PREPARED
BY JIM DUFFORD
MARCH 1991

INDEX TO DECREES, POINTS OF DIVERSION CHANGES, TRANSFERS AND COURT DECREES RELATING TO WATER RIGHTS OF THE CITY OF GRAND JUNCTION, COLORADO

[VOLUME I - 1 THROUGH 27]

KANNAH CREEK DRAINAGE -- DIRECT FLOW

1. PARAMOUNT RIGHT - 7.8 c.f.s.

   A. Acquired by condemnation - Case No. 1818, District Court of Mesa County. Decree date: 2/25/1911.

   B. Order permitting storage of Paramount Right dated 7/28/1977.

   C. Initial Order of Water Court denying storage.

   D. Initial Supreme Court Order reversing water right.

   E. Water Court Order - refusal of Water Judge to obey Supreme Court Mandate.

   F. Order making rule absolute.

2. KANNAH CREEK HIGHLINE DITCH.

   A. Decree date - 6/1/1916 - 49.11 c.f.s.

   B. Decree date - 7/25/1941 - awarding 18.79 c.f.s. supplemental and making 49.11 c.f.s. absolute.

3. KANNAH CREEK EXTENSION DITCH.

   A. Original decree date - 7/25/1888 - 15.60 c.f.s. (City owns 1.37 c.f.s.)

   B. Order transferring 1.37 c.f.s. to headgate of Juniata Ditch.

   C. Order permitting diversion through Kannah Creek Highline Ditch headgate.

4. JUNIATA DITCH.

   A. Original decree - dated 7/25/1888 - 21.25 c.f.s. (Incorporated ditch company - City owns 2.4 percent of 500 shares.)

      (Additional decree - 5.0 c.f.s. - diverted through headgate of Juniata Ditch Enlarged - 5.0 c.f.s. - decree date - July 25, 1941 - SEE ITEM 5-A BELOW.)

   B. Domestic and stock water decree - 2.0 c.f.s. - decree date - 7/25/1941.

5. JUNIATA DITCH ENLARGED.

   A. Original decree - 7/25/1941 - 54 c.f.s.

      NOTE: Of the total original decree - 29 c.f.s. awarded for filling Hallenbeck (Purdy Mesa) Reservoir - 20.0 c.f.s. for direct flow irrigation and 5.0 c.f.s. awarded to Juniata Ditch Company.

   B. Additional decree - conditional - 75 c.f.s. for filling Juniata Enlarged Reservoir.

6. GRAND JUNCTION PIPELINE AND WATER WORKS SYSTEM.

   A. Original decree - 7/25/1941 - 1.042 c.f.s. absolute and 2.866 c.f.s. conditional. Order making conditional decree absolute - total decree 3.908 c.f.s.

7. BOLEN, ANDERSON & JACOBS DITCH.

   A. Original decree - 6/1/1916 - 9.59 c.f.s.

STORAGE RIGHTS -- KANNAH CREEK DRAINAGE

8. ANDERSON RESERVOIR NO. 1.

   A. Original decree date 7/25/1941 - 466 a.f.

9. ANDERSON RESERVOIR NO. 2.

   A. Original decree dated 7/25/1941 - 433.36 a.f.

   B. Order making conditional portion absolute.

10. CARSON LAKE RESERVOIR (formerly Hog Chute)

   A. Original decree dated 2/20/1959 - 637 a.f.

11. CHAMBERS RESERVOIR (formerly Deep Creek Reservoir)

   A. Original decree - 6/1/1916 - 600 a.f. Decree relating to Dry Creek Ditch - filling right for Chambers Reservoir.

12. DEEP CREEK RESERVOIR NO. 2.

   A. Original decree dated 6/1/1916 - 350 a.f.

   B. Order making decree absolute - 7/25/1941 - 350 a.f.

   C. Decree for Deep Creek Reservoir No. 2 Supply Ditch - decree date 7/25/41.

13. HALLENBECK RESERVOIR (now called Purdy Mesa Reservoir).

   A. Original decree dated 7/25/1941 - 863 a.f. (as built capacity - 680 a.f.)

14. FLOWING PARK RESERVOIR.

   A. Original decree dated 7/25/1941.

   B. Order cancelling conditional portion of decree.

15. GRAND MESA RESERVOIR GROUP (includes Scales Reservoirs 1 & 3).

   A. Original decree dated 6/1/1916.

   B. Order making conditional decree relating to Grand Mesa No. 6 absolute.

16. HALLENBECK RESERVOIR NO. 2 (now called Raber-Click Reservoir).

   A. Original decree dated 7/25/1941.

17. JUNIATA RESERVOIR.

   A. Original decree dated 7/25/1941 - 400 a.f.

18. JUNIATA RESERVOIR ENLARGED.

    A. Original decree dated 7/25/1941.

    B. Order increasing absolute portion of decree to 2,313 a.f.

    C. Order cancelling conditional decree as to 1,122.41 a.f.

19. JUNIATA RESERVOIR ENLARGED - SECOND ENLARGEMENT

    A. Original conditional decree - Case No. W-18.

    B. Original decree dated 4/25/1984 - Case No. 82CW280.

    C. Protest to Referee's Ruling.

    D. Memo of June 26, 1984 - Water Referee to Judge Brown.

    E. Amended Ruling of October 24, 1984.

20. JUDGEMENT - CASE NO. 16803 DISTRICT COURT OF MESA COUNTY.

    A. Establishes system for filling reservoirs on Grand Mesa in Kannah Creek Drainage. Also contains provisions relating to administration of Carson Lake Reservoir.

NORTH FORK OF KANNAH CREEK -- DIRECT FLOW

21. DECREE OF JULY 25, 1888 RELATING TO KANNAH CREEK AND NORTH FORK OF KANNAH CREEK DITCHES.

22. BAUER DITCH.

    A. Original decree (see Item 21 above - 1888 decree).

    B. Order making 1.96 c.f.s. absolute.

23. BOLEN DITCH NO. 1 - see 1888 decree - Item 21.

24. BOLEN DITCH NO. 2 - see 1888 decree - Item 21.

25. HENSCHAEL DITCH - see 1888 decree - Item 21.

26. SEEGAR & BEDFORD DITCH - see 1888 decree - Item 21.

27. SEEGAR & BEDFORD DITCH ENLARGED - see 1888 decree - Item 21.

1-A

State of Colorado)
) ss. In the District Court.
County of M e s a)

The City of Grand Junction,
a municipal corporation,
Petitioner,
--vs--
Wm. Van Pelt, et al,
Respondents.

1818

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 Kannah 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 Kannah Creek, said water so to be taken and diverted to be conducted by a system of water works to be erected 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 interferred with in their vested rights heretofore acquired, residing upon such said Kannah 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 Coffman tract herein, viz.- W½SE¼ and SE¼SW¼, Sec.,10, Township 2 South, Range 1 East, Ute Meridian, in said County, containing 120 acres of land, together with the water right thereunto appertaining, consisting of 64.3 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 Snyer Tract, herein, viz.- W½NE¼SE¼, 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. 2½, known as the Upper Snyer Tract, viz.- N½NW¼SE¼ and SW¼NE¼, of Section 14, in the last described township and range, less right of way, said tract containing 43 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.- E½NE¼ and SE¼ of Sec. 10, and NW¼SW¼, 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.- N½NW¼NE¼, 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.- SE¼SW¼, 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 SE¼SW¼ below the Kannah Creek Extension Ditch, and the W½SE¼ 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 Elk Glen Orchard & Irrigation Company, herein, viz.- NE¼SE¼, S½SE¼, Section 25; NW¼NE¼, NE¼NW¼, and SW¼SW¼, Section 36; NE¼, SE¼NW¼ and NE¼SW¼, Section 35; 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 325 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 Ternahan Reservoir, Twelve Thousand ($12,000) Dollars.

To respondent, or respondents, owning PARCEL NO. 8, known as the Laramore tract, viz.- SE¼SE¼, Section 11, and that part below the Kannah Creek Extension Ditch of the S½SW¼, Sec. 12, and all of the NE¼NW¼, 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.- SW¼NW¼ and N½NW¼SW¼, Section 30, in said Township 2 South, Range 2 East, Ute Meridian, and SE¼NE¼ and NE¼SE¼, 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.- SE¼NW¼, NW¼SE¼ and 13⅓ acres of NE¼SW¼, Section 24, Township 2 South, Range 1 East, Ute Meridian, containing 93⅓ 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.- SW¼SE¼, SE¼SW¼, 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 Goldsby tract, viz.- SW¼NW¼SE¼ and that part north of Kannah Creek of S½SE¼, 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 No. 15, known as the Renderle tract, viz.- NW¼NW¼NE¼, 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.- SE¼NE¼ and NE¼SE¼ (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. T. Downing tract, viz.- NE¼NE¼, Section 23, and South 10 acres of SE¼SE¼, 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, Eighteen Hundred Forty-two ($1842) Dollars.

To respondents owning PARCEL NO. 18, known as the Packard's tract, viz.- S½NW¼SW¼ and SW¼SW¼, Section 30, and N½NW¼, 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 Honsinger tract, viz.- SE¼SE¼ and SW¼SE¼, Section 33, Township 2 South, Range 2 East, and the NE¼NW¼ and NW¼NE¼, 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 SW¼SW¼, Sec. 22, Township 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 irrigation thereof, consisting of 15 shares in the corporation controlling same, being equivalent to the use of 15 statutory inches of Priority No. 8, from Kannah Creek, in said water district, and 22 shares in the company controlling the Grand Mesa Reservoir, in said water district, Twelve hundred ($1200) Dollars.

To respondents owning PARCEL NO. 21, known as the Dennis Sullivan tract, viz.- NE¼NW¼ and NW¼ NE¼, Section 33, and SE¼SW¼ and SW¼SE¼, 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 Kannah Creek, in said Water District, Three Thousand ($3000)Dollars.

To respondent, or respondents, owning PARCEL NO. 22, known as the Ponsford tract, viz.- E½NW¼, SW¼NW¼, and NW¼SW¼, Section 9, and SE¼NE¼ and NE¼SE¼, 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 Kannah Creek, in said Water District, 23 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.- W½NW¼, Section 4, Township 3 south, range 2 east, and SE¼NE¼, Section 5, same township and range, and N½NE¼, 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.- E½SW¼, SW¼SW¼, Section 36, and Lot 4, Section 35, Township 12 South, Range 90 West, 6th P. M. containing 174 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, owing PARCEL NO. 27, known as the Farmer tract, viz.- N½SW¼, S½NW¼, NW¼SW¼, Sec. 5, and E½NE¼ and NE¼SE¼, 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 83⅓ 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 SE¼SE¼ south of Kannah Creek, of Section 32, Township 2 South, Range 2 East, Ute Meridian, containing 20 acres, together with the water right thereunto appertaining, being 1/2 interest in decreed Priority No; 1 from said Kannah Creek, in said Water district, being equivalent to 11⅓ statutory inches of water, Five Hundred ($500) Dollars.

To respondent, or respondents, owning PARCEL NO. 29, known as the Van Pelt tract, viz.- SW¼SE¼, Section 25, Township 2 South, Range 2 East, and NW¼NE¼. Section 2, Township 3 South, range 2 East, Ute Meridian, containing 80 acres, together with the water right appurtenant thereto, being 1/3 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, Eighteen Hundred Twenty-three ($1823) Dollars.

To respondent, or respondents, owning PARCEL NO. 30, known as the Bowman tract, viz.- SE¼SE¼, Section 33, SW¼SW¼, Section 34, Township 2 South, Range 2 east, and NE¼NE¼, Sec. 4, and NW¼NW¼, 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 Kannah Creek, in said water district, and 1/8 interest in the Ternahan Reservoir, together with 15 shares, being 50 statutory inches of water from Priority No. 11, from said Kannah Creek, in said water district, Sixty-five Hundred ($6500) Dollars.

To respondent, or respondents, owning PARCEL NO. 31, known as the Ternahan tract, viz.- SE¼SW¼, SW¼SE¼, and SE¼SE¼, Section 34, township 2 south, range 2 east, Ute Meridian, and NE¼NW¼, NW¼NE¼, Section 3, township 3 south, range 2 east, and SW¼SW¼, Section 35, township 2 south, range 2 east, and Lot 4, Section 2, and Lot 1, Section 3, both in township 3 south, range 2 east, Ute Meridian, containing 320 acres, together with the following water rights appurtenant thereto and used for irrigating 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. 32, known as the McKay tract, viz.- E½NE¼, Sec. 32, and W½NW¼, 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. 33, known as the Saunders tract, viz.- SE¼NW¼, 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 ~~Thousand~~ Hundred ($400~~0~~) Dollars.

To respondent, or respondents, owning PARCEL NO. 34, known as the Rozzelle 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. 35, known as M. B. Holland, viz.- part of S½SE¼, Sec. 32, and SW¼SW¼, 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. 8, 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.- NW¼NE¼, Sec. 5, township 3 south, range 2 east, and 8 acres of SW¼SW¼, Sec. 33, township 2 south, range 2 east, 48 acres, together with the water rights thereto appertaining, being/2 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. 36½, known as the Learned tract, viz.- W½SE¼SE¼, Sec. 25, township 2 south, range 2 east, and W½ NE¼NE¼, 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, ir respondents, owning PARCEL NO. 37, known as the Bean tract, viz.- S½SE¼ and N½NE¼, Sec. 8, township 3 south, range 2 east, 160 acres, together with the water right thereto appertaining, being 7 statutory inches of Priority No. 7, One Thousand ($1000) Dollars.

To respondent, orrespondents, owning PARCEL NO. 38, known as the Wiley tract, being S½NW¼, N½SW¼, Sec. 32, township 2 south, range 2 east, Ute Meridian, containing 160 acres, together with the water rights appurtenant thereto, being 5 7/8 statutory inches of said decreed Priority No. 2, 36 statutory inches of decreed Priority No. 8, and 25 shares of the Grand Mesa Reservoir, Eighteen hundred twenty-five ($1825) Dollars.

To respondent, or respondents, owning PARCEL NO. 39, known as the PATTERSON-DODGION tract, viz.- N½NW¼SW¼, SW¼NW¼, and North 26 1/2 acres of NE¼SW¼, of Section 24, township 2 south, range 1 east, Ute Meridian, containing 86 1/2 acres, together 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 Gammage and Malinda Gammage, her husband, owning or in any way interested in PARCEL NO. 41, known as the Gammage 80 acre tract, viz.- SW¼NE¼, NE¼NE¼, Sec. 5, township 2 south, range 2 east, 80 acres, together with the following water rights appurtenant thereto and used for irrigating portions thereof, being 62½ statutory inches of decreed Priority No. 7, and 85 shares of the company controlling the Grand Mesa Reservoir company, Thirteen Hundred Seven Dollars and fifty cents. ($1307.50).

To respondent, or respondents, owning Parcel No. 42, known as the Lucas tract, viz.- SW¼NE¼, NE¼NW¼, N½SW¼ and SW¼SW¼, all in Section 1, also Lots 3 and 4, in Section 2, all in township 13 south, range 98 west, 6th P. M. containing 309 acres, together with the following described water rights appurtenant thereto and used for irrigating portions thereof, via.- 52½ statutory inches of Priority No. 2, and 163 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.-S½NE¼SE¼ and SE¼SE¼, Section 19, township 2south, 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 36⅔ 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 36⅔ 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.- S½NW¼SW¼, and SW¼SW¼, Sec. 20, and W½NW¼, Section 29, township 2 south, range 2 east, Ute Meridian, containing 130 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 PRESCOT WEST TRACT, viz.- N½NW¼NW¼, E½NW¼, W½NE¼NE¼, 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.- SE¼SW¼, Sec. 1, township 13 south, range 98 west, and NE¼NW¼, Sec. 12, township 13 south, range 98 west, 6th P. M. together with the water right heretofore enjoyed of diverting into a ditch owned by said respondent flood waters from said Kannah 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.- NW¼NE¼, Section 1, Township 13 South, Range 98 West, and NE¼NW¼ Sec. One (1) township 13 south, range 98 west, and S½SE¼, NE¼NE¼, Section 36, township 12 south, range 98 west, 6 P. M. containing 240 acres, together with 35 statutory inches of decreed Priority No. 11, Twenty-five Hundred ($2500) Dollars.

To respondent, or respondents, owning Parcel No. 50, known as the Merritt tract, viz.- W½NW¼, 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.- E½SE¼SE¼, Sec. 35, township 2 south, rangen2 east, and E½NE¼NE¼, Section 2, township 3 south, range 2 east, Ute Meridian, 40 acres, together with the water rights appurtenant thereto and used for irrigating portions thereof, being 1/12th interest in decreed Priority No. 6 from said Kannah Creek, in said water district, equaling 11¼

statutory inches of water, Five Hundred Thirty and fifty-one-hundredths ($530.50) Dollars.

To respondent, or respondents, owning PARCEL NO. 52, known as the Chambers Tract, viz.- NE¼NE¼, S½NE¼, Section 36, township 2 south, range 2 east, Ute Meridian, 120 acres, together with 52 shares of water in the company controlling said decreed Priroity No. 11, being equal to 85 statutory inches of water, and 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.- NE¼SW¼, NW¼SE¼, 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 53 statutory inches of water from decreed Priority No. 11, and 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 VINCENT TRACT, viz.- SW¼SW¼, Sec. 36, township 2 south, range 2 east, and NW¼NW¼, Sec. 1, township 3 south, range 2 east, and the west 170 feet of the NE¼NW¼, Sec. 1, township three south, range 2 east, and of which 90 acres, 40 are under ditch, together with the water rights appurtenant thereto and used for irrigating portions thereof, being 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.-SE¼SW¼, Sec. 36, Township 2 South, range 2 east, and SW¼SE¼, NE¼NW¼, NW¼NE¼, 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 41⅔ 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 E½SE¼, 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 30 acres of SW¼NW¼, Section 20, and North 30 acres of SE¼NE¼, Section 35, 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 /WHITEWATER, together with the water right appurtenant thereto and used to irrigate portions thereof, being 11.1 statutory inches of said decreed Priority No. 2, Four Thousand Three Hundred Fifty ($4350) Dollars.

To respondent, or respondents, owning PARCEL NO. 59, known as the MESERVE TRACT, the same being 9 acres, part of the NE¼NW¼NE¼, Section 24, (?) 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.- SE¼SW¼, Sec. 35, township 2 south, range 2 east, and NE¼NW¼, Sec. 2, township 3 south, range 2 east, Ute Meridian, containing 80 acres, together with the water right thereunto appertaining, being 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 WILLIAMS TRACT, viz.- NW¼SE¼, SE¼NE¼, Sec. 1, township 13 south, range 98 west, containing 80 acres, together with the water right appurtenant thereto and used for irrigating portions thereof, being 2/3 interest in decreed priority No. 10, from Kannah Creek, in said water district, being 68 1/3 statutory inches, also 11 statutory inches of water from said Priority No. 2, and 11 shares of stock in the company owing or controlling said Grand Mesa Reservoir, Two Thousand ($2000) Dollars.

To respondent, or respondents, owning PARCEL NO. 62, known as the Raber tract, viz.- SE¼NW¼, NE¼NW¼, and NW¼NE¼, Section 6, township 13 south, range 97 west containing 120 acres, together with the water rights appurtenant thereto being 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, viz.-SW¼NW¼, 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 23 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, viz.- tNorth 28 acres of the SW¼SW¼, SE¼SW¼, SW¼SE¼, and north 28 acres of SE¼SE¼, 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. M. Porter, Foreman,
E. H. Weckel,
C. S. Severson,
Peter A. Johnson,
M. P. Sellers,
Thos. J. Griffith,
J. F. Dawson,
E. R. Detweeler,
W. H. Weld,
Ira Jenkins,
E. V. Longfellow,
T. F. Johanson."

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 Kannah Creek by the petitioner, at the following point of diversion: A point on the right bank of Kannah Creek, situate in said Water District No. 42, Mesa County, Colorado, in the southwest quarter of Section 34 (SW¼ Sec. 34) township 12 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. Snyer; and Adella D. Snyer; 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 P. 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 Renderle; Parcel No. 16, Wm. L. Downing; Parcel No. 17, W. T. Downing; Parcel No. 18, L. C. Packard; Parcel No. 19; Willard P. Honsinger; Parcel No. 20, Thomas Virden; Parcel No. 21, Dennis Sullivan; Parcel No. 22, Wm. J. Ponsford; Parcel No. 24, Mary I. Bradbury; Parcel No. 25, Joseph Laurent; Parcel No. 26, Pride School House, School District No.11; Parcel No. 27, Walter L. 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. Rozzelle; Parcel No. 35, M. B. Holland; Parcel No. 36, J. J. Holland; Parcel No. 36½, Mrs. Grace Learned; Parcel No. 37, John Bean; Parcel No. 38, Mrs. Mary Wiley; Parcel No. 39, J. M. Patterson and B. S. Dodgion; Parcels Nos. 40 and 41, ~~Mary 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. M. Whitney, deceased; Parcel No. 46, Prescott West; Parcel No. 48, Frank K. Berry, (Government homestead final proof not yet made); Parcel No. 49, S. W. Ashley; Parcel No. 50, H. W. Merritt; 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 O Hayt Trustee for the owners within the platted Town of Whitewater; Parcel No. 59, Richard E. Meserve; ~~Parcel~~ and J. W. McAndrews Parcel No. 60, John W. Cox; Parcel No. 61, Bessie P. Williams, Robert Williams, and Mrs. Emma McArthur, and John Williams, William H. Williams, Mrs. Bessie O. Smith, and Hugh T. Williams (son), heirs of Hugh T. Williams, deceased; Parcel No. 62, Carrie M. 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

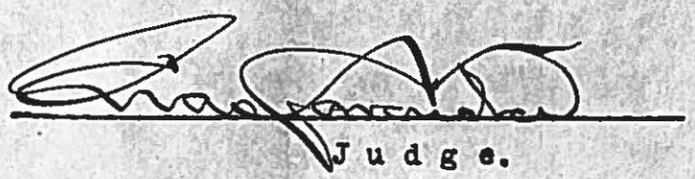
towns and cities in this State.

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 Hundred 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 on the judgment, 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 ma de, is also allowed ninety days in which to prepare and file a Bill of Exceptio ns, which is granted.



J u d g e.

FILED
IN THE DISTRICT COURT
WATER DISTRICT 4
JUL 28 1977
[illegible], WATER CLERK
BY _____ DEPUTY

IN THE DISTRICT COURT IN AND FOR

WATER DIVISION NO. 4

STATE OF COLORADO

Case No. W-1720

IN THE MATTER OF THE APPLICATION FOR WATER RIGHTS OF THE CITY OF GRAND JUNCTION, COLORADO, A MUNICIPAL CORPORATION, IN THE GUNNISON RIVER OR ITS TRIBUTARIES; TRIBUTARY INVOLVED: KANNAH CREEK, MESA COUNTY.

DECREE

IT IS ORDERED, ADJUDGED AND DECREED that the City of Grand Junction have the right and authority to store and impound its Paramount right in the Purdy Mesa Reservoir, or in any other storage facility owned and controlled by the City of Grand Junction or in which it has rights to store water, during the periods of time when such water is not required immediately for the City's municipal purposes.

Dated this 28th day of July, 1977.

BY THE COURT:

Water Judge
Division No. 4

cc: Dufford
Williams
Groves
Div. Eng.

#1-8

1-C

IN THE DISTRICT COURT IN AND FOR

WATER DIVISION NO. 4, STATE OF COLORADO

Case No. 1720

IN THE MATTER OF THE APPLICATION FOR WATER RIGHTS OF THE CITY OF GRAND JUNCTION, COLORADO, A MUNICIPAL CORPORATION, IN THE GUNNISON RIVER OR ITS TRIBUTARIES; TRIBUTARY INVOLVED: KANNAH CREEK, IN MESA COUNTY.	ORDER

This matter came on for hearing March 19, 1975, in Delta, Colorado, on a protest filed by the Kannah Creek Water Users Association (Users) to a Referee's ruling granting the City of Grand Junction, Colorado (City) the right to store and impound its "Paramount" water right of 7.81 c.f.s. when it was not being used immediately for municipal purposes; the City was represented by D. J. Dufford, and the Protestors (Users) were represented by Anthony W. Williams, and after hearing arguments and viewing the file and the exhibits, THE COURT DOTH FIND:

I

The Petitioner is a municipal corporation which owns the 7.81 c.f.s. water right decree which is the subject matter of this action. The City obtained this decree by a Final Rule or Judgment entered on November 11, 1911, in the District Court in Mesa County in case No. 1818 (Exhibit 4); That case No. 1818 was a condemnation type case wherein the City was required to pay $182,000.00 damages as compensation to water decree owners on Kannah Creek who were adversely affected by the granting of the municipal use decree; That in return for the payment of damages, the City obtained from the Court a decree for 300 statutory inches of water per second of time which "shall be a first, superior and paramount right to a continuous flow of 300 statutory inches of water . . ."; That such water right was granted subject to the laws of the state regulating, governing and controlling the use and distribution of water by towns and cities; That said decree was further subject to the provision that the water was to be taken and diverted to be conducted by

a system of water works to be erected by the City to its municipal limits; That the use of the term "500 statutory inches" is used interchangeably with 7.81 c.f.s.

II

That the 1903 Revised Statutes of Colorado should govern the use of this water decree; That just as the statutes do today, the statutes of 1903 made a distinction between a direct flow or running decree and a storage right; That the City was granted a decree for direct flow which was to be placed in the distribution system of the City, not the storage system; That such a holding is the only holding which makes sense of the 1911 decree without changing the wording and evident intent of Judge Shackleford; In other words, the phrase "conducted by a system of water works to be erected by said petitioners to its municipal limits" is referring to the distribution system as differentiated from its storage system.

III

That at such times as the City does not or cannot use any or all of the paramount right, the water flows down stream where it can be used by the Users. If any possible downstream flow is stopped or altered, the right of the Users is adversely affected.

IV

The statement of the Referee that return flow does not affect Kannah Creek is correct, but the flow of Kannah Creek is, or could be, altered as set out in paragraph III above.

V

That even though junior appropriators may have used these waters but are not entitled to the continued use of these waters if legitimately diverted by the City, the Users are entitled to protection of their decrees and the use of the water as against illegal or improper diversion by the City.

VI

That a distinction has been made by statute and case law between direct flow rights and storage rights; That the City has never had storage rights to this 7.81 c.f.s. of water, and did not obtain it in the 1911 judgment; That to allow storage

at this time would be to allow expansion of use and not maximum legal use. This point was discussed in case No. W-1719. Also see Judge Ela's short dissertation in Exhibit 7 wherein he discusses a change of use from direct flow to a storage decree.

VII

That Judge Ela, in case No. 16632, Mesa County (Exhibit 5), properly held that the City was not entitled to store water under the decree obtained in case No. 1318; That such an Order may not be res judicata between the parties, but this Court feels it is binding on this Court and on the City, particularly in view of the fact that it was not appealed.

VIII

That by allowing the City to store a "paramount" right, it is possible the Users would have to let their decrees go down the Creek to supply a call on the river or fulfill committments as discussed in paragraph VI in case No. 1719.

IX

That the case should be reversed and remanded with directions to the Referee to enter a ruling not inconsistent with these findings, and deny the City the right to store the 7.81 c.f.s. paramount decree.

WHEREFORE IT IS THE ORDER OF THE COURT that the ruling of the Referee entered herein on November 14, 1974, is reversed and remanded to the Referee to enter a ruling not inconsistent with the above findings and denying the petitioner the right to store the 7.81 c.f.s. "paramount" direct flow.

Done in open Court this 29th day of April, 1975.

BY THE COURT:

Water Judge
Division 4

1-D

IN THE SUPREME COURT
OF
COLORADO

NO. 27047

IN THE MATTER OF THE APPLICATION FOR WATER RIGHTS OF THE CITY OF GRAND JUNCTION, COLORADO, a municipal corporation, IN THE GUNNISON RIVER OR ITS TRIBUTARIES: TRIBUTARY INVOLVED: KANNAH CREEK, IN MESA COUNTY,	)
CITY OF GRAND JUNCTION, COLORADO, a municipal corporation,	)
Applicant-Appellant,	)
v.	)
KANNAH CREEK WATER USERS ASSOCIATION; LLOYD V. WRIGHT; JENNY M. WRIGHT; and THE KANNAH CREEK EXTENSION DITCH ASSOCIATION,	)
Protestors-Appellees.	)

Appeal from the District Court of Water Division No. 4

Honorable Fred Calhoun, Judge

EN BANC

JUDGMENT REVERSED
AND CAUSE REMANDED
WITH DIRECTIONS

Graham and Dufford,
D. J. Dufford,

Attorneys for Applicant-Appellant.

Williams, Turner & Holmes,
Anthony W. Williams,

Attorneys for Protestor-Appellee
Kannah Creek Water Users Association.

MR. JUSTICE DAY* delivered the Opinion of the Court.

This case and Supreme Court Case No. 27046 (City of Grand Junction, Colorado v. Kannah Creek Water Users Association), announced this date, are related though involving separate issues. They were consolidated for oral argument.

This appeal seeks a determination of the right of the City of Grand Junction (the City) to store 7.81 cubic feet of water per second (c.f.s.) taken from Kannah Creek and obtained almost 50 years ago pursuant to an eminent domain proceeding.

The water referee ruled that the judgment in the condemnation action carried with it by implication the right to store water as an integral part of the City's authority to construct water works. The water judge thereafter rejected the ruling of the referee and entered judgment denying the City the requested storage right. We reverse.

The historical background of the present proceedings originated in 1907, when the City filed a petition in condemnation in Mesa County district court joining as respondents the owners of all of the direct flow appropriations on the main course of Kannah Creek. "Final Rule or Judgment" was entered approximately four years later when the City had made compensation payments of $182,940 awarded by a jury to respondents therein.

The judgment decreed the City to be the owner of "a first, superior and paramount right to a continuous flow of [7.81 c.f.s. of water] over and above all other water rights claimed or asserted in reference to the water of said Kannah Creek or the water arising in the water shed of said stream."

The right to divert said water at a specified point of diversion was

> "...for the use of said City of Grand Junction...and its inhabitants, under the laws of this state regulating, governing and controlling the use and distribution of water by towns and cities, and the said city now has and at all times hereafter shall have and exercise control and dominion over said [7.81 c.f.s. of water]...."

I.

Because subsequent litigation has involved a great number of procedural errors, an understanding of the nature of the 1907 action and of the judgment rendered in 1911 is critical. The original action was not brought pursuant to the statutes dealing with the appropriation of water. Rather, it was strictly limited to the City's power of condemnation based on eminent domain.

The trial court was not required to and did not determine therein the respective priorities of appropriators of the waters of Kannah Creek. The proceedings were in rem; the court's ruling affected the right to the water itself.

Since the purpose of the City in securing the water was for the benefit of its inhabitants, i.e., a public use, it acquired not only the ownership, but also the additional right to distribute that water to the citizens of Grand Junction which entails the construction of city waterworks. Pennsylvania Railroad Co. v. Sagamore Coal Co., 281 Pa. 233, 126 A. 386 (1924), cert. denied, 267 U.S. 592, 45 S.Ct. 228, 69 L.Ed. 803.

The City's ownership is solely by virtue of the 1911 judgment. All appropriators on Kannah Creek were compensated upon the payment of damages by the City to them through the registry of the court. Monte Vista Canal Co. v. Centennial Irrigating Ditch Co., 22 Colo. App. 364, 123 P. 831 (1912). The water belonging to Grand Junction is limited only by the applicable eminent domain statute. San Luis Land, Canal and Improvement Co. v. Kenilworth Canal Co., 3 Colo. App. 244, 32 P. 860 (1893). The controlling 1908 statute in Colorado reads as follows:

> "[Incorporated cities] shall have the right and privilege of taking water in sufficient quantity, for the purpose [of supplying the same with water; to provide proper pumps and conducting pipes or ditches; to regulate the distribution of water for irrigating and other purposes], from any stream...in the state; Provided, That if the taking of such water in such quantity shall materially interfere with or impair the vested right of any person or persons or corporation, heretofore acquired,

> ...they shall first obtain the consent of such person or persons or corporation, or acquire the right of domain, by condemnation,...and make full compensation or satisfaction for all the damages thereby occasioned to such person or persons or corporation." Revised Statutes of Colorado, 1908, Chap. 147, Sec. 6525, subdiv. 73.

The City's purpose in the condemnation proceeding was openly declared to be as follows:

> "...said water so to be taken and diverted [shall] be conducted by a system of water works to be erected by [the City]...for [its] municipal purposes...and for distribution among its inhabitants for domestic and other like beneficial uses."

The water referee in the instant controversy correctly interpreted the 1911 judgment. The referee held in effect that the court had by its order enabled the City to provide the water to its inhabitants by means of a system of water works to be "erected in the future" or the equivalent already in existence if available to the City.

We thus hold that the trial court unreasonably restricted the City by its narrow interpretation in ruling that the system of water works referred only to a distribution system and did not include facilities for storage. The 1911 judgment must be read as a whole. The lack of direct reference to storage rights and measurements is not fatal. On the contrary, the designation of a

"paramount right" in cubic feet per second is a declaration of the City's right rather than as a limitation upon it and is a definite expression of an unlimited right.

II.

On November 19, 1954, the City acquired the entire right, title and interest in and to a facility known as the Hallenbeck Reservoir, which is now known as the Purdy Mesa Reservoir. Shortly after acquiring this facility, the City constructed a by-pass line from the flow line to the Purdy Mesa Reservoir. By use of the by-pass line, the City is able to divert water from the flow line to the reservoir during the periods when not all of the water condemned in 1911 is required for municipal purposes.

Although the City has utilized the Purdy Mesa Reservoir for this purpose since acquiring title thereto, it instituted the present action in 1973 "to change the manner of use of [that] Water Right." Included in this application was a request that the City be authorized to store any part of the 7.81 c.f.s. of water in any storage facility which it owns and controls or in which it has rights to store water.

The trial court held that the City may not continue to store in Purdy Mesa Reservoir water which is not immediately required. This holding is based upon an

erroneous concept of the effect of the 1911 judgment and was based on the court's misconception that appropriators on the Creek would be injured thereby. The court erroneously described that judgment as a "decree." Then proceeding upon that mistaken premise, it distinguished between direct flow and storage decrees and corresponding municipal distribution and storage systems, and then erroneously applied those rules of water law to the City's ownership of its water right.

As discussed above, the order in the 1911 eminent domain action was not a "water decree." It was a judgment in condemnation. And title to the use of the first 7.81 c.f.s. of water of Kannah Creek is in the City without regard to injury to water users on the Creek because each appropriator has been fully compensated in specific dollar damage for any injury resulting from the City's acquisition of that water. We hold the City may utilize its water in a manner consistent with beneficial use for the inhabitants of Grand Junction.

The City, in order fully to utilize its paramount right, must be able to store and hold that water. When the flow line water is placed in storage facilities, it is thereafter capable of being put to a beneficial use as required by the eminent domain statute quoted above. Furthermore, condemned water stored in any of the City's facilities may properly be transferred to any other facility

the City owns and controls or in which it has storage rights. Such a water system was contemplated by the 1911 judgment. The City also acquired interests in several reservoirs in the condemnation proceeding. The necessity of holding water in reservoirs was obvious then as now. And the appropriators had notice of the City's almost immediate storage of water and were fully compensated.

It is true that by the compulsory sale the City could take from the appropriators only those rights which the appropriators themselves had acquired. Westminster v. Church, 167 Colo. 1, 445 P.2d 52 (1968). Thus, had the City condemned direct flow rights of some but not all appropriators on Kannah Creek, the appropriators not having been compensated would have standing to object to the City's storing of the water. However, the City acquired rights from and paid damages to every party to the action for the loss sustained; that is, the damages reached the injuries sustained by the City's use of water and the parties' loss of use thereof.

Although in condemning the water, the City may not do simply as it pleases, it is unquestionably entitled to do what is reasonably necessary to carry out the public purpose for which the water was taken.

In the City's exercise of its power of eminent domain, all parties had notice that the water was taken

for domestic purposes. And we reiterate that all parties were fully compensated for resultant injuries caused by the City's subsequent use of the water. The fact that the City did not utilize a particular reservoir until 1954 is of no moment to this Court. The damages paid were for use by the City of the water pursuant to the eminent domain statute. The water was set aside for beneficial public use, encompassing the public welfare, including health, convenience, and comfort of the inhabitants of Grand Junction.

III.

The trial court gave inordinate weight to the holding by the district court of Mesa County in Case No. 16632. That case involved the City of Grand Junction and various others not parties to this action. In that 1970 ruling, the court held, inter alia, that the 1911 judgment did not give the City the right to store any of the 7.81 c.f.s. of water. That decision was never finally appealed to an appellate court. The appeal filed by the City was voluntarily dismissed pursuant to an agreement between the parties. However, that decision was and is void and is not binding upon this court.

The 1911 judgment was final [Denver Power and Irrigation Co. v. Denver and Rio Grande Railway Co., 30 Colo. 204, 69 P. 568 (1902)],and the rights of all parties became definitively fixed thereby. Consequently,

it is binding on said parties and their privies and successors in title or interest. Therefore, the court in Case No. 16632 lacked any jurisdiction to review or make a redetermination of or to set aside the City's right to store the 7.81 c.f.s. of water. That right was irrevocably awarded to the City in the condemnation proceedings, as discussed above. The parties to the subsequent action could not by express or implied consent confer jurisdiction upon the court in the 1970 action. Triebelhorn v. Turzanski, 149 Colo. 558, 370 P.2d 757 (1962). The matter was not later susceptible to review or interpretation by any court. The judgment in Case No. 16632, being void, is subject to attack directly or collaterally at any time and in any court. In re Estate of Lee v. Graber, 170 Colo. 419, 462 P.2d 492 (1969).

IV.

Finally, the trial court took into consideration and gave great weight to the provisions of an agreement then in existence which involved an option to purchase water rights. The agreement was between the estate of Mr. Hallenbeck and the City. By its terms, insofar as relevant to this action, the City agreed to dismiss the appeal in Case No. 16632 wherein the City was denied the storage rights also at issue here.

Protestors herein contend that by making such an agreement, the City is precluded from here asserting any right to store the 7.81 c.f.s. of water. Not so. That agreement did not affect the rights of the parties thereto, since there was a failure of the consideration. Grand Junction contracted to waive its right to appeal the void judgment discussed above. The estate did not thereby receive anything of value, since the City retained all right to store the subject water and since the void judgment could later be attacked either directly or collaterally. Also, the agreement does not affect this action for another reason, i.e., the terms of that contract benefited only the parties thereto, and the rights obtained by the estate do not run with the stream. Protestors are at most incidental third-party beneficiaries to the agreement, not having been specifically named or provided for therein. No part of the agreement has been incorporated into a water decree. The protestors have no standing to ask this court to enforce the City's obligation to the Hallenbeck contract, if any in fact exists.

Judgment is reversed and the cause is remanded to the trial court to enter its order granting the requested storage rights.

MR. CHIEF JUSTICE PRINGLE, together with MR. JUSTICE HODGES, MR. JUSTICE KELLEY, join with retired MR. JUSTICE DAY in this opinion.

MR. JUSTICE ERICKSON and MR. JUSTICE LEE dissent.

MR. JUSTICE GROVES and MR. JUSTICE CARRIGAN do not participate.

*Retired Supreme Court Justice sitting under assignment of the Chief Justice under provisions of Article VI, Section 5(3) of the Constitution of Colorado.

NO. 27047. IN THE MATTER OF THE APPLICATION FOR WATER RIGHTS OF THE CITY OF GRAND JUNCTION, etc. v. KANNAH CREEK WATER USERS ASSOCIATION, et al.

MR. JUSTICE ERICKSON dissenting:

I respectfully dissent. The water rights in issue were acquired in an eminent domain proceeding in 1911. In that proceeding, the condemnor sought to acquire 300 statutory inches of water, which is equivalent to 7.81 cubic feet of water per second of time. A municipality or governmental entity, subject to statutory limitations, can invoke the right of eminent domain to acquire water rights, but an eminent domain proceeding cannot be utilized to adjudicate water rights or change the use of existing water rights.

The City of Grand Junction, as condemnor, named the holders of direct flow water rights as condemnees. The water judge concluded that the only rights condemned in 1911 were direct flow rights and denied the City of Grand Junction the right to store the direct flow water that it was able to capture. In my judgment, his decision is correct. Neither adverse possession nor prescription is an issue.

In Handy Ditch Co. v. Greeley & Loveland Irrigation Co., 86 Colo. 197, 280 P. 481 (1929), this court delineated the differences between direct flow rights and storage rights. Water which is diverted for direct flow is put to immediate beneficial use. Water which is stored is subsequently put to beneficial use.

The water rights which were condemned were specifically set forth in the condemnation petition and in the subsequent judgment. The rights were direct flow rights and not storage rights. To characterize the condemnation proceeding as one in which "the City acquired rights from and paid damages to every appropriator for the loss sustained" (emphasis in majority opinion) is thus to beg the question. See Baker v. City of Pueblo, 87 Colo. 489, 289 P. 603 (1930).

The condemnor stands in no better position than the prior direct flow owners who were the condemnees in 1911. Farmers Co. v. Golden, 129 Colo. 575, 272 P.2d 629 (1954). See State Highway Department v. Dawson, 126 Colo. 490, 253 P.2d 593 (1953). That the 1911 condemnation judgment recognized this principle is reflected in the designation that the city acquired rights to a "continuous flow" of 7.81 c.f.s. Thus, the majority conclusion that "[i]n the City's exercise of its power of eminent domain, all parties had notice that the water was taken unconditionally," is not supported by the record or as a proposition of law.

Storage rights are defined in static storage terms, such as "acre feet" or "cubic feet." In contrast, "direct flow rights" are defined in terms that are appropriate to diversion from a flowing stream and are represented by such terms as "cubic feet per second" or by the equivalent definition -- "statutory inches."

The 1911 judgment specified that the property condemned by the City of Grand Junction was 300 inches, or the equivalent of 7.81 cubic feet per second of water. The 1911 judgment does not mention the term "store" or any derivative or synonym thereof. Moreover, the difference between the right to store water and the right to divert the direct flow of a stream to put the water to immediate beneficial use was recognized long before 1911. See New Loveland & Greeley Irrigation & Land Co. v. Consolidated Home Supply Ditch Co., 27 Colo. 525, 62 P. 366 (1900).

The majority opinion ignores the distinction and grants water rights acquired in an eminent domain proceeding a special status. The record reflects that neither the court nor counsel was able to find authority which treats a direct flow decree acquired in an eminent domain proceeding in a manner that would be different than any other decree.

Moreover, the implications of the majority opinion ignore the basic tenet of Colorado water law that there is no "fee simple" in water. See Coffin v. Left Hand Ditch Co., 6 Colo. 443 (1882). Water rights are usufructory -- the entire public of the state holds ultimate title to the waters of the state. Any holders of subordinate rights, including those purchased or condemned by a municipality, can exist only by virtue of some appropriation and as explicitly determined by decree. The majority apparently equates the fact that the "necessity of holding waters in reservoirs was obvious then as now," with the propositon that the necessity creates the right. This is not the law. Being so bound, a city cannot

be "unquestionably entitled to do what is reasonably necessary to carry out the public purpose for which the water was taken."

In City of Westminster v. Church, 167 Colo. 1, 445 P.2d 52 (1968), the City of Westminster had purchased both direct flow rights and storage rights from a private party who had historically used the rights for agricultural purposes. The city sought to have the point of diversion of the direct flow rights, and the usage of all the rights, changed to accommodate certain municipal purposes, including water storage. We were then guided by the following language:

> "Equally well established, as we have repeatedly held, is the principle that junior appropriators have vested rights in the continuation of stream conditions as they existed at the time of their respective appropriations, and that subsequent to such appropriations they may successfully resist all proposed changes in point of diversion and use of water from that source which in any way materially injures or adversely affects their rights."

City of Westminster v. Church, supra, quoting Green v. Chaffee Ditch Co., 150 Colo. 91, 371 P.2d 775 (1962). Accord, Farmer's Highline Canal & Reservoir Co. v. City of Golden, 129 Colo. 575, 272 P.2d 629 (1954); Enlarged Southside Irrigation Ditch Co. v. John's Flood Ditch Co., 116 Colo. 580, 183 P.2d 552 (1947). The court then noted that any direct flow rights were limited by prior historical use of the municipality's predecessor in interest and concluded:

> "Defendant City of Westminster could not enlarge upon its predecessors' use of the water rights by changing periodic flow for irrigation to a continuous flow for storage. Such a change would necessarily increase the ultimate consumption from the stream to the detriment of other appropriators."

Accordingly, I would affirm the water judge.

MR. JUSTICE LEE has authorized me to say that he joins me in this dissent.

Dufford

IN THE DISTRICT COURT IN AND FOR

WATER DIVISION NO. 4

STATE OF COLORADO

Case No. W-1720

IN THE MATTER OF THE APPLICATION OF THE CITY OF GRAND JUNCTION, COLORADO, a Municipal Corporation, TO CHANGE THE MANNER OF USE OF A WATER RIGHT IN WATER DIVISION NO. 4.	JUDGMENT

This matter came on this 1ST day of APRIL, 1977, the City of Grand Junction being represented by D. J. Dufford, and the Objectors being represented by Anthony W. Williams, and the Court being fully advised, DOTH FIND:

I

That the above-captioned case was remanded to the Water Court of Division No. 4 by the Supreme Court of the State of Colorado in Case Number 27047 announced December 20, 1976, in a 3-2-2 opinion, directing the Water Court to enter its Order granting the requested storage rights.

II

In 1911, the City of Grand Junction (applicant) was awarded a "judgment", as distinguished from a "decree", in an eminent domain proceeding, for 7.81 c.f.s. of irrigating water used and decreed for the irrigation season. This water right was termed a "paramount right", the definition of which this Judge is unaware, and of which this Judge knows of no other such water right in the State of Colorado. Prior to the formation of the water divisions in the State of Colorado, the applicant, in District Court case number 16632 in Mesa County, made an application for the right to store this "paramount right." This application was denied by the learned District Court Judge William Ela. Thereafter, the applicant later made this application for the right to store the same water

as was denied in case number 16632. An appeal to an adverse ruling resulted in the aforementioned remand.

III

It is unclear to the Judge of the Water Court if the majority opinion stands for the proposition that a municipality can condemn cfs irrigating water with a maximum use of up to 150 days per year and receive water with a use of 365 days per year. It is also not clear if the opinion holds that a water user can change the use of water without receiving a change of use decree from the proper authorities in charge of water decrees. It likewise is unclear if the opinion may be cited to support an expanded use of water without service on the other water users in the division (water district at that time) and that the United States need not be notified of the increased and altered use of the water decree condemned.

As Justice Erickson pointed out in his well written minority opinion:

1. Even though the applicant was entitled to obtain the water in question by an eminent domain proceeding, it cannot utilize eminent domain to adjudicate water rights, change the use of existing water rights, nor to change a running decree to a storage decree.

2. A condemnor cannot condemn any more than that owned by a condemnee.

IV

If the majority opinion stands for what it apparently says, can a municipality circumvent the apparent intent of the well founded water laws of the State of Colorado by condemning seasonal irrigation water and, by judgment, converting it to year around storage use without the benefit of a decree for change of use, change of point of diversion, and other water law restrictions placed on the other water users?

The District Court, prior to the "Water Right Determination and Administration Act of 1969", had the same jurisdiction over

water matters that the Water Courts have today under that Act. It was in this setting that Judge Ela, a man learned in the water laws of the State, handed down his decision denying the City of Grand Junction the right to store the water in question. The majority opinion, in discussing this case, commented on that case and stated: "However, that decision was and is void and is not binding on this Court." "Therefore, the Court in case number 16632 lacked any jurisdiction to review or make a redetermination of or to set aside the City's right to store the 7.81 c.f.s. of water." "The judgment in case number 16632, being void, is subject to attack directly or collateraly at any time and in any Court." If this statement is a true reflection of the law, and the status of the case, then the Water Court in 1977 has no jurisdiction to grant the application.

The lack of jurisdiction by the Court to enter an Order pertaining to the "paramount" water right leaves in limbo the question of jurisdiction of the District Court, the Water Court or the Division Engineer to control the amount of storage by the Petitioner in the event a junior appropriator brings suit for the reason the Petitioner may be storing water in excess of its decree.

CONCLUSIONS OF LAW

Contained in the Supreme Court opinion Number 27047.

JUDGMENT

IT IS THE JUDGMENT OF THE COURT that the application of the City of Grand Junction for the right and authority to store and impound its Paramount right in and to 7.81 c.f.s. of water should be, and hereby is, denied and dismissed for the reason that the Water Court lacks jurisdiction over the matter.

DONE IN OPEN COURT this 1ST day of APRIL, 1977.

BY THE WATER COURT:

Fred Balhorn
Water Judge
Division No. 4

IN THE SUPREME COURT OF COLORADO

NO. 27635

CITY OF GRAND JUNCTION, COLORADO, a municipal corporation,	)
Petitioner,	)
v.	)
DISTRICT COURT OF WATER DIVISION NO. 4 and THE HONORABLE FRED CALHOUN, JUDGE OF THE DISTRICT COURT OF WATER DIVISION NO. 4,	)
Respondents.	)

ORIGINAL PROCEEDING

EN BANC RULE MADE ABSOLUTE

Graham and Dufford
D. J. Dufford,

Attorneys for Petitioner

The Honorable Fred Calhoun,

Respondent, Pro Se

*MR. JUSTICE DAY delivered the Opinion of the Court.

This is an original proceeding. It is not the usual action in the nature of mandamus in that it was made necessary because of the refusal of the respondent water judge to comply with the mandate of this Court in City of Grand Junction v. Kannah Creek Water Users Association, ____ Colo. ____, 557 P.2d 1173.

The City of Grand Junction (City) was the successful party in the above case on appeal to this Court. In our decision we reversed a judgment of the water court denying the City certain storage rights for which it sought a court order. Our remand was unequivocal and certainly not ambiguous. It stated "Judgment is reversed and the cause is remanded to the trial court [respondent water court] to enter its order granting the requested storage rights."

Upon the case being returned to the water court, the respondent judge refused to enter the order as directed ruling that "... the Water Court in 1977 has no jurisdiction to grant the application."

The City, thus having its application for entry of a corrected judgment denied and dismissed, had several courses of action. It could have petitioned this Court for a contempt citation which would have delayed matters while we dealt with the recalcitrant judge. The City chose, therefore, to file the instant original proceeding requesting we order the respondent judge to show cause why he should not be compelled to enter the mandated order. The respondent has answered the show cause order and the matter is now at issue. We make the rule absolute.

Without reiterating our original majority opinion in City of Grand Junction, supra, suffice it to say the water court judgment which was appealed was entered upon reliance on an earlier 1970 judgment of the Mesa County District Court which we held to be void. We further held that the water court committed error when it held as res judicata the 1970 void judgment.

Respondent judge, either facetiously or through unwillingness to study the opinion, has made a faulty deduction on a faulty premise concluding with a ruling that if the 1970 district court judgment was void, then "... the water court lacks jurisdiction over the matter." The court, however, has attempted to reargue the original case herein and to express his acceptance of the dissenting opinion. The majority opinion is the law of the case.

It is axiomatic that courts retain jurisdiction to correct void judgments or erroneous ones. In the case originally before the water referee, the City obtained a favorable decision granting its right to the requested storage. The water court accepted jurisdiction to review the referee's decision, entered an order reversing it and remanded the cause to the referee with directions "to enter a ruling not inconsistent with these [the court's] findings, and deny the right to store the 7.81 c.f.s. paramount decree." (Emphasis added).

The water court then — as its proceedings below reveal — had jurisdiction of the subject water in its division, had jurisdiction of the parties and had jurisdiction over the referee. In exercising that jurisdiction, it granted relief to the protesting Kannah Creek Water Users Association and denied the requested right to the City. That judgment we held to be error but it remains on record in the water court until corrected. Our remand reinvested jurisdiction in the water court to make the corrected order. We have mandated that the erroneous judgment be vacated and that the new order be entered. Nothing could be more plain. The water judge has no discretion but to carry out the order on remand. It is so ordered.

The rule is made absolute.

MR. JUSTICE GROVES does not participate.

*Retired Supreme Court Justice sitting under assignment of the Chief Justice under provisions of Article VI, Section 5(3) of the constitution of Colorado.

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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 South-east one-quarter of Section thirty-three, in township twelve

Decree Date: 6-1-1916 2-A

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 ditchs shall have, with reasonable diligence, increased their cultivated, meadow and pasture land thereunder, to more than fifteenhundred and forty acres; and

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 landtherewith irrigated.

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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.

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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 SW¼ of SW¼ 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 oforesaid, 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,

Decree Date: 7-25-1888

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°30' W from N.E. cor. of S. W.¼ 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 NE¼ of NE¼ of Sec. 3 T 3 S, R 2 E, Ute P.M. bears 30°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 ~~rise~~ 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 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

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CERTIFIED COPY OF DECREE

STATE OF COLORADO)
(ss.
County of M e s a)

IN THE DISTRICT COURT

No. 1148

IN THE MATTER OF THE PETITION OF B. F. LUCAS FOR A DECREE CHANGING THE POINT OF DIVERSION OF HIS RIGHT TO USE WATER FROM KANNAH CREEK IN DISTRICT NO. 42 IN SAID MESA COUNTY

And now on this day this cause coming on to be heard upo. the petition of said B. F. Lucas and the Answer of R. N. Day thereto, and the testimony of the parties, and it appearing to the Court that all of the allegations of the petitioner are true and that the Change of the Point of Diversion Prayed will not injuriously affect the vested rights of others in and to the use of water from said Kannah Creek. And it further appearing that all persons having vested rights in and to the use of such waters have been duly notified of the time and place of the hearing of this cause and petition.

Now, therefore, it is Ordered, Adjudged and Decreed that the petitioner B. F. Lucas, be allowed to divert from said Kannah Creek, at a point on the north bank of said creek about one hundred yards above the headgate of the Juniata Ditch, Fifty Two and 1/2 inches of water of said Creek, as of priority No. 2, which waters have heretofore been diverted from said Creek through the headgate of the Kannah Creek Extension Ditch, and that upon filing of a certified copy of this decree together with plats of said ditches as provided by Statute, the State Engineer issue an order to the Water Commissioner of said District No. 42, notifying him of such changes of place of diversion of such water.

And it is further ordered that thereafter the amount of water heretofore decreed to said The Kannah Creek Extension Ditch be decreased to the extent of the said 52½ inches so diverted.

Done in open Court. Theron Stevens, Judge March 6" 1900

STATE OF COLORADO,)
(ss.
County of M e s a.)

I do hereby certify that the above and foregoing is a true and complete copy of the Decree made and entered in the above entitled cause in the District Court of Mesa County, Colorado, Docket No. 1148, as the same appears of record in Judgment Book 1, at page 200, of the records of said Court in my hands now remaining.

Witness my hand and the seal of said Court this 5th day of August, 1959.

Clerk of the District Court of Mesa County, Colorado.

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IN THE DISTRICT COURT IN AND FOR THE

COUNTY OF MESA AND STATE OF COLORADO

[redacted]

[redacted], ORIGINALLY ADJUDICATED TO THE JUNIATA DITCH AS PRIORITY #11 OUT OF SAID CREEK, IN THE DECREES OF THE DISTRICT COURT IN WATER DISTRICT NO. 42; TO THE HEADGATE OF THE KANNAH CREEK HIGHLINE DITCH,

THE JUNIATA DITCH COMPANY, a Corporation,

PETITIONER.

. . . DECREE

Juniata

THIS MATTER COMING ON FOR HEARING on this 12th day of September, A. D. 1955, the Petitioner appearing by Smith & Holmes, its Attorneys of record, and no protest having been filed or appearance made in opposition to said Petition, and the Court having considered all of the testimony and evidence and now being fully advised in the premises, finds:

THAT the Petition for the change in the point of diversion of the adjudicated water of the Juniata Ditch Company, a corporation, was filed on July 26, 1955, and on said date the Court ordered that the hearing on said Petition be held on Monday, the 12th day of September, 1955, at 10:00 a.m., in the District Court room in the City of Grand Junction, Mesa County, Colorado, and on the said date the Court ordered that the Division Engineer for Division No. 4 be requested and directed to furnish a list of the names and addresses of all owners and claimants of ditches, reservoirs, and other structures by which water has been diverted during the last calendar year in Water District No. 42, so far as is known to said water official, and the Court further ordered that the Clerk of the Court issue a notice of pendency of this proceedings, containing the facts and matters

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required by Statute, and that the Clerk of the Court cause a printed or typewritten notice to be mailed, by ordinary mail, to all persons at the addresses as shown by the list furnished by the Division Engineer, and further ordered that the notice be published in the Daily Sentinel, a daily newspaper published in Grand Junction, Colorado, once a week for at least five consecutive issues prior to the date set for hearing.

The Court further finds that on the 26th day of July, 1955, in conformity with said Order, the Clerk of the Court delivered a certified copy of said order to Frederick W. Paddock, Division Engineer for Division No. 4, by mailing said copy to him at Montrose, Colorado on July 26, 1955.

The Court further finds that on August 27, 1955, in answer to said order, Frederick W. Paddock, Division Engineer, notified the Clerk of the Court that the list of names and addresses of all owners and claimants of ditches, reservoirs and other structures by which water has been diverted during the last calendar year in Water District No. 42, so far as known to said water official, is the same as that list furnished for Civil Action No. 9995, and that the same is suitable for use in this Action [redacted]

The Court further finds that under date of August 29, 1955, Lucy E. Hogan, Clerk of the District Court, certified that pursuant to the Order of Court she mailed, postage prepaid, by ordinary mail, a copy of the notice of hearing in this cause to each of the persons and corporations listed and shown in the list of water users furnished by Frederick W. Paddock, Division Engineer for Division No. 4, in which Water District No. 42 is located, and in said certificate the Clerk included the list of the persons and corporations to whom notices were mailed.

The Court further finds that the said notice, as issued by the Clerk under the Order of the Court, was published for five consecutive weekly insertions in the Daily Sentinel, a daily newspaper of general circulation in Mesa County, Colorado, and that the first publication thereof was on

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July 27, 1955 and the last publication on August 24, 1955, and that the proof of publication by the Daily Sentinel was returned to the Court and is filed herein.

The Court further finds that notice of this proceeding, and application for change of point of diversion as set out in the Petition was duly and regularly given in full compliance with the applicable statutes, and said notice was served on all persons entitled to service as required by statute, and that the Court has jurisdiction of this proceeding and of all persons who might be adversely affected thereby.

The Court further finds, from the evidence presented in open court, that the Petitioner herein is the owner of and has made beneficial use of 21.25 cubic feet of water per second of time, with adjudicated Priority No. 11 and priority date of January, 1884, of the waters of Kannah Creek as appearing in the records of this Court under date of July 25, 1888 in Record Book 1 at Page 367 in the general water adjudications proceedings in Water District No. 42, and that said water was adjudicated out of Kannah Creek by headgate located at a point on Kannah Creek four miles nearly due east of the middle of the east line of Section 25, Township 2South, Range 2 East, of the Ute Meridian, which point is now more specifically described under the resurvey of said area as a point on the right bank of Kannah Creek whence the east quarter corner of Section 33, Township 12 South, Range 97 West (resurvey) bears North 71° 58' East 2263 feet.

The Court further finds, from the evidence, that by virtue of of water carriage right agreement of sale and purchase dated March 8, 1930 between the Kannah Creek Highline Ditch Company and the Grande Ditch Company, Petitioner herein, the said 21.25 cubic feet of water per second of time decreed to the Kannah Ditch Company, has continuously been diverted and carried during each irrigation season since 1930 through the headgate and ditch of the Kannah Creek Highline

The Court further finds that the headgate of the Kannah Creek Highline Ditch was described under the original survey under which the decree to the Kannah Creek Highline Ditch was made, as a point 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 P.M. bears North 24° 30' East 931 feet and that said point under the resurvey of said area is presently described a s a point whence the resurvey East Quarter corner post of Section 33, Township 12 South, Range 97 West of the 6th P.M. bears North 5° 30' East 695 feet.

The Court further finds that there is no ditch or [illegible] diverting water from Kannah Creek between the point of diversion of the Juniata Ditch as originally decreed and the point of diversion of the Kannah Creek Highline Ditch, to which point the Petitioner herein prays the change of point of diversion, and that the proposed change will not injuriously affect the vested rights of others in and to the use of water.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Decree awarding to the Juniata Ditch Company the 11th priority out of Kannah Creek in the Juniata Ditch for 21.25 cubic feet of water per second of time [illegible] which point is now more specifically described under the resurvey of said [illegible] and which Decree bears a priority date of January, 1884, and was entered on the 25th day of July, 1888 in Record Book 1 at Page 367 in a general water adjudication proceeding in Water District No. 42 of this Court,

and that said Decree is hereby modified by changing the point of diversion therein fixed from the original point of diversion to the headgate of the Kannah Creek Highline Ditch Company, located at a point whence the resurvey East Quarter corner post of Section 33, Township 12 South, Range 97 West of the 6th P.M. bears North 5° 30' East 695 feet, which point was originally described under the original survey as contained in the Decree of the Kannah Creek Highline Ditch as a point 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 P.M. bears North 24° 30' East 931 feet.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Petitioner shall have full right and authority to take out and apply to a beneficial use 21.25 cubic feet of water per second of time, decreed to the Juniata Ditch Company as Priority No. 11 with priority date of January, 1884, from said new point of diversion, to wit: The headgate of the Kannah Creek Highline Ditch.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that a certified copy of this Decree be filed by the Clerk of this Court in the office of the State Engineer, and that a certified copy thereof be filed in the office of the Irrigation Division Engineer for Division No. 4, and that the Water Commissioner in and for Water District No. 42 be and he is hereby authorized and directed to recognize the right of said Petitioner to take and use 21.25 cubic feet of water per second of time under Priority No. 11 out of Kannah Creek, relating back to and dating from January, 1884 through the new point of diversion as set forth in this Decree.

IT IS FURTHER ORDERED that the Petitioner pay the cost of this proceedings.

DONE IN OPEN COURT in Grand Junction, Colorado this 12th day of December, 1950.

By the Court.

Charles E. Blaine
Judge

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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

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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

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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 thisdecree 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.

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WATER FILE No. 259

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° 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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WATER FILE
No. 115

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

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 E¼ 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-

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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.

KANNAH CREEK WATERSHED

GRAND JUNCTION FLOW LINE AND WATERWORKS SYSTEM

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 (SW¼) 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 13° 48' West, distant 2.062 feet, from which point its Flow Line runs in a general Northwesterly 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.

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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,

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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.

There is so situated as to be susceptible of profitable 4 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;

THIRD: That the water diverted by means of said ditch 5 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.

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.

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WATER PROJ. 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.

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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. Kromm, and Gertrude Kromm, 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 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 civilengineer, 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 56[illegible].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

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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 landunder 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, 1926, and Decreed Date July 25, 1941.

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

RESERVOIR NO. 171 — Priority No. 777. ABSOLUTE and Priority No. 777, CONDITIONAL

THE COURT FINDS:

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 W¼ corner of Sec. 22, Twp. 12 S., R. 96 W., 6th P. M. bears N. 82° 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

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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 Grad 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.

DRY CREEK WATER SHED

RESERVOIR NO. 1 PRIORITY NO. 1

DRY CREEK RESERVOIR & SUPPLY DITCH

Claimed by E. E. 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 sixty 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.

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 (atotal 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.

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Now known as: Chambers Reservoir

WHEREFORE: IT IS ORDERED AND DECREED that said reservoir is entitled to be filled, 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: That the water so authorized to be stored shall not, together with water otherwise br 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.

12-A

DEEP CREEK WATER-SHED

RESERVOIR NO. 1 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 oper tion 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 whence 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 reservoirwill

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DECREE DATE: 6-1-1916

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

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.

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.

~~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 FURTHER: 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 .018 of a cubic foot of water per second, per one acre of land, for all of the land therewith irrigated.

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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. 49. 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° 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.

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404.

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WATER FILE 229

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° 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° 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.

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Decree Date: 7-25-41 533

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° 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.

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Decree Date: 7-25-41

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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° 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 26½ feet, and additional water stored therein to the amount and extent of 2428.07 acre feet.

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422

Decree Date: 7-25-41 14-A

14-B

IN THE DISTRICT COURT IN AND FOR

WATER DIVISION NO. 4 W.D.-42

STATE OF COLORADO

Case No. CW-(74) 305

IN THE DISTRICT COURT
WATER DIVISION 4
MAR 13 1975
Kay Phillips, WATER CLERK
By _____ DEPUTY

DECREE

This matter came on for hearing this 13th day of March, 1975, upon an Order to Show Cause why a conditional water decree should not be cancelled, the State of Colorado being represented by the Water Engineer of Division No. 4 and the Water Referee of Division No. 4, and after hearing the testimony on:

FLOWING PARK RESERVOIR 1643.9 A.F.

THE COURT DOTH FIND:

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That the Court has jurisdiction over the subject matter of this action; that notice was given in accordance with the rules and statutes governing this action; that the applicant or conditional water decree owner has failed and neglected to use the water and water decree under the above case number; that applicant has failed to file for due diligence as provided by Statute; that the applicant has abandoned the conditional decree; that the applicant had the intent to abandon the decree; and that the conditional decree should be cancelled.

WHEREFORE, IT IS THE ORDER OF THE COURT that the above named conditional water decree should be, and hereby is CANCELLED.

Done in open Court this 13th day of March, 1975.

BY THE COURT:

Water Judge
Division No. 4

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 North west 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

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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 quamtum-equivalent of Kannah Creek water is diverted and conveyed to its destination.

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

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;

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.

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.

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.

~~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 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; 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~~,

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.

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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.

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Decree Date: 10-1-16

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 E¼ 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 Raber, said reservoir site was on government property, and each year after filing said company did a limited

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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.

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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° 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.

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Decree Date: 7-25-41

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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%
John 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 Kannah 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.

#18-A

Decree Date: 7-25-41

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 wil be new irrigation, and will required 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 aa 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 opinionthat 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 or of 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."

NOTE: We are unable to locate the Order making 1562 acre feet absolute. However, we are sure there is such an Order. The Order was entered on November 14, 1962 in Case No. W-130.

IN THE DISTRICT COURT OF MONTROSE COUNTY

WATER COURT DIVISION

WATER DIVISION IV

Case No. W-130

THE APPLICATION OF THE CITY OF GRAND JUNCTION, COLORADO FOR A DETERMINATION OF REASONABLE DILIGENCE WITH RESPECT TO THE JUNIATA RESERVOIR ENLARGED	ORDER & JUDGMENT

This matter came on for hearing upon opposition by C. V. Hallenbeck and Charles V. Hallenbeck, Jr., on September 22, 1970; the City of Grand Junction being represented by counsel; D. J. Dufford; C. V. Hallenbeck being present in person and represented by counsel, William G. Waldeck; and Charles V. Hallenbeck, Jr., being present in person and represented by counsel, Marvin B. Woolf; and after hearing the testimony,

THE COURT DOTH FIND:

1. That the brief for the City of Grand Junction was filed October 26, 1970; That the Answer brief by the opposers was filed November 19, 1970; That a Reply brief was due December 11, 1970, but said brief had not been filed as yet; and

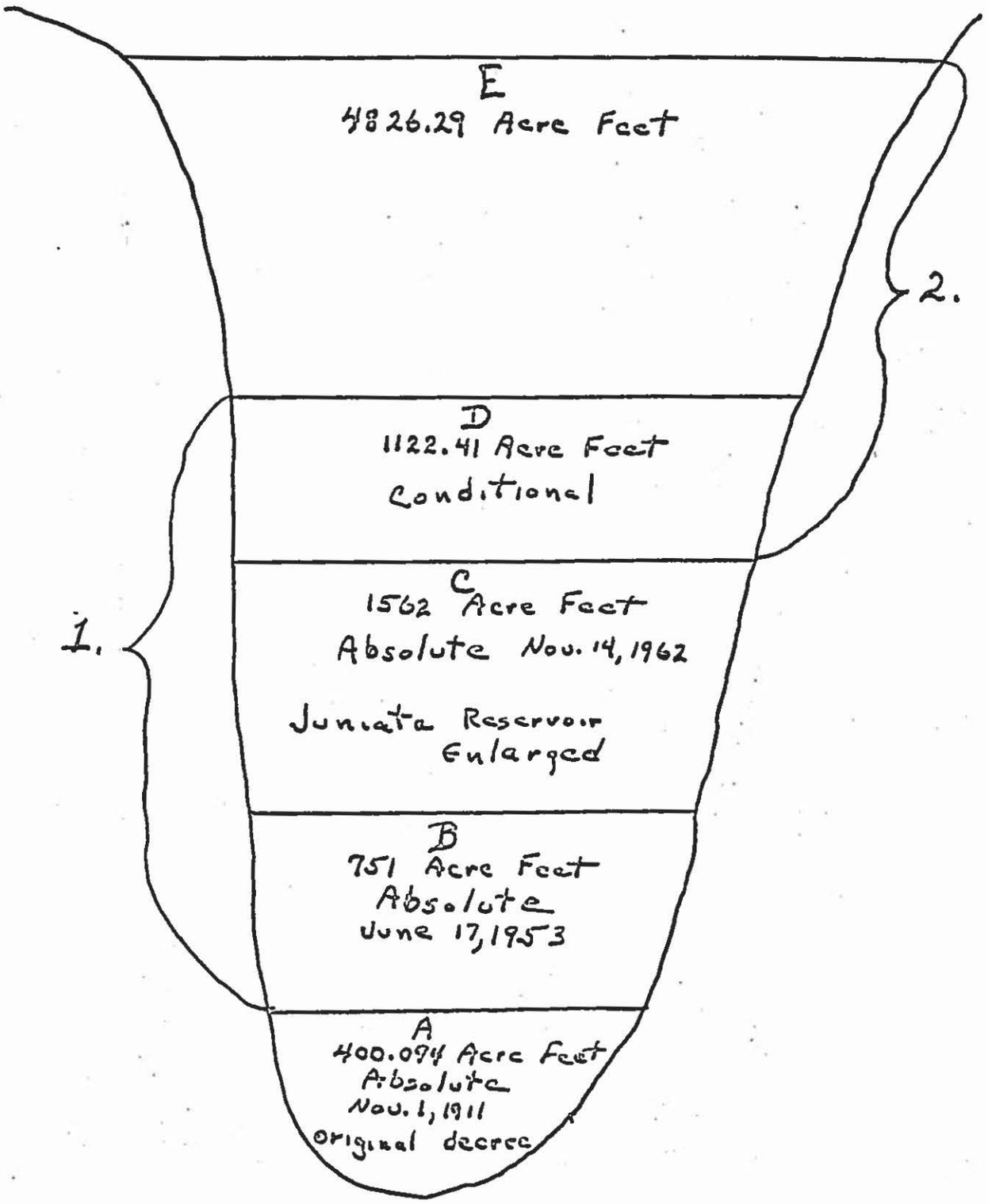
THE COURT FURTHER FINDS:

2. To better understand the case, the following facts are set forth:

There are actually three parties, or points of view, represented in the case. The Juniata Reservoir Enlarged, Inc.,

is the actual decree holder and the owner of the reservoir in question. It will hereafter be referred to as Company. The Company was not represented, as such, at the hearings on reasonable diligence. The second party, or petitioner, is the City of Grand Junction, Colorado, hereinafter referred to as City. It was the City that filed the petition for a finding of reasonable diligence on the part of the Company. This petition is opposed by the Hallenbeck family interests, hereinafter referred to as Hallenbeck. The Juniata Enlarged Reservoir will be referred to as reservoir.

3. The original Juniata Reservoir was decreed 400.094 Acre Feet of water as of the date of November 1, 1911. The Juniata Reservoir Enlarged was adjudicated 751.00 Acre Feet of water absolute as of date of June 17, 1953, and 2,684.41 Acre Feet of water conditional as of the same date. The conditional decree was made absolute to the extent of 1562 Acre Feet (897 acre feet for irrigation and 665 Acre Feet for winter stock water) on November 14, 1962, leaving 1,122.41 Acre Feet as a conditional decree. It is this last conditional decree that is here in question. In addition thereto, Hallenbecks have filed for a conditional decree for Juniata Second Enlargement in the amount of 5,948.7, said conditional decree to include the storage space now in question, together with an addition to the reservoir to accomodate the full storage right asked for, and may be hereinafter referred to as Case No. W-18. This situation may better be visualized by the following diagram representing a cross section of the reservoir:



1. Juniata Reservoir Enlarged. B & C completed and absolute decree awarded. D incomplete and has the conditional decree here in question of reasonable diligence.

2. Hallenbeck application for conditional decree in case No. W-18.

When the Company was awarded an absolute decree for the 751.00 Acre Feet of water, the stockholders were:

C. V. Hallenbeck	50%
Luther Crosswhite	25%
Wilbur J. Raber	12½%
John P. Raber	12½%

Under date of January 3, 1967, the City obtained "option agreements" to the 50% not owned by Hallenbecks. Under date of July 14, 1969, they obtained the stock of Wilbur J. Raber (which may be spelled Rayber). This stock was immediately re-issued as follows:

Alvin Wing	1 share
Richard Plowman	1 share
Richard M. Gray	3 shares
Grand Junction	7½ shares

The City, for purposes of this decision, owns the 50% discussed. What they do not own outright, they have options on with full right to vote and control the shares.

THE COURT FURTHER FINDS:

4. That during the year of 1967 Mr. C. V. Hallenbeck made expenditures on the reservoir and so testified in 1968 as such time as evidence of reasonable diligence was presented to the Court; That the City has, to this date, not repaid Mr. Hallenbeck for a proportionate share of the money so expended; That the Company has not repaid Mr. Hallenbeck for the money so expended; That it is immaterial for the purposes of this case whether or not Mr. Hallenbeck was repaid by the Company or the City.

5. That Hallenbeck made the following motions which should be ruled upon:

a. Motion to dismiss because the pleadings of the city omitted any allegation that either the Company or the City had an intent to complete the structure so as to make the conditional decree absolute,

b. Motion to dismiss because the City had no standing to file an application for reasonable diligence, and

c. Motion to dismiss because the Colorado Constitution prohibits the City from owning stock in a private corporation.

In reply, the City requested that any action be held in abeyance to allow the Company to file an application for reasonable diligence. It should be noted at this time that such an application would not meet the time element set forth in the statute. For the purposes of this decision, these motions will be ruled on, but because of the final decision, none of the above motions will be acted upon as to either granting or denying the application. In the event of an appeal from this judgment, the motions are of sufficient importance that the Supreme Court should have an opportunity to decide the motions for future guidance to the Courts. That motion (a) above should be denied so that the City may put into evidence any intent the City had, as a stockholder, for the completio of the project. That motion (b) above should be denied for reasons to be set out in the Conclusions of Law. That, under normal circumstances, motion (c) above would be sufficient to dismiss the case for reasons set out in the Conclusions of Law. That the motion of the City to hold the matter in abeyance should be denied and that the City should be allowed to proceed with its evidence as to reasonable diligence (which would be the same witnesses and evidence that the Company would have had).

6. That Hallenbeck made no expenditure nor contributed any labor which could be claimed for the benefit of the Company in the biennial period 1968-1969 on a claim of reasonable diligence; That the Company made no expenditure of money nor have any labor performed during the biennial period in question which could be considered as reasonable diligence; That the City did do work on their own transmission and distribution lines at a cost of approximately $2.2 million; That such work as was done by the City was in a long-range plan formulated by the City prior to the year of 1967,

the year that the City obtained its options; That the work completed by the City was for the benefit of the City, and not for the benefit of the Company nor its stockholders as a whole; That such work as was completed by the City was for the improvement of the transmission lines and the distribution lines and for the improvement of the quality of the water for the City, and not for the benefit of the Company; That the relining project completed was undertaken because of "massive tuberculation" of the pipe, and to cut the friction in the pipe and thereby increase the carrying capacity, and not for the benefit of the Company; That the City has not formed the intent during the biennial period to continue with nor to complete the project; That the City voted against completing the enlargement; That C. V. Hallenbeck, Jr., has offered to complete the enlargement at a cost of $150.00 per acre foot, and such offer was refused by the City; That the Company has not, either in and of itself or acting through the City, shown reasonable diligence in the completion of the enlargement of the Reservoir.

CONCLUSIONS OF LAW

"Where the interests of beneficiaries are not represented or protected by their trustees, the beneficiaries become proper and necessary parties, with the right to appear and present their case."
Denver vs. Northern Colorado Water District, 276 P2d 992, 130 Colo 375

- - -"a municipal corporation has no different status from that of an individual or any other party to the proceedings;"
Ibid

- - -"that the question of reasonable diligence and of fixed and definite purpose are questions of fact to be determined by the trial court from the evidence."
Ibid

"One may procrastinate and be dilatory, entirely without excuse or reason, yet without any intent to abandon the project."
Ibid

"The requirement of the statute authorizing conditional decrees is not that the claimant shall not have abandoned, but rather that he has prosecuted his claims of appropriation and the financing and construction of his enterprise with reasonable diligence."
Ibid

Even though the statute has been amended by the enactment of a complete new statute, the requirements for a conditional decree and for reasonable diligence is the same, and the old case law may be used.

The only requirement for a conditional decree is the necessary intent to divert water and put it to a beneficial use. The showing of reasonable diligence includes not only the above intent, but the further fact that there must have been some affirmative act or acts during each biennial period in order that the court may enter an order continuing the conditional decree.

Article XI, Section 2 of the Constitution of the State of Colorado prohibits any city from becoming a shareholder in any corporation or company, public or private, except in specific cases not here involved. Case law appears to make a distinction between public corporations and private corporations, uniformly denying a city the right to be a shareholder in a private corporation.

WHEREFORE IT IS THE ORDER OF THE COURT that the Motion to dismiss because there was no allegation of intent should be, and hereby is, denied, and

IT IS THE FURTHER ORDER OF THE COURT that the Motion to dismiss because the City has no standing to file for reasonable diligence should be, and hereby is, denied, and

IT IS THE FURTHER ORDER OF THE COURT that the Motion to dismiss because the Colorado Constitution prohibits the City from owning stock in the Company should be granted, but it is not granted and the case should be decided on other points, and

IT IS THE FURTHER ORDER OF THE COURT that the Motion to hold further action in abeyance should be, and hereby is, denied, and

IT IS THE FURTHER ORDER OF THE COURT that the application of the City of Grand Junction for a finding of reasonable diligence on the part of the Juniata Reservoir Enlarged, Inc., pertaining to the remaining conditional portion of decree number 930 should be, and hereby is, denied, and that portion of decree number 930 in the amount of 1122.41 acre feet which has been conditional for the biennial period of 1968-1969 should be, and hereby is, cancelled and declared to be available for any other valid water decree.

DONE in open Court this 24th day of February, 1971.

BY THE COURT:

Fred Paddock
Water Judge

FEB 25 1971

IN THE DISTRICT COURT IN AND FOR

WATER DIVISION NO. 4

STATE OF COLORADO

Case No. W-18

IN THE MATTER OF THE APPLICATION FOR WATER RIGHTS OF C. V. HALLENBECK, C. V. HALLENBECK, JR., AND C. A. HALLENBECK IN MESA COUNTY	)	JUDGMENT AND DECREE

This matter came on for hearing on the 22nd day of September, 1979, upon the application of the applicants for a water right, the applicants being present in person and by their attorneys, Mr. William G. Waldeck and Mr. Marvin Woolf, and the City of Grand Junction appearing in opposition thereto appearing by counsel, D. J. Dufford, and after hearing the evidence, THE COURT DOTH FIND:

That this case was consolidated with case number W-130 for hearing; That the Findings of Fact and Judgment in case number W-130 should be made a part of this record, and consolidated with this case for consideration; That the application should be granted.

WHEREFORE IT IS THE ORDER OF THE COURT that the Findings of Fact and Judgment in case number W-130 should be, and hereby is, made a part of the record of this case, and should be taken into consideration in making this decision, and

IT IS THE FURTHER ORDER OF THE COURT that the application of C. V. Hallenbeck, C. V. Hallenbeck, Jr., and C. A. Hallenbeck should be, and hereby is approved for 5,948.7 acre feet of water as a conditional decree dating from and after February 24, 1970, with a historical date of April 2, 1967.

DONE IN OPEN COURT this 22nd day of February, 1971.

BY THE COURT

Fred Paddock
Judge

19-A

DATE OF MAILING
4-25-84

Filed in The District Court
Water Division No. 4
APR 25 1984
Kay Phillips, Clerk

DISTRICT COURT, WATER DIVISION NO. 4, COLORADO

Case No. 82CW280 Ref. W-18 and W-638

IN THE MATTER OF THE APPLICATION FOR WATER RIGHTS OF:

CITY OF GRAND JUNCTION, COLORADO, in Mesa County, Colorado River drainage

Applicant, City of Grand Junction, Colorado, by its attorney, D. J. Dufford, P. O. Box 2188, Grand Junction, Colorado 81502, by Application filed October 12, 1982, requests a continuation of conditional rights and an absolute decree.

FINDINGS OF FACT

1. All notices required by law of the filing of this application have been given.

2. The Referee has jurisdiction of this case.

3. The time for filing of statements of opposition has expired, and no such statements have been filed.

4. Applicant has completed a portion of the appropriation as required by the Conditional Decree issued in Case No. 638 on February 24, 1970. Diversion of 4,154.6 acre feet of water has been used by the City of municipal, industrial, domestic and other beneficial U uses. Therefore an Absolute Decree for 4,154.6 feet of water is appropriate at this time.

5. Applicant has not shown sufficient intent to further enlarge the reservoir to justify the continuance of the balance of the conditional decrees in Cases No. W-18 and W-638. Therefore the balance of the decrees should be denied.

RULING

The Applicant is hereby granted an ABSOLUTE DECREE for 4,156.6 acre feet of water from JUNIATA RESERVOIR SECOND ENLARGEMENT for municipal, industrial and domestic uses, from a point of diversion on the high water line

1430-026

19-B

at the Northeast End of the dam, from which the Northwest Corner of Section 31, Township 12 South, Range 97 West, 6th P.M. bears North 79°00' West 815 feet, with appropriation date of April 2, 1967, adjudication date of December 31, 1969.

The applicant having failed to show intent to complete the balance of the conditional decree issued in Case Nos. W-18 and W-638, to JUNIATA RESERVOIR SECOND ENLARGEMENT, the same is hereby CANCELLED.

Dated this 25th day of April, 1984.

Aaron R Clay

Aaron R. Clay, Water Referee
Division No. 4


19-C

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026

DISTRICT COURT, WATER DIVISION NO. 4, COLORADO

Case No. 82 CW 280 (Ref. W-18 and W-638)

PROTEST TO REFEREE'S RULING

THE APPLICATION FOR WATER RIGHTS FOR THE CITY OF GRAND JUNCTION, COLORADO, IN MESA COUNTY
COLORADO RIVER DRAINAGE

The Applicant, City of Grand Junction, Colorado ("City"), submits the following protest to the ruling of the referee entered in the above entitled case on April 25, 1984. In support of its protest, Applicant states:

A. Applicant does not protest that portion of the ruling which granted the Juniata Reservoir-Second Enlargement an absolute decree of 4,156.6 acre feet.

B. Applicant does protest that part of the Referee's ruling which reads as follows:

> The Applicant having failed to show intent to complete the balance of the conditional decree issued in Case Nos. W-18 and W638, to Juniata Reservoir-Second Enlargement, the same is hereby CANCELED.

C. There was no basis for canceling that part of the decree issued to the Juniata Reservoir-Second Enlargement on October 24, 1970, which remains in a conditional status.

D. In connection with its construction of that portion of the Juniata Reservoir-Second Enlargement to hold 4,154.6 acre feet of water, the City expended in excess of $1,000,000.00 to construct that portion of the Second Enlargement for which an absolute decree was granted.

E. The City has not abandoned the remaining portion of its conditional decree. The conditional portion of the decree and the further enlargement of the Juniata Reservoir-Second Enlargement, is an integral part of the City's development plans for municipal water service.

THEREFORE, the City requests the Court to amend and modify the Referee's Ruling of April 25, 1984, to find that the City has been diligent with respect to the remaining conditional portion of the decree awarded to the Juniata Reservoir-Second Enlargement and, if necessary, to permit the City to present evidence of its intent to complete the Juniata Reservoir-Second Enlargement to its full decreed capacity.

19-C

Dated this 9th day of May, 1984.

DUFFORD, WALDECK, RULAND,
WISE & MILBURN

By _____
D. J. Dufford (2913)
Attorney for Applicant
900 Valley Federal Plaza
P.O. Box 2188
Grand Junction, CO 81502
(303) 242-4614

19-D

State of Colorado
SEVENTH JUDICIAL DISTRICT

District Administrator
Montrose County
Courthouse
Montrose, CO 81402
Telephone 249-9676

Combined Courts:

Delta County
Fifth & Palmer
Delta, CO 81416
Telephone 874-4457

Gunnison County
Courthouse Bldg.
Gunnison, CO 81230
Telephone 641-3500

Hinsdale County
P.O. Box 245
Lake City, CO 81235
Telephone 944-2227

Montrose County
P.O. Box 368
Montrose, CO 81402
Telephone 249-9676

Montrose County
Associate Court
P.O. Box 78
Nucla, CO 81424
Telephone 864-7373

Ouray County
P.O. Box 643
Ouray, CO 81427
Telephone 325-4405

San Miguel County
P.O. Box 919
Telluride, CO 81435
Telephone 728-3891

Water Division Clerk
P.O. Box 368
Montrose, CO 81402
Telephone 249-9676

Probation Department:

Montrose Office
P.O. Box 1307
Montrose, CO 81402
Telephone 249-8622

Delta Office
Courthouse, Room 305
Fifth and Palmer
Delta, CO 81416
Telephone 874-4457

Gunnison Office
Gunnison County
Courthouse
200 East Virginia Ave.
Gunnison, CO 81230
Telephone 641-0695

June 26, 1984

TO: Judge Brown

FROM: Referee Clay

RE: 82CW280, City of Grand Junction.

You have asked me to write you and explain my reasons for cancelling the balance of the conditional decree to the Juniata Reservoir, rather than granting diligence and continuing it for four years.

First, I looked at whether the City had completed the project as contemplated in the original decree. From everything I could find, the City had a plan to raise the dam a certain number of feet (ten, as I recall). Once that was done, the reservoir was supposed to have an additional 5,948.7 acre feet. As it turned out after the reservoir was raised the contemplated number of feet, the reservoir didn't quite increase by the 5,948 acre feet. However, it appears to me that the project as designed was completed.

Second, I looked to see if the City has definite plans to make use of the balance of the conditional right. In considering this, I tried to use a test of whether they have the intent etc. necessary to justify a new conditional decree. My understanding is that the City has no definite expansion plans, no time table for any expansion, and in fact, is not sure that the additional water is needed. In that circumstance, I don't feel that the City would be entitled to a new conditional decree, and so is not entitled to a continuation of the old one.

If you would like to discuss it further, let me know.

Sincerely,

Aaron R Clay

Water Referee
Division No. 4

1430-026

19-D


19-E

DISTRICT COURT, WATER DIVISION NO. 4, COLORADO

Case No. 82-CW-280 Ref. W-18 and W-638

AMENDED RULING AND DECREE OF THE COURT

IN THE MATTER OF THE APPLICATION FOR WATER RIGHTS OF:

CITY OF GRAND JUNCTION, COLORADO, in Mesa County, Colorado River drainage

Applicant, City of Grand Junction, Colorado, by its attorney, D. J. Dufford, P.O. Box 2188, Grand Junction, Colorado 81502, by Application filed October 12, 1982, requests a continuation of conditional rights and an absolute decree.

FINDINGS OF FACT

1. All notices required by law of the filing of this application have been given.

2. The Court has jurisdiction of this case.

3. The time for filing of statements of opposition has expired, and no such statements have been filed.

4. Applicant has completed a portion of the appropriation as required by the Conditional Decree issued in Case No. 638 on February 24, 1970. Diversion of 4,154.6 acre feet of water has been used by the City of municipal, industrial, domestic and other beneficial U uses. Therefore, an Absolute Decree for 4,154.6 feet of water is appropriate at this time.

5. Based upon the Applicant's motion for summary judgment, as well as its memorandum brief and an affidavit in support of said motion, the Court finds that the Applicant has demonstrated reasonable diligence to keep in full force and effect its conditional water right to the extent of 1,791.4 acre feet is not made absolute by this order. The basis for this finding is the Applicant's completion of a portion of the second enlargement of the Juniata Reservoir, engineering studies which it has made concerning future enlargement, and its expressed intention to complete the second enlargement so as to fully utilize its conditionally decreed capacity. For these reasons the Referee's ruling of April 25, 1984, should be amended to continue that portion of the conditional decree which was cancelled by the Referee.

DECREE

The Applicant is hereby granted an ABSOLUTE DECREE for 4,156.6 acre feet of water from JUNIATA RESERVOIR SECOND ENLARGEMENT for municipal, industrial and domestic uses, from a point of diversion on the high water line at the Northeast

#19-E

End of the dam, from which the Northwest Corner of Section 31, Township 12 South, Range 97 West, 6th P.M. bears North 79°00' West 815 feet, with appropriation date of April 2, 1967, adjudication date of December 31, 1969.

It is the Court's ruling that reasonable diligence has been shown and that the JUNIATA RESERVOIR SECOND ENLARGMENT is approved and granted continued conditional status with respect to 1,791.4 acre feet.

The Applicant shall be required to demonstrate additional reasonable diligence not later than the month of October 1986 (being four years from the date of its application in this action) and every four years thereafter until the right is decreed absolute.

Dated this 24th day of October, 1984.

Robert A. Lowe

Water Judge
Water Division No. 4

xc: Ruland
Div. Engr.
State Engr.

Mailed-A Copy of this Document to all parties in this case.

Dated 10-24-84

SW

Way Public, Water Clerk

IN THE DISTRICT COURT IN AND FOR THE

COUNTY OF MESA AND STATE OF COLORADO

No. 16803

4 56 7

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

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 Defendants 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

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37-14.21

1430-007 - Chambers Res. PK. Flow.

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.

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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 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

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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 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

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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 th was any causal relationship between such improprieties and Plaintiff 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 faile to show that the water which was stored in the Juniata Reservoir ar 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 pefendant 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 reservoi water to Doctor Monro to save the donee's crops and Plaintiff assert 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 2n 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 t 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 car over storage. Plaintiff emphatically asserted that his losses in 1967 came in May, June and July and prior to the August 8th gift o water to Doctor Monro. He, at no place, asserted that he was shor of storage water in the Juniata Reservoir for the production of ha

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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 illega storage in that Reservoir. In 1967 when the reservoir leak dissipat 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 counse asserted that Plaintiff was not responsible for acts of illegal sto age by his Agent, the Pool. However, there was no evidence that Plaintiff instructed or ordered the Pool to treat Chambers Reservoi

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, (exluding 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 Jniata 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 dor 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 Fitch 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 or 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&W

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." 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 Pickens, 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.

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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 priori 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 stablize 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 ofte used Highline Ditch irrigation direct flow decreed water for storage in said reservoir. Likewise, Plaintiff still fills and refills

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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 determinatio 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

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Mr. C. V. Hollenbeck, 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 FL&WW took water out of priority on occasion, including May 17, 1967. In studying the Exhibits, the Court is satisfied that both the FL&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 furture 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

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way as the stream is now administered to let the mountain 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 illega 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 Stadleman 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.

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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

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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.

II. 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 a 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-

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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 o testimony in direct conflict.

CONCLUSIONS

A. Finding A(2) was the basis of the Court's determinati 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 196 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 appl 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.

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 inpart 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).

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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-trail 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

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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 sufficint 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

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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 sporadicand 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

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such showing except that Exhibits 11 and 15 occasionally 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 wiers.

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.

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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 priorit 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

senior decrees. Opening the head gate for diversion by the Boten, 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 discharg from the reservoir in an amount equivalent to the amount stored within the last twelve hour period before the reservoir commenced to

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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, particular 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.

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#1.

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.

1888 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. 42IN 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 saveral 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 such 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 controling 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 controling 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, endargement 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 approrpiations 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 Knnah 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 " " Mch. 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, Mch. 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, Mch. 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 Bales, 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	19.6	20.9
No. 4	The Northwestern Ditch, Priority No. 4	4.	
No. 5	The Brown & Campion Ditch, Priority No. 5	8.6	
	" " 8	22.	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 — (7a - 7h)

NORTH FORK OF KANNAH CREEK DITCHES.

No. 1, The Bolen Ditch No. 2

That said ditch ~~xxxxx~~ 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 NE¼ 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 HENSCHAEL DITCH.

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

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:-

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 SW¼ of SW¼ 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 oforesaid, 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 Kannaeh 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°30' W from N.E. cor. of S. W.¼ 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 NE¼ of NE¼ of Sec. 3 T 3 S, R 2 E, Ute P.M. bears 30°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 ~~rise~~ 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 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 NE¼ of NW¼ 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 NW¼ of NW¼ 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 com-- puted 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 andby 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

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 SE¼ 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~~ on 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 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 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 NE¼ of NE¼ 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 approrpiation 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.

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

(Signed) M. B. Gerry,

Judge.

STATE OF COLORADO :
: ss.
COUNTY OF ME E S A :

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.

DISTRICT COURT
MESA COUNTY, COLO.

T W Primrose

Clerk of the District Court.

22-B

KANNAH CREEK - North Fork

DITCH NO. 3

PRIORITY NO. 5

WATER FILE No. 117

THE BAUER DITCH

Claimed by Robert T. Anderson.

WHEREAS, on the 25th day of July, 1888, this court decreed to The Bauer Ditch, as the FIFTH PRIORITY out of Kannah Creek, in Water District Forty Two, of said State, 1.96 of a cubic foot of water per second of time,

CONDITIONAL HOWEVER, that the owner of said ditch, namely, Joseph Bauer, should file a sworn statement and plat of said ditch, as required by law.

NOW THEREFORE: IT APPEARING TO THE COURT that pursuant to said condition, and in compliance therewith, said sworn statement and plat have been duly filed, as required by law.

IT IS ORDERED AND DECREED that said former decree be fully confirmed and that, accordingly, there be allowed to flow into said ditch, as the FIFTH PRIORITY out of the North Fork of Kannah Creek, for the use and benefit of the parties entitled thereto, 1.96 cubic feet of water per second -

CONDITIONAL HOWEVER, 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.

4/J

DECREE Date: 7-25-1888

22-B