

MEMORANDUM

Date: February 20, 2013
To: Water Right Files
From: mholliday
Re: Deep Creek Decrees

On November 23, 2012, Curlew Irrigation and Reservoir Co. filed an application for transfer proposing to change the place of use and point of diversion of three water rights, and to define the missing elements of these rights according to current standards. One of these rights is based on a license issued in 1913, one is based on an 1896 decree, and the other is apparently based on a 1914 decree. I read through the 1896 and 1914 decrees as part of my initial review of the transfer application. I also found a supplemental decree entered in 1940 that affirmed the 1914 decree, but with some modifications.

In the 1896 decree (Henry Conant et al. vs. Deep Creek and Curlew Valley Irrigation Co. et al.), 31.46 cfs of the waters of Deep Creek were decreed to 16 water users. These are recorded in the IDWR database as right nos. 17-1 through 17-16. Each of these rights includes ownership, source, nature of use, diversion rate, and priority date. While the descriptions of the points of diversion and places of use are missing from the decree, which is common for water right decrees from that era, all of the other essential elements of the rights are present. It is clear that the purpose of this decree was to determine and define the water rights from Deep Creek.

The 1896 decree also describes how surplus water should be apportioned, although there is no means to practically administer the surplus, since the decree contains no water right elements for this use other than the source. The 1914 and 1940 decrees give no evidence of delivery of the surplus, and the fact that IDWR issued two Deep Creek licenses after the decree seems to nullify its validity. The surplus water is recorded in the IDWR database as right no. 17-17, but should be removed since the right has not been historically recognized or delivered.

The 1914 decree (Curlew Irrigation and Reservoir Co. vs. Pratt Irrigation Co.) described how 30.26 cfs of the natural flow of Deep Creek was to be distributed between five laterals. This water use is recorded in the IDWR database as right no. 17-18. Although diversion rates are shown for each lateral, the decree lacks other elements that are essential to the definition of water rights. The item most notably lacking is priority date. After reading through the decree, it became clear that the purpose of the decree was not the determination of water rights, but rather the administration of already existing water rights. It should also be noted that the quantity of water described in the 1914 decree, while not identical, is very close to the total diversion rate decreed in the 1896 decree.

Apparently the Pratt Irrigation Company's construction of a reservoir in 1911 just upstream of the Curlew Irrigation and Reservoir Company's east and west laterals led to a dispute about the delivery of the senior

priority natural flow rights to the plaintiff. The decree addressed the operation of the reservoir in order to ensure the proper delivery of water to the plaintiff. The decree also addressed seepage from the reservoir, the delivery of water to fill downstream rights in Utah, the appointment of a watermaster, and the watermaster's duties. All these matters relate to water delivery, rather than the establishment or definition of water rights.

The 1914 decree also indicated that Curlew Irrigation and Reservoir Co. was the owner of all the natural flow of Deep Creek, and that Pratt Irrigation Co. was entitled to use "all the flow of said stream, except that owned and used by the plaintiff..." (Pratt's water use is recorded in the IDWR database as right no. 17-20). As for ownership of Deep Creek water, this seems consistent with the "Articles of Agreement for Corporation of the Curlew Irrigation and Reservoir Company," which show that in about 1903, the former owners of the rights decreed in the 1896 decree (right nos. 17-1 through 17-16) conveyed their water rights to the Curlew Irrigation and Reservoir Company. The 1914 decree made it clear that the defendant could only use water that was not being used by the plaintiff. Since the 1914 decree did not determine water rights, but instead dealt with matters of administration, water rights 17-18 and 17-20 should not be considered legitimate water rights and should be removed from the IDWR database.

The 1940 decree (Curlew Irrigation and Reservoir Company vs. Delmore Canal Company) was supplemental to the 1914 decree. The 1940 decree was based on a 1938 agreement between the parties that provided "a method for a more efficient and satisfactory enforcement of [the] terms and provisions" of the 1914 decree. The 1940 decree modified the 1914 decree by clarifying the parties' obligations regarding measuring devices, canal maintenance, and the associated operational costs. It also provided a more detailed description of the watermaster's responsibilities. In addition, the 1940 decree defined a point of delivery for 339 inches plus the associated 78 inches of conveyance loss between the point of delivery and two laterals located in Utah. Like the 1914 decree, the 1940 decree was an attempt to resolve an ongoing dispute regarding the administration of existing water rights.

In conclusion the 1914 and 1940 decrees did not determine water rights, but instead provided guidance to the watermaster for the proper administration of existing rights. The water rights for Curlew Irrigation and Reservoir Co. were memorialized in the 1896 decree (right nos. 17-1 through 17-16) and in license no. 17-2006. The Delmore Canal Company's (formerly Pratt Irrigation Co.) water rights were memorialized in license nos. 17-2000 and 17-2068.

REPRODUCTION
FROM ORIGINAL

ARTICLES OF AGREEMENT
FOR CORPORATION OF THE CURLEW IRRIGATION
AND RESERVOIR COMPANY

The undersigned, for the purpose of forming a corporation under the laws of the State of Utah relating to private corporations and associations do hereby associate and for that purpose agree as follows:

Article I
Name

The name of the corporation hereby formed shall be the Curlew Irrigation and Reservoir Company.

Article II
Duration

The duration of the corporation shall be 50 years, and it is organized in the precinct of Curlew, Box Elder County, State of Utah.

Article III
Names of Incorporators

The full names and places of residences of the incorporators and the amount of capital stock each party has subscribed are as follows:

Name	Residence	Stock
David George Nelson	Stone, Idaho	325.00
Michael Glier	Stone, Idaho	100.00
William T. Hudson	Stone, Idaho	100.00
Alma Josephsen		50.00

East Canal

Edward J. Robbins	Stone, Idaho	120.00
Charles E. Harris	Stone, Idaho	190.00
Martha Hurd	Snowville, Utah	63.25
James Cottam	Snowville, Utah	501.25
Torben J. Torbensen	Snowville, Utah	22.25
Joseph S. Larkin	Snowville, Utah	31.60
School District No. 16	Snowville, Utah	12.65
Lars F. Jensen	Snowville, Utah	88.50
P. James Derbyshire	Stone, Idaho	37.90
Anton L. Petersen	Snowville, Utah	15.80

Cyrus W. Robbins	Snowville, Utah	126.30
Joseph Robbins	Snowville, Utah	157.90
Andrew Wallwork	Stone, Idaho	128.25
William V. Bundersen	Stone, Idaho	25.30
Thomas W. Roe	Stone, Idaho	25.30
Richard Allen	Stone, Idaho	92.75
William Cottam Sr.	Snowville, Utah	34.75
Cyrus M. Robbins	Snowville, Utah	63.25
John Sparks	Stone, Idaho	101.00
William Robbins	Stone, Idaho	58.25
Snowville Charitable Association	Snowville, Utah	12.65
William T. Robbins	Snowville, Utah	63.25
Phillip Arbon	Stone, Idaho	80.50
Christian Petersen	Snowville, Utah	79.60
John C. Petersen	Snowville, Utah	102.00
Alice Whitaker	Snowville, Utah	6.30
Jesse Bradshaw	Snowville, Utah	126.30
George Daley	Stone, Idaho	16.90
H. B. Robbins	Stone, Idaho	132.60
Arnold Goodliffe	Snowville, Utah	308.25
J. H. Garbanati	Snowville, Utah	19.00
William Hurd	Snowville, Utah	164.00
School District No. 17	Stone, Idaho	12.65
August Eliason	Stone, Idaho	31.60
John Petersen	Snowville, Utah	25.30
O. J. Norr	Stone, Idaho	183.25
John Cottam	Snowville, Utah	35.00
Charles Arbon	Snowville, Utah	100.00
James H. Berry	Stone, Idaho	100.00

West Canal

Lars P. Jensen	Stone, Idaho	18.30
Anton L. Petersen	Snowville, Utah	104.00
John Cottam	Snowville, Utah	131.25
William Cottam Jr.	Snowville, Utah	120.35
James Cottam	Snowville, Utah	209.50
Charles Arbon	Snowville, Utah	198.70
J. C. Petersen	Snowville, Utah	36.50
Arnold Goodliffe	Snowville, Utah	152.00
Joseph S. Larkin	Snowville, Utah	235.25
Charles L. Allen	Snowville, Utah	91.25
August Eliason	Stone, Idaho	16.50
John Sparks	Snowville, Utah	21.90
Hyrum Petersen	Snowville, Utah	25.75

C. D. Wade	Stone, Idaho	510.00
Chris Petersen	Snowville, Utah	36.50
George Wade	Stone, Idaho	47.50
Edward Cottam	Stone, Idaho	65.75
Charles Arbon	Snowville, Utah	95.00
G. W. Showell	Curlew, Utah	800.00
Andrew and Abe Rose	Curlew, Utah	800.00

Article IV Place of Business

The principal and general place of business of the corporation shall be at Snowville, Box Elder County, Utah but business, transfer and financial offices may be established and business conducted at any place or places in the United States.

Article V Object and Business

The business and pursuits of the corporation shall be the general irrigation of land and the conservation of water for the purpose of irrigation, domestic and culinary uses; and for all other purposes and uses for which water may or can be applied, and the building of reservoirs, canals and ditches for the purpose of preserving water and conducting the same and to purchase, buy and sell water rights, reservoirs, canals, ditches and land and all necessary right of way, and stocks in other water Companies, and to make assessments and obligate the corporation therefore, and do all business relating and incidental to the business and pursuits of the corporation.

Article VI Amount of Stock

The amount of each share of stock at the par or face value is \$1.00 and the limit of the capital stock agreed upon and authorized by this agreement is \$10,000. Divided into shares of \$1.00 each.

Article VII Officers

The number and kind of officers of the corporation shall be a board of directors consisting

of 5 members, and except as to the first, directors shall be elected at the annual meeting, as provided for in clause 1 of original agreement, viz; one director from the Sinks, one director from the East Side Canal, one director from West Side Canal, one director from private rights in Idaho, one director "at large", by a majority vote of Stockholders present or represented at the meeting (each stock holder being entitled to one vote for each share of stock held by him), each director and office holder shall hold office for one year and until a successor is elected and qualified, except that a director appointed to fill a vacancy shall hold office until the next annual meeting and the election and qualification of a successor. The vacancies in the office of director or other offices of the Company may be filled by the Board of Directors, also a president, vice-president, secretary and treasurer, each of whom shall be a stock holder and shall be elected by the Board of Directors at the first meeting of the Board of Directors after the annual meeting of the stock holders and hold office for one year and until successors are elected and qualified.

Article VIII Resignation

Any director or other officers may resign by filing with the secretary a written resignation, accepted by the Board, or if not accepted by the Board within thirty days the resignation shall take effect and the office becomes vacant.

Article IX Removal of Officers

Any director or other officer may be removed by the Board of Directors for cause, and after a hearing before the Board of Directors on notice to the party sought to be removed, and by the affirmative vote of not less than two-thirds of the whole board. All shares of stock in the corporation shall be transferable in the same canal, but shall not be transferable from one canal to another.

Article X Present Officers

Until the first meeting of the stock holders and the election and qualification of successors; the officers shall be:

A. Goodliffe, President and Director
Abe Rose, Vice-President and Director
F. W. Roe, Secretary and Treasurer and Director
D. G. Nelson, Director
Charles Arbon, Director

Article XI Quorum

A majority of directors elected and appointed and qualified shall form a quorum and shall be authorized to transact the business and exercise the corporate powers.

Article XII Liability

The private property of the stock holders shall not be liable for the obligations of the Corporation.

Article XIII Executive Committee

The Board of Directors may appoint an executive committee of one or more of its members, which committee, in ordinary business of the corporation, may exercise the powers of the board, between meetings and in respect to the matters upon which the board has not acted.

Article XIV Agents

The Board of Directors may appoint agents for the management of its business, fix their duties and compensation and remove them at pleasure.

Article XV By-Laws

The Board of Directors may make by-laws providing for special meetings of the stock holders and notice thereof; for meetings of the Board of Directors; defining the duties of officers and generally for the management and control of the business of the corporation; which by-laws shall not be in conflict with the laws of the states of Utah and Idaho or of this agreement.

Article XVI Annual Meetings

The first annual meeting of the stock holders shall be held in Snowville, Box Elder County, State of Utah, on the first Saturday in March 1903 at 10 O'clock in the fore-noon, and annually thereafter at the same time and place, and it shall be the duty of the secretary to give each stock holder, appearing to be such on the books of the Company, and whose post office

address is known ten days notice by mail of the time and place of the meeting, but the omission to give such notice shall not invalidate the action or proceedings of the meeting. An annual report shall be given at each annual meeting.

Article XVII Stock-Holders Vote

At all stock holders meetings each share holder shall be entitled to one vote for each share of stock which he or she may have in his or her own right, or held by him or her in trust for others, and such votes may be given in person or by an authorized agent or by proxy.

Article XVIII Subscription for Stock

The corporation by purchase or subscribe for the capital stock of any other similar corporation which at the time of each purchase or subscription shall be or is about to be incorporated.

Article XIX Property Subscribed

That the subscription to the capital stock of this corporation shall consist in whole of the property and shares in the property owned and possessed by the subscribers hereto and the share holders herein and their canals, water ditches, culverts, laterals, and water rights therein, and all other property belonging and appertaining thereto: the said property being more particularly described as follows:

All the waters of Deep Creek or Curlew Creek situated and flowing through Oneida County, Idaho and Box Elder County, Utah and commencing in Holbrook Precinct, Oneida county, Idaho and flowing through the said Oneida and Box Elder Counties and all the canals, water ditches, laterals and water therein, diverted from said Deep Creek or Curlew Creek and all the share holders therein. That the fair cash value is \$7860 and the subscribers thereof severally hold title to said property and assets in the same proportions as the subscriptions of each bear the share subscribed by each herein, and the corporation accepts said property and assets as worth \$7860. net, over and above all liabilities there being no incumbrance thereon. That the said property and assets above mentioned are to be transferred to this corporation in consideration of its organization and the issue of its shares of stock to the amount of its face value, therefore proportionately to the subscribers hereto, and the subscribers hereto agree that they hold the title to said property and assets each proportion as his subscription to the capital stock of this corporation bears to the whole amount subscribed in trust to convey, transfer, and deliver the same and agree that they will convey, transfer, and deliver the same to this corporation in full payment for shares of stock of said company equal in par or face value, to the value of said shares and assets as stated in these articles. And in consideration thereof this corporation agrees

to issue to the subscribers its shares of stock to the amount of \$7860 in payment of said property and assets to the said share holders and owners in proportion to their several ownerships therein.

The balance of the authorized capital stock of this corporation, to remain in the treasury of said corporation, to be issued and sold by the Board of Directors upon authorization by a majority of the stock holders of said corporation

Article XX Conveyance

That the subscribers and share holders herein, each for himself, in consideration of the issuance and delivery to each of them, his or her proportionate share of stock as herein set forth, hereby conveys, transfers, delivers and quit claims all of his or her right, title and interest in and to the above described property and property rights therein, to this corporation, (The Curlew Irrigation and Reservoir Company) TO HAVE AND TO HOLD to the said Curlew Irrigation and Reservoir Company or its assigns forever, for the purpose and uses as set forth in this article of association; and in consideration thereof this corporation agrees to issue to the subscribers herein, in payment thereof its shares of stock to the amount of \$7860 in proportion to their several ownerships therein, the same being the several amounts herein subscribed by each of said subscribers.

Article XXI Obligations and Liabilities of Branches of Canal

It is agreed by each and every subscriber to these articles of incorporation that the amount of labor or money necessary to keep up repairs or improvements; or necessary to pay damages for any default or act of negligence; or necessary to pay any obligation incurred by any one of said branches of said canal, or ditch, shall be settled and paid, done and performed and assessed upon the stock holders herein, whose lands and property are served and watered by said branch of canal, so incurring such obligation, and that this corporation shall not obligate itself or any such several and separate improvements or liability on any of said branches, but the same shall be borne by the stock holders thereon, and if this corporation shall be subjected to any such liability by law or otherwise, and in such case the said stock holders owning property so served by any one of said branches, by whose act or event, any such liability is incurred, shall be reimburse, account to pay the said amount to this corporation; and the corporation is empowered to make special assessments upon the said stock holder of any such obligated branch therefor; the intent being that each branch shall separately be liable for its own expenses and obligations, all other obligations and liabilities of said corporation for maintenance of culvert or otherwise shall be borne by assessments upon the general stock holders of this corporation.

Article XXII
Treasury Stock

The balance of the authorized capital stock of this corporation to remain in the treasury of said corporation, to be issued and sold by the Board of Directors upon authorization of a majority of the stock holders of said corporation and at such times and of such amounts as in their judgement shall be necessary for the business welfare of the corporation.

IN WITNESS WHERE OF we have hereunto set our hands this — day of A.D. 190-

David G. Nelson
Michel Glier
William T. Hudson
Alma Josephsen

East Canal

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|------------------------|------------------------|----------------------------|
| 1. E. J. Robbins | 14. Wm. V. Bundersen | 26. Jesse Bradshaw |
| 2. C. C. Harris | 15. Thos. W. Roe | 27. |
| 3. Martha Hurd | 16. Richard Allen | 28. H. B. Robbins |
| 4. James Cottam | 17. Wm. Cottam Sr. | 29. Arnold Goodliffe |
| 5. Torben J. Torbensen | 18. Cyrus M. Robbins | 30. Jas. H. Garbanati |
| 6. Jos. S. Larkin | 19. John Sparks | 31. William Hurd |
| 7. Arnold Goodliffe | 20. William Robbins | 32. Thos. W. Roe, Chairman |
| 8. I. P. Jensen | 21. Ester A. Goodliffe | 33. August Eliason |
| 9. Jas. Derbyshire | 22. Wm. T. Robins | 34. John Petersen |
| 10. A. I. Petersen | 22 ½. | 35. O. J. Norr |
| 11. C. W. Robbins | 23. Chris Petersen | 36. John Cottam |
| 12. Joseph Robbins | 24. John C. Petersen | 37. Charles Arbon |
| 13. Andrew Wallwork | 25. Alice Whitaker | 38. James H. Berry |

West Canal

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|------------------------|-------------------|----------------------|
| 39. I. P. Jensen | 43. James Cottam | 45. J. C. Petersen |
| 40. | 44. Charles Arbon | 46. Arnold Goodliffe |
| 41. John Cottam | | 47. Jos. S. Larkin |
| 42. William Cottam Jr. | | 48. C. I. Allen |

49. August Eliason
50. John Sparks

51.
52. C. B. Wade
53. Chris Petersen
54. George Wade
55. Edward Cottam

Sinks

56. Charles Arbon

57. G. W. Showell

58. Andrew and Abe Rose

State of Utah:

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County of Box Elder:

Arnold Goodliffe, Thos. W. Roe and Charles Arbon, being each duly sworn, each for himself on his own oath, deposes and says; I am one of the incorporators named in, and who subscribed the foregoing agreement of the incorporation of the Curlew Irrigation and Reservoir Company. That the parties to said agreement have commenced, and it is bona fide their intentions to carry on the business mentioned in said agreement; that I am acquainted with the said property and assets subscribed in the agreement to the capital stock of this corporation; that it is reasonably worth the amount in cash for which it was accepted and is accepted by their corporation; and I verily believe that each party to this agreement has paid or is able to pay and will pay the amount of his stock subscribed by him and that at least ten per cent of the capital stock of the corporation has been paid in the manner set forth in this agreement.

Arnold Goodliffe
Thos. W. Roe
Charles Arbon