAY
CLERK
By Fred A. Bassett
Deputy Clerk

4449

FILED IN THE CLERK'S OFFICE
Salt Lake County, Utah
OCT 17 1934
ALONZO MACKAY, Clerk 3rd Dist. Court
Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

- - - - - - - - - - - - - - - - -

MARTHA YOUNG, Administratrix to the Estate of James Young, Deceased,	:	
Plaintiff,	:	
vs.	:	
WILLIAM GORDON, EXECUTOR of the Estate of Daniel Lund, Deceased, et al,	:	AFFIDAVIT OF MAILING NOTICES
Defendants.	:	

- - - - - - - -

STATE OF UTAH)
COUNTY OF SALT LAKE) SS.

- - - - - -

T. F. McDonald being duly sworn, deposes and says that, I am Court Commissioner of Mill Creek Stream, That on the 22nd day of October, 1934, I enclosed eight (8) copies of the attached letter in eight (8) envelopes to wit:

George F. Taylor, Attorney for Stillman Russell Ditch
Ernest E. Randall, Attorney for Stillman Estate
Fisher Harris, Attorney for Salt Lake City
Allan T. Sanford, Attorney for Upper Ditches
Corey and Inman, Attorneys for Utah Power & Light Co.
Bagley, Judd, and Ray, Attorneys for Mrs. O'Connor
Morris and Callister, Attorneys for Barry
L. L. Bagley, Attorney for Small Neff Ditches

And that I fully prepaid the postage upon said envelopes and enclosures therein, And that I deposited said envelopes so addressed, sealed, and postpaid in the post office at Salt Lake City of the State of Utah.

T. F. McDonald

Subscribed and sworn to before me this 22 day of October, 1934.

Fred G. Barnett
Notary Public

My commission expires June 6 day of 1937

4449

FILED IN THE CLERK'S OFFICE
Salt Lake County, Utah
OCT 27 1934
ALONZO MACKAY, Clerk 3rd Dist. Court
By Lorene Butterworth
Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

- - - - - - - - - - - - - - - - - -

MARTHA YOUNG, Administratrix of the Estate of James Young, Deceased,	)	
Plaintiff,	)	ORDER TAXING COSTS FOR YEAR BEGINNING APRIL 15, 1934.
vs.	)	
WILLIAM GORDON, Executor of the Estate of Daniel Lund, Deceased, et al,	)	No. 4449
Defendants.	)	

- - - - - - - - - - - - - - - - - -

The court having appointed T. F. MCDONALD, Court Commissioner in the above entitled case at a salary of $500.00 (Five Hundred) Dollars for the period of one year beginning on the 15th day of April, 1934 and allowing reasonable costs and expenses for engineering and other items necessary for the proper execution of the work of court Commissioner.

Aside from the above mentioned salary of $500.00 (Five Hundred) Dollars the following costs are included as follows:

Court Commissioner's Salary	$500.00
Assistant, Joel Anderson	51.00
Stenographic expenses, in connection with this petition and court order	4.00
Stenographic expenses, notices to water users of Mill Creek, & Stamps, etc.	12.50
Lee Anderson, 3 days, cleaning Creek Channel, etc.	8.25
TOTAL	$575.75

Proportion of cost for water users:

Utah Power and Light Company	$108.50
Pleasant View Park Company & E. W. Kelley	1.66
Stillman Estate and Successors, Joseph Stillman, Mrs. Brigham Stillman and Elizabeth Stillman, etc.	7.80
Moses Estate and Successors, Mrs. E. B. Swain and Mrs. Cummings, etc.	11.40

Frank Russell and Brigham Stillman	$ 3.25
James Russell	6.20
J. E. Morris and Successors	2.40
Ferry Young and B. S. Hinckley, Successors to Salt Lake County, one-half each	.60
The following parties are successors to the Alexander Estate Right:	
A; B. Child	2.25
Mitchell	.45
George E. Airis	2.25
A. B. Irvine	1.50
J. E. Burbidge & Minnie Johnson	1.60
Caroline Soderland & Successors	3.00
George Airis, Successor to B.A.M. Froiseith	1.50
Brigham Stillman and Brigham Stillman, etc., Successor to Daniel Hussey	.90
Samuel Stillman	2.73
Thomas Osguthorpe	.90
B. S. Hardy and successors to H. B. Skidmore	.90
E. F. Chamberlain and successor, Joseph Stillman	2.70
D. C. Brown	1.80
Frank and John Neff Ditch, Amos H. Neff and Neff Ditch and Brigham Young Ditch and their successors, The East Mill Creek Water Company	150.00
Seymour H. Neff and successors	.20
Seymour H. Neff & A. M. Seeley, Eugene Neff, etc.	.96
Keller Ditch	33.60
Amos H. Neff Pipe Line, David Neff, etc.	.20
Lower Mill Creek Irrigation Company and Salt Lake City	180.00
Susan Emery Holmes	1.00
White Ditch Irrigation Company or Salt Lake City	45.00
Amos B. Neff, John S. Neff, etc.,	.50

It is further expressly ORDERED and ADJUDGED, that in the event any of the parties shall fail to pay the amount of costs taxed against them herein, or the costs heretofore taxed under the orders and decree of the court heretofore made, the payment of which they are delinquent herein, that no water shall be delivered to such person or persons until the entire amount of costs, taxes herein and heretofore shall have been paid in full, and where costs are taxed against a ditch or company in this order and the orders and decree heretofore entered and the full amount of costs taxed against such ditch or company in this order and the orders and decree heretofore entered shall not have been paid, then no water shall be delivered to such ditch until said costs taxed herein and heretofore are paid in full, and in the event any person entitled to water from said ditch shall fail to pay the portion of costs fixed herein and heretofore, and the others using water from said ditch shall pay such portion, then no water shall be delivered to such delinquent person, but the portion which such delinquent person is entitled to, shall be delivered to the others on said ditch who shall have paid such cost, in the proportion in which they shall pay the same; and it is further ordered that the rights to discontinue the distribution of the water as herein provided shall be considered a cumulative remedy in addition to the right to have execution issued on this order and the orders heretofore entered.

Done in open court this 27th day of October 1934.

Roger J. McTonough
JUDGE

ATTEST
ALONZO MACKAY
CLERK

By Lyttasse Butterworth
Deputy Clerk

4449

FILED IN THE CLERK'S OFFICE
Salt Lake County, Utah
OCT 27 1934
ALONZO MACKAY, Clerk 3rd Dist. Court
By [illegible] Deputy Clerk

Stip

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

MARTHA YOUNG, Administratrix of the Estate of James Young, deceased,	)	
Plaintiff,	)	
vs.	)	STIPULATION
WILLIAM GORDON, Executor of the Estate of Daniel Lund, deceased, et. al.,	)	CASE NO.4449
Defendants.	)	

Comes now Salt Lake City, a municipal corporation, Utah Power and Light,Company, a corporation, and T. F. McDonald, water commissioner of Mill Creek, in Salt Lake County, Utah, heretofore appointed by this Court, and hereby stipulate and agree as follows:

That the said T. F. McDonald has heretofore been appointed water commissioner of Mill Creek, in Salt Lake County, Utah, at an annual salary of $500.00, plus reasonable costs and expenses, and that for several years the costs assessed against the water users of said Mill Creek for the purpose of paying said salary, costs and expenses, has been the sum of $575.00, and that the portion thereof assessed against Salt Lake City has been the sum of $375.00, on the following basis, to-wit: The Frank and John Neff Ditch, Amos H. Neff and Neff Ditch and Brigham Young Ditch and their successors and The East Mill Creek Water Company, $150.00; the Lower Mill Creek Irrigation Company, $180.00, and the White Ditch Irrigation Company, $45.00, and the portion of said sum of $575.00 assessed against the Utah Power and Light Company has been the sum of $108.50, and the said parties hereto further stipulate and agree that hereafter the portion of the compensation payable by the said Salt Lake City and the Utah Poiwer and Light Company, may, at the option of said water master, be made payable quarter-annually, beginning April 15,1935, and thereafter until further

order of court, and the said Salt Lake City and the Utah Power and Light Company further agree that the portion of the compensation of said T. F. McDonald, as water commissioner aforesaid, for the quarter beginning on the 15th day of April, 1935 and ending on the 15th day of July, 1935, are the sums of $93.75 and $27.13 respectively.

Dated this 15th day of July, 1935.

Fisher Harris, Irvine, MacFarlane & Christensen
Attorneys for Salt Lake City.

Geo. R. Corey - Al Inman
Attorneys for Utah Power and Light Co.

T. F. McDonald
T. F. McDonald, water commissioner of Mill Creek, Salt Lake County, Utah.

File

FILED IN THE CLERK'S OFFICE
Salt Lake County, Utah
JUL 19 1935
WILLIAM J. KORTH, Clerk 3rd Dist. Court
By [illegible]
Deputy Clerk

6477

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

MARTHA YOUNG, Administratrix of the Estate of James Young, deceased,	)	
Plaintiff,	)	ORDER PROVIDING FOR THE PAYMENT OF COMPENSATION OF WATER COMMISSIONER ON QUARTER ANNUAL BASIS BY SALT LAKE CITY, a municipal corporation, and UTAH POWER AND LIGHT COMPANY, a corporation, AND FIXING THE AMOUNTS PAYABLE FOR THE QUARTER BEGINNING APRIL 11,1935 AND ENDING JULY 11,1935.
vs.	)	
WILLIAM GORDON, Executor of the Estate of Daniel Lund, deceased, et. al.,	)	
Defendants.	)	Case No.4449.

It appearing to this Court that Salt Lake City, a muncipal corporation of the State of Utah, the Utah Power and Light Company, a corporation, and T. F. McDonald, water commissioner for Mill Creek in Salt Lake County, Utah, have in writing stipulated that the annual compensation of saie water commissioner has, for several years past, been in the sum of $500.00, plus reasonable costs and expenses, and that the sum of $575.00, has constituted the salary and reasonable costs and expenses paid to said water commissioner for several years and that the portion thereof payable by said Salt Lake City and the said Utah Power and Light Company, has for several years, been the sums of $375.00 and $108.50, and it fur ther appearing that the said parties have stipulated and agreed that the portion of said compensation, costs and expenses payable by Salt Lake City and the Utah Power and Light Company, may, hereafter, and until further order of court, at the option of the water commissioner, be made payable quarter-annually, beginning April 15,1935, and that the amounts payable by the said Salt Lake City and the said Utah Power and Light Company, for the quarter beginning April 15,1935 and ending July 11,1935, are the sums of $93.75 and $27.13, respectively,

Now therefore, be and it is hereby ordered, adjudged and decreed, that the portions of the salary, reasonable costs and expenses

of the water commissioner of Mill Creek, in Salt Lake County, Utah, payable by Salt Lake City and the Utah Power and Light Company, shall hereafter, and until further order of Court, at the option of the said water commissioner be paid to said water commissioner by said Salt Lake City and said Utah Power and Light Company, on a quarter annual basis, and further that the portions of said compensation for the quarter year beginning April 15,1935 and ending July 15,1935, payable by said Salt Lake City and said Utah Power and Light Company, are the sums of $93.75 and $27.13, respectively, which said sums are hereby approved and allowed as quarter annual assessments for the period above named, now payable by said Salt Lake City and said Utah power and Light Company, to T. F. McDonald, water commissioner of said Mill Creek.

Dated this 18th day of July, 1935.

BY THE COURT

Roger S. McDonough

JUDGE.

ATTEST
WILLIAM J. KORTH
CLERK

Deputy Clerk

FILED IN THE CLERK'S OFFICE
Salt Lake County, Utah
JUL 1 9 1935
WILLIAM J. FORTH, Clerk 3rd Dist. Court
By _____ Deputy Clerk

File

449

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT IN AND FOR THE COUNTY

OF SALT LAKE, STATE OF UTAH

MARTHA YOUNG, Administratrix of the estate of James Young, deceased,	)	
Plaintiff,	)	
vs.	)	PETITION FOR ORDER TAXING COSTS
WILLIAM GORDON, Executor of the estate of Daniel Lund, deceased, et. al.,	)	FOR YEAR BEGINNING APRIL,15,1935
	)	No.4449
Defendants.	)	

Comes now T. F. McDonald, of Salt Lake County, State of Utah, your petitioner herein, and respectfully represents to the Court as follows:

1. That your petitioner was heretofore duly appointed by this Court as Water Commissioner for the Mill Creek Canyon stream of Salt Lake County, Utah, in the above entitled matter, and said petitioner ever since has been and now is the duly appointed and qualified water commissioner for said stream, and that he served and acted in such capacity during all of the irrigation year beginning April 15, 1935.

2. That in pursuance of the duties and responsibilities upon him devolving as said Water Commissioner of said stream, your petitioner has, during all of the irrigation season beginning April 15,1935, diligently and continuously acted as and performed the duries of said Water Commissioner in distributing the waters of said stream among the various users thereof according to their respective rights therein, and has in such capacity supervised the construction and installation of such weirs and measuring devices for the distribution of said waters as were necessary or proper, and in this connection has rendered engineering services necessary thereto, that he has employed assistance necessary to the proper discharge of his duties, has caused the channel of said stream to be cleaned as necessary, and in the performance of his said duties as said Water Commissioner your petitioner has been put to some costs and has incurred some expenses, as more fully appears herein, which said costs and expenses should be paid by the users of water from said stream.

3. That the irrigation season for the users of water from said Mill Creek Canyon stream for the irrigation year beginning April 15,1935, is now closed.

4. Your petitioner further represents that the duties and responsibilities devolving upon him as said water commissioner as aforesaid, and the demands upon his time and services as such, have materially increased during the past year, due to the fact that a much closer check is being maintained by the users of water from said stream on their respective distributive shares, which requires more detailed and constant supervision on the part of your petitioner to properly regulate the flow of the waters of said stream among the various users thereof as their rights and interests may appear and that by reason of the fact that several changes in the regulation of the low of said said water are now of necessity made daily it has become necessary for your petitioner to employ an assistant to assist in this work to the end that a proper distribution and regulation of the water may be effected and maintained.

5. Your petitioner also represents that heretofore "house use" streams and "secondary right" streams distributed to the users thereof from the waters of said stream have not been charged their proportionate share of the expenses incident to the proper distribution and supervision of the same and your petitioner represents that the users of said streams should pay their fair proportion of the cost and added expense to your petitioner in the performance of his duties as said water commissioner in the supervision and distribution of said "house use" streams and "secondary right" streams.

6. Your petitioner further represents that the Keller Ditch, the same having certain rights in and to part of the flow of said stream, is not incorporated nor organized, nor has said ditch any water master or duly authorized representative to assist in the distribution of the water belonging to said Keller Ditch, with the result that each user of water through said Keller Ditch attempts to determine for himself his distributive amount of water, thus causing considerable confusion, and requiring additional time and expense on the part of your petitioner in the regulation of the flow of water in said ditch which should be paid for by the users of water therefrom.

7. Your petitioner represents that the following is a full, true and correct statement of his expenses as Water Commissioner aforesaid, including his salary and engineering fee as such for the year beginning April 15, 1955, together with a list of the users of water from said Mill Creek Canyon stream and a statement of the amount of assessed against them, based upon their respective rights and interests in the flow of said stream and/or the proportion of the time, costs and expense of said Commissioner in the supervision and distribution of the respective amounts of water to which they are entitled.

STATEMENT OF COSTS AND EXPENSES.

Court Commissioner's Salary	$522.18
Assistant, Joel Anderson	73.00
Stenographic services in connection with this petition and court order.	6.00
Stenographic services, notice to water users, stamps, etc.	6.50
Cleaning creek channel, Lee Anderson 3 days at $3.50 per day	10.50
Total	$618.18

LIST OF WATER USERS WITH
PROPORTION OF COST ASSESSED AGAINST EACH.

A. HOUSE USE STREAM.

Assessment to apportioned according to rights of users.

E. F. Chamberlain, house use stream	$ 3.50
William Simper, house use stream	2.54
Daniel Hussy, house use stream	2.54
Chas. Stillman Estate, house use stream	2.41
Samuel Stillman, house use stream	1.61
Thomas Osguthorpe, house use stream	1.90
D. C. Brown, house use stream	.85
H. B. Skidmore, house use stream	.85
Ruth B. Moses, Barabara Cummings, Sarah E. Neilson, and Esther B. Moses, house use stream	3.00
James Russell, house use stream	5.20
Amos H. Neff, Dave and Samuel Neff, house use stream	.45
Seymour H. Neff, Eugene Neff and others, house use stream	.45
Amos B. Neff, John Neff, Walker etc., house use stream	1.00
Seymour H. Neff, A. M. Seely, Stokes, Bagley, Chamberlain and Eugene Neff etc., house use stream	1.92
W. J. O'Conner, Susan Emery Holmes etc.,	1.71
	$29.93

B. Power

Utah Powe r and Light Company -	$108.50	Pay Quarterly

C. Irrigation.

Pleasant View Park Co., E. W. Keely - - - - - - - - - - - - - - - -	1.50	
Stillman Estate and Successors - - - - - - - - - - - - - - - - - - -	7.80	
Moses Estate and Successors -	11.40	
Frank Russell and Brigham Stillman Estate - - - - - - - - - - - - -	3.60	
James Russell and Successors -	3.60	
Salt Lake County and Successors - - - - - - - - - - - - - - - - - - -	1.00	
The Alexander Estate and Successors - - - - - - - - - - - - - - - -	10.40	
Caroline Suderland Estate and Successors - - - - - - - - - - - - -	5.20	
George E. Airis, Successors to B. A. M. Froiseth - - - - - - - - -	2.00	
J. E. Morris Estate and Successors - - - - - - - - - - - - - - - - -	4.20	
Samuel Stillman, Primary Rights - - - p - - - - - - - - - - - - - -	1.50	
Samuel Stillman, Secondary Rights - - - - - - - - - - - - - - - - -	1.20	
James Russell, Secondary Rights in Crissman Ditch - - - - - - - - -	.65	
Julia Tripp, Joseph Alexnader and Chas. Alexander, Secondary Rights in the Tripp Ditch -	1.50	
E. F. Chamberlain and Successors - - - - - - - - - - - - - - - - -	2.70	
Thos. Osguthorpe in Osguthorpe Ditch - - - - - - - - - - - - - - -	.90	
D. C. Brown and Successors -	1.80	
H. B. Skidmore and Successors - - - - - - - - - - - - - - - - - - -	.90	
Keller Ditch -	42.00	
Daniel Hussy and Successors -	.90	
John and Frank Neff Dithh, Amos H. Neff Ditch, Brigham Young Ditch and their Successors, Salt Lake City - - - - - - - - - - -	150.00	Payable Quarterly.
Lower Mill Creek Irrigation Company and Successor, Salt Lake City -	180.00	" "
Whit Ditch Irrigation Co., and Successor, Salt Lake City - - -	45.00	" "
Total Total	$618.18	

WHEREFORE, your petitioner prays that the parties using the waters of Mill Creek Canyon Stream shall be ordered to pay such amounts respectfully as may be necessary for the payment of the said salary, costs and expenses of your petitioner including the preparation and presentation of this petition, and that each user be taxed the amount set opposite his or its name in the foregoing list.

T. F. McDonald

Petitioner.

STATE OF UTAH)
) SS.
COUNTY OF SALT LAKE)

T. F. MCDONALD, having first been duly sworn upon oath deposes and says that he is the petitioner above named and that he has read the foregoing petition and knows the contents thereof, that the same is ture of his own knowledge, except as to those matters therein stated on his information and belief and as to such matters he believes the same to be true.

T. F. McDonald

Subscribed and sworn to before me this 20 day of November, 1935.

Glen E. Howe
Notary Public

Commission Expires: Dec. 9, 1937.
Residence: Murray City Utah

1

4449

FILED IN THE CLERK'S OFFICE
Salt Lake County, Utah
NOV 21 1935
WILLIAM J. KORTH, Clerk 3rd Dist. Court
By Bradley Jones
Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR THE SALT LAKE COUNTY, STATE OF UTAH

- -

MARTHA YOUNG, Administratrix of the Estate of James Young, Deceased,	:	
Plaintiff,	:	
vs.	:	**NOTICE**
WILLIAM GORDON, Executor of the Estate of Daniel Lund, Deceased, et, al,	:	Case No. 4449
Defendants.	:	

- - - - - - - - - - - - - - - - - - -

To the users and owners of the Mill Creek Stream and to the following Attorneys for the respective users and owners of such waters. Namely:

Mr. & Mrs. George F. Taylor, Sugar House, RD # 1.
Fisher Harris, Attorney for Salt Lake City
Allen T. Sanford, Attorney for Upper Ditches
Corey and Inman, Attorneys for Utah Power & Light Co.
Bagley, Judd, and Ray, Attorneys for Mrs. O'Connor
L. L. Bagley, Attorney for Small Neff Ditches
Joseph Stillman, Sugar House, RD #1.
Mrs. William Simper
Mrs. Samual Stillman
Thomas Osguthorup
Mrs. Nellie Brown
Horace H. Cummings, 159 McClellan Street.
Mrs. F. N. Stillman
Danial Russel
Mrs. John Henry Osguthorup, Sugar House, RD # 1.
Keller Ditch Co.
Mrs. Brigham Stillman
Mrs. James Russel

You and each of you will please take notice that the hearing upon the petition heretofore filed on the above entitled cause by T. F. McDonald, Water Commissioner for the Mill Creek Stream, will be held before the Honorable Roger I. McDonough, one of the Judges of the above entitled Court at the City and County Building, Salt Lake City, Utah, at the hour of 10:00 AM on the 30th day of November, 1935 for the purpose of fixing and ordering the payment as taxable costs of such sums of money as set out in the said petition, deemed as necessary to cover the costs and expenses of work done for year beginning April 1, 1934.

Dated this A. D., 1935.

William I. Korth
CLERK OF THIRD DISTRICT COURT

by Thom Reddington
Deputy

4449

FILED IN THE CLERK'S OFFICE
Salt Lake County, Utah
NOV 25 1935
William I. KORTH, Clerk 3rd Dist. Court
Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

MARTHA YOUNG, Administratrix of the estate of James Young, Deceased,	)	
Plaintiff	)	NOTICE ON PETITION FOR HEARING
vs.	)	
WILLIAM GORDON, Executor of the Estate of Daniel Lund, Deceased, et al,	)	CASE No. 4449
Defendants.	)	

The petition of T. F. MCDONALD, Water Commissioner for the Mill Creek Stream, having been duly filed, praying for an order taxing costs for the year beginning April 15, 1935.

It is HEREBY ORDERED that the time for the hearing of the said petition be and it is hereby fixed at the hour of 10 a.m on the 30th day of Nov., 1935 before the Honorable ROGER I. MCDONOUGH, Judge, in the courtroom of the above entitled Court at Salt Lake City, Utah.

It is further ordered that five (5) days' notice of said hearing be given in writing to the respective water users to be taxed.

Dated: Nov. 21, 1935.

ATTEST
WILLIAM J. KORTH
CLERK
By Bradley Kernett
Deputy Clerk

Roger I. McDonough
District Judge.

4449

FILED IN THE CLERK'S OFFICE
Salt Lake County, Utah
NOV 21 1935
WILLIAM J. KORTH, Clerk 3rd Dist. Court
Deputy Clerk

NOTICE ON PETITION FOR HEARING

CASE No. 4449

MARTHA YOUNG, Administratrix of the estate of James Young, Deceased,

Plaintiff

vs.

WILLIAM GORDON, Executor of the Estate of Daniel Lund, Deceased, et al,

Defendants.

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

The petition of T. E. MCDONALD, Water Commissioner for the Mill Creek Stream, having been duly filed, Praying for an order taxing costs for the year beginning April 1st, 1935.

It is HEREBY ORDERED that the time for the hearing of the said petition be and it is hereby fixed at the hour of 10 A.M. on the 8th day of [illegible], 1935 before the Honorable ROGER I. MCDONOUGH, Judge, in the courtroom of the above entitled Court at Salt Lake City, Utah.

It is further ordered that five (5) days, notice of said hearing be given in writing to the respective water users to be taxed.

Dated: [illegible], 1935.

District Judge.

WILLIAM J. KORTH
CLERK
Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUCICIAL DISTRICT

IN AND FOR THE SALT LAKE COUNTY, STATE OF UTAH

- -

MARTHA YOUNG, Administratrix of the Estate of James Young, Deceased,	:	
Plaintiff,	:	
vs.	:	NOTICE
WILLIAM GORDON, Executor of the Estate of Daniel Lund, Deceased, et, al,	:	Case No. 4449
Defendants.	:	

- - - - - - - - - - - - - - - - - - -

T. F. McDonald being duly sworn, deposes and says that, I am Court Commissioner of Mill Creek Stream, that on the 25th day of November 1935, I enclosed nineteen (19) copies of the attached letter in nineteen (19) envelopes to wit:

Mr. & Mrs. George F. Taylor, Sugar House, R D # 1.
Fisher Harris, Attorney for Salt Lake City
Allen T. Sanford, Attorney for Upper Ditches
Corey and Inman, Attorneys for Utah Power & Light Co.
Bagley, Judd, and Ray, Attorneys for Mrs. O'Connor
L. L. Bagley, Attorney for Small Neff Ditches
Joseph Stillman, Sugar House, R D # 1.
Mrs. William Simper
Mrs. Samual Stillman
Thomas Osguthorup
Mrs. Nellie Brown
Horace H. Cummings, 159 McClellan Street
Mrs. F. N. Stillman
Thomas Osguthorup
Daniel Russel
Mrs. John Henry Osguthorup, Sugar House, R D # 1
Keller Ditch Co.
Mrs. Brigham Stillman
Mrs. James Russel

And that I fully prepaid the postage upon said envelopes and enclosures therein, and that I deposited said envelopes addressed, sealed, and postpaid in the post office at Murray City of the State of Utah.

T. F. McDonald

Subscribed and Sworn to before me this 30th day of November, 1935.

Herman J. Hoagnson
Notary Public

My Commission Expires 20th day of February 1939

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR THE SALT LAKE COUNTY, STATE OF UTAH

- -

MARTHA YOUNG, Administratrix of the Estate of James Young, Deceased,	:	
Plaintiff,	:	
vs.	:	
		N O T I C E
WILLIAM GORDON, Executor of the Estate of Daniel Lund, Deceased, et, al,	:	Case No. 4449
Defendants.	:	

- - - - - - - - - - - - - - - - - - -

To the users and owners of the Mill Creek Stream and to the following Attorneys for the respective users and owners of such waters. Namely:

Mr. & Mrs. George F. Taylor, Sugar House, RD # 1.
Fisher Harris, Attorney for Salt Lake City
Allen T. Sanford, Attorney for Upper Ditches
Corey and Inman, Attorneys for Utah Power & Light Co.
Bagley, Judd, and Ray, Attorneys for Mrs. O'Connor
L. L. Bagley, Attorney for Small Neff Ditches
Joseph Stillman, Sugar House, RD # 1.
Mrs. William Simper
Mrs. Samual Stillman
Thomas Osguthorup
Mrs. Nellie Brown
Horace H. Cummings, 159 McClellan Street.
Mrs. F. N. Stillman
Thomas Osguthorup
Daniel Russel
Mrs. John Henry Osguthorup, Sugar House, RD # 1.
Keller Ditch Co.
Mrs. Brigham Stillman
Mrs. James Russel

You amd each of you will please take notice that the hearing upon the petition heretofore filed on the above entitled cause by T. F. McDonald, Water Commissioner for the Mill Creek Stream, will be held before the Honorable Roger I. McDonough, one of the Judges of the above entitled Court at the City and Country Building, Salt Lake City, Utah, at the hour of on the of for the purpse of fixing and ordering the payment as taxable costs of such sums of money as set out in the said petition, deemed as necessary to cover the costs and expenses of work done for year beginning April 1, 1934.

Dated this A. D., 1935.

CLERK OF THIRD DISTRICT COURT

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

- -

MARTHA YOUNG, Administratrix of the Estate of James Young Deceased,	)	
	)	
Plaintiff,	)	ORDER TAXING COSTS FROM APRIL 15, 1935, to APRIL 15, 1936.
vs.	)	
WILLIAM GORDON, Executor of the Estate of Daniel Lund, Deceased, et al,	)	No. 4449
	)	
Defendants.	)	

* *

T. F. McDonald having heretofore been duly appointed as Water Commissioner of Mill Creek Canyon Stream, in Salt Lake County, Utah in the above entitled matter, and having acted in such capacity for the year beginning April 15, 1935, and having heretofore filed herein his petition for an order taxing costs against the users of water of said stream to pay his salary as such water commissioner together with the costs and expenses incident to the distribution and regulation of the waters of said stream, and said matter coming on regularly to be heard before the above entitled Court this ____ day of November, 1935, and it appearing to the satisfaction of the Court that the expenses, costs and salary of said water commissioner for the year beginning April 15, 1935, together with the amounts proportioned and assessed against the various water users of water from said stream are as follows:

STATEMENT OF COSTS AND EXPENSES.

Court Commissioner's Salary -	$522.18
Assistant, Joel Anderson -	73.00
Stenographic services in connection -	6.00
with this petition and court order.	
Stenographic serviees, notice to water users, stamps, etc. -	6.50
Cleaning creek channel, Lee Anderson 3 days at $3.50 per day -	10.50
Total	$618.18

LIST OF WATER USERS WITH PROPORTION
OF COST ASSESSED AGAINST EACH.

A. HOUSE USE STREAM.

Assessment to apportioned according to rights of users.

E. F. Chamberlain, house use stream	$ 3.50
William Simper, house use stream	2.54
Daniel Hussy, house use stream	2.54
Chas. Stillman Estate, house use stream	2.41
Samuel Stillman, house use stream	1.61
Thomas Osguthorpe, house use stream	1.90
D. C. Brown, house use stream	.85
H. B. Skidmore, house use stream	.85
Ruth B. Moses, Barbara Cummings, Sarah E. Neilson, and Esther B. Moses, house use stream	3.00
James Russell, house use stream	5.20
Amos H. Neff, Dave and Samuel Neff, house use stream	.45
Seymour H. Neff, Eugene Neff and others, house use stream	.45
Amos B. Neff, John Neff, Walker etc., house use stream	1.00
Seymour H. Neff, A. M. Seely, Stokes, Bagley, Chamberlain and Eugene Neff etc., house use stream	1.92
W. J. O'Conner, Susan Emery Holmes, etc.,	1.71
	$ 29.93

B. POWER

Utah Power and Light Company	108.50

C. IRRIGATION.

Pleasant View Park Co., E. W. Kelly	1.50
Stillman Estate and Successors	7.80
Moses Estate and Successors	11.40
Frank Russell and Brigham Stillman Estate	3.60
James Russell and Successors	3.60
Salt Lake City and Successors	1.00
The Alexander Estate and Successors	10.40
Caroline Suderland Estate and Successors	5.20
George E. Airis, Successors to B. A. M. Froiseth	2.00
J. E. Morris Estate and Successors	4.20
Samuel Stillman, Primary Rights	1.50
Samuel Stillman, Secondary Rights	1.20
James Russell, Secondary Rights in Crissman Ditch	.65
Julia Tripp, Joseph Alexander and Chas. Alexander, Secondary Rights in the Tripp Ditch	1.50
E. F. Chamberlain and Successors	2.70
Thos. Osguthorpe in Osguthorpe Ditch	.90
D. C. Brown and Successors	1.80
H. B. Skidmore and Successors	.90
Keller Ditch	42.00
Daniel Hussy and Successors	.90
John and Frank Neff Ditch, Amos H. Neff Ditch, Brigham Noung Ditch and their Successors, Salt Lake City	150.00
Lower Mill Creek Irrigation Company and Successors, Salt Lake City	180.00
Whit Ditch Irrigation Co., and Successors, Salt Lake City	45.00
Total	$618.18

It is therefore, ordered, adjudged and decreed, that the account of expenses, costs and salary of said water commissioner be and are hereby approved, and that the waters users of water from said stream be and are hereby ordered to pay to said water commissioner the various amounts set opposite their respective names as their proporation of said salary, costs and expenses, and it is further expressly ORDERED AND ADJUDGED, that in the event of any of the parties shall fail to pay the amount of costs taxed against them herein, or the costs heretofore taxed under the orders and decree of the court heretofore made, the payment of which they are delinquent herein that no water shall be delivered to such person or persons until the entire amount of costs, taxes herein and heretofore shall have been paid in full, and where costs are taxed against a ditch or company in this order and the orders and decree heretofore entered and the full amount of costs taxed against such ditch or company in this order and the orders and decree heretofore entered shall not have been paid, then no water shall be delivered to such ditch until said costs taxed herein and heretofore are paid in full, and in the event of any person entitled to water from said ditch shall fail to pay the portion of costs fixed herein and heretofore, and the others using water from said ditch shall pay such portion, then no water shall be delivered to such delinquent person, but the portion whcih such delinquent person is entitled to, shall be delivered to the others on said ditch who shall have paid such cost, in the proportion in which they shall pay the same; and it is further ordered that the rights to discontinue the distribution of the water as herein provided shall be considered a cumulative remedy in addition to the right to have execution issued on this order and the orders heretofore entered.

Done in open court this 30th day of November, 1935.

Roger P. McTonough
JUDGE.

ATTEST
WILLIAM J. KORTH
CLERK
By Jack Hale
Deputy Clerk

4449

FILED IN THE CLERK'S OFFICE
Salt Lake County, Utah
NOV 30 1935
WILLIAM J. KORTH, Clerk 3rd Dist. Court
By Jacob Hicks
Deputy Clerk

IN THE DISTRICT COURT IN AND FOR SALT LAKE COUNTY,

STATE OF UTAH.

-----ooOoo-----

MARTHA YOUNG, administratrix of the Estate of James Young, Deceased, Plaintiff, -vs- WILLIAM GORDON, Executor of the Estate of Daniel Lunnd, Deceased, et al, Defendants.	NO. 4449. ORDER.

-----ooOoo-----

This matter coming on to be heard upon the petition of John T. Guest and Edward Ellis, and it appearing that notice thereof was served upon the parties interested, and the Court having heard the evidence, and being fully informed in the premises, hereby orders and directs that there be constructed in the channel of said stream, under the direction of John T. Guest & Edward Ellis at the point of diversion of the Neff Mill Race, a concrete dam for the purpose of diverting the waters of said Mill Creek into the said Neff Mill Race in accordance with the custom which has heretofore been followed in the distribution of said water, and that the cost of said dam be taxed to the users of said water in accordance with their respective rights, who draw water from and including the B. Y. and Kellar Ditch down the stream.

Done in open Court this 10th day of April, A. D. 1913.

C. W. Morse

Judge.

ATTEST

L. P. PALMER,

CLERK.

By N. P. Counts

Deputy Clerk.

4449

FILED

APR 10 1913

L. P. PALMER, Clerk Dist. Court,
of Salt Lake County, Utah.

By _____ Deputy Clerk.

IN THE DISTRICT COURT IN AND FOR SALT LAKE COUNTY,

STATE OF UTAH.

-----ooOoo-----

MARTHA YOUNG, Administratrix of the Estate of James Young, Deceased, Plaintiff, -vs- WILLIAM GORDON, Executor of the Estate of Daniel Lunnd, Deceased, et al, Defendant.	NO. 4449. Notice.

-----ooOoo-----

To the above named defendants and their attorneys:-

You and each of you are hereby notified that the hereto attached petition will be presented to the Honorable C. W. Morse, Judge, for consideration, on Wednesday, the 10th day of April, 1913, at 10 o'clock A. M., or as soon thereafter as the matter may be heard.

Allen T. Sanford
Attorney for Petitioners.

Copy of the above Petition and Notice received this 9th day of April, 1913.

J. S. Richards
Attorney for Lower Mill Creek Irrigation Co.

Sherman Wadsworth - Sovine
Attorney for White Ditch.

Attorney for Kellar Ditch.

Moyle & Van Cott
Attorney for part of Brigham Young Ditch

Dickson Ellis Ellis & Schnilder
Attorney for E. F. Holmes, et al.

4449

FILED
APR 10 1913
L. P. PALMER, Clerk Dist. Court,
of Salt Lake County, Utah.
By [signature]
Deputy Clerk.

IN THE DISTRICT COURT IN AND FOR SALT LAKE COUNTY,

STATE OF UTAH.

-----ooOoo-----

MARTHA YOUNG, Administratrix of the Estate of James Young, Deceased, Plaintiff, -vs- WILLIAM GORDON, Executor of the Estate of Daniel Lunnd, Deceased, et al, Defendants.	NO. 4449. Petition.

-----ooOoo-----

Comes now John T. Guest and Edward Ellis and respectfully represent and state that they are parties defendant in this action taking water from the Mill Creek system through the Hoagland & Murphy and Brigham Young Ditches repectively. That the dam diverting the water from the channel of said Mill Creek into the Neff mill race has become rotten and useless so that it will no longer perform its purpose of diverting the water from the main channel into the Neff mill race. That there was held a meeting on the 8th day of April, 1913 of the users of the waters of Mill Creek, and notice was sent generally to the users of all the waters from lower Mill Creek, and as far up on the stream as, and including the Brigham Young and Kellar ditches, including all users below said ditches, and at said meeting it was unanimously agreed that a concrete dam should be constructed, the cost and expense of said construction to be taxed to the users of the waters from said Mill Creek beginning at the Kellar Ditch and thence going down the stream, and that your petitioners herein were, by said meeting, appointed a committee to secure

an order authorizing the construction of said dam, and to superintend the construction thereof, having charge of all the details connected therewith.

Your petitioners allege that they believe that the costs of the construction of a concrete dam will be approximately One Hundred Fifty ($150.00) Dollars,

WHEREFORE, they respectfully ask for an order of Court authorizing and directing the construction of a concrete dam across the channel of said stream so as to divert the water of said stream into the Neff Mill Race in accordance with the custom and usage heretofore used in the distribution of the water of said stream, and that the cost of said work be taxed to all of the users of said waters in proportion to their rights from and including the Kellar Ditch down the stream.

Allen T. Overgard

Attorney for Petitioners.

4449

FILED

APR 10 1913

L. P. PALMER, Clerk Dist. Court,
of Salt Lake County, Utah.

By _____
Deputy Clerk.

JAMES M. YOUNG)

VS.) N o. 4449.

DANIEL LUNN, ET AL.,)

* *

Order filed 3/10/10 $1450.76

" " 5/20/11 916.47 2367.23

RECEIPTS BY COUNTY CLERK a/c OF COURT ORDERS.

Apl. 13/09	M. W. White	White Ditch	$137.65
19	Lower Mill Creek		503.05
24	Chas. Stillman Estate	E. V. Higgins	16.77
26	" " "	" "	5.
26	Sam'l. Stillman	" "	9.44
30	M. Henry Osgithorpe		8.25
May 4	Kellar Ditch	Sam'l. Oliver	6.
27	Andrew Bagley		16.80
Jun. 5	C. A. Anderson	Kellar Ditch	.60
5	Jonas Anderson	" "	1.50
Nov. 30	Alvah Kellar	" "	48.60
Jan. 18/10	A. T. Sanford	(per letter)	229.55
25	James M. Fisher		32.75
Dec. 3	Jane Hengly	B. Y. Ditch	11.55
11	Chas. Platts		1.25
1	Allen T. Sanford		43.51
12	L. C. Hengley	10 Acres B. Y. Ditch	7.70
12	M. Bingley	19 " " "	9.24
13	Frances W. Gray	14 " " "	10.78
14	Geo. Capson	B. Y. Ditch	2.77
14	H. H. Cummings Ex. Moses Estate		31.77
15	Salt Lake County		2.11
15	W. H. Chamberlin		7.70
16	H. J. Debenham		20.79
17	Chas. W. Capson		10.
	Chas. O' Connor		3.85
	L. A. Fisher		1
	J. M. Fisher, Jr.,		5.20
	Arthur Woods		7.75
	John C. Capson		10.50
	W. Woodell		15.40
	Christian Voss		8.
19	J. B. Chapman		6.93
	" "		1.68
	R. P. Fisher		15.40
20	O. H. Capson		8.50
	Wm. J. Butterworth		11.55
	Louise Bath		1.55
	H. H. Cummings Moses Estate,	O. & S. Ditch	4.80
22	Mrs. Lillie Neff	B. Y. Ditch	1.55
	T. O. Perry		7.68
	A. M. Seely		4.10
	Joseph Waller		1.75
20	P. Ryan		19.
	Forward		$1311.32

	Amount Forward		$1311.32
Dec. 22,1910	Simon Bath	B. Y. Ditch	.32
	Wm. Wardell	" "	1.75
	Wm. Wardell, Jr.,	" "	1.95
29	P. L. Ranch	" "	1.65
Jan. 5,1911	Vilate Carney	" "	1.75
	Isaac B. Chapman	" "	1.50
	Albert Capson	" "	2.20
18	Wm. Whyte	" "	1.65
Feb. 8	Allen T. Sanford	(see letter)	20.85
Mch. 1	Benj. Sharples		15.92
	Wm. Waters		3.85
Aug. 14	A. H. Bagley	Kellar Ditch	10.75
	Jonas Anderson	" "	.95
	Mrs. Card Anderson	" ? "	.40
	Sam'L. Oliver		3.85
	Stillman Estate		19.30
Dec. 14	Lower Mill Creek Irri. Co.		326.80
			$1726.76

AMOUNTS PAID OUT BY COUNTY CLERK.

Apl. 30,1909	To Caleb Tanner Comr.	$580.16
May 1,1909	To A. B. Sawyer,Jr,	100.
Jan. 9,1910	To Caleb Tanner	335.80
Feb. 13,1911	To Utah Foundry & Mach. Co.,	106.72
Aug. 12,1911	To Geo. F. Taylor	242.06
Jan. 11,1912	To Silver Bros. Iron Wks.	134.20
Mch. 15, 1912	To Geo. F. Taylor	227.85
		$1726.79

Aug. 29,1913.

JAMES M. YOUNG)

VS. : No. 4449.

DANIEL LUNN, ET AL)

E. A. Wedgwood,Esq.
Salt Lake City,Utah.

Dear Sir:--

At the instance of Mr. Allen T. Sanford, I have examined the account in this office in the above action, and after such an examination, I beg to advise you that there appears to have been but one payment on account of the White ditch, that of April 13th, 1909, of $137.65.

Very truly yours,

IN THE DISTRICT COURT IN AND FOR SALT LAKE COUNTY,

STATE OF UTAH.

-----ooOoo-----

MARTHA YOUNG, ADMINISTRATRIX OF THE ESTATE OF JAMES YOUNG, DECEASED, Plaintiff, -vs- WILLIAM GORDON, EXECUTOR OF THE ESTATE OF DANIEL LUND, DECEASED, ET AL, Defendants.	NUMBER 4449. FINDINGS OF FACT AND CONCLUSIONS OF LAW.

-----ooOoo-----

This cause which is a suit to quiet title of the plaintiff and of the defendants, numbering several hundred or more, to all the waters of Mill Creek Canyon, and its tributaries in Salt Lake County, State of Utah, coming on regularly to be heard in this court on the pleadings of the plaintiff and the defendants, and thereupon the said parties introduced the testimony of numerous witnesses, and documentary evidence to support the issues raised by the said several pleadings, and the court having heretofore appointed its commissioners to make examinations of said stream, and the system of distribution employed thereon, and having read the report of said commissioners and heard and considered the testimony of said commissioners, as well as the testimony and evidence offered by the parties to said action, and the arguments of the counsel of the respective parties herein, and having fully considered the same, and being fully advised in the premises, now finds the following facts, namely;-

FINDINGS OF FACT

1. That all of the defendants in this action have either been duly and regularly served with summons herein, or entered

their appearance herein, and proof thereof is now on file herein, and every person who claims any water in Mill Creek Canyon Creek is now a party to this action, and has either pleaded herein, or the time to plead has elapsed, and the default of all the defendants who have failed to answer has been duly entered herein.

2. That all the corporations mentioned in the pleadings of the parties herein exist as therein alleged, and each and all the executors, administrators, trustees and other representatives has, and have, the legal qualification, status and powers therein alleged.

3. That all the lands irrigated by the parties to this suit and described in the pleadings were originally arid lands, and would not successfully produce agricultural crops without irrigation, but that by irrigation said lands are productive, and the rights herein found in favor of the respective parties to this action, are based on a beneficial use by said parties in the irrigation of said lands, and for culinary and domestic uses, and for power rights as herein set out.

4. That said Mill Creek Canyon Creek is a typical mountain stream, which has its source in the Wasatch Mountains, and flows in a general northwesterly direction into the Jordan River, and is subject to great and rapid fluctuations in the volume of its flow.

5. That the irrigation season for the land irrigated by the waters of said Creek, usually commences about the 1st day of April of each year, and extends to about the 1st day of October following.

6. That the following named defendants or their predecessors at the times stated herein appropriated and diverted of the unappropriated waters of said Mill Creek the amount stated after their respective names, and ever since have continuously, openly, notoriously without interruption and under a claim of right, used said amount of water continuously for culinary, stock watering, domestic and irrigating purposes, being waters

commonly known as house use streams.

a. E. F. Chamberlain and William Simper, more than twenty years prior to the commencement of this action, appropriated and diverted four tenths (.4) of a second foot through what is known as the Chamberlain Ditch, of which amount E. F. Chamberlain has used 3/5 and William Simper 2/5. During the time that water has been delivered to E. F. Chamberlain, for her irrigation turn, said .4 of a second foot has been included in the amount allotted to E. F. Chamberlain for her irrigating turn, and the balance of the time said .4 of a second foot has been taken from the channel of said stream.

b. Daniel Hussy more than 25 years prior to the commencement of this action appropriated and used .16 of a second foot through what is known as the Stillman & Hussy Ditch. During the time that water has been taken through said ditch for irrigation purposes said amount has been taken from the irrigation water taken through said ditch, and the remaining time said amount has been taken from the channel of said stream.

c. The Chas. Stillman estate and Samuel Stillman, about the year 1850, appropriated through the Stillman & Hussy Ditch, .18 and .12 of a second foot respectively. During the time that water has been delivered to said parties for their irrigation turn, through the Stillman & Hussy Ditch, said amounts have been taken from the portions delivered through said ditch for said irrigation turns, and the remaining time the said amount has been taken from the main channel of the stream.

d. That Thomas Osguthorpe, D. C. Brown, H. B. Skidmore about the year 1850, appropriated through the Osguthorpe & Skidmore Ditch, .24 of a second foot, 1/2 thereof for the use of Thomas Osguthorpe and 1/4 for the use of D. C. Brown, and H. P. Skidmore each, during the time that there has been surplus water in said creek, the entire amount of this house use stream has been deducted from the amount of water drawn by the Osguthorpe & Skidmore

Ditch. When there was not surplus water in the stream, then the amount of said water has been taken from the main channel of the creek, except during twelve hours a week when it has been taken from the primary water in the Osguthorpe & Skidmore Ditch.

e. Ruth R. Moses, Barbra Cummings, Sarah E. Neilson, and Esther B. Moses, heirs of Julia Moses who about the year 1850, appropriated through the Stillman & Russell Ditch .49 of a second foot, which, during the time there has been no water in the Stillman & Russell Ditch for irrigation purposes, has been taken from the main stream, and during the time that James Russell and Frank Russell have used their primary rights through the Stillman & Russell Ditch, it has been deducted from their rights, and during the time that the water has flown past the headgate of the Moses Ditch which is situate in the Stillman & Russell Ditch, its headgate which is twelve inches wide is raised one-half of an inch and said Moses heirs have used during such time, the amount of water which has passed through said opening.

f. That James Russell about the year 1880, appropriated from the Osguthorpe mill pond and tail-race therefrom .31 of a second foot, which at all times has been used from the main channel of the stream through the said Osguthorpe mill pond and tail-race.

g. That Seymour H. Neff about the year 1890, appropraited .017 of a second foot through a one inch pipe, the intake of which was located at a point fourteen inches above the headgate of the Franklin Neff Ditch. The amount of this appropriation at all times has been taken from the main channel of the creek.

h. Eliza Ann Neff and Catherine T. Neff about the year 1850, appropriated .15 of a second foot and diverted the same at a point about two feet above the intake of the Brigham Young Ditch. The ditch is constructed from the point of the diversion through the premises of A. H. Neff, and leads to the main channel of the creek below the point at which the water is appropraited at lower Mill

Creek, and only such portion of the water diverted was appropriated and used as has been consumed in the watering of the stock from the ditch, and such irrigation as is incidentally performed through the conducting of the water through said ditch, none of said water having been taken out of said ditch for irrigation purposes, and the portion of the water not so consumed has been returned to the main channel of the stream below the point that the water is measured to lower Mill Creek.

i. Amos H. Neff and Susan Emery Holmes about the year 1894, appropriated through a two inch pipe, having its head in the old Neff Mill pond, .07 of a second foot, 2/5 thereof to the use of Amos H. Neff and 3/5 thereof to the use of Susan Emery Holmes.

j. Susan Emery Holmes about the year 1894, appropriated through a two inch pipe which heads in the Neff Mill race, about 20 feet below the head of the Seymour H. Neff pipe line, .05 second feet, and appropriated through a two and one-half inch pipe, which heads in the old mill pond, .01 of a second foot and about the year 1894, through several hose syphons of the old mill pond .17 of a second foot and about the year 1894 through a lateral ditch from the Amos H. Neff house stream and through a lateral from the Franklin Neff ditch, and through a ditch which heads in the Neff mill race at a point one hundred fifty feet east of the Holmes residence .03 of a second foot.

k. That Seymour H. Neff and A. M. Seeley about the year 1870, appropriated through the Franklin Neff ditch, which heads at the Neff Mill race at a point just east of the mill pond .44 of a second foot for a period of twenty-four hours in each eight days, five hours thereof belonging to Seeley and nineteen hours there of to Neff.

l. Amos B. Neff about the year 1870, appropraited through the Franklin Neff ditch, which heads in the Neff mill race, at a point just east of the mill pond, .27 of a second foot, during

the period of twenty-four hours each seven days.

m. That the water produced by an excavation made by John Neff immediately below the Neff mill race and conducted through a pipe in the barn lot of said Neff, for stock purposes, also the flow from the spring on the south side of mill creek conducted to a ram by means of which the water is forced through a two inch pipe to the house of said John Neff, are not a part of the waters of Mill Creek, and after the commencement of this action, said John Neff appropriated sufficient of the waters of Mill Creek to operate said ram, the water so used for the operation of said ram to be returned to said creek undiminished in quantity and unimpaired in quality.

n. The aforesaid amounts of water, except where it is provided that the same has been deducted from some of the irrigating ditches has been deducted from the amount of water flowing in Mill Creek at all stages of the flow thereof, and the amount of water remaining after the aforesaid deductions has been the amount of water that has been distributed for the general purposes through the respective irrigation ditches.

7. That when the waters of said stream amount to 29.03 cubic feet per second or less, what are known and designated as the primary users of said stream have appropriated and used all the waters thereof, excepting the house use stream, and said primary users, at periods between twenty-five and fifty years, prior to the commencement of this action, appropriated, diverted and used for irrigation and domestic purposes all the waters of said stream until the flow thereof amounts to 29.03 cubic feet per second, and ever since their said appropriations they have so used said water, and the said primary owners when there is 29.03 cubic feet per second or less flowing in said stream, have used it in the following proportion:-

a. The first ditch consisting of the Osguthorpe & Skidmore Ditch, the Chamberlain Ditch, the Stillman & Russell Ditch,

The Stillman & Hussy Ditch and the Tripp Ditch appropriated and used .0983 of the waters of said stream and that the following named persons have appropriated and used such waters as follows:-

Osguthorpe & Skidmore Ditch.

Thos. Osguthorpe	3 hrs. each week,
H. B. Skidmore	3 " " "
D. C. Brown	6 " " "

Chamberlain Ditch.

E. F. Chamberlain	9 hrs. each week,

Stillman & Russell Ditch.

Chas. Stillman Estate	26 hrs. each week,
The Moses Estate	38 " " "
Frank Russell	12 " " "
James Russell	12 " " "
J. E. Morris	8 " " "
Salt Lake County	2 " " "
The Alexander Estate	26 " " "
Caroline Soderland	10 " " "
B. A. M. Froiseth	5 " " "

James Russell at times has used his portion through the Crismon & Russell Ditch and the Stillman Estate has at times used its portion or a part of it through the Stillman & Hussy Ditch.

Stillman & Hussy Ditch.

Daniel Hussy	3 hrs. each week,
Samuel Stillman	5 " " "

b. The owners of the Franklin and John Neff Ditch appropriated and used .0443 of the waters of the stream to be used as follows:-

James A. Wilkinson	5 hrs.	10 min.		each	week,
Ernest E. Wilkinson	4 "			"	"
Seymour Neff	11 "			"	"
Jonas Anderson	27 "	30	"	"	"
J. E. Morris	7 "	50	"	"	"
James King	5 "	30	"	"	"
Nephi Smart	9 "	10	"	"	"
Jos. C. Ranck	7 "	10	"	"	"
T. I. Midgley	3 "	30	"	"	"
George Christensen	7 "	20	"	"	"
John Neff	36 "	30	"	"	"
John B. Fagg	5 "	30	"	"	"
George Christensen	8 "	10	"	"	"
J. F. Hugley	1 "			"	"
Koran L. Morris	9 "	10	"	"	"
Eldredge Estate	10 "			"	"
Salt Lake County	10 "	30	"	"	"

c. The owners of the Amos H. Neff Ditch appropriated and used .0574 of the waters of the stream to be used as follows:-

Amos H. Neff	37.1	hrs.	each	week,
John Neff	46.9	"	"	"
Cyrus Neff	8.4	"	"	"
Amos B. Neff	15.4	"	"	"
John B. Fagg	7	"	"	"
Joseph G. Ranck	39.2	"	"	"
Martha Smith	7	"	"	"
John D. Neff	7	"	"	"

d. That the owners of the Kellar Ditch appropriated and used .0705 of such waters apportioned among the owners thereof according to their several respective rights.

e. That the owners of the Brigham Young Dtich appropriated and used .2295 of such waters apportioned among the owners thereof according to their several respective rights.

f. That the owners of the Murphy & Hoagland Ditches and the White Ditch appropriated and used .5 of the waters apportioned to said ditches by measurement in the channel of the stream immediately below the point where the waters taken through the Neff mill race are returned to the channel of the stream, and the same has been apportioned to said respective ditches at the point of diversion of the White Ditch as follows:- viz:- 5/6 to the Hoagland & Murphy Ditches, and 1/6 thereof to the White Ditch. The same having been used according to the several respective rights of the owners.

g. In apportioning the waters, except to the Hoagland & Murphy Ditches, during the primary period the amount has been determined by measurements in each of said ditches at or near the intakes thereof.

8. That for a period ranging from 20 to 30 years prior to the commencement of this action, the owners of what is called the second class water rights, appropriated, diverted and used for irrigation and domestic purposes a portion of the waters of said Mill Creek, when there was flowing in said stream more than 29.03 cubic feet per second and by the general custom and practice that has obtained and been in vogue for more than twenty years prior to the commencement of this action by and between all of the users of the water when the flow exceeds 29.03 cubic feet per second, and

until the flow amounts to 41.93 cubic feet per second, the owners of the primary and second class waters have always diverted and used all the waters of said stream, except the house use streams, as herein set out, namely:-

a. The owners of the first ditch consisting of the Osguthorpe & Skidmore Ditch, Chamberlain Ditch, Stillman & Russell Ditch, Stillman & Hussy Ditch, Tripp Ditch and the Crismon & Russell Ditch, have diverted and used .1305 of all the waters of said stream, the owners of the said ditches having used said portion as follows:-

1. The Stillman & Russell Ditch has used the following proportion of the flow of the entire stream, viz; .09 for 48½ hours, .10 for 114½ hours each week apportioned among the users under said ditch as follows:-

Chas. Stillman Estate	26	hrs.	each	week,
Moses Estate	38	"	"	"
Frank Russell	12	"	"	"
James Russell	12	"	"	"
J. E. Morris	18	"	"	"
Salt Lake County	4	"	"	"
Alexander Estate	26	"	"	"
Caroline Soderland	22	"	"	"
B. A. M. Froiseth	5	"	"	"

James Russell part of the time has used all or a portion of his right through the Crismon & Russell Ditch and the Stillman Estate a part of the time has used all or a portion of its right through the Stillman & Hussy Ditch.

2. The Stillman & Hussy Ditch has used .10 of the flow of the entire stream 21 hours each week, apportioned as follows:

Daniel Hussy	3	hrs.	each	week,
Samuel Stillman	18	"	"	"

3. The Crismon & Russell Ditch has used .10 of the entire stream for six and one-half hours each week apportioned to James Russell.

4. The Tripp Ditch has used .09 of the entire stream for a period of 15 hours each week apportioned to Julia E. Tripp, Joseph Alexander and Charles Alexander each one-third.

5. The Chamberlain Ditch has used .10 of the

entire stream for 9 hours each week apportioned to E. F. Chamberlain.

6. The Osguthorpe & Skidmore Ditch .10 of the entire stream for 12 hours each week, apportioned as follows:-

Thomas Osguthorpe	3 hrs.	each week,		
H. B. Skidmore	3 "	"	"	
D. C. Brown	6 "	"	"	

b. The owners of the Franklin and John Neff Ditch have diverted and used .0745 of the waters of said stream apportioned among the users under said ditch as follows:-

James A. Wilkinson	2 hrs.	45 min.	each week,		
Ernest A. Wilkinson	2 "	15 "	"	"	
J. E. Morris	12 "	30 "	"	"	
Martha Capson	8 "	30 "	"	"	
J. B. Fagg	13 "		"	"	
Koran L. Morris	10 "	30 "	"	"	
Mary L. Osguthorpe	8 "	30 "	"	"	
Delia B. Fagg	7 "		"	"	
Jonas Anderson	20 "		"	"	
J. G. Ranck	5 "		"	"	
S. H. Neff	11 "		"	"	
Geo. Christensen	5 "		"	"	
Nephi Smart	10 "		"	"	
James King	4 "		"	"	
T. I. Midgley	2 "		"	"	
John Neff	20 "		"	"	
Geo. Christensen	4 "	30 "	"	"	
J. S. Hugley		30 "	"	"	
Eldredge Estate	10 "		"	"	
Salt Lake County	11 "		"	"	

c. The owners of the Amos H. Neff Ditch have diverted and used .0655 of the waters of said stream apportioned to the users under said ditch according to their several respective rights.

d. The owners of the Kellar Ditch have diverted and used .0658 of the waters of said stream apportioned to the users under said ditch according to their several respective rights.

e. The owners of the Brigham Young Ditch have diverted and used .2232 of the waters of said stream apportioned to the users under said ditch according to their several respective rights.

f. The owners of the White, Hoagland & Murphy Ditches have diverted and used .4405 of the waters of said stream apportioned as follows:- To the White Ditch 1/5 thereof and to the Hoagland and Murphy Ditches 4/5 thereof.

g. The points for measuring the amounts to be apportioned during the second class stage has been the same as at the primary stage.

9. That for a period ranging from fifteen to twenty years prior to the commencement of this action, the owners of what is called the surplus water rights appropriated and diverted and used for irrigating and domestic purpose, a portion of the waters of said Mill Creek stream when there was flowing in said stream more than 41.93 cubic feet per second, and during the time there has been more than 41.93 cubic feet per second flowing in said stream by the general custom and practice that has obtained and been in vogue for more than fifteen years prior to the commencement of this action by and between all of the users of the water the owners of the water rights have always diverted and used all of the waters of said stream except the house use streams, as herein set out, viz:-

a. The owners of the first ditch, consisting of the Osguthorpe & Skidmore Ditch, Chamberlain Ditch, Stillman & Hussy Ditch, Stillman & Russell Ditch, Tripp Ditch and the Crismon & Russell Ditch have diverted and used .2946 of all the waters of said stream. The owners of the several respective ditches comprising the said first ditch have used the portions of the entire stream as herein set out, viz:-

1. The Chamberlain and Crismon & Russell Ditches have used .10 of the flow of the entire stream for a period of 159.5 hours each week. The Pleasant View Park Company, successors to Elizabeth Crismon, using the same four days each week, and James Russell using the same 2 days 6-1/2 hours each week, through the Crismon & Russell Ditch, and E. F. Chamberlain 9 hours each week through the Chamberlain Ditch as a primary right.

2. The Osguthorpe & Skidmore Ditch has used the following proportions of the flow of the entire stream, viz:- .09 thereof for 159½ hours each week, and .10 thereof for 8½ hours each

week, the same having been used by James Young, Oscar Capson, Joseph G. Ranck, Thomas Osguthorpe, Joseph Osguthorpe, Albert Capson, Moses Estate, Carl Capson, H. B. Skidmore and D. C. Brown, according to their several respective rights, as is set forth in the pleadings.

3. The Stillman & Hussy Ditch has used .09 of the flow of the entire stream for a period of forty-five hours each week, same having been used as follows:- Daniel Hussy three hours each week, Samuel Stillman forty-two hours each week.

4. The Stillman & Russell Ditch has used the following portions of the flow of the entire stream viz:- .074 for 45 hours each week, .083 for 114½ hours each week and .09 for 3½ hours each week through the Stillman & Russell Ditch for a period of 163 hours each week, same having been used by the owners thereof as follows:-

Chas. Stillman Estate	26	hrs.	each	week,
Moses Estate	38	"	"	"
Frank Russell	12	"	"	"
James Russell	12	"	"	"
J. E. Morris	18	"	"	"
Salt Lake County	4	"	"	"
Alexander Estate	26	"	"	"
Caroline Soderland	22	"	"	"
George E. Airis, successor to B.A.M.Froiseth	5	"	"	"

James Russell part of the time has used all or a portion of his right through the Crismon & Russell Ditch and the Stillman Estate a part of the time has used all or a portion of its right through the Stillman & Hussy Ditch.

5. That George Tripp has used .0729 of the flow of the entire stream through the Tripp Ditch for a period of 15 hours during each week, apportioned equally to Julia E. Tripp, Charles Alexander and Joseph Alexander.

b. The owners of the Franklin and John Neff Ditch have used through said Franklin & John Neff Ditch .0604 of all the waters of said stream in the following portion, viz:-

James A. Wilkinson	2	hrs.	45	min.	each	week,
Ernest A. Wilkinson	2	"	15	"	"	"
J. E. Morris	12	"	30	"	"	"

Martha Capson	8	hrs.	30	Min.	each	week,
J. B. Fagg	13	"			"	"
Koran L. Morris	10	"	30	"	"	"
Mary L. Osguthorpe	8	"	30	"	"	"
Delia B. Fagg	7	"			"	"
Jonas Anderson	20	"			"	"
J. G. Ranck	5	"			"	"
S. H. Neff	11	"			"	"
Geo. Christensen	5	"			"	"
Nephi Smart	10	"			"	"
James King	4	"			"	"
T. I. Midgley	2	"			"	"
John Neff	20	"			"	"
Geo. Christensen	4	"	30	"	"	"
J. S. Hugley			30	"	"	"
Eldredge Estate	10	"			"	"
Salt Lake County	11	"			"	"

c. The owners of the Amos Neff Ditch have used through said Amos H. Neff Ditch .0588 of all the waters of said stream.

d. The owners of the Kellar Ditch have used through said Kellar Ditch .0528 of all the waters of said stream.

e. The owners of the Brigham Young Ditch have used through said Brigham Young Ditch .1794 of all the waters of said stream.

f. The owners of the White, Hoagland & Murphy Ditches have used through said White, Hoagland & Murphy Ditches .3540 of all the waters of said stream during the surplus period, of which amount the owners of the White Ditch have used 1/5 and the owners of the Hoagland & Murphy Ditch have used 4/5 measured and divided at the intake of the White Ditch.

10. That for the purpose of making all apportionments and divisions of the water of the stream at the various stages provided for in these findings, the entire quantity of the water of the stream has been determined by measuring the quantity of water flowing into each of said ditches (except the Hoagland & Murphy and White Ditches, and the ditches and diversions herein referred to as house streams), and in the channel of the stream immediately below the point where the waters of the Neff mill race are returned to the stream, and the aggregate amount so found has constituted the entire flow of the stream, or all of the water thereof, for the purpose of measuring to each of the ditches the aliquot part which each ditch has used as herein found.

11. That for the purpose of determining when the flow of the stream has reached a quantity of 29.03 cubic feet per second and when the flow of the stream has reached a quantity of 41.93 cubic feet per second, the water of the stream has for many years been measured at the weir near the mouth of the canyon, above the point of diversion of any of the ditches, excepting the Crismon & Russell Ditch, and in determining the amount of water in said stream, the amount flowing over said weir and in said Crismon Russell Ditch has been measured in determining the quantity of water in said stream, for the purpose of determining when there is a quantity of 29.03 and a quantity of 41.93 cubic feet per second.

12. That in distributing the waters at all the stages of the flow of said stream, the water has been measured and apportioned to each of the ditches by measurements made in each of them at or near the intakes thereof, excepting that the portion which has been used by the White, Hoagland & Murphy Ditches has been measured at a point in the channel of the stream immediately below the point where the waters taken through the Neff mill race have been returned to the channel of the stream.

13. About fifty years prior to the commencement of this action, the predecessors of Thomas Osguthorpe diverted at the intake of the Osguthorpe mill race 8/10 of the flow of said Mill Creek stream, and used the same for power purposes, and ever since that time said Thomas Osguthorpe and his predecessors have used 8/10 of the flow of said stream for power purposes and have returned the water so used to be returned to the main channel undiminished in quantity and unimpaired in quality.

14. That about fifty years prior to the commencement of this action Chas. Stillman appropriated and diverted at the intake of the Stillman mill race diverting water from the Osguthorpe mill race, 8/9 of the flow of said Mill Creek stream for power purposes, and ever since said date, Chas. Stillman Estate have used 8/9 of the flow of said stream for power purposes, and have returned the water

so used to the main channel of the stream undiminished in quantity and unimpaired in quality.

15. That about _____ years prior to the commencement of this action, Susan Emery Holmes appropriated and diverted 6-1/2 cubic feet per second from the Neff mill race, but not exceeding the amount flowing to Lower Mill Creek, and used the same for power purposes to operate a Turbine wheel located on her premises and returned the water so diverted to the main channel of the stream undiminished in quantity and unimpaired in quality.

16. That about _____ years prior to the commencement of this action Alva Kellar appropriated and diverted four cubic feet per second, but not exceeding the amount flowing to Lower Mill Creek, from the channel of the creek and used the same to operate the over-shot wheel, now situate upon his premises and since the appropriation, has continued the use thereof, and returned the water so used to the main channel of the creek undiminished in quantity and unimpaired in quality.

17. That since the commencement of this action the Mill Creek Power Company has constructed an electrical power plant near the mouth of Mill Creek Canyon, and used a part of the waters of Mill Creek for power purposes and in returning the water to the main channel of said stream it has interfered with and interrupted the even and normal flow of said stream, and it has constructed a dam across the channel of said stream and thereby impounds most of the water of said stream, and it has not been considered or determined in this action, whether said dam and impounding of the water causes any waste thereof.

CONCLUSIONS OF LAW.

As conclusions of law from the foregoing facts the court finds and hereby decides.

1. That the following named parties are entitled to a decree quieting and confirming their use to what is called house streams as follows:- viz.

a. E. F. Chamberlain and William Simper .4 of a second foot through the Chamberlain ditch, of which amount E. F. Chamberlain is entitled to 3/5 and William Simper to 2/5, the same to be drawn from the main channel of the stream, excepting when irrigation water is taken through the ditch, when it is to be deducted from the irrigation water allotted to E. F. Chamberlain.

aa. Daniel Hussy .16 of a second foot through the Stillman & Hussy Ditch, the same to be drawn from the main channel of the stream, excepting when irrigation water is taken through the said Stillman & Hussy Ditch, when it is to be taken therefrom.

b. Chas. Stillman Estate and Samuel Stillman .18 and .12 of a second foot respectively, the same to be taken from the main channel of the stream, excepting during the time that water is allotted to the Stillman & Hussy Ditch for irrigation purposes, and when the same shall be taken from the irrigation water allotted to the Stillman & Hussy Ditch.

c. Thomas Osguthorpe, D. C. Brown and H. B. Skidmore .24 of a second foot, 1/2 thereof for Thomas Osguthorpe and 1/4 for D. C. Brown and H. B. Skidmore each, the same to be drawn from the main channel of the stream excepting when there is irrigation water flowing in the ditch.

d. Ruth R. Moses, Barbra Cummings, Sarah E. Neilson, and Esther B. Moses .49 of a second foot during the time there is no water in the Stillman & Russell Ditch for irrigation purposes, and during the time that James Russell and Frank Russell use their primary rights through the Stillman & Russell Ditch, said amount is to be taken from their rights, and during the time that the

water has flown past the headgate of the Moses Ditch which is situate in the Stillman & Russell, the headgate of said Moses Ditch, which is twelve inches wide, is to be raised one-half of an inch, and during such time the Moses heirs above named are entitled to the amount of water which passes through said opening.

e. James Russell .31 of a second foot which at all times shall be deducted from the water of the main channel of the stream.

f. Seymour H. Neff .017 of a second foot to be taken through a one inch pipe and deducted from the waters of the main channel of the stream.

g. Amos H. Neff is entitled to divert .15 of a second foot which shall be returned to the stream less such portion thereof as shall be consumed from the watering of stock and irrigating trees, along the ditch through which said water may be conducted, though said water is not to be taken out of the ditch for irrigating purposes.

h. Amos H. Neff and Susan Emery Holmes .07 of a second foot through a two inch pipe, 2/5 thereof belonging to Amos H. Neff and 3/5 thereof to Susan Emery Holmes.

i. Susan Emery Holmes .05 of a second foot through a two inch pipe heading in the Neff mill race about 20 ft. below the head of the Seymour H. Neff pipe line, and .01 of a second foot through a two and one-half inch pipe heading in the old mill pond and .17 of a second foot through several hose syhpones from the old mill pond, and .03 of a second foot through the lateral ditch from the Amos H. Neff house stream and through the lateral ditch of the Franklin Neff Ditch and through the ditch which heads in the Neff mill race at a point 150 feet east of the Holmes residence.

j. Seymour H. Neff and A. M. Seeley, .44 of a second foot for a period of 24 hours in each eight days, 5 hours thereof to Seeley and 19 hours to Neff.

k. Amos B. Neff through the Franklin Neff Ditch .27 of a second foot for a period of 24 hours each seven days.

l. John Neff is entitled to the water produced by an excavation immediately below the Neff mill race, and conducted through a pipe in the barn lot of said Neff for stock purposes, also the flow of the spring on the south side of mill creek and conducted to a ram by means of which the water is forced through a two inch pipe to the house of said John Neff and sufficient of the waters of Mill Creek to operate said ram, the water so used for the operation of the ram to be returned to the creek undiminished in quantity and unimpaired in quality.

m. The aforesaid amounts of water specified in paragraphs A to L both inclusive, except where it is therein provided that the same shall be deducted from the portion allotted to some of the diverting ditches, shall be deducted from the amount of water to be distributed to the various irrigating ditches at all stages of the flow of said Mill Creek, and the amount of water remaining after the aforesaid deductions shall be the amount of water to be distributed in the manner herein set out for general irrigation purposes through the respective irrigation ditches.

2. That when the waters of said stream amount to 29.03 cubic feet per second or less those known and designated as primary users of said stream are entitled to all the waters thereof, except the amount allotted to the house use streams in the following proportion.

a. The first ditch consisting of the Osguthorpe & Skidmore Ditch, Chamberlain Ditch, Stillman & Russell Ditch, Stillman & Hussy Ditch and the Tripp Ditch, are entitled to .0983 of the waters of said stream, and the following named persons are entitled to use such waters as follows:

<u>Osguthorpe & Skidmore Ditch.</u>

Thos. Osguthorpe	3 hrs. each week,
H. B. Skidmore	3 " " "
D. C. Brown	6 " " "

<u>Chamberlain Ditch.</u>

E. F. Chamberlain	9 hrs. each week,

Stillman & Russell Ditch.

Chas. Stillman Estate	26	hrs.	each	week,
The Moses Estate	38	"	"	"
Franklin Russell	12	"	"	"
James Russell	12	"	"	"
J. E. Morris	8	"	"	"
Salt Lake County	2	"	"	"
The Alexander Estate	26	"	"	"
Caroline Soderland	10	"	"	"
B. A. M. Froiseth	5	"	"	"

James Russell is entitled to use his portion through the Crismon & Russell Ditch, and the Stillman Estate is entitled to use its portion through the Stillman & Hussy Ditch.

Stillman & Hussy Ditch.

Daniel Hussy	3	hrs.	each	week,
Samuel Stillman	5	"	"	"

b. Franklin and John Neff Ditch is entitled to .0443 of the waters of said stream to be used as follows:-

James A. Wilkinson	5	hrs.	10	min.	each	week,
Ernest E. Wilkinson	4	"			"	"
Seymour Neff	11	"			"	"
Jonas Anderson	27	"	30	"	"	"
J. E. Morris	7	"	50	"	"	"
James King	5	"	30	"	"	"
Nephi Smart	9	"	10	"	"	"
Jos. G. Ranck	7	"	10	"	"	"
T. I. Midgley	3	"	30	"	"	"
George Christensen	7	"	20	"	"	"
John Neff	36	"	30	"	"	"
John B. Fagg	5	"	30	"	"	"
George Christensen	8	"	10	"	"	"
J. F. Hugley	1	"			"	"
Koran L. Morris	9	"	10	"	"	"
Eldredge Estate	10	"			"	"
Salt Lake County	10	"	30	"	"	"

c. The owners of the Amos H. Neff Ditch are entitled to .0574 of the waters of said stream to be used as follows:-

Amos H. Neff	37.1	hours	each	week,
John Neff	46.9	"	"	"
Cyrus Neff	8.4	"	"	"
Amos B. Neff	15.4	"	"	"
John B. Fagg	7	"	"	"
Joseph G. Ranck	39.2	"	"	"
Martha Smith	7	"	"	"
John D. Neff	7	"	"	"

d. The owners of the Kellar Ditch are entitled to .0705 of said waters according to their respective rights.

e. The owners of the Brigham Young Ditch are entitled to .2295 of said waters according to their respective rights.

f. The owners of the Hoagland & Murphy and White

Ditches are entitled to use .5 of the waters to be measured in the channel of the stream immediately below the point where the waters taken from the Neff mill race are returned to the channel of the stream, of which amount the Hoagland and Murphy Ditch is entitled to 5/6 and the White Ditch to 1/6, to be divided at the point of the diversion of the White Ditch.

g. In apportioning the waters, except to the Hoagland & Murphy Ditch, the same shall be determined by measurements in each of the ditches at or near the intakes thereof.

3. When there is flowing in said stream more than 29.03 cubic feet per second and 41.93 cubic feet per second or less, then the owners of second class water rights have a right to the use of the waters of said stream, and when there is more than 29.03 and 41.93 cubic feet per second or less, the owners of the primary and second class rights are entitled to use all of the water in said stream as follows:-

a. The owners of the first ditch consisting of the Osguthorpe & Skidmore Ditch, Chamberlain Ditch, Stillman & Russell Ditch, Stillman & Hussy Ditch, Tripp Ditch and the Crismon & Russell Ditch are entitled to .1305 of all the waters of said stream to be divided as follows:-

1. The Stillman & Russell Ditch is entitled to the following proportion of the flow of the entire stream, viz;- .09 for 48½ hours, .10 for 114½ hours each week apportioned among the users under said ditch as follows;-

Chas. Stillman Estate	26	hrs.	each	week,
Moses Estate	38	"	"	"
Frank Russell	12	"	"	"
James Russell	12	"	"	"
J. E. Morris	18	"	"	"
Salt Lake County	4	"	"	"
Alexander Estate	26	"	"	"
Caroline Soderland	22	"	"	"
George E. Airis, successor to B.A.M. Froiseth	5	"	"	"

James Russell part of the time is entitled to use all or a portion of his right through the Crismon & Russell Ditch and the Stillman Estate a part of the time is entitled to use all or a portion of its

right through the Stillman & Hussy Ditch.

2. The Stillman & Hussy Ditch is entitled to .10 of the flow of the entire stream 21 hours each week, apportioned as follows:-

Daniel Hussy	3 hrs. each week,
Samuel Stillman	18 " " "

3. The Crismon & Russell Ditch is entitled to .10 of the entire stream for six and one-half hours each week apportioned to James Russell.

4. The Tripp Ditch is entitled to .09 of the entire stream for a period of 15 hours each week apportioned to Julia E. Tripp, Joseph Alexander and Charles Alexander each one-third.

5. The Chamberlain Ditch is entitled to .10 of the entire stream for 9 hours each week apportioned to E. F. Chamberlain.

6. The Osguthorpe & Skidmore Ditch is entitled to .10 of the entire stream for 12 hours each week, apportioned as follows:-

Thomas Osguthorpe	3 hrs. each week,
H. B. Skidmore	3 " " "
D. C. Brown	6 " " "

b. The Franklin and John Neff Ditch is entitled to have .0745 of the waters of said stream to be apportioned among the users under said ditch as follows:-

James A. Wilkenson	2 hrs.	45 min.	each week,		
Ernest A. Wilkenson	2 "	15 "	"	"	
J. E. Morris	12 "	30 "	"	"	
Martha Capson	8 "	30 "	"	"	
J. B. Fagg	13 "		"	"	
Koran L. Morris	10 "	30 "	"	"	
Mary L. Osguthorpe	8 "	30 "	"	"	
Delia B. Fagg	7 "		"	"	
Jonas Anderson	20 "		"	"	
J. G. Ranck	5 "		"	"	
S. H. Neff	11 "		"	"	
Geo. Christensen	5 "		"	"	
Nephi Smart	10 "		"	"	
James King	4 "		"	"	
T. I. Midgley	2 "		"	"	
John Neff	20 "		"	"	
Geo. Christensen	4 "	30 "	"	"	
J. S. Hugley		30 "	"	"	
Eddredge Estate	10 "		"	"	
Salt Lake County	11 "		"	"	

c. The Amos H. Neff Ditch is entitled to .0655 of the waters of said stream to be apportioned to the users under said ditch

according to their several respective rights.

d. The Kellar Ditch is entitled to .0658 of the waters of said stream to be appotioned to the users under said ditch according to their several respective rights.

e. The Brigham Young Ditch is entitled to .2832 of the waters of said stream to be apportioned to the users under said ditch according to their several respective rights.

f. The White, Hoagland & Murphy Ditches are entitled to .4405 of the waters of said stream to be apportioned as follows:- The White Ditch 1/5 thereof and to the Hoagland and Murphy Ditch 4/5 thereof.

g. The points for measuring the amounts to be apportioned during the second class stage shall be the same as at the primary stage.

4. When there is flowing in said stream more than 41.93 cubic feet per second the owners of the surplus rights are entitled to use a portion of the waters of said stream, and when there is more than said amount of 41.93 cubic feet per second, the owners of the primary, second class and surplus water rights are entitled to use all of the water of said stream as follows:-

a. The owners of the first ditch consisting of the Osguthorpe & Skidmore Ditch, Chamberlain Ditch, Stillman & Hussy Ditch, Stillman & Russell Ditch, Tripp Ditch and the Crismon & Russell Ditch are entitled to use .2946 of all the waters of said stream. The owners of the several respective ditches comprising the said first ditch are entitled to use the portions of the entire stream as herein set out, viz;-

1. The Chamberlain and Crismon & Russell Ditches are entitled to use .10 of the flow of the entire stream for a period of 159.5 hours each week. The Pleasant View Park Company, successors to Elizabeth Crismon, using the same four days each week, and James Russell using the same 2 days 6-1/2 hours each week, through the Crismon & Russell Ditch, and E. F. Chamberlain 9 hours each week through the Chamberlain Ditch as a primary right.

2. The Osguthorpe & Skidmore Ditch is entitled to use the following proportions of the flow of the entire stream viz;- .09 thereof for 159½ hours each week, and .10 thereof for 8½ hours each week, the following persons are entitled to use the same, viz;- James Young, Oscar Capson, Joseph G. Ranck, Thomas Osguthorpe, Joseph Osguthorpe, Albert Capson, Moses Estate, Carl Capson, H. B. Skidmore and D. C. Brown, according to their several respective rights, as is set forth in the pleadings.

3. The Stillman & Hussy Ditch is entitled to use .09 of the flow of the entire stream for a period of forty-five hours each week as follows:- Daniel Hussy three hours each week, Samuel Stillman forty-two hours each week.

4. The Stillman & Russell Ditch is entitled to use the following portions of the flow of the entire stream, viz;- .074 for 45 hours each week, .083 for 114½ hours each week and .09 for 3½ hours each week through the Stillman & Russell Ditch for a period of 163 hours each week, same to be used by the owners thereof as follows:-

Chas. Stillman Estate	26	hrs.	each	week,
Moses Estate	38	"	"	"
Frank Russell	12	"	"	"
James Russell	12	"	"	"
J. E. Morris	18	"	"	"
Salt Lake County	4	"	"	"
Alexander Estate	26	"	"	"
Caroline Soderland	22	"	"	"
George E. Airis, successor to B.A.M. Froiseth	5	"	"	"

James Russell a part of the time may use all or a portion of his right through the Crismon & Russell Ditch and the Stillman Estate a part of the time may use all or a portion of its right through the Stillman & Hussy Ditch.

5. The George Tripp Ditch may use .0729 of the flow of the entire stream through the Tripp Ditch for a period of 15 hours during each week, apportioned equally to Julia E. Tripp, Charles Alexander and Joseph Alexander.

b. The owners of the Franklin and John Neff Ditch are entitled to .0604 of all the waters of said stream to be apportioned

as follows, viz;-

James A. Wilkenson	2	hrs.	45	min.	each	week,
Ernest A. Wilkenson	2	"	15	"	"	"
J. E. Morris	12	"	30	"	"	"
Martha Capson	8	"	30	"	"	"
J. B. Fagg	13	"			"	"
Koran L. Morris	10	"	30	"	"	"
Mary L. Osguthorpe	8	"			"	"
Delia B. Fagg	7	"			"	"
Jonas Anderson	20	"			"	"
J. G. Ranck	5	"			"	"
S. H. Neff	11	"			"	"
Geo. Christensen	5	"			"	"
Nephi Smart	10	"			"	"
James King	4	"			"	"
T. I. Midgley	2	"			"	"
John Neff	20	"			"	"
Geo. Christensen	4	"	30	"	"	"
J. S. Hugley			30	"	"	"
Eldredge Estate	10	"			"	"
Salt Lake County	11	"			"	"

c. The owners of the Amos H. Neff Ditch are entitled to .0588 of all the waters of said stream.

d. The owners of the Kellar Ditch are entitled to .0528 of all the waters of said stream.

e. The owners of the Brigham Young Ditch are entitled to .1794 of all the waters of said stream.

f. The owners of the White, Hoagland & Murphy Ditches are entitled to .3540 of all the waters of said stream during the surplus period of which amount the owners of the White Ditch are entitled to 1/5 and the owners of the Hoagland & Murphy Ditch are entitled to 4/5 measured and divided at the intake of the White Ditch.

5. That for the purpose of making all apportionments and divisions of the water of the stream at the various stages provided, for in these findings and conclusions, that is, the primary, second class and surplus periods, the entire quantity of the water of the stream shall be determined by measuring the quantity of water flowing into each of the said ditches, (except the Hoagland & Murhpy and White Ditches, and the ditches and diversions referred to herein as house streams, and in the channel of the stream immediately below the point where the waters of the Neff mill race are returned to the stream, and the aggregate amount so found shall constitute the entire flow of the stream, or all of the water thereof for the

purpose of measuring to each of the ditches the aliquot part which each ditch is entitled to as herein set out.

6. That for the purpose of determining when the flow of the stream has reached a quantity of 29.03 cubic feet per second, and when the flow of the stream has reached a quantity of 41.93 cubic feet per second, the water of the stream shall be measured at a weir near the mouth of the canyon above the point of diversion of any of the ditches excepting the Crismon & Russell Ditch, and in determining the amount of water in said stream the amount flowing over said weir and in said Crismon & Russell Ditch, or any other ditch which may be taken out above the point of said weir, shall be measured in determining the quantity of water in said stream, for the purpose of determining when there is a quantity of 29.03 cubic feet per second and a quantity of 41.93 cubic feet per second.

7. That in distributing the waters at all the stages of the flow of said stream, the water shall be measured and apportioned to each of the ditches by measurements made in each of them at or near the intakes thereof, excepting that the portion which has been allotted to the White and Hoagland & Murphy Ditches shall be measured at a point in the channel of the stream immediately below the point where the waters taken through the Neff mill race have been returned to the channel of the stream.

8. Thomas Osguthorpe is entitled for power purposes to use .8 of the flow of said Mill Creek stream, the water so used to be returned to the main channel of the stream undiminished in quantity and unimpaired in quality.

9. Chas. Stillman and the Stillman Estate are entitled for power purposes, to use 8/9 of the flow of said Mill Creek stream, the water so used to be returned to the main channel of the stream undiminished in quantity and unimpaired in quality.

10. Susan Emery Holmes is entitled to 6-1/2 cubic feet per second for power purposes, the water so used to be returned to the main channel of the stream undiminished in quantity and unimpaired in quality.

11. Alva Kellar is entitled for power purposes to use 4 cubic feet per second of the flow of said Mill Creek stream, the water so used to be returned to the main channel of the stream undiminished in quantity and unimpaired in quality.

12. The Mill Creek Power Company is not entitled to interfere with or interrupt the normal and even flow of the water of said stream, nor is it entitled to impair the quality of said water or diminish the quantity thereof.

Done in open court this 1st day of August A.D.1913.

ATTEST
L. P. PALMER,
CLERK.
By [signature] Groesbeck
Deputy Clerk.

C.W. Morse
Judge.

44219

FILED

AUG 1 1913

L. P. PALMER, Clerk Dist. Court,
of Salt Lake County, Utah.

By [illegible]
Deputy Clerk.

IN THE DISTRICT COURT IN AND FOR SALT LAKE COUNTY,

STATE OF UTAH.

-----ooOoo-----

MARTHA YOUNG, ADMINISTRATOR OF THE ESTATE OF JAMES YOUNG, DECEASED, Plaintiffs,	
-vs-	DECREE.
WILLIAM GORDON, EXECUTOR OF THE ESTATE OF DANIEL LUND, DECEASED, et al, Defendants.	

-----ooOoo-----

In this cause which is an action to quiet titles to certain water rights of the plaintiff and numerous other parties to all the waters of Mill Creek Canyon, and the water tributary thereto, in Salt Lake County, Utah, and it appearing that all the defendants in said action were either served with summons personally, or their appearance was entered in said action in person or by counsel, and the said defendants having filed their said several respective answers and counter-claims and cross-complaints in said action, wherein the rights of all the parties being all the users of said waters of said Mill Creek are set forth and their adverse claims against each other respectively set out.

And thereupon and thereafter said plaintiff and the parties defendant herein appeared and introduced the testimony of numerous witnesses, who were called, sworn and examined, and introduced documentary evidence to support their respective claims, interest and titles as set out in their respective pleadings.

And thereupon and thereafter the court ordered the appointment of several commissioners to examine said stream, and the use of the waters and the various diverting ditches taking

water therefrom and especially what are known as the house use ditches or streams and the manner and method of the use thereof, and the court having read the report of said commissioners and having heard the testimony of said commissioners and the testimony of other witnesses at the various hearings, which were had upon the reports of said commissioners, and various times since the day the main issues in this action were tried, and the court having heard and considered the arguments of the counsel of the respective parties, and having taken said cause under advisement for its decision, and thereafter the court being fully advised in the premises, did make, enter and file its Findings of Fact and Conclusions of Law upon all and singular the matters and issues presented by the pleadings in this action, and did thereby order decree of this court to be entered in accordance therewith.

WHEREFORE by reason of the premises and the Findings of Fact and Conclusions of Law, aforesaid,

IT IS NOW HEREBY ORDERED, ADJUDGED AND DECREED as follows;

1. That each of the parties whose title to water is by this decree quieted and confirmed has a beneficial use for the same.

2. That the right and title of the parties hereinbelow set out is hereby quieted and confirmed to the use of what are commonly called house use streams being the streams having a constant flow except wherein it is otherwise specified, as follows; viz:-

a. E. F. Chamberlain and William Simper .4 of a cubic foot per second through the Chamberlain Ditch, of which amount E. F. Chamberlain is entitled to 3/5 and William Simper to 2/5, the same to be taken from the main channel of the stream, excepting when irrigating water is taken through the ditch, when it is to be deducted from the irrigation water allotted to E. F. Chamberlain.

aa. Daniel Hussy .16 of a cubic foot per second through the Stillman & Hussy Ditch, the same to be taken from the

main channel of the stream, excepting when irrigation water is running in said Stillman & Hussy Ditch when it is to be deducted from said irrigation water.

b. Chas. Stillman Estate and Samuel Stillman .18 and .12 of a second foot respectively, the same to be taken from the main channel of the stream, excepting during the time that water is allotted to the Stillman & Hussy Ditch for irrigation purposes, when the same shall be taken from the irrigation water allotted to the Stillman & Hussy Ditch.

c. Thomas Osguthorpe, D. C. Brown and H. B. Skidmore .24 of a second foot, 1/2 thereof for Thomas Osguthorpe and 1/4 for D. C. Brown and H. B. Skidmore each, the same to be drawn from the main channel of the stream excepting when irrigation water is taken through the ditch.

d. Ruth R. Moses, Barbra Cummings, Sarah E. Neilson and Esther B. Moses .49 of a second foot during the time there is no water in the Stillman & Russell Ditch for irrigation purposes, and during the time that James Russell and Frank Russell use their primary rights through the Stillman & Russell Ditch, said amount is to be taken from their rights, and during the time that the water has flown past the headgate of the Moses Ditch, which is situate in the Stillman & Russell, the headgate of said Moses Ditch, which is twelve inches wide, is to be raised one-half of an inch, and during such time the Moses heirs above named are entitled to the amount of water which passes through said opening.

e. James Russell .31 of a second foot which at all times shall be deducted from the water of the main channel of the stream.

f. Seymour H. Neff .017 of a second foot to be taken through a one inch pipe and deducted from the waters of the ~~water~~ main channel of the stream.

g. Amos H. Neff .15 of a second foot which shall be returned to the stream above the point that the lower Mill Creek water is measured less such portion thereof as shall be

consumed from the watering of stock and irrigating trees along the ditch through which said water may be conducted, though said water is not to be taken out of the ditch for irrigating purposes.

h. Amos H. Neff and Susan Emery Holmes .07 of a second foot through a two inch pipe, 2/5 thereof belonging to Amos H. Neff and 3/5 thereof to Susan Emery Holmes.

i. Susan Emery Holmes .05 of a second foot through a 2 inch pipe heading in the Neff mill race about 20 feet below the head of the Seymour H. Neff's pipe line, and .01 of a second foot through a two and one-half inch pipe heading in the old Neff mill pond and .17 of a second foot through several hose syphons from the old Neff mill pond, and .03 of a second foot through the lateral ditch from the Amos H. Neff house stream and through the lateral ditch of Franklin Neff Ditch, and through the ditch which heads in the Neff mill race at a point 150 feet east of the Holmes' residence.

j. Seymour H. Neff and A. M. Seely .44 of a second foot for a period of 24 hours in each eight days, 5 hours thereof to Seely and 19 hours to Neff.

k. Amos B. Neff through the Franklin Neff Ditch .27 of a second foot for a period of 24 hours each seven days.

l. The right and title of John Neff is quieted and confirmed to the use of all the water produced by an excavation immediately below the Neff mill race and conducted through a pipe in the barn lot of said Neff for stock purposes. Also the right and title to the flow of the spring on the south side of Mill Creek and conducted to a ram by means of which the water is forced through a two inch pipe to the house of John Neff, and also the right and title to sufficient of the waters of Mill Creek to operate said ram, the water so used for the operation of the ram to be returned to the creek undiminished in quantity and unimpaired in quality, provided no more water may be used to operate said ram than is allotted the Kellar Ditch.

m. The aforesaid amounts of water specified in

paragraphs A to L both inclusive, except where it is therein provided that the same shall be deducted from the portion allotted to some of the diverting ditches, shall be deducted from the amount of water to be distributed to the various irrigating ditches at all stages of the flow of said Mill Creek, and the amount of water remaining after the aforesaid deductions shall be the amount of water to be distributed in the manner herein set out for general irrigation purposes through the respective irrigation ditches.

3. That when the waters of said Mill Creek stream amount to 29.03 cubic feet per second or less, the right and title of the following named persons and ditches in the portion hereinbelow set out is hereby quieted and confirmed to the use of all the water then flowing in said stream, excepting the amount allotted to the house use streams in the proportions as herein set out as follows, viz;-

a. The first ditch consisting of the Osguthorpe & Skidmore Ditch, Chamberlain Ditch, Stillman & Russell Ditch, Stillman & Hussy Ditch and the Tripp Ditch to .0983 of the waters of said stream, and the following named persons are entitled to use such waters as follows:-

<u>Osguthorpe & Skidmore Ditch.</u>

Thos. Osguthorpe	3 hrs.	each	week,	
H. B. Skidmore	3 "	"	"	
D. C. Brown	6 "	"	"	

<u>Chamberlain Ditch.</u>

E. F. Chamberlain	9 hrs.	each	week,

<u>Stillman & Russell Ditch.</u>

Chas. Stillman Estate	26 hrs.	each	week,	
The Moses Estate	38 "	"	"	
Franklin Russell	12 "	"	"	
James Russell	12 "	"	"	
J. E. Morris	8 "	"	"	
Salt Lake County	2 "	"	"	
The Alexander Estate	26 "	"	"	
Caroline Soderland	10 "	"	"	
Geo. E. Airis, successor to B.A.M. Froiseth	5 "	"	"	

James Russell may use his portion through the Crismon & Russell Ditch, and the Stillman Estate may use its portion, or a part of it through the Stillman & Hussy Ditch.

Stillman & Hussy Ditch.

Daniel Hussy	3 hrs. each week,
Samuel Stillman	5 " " "

b. Franklin & John Neff ditch .0443 of the waters of said stream to be used as follows:-

James A. Wilkinson	5 hrs.	10 min.		each	week,
Ernest E. Wilkinson	4 "			"	"
Seymour Neff	11 "			"	"
Jonas Anderson	27 "	30	"	"	"
J. E. Morris	7 "	50	"	"	"
James King	5 "	30	"	"	"
Nephi Smart	9 "	10	"	"	"
Jos. G. Ranck	7 "	10	"	"	"
T. I. Midgley	3 "	30	"	"	"
George Christensen	7 "	20	"	"	"
John Neff	36 "	30	"	"	"
John B. Fagg	5 "	30	"	"	"
George Christensen	8 "	10	"	"	"
J. F. Hugley	1 "			"	"
Koran L. Morris	9 "	10	"	"	"
Eldredge Estate	10 "			"	"
Salt Lake County	10 "	30	"	"	"

c. The owners of the Amos H. Neff Ditch .0574 of the waters of said stream to be used as follows:-

Amos H. Neff	37.1 hrs.	each	week,	
John Neff	46.9 "	"	"	
Cyrus Neff	8.4 "	"	"	
Amos B. Neff	15.4 "	"	"	
John B. Fagg	7 "	"	"	
Joseph G. Ranck	39.2 "	"	"	
Martha Smith	7 "	"	"	
John D. Neff	7 "	"	"	

d. The owners of the Kellar Ditch .0705 of said waters according to their respective rights.

e. The owners of the Brigham Young Ditch .2295 of said waters according to their respective rights.

f. The owners of the Hoagland & Murphy and White Ditches .5 of the waters to be measured in the channel of the stream immediately below the point where the waters taken from the Neff mill race are returned to the channel of the stream, of which amount the Hoagland and Murphy Ditch is entitled to 5/6 and the White Ditch to 1/6, to be divided at the point of the diversion of the White Ditch.

g. In apportioning the waters, except to the Hoagland and Murphy Ditch, the same shall be distributed by measurements in each of the ditches at or near the intakes thereof.

4. That when there is flowing in said stream more than 29.03 cubic feet per second and 41.93 cubic feet per second, or less, then the right and title of the following named persons and ditches in the portions hereinbelow set out is hereby quieted and confirmed to the use of all the water then flowing in said stream, excepting the amount allotted to house use streams in the apportionments herein set out, viz:-

a. The first ditch consisting of the Osguthorpe & Skidmore Ditch, Chamberlain Ditch, Stillman & Russell Ditch, Stillman & Hussy Ditch, Tripp Ditch and the Crismon & Russell Ditch .1305 of all the waters of said stream, to be distributed to the several ditches as follows:-

1. The Stillman & Russell Ditch the following proportion of the flow of the entire stream, viz;- .09 for 48½ hours, .10 for 114½ hours each week apportioned among the users under said ditch as follows:-

Chas. Stillman Estate	26	hrs.	each	week,
Moses Estate	38	"	"	"
Frank Russell	12	"	"	"
James Russell	12	"	"	"
J. E. Morris	18	"	"	"
Salt Lake County	4	"	"	"
Alexander Estate	26	"	"	"
Caroline Soderland	22	"	"	"
George E. Airis, successor to B.A.M. Froiseth	5	"	"	"

James Russell part of the time is entitled to use all or a portion of his right through the Crismon & Russell Ditch and the Stillman Estate a part of the time is entitled to use all or a portion of its right through the Stillman & Hussy Ditch.

2. The Stillman & Hussy Ditch .10 of the flow of the entire stream 21 hours each week, apportioned as follows:-

Daniel Hussy	3	hrs.	each	week,
Samuel Stillman	18	"	"	"

3. The Crismon & Russell Ditch .10 of the entire stream for six and one-half hours each week apportioned to James Russell at a time just prior to, or just after the primary right shall have been distributed to him.

4. The Tripp Ditch .09 of the entire stream for

a period of 15 hours each week apportioned to Julia E. Tripp, Joseph Alexander and Charles Alexander each one-third.

5. The Chamberlain Ditch .10 of the entire stream for 9 hours each week apportioned to E. F. Chamberlain.

6. The Osguthorpe & Skidmore Ditch .10 of the entire stream for 12 hours each week, apportioned as follows:-

Thomas Osguthorpe	3 hrs.	each week,		
H. B. Skidmore	3 "	"	"	
D. C. Brown	6 "	"	"	

Water shall not be distributed to more than one ditch described in paragraphs 2 to 6, both inclusive, at the same time.

b. The Franklin and John Neff Ditch .0745 of the waters of said stream to be apportioned among the users under said ditch as follows:-

James A. Wilkinson	2 hrs.	45 min.	each	week,	
Ernest A. Wilkinson	2 "	15 "	"	"	
J. E. Morris	12 "	30 "	"	"	
Martha Capson	8 "	30 "	"	"	
J. B. Fagg	13 "		"	"	
Koran L. Morris	10 "	30 "	"	"	
Mary L. Osguthorpe	8 "	30 "	"	"	
Delia B. Fagg	7 "		"	"	
Jonas Anderson	20 "		"	"	
J. G. Ranck	5 "		"	"	
S. H. Neff	11 "		"	"	
Geo. Christensen	5 "		"	"	
Nephi Smart	10 "		"	"	
James King	4 "		"	"	
T. L. Midgley	2 "		"	"	
John Neff	20 "		"	"	
Geo. Christensen	4 "	30 "	"	"	
J. S. Hugley		30 "	"	"	
Eldredge Estate	10 "		"	"	
Salt Lake County	11 "		"	"	

c. The Amos H. Neff Ditch .0655 of the waters of said stream to be apportioned to the users under said ditch according to their several respective rights.

d. The Kellar Ditch .0658 of the waters of said stream to be apportioned to the users under said ditch according to their several respective rights.

e. The Brigham Young Ditch .2232 of the waters of said stream to be apportioned to the users under said ditch according to their several respective rights.

f. The White, Hoagland & Murphy Ditches .4405 of the waters of said stream to be apportioned as follows. The White

Ditch 1/5 thereof, and to the Hoagland and Murphy Ditch 4/5 thereof.

g. The points for measuring the amounts to be apportioned during the second class stage shall be the same as at the primary stage.

5. That when the water of said stream amounts to more than 41.93 cubic feet per second the right and title to the following named persons and ditches in the portions hereinbelow set out is hereby quieted and confirmed to the use of all the water then flowing in said stream, excepting the amount allotted to the house use ditches as herein set out, viz;-

a. The owners of the first ditch consisting of the Osguthorpe & Skidmore Ditch, Chamberlain Ditch, Stillman & Hussy Ditch, Stillman & Russell Ditch, Tripp Ditch and the Crismon & Russell Ditch .2946 of all the waters of said stream, which shall be distributed to the several streams as follows:-

1. The Chamberlain and Crismon & Russell Ditches .10 of the flow of the entire stream for a period of 159.5 hours each week. The Pleasant View Park Company, successors to Elizabeth Crismon, using the same four days each week, and James Russell using the same 2 days 6-1/2 hours each week, through the Crismon & Russell Ditch, and E. F. Chamberlain 9 hours each week through the Chamberlain Ditch.

2. The Osguthorpe & Skidmore Ditch the following proportions of the flow of the entire stream, viz;- .09 thereof for 159½ hours each week, and .10 thereof for 8½ hours ~~there~~ each week, to be used by the following persons;- James Young, Oscar Capson, Joseph G. Ranck, Thomas Osguthorpe, Joseph Osguthorpe, Albert Capson, Moses Estate, Carl Capson, H. B. Skidmore and D. C. Brown, according to their several respective rights, as is set forth in the pleadings.

3. The Stillman & Hussy Ditch .09 of the flow of the entire stream for a period of forty-five hours each week as follows:- Daniel Hussy three hours each week, Samuel Stillman forty-two hours each week.

4. The Stillman & Russell Ditch the following

portions of the flow of the entire stream, viz;- .074 for 45 hours each week, .083 for 114½ hours each week and .09 for 3½ hours each week through the Stillman & Russell Ditch, the same to be used by the owners thereof as follows:-

Chas. Stillman Estate	26	hrs.	each	week,
Moses Estate	36	"	"	"
Frank Russell	12	"	"	"
James Russell	12	"	"	"
J. E. Morris	18	"	"	"
Salt Lake County	4	"	"	"
Alexander Estate	26	"	"	"
Caroline Soderland	22	"	"	"
George E. Airis, successor to B.A.M. Froiseth	5	"	"	"

James Russell part of the time may use all or a portion of his right through the Crismon & Russell Ditch and the Stillman Estate a part of the time may use all or a portion of its right through the Stillman & Hussy Ditch.

5. The George Tripp Ditch .0729 of the flow of the entire stream through the Tripp Ditch for a period of 15 hours during each week, apportioned equally to Julia E. Tripp, Charles Alexander and Joseph Alexander.

Water shall not be distributed to the ditches discribed in paragraphs 3 and 5 at the same time.

b. The owners of the Franklin and John Neff Ditch .0604 of all the waters of said stream to be apportioned as follows, viz;-

James A. Wilkinson	2	hrs.	45	min.	each	week,
Ernest A. Wilkinson	2	"	15	"	"	"
J. E. Morris	12	"	30	"	"	"
Martha Capson	8	"	30	"	"	"
J. B. Fagg	13	"			"	"
Koran L. Morris	10	"	30	"	"	"
Mary L. Osguthorpe	8	"			"	"
Delia B. Fagg	7	"			"	"
Jonas Anderson	20	"			"	"
J. G. Ranck	5	"			"	"
S. H. Neff	11	"			"	"
Geo. Christensen	5	"			"	"
Nephi Smart	10	"			"	"
James King	4	"			"	"
T. L. Midgley	2	"			"	"
John Neff	20	"			"	"
Geo. Christensen	4	"	30	"	"	"
J. S. Hugley			30	"	"	"
Eldredge Estate	10	"			"	"
Salt Lake County	11	"			"	"

c. The owners of the Amos H. Neff Ditch .0588 of all the waters of said stream.

d. The owners of the Kellar Ditch .0528 of all the waters of said stream.

e. The owners of the Brigham Young Ditch .1794 of all the waters of said stream.

f. The owners of the White, Hoagland & Murphy Ditches .3540 of all the waters of said stream during the surplus period of which amount the owners of the White Ditch are entitled to 1/5 and the owners of the Hoagland & Murphy Ditch are entitled to 4/5 measured and divided at the intake of the White Ditch.

6. That for the purpose of making all apportionments and diversions of the water of the stream at the various stages provided for in this decree, that is, the primary, second class and surplus periods, the entire quantity of the water of the stream shall be determined by measuring the quantity of water flowing into each of the said ditches, (except the Hoagland & Murphy and White Ditches, and the ditches and diversions referred to herein as house streams) and in the channel of the stream immediately below the point where the waters of the Neff mill race are returned to the stream, and the aggregate amount so found shall constitute the entire flow of the stream, or all of the water thereof for the purpose of measuring to each of the ditches the aliquot part which each ditch is entitled to as herein set out.

7. That for the purpose of determining when the flow of the stream has reached a quantity of 29.03 cubic feet per second, and when the flow of the stream has reached a quantity of 41.93 cubic feet per second, the water of the stream shall be measured at a weir near the mouth of the canyon above the point of diversion of any of the ditches excepting the Crismon & Russell Ditch, and in determining the amount of water in said stream, the amount flowing over said weir and in said Crismon & Russell Ditch, or any other ditch which may be taken out above the point of said weir, shall be measured in determining the quantity of water in said stream, for

the purpose of determining when there is a quantity of 29.03 cubic feet per second and a quantity of 41.93 cubic feet per second.

8. That in distributing the waters at all the stages of the flow of said stream, the water shall be measured and apportioned to each of the ditches by measurements made in each of them at or near the intakes thereof, excepting that the portion which has been allotted to the White & Hoagland & Murphy Ditches shall be measured at a point in the channel of the stream immediately below the point where the waters taken through the Neff mill race have been returned to the channel of the stream.

9. That the right and title of the parties hereinbelow set out is hereby quieted and confirmed to the use of the water of said creek in the proportion set after their respective names for power purposes, the water so used to be returned to the main channel of the stream undiminished in quantity and unimpaired in quality.

a. Thomas Osguthorpe 8/10 of the flow of said creek through the Osguthorpe mill race.

b. The Stillman Estate 8/9 of the flow of said creek through the Stillman mill race.

c. Susan Emery Holmes 6-1/2 cubic feet per second through the Neff mill race, provided there shall be such an amount of water for the use of the Hoagland & Murphy and White Ditches.

d. Alva Kellar 4 cubic feet per second the same to be diverted on the premises of Alva Kellar provided there is that much water for the use of the Hoagland & Murphy and White Ditches.

e. The Mill Creek Power Company is hereby enjoined and restrained from impairing the quality of diminishing the quantity of the flow of said stream, or with interfering with or interrupting the natural, steady and equal flow of the water of said stream.

10. That for the purpose of making the measurements

and distributions as herein provided, this court retains jurisdiction of the subject matter hereof, and a commissioner shall be appointed by this court from time to time, with full power and authority to make the distribution of the waters as is herein provided, and to require the owners of the ditches to install such weirs and measuring devices as may be necessary and proper in order to fully execute and carry out this decree, such commissioner to receive such reasonable compensation as may be allowed by the court, which sum so allowed shall be taxed as costs against all the parties of this action according to their several respective rights, and until the further order of this court _____ _____ is hereby appointed such commissioner.

11. That each of the parties to this action shall pay his own costs, which includes the amount paid to the Clerk and witness fees. That the cost of the commissioner, John T. Guest, for distributing the water for the years 1910, 1911, 1912 and 1913 is taxed against all the parties in the sum of Twenty-six Hundred ($2600.00) Dollars, and the costs of printing this decree, and binding and indexing the files and papers, and expenses incidental thereto is taxed against all the parties in the sum of Fifty ($50.00) Dollars, and the amount paid Silver Bros, Iron Works by the Clerk under order of this court for material furnished in installing the general weir at the mouth of the canyon in 1904 is taxed against all the parties of this action in the sum of One Hundred Thirty-four and 20/100 ($134.20) Dollars; and the amount paid by the Clerk under order of this court to the Utah Foundry & Machine Company for supplies ordered by A. F. Doremus is taxed against all the parties in this action in the sum of One Hundred six and 72/100 ($106.72) Dollars. It is further ordered that the amount of said costs, viz;- the sum of Two Thousand Eight Hundred Ninety and 92/100 ($2890.92) Dollars is taxed against the parties hereto in the following proportions, viz:-

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Pleasant View Park Company	$ 27.55
Stillman Estate	43.50
Moser Estate	62.93
Frank Russell	20.60
James Russell	37.99
J. [illegible] Morris	16.53
Salt Lake County	4.06
Alexander Estate right	43.50
Caroline Soderland	20.60
Geo. Airis, successor to B.A.M. Froiseth	8.41
Daniel Hussy	5.22
Samuel Stillman	18.85
Thomas Osguthorpe	4.06
H. B. Skidmore	4.06
D. C. Brown	8.12
E. F. Chamberlain	15.37
Osguthorpe & Skidmore Surplus	43.50
Franklin & John Neff	139.20
Amos H. Neff	165.30
Keller Ditch	195.30
Brigham Young Ditch	636.40
Lower Mill Creek Irrigation Company	1000.50
White Ditch	274.05
James Estate	20.60
Patrick Ryan	39.73
Christian Voss	15.95
G. A. Bullock, et al	10.15
J. B. Weimer	6.96
Chas. Platt	2.61
Andrew M. Christenson	1.00
Lizzie M. Wilson	.50
Isabella C. Webb	1.00

And it is further ordered that the amount of costs taxed herein is additional and supplemental to the costs taxed heretofore under orders of the court, and it is further ordered that in the event that any of the parties shall fail to pay the amount of costs taxed against them herein, or the costs which they are delinquent in, under the order or orders of the court heretofore made and entered, or in the event that the owners of any of the ditches shall fail to pay the full amount of costs taxed against said ditch herein, or under the orders heretofore entered, that the court hereby retains and reserves the right to order the commissioner or other person in charge of the distribution of said water, not to distribute to such delinquent person or ditch any of the water of said Mill Creek stream until the costs taxed against such person or ditch shall have been paid, and the right to discontinue the distribution of said water shall be considered accumulative remedy in addition to the right to have execution issued on said judgment.

Done in open court this 1st day of Aug. A. D. 1913

C. W. Morse
Judge.

ATTEST
L. P. PALM
BY [illegible]

FILED
AUG 1 1913
L. P. PALMER, Clerk Dist. Court,
Salt Lake County, Utah.
By [signature]
Deputy Clerk.

PART OF THE EARLY FILES OF CASE NO. 4449

ORDER

FINDINGS OF FACT and CONCLUSIONS OF LAW and DECREE

No. 4449

In the District Court of the Third Judicial District in and for Salt Lake County, State of Utah

PAPERS IN CASE OF

Martha Young, etc

VS.

William Gordon, etc

Filed Nov. 4, 1937

No file shall be taken from the Clerk's office except to be used in one of the six courts and when taken there, must be delivered to the Deputy Clerk of said court after each adjournment. No person shall take a file out of the Clerk's office without leaving a receipt therefor.

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Dirty &

Damaged

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IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT IN AND FOR THE

COUNTY OF SALT LAKE, STATE OF UTAH

MARTHA YOUNG, Administratrix of the estate of James Young, deceased,	)	
Plaintiff,	)	
vs.	)	PETITION FOR ORDER TAXING
WILLIAM GORDON, Executor of the estate of Daniel Lund, deceased, et. al.,	)	COSTS FOR YEAR BEGINNING APRIL 1, 1937
Defendants.	)	No. 4449

Comes now T. F. McDonald, of Salt Lake County, State of Utah, your petitioner herein, and respectfully represents to the Court as follows:

1. That your petitioner was heretofore duly appointed by this Court as Water Commissioner for the Mill Creek Canyon stream of Salt Lake County, Utah, in the above entitled matter, and said petitioner ever since has been and now is the duly appointed and qualified water commissioner for said stream, and that he served and acted in such capacity during all of the irrigation year beginning April 1, 1937.

2. That in pursuance of the duties and responsibilities upon him devolving as said Water Commissioner of said stream, your petitioner has, during all of the irrigation season beginning April 1, 1937, diligently and continuously acted as and performed the duties of said Water Commissioner in distributing the waters of said stream among the various users thereof according to their respective rights therein, and has in such capacity supervised the construction and installation of such weirs and measuring devices for the distribution of said waters as were necessary or proper, and in this connection has rendered engineering services necessary thereto, has caused the channel of said stream to be cleaned as necessary, and in the performance of his said duties as said Water Commissioner your petitioner has been put to some costs and has incurred some expenses, as more fully appears herein, which said costs and expenses should be paid by the users of water from said stream.

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT IN AND FOR THE

COUNTY OF SALT LAKE, STATE OF UTAH

MARTHA YOUNG, Administratrix of the estate of James Young, deceased,	)	
Plaintiff,	)	
vs.	)	PETITION FOR ORDER TAXING
WILLIAM GORDON, Executor of the estate of Daniel Lund, deceased, et. al.,	)	COSTS FOR YEAR BEGINNING APRIL 1, 1937
Defendants.	)	No. 4449

Comes now T. F. McDonald, of Salt Lake County, State of Utah, your petitioner herein, and respectfully represents to the Court as follows:

1. That your petitioner was heretofore duly appointed by this Court as Water Commissioner for the Mill Creek Canyon stream of Salt Lake County, Utah, in the above entitled matter, and said petitioner ever since has been and now is the duly appointed and qualified water commissioner for said stream, and that he served and acted in such capacity during all of the irrigation year beginning April 1, 1937.

2. That in pursuance of the duties and responsibilities upon him devolving as said Water Commissioner of said stream, your petitioner has, during all of the irrigation season beginning April 1, 1937, diligently and continuously acted as and performed the duties of said Water Commissioner in distributing the waters of said stream among the various users thereof according to their respective rights therein, and has in such capacity supervised the construction and installation of such weirs and measuring devices for the distribution of said waters as were necessary or proper, and in this connection has rendered engineering services necessary thereto, has caused the channel of said stream to be cleaned as necessary, and in the performance of his said duties as said Water Commissioner your petitioner has been put to some costs and has incurred some expenses, as more fully appears herein, which said costs and expenses should be paid by the users of water from said stream.

3. That the irrigation season for the users of water from said Mill Creek Canyon stream for the irrigation year beginning April 1, 1937 and ending November 1, 1937, is now completed.

4. Your petitioner further represents that the duties and responsibilities devolving upon him as said water commissioner as aforesaid, and the demands upon his time and services as such, have materially increased during the past three (3) years, due to the fact that a much closer check is being maintained by the users of water from said stream on their respective distributive shares, which requires more detailed and constant supervision on the part of your petitioner to properly regulate the flow of the waters of said stream among the various users thereof as their rights and interests may appear and that by reason of the fact that several changes in the regulation of the flow of said water are now of necessity made daily it has become necessary for your petitioner to make changes and measurements from one (1) to three (3) times daily andwork to the end that a proper distribution and regulation of the water may be effected and maintained.

5. Your petitioner also represents that the users of house use streams should pay their fair proportion of the cost and expense to your petitioner in the performance of his duties as said water commissioner in the supervision and distribution of said "house use" streams and "secondary right" streams.

6. Your petitioner further represents that the Keller Ditch, the same having certain rights in and to part of the flow of said stream, is not incorporated nor organized, nor has said ditch any water master or duly authorized representative to assist in the distribution of the water belonging to said Keller Ditch, with the result that attempts are made by irresponsible users to steal water from the main channel, also the John and Frank Neff Ditch gives considerable trouble on account of water thieves.

7. Your petitioner represents that the following is a full, true and correct statement of his expenses as Water Commissioner aforesaid, including his salary and engineering fee as such for the year beginning April 1, 1937, together with a list of the users of water from said Mill Creek Canyon stream and a statement of the amount assessed

against them based upon their respective rights and interests in the flow of said stream and the proportion of the time, costs and expense of said Commissioner in the supervision and distribution of the respective amounts of water to which they are entitled.

STATEMENT OF COSTS AND EXPENSES

Court Commissioner Salary	$ 586.25
Petition, Order, stamps Stationary, Notices etc. connected with this case,	25.00
Total	$ 611.00

LIST OF WATER USERS WITH
PROPORTION OF COST ASSESSED AGAINST EACH

A. HOUSE USE STREAM

Assessment ~~to~~ apportioned according to rights of users

E. F. Chamberlain, house use stream	$ 2.20
William Simper, house use stream or successors	1.60
Daniel Hussy, house use stream	1.60
Chas. Stillman Estate, house use stream	1.80
Samuel Stillman, house use stream	1.20
Thomas Osguthorpe, house use stream	1.20
D. C. Brown, house use stream	.60
M. B. Skidmore, house use stream	.60
Ruth B. Moses, Barbara Cummings, Sarah E. Neilson, and Esther B. Moses, house use stream	3.00
James Russell, house use stream	3.10
Amos H. Neff (Samuel Neff) house use stream,	1.00
Seymour H. Neff (Eugene Neff and others) pipeline	1.00
Amos H. Neff Samuel Neff sold to Furs Corporation and transferred to Furs Place in Canyon approximately 3 gallons per minute, three trips at $5.00 each	15.00
M. Q. Cannon pipeline	1.00
Amos B. Neff, John Neff, Walker, Albert Pixton	3.00
Seymour H. Neff, A. M. Seely, Stokes, Bagley, Chamberlain, Eugene Neff and Successors	4.00
W. J. Oconner, Susan Emery Holmes, Mrs. Lamb	1.70

B. Power

Utah Power and Light Company	108.50

C. Irrigation

Stillman Estate and Successors	7.80
Moses Estate and Successors	11.40
Frank Russell and Brigham Stillman Estate	3.60
James Russell and Successors	3.60
Salt Lake County and Successors	.90
The Alexander Estate and Successors	10.40
Caroline Suderland Estate and Successors	4.60
George E. Airis, Successors to B. A. M. Froiseth	2.00
J. E. Morris Estate and Successors	3.70
Samuel Stillman, Primary Rights	1.50
Samuel Stillman, Secondary Rights	.60
James Russell, Secondary Rights in Crissman Ditch	.34
Julia Tripp, Joseph Alexander & Chas. Alexander, Secondary rights in the Tripp Ditch	.75
E. F. Chamberlain and Successors	2.70

Thos. Osguthorpe in Osguthorpe Ditch ----------	.90
D. C. Brown and Successors ----------	1.80
H. B. Skidmore and Successors ----------	.90
Keller Ditch ----------	42.00
Daniel Hussy and Successors ----------	.90
John and Frank Neff Ditch, Amos H. Neff Ditch, Brigham Young Ditch and their Successors, Salt Lake City ------	139.20
Lower Mill Creek Irrigation Company and Successor Salt Lake City ----------	175.69
Whit Ditch Irrigation Co., & Successors, Salt Lake City-	35.11
Surplus Rights ----------	9.00
Total----------	
Total-------$	611.25

WHEREFORE, your petitioner prays that the parties using the waters of Mill Creek Canyon Stream shall be ordered to pay said amounts respectfully as may be necessary for the payment of the said salary, costs and expenses of your petitioner including the preparation and presentation of this petition, and that each user be taxed the amount set opposite his or its name in the foregoing list.

F. F. McDonald
Petitioner

STATE OF UTAH)
) SS.
COUNTY OF SALT LAKE)

F. F. McDonald, having first been duly sworn upon oath deposes and says that he is the petitioner above named and that he has read the foregoing petition and knows the contents thereof, that the same is true of his own knowledge, except as to those matters therein stated on his information and belief and as to such matters he believes the same to be true.

F. F. McDonald

Subscribed and sworn to before me this 3 day of November, 1937.

Thom Addington
~~Notary Public~~
Chief Deputy Clerk
S.L. County, Utah

Commission expires:

Residence:

4449

FILED IN THE CLERK'S OFFICE
Salt Lake County, Utah
NOV 4 1937
WILLIAM J. KORTH, Clerk 3rd Dist. Court
By Jacob Thiele
Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

MARTHA YOUNG, Administratrix of the estate of James Young, deceased, Plaintiff vs. WILLIAM GORDON, Executor of the estate of Danial Lund, Deceased, et al, Defendants.	NOTICE ON PETITION FOR HEARING Case No. 4449

The petition of T. F. MCDONALD, Water Commissioner for the Mill Creek Stream, having been duly filed, praying for an order taxing costs for the year beginning April 1, 1937.

IT IS HEREBY ORDERED that the time for the hearing of the said petition be and it is hereby fixed at the hour of 10 a.m. on the 12 day of Nov., 1937 before the Honorable ROGER I. MCDONOUGH, Judge, in the courtroom of the above entitled Court at Salt Lake City, Utah.

It is further ordered that five (5) days' notice of said hearing be given in writing to the respective water users to be taxed.

Dated: Nov. 3, 1937.

Roger I. McDonough
District Judge

ATTEST
WILLIAM J. KORTH
CLERK
By Jacob Hailer
Deputy Clerk

4449

FILED IN THE CLERK'S OFFICE
Salt Lake County, Utah
NOV 4 1937
WILLIAM J. KORTH, Clerk 3rd Dist. Court
By [illegible]
Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

MARTHA YOUNG, Administratrix of the Estate of James Young, Deceased,	:	
Plaintiff,	:	
vs.	:	NOTICE
WILLIAM GORDON, Executor of the Estate of Daniel Lund, Deceased, et, al,	:	Case No. 4449
Defendants.	:	

To the users and owners of the Mill Creek Stream and to the following Attorneys for the respective users and owners of such waters. Namely:

Mr. & Mrs. George F. Taylor, Sugar House R D #1
Fisher Harris, Attorney for Salt Lake City
Allen T. Sanford, Attorney for Upper Ditches
Corey and Inman, Attorneys for Utah Power & Light Co.
Bagley, Judd, and Ray, Attorneys for Mrs. O'Connor
L. L. Bagley, Attorney for Small Neff Ditches
Joseph Stillman, Sugar House, R D #1
Mrs. William Simper C/O John Simpers, Taylorsville
Mrs. Samuel Stillman
Thomas Osguthorpe
Mrs. Nellie Brown
Horace H. Cummings, 159 McClellan Street
Mrs. F. N. Stillman
Daniel Russel
Mrs. John Henry Osguthorpe, Sugar House, R D #1
Keller Ditch Co.
Mrs. Brigham Stillman
Mrs. James Russel

You will please take notice that the hearing upon the petition heretofore filed on the above entitled cause by T. F. Mc Donald, Water Commissioner for the Mill Creek Stream, will be held before the Honorable Roger I. McDonough, one of the Judges of the above entitled Court at the City and County Building, Salt Lake City, Utah, at the hour of 10:00 A. M. on the 13th day of november, 1937, for the purpose of fixing and ordering the payment as taxable costs of such sums of money as set out in the said petition, deemed as necessary to cover the costs and expenses of work done for the year beginning April 1, 1937.

Dated this 8 Nov. 1937 A. D., 1937

WILLIAM J. KORTH Clerk

Signed [illegible]
Deputy

4449

FILED IN THE CLERK'S OFFICE
Salt Lake County, Utah
NOV 9 1937
WILLIAM J. KORTH, Clerk 3rd Dist. Court
By R. C. Hagenson
Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR THE SALT LAKE COUNTY, STATE OF UTAH

MARTHA YOUNG, Administratrix of the Estate of James Young, Deceased,	:	
Plaintiff,	:	
vs.	:	NOTICE
WILLIAM GORDON, Executor of the Estate of Daniel Lund, Deceased, et, al,	:	Case No. 4449
Defendant.	:	

T. F. McDonald being duly sworn, deposes and says that, I am Court Commissioner of Mill Creek Stream, that on the 8th day of November, 1937, I enclosed nineteen (19) copies of the attached letter in nineteen (19) envelopes to wit:

Mr. & Mrs. George F. Taylor, Sugar House, R. D. #1.
Fisher Harris, Attorney for Salt Lake City
Allen T. Sanford, Attorney for Upper Ditches
Corey and Inman, Attorneys for Utah Power & Light Co.
Bagley, Judd, and Ray, Attorneys for Mrs. O'Connor
L. L. Bagley, Attorney for Small Neff Ditches
Joseph Stillman, Sugar House, R. D. #1.
Mrs. William Simper
Mrs. Samuel Stillman
Thomas Osguthorpe
Mrs. Nellie Brown
Horace H. Cummings, 159 McClellan Street
Thomas Osguthorpe
Daniel Russel
Mrs. John Henry Osguthorpe, Sugar House, R. D. #1.
Keller Ditch Co.
Mrs. Brigham Stillman
Mrs. James Russel

And that I fully prepaid the postage upon said envelopes and enclosures therein, and that I deposited said envelopes addressed, sealed, and postpaid in the post office at Murray City of the State of Utah.

T. F. McDonald

Subscribed and Sworn to before me this 8th day of November, 1937

Norman J. Hansen
Notary Public

My Commission Expires February 20, 1937 of _____.

Copy

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

MARTHA YOUNG, Administratrix of the Estate of James Young, Deceased,	:	
Plaintiff,	:	
vs.	:	N O T I C E
WILLIAM GORDON, Executor of the Estate of Daniel Lund, Deceased, et, al,	:	Case No. 4449
Defendants.	:	

To the users and owners of the Mill Creek Stream and to the following Attorneys for the respective users, and owners of such waters. Namely:

Mr. & Mrs. George F. Taylor, Sugar House R D #1
Fisher Harris, Attorney for Salt Lake City
Allen T. Sanford, Attorney for Upper Ditches
Corey and Inman, Attorneys for Utah Power & Light Co.
Bagley, Judd, and Ray, Attorneys for Mrs. O'Connor
L. L. Bagley, Attorney for Small Neff Ditches
Joseph Stillman, Sugar House, R D #1
Mrs. William Simper C/O John Simpers, Taylorsville
Mrs. Samuel Stillman
Thomas Osguthorpe
Mrs. Nellie Brown
Horace H. Cummings, 159 McClellan Street
Mrs. F. N. Stillman
Daniel Russel
Mrs. John Henry Osguthorpe, Sugar House, R D # 1
Keller Ditch Co.
Mrs. Brigham Stillman
Mrs. James Russel

You will please take notice that the hearing upon the petition heretofore filed on the above entitled cause by T. F. Mc Donald, Water Commissioner for the Mill Creek Stream, will be held before the Honorable Roger I. McDonough, one of the Judges of the above entitled Court at the City and County Building, Salt Lake City, Utah, at the hour 10:00 A. M. on the 13th day of November, 1937, for the purpose of fixing and ordering the payment as taxable costs of such sums of money as set out in the said petition, deemed as necessary to cover the costs and expenses of work done for the year beginning April 1, 1937.

Dated this 8 Nov 8 1937 A. D., 1937

seal

Signed WILLIAM J. KORTH (Clerk)

Deputy

4449

FILED IN THE CLERK'S OFFICE
Salt Lake County, Utah
NOV 1 2 1937
WILLIAM J. KORTH, Clerk 3rd Dist. Court
By R. A. Hogenson
Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

MARTHA YOUNG, Administratrix of the Estate of James Young Deceased,	:	
Plaintiff,	:	
vs.	:	ORDER TAXING COSTS FROM APRIL 1, 1937 to APRIL 1, 1938.
WILLIAM GORDON, Executor of the Estate of Daniel Lund, Deceased, et al,	:	No. 4449
Defendants.	:	

T. F. McDonald having heretofore been duly appointed as Water Commissioner of Mill Creek Canyon Stream, in Salt Lake County, Utah in the above entitled matter, and having acted in such capacity for the year beginning April 1, 1937, and having heretofore filed herein his petition for an order taxing costs against the users of water of said stream to pay his salary as such water commissioner together with the costs and expenses incident to the distribution and regulation of the waters of said stream, and said matter coming on regularly to be heard before the above entitled Court this 13 day of November, 1937 and it appearing to the satisfaction of the Court that the expenses, costs and salary of said water commissioner for the year beginning April 1, 1937, together with the amounts proportioned and assessed against the various water users of water from said stream are as follows:

STATEMENT OF COSTS AND EXPENSES.

Court Commissioner Salary----------	$ 586.25
Petition, Order, stamps Stationary, Notices etc. connected with this case,----------	25.00
Total	$ 611.00

LIST OF WATER USERS WITH PROPORTION OF COST ASSESSED AGAINST EACH

A. HOUSE USE STREAM

Assessment to apportioned according to rights of users

E. F. Chamberlain, house use stream----------	$ 2.20
William Simper, house use stream or successors---------	1.60
Daniel Hussy, house use stream----------	1.60
Chas. Stillman Estate, house use stream----------	1.80
Samuel Stillman, house use stream----------	1.20
Thomas Osguthorpe, house use stream----------	1.20
D. C. Brown, house use stream----------	.60
M. B. Skidmore, house use stream----------	..60

Ruth B. Moses, Barbara Cummings, Sarah E. Neilson, and Esther B. Moses, house use stream----------$	3.00
James Russell, house use stream----------	3.10
Amos H. Neff (Samuel Neff) house use stream----------	1.00
Seymour H. Neff (Eugene Neff and others)----------	1.00
Amos H. Neff Samuel Neff sold to Furs Corporation and transferred to Furs Place in Canyon approximately 3 gallons per minute, three trips at $5.00 each----------	15.00
M. Q. Cannon pipeline----------	1.00
Amos B. Neff, John Neff, Walker, Albert Pixton----------	3.00
Seymour H. Neff, A. M. Seely, Stokes, Bagley, Chamberlain, Eugene Neff and Successors----------	4.00
W. J. Oconner, Susan Emery Holmes, Mrs. Lamb----------	1.70
B. POWER	
Utah Power and Light Company----------	108.50
C. IRRIGATION	
Stillman Estate and Successors----------	7.80
Moses Estate and Successors----------	11.40
Frank Russell and Brigham Stillman Estate----------	3.60
James Russell and Successors----------	3.60
Salt Lake County and Successors----------	.90
The Alexander Estate and Successors----------	10.40
Caroline Suderland Estate and Successors----------	4.60
George E. Airis, Successors to B. A. M. Froiseth-------	2.00
J. E. Morris Estate and Successors----------	3.70
Samuel Stillman, Primary Rights----------	1.50
Samuel Stillman, Secondary Rights----------	.60
James Russell, Secondary Rights in Crissman Ditch------	.34
Julia Tripp, Joseph Alexander & Chas. Alexander, Secondary rights in the Tripp Ditch----------	.75
E. F. Chamberlain and Successors----------	2.70
Thos. Osguthorpe in Osguthorpe Ditch----------	.90
D. C. Brown and Successors----------	1.80
H. B. Skidmore and Successors----------	.90
Keller Ditch----------	42.00
Daniel Hussy and Successors----------	.92
John and Frank Neff Ditch, Amos H. Neff Ditch Brigham Young Ditch and their Successors, Salt Lake City-----	139.20
Lower Mill Creek Irrigation Company and Successor Salt Lake City----------	175.69
Whit Ditch Irrigation Co. & Successors, Salt Lake City-	35.11
Surplus Rights----------	9.00
Total----------$	611.25

It is therefore, ordered, adjudged and decreed, that the account of expenses, costs and salary of said water commissioner be and are hereby approved, and that the waters users of water from said stream be and are hereby ordered to pay to said water commissioner the various amounts set opposite their respective names as their proportion of said salary, costs and expenses, and it is further expressly ORDERED AND ADJUDGED, that in the event of any of the parties shall fail to pay the amount of costs taxed against them herein, or the costs heretofore taxed under the orders and decree of the court heretofore made, the payment of which they are delinquent herein that no water shall be delivered to such person or persons until the entire amount of costs, taxed herein and heretofore shall have been paid in full, and where costs are taxed against a

ditch or company in this order and the orders and decree heretofore entered and the full amount of costs taxed against such ditch or company in this order and the orders and decree heretofore entered shall not have been paid, then no water shall be delivered to such ditch until said costs taxed herein and heretofore are paid in full, and in the event of any person entitled to water from said ditch shall fail to pay the portion of costs fixed herein and heretofore, and the others using water from said ditch shall pay such portion, then no water shall be delivered to such delinquent person, but the portion which such delinquent person is entitled to, shall be delivered to the others on said ditch who shall have paid such cost, in the proportion in which they shall pay the same; and it is further ordered that the rights to discontinue the distribution of the water as herein provided shall be considered a cumulative remedy in addition to the right to have execution issued on this order and the orders heretofore entered.

Done in open court this 13th day of Nov., 1937.

ATTEST
WILLIAM J. KORTH
CLERK
By Jacob Weiler
Deputy Clerk

Roger L. McDonough
JUDGE

4449

FILED IN THE CLERK'S OFFICE
Salt Lake County, Utah
NOV 13 1937
WILLIAM J. KORTE, Clerk 3rd Dist. Court
By Jacob White
Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

- - - - - - - - - - - - - - - - - -

MARTHA YOUNG, Administratrix of the Estate of James Young, Deceased,	)	
Plaintiff,	)	ORDER TAXING COSTS FROM APRIL 1, 1938 to APRIL 1, 1939.
vs.	)	
WILLIAM GORDON, Executor of the Estate of Daniel Lund, Deceased, et al,	)	No. 4449
Defendants.	)	

- -

T. F. McDonald having heretofore been duly appointed as Water Commissioner of Mill Creek Canyon Stream, in Salt Lake County, Utah in the above entitled matter, and having acted in such capacity for the year beginning April 1, 1938, and having heretofore filed herein his petition for an order taxing costs against the users of water of said stream to pay his salary as such water commissioner together with the costs and expenses incident to the distribution and regulation of the waters of said stream, and said matter coming on regularly to be heard before the above entitled Court this 28th day of January, 1929 and it appearing to the satisfaction of the Court that the expenses, costs and salary of said water commissioner for the period beginning April 1, 1938, together with the amounts proportioned and assessed against the various water users of water from said stream are as follows:

STATEMENT OF COSTS AND EXPENSES.

Court Commissioner Salary -	$596.00
Petition, Order, Stamps, Stationary, Mailing Notices & Extra time connected with this case - - - - - - - - - - - - - - -	15.00
Total -	$611.00

LIST OF WATER USERS WITH PROPORTION OF COST ASSESSED AGAINST EACH

"A" HOUSE USE STREAM

Assessment to be apportioned according to rights of users

E. F. Chamberlain, house use stream - - - - - - - - - - - - - - - -	$ 2.80
William Simper, house use stream or successors - - - - - - - - -	1.60
Daniel Hussy, house use stream - - - - - - - - - - - - - - - - - -	1.60
Chas. Stillman Estate, house use stream - - - - - - - - - - - - - -	1.80
Samuel Stillman, house use stream - - - - - - - - - - - - - - - - -	1.20
Thomas Osguthorpe, house use stream - - - - - - - - - - - - - - - -	1.20
D. C. Brown, house use stream - - - - - - - - - - - - - - - - - - -	.60
M. B.Skidmore, house use stream - - - - - - - - - - - - - - - - - -	.60

Ruth B. Moses, Barbara Cummings, Sarah E. Neilson, and Esther B. Moses, house use stream - - - - - - - - - - - - - - -	$ 3.00
James Russell, House use stream - - -v- - - - - - - - - - - - - -	3.10
Amos H. Neff, house use stream- - of 0.28 C.F.S - - - - - - - - -	1.00
Seymour H. Neff (Eugene Neff and others) - - of .017 C.F.S. -0-	1.00
Amos H. Neff, Samuel Neff sold to FursCorporation and transferred to Furs Place in Canyon approximately 3 gallons per minute, three trips at $5.00 each - - - - - - - - - - - - -	15.00
M. Q. Cannon pipeline -	1.00
Amos B. Neff, John Neff, Walker, Albert Pixton, house use stream -	3.00
Seymour H. Neff, A. M. Seely, Stokes, Bagley, Chamberlain, A. E. Lloyd and Successors, house use stream - - - - - - - - -	4.00
W. J. O'Connor, Susan Emery Holmes, Mrs. Lamb - - - - - - - - - - -	1.70

"B" POWER

Utah Power and Light Company -	108.50

"C" IRRIGATION

Chas. Stillman Estate and Successors - - - - - - - - - - - - - - - - -	7.80
Moses Estate and Successor -	11.40
Frank Russell and Brigham Stillman Estate - - - - - - - - - - - - - -	3.60
James Russell and Successors -	3.60
Salt Lake County and Successors - ,	.90
The Alexander Estate and Successors - - - - - - - - - - - - - - - - -	10.40
Caroline Suderland Estate and Successors - - - - - - - - - - - - - - -	4.60
George E. Airis, Successors to B. A. M. Froiseth - - - - - - - - - -	2.00
J. E. Morris Estate and Successors - - - - - - - - - - - - - - - - - -	3.70
Samuel Stillman, Primary Rights - - - - - - - - - - - - - - - - - - -	1.50
Samuel Stillman, Secondary Rights - - - - - - - - - - - - - - - - - -	.60
James Russell, Secondary Rights in Crissman Ditch - - - - - - - - -	.34
Julia Tripp, Joseph Alexander & Chas. Alexander, Secondary Rights in the Tripp Ditch - - - - - - - - - - - - -	.75
E. F. Chamberlain and Successors - - - - - - - - - - - - - - - - - - -	2.70
Thos. Osguthorpe Osguthorpe Ditch - - - - - - - - - - - - - - - - - -	.90
D. C. Brown and Successors -	1.80
H. B. Skidmore and Successors -	.90
Keller Ditch -	42.00
Daniel Hussey and Successors -	.90
John and Frank Neff Ditch, Amos H. Neff Ditch, Brigham Young Ditch and their Successors. Salt Lake City - - - - - -	139.20
Lower Mill Creek Irrigation Company and Successor Salt Lake City -	175.69
White Ditch Irrigation Co. & Successors Salt Lake City - - - - - -	35.11
Surplus Rights -	9.00
TOTAL	$611.25

It is therefore, ordered, adjudged and decreed, that the account of expenses, costs and salary of said water commissioner be and are hereby approved, and that the water users of water from said stream be and are hereby ordered to pay to said water commissioner the various amounts set opposite their respective names as their proportion of said salary, costs and expenses, and it is further expressly ORDERED AND ADJUDGED, that in the event of any of the parties shall fail to pay the amount of costs taxed against them herein, or the costs heretofore taxed under the orders and decree of the court heretofore made, the payment of which they are delinquent herein that no water shall be delivered to such person or persons until the entire amount of costs, taxed herein and heretofore shall have been paid in full, and where costs are taxed

against a ditch or company in this order and the orders and decree heretofore entered and the full amount of costs taxed against such ditch or company in this order and the orders and decree heretofore entered shall not have been paid, then no water shall be delivered to such ditch until said costs taxed herein and heretofore are paid in full and in the event of any person entitled to water from said ditch shall fail to pay the portion of costs fixed herein and heretofore, and the others using water from said ditch shall pay such portion, then no water shall be delivered to such delinquent person, but the portion which such delinquent person is entitled to, shall be delivered to the others on said ditch who shall have paid such cost, in the proportion in which they shall pay the same; and it is further ordered that the rights to discontinue the distribution of the water as herein provided shall be considered as a cumulative remedy in addition to the right to have execution issued on this order and the orders heretofore entered.

Done in open court this 28th day of Janaury, 1939.

Allen G. Thurman
JUDGE.

ATTEST
WILLIAM J. KORTH
CLERK

By Wes X Leslie
Deputy Clerk

4449

FILED IN THE CLERK'S OFFICE
Salt Lake County, Utah
JAN 28 1939
WILLIAM J. KORTH, Clerk 3rd Dist. Court
By [illegible]
Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

- - - - - - - - - - - - - - - - - - - -

MARTHA YOUNG, Administratrix of the Estate of James Young, Deceased,	)	
Plaintiff,	)	NOTICE
vs.	)	Case No. 4449
WILLIAM GORDON, Executor of the Estate of Daniel Lund, Deceased, et. al,	)	
Defendants.	)	

- - - - - - - - - - - - - - - - - -

To the users and owners of the Mill Creek Stream and to the following Attorneys for the respective users and owners of such waters, Namely:

Mr. & Mrs. George F. Taylor, R. D. #1
Fisher Harris, Attorney for Salt Lake City
Allen T. Sanford, Attorney for Upper Ditches
Corey & Behle, Attorneys for Utah Power & Light Co.
Bagley, Judd and Ray, Attorneys for Mrs. O'Connor
L.L. Bagley, Attorney for Small Neff Ditches
A. E. Lloyd, 3384 Oakwood Ave.
Mr. & Mrs. Jeremiah Stokes, 3362 Oakwood Ave.
F. E. Walker, 3426 Oakwood Ave.
Mrs. William Simper, % John Simper, Taylorsville
Mrs. Samuel Stillman, 3000 East 39th South St.
Thomas Osguthorpe, R. D.#1
Mrs. Nellie Brown, 1421 South Main St.
Horace H. Cummings, 159 McClellan St.
Mrs. F. N. Stillman, 3381 East 38th South St.
Daniel Russel, R. D. #1
Mrs. John Henry Osguthorpe, R. D. #1
Keller Ditch Co., % Joseph Oliver, R. D. #1
Mrs. James Russel, R. D. #1
Salt Lake County Commissioners, (County Deed, Chamberlain Place)
East Mill Creek
Lizzie S. Rhead, 2636 Liberly Ave., Ogden, Utah
Lyle Stillman, Oakley, Utah Stillman Ranch
Oakley Bank, Oakley, Utah
J.J. Stillman, 3880 East 38th South St.

You will please take notice that the hearing upon the petition heretofore filed on the above entitled cause by T. F. McDonald, Water Commissioner for the Mill Creek Stream, will be held before the Honorable Allen G. Thurman, one of the Judges of the above entitled Court at the City and County Building, Salt Lake City, Utah, at the hour of 10:00 A. M. on the 28th day of January, 1939, for the purpose of fixing and ordering the payment as taxable costs of such sums of money as set out in the said petition, deemed as necessary to cover the costs and expenses of work done for the year beginning April 1, 1938.

Dated this 23rd day of January, 1939.

Signed Thomas F. McDonald
Court Commissioner.

Jan 26

4449

FILED IN THE CLERK'S OFFICE
Salt Lake County, Utah
JAN 24 1939
WILLIAM J. KORTH, Clerk 3rd Dist. Court
By Jacob Wirle
Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH.

MARTHA YOUNG, Administratrix of the estate of James Young, Deceased, Plaintiff vs. William Gordon, Executor of the Estate of Daniel Lund, Deceased, et al, Defendants.	Notice of PETITION FOR HEARING. Case No. 4449.

The petition of T.F. Mc DONALD, Water Commissioner for the Millcreek Stream, having been duly filed, praying for an ordor taxing costs for the year beginning April 1, 1938

It IS HEREBY ORDERED that the time for the hearing of the said petition be and it is hereby fixed at the hour of 10:00 A.M. on the 28th day of January 1939. before the honorable Allen G. Thurman Judge, in the Court room of the above entitled court at Salt Lake City, Utah.

It is further ordered that five (5) days notice of said hearing be given in writing to the respective water users to be taxed.

Dated January 16th, 1938.

Allen G. Thurman
District Judge.

ATTEST
WILLIAM J. KORTH
CLERK

By Wax Leslie
Deputy Clerk

4449

FILED IN THE CLERK'S OFFICE
Salt Lake County, Utah
JAN 16 1939
WILLIAM J. KORTH, Clerk 3rd Dist. Court
By [signature]
Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT IN AND FOR THE

COUNTY OF SALT LAKE, STATE OF UTAH

MARTHA YOUNG, Administratrix of the estate of James Young, deceased,	)	
Plaintiff,	)	
vs.	)	PETITION FOR ORDER TAXING
WILLIAM GORDON, Executor of the estate of Daniel Lund, deceased, et. al.,	)	COSTS FOR YEAR BEGINNING APRIL, 1, 1938.
Defendants.	)	No. 4449

Comes now T. F. McDonald, of Salt Lake County, State of Utah, your petitioner herein, and respectfully represents to the Court as follows:

1. That your petitioner was heretofore duly appointed by this Court as Water Commissioner for the Mill Creek Canyon stream of Salt Lake County, Utah, in the above intitled matter, and said petitioner ever since has been and now is the duly appointed and qualified water commissioner for said stream, and that he served and acted in such capacity during all of the irrigation year beginning April 1, 1938.

2. That in pursuance of the duties and responsibilities upon him devolving as said Water Commissioner of said stream, your petitioner has, during all of the irrigation season beginning April 1, 1938, diligently and continuously acted as and performed the duties of said Water Commissioner in distributing the waters of said stream among the various users thereof according to their respective rights therein, and has in such capacity supervised the construction and installation of such weirs and measuring devices for the distribution of said waters as were necessary or proper, and in this connection has rendered engineering services necessary thereto, has caused the channel of said stream to be cleaned as necessary, and in the performance of his said duties as said Water Commissioner your petitioner has been put to some costs and has incurred some expenses, as more fully appears herein, which said costs and expenses be paid by the users of water from said stream.

3. That the irrigation season for the users of water from said Mill Creek Canyon stream for the irrigation year beginning April 1, 1938 and ending November 1, 1938, is now completed.

4. Your petitioner further represents that the duties and responsibilities devolving upon him as said water commissioner as aforesaid, and the demands upon his time and services as such, have materially increased during the past four (4) years, due to the fact that a much closer check is being maintained by the users of water from said stream on their respective distributive shares, which requires more detailed and constant supervision on the part of your petitioner to properly regulate the flow of the waters of said stream among the various users thereof as their rights and interests may appear and that by reason of the fact that several changes in the regulation of the flow of said water are now of necessity made daily it has become necessary for your petitioner to make changes and measurements from one (1) to three (3) times daily and work to the end that a proper distribution and regulation of the water may be effected and maintained.

5. Your petitioner also represents that the users and owners of house use streams and Secondary Rights should pay their fair proportion of the cost and expense to your petitioner in the performance of his duties as said water commissioner in the supervision and distribution of said "house use" streams and "secondary right " streams.

6. Your petitioner represents that the following is a full, true and correct statement of his expenses as Water Commissioner aforesaid, including his salary and engineering fee as such for the year beginning April 1, 1938, together with a list of the users of water from said Mill Creek Canyon stream and a statement of the amount assessed against them, based upon their respective rights and interests in the flow of said stream and the proportion of the time, costs and expense of said Commissioner in the supervision and distribution of the respective amounts of water to which they are entitled.

STATEMENT OF COSTS AND EXPENSES

Court Commissioner Salary ----------	$ 600.00
Petition, Order, Stamps, Stationary, Mailing, Notices, etc., connected with this case. ----------	11.00
Total	$ 611.00

LIST OF WATER USERS WITH PROPORTION OF COST ASSESSED AGAINST EACH

A. HOUSE USE STREAM

Assessment apportioned according to rights of users, owners, or successors of following:

E. F. Chamberlain, house use stream ----------	$ 2.20
William Simper, house use stream ----------	1.60
Daniel Hussy, house use stream ----------	1.60
Chas. Stillman Estate, house use stream ----------	1.80
Samuel Stillman, house use stream ----------	1.20
Thomas Osguthorpe, house use stream ----------	1.20
D. C. Brown, house use stream ----------	.60
M. B. Skidmore, house use stream ----------	.60
Ruth B. Moses, Barbara Cummings, Sarah E. Neilson, and Esther B. Moses, house use stream ----------	3.00
James Russell, house use stream ----------	3.00
Amos H. Neff (Samuel Neff and Mrs.Alice Neff Taylor) house use stream ----------	1.00
Seymour H. Neff (Mrs. Jeremiah Stokes and others) pipeline 0.017 C.F.S. ----------	1.00
Amos H. Neff, Samuel Neff sold to Furs Corporation and transferred to Furs Place in Canyon approximately 3 gallons per minute, three trips at $5.00 each ----------	15.00
M. Q. Cannon, pipeline ----------	1.00
Amos B. Neff, John Neff, Walker, Albert Pixton 0.27C.F.S.	3.00
Seymour H. Neff, A. M. Seely(Stokes, Bagley, Chamberlain, Lloyd) and Successors ----------	4.00
W. J. Oconner, Susan Emery Holmes, Mrs. Lamb ----------	1.70

B. POWER

Utah Power and Light Company ----------	108.50

C. IRRIGATION

Stillman Estate and Successors ----------	7.80
Moses Estate and Successors ----------	11.40
Frank Russell and Brigham Stillman Estate ----------	3.60
James Russell and Successors ----------	3.60
Salt Lake County and Successors ----------	.90
The Alexander Estate and Successors ----------	10.40
Caroline Suderland Estate and Successors ----------	4.60
George E. Airis, Successors to B. A. M. Froiseth ----------	2.00
J. E. Morris Estate and Successors ----------	3.70
Samuel Stillman, Primary Rights ----------	1.50
Samuel Stillman, Secondary Rights ----------	.60
James Russell, Secondary Rights in Crissman Ditch ----------	.34
Julia Tripp, Joseph Alexander and Chas. Alexander, Secondary Rights in the Tripp Ditch ----------	.75
E. F. Chamberlain and Successors ----------	2.70

THEREFORE, your petitioner prays that the parties using the waters of Mill Creek Canyon Stream shall be ordered to pay such amounts respectfully as may be necessary for the payment of the said salary of your petitioner including the preparation and presentation of this petition, and that each user be taxed the amount set opposite his or its name in the foregoing list.

Thomas F. McDonald
Petitioner

STATE OF UTAH)
) SS.
COUNTY OF SALT LAKE)

T. F. MCDONALD, having first been duly sworn upon oath deposes and says that he is the petitioner above named and that he has read the foregoing petition and knows the contents thereof, that the same is true of his own knowledge, except as to those matters therein stated on his information and belief and as to such matters he believes the same to be true.

Thomas F. McDonald

Subscribed and sworn to before me this 31st day of December 1938.

Alon Reddington
Notary Public
Commission expires:
Residence
Deputy County Clerk
of Salt Lake County
Utah

4449

FILED IN THE CLERK'S OFFICE
Salt Lake County, Utah
JAN 16 1939
WILLIAM J. KORTH, Clerk 3rd Dist. Court
By [illegible]
Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKECOUNTY, STATE OF UTAH

o- - - - - - - - - - - - - - - - -o

MARTHA YOUNG, Administratrix of the Estate of James Young, Deceased,	)	
Plaintiff	)	NOTICE
vs.	)	Case No. 4449
WILLIAM GORDON, Executor of the Estate of Daniel Lund, Deceased, et. al,	)	
Defendants.	)	

- - - - - - - - - - - - - -

T. F. McDonald being duly sworn, deposes and says that, I am Court Commissioner of Mill Creek Stream, that on the 23rd day of January, 1939, I enclosed twenty-four(24) copies of the attached letter in twenty-four(24) envelopes to wit:

Mr. & Mrs. George F. Taylor, R. D. #1
Fisher Harris, Attorney for Salt Lake City
Allen T. Sanford, Attorney for Upper Ditches
Corey and Behle, Attorneys for Utah Power & Light Co.
Bagley, Judd and Ray, Attorneys for Mrs. O'Connor
L. L. Bagley, Attorney for Small Neff Ditches
A. E. Lloyd, 3384 Oakwood Ave.
Mr. & Mrs. Jeremiah Stokes, 3362 Oakwood Ave.
F. E. Walker, 3426 Oakwood Ave.
Mrs. William Simper, % John Simper, Taylorsville
Mrs. Samuel Stillman, 3000 East 39th South St.
Thomas Osguthorpe, R. D. #1
Mrs. Nellie Brown, 1421 South Main St.
Horace H. Cummings, 159 McClellan St.
Mrs. F. N. Stillman, 3381 East 38th South St.
Daniel Russell, R. D.#1
Mrs. John Henry Osguthorpe, R. D. #1
Keller Ditch Co., % Joseph Oliver, R. D. #1
Mrs. James Russel, R. D. #1
Salt Lake County Commissioners, (County Deed, Chamberlain Place) East Mill Creek
Lizzie S. Rhead, 2636 Liberly Ave., Ogden, Utah
Lyle Stillman, Oakley, Utah % Stillman Ranch
Oakley Bank, Oakley, Utah
J.J. Stillman, 3880 East 38th South St.

And that I fully prepaid the postage upon said envelopes and enclosures therein, and that I deposited said envelopes addressed, sealed, and postpaid in the post office at Murray City of the State of Utah.

Thomas F. McDonald

Subscribed and sworn to before me this 24 day of January, 1939.

Norm Reddington
Notary Public
Chief Deputy Clerk, of Salt Lake County, Utah
Commission Expires:

4449

FILED IN THE CLERK'S OFFICE
Salt Lake County, Utah
JAN 24 1939
WILLIAM J. KORTH, Clerk 3rd Dist. Court
By Jacob Wirks
Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT IN AND FOR

THE COUNTY OF SALT LAKE, STATE OF UTAH

*- - - - - - - - - - - - - - -

MARTHA YOUNG, Administratrix of the Estate of James Young, Deceased,	)	
Plaintiff	)	PETITION FOR ORDER TAXING
vs.	)	COSTS FOR YEAR BEGINNING
WILLIAM GORDON, Executor of the Estate of Daniel Lund, Deceased,	)	APRIL 15, 1940.
et al,	)	No. 4449
Defendant.	)	

- - - - - - - - - - - - - - - - - - -

Comes now T. F. MCDONALD, of Salt Lake County, State of Utah, your petitioner herein, and respectfully represents to the Court as follows:

1. That your petitioner was heretofore duly appointed by this Court as Water Commissioner for the Mill Creek Canyon stream of Salt Lake County, Utah, in the above entitled matter, and said petitioner ever since has been and now is the only appointed and qualified water commissioner for said stream, and that he served and acted in such capacity during all of the irrigation year beginning April 1, 1939 to November 1, 1939.

2. That pursuance of the duties and responsibilities upln him devolving as said Water Commissioner of said stream, your petitioner has, during all of the irrigation season beginning April 1, 1939, diligently and continuously acted as and performed the duties of said Water Commissioner in distributing the waters of said stream among the various users thereof according to their respective rights therein, and has in such capacity supervised the construction and installation of such weirs and measuring devices for the distribution of said waters as were necessary or proper, and in this connection has rendered engineering services necessary thereto, and in the performance of his said duties as said Water Commissioner your

petitioner has been put to some costs and has incurred some expenses, as more fully appears herein, which said costs and expenses should be paid by the users of water from said stream.

3. That the irrigation season for the users of water from said Mill Creek Canyon stream for the irrigation year beginning April 1, 1939, is now closed.

4. Your petitioner further represents that the duties and responsibilities devolving upon him as said water commissioner as aforesaid, and the demands upon his time and services as such, have materially increased during the past few years, due to the fact that a much closer check is being maintained by the users of water from said stream on their respective distributive shares, which requires more detailed and constant supervision on the part of your petitioner to properly regulate the flow of the waters of said stream among the various users thereof as their rights and interests may appear and that by reason of the fact that several changes in the regulation of the flow of said water are now of necessity made daily.

5. Your petitioner also represents that the users of house-use streams should pay their fair proportion of the cost and expense to your petitioner in the performance of his duties as said water commissioner in the supervision and distribution of said "house use" streams and "secondary right" streams.

6. Your petitioner further represents that the Keller Ditch, the same having certain rights in and to part of the flow of said stream, is not incorporated nor organized, nor has said ditch any water master or duly authorized representative to assist in the distribution of the water belonging to said Keller Ditch, with the result that many attempts are made to steal water thus causing considerable confusion, and requiring additional time and expense on the part of your petitioner in the regulation of the flow of water in said ditch which should be paid for by the users of water therefrom.

7. Your petitioner represents that the following is a full, true and correct statement of his expenses as Water Commissioner aforesaid, including his salary and engineering fee as such for the year beginning April 1, 1939, together with a list of the users of water from said Mill Creek Canyon stream and a statement of the amount assessed against each of them, based upon their respective rights and interests in the flow of said stream and the proportion of the time, costs and expense of said Commissioner in the supervision and distribution of the respective amounts of water to which they are entitled.

STATEMENT OF COSTS AND EXPENSES.

Court Commissioner Salary - - - - - - - - - - - - - - - -	$ 592.09
Petition, Order, Stamps, Stationary, Mailing, Notices and Extra time connected with this case - - - - -	10.00
Total -	$-602.09

LIST OF WATER USERS WITH PROPORTION OF COST ASSESSED AGAINST EACH

"A" HOUSE USE STREAM

Assessment to be apportioned according to rights of users

E. F. Chamberlain, house use stream -v- - - - - - - - -	$ 2.00
William Simper, house stream or successors - - - - - - -	1.60
Daniel Hussy, house use stream - - - - - - - - - - - -	1.60
Chas. Stillman Estate, house use stream - - - - - - - -	1.80
Samuel Stillman, houseuse stream - - - - - - - - - - -	1.20
Thomas Osguthorpe, house use stream - - - - - - - - - -	1.20
D. C. Brown, house use stream - - - - - - - - - - - - -	.60
M. B. Skidmore, house use stream - - - - - - - - - - - -	.60
Ruth B. Moses, Barbara Cummings, Sarah E. Neilson and Esther B. Moses, house use stream - - - - - - - - -	3.00
James Russell, house use stream - - - - - - - - - - - -	3.10
Amost H. Neff, house use stream - of 0.028 C. F. S - -	1.00
Seymour H. Neff (Eugene Neff and Others) -of .017 C.FS	1.00
Amos H. Neff, Samuel Neff sold to Furs Corporation and transferred to Furs Place in Canyon approximately 3 gallons per minute, three trips at $5.00each	15.00
M. Q. Cannon pipeline - - - - - - - - - - - - - - - - -	1.00
Amos B.Neff, John Neff, Walker, Albert Pixton, house use stream -	3.00
Seymour H. Neff, A.M. Seely, Stokes, Bagley, Chamberlain A. E. Lloyd and Successors, house use stream - - -	4.00
W. J. O'Connor, Susan Emery Homes, Mrs. Lamb - - - -	1.70

"B" POWER

Utah Power and Light Company - - - - - - - - - - - - - -	108.50

"C" IRRIGATION

Chas. Stillman Estate and Successors - - - - - - - - -	7.80
Moses Estate and Successor - - - - - - - - - - - - - -	11.40
Frank Russell and Brigham Stillman Estate - - - - - -	3.60
James Russell and Successors - - - - - - - - - - - - -	3.60
Salt Lake County and Successors - - - - - - - - - - - -	.90
The Alexander Estate and Successors - - - - - - - - - - -	10.40

"C" IRRIGATION-cont.

Caroline Suderland Estate and Successors - - - - - - - - -	$ 4.60
Geroge E. Airis, Successors to B.A.M. Froiseth - - - - -	2.00
J. E.Morris Estea dn Successors - - - - - - - - - - - - -	3.70
Samuel Stillman, Primary Rights - - - - - - - - - - - - -	1.50
Samuel Stillman, Secondary rights - - - - - - - - - - - -	.60
James Russell, Secondary Rights in Crissman Ditch - - - -	.34
Julia Tripp, Joseph Alexander & Chas. Alexander, Secondary Rights in the Tripp Ditch - - - - - - - - - -	.75
E. F. Chamberlain and Successors - - - - - - - - - - - - -	2.70
Thos. Osguthorpe, Osguthorpe Ditch - - - - - - - - - - - -	.90
D. C. Brown and Successors - - - - - - - - - - - - - - - -	1.80
H. B. Skidmore and Successors - - - - - - - - - - - - - -	.90
Keller Ditch -	42.00
Daniel Hussy and Successors - - - - - - - - - - - - - - -	.90
John and Frank Neff Ditch, Amos. H. Neff Ditch, Bringham Young Ditch and their Successors. Salt Lake City - -	139.20
Lower Mill Creek Irrigation Company and Successor Salt Lake City -	175.69
White Ditch Irrigation Co and Successors Salt Lake City -	35.11
TOTAL *	$602.09

WHEREFORE, your petitioner prays that the parties using the waters of Mill Creek Canyon Stream shall be ordered to pay such amounts respectfully as may be necessary for the payment of said salary, costs and expenses of your petitioner including the preparation and presentation of this petition, and that each user be taxed the amount set opposite his or its name in the foregoing list.

T. F. McDonald
Petitioner.

STATE OF UTAH)
) SS.
COUNTY OF SALT LAKE)

T. F. MCDONALD, having first been duly sworn upon oath deposes and says that he is the petitioner above named and that he has read the foregoing petition and knows the contents thereof, that the same is true of his own knowledge, except as to those matters therein stated on his information and belief and as to such matters he believes the same to be true.

T. F. McDonald

Subscribed and sworn to before me this 21 day of November, 1939.

Glen E. Howe
Notary Public
Comm. expires 12/9/41

4449

FILED IN THE CLERK'S OFFICE
Salt Lake County, Utah
NOV 21 1939
WILLIAM J. KORTH, Clerk 3rd Dist. Court
Jacob Weiler
Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

- - - - - - - - - - - - - - -

MARTHA YOUNG, Administratrix of the estate of James Young, Deceased,	)	NOTICE OF PETITION FOR HEARING
Plaintiff	)	
vs.	)	Case No. 4449
WILLIAM GORDON, Executor of the Estate of Daniel Lund, Deceased, et al,	)	
Defendants.	)	

- -

The petition of T. F. MCDONALD, Water Commissioner for the Mill Creek Stream, having been duly filed, praying for an order taxing costs for the year beginning April 15, 1939.

IT IS HEREBY ORDERED that the time for the hearing of the said peititon be and it is hereby fixed at the hour of 10:00 a.m. on the 2d day of December, 1939 before the Honorable Allen G. Thurman, Judge, in the courtroom of the above entitled Court at Salt Lake City, Utah.

It is further ordered that five (5) days' notice of said hearing be given in writing to the respective water users to be taxed.

Dated: November 21st, 1939.

Allen G. Thurman
District Judge

ATTEST
WILLIAM J. KORTH
CLERK
By Jacob Wesley
Deputy Clerk

Dec 2d 10 am

4449

FILED IN THE CLERK'S OFFICE
Salt Lake County, Utah
NOV 21 1939
WILLIAM J. KORTH, Clerk 3rd Dist. Court
By Jacob Wuiles
Deputy Clerk

Docket 38
Pg 618

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

- - - - - - - - - - - - - - - - -

MARTHA YOUNG, Administratrix of the Estate of James Young, Deceased,	)	
Plaintiff	)	**N O T I C E**
vs.	)	Case No. 4449
WILLIAM GORDON, Executor of the Estate of Daniel Lund, Deceased, et. al,	)	
Defendants.	)	

- -

To the users and owners of the Mill Creek Stream and to the following Attorneys for the respective users and owners of such waters. Namely:

Mr. & Mrs. George F. Taylor, R. D.#1
Fisher Harris, Attorney for Salt Lake City
Allen T. Sanford, Attorney for Upper Ditches
Corey and Behle, Attorneys for Utah Power and Light Co.
Bagley, Judd and Ray, Attorneys for Mrs.O'Connor
L.L. Bagley, Attorney for Small Neff Ditches
A.E. Blloyd, 3384 Oakwood Ave.
Mr. & Mrs. Jeremiah Stokes, 3362 Oakwood Ave.
F. E. Walker, 3426 Oakwood Ave.
Mrs. William Simper, % John Simper, Taylorstille
Mrs. Samuel Stillman, 3000 East 39th South St.
Thomas Osguthorpe, R. D.#1
Mrs. Nellie Brown, 1421 South Main St.
Horace H. Cummings, 159 McClelland St.
Mrs. F.N. Stillman, 3381 East 38th South St.
Daniel Russel, R. D. #1
Mrs. John Henry Osguthorpe, R.D.#1
Keller Ditch, % Joseph Oliver, R.D.#1
Mrs. James Russel, R. D.#1
Salt Lake County Commissioners (County Deed, Chamberlain Place, East Mill Creek)
Lizzie S. Rhead, 2636 Liberly Ave., Ogden, Utah
Lyle Stillman, Oakley, Utah % Stillman Ranch
Oakley, Bank, Oakley, Utah
J.J. Stillman, 3880 East 38th South St.

You will please take notice that the hearing upon the petition heretofore filed on the above entitled cause by T. F. McDonald, Water Commissioner for the Mill Creek Stream, will be held before the Honorable Allen G. Thurman, one of the Judges of the above entitled Court, at the City and County Building, Salt Lake City, Utah, at the hour of 10:00 A. M. on the 2nd day of December, 1939, for the purpose of fixing and ordering the payment as taxable costs of such sums of money as set out in the said petition, deemed as necessary to cover the costs and expenses of work done for the year beginning April 1, 1939.

Dated this 27th day of November, 1939.

SIGNED T. F. McDonald
Court Commissioner

4449

FILED IN THE CLERK'S OFFICE
Salt Lake County, Utah
DEC - 1 1939
WILLIAM J. KORTH, Clerk 3rd Dist. Court
By [signature]
Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR THE SALT LAKE COUNTY, STATE OF UTAH

- - - - - - - - - - - - - - - - - -

Martha Young, Administratrix of the Estate of James Young, Deceased,	)	
Plaintiff	)	NOTICE
vs.	)	Case. No. 4449
William Gordon, Executor of the Estate of Daniel Lund, Deceased, et.al,	)	
Defendants.	)	

- -

T. F. McDonald being duly sworn, deposes and says that, I am Court Commissioner of Mill Creek Stream, that on the 27th day of November, 1939 I enclosed 24 copies of the attached letter to and in 24 envelopes to wit:

Mr. & Mrs. George F. Taylor, R. D. #1
Fisher Harris, Attorney for Salt Lake City
Allen T. Sanford, Attorney for Upper Ditches
Corey and Behle, Attorneys for Utah Power and Light Co.
Bagley, Judd and Ray, Attorneys for Mrs. O'Connor
L.L. Bagley, Attorney for Small Neff Ditches
A. E.Lloyd, 3384 Oakwood Ave.
Mr. & Mrs. Jeremiah Stokes, 3362 Oakwood Ave.
F. E. Walker, 3426 Oakwood Ave.
Mrs. William Simper, % John Simper, Taylorsville
Mrs. Samuel Stillman, 3000 East 39th South St.
Thomas Osguthorpe, R. D.#1
Mrs. Nellie Brown, 1421 South Main St.
Horace H. Cummings, 159 McClellan St.
Mrs. F. W. Stillman, 3321 East 38th South St.
Daniel Russel, R. D. #1
Mrs. John Henry Osguthorpe, R. D.#1
Keller Ditch, % Joseph Oliger, R. D. #1
Mrs. James Russel, R. D. #1
Salt Lake County Commmissionners (County Deed, Chamberlain Place East Mill Creek)
Lizzie S. Rhead, 2636 Liberly Ave., Ogden, Utah
Lyle Stillman, Oakley, Utah % Stillman Ranch
Oakley Bank, Oakley, Utah
J.J. Stillman, 3880 East 38th South St.

And that I fully prepaid the postage upon said envelopes and enclosures therein, and that I deposited said envelopes addressed, sealed, and postpaid in the post office at Murray City of the State of Utah.

T. F. McDonald

Subscribed and sworn to before me this 14 day of December, 1939.

Geo E Howe
Notary Public

Commission Expires: 12/9/41

4449

FILED IN THE CLERK'S OFFICE
Salt Lake County, Utah
DEC - 1 1939
WILLIAM J. KORTH, Clerk 3rd Dist. Court
Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

- - - - - - - - - - - - - - - -

MARTHA YOUNG, Administratrix of the Estate of James Young, Deceased,	)	
Plaintiff	)	ORDER TAXING COSTS FROM APRIL 1, 1939 to APRIL 1, 1940.
vs.	)	
WILLIAM GORDON, Executor of the Estate of Daniel Lund, Deceased, et. al,	)	Case No. 4449
Defendants.	)	

- -

T. F. McDonald having heretofore been duly appointed as Water Commissioner of Mill Creek Canyon Stream, in Salt Lake County, Utah in the above entitled matter, and having acted in such capacity for the year beginning April 1, 1939, and having heretofore filed herein his petition for an order taxing costs against the users of water of said stream to pay his salary as such water commissioner together with the costs and expenses incident to the distribution and regulation of the waters of said stream, and said matter coming on regularly to be heard before the above entitled Court this 2nd day of December, 1939 and it appearing to the satisfaction of the Court that the expenses, costs and salary of said water commissioner for the period beginning April 1, 1939, together with the amounts proportioned and assessed against the various water users of water from said stream are as follows:

STATEMENT OF COSTS AND EXPENSES.

Court Commissioner Salary - - - - - - - - - - - - -	$ 592.09
Petition, Order, Stamps, Stationary, Mailing Notices and Extra time connected with this case - - - -	10.00
Total -	$ 602.09

LIST OF WATER USERS WITH PROPORTION OF COST ASSESSED AGINST EACH

"A" HOUSE USE STREAM

Assessment to be apportioned according to rights of users.

E. F. Chamberlain, house use stream - - - - - - - - -	2.00
William Simper, house use stream - - - - - - - - - - -	1.60
Daniel Hussy, house use stream - - - - - - - - - - - -	1.60
Chas. Stillman, Estate, house use stream - - - - - -	1.80
Samuel Stillman, house use stream - - - - - - - - - -	1.20
Thomas Osguthorpe, house use stream - - - - - - - - -	1.20
D. C. Brown, house use stream - - - - - - - - - - - -	.60
M. B. Skidmore, house use stream - - - - - - - - - - -	.60
Ruth B. Moses, Barbara Cummings, Sarah E.Neilson and Ester B. Moses, house use stream - - - - - - - - - -	3.00

"A" House Use Stream. cont.

James Russell, house use stream - - - - - - - - - - - - -	$ 3.10
Amos H. Neff, house use stream -of 0.028 CFS - - - -	1.00
Seymour H. Neff (Eugene Neff and Others)-of .017 CFS-	1.00
Amos H. Neff, Samuel Neff sodl to Furs Corporation and transferred to Furs Place in Canyon approximately 3 gallons per minute, three trips each at $5.00 each -	15.00
M. Q. Cannon pipeline - - - - - - - - - - - - - - - - - -	1.00
Amos B.Neff, John Neff, Walker, Albert Pixton, house use stream -	3.00
Seymour H. Neff, A. M. Seely, Stokes, Bagley, Chamberlain A. E.Lloyd and Successors, house use stream - - - -	4.00
W. J. O'Connor, Susan Emery Holmes, Mrs. Lamb - - - - -	1.70

"B" POWER

Utah Power and Light Company - - - - - - - - - - - - - - -	108.50

"C" IRRIGATION

Chas. Stillman Estate and Successors - - - - - - - - - -	7.80
Moses Estate and Successor - - - - - - - - - - - - - - - -	11.40
Frank Russell and Brigham Stillman Estate - - - - - - -	3.60
James Russell and Successors - - - - - - - - - - - - - -	3.60
Salt Lake County and Successors - - - - - - - - - - - -	.90
The Alexander Estate and Successors - - - - - - - - - -	10.40
Caroline Suderland Estate and Successors - - - - - - -	4.60
George E.Airis, Successors T. B.A.M. Froiseth - - - -	2.00
J. E. Morris Estate and Successors - - - - - - - - - - -	3.70
Samuel Stillman, Primary Rights - - - - - - - - - - - - -	1.50
Samuel Stillman, Secondary Rights - - - - - - - - - - -	.60
James Russell, Secondary Rights in Crissman Ditch - - -	.34
Julia Tripp, Joseph Alexander & Chas. Alexander, Secondary Rights in Tripp Ditch - - - - - - - - - - -	.75
E. F. Chamberlain and Successors - - - - - - - - - - - -	2.70
Thos. Osguthorpe, Osguthorpe Ditch - - - - - - - - - -	.90
D. C.Brown and Successors - - - - - - - - - - - - - - - -	1.80
H. B.Skidmore and Successors - - - - - - - - - - - - - -	.90
Keller Ditch -	42.00
Daniel Hussey and Successors - - - - - - - - - - - - - -	.90
John and Frank Neff Ditch, Amos H. Neff Ditch, Brigham Young Ditch and their Successors, Salt Lake City - -	139.20
Lower Mill Creek Irrigation Company and Successor, Salt Lake City -	175.69
White Ditch Irrigation Co., and Successors, Salt Lake City	34.11
TOTAL -	$602.09

It is therefore, ordered, adjudged and decreed, that the account of expenses, costs and salary of said water commissioner be and are hereby approved, and that the water users of water from said stream be and are hereby ordered to pay to said water commissioner the various amounts set opposite their respective names as their proportion of said salary, costs and expenses, and it is further expressly ORDERED AND ADJUDGED, that in the event of any of the parties shall fail to pay the amount of costs taxed

against them herein, or the costs heretofore taxed under the orders and decree of the court heretofore made, the payment of which they are delinquent herein that no water shall be delivered to such person or persons until the entire amount of costs, taxed herein and heretofore shall have been paid in full, and where costs are taxed against a ditch or company in this order and the orders and decree heretofore entered and the full amount of costs taxed against such ditch or company in this order and the orders and decree heretofore entered shall not have been paid, then no water shall be delivered to such ditch until said costs taxed herein and heretofore are paid in full and in the event of any person entitled to water from said ditch shall fail to pay the portion of costs fixed herein and heretofore, and the others using water from said ditch shall pay such portion, then no water shall be delivered to such delinquent person, but the portion which such delinquent person is entitled to, shall be delivered to the others on said ditch who shall have paid such cost, in the proportion in which they shall pay the same; and it is further ordered that the rights to discontinue the distribution of the water as herein provided shall be considered as a cumulative remedy in addition to the right to have execution issued on this order and the orders heretofore entered.

Dated in open court this 2nd day of December, 1939.

Allen G. Thurman
JUDGE.

ATTEST
WILLIAM J. KORTH
CLERK

By Wesx Keslee
Deputy Clerk

4449

FILED IN THE CLERK'S OFFICE
Salt Lake County, Utah
Dec 2 / 39
WILLIAM J. KORTH, Clerk 3rd Dist. Court
By Wm Lessee
Deputy Clerk

No. 4449

Last Volume

In the District Court of the Third Judicial District in and for Salt Lake County, State of Utah

PAPERS IN CASE OF

Martha Young

VS.

William Gordon etc

Filed _____, 19__

No file shall be taken from the Clerk's office except to be used in one of the six courts, and when taken there must be delivered to the Deputy Clerk of said court after each adjournment. No person shall take a file out of the Clerk's office without leaving a receipt therefor.

No. _____

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

MARTHA YOUNG, Administratrix of the estate of James Young, deceased, Plaintiff, vs. WILLIAM GORDON, Executor of the estate of Daniel Lund, deceased, et al., Defendants.	PETITION FOR ORDER TAXING COSTS FOR YEAR BEGINNING APRIL 15, 1936 No. 4449

Comes now T. F. McDonald, of Salt Lake County, State of Utah, your petitioner herein, and respectfully represents to the Court as follows:

1. That your petitioner was heretofore duly appointed by this Court as Water Commissioner for the Mill Creek Canyon stream of Salt Lake County, Utah, in the above entitled matter, and said petitioner ever since has been and now is the duly appointed and qualified water commissioner for said stream, and that he served and acted in such capacity during all of the irrigation year beginning April 15, 1936.

2. That in pursuance of the duties and responsibilities upon him devolving as said Water Commissioner of said stream, your petitioner has, during all of the irrigation season beginning April 15, 1936, diligently and continuously acted as and performed the duties of said Water Commissioner in distributing the waters of said stream among the various users thereof according to their respective rights therein, and has in such capacity supervised the construction and installation of such weirs and measuring devices for the distribution of said waters as were necessary or proper, and in this connection has rendered engineering services necessary thereto, has caused the channel of said stream to be cleaned as necessary, and in the performance of his said duties as said Water Commissioner your petitioner has been put to some costs and has incurred some expenses, as more fully appears herein, which said costs and expenses should be paid by the users of water from said stream.

3. That the irrigation season for the users of water from said Mill Creek Canyon stream for the irrigation year beginning April 15, 1936 is now closed.

4. Your petitioner further represents that the duties and responsibilities devolving upon him as said water commissioner as aforesaid, and the demands upon his time and services as such, have materially increased during the past two (2) years, due to the fact that a much closer check is being maintained by the users of water from said stream on their respective distributive shares, which requires more detailed and constant supervision on the part of your petitioner to properly regulate the flow of the waters of said stream among the various users thereof as their rights and interests may appear and that by reason of the fact that several changes in the regulation of the flow of said water are now of necessity made daily it has become necessary for your petitioner to make changes and measurements from one (1) to three (3) times daily and work to the end that a proper distribution and regulation of the water may be effected and maintained.

5. Your petitioner also represents that the users of houseuse streams should pay their fair proportion of the cost and expense to your petitioner in the performance of his duties as said water commissioner in the supervision and distribution of said "house use" streams and "secondary right" streams.

6. Your petitioner further represents that the Keller Ditch, the same having certain rights in and to part of the flow of said stream, is not incorporated nor organized, nor has said ditch any water master or duly authorized representative to assist in the distribution of the water belonging to said Keller Ditch, with the result that many attempts are made by irresponsible users to steal water from the main channel thus requiring additional time and expense on the part of your petitioner in the regulation of the flow of water in said ditch which should be paid for by the users of water therefrom, also the John and Frank Neff Ditch gives considerable trouble on account of water thieves.

7. Your petitioner represents that the following is a full, true and correct statement of his expenses as Water Commissioner aforesaid, including his salary and engineering fee as such for the year beginning April 15, 1936, together with a list of the users of water from said Mill Creek Canyon stream and a statement of the amount assessed against them, based upon their respective rights and interests in the flow of said stream and the proportion of the time, costs and expense of said Commissioner in the supervision and distribution of the respective amounts of water to which they are entitled.

STATEMENT OF COSTS AND EXPENSES

Court Commissioner's Salary- - - - - - - - - - - - - - - - - -	$591.62
Stenographic services in connection- - - - - - - - - - - - - -	1.00
with this petition and court order.	
Stenographic services, notice to water users, stamps, etc. -	5.00
Cleaning creek channel, 2 days at $3.50 per day -	7.00
Total	$604.62

LIST OF WATER USERS WITH
PROPORTION OF COST ASSESSED AGAINST EACH

A. HOUSE USE STREAM

Assessment to apportioned according to rights of users.

E. F. Chamberlain, house use stream - - - - - - - - - - - - - - - - $	2.20
William Simper, house use stream- - - - - - - - - - - - - - - - -	1.60
Daniel Hussy, house use stream - - - - - - - - - - - - - - - - -	1.60
Chas. Stillman Estate, house stream- - - - - - - - - - - - - - -	1.80
Samuel Stillman, house use stream- - - - - - - - - - - - - - - -	1.20
Thomas Osguthorpe, house use stream- - - - - - - - - - - - - - -	1.20
D. C. Brown, house use stream- - - - - - - - - - - - - - - - - -	.60
H. B. Skidmore, house use stream - - - - - - - - - - - - - - - -	.60
Ruth B. Moses, Barbara Cummings, Sarah E. Nielson, and Esther B. Moses, house use stream - - - - - - - - - - - - - -	3.00
James Russell, house use stream - - - - - - - - - - - - - - - - -	3.10
Amos H. Neff, Dave and Samuel Neff, house use stream- - -	.45
Seymour H. Neff, Eugene Neff & others, house use stream -	.45
Amos B. Neff, John Neff, Walker ect., house use stream- -	1.00
Seymour H. Neff, A. M. Seely, Stokes, Bagley, Chamberlain and Eugene Neff etc., house use stream - - - - - - - - - -	1.92
W. J. O'Conner, Susan Emery Holmes, etc., - - - - - - - - -	1.71

B. Power

Utah Power and Light Company - - - - - - - - - - - - - - - - -	$108.50

C. Irrigation

Stillman Estate and Successors - - - - - - - - - - - - - - - -	7.80
Moses Estate and Successors - - - - - - - - - - - - - - - - - -	11.40
Frank Russell and Brigham Stillman Estate - - - - - - - - -	5.60
James Russell and Successors - - - - - - - - - - - - - - - - -	3.60
Salt Lake County and Successors - - - - - - - - - - - - - - -	.90
The Alexander Estate and Successors - - - - - - - - - - - - -	10.40
Caroline Suderland Estate and Successors - - - - - - - - - -	4.60
George E. Airis, Successors to B. A. M. Froiseth - - - - -	2.00
J. E. Morris Estate and Successors - - - - - - - - - - - - -	5.70
Samuel Stillman, Primary Rights - - - - - - - - - - - - - - -	1.50
Samuel Stillman, Secondary Rights - - - - - - - - - - - - - -	.60
James Russell, Secondary Rights in Crissman Ditch - - - -	.32
Julia Tripp, Joseph Alexander & Chas. Alexander, Secondary Rights in the Tripp Ditch - - - - - - - - - - - - - - - - - -	.75
E. F. Chamberlain and Successors - - - - - - - - - - - - - -	2.70
Thos. Osguthorpe in Osguthorpe Ditch - - - - - - - - - - - -	.90
D. C. Brown and Successors - - - - - - - - - - - - - - - - - -	1.80
H. B. Skidmore and Successors - - - - - - - - - - - - - - - -	.90
Keller Ditch -	40.32
Daniel Hussy and Successors - - - - - - - - - - - - - - - - -	.90
John & Frank Neff Ditch, Amos H. Neff Ditch, Brigham Young Ditch and their Successors, Salt Lake City - - - - - - - -	150.00
Lower Mill Creek Irrigation Company and Successors, Salt Lake City -	180.00
Whit Ditch Irrigation Co., & Successor, Salt Lake City - -	45.00
Total	$604.62

WHEREFORE, your petitioner prays that the parties using the waters of Mill Creek Canyon Stream shall be ordered to pay such amounts respectfully as may be necessary for the payment of the said salary, costs and expenses of your petitioner including the preparation and presentation of this petition, and that each user be taxed the amount set opposite his or its name in the foregoing list.

O. F. McDonald
Petitioner

STATE OF UTAH)
) SS.
COUNTY OF SALT LAKE)

T. F. MCDONALD, having first been duly sworn upon oath deposes and says that he is the petitioner above named and that he has read the foregoing petition and knows the contents thereof, that the same is true of his own knowledge, except as to those matters therein stated on his information and belief and as to such matters he believes the same to be true.

T. F. McDonald

Subscribed and sworn to before me this 20th day of November, 1936.

Mabel Christensen
Notary Public

Commission Expires: Jan 18, 1939
Residence: Salt Lake City, Utah

4449

FILED IN THE CLERK'S OFFICE
Salt Lake County, Utah
NOV 20 1936
WILLIAM J. KOUTH, Clerk and Dist. Court
By [signature]
Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

MARTHA YOUNG, Administratrix of the estate of James Young, Deceased, Plaintiff vs. WILLIAM GORDON, Executor of the Estate of Daniel Lund, Deceased, et al, Defendants.	NOTICE ON PETITION FOR HEARING Case No. 4449

The petition of T. F. MCDONALD, Water Commissioner for the Mill Creek Stream, having been duly filed, praying for an order taxing costs for the year beginning April 15, 1936.

IT IS HEREBY ORDERED that the time for the hearing of the said petition be and it is hereby fixed at the hour of 10 A. M. on the 5th day of Dec., 1936 before the Honorable ROGER I. MCDONOUGH, Judge, in the courtroom of the above entitled Court at Salt Lake City, Utah.

It is further ordered that five (5) days' notice of said hearing be given in writing to the respective water users to be taxed.

Dated: Nov. 20, 1936.

Roger I. McDonough
District Judge

ATTEST
WILLIAM J. KORTH
CLERK
By Jack Hill
Deputy Clerk

mcc

4449

FILED IN THE CLERK'S OFFICE
Salt Lake County, Utah
NOV 20 1936
WILLIAM J. KOATH, Clerk 3rd Dist. Court
By _____
Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR THE SALT LAKE COUNTY, STATE OF UTAH

- -

MARTHA YOUNG, Administratrix of the Estate of James Young, Deceased,	:	
Plaintiff,	:	
vs.	:	
WILLIAM GORDON, Executor of the Estate of Daniel Lund, Deceased, et, al,	:	N O T I C E Case No. 4449
Defendant.	:	

- - - - - - - - - - -

T. F. McDonald being duly sworn, deposes and says that, I am Court Commissioner of Mill Creek Stream, that on the 30th day of November, 1936, I enclosed nineteen (19) copies of the attached letter in nineteen (19) envelopes to wit:

Mr. & Mrs. George F. Taylor, Sugar House, R D #1.
Fisher Harris, Attorney for Salt Lake City
Allen T. Sanford, Attorney for Upper Ditches
Corey and Inman, Attorneys for Utah Power & Light Co.
Bagley, Judd, and Ray, Attorneys for Mrs. O'Connor
L. L. Bagley, Attorney for Small Neff Ditches
Joseph Stillman, Sugar House, R D #1.
Mrs. William Simper
Mrs. Samuel Stillman
Thomas Osguthorpe
Mrs. Nellie Brown
Horace H. Cummings, 139 McClellan Street
Mrs. F. N. Stillman
Thomas Osguthorpe
Daniel Russel
Mrs. John Henry Osguthorpe, Sugar House, R D #1
Keller Ditch Co.
Mrs. Brigham Stillman
Mrs. James Russel

And that I fully prepaid the postage upon said envelopes and enclosures therein, and that I deposited said envelopes addressed, sealed, and postpaid in the post office at Murray City of the State of Utah.

T. F. McDonald

Subscribed and Sworn to before me this 2nd day of ~~November~~ December, 1936.

Herman J. Hogensen
Notary Public

My Commission Expires 20th day of February 1939

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

- -

MARTHA YOUNG, Administratrix of the Estate of James Young, Deceased,	:	
Plaintiff,	:	
vs.	:	NOTICE
WILLIAM GORDON, Executor of the Estate of Daniel Lund, Deceased, et, al,	:	Case No. 4449
Defendants.	:	

- - - - - - - -

To the users and owners of the Mill Creek Stream and to the following Attorneys for the respective users and owners of such waters. Namely:

Mr. & Mrs. George F. Taylor, Sugar House, RD #1
Fisher Harris, Attorney for Salt Lake City
Allen T. Sanford, Attorney for Upper Ditches
Corey and Inman, Attorneys for Utah Power & Light Co.
Bagley, Judd, and Ray, Attorneys for Mrs. O'Connor
L. L. Bagley, Attorney for Small Neff Ditches
Joseph Stillman, Sugar House, RD #1
Mrs. William Simper
Mrs. Samuel Stillman
Thomas Osguthorpe
Mrs. Nellie Brown
Horace H. Cummings, 159 McClellan Street
Mrs. F. N. Stillman
Daniel Russel
Mrs. John Henry Osguthorpe, Sugar House, RD #1
Keller Ditch Co.
Mrs. Brigham Stillman
Mrs. James Russel

You will please take notice that the hearing upon the petition heretofore filed on the above entitled cause by T. F. McDonald, Water Commissioner for the Mill Creek Stream, will be held before the Honorable Roger I. McDonough, one of the Judges of the above entitled Court at the City and County Building, Salt Lake City, Utah, at the hour of 10:00 A. M. on the 5th day of December, 1936, for the purpose of fixing and ordering the payment as taxable costs of such sums of money as set out in the said petition, deemed as necessary to cover the costs and expenses of work done for the year beginning April 1, 1936.

Dated this 2nd Day of December A. D., 1936.

WILLIAM J. KORTH
Clerk, 3rd Dist Court

Signed Alvin Reddington
Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

- -

MARTHA YOUNG, Administratrix of the Estate of James Young Deceased,	)	
Plaintiff,	)	
vs.	)	ORDER TAXING COSTS FROM APRIL 15, 1936, to APRIL 15, 1937.
WILLIAM GORDON, Executor of the Estate of Daniel Lund, Deceased, et al,	)	No. 4449
Defendants.	)	

- -

T. F. McDonald having heretofore been duly appointed as Water Commissioner of Mill Creek Canyon Stream, in Salt Lake County, Utah in the above entitled matter, and having acted in such capacity for the year beginning April 15, 1936, and having heretofore filed herein his petition for an order taxing costs against the users of water of said stream to pay his salary as such water commissioner together with the costs and expenses incident to the distribution and regulation of the waters of said stream, and said matter coming on regularly to be heard before the above entitled Court this 5 day of December, 1936, and it appearing to the satisfaction of the Court that the expenses, costs and salary of said water commissioner for the year beginning April 15, 1936, together with the amounts proportioned and assessed against the various water users of water from said stream are as follows:

STATEMENT OF COSTS AND EXPENSES.

Court Commissioner's Salary -	$591.62
Stenographic services in connection with this petition and court order - - - - - - - - - - - - - - - - -	1.00
Stenographic services, notice to water users, stamps, etc. -	5.00
Cleaning creek channel, 2 days at $3.50 per day -	7.00
Total	$604.62

LIST OF WATER USERS WITH PROPORTION
OF COST ASSESSED AGAINST EACH.

A. HOUSE USE STREAM

Assessment to apportioned according to rights of Users:

E. F. Chamberlain, house use stream	$ 2.20
William Simper, house use stream	1.60
Daniel Hussy, house use stream	1.60
Chas. Stillman Estate, house use stream	1.80
Samuel Stillman, house use stream	1.20
Thomas Osguthorpe, house use stream	1.20
D. C. Brown, house use stream	.60
H. B. Skidmore, house use stream	.60
Ruth B. Moses, Barbara Cummings, Sarah E. Nielson, and Esther B. moses, house use stream	3.00
James Russell, house use stream	3.10
Amos. H. Neff, Dave & Samuel Neff, house use stream	.45
Seymour H. Neff, Eugene Neff and others, house use stream	.45
Amos B. Neff, John Neff, Walter, etc., house use stream	1.00
Seymour H. Neff, A. M. Seely, Stokes, Bagley, Chamberlain and Eugene Neff, etc., house use stream	1.92
W. J. O'Conner, Susan Emery Holmes, etc.,	1.71

B. POWER

Utah Power and Light Company	108.50

C. IRRIGATION

Stillman Estate and Successors	7.80
Moses Estate and Successors	11.40
Frank Russell and Brigham Stillman Estate	3.60
James Russell and Successors	3.60
Salt Lake County and Successors	.90
The Alexander Estate and Successors	10.40
Caroline Suderland Estate and Successors	4.60
George E. Airis, Successors to B. A. M. Froiseth	2.00
J. E. Morris Estate and Successors	3.70
Samuel Stillman, Primary Rights	1.50
Samuel Stillman, Secondary Rights	.60
Julia Tripp, Joseph Alexander & Chas, Alexander, Secondary Rights in the Tripp Ditch	.75
James Russell, Secondary Rights in Crissman Ditch	.32
E. F. Chamberlain and Successors	2.70
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H. B. Skidmore and Successors	.90
Keller Ditch	40.32
Daniel Hussy and Successors	.90
John and Frank Neff Ditch, Amos H. Neff Ditch, Brigham Young Ditch and their Successors, Salt Lake City	150.00
Lower Mill Creek Irrigation Company and Successors, Salt Lake City	180.00
Whit Ditch Irrigation Co., & Successors, Salt Lake City	45.00
Total	$604.62

It is therefore, ordered, adjudged and decreed, that the account of expenses, costs and salary of said water commissioner be and are hereby approved, and that the waters users of water from said stream be and are hereby ordered to pay to said water commissioner the various amounts set opposite their respective names as their proportion of said salary, costs and expenses, and it is further expressly ORDERED AND ADJUDGED, that in the event of any of the parties shall fail to pay the amount of costs taxed against them herein, or the costs heretofore taxed under the orders and decree of the court heretofore made, the payment of which they are delinquent herein that no water shall be delivered to such person or persons until the entire amount of costs, taxes herein and heretofore shall have been paid in full, and where costs are taxed against a ditch or company in this order and the orders and decree heretofore entered and the full amount of costs taxed against such ditch or company in this order and the orders and decree heretofore entered shall not have been paid, then no water shall be delivered to such ditch until said costs taxed herein and heretofore are paid in full, and in the event of any person entitled to water from said ditch shall fail to pay the portion of costs fixed herein and heretofore, and the others using water from said ditch shall pay such portion, then no water shall be delivered to such delinquent person, but the portion which such delinquent person is entitled to, shall be delivered to the others on said ditch who shall have paid such cost, in the proportion in which they shall pay the same; and it is further ordered that the rights to discontinue the distribution of the water as herein provided shall be considered a cumulative remedy in addition to the right to have execution issued on this order and the orders heretofore entered.

Done in open court this 5th day of Dec., 1936.

Roger L. McDonough
JUDGE

ATTEST
WILLIAM J. KORTH
By [illegible] CLERK
Deputy Clerk

4449

FILED IN THE CLERK'S OFFICE
Salt Lake County, Utah
DEC 5 - 1936
WILLIAM J. KORTH, Clerk 3rd Dist. Court
By _____
Deputy Clerk