

FILE OF  
WATER RIGHTS AND DECREES  
MAIN KANNAH CREEK  
July, 1977

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LIST OF WATER RIGHTS-MAIN KANNAH CREEK

MAY 1977

Stream Priority Position	State Tab No.	Name of Ditch or Reservoir (Name of Water Right)	Notes	Approp- riation Date	Decree Date	Decreed Amount CFS-AF
		Adjudication and Administration	1			
Par	81	City of Grand Junction Pipeline	2	12/30/81	11/11/11	7.81 CFS
1	82	William J. Ponsford Ditch	3	12/31/81	7/25/88	.60 CFS
2	196	Kannah Creek Extension Right	4	11/04/84	7/25/88	15.60 CFS
		Kannah Creek Extension Ditch	6.20 CFS 4			
		Smith Irrigating Ditch	2.88 CFS 5			
		Northwestern Ditch	.29 CFS 6			
		Brown & Campion Ditch	4.57 CFS 7			
		Boles, Williams & Morrison Ditch	.29 CFS 10			
		Juniata Ditch	1.37 CFS 11			
		Total	15.60 CFS			
3	221	Smith Irrigating Ditch	5	8/11/85	7/25/88	1.30 CFS
4	221	Northwestern Ditch	6	8/11/85	7/25/88	4.00 CFS
5	226	Brown & Campion Ditch	7	11/14/85	7/25/88	8.60 CFS
6	230	Sullivan Ditch	8	12/03/85	7/25/88	3.57 CFS
7	237	Smith Irrigating Ditch	5	3/26/86	7/25/88	19.60 CFS
8	269	Brown & Campion Ditch	7	12/16/86	7/25/88	22.00 CFS
9	302	Washburn & Downing Ditch	9	1/21/88	7/25/88	2.77 CFS

Stream Priority Position	State Tab No.	Name of Ditch or Reservoir (Name of Water Right)	Notes	Approp- riation Date	Decree Date	Decreed Amount CFS-AF
10	304	Boles, Williams & Morrison Ditch	10	1/23/88	7/25/88	2.70 CFS
11	306	Juniata Right Diversion by Kannah Creek Highline Ditch	11	1/25/88	7/25/88	21.25 CFS
12	1046	Grand Mesa Reservoir No. 1	12	8/01/87	6/01/16	780 AF
None	1048	Coulter Ditch	13	8/01/89	6/01/16	1.00 CFS
None	1050	Turnahan & Bowman Seepage Ditch	14	4/01/90	6/01/16	1.50 CFS
None	1051	Van Pelt & Cox Seep Ditch	15	5/01/90	6/01/16	1.00 CFS
13	1052	Scales Reservoir No. 1	12	12/31/91	6/01/16	215 AF
14	1054	Scales Reservoir No. 3	12	12/31/92	6/01/16	145 AF
15	1060	Bolen, Anderson & Jacob Ditch	16	7/25/01	6/01/16	9.59 CFS
16	1061	Grand Mesa Reservoir No. 8	12	12/31/01	6/01/16	382 AF
17	1062	Chambers (Dry Creek Res. & Supply)	17	6/15/03	6/01/16	600 AF
18	1064	Grand Mesa Reservoir No. 9	12	12/31/04	6/01/16	332 AF
19	1064	Grand Mesa Reservoir No. 6	12	12/31/04	6/01/16	76.24 AF
20	1065	Raber-Click Res. (Deep Creek No. 1)	18	9/15/06	6/01/16	491.4 AF
21	1065	Deep Creek Reservoir No. 2	19	9/15/06	6/01/16	525.64 AF
22	1067	Kannah Creek Highline Ditch	20	3/08/08	6/01/16	49.11 CFS
23	1003	Florence H. Berry Ditch	21	4/25/14	6/01/16	1.04 CFS

Stream Priority Position	State Tab No.	Name of Ditch or Reservoir (Name of Water Right)	Notes	Approp- riation Date	Decree Date	Decreed Amount CFS-AF
24	2184	Juniata Reservoir (Original)	22	11/01/11	7/25/41	400.094 AF
25	2188	Anderson Reservoir No. 1	23	11/24/11	7/25/41	466.0 AF
26	2190	Flowing Park Reservoir	24	11/27/11	7/25/41	782.2 AF
27	2196	Sullivan-Bowen Ditch	25	7/28/14	7/25/41	.26 CFS
28	2197	Bowen Private Ditch	26	8/08/14	7/25/41	.72 CFS
29	2198	William H. Williams Ditch	27	8/10/14	7/25/41	1.17 CFS
30	2200	Raber Highline Ditch	28	9/18/15	7/25/41	1.17 CFS
31	2202	Smith Irrigating Ditch	5	5/01/20	7/25/41	.45 CFS
32	2204	Raber Davis Ditch	29	10/27/21	7/25/41	.34 CFS
33	2206	Anderson Reservoir No. 2	30	10/05/28	7/25/41	568.4 AF
34	2208	Grand Junction Flow Line	32	5/01/29	7/25/41	3.91 CFS
35	2209	Raber Coal Creek Ditch	31	4/01/30	7/25/41	3.38 CFS
36	2210	Deep Creek Res. No. 2 Supply Ditch	32	7/15/31	7/25/41	20.0 CFS
37	2211	Black Ditch	33	3/15/33	7/25/41	.62 CFS
38	2240	Raber Coal Creek Supply Ditch	34	1/15/37	7/25/41	2.21 CFS
Note	2421	Sullivan Ranch Drain	35	11/15/37	7/25/41	.13 CFS

Stream Priority Position	State Tab No.	Name of Ditch or Reservoir (Name of Water Right)	Notes	Approp- riation Date	Decree Date	Decreed Amount CFS-AF
39	2436	Juniata Ditch Enlarged	11	9/01/39	7/25/41	54.0 CFS
39	2436	Purdy Mesa Reservoir (Hallenbeck Res.)	36	9/01/39	7/01/41	863.0 AF
40	2439	Kannah Creek Highline Ditch	20	11/01/39	7/01/41	18.79 CFS
40	2439	Smith Irrigating Ditch	5	11/01/39	7/01/41	.58 CFS
40	2439	Sullivan Ditch	8	11/01/39	7/25/41	1.29 CFS
40	2439	Northwestern Ditch	6	11/01/39	7/25/41	1.78 CFS
40	2439	Kannah Creek Extension Ditch	4	11/01/39	7/25/41	4.39 CFS
41	2540	Brown & Campion Ditch	7	4/18/83	7/21/59	1.00 CFS
42	2541	Juniata Ditch	11	1/01/84	7/21/59	2.00 CFS
43	2542	Kannah Creek Extension Ditch	4	11/01/84	7/21/59	1.00 CFS
44	2543	Northwestern Ditch	6	8/11/85	7/21/59	.50 CFS
45	2544	Sullivan Ditch	8	12/03/85	7/21/59	.50 CFS
46	2545	Gammage Highline Ditch	37	11/01/92	7/21/59	.20 CFS
46	2545	Gammage Highline Ditch	37	11/01/92	7/21/59	1.35 CFS
47	2550	Raber-Click Res. (Hallenbeck No. 2)	18	10/17/23	7/21/59	526.11 AF
48	2553	William J. Ponsford Ditch	3	10/01/29	7/21/59	.20 CFS

Stream Priority Position	State Tab No.	Name of Ditch or Reservoir (Name of Water Right)	Notes	Approp- riator Date	Decree Date	Decreed Amount CFS-AF
49	2610	Carson Lake	38	6/01/46	7/21/59	637.0 AF
50	2733	William J. Ponsford Ditch	3	6/01/51	7/21/59	.40 CFS
51	2764	Juniata Reservoir Enlarged	39	6/01/53	7/21/59	2688.41 AF
52	2765	Juniata Ditch Second Enlargement	39	6/07/53	7/21/59	75.0 CFS
53	2903	Northwestern Ditch	6	6/01/55	7/21/59	1.50 CFS

## NOTE 1

### ADJUDICATION AND ADMINISTRATION

The water rights of main Kannah Creek have been adjudicated in four General Adjudication court actions, dated July 25, 1888; June 1, 1916; July 25, 1941; and July 21, 1959.

The water shed runoff is over appropriated in three or four years in 10 with no water spilling to the Gunnison River. An excellent opportunity exists for a better use of the available runoff by improvement of facilities, installing measuring devices and the use of present reservoirs in the control of variation of snowmelt runoff.

The attached list is a tabulation of the decreed rights. The reported data showing stream priority, state tabulation, appropriation date, decreed date and the amount decreed are taken from Court or State Engineer records. Experience has shown that the figures on decreed amount may or may not represent the true capacity of the reservoir or the diversion ditch for which the water was decreed.

The administration of the diversions of water from the Creek during the irrigation season is handled by a Water Commissioner employed by the state. The scheduling of water releases from the water shed reservoirs is presently handled by an informal reservoir pooling of water by the several owners of reservoirs.

Due to a wide range of variation of flow, the administration of the creek during the snowmelt period is very difficult, and also the turning of reservoir water on and off results in a variation of flow that is difficult of administration. Much of this difficulty could easily be corrected by a cooperative use of existing and an expansion of facilities.

NOTE 2

GRAND JUNCTION CITY FLOW LINE

Stream Priority - Paramount for	7.81 cfs
Stream Priority - No. 34 for	<u>3.91</u> cfs
Total	11.72 cfs

The Paramount Right of the City of Grand Junction originated from a condemnation of the water rights of main Kannah Creek. The right was decreed by the District Court of Mesa County, dated November 11, 1911. At the time of the water right condemnation, the North Fork of Kannah was considered a separate stream and as such was not included in the condemnation suit. The decree recites that the city shall have a first, superior and a paramount right to a continuous flow of 300 statutory inches (7.81 CFS) of water per second of time over and above all other rights of the creek.

After a challenge of the paramount right by several of the ranchers of the Kannah Creek area, the Colorado Supreme Court has now interpreted the right of the city to be all inclusive for any desired purpose, including reservoir storage. This interpretation is important, since the city may find it desirable in certain years that the winter flow of the creek be stored in the Hardy Mesa Reservoir, the Juniata Reservoir, or in Carson Lake.

The Grand Junction Flow line right for 3.91 CFS is a supplemental right to the 7.81 CFS Paramount Right. The two rights provide for a total pipeline diversion of 11.72 CFS. Under the recent ruling of the court, the city may store the 7.81 CFS or any part thereof in any city reservoir, and at the same time divert the full 3.91 CFS for city pipeline use.

The Flow line right of 3.91 CFS is senior to any wintertime diversion right of Kannah Creek. During the wintertime or nonirrigation season, the city may thus divert the full amount of 11.72 CFS from Kannah Creek and, if it desires, 7.81 CFS of the diversion may be used for storage purposes in any city reservoir.



NOTE 3

WILLIAM J. PONSFORD DITCH

Stream Priority No. 1 for .60 CFS
Stream Priority No. 48 for .20 CFS
Stream Priority No. 50 for <u>.40</u> CFS
Total 1.20 CFS

The William J. Ponsford Ditch diverts from lower Kannah Creek. The ditch right for .60 CFS is supplied from Creek inflow between the head of the ditch and the headgate of the Kannah Creek Extension Ditch located a short distance upstream. The head of the Kannah Creek Extension Ditch is considered the point at minimum flow for water administration purposes. The Whiting Ranches is the owner of the water right and irrigation land.

The right of .20 CFS is for domestic and stock water use and carries an effective priority date of March 27, 1944. The right was granted along with domestic rights for other Kannah Creek ditches. The right of .40 CFS is for supplemental irrigation and has an effective priority date of June 1, 1951.

NOTE 4

KANNAH CREEK EXTENSION DITCH RIGHT

Stream Priority No. 2 for	15.60 CFS
Stream Priority No. 40 for	4.39 CFS
Stream Priority No. 43 for	<u>1.00</u> CFS
Total	20.99 CFS

The right for 15.60 CFS was originally decreed for diversion by the Kannah Creek Extension Ditch. Several transfers of point of diversion have been made for various amounts of the water. The water diversions chargeable against the Kannah Creek Extension right and the ditch to which the water is used are given in the following table:

Kannah Creek Extension Ditch	6.20 CFS
Brown and Campion Ditch	4.57 CFS
Smith Irrigating Ditch	2.88 CFS
Northwestern Ditch	.29 CFS
Boles, Williams & Morrison Ditch	.29 CFS
Juniata Ditch	<u>1.37</u> CFS
Total	15.60 CFS.

The availability of water for this right is in large measure dependent on the water commissioner shrinkage charge for release and conveyance of Reservoir water. If it were not for the Grand Mesa Reservoirs, the water flow available for diversion under this right would, in the late summer months, be a very nominal amount.

Since the land irrigated under the Kannah Extension Ditch is located either downstream from point of minimum flow or out of the Kannah Creek drainage basin, the water as originally adjudicated to the ditch would not provide any return flow for use by other appropriators. The transfer of water for diversion by some upstream ditches provides a return flow benefit to other appropriators. The land irrigated by the 6.20 CFS (non-transferred) portion of the right is a heavy type soil of low crop production capability.

It is interesting to note that the water remaining in the Kannah Creek Extension Ditch is less than forty percent of that originally adjudicated.

The right of 4.39 CFS is for supplemental irrigation and has an effective priority date of November 1, 1939. The appropriators reside in the vicinity of Whitewater. The right of 1.00 is for domestic and stock water use. The area of use for the domestic and stock water is the old Henry Holland ranch, now a part of the Whiting property. The effective priority date is July 25, 1941.

NOTE 5

SMITH IRRIGATING DITCH

Stream Priority No. 2 for	2.88	CFS
Stream Priority No. 3 for	1.30	CFS
Stream Priority No. 7 for	19.60	CFS
Stream Priority No. 31 for	.45	CFS
Stream Priority No. 40 for	<u>.58</u>	CFS
Total	24.81	CFS

Water diverted by the Smith Irrigating Ditch is largely used on land located in the drainage basin of Indian Creek South of Kannah. The lands are generally of heavy type soil of somewhat limited capacity for crop production. The maintained capacity of the ditch in past years has generally been somewhat less than the 24.80 CFS of adjudicated right. The water right and irrigated land are held by the Whittings, W. D. Bradbury, and Gay Johnson.

The 2.88 CFS right is a transfer from the original right of the Kannah Creek Extension Ditch. The 1.30 CFS is the original adjudicated right of the ditch. The 19.60 CFS is for additional irrigated land. The .45 CFS right has an effective priority date of August 3, 1934, and the .58 right has an effective priority date of November 1, 1939. Both rights are for supplemental irrigation.

NOTE 6

NORTHWESTERN DITCH

Stream Priority No. 2	for	.29	CFS
Stream Priority No. 4	for	4.00	CFS
Stream Priority No. 40	for	1.78	CFS
Stream Priority No. 44	for	.50	CFS
Stream Priority No. 53	for	<u>1.50</u>	CFS
Total		8.07	CFS

The land irrigated by the Northwestern Ditch consists generally of river bottom soil, located north of Kannah Creek and downstream from the Junction of the North Fork. The Whitings and Gay Johnson are the owners of the water right and irrigated land.

The right of .29 CFS is a transfer from the right of the Kannah Creek Extension Ditch. The 4.00 CFS is the original ditch adjudication. The 1.78 CFS is an award for a supplemental diversion as given in a decree granting additional rights to several Kannah Creek ditches. The right of .50 CFS is for domestic and stock watering. The right of 1.50 CFS is for supplemental irrigation. All rights except for the .29 CFS and the 4.00 CFS are junior to the storage right of the Purdy Mesa reservoir of the City of Grand Junction.

NOTE 7

BROWN AND CAMPION DITCH

Stream Priority No. 2	for	4.57	CFS
Stream Priority No. 5	for	8.60	CFS
Stream Priority No. 8	for	22.00	CFS
Stream Priority No. 41	for	<u>1.00</u>	CFS

Total 36.17 CFS

The principal use of the Brown and Campion Ditch water is for the irrigation of land in Whiskey Flats north of the Kannah Creek basin. Only a very small acreage of the irrigated land contributes any return flow water to Kannah Creek. In past years, the maintained capacity at the ditch was materially less than the decreed right; however, in more recent years, a sizable acreage of new, not previously irrigated land of John Whiting is now dependent on the ditch for irrigation water.

The land of Whiskey Flats is generally a heavy type soil of limited capacity for crop production. The owners of the water right and irrigated land include the Whitings, Gay Johnson, Robert Coburn, Clifford Davis, and James Blair.

The 4.57 CFS right is a transfer from the Kannah Creek Extension Ditch right. The 8.60 CFS is the original adjudicated right of the ditch. The 22.00 CFS is for additional irrigated land, and the 1.00 CFS is for domestic and stock water use. The domestic and stock water right carries an effective priority date of July 25, 1941 and is decreed for use in the Whiskey Flats basin.

NOTE 8

SULLIVAN DITCH

Stream Priority No. 6	for	3.57	CFS
Stream Priority No. 40	for	1.29	CFS
Stream Priority No. 45	for	<u>.50</u>	CFS
Total		5.36	CFS

The Sullivan Ditch is used for the irrigation of a small tract of river bottom land located south of Kannah Creek and upstream from the junction of the North Fork. Jay Olsen is the owner of the land and water right.

The water right for 3.57 CFS is the original ditch adjudication. The right for 1.29 CFS is an award for supplemental irrigation. The .50 CFS is an award for domestic and stock water use and carries an effective priority date of July 25, 1941.

NOTE 9

WASHBURN AND DOWNING DITCH

Stream Priority No. 9 for 2.77 CFS

The Washburn and Downing Ditch irrigates a small acreage of river bottom land located south of Kannah Creek upstream from the junction of the North Fork with main Kannah Creek. The Whitings are the present owners of the land and the water right.

NOTE 10

BALES, WILLIAMS AND MORRISON DITCH

Stream Priority No. 10 for 2.70 CFS

The Bales, Williams and Morrison Ditch irrigates a small tract of river bottom land located south of Kannah Creek and upstream from the junction of the North Fork with main Kannah Creek. The land irrigated and water right are held by Keith Clark and Donald Dowd.

NOTE 11

JUNIATA DITCH

Stream Priority No. 2 for 1.37 CFS  
 Stream Priority No. 11 for 21.25 CFS  
 Stream Priority No. 39 for 54.00 CFS  
 Stream Priority No. 42 for 2.00 CFS  
 Stream Priority No. 52 for 75.00 CFS

Total 153.62 CFS

The Juniata Ditch water diversion rights as shown above were awarded in four separate decrees.

The 1.37 CFS right is water transferred to the ditch from the Kannah Creek Extension right of 15.60 CFS. The right is the property of the City of Grand Junction.

The 21.25 CFS right was originally adjudicated for diversion by the Juniata ditch and later, due to unstable canal bank, was transferred for diversion by the Kannah Creek Highline ditch. The diverted water is returned to the Juniata about  $\frac{1}{2}$  mile downstream. The water is used for the irrigation of land on Purdy Mesa. The ownership of the 21.25 CFS water right is represented by stock in the Juniata Ditch Company as follows:

Whiting Ranches	224 Sh	44.8%	9.52 CFS
Pavlakis & Co.	169 Sh	33.8%	7.18 "
Crafts Black	36 Sh	7.2%	1.53 "
Robert Black	20 Sh	4.0%	.85 "
Ed Studebaker	21 Sh	4.2%	.64 "
Jeff Bonnell	15 Sh	3.0%	.64 "
City of Grand Junction	12 Sh	2.4%	.51 "
Pat Dalton	<u>3</u> Sh	<u>.6%</u>	<u>.13</u> "
Total	500 Sh	100.0%	21.25 CFS

The right for 54.00 CFS was appropriated for direct flow irrigation of land on Purdy Mesa and the filling of the Purdy Mesa Reservoir. The Purdy Mesa Reservoir water right has the same appropriation date as the 54.00 CFS of direct flow water.



The ownership of the 54.00 CFS of water right is as follows:

City of Grand Junction	39 CFS
Whiting Ranches	10 "
Stockholders of Juniata Ditch Co.	<u>5</u> "
Total	54 CFS.

The 2.00 CFS right is for domestic and stock water use. It was adjudicated along with a domestic right for the other Kannah Creek ditches. The right has an effective priority date of July 25, 1941.

The 75.00 CFS right was appropriated for the filling of the Juniata Reservoir Enlarged which is held by the City of Grand Junction.

NOTE 12

GRAND MESA RESERVOIR COMPANY

Grand Mesa No. 1 Stream Priority No. 12 for	780	AF
Scales No. 1 Stream Priority No. 13 for	215	AF
Scales No. 3 Stream Priority No. 14 for	145	AF
Grand Mesa No. 8 Stream Priority No. 16 for	382	AF
Grand Mesa No. 9 Stream Priority No. 18 for	332	AF
Grand Mesa No. 6 Stream Priority No. 19 for	<u>212.6</u>	AF
Total		2066.6 AF

The six reservoirs of the Grand Mesa Reservoir Company are all located on the upper water shed of main Kannah Creek. They were developed by and are the property of the Grand Mesa Reservoir Company. The six have a total decreed capacity of 2066.6 AF. The annual water yield is reported to be about 1,000 AF. The reservoirs were all decreed in the June 1, 1916 General adjudication of water rights of water district No. 42. The company stock is held by the following:

Whiting Ranches	626 Shares	55.1%	550 AF
City of Grand Junction	257 "	22.6%	226 AF
W. D. Bradbury	87 "	7.6%	77 AF
James Blair	52 "	4.6%	46 AF
Jay Olsen	50 "	4.4%	44 AF
Howard Brouse	40 "	3.5%	35 AF
Lawrence Mash	<u>25</u> "	<u>2.2%</u>	<u>22 AF</u>
Total	1137 Shares	100.0%	1000.0 AF.

The stock of the Company is not tied to any specified land but is purchased and sold at will. The use of reservoir water is also transferred as the owner of the stock desires, with a large part of the same used outside the Kannah Creek basin.

NOTE 13

COULTER DITCH

Stream Priority None. Decreed for 1.00 CFS of seepage water.

The Coulter Ditch derives its entire water supply from Coulter Gulch, a tributary of main Kannah Creek. The flow of Coulter Gulch is made from flood and seepage water.

NOTE 14

TURNAHAN & BOWMAN SEEPAGE & WASTE WATER DITCH

Stream Priority None. Decreed for 1.5 CFS of seepage water.

The Turnahan & Bowman Seepage and Waste Water Ditch rights include the diversion of two ditches. Both heads from natural draws and discharge water into the North Fork of Kannah Creek. The water thus conveyed to the North Fork is rediverted and delivered to the Northwestern Ditch for the irrigation of the land under that ditch. The right of the Turnahan & Bowman Ditch has no effect on the respective priorities of the ditches of main Kannah Creek or the North Fork. The water right and the ditches are the property of the Whitings.

NOTE 15

VAN PELT AND COX SEEP DITCH

Stream Priority None. Decreed for 1.00 CFS seepage water.

The Van Pelt and Cox Seep Ditch diverts from a short gulch which is tributary to main Kannah Creek.

NOTE 16

BOLEN, ANDERSON & JACOBS DITCH

Stream Priority No. 15 for 9.59 CFS

The Bolen, Anderson and Jacob Ditch heads on the west bank of Deep Creek on Grand Mesa, a short distance downstream from the Anderson Reservoir No. 1 (Lower Anderson Reservoir). The diverted water is conveyed out of the watershed of main Kannah Creek and discharged into the North Fork of Kannah Creek. The water is rediverted by the Bauer Ditch for use on the agriculture land of Reeder Mesa or by the City Ditch for conveyance to the Purdy Mesa Reservoir for use by the City of Grand Junction.

This water right is senior to the right of the Kannah Creek Highline Ditch and many of the reservoirs of the Grand Mesa Reservoir Company. The water right and ditch were acquired by the City of Grand Junction as a part of the Anderson Ranch purchase. Water diverted by the ditch may be regulated or stored in any one of the North Fork reservoirs, the Reeder Reservoir, or the Purdy Mesa Reservoir.

NOTE 17

CHAMBERS RESERVOIR (DRY CREEK RESERVOIR & SUPPLY)

Stream Priority No. 17 for 600 AF

The Chambers Reservoir is decreed for 600 AF. The annual yield is reported to be about 150 AF. The filling right junior to four and senior to two of the reservoirs of the Grand Mesa Reservoir Company. It is senior to the water diversion right of the Kannah Creek Highline Ditch.

The ownership of the reservoir is as follows:

E. H. Munro (Crafts Black)	1/3	50 AF
City of Grand Junction	1/3	50 AF
Whiting Ranches	1/6	25 AF
Howard Brouse	1/6	<u>25</u> AF
Total		150 AF.

NOTE 18

RABER-CLICK RESERVOIR (DEEP CREEK NO. 1)

Stream Priority No. 20 for 491.4 AF

The Raber-Click Reservoir is located on a lower tributary of Deep Creek. It is one of the better filling reservoirs of any on Grand Mesa. The City of Grand Junction is the sole owner. Although the reservoir is decreed for 525.46 AF, the annual yield is reported to be about 420 AF. The filling right of this reservoir is senior to the water right of the Kannah Creek Highline Ditch and follows in priority the filling right of the Grand Mesa Reservoir No. 6 of the Grand Mesa Reservoir Company.

NOTE 19

DEEP CREEK RESERVOIR NO. 2

Stream Priority No. 21 for 525.64 AF

The Deep Creek Reservoir No. 2 is the property of the Deep Creek Reservoir Company. It is decreed for a capacity of 525.64 acre feet. The annual yield is reported to be about 230 acre feet. The following is a list of reservoir company stock ownership:

Whiting Ranches	360 Shares	38.9%	89 AF
W. . Shelnult	168 "	18.1%	42 AF
Robert Coburn	108 "	11.6%	27 AF
Howard Brouse	100 "	10.8%	25 AF
Clifford Davis	70 "	7.6%	17 AF
Keith Clark	60 "	6.5%	15 AF
City of Grand Junction	50 "	5.4%	12 AF
Sisters	<u>1</u> "	<u>1.1%</u>	<u>3</u> AF
Total	926 Shares	100.0%	230 AF.

NOTE 20

KANNAH CREEK HIGHLINE DITCH

Stream Priority No. 11 for 21.25 CFS (Juniata Right)  
 Stream Priority No. 22 for 49.11 CFS  
 Stream Priority No. 40 for 18.79 CFS

Total 89.11

The Kannah Creek Highline Ditch provides water for the irrigation of land located on Reeder Mesa, land located on Purdy Mesa, and land located immediately above the Juniata Reservoir. The ditch also provides water for the filling of the original Juniata Reservoir. Based on the ownership of ditch company stock about 50 percent of the diverted water is used on Reeder Mesa, about 37 percent of the water is used within the Juniata Reservoir basin, and only about 13 percent is used for the irrigation of land tributary to main Kannah Creek.

The ownership of the ditch and water right is represented by 4000 shares of stock as follows:

City of Grand Junction	1474.5 Shares	36.8%	25.6 CFS
GayJohnson	780.0 "	19.5%	13.5 CFS
Whiting Ranches	730.0 "	18.2%	12.6 CFS
Clifford Davis	525.0 "	13.1%	9.1 CFS
Pavlakis & Co.	239.0 "	6.0%	4.2 CFS
Lawrence Mash	155.0 "	3.9%	2.7 CFS
Jeff Bonnell	46.0 "	1.2%	.8 CFS
Pat Dalton	42.5 "	1.1%	.8 CFS
Howard Brouse	<u>8.0</u> "	<u>8.0%</u>	<u>.1</u> CFS
Total	4000.0 Shares	100.0%	69.4 CFS.

The 49.11 CFS was the original adjudication, the other right is a supplemental adjudication. The Highline right for 49.11 CFS is the first direct flow diversion right junior to the filling of a large number of the Grand Mesa Reservoirs.

Over a long period of years dating back to the construction of the original Juniata Reservoir in 1911, the water diversion

listed above as used within the Juniata Reservoir Basin was largely stored in the Juniata Reservoir. The testimony of John P. Raber given to the court on November 26, 1940 shows that 6.83 CFS of the water diverted by the Kannah Creek Highline Ditch was directly stored in the Juniata Reservoir.

NOTE 21

FLORENCE H. BERRY DITCH

Stream Priority No. 23 for 1.04 CFS

The Florence H. Berry Ditch is used for the irrigation of a small tract of land located south of Kannah Creek upstream from the junction of the North Fork. The ditch and water right are the property of Keith Clark.

NOTE 22

JUNIATA RESERVOIR

Stream Priority No. <sup>24</sup>~~22~~ for 400.09 ~~ACS~~ AF

The construction of the original Juniata Reservoir provided for the storage of 400.00 AF. Although the reservoir was constructed in 1911, it was not decreed until 1941, which resulted in a right junior to the Florence H. Berry Ditch of somewhat later construction.

The Juniata Reservoir decree recites that the reservoir is supplied with water through the Kannah Creek Highline Ditch and also has an additional filling right through the Juniata Ditch Enlarged. The reservoir and filling right are the property of the City of Grand Junction.

Since the filling right of the original Juniata Reservoir is senior to the domestic and stock water right of the Kannah Creek ditches, the non-irrigation season winter-time flow of the creek can be diverted under this right by either the Kannah Creek Highline or the Juniata Ditch for storage in the Juniata Reservoir.

A discussion of the reservoir filling right is given in this report under the heading "Kannah Creek Highline Ditch."



NOTE 23

ANDERSON RESERVOIR NO. 1

Stream Priority No. 25 for 466.0 AF

The Anderson Reservoir No. 1 is located on Deep Creek tributary to main Kannah Creek. The reservoir filling right is therefore competitive with the priorities of main Kannah Creek.

Releases from the reservoir can either be routed down Deep Creek or diverted by the Bolen, Anderson and Jacob Ditch to the North Fork for use by the city. If the water is routed down Deep Creek and thus commingled with main Kannah Creek water, the administration of the water comes under the supervision of the water commissioner and a shrinkage charge of fifteen percent is applied prior to the rediversion of the water by the city. The anticipated conveyance loss by the routing of the water by way of the Bolen, Anderson and Jacob Ditch and the North Fork is much less than the fifteen percent water commissioner charge for main Kannah Creek. The reservoir is the property of the City of Grand Junction.

NOTE 24

FLOWING PARK RESERVOIR

Stream Priority No. 26 for 782.2 AF

The Flowing Park Reservoir was constructed by the City of Grand Junction. Construction maps and water right decree call for a storage capacity of 782.2 AF. Since the reservoir seldom fills, it may well be used for carry over water.

NOTE 25

SULLIVAN BOWEN DITCH

Stream Priority No. 27 for .26 CFS

The Sullivan-Bowen Ditch is used for the irrigation of a very small tract of land located north of Kannah Creek upstream from the junction of the North Fork. The ditch and water right are the property of Jay Olsen.

NOTE 26

BOWEN PRIVATE DITCH

Stream Priority No. 28 for .72 CFS

The Bowen Private is a very small ditch located south of Kannah Creek upstream from the junction of the North Fork. The ditch and water right are the property of Jay Olsen.

NOTE 27

WILLIAM H. WILLIAMS DITCH

Stream Priority No. 29 for 1.17 CFS

The William H. Williams Ditch is used for the irrigation of a small tract of land located south of Kannah Creek upstream from the junction of the North Fork. The ditch and water right are the property of Keith Clark.

NOTE 28

RABER HIGHLINE DITCH

Stream Priority No. 30 for 1.17 CFS

The Raber Highline Ditch provides water for the irrigation of land located north of Kannah Creek upstream from the North Fork. The ditch and water right are the property of W. C. Shelnult.

NOTE 29

RABER-DAVIS DITCH

Stream Priority No. 32 for .34 CFS

The Raber-Davis Ditch is used for the irrigation of a very small tract of land located north of Kannah and upstream from the North Fork. This is the uppermost ditch of the basin which serves river bottom land. The ditch is the property of W. C. Shelnult.

NOTE 30

ANDERSON RESERVOIR NO. 2

Stream Priority No. 33 for 568.4 AF

The Anderson Reservoir No. 2 is located on the watershed of Deep Creek upstream from the Anderson Reservoir No. 1. The watershed of this reservoir and that of the Anderson No. 1 is insufficient for the filling of the two reservoirs in years of low runoff.

Releases from this reservoir run into the Anderson No. 1 and are thus available for routing down Deep Creek, or the water may be conveyed by the Bolen, Anderson and Jacob Ditch for use under the North Fork ditches. The reservoir is also subject to the water right priorities of main Kannah Creek. The two Anderson reservoirs are the property of the City of Grand Junction.

NOTE 31

RABER COAL CREEK DITCH

Stream Priority No. 35 for 3.38 CFS

The Raber Coal Creek Ditch heads on Coal Creek. The diverted water is used for the irrigation of the Mesa land north of the City Intake - Purdy Mesa road and east of the house of Howard Brouse. The ditch and water right are the property of Mr. Brouse. See discussion of right under Note 34.

NOTE 32

DEEP CREEK RESERVOIR NO. 2 SUPPLY DITCH

Stream Priority No. 36 for 20.0 CFS

The Deep Creek Reservoir No. 2 Supply Ditch is used for the conveyance of spill water from the Raber-Click Reservoir to the Deep Creek Reservoir No. 2. The ditch and water right are the property of the Deep Creek Reservoir Company.

NOTE 33

BLACK DITCH

Stream Priority No. 37 for .62 CFS

The black Ditch diverts from the North bank of main Kannah Creek upstream from the junction of the North Fork. The water is used for irrigation of a small area of land near the Creek. The ditch and water right are the property of Keith Clark.

NOTE 34

RABER COAL CREEK SUPPLY DITCH

Stream Priority No. 38 for 2.21 CFS

The Raber Coal Creek Supply Ditch heads on the north bank of main Kannah Creek about one mile upstream from the head of the city pipeline, and about  $\frac{1}{2}$  mile above the junction of Coal Creek with main Kannah Creek. The ditch is a continuation of the Raber Coal Creek ditch and provides a supplement supply of water for the land irrigated under the Raber Coal Creek Ditch. The ditch and water right are the property of Howard Brouse.

NOTE 35

SULLIVAN RANCH DRAINAGE DITCH

Stream Priority None. Decreed for .13 CFS.

The Sullivan Ranch Drainage Ditch is located in Section 6, Township 13 South, Range 97 West of the 6th P. M. It is used for the collection of drain, seepage and irrigation waste water from Purdy Mesa. The water was originally decreed by Charles Hallenbeck.

NOTE 36

PURDY MESA RESERVOIR (HALLENBECK RESERVOIR)

Stream Priority No. 39 for 863.0 AF

The Purdy Mesa Reservoir has a decreed capacity for 863.0 AF. It was constructed by Charles Hallenbeck in 1939, at which time the Juniata Ditch was also reconstructed and enlarged for the principal purpose of the filling of the Purdy Mesa Reservoir. The reservoir and the ditch, which both have the same water right date, were sold to the City of Grand Junction in 1957, along with other Kannah Creek water rights. The decree recites that the reservoir is filled by the Juniata Ditch Enlarged, the Juniata Ditch, and the Highline Ditch.

The filling right of the reservoir during the non-irrigation season is senior to any other non-irrigation season right, which includes the diversion of water for domestic or stock watering purposes. In other words, after the close of the irrigation season, the city has the option of the diversion of the 7.81 CFS Paramount Right for storage in <sup>this or</sup> any reservoir desired, and also any remaining Creek flow. This right is senior to the Kannah Creek Highline supplemental right of 18.79 CFS.

NOTE 37

GAMMAGE HIGHLINE DITCH

Stream Priority No. 46 for .20 & 1.35 CFS

The Gammage Highline Ditch heads on the north bank of Kannah Creek below the crossing of State Highway 50 and a short distance below the headgate of the William J. Ponsford Ditch. Although the ditch was constructed prior to 1900, the water right was not adjudicated until the General Adjudication of 1959, and therefore has a relatively junior effective priority date of July 25, 1941. The .20 CFS was adjudicated for domestic and stock water use, and the 1.35 CFS for irrigation use. The ditch and water right are the property of the Whitings.

NOTE 38

CARSON LAKE RESERVOIR

Stream Priority No. 49 for 637.0 AF

The Carson Lake Reservoir was constructed by the City of Grand Junction. At the time of construction, a 15 percent interest in the developed water was given by the City to Charles Hallenbeck and a Mrs. Farmer for a purported claim on the reservoir site. The 15 percent interest has since been purchased by the city. Also, under terms of non-contest agreement with Charles Hallenbeck, a canal was constructed for the bypass of the flow of Kannah Creek around the reservoir.

In years the reservoir remains full at the close of the irrigation season, the bypass canal will bypass the natural flow of the Creek. In other years, the city has been required by the water commissioner that the natural flow of the creek be bypassed. The natural flow of the creek has been determined by the water commissioner to be 1.8 CFS. How this applies to high and low runoff years is unknown.

Since the Carson Lake right is junior to the domestic and stockwater rights of the Kannah Creek ditches, the bypass of the fall and winter flow of the creek has been required. This action by the water commissioner is not enforceable, however, since the city may, if it desires, store a part of the paramount right water up to the flow of the creek in Carson Lake and at the same time divert the flow of Kannah Creek at the City Intake under its flowline right, or divert the flow of the creek for storage in the Purdy Mesa Reservoir by pipeline or otherwise. The city holds complete prior rights for the diversion of the flow of Kannah Creek for its use during the non-irrigation season.

Much of the snowmelt Kannah Creek flow variation could be eliminated if the flow of main Kannah Creek is routed through Carson Lake. This would make for a much more efficient use of the snowmelt runoff.



NOTE 39

JUNIATA RESERVOIR ENLARGED

Stream Priority No. 51 for 2688.41 AF

The Juniata Reservoir Enlarged and the Juniata Ditch Second Enlargement were constructed by Charles Hallenbeck as a single project. The Reservoir and the ditch carry the same priority date. After the completion of construction work, both facilities and a large acreage of both irrigated and non-irrigated grazing land surrounding the Reservoir were acquired by the City of Grand Junction.

CITY OF GRAND JUNCTION, COLORADO

MEMORANDUM

Reply Requested  
 Yes  No

Date  
 Dec. 29, 1977

To: (From:) Jim Wysocki *J.W.* From: (To:) Jim Patterson *J.P.*  
 City Manager Public Works Director

At our recent meeting with Keith Clark certain incidents were mentioned by Keith which he said were indications of poor management of the water supply system. I have investigated the incidents and found the following:

1. Keith said that on the day of the Deep Creek Reservoir meeting that he saw water going down the ditch to Ed Studebaker and that this water should have been going into the City system.

On that day there was a break in the City flowline just below the intake. When there is a break on the flowline Danny diverts the water from the flowline into a ditch which carries the water to Juniata Reservoir. The water is turned to the ditch first and then the position of lateral ditches is determined, so there could be some water in some lateral ditches for a short time. Also, as the flowline drains through the break in the pipe the water should be utilized through the nearest ditch if at all possible. There was no transaction between the City and Studebaker to sell Studebaker water.

2. Keith asked that I check on how much water Studebaker paid for (tank water purchased at the intake) this year. Keith said he saw Studebaker get water but never saw it recorded. The following is from our records in the finance department.

<u>Name (ranked in order of volume of water paid for)</u>	<u>Gallons paid for in 1977</u>
Keith Clark	46,000 gal.
Ed Studebaker	25,000 gal.
Mr. Bonnell	15,500 gal.
Jay Olson	13,500 gal.

This is no guarantee that Studebaker paid for all the water he got, but other than Keith Clark he paid for more water than anyone else.

3. Keith said that Danny recorded that the full paramount right was being diverted into the City system at times when part of the paramount right was getting by the City intake.

There is a recording chart that is owned by the City located in the chlorine feed building at the intake. Water is diverted at the dam into a pipe which either carries the water through the leaf screen or by-passes the screen if no screening is needed. The pipe then goes into the chlorinating building where the measuring recorder is located. All water that enters

## CITY OF GRAND JUNCTION, COLORADO

## MEMORANDUM

Reply Requested

Yes  No 

Date

Dec. 29, 1977

To: (From:) Jim Wysocki From: (To:) Jim Patterson  
City Manager

Page Two

the pipe at the dam is measured at the chlorinating building except wash water from the screen or unless the screen plugs up and the water overflows there. Water that by-passes at the dam is not measured at the chlorinating building.

The recording chart is a one-year chart and is picked up by the State Engineer's Office once a year. It was picked up about the first of November this year.

Water that is not diverted at the dam into the pipe returns to the creek to be appropriated among the water users on the creek. If the pipe at the dam or the leaf screen plugs up the water returns to the creek. The screen can plug up in early fall or during the spring runoff when there is a lot of leaves and trash in the water. The pipe at the dam can plug up in early winter when ice begins to form and there are large fluctuations in temperatures from day to night. If the pipe plugs up and the water returns to the creek, then technically the most senior right can call for the water for irrigation purposes. Since no one irrigates in the winter the water is not called for and the City can pick up the water under its domestic right. This is done by diverting the water into the Highline Canal, transferring it to the Juniata Ditch which discharges into the Juniata Reservoir.

The way Danny has operated the system is to rely on picking up the water under our junior rights when necessary. Danny attempts to keep the pipe unplugged but if it should plug in the middle of the night or when he is working elsewhere then the City still gets the water. Danny has discussed this procedure with the water commissioner who has had no objection to it.

There has been some problem with this procedure in that Keith Clark sometimes will open the by-pass gate at the Highline Ditch. The water will then go back to the creek. It is not legal for Keith to change the gates and the Commissioner has instructed him not to do it. However, he will still do it and he takes the gate boards home with him so that no one can close the by-pass. Keith's position is that the water legally belongs to the creek. Practically, however, the water is part of the City's paramount right and none of the other users have a beneficial use for it at that time anyway. No water would be lost to the City if it were not for Keith's interference.

I will instruct Danny to make more effort to keep the pipe open and rely less on picking up the water through the junior rights. A simple alarm system can be installed easily that will give a signal in Danny's house when the flow in the pipe drops.

## CITY OF GRAND JUNCTION, COLORADO

## MEMORANDUM

Reply Requested

Yes  No 

Date

Dec. 29, 1977

To: (From:) Jim Wysocki  
City ManagerFrom: (To:) Jim PattersonPage Three

The purpose of the daily log that Danny keeps is to calculate the total volume of water taken into the system on a daily and monthly basis. If every fluctuation in flow was recorded, the calculations would become impossible. Instead, Danny records once a day the average flow for the day. The calculations are easy and the purpose of the log is served. We still have on hand and filed with the state a recorded chart in ink of the actual flow with all the fluctuations should this information be needed. At any given moment during certain times of the year the flow recorder may be registering higher or lower than the average flow recorded on the daily log. For the vast majority of time there is no fluctuation in flow, and the charts will draw a straight line. I can't think of a better way of keeping our records.

In summary, I have investigated all of the areas which Keith has indicated that there are problems and have found no wrongdoing on Danny's part. The water supply system is in better shape now than it has ever been since I started working for the City. Danny has consistently carried out the policy guidelines that I have given him as director of the department. It is difficult to determine the degree of accuracy of the details of his work because he is physically removed from the administrative center. We will, however, continue to try to monitor his performance, as we do all employees, so that we can correct mistakes as they happen and give the best operation possible.

IN THE DISTRICT COURT IN AND FOR THE  
COUNTY OF MESA AND STATE OF COLORADO

No. 16803

C. V. HALLENBECK,

Plaintiff,

vs.

THE CITY OF GRAND JUNCTION COLORADO,  
a municipal corporation; CHAMBERS  
RESERVOIR COMPANY; DEEP CREEK  
RESERVOIR COMPANY; GRAND MESA  
RESERVOIR COMPANY, individually and  
as members of Grand Mesa Reservoir  
Pool, an unincorporated association;  
and W. D. BRADBURY, individually and as  
secretary and member of the Grand Mesa  
Reservoir Pool,

Defendants.

FINDINGS, CONCLUSIONS  
OF LAW AND JUDGMENT

**FILED**  
IN DISTRICT COURT  
MESA COUNTY, COLORADO  
MAY 1 - 1969

*R. O. Fisher*  
CLERK

THIS MATTER came on for trial on various of approximately twenty days between March 27, 1968 and August 1, 1968, the Plaintiff appearing in person and by his attorney William G. Waldeck, Esquire and the Defendant, The City of Grand Junction, appearing by its attorneys Dufford, Ruland, Uhrlaub and Williams, the other Defendants all appearing collectively by their attorney John B. Barnard, Esquire and the Court being fully advised in the premises:

For simplification the Court will refer to the City of Grand Junction as the "Defendant" and will refer to the other Defendant collectively as "The Pool". Many of the findings will overlap in their significance and the Court wishes all findings to be considered as a whole. The Findings will, however, be broken down by categories (A) Plaintiff's damages; (B) Storage and direct flow rights taken out of priority; (C) Carson Lake; (D) Twenty-four Hour Rule; (E) Penalties for alleged illegal storage; (F) Reservoir Ditch and Micro-strainer discharge; (G) Juniata Enlarged Reservoir; (H) The Bolen Anderson and Jacobs Ditch and Anderson Ditch; (I) Equitable relief,

X

27-14.2

## FINDINGS

### THE COURT FINDS:

#### A. DAMAGES

1. Since the Court's findings on Motion to Dismiss at the conclusion of Plaintiff's case in chief, were made verbally, they will be reiterated herein as pertinent, as determined from a preponderance of the evidence in the whole trial.

2. The beginning of run off in sufficient quantity to fill the Juniata Ditch and junior priorities to a greater or lesser extent varies from about the first of May to the sixteenth of May as shown by the various records in evidence and graphically shown on Exhibit 15. Though there was some testimony that in 1967 the run off was late, the Plaintiff did not differentiate his water requirements to produce a crop between any particular years. The Court examined Plaintiff's case with some scrutiny to determine if any evidence was adduced to show that for a crop Plaintiff's water quantity requirements were different in 1967 because of any particular conditions existing that year. The Court found none. A re-examination of Plaintiff's own testimony reveals that he did not differentiate between irrigation years as to his standard formula that 1/4 acre foot of water was sufficient to maintain his irrigated land to produce good winter pasture provided such amount of water could be applied in the month of May and in one instance he was specific in requiring that it be in mid May. The Plaintiff felt that such amount of water must be applied before the ground became dried out as it could in the month of June and more so by July. The Plaintiff said nothing to indicate the 1967 run in his ditches was ill timed. The Court believed his testimony and there was no evidence to the contrary.

3. With the application of such 1/4 of one acre foot of water, Plaintiff's lands will produce 1 1/2 to 2 tons per acre of winter pasture if allowed to remain ungrazed until the winter period.

By 1967, Plaintiff owned some 807 acres of irrigated land but less than 100 unspecified acres was used for cutting hay and the remainder was irrigated for winter pasture.

4. In Plaintiff's case in chief, and in Defendant's case there was no evidence as to the size of head of water required for his ranch. At the rate of  $1/4$  acre foot per acre, it would require 202 acre feet of water for one irrigation of Plaintiff's 807 acres. Mathematically, watermen do approximately equate 202 acre feet of water to 101 cubic feet of water per second of time running for twenty-four hours. For the facts pertinent to this case, it can be equated to 10 second feet of water running continuously for ten days, a substantial continuous head of water without fluctuations.

5. The Juniata Ditch decree provides for 21.25<sup>5</sup> second feet of water of which Plaintiff owns 44.8 percent of the right or 9.52 second feet of said direct flow right. As to Plaintiff's No. 4 priority water (which he and others sometimes referred to as No. 2 water), Plaintiff owns 1.37 second feet of direct flow diverted through the Juniata Enlarged Ditch head gate. The ditch below the Juniata Ditch head gate and the ditch below the Juniata Enlarged Ditch head gate join to become a common conduit before such conduit reaches Plaintiff's ranch. Plaintiff's combined rights in these two ditches of 9.52 second feet plus 1.37 second feet gives Plaintiff a total right of 10.89 second feet.

6. Examination of Exhibit SS and Exhibit 11 show that in 1967 Plaintiff received as a minimum sum from the two decrees for eleven consecutive days all in the month of May between May 21st and May 31st without surges or fluctuations such 10.89 second feet of water. This provided Plaintiff with 239.58 acre feet of water well in excess of the 10 second feet for ten days which would have been required by Plaintiff's own formula to irrigate once his 807 acres.

7. Since by his own testimony, Plaintiff's land if so

watered would produce a good crop of winter pasture, the Court specifically finds that the Plaintiff would not have suffered any total economic loss of any of his acreage in 1967. Plaintiff's Exhibit G, his own evaluation and survey of acreage suffering damage in 1967 shows some 260 acres in the category of total economic loss in 1967. Thus Plaintiff failed to sustain his burden of proof of such damage.

8. The Plaintiff received substantially in excess of this amount of water when it is considered that he received on June 5th and 6th, a full head from these two ditches. On June 4th and 7th his No. 4 was full and the Juniata Ditch lacked less than 10% of running full for a very small part of the day. There were some nine other days when there was substantial water in the Juniata Ditch and the No. 4 right was full. It is significant that this did not take into account any water he may have received from the Highline Ditch and the Juniata Enlarged Ditch for irrigation purposes.

9. Of the Plaintiff's 807 acres, his evidence indicates that he had some seventy acres (see Exhibit G) in Tract 15, known as the Kerstetter Place, or possibly as much as 100 acres in the Kerstetter Place which he could not water from the two above mentioned ditches and water had to come from the Highline Ditch right of the Plaintiff. Plaintiff's right in the Highline Ditch is  $\frac{930}{4000}$  of 49.11 second feet of water or 23% of the ditch right amounting to 11.29 second feet when the ditch is full. The Plaintiff on three separate occasions on cross-examination verified that in 1967 he never stored a drop of his Highline Ditch flow. Likewise, Plaintiff insisted that he never asked the head gate tender to cut his share of the Highline Ditch diversion in any amount in 1967. Plaintiff testified that no machine bogged down in the Highline Ditch was in his part of the ditch, namely: Ashley Extension, to prevent getting full 1967 Highline flow.

10. Again from his Exhibit SS, the low average flow



for twenty-four hours in the Highline Ditch only for the days in the month of May provided the ditch with a minimum of 241.17 second feet. The average flow and the high average flow exceeds this substantially or probably nearly double. Plaintiff's 23% of this water gave him 55.47 second feet in May which would have covered by his formula (55.47 second feet for twenty-four hours equals 110 acre feet) 440 acres.

11. Plaintiff stored none of this Highline water and presumably he used it on his ranch for irrigation. He asserted that when the surges and fluctuations were too great for practical irrigation that he ran the water through the Juniata Enlarged Ditch head gate to the Reservoir rather than keep it in the Highline Ditch. It is fair therefore to find that even though fluctuating, the Plaintiff had adequate Highline flow to cover Tract 15, the Kerstetter Place. The Kerstetter Place, Tract 15, is the one on which he asserted total economic loss in 1967. From Exhibit F, it appears that Tract 16 is also served exclusively by the Highline Ditch. By Exhibit G, Tract 16 was totally lost before 1967, however, had Plaintiff chosen to irrigate same in 1967, the above analysis shows that he received substantially sufficient water to do so in addition to the water for Tract 15.

12. Again with relation to the Highline Ditch right, there was substantial water received in June and some water in May before the 21st, comparing Exhibit SS and Exhibit 11. This additional water in the Highline Ditch further supports the conclusions that Plaintiff should not have suffered any loss in 1967.

13. In contrast to and by way of change of a finding made by the Court in the ruling at the end of Plaintiff's case in the motion to dismiss; the Court now finds that it erred in asserting that the Defendant in its Grand Junction Flow Line and Water Work (FL&WW) Ditch took water between June 20, 1967 and September 1, 1967 in excess of its paramount right to 7.8 second feet and which could

have been available to the Plaintiff under Plaintiff's direct flow decree. The recorder strip charts in evidence do not reflect the source of the water in excess of 7.8 second feet, see Exhibit A-18. However, on examination by the Court of the original field books in evidence, it is plain that the water taken during this period after June 20, 1967 was in fact a run of reservoir water. Only the original field book shows a break down of the water in the pipe line by way of decree for direct flow and the amount of water in the pipe line as a run of reservoir water. Exhibit A-17 does not show such break down. The Court therefore subsequently finds that there was no taking of water in the FL&WW Ditch out of priority in 1967 from and after June 20th.

14. Without exception all Plaintiff's claims of storage or direct flow taken out of priority by the Defendant or the Pool in 1967 was during the run off period. Plaintiff's case indicated some assertion of improper storage of rain water later in the summer but Plaintiff made no attempt to show any substantial amounts or that there was any causal relationship between such improprieties and Plaintiff's crop damages. The only loss which Plaintiff claimed for 1967 after run off period, shown by Exhibit G, concerns a total of eighty acres all of which (Tracts 3, 6, 9 and 17) were subject to irrigation from any of Plaintiff's ditches. Each of the damaged portions of such Tracts should have been watered the first time during run off as above found and may have been watered in April as well as Plaintiff testified. Some of his Tracts were being watered from the Juniata Reservoir. A loss to these Tracts after the run off could not be attributable to the Defendant or the Pool where it was Plaintiff's failure to water these Tracts during run off. Also Plaintiff failed to show that the water which was stored in the Juniata Reservoir and the Juniata Enlarged Reservoir in 1967 could not have been used to prevent any partial economic loss to these eighty acres after run o

Plaintiff's claim of loss was not related to lack of stored water in the Juniata Reservoir and the Juniata Enlarged Reservoir but all of his case evidence pointed toward interference with his direct flow rights by the alleged illegality of storage and direct flow by the defendant and the Pool.

15. Casting doubt on Plaintiff's damage figure of \$50.00 per acre for only partial economic loss in a given year, the Court notes that based on Plaintiff's formula of being able to water four acres of land with each acre foot of water, this means that he valued each acre foot of water for one season only at \$200.00. By contrast Mr. Jex's appraisal of the purchase price figure of a permanent decreed right to one acre foot of water is \$160.00 per acre foot.

16. It was not until 1967 that Plaintiff made a careful survey of his alleged damages and he was unable to say if his total economic loss to acreage was in fact in 1967 or 1963 or when. Plaintiff admitted that he could not break down his losses year by year.

17. On August 8, 1967, Plaintiff gave a run of reservoir water to Doctor Monro to save the donee's crops and Plaintiff asserts that it did not hurt his own ranch because it did not come during run off. Any such delivery negates his partial economic loss since such water would have been used to mitigate his own losses from 2nd or 3rd cuttings of hay.

18. The Plaintiff proved that there were 990 acre feet of water carried over in the Juniata Enlarged Reservoir from 1966 to 1967. Plaintiff was entitled to one-half of this storage. This figure was Plaintiff's figure on May 1, 1967 after Plaintiff had already irrigated some of his lands in the month of April from carry over storage. Plaintiff emphatically asserted that his losses in 1967 came in May, June and July and prior to the August 8th gift of water to Doctor Monro. He, at no place, asserted that he was short of storage water in the Juniata Reservoir for the production of hay

cuttings after the run off period. His entire claim related to misappropriation during the run off period.

19. Plaintiff's position might be that he required his share of the Juniata Enlarged Reservoir storage from 1967 for winter stock water rather than for hay in the summer of 1967, this is refuted by his own testimony that even though he ran stock water all winter (late 1967 and early 1968) he ran some one to two second feet but that he averaged under one second foot and that during good weather when the ditch did not freeze up that the flow was down to as low as 1/4 second foot. Assuming a figure above Plaintiff's asserted average, namely, one second foot consistent run for six months of winter and you have a use of approximately two acre feet per day or a total of 360 acre feet. This should be compared with the 665 acre feet decreed in the Juniata Enlarged Reservoir for winter stock water, (compare Finding G-1 below). Plaintiff's run of the assumed 360 acre feet is in the Reservoir Ditch which he asserted also serves all other users and owners of the stock water decree.

20. In addition to the carry over water, Plaintiff had available one-half of the Juniata Enlarged Reservoir gain from storage or 603 acre feet for summer irrigation in 1967. Plaintiff asserted that he used none of his share of 603 acre feet of storage in May and as the Court found above, he had no such need.

21. Plaintiff as a one-sixth fractional owner of Chambers Reservoir was responsible with the Pool for any asserted illegal storage in that Reservoir. In 1967 when the reservoir leak dissipated its entire storage, Plaintiff and the other direct flow decree holders from Kannah Creek received all of the benefit after the run off period beginning June 3rd when storage stopped. Plaintiff's counsel asserted that Plaintiff was not responsible for acts of illegal storage by his Agent, the Pool. However, there was no evidence that Plaintiff instructed or ordered the Pool to treat Chambers Reservoir

in any manner different than all other Pool Reservoirs.

22. Plaintiff's evidence of the value of the loss to crops did not at any period take into account the out-of-pocket expenses of production.

23. Convincing evidence that Defendant did not use excessive water which might have belonged to the Plaintiff is found from Mr. Jex's figures in Exhibit 12, showing that if the Defendant had used nothing but its 7.8 second feet or paramount decree for 365 days of the year, that said paramount decree should have come within 200 acre feet of Defendant's total actual use and which 200 acre feet is represented many times over by Defendant's storage rights. Defendant's remainder of storage rights amount to some 4,700 acre feet when the reservoirs are full, all of which was released to the benefit of the Plaintiff and other Kannah Creek users. The only holder over storage was in Carson Lake whose total decree is 637 acre feet or in the Juniata Enlarged Reservoir, where Defendant by the evidence never withdrew its full share.

24. From the Highline Ditch and the Juniata Ditch head gate alone, (excluding Plaintiff's rights in the Juniata Enlarged Ditch and his No. 4 priority) in 1967, Plaintiff diverted some 594.3 acre feet of water by direct flow in the run off period or nearly three times the quantity the Court computed as necessary for him to have irrigated his ranch once.

25. Concerning Plaintiff's claimed total economic loss to certain of his acreages for years prior to 1967, the Plaintiff's own testimony was to the effect he could not breakdown his losses year by year. Additionally, Plaintiff stated that he had problems in defining any specific amount of losses from 1960 through 1966. Again the Plaintiff stated that the amount of water of which he was deprived each year had to be by guess or by observation without specificity. Particularly his observations were impeached when he asserted his presence on the mountain top via Lands End road in mid-May, 1967 to observe illegal storage in Grand Mesa No. 6 and other reservoirs when it was later proved that said road was snow bound until

June 3rd by the man who cleared the road, Mr. Brouse. There was no testimony in Plaintiff's case as to the fair market value of the ranch or the crops before and after the alleged damages, in fact, Plaintiff asserted he could not testify as to the fair market value of the lands in 1962. There is in the evidence no tie between any loss of water and any particular piece of land. There is no proof why, with the water available, at least one application of water during the May run off, could not have been used on each Tract. Plaintiff could not even designate in particular years when total economic loss occurred to each Tract. Close examination of Exhibit G demonstrates that Plaintiff's claimed losses prior to 1967 were all in the category of total economic loss which Plaintiff's testimony equates to the fact that the acreage was not watered even once in run off to the extent of 1/4 acre foot per acre.

26. Examination of Exhibit 15 and other evidence of total flow based on the USGS Gauging Station for each year plus storage and carryover storage, shows that Plaintiff should have had no less water in each of the years during run off than Plaintiff had in 1967. All of the witnesses agree that 1967 was the worst or shortest water year. In 1963, also a short year, the Pool was penalized by the water officials for alleged illegal water storage and the water was released at a time when according to all the witnesses it became of maximum benefit to the direct flow rights of the Plaintiff and any other direct flow holders who may have been damaged.

27. In 1963, the Plaintiff sold enough reservoir water stored during run off to the Defendant, 300 acre feet for \$4,875.00, to have prevented total economic loss to any of Plaintiff's irrigated tracts.

28. In the years 1962 through 1966, there was carryover water by the Plaintiff in the Juniata Reservoir and the Juniata Enlarged Reservoir of 500 to 700 acre feet minimum. In these years there was no testimony that this carryover water was even used as a part of the 665 acre foot stock water decree. The Agreements for availability of the Kerstetter valve as a substitute for winter stock

water in each year prior to 1967 made all of the water in the reservoir available for irrigation of Plaintiff's crops. The water from said valve served Plaintiff's and other stock water users' needs on a traded basis, as to which Defendant never collected or used the consideration, namely: additional water from the Juniata Enlarged Reservoir.

29. After the close of Plaintiff's case and its rulings, the court allowed Plaintiff to continue with his case for damages for the year 1966 for losses designated as partial economic losses. In 1966 in the Highline and Juniata Ditches alone during run off, Plaintiff received 1100.9 acre feet of water which should have prevented all other forms of economic losses in that year (compare this with Finding No. 24 above for 1967). Any misappropriation by the Defendant or the Pool with particular emphasis by the Plaintiff on appropriation by the FL&WW Ditch, was not such as to deprive the Plaintiff of sufficient water necessary to cover his whole irrigated ranch some four times over at the rate of  $1/4$  acre foot per acre. Plaintiff could have taken his full share of Highline Ditch decree for eight days in 1966, see Exhibit 15, but compare to Exhibit A-11. At best for Plaintiff's case, he could have asserted that the Defendant took 4.2 second feet of water in excess through the FL&WW Ditch for thirty-four days. At 4.2 second feet per day for thirty-four days, there are 285 acre feet which might have been taken out of priority. This, however, should be compared with stored water in the Juniata Enlarged Reservoir through the Juniata Enlarged Ditch which is junior in priority to the FL&WW. Said Juniata Enlarged Ditch completely filled the Juniata Enlarged Reservoir in 1966 making available there some 2,413 acre feet. Plaintiff's  $1/2$  would be 1,206 acre feet compared to the above noted 285 acre feet. Plaintiff's own Exhibit A-11 shows the Juniata Ditch in 1966 filled for thirty-five consecutive days, Exhibit 15 shows only nineteen days, at the time when Plaintiff would have had to have been damaged. Partial economic loss would have to be after the time when the FL&WW

Ditch ceased its diversions and reservoir water was plentifully available. At one point in Plaintiff's cross-examination he specifically admitted there were no tracts in 1966 which suffered partial economic loss. In addition Exhibit G so indicated.

30. The only evidence of value before and after the alleged losses is that of the Plaintiff himself concerning the price of his total ranch in 1966 and again in 1967. This evidence shows that his price increased in that period from \$375,000.00 to \$500,000.00. Plaintiff offered some explanation of the increase being limited to certain survey work done by the Plaintiff on the Juniata Enlarged Reservoir. However, there was no evidence satisfying to the Court to explain the substantial increase in value, which totally negates Plaintiff's claim of loss in 1966 or 1967.

31. In 1967, from the 1967 Field Book, Exhibit Q, the Court computed the extent of FL&WW diversions compared to the times the Highline Ditch could be calling for the water shown graphically on Exhibit 11, and when the Juniata Enlarged Ditch was not taking what the Highline Ditch could have had if it had asked for it. This excess taking by FL&WW occurred on May 16th through May 26th and on May 29th and 30th. For such hours the FL&WW took 42.1 acre feet. If such water had gone to the Highline, Plaintiff's 23% would have given him 9.7 acre feet. Again from Exhibit 11, the Juniata Enlarged Ditch in 1967 took substantial water before the Defendant and the Pool were allowed to store in reservoirs senior to the Juniata Enlarged Ditch. The FL&WW, also senior to the Juniata Enlarged Ditch, got none of this water. The dates are May 11, 12 and 16th and the excess amounts taken by Juniata Enlarged Ditch were 43.7 acre feet to detriment of the senior reservoirs. The Court does not have a figure representing Plaintiff's share of water in the Juniata Enlarged Ditch, however, if the water resulted in storage in the Juniata Enlarged Reservoir, Plaintiff would be



be entitled to one-half or possibly as much as 21.8 acre feet.

B. STORAGE OUT OF PRIORITY

1. Though C. V. Hallenbeck, Jr.'s testimony, shown in words and figures as Exhibit A-11, substantiated by his personal opinion as an expert, indicated storage out of priority by the Defendant and Pool reservoirs in May, 1967; the evidence does lack any positive proof that the time of the alleged storage was in fact coincidental with the time of the shortage in Plaintiff's direct flow decrees. This element of proof of timing of storage compared to shortages in the direct flow decree pervades the proof in Plaintiff's, Defendant's and the Pool cases. The Court does not find a proper demand based on a due process proceeding under the Colorado statutes to require before the runoff season of 1967 automatic recording devices on all of the mountain top reservoirs except solely Carson Lake. The water officials themselves, particularly George Fickens, agreed that he had insufficient data to administer the priorities in the watershed properly.

2. For 1967, the Court is satisfied with the proof that the Juniata Enlarged Ditch, holding a priority junior to all but four of the mountain top reservoirs, was receiving at least limited amounts of water throughout the period when the controversy ensued between the water officials, the Defendant and the Pool as to whether or not the reservoir gates should have been reopened on May 18th, 19th or 20th, once having been closed May 17th by consent and order of the water officials given on May 16th.

3. The setting for the head gate to the FL&WW Ditch was generally determined by George Pickens only once a day although all of the evidence indicates that there was tremendous fluctuation in the stream over each twenty-four hours. There was no taking of water for the FL&WW Ditch against the orders or instructions of the water officials, or such diversions without the knowledge and consent of the water officials.

4. Substantial water was taken May 20th and May 21st, 1967 by the Highline Ditch and the Juniata Enlarged Ditch as against senior reservoir rights on the mountain before Mr. Pickens re-ordered reservoir storage on May 22nd. The May 20th order to re-open reservoir valves was without regard to any of the reservoir priorities.

5. The administration of the stream was inconsistent to prevent four days of substantial waste of water to the Gunnison River at the end of the 1967 runoff season. Likewise, the Highline Ditch, Landers Extension, ran waste of a full 40 second feet of water to the North Fork for one full day without coordination between the head gate tender and water officials to prevent same.

6. Only when there is active snow melt on the top of Grand Mesa is there sufficient water to provide storage and surges in the stream sufficient to fill the Highline Ditch decree and more junior decrees. These surges occur daily and come at an average time of 10:00 o'clock P.M. with little fluctuation in time. The top of Grand Mesa production of direct flow water or storage water is directly related to changes in temperature which happens daily and varies substantially from day to day in the range of change. The shortage of water in Kannah Creek to fill direct flow decrees is as directly related to temperature change on the top of Grand Mesa as it is to any asserted improper storage of water and the evidence is unconvincing to satisfy the Court that it is solely one or the other. (Emphasis supplied) The amount of such storage out of priority and location though is not determinable from the evidence. Consistently, witnesses in Plaintiff's case gave opinions that storage in the junior reservoirs on the mountain prevented filling of senior decreed flow down stream and just as consistently the same witnesses admitted on cross examination that the same effect on the senior direct flow decrees could have been caused by changes in temperature

popularly called "freeze backs". Logically there is merit to Charles V. Hallenbeck Jr.'s opinion that in 1963 since estimated storage for a two week period was roughly 2/3 of the total flow in the stream at the USGS gauging station for the entire month of May, it is indicative that storage has taken place out of priority. But again his prefacing foundation for such opinion indicated that to be accurate he would have to have data on water stored as a function of continuous timing plus the same timed information on stream fluctuations and on all calls for water both senior and junior. Admittedly those time facts were missing.

7. There was a conflict of evidence between the Plaintiff on one side and Mr. Raber, Mr. Prouse and others on the other side as to whether the Hallenbeck No. 2 Reservoir valve was closed during the winter prior to approximately 1957 when water officials disallowed closing of most reservoir valves in the fall. Plaintiff generally operated Hallenbeck No. 2 Reservoir as his own up to 1954 in the same manner as the Defendant has done since. In face of his own reservoir operations, Plaintiff asserts that there has been no proper stream administration in the last thirty two years on Kannah Creek. Consistently, Plaintiff with other reservoir owners, had never reopened the reservoir valves once closed for storage during runoff. The Plaintiff never attempted to stabilize in-flow and out-flow of his reservoir at times when freeze backs caused stream shortage. Since 1954, Plaintiff's ownership of interest in Chambers Reservoir and Deep Creek Reservoir has likewise resulted in no request by Plaintiff that these reservoirs be operated differently than the others to prevent illegal storage to the detriment of direct flow decrees. Likewise, before the 1954 sale of Hallenbeck No. 1 Reservoir to the Defendant, Plaintiff admits he often used Highline Ditch irrigation direct flow decreed water for storage in said reservoir. Likewise, Plaintiff still fills and refills

innumerable time each year his undecreed six acre foot pond on Purdy Mesa and uses it as a stabilizing basin. It is noteworthy that the Plaintiff is the only complainant in the litigation and yet he owns everyone of the alleged encroached upon rights jointly with other water users who have not seen fit to complain.

8. The Court finds that on Mr. Ralph Kelling's determination on May 21, 1967, that some 279.04 acre feet of water had been wrongfully impounded in Deep Creek Reservoir and Hallenbeck Reservoir No. 2 was subject to some frailties, namely: Deep Creek Reservoir carries a decreed priority senior to the Highline Ditch whereas Hallenbeck Reservoir No. 2 decreed priority is junior. Mr. Kelling's testimony is thus irrelevant that a basis for the determination of impounding was the fact that the Highline Ditch was not full in the period of May before the 21st. His basis as to Hallenbeck Reservoir No. 2 may be valid. However, as to both reservoirs, the determination of timing is lacking. There is conflicting evidence as to whether such water was stored in the two reservoirs from peaks when senior decrees were full or could have been full, or whether there was substantial snow melt during the low flow for those days to store water also. Without such time element, the issue can not be resolved.

9. Until 1968, the practice was generally to close all mountain top reservoir valves the same date regardless of priority because of the substantial hardship in making two or three trips. The runoff comes from almost nothing for the Juniata Ditch to enough to fill most of the junior decrees in almost a days change. The priorities may be such that storage out of priority can be prevented if all reservoir valves are closed the same day in indiscriminate order. Mr. Jex and Mr. Raber both gave opinions that closing the reservoir valves in the fall does not make any change in the rights of senior decrees, and comparing years prior to 1957 and afterwards on Exhibit 14, seems to bear this out. Mr. Jex and

Mr. C. V. Pallenbeck, Jr. gave opposing opinions of the accuracy of Exhibit A-11 and whether it proved improper storage for 1962 through 1967. This Court is satisfied that some improper storage took place, but as above found, such improprieties are difficult if not impossible to measure from the evidence available. Mr. Jex admittedly opined no encroachment by eleven reservoirs on Plaintiff's rights but admitted possible encroachment by five reservoirs. He further is convincing that such encroachment by five junior reservoirs were at the daily peaks of Kannah Creek flow and at times when Plaintiff's Highline Ditch gate tender let such peaks go by in favor of diversion through the Juniata Enlarged Ditch for storage. The order to reopen the reservoir valves by the water officials on May 20, 1967 was on one of those days and would have helped only the Juniata Enlarged Ditch since the Highline Ditch was taking less than its decree and all it wanted at the peak flow of the creek and allowing part of its rights to be diverted in the Juniata Enlarged Ditch.

10. Though the water officials directed the flow to be taken by the Defendant's intake pipe line, Defendant's witness admitted that the FI&WW took water out of priority on occasion, including May 17, 1967. In studying the Exhibits, the Court is satisfied that both the FI&WW Ditch and the Juniata Enlarged Ditch diverted water out of priority in 1967. In May, 1967, the Court is satisfied that the Juniata Enlarged Ditch took substantial water at hours when it is undisputed there was a specific and consistent call for same by Mr. Keith Clark for three senior ditches, the Black, the Florence Berry and the Williams Ditches. This occurred on several dates, May 12th, 16th, 18th, 20th, 21st, 24th through the 30th. On the other hand, Mr. Clark had been manipulating his head gate without consent or authority from the water commissioner which was improper regardless of his rights thereby being encroached upon.

11. The watershed involved derives some moisture annual-

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ly from natural rainfall after run off and before snow fall. This rainfall varies from arid hills at the lowest elevation to some substantial rainfall on the top of Grand Mesa. Both sides took issue with the other parties' practices in failure to operate storage reservoirs in such a manner as to bypass all rainfall. It was admitted by all parties that none of them in their respective operations of storage rights do, in fact, bypass through the storage reservoirs any increments to storage derived by rainfall.

12. It is significant in the request to the Court for automatic recording devices on many of the ditches or reservoirs that an automatic device is not self-executing and can do nothing to eliminate improper water administration. Their sole purpose is to gather information to make administration in the future more accurate and as one of the witnesses testified "to preserve facts for a lawsuit".

#### C. CARSON LAKE

1. The Court finds that Carson Lake is not drained in the fall and is used by the Defendant for municipal purposes in the early spring and up to run off time. It is equipped with an automatic device to record discharge and has been since 1965, but is not operated year around.

2. Carson Lake had certain springs in its reservoir bed which were tributary to Kannah Creek before the lake was made and there are certain stream tributaries to Kannah Creek from the southeast drainage area above the reservoir which are captured by the reservoir when its valve is closed. These streams and springs are such as to provide some year around flow which has been determined by measurement by the water officials to be 1.8 second feet. The dam for the lake does have some leaks which below the dam shortly join the Kannah Creek main stream. The lake is part of the main stem stream bed of Kannah Creek and a bypass canal allows diversion of the main flow around the north side of the lake and back into its natural stream bed. This bypass canal during run off is filled

with snow at least during a part of its filling period. This was admitted by both sides and viewed by the Court on its air view of the area on May 23, 1968.

3. Because of its low elevation and extra large drainage basin, Carson Lake is one of the first reservoirs to fill and yet its priority is quite junior to most of the pertinent water rights involved. It filled first in 1967, by May 24th or May 26th at the latest when the senior Highline Ditch had not yet filled. Being on the main stream of Kannah Creek below several other reservoirs and where Kannah Creek always flows some water regardless of temperature, Carson Lake must have taken some water out of priority.

4. Defendant has offered to allow use of Carson Lake as a surge tank and it is well situated for such purpose.

5. There being no evidence of the extent of leakage through the Carson Lake dam it is not convincing to the Court that 1.8 second feet is necessarily too high a figure for required bypass from Carson Lake when Carson Lake lost depth through 1967 summer when it constantly bypassed 1.8 second feet through its discharge valves. The same is true of the evidence that with the discharge valves closed and Carson Lake spilling in August, that spillage is constantly less than 1.8 second feet.

#### D. TWENTY-FOUR HOUR RULE.

1. The water officials, to a substantial extent but not consistently, allow the storage of water in junior priority reservoirs only after each senior right has received its full decreed flow for a constant twenty-four hour period. Because the stream fluctuates every day, this means that the peaks above the solid twenty-four hour low flow are deemed flood water and allowed to be taken by any head gate able to catch the said flood water regardless of priority.

2. Mr. Woodrow Saunders admitted there is no practical

way as the stream is now administered to the certain top reservoirs store the peaks of Kannah Creek surges which are now being taken by the Juniata Enlarged head gate which is junior to most of the said reservoirs. Likewise, because these peaks are somewhat impractical to irrigate with when not a solid flow for twenty-four hours Mr. Saunders approved allowing the Highline Ditch (not full) to bypass the peaks and allow the Juniata Enlarged head gate to take the water for storage ahead of reservoirs senior to the Juniata Enlarged Ditch.

#### E. PENALTIES FOR ILLEGAL STORAGE.

1. In 1963 when illegal storage was declared by the water officials, the mid or late summer release of the water greatly benefited the direct flow decrees. Again in 1967 the asserted illegal storage in Hallenbeck Reservoir #2 and the Deep Creek Reservoir was not discharged by the water officials until October when it greatly benefited the Plaintiff compared to an immediate discharge during run off. Plaintiff's first demand for release of it came not in run off period but in July. Mr. Kelling in asserting the illegal storage in Deep Creek Reservoir on May 21, 1967 because the Highline Ditch was not full, failed to recognize that the senior Juniata Ditch was full that date and that the said Reservoir was itself senior to the Highline Ditch which wasn't full that date.

#### F. MICROSTRAINER.

1. It was undisputed that the Stadlemah Brothers of the Pool requested the water officials to change Plaintiff's diversion of the water coming as a discharge from the Defendant's microstrainer. The discharge runs some water constantly and surges on frequent occasions. This flow proceeds through a natural draw which the Court finds to be tributary to the North Fork of Kannah Creek which in turn is tributary to Kannah Creek. The Plaintiff, however, diverts the flow from the natural draw within 1/4 of a mile of the microstrainer and runs the water through the Reservoir Ditch to Plaintiff's lands. This is the same Reservoir Ditch which carries Plaintiff's water from the Juniata Reservoir to his lands. The Microstrainer is located immediately below Hallenbeck Reservoir #1.



2. The same Reservoir Ditch also collects water from a spring which is located under the dike of the Juniata Enlarged Reservoir in the hill side to which the south end of the Juniata Reservoir dam abuts. It was not disputed by the opponents that Plaintiff found said spring to be non-tributary in that it would not flow even the short distance between its source and the high water line of Hallenbeck #1.

3. If as Plaintiff testified, a pipe once carried the microstrainer discharge flow under the Reservoir Ditch, it is plain that such bypass of the Reservoir Ditch as a diversion is not presently used. The Reservoir Ditch was in existence prior to the construction of the microstrainer and the Plaintiff made no change in the Reservoir Ditch to prevent said ditch from diverting this flow from the natural draw in which it runs. The Plaintiff did not develop this source of water anew or increase an existing flow.

G. JUNIATA ENLARGED RESERVOIR AND HALLENBECK RESERVOIR #1.

1. The decree which provides for the filling of Juniata Reservoir and Juniata Enlarged Reservoir includes the 665 acre feet of water for stock water which was the last filling appropriation taken to decree. Thus in a year when the reservoir does not fill this stock water decree is the one which is shorted. The reservoir did not fill in 1967 and was short of filling by an amount in excess of this 665 acre feet so that there was no restriction by decree on the use of the water in the reservoir to livestock purposes only.

2. The Hallenbeck Reservoir has been used by the Defendant for the last ten years as a regulating basin and has not used its filling right by ditches which use the Juniata Reservoir as a conduit. The Juniata Enlarged Reservoir being a junior reservoir has thus gotten the full benefit of the non-use of the Hallenbeck Reservoir filling rights.

3. Substantially greater head of water is required from the Juniata Enlarged Reservoir to supply stock in the winter to prevent freeze ups than is required for the actual consumption by the livestock.

4. In the evidence presented to the Court to make absolute the 665 acre foot decree, the quantity of water was not

based on a precise measure of the past runs of water necessary to supply water for livestock needs. The 665 acre foot quantity was decreed to attempt to obtain good quality stock water on Purdy Mesa and to improve the quality of the water down stream on Kannah Creek for winter use. The Court believes the Plaintiff was a participant in the pre-trial discussions between the attorneys and the witness who testified when the conditional stock water decree was made absolute.

#### H. THE BOLEN, ANDERSON AND JACOBS DITCH.

1. The Anderson Ditch used to fill point Reservoirs (Bolen, Anderson and Jacobs Reservoir, Bolen Reservoir, and Anderson Reservoir No. 6) carries no decree as a direct flow decree. It diverts water from Coal Creek and acts as a watershed capture ditch in the first part of its course before it crosses the divide from the Coal Creek watershed to the North Fork watershed.

2. The decree for the Bolen, Anderson and Jacobs Ditch is a direct flow decree and not a decree for reservoir filling. Though its head gate is no longer opened in the fall so as to divert water from Deep Creek there was a variance in the 1966-1967 winter when it remained opened. Defendant's witness, Mr. Wing, admits that the Bolen, Anderson and Jacobs Ditch is used by the Defendant to fill the point reservoirs and that no records are kept on the extent of filling of these reservoirs or their discharges. These reservoirs did not fill in 1967.

3. From the location of the Bolen, Anderson and Jacobs Ditch head gate when the valve is closed on the Anderson Reservoir No. 1, there is no water to run in the Bolen, Anderson and Jacobs Ditch from its head gate. Yet said ditch is senior to the storage rights for Anderson Reservoir No. 1 and No. 2 which are also junior to the Highline Ditch. What water flows in this ditch prior to the spilling of Anderson Reservoir No. 1 must derive from the ditch as a capture ditch for the watershed which it crosses enroute to the

North Fork drainage. The Bolen, Anderson and Jacobs Ditch as a capture ditch collects water from about 4% of the Kannah Creek watershed area. The Anderson Ditch captures water from an area about 1% of such watershed.

I. EQUITABLE RELIEF.

1. The evidence produced through Mr. Jex was undisputed that the 15% shrink charged on reservoir runs between the pertinent reservoir and the USGS Gauging Station, is excessive. There was no testimony to show the accuracy of this figure or the accuracy basis for the 5% figure which Mr. Jex suggested.

2. The mountain reservoirs, excluding Carson Lake, control only 19% of the Kannah Creek watershed and it would take twelve men during runoff to man each reservoir valve during runoff to strickly enforce priorities of storage. Automatic recording devices on inflow water sources to each reservoir are impractical and unfeasible. This is due to the fact that most of the reservoirs lay in a stream bed which runs no water except during runoff and such stream beds even during runoff do not account for very substantial storage from snow melt directly into the reservoir without becoming tributary to a defined stream bed. Automatic recording device on gage rod levels as a function of time could provide valuable information on the correlation between peaks in downstream Kannah Creek and peaks in storage; similarly for low points in each.

3. To close the reservoir valves during runoff requires hardship, danger and extreme time. The evidence is full of testimony in this respect, particularly the testimony of Mr. W. K. Bradbury and Mr. Orville Stadleman, (re: 1963 Chambers Reservoir experience)

4. The court believes the better logic from disputed evidence is that storage in the reservoirs on the mountain top does level out daily peaks in the Kannah Creek flow, when compared to the limited evidence of the destructive peak and low runoff flows testi-

fied to by Mr. Wilbur Raber when few or no reservoirs were on the mountain top.

5. The "dam" near the highway bridge across Kannah Creek is above only the Ponsford Ditch head gate requiring only .60 second feet flow beyond the "dam". Whenever water in excess of this amount is running over the "dam", the administration of the stream is wasteful when all decrees are not full up stream. The degree of wastefulness must be related to reasonable tailwater entering Kannah Creek below the lowest head gate above the "dam". Runs of 10 to 40 second feet of water over the dam are unreasonable unless related to some accident such as a major ditch break.

6. Snow dams do effect surges in Kannah Creek but are beyond the control of water users or water officials.

All of the above findings are made to the satisfaction of the Court based on proof by a preponderance of the evidence; whether based on admissions against interest, undisputed testimony or testimony in direct conflict.

#### CONCLUSIONS

A. Finding A(2) was the basis of the Court's determination that the testimony of Plaintiff and Clyde Hallenbeck in Plaintiff's rebuttal case should be limited. Until after the Motion to Dismiss had been granted as to most of Plaintiff's damages and until even after Defendant's total case, Plaintiff did not offer to prove that a specific sized head of water was necessary and unavailable in 1967 to operate his ranch irrigation system. Because of tract layout and the extra length of field creases, he offered in rebuttal to prove his 1/4 acre foot of water per acre formula could not be applied as the Court used it. The minimum non-fluctuating head of water Plaintiff had was approximately 1/2 of the maximum head he would receive if his No. 4 right, the Juniata, and the Highline were all full. After the Motion to Dismiss in part was granted, nothing in the Pool and the Defendant's cases reopened the issue of the water needs of Plaintiff's specific ranch.

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If Plaintiff had applied the quantities of water available to him and shown diverted to his ditches in 1967, there should have been no total economic loss in that year to any of his tracts. All this water was available to Plaintiff during May runoff and would have produced the winter pasture he tried to produce.

After correcting the finding as to the FL&WW Ditch, Finding No. 13 above, there remains per Findings 14, 17, 18, 19 and 20 no causal relation between Plaintiff's claimed partial economic losses in 1967 and the Defendant or the Pool's alleged illegal appropriations.

Again if Plaintiff had applied the quantities of water available to him in years prior to 1967 there should have been no total economic loss to any of his tracts.

Though Plaintiff's Exhibit G designates no loss before 1967 except for total economic loss. After granting the motion to dismiss in part the Court allowed Plaintiff to proceed as to partial economic loss for 1966 as well as 1967. The main consideration was the recently discovered evidence of possible improper diversions by Defendant's FL&WW Ditch. Per Findings 29 and 30, the Plaintiff showed no basis for such damages in 1966.

The Plaintiff was obligated throughout to mitigate his damages by using all the sources of water available to him, see Denver vs. Noble 124 Colo. 392, 237 P2d 637 (1959) and the Court is not convinced he did so. For certain there are instances proven by the evidence of improper taking by Defendant and possibly the Pool, but Plaintiff failed in his burden of proof to show these improprieties were the cause of his losses.

Plaintiff ignored in his proof the usual measure of damages, namely, loss of market value of his ranch over the pertinent years when significant acreage became of no crop value, see Dandrea vs. County Commissioners 144 Colo. 343, at 348, 356 P2d 893 (1960).

Likewise, in showing partial loss of crops for a given year, he failed to show that from the lost sale value of the hay or pasture that he had deducted the costs of production, Denver vs. Noble supra at page 395.

B. The Court is well satisfied from its findings that there are specific instances and probable instances of taking water out of priority by the Plaintiff, the Defendant, and the Pool. The Court will require additional data particularly as to the timing of diversions and storage to assist in proper administration of Kannah Creek. There are corrections in the distribution to the priority holders which can be accomplished by a decree in equity based on the findings of the Court.

Under the Pre-trial Order, Paragraph 1, the issue of Defendant's Cross-claim No. 1 concerning the right to close reservoir valves in the fall and to leave them closed all winter was deferred to a separate proceeding to follow trial of the damages action. However, in the course of trial substantial evidence was submitted on this issue and the court has included its findings on this issue to the extent of the evidence submitted. These findings should be of benefit to counsel in the deferred determination and should be binding unless further evidence is produced.

C. By the Pre-trial Order, Paragraph 1, the Defendant's Cross-claim No. 2 was deferred for disposition in a separate proceeding. Again the Court has made certain findings concerning Carson Lake to the extent that the evidence disclosed facts concerning it and again these may be helpful to counsel in a later separate determination.

It does appear that the determination of the necessary bypass amounting to 1.8 second feet is an administrative determination by the Division Engineer. The Order being administrative, the Defendant must exhaust its remedies through the State Engineer's

administrative procedures before the issue is validly before the Court. Refer to 148-12-5 of 1963 C.R.S. Whether or not such remedies have been exhausted remains open and was not touched upon in the present trial.

It should be quite beneficial to the administration of Kannah Creek that Carson Lake be used as a regulating basin or surge tank to control some of the extreme fluctuations in the stream during runoff. This use of Carson Lake has been offered by Defendant, its sole owner.

Any leakage through the dam of a reservoir becomes a part of the natural stream below, see *Comstock vs. Ramsay* 55 Colo. 144, at 256 133 Pac. 1107 (1913), and cannot be used by the reservoir owner as a credit against water said owner is otherwise required to by-pass. Thus the Defendant can't reduce the amount of 1.8 second feet of water to be by-passed through its discharge tubes at all times, by the amount of any leakage through its dam. Defendant may repair the dam to prevent such leakage.

D. The Court can find no statutory or case authority in Colorado to support the so called twenty-four hour rule. Any peaks in the stream even though not sufficient to supply a priority for a full twenty-four hours, still must be distributed in the order of priorities for the portion of the day applicable.

In operating the stream below the USGS gaging station, the water commissioner must allow the peaks to be taken by the next junior appropriator in order as each senior decree is filled, regardless of whether the senior decree is filled for only a partial day. When a peak in the stream is sufficient to supply water to a mountain top reservoir, though for only part of a day, the Defendant and the Pool may call for same.

Declaring such peaks as "flood" water and allowing it to be taken regardless of priority by whatever ditch tender is able to

accept it is not a proper administrative step.

E. The Court concludes that the penalties for past illegal storage in the mountain top reservoirs have not been properly administered and that more immediate release of any illegally stored water must be effected. The responsibility for such determination of improper storage rests with the water officials and likewise they have the responsibility for seeing that said water is returned to the stream timewise so as to most nearly place the interested parties in the position they would have been in had the storage not so taken place, see the provisions of 1963 C.R.S. 148-12-11 for analogy. The delay of the release of impounded water in the past has been unreasonable.

F. The Microstrainer discharge is tributary water to the North Fork of Kannah Creek and cannot be taken by the Reservoir Ditch by the Plaintiff if it can be used to fill more senior decrees on Kannah Creek, see Dolpez vs. Nix 96 Colo. 540, 45 P2d 176 (1935). The flow is small and sporadic and an administrative determination should be made as to whether or not such flow can be of benefit to a senior decree.

G. The argument was raised as to whether or not Plaintiff could be required to pipe his winter stock water supply from its source in the Juniata Enlarged Reservoir to its place of use to prevent the more extensive water use required to keep the ditch open in freezing weather. The Court concludes that the Plaintiff's use of water to keep the ditch open to supply his stock is not unreasonable and that the law does not impose upon him the expense of the piping system which would use less water. His use is reasonable, and it is likewise beneficial under Colorado water laws.

H. Anderson Ditch not being a decreed right must be treated as an appropriation junior to all other rights listed in Exhibit A. The right diverted through it must be utilized only when Defendant can show that it does not deprive senior decrees, Defendant made no



such showing except that Exhibits 11 and 15 clearly show a peak flow in Kannah Creek sufficient to fill all decreed rights in Exhibit A.

The Bolen, Anderson and Jacobs Ditch carrying a direct flow irrigation decree cannot be used under its decree by the Defendant for a filling right to two point reservoirs. These reservoirs are not exempt from record keeping required of other reservoirs and the installation of gauge rods and outlet weirs.

There is no law that prevents the Bolen, Anderson and Jacobs Ditch or the Anderson Ditch within their respective priorities from capturing or collecting water from the watershed upgrade from their course in crossing the watershed. There was nothing in the evidence to show that such collection from the watershed was out of priority as to the Bolen, Anderson and Jacobs Ditch. As to the Anderson Ditch, if it captures or collects out of priority, such Ditch must be cut to return the captured water to Coal Creek before it passes over the ridge into the North Fork drainage basin.

I. Determination of shrink in reservoir runs between reservoirs and the distribution ditches downstream is an administrative function of the water officials. Use of administrative remedies to redetermine such shrink may be requested by an interested party, 148-12-5 of 1963 C.R.S., and 148-5-2 of 1963 C.R.S.

Even the maximum summer rainfall referred to in the evidence does not produce sufficient storage or stream flow to equitably warrant the expense of constant recording devices on any reservoir or ditch. No relief has ever been requested from the water officials to distribute this rainfall, but upon request they may determine how to measure and distribute same.

The Plaintiff, under 148-7-16 of the 1963 C.R.S., must be allowed access to read the various measuring devices at Defendant's intake which are now under lock and key to the Plaintiff's exclusion.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that as to the Plaintiff's first and second causes of action, the Plaintiff has failed in his burden of proof and therefore shall take nothing by his Complaint.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by way of equitable relief:

1. The Court retains jurisdiction with the aid of the findings herein made to determine the right of the owners of storage reservoirs on the top of Grand Mesa in the Kannah Creek watershed to close the reservoirs valves in the fall of the year for the following years filling rights.

2. The Court retains jurisdiction to determine whether or not the defendant has exhausted the administrative remedies to redetermine the proper measurement of natural flow of Kannah Creek which must be by-passed throughout the year at Carson Lake. If the Court has jurisdiction, the herein contained findings will become applicable.

3. As soon as acquisition and installation is practicable, the Defendant and the Pool will supply adequate automatic recording devices to record gage rod levels as a function of time for Hallenbeck Reservoir No. 2 and Grand Mesa Reservoir No. 9 and will keep the data from the recording devices together with detailed data on discharge of the reservoirs for one season. After review of the data as a reflection on the findings in this proceedings, the Court will determine whether additional measuring devices or shifting of the existing devices to other reservoirs is appropriate.

4. The water officials shall order the closing of the reservoir valves for the 1969 runoff season according to the priority of said reservoirs. In so doing, use of the so called twenty-four rule shall not be utilized. Closing of the valves on one or more reservoirs on the same date shall be permitted where the water officials reasonably predict that such may be done without detriment to

Anderson and Jacobs Ditch shall be in order of its consecutive priority. Opening of the head gate for diversion by Anderson Ditch out of Coal Creek shall not be had until all decreed rights have been supplied.

5. Commencing with the 1969 run off season, the Court will require the Defendant to place a man in charge of the facilities at Carson Lake. Said person shall be required to maintain sufficiently frequent readings on the gauge rod of the Lake to establish the inflow to the Lake and likewise to use the existing automatic recorder or to maintain readings on the discharge therefrom to keep an accurate record thereof. Said person shall also be required to maintain a time correlated temperature record. The water officials will advise the Defendant's lake tender when sufficient run off has commenced in Kannah Creek to cause substantial fluctuations in the volume of the stream exemplified by those fluctuations noted in Exhibit 11 on May 15th and thereafter. Upon such notice, the planks at the inlet will be removed and the discharge valves will be closed, (to the extent that only 1.8 second feet of water shall pass through the reservoir) commencing at 11:00 o'clock A.M. daily and to remain closed until 11:00 o'clock P.M. The discharge valves to the reservoir shall then be opened to such an extent, if possible, that there will be discharged from the lake between 11:00 o'clock P.M. and 11:00 o'clock A.M. the total amount of water impounded for the prior twelve hours. Such procedure shall be continued until water officials give notice that Carson Lake can commence its own filling right from Kannah Creek. Thereafter Carson Lake shall be allowed to fill until it spills or until the water commissioners determine that there is no longer water sufficient in the stream to allow further storage in accordance with Carson Lake priority. If Carson lake should commence spilling before the end of the runoff period, then during the next twelve hour period from 11:00 o'clock P.M. to 11:00 o'clock A.M. there shall be a discharge from the reservoir in an amount equivalent to the amount stored within the last twelve hour period before the reservoir commenced to

57.17.2

spill. This same alternation shall continue for forty-eight hours after it is commenced. The next forty-eight hours the Lake shall be allowed to continue to spill uninterrupted. The next forty-eight hours shall again be used in alternate discharge and filling followed by forty-eight hours of uninterrupted spilling. This alternation will be continued thereafter until it appears in the historical experience of the water commissioners that runoff will cease and the commissioners shall attempt to notify the Defendant a sufficient time in advance to allow the Defendant to cease the alternation and allow the reservoir to finally remain filled. All records of the operations of Carson Lake during this runoff season shall immediately be made available to the parties hereto so that they may analyze the effectiveness of the operation of the reservoir to control some of the extreme fluctuations in the stream and a hearing will be had by the Court to determine whether or not to continue or modify such operating procedures. If living facilities are not available to implement this Order for the 1969 runoff season, the Defendant will make appropriate arrangements to provide for implementation of this Order before the 1970 runoff season.

6. In the event of future determination of any improper storage and the impounding thereof by the water officials, said water officials shall release said volume of water at the earliest possible date following such determination and notice to parties. The responsibility for such determination shall rest solely with the water officials as an administrative procedure. Any interested parties may seek relief from such determination by his available administrative remedies.

7. In the administration of direct flow decrees, the water officials shall prohibit the use of such diversions for reservoir filling unless the decree specifically calls for same, particularly the Bolen, Anderson and Jacobs Ditch and the Highline Ditch.

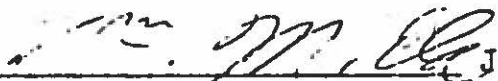
8. In any required discharge from any reservoir there shall not be allowed as a credit against the required discharge, the amount of any leakage through its dam. Said leakage shall be deemed to be a part of the natural stream flow below the reservoir. The amount of shrink to be charged against any run of reservoir water for using the natural stream as a conduit shall remain 15% until administrative procedures are utilized to redetermine same.

9. The Pool and the defendant did not act in bad faith in resisting the excessively broad orders of the water officials to reopen all the storage reservoir valves on May 20, 1967. However, during the time this Court shall retain equitable jurisdiction any bad faith resistance to the Court's orders and its direction of the administration of the watershed shall be grounds for a summary contempt proceeding. The Conclusions of the Court hereinabove set out shall be deemed a part of this Decree to the extent they direct a specific course of action or procedure.

10. The water officials must review their distribution at the Defendant's intake concerning the FL&WW Ditch, at the Highline and Juniata Enlarged head gates concerning the ditch and reservoir priorities in between them and senior to them, and at the "dam" at the lower end of Kannah Creek; all to avoid the abuses of other's priorities found on occasion to exist in finding numbers A-31, B-2, 3, 5, 9, D-1 and 2 and I-5 above.

IT IS FURTHER ORDERED that because of the equitable relief it is equitable for each party to pay its own costs.

DONE IN OPEN COURT, May 1, 1969.

  
\_\_\_\_\_  
Judge.

IN THE DISTRICT COURT IN AND FOR THE  
COUNTY OF MESA AND STATE OF COLORADO  
Civil Action No. 16632

THE CITY OF GRAND JUNCTION,  
COLORADO, a Municipal  
corporation, and STADELMAN  
HEREFORD RANCH, INC.,  
a corporation,

Plaintiffs,

vs.

C. V. HALLENBECK, THE  
JUNIATA RESERVOIR ENLARGED,  
INC., A corporation, and  
JUNIATA RESERVOIR COMPANY,  
a corporation,

Defendants.

FINDINGS  
CONCLUSIONS  
AND  
JUDGMENT

FILED  
IN THE DISTRICT COURT  
MESA COUNTY COLORADO  
APR 1 - 1970

*Robert O. Peterson*  
CLERK

J. J. H. C.

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IN THE DISTRICT COURT IN AND FOR THE  
COUNTY OF MESA AND STATE OF COLORADO

Civil Action No. 16632

THE CITY OF GRAND JUNCTION, )  
COLORADO, a Municipal )  
corporation, and STADELMAN )  
HEREFORD RANCH, INC., )  
a corporation, )  
Plaintiffs, )  
vs. )  
C. V. HALLENBECK, THE )  
JUNIATA RESERVOIR ENLARGED, )  
INC., a corporation, and )  
JUNIATA RESERVOIR COMPANY, )  
a corporation, )  
Defendants. )

FINDINGS  
CONCLUSIONS  
AND  
JUDGMENT

This matter came on for trial first, June 9, 1967, again on two dates in 1968, and last on July 1 and 2, 1969 with briefs and appearances submitted until the eleventh of September. The stadelman Hereford Ranch, Inc., a corporation, appeared but its issues on damages were deferred. The City of Grand Junction, a municipal corporation, hereinafter referred to as City, appeared by its agents and the firm of Dufford, Ruland & Williams, its attorneys. The defendant, Clyde Hallenbeck, was dismissed from the suit. The defendant C. V. Hallenbeck, hereinafter referred to by his last name, appeared in person and by his attorney, William G. Waldeck, Esq. The Juniata Reservoir Enlarged, Inc., a corporation, and The Juniata Reservoir Company, a corporation, were joined but did not participate in the trial. John P. Raber, Katheryn J. Raber, Wilbur J. Raber, Winfred K. Raber

and John Grounds have all entered appearances and consented to the jurisdiction of the Court as to equitable relief concerning The Juniata Reservoir Enlarged, Inc.

Each issue will be treated separately with Findings and Conclusions.

I

Findings as to filling rights of Hallenbeck Reservoir:

1. The City runs water to Hallenbeck Reservoir in filling its storage decree through Highline Ditch, Juniata Ditch, Juniata Ditch First Enlargement and Juniata Enlarged Reservoir as a conduit for <sup>decree 71.77.8. 8/24/10</sup> 863.097 a.f. of water. The City runs North Fork direct flow water through the North Fork Ditch and paramount decree direct flow water from Kannah Creek through the bypass pipeline, all into Hallenbeck Reservoir. The City sometimes runs mountain top storage from reservoirs both on North Fork and Kannah Creek down to Hallenbeck Reservoir for further transmission to the City customers below the microstrainer. The microstrainer is fed by a pipeline, being the only outlet facility used from Hallenbeck Reservoir.

2. The past practice of the City has been to use Hallenbeck Reservoir to accommodate all the above varieties of water in different and comingled manner. The proof fails to show in any way that the City has kept records which can be examined to label the various types and volumes of water in Hallenbeck Reservoir at any one time. Nor has Hallenbeck kept such records. The water on occasion has been conveyed through Hallenbeck Reservoir as a conduit with the discharge to the microstrainer being at the same rate as the inflow to Hallenbeck Reservoir from North Fork Ditch or the by pass pipeline. Again the water has been temporarily stored in Hallenbeck Reservoir which was used as a regulation basin for periods no longer than 24 hours. Again Hallenbeck Reservoir has been



used for lengthier storage of days or months.

3. By its storage decree Hallenbeck Reservoir is in a depression tributary to North Fork of Kannah Creek. Use of Hallenbeck Reservoir at the time of its construction and decree was for traditional agricultural purposes by filling in the spring run off and storage until needed in late summer for crops.

4. The evidence proved that the level of Hallenbeck Reservoir oftentimes rises when it is not receiving water from its decreed filling ditch rights. There was no proof to show that the rising level of Hallenbeck Reservoir in 1967, 1968 and 1969 was either due to storage of direct flow water, or to transfer down stream of upstream storage, or to free water in 1969 not called for by any others. Mr. Wing testified at the 6-9-67 hearing that the North Fork Ditch ran both 1.5 c.f.s. of direct flow and Bolen and other reservoir storage. Also he stated that through the by pass pipeline came both paramount decree direct flow and Carson Lake and other reservoir storage. The Court viewed the recorder on the by pass pipeline and Mr. Wing's testimony revealed a recorder on North Fork Ditch. No readings were introduced by either party to show the precise source which filled or partially filled Hallenbeck Reservoir in a particular year. Hallenbeck at the 4-19-68 hearing testified that Hallenbeck Reservoir historically filled in winter from excess water in Kannah Creek though its decree Exhibit I doesn't so indicate.

## II

### Conclusions as to filling of Hallenbeck Reservoir

1. Hallenbeck Reservoir is the usual reservoir with a filling right for <sup>decreed gr. m. e. 8/2/70</sup> storage of 863.097 a.f. It can have but one fill per year and when it spills it must cease storage

in favor of junior appropriators, including Juniata Enlarged Reservoir and others, *Holbrook v. Ft. Lyon*, 84 Colo. 174, 269 Pac. 574 (1928), *Windsor Reservoir v. Lake*, 44 Colo. 214, 98 Pac. 729 (1908).

2. It is necessary that waters of different decrees in Hallenbeck Reservoir be separately accounted for as they are governed by different rules of law. It is incumbent on the City to operate its recorders so that water officials can differentiate and turn water from the City to junior priorities when pertinent.

3. In addition to the filling right, the City may use Hallenbeck Reservoir as a conduit, with equal inflow and outflow in time and volume, from its Kannah Creek diversions under any of its direct flow decrees in order to transport the water to the microstrainer, see *Denver v. Northern Colo.*, 130 Colo. 375 at page 388, headnote 8, 276 P. 2d 992 at page 999, headnote 6 (1954). Likewise, with North Fork direct flow water. The only limitation in this conduit use is the amount in the combined direct flow decrees and the size of the flow-line through the microstrainer below Hallenbeck Reservoir. This use of Hallenbeck Reservoir is precisely similar to uses of Dillon Reservoir in *Denver v. Northern Colo.*, *Supra*. There Denver as claimant received a direct flow decree as limited by the size of its ditch, being in fact a large tunnel. Denver was denied the right to ever temporarily store a part of its requested direct flow (in excess of the size of its ditch or tunnel of 788 c.f.s.) in the Dillon Reservoir which it wanted to use as a regulating basin. When the City has't use for its full flow decrees or a pipeline large enough to receive it, then the excess water can not be stored in Hallenbeck Reservoir, see *Greeley v. Farmers*, 58 Colo. 462, 146 Pac. 217

(1915) and Handy Ditch v. Greeley, 86 Colo. 197, 280 Pac. 481 (1929).

4. This Court agrees that water once diverted for a beneficial use under a priority becomes a possession, under Brighton v. Englewood, 124 Colo. 366, 237 P. 2d 116 (1951). The City can not have a beneficial use within Hallenbeck Reservoir, both for a full storage right and for use as a regulating basin for direct flow additional water at exactly the same time, Denver v. Northern Colo. 130 Colo. 375, 276 P. 2d 992 (1954). Water decreed for direct flow can not be stored when a junior priority could use it, Handy Ditch v. Greeley, 86 Colo. 197, 280 Pac. 481 (1929). The level of Hallenbeck Reservoir can not be allowed to rise from storage of direct flow decrees, other than its decreed filling right once per year. It should be enjoined from such practice of the past from either Kannah Creek or North Fork. Under the Decree of No. 15487 it can beneficially use North Fork water alternately elsewhere. The water officials are charged with preventing diversions of direct flow for storage except for the one decreed reservoir fill per year. Violations should be dealt with appropriately under the penalty statutes.

5. Decreed storage in mountain top reservoirs, once captured, becomes a City possession. When there is a space open in Hallenbeck Reservoir, the City may move this possession downstream into Hallenbeck Reservoir and thereby use Hallenbeck Reservoir as a regulating basin or for long term retention. This is not a charge against the annual filling right of Hallenbeck Reservoir. Note that this was expressly not an issue in Denver v. Northern Colo., 130 Colo. 375, at page 388, 276 P. 2d 992, at at page 999 (1954). It is incumbent on the City to account for such uses of Hallenbeck Reservoir

by appropriate record keeping.

6. Whether Hallenbeck Reservoir be classed as an "on channel" or an "off channel" reservoir should make no difference. It has some "off channel" characteristics, but where it has an annual filling right and on top of that it is used as a regulating basin for direct flow decrees it violates the same rules as for an "on channel" reservoir like Dillon Reservoir did in *Denver v. Northern Colo.*, *Supra*. *Seven Lakes v. New Loveland*, 40 Colo. 382, 93 Pac. 485 (1907) seems to aid the City, but as an authority it has not been followed since 1914 and appears distinguishable because of the specific finding of no increased burden on the stream or is inferentially overruled by many later cases, such as *Denver v. Northern Colo.*, *Supra*.

### III

#### Findings as to Corporate Deadlock

1. The Articles of Incorporation, Exhibit W, and the bylaws, Exhibit VIII of Juniata Reservoir Enlarged, Inc., are its governing documents with particular reference to Articles II and VII of the former and Sections V, VI, XI, XIV, XIX, XXII, XXIII, XXIV, and XXV of the latter.

2. The minutes, Exhibit VII, reflect that on 6-4-63 the 3 directors elected were Hallenbeck, John Raber and Wilbur Raber. There was no election of directors or officers in the only 1964 meeting on 6-6-64. Again in 1965 and 1966 the minutes do not reflect any attempt to elect a new board of directors or officers.

3. 1-3-67 John Grounds, a stockholder, gave a proxy to the City Manager or his designees. The proxy, page 44 of Exhibit VII, allows the Manager to vote all Ground's shares or "for any purposes which I (Grounds) might personally vote or

or exercise rights with respect to said shares." 3-1-67 Wilbur Raber resigned as director of Juniata Reservoir Enlarged, Inc. The proxy and resignation are in the minutes by the meeting of 3-13-67, designated as an annual meeting of the corporation stockholders. Juniata Ditch Co. and Juniata Ditch 1st Enlargement met jointly with the corporation the same date. More than a majority of corporate stock was represented, Section XIX, and Ground's proxy was recognized as presented by the City. The minutes recite all stockholders of all 3 entities present, recognizing the Raber proxy also, though not incorporated in the minutes yet. Without the Raber proxy a majority of stock was still present. Wilbur Raber's resignation was formally accepted. Hallenbeck was elected President, Ragan, Secretary-Treasurer, and Gray, Vice President. At that time all assessments were paid.

4. Before the meeting of 6-30-67 the Raber proxy appears in the minutes containing the same language as the Ground's proxy. June 27, 1967 the City made demand by letter, Exhibit VII page 50, for election of directors and officers at the meeting of 6-30-67.

5. The meeting of 6-30-67 failed to elect a third director from nominations made. The minutes expressly recognize the officers elected 3-13-67. Hallenbeck and Gray are referred to in the capacity of directors. Hallenbeck at the trial several times admitted that Gray was elected a director, though he was not consistent in that. The bylaws had not yet been found to be studied by either side and no one proposed for the third directorship was eligible under the terms of the bylaws. The first two meetings of 1967 show confusion between the 3 entities and their common operation, Juniata Reservoir Enlarged, Inc., Juniata Ditch Co., and Juniata Ditch First

Enlargement. However, this was the adopted method of operation consistently from 1963 till 1967. At this meeting a tie vote occurred on whether to complete Juniata Enlarged Reservoir.

6. The meeting of 9-23-67 and notice thereof showed for the first time that the bylaws had been found and some compliance with them as to notice is apparent. A quorum of directors (regardless of recognizing Gray as a director) did not attend the 9-23-67 meeting. A majority of the stock was not represented at the meeting.

7. No meetings were held in 1968.

8. Before the 3-15-69 meeting the Hallenbeck proxies show up in the minutes. No directors or officers were elected as a tie vote occurred. A special meeting or a continuation meeting was held 4-26-69 or 4-28-69 as the minutes vary. Assessments were considered but failed from a tie vote.

9. Meetings were attempted 4-28-69, 5-29-69 and 6-17-69. At the 4-28-69 meeting the President, acting alone, appointed directors to fill purported vacancies. Neither a majority of outstanding stock at any of these meetings nor was a quorum of directors present if Mr. Gray was a director.

10. Hallenbeck has many historical, family and financial ties to Purdy Mesa, though he physically resides consistently in Delta County where he votes, owns property, and licenses his car. Gray resides in the City of Grand Junction whose water system distributes water from Juniata Enlarged Reservoir.

11. Juniata Reservoir Enlarged, Inc. is not insolvent and its bills have been paid except sums due to Hallenbeck for work done on raising the dam for Juniata Enlarged Reservoir, roadwork, etc. Disputes arise periodically between City and Hallenbeck over distribution of water from Juniata Enlarged

Reservoir, though these distributions have not been fully stymied.

#### IV

##### Conclusions as to Corporate Deadlock.

1. The 1963 election of directors was valid. Though directors' terms are 1 year, Section XX, the Court concludes that under Section V officers must be directors and that officers do hold over till successors are elected. Therefore, Hallenbeck, Wilbur Raber and John Raber remained directors at least through 1966.

2. The Grounds and Raber proxies are of broad enough language to allow the proxy holder the right to act on the board of directors as Grounds and Raber could have done. Mr. Gray's election as vice president of Juniata Reservoir Enlarged, Inc. on 3-13-67 was also his election to the board of directors, Section V of bylaws. This was recognized by Hallenbeck in his testimony at the trial, and by the minutes of the next meeting on 6-30-67. Likewise, Hallenbeck's election was valid. Mr. Ragan's election was not valid as he was not a stockholder of Juniata Reservoir Enlarged, Inc., Section XXII. Ragan was not recognized as a director at the next meeting of 6-30-67. Wilbur Raber's resignation was present but not required since it was an annual meeting and election of directors was in order, Section XX.

3. At the 9-23-67 meeting no business could be conducted since there was no quorum of directors, Section XIV. Since there was no 1968 meeting, Hallenbeck and Gray, as directors and officers, were held over in their positions, Section V.

4. In 1969 at the March 15 meeting no directors were elected because of the tie vote, and Hallenbeck and Gray

held over, If Gray were not a director, there would have been no quorum to conduct directors' business, Section XIV. The assessments attempted could not be valid, Section XXIII, since the meeting was after April 1 and director action only could make assessments.

5. At the 4-28-69 meeting Hallenbeck could not validly act alone as he had no quorum of directors to do business, Section XIV, see Paxton v. Heron, 41 Colo. 147, 92 Pac. 15 (1907). Nor was a majority of outstanding stock represented at the meeting, Section XIX. The appointment of directors on 4-28-69 being invalid, the actions of the directors on 6-17-69 and 5-29-69 were invalid.

6. There is no abuse apparent to the needs of the corporation in ruling that both Hallenbeck and Gray are eligible for directorships. It is noteworthy that no significant corporate action was taken after 1-3-67 at any time in which Gray's vote as a director was critical, when it is remembered that otherwise Hallenbeck alone could not act since a quorum was absent.

7. The minutes and testimony is replete with examples of tie votes, invalid corporate action and the need for a break in the deadlock of corporate business, and particularly, to elect the third member to the board of directors after John Haber resigned. Valid assessments are necessary and the status of Hallenbeck's money claims against the corporation needs clarifying. With director approval there is no breach of a fiduciary obligation for Hallenbeck to have performed work for the corporation or become its creditor, Section VI.

8. The Court concludes that it must interfere to appoint a third member of the directors or a general receiver, but that the least equitable jurisdiction interference is



best, Eureka v. McGowan, 72 Colo. 402, 212 Pac. 521 (1922).  
With the hoped for clarification of past corporate acts given  
in this opinion, a temporary third director may be sufficient  
to solve the ills.

V

Findings on estoppel as to the uses of Hallenbeck  
Reservoir.

1. Reference is made in this Court's denial of  
injunction order of 6-16-67 to possible estoppel concerning  
certain uses of Hallenbeck Reservoir. This Court finds that  
Hallenbeck, personally, and the other owners of Juniata En-  
larged Reservoir full well knew the City was using Hallenbeck  
Reservoir as a regulating basin for direct flow waters - see  
minutes of meeting of meeting of 6-8-64 and again 4-16-65  
and that in 1964 it was negotiated between City and Hallenbeck.  
Between dates of construction of the bypass pipeline and North  
Fork Ditch as late as 1960 and until 1964, there is no evidence  
of Hallenbeck's position toward acquiescence in City use of  
Hallenbeck Reservoir.

2. Exhibit T, however, is quite revealing of Hallen-  
beck's unfair and inconsistent positions. Page 5 of the letter  
of 1-17-53 shows Hallenbeck's attitude in trying to induce the  
City to purchase Hallenbeck Reservoir and in 1954 his induc-  
ment worked. Therein he urged City that Hallenbeck Reservoir  
could be used by City to "temporarily hold that portion of the  
City's direct flow not required by the City at a time when the  
full flow is not required by the City." Hallenbeck's attitude  
obviously changed when the shoe got on the other foot and could  
legally complain in this suit of his previously recommended  
action.

## VI

Conclusions on estoppel as to the uses of Hallenbeck Reservoir.

1. Though Hallenbeck should personally be estopped from complaining of any improper temporary storage of direct flow water by City in Hallenbeck Reservoir, the other parties and corporations, and particularly, the water officials can not be so estopped on the facts in this case. They must enforce the water laws regardless of Hallenbeck's individual estoppel.

## VII

Findings re: Stock Water Decree

1. The 665 a.f. of the last absolute Decree to Juniata Enlarged Reservoir was designated for winter stock water and domestic uses. Extensive Exhibits were introduced on the testimony given in the adjudication proceeding. Hallenbeck, Raber and Crosswhite all testified in the 1960 hearings. Hallenbeck testified that the water was used for irrigation. Raber extensively testified that it was winter stock water up to 665 a.f. Crosswhite testified that it was for stock and irrigation water being used outside the Kannah Creek basin in Whitewater Creek.

2. After the Decree, there is evidence of the stock water use and for hold over stock water. Stock water runs never reached 665 a.f. in a given year after the Decree and amounts were held over. No concerted effort was made and placed in evidence to show a separated and cumulative accounting to stockholders for calls on this part of the Decree. Crosswhite's part of the water passed to Grounds and then to the City through transfers of Juniata Reservoir Enlarged, Inc. stock or by options and proxies thereon.

3. The bylaws of Juniata Reservoir Enlarged, Inc., Section XXIV, state that the stock represents water rights and that transfer of the stock carries all water rights represented. Section XXV provides available water may be drawn from the reservoir pro rata with stock owned.

#### VIII

#### Conclusions re: Stock Water Decree

1. The testimony of the claimants became merged in the Decree for 665 a.f. domestic and winter stock water. City's reliance on Arnold v. Roup, 61 Colo. 316, 157 Pac. 206 (1916) is improperly placed considering that the Court's restriction on "change" which may injuriously affect others, page 325, and on "use" to claimant's necessities for irrigation, page 326. Hallenbeck's assertion that Westminster v. Church, Colo. , 445 P. 2d 52 (1968) has no relevancy is also improper. This Court concludes that that case is controlling here. Westminster, a municipality, purchased storage rights from prior irrigation users. Westminster changed the character of use to municipal and the trial Court tried to restrict the use as historically used for irrigation. The Supreme Court in its latest pronouncement in this area reversed the trial court and held storage rights could not be limited to historical use. The Supreme Court described it as one of several cases where municipalities purchase agricultural water rights intending to devote same to domestic and municipal purposes. It holds the direct flow rights are restricted and the storage rights are not. In the Westminster case junior priorities were contesting and failed, for stronger reason here a co-owner would fail.

2. Hallenbeck's assertion that ownership of stock does not control the water is refuted by the express provisio

of the bylaws noted in the findings. The corporation made the shares alienable and had to foresee such possibilities. Historically as to Crosswhite, 1/4 of the water was not to be used on Purdy Mesa but in Whitewater Creek basin and without a return flow to Kannah Creek. This Court does not know how this water was transmitted to Whitewater Creek, but the adjudicating court was satisfied it was used there.

3. Where Hallenbeck's position for need for 665 a.f. of stock water rests on historical use not in the year of diversion from the stream but for hold over insurance against a drought year, this Court has serious doubt that use under the decree is based upon a beneficial use.

#### IX

Findings and Conclusions as to hold over storage.

1. As to "hold over" procedures the Court finds the issue moot as the Juniata Reservoir Enlarged filled in 1969 and all parties agree no hold over can apply after the reservoir fills. As to future policy, the parties can apparently agree as shown by the briefs. The proviso on agreement in paragraph 4, page 19 of Hallenbeck's brief is filled when the measured winter stock water runs of the past have not exceeded his one-half of the 665 a.f. 331 a.f. was run in the winter of 1968 - 1969, and 308 a.f. run in winter of 1967 - 1968. If hold over water is in fact held over (when the reservoir doesn't fill) it must be accounted for cumulatively between the owners from one complete fill of the reservoir to the next.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. That the City be enjoined from storage of any direct flow decreed water in Hallenbeck Reservoir except

as decreed for its one filling right.

2. That the City may use Hallenbeck Reservoir as space permits as a regulating basin or as a storage facility for water previously stored in its upstream reservoirs.

3. That the City may use Hallenbeck Reservoir as a conduit for its direct flow decrees, outflow and inflow must be equal in time and volume.

4. That the actions of Juniata Reservoir Enlarged, Inc. at the meetings of 9-~~23~~<sup>28</sup>-67, <sup>28</sup> 4-28-69, 5-29-69 and 6-17-69 were invalid.

5. That the existing directors on the last date of trial were C. V. Hallenbeck and Richard Gray, with the third directorship vacant.

6. That the corporate deadlock, existing since 3-15-67, imperiling the property rights of all stockholders as to water distributions and completion of corporate purposes, requires an equitable order to break such deadlock.

7. The City may use its share of the 665 a.f. of Juniata Enlarged Reservoir winter stock water decree for beneficial municipal purposes as between the parties.

IT IS FURTHER ORDERED that the costs of this action be borne by each side as expended by them.

Done in open court this 1st day of April, 1970.

BY THE COURT:

  
\_\_\_\_\_  
Judge

IN THE DISTRICT COURT IN AND FOR THE  
COUNTY OF MESA AND STATE OF COLORADO

No. 16632

FILED  
IN DISTRICT COURT  
MESA COUNTY, COLORADO  
SEP 24 1970

THE CITY OF GRAND JUNCTION, a )  
Municipal Corporation, and )  
STADELMAN HEREFORD RANCH, )  
INC., a Corporation, )

Plaintiffs, )

vs. )

C. V. HALLENBECK, THE JUNIATA )  
RESERVOIR ENLARGED, INC., a )  
Corporation, and JUNIATA )  
RESERVOIR COMPANY, )  
a Corporation, )

Defendants. )

NOTICE OF CROSS APPEAL  
BY THE  
CITY OF GRAND JUNCTION

The City of Grand Junction, Colorado, a municipal corporation (herein called "City"), gives this Notice of Cross Appeal pursuant to C.A.R. 3 and 4.

The City appeals from that portion of the Court's Findings, Conclusions and Judgment dated April 1, 1970 designated as Section I (Findings as to filling rights of Hallenbeck Reservoir), Section II (Conclusions as to filling of Hallenbeck Reservoir), and Paragraph 1 of the Judgment portion which reads

"1. That the City be enjoined from storage of any direct flow of decreed water in Hallenbeck Reservoir except as decreed for its one filling right."

The City also appeals from Paragraphs A and B of the trial Conclusions in the Court's order Disposing of Pending Motion for New Trial or to Alter or Amend Judgment dated August 20, 1970.

Appeal in this case was initiated by C. V. Hallenbeck by filing with the Mesa County District Court his Notice of Appeal on or about September 16, 1970. In the Notice filed by C. V. Hallenbeck, he was designated as Appellant, The City, Stadelman Hereford Ranch, Inc., and Ralph V. Kelling, the Division Engineer of Water Division IV of the State of Colorado,

X

are designated as Appellees. In the trial Court, the Plaintiffs were The City and Stadelman Hereford Ranch, Inc., a corporation, and C. V. Hallenbeck, The Juniata Reservoir Enlarged, Inc., a corporation, and Juniata Reservoir Company, a corporation, were Defendants.

The water rights involved in the portion of the Judgment of April 1, 1970 and the Order of August 20, 1970 involved in this Cross Appeal are:

1. The Hallenbeck Reservoir No. 1 which takes its supply of water from Kannah Creek under Division Engineer's tabulation No. 2433 with a priority date of September 1, 1939.
2. The Paramount Right of the City of Grand Junction, Colorado to divert 7.81 c. f. s. out of Kannah Creek for its municipal and domestic purposes.
3. The right to divert 10.97 c. f. s. out of the North Fork of Kannah Creek under Stream Priorities 1, 2, 3, 4 and 5 alternately through the headgates of the City Ditch and the Bauer Ditch for irrigation, domestic and municipal uses and purposes.

Dated this 24th day of September, 1970.

DUFFORD, RULAND & WILLIAMS

By *D. J. Dufford*  
D. J. Dufford  
Attorneys for THE CITY OF GRAND  
JUNCTION, a Municipal Corporation  
P. O. Box 2188  
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Telephone No. 242-8834

Address of City of Grand Junction:  
City Hall  
Grand Junction, Colorado 81501

CERTIFICATE OF SERVICE

I, D. J. Dufford, certify that on the 24th day of September, 1970, I filed duplicate originals of this Notice of Cross Appeal with Ben O. Peters, Clerk of the District Court, Mesa County, Colorado, and mailed a copy of this Notice to Raphael J. Moses, Esq., Box 34, Boulder, Colorado, 80302, and personally served copies of this Notice upon William E. Foster, President of Juniata Reservoir Enlarged, Inc. at his office in the First National Bank Building, Grand Junction, Colorado, and upon Mr. Richard Gray, President of Juniata Reservoir Company, at his office in the City Hall in Grand Junction, Colorado, and upon Stadelman Hereford Ranch, Inc. by mailing a copy of this

Notice to it at its principal office in Whitewater, Colorado  
by certified mail, return receipt requested.

*D. J. Dufford*  
D. J. Dufford



WATER DISTRICT  
No. 115

THE JUNIATA RESERVOIR ENLARGEMENT

RESERVOIR NO. 254

Priority No. 930, ABSOLUTE  
and  
Priority No. 930, CONDITIONAL.

THE COURT FINDS:

That in this proceeding said reservoir is number 254, and it is entitled to Absolute priority No. 930, and to Conditional Priority No. 930.

That the claimants of said reservoir are C. V. Hallenbeck, Wilbur J. Raber, and Luther Crosswhite, the address of each of whom is Whitewater, Colorado, and John P. Raber, whose post office address is Paonia, Colorado.

That the claimed interests in said Reservoir Enlargement are as follows:

C. V. Hallenbeck, - - - - -	50%
Luther Crosswhite - - - - -	25%
Wilbur J. Raber - - - - -	12½%
<i>John</i> P. Raber - - - - -	12½%

That the water to be stored therein will be used for irrigation, stockwater and domestic purposes.

That said Reservoir Enlargement will derive its supply of water from Kamah Creek through the First Enlargement of the Hallenbeck Ditch and the Second Enlargement of the Juniata Ditch, in Water District No. 42.

That the initial point of survey of said Juniata Reservoir Enlarged is located at a point whence the E¼ corner of Sec. 36, Twp. 12 S., R. 98 W., 6th P. M. bears S. 46° 20' W. 738 feet.

That the height of the dam as proposed to be constructed will be 69 feet, with high water line at 62 feet; that the total capacity of the enlargement, as proposed to be constructed, will be 3435.406 acre feet.

That the original Juniata Reservoir has a heretofore decreed priority for 400.094 acre feet of water, as of date November 1, 1911.



And the Court Further Finds from the evidence that work of construction was begun on said enlargement of the Juniata Reservoir On or about June 17, 1953, and that said construction work has been proceeding diligently ever since; that prior to the closing of these proceedings, the dam had been constructed to a height of 45 feet, providing for storage of 2,095.3 acre feet, as shown in the capacity table on the plat to said enlargement; and 751.00 acre feet of water, in addition to the storage under original construction, had been stored therein, and diverted therefrom and applied to beneficial purposes. That claimants are still proceeding, and propose to continue until said reservoir is completed in accordance with survey to its full increased storage capacity of 3435.406 acre feet.

And it appears from the evidence given by the claimants themselves that they are the owners of approximately 2000 acres of farm and pasture land under, and which can be irrigated by water stored in said reservoir; that about 800 acres thereof are insufficiently irrigated now and will require for their proper irrigation stored water at the rate of 3.00 acre feet per acre in addition to present decreed rights. That any portion of the balance of said acreage will be new irrigation, and will require stored water at the rate of 4.00 acre feet per acre.

That upon a dispute arising between the claimants of said Juniata Reservoir Enlargement and various other water users out of said Kannah Creek, the Court, on petition, appointed Philip Smith, a qualified engineer, to make certain investigations of acreages irrigated, volumes of water used, and available, and require, among other things, by the various claimants on said Kannah Creek involved in said dispute, for the information of the Court in arriving at its Findings and Decree. That among the things to be investigated was "The approximate acreage of fair farm land and pasture owned by the claimants that has been

or can be irrigated by the enlargement of this reservoir by gravity flow, if any." And said engineer reported such acreage to be approximately 800 acres. As to whether this includes marginal pasture land which could be irrigated with reasonable expense, is not definite. The said engineer also considered that said lands would require in addition to decreed rights owned by claimants, for the lands insufficiently irrigated, approximately 3.00 acre feet of stored water, and the lands not now under irrigation, 4.00 acre feet of stored water per acre.

That as to claimants' right to a conditional decree for the right to store water in said reservoir for purpose of exchange with the City of Grand Junction, the Court is of the opinion that it has no jurisdiction in an adjudication proceeding to approve or ratify any such exchange agreement, and hence cannot consider same as a basis for an award, except possibly as a measure of claimants' requirements, and then only if such exchange is on a permanent basis, and in a definite amount, and to be conditioned upon proper action being taken in apt time to ratify and confirm such exchange. In the present instance any proposed exchange with the City of Grand Junction might be abrogated by it at its pleasure, in whole, or in part. In fact the City of Grand Junction is requesting conditional decrees in this proceeding for large amounts of water from other sources, and should they be made final at a later date there would be no need for this small exchange. In its present speculative condition the Court is of the opinion that it should not be considered even as a measure of claimants' requirements.

However, in view of inability to determine whether the engineer's report of approximately 800 acres of claimants' lands susceptible of irrigation by gravity flow from said reservoir through their system of distribution ditches, included all of or what might be called their marginal pasture lands which could with reasonable expense be irrigated thereby; and further (in view

of the testimony of claimants that they have not only 2000 acres, but many more that could be irrigated thereby, in the Court's opinion, an award up to the proposed capacity of said reservoir should be granted, -the conditional portion of which to be, among other things, conditioned upon satisfactory proof at the time of application to make said conditional award absolute, that claimants had, within proper time, beneficially applied said water upon an acreage reasonably requiring same for proper irrigation, And upon failure of such proof, limiting the amount of absolute award to the amount required for the acreage shown.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that, subject to the several limitations and provisions in the preamble to this decree expressed, there be allowed to flow into said reservoir as enlarged from said Kannah Creek through the ditches above mentioned, for the uses aforesaid, and for the benefit of the parties lawfully entitled thereto, under and by virtue of construction, storage and beneficial use, and as the Absolute portion of Priority No. 930, so much water as can be stored therein as now constructed, not to exceed 751.00 acre feet, as of priority date June 17, 1953.

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED THAT, SUBJECT to said several limitations and provisions, there be allowed to flow into said reservoir from said Kannah Creek through ditches hereinabove mentioned, for the uses aforesaid, and for the benefit of the parties lawfully entitled thereto, under and by virtue of appropriation by proposed construction, storage and beneficial use, and as the conditional portion of said Priority No. 930, so much additional water as can be stored in said reservoir as proposed to be constructed, not to exceed 2684.41 acre feet, as of priority date June 17, 1953. CONDITIONED, however, upon proof of completion of such construction as proposed within the time and in the manner provided by law. And further CONDI-

TIONED upon satisfactory proof at the time of application to make said award absolute that claimants had, within proper time beneficially applied the full amount of said award upon an acreage reasonably requiring same for proper irrigation. And in the event of failure of such proof, the amount of said conditional award made absolute shall be limited to the amount required for the irrigation shown.

IT IS FURTHER ORDERED that the use of said stored water or any portion thereof for stock watering or domestic purposes shall be limited in time and amount to what is reasonably necessary for such purposes and shall not in any way enlarge the filling rights of said Reservoir and Enlargement.

By subsequent order of court dated December 15, 1960 "the name of V. P. Raber as appears in the decree of said court, is hereby corrected to read John P. Raber."

WATER FILE  
67

THE CARSON LAKE RESERVOIR,  
Formerly known as  
The Hog Chute Reservoir.

RESERVOIR NO. 171

Priority No. 777. ABSOLUTE

THE COURT FINDS:

and  
Priority No. 777, CONDITIONAL

That said reservoir is number 171, and it is entitled to Priority No. 777.

That the claimants thereof are The City of Grand Junction, Colorado, C. V. Hallenbeck, and Nevada Farmer, with post office address at Grand Junction, Colorado.

That it is a reservoir for the storage of water for Municipal, domestic and irrigation purposes.

That it diverts its supply of water from Kannah Creek, in Water District No. 42.

That the initial point of survey of the dam of said reservoir is at a point whence the  $W\frac{1}{4}$  corner of Sec. 22, Twp. 12 S., R. 96 W., 6th P. M. bears N.  $82^{\circ}42'$  W. 2434.8 feet.

That the height of the dam to said reservoir as now constructed is 48 feet, with a free board of 7 feet, and the storage capacity of the reservoir is 637.00 Acre feet of water.

And the Court Further Finds from the evidence that several filings have been made upon said reservoir site, the earliest of which was on August 13, 1924, under the name of the Rimrock Reservoir, and that probably in 1925 a small amount of work was done on the dam. That thereafter and on Sept. 4, 1937 another survey was made of said site and plat filed under the name of the Hallenbeck Reservoir, and following that on June 3, 1946 another independent survey was made by the City of Grand Junction of said site, under the name of the Hog Chute Reservoir. That subsequent to that, and on August 18, 1948 the City of Grand Junction entered into a contract with C. V. Hallenbeck and Nevada Farmer concerning the construction of said reservoir wherein it appears that the said C. V. Hallenbeck reserves a 10% interest

in the water to be stored in said reservoir or any enlargement thereof, and the said Nevada Farmer reserves a 5% interest in said water. Said reserved waters to be used for irrigation purposes; claimants having ample unirrigated land for its beneficial use.

That subsequent to said last filing of June 3, 1946, claimant, the City of Grand Junction, proceeded with diligence in the construction of said reservoir, -the name of which was then changed to "The Carson Lake Reservoir", -in accordance with said last mentioned filing, to a capacity of 637.00 acre feet of water.

That in the opinion of the Court there was a lack of sufficient diligence on the part of the various claimants of said reservoir site, in the construction of the dam thereon, to warrant the relation of the initiation of work thereon back to the initial filing in 1924. And the Court Finds that through such lack of diligence, claimants have forfeited their right of relation back any date prior to June 3, 1946, the date of the last survey.

The Court Further Finds that the claimant, the City of Grand Junction, at the time of giving testimony, announced its plan and purpose of proceeding with an enlargement of said reservoir, by increasing the height of the dam thereof, to the extent that an additional 1000.00 acre feet of water can be stored therein, within a reasonable time in the future; that the needs of the City of Grand Junction for such additional water are urgent, both to provide for the immediate needs of the City and to provide a margin of safety for emergencies.

That said reservoir was completed to its present capacity of 637.00 acre feet in 1948, and ever since water has been stored therein to capacity, when available, and used for the beneficial uses aforesaid.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that, subject to the several limitations and provisions in the preamble to this decree expressed, there be allowed to flow into said res-

ervoir from said Kannah Creek, for the uses aforesaid, and for the benefit' of the parties lawfully entitled thereto, under and by virtue of appropriation by construction, storage and beneficial use, and as the Absolute portion of said Priority No. 777, so much water as can be stored therein as now constructed, not to exceed 637.00 acre feet, as of Priority Date June 3, 1946.

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, subject to said several limitations and provisions, there be allowed to flow into said reservoir from said Kannah Creek, for the uses aforesaid, and for the benefit of the parties lawfully entitled thereto, under and by virtue of appropriation by proposed enlarged construction, storage and beneficial use, and as the Conditional Portion of said Priority No. 777, so much water as can be stored therein as proposed to be constructed, not to exceed 1000.00 acre feet, as of Priority Date June 3, 1946.

CONDITIONED, however, upon the completion of said proposed construction, the diversion and storage of said additional water, and its beneficial use for the purposes aforesaid, within the time and in the manner provided by law.



GAMMAGE HIGHLINE DITCH



Ditch No. 442

Priority No. 616 Ir.  
and  
Priority No. 616 Do.

THE COURT FINDS:

That in this proceeding the said ditch is numbered 442, and it is entitled to Irrigation Priority No. 616 and Domestic and Stock Water Priority No. 616.

That the claimant thereof is John Holland, whose post-office address is Whitewater, Colorado.

That the headgate of said ditch is located on the north, or right bank of Kannah Creek at a point whence the  $S\frac{1}{4}$  corner of Sec. 32, Twp. 2 S., R. 2 East of the Ute Meridian bears South  $65^{\circ} 15'$  East, (The distance is not shown, but said headgate is apparently a short distance below the headgate of the William J. Ponsford Ditch)

That on November 1, 1892 plat of said ditch was filed with the clerk and recorder of Mesa County, Colorado, claiming 2.72 second feet of water; that it was filed as the Gammage, but is one and the same as the Gammage Highline Ditch, except that the headgate has been moved upstream about 1000 feet from its original location.

That Mr. Smith, the engineer appointed in this proceeding for the purpose of surveying this and other ditches and lands, found the present headgate of said ditch to bear north  $0^{\circ} 56'$  W. from said  $S\frac{1}{4}$  corner above mentioned, a distance of 828.9 feet.

Mr. Smith, in his report further states that the present length of said ditch is 2700 feet "to a drain ditch"; that there is evidence of an old ditch west of this drain, which indicated the Gammage Ditch at one time extended another 2500 feet, and there is no evidence to show a flume was ever constructed across the drain ditch, or when the drain was constructed. That the present acreage irrigated by the ditch is 34.6 acres all of which lies above said drain ditch. With reference to the carrying capacity

of the ditch he found it to be about 3.50 second feet of water.

That Court further finds from the evidence of claimant that he claimed to have irrigated in the neighborhood of 100 acres under the ditch. This would probably include the 37.7 acres Mr. Smith found to be below the drain ditch, and there is no evidence to show that claimant intends to construct a flume across said drain ditch and divert and carry additional water across it and return to the irrigation of said acreage, nor is there any request for a conditional decree for that purpose. From the evidence the Court is unable to determine for how long a period said acreage has not been irrigated by the Gammage Ditch, or whether there is an abandonment of that portion thereof. But in the absence proof to resolve these questions, the Court does not feel justified in awarding either an absolute or conditional decree for the irrigation of said 37.7 acres below said drain ditch.

The Court does find from the evidence that there is possibly 15 acres of rough pasture land irrigated by said ditch above said drain ditch which was not contained in the Smith report, which would make a total of about 52 or 53 acres presently irrigated thereby.

The Court Further Finds with regard to the use of said ditch for watering stock, that there is a portion of claimant's pasture land fenced away from the creek, and that he does, and has at all times use the ditch for supplying stockwater thereto, as well as to other portions of his land; that this is a comparatively short ditch, and in the court's opinion .20 of a second foot of water will be sufficient for such purpose will meet the need of claimant. The Court also finds that this is an old stock ranch and said ditch has been used for stock watering purposes ever since its inception.

The Court Further finds from the evidence and records that said ditch has never been presented in any previous adjudication proceeding for either irrigation of stock water decree.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that, subject to the several limitations in the preamble to this decree expressed, there be allowed to flow in said ditch from said Kannah Creek for irrigation purposes, for the benefit of the parties lawfully entitled thereto, under and by virtue of original appropriation by construction, diversion and beneficial use, and Irrigation Priority No. 616, so much water as will flow therein as now constructed, not to exceed 1.35 second feet, as of Historic Date November 1, 1892, and Decreed Date July 25, 1941.

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, subject to said limitations, there be allowed to flow in said ditch from said Kannah Creek, for domestic and stock water purposes, during the non-irrigation season, and at such time or times as claimant does not require and is not using irrigation water therethrough during the irrigation season, for the benefit of the parties lawfully entitled thereto, under and by virtue of appropriation by original construction, and beneficial use, and Domestic and Stock Water Priority No. 616, so much water as will flow therein as now constructed, not to exceed .20 of a cubic foot of water per second of time, as of Historic Date November 1, 1892, and Decreed Date July 25, 1941.



KANNAH CREEK

HALLENBECK RESERVOIR

Reservoir No. 103

Reservoir Priority No. 111 C.

That said Reservoir is entitled to Priority No. 111 C., and is claimed by C. V. Hallenbeck, and used for the storage of water for irrigation purposes, and is situate in Water District No. 42. The initial point of survey is the Southerly end of the lesser dam, whence the East Quarter Corner of Section 36, Resurvey of Township 12 South, Range 98 West of the 6th P.M. bears South  $66^{\circ} 50'$  East 2,099 feet.

Said reservoir is located in the Kannah Creek watershed in a depression which is tributary to the North Fork of Kannah Creek, and to Kannah Creek and to the Gunnison and Colorado Rivers. The source of water supply is rains and melting snows, and the same is filled from the Kannah Creek drainage area by means of the Juniata Ditch Enlarged, the Juniata Ditch and the Kannah Creek highline ditch.

IT IS HEREBY ADJUDGED AND DECREED that there be allowed to flow into said reservoir from said sources of supply for the uses aforesaid, and for the benefit of the parties entitled thereto, under and by virtue of appropriation by construction, and Priority No. 111 C., 863.097 acre feet of water, of which amount of water 520 acre feet is absolute, and the balance conditional upon the full completion of the said reservoir, so that the same will hold in storage not to exceed 863.097 acre feet of water, and the use thereof for irrigation purposes within a reasonable time after the entry of this decree, with priority date of September 1, 1939.

15-114

450



KANNAH CREEK

SULLIVAN RANCH DRAINAGE DITCH

Ditch No. 434

Priority No. 606

That said ditch is entitled to Priority No. 606. It is a ditch claimed by C. V. Hallenbeck, and is used for the irrigation of land, taking its supply of water from certain lands situate in close proximity and right along the bank and in the drainage area of Kannah Creek, which source of supply is tributary to said creek, in Water District No. 42. The headgate is located at the intersection of 2 main drains whence the North quarter corner of Section 12, Township 13 South, Range 98 West of the 6th Principal Meridian bears North 57° 50' East 5700 feet.

IT IS HEREBY ADJUDGED AND DECREED that there be allowed to flow into said ditch from the said source or sources of supply and from the said Kannah Creek, for the use aforesaid and for the benefit of the parties lawfully entitled thereto, under and by virtue of said appropriation by original construction and Priority No. 606, 1.43 cubic feet of water per second of time, with Priority date of November 15, 1937; provided that not more than .13 of a cubic foot of water per second of time be allowed to flow into said ditch until the owners or beneficiaries thereof shall, with reasonable diligence, have increased their cultivated, meadow and pasture lands thereunder to more than 5 acres and water for such increase shall be allowed at the rate of 1 statute inch per acre therefor.

15-91

EBH

WATER FILE  
251

KANNAH CREEK

RABER COAL CREEK SUPPLY DITCH

Ditch No. 429

Priority No. 600

That said ditch is entitled to Priority No. 600. It is a ditch claimed by John P. Raber and Wilbur J. Raber, and is used for the irrigation of land, taking its supply of water from Kannah Creek, in Water District No. 42. The headgate is located on the right bank of Kannah Creek, whence the corner common to Sections 26, 27, 34 and 35, Township 12 South, Range 97 West of the 6th Principal Meridian bears North 10° 49' West 1942 feet. The said Raber Coal Creek Supply Ditch constitutes a supplemental supply and an additional headgate to the Raber Coal-Creek Ditch which has its headgate on Coal Creek, a tributary of Kannah Creek.

IT IS HEREBY ADJUDGED AND DECREED that there be allowed to flow into said ditch for the use aforesaid and for the benefit of the parties lawfully entitled thereto under and by virtue of said appropriation by original construction and Priority No. 600, 2.21 cubic feet of water per second of time, with Priority date of January 15, 1937; provided that the water taken from said streams, to-wit, Kannah Creek and Coal Creek, through said Ditch and the said Raber Coal Creek Ditch, shall not exceed in amount 2.21 cubic feet of water per second of time.

15-90

300

WATER FILE  
235

KANNAH CREEK

BLACK DITCH

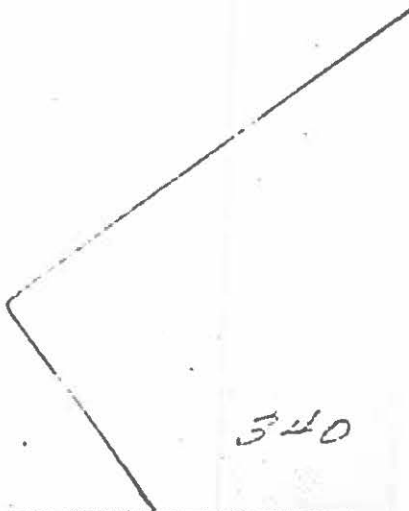
Ditch No. 412

Priority No. 580

That said ditch is entitled to Priority No. 580. It is a ditch claimed by Walter C. Black and the United States Bank of Grand Junction, a corporation, and is used for the irrigation of land, taking its supply of water from Kannah Creek, in Water District No. 42. The headgate is located at a point on the right or west bank of Kannah Creek, whence the Northeast corner of Section 1, Township 13 South, Range 98 West of the 6th P.M., bears North 34° 14' East 2800 feet.

IT IS HEREBY ADJUDGED AND DECREED that there be allowed to flow into said ditch for the use aforesaid and for the benefit of the parties lawfully entitled thereto under and by virtue of said appropriation by original construction and Priority No 580, .624 of a cubic foot of water per second of time, with Priority date of March 15, 1933.

5-85



540



COAL CREEK

RABER COAL CREEK DITCH

Ditch No. 405

Priority No. 569

That said ditch is entitled to Priority No. 569. It is a ditch claimed by Wilbur J. Raber and John P. Raber, and is used for the irrigation of land, taking its supply of water from Coal Creek, which is a branch or tributary of Kannah Creek, in Water District No. 42. The headgate is located at a point on the right bank of Coal Creek, whence the Northwest corner of Section 35, Township 12 North Range 97 West 6th P.M. bears North 49° 20' West 1217 feet.

IT IS HEREBY ADJUDGED AND DECREED that there be allowed to flow into said ditch for the use aforesaid and for the benefit of the parties lawfully entitled thereto under and by virtue of appropriation by original construction and Priority No. 569, 3.38 cubic feet of water per second of time, with Priority date of April 1, 1930.

15-82

358



WATER FILE  
No. 114

THE ANDERSON RESERVOIR NO. 2

RESERVOIR NO. 122

Priority No. 687.

THE COURT FINDS:

That in this proceeding said reservoir is numbered 122, and it is entitled to Priority No. 687.

That the claimants thereof are Walter L. Anderson, Frank E. Anderson, William F. Krom, and Gertrude Krom, the post address of each of whom is Whitewater, Colorado.

That it is a reservoir for the storage of water for irrigation purposes on lands belonging to said claimants.

That it derives its supply of water from <sup>Deep Cr.</sup> ~~Coal Creek~~, a tributary of Kannah Creek, in Water District No. 42.

And the Court Finds that neither the statement of claim nor the evidence contains a description of the location of the location of said reservoir, nor the height of the dam or surface area thereof; that for such data reference is made to decree thereto heretofore entered of record in this court in Book 15 at page 105, and the Court in this decree is also fixing the location of said reservoir by such reference.

The Court Further Finds that claimants did produce as a witness, a civil engineer, one Roy George, who testified that he had examined the plat and statement originally filed for said reservoir, and that he inspected the reservoir as now constructed, and that same was constructed in accordance with the specifications on said plat and statement, and that he calculated the storage capacity of said reservoir as 568.40 acre feet.

And the Court Further Finds that work was started on the construction of said reservoir by survey on October 5, 1928, and that according to said survey said reservoir was designed to have a storage capacity of 568.40 acre feet of water; that said reservoir was constructed in a series of several stages in such manner as to constitute a continuing project to its completion in

1944. That during the course of construction water was stored therein at different levels as work progressed, and diverted therefrom and beneficially used for the irrigation of lands belonging to the various claimants, and decrees have been issued by this court therefor in prior adjudication proceedings for a total of 433.36 acre feet of water.

And the Court Further Finds from the evidence that ever since the completion of the last stage of said reservoir in 1944 the full capacity thereof, or 568.40 acre feet of water has been stored and beneficially used, and claimants are now asking a decree to the unadjudicated storage capacity of said reservoir, or 135.04 acre feet of water, priority to relate back to the inception of work on said reservoir. In the opinion of the Court sufficient diligence has been shown, under all the circumstances to justify the application of said doctrine.

And the Court Further Finds that claimants have some 1500 acres of irrigated and irrigable land upon which they have and can run this stored water; that claimants also have other water rights, but with the full amount of water they receive therefrom they are still unable to irrigate all of said land. That said water is also used for domestic and stock water purposes.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that, subject to the several limitations in the preamble to this decree expressed, there be allowed to flow into said reservoir from said Coal Creek, for the uses aforesaid, and for the benefit of the parties lawfully entitled thereto, under and by virtue of appropriation by construction, storage and beneficial use, and as Priority No. 687, so much water as can be stored therein as now constructed, over and above prior decrees thereto, not to exceed 135.04 acre feet, as of Historic Date October 5, 1928, and Decreed Date July 25, 1941.

323

DEEP CREEK •

ANDERSON RESERVOIR NO. 2

Reservoir No. 86

Priority No. 92

That said reservoir is entitled to Priority No. 92, and is claimed by Robert T. Anderson, Walter L. Anderson and Frank E. Anderson, and is used for the storage of water for irrigation purposes, and is situate in Water District No. 42. The source of supply thereof is from Deep Creek, a tributary of Kannah Creek, and the said reservoir is situated in Section 4, Township 12 South, Range 96 West of the 6th P.M., Mesa County, Colorado. For a more particular description thereof reference is here made to the plat and statement introduced in evidence as claimants' Exhibit G herein.

IT IS HEREBY ADJUDGED AND DECREED that there be allowed to flow into said reservoir from the said source of supply, for the use aforesaid and for the benefit of the parties lawfully entitled thereto, under and by virtue of said appropriation by original construction and Priority No. 92, 433.36 acre feet of water, of which 75.05 acre feet of water is absolute and the balance conditional upon the completion of the said reservoir with reasonable diligence and storage therein to said capacity and the use of water therefrom for irrigation purposes within a reasonable time, with date of Priority October 5, 1928.

433.36  
75.05  
-----  
358.31

15-110.

437



KANNAH CREEK

RABER--DAVIS DITCH

Ditch No. 384

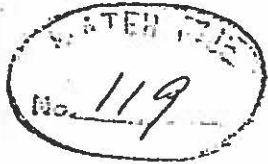
Priority No. 531

That said ditch is entitled to Priority No. 531. It is a ditch claimed by C. M. Raber and Charles M. Holmes, and is used for the irrigation of land, taking its supply of water from Kannah Creek, in Water District No. 42. The headgate is located at a point on the right bank of Kannah Creek, whence the witness quarter corner bears North  $89^{\circ} 51'$  West 1 chain to the north quarter corner of Section 5, Township 13 South, Range 97 West of the 6th P.M. and corner number 6 of Tract 243, Section 32, Township 12 South, Range 97 West of the 6th P.M. bears south  $79^{\circ} 51'$  West 473 feet.

IT IS HEREBY ADJUDGED AND DECREED that there be allowed to flow into said ditch for the use aforesaid and for the benefit of the parties lawfully entitled thereto under and by virtue of said appropriation by original construction and Priority No. 531, 0.73 cubic feet of water per second of time, with Priority date of October 27, 1921; provided that not more than .34 of a cubic foot of water per second of time be allowed to flow into said ditch until the owners or beneficiaries of said ditch shall, with reasonable diligence, increase their cultivated, meadow and pasture land thereunder to more than 13 acres, and water shall be allowed for such increase so to be allowed to flow therein at the rate of 1 statute inch per acre.

15-73

293



KANNAH CREEK

RABER HIGHLINE DITCH

Ditch No. 349

Priority No. 454

That said ditch is entitled to Priority No. 454. It is a ditch claimed by Carrie M. Raber, and is used for the irrigation of land, taking its supply of water from Kannah Creek, in Water District No. 42. The headgate is located at a point on the right bank of Kannah Creek, whence the Northeast corner of Section 6, Township 13 South, Range 97 West of the 6th P.M., bears North  $35^{\circ} 30'$  East 875 feet distant.

IT IS HEREBY ADJUDGED AND DECREED that there be allowed to flow into said ditch for the use aforesaid and for the benefit of the parties lawfully entitled thereto under and by virtue of said appropriation by original construction and Priority No. 454, 1.17 cubic feet of water per second of time, with Priority date of September 18, 1915.

15-54

219

8-10-1914

oil

126



KANNAH CREEK

WM. H. WILLIAMS DITCH

Ditch No. 310

Priority No. 407

That said ditch is entitled to Priority No. 407. It is a ditch claimed by Walter C. Black and George O. Goldsborough, and is used for the irrigation of land, taking its supply of water from Kannah Creek, in Water District No. 42. The headgate is located at a point on the South bank of Kannah Creek, whence the Northeast corner of Section 1, Township 13 South, Range 98 West of the 6th Principal Meridian bears North 6° 12' West 1350 feet.

IT IS HEREBY ADJUDGED AND DECREED that there be allowed to flow into said ditch for the use aforesaid and for the benefit of the parties lawfully entitled thereto under and by virtue of said appropriation by original construction and Priority No. 407, 1.17 cubic feet of water per second of time, with Priority date of August 10, 1914.

42



KANNAH CREEK

BOWEN PRIVATE DITCH

Ditch No. 307

Priority No. 404

That said ditch is entitled to Priority No. 404. It is a ditch claimed by the Estate of Thomas Ternehan, Deceased, and is used for the irrigation of land, taking its supply of water from Kannah Creek, in Water District No. 42. The headgate is located on the left bank of Kannah Creek, whence the quarter corner common to Sections 1 and 12, Township 13 South, Range 98 West of the 6th P. M. bears North 73° East 1210 feet.

IT IS HEREBY ADJUDGED AND DECREED that there be allowed to flow into said ditch for the use aforesaid and for the benefit of the parties lawfully entitled thereto under and by virtue of said appropriation by original construction and Priority No. 404, .72 of a cubic foot of water per second of time, with Priority date of August 8, 1914.

SIXTY FIVE  
64

KANNAH CREEK

SULLIVAN - BOWEN DITCH

Ditch No. 301

Priority No. 395

That said ditch is entitled to Priority No. 395. It is a ditch claimed by Ruth Sullivan, and the Estate of Thomas Ternehan, Deceased, and is used for the irrigation of land, taking its supply of water from Kannah Creek, in Water District No. 42. The headgate is located at a point on the right bank of Kannah Creek, whence the North quarter corner of Section 12, Township 13 South, Range 98 West of the 6th Principal Meridian bears North 60° East 2655 feet.

IT IS HEREBY ADJUDGED AND DECREED that there be allowed to flow into said ditch for the use aforesaid and for the benefit of the parties lawfully entitled thereto under and by virtue of said appropriation by original construction and Priority No. 395, .25 of a cubic foot of water per second of time, with Priority date of July 28, 1914.

15-39

155



WATER FILE  
No. 309

KANNAH CREEK WATERSHED  
FLOWING PARK RESERVOIR

Reservoir No. 71

Reservoir Priority No. 76

That said reservoir is entitled to Priority No. 76, and is claimed by the City of Grand Junction, a municipal corporation. The said reservoir is used for the storing of water for all municipal purposes and uses, and for sprinkling streets, extinguishing fires and for household purposes and for the use of its consumers located along its diversion system for domestic, power and irrigation purposes. The initial point of survey of the said reservoir is situated at a point whence the southeast corner of Section 34, Township 12 South, Range 96 West of the 6th P.M., in said Water District No. 42, bears north  $71^{\circ} 56'$  East 355 feet distant, the source of supply of said reservoir being melting snows and waste and seepage water from lands lying above said reservoir. The location of said reservoir is further described as situated on Sheep Creek, in Mesa County, Colorado, close to the Delta County line. The water stored in said reservoir is carried through its outlet into Kannah Creek and thence into the waterworks system of said City.

IT IS HEREBY ADJUDGED AND DECREED that there be allowed to flow into said reservoir from the said sources of supply, for the uses aforesaid and for the benefit of the said City of Grand Junction, and the inhabitants thereof and all parties lawfully entitled thereto under and by virtue of appropriation by construction and Reservoir Priority No. 76, 2428.07 acre feet with priority date of November 27, 1911; provided that not more than 782.17 acre feet, which is the capacity of said reservoir with height of dam at 15 feet, which quantity of water shall be allowed to flow into and be stored in said reservoir until the said City of Grand Junction shall, with reasonable diligence, construct and complete the dam of said reservoir to a greater height than 15 feet, when the flow shall be proportionately increased until the dam shall be built to a height of  $26\frac{1}{2}$  feet, and additional water stored therein to the amount and extent of 2428.07 acre feet.

15-106

422

307

DEEP CREEK

ANDERSON RESERVOIR NO. 1

Reservoir No. 69

Priority No. 74

That said reservoir is entitled to Priority No. 74, and is claimed by Robert T. Anderson, Walter L. Anderson and Frank E. Anderson, and is used for the storage of water for irrigation purposes and situated in Water District No. 42. The location of said reservoir is accurately described in the map and statement filed herein and is referred to as claimants' Exhibit "F", to which reference is hereby made. Said reservoir is located in Section 4, Township 12 South, Range 96 West 6th P.M. The source of supply thereof is Deep Creek, which runs through the site of said reservoir.

IT IS HEREBY ADJUDGED AND DECREED that there be allowed to flow into said reservoir from the said source of supply, for the use aforesaid and for the benefit of the parties lawfully entitled thereto under and by virtue of appropriation by construction and Priority No. 74, 466 acre feet of water, with Priority date of November 24, 1911.

105

420

293<sup>7N</sup>  
MAY 1911

KANNAH CREEK

JUNIATA RESERVOIR

Reservoir No. 54

Reservoir Priority No. 56

That said reservoir is entitled to Priority No. 56 and is claimed by The Juniata Reservoir Co., Inc., a corporation, and is used for the storage of water for irrigation purposes, and situate in Water District No. 42. The initial point of survey of said reservoir is the South end of the dam at high water line, whence the West Quarter Corner of Section 31, Township 12 South, Range 97 West of the 6th P.M. bears South 17<sup>0</sup> 22' West 937 feet.

The said reservoir is supplied with water from the Kannah Creek watershed and from melting snows and rains and the said reservoir is located in the wash or ravine which is tributary to the North Fork of Kannah Creek, to Kannah Creek, and to the Gunnison River. The said reservoir is supplied with water through The Kannah Creek Highline Ditch and has also an additional filling right through the Juniata Ditch Enlarged.

IT IS HEREBY ADJUDGED AND DECREED that there be allowed to flow into said reservoir from the said sources of supply for the use aforesaid and for the benefit of the parties lawfully entitled thereto, under and by virtue of appropriation by construction and use and priority No. 56, 400.094 acre feet of water with priority date of November 1, 1911.

5-101

405

WATER FILE  
26

KANNAH CREEK

FLORENCE H. BERRY DITCH

Ditch No. 262

Priority No. 340

That said ditch is entitled to Priority No. 340. It is a ditch claimed by the United States Bank of Grand Junction, a corporation, and the Estate of Thomas Ternahan, deceased, and is used for the irrigation of land, taking its supply of water from Kannah Creek, in Water District No. 42. The headgate is located on the left bank of Kannah Creek, whence the quarter corner between Sections 1 and 12, Township 13 South, Range 98 West of the 6th P.M. bears South 6° 50' West 1190 feet. The said ditch was heretofore awarded a decree for 1.044 cubic feet of water per second of time as Priority No. 14 from said Kannah Creek, and the said decree was made conditional that no more than .432 of a cubic foot of water per second of time be allowed to flow into said ditch until the owners and claimants thereof had, with reasonable diligence, increased their cultivated, meadow and pasture lands thereunder to more than 12 acres. That said lands have been increased to a total of 34 acres and the said ditch is now entitled to an absolute decree for 1.044 cubic foot of water per second of time, as Priority No. 14, from said Kannah Creek.

IT IS HEREBY ADJUDGED AND DECREED that there be allowed to flow into said ditch for the use aforesaid and for the benefit of the parties lawfully entitled thereto under and by virtue of said appropriation by original construction and Priority No. 14, 1.044 cubic foot of water per second of time, with Priority No. 340, as renumbered herein.

15-29

114

K A N N A H    C R E E K

DITCH NO. 14

PRIORITY NO. 14

THE FLORENCE H. BERRY DITCH

Claimed by Florence H. Berry.



Said ditch derives its supply of water from Kannah Creek, and its headgate of located at a point on the left bank of Kannah Creek, whence the quarter common to Sections one and twelve, in township thirteen south, range binety-eight west, of the sixth principal meridian, bears south six degrees eleven minutes west, eleven hundred and ninety feet; and the capacity of said ditch is 1.25 cubic feet of water per second of time.

Work was commenced on said ditch on April 25, 1914, and was prosecuted to completion, with reasonable diligence,

The water diverted from said stream and conveyed through said ditch is applied to the irrigation of land, but being only a flood water right, of short duration, but abundant when flowing at all, the duty of water is found to be .036 of a cubic foot per second per acre.

There is so situated as to be susceptible of profitable irrigation, with water so diverted and conveyed, twenty-nine acres, twelve of which has been actually irrigated with reasonable diligence;

WHEREFORE: IT IS ORDERED AND DECREED that there be allowed to flow into said ditch, as the FOURTEENTH PRIORITY from said stream, for the use of the parties entitled thereto, 1.044 cubic feet of water per second -

CONDITIONAL HOWEVER, that no more than .432 of a cubic foot of water per second of time shall be allowed so to flow until the owners or beneficiaries of said ditch shall have, with reasonable diligence, increased their cultivated, meadow and pasture land thereunder, to more than twelve acres; and

3. FURTHER CONDITIONAL, that the water so allowed to flow shall not exceed the ratio or proportion of .036 of a cubic foot per second, per acre of land, for the land therewith irrigated.

12-u.



inches at the headgate.

Q And what water is directed out of that ditch into the Juniata Ditch? A 816 inches. (21.35 CFS)

Q And from the point where that water is adjudicated into the Juniata Ditch down the Kannah Creek High Line Ditch, what is the capacity of the ditch? A It carries 2,000 inches or has year after year since construction.

Q It has a carrying capacity below that diversion point of 2,000 inches? A Yes.

Q Mr. Raber, there has been adjudicated for direct flow, direct use, a total of 42.28 cubic feet per second in the Kannah Creek High Line Ditch; as I understand, you are now asking for an additional adjudication to the Kannah Creek High Line Ditch of 262-1/2 inches of water, or 6.83 cubic feet per second? A Yes.

Q For the purpose of filling the Juniata Reservoir? A Yes sir.

Q As a matter of fact, has that water been used through the Kannah Creek High Line Ditch for filling the Juniata Reservoir, since its first construction? A Yes, indeed.

Q Do the owners of the Juniata Reservoir own water stock in the Kannah Creek High Line Ditch? A Yes.

Q For the purpose of filling this Juniata Reservoir? A Yes sir.

Q How many shares? A They have appropriated 525 shares of theirs but then they have more stock beside that.

Q In other words, they are appropriating 525 shares of their carriage right for the purpose of filling the Juniata Reservoir, and use their other carriage rights for direct flow use?

A That is true.

Q There is capacity in the Kannah Creek High Line Ditch, over and above 42.28 adjudicated for direct flow, and the 6.83 asked for reservoir filling, is there not? A That is true; it still does not fill the ditch.

42.28  
6.83  
49.11 CFS

575 54 = 13.10%  
13.1 x 17.9 = 8.90 CFS



Q In other words, there is still, under present capacity of the ditch, there is still 113 feet that will not have been used in these adjudications? A That is true.

Q And you would ask that there be added to the present adjudication of the Kannah Creek Ditch Company, 6.83 for the purpose of filling the Juniata Reservoir? A Yes sir.

Q You are asking that as of the date of the original decree?

A Yes.

Q Mr. Raber, in connection with the <sup>(6.83)</sup> 262-1/2 inches of water carried through the Kannah Creek High Line Ditch for the filling of the Juniata Reservoir, are you asking for direct flow right on this <sup>(6.83 CFS)</sup> 262-1/2 inches, after the Juniata Reservoir has been once filled?

A I would ask to enjoy the privilege during the flood water.

Q Of using that water for direct flow after it has filled the reservoir? A Yes.

Q You understand you are permitted to fill your reservoir only once?

A Yes.

Q You have already put in here, I think, that you want the right to fill from the Juniata Ditch, provided there is water available and carriage capacity owned by you? A Yes.

John P. Raber

SUBSCRIBED and sworn to before the Referee, this

\_\_\_\_\_ day of \_\_\_\_\_, 1940.

\_\_\_\_\_  
Referee.

WATER FILE  
No. 17

KANNAH CREEK

KANNAH CREEK HIGHLINE DITCH

Ditch No. 226

Priority No. 290

That said ditch is entitled to Priority No. 290. It is a ditch claimed by The Kannah Creek Highline Ditch Company, a corporation, and is used for the irrigation of land, taking its supply of water from Kannah Creek, in Water District No. 42. The headgate is located on the northerly bank of Kannah Creek, whence the Northeast corner of the Southeast Quarter of Section 33, Township 12 South, Range 97 West of the 6th Principal Meridian, bears North 24° 30' East 931 feet. Said ditch was heretofore awarded a decree with Priority No. 13 from Kannah Creek, for 59 cubic feet of water per second of time, of which 27.72 cubic feet of water per second of time was absolute and 31.28 cubic feet of water per second of time was conditional and the said decree is now entitled to be made absolute for 49.11 cubic feet of water per second of time under Priority No. 13 from said Kannah Creek.

IT IS HEREBY ADJUDGED AND DECREED that there be allowed to flow into said ditch for the use aforesaid and for the benefit of the parties lawfully entitled thereto under and by virtue of the said appropriation by original construction and Priority No. 13, 49.11 cubic feet of water per second of time, as an absolute decree, with Priority No. 290, as renumbered herein.

IT IS FURTHER ADJUDGED AND DECREED that there be allowed to flow into said ditch for the use aforesaid and for the benefit of the parties entitled thereto, as a supplemental decree, 18.79 cubic feet of water per second of time, with Supplemental Priority No. 610, and date of Priority Nov. 1, 1939, the same as all other supplemental decrees from Kannah Creek, or the tributaries thereof.

K A N N A H   C R E E K

DITCH NO. 13

PRIORITY NO. 13

THE KANNAH CREEK HIGH LINE DITCH

Claimed by The Kannah Creek High Line Ditch Company.



ABSTRACT OF EVIDENCE.

The claimant of this ditch is a Mutual Company, which was incorporated NOT FOR PROFIT, in the spring of 1908, looking to the promotion of this enterprise, and two thousand shares of its capital stock have been issued, each share entitling its holder to one two-thousandth of the appropriation, providing, the same can be beneficially used.

In 1904 The Junietta Reservoir Supply Ditch was projected, and a survey and filing duly made, but nothing was ever done pursuant thereto, and all rights thereby initiated were acquired by this claimant and incorporated into this system. Said Junietta Supply Ditch survey being substantially identical with the line of this ditch from its headgate down to what is known as Station 18 thereon.

Work was commenced on this ditch on March 8, 1908, and was continuous thereafter, whenever conditions permitted, until its completion.

Water was first run thru said ditch and fifteen acres of land therewith irrigated, in 1910; and each and every year there-since more cultivated and irrigated land has been added thereto.

There has been expended in the construction of said ditch, nineteen thousand dollars and in addition thereto some fifteen hundred dollars for maintenance.

The headgate of said ditch is located on the northerly bank of Kannah Creek, whence the northeast corner of the Southeast one-quarter of Section thirty-three, in township twelve

south, range ninety-seven west, of the sixth principal meridian, bears north twenty-four degrees thirty minutes east, nine hundred and thirty-one feet, and from its headgate said ditch takes a general west-northwesterly course for a distance of some \_\_\_\_\_ miles and has a capacity of ninety nine feet.

It is possible to profitably irrigate 3390 acres of land, 1540 of which have been, with reasonable diligence, so actually irrigated.

THE COURT THEREFORE FINDS --

FIRST: That said ditch derives its supply of water from Kannah Creek, and that the headgate of said ditch is located on the northerly bank of said stream, whence the northeast corner of the southeast quarter of Section thirty-three, in township twelve south, range ninety-seven west, of the sixth principal meridian, bears North twenty-four degrees thirty minutes east, nine hundred and thirty one feet; and the capacity of said ditch is fifty-ninecubic feet of water per second of time -

SECOND: That work was commenced on said ditch on March 8, 1908, and was prosecuted to completion, with reasonable diligence;

THIRD: That the water diverted from said stream and conveyed through said ditch is applied to the irrigation of land, and its duty is in the ratio or proportion of .72 of a cubic foot per second, per forty acres of land;

FOURTH: That there is so situated as to be susceptible of profitable irrigation, with water so diverted and conveyed, three thousand three hundred and ninety acres of land, fifteen hundred and forty acres of which have been so actually irrigated with reasonable diligence -

WHEREFORE, IT IS ORDERED AND DECREED - that there be allowed to flow into said ditch, as the THIRTEENTH PRIORITY out of Kannah Creek, for the use of the parties entitled thereto, fifty-nine cubic feet of water per second -

PROVIDED HOWEVER, that no more than 27.72 cubic feet of water per second of time be allowed so to flow until the owners or beneficiaries of said ditches shall have, with reasonable diligence, increased their cultivated, meadow and pasture land thereunder, to more than fifteen hundred and forty acres; and

1540

PROVIDED FURTHER, that the water so allowed to flow shall not exceed the ratio or proportion of .72 of a cubic foot per second, per forty acres, for the land therewith irrigated.



RESERVOIR CREEK

DEEP CREEK RESERVOIR No. 2 SUPPLY DITCH

Ditch No. 409

Priority No. 574

That said ditch is entitled to Priority No. 574. It is a ditch claimed by the Deep Creek Reservoir Company, a corporation, and is used as a supply ditch for the purpose of carrying water to and for storage in the Deep Creek Reservoir No. 2 for irrigation purposes, belonging to said corporation, taking its supply of water from Reservoir Creek, which creek and its branches flow into Kannah Creek, in Water District No. 42. Said ditch is divided into two units, the feeder ditch and the main supply ditch. The headgate of the feeder ditch is located on the right bank of a branch of Reservoir Creek, whence the East Quarter Corner of Section 16, Township 12 South, Range 96 West of the 6th P.M. bears north  $57^{\circ} 40'$  East 1105 feet. The headgate of the main supply ditch is located on the right bank of a branch of Reservoir Creek, whence the West Quarter Corner of Section 16, Township and range aforesaid, bears north  $80^{\circ} 50'$  West 4096 feet.

IT IS HEREBY ADJUDGED AND DECREED that there be allowed to flow into said ditch for the uses and purposes aforesaid and for the benefit of the parties lawfully entitled thereto under and by virtue of said appropriation by original construction and Priority No. 574, 20 cubic feet of water per second of time for the filling of said reservoir and for irrigation use therefrom, with Priority date of July 15, 1931.

150-83

333

292

DEEP CREEK WATERSHED

DEEP CREEK RESERVOIR NO. 2

Reservoir No. 39

Priority No. 40

That said reservoir is entitled to Priority No. 40, and is claimed by The Deep Creek Reservoir Company, a corporation, and is used for the storage of water for irrigation purposes and situated in Water District No. 42. The initial point of survey is at a point whence the Northwest corner of Section 16, Township 12 South, Range 96 West of the 6th Principal Meridian bears north  $26^{\circ} 05'$  West 1482 feet. The source of supply thereof is rains and melting snows in the natural water shed of said reservoir, which is tributary to Kannah Creek and from the Deep Creek supply and feeder ditch. Heretofore the said reservoir was given a conditional decree in the 1916 general water adjudication, in which its maximum capacity was fixed at 525.64 acre feet, but conditioned that the reservoir be constructed and water stored therein and used for irrigation with reasonable diligence and it appearing that with such diligence the said reservoir has been completed and storage of water therein made and used for irrigation purposes to the extent of 350 acre feet of water, the said decree for said reservoir is now made absolute to the extent of 350 acre feet of water.

IT IS HEREBY ADJUDGED AND DECREED that there be allowed to flow into said reservoir from its sources of supply, for the use aforesaid and for the benefit of the parties lawfully entitled thereto, 350 acre feet of water as an absolute decree with date of Priority of April 15, 1906, and with Priority No. 1-B and with Priority No. 40 as renumbered herein.

15-101

404

THE HALLENBECK RESERVOIR NO. 2

(Formerly The Deep Creek Reservoir No. 1)



RESERVOIR NO. 119.

Priority No. 668.

THE COURT FINDS:

That in this proceeding said Reservoir is numbered 119, and it is entitled to Priority No. 668.

That the claimant thereof is The Hallenbeck No. 2 Reservoir Company, the post office address of which is, c/o Fred Click, Secretary, Whitewater, Colorado.

That it is a reservoir used for the storage of water for irrigation purposes on approximately 1075 acres of land belonging to individual members of said reservoir company.

That it derives its supply of water from the Northeast Branch of Deep Creek, a tributary of Kannah Creek, in Water District No. 42.

That the initial point of survey of the dam to said reservoir is located at a point whence the E $\frac{1}{4}$  Corner of Sec. 17, Twp. 12 S., R. 96 W., 6th P. M. bears S. 15° 40' E. 2061 feet.

That the height of the dam, as shown by the plat prepared on the Oct. 17, 1923 survey, was to be 39 feet, but the testimony shows in the construction the height was increased 1 foot; and the total capacity as constructed is 526.11 acre feet of water.

And the Court Further Finds from the evidence that on August 25, 1924, Plat of the Deep Creek Reservoir No. 1 was filed with the state engineer, reception No. 202278 (probably an error in the number), showing work of construction was begun by survey on October 17, 1923. That the claimant thereof was the Deep Creek Reservoir Company, and that the members of said company were a small group of farmers, with limited finances, and as shown by witness Wilbur Faber, said reservoir site was on government property, and each year after filing said company did a limited



amount of work on the dam to said reservoir, at least sufficient to hold the site, until they were financially able to complete the dam. In the meantime their finances were largely expended in the construction of another reservoir. That at no time was there any intention by the company to abandon said reservoir. That this course continued until probably 1942 when the Hallenbeck Reservoir No. 2 Company purchased said reservoir and site from the Deep Creek Reservoir Company, and proceed to, and did, complete the construction of said reservoir to the above mentioned capacity.

That in the Court's opinion, under all the circumstances, the original claimant of said reservoir, up to the time it disposed of same, exercised sufficient diligence in the construction thereof to justify the application of the doctrine of relation to the time of the original survey, to-wit: October 17, 1923.

The Court Further Finds that the members of the Hallenbeck Reservoir No. 2 Company are C. V. Hallenbeck, Wilbur Raber, John Raber and Fred E. Click; That the said C. V. Hallenbeck uses water from said reservoir for supplemental irrigation on about 500 acres, for which he has insufficient direct flow water; and the said Wilbur Raber and John Raber, on about 475 acres; and the said Fred E. Click, on about 100 acres. And the evidence further shows that each year since completion, said reservoir has stored water to the capacity thereof, or 526.11 acre feet, and that same has been beneficial used on, and is necessary for the proper irrigation of said 1075 acres; that none of said claimants have an adequate water right for his land without this source of supplemental water. That it enables each of them to raise satisfactory crops of hay, grain, corn and pasture.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that, subject to the several limitations in the preamble to this decree expressed, there be allowed to flow into said reservoir from said

Northeast Branch of Deep Creek, for storage, to be later diverted therefrom and used for supplemental irrigation, as aforesaid, for the use and benefit of the parties lawfully entitled thereto, under and by virtue of appropriation by original construction, diversion, storage and beneficial use, and as Priority No. 668, so much water as can be stored therein as now constructed, not to exceed 526.11 acre feet, as of Historic Date October 17, 1923, and decreed date July 25, 1941.

DEEP CREEK WATER-SHED

RESERVOIR NO. 1 <sup>Hollenbeck No. 2 - Robou-Clark</sup> DEEP CREEK RESERVOIR NO. 1----- PRIORITY NO. 1-A  
RESERVOIR NO. 2 DEEP CREEK RESERVOIR NO. 2----- PRIORITY NO. 1-B

Claimed by The Deep Creek Reservoir Company.



These two reservoirs are built on the top of Grand Mesa, each on a different branch of Deep Creek (a tributary of Kannah Creek) and but a short distance apart, and they derive their supply of water from Deep Creek Water shed.

Because of the better facility for filling No. 1, the plan of operation is first to fill it, to its maximum capacity, and when so filled, by means of an over-flow ditch leading from No. 1 to No. 2, and which comes into operation when the high water line in No. 1 is reached, the inflow is allowed to continue into No. 1 until its over-flow, through said connecting ditch, fills No. 2.

Each of said reservoirs has an outlet ditch through which its water is conveyed and emptied into Deep Creek, through which it flows into Kannah Creek, and down Kannah Creek a total distance of from ten to eighteen miles to the Kannah Creek High Line Ditch (Being Ditch No. 13 carrying Priority No. 13 out of Kannah Creek) into which an equal quantity of water is diverted and used to supplement said Priority No. 13 of Kannah Creek Water (which begins to fail about the first of July) in the irrigation of from 1100 to 1200 acres of land, in the ratio of .018 of a cubic foot of water per second, per one acre of land.

The initial point of survey of No. 1 is a point when the southeast corner of Section 8, in Township 12 South, Range 96 West of the 6th Principal Meridian, bears South 20 degrees one minute East, 1646 feet; and with its dam at its proposed height of 34 feet above the outlet tube, said reservoir will

have an area of 2,691,359 square feet and a capacity of 21,405,418 cubic feet.

4 The initial point of survey of No. 2 is a point whence the northwest corner of Section 16, in Township 12 South, Range 96 West, of the 6th Principal Meridian, bears North 26 degrees five minutes west, 1482 feet; and with its dam at its proposed height of 27 feet above the outlet tube, said reservoir will have an area of 2,887,696' square feet, and a capacity of 22,896,895 cubic feet.

The estimated cost of No. 1 is \$8000; and of No. 2 \$10,000.

Work on said reservoirs was commenced on September 15, 1906; and tho it has ever since been prosecuted with reasonable diligence, in which \$5,350 has been expended (all that claimant, a mutual irrigation company could afford) no water stored in either of said reservoirs has ever been applied to the irrigation of land.

5 WHEREFORE: IT IS ORDERED AND DECREED that said Reservoir No. 1 is entitled to be filled to its maximum capacity of 21,405,418 cubic feet of water, ~~once each and every year~~, as Reservoir Priority No. 1-A, within Deep Creek Basin or water-shed; and said Reservoir No. 2 is entitled to be filled to its maximum capacity of 22,896,895 cubic feet of water, ~~once each and every year~~, as RESERVOIR PRIORITY No. 1-B, within Deep Creek Basin or water-shed. The water so impounded to be used for the irrigation of land and for the use of the parties entitled thereto.

6 ~~PROVIDED HOWEVER: That the filling of said Reservoirs shall only take place when the flow of said Deep Creek is not needed for direct or immediate irrigation of land; and~~

PROVIDED ~~HOWEVER~~: That the filling of either of said reservoirs, or the storing therein of any quantity of water whatever shall only be upon condition that the construction of said reservoirs and the storing therein of water and its use in

the irrigation of land, shall progress with reasonable diligence;  
and

PROVIDED FURTHER, that the water so authorized to be  
stored shall not, together with water otherwise or by virtue of  
other appropriations derived, exceed, in its use, the ratio of  
1  
.018 of a cubic foot of water per second, per one acre of land,  
for all of the land therewith irrigated.

g-w

4-12-03

DRY CREEK WATER SHED

RESERVOIR NO. 1 DRY CREEK RESERVOIR & SUPPLY DITCH PRIORITY NO. 1

Claimed by E. F. Chambers, S. B. Darling,  
John H. Herron and Minnie G. Herron.



Said reservoir is located in the Southwest quarter of Section 9, in the Southeast quarter of the Southeast Quarter, and the Northeast quarter of the Southeast Quarter, of Section 8, all in Township 13 south, range 96 west of the sixth Principal Meridian; and the headgate of its supply ditch is located at a point whence the northeast corner of Section 4, in Township 13 south, range 96 west, of the 6th Principal Meridian, bears North 500 feet; and from said headgate said supply ditch extends in a general southwesterly direction for a distance of about 8879 feet, and empties into said reservoir; and has a capacity of 75 cubic feet of water per second.

Work was commenced on said reservoir on June 15, 1903, and prosecuted with reasonable diligence, to completion.

The area of said reservoir, at high water line, is 101.33 acres, and its capacity is 600 acre feet; and its source of supply is the water within said Dry Creek water shed.

2 The outlet of said reservoir is the natural channel of Dry Creek, through which it flows into Kannah Creek, and in Kannah Creek to the headgate of the Junietta Ditch (a total distance of about twelve miles- into which a part of its equal quantity is diverted and used to supplement Priority No. 11, out of Kannah Creek, and the remainder is diverted into the Kannah Creek High Line Ditch, and is used to supplement Priority No. 13 out of Kannah Creek, the water so stored and supplementally used is applied to the irrigation of some 600 acres of land, in the ratio of .018 of a cubic foot per second per acre, all of which has been so irrigated with reasonable diligence.

3

WHEREFORE: IT IS ORDERED AND DECREED. that said reservoir is entitled to be filled, ~~once each and every year,~~ to its maximum capacity, of 600 acre feet, as RESERVOIR PRIORITY NO. 1 out of Dry Creek Water Shed, for the use of the parties entitled thereto in the irrigation of land;

~~PROVIDED HOWEVER: That the filling of said reservoir shall only take place when the flow of said Deep Creek is not needed for direct or immediate irrigation of land; and~~

PROVIDED ~~FURTHER~~; That the water so authorized to be stored shall not, together with water otherwise or by virtue of other appropriations derived, exceed, in its use, the ratio of .018 of a cubic foot of water per second, per one acre of land, for all of the land therewith irrigated.

4

51-w

195

COAL CREEK

Decree of 1941

BOLEN, ANDERSON & JACOB DITCH ENLARGED

Ditch No. 205

Priority No. 537

That said ditch is entitled to Priority No. 537, and is claimed by Robert T. Anderson, Walter L. Anderson and Frank E. Anderson, and is used for the irrigation of land, taking its supply of water from Coal Creek, a tributary of Kannah Creek, in Water District No. 42. The headgate is located on the right bank of Coal Creek, whence the South Quarter Corner of Section 1, Township 12 South, Range 97 West of the 6th P.M. bears South 7° West 1185 feet.

IT IS HEREBY ADJUDGED AND DECREED that there be allowed to flow into said ditch for the use aforesaid and for the benefit of the parties lawfully entitled thereto under and by virtue of appropriation by original construction and Priority No. 537, 19.8 cubic feet of water per second of time, with Priority date of September 12, 1922.

IT IS FURTHER ADJUDGED AND DECREED that the said Bolen, Anderson and Jacob Ditch Enlarged, the Laurent Ditch Enlarged and the Laurent Ditch Second Enlargement, all taking water from Kannah Creek and tributaries thereof, which collectively constitute a complete and unified system for the irrigation of 1100 acres of land belonging to the said claimants, although the combined amount of the decrees for said ditches is 53.40 cubic feet per second of time, are confined to a total of 28.37 cubic feet of water per second of time from or through any or all of the said ditches, and no more, for the irrigation of the said 1100 acres of land.

4.



K A N N A H   C R E E K

DITCH NO. 12

PRIORITY NO. 12

THE BOLEN, ANDERSON AND JACOB DITCH.  
Claimed by Robert T. Anderson.

ABSTRACT AND DIGEST OF EVIDENCE.



Claimant is owner of 533 acres of land situated in Sections twenty-five, twenty-six, thirty-five and thirty-six, in township twelve south, range ninety eight west of the sixth principal meridian, and sections twenty-four and twenty-five, in township two south, range two east, of the Ute Meridian, for the irrigation of which this right supplements that of The Bauer Ditch Enlarged, taking water out of the North Fork of Kannah Creek, both of which are high water rights.

The headgate of this ditch is located in Section nine , in township twelve south, range ninety-six west of the sixth principal meridian, and on the right bank of Deep Creek ( a tributary of Kannah Creek) between the Deep Creek reservoirs and Anderson Reservoirs, and the ditch has a capacity of thirty two second feet.

The ditch is located on the top of Grand Mesa and derives its water from the watershed of Kannah Creek proper, and diverts the water therefrom, for a distance of some ten miles, and empties it into the North' Fork of Kannah Creek, into which it is carried for a distance of some ten miles to the headgate of The Bauer Ditch, into which it is diverted and conveyed to the land which it irrigates, supplementing the water of the Bauer Ditch Enlarged, prolonging the flow thereof for some eighteen days. The headgate of the Bauer Ditch is located at a point on the right bank of the North Fork of Kannah Creek, whence the northeast corner of Section twenty-five, in Township twelve south, range ninety-eight west of the sixth principal meridian, bears south twenty-six degrees thirty-two minutes west,

eight hundred and ninety-five feet, and its capacity as enlarged is eighteen and seven tenths feet.

Work was commenced on said Bolin, Anderson and Jacob Ditch on July 25, 1901, and was diligently prosecuted to completion.

The water diverted from said stream and conveyed through said ditch is applied to the irrigation of land, and its duty is in the ratio or proportion of .72 of a cubic foot per second, per forty acres of land.

4 There is so situated as to be susceptible of profitable irrigation, with water so diverted and conveyed, 533 acres of land, all of which has been, with reasonable diligence, so actually irrigated.

THEREFORE: THE COURT FINDS -

FIRST: That said ditch derives its supply of water from Kannah Creek; and

SECOND: The headgate of said ditch is location in Section nine, range ninety-six west, township twelve south, the sixth principal meridian, and at a point on the right bank of Deep Creek (a tributary of Kannah Creek) between the Deep Creek Reservoirs and Anderson Reservoirs; and the capacity of said ditch is thirty two cubic feet of water per second;

5 THIRD: That the water diverted by means of said ditch is emptied into the North Fork of Kannah Creek, from which a like quantity of water is diverted into the Bauer Ditch, the headgate of which is located on the right bank of said North Fork of Kannah Creek, at a point whence the northeast corner of Section 25, in township twelve south, range ninety eight west, of the sixth principal meridian, bears south twenty-six degrees thirty-two minutes west, eight hundred and ninety five feet; and its capacity as enlarged, is eighteen and seven-tenths cubic feet of water per second;

FOURTH: That work was commenced on said ditch on July 25, 1901, and was prosecuted to completion, with reasonable diligence;

FIFTH: That the water diverted from said stream and conveyed through said ditch is applied to the irrigation of land, and its duty is in the ratio or proportion of .72 of a cubic foot per second, per forty acres of land;

SIXTH: That there is so situated as to be susceptible of profitable irrigation, with water so diverted and conveyed, five hundred and thirty-three acres of land, all of which has been, with reasonable diligence, so actually irrigated;

WHEREFORE: IT IS ORDERED AND DECREED that there be allowed to flow into said ditch, as the TWELFTH PRIORITY out of Kannah Creek, 9.594 cubic feet of water per second, the same to be emptied into the North Fork of Kannah Creek; and that a quantity of water equal to that so diverted and emptied, be allowed to flow into said The Bauer Ditch Enlarged, as said Twelfth priority out of Kannah Creek, for the use of the parties entitled thereto;

PROVIDED HOWEVER: That the water so allowed to flow, whether used singly or together with water otherwise derived, shall not, in the aggregate, exceed the ratio or proportion of .72 of a cubic foot of water per second, per forty acres of land, for the land therewith irrigated.

15-00

UNNAMED GULCH HEADING ON THE SOUTHEAST  
QUARTER OF THE NORTHWEST QUARTER OF  
SECTION 36, IN TOWNSHIP 2 SOUTH, RANGE  
2 EAST, UTE MERIDIAN.

DITCH NO. 1

PRIORITY NO. 1

THE VAN PELT & COX SEEPAGE DITCH

Claimed by Wm. Van Pelt and Pearl Van Pelt.



Said ditch derives its supply of water from Seepage and waste water of a certain gulch, the head of which is located on the southeast quarter of the northwest quarter in Section 36, in township two south, range two east, Ute Meridian, and the headgate of said ditch is located at a point on the right bank of said flow of water, whence the southwest corner of section thirty-six, twp. two south, range 2 east, bears south 520 feet, and the capacity of said ditch is one and one-half cubic feet per second.

From said headgate said ditch runs in a southerly direction for a distance of 581 feet, and empties into Washburn and Downing Ditch (Being Ditch No. 2, carrying Priority No. 9, out of Kannah Creek) through which its water is conveyed, to lands of claimants.

Claimants are the owners of said Priority 9 water, which is a high water right, and the water here claimed is used to supplement said Priority Nine water in the irrigation of 160 acres of land, all of which has, with reasonable diligence, been so irrigated in the ratio of .018 of a cubic foot per second per acre.

Work was commenced on said ditch on May 1, 1890, and was prosecuted with reasonable diligence, to completion.

WHEREFORE: IT IS ORDERED AND DECREED that there be allowed to flow into said ditch, as the FIRST PRIORITY OUT of said

said source of supply, for the use of the parties entitled thereto,  
3 1 cubic foot of water'per second -

PROVIDED HOWEVER, that the water so allowed to flow,  
together with the water otherwise derived, shall not exceed  
in the aggregate, .018 of a cubic foot per second, per acre <sup>for the</sup> land  
*therewith irrigated.*

37- W

SEEPAGE AND WASTE WATER FROM PURDY MESA

Ditch No. 1

Priority No. 1

THE TERNAHAN & BOWMAN SEEPAGE & WASTE WATER  
DITCH, (claimed by William Ternahan and Chas.  
F. Bowman,) comprising two gathering ditches.



The headgate of ditch No. 1 is located in a natural draw, carrying seepage and waste water, whence the southwest corner of Section 25, in Township 2 South, Range 2 East, Ute Meridian, bears south 52 degrees west, 1267 feet; and from said headgate said ditch runs southwesterly about 240 feet, and empties into the North Fork of Kannah Creek, about three quarters of a mile above headgate of claimant's diversion ditch.

The headgate of ditch No. 2 is located in a natural draw, carrying seep and waste water, whence the southwest corner of section twenty-five, in township two south, range 2 east, Ute Meridian, bears north 38 degrees 40. minutes east, 1085 feet; and from said headgate said ditch runs southwesterly, about 560 feet, and empties into said north fork of Kannah Creek, about one-fourth mile above the headgate of claimants' diversion ditch; the capacity of said ditches one and two combined is 1.5 cubic feet of water per second.

2  
The equivalent in quantity of water so gathered and emptied into said North Fork of Kannah Creek is diverted from said stream by means of claimants' Diversion ditch, the headgate of which is located at a point on the west bank of said North Fork of Kannah Creek, one thousand feet east of the northwest corner of the northeast quarter of the southwest quarter of section 35, in township 2 south, range 2 east, Ute Meridian, and is conveyed there-through in a south-southwesterly direction for about one third of a mile, and emptied into the Northwestern Ditch (carrying Priority No. 6 out of said stream) through

which it is conveyed to lands of claimants.

Said Diversion ditch has a capacity of three cubic feet per second, and said Northwestern Ditch has a capacity sufficient to carry all of the water here claimed over and above its other duties.

The water here claimed is used to supplement high water rights out of the North Fork of Kannah Creek, in the irrigation of 210 acres of land, in the ratio of .018 of a cubic foot per second per acre, all of which has been, with reasonable diligence, so irrigated.

4 Work was commenced on said ditch on April 1, 1890, and prosecuted with reasonable diligence to completion.

WHEREFORE: IT IS ORDERED AND DECREED that there be allowed to flow into said gathering ditches one and two, 1.5 cubic feet of water per second, as the FIRST PRIORITY out of the water coming as aforesaid into said Natural draws, and gathered as aforesaid by means of said gathering ditches, and exchanged, as aforesaid, for North Fork of Kannah Creek water.

5 PROVIDED HOWEVER: That the water so allowed to flow shall not, together with water otherwise derived, in the aggregate, exceed .018 of a cubic foot per second, per acre <sup>for the</sup> land <sup>therewith</sup> irrigated.

10--W

COULTER GULCH

DITCH NO. 1

PRIORITY NO. 1



THE COULTER DITCH

Claimed by Harvey Bryant Evans and Carrie Celesta Evans.

This ditch derives its supply of water from Coulter Gulch, which carries only flood water and seepage water.

Work was commenced on said ditch on August 1, 1889 by one Coulter with a view to the irrigation of 240 acres of land then owned by him, about five acres of which is situated on the north side of Kannah Creek and the balance thereof on the south side of said creek.

The original method of operation was to flume over said creek all of the water for the irrigation of the land situated on the south side thereof; but the owner of said land and this water right, being also a part owner in The Sullivan Ditch, being Ditch No. 4, carrying Priority No. 6, being a High Water right out of Kannah Creek, and there being no water diverted from said creek between the point of location of the headgate of said Sullivan Ditch and the point on said creek where said flume made its crossing, and therefore, no one whose rights could be affected by such change of operation, in about the year 1902, said flume was abandoned and instead of carrying the water so theretofore flumed, across said creek, it was, at the point of location of said flume, measured into said creek and a like quantity of water diverted into said Sullivan Ditch; and both said rights being High Water rights, they have ever since been supplementally used in the irrigation of the same land, with the exception of said 5 acres situated on the North side of said creek, which is irrigated wholly with water from said Gulch.



3 On the 25th day of July, 1888, this court decreed to The Sullivan Ditch 3.57 cubic feet of water per second, as the SIXTH PRIORITY out of Kannah Creek, and according to said decree the headgate of said Sullivan Ditch is located on the south side of said Creek at a point near the residence of A. F. Paff; and the said Sullivan Ditch headgate is a short distance above the point where The Coulter Ditch discharges its water in said creek, there is no water diverted from said creek, between said Sullivan Ditch headgate and said Coulter Ditch discharge.

4 It is possible to profitably irrigate 240 acres of land with water diverted from Coulter Gulch and reciprocally conveyed, as aforesaid, through said Sullivan Ditch, 100 acres of which have been so actually irrigated; or it would be possible to irrigate all of said land by reverting to the original method of fluming said Gulch water across said creek, directly to said land.

THE COURT THEREFORE FINDS AS TO SAID COULTER DITCH:

FIRST: That said ditch derives its supply of water from Coulter Gulch;

5 SECOND: That the headgate of said ditch is located at a point on the right bank of said Gulch where same crosses the north line of the Southwest Quarter of the Southeast quarter of Section 36, in Township 2 South, of Range 2 East, Ute Meridian, and that the capacity of said ditch is 2 cubic feet of water per second;

THIRD: That work was commenced on said ditch on August 1, 1889, and was prosecuted with reasonable diligence, to the completion of said ditch;

6 FOURTH: That the capacity of The Sullivan Ditch, being Ditch No. 4, carrying 3.57 cubic feet of water per second, as the SIXTH PRIORITY out of Kannah Creek, is 5 cubic feet of water per second;

FIFTH: That the water diverted from said Gulch and conveyed through said Ditch, whether used directly or reciprocally from Kannah Creek, through said Sullivan Ditch, is applied to the irrigation of land, in the ratio or proportion of .72 of a cubic foot per second, per 40 acres of land.

SIXTH: That it is possible to profitably irrigate 240 acres of land with water so diverted and conveyed, whether directly or reciprocally, as aforesaid, 100 acres of which have, with reasonable diligence, been actually so irrigated.

SEVENTH: That between the point of discharge of The Coulter Ditch into Kannah Creek and the headgate of The Sullivan Ditch, diverting water out of said creek, no water whatever is being diverted from said creek:

WHEREFORE: IT IS ORDERED AND DECREED that there be allowed to flow into said ditch, as the FIRST PRIORITY out of said Gulch, 1 cubic foot of water per second, whether directly conveyed and applied, or in whole or in part by conveying to and discharging same into Kannah Creek and diverting an equal quantity of water out of said creek through The Sullivan Ditch;

PROVIDED HOWEVER; that the water so allowed to flow whether alone applied/or together with water otherwise, or by virtue of other rights, derived, shall not, in the aggregate, exceed the ratio and proportion for the land therewith irrigated,

*of seventy-two one-hundredths of a cubic foot of water per second, per forty acres of land.*

45-W

WATER FILE  
No. 291

GRAND MESA WATERSHED

GRAND MESA RESERVOIR NO. 6

Reservoir No. 37

Priority No. 38

That said reservoir is entitled to Priority No. 38, and is claimed by The Grand Mesa Reservoir Company, a corporation, and is used for the storage of water for irrigation purposes and situate in Water District No. 42. The initial point of survey of said reservoir is located at a point whence the North Quarter Corner of Section 1, Township 12 South, Range 96 West of the 6th P.M. bears North 31° 45' East 4140 feet, and is a part of the reservoir system of said corporation, taking its supply of water from the Kannah Creek watershed, from melting snows and rains. Heretofore the said reservoir was given a conditional decree, providing that when constructed it should be entitled to fill to its maximum capacity as Priority No. 6 within said watershed, and is now entitled to be made absolute for a capacity of 212.6 acre feet of water.

IT IS HEREBY ADJUDGED AND DECREED that there be allowed to flow into said reservoir from the said sources of supply, for the use aforesaid and for the benefit of the parties lawfully entitled thereto under and by virtue of said appropriation by construction and said Priority No. 6, 212.6 acre feet of water as an absolute decree and with Priority No. 38, as renumbered.

101

403



KANNAH CREEK WATER SHED

THE GRAND MESA RESERVOIR SYSTEM

Reservoir No.	Comprising	Priority No.
No. 1	Grand Mesa Reservoir No. 1	No. 1
No. 2	Scales Reservoir No. 1	No. 2
No. 3	Scales Reservoir No. 3	No. 3
No. 4	Grand Mesa Reservoir No. 8	No. 4
No. 5	Grand Mesa Reservoir No. 9	No. 5
No. 6	Grand Mesa Reservoir No. 6	No. 6

Claimed by The Grand Mesa Reservoir Company

These reservoirs, known as The Grand Mesa Reservoir system comprise two groups, all situated on the top of Grand Mesa and within the water shed of Kannah Creek, within which they derive their supply of water. The first group comprises Scales Nos. 1 and 3, and Grand Mesa Nos. 8 and 9.

The Scales Reservoirs 1 and 3 are located on separate branches at the headwaters of Kannah Creek. No. 3 or Upper Scales is situated entirely within the Southwest quarter of Section 33, in Township 11 South, Range 95 West, 6th P. M. and Scales No. 1 or Lower Scales is situated partly within said quarter section and partly within the Southeast Quarter of Section 32, in said township and range, and partly within the Northwest Quarter of Section Four, and the Northeast Quarter of Section 5, in Township 12 South, range 95 west, 6th Principal Meridian. Next lower down is Grand Mesa No. 8, situated in the Southwest quarter of Section 31, in Township 11 south, range 95 west, of the 6th principal meridian, and the northwest quarter of Section 6, in township 12 south, and range 95 west, of the

3  
f  
6th principal meridian, and the Southeast quarter of Section 36, in township 11 south, range 96 west of the 6th P. M. and the Northeast quarter of Section 1, in township 12 south, range 96 west, of the 6th P. M. and below Grand Mesa No. 8 is Grand Mesa No. 9, situated in all four quarters and near the center of Section 1, in Township 12 South, Range 96 West, of the 6th P. M. The two separate branches on which are respectively situated Upper and Lower Scales, unite a short distance below said reservoirs, and Grand Mesa No. 8 and No. 9 are located, the one above the other, lower down and in the bed of the main branch formed by the junction of said two branches. Upper Scales drains into Lower Scales, by means of a connecting drain, and Lower Scales outlets into the branch in the bed of which it is located, whence the waters of Upper and Lower Scales, so released, flow down said main branch, the entire flow of which enters Grand Mesa No. 9, which, in turn, outlets into said Main branch; and thus all of the waters of said groups, following Kannah Creek channel, find their way to the several ditches into which the quantum-equivalent of Kannah Creek water is diverted and conveyed to its destination.

5  
Of the other group, Grand Mesa No. 6 is highest up and in the bed of a west branch of Kannah Creek, and its water, by means of an outlet ditch, is drained into Grand Mesa No. 1, situated lower down and likewise in the bed of said west branch and which, in turn, likewise outlets into said branch; and thus the waters of this group, following Kannah Creek channel, reach their ultimate destination as do the waters of the other group.

The water so impounded by said system is held in reserve to supplement other priorities out of Kannah Creek, or

6 its water shed, in the irrigation of some 1960 acres of land, in the ratio of .018 of a cubic foot of water per second, per one acre of land, and is drawn upon whenever demanded by the failure of such other priorities, which usually occurs about July 10th of each year.

Scales Reservoir No. 1 (Lower Scales) has an area of 58.56 acres, and a capacity of 215 acre feet;

Scales Reservoir No. 3 (Upper Scales) has an area of 33.56 acres, and a capacity of 145 acre feet;

Grand Mesa Reservoir No. 8 has an area of 37.54 acres and a capacity of 382 acre feet;

7 Grand Mesa Reservoir No. 9 has an area of 29.57 acres and a capacity of 332 acre feet;

Grand Mesa Reservoir No. 6 has an area of 13.66 acres and a capacity of 136.36 acre feet;

Grand Mesa Reservoir No. 1 has an area of 59 acres, and a capacity of 780 acre feet.

Grand Mesa Reservoir No. 6 is only partially completed.

Not including Grand Mesa Reservoir No. 6 (not completed) there is a total area of 327 acres, and a total capacity of 1854 acre feet.

8 The total loss from evaporation and seepage is found to be 327 acre feet, so that, of the 1854 acre feet so stored in said reservoirs, but 1527 acre feet reaches its destination.

Work was commenced and completed on said reservoirs as follows: Scales Reservoir No. 1 (Lower Scales) in 1891; Scales Reservoir No. 3 (Upper Scales) in 1892; Grand Mesa Reservoir No. 1 August 1, 1887; Grand Mesa Reservoir No. 6 1904;

Grand Mesa Reservoir No. 8 1901; Grand Mesa Reservoir No. 9  
1904.

9  
All said reservoirs except Grand Mesa No. 6 were, completed with reasonable diligence and are now being used by the present owner, as a system, according to the plan about set out.

WHEREFORE IT IS ORDERED AND DECREED that each of said completed reservoirs is entitled to be filled to its maximum capacity, ~~once each and every year~~, according to its priority within Kannah Creek Water Shed, to-wit:

Reservoir No.		Priority No.
No. 1	Grand Mesa Reservoir No. 1	No. 1
No. 2	Scales Reservoir No. 1	No. 2
No. 3	Scales Reservoir No. 3	No. 3
No. 4	Grand Mesa Reservoir No. 8	No. 4
No. 5	Grand Mesa Reservoir No. 9	No. 5

for the benefit of the parties entitled thereto.

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~~PROVIDED, HOWEVER, that such filling shall take place when the water of said Water Shed is not needed for direct or immediate irrigation; and~~

PROVIDED ~~HOWEVER~~: that the water so impounded and used, together with water derived by virtue of other priority rights, shall not in the aggregate, exceed the ratio or proportion of .018 of a cubic foot per second, per acre, for the land therewith irrigated; and

IT IS FURTHER ORDERED AND DECREED that said Grand Mesa Reservoir No. 6, when constructed, shall be entitled to be filled to its maximum capacity, ~~once each and every year~~.

11. for the benefit of the parties entitled thereto, as Priority No. 6 within said Water Shed,

PROVIDED, HOWEVER that said reservoir shall be completed with reasonable diligence; and, and,

~~PROVIDED FURTHER that such filling shall take place when the water of said Water Shed is not needed for direct or immediate irrigation; and,~~

PROVIDED ~~STILL~~ FURTHER that the water so impounded and used, together with water derived by virtue of other priority rights, shall not in the aggregate, exceed the ratio or proportion of .018 of a cubic foot per second, per acre, for the land therewith irrigated.



THE HALLENBECK DITCH ENLARGED  
also known as the  
THE JUNIATA DITCH ENLARGED

WATER FILE  
115

DITCH NO. 587

Priority No. 931, CONDITIONAL.

The Court Finds:

That in this proceeding said ditch is number 587, and it is entitled to Conditional Priority No. 931.

That the claimants of said ditch are C. V. Hallenbeck, Wilbur J. Raber and Luther Crosswhite, the post office address of each of whom is Whitewater, Colorado, and John P. Raber, whose post office address is Paonia, Colorado.

That the enlargement is to be used for the purpose of filling the Juniata Reservoir Enlargement.

That it derives its supply of water from Kannah Creek, in Water District No. 42.

That its headgate is located on the right bank of said Kannah Creek, at a point whence the  $E\frac{1}{4}$  corner of Section 33, Resurvey Township 12 S., R. 97 W., 6th P. M. bears N. 71° 58' E. 2263 feet.

That said headgate and ditch is being constructed with a carrying capacity of 137.00 cubic feet of water per second of time; that at Station 12 on the plat thereof, said ditch unites with the Juniata Ditch, and proceeds in conjunction therewith to said Juniata Reservoir Enlarged. That the capacity of the ditch from headgate to reservoir is being increased to a capacity sufficient to carry all previously decreed waters thereto, and the 75.00 second feet of water requested herein for filling said Reservoir enlargement.

And the Court Finds from the evidence that the work of construction on the Enlargement of said Hallenbeck Ditch was begun on or about June 17, 1953, and same has been proceeding with reasonable diligence ever since, and a large portion thereof has been completed, and claimants intend to continue until com-

pletion to the extent above mentioned. That when completed it is proposed to divert from said Kannah Creek and carry through said enlarged ditch an additional 75.00 second feet of water to be used for storage in said reservoir to its proposed capacity, and to be re-diverted therefrom and used for irrigation purposes, as well as domestic and stockwatering purposes, on claimants' lands.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that, subject to the several limitations and provisions in the preamble to this decree expressed, there be allowed to flow through said enlargement of said ditch from said Kannah Creek, for the uses aforesaid, and for the benefit of the parties lawfully entitled thereto, under and by virtue of appropriation by proposed construction, diversion and beneficial use, and as Conditional Priority No. 931, so much water as will flow therethrough as proposed to be constructed, not to exceed 75.00 cubic feet per second of time, as of priority date June 17, 1953. CONDITIONED, HOWEVER, upon completion of such construction, as well as the construction of said Juniata Reservoir Enlarged, as proposed, within the time and in the manner provided by law.

WATER FILE  
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THE JUNIATA DITCH

Ditch No. 437

Priority No. 611.

THE COURT FINDS:

That in this proceeding said ditch is numbered 437, and it is entitled to Domestic and stockwater Priority No. 611.

That the claimant thereof, as shown by the claim Statement, is The Juniata Ditch Company.

(That in connection with this matter claimant filed an additional claim statement for Stockwater Priority through the Juniata Ditch First Enlargement, which ditch is shown to be identical with the Hallenbeck Ditch from its headgate to the point where it enters the Juniata Ditch proper, and thence on is the same ditch)

That the original Juniata Ditch was awarded irrigation Priority No. 11 in the Decree of July 25, 1888, for 21.25 second feet of water, as of date January 1, 1884.

That as shown by the claim statement the headgate of said Juniata Ditch is coincident with the headgate of the Kannah Creek Highline Ditch, which is located at a point whence the re-survey East Quarter Corner post of Sec. 33, Twp. 12 S., R. 97 W., 6th P.M. Bears North 5° 30' East 695 feet.

That said combined ditches flow westerly a distance of about 4000 feet from their common headgate to a point where the Juniata Ditch water is dropped into a natural drainage channel and carried to the Juniata Ditch. From the intercept of this natural drainage channel and the Juniata Ditch the Juniata Ditch is also fed by the Hallenbeck Canal, or the Juniata Ditch First Enlargement.

That said ditch has a carrying capacity far in excess of winter stock water requirements of claimant. That it serves a rather large territory in which there are about 9 users, and is 6 or 7 miles in length.

And the Court Finds further from the evidence that the ranches served by the ditch are stock ranches on which large numbers

of cattle and sheep are customarily kept during the winter, and claimants are dependent upon the Juniata Ditch for winter stock water purposes; that their ranches are almost entirely off-stream ranches, and the creek is not accessible to them for watering their stock. And it further appears to the Court that since the inception of said ditch same has been continuously used, and is still used, for the diversion of winter stock water for the use of the various claimants of the Juniata Ditch, as well as its enlargement.

And it further appears to the court that these ranches lie on what is called Purdy Mesa; that the soil thereon is of a porous nature, and underlaid with a strata of stone, making it difficult to construct reservoirs, or stock water ponds which will hold water for any length of time; that some reservoirs have been constructed and are in use, but require frequent filling; that while it is possible this condition might sometime be remedied by the application of impervious material to the bottoms and sides of these ponds, for the present at least it is necessary that a constant flow of water be maintained in the Juniata Ditch to insure a supply of stock water at all times to the claimants thereof.

The Court, upon request of adverse claimants, ordered a survey by a competent Engineer of not only the Juniata Ditch diversion, but the several other ditches and diversions from said Kannah Creek whose rights might be adversely affected by an award to the Juniata Ditch; and the said engineer, Philip P. Smith, has made his investigation and survey and filed his report on all matters referred to him by interrogatories from interested parties.

That with regard to the Juniata Ditch Company claim for winter stock water decree said report contains the following statement:

"Virtually all the requirements for winter stock water on Purdy Mesa are served by the Juniata Canal west from the Juniata drop. Only one ranch, owned by Howard Brouse, obtains winter stock water from the combined Highline and Juniata Canal. No ranches are served winter

stock water by the Hallenbeck Ditch upstream from its juncture with the Juniata Ditch. \* \* \* \* \*  
In my opinion two cubic feet of water per second of time is an adequate diversion of winter water through the combined Juniata and Kannah Creek Highline Ditch System. This water would be diverted in its entirety by the Highline Ditch and dropped to the Juniata Ditch through the Juniata Drop and continue in the Juniata ditch through several branches over Purdy Mesa. After the canal crowns over with ice the diversion could be reduced to one and one-half second feet and adequately serve the Purdy area. In my opinion there is no necessity or justification for a winter water diversion through the Hallenbeck Ditch for winter stock water since there are no farmsteads located along this part of the ditch system."

The above being the result of an independent and expert investigation and survey, the Court is inclined to attach a good deal of weight to it.

The Court therefore Finds that there is no necessity for granting an independent stock water priority to the Juniata Ditch First Enlargement, since an award to the original Juniata Ditch will, as a practical matter, furnish water to all members of Claimant Company, as well as claimants under the said First Enlargement. Further, in view of the fact that there is a chronic shortage of winter water in Kannah Creek to meet the needs of water users therefrom; and since said First Enlargement bears stream Priority No. 22, with date of September 1, 1939 and any stock water award thereto would necessarily take that date, in the Court's opinion it would be entirely futile to make such award since prior stock water rights will entirely exhaust the supply.

IT IS THEREFORE ORDERED by the court that said claim for domestic and stockwater priority to the Juniata Ditch, First Enlargement, be, and the same is hereby denied.

That as to the Original Juniata Ditch,

IT IS ORDERED, ADJUDGED AND DECREED that subject to the several limitations in the preamble to this decree expressed, there be allowed to flow in said ditch from said Kannah Creek at the combined headgate thereof with the Kannah Creek Highline Ditch, for domestic and stock water purposes during the non-irri-

gation season, and at such time or times as claimants do not require and are not using irrigation water therethrough during the irrigation season, for the benefit of the parties lawfully entitled thereto, under and by virtue of appropriation by original construction and beneficial use, and Domestic and Stockwater Priority No. 611, so much water as will flow therein as now constructed, not to exceed 2.00 cubic feet per second of time, as of Historic Date Jan. 1, 1884, and Decreed Date July 25, 1941.

IT IS FURTHER PROVIDED that claimant has the right, at its election to divert all, or any portion, of said water at the headgate of the Hallenbeck Ditch, otherwise called the Juniata Ditch First Enlargement; it being understood that at no time shall the combined diversion for domestic and stock water purposes at said two diversion points exceed said award of 2.00 cubic feet of water per second of time.

FURTHER PROVIDED that said Priority shall not be used at any time for storage purposes in The Juniata Reservoir or in The Juniata Reservoir Enlarged.



KANNAH CREEK

JUNIATA DITCH ENLARGED

DITCH NO. 15

PRIORITY NO. 608

That said ditch is entitled to Priority No. 608. It is claimed by C. V. Hallenbeck and is used for the irrigation of land and takes its supply of water from Kannah Creek in Water District No. 42. The headgate is located on the right bank of Kannah Creek whence the East quarter corner of Section 33, resurvey Township 12 South, Range 97 West bears North  $71^{\circ} 58'$  East 2263 feet.

IT IS HEREBY ADJUDGED AND DECREED that there be allowed to flow into said ditch for the use aforesaid and for the benefit of the parties lawfully entitled thereto, and under and by virtue of the said appropriation by construction and said enlargement and Priority No. 608, 54 cubic feet of water per second of time, with Priority date September 1, 1939, for the purpose of filling the Hallenbeck Reservoir; provided however, that of the said 54 second feet, not in excess of 20 second feet is allowed for direct irrigation through the said Juniata Ditch Enlarged, and 5 second feet is awarded for carriage through said Juniata Ditch Enlarged for the use of the stockholders of the Juniata Ditch Company for direct irrigation use upon lands lying under the said Juniata Ditch and of the 25 feet or less amount of water hereby awarded for direct irrigation use as aforesaid, in case there is less flow than 25 second feet, The Juniata Ditch Company is entitled to  $1/5$  of such amount for direct irrigation through the said Juniata Ditch and the claimant to  $4/5$  of the same for such direct irrigation use.

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SULLIVAN DITCH



Ditch No. 440

Priority No. 614.

THE COURT FINDS:

That in this proceeding said ditch is numbered 440, and it is entitled to Domestic and stock water Priority No. 614.

That the claimants thereof, as shown by the statement of claim are J. Olson and Earl Lucas. However the testimony shows that J. B. Claybaugh, Jr. also has a small interest in the ditch.

That the interests as testified to are as follows:

J. A. Olson and his father 4/12 interest  
Earl Lucas 7/12 interest,  
J. B. Claybaugh, Jr. 1/12 interest.

That on July 25, 1888 said ditch was awarded Priority No. 6 for 3.57 second feet of water for irrigation purposes, as of date December 3, 1885. And in the decree of July 25, 1941 said ditch was awarded an additional irrigation priority for 1.29 second feet of water, making a total of 4.86 second feet. But said ditch was never awarded a domestic or stockwater decree.

That its headgate is located on the south bank of Kannah Creek at a point whence the  $N\frac{1}{4}$  corner of Sec. 12, Twp. 13 S., R. 98 W., 6th P. M. bears N.  $65^{\circ}7'$  East 2288 feet.

That said ditch flows southerly, is about 3 miles long, 4 feet wide on the bottom, 7 feet wide on top, 1 foot deep, with a grade of 7 feet per mile and carrying capacity of about 7.25 second feet of water.

And the Court finds from the evidence that said ditch has from its inception served the ranch now belonging to Claimant Earl Lucas for irrigation purposes; And that it has at all times from its inception served the ranches now belonging to claimants Olson and Claybaugh for both irrigation and stockwater purposes. That the Lucas ranch is at the lower end of the ditch, and that the creek runs clear through his property and he keeps his stock away from the ditch and uses the creek for stock water. That he is



interested only in keeping water in the Creek and not the Ditch. And it would appear to the Court that if there is water in the ditch, which parallels the creek at no great distance, and from which it is testified at least 75 percent of the water will return to the creek, that there will be water in the creek through Mr. Lucas' place.

The Court finds that there was a great deal of testimony introduced by claimants purporting to show the necessity of maintaining a flow of water during the winter in the Sullivan Ditch for the benefit of numerous permittees who customarily run stock on the public range in that vicinity and use the Sullivan Ditch frequently as a convenient watering place for such stock.

The Court does not consider this a valid basis for the award of any amount of water to said ditch for stock watering purposes. The Court considers that if these various permittees desired to obtain the benefits of a decree to the use of winter stock water in the Sullivan Ditch they should not only be parties to the petition, either by themselves or representatives, and should submit appropriate evidence showing time of appropriation, amount, necessity and regular use.

The Court does find that claimants Olson and Claybaugh do have, through their own use and the use of their predecessors in title, right to have decreed for their winter stock water use a quantity of water to the Sullivan Ditch. If said ditch is open to the public domain at any point it is likely stock in that vicinity will water from it, but such use will not create the right to demand that water be kept in said ditch when not needed by the immediate claimants thereof.

A more difficult problem arises in connection with the prayer in the statement of claim for a conditional priority of 2.00 second feet of water for the irrigation of an additional 70 or 75 acres of land.

The testimony of claimant Claybaugh eliminates him from

any interest in this portion of the claim.

The testimony of claimant Lucas is that he has irrigated the same acreage ever since 1941, that is about 70 or 75 acres, And there is no indication that he intends to increase it at this time; that for said acreage he has 7/12 of the 4.86 second feet of water decreed to the Sullivan Ditch, or approximately 2.75 second feet. This enables him to apply more than 1 inch to the acre of said land, which amount the Court has found in various instances in this proceeding is sufficient for proper irrigation."

The above conclusions leave only the proposed additional irrigation by the Olsons on which to base the claim for the 2.00 cubic feet of water per second of time as a conditional decree.

An examination of the evidence reveals an extremely slight basis for the award of any amount for such purpose, or the fixing of any definite date of initiation of appropriation. The evidence of Claimant Olson is that there is an alluvium fan at the mouth of a small canyon, consisting of about 12 acres of rich soil which he intends to irrigate; That claimants have owned the place for only 3 years, and witness observed that some of the rock which covered this fan area had been removed by some former owner and stacked at the fence; relying on this as inferring it had been done for the purpose of rendering the land susceptible of irrigation. During the 3 years claimants have been on the place all they have done is burn some brush off of this area. Further than this it appears claimants have done nothing more than form an intention to irrigate this ground. On the other hand we have the report of the Engineer appointed by the Court in this matter, showing that the Sullivan Ditch irrigates, on the lands of claimants, 47.6 acres, and is occasionally applied on an additional 7.6 acres which is generally irrigated by another ditch. And his report further shows the outwash area proposed to be irrigated consists of only 2.3 acres. The Evidence also shows that the Olson claimants are entitled to

1/3 of the 4.86 second feet of water previously awarded to the Sullivan Ditch, or 1.62 second feet, which provides practically the amount of water which the Court has in many instances in this proceeding found sufficient for the irrigation of a like amount of land.

For the above reasons IT IS ORDERED, ADJUDGED AND DECREED THAT THE prayer for a conditional priority of 2.00 cubic feet of water per second of time herein be, and the same hereby is denied.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, subject to the several limitations in the preamble to this decree expressed, there be allowed to flow in said ditch from said Kannah Creek, for domestic and stock water purposes during the non-irrigation season, and at such time or times as claimants do not require and are not using irrigation water therethrough during the irrigation season, for the benefit of the parties lawfully entitled thereto, under and by virtue of appropriation by original construction, and beneficial use, and Domestic and Stock Water Priority No. 614, so much water as will flow therein as now constructed, not to exceed .50 of a cubic foot per second of time, as of Historic Date December 3, 1885, and Decreed Date July 25, 1941.

WATER FILE  
No. 264

KANNAH CREEK  
SULLIVAN DITCH

Ditch No. 10 . Priority No. 610

That said ditch is entitled to Priority No. 610. It is a ditch claimed by Earl Lucas and Ruth Sullivan and the Federal Land Bank of Wichita, and is used for the irrigation of land, taking its supply of water from Kannah Creek, in Water District No. 42. The headgate is located on the south side of Kannah Creek, at a point near what is known as the old A. F. Paff residence, now owned by Thomas Ternehan, or the Thomas Ternehan Estate. The Sullivan Ditch was heretofore awarded a decree and Priority No. 6 from Kannah Creek, for 3.57 cubic feet of water per second of time.

IT IS HEREBY ADJUDGED AND DECREED that there be allowed to flow into said ditch for the use aforesaid and for the benefit of the parties lawfully entitled thereto, 1.294 cubic feet of water per second of time, as a supplemental decree, with Priority No. 610, and date of Priority Nov. 1, 1939.

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THE BROWN & CAMPION DITCH

Ditch No. 435

Priority No. 609 Do.

THE COURT FINDS:

That in this proceeding said ditch is numbered 435, and is entitled to Domestic and Stockwater Priority No. 609.

That the claimants thereof are The GJC Hereford Ranch, John Holland, Floyd Blair, James Blair, and R. C. Sherwood. Post-office address of each Whitewater, Colorado.

That the historic date of appropriation of this domestic and stockwater claim is based upon the original irrigation award to said ditch, being Priority No. 5 out of Kannah Creek, for 8.60 second feet of water, as of date April 18, 1883.

> That, as shown by the claim statement filed herein, the headgate of said ditch is located on the North bank of said Kannah Creek at a point whence the NE corner of the NW $\frac{1}{4}$  NW $\frac{1}{4}$ , Sec. 3, Twp. 3 S., R. 2 East of the Ute Meridian bears N. 10° E. 512 feet.

> That said ditch flows Northwesterly, and has an adjudicated carrying capacity of 30.6 Second feet of water.

That from the record it appears said priority was awarded for irrigation purposes only, and that no domestic or stockwatering priority has ever been awarded to said ditch.

That from the evidence it appears that said ditch has at all times, and still does, serve livestock ranches which require the diversion and use of water therethrough for domestic and livestock purposes throughout the year, and that such diversion has been made, either by continuous direct flow, or for the filling of stockwatering ponds, ever since the inception of the ditch; The present practice being to divert the stockwater only at such times, and for the period necessary to fill said ponds, then return the water to the creek flow.

The Court further Finds from the evidence that there is a general shortage of winter water in Kannah Creek, and that it is frequently insufficient to meet the demands of all water users

dependent upon it. It is therefore necessary to establish all domestic and stockwater rights on a minimum basis which, in the Court's opinion, will be adequate to meet such needs if handled in a properly careful and skillful Manner.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that, subject to the several limitations in the preamble to this decree expressed, there be allowed to flow in said ditch from Kannah Creek, for domestic and stockwater purposes, during the irrigation or non-irrigation season, and for such period or periods only as necessary to fill the stockwater ponds thereunder as now constructed for the benefit of the parties lawfully entitled thereto, under and by virtue of appropriation by original construction, and beneficial use, and Priority No. 609, so much water as will flow therein as now constructed, not to exceed 1.00 cubic foot of water per second of time, as of Historic date April 18, 1883, and Decreed date July 25, 1941.

WATER FILE  
No. 263

KANNAH CREEK  
ERN  
NORTHWEST/ DITCH

Ditch No. 8

Supplemental Priority No. 610

That said ditch is entitled to Supplemental Priority No. 610. It is a ditch claimed by the William Ternehan Estate and Charles F. Bowman, and is used for the irrigation of land, taking its supply of water from Kannah Creek, in Water District No. 42. The headgate is located on the north side of the Kannah Creek in the Northeast Quarter of the Northwest Quarter of Section 2, Township 5 South, Range 2 East of the Ute Meridian, Mesa County, Colorado. The said ditch was heretofore awarded Priority 4 from Kannah Creek, for 4 cubic feet of water per second of time and the said ditch is entitled to a supplemental decree as herein set forth.

IT IS HEREBY ADJUDGED AND DECREED that there be allowed to flow into said ditch for the use aforesaid and for the benefit of the parties lawfully entitled thereto, 1.78 cubic feet of water per second of time, as a supplemental decree, with Priority No. 610 and date of Priority Nov. 1, 1939.

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WATER FILE  
N. 140

NORTHWESTERN DITCH

Ditch No. 439

Priority No. 613 Do.  
and  
Priority No. 938 Ir.  
CONDITIONAL

THE COURT FINDS:

That in this proceeding said ditch is numbered 439, and it is entitled to Domestic and Stockwater Priority No. 613, and Conditional Irrigation Priority No. 938.

That the claimants of said ditch are The Devisees of J. B. Claybaugh, Sr., Deceased, who claim an undivided  $3/4$  interest, and Luther W. Crosswhite, who claims an undivided  $1/4$  interest, as shown by the statement of claim.

That on July 25, 1888 said ditch was awarded Priority No. 4 for 4.00 second feet of water for irrigation purposes, as of date August 11, 1885. And in the Decree of July 25, 1941 said ditch was awarded an additional irrigation priority for 1.78 second feet of water, but has never been awarded a domestic or stockwater decree.

That the headgate of said ditch is located on the North bank of said Kannah Creek on the NE $\frac{1}{4}$  NW $\frac{1}{4}$ , Sec. 2, Twp. 3 South, Range 2 East of the Ute Meridian, at a point *whence the NW corner of said Sec. 2 bears N. 37° 17' W. 2280 feet.*

That said ditch flows northwesterly and is about 2 miles long, 3 feet wide on the bottom, 4 feet on top and 1.5 feet deep, with a grade of about  $1/4$  inch per rod, and carrying capacity of about 7.72 second feet of water.

The Court finds from the evidence that said ditch has from its inception served the two livestock ranches now belonging to the above claimants; that the Claybaugh ranch depends largely thereon for winter stockwater; that the Crosswhite ranch, according to the testimony of both Crosswhite and his witnesses, has never depended on or used the ditch water for such purpose and that the winter water has been cut back to the creek before it reaches his place. His place would appear to be at the lower end of the ditch.



It further appears from the testimony, with respect to irrigation rights in said ditch, that the Claybaugh ranch is entitled to  $3/4$  of Irrigation Priority No. 4, or 3.00 second feet of water, and apparently all of the supplemental priority for 1.78 second feet of water, which was awarded in 1941, and necessarily would be only a flood water right. This gives the Claybaugh ranch a total of 4.78 second feet of water with which to irrigate what the survey and report of the engineer appointed by the court shows to be about 186 acres, which is application of water at the rate of about 1 inch per acre, which amount the Court has found in various instances in this proceeding is sufficient for proper irrigation.

The evidence of the claimants of the Claybaugh ranch further shows that there is somewhere between 45 and 70 acres of land on said ranch susceptible of irrigation by said ditch, which they did at onetime along in 1937 start to clear and prepare for irrigation, on the south side of the creek, that for some reason that work was dropped until recently, and that they now intend to proceed with this work, and are proceeding with it, and intend to place water thereon from said ditch. In the Court's opinion there has not been sufficient diligence shown in the prosecution of this work to relate the Conditional Decree to the 1937 date, though there is evidence of a flume having been in use across the creek at one time, the same is now in unusable condition, and apparently has been for many years. That the claimant has recently reconstructed the ditch down to the point where the flume crossed the creek and intends to complete the application of water to said acreage with a reasonable time. And that no other ditch is or can be used by claimant for the irrigation of said land.

The testimony of claimant Crosswhite does not show that he is making any claim for any additional water for either irrigation or stockwater purposes.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, that, subject to the several limitations in the preamble to this decree expressed, there be allowed to flow in said ditch from said Kannah Creek, for domestic and stock water purposes during the non-irrigation season, and at such time or times as claimants do not require and are not using irrigation water therethrough during the irrigation season, for the benefit of the parties lawfully entitled thereto, under and by virtue of appropriation by original construction, and beneficial use, and Domestic and Stock Water Priority No. 613, so much water as will flow therein as now constructed, not to exceed .50 of a cubic foot per second of time, as of Historic date August 11, 1885, and Decreed Date July 25, 1941.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the prayer for .50 of a cubic foot of water per second of time as an absolute supplemental priority award be, and the same hereby is, denied.

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that, subject to the several limitations in the preamble to this decree expressed, there be allowed to flow in said ditch from said Kannah Creek, for irrigation purposes, for the benefit of the parties lawfully entitled thereto, under and by virtue of appropriation by proposed additional construction, diversion and beneficial use, and Priority No. 938, so much water as will flow therein as proposed to be constructed, not to exceed 1.50 cubic feet per second of time, as of date June 1, 1955. CONDITIONED, however, upon completion of said proposed ditch and the actual diversion of said additional water, and application thereof to the use aforesaid within the time and in the manner provided by law, -or so much thereof as may be by proof shown to have been so diverted and beneficially applied.

WATER FILE  
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KANNAH CREEK

SMITH IRRIGATION DITCH AND SECOND ENLARGEMENT OF SMITH IRRIGATION DITCH

Ditch No. 7

Priority No. 521

That said Second Enlargement of the Smith Irrigation Ditch is entitled to Priority No. 521. It is a ditch claimed by the William Ternehan Estate (Henry Tupper, Executor), Walter Farmer and C. F. Bowman, and is used for the irrigation of land, taking its supply of water from Kannah Creek, in Water District No. 42. The headgate of said ditch is located at a point on the south side of Kannah Creek, whence the Southwest corner of the Northeast Quarter of the Northeast Quarter of Section 3, Township 3 South, Range 2 East of the Ute Meridian, bears 30° 26' East 813.5 feet. The Smith Irrigation Ditch was heretofore awarded Priority for 1.3 cubic feet of water per second of time, as Priority No. 3 and the Smith Irrigation Ditch Enlargement which was the First Enlargement of the said Smith Irrigation Ditch, was awarded a decree for 19.6 cubic feet of water per second of time as Priority No. 7 from said Kannah Creek.

IT IS HEREBY ADJUDGED AND DECREED that there be allowed to flow into said ditch, as the Second Enlargement of the Smith Irrigation Ditch, for the use aforesaid and for the benefit of the parties lawfully entitled thereto under and by virtue of construction by enlargement and Priority No. 521, .45 of a cubic foot of water per second of time, with Priority date of May 1, 1920.

IT IS FURTHER ADJUDGED AND DECREED that there be allowed to flow into said Smith Irrigation Ditch for the use aforesaid and for the benefit of the parties lawfully entitled thereto, .578 of a cubic foot of water per second of time, as a supplemental decree, with Priority No. 610, and Priority date of Nov. 1, 1939

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KANNAH CREEK EXTENSION DITCH

Ditch No. 438

Priority No. 612.

THE COURT FINDS:

That in this proceeding said ditch is numbered 438, and it is entitled to Domestic and stockwater Priority No. 612.

That the claimants thereof, as shown by the claim statement are "Henry Holland, et al."

That this is a claim for domestic and stock water purposes under said ditch.

That on July 25, 1888 said ditch was awarded Priority No. 2 for 15.6 second feet of water for irrigation purposes, as of Date Nov. 1, 1884.

That the headgate of said ditch is located on the right bank of Kannah Creek 68 rods North 27° 30' West from the North-east corner of the SW $\frac{1}{4}$  of Sec. 33, Twp. 2 S., R. 2 East of the Ute Meridian.

That said ditch flows northwesterly, and the branch involved in this claim is about 4 miles in length, 3 feet wide on top, 2 feet wide on the bottom, 3 feet deep, with a grade of 10 feet per 1000 feet, and carrying capacity of 5.00 cubic feet of water per second of time.

The Court Finds from the Mesa County District Court Adjudication records that, while the Kannah Creek Extension Ditch was in said Decree of 1888 awarded a priority number lower than the priority number awarded to the Juniata Ditch, (to which ditch was just heretofore in this proceeding awarded a domestic and stock water priority) and the claimants of both ditches base their claim in this proceeding upon their original awards, the date of the original award to the Kannah Creek Extension Ditch was later than the date of the award to the Juniata Ditch. That while this is unusual procedure, the court in this proceeding is basing its order of priority upon said priority dates rather than priority

numbers.

The Court further finds that the ranches served by said ditch are mostly off-stream stock ranches, on which a considerable number of cattle and sheep are kept during the winter months, and are dependent upon this ditch for stock water. And the Court also finds that this condition has existed from the inception of the ditch, and that stock water has been continuously diverted therethrough and used thereunder during the non-irrigation seasons.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that, subject to the several limitations in the preamble to this decree expressed, there be allowed to flow in said ditch from said Kannah Creek, for domestic and stock water purposes, during the <sup>non-</sup>irrigation season, and at such time or times as claimants do not require and are not using irrigation water therethrough during the irrigation season, for the benefit of the parties lawfully entitled thereto, under and by virtue of appropriation by original construction and beneficial use, and Domestic and Stockwater Priority No. 612, so much water as will flow therein as now constructed, not to exceed 1.00 cubic foot per second of time, as of historic date November 1, 1884, and Decreed date July 25, 1941.

WATER FILE  
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KANNAH CREEK

KANNAH CREEK EXTENSION DITCH

Ditch No. 5 Supplemental Priority No. 610

That said ditch is entitled to Supplemental Priority No. 610. It is a ditch claimed by the William Ternahan Estate, Mrs. John Phillips, Mrs. James Armstrong, Charles Rinderle, Emma Scales, Town of Whitewater, Colorado, George W. Peugh, Pete McMillan, Henry W. Snyder, W. H. Coffman, Mrs. Margaret Fuite, Mrs. Marigold, and Mr. John Bale, and is used for the irrigation of land, taking its supply of water from Kannah Creek, in Water District No. 42. The headgate is located on the right bank of Kannah Creek 68 rods north  $27^{\circ} 30'$  West from the Northeast corner of the Southwest Quarter of Section 33, Township 2 South, Range 2 East Ute Meridian. Said ditch was heretofore awarded a decree as Priority No. 2 from Kannah Creek for 15.6 cubic feet of water per second of time, and claim is made for a supplemental decree herein.

IT IS HEREBY ADJUDGED AND DECREED that there be allowed to flow into said ditch for the use aforesaid and for the benefit of the parties lawfully entitled thereto, 4.39 cubic feet of water per second of time, as a supplemental decree, with Priority No. 610, and date of Priority Nov. 1, 1939.

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THE WILLIAM J. PONSFORD DITCH

DITCH NO. 498

Priority No. 690 Domestic.  
and  
Priority No. 861 Irrigation  
CONDITIONAL.

THE COURT FINDS:

That in this proceeding said ditch is numbered 498, and it is entitled to Domestic Priority No. 690, and to Irrigation Conditional Priority No. 861.

That the claimant thereof is John Holland, whose post office address is Whitewater, Colorado.

That it is a ditch used for the watering of stock in the non-irrigation season as well as irrigation season, and for the irrigation of land.

That it derives its supply of water from Kannah Creek, in Water District No. 42.

That its headgate is located on the South bank of said Kannah Creek at a point whence the  $S\frac{1}{4}$  corner of Sec. 32, Twp. 2 S., R. 2 W., Ute Meridian bears S.  $65^{\circ} 24'$  W. 755 feet.

That said ditch flows in a general westerly direction, is about one-half mile long, 3.5 feet wide on the surface, 1.5 feet wide on the bottom, in excess of one foot deep, with a grade of about 1 inch to 5 rods, and a carrying capacity of about 3.50 second feet of water.

And the Court Finds from the evidence, and report of the engineer appointed to make a special investigation and survey of the ditches taking water from said Kannah Creek involved in a dispute of rights among certain claimants, that in decree of July 25, 1888 said ditch was awarded Priority No. 1 out of said creek, for .60 second foot of water. That claimant alleged, and testified, that since said award the irrigated acreage under said ditch has been increased to a total of 50 or 55 acres, and is asking additional water. However, the report of said engineer shows on survey

the claimants estimate of irrigated acreage under said ditch is high,--that it irrigates only 25.1 acres. And the Court therefore Finds, on the basis of said report, that the previous award to said ditch of .60 of a second foot of water, is sufficient for the proper irrigation thereof, and is in line with other priorities awarded out of said creek.

With regard to the use of said ditch for winter stock-watering purposes, the Court finds the evidence insufficient to establish that it was so used from its inception. The testimony of Albert Rhodes, who lived on the place from 1906 to 1914, and leased and operated it from 1918 to 1928, that it was not used for winter stockwatering purposes,--that the stock had access to the creek. And the testimony of Fred Semino was that he knew the ditch since 1883, and that the stock could get water from either the ditch or the creek, which in the opinion of the court indicates the creek was open to the stock at all times during the winter, and the use of the ditch was unnecessary. However, other testimony shows that since on or about 1929, a portion of the ranch has been fenced off from the creek, through which the ditch runs, and that since that time, at least, it became necessary to use the ditch during the winter for watering stock pastured therein. That said ditch is a very short ditch, at the lower end of the creek, where freezing is not ordinarily severe, and in the Court's opinion .20 of a second foot of water will be sufficient to award thereto for winter stock watering purposes.

The Court Further Finds from the evidence that on or about the First of June, 1951, claimant started clearing the brush from about 15 or 16 acres below the irrigated land under said ditch, and making preparations for extending his irrigation thereto; that he has expressed his intention to complete such work and divert additional water through said ditch and apply it to the irrigation of said acreage within a reasonable length of time.



IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, that claimant's request for additional water to supplement the original award to said ditch for the irrigation of an estimated 50 to 55 acres, be, and the same hereby is, denied, on the basis of the engineer's report.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, subject to the several limitations in the preamble to this decree expressed, there be allowed to flow in said ditch from said Kennah Creek, for domestic and stockwater purposes, during the non-irrigation season, and at such time or times as claimant does not require and is not using irrigation water therethrough during the irrigation season, for the benefit of the parties lawfully entitled thereto, under and by virtue of appropriation by construction, diversion and beneficial use, as Priority No. 690, so much water as will flow therein as now constructed, not to exceed .20 of a cubic foot per second of time, as of Historic Date Jan. 1, 1929, and Decreed Date July 25, 1941.

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, subject to said several limitations, there be allowed to flow in said ditch from said Kennah Creek, for irrigation purposes, and for the benefit of the parties lawfully entitled thereto, under and by virtue of appropriation by proposed enlarged diversion and beneficial use, and as Priority No. 861, so much water as will flow therein as now constructed, not to exceed .40 of a cubic foot per second of time, as of Historic Date June 1, 1951, and Decreed Date June 1, 1951. CONDITIONED, however, upon the completion of such enlarged diversion and beneficial use in the irrigation of said 15 or 16 acres proposed to be irrigated under said ditch, or such portion thereof as proof shall show to have been so completed within the time and in the manner provided by law.

Book 1, Page 357.  
7th Judicial District Court Record.  
Grand Junction, Mesa County, Colo.  
8th day of July Term of the District  
Court, July 25th, A. D. 1888.

IN THE MATTER OF THE ADJUDICATION OF THE  
PRIORITIES OF RIGHT TO THE USE OF WATER  
FOR IRRIGATION FROM KANNAH CREEK, IN WATER  
DISTRICT NO. 42 IN SAID STATE.

No. 216.

\*\*\*\*\*

Now on this the 25th day of July, A. D. 1888, this cause coming on for final hearing, and the Court having set aside the finding set forth in the report of the Referee, Arthur P. Cook, to whom said matter was by order of this Court, made on the 4th day of November, A. D. 1887, referred, and the Court having considered all the evidence taken and reported by said Referee, and being satisfied from examination of the several notices, certificates of publication, and affidavits filed herein, that the evidence herein reported was taken upon due and lawful notice in all respects as provided by statute, and the rules and several orders of this Court in this behalf made and entered, and the Court having filed his several findings of fact in this cause made, wherein the rights of the several claimants of priorities to the use of water in Kannah Creek and its tributaries now set forth and express.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that each and every of said findings, be and the same are hereby made a part of this Decree.

AND THE COURT DO FURTHER ORDER, adjudge and decree as follows, that is to say:

1st. No part of this decree shall in any case be taken, deemed or held to confirm, impair or in any manner affect any claim of right or property, held or claimed by any person, association or corporation, in or to any ditch, canal or reservoir, or any part thereof, or to the land or any part thereof, on which any of the same, may be situated, or the land held or claimed as right of way of any of them, or any right interest or claim of property whatever in or relating to any of them.

2nd. No part of this Decree shall be taken, deemed or held as affecting in any manner, any question or claim of right between the owners or claimants of any such ditch, canal or reservoir, as between each other; whether as part owners, or share-holders therein, or as stockholders in any corporation, or joint stock company claiming, or to claim the same, or any part thereof; nor shall it affect the rights interest, or claims of any consumers of water for irrigation or domestic purposes, whether as part owner, lessee, shareholder or stockholder in any corporation holding or controlling the same, or as purchasers of water therefrom, as against the rights, interests or claims of any other party or parties interested, or claiming interest or right in or to such ditch, or canal or reservoir as owner, lessee, or part owner thereof, or as shareholder or stockholder in any corporation claiming the same, or as purchaser of water therefrom; neither shall it affect any claim or priority made or resisted as between the parties using water for said purposes from the same ditch, canal or reservoir as to such water.

3rd. No part of this Decree shall in any manner affect any question between two or more parties claiming or owning priorities as herein adjudged on the same stream in any case, where the water in such stream sinks and rises to the surface again, between the location of the headgate of their respective ditches, canals or feeders of reservoirs, or in any dispute as to the identity of the water appropriated by either party out of such sinking and rising stream.

4th. This Decree shall not affect any question of priority between claimants, or owners of ditches, or canals used in whole or in part, for milling or manufacturing, or water power for other purposes, as to any water carried in said ditch or canals for said purposes.

5th. This Decree shall not affect any claim, interest or right of any corporation, as to the right of priority in any ditch, canal or reservoir, on the ground on which the same may be situated, or any question which may arise between the stockholders thereof or between them and the State, people or any party upon the dissolution of such corporation, by expiration of its charter or otherwise, as to any appropriation of water or right secured by condemnation proceedings by such corporation, during its legal existence.

6th. No part of this Decree shall affect in any way any right, claim or interest now or hereafter held or claimed to any appropriation of water, made after the closing of the testimony, touching the construction or enlargement of the ditch, canal or reservoir, by means of which said appropriation may have been made.

7th. No part of this Decree shall be taken or held as adjudging to any claimant or present or future representatives of any claim to any ditch, or canal or reservoir, or party holding or using or controlling the same, any right to take and carry by means of any canal, ditch or reservoir herein mentioned, or by virtue of any appropriation herein adjudged, any water from any natural stream, except to be applied to the use for which the appropriation was made, nor to allow any excessive use or waste of water whatever nor to allow any diversion of water except for lawful and beneficial purposes; nor to allow the storage of water in reservoirs, when it is necessary for immediate use for domestic or irrigation purposes, [ That no part of this Decree shall be taken or held to prevent any ditch claimant from flowing a portion or the whole of the water that his ditch is entitled to under this Decree, in any other ditch with the consent of the owner or owners thereof, and under the regulations, control and

supervision of the water commissioner of said District.

8th. This Decree shall be taken, decreed and held as intended to determine and establish the several priorities of right by legal appropriation of water from Kannah Creek, and the North Fork of Kannah Creek, in Water District No. 42 for irrigation, of the several ditches, canals and reservoirs in said District, concerning which testimony has been offered in this matter, according to the construction, enlargement or extension thereof, and by legal appropriation with the amount of water held to have been appropriated thereby, subject to the several last mentioned rights and provisions.

It is further, as to said ditches, canals and reservoirs, and the several appropriations of water, by means of them respectively claimed in this matter, ordered, adjudged and decreed in and by the findings of the said Court, as follows; That said ditches be and the same are hereby separately numbered, according to the date of their several and respective constructions:

KANNAH CREEK DITCHES.

- |        |                                      |                   |
|--------|--------------------------------------|-------------------|
| No. 1. | Wm. J. Ponsford's Ditch,             | December, 1881.   |
| No. 2. | The Washburn & Downing Ditch,        | February 15, 1882 |
| No. 3. | The Bales-Williams & Morrison Ditch, | April, 1882.      |
| No. 4  | The Sullivan Ditch,                  | February 1, 1883. |
| No. 5  | The Brown & Campion Ditch,           | April 15, 1883.   |
| No. 6  | The Smith Irrigating Ditch,          | May 1, 1883.      |
| No. 7  | The Northwestern Ditch,              | May 1, 1883.      |
| No. 8  | The Junietta Ditch,                  | Jan. 7, 1884.     |
| No. 9  | The Kannah Creek Extension Ditch     | Jan. 21, 1884.    |
| No. 10 | The Brown & Campion Ditch Enlarged,  | Nov. 20, 1885.    |
| No. 11 | The Smith Irrigating Ditch Enlarged, | Jan. 20, 1886.    |

NORTH FORK OF KANNAH CREEK DITCHES.

- |       |                       |                |
|-------|-----------------------|----------------|
| No. 1 | The Bolen Ditch No. 1 | March 5, 1882  |
| No. 2 | The Bolen Ditch No. 2 | March 6, 1882  |
| No. 3 | The Bauer Ditch       | Feb'y 15, 1883 |

- |       |                                       |                |
|-------|---------------------------------------|----------------|
| No. 4 | The Hentschel Ditch                   | May 1, 1883    |
| No. 5 | The Seegar & Bedford Ditch            | May 4, 1885    |
| No. 6 | The Seegar & Bedford Ditch, Enlarged, | Sept. 21, 1885 |

And the several appropriations of water for said ditches respectively, and their respective enlargements, are hereby numbered and declared, with the dates of said appropriations, to be as follows:

KANNAH CREEK DITCHES.

- |         |  |                     |
|---------|--|---------------------|
| No. 1,  | Wm. J. Ponsford's Ditch, original construction,        | Dec. 1881,          |
| No. 2,  | The Kannah Creek Extension Ditch, legal appropriation, | Nov. 1, 1884        |
| No. 3,  | The Smith Irrigating Ditch,                            | " " " Aug. 11, 1885 |
| No. 4,  | The Northwestern Ditch,                                | " " " Aug. 11, 1885 |
| No. 5,  | The Brown & Campion Ditch,                             | " " " Nov. 14, 1885 |
| No. 6,  | The Sullivan Ditch,                                    | " " " Dec. 3, 1885  |
| No. 7,  | The Smith Irrigating Ditch as enlarged                 | " " " Nov. 26, 1886 |
| No. 8,  | The Brown & Campion Ditch as enlarged                  | " " " Dec. 16, 1886 |
| No. 9,  | The Washburn & Downing Ditch,                          | " " " Jan. 21, 1888 |
| No. 10, | The Bales, Williams & Morrison Ditch original cons.    | Apr. 1882.          |
| No. 11, | The Junietta Ditch, original construction              | Jan. 7, 1884        |

NORTH FORK OF KANNAH CREEK DITCHES.

- |       |  |               |
|-------|--|---------------|
| No. 1 | The Bolen Ditch No. 2, original construction,        | Nov. 6, 1882  |
| No. 2 | The Henschael Ditch, " " " "                         | May 1, 1883   |
| No. 3 | The Seegar & Bedford Ditch, legal appropriation      | May 1, 1885   |
| No. 4 | The Seegar & Bedford Ditch as enlarged, legal appro. | Sep. 21, 1885 |
| No. 5 | The Bolen Ditch No. 1, original construction,        | Nov. 5, 1882  |
| No. 6 | The Bauer Ditch, original construction,              | Feb. 15, 1883 |

And said ditches are respectively entitled to said appropriations and priorities on the aforesaid numbers, as follows:

KANNAH CREEK DITCHES.

- |       |  |
|-------|--|
| No. 1 | The Wm. J. Ponsford Ditch, Priority No. 1        |
| No. 2 | The Kannah Creek Extension Ditch, Priority No. 2 |

No. 3	The Smith Irrigating Ditch, Priority No. 3-7
No. 4	The Northwestern Ditch, " " 4
No. 5	The Brown & Campion Ditch " " 5-8
No. 6	The Sullivan Ditch " " 6
No. 7	The Washburn & Downing Ditch " " 9
No. 8	The Balos, Willims & Morrison Ditch, Priority No. 10
No. 9	The Junietta Ditch, priority No. 11

NORTH FORK OF KANNAH CREEK DITCHES.

No. 1	The Bolen Ditch No. 2 Priority No. 1
No. 2	The Henschael Ditch " " 2
No. 3	The Seegar & Bedford Ditch " " 3
No. 4	The Bolen Ditch No. 1 " " 4
No. 5	The Bauer Ditch " " 5

And the amount of water adjudged to said ditches on their respective priorities, per second of time, is computed as follows, to-wit:

KANNAH CREEK DITCHES.

		Cu. ft.
No. 1	The Wm. J. Ponsford Ditch, Priority No. 1	.6
No. 2	The Kannah Creek Extension Ditch, Pri. No. 2	15.6
No. 3	The Smith Irrigating Ditch, Priority No. 3	1.3
	" " 7	<u>19.6</u> 20.9
No. 4	The Northwestern Ditch, Priority No. 4	4.
No. 5	The Brown & Campion Ditch, Priority No. 5	8.6
	" " 8	<u>22.</u> 30.6
No. 6	The Sullivan Ditch, Priority No. 6	3.57
No. 7	The Washburn & Downing Ditch, Priority No. 9	2.77
No. 8	The Bales, Williams & Morrison Ditch, Priority No. 10	2.7
No. 9	The Junietta Ditch, Priority No. 11	21.25
NORTH FORK OF KANNAH CREEK DITCHES.		
No. 1	The Bolen Ditch No. 2, Priority No. 1	.9
No. 2	The Henschael Ditch, Priority No. 2	.95

No. 3	The Seegar & Bedford Ditch, Priority No. 3	5.76
No. 4	The Bolen Ditch No. 1, Priority No. 4	1.4
No. 5	The Bauer Ditch, Priority No. 5	1.96

The entire amount of water taken from said Kannah Creek by said ditches so taking water therefrom, under the Priorities established by this Decree, is computed at 101.99 cubic feet of water per second of time.

And the entire amount of water taken from said North Fork of Kannah Creek, a natural stream and a tributary of said Kannah Creek by said ditches, so taking water therefrom, under the priorities established by this Decree, is computed at 10.97 cubic feet of water per second of time. And more particularly in regard to said ditches and enlargements of the same as follows:-

\*\*\*\*\**(Details of Kannah Creek Ditches)*\*\*\*\*\*  
*— Attached —*  
*hereto.*

NORTH FORK OF KANNAH CREEK DITCHES.

No. 1, The Bolen Ditch No. 2

That said ditch ~~xxxx~~ is entitled to North Fork Priority No. 1, the claimant is Henry Bolen. That it is a ditch used for the irrigation of lands, taking its supply of water from the stream of the North Fork of Kannah Creek, and the headgate is located at a point on the North Fork of Kannah Creek one mile east of NE Corner of the NE $\frac{1}{4}$  of Sec. 24, T 2 S, R 2 E, U. P. M. in Mesa County, Colorado. And it is hereby adjudged and decreed that there be allowed to flow into said ditch from the said North Fork of Kannah Creek, for the use aforesaid, and for the benefit of the parties lawfully entitled thereto under and by virtue of Priority No. 1, nine-tenths (.9) of a cubic foot of water per second of time. The size of said ditch being ten inches wide on the bottom, twenty inches wide at the water surface, depth of water flow eighteen inches, grade five feet to the mile.

No. 2 THE HENSCHAELE DITCH.

That said ditch is entitled to North Fork Priority No. 2



and the claimant is Alvin Henschael. That it is a ditch used for the irrigation of lands, taking its supply of water from the stream of the North Fork of Kannah Creek, and its headgate is located at a point on the North Fork of Kannah Creek, one hundred and ten rods east of NE Corner of SE $\frac{1}{2}$  of Sec. 24, T 2 S, R 2 East, U. P. M. in Mesa County, Colorado. And it is hereby adjudged and decreed that there be allowed to flow into said ditch from said North Fork of Kannah Creek for the use aforesaid, and for the benefit of the parties lawfully entitled thereto, under and by virtue of Priority No. 2, ninety-five hundredths (.95) of a cubic foot of water per second of time. The size of said ditch being ten inches in width ~~from~~<sup>at</sup> the bottom, fifteen inches in width at the water surface, depth of water flow four inches, grade twenty feet to the mile.

NO. 3 . THE SEEGAR AND BEDFORD DITCH.

That said ditch is entitled to North Fork Priority No. 3. The claimants are John D. Reeder and Louis Seegar. That it is a ditch used for the irrigation of lands, taking its supply of water from the stream of the North Fork of Kannah Creek, and its headgate is located about fifty feet below where the East Fork of the North Fork of Kannah Creek joins said North Fork of Kannah Creek in Mesa County, Colorado. And it is hereby adjudged and decreed that there be allowed to flow into said ditch from the said North Fork of Kannah Creek, for the use aforesaid and for the benefit of the parties lawfully entitled thereto, under and by virtue of legal appropriation and Priority No. 3, five and seventy-six hundredths (5.76) cubic foot of water per second of time. The size of said ditch being three feet in width on the bottom, five feet in width at the water surface, depth of water flow one and one-half feet, grade ten feet to the mile.

NO. 4 THE BOLEN DITCH NO. 1.

That upon filing a sworn statement and plat as required by statute, the said ditch will be entitled to North Fork Priority No. 4. The claimant is Henry Bolen. That it is a ditch used for irriga-

tion of land, taking its supply of water from the stream of the North Fork of Kannah Creek, and the headgate thereof, is located at a point one-half mile east of NE corner of the NE $\frac{1}{2}$  of NE $\frac{1}{4}$  of Section 24, T 2 S, R 2 E, U. P. M. in Mesa County, Colo. And it is hereby adjudged and decreed that upon filing a sworn statement and plat as aforesaid there will be allowed to flow into said ditch from said North Fork of Kannah Creek for the use aforesaid, and for the benefit of the parties lawfully entitled thereto, under and by virtue of legal appropriation and Priority No. 4, one and four tenths (1.4) cubic feet of water per second of time. The size of said ditch is ten inches in width on the bottom, fifteen inches in width at water surface, depth of water flow six inches, grade fifteen feet to the mile.

No. 5 THE BAUER DITCH.

That upon filing a sworn statement and plat as required by statute, the said ditch will be entitled to North Fork Priority No. 5. The claimant is Joseph Bauer, that it is a ditch used for the irrigation of land, taking its supply of water from the East fork of the North Fork of Kannah Creek, and its headgate is located on the east fork of the North Fork of Kannah Creek, at a point one thousand and forty feet NE of NE corner, of Section 25, T 12 S, R 98 W, 6th P. M. in Mesa County, Colorado. And it is hereby adjudged and decreed that upon filing a sworn statement and plat as required by statute, there will be allowed to flow into said ditch from said east fork of the North Fork of Kannah Creek for the use aforesaid, and for the benefit of the parties lawfully entitled thereto, under and by virtue of legal appropriation and Priority No. 5, one and ninety-six hundredths (1.96) cubic feet of water per second of time. The size of said ditch being eighteen inches in width on the bottom, two and one-half feet in width at the water surface, depth of water flow six inches, grade twenty feet per mile.

\*

No. 3	The Seegar & Bedford Ditch, Priority No. 3	5.76
No. 4	The Bolen Ditch No. 1, Priority No. 4	1.4
No. 5	The Bauer Ditch, Priority No. 5	1.95

The entire amount of water taken from said Kannah Creek by said ditches so taking water therefrom, under the Priorities established by this Decree, is computed at 101.99 cubic feet of water per second of time.

And the entire amount of water taken from said North Fork of Kannah Creek, a natural stream and a tributary of said Kannah Creek by said ditches, so taking water therefrom, under the priorities established by this Decree, is computed at 10.97 cubic feet of water per second of time. And more particularly in regard to said ditches and enlargements of the same as follows:-

WILLIAM J. PONSFORD DITCH

No. 1,

That said ditch is entitled to Kannah Creek priority No. One. The claimant is William J. Ponsford. That it is a ditch used for the irrigation of land, taking its supply of water from the stream of Kannah Creek. That the head gate is located at a point 250 yards above the N. E. Corner of the SW $\frac{1}{4}$  of SW $\frac{1}{4}$  of Sec. 33 T 2 S, R 2 E, U. P. M. in Mesa County in the State of Colorado and it is hereby adjudged and decreed that there be allowed to flow into said ditch from the said Kannah Creek for the rise offoresaid, and for the benefit of the parties lawfully entitled to the same six tenths of a cubic foot of water per second of time. The size of said ditch is one foot at the bottom, one and one half feet width at the water surface, depth of water flow one and one half feet grade one fifth of an inch to the rod.

THE KANNAH CREEK EXTENSION DITCH

No. 2

That said ditch is entitled to Kannah Creek priority No. 2. The claimants are J. Ross Penniston, R. W. Shropshire,

Wm. Coffman, John E. Carew, P. J. Dowling, Caroline Edwards and J. H. Nelson: that it is a ditch used for irrigation of lands, taking its supply of water from Kannah Creek and the headgate thereof is located at a point on the right bank of Kannah Creek 68 rods N.  $27^{\circ}30'$  W from N.E. cor. of S. W. $\frac{1}{4}$  of Sec 33 T 2 S, R 2 East Ute P.M. in Mesa County Colorado. And it is hereby adjudged and decreed that there be allowed to flow into said ditch from said Kannah Creek for the use aforesaid and for the benefit of the parties lawfully entitled thereto under and by virtue of legal appropriation and priority No. 2, 15.6 cubic feet per second of time. The size of said ditch being five feet in width on the bottom and eleven feet in width at the water surface, depth of water flow eighteen inches, grade six and three quarter feet per mile.

#### THE SMITH IRRIGATION DITCH

No. 3,

That said ditch is entitled to Kannah Creek priorities No.'s 3 and 7. The claimants Are F. N. Smith, and Joseph Simineo as to priority No. 3, and The Smith Extension Irrigating Ditch Association as to priority No. 7. That it is a ditch used for the irrigation of lands, taking its supply of water from the stream of Kannah Creek, and the headgate thereof is located on the south side of Kannah Creek at a point whence the SW Cor. of NE $\frac{1}{4}$  of NE $\frac{1}{4}$  of Sec. 3 T 3 S, R 2 E, Ute P.M. bears  $30^{\circ}26'$  East 813.5 feet in Mesa County Colorado. And it is hereby adjudged and decreed that there be allowed to flow into said ditch from said Kannah Creek for the <sup>use</sup>~~use~~ aforesaid and for the benefit of the parties lawfully entitled thereto under and by virtue of legal appropriation and priority No. 3, one and three tenths ( $1\frac{3}{10}$ ) cubic feet of water per second of time. The size of said ditch as originally constructed was two and one half feet in width on the bottom and three and onehalf feet in width at the water surface, depth of water flow eighteen inches, grade one

quarter of an inch to the rod. And that there be further allowed to flow into said ditch as aforesaid under and by virtue of legal appropriation and priority No. 7 so much additional water for the purposes aforesaidas Will supply the increased flow thereof by nineteen and six tenths (19.6) cubic feet of water per second of time. The size of said ditch as enlarged being eight feet wide on the bottom eleven feet wide at the water surface, depth of water flow two feet, grade two and sixty four hundredths feet per mile, and the whole amount of water to which said ditch is entitled is computed at twenty and nine tenths (20.9) cubic feet per second of time.

#### THE NORTHWESTERN DITCH

No. 4,

That said ditch is entitled to Kannah Creek priority No. 4. The claimants are I. W. Smith, Joseph Simineo and Willis Smith: that it is a ditch used for the irrigation of lands, taking its supply of water from Kannah Creek, and its headgate is located on the North Side of Kannah Creek on the NE $\frac{1}{4}$  of NW $\frac{1}{4}$  of Sec. 2 T 3 S, R 2 East U. P. M. in Mesa County Colorado. And it is hereby adjudged and decreed that there be allowed to flow into said ditch from said Kannah Creek for the use aforesaid and for the benefit of the parties lawfully entitled thereto under and by virtue of legal appropriation and priority No. 4 four cubic feet of water per second of time. The size of said ditch being three feet in width on the bottom five feet in width at the water surface, depth of water flow eighteen inches and grade one quarter of an inch to the rod.

#### THE BROWN & CAMPION DITCH

No. 5,

That said ditch is entitled to Kannah Creek priorities No.'s 5 and 8. The claimants as to priority No. 5 are Joseph Simineo, Dennis Sullivan, John J. McKay and Daniel W. Collard, and that the claimants as to priority No. 8 are Joseph Simineo, Dennis Sullivan, John J. McKay and Daniel Collard and The Brown and

Campion Ditch Company. That it is a ditch used for the irrigation of lands, taking its supply of water from the stream of Kannah Creek, and the headgate thereof is located at a point on Kannah Creek where the NE cor. of the NW $\frac{1}{4}$  of NW $\frac{1}{4}$  of Sec 3. T 3 S, R 2 E., U.P.M. bears N 10° East 512 feet, in Mesa County Colorado. And it is hereby adjudged and decreed that there be allowed to flow into said ditch from said Kannah Creek, for the use aforesaid and for the benefit of the parties lawfully entitled thereto, under and by virtue of legal appropriation and priority No. 5, eight and six tenths (8.6) cubic feet of water per second of time. The size of said ditch as originally constructed was three feet in width on the bottom, five feet in width at the water surface, depth of water flow one foot, grade one quarter of an inch to the rod. And that there be further allowed to flow into said ditch as aforesaid under and by virtue of legal appropriation and priority No. 8 so much additional water for the purposes aforesaid as will supply the increased flow thereof by twenty two (22) cubic feet of water per second of time. The said ditch as enlarged being eight feet in width on the bottom, twelve feet in width at the water surface, depth of water flow one and one half feet, grade one quarter of an inch to the rod, and the whole amount of water to which said ditch is entitled is computed at thirty and six tenths (30.6) cubic feet per second of time.

#### THE SULLIVAN DITCH

No. 6,

That said ditch is entitled to Kannah Creek priority No. 6. The claimants are J. F. Sullivan, W. W. Morrison, J. W. Washburn and R. R. Coulter: that it is a ditch used for the irrigation of lands, taking its supply of water from the stream of Kannah Creek, and its headgate is located on the south side of Kannah Creek at a point on said Creek near the residence of A. F. Paff in Mesa County Colorado. And it is hereby adjudged and decreed that there be allowed to flow into said ditch from said Kannah Creek for the use aforesaid and for the benefit of the parties lawfully

entitled thereto, under and by virtue of legal appropriation and priority No. 6 three and fifty seven hundredths (3.57) cubic feet of water per second of time. The size of said ditch being four feet in width on the bottom seven feet in width at the water surface, depth of water flow one foot, grade seven feet to the mile.

No. 7,

THE WASHBURN & DOWNING DITCH

That said ditch is entitled to Kannah Creek priority No. 9. The claimants are George S. Downing and J. W. Washburn. That it is a ditch used for the irrigation of lands, taking its supply of water from the stream of Kannah Creek, and the headgate thereof is located at a point on the North Side of Kannah Creek whence Section Corner to Section 1 & 2 T 3 S, and Sections 35 and 36 T 2 S, R 2 E., U. P. M., bears North 11°8' E. 213.4 feet, in Mesa County, Colorado.

And it is hereby adjudged and decreed that there be allowed to flow into said ditch from said Kannah Creek, for the use aforesaid and for the benefit of the parties lawfully entitled thereto, under and by virtue of legal appropriation and priority No. 9, two and seventy--seven hundredths (2.77) cubic feet of water per second of time. The size of said ditch being two feet in width on the bottom, five feet in width at the water surface, depth of water flow one and one half feet, grade one quarter of an inch to the rod.

No. 8,

THE BALES, WILLIAMS & MORRISON DITCH

That upon filing a sworn statement and plat as required by Statute the said ditch will be entitled to Kannah Creek priority No. 10. The claimants are J. M. Walker, H. T. Williams and G. H. Howard. That it is a ditch used for the irrigation of lands, taking its supply of water from the stream of Kannah Creek, and

headgate thereof is located at a point on said Kannah Creek one half mile above where the old Ute Trail crosses Kannah Creek in Mesa County Colorado. And it is hereby adjudged and decreed that upon filing a sworn statement and plat as aforesaid that there be allowed to flow into said ditch from said Kannah Creek for the use aforesaid and for the benefit of the parties lawfully entitled thereto under and by virtue of legal appropriation and priority No. 10 two and seven tenths (2.7) cubic feet of water per second of time. The size of said ditch being twenty in width on the bottom, thirty inches in width at the water surface, and depth of water flow ten inches, grade one quarter of an inch to the rod.

No. 9,

#### THE JUNIATA DITCH

That upon filing a sworn statement and plat as required by statute the said ditch will be entitled to Kannah Creek priority No. 11. The claimants are the Juniata Ditch Company, That it is a ditch used for the irrigation of lands, taking its supply of water from the stream of Kannah Creek, and the headgate thereof is located at a point on Kannah Creek four miles nearby due East of the middle of the east line of Section 25, T 2 S, R 2 E, U. P. M., in Mesa County Colorado. And it is hereby adjudged and decreed that upon filing a sworn statement and plat as aforesaid, there be allowed to flow into said ditch from said Kannah Creek for the use aforesaid and for the benefit of the parties lawfully entitled thereto, under and by virtue of legal appropriation and priority No. 11, twenty-one and twenty-five hundredths (21.25) cubic feet of water per second of time. The size of said ditch being five feet in width, on the bottom, seven feet in width at water surface, depth of water flow one and one half feet, grade eight feet to the mile.

#### NORTH FORK OF KANNAH CREEK DITCHES

No. 1, The Bolen Ditch No. 2

That said ditch is entitled to North Fork Priority No. 1, the claimant is Henry Bolen. That it is a ditch used for the



irrigation of lands, taking its supply of water from the stream of the North Fork of Kannah Creek, and the headgate is located at a point on the North Fork of Kannah Creek one mile east of NE Corner of the NE $\frac{1}{4}$  of Sec. 24, T 2 S, R 2 E, U. P. M. in Mesa County, Colorado. And it is hereby adjudged and decreed that there be allowed to flow into said ditch from the said North Fork of Kannah Creek, for the use aforesaid, and for the benefit of the parties lawfully entitled thereto under and by virtue of Priority No. 1, nine-tenths (.9) of a cubic foot of water per second of time. The size of said ditch being ten inches wide on the bottom, twenty inches wide at the water surface, depth of water flow eighteen inches, grade five feet to the mile.

No. 2 THE HENSCHAEEL DITCH.

That said ditch is entitled to North Fork Priority No. 2

\*\*\*\* Continued on next page \*\*\*\*

ORDERED, that Court do now adjourn until Monday, July 30,  
A. D. 1888, at Eight o'clock A. M.

(Signed) M. B. Gerry,

J u d g e .

STATE OF COLORADO :  
                          : ss.  
COUNTY OF MESA :

I, T. W. Primrose, Clerk of the District Court in and for  
the County of Mesa and State aforesaid, do hereby certify that the  
above and foregoing is a true and correct copy of a certain portion  
of a Decree in the Matter of the Adjudication of the Priorities  
of right to the use of water for irrigation from Kannah Creek, in  
Water District No. 42, in said State, as the same appears of record  
in this office.

IN WITNESS WHEREOF I have hereunto set my hand and  
the seal of said office, at Grand Junction, County and State  
aforesaid, this 29th day of March, A. D. 1910.



*T. W. Primrose*

Clerk of the District Court.

KANNAH CREEK WATERSHED

GRAND JUNCTION FLOW LINE AND WATERWORKS SYSTEM

WATER FILE  
384

No. 1

Priority No. 52

Said Flow Line and Waterworks System is entitled to Priority No. 52 and is claimed by the City of Grand Junction, a municipal corporation of Mesa County, Colorado. The said Flow Line and Waterworks System is used for the purpose of storing, supplying and distributing water for all municipal purposes, and for sprinkling streets, extinguishing fires and for household purposes, and for the use of its inhabitants and consumers located along its Flow Line and Waterworks System for domestic, power and irrigation purposes. The head of the Grand Junction Flow Line and Waterworks System is located at a point on the right bank of Kannah Creek, situate in Water District No. 42, Mesa County, Colorado, in the Southwest quarter ( $SW\frac{1}{4}$ ) of Section 34, Township 12 South, Range 97 West of the 6th Principal Meridian from whence the Southwest corner of said Section 34 bears South  $15^{\circ} 48'$  West, distant 2.062 feet, from which point its Flow Line runs in a general North-westerly direction a distance of approximately twenty miles to the corporate limits of the said City of Grand Junction; said Flow Line varying in diameter from ten inches to twenty-four inches and having a carrying capacity of 8.854 cubic feet of water per second of time and deriving its source of supply from Kannah Creek and the waters arising in the watershed of said Creek.

IT IS HEREBY ADJUDGED AND DECREED: That there be allowed to flow into said Flow Line and Waterworks System from the said source of supply for the uses aforesaid and for the benefit of said City of Grand Junction and the inhabitants thereof and all parties lawfully entitled thereto, in addition to all other and prior rights, decrees and appropriations, under and by virtue of appropriation by construction and use and Priority No. 52, 3.908 cubic feet of water per second of time with priority date of May 1, 1929, of which 40 inches, or 1.042 second feet, shall be absolute, and 110 inches, or 2.866 second feet, conditional upon the completion of the enlargement of said Flow Line with due diligence.

15-129

2

City of Colorado )  
City of Mesa )

In the District Court.

City of Grand Junction,  
Municipal corporation,

Petitioner,

--vs--

Wm. Van Felt, et al,

Respondents.

1911

J U D G M E N T .

1911 Water  
Decree

No. 1818.

This action came on regularly for trial, and the petitioner appeared by its attorneys, and the respondents appeared by their respective attorneys, except as to those against whom default had been entered. A jury of twelve persons was regularly empanelled and sworn to try said action. Witnesses on the part of petitioner and respondents were sworn and examined. After hearing the evidence, the argument of counsel and instructions of the Court, the jury retired to consider their verdict and returned into Court on the 25th day of February, 1911, answered to their names, and rendered the following verdict, to-wit:

"We, the jury, duly empanelled and sworn in said cause, hereby render verdict, as follows:

First: An accurate description of the real property taken and to be taken by petitioner herein, pursuant to statute in that behalf, is -

The exercise of the right and privilege of diverting water to the extent of a constant flow of 7.81 cubic feet per second of time, of the waters of Hannah Creek, in said County, at or near the point designated in the petition herein, above the headgate of all irrigating ditches heretofore diverting water from said creek, and the superior right of domain to said quantity of water, against all others diverting water from said Hannah Creek, said water so to be taken and diverted to be conducted by a system of water works to be created by said petitioner to its municipal limits, and to be distributed and used within said limits, for the municipal purposes of said petitioner, and for distribution among its inhabitants for domestic and other like beneficial uses of its inhabitants.

Second: The value of the said property actually taken being granted by statute in that behalf, conditioned on making full compensation or satisfaction of all damages thereby occasioned to such person, persons or corporation, as shall be materially interfered with in their vested rights heretofore acquired, residing upon such said Hannah Creek, or having heretofore applied, used and diverted waters therefrom for proper and beneficial purposes, we find such compensation to be paid by said petitioner to be One Hundred Eighty-two Thousand Nine Hundred Forty (\$182,940.00) Dollars.

Third: The damages to the land and property of the several respondents to be paid by said petitioner as conditioned precedent to the exercise of said right of domain, we find to be as follows:

To respondent or respondents owning PARCEL NO. 1, known as the Coffren tract herein, viz.-  $W\frac{1}{2}SE\frac{1}{4}$  and  $SE\frac{1}{4}SW\frac{1}{4}$ , Sec. 10, Township 8 South, Range 1 East, Ute Meridian, in said County, containing 120 acres of land, together with the water right thereunto appertaining, consisting of 64.5 statutory inches of decreed priority No. 2, from said Kannah Creek, in said Water District No. 42, Nine Thousand (\$9000) Dollars.

To respondent, or respondents, owning PARCEL NO. 2, known as the Lower Snyder Tract, herein, viz.-  $W\frac{1}{2}NE\frac{1}{4}SE\frac{1}{4}$ , Sec. 10, in the last described township and range, consisting of 20 acres of land, together with the water right thereunto appertaining, consisting of  $10-1/5$  statutory inches of said decreed Priority #2, Two Thousand (\$2000) Dollars.

To respondent, or respondents, owning PARCEL NO. 2 $\frac{1}{2}$ , known as the Upper Snyder Tract, viz.-  $NE\frac{1}{4}NW\frac{1}{4}SE\frac{1}{4}$  and  $SW\frac{1}{4}NE\frac{1}{4}$ , of Section 14, in the last described township and range, less right of way, said tract containing 45 acres of land, in said county, together with the water right thereunto appertaining, being undecreed right of diversion for irrigation of said water heretofore enjoyed in connection with said tract, Four Hundred (\$400) Dollars.

To respondent, or respondents, owning said PARCEL NO. 3, known as the Sargent tract herein, viz.-  $E\frac{1}{2}NW\frac{1}{4}$  and  $SW\frac{1}{4}$  of Sec. 10, and  $NE\frac{1}{4}SW\frac{1}{4}$ , Section 11, in the last described township and range, containing 60 acres, together with the water right thereunto appertaining, consisting of  $10-1/5$  statutory inches of said decreed Priority No. 2, Twenty-five Hundred (\$2500) Dollars.

To respondent, or respondents, owning said PARCEL NO. 4, known as the upper Dowling tract herein, viz.- NW<sup>1</sup>NE<sup>1</sup>, Section 13, in said last described township and range, containing 20 acres, together with the water right thereunto appertaining, consisting of 10-1/2 statutory inches of said decreed Priority No. 2, Eight Hundred (\$800) Dollars.

To respondent, or respondents, owning said PARCEL NO. 5, known as the lower Dowling tract, herein, viz.- SE<sup>1</sup>SW<sup>1</sup>, Sec. 11, in said last described township and range, containing 40 acres, together with the water right thereunto appertaining, consisting of 22 statutory inches of said decreed Priority No. 2, Thirty-five Hundred (\$3500) Dollars.

To respondent, or respondents, owning PARCEL NO. 6, known as the Cutting tract, herein, viz.- that part of the SE<sup>1</sup>SW<sup>1</sup> below the Mannah Creek Extension Ditch, and the W<sup>1</sup>SE<sup>1</sup> of Section 12, said last described township and range, containing 100 acres, together with the water right thereunto appertaining, consisting of 10-1/5 statutory inches from said decreed Priority No. 2, Three Thousand One Hundred Sixty-Eight (\$3168) Dollars.

To respondent owning PARCEL NO. 7, known as The Hill Plon Orchard & Irrigation Company, herein, viz.- NE<sup>1</sup>SE<sup>1</sup>, S<sup>1</sup>SE<sup>1</sup>, Section 25; NW<sup>1</sup>NE<sup>1</sup>, NE<sup>1</sup>NE<sup>1</sup>, and SW<sup>1</sup>SW<sup>1</sup>, Section 26; NE<sup>1</sup>, SE<sup>1</sup>NE<sup>1</sup> and NE<sup>1</sup>SW<sup>1</sup>, Section 25; all in Township 2 South, Range 2 East, Ute Meridian, and Lots 1 and 2, of Section 2, Township 13 South, Range 98 West, 6 P. M., all containing 600 acres of land, in said county, together with the following water rights thereunto appertaining and used for the irrigation thereof, viz.- 205 shares of the company controlling same, being about 225 statutory inches of decreed Priority No. 11, from

said Kannah Creek, in said Water District, and a seventh-eighths interest in that irrigation reservoir, known as the Ternaban Reservoir, Twelve Thousand (\$12,000) Dollars.

To respondent, or respondents, owning PARCEL NO. 8, known as the Laramore tract, viz.- SE $\frac{1}{4}$ SE $\frac{1}{4}$ , Section 11, and that part below the Kannah Creek Extension Ditch of the S $\frac{1}{4}$ SW $\frac{1}{4}$ , Sec. 12, and all of the NE $\frac{1}{4}$ NW $\frac{1}{4}$ , Section 13, all in township 2 south, range 1 East, Ute Meridian, containing 132 acres, together with the water right thereunto appertaining, consisting of 68 statutory inches of said decreed Priority No. 2, Seven Thousand (\$7000) Dollars.

To respondent, or respondents, owning Parcel No. 10, known as the Upper Renick Tract, viz.- SW $\frac{1}{4}$ NW $\frac{1}{4}$  and N $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ , Section 30, in said Township 2 South, Range 2 East, Ute Meridian, and SE $\frac{1}{4}$ NE $\frac{1}{4}$  and NE $\frac{1}{4}$ SE $\frac{1}{4}$ , Section 25, in Township 2 South, Range 1 East, Ute Meridian, containing 140 acres, together with the water right thereunto appertaining, consisting of 26-1/4 statutory inches of said decreed Priority No. 2, Five Thousand Seven Hundred Ninety-five (\$5795) Dollars.

To respondent, or respondents, owning PARCEL NO. 11, known as the Lower Renick Tract, viz.- SE $\frac{1}{4}$ NW $\frac{1}{4}$ , NW $\frac{1}{4}$ SE $\frac{1}{4}$  and 10 $\frac{1}{2}$  acres of NW $\frac{1}{4}$ SW $\frac{1}{4}$ , Section 24, Township 2 South, Range 1 East, Ute Meridian, containing 93 $\frac{1}{2}$  acres, together with the water right thereunto appertaining, consisting of 26-1/4 statutory inches of said decreed Priority No. 2, Twenty-five (\$2500) Hundred Dollars.

To respondent, or respondents, owning PARCEL NO. 12, known as the Bailey tract, viz.- SW $\frac{1}{4}$ SE $\frac{1}{4}$ , SE $\frac{1}{4}$ SW $\frac{1}{4}$ , Section 22, Township 2 South, Range 1 East, Ute Meridian, containing 80



acres, together with the water right thereunto appertaining, consisting of 21-1/2 statutory inches of said decreed Priority No. 2, Twenty-five hundred (\$2500) Dollars.

To respondent, or respondents, owning PARCEL NO. 14, known as the Goldeby tract, viz.- SW<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub>SE<sup>1</sup>/<sub>4</sub> and that part north of Hannah Creek of S<sup>1</sup>/<sub>2</sub>SE<sup>1</sup>/<sub>4</sub>, Section 14, Township 2 South, Range 1 East, Ute Meridian, containing 60 acres, together with the water right thereunto appertaining, consisting of 10-1/5 statutory inches from said decreed Priority No. 2, Thirty-one hundred twenty-nine (\$3129) Dollars.

To respondent, or respondents, owning Parcel<sup>15</sup>/<sub>A</sub>, known as the Renderle tract, viz.- NW<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub>, Section 12, Township 2 South, Range 1 East, Ute Meridian, containing 20 acres, together with the water right thereunto appertaining, consisting of 10-1/5 statutory inches of said decreed Priority No. 2, Sixteen hundred Thirty-three (\$1633) Dollars.

To respondent, or respondents, owning PARCEL NO. 16 known as the Wm. L. Downing tract, viz.- SE<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub> and NE<sup>1</sup>/<sub>4</sub>SE<sup>1</sup>/<sub>4</sub> (less 10 acres thereof owned by Thomas Downing), Section 23, Township 2 South, Range 1 East, Ute Meridian, containing 50 acres, together with the water right thereunto appertaining, consisting of 11-1/2 statutory inches of said decreed Priority No. 2, Two thousand and twelve (\$2012) Dollars.

To respondent, or respondents, owning PARCEL NO. 17, known as the W. L. Downing tract, viz.- NE<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub>, Section 23, and South 10 acres of SE<sup>1</sup>/<sub>4</sub>SE<sup>1</sup>/<sub>4</sub>, Section 14, all in Township 2 South, Range 1 East, Ute Meridian, containing 50 acres, together with the water right thereunto appertaining, consisting of 11-1/2 statutory inches of said decreed Priority No. 2, Nineteen hundred Forty-two (\$1842) Dollars.

To respondents owning PARCEL NO. 18, known as the  
P. Murd's tract, viz.- S $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$  and SW $\frac{1}{4}$ SW $\frac{1}{4}$ , Section 30, and  
NE $\frac{1}{4}$ NE $\frac{1}{4}$ , Section 31, Township 2 South, Range 2 East, Ute Meridian,  
containing 140 acres, together with the water right thereunto  
appertaining, consisting of 21 statutory inches of said decreed  
Priority No. 2, Twenty-eight hundred Ninety-two (\$2892) Dollars.

To respondent, or respondents, owning PARCEL NO. 19,  
known as the Hensinger tract, viz.- SE $\frac{1}{4}$ SE $\frac{1}{4}$  and SW $\frac{1}{4}$ SE $\frac{1}{4}$ , Section  
33, Township 2 South, Range 2 East, and the NE $\frac{1}{4}$ NE $\frac{1}{4}$  and NW $\frac{1}{4}$ NE $\frac{1}{4}$ ,  
Section 4, Township 3 South, Range 2 East, Ute , containing 160  
acres, together with the water rights appurtenant thereto and  
used for the irrigation thereof, viz.- 85 statutory inches of  
Decreed Water Right No. 5, in said Water District No. 42, in  
said County, and 21-1/2 statutory inches of said decreed Priority  
No. 2, Seven Thousand (\$7000) Dollars.

To respondent, or respondents, owning PARCEL NO. 20,  
known as the Virden tract, viz.- 24 acres in a tract 162 rods  
long by 390 feet wide, described by boundary line as follows:  
Commencing at the southeast corner of SW $\frac{1}{4}$ SW $\frac{1}{4}$ , Sec. 22, Town-  
ship 2 South, Range 2 East, thence North 390 feet; thence west  
162 feet; thence south 390 feet; thence east 162 rods; together  
with the water right appurtenant thereto and used for the ir-  
rigation thereof, consisting of 15 shares in the corporation  
controlling same, being equivalent to the use of 15 statutory  
inches of Priority No. 6, from Hannah Creek, in said water  
District, and 22 shares in the company controlling the Grand  
Lake Reservoir, in said water district, Twelve hundred (\$1200)  
Dollars.

To respondents owning PARCEL NO. 21, known as the Dennis Sullivan tract, viz.- NW<sup>1</sup>/<sub>4</sub> NW<sup>1</sup>/<sub>4</sub> and NW<sup>1</sup>/<sub>4</sub> NE<sup>1</sup>/<sub>4</sub>, Section 33, and SW<sup>1</sup>/<sub>4</sub> SW<sup>1</sup>/<sub>4</sub> and SW<sup>1</sup>/<sub>4</sub> SE<sup>1</sup>/<sub>4</sub>, Section 28, all in township 2 South, Range 2 East, Ute Meridian, containing 160 acres, together with the water right thereunto appertaining, consisting of 85 statutory inches of said Decreed Priority No. 5, from Hannah Creek, in said Water District, Three Thousand (\$3000) Dollars.

To respondent, or respondents, owning PARCEL NO. 22, known as the Ponsford tract, viz.- E<sup>1</sup>/<sub>2</sub> NW<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub> NW<sup>1</sup>/<sub>4</sub>, and NW<sup>1</sup>/<sub>4</sub> SW<sup>1</sup>/<sub>4</sub>, Section 9, and SE<sup>1</sup>/<sub>4</sub> NE<sup>1</sup>/<sub>4</sub> and NE<sup>1</sup>/<sub>4</sub> SE<sup>1</sup>/<sub>4</sub>, Section 8, all in Township 3 South, Range 2 East, Ute Meridian, containing 240 acres, together with the following water right used for irrigating portions thereof; 100 statutory inches of decreed Priority No. 7 from Hannah Creek, in said Water District, 25 statutory inches from said decreed Priority No. 2, and 100 shares of the company controlling said Grand Mesa Reservoir, Five Thousand Five Hundred (\$5500) Dollars.

To respondent, or respondents, owning PARCEL NO. 24, known as the Bradbury tract, viz.- W<sup>1</sup>/<sub>2</sub> NW<sup>1</sup>/<sub>4</sub>, Section 4, Township 3 south, range 2 east, and SE<sup>1</sup>/<sub>4</sub> NE<sup>1</sup>/<sub>4</sub>, Section 5, same township and range, and NE<sup>1</sup>/<sub>4</sub> NE<sup>1</sup>/<sub>4</sub>, Section 25, township 2 south, range 1 east, Ute Meridian, containing 240 acres, together with the water rights appurtenant thereto, consisting of 10.69 statutory inches of said Priority No. 2; 16 shares in the company controlling same, equal to 50 statutory inches in Priority No. 7, and 65 shares in the company controlling the Grand Mesa Reservoir, Twenty-five hundred (\$2500) Dollars.

To respondent, or respondents, owning PARCEL NO. 25, known as the Laurent tract, viz.- E $\frac{1}{2}$ SW $\frac{1}{4}$ , SW $\frac{1}{4}$ SW $\frac{1}{4}$ , Section 36, and Lot 4, Section 35, Township 12 South, Range 90 West, 6th P. M. containing 17 $\frac{1}{2}$  acres, together with the water right used for irrigating portions thereof, being 48 shares in the company controlling the same, equal to about 77 statutory inches of Priority No. 11, and 132 shares of the company controlling said Grand Mesa Reservoir, Thirty-seven hundred fifty (\$3750) Dollars.

To respondent owning PARCEL NO. 26, known as the PRIDE SCHOOL HOUSE, together with the water right appurtenant thereto, being one statutory inch of said decreed Priority No. 2, One Hundred Fifty (\$150) Dollars.

To respondent, or respondents, owning PARCEL NO. 27, known as the Farmer tract, viz.- N $\frac{1}{2}$ SW $\frac{1}{4}$ , S $\frac{1}{2}$ SW $\frac{1}{4}$ , NW $\frac{1}{4}$ SW $\frac{1}{4}$ , Sec. 5, and E $\frac{1}{2}$ NE $\frac{1}{4}$  and NE $\frac{1}{4}$ SE $\frac{1}{4}$ , Sec. 6, Township 3 South, Range 2 East, Ute Meridian, together with the following water rights used for irrigating portions thereof, viz.- 100 statutory inches of decreed Priority No. 7, 32 statutory inches of said Priority No. 6, 33 statutory inches of Priority No. 3, and 83 $\frac{1}{2}$  shares of stock in the company controlling said Grand Mesa Reservoir, Eighty-nine Hundred (\$8900) Dollars.

To respondent, or respondents, owning PARCEL NO. 28, known as the Sinclair tract, viz.- that part of the NE $\frac{1}{4}$ SE $\frac{1}{4}$  corner of Hannah Creek, of Section 32, Township 2 South, Range 2 East, Ute Meridian, containing 20 acres, together with the water right thereto appertaining, being 1/2 interest in decreed Priority No. 1 from said Hannah Creek, in said Water district, being equivalent to 11 $\frac{1}{2}$  statutory inches of water, Five Hundred (\$500) Dollars.

To respondent, or respondents, owning PARCEL NO. 29, known as the Van Belt tract, viz.- SW<sup>1</sup>/<sub>4</sub>SE<sup>1</sup>/<sub>4</sub>, Section 35, Township 2 South, Range 2 East, and NW<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub>, Section 2, Township 3 South, Range 2 East, Ute Meridian, containing 80 acres, together with the water right appurtenant thereto, being 1/5 interest in decreed Priority No. 9, equal to 25-1/3 statutory inches of water, also 38 shares of the company controlling said Grand Mesa Reservoir, Fifteen Hundred Twenty-three (\$1823) Dollars.

To respondent, or respondents, owning PARCEL NO. 30, known as the Bowman tract, viz.- SE<sup>1</sup>/<sub>4</sub>SE<sup>1</sup>/<sub>4</sub>, Section 33, SW<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub>, Section 34, Township 2 South, Range 2 east, and NE<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub>, Sec. 4, and NW<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub>, Sec. 3, township 3 south, range 2 east, Ute Meridian, together with the following water rights used for irrigation of portions thereof,- 10-1/2 statutory inches of said Priority #2, 9 statutory inches of Priority No. 3; 38 statutory inches of Priority No. 4, and 42 statutory inches of Priority No. 5, all from Hannah Creek, in said water district, and 1/8 interest in the Fernahan Reservoir, together with 15 shares, being 50 statutory inches of water from Priority No. 11, from said Hannah Creek, in said water district, Sixty-five Hundred (\$6500) Dollars.

To respondent, or respondents, owning PARCEL NO. 31, known as the Fernahan tract, viz.- SE<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>SE<sup>1</sup>/<sub>4</sub>, and SE<sup>1</sup>/<sub>4</sub>SE<sup>1</sup>/<sub>4</sub>, Section 34, township 2 south, range 2 east, Ute Meridian, and NE<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub>, NW<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub>, Section 3, township 3 south, range 2 east, and SW<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub>, Section 35, township 2 south, range 2 east, and Lot 1, Section 2, and Lot 1, Section 3, both in township 3 south, range 2 east, Ute Meridian, containing 520 acres, together with the following water rights appurtenant thereto and used for irrigation; portions thereof:

10-1/2	statutory inches from said Decreed Priority No. 2	
19	" " " " " " " " " "	3
115	" " " " " " " " " "	4

and 59 shares of the company controlling said Grand Mesa Reservoir, Eighty-seven hundred fifty (\$8750) Dollars.

To respondent, or respondents, owning PARCEL NO. 52, known as the McKay tract, viz.- E1/4, Sec. 32, and W1/4, Sec. 33, all in township 2 south, range 2 east, Ute Meridian, containing 160 acres, together with the water rights appurtenant thereto, being 4-1/2 statutory inches of said decreed Priority No. 2; and 85 statutory inches of said decreed Priority No. 5, and 108 shares of the company controlling said Grand Mesa Reservoir, Forty-seven hundred twelve (\$4712) Dollars.

To respondent, or respondents, owning PARCEL NO. 53, known as the Saunders tract, viz.- SE1/4, Sec. 31, Township 2 south, range 2 east, Ute Meridian, containing 40 acres, together with the water rights thereto appurtenant, being 20 statutory inches of said decreed Priority No. 8 and 12 shares of the company controlling said Grand Mesa Reservoir, Four <sup>thousand</sup> ~~thousand~~ (\$4000) Dollars.

To respondent, or respondents, owning PARCEL NO. 54, known as the Rozelle tract, Section 31, township 2 south, range 2 east, Ute, containing 40 acres, together with the water right thereto appertaining, being 20 statutory inches of Priority No. 8, and 12 shares of the said company controlling Grand Mesa Reservoir, Four Hundred (\$400) Dollars.

To respondent, or respondents, owning PARCEL NO. 55, known as H. B. Holland, viz.- part of E1/4, Sec. 32, and W1/4, Sec. 33, township 2 south, range 2 east, containing 112 acres,

together with the water rights appurtenant thereto, being 22-1/2 statutory inches of No. 2 Priority, and 65 statutory inches of Priority No. 6, and 19 shares of the company controlling said Grand Mesa Reservoir, Five Thousand (\$5000) Dollars.

To respondent, or respondents, owning PARCEL NO. 36, known as the J. J. Holland tract, viz.- NE1/4NE1/4, Sec. 5, township 3 south, range 2 east, and 8 acres of SW1/4SW1/4, Sec. 35, township 3 south, range 2 east, 48 acres, together with the water rights thereto appertaining, being 12 1/2 statutory inches of Priority No. 7, and 10 shares of the company controlling the Grand Mesa Reservoir, Seven Hundred fifty (\$750) Dollars.

To respondents owning PARCEL NO. 36<sub>2</sub>, known as the Learned tract, viz.- W1/2SE1/4SE1/4, Sec. 25, township 2 south, range 2 east, and W1/2NE1/4NE1/4, Sec. 2, township 3 south, range 2 east, 40 acres, together with the water rights appurtenant thereto, being 1/6 interest in decreed Priority No. 9 from Kannah Creek, in said water district, being about 17-2/3 statutory inches of water, Six hundred fifty-six (\$656) Dollars.

To respondent, or respondents, owning PARCEL NO. 37, known as the Bean tract, viz.- S1/2SE1/4 and NE1/4NE1/4, Sec. 8, township 3 south, range 2 east, 100 acres, together with the water right thereto appertaining, being 7 statutory inches of Priority No. 7, One Thousand (\$1000) Dollars.

To respondent, or respondents, owning PARCEL NO. 38, known as the Wiley tract, being S1/2NE1/4, NE1/4SW1/4, Sec. 22, township 3 south, range 2 east, 1/4 Meridian, containing 100 acres, together with the water rights appurtenant thereto, being 5 7/8 statutory inches of said decreed Priority No. 2, 26 statutory inches of decreed Priority No. 3, and 25 shares of the Grand Mesa Reservoir, Eighteen hundred twenty-five (\$1825) Dollars.

... of in any way interested in Parcel No. 40,  
... 40-acre tract, viz.- NE<sup>1</sup>/<sub>4</sub>, Sec. 5, Township  
... range 2 east, 40 acres, together with the water right  
thereunto appertaining, being 1/2 interest in said decreed Priority  
No. 1, equaling 1 1/2 statutory inches of water, four Hundred Dollars  
(\$400.00).

... of the ...

... North 20 1/2 acres of NE<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub>, of Section 24, township 2  
south, range 1 east, Ute Meridian, containing 86 1/2 acres, to-  
gether with the water right thereunto appertaining, being  
22 1/2 statutory inches of said decreed Priority No. 2, Twenty-  
two hundred (\$2200) Dollars.

To respondent, Mary Gamage and Malinda Gamage,  
her husband, coming or in any way interested in Parcel No. 41,  
known as the Gamage 80 acre tract, viz.- SW<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub>, NE<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub>, Sec.  
5, township 2 south, range 2 east, 80 acres, together with the  
following water rights appurtenant thereto and used for irrigat-  
ing portions thereof, being 62 1/2 statutory inches of decreed  
Priority No. 7, and 85 shares of the company controlling the  
Grand Hole Reservoir company, Thirteen Hundred Seventy Dollars  
and fifty cents. (\$1370.50).

To respondent, or respondents, owning Parcel No. 42,  
known as the Lucas tract, viz.- SW<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub>, NE<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub>, N<sup>1</sup>/<sub>2</sub>SW<sup>1</sup>/<sub>4</sub> and SW<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub>,  
all in Section 1, also Lots 3 and 4, in Section 2, all in township  
13 south, range 28 west, 6th T. N. containing 309 acres, together  
with the following described water rights appurtenant thereto and  
used for irrigating portions thereof, viz.- 52 1/2 statutory inches  
of Priority No. 2, and 165 statutory inches of Priority No. 11,  
Nine Thousand Two Hundred Fifty (\$9250) Dollars.

To respondent, or respondents, owning Parcel No. 43,  
known as the Blair home tract, viz.- S<sup>1</sup>/<sub>2</sub>NE<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub> and SE<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub>, Section  
19, township 2 south, range 2 east, 50 acres, together with the



Following water rights appurtenant thereto and used for irrigating portions thereof; 28 statutory inches of said decreed priority No. 8 and 56½ shares of the company controlling the Grand Mesa Reservoir Company, Fifteen Hundred (\$1500) Dollars.

To the respondent, or respondents, owning Parcel No. 44, known as the B. F. Blair (Ponder) Tract, viz.- SW¼NW¼, SE¼NW¼, NE¼SW¼, and NW¼SE¼, Sec. 24, township 2 south, range 2 east, containing 160 acres, together with the water rights thereunto appertaining, being 36½ shares in the company controlling the Grand Mesa Reservoir, and 32 statutory inches of water from said decreed priority No. 8, Nine Hundred Seventy-nine (\$979) Dollars.

To the respondent, or respondents, owning PARCEL NO. 45, known as the Whitney Tract, viz.- S¼NW¼SW¼, and SW¼SW¼, Sec. 20, and W¼NW¼, Section 29, township 2 south, range 2 east, Ute Meridian, containing 150 acres, together with the water rights thereto appertaining, being 58 statutory inches of water from said decreed priority No. 8 and 27 shares of stock in the company controlling said Grand Mesa Reservoir, Eighteen Hundred Sixty-two (\$1862) Dollars.

To the respondent, or respondents, owning PARCEL NO. 46, known as the FINEBOOT WOLF TRACT, viz.- NW¼NW¼, E¼NW¼, W¼NW¼, and Lots 1 and 2, Section 19, township 2 south, range 2 east, Ute Meridian, containing 200 acres, together with the water right thereto appertaining, being 70 statutory inches of said decreed priority No. 8, and 22 statutory inches of decreed priority No. 2, Fifteen Hundred Forty-two (\$1542) Dollars.

To the respondent, or respondents, owning PARCEL NO. 48, or controlling same as a government homestead entry) known as the BERRY Tract, viz.- SE $\frac{1}{4}$ SW $\frac{1}{4}$ , Sec. 1, township 13 south, range 98 west, and NE $\frac{1}{4}$ SW $\frac{1}{4}$ , Sec. 12, township 13 south, range 98 west, 6th T. L. together with the water right heretofore enjoyed of diverting into a ditch owned by said respondent flood waters from said Hamish Creek without decree therefor, said to be capable of diverting 25 statutory inches, Two Hundred Sixty-six (\$266) Dollars.

To respondent, or respondents, owning PARCEL NO. 49, known as the ASHLEY tract, viz.- NE $\frac{1}{4}$ NE $\frac{1}{4}$ , Section 1, Township 13 South, Range 98 West, and NE $\frac{1}{4}$ SW $\frac{1}{4}$  Sec. One (1) township 13 south, range 98 west, and S $\frac{1}{2}$ SW $\frac{1}{4}$ , NE $\frac{1}{4}$ NE $\frac{1}{4}$ , Section 56, township 12 south, range 98 west, 6 T. L. containing 540 acres, together with 55 statutory inches of decreed Priority No. 11, Twenty-five Hundred (\$2500) Dollars.

To respondent, or respondents, owning Parcel No. 50, known as the Herritt tract, viz.- W $\frac{1}{2}$ SW $\frac{1}{4}$ , Sec. 1, township 13 south, range 98 west, 80 acres, together with the water right appurtenant thereto, being 40 statutory inches of decreed Priority No. 11, and 50 shares of stock in the company controlling said Grand Mesa Reservoir, Eighteen Hundred (\$1800) Dollars.

To respondent, or respondents, owning PARCEL NO. 51, known as the Riddle tract, viz.- E $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ , Sec. 35, township 3 south, range 2 east, and E $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ , Section 2, township 5 south, range 2 east, Ute Meridian, 40 acres, together with the water rights appurtenant thereto and used for irrigating sections thereof, being 1/12th interest in decreed Priority No. 6 on said Grand Creek, in said water district, equaling 115

Statutory inches of water, Five Hundred Thirty and fifty-one-hundredths (\$570.50) Dollars.

To respondent, or respondents, owning PARCEL NO. 52, known as the Chambers Tract, viz.- NE $\frac{1}{4}$ NE $\frac{1}{4}$ , S $\frac{1}{2}$ NE $\frac{1}{4}$ , Section 36, township 2 south, range 2 east, Ute Meridian, 120 acres, together with 52 shares of water in the company controlling said decreed Priority No. 11, being equal to 85 statutory inches of water, and  $\frac{1}{3}$  interest in Dry Creek Reservoir, Forty-five Hundred (\$4500) Dollars.

To respondent, or respondents, owning PARCEL NO. 53, known as the DARLING TRACT, viz.- NE $\frac{1}{4}$ SW $\frac{1}{4}$ , NW $\frac{1}{4}$ SE $\frac{1}{4}$ , Section 36, township 2 south, range 2 east, Ute Meridian, containing 80 acres, together with the water right appurtenant thereto and used for irrigating portions thereof, being 55 statutory inches of water from decreed Priority No. 11, and  $\frac{1}{3}$  interest in Dry Creek Reservoir, Twenty-nine Hundred Seventeen (\$2917) Dollars.

To respondent, or respondents, owning PARCEL NO. 54, known as the IRA VINCENTE TRACT, viz.- SW $\frac{1}{4}$ SW $\frac{1}{4}$ , Sec. 36, township 2 south, range 2 east, and NW $\frac{1}{4}$ NW $\frac{1}{4}$ , Sec. 1, township 3 south, range 2 east, and the west 170 feet of the NE $\frac{1}{4}$ NW $\frac{1}{4}$ , Sec. 1, township three south, range 2 east, and of which 96 acres, 40 are under ditch, together with the water rights appurtenant thereto and used for irrigating portions thereof, being  $\frac{1}{4}$  interest in Priority No. 6, being 34 statutory inches of water, Two Thousand (\$2000) Dollars.

To respondent or respondents owning PARCEL NO. 55, known as the Eliza and Ruth Sullivan tract, viz.- SW $\frac{1}{4}$ SW $\frac{1}{4}$ , Sec. 36, township 2 South, range 2 east, and SW $\frac{1}{4}$ SE $\frac{1}{4}$ , NE $\frac{1}{4}$ NW $\frac{1}{4}$ , NW $\frac{1}{4}$ NE $\frac{1}{4}$ , of Section 1, township 3 south, range 2 east, Ute Meridian,

excepting therefrom a ten acre strip off the west end of said tract, reducing said acreage to 150 acres, together with the water rights thereunto appertaining, being 1/3 interest in Priority No. 6, being 41 1/2 statutory inches of water, and 90 shares of the company controlling the Grand Mesa Reservoir company, Twenty-five Hundred and Sixty-six (\$2566) Dollars.

To respondents, Eliza Sullivan and John Bell, owning PARCEL NO. 56, known as the SULLIVAN-BELL tract, viz.- Lots 2 and 3, Section 11, township 13 south, range 98 west, and E33W1/2, Section 36, township 2 South, range 2 East, containing 174.26 acres, together with the water rights thereunto appertaining, being 1/3 interest in decreed Priority No. 6, being 45 statutory inches of water, and 50 shares of stock in the company controlling the said Grand Mesa Reservoir, Three Thousand (\$3000) Dollars.

To respondents, or respondents, owning PARCEL NO. 57, known as the JOSEPH VINCENT TRACT, viz.- North 50 acres of SE1/4SW1/4, Section 20, and North 30 acres of SE1/4E1/2, Section 55, township 2 south, range 2 east, containing 60 acres, together with the water rights thereunto appertaining, being 34 statutory inches of decreed Priority No. 8, Twenty-three Hundred Eighty-three (\$2383) Dollars.

To respondent, or respondents, owning PARCEL NO. 58, all the lots known as the town of /WHEATLAND, together with the water right appurtenant thereto and used to irrigate portions thereof, being 11.1 statutory inches of said decreed Priority No. 5, Four Thousand Three Hundred Fifty (\$4350) Dollars.

To respondent, or respondents, owning PARCEL NO. 59, known as the RESERVE TRACT, the same being 9 acres, part of the [REDACTED], Section 24, (7) township 2 south, range 1 east, Ute Meridian, together with the water right appurtenant thereto and used to irrigate portions thereof, being 7.4 statutory inches of said decreed priority No. 2, Seven Hundred Fifty (\$750) Dollars.

/- To respondent, or respondents, owning PARCEL NO. 60, known as the COX PLACE, viz.- SE $\frac{1}{4}$ SW $\frac{1}{4}$ , Sec. 55, township 2 south, range 2 east, and NE $\frac{1}{4}$ SW $\frac{1}{4}$ , Sec. 2, township 3 south, range 2 east, Ute Meridian, containing 80 acres, together with the water right thereunto appertaining, being  $\frac{1}{3}$  interest in decreed Priority No. 9, equaling 35.8 statutory inches of water, and 33 shares of stock in the company owning the Grand Mesa Reservoir, Twenty-five Hundred (\$2500) Dollars.

To respondent, or respondents, owning PARCEL NO. 61, known as the WILKINS TRACT, viz.- NW $\frac{1}{4}$ SE $\frac{1}{4}$ , SE $\frac{1}{4}$ NE $\frac{1}{4}$ , Sec. 1, township 13 south, range 98 west, containing 60 acres, together with the water right appurtenant thereto and used for irrigating portions thereof, being  $\frac{2}{3}$  interest in decreed priority No. 10, from Hannah Creek, in said water district, being 68  $\frac{1}{3}$  statutory inches, also 11 statutory inches of water from said Priority No. 3, and 11 shares of stock in the company owning or controlling said Grand Mesa Reservoir, Two Thousand (\$2000) Dollars.

To respondent, or respondents, owning PARCEL NO. 62, known as the Raber tract, viz.- SE $\frac{1}{4}$ SW $\frac{1}{4}$ , NE $\frac{1}{4}$ SW $\frac{1}{4}$ , and NW $\frac{1}{4}$ SW $\frac{1}{4}$ , Section 6, township 13 south, range 97 west containing 120 acres, together with the water rights appurtenant thereto being  $\frac{1}{3}$  interest in decreed priority No. 10, being 34.6 statutory

inches of water, Sixteen Hundred (\$1600) Dollars.

To respondent, or respondents, owning PARCEL NO. 63, known as BOWEN'S TRACT, vis.-SW<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub>, Sec. 12, also 14 acres, part of Lot 2, Sec. 11, Township 13 south, range 98 west, 6 P. M. together with private ditch without decreed water right, diverting flood waters from Kannah Creek to irrigate portions thereof, also 25 shares of stock in the company controlling said Grand Mesa Reservoir, One Thousand (\$1000) Dollars.

To respondent, or respondents, owning PARCEL NO. 64, known as the MINNIE G. GEIGER tract, being owned by Minnie G. Geiger and her husband, J. J. Geiger, vis.- North 28 acres of the SW<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub>, SE<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub>, and north 28 acres of SE<sup>1</sup>/<sub>4</sub>SE<sup>1</sup>/<sub>4</sub>, all in section 28, township 2 south, range 2 east, Ute Meridian, containing 136 acres, together with the water rights appurtenant thereto, being 45 statutory inches of said decreed Priority No. 8, and 40 shares of stock in the company controlling the said Grand Mesa Reservoir, Twenty-two Hundred Fifty (\$2250) Dollars.

~~W. H. Porter,~~ W. H. Porter, Foreman,  
E. H. Weckel,  
C. S. Severson,  
Peter A. Johnson,  
H. P. Sellers,  
Thos. J. Griffith,  
J. F. Dawson,  
E. R. Detweeler,  
W. H. Weld,  
Ira Jenkins,  
E. V. Longfellow,  
E. P. Johansen."

And the Court, being fully advised in the premises, it is considered and adjudged that the respective sums of money awarded by the jury in and by their said verdict, to the owners of the respective parcels of land and property, are, and each of them is, a full compensation to the owner or owners thereof for the taking of Three Hundred (300) inches of water out of Hannah Creek by the petitioner, at the following point of diversion: A point on the right bank of Hannah Creek, situate in said Water District No. 42, Mesa County, Colorado, in the southwest quarter of Section 34 (SW<sup>1</sup>/<sub>4</sub> Sec. 34) township 13 south, range 97 west, of the 6th P. M., from whence the southwest corner of said section 34 bears south 13° 48' West, distant 2062 feet.

And the Court doth find that the owner, or owners, of Parcel No. 1 is Wm. H. Coffman; Parcel No. 2, Henry W. Snyder and Adella D. Snyder; of Parcel No. 3, C. G. Sargent and Mary L. Sargent; of Parcels Nos. 4 and 5, Mrs. Julia Dowling, Mrs. Margaret Fuite, and John Dowling and Nancy Dowling, minor heirs of F. J. Dowling, deceased, and Margaret Fuite, as guardian of said heirs; of Parcel No. 6, George W. Cutting; Parcel No. 7, The Elk Glen Orchard and Irrigation Company; Parcel No. 8, Mary A. Laramore, and her husband, James H. Laramore; Parcels Nos. 10 and 11, Roy G. Renick; Parcel No. 12, Wm. A. Bailey; Parcel No. 14, John Goldsby; Parcel No. 15, Charles Rengerle; Parcel No. 16, Wm. L. Downing; Parcel No. 17, W. E. Downing; Parcel No. 18, E. C. Richard; Parcel No. 19, Willard P. Hensinger; Parcel No. 20, Thomas Virden; Parcel No. 21, Dennis Sullivan; Parcel No. 22, Wm. J. Boniford; Parcel No. 24, Mary I. Brasbury; Parcel No. 25, Joseph Laurent; Parcel No. 26, Pride School House, School District No. 11; Parcel No. 27, Walter B. Farmer;

Parcel No. 28, Mrs. A. Sinclair; Parcel No. 29, Wm. VanPelt;  
Parcel No. 30, Charles F. Bowman; Parcel No. 31, Wm. Ternahan;  
Parcel No. 32, John J. McKay; Parcel No. 33, R. J. Saunders;  
Parcel No. 34, Joseph W. Rosselle; Parcel No. 35, H. B. Holland;  
Parcel No. 36, J. J. Holland; Parcel No. 36<sup>1/2</sup>, Mrs. Grace Learned;  
Parcel No. 37, John Bean; Parcel No. 38, Mrs. Mary Wiley; Parcel  
No. 39, J. H. Patterson and A. S. Dodgion; Parcels Nos. 40 and 41,  
~~Henry Gammage~~ and Malinda Gammage; Parcel No. 42, Benjamin F. Lucas;  
Parcel No. 43 and Parcel No. 44, D. F. Blair; Parcel No. 45,  
James Whitney and heirs of F. H. Whitney, deceased; Parcel No. 46,  
Prospect West; Parcel No. 48, Frank K. Berry, (Government home-  
stead final proof not yet made); Parcel No. 49, S. W. Ashley;  
Parcel No. 50, H. W. Herritt; Parcel No. 51, Mrs. Caroline  
Riddle; Parcel No. 52, E. E. Chambers and Mary Chambers; Parcel  
No. 53, S. B. Darling; Parcel No. 54, Ira Vincent; Parcel No.  
55, Eliza and Ruth Sullivan; Parcel No. 56, Eliza Sullivan  
and John Bell; Parcel No. 57, Joseph Vincent; Parcel No. 58,  
*Charles A. Hoyt trustee for the owners within the platted*  
Town of Whitewater; Parcel No. 59, Richard E. Meserve; Parcel  
<sup>^</sup> and *J. W. McAndrews Parcel*  
No. 60, John W. Cox; Parcel No. 61, Bessie P. Williams,  
Robert Williams, and Mrs. Emma McArthur, and John  
<sup>^</sup> Williams, William H. Williams, Mrs. Bessie O. Smith, and Hugh  
E. Williams (son), heirs of Hugh E. Williams, deceased; Parcel  
No. 62, Carrie H. Raber; Parcel No. 63, Robert H. Bowen; Parcel  
No. 64, Minnie G. Geiger .

It is further considered and adjudged that said  
owner or owners respectively, shall accept from the City of  
Grand Junction, the petitioner in this suit, such sum or sums  
of money as are so awarded as damages to their respective tracts  
of land, by reason of the city taking said three hundred inches  
out of said stream, at the point above designated, as a first  
and superior water right in said stream, for use by said city  
under and by virtue of the laws regulating the use of water by




towns and cities in this State.

And it is further considered and adjudged that upon payment into the registrar of this Court, viz: The Mesa County National Bank, on or before the first day of September, 1911, *the sum of one thousand and eighty two thousand, nine hundred and forty (\$182,940) Dollars* with interest thereon at the rate of 8% per annum from this date, *subject to the order of the Court, or the judge thereof,* for the use of the respective owners of said parcels of land, respectively described in said verdict and this judgment and any lien claimants therein, The said City of Grand Junction shall then and there have the right at any time thereafter to divert said three hundred inches of water out of Kannah Creek at the point of diversion hereinbefore described, and to conduct and convey the said water to the said city of Grand Junction for use by it, under the laws of this state regulating and governing and controlling the use and distribution of water by towns and cities, and the city shall then and thereafter have and exercise control over the said three hundred inches of water, for the use of itself and its inhabitants, under the laws of this State governing and controlling said use, and the said use shall be of superior and paramount right to said three hundred inches over and above all other water rights claimed or asserted in reference to the waters of Kannah Creek, or the waters arising in the water shed of said creek. Provided that if said amount of \$182,940.00, and interest thereon, shall not be paid on or before September 1st, 1911, then and in such event the petitioner shall have no right hereunder, and the respondents shall go hence without day.

And it is further considered and adjudged that the petitioner pay all costs in this case to be taxed, in the sum of \_\_\_\_\_ Dollars.

To each of the findings of said jury in respect to the several respondents, this petitioner excepts and objects,

and to the giving of an entry of any judgment thereon, this petitioner excepts and objects; and the petitioner prays an appeal of this judgment to the Supreme Court of this State, which is \_\_\_\_\_ allowed, and asks that the Court allow ninety days in which to file a Bill of Exceptions, which is granted; and each and every respondent excepts and objects to said judgment and the entry thereof and upon application now made, is also allowed ninety days in which to prepare and file a Bill of Exceptions, which is granted.

  
\_\_\_\_\_  
J u d g e.

1018

COLORADO ( ) SS. IN THE DISTRICT COURT.  
COUNTY OF NEVA. ( )

City of Grand Junction, a municipal corporation,  
Petitioner,

Condemnation

Walter Van Pelt and Pearl Van Pelt, Mrs. Emery  
Hudson, Joseph Vincent, George W. Cutting, L. C.  
F. Van Boissin and Rossian,  
W. A. Bailey, James W. Dodgion, Wil-  
liam Leonard Dowling, Charles Rinderle, John W.  
Sullivan, Joseph F. Sullivan, H. P. Williams, Wil-  
liam J. Ponsford, Walter L. Farmer, John Goldsby,  
Henry W. Schreyer, and Adella D. Schreyer, William  
H. Coffey, James H. Laramore and Mary A. Laramore,  
William G. Rounds, Julia Dowling, Robert W. Shrop-  
shire, John Ternahan, Elijah B. Chambers and Mary  
Chambers, Samuel B. Dooling, Dennis Sullivan, Thom-  
as Vinton, Minnie Geiger and J. V. Geiger, her hus-  
band, F. M. Whitney and James Whitney, D. F. Blair,  
Prescott West, Willard P. Honsinger, Sophie Klint,  
Mary L. Bradbury and Daniel Bradbury, Michael Hol-  
land, Nathaniel T. Wiley and Mahala Wiley, Alonzo  
Bradbury, John W. Cox, and Clemie C. Cox, Minnie  
Stclair, William Ternahan, Malinda Gamage, Charl-  
es Leaman, Robert Bowen, Aiden Leonard, George H.  
Wright, Fred Barford, Eli Mahanna, M. F. Wright,  
William Silzell, Warren Watkins, Sarah A. Jones,  
A. A. Silzell, R. F. Barford, Caroline Edwards,  
Charles Silzell, John Love, George Jones, T. W. Mc-  
Andrew, Dora Meserve, and William Meserve, William  
Hall, Olive E. Meserve, and Richard Meserve, The  
Congregational Church Society of Watowater, School  
District No. 3 of Nela County, Colorado, William  
Williams, George W. Swain, A. A. Carpenter, Jeremi-  
ah Cole, Mary J. Chenoweth, B. F. Lucas, Henry John-  
son, Samuel Ashley, Joseph Laurent, Oscar Laurent,  
John Bell, Mary G. McDonald, and J. F. McDonald,  
F. R. Husband, James H. Patterson, Samuel B. Dodgion,  
Fleance Tibbels, Mrs. Grace Learned, John Bean,  
John McKay, Marguerite Faite and John Faite, her  
husband, Marguerite Faite, Guardian of John Dowling  
and Mary Dowling, minor heirs of P. J. Dowling,  
Deceased, The Junction Ditch Company, a corpora-  
tion, The Grand Neva Reservoir Company, The Scales  
Reservoir Company, The Home Loan and Investment  
Company, A. P. Augustine, Yorkshire Investment and  
American Mortgage Company, a corporation, J. T. Ken-  
nedy, H. G. Rupp, George T. DeLong, Nelson Broth-  
er, William L. Waitaker, Theodore Chapin, H. R.  
Hart, Jennie Ryan, W. D. Jarvis, Martin V. Werling,  
Ed. Ryan, The Kresy - Ullock Investment Company,  
G. G. Sargent, Mary L. Sargent and G. W. Bundy,  
The Logan Investment Company and Alfred Cribben,  
Private Trustees,

PETITION.

Respondents.

JOSEPH H. SCHUBERT, Spring Snicketford, Judge of the District  
Court of the Seventh Judicial District of the State of Colorado, within  
and for the County of Neva:

Now comes the petitioner above named and represents and shows to the Judge of said Court:

I.

That your petitioner is a municipal corporation duly organized and existing under the laws of the State of Colorado; that your petitioner is authorized under and by the laws of the State of Colorado, to purchase or erect, water works for the purpose of supplying the inhabitants of the City of Grand Junction with water for fire protection and domestic purposes and is authorized to purchase water and water rights for such purposes and is also authorized to acquire water and reservoir sites for said city for said purpose by means of condemnation proceedings.

II.

That in order to carry out the powers upon this petitioner conferred by law, and to supply the inhabitants of the said city with a supply of water for fire protection and domestic purposes, the city council of the said city of Grand Junction, at a regular meeting thereof heretofore held, by resolutions duly passed at said regular meeting, by unanimous vote decided and determined that it is necessary for the purpose of supplying the inhabitants of the city of Grand Junction with a wholesome supply of water to take three hundred inches of water from Kannah Creek, situate in water district No. 42 in the County of Mesa and State of Colorado, and have condemnation proceedings instituted against the parties owning or claiming to own said water and water rights in said Kannah Creek and all parties having or claiming an interest in and to the waters of said Kannah Creek so declared necessary by said city council for the use of the inhabitants of said city for the purpose of acquiring title thereto for the use of the inhabitants of the City of Grand Junction.

III.

That said water is sought to be taken by the city of Grand Junction for the purpose of supplying the said city of Grand Junction and its inhabitants with a pure and wholesome supply of mountain water for domestic purposes and which is necessary to the inhabitants of the city of Grand Junction.

IV.

That the property sought to be taken by the city of Grand Junction is three hundred inches of the water of said Kannah Creek and the right to the use thereof, said right to be a first, superior and exclusive right to the use of said three hundred inches of water against all other rights to the use of the water of said stream upon the part of any other person or persons, corporation or corporations, for any use whatsoever.

V.

That the respondents, William Van Pelt and Pearl Van Pelt, Mrs. Mary Riddle, Joseph Vincent, George W. Cutting, L. C. Packard,<sup>o</sup> Emma Boissiau and Bossiau, her husband, W. A. Bailey, James W. Dodgion, William Leonard Downing, Charles Rinderlie, John W. Sullivan,<sup>o</sup> Joseph F. Sullivan, H. P. Williams, William J. Ponsford, Walter L. Farmer, John Goldsby, Henry W. Schneyer, Adella D. Schneyer, William H. Coffman, James H. Iaramore, Mary A. Iaramore, Nathan G. Rounds, Julia Dowling, Robert W. Shropshire, John Ternahan, Elijah E. Chambers, Mary Chambers, Samuel B. Durling, Dennis Sullivan, Thomas Virden, Minnie Geiger, and J. V. Geiger, her husband, F. M. Whitney, James Whitney, Joseph Vincent, D. F. Blair, Prescott West, Willard P. Honsinger, Sophie Klint, Mary I. Bradbury and Daniel Bradbury, her husband, Michael Holland, Nathaniel T. Wiley and Mahala Wiley,<sup>o</sup> Alonzo Bradbury, John W. Cox, Clemie Cox, Minnie Sinclair, William Ternahan, Malinda Gamage, Charles Bowman, Alden Leonard, George H. Hughes, Fred Barford, Eli Mahanna, M. F. Wright, William Silzell, Warren Watkins, Sarah A. Jones, A. A. Silzell, R. F. Barford, Caroline Edwards, Charles Silzell, John Lowe, T. W. McAndrew, Dora Meserve and William Meserve, her husband, William Coeff, Olive E. Meserve and Richard Meserve, her husband, William Williams, The Congregational Church Society of Whitewater, School District No. 3, Mesa County, Colorado,<sup>o</sup> George W. Swain, B. F. Lucas, Henry Johnson, Samuel Asaley, Joseph Laurent, Oscar Laurent, John Bell, Mary G. McDonald, and J. F. McDonald, her husband, John H. Patterson, Samuel B. Dodgion, Mrs. Grace Learned, John H. H., Marguerite Faite and John Faite, her husband, Julia Dowling, Marguerite Faite, Guardian of John Dowling and Nancy Dowling, minor heirs of P. J. Dowling, deceased, and The Juniatta Ditch Company, a corporation organized and existing under the laws of the State of Colorado, are the

users of water and owners of, or interested in, water rights from said Kannah Creek, the right to the use of which has heretofore been established and determined by decree of this Court and as such have, or claim an interest in, the water of said stream and in the use thereof, the exact extent of which interest and use of the respective claimants this petitioner does now know and is unable to state.

VI.

That the respondents, The Home Loan and Investment Company, a corporation organized and existing under the laws of the State of Colorado, A. P. Augustine, William Ternahan, The Yorkshire Investment and American Mortgage Company, a corporation organized and existing under the laws of the State of \_\_\_\_\_ and doing business in the State of Colorado, J. T. Mennell, U. G. Ramey, Horace T. DeLong, Nelson Brothers, a co-partnership composed of James Nelson and Fred Nelson, William L. Whitaker, Theodore Chapin H. R. Marsh, Jennie Ryan, Marguerite Fuite, John Dowling and Nanny Dowling, heirs at law of P. J. Dowling, deceased, W. C. Davies, Robert W. Shropshire, Martin V. Werling, Ed. Smith, The Ramey-Udlock Investment Company, a corporation organized and existing under the laws of the State of Colorado, C. G. Sargent, Mary L. Sargent, C. W. Bandy, The Logan Investment Company, a corporation organized and existing under the laws of the State of Colorado, are mortgagees and beneficiaries in Deeds of Trust of record in the office of the Clerk and Recorder of Mesa County, Colorado, covering and including water rights and rights to the use of water of said Kannah Creek, which mortgages and Deeds of Trust are not at this time released and satisfied of record.

VII.

That the respondent, Alfred Cribben, is the Trustee in a certain Deed of Trust of record in the office of the Clerk and Recorder of Mesa County, Colorado, at book \_\_\_\_\_ and page \_\_\_\_\_ in which said Deed of Trust, the respondent above named, The Yorkshire Investment and American Mortgage Company, a corporation, is the beneficiary and which said Deed of Trust is not satisfied of record.

VIII.

That the respondents, Robert Bowen and Florence Timbrel are the users of water from said Kannah Creek, the right to the use of which has

not been determined by decree of Court and the extent of whose use and the respective interest therein of the said respondents the petitioner does not know and is unable to state.

IX.

That the respondents, J. D. Bean, A. A. Carpenter, Jeremiah Cole and Mary J. Chenoweth, have, or claim some interest in the waters of said Kannah Creek and to the use thereof, but what the interest of the respondents and each of them is, the petitioner does not know and is unable to state.

X.

That the respondent, Marcus M. Shores, is the Public Trustee of Mesa County, Colorado, and as such is the Trustee in certain Deeds of Trust of record in the office of the Clerk and Recorder of Mesa County, Colorado, and not satisfied of record, which said Deeds of Trust cover and include certain rights to the use of water and water rights from said Kannah Creek and that the said respondent, Marcus M. Shores, has no other interest therein.

XI.

That the respondents, The Grand Mesa Reservoir Company and The Scales Reservoir Company are corporations organized and existing under the laws of the State of Colorado, for the purpose of storing the waters of said Kannah Creek and its tributaries, from time to time for agricultural purposes and that the said respondents do, from time to time, store the waters from said Kannah Creek and its tributaries, for agricultural purposes, but that said respondents have no other interest therein.

XII.

That the respondents above named are all of the persons and corporations having, or claiming to have, any interest in or the right to the use of the waters of said Kannah Creek as owners, users or otherwise so far as your petitioner knows or can ascertain.

XIII.

That respondents will not consent to the taking of said water by petitioner, nor can the compensation to be paid for the said water be agreed upon between this petitioner and said respondents who claim to

own the same or who have an interest therein; that according to the best knowledge, information and belief of your petitioner, the value of said water so to be taken from said stream for the use of the inhabitants of Grand Junction, is about Fifteen Thousand (15,000) Dollars; that your petitioner is ready and willing and hereby offers to pay into Court, or to deposit with the Clerk thereof, the sum of Fifteen Thousand (15,000) Dollars for the use and benefit of and to compensate the respondents entitled thereto for said water when said compensation and the damages and the person and persons, corporation or corporations, entitled to receive the same shall be determined by this Court.

XIV.

That the point at which the petitioner proposes to divert this supply of water from said Kannah Creek for the use of the inhabitants of the city of Grand Junction and the property sought to be taken herein by this proceeding and all interests affected thereby, is situate in the County of Mesa and State of Colorado.

XV.

That it will be impracticable to be ar this cause in term time before this Court on account of the length of time necessary to hear and determine the cause and the short time that is allowed by law for the sitting of this Court and that it is necessary to appoint a commission to hear and take the testimony herein and determine and assess the value of the property sought to be taken and assess the damages sustained by reason of the taking thereof.

WHEREFORE, your petitioner prays that said respondents and each of them may be summoned to appear before this Honorable Court on ~~at the day~~ <sup>or the Judge thereof</sup> ~~thereof~~ upon a day certain to be named by this Court, to show cause why the said water above described, to-wit, a first right to the use of three hundred inches of water from Kannah Creek should not be taken by your petitioner for the purposes aforesaid, to be diverted at such point on said stream as your petitioner may elect, and that Your Honor will cause compensation and damages to be determined and to be paid to such of said respondents as are the owners thereof or interested therein, as their interests may appear, by reason of the appropriation and condemnation of the same for the use of your petitioner against the rights of the respondents



and your petitioner further prays that the exclusive first right to appropriate and use three hundred inches of the water of the said stream for the purposes aforesaid against the right of all other persons, corporation or corporations, be adjudged and decreed to your petitioner and that upon the payment or deposit with the Clerk of this Court the sum of Fifteen Thousand (15,000) Dollars, or such other sum as may be determined to be just and reasonable, Your Honor will enter a rule herein giving your petitioner the right to enter upon and take possession of three hundred inches of water from said stream and to stay by rule of this Court all actions and proceedings against this petitioner for and on account of taking and appropriating said water during the pendency of this suit. The petitioner prays for such other and further relief in the premises as shall be meet and proper.

THE CITY OF GRAND JUNCTION,

BY

Joe W. Rozzelle, City Atty  
J. S. Carnahan  
Strand M. Logan  
Its Attorneys.

State of Colorado ( )  
County of Mesa. ( ) SS.

JOE W. ROZZELLE, being first duly sworn on oath, deposes and says, that he is the City Attorney of the City of Grand Junction, that he has read the above and foregoing petition, knows the contents thereof and that the facts stated therein are true to the best knowledge and belief of affiant.

Joe W. Rozzelle

Subscribed and sworn to before me this 1st day of November, A.D. 1907.

J. M. Pinnerose  
Clerk of the District Court.