

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR FRANKLIN COUNTY.

HENRY T. MCNEWMAN,

Plaintiff

VS

D E C R E E

FRANKLIN COUNTY SUGAR COMPANY, a corporation;
CITY OF PEESTON, a municipal corporation; THE CUB
RIVER IRRIGATION CO., a corporation; THE CUB RIVER
MIDDLE DITCH CO., a corporation; THE FRANKLIN CUB
RIVER CANAL CO., a corporation; THE CUB RIVER AND
WORM CREEK CANAL CO., a corporation; B. M. BURBANK,
CAROLINE Y. ALFRED, GRACE H. WOOLLEY, VIRGIL L.
NELSON, HENRY F. BENNETT, MERLIN PERKINS, JAMES
PERKINS, JANUS KELLER, JR., JOS. SHARP, C. M.
EPPECH, MARY ANN BUCKLEY MCGEE, HENRY DAY, J. A.

The Document to which this certificate is
attached is a full, true and correct copy
of the original on file and of record in my
office, same having been filed 7-9-34
Attest: Michael D. Kunz 19 30
Michael D. Kunz, Clerk of the District
Court of the Fifth Judicial District in
and for Franklin County, Idaho.
Lana Bryan Deputy

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DUNKLEY, JOSEPH T. SHARP, ALVIN C. HULL, LEROY HULL, PRISCILLA BOWMAN, TRACY LOAN & TRUST COMPANY, A corporation, and S. W. PARKINSON, AS Administrators of the Estate of Samuel C. Parkinson, deceased; ALVIN SHARP, CECIL WOODWARD, GARNET WOODWARD, FRANKLIN MAPLE CREEK PIONEER IRRIGATION COMPANY, a corporation, ELIZA D. LOWE, ELIZABETH K. LOWE, LEVI OLIVERSON: JOHN W. GIBSON, WM. FOLLETT and HOWARD GIBSON, as Administrators of the Estate of W. M. Gibson, deceased; WALLACE CHATTERTON, S. B. WRIGHT, S. J. HANDY, W. CHATTERTON, AARON CHATTERTON, JOANNA WHITEHEAD, IVAN WOODWARD, EDWARD MORGAN, THOMAS HAWORTH, W. L. WICKHAM, PETER C. WHITEHEAD, WILLIAM STOCKDALE, P. A. ROBINSON: AND ALVIN C. HULL, as Administrator of the Estate of Robert M. Hull, deceased;

Defendants.

This cause came on regularly for trial on the 10th day of March, 1924, before Honorable O. R. Baum, one of the Judges of the said Court at Preston, Idaho, Charles H. Hart, Esq., of Salt Lake City, Utah, and F. J. Evans, Esq., of Preston, Idaho, appearing as attorneys for the plaintiff, Henry T. McEwan; Dey, Hoppaugh & Mark, Esqs., and Arthur W. Hart, Esq., appearing as attorneys for the defendant Franklin County Sugar Company, a corporation; P. M. Condie, Esq., appearing as attorney for the defendant and cross-complainant The City of Preston, a municipal corporation; Clark, Richards & Bowen, Esqs., and C. E. Crowley, Esq., appearing as attorneys for the defendant and cross-complainant, The Cub River Irrigation Company, a corporation; A. W. Hart, Esq., appearing as attorney for the defendant and cross complainant, The Cub River Middle Ditch Company, a corporation, and for the defendant and cross-complainant, The Cub River & Worm Creek Canal Company, a corporation, and also for the defendants and cross complainants Alvin C. Hull, Leroy Hull and Alvin C. Hull as administrator of the estate of Robert N. Hull, deceased; and none of the other defendants appearing, either personally or by counsel, and the default of all of said other defendants having been entered for failure to answer or otherwise plead to the complaint and amended complaint of the plaintiff, and the cross complaint of the City of Preston, a municipal corporation, and for failure to answer the cross complaint of the defendant Cub River Irrigation Company, a corporation, in accordance with the Praecipe for Default filed herein, and the judgment of default having been entered herein against such defaulting defendants, and testimony on behalf of the plaintiff and of the appearing defendants and cross-complainants, both oral and documentary, having been offered and received by the Court on behalf of each of said parties respectively, and the parties having, by consent of the Court, agreed among themselves with reference to certain facts and the Court having examined all the testimony offered and received for and on behalf of the respective parties and the agreements and stipulations entered into between the said parties and having taken the said cause under consideration and being fully advised in the premises, and having made and entered its Findings of Fact and Conclusions of Law herein in writing and ordered judgment to be entered in accordance therewith,

IT IS NOW, BY THE COURT, ORDERED, ADJUDGED AND DECREED, as follows: .

FIRST: That the Irrigation season, as the term is used herein, begins on the first day of April and extends to the 31st day of October of each and every year and the non-irrigation season extends from the first day of November of each year to the first day of April of the succeeding year.

SECOND: That irrigation rights as herein awarded and decreed are of two classes, primary rights and excess or high water rights.

The primary rights include the right to use at all times during the irrigation season, in the amounts herein awarded to the various appropriators, respectively, and in the order of their respective priorities, the quantity of water specifically allotted to the

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various appropriators for irrigation purposes, exclusive of the excess or high water rights awarded to Cub River Irrigation Company, a corporation, Cub River Middle Ditch Company, a corporation, and Cub River & Worm Creek Canal Company, a corporation, in Paragraphs Third and Fourth and Fifth hereof.

Excess or high water rights are defined to be the right to use by defendants, Cub River Irrigation Company, Cub River Middle Ditch Company, and Cub River Worm Creek Canal Company, a corporation, during the irrigation season, for irrigation purposes, in the amounts, and with the priorities in said Paragraphs Third, Fourth and Fifth hereof specifically set out, all waters flowing in the said Cub River and its tributaries in excess of the amount of water necessary to satisfy the primary irrigation rights as herein allotted.

13-0026 THIRD: That the defendant, Cub River Irrigation Company, a corporation, is the owner of a primary right to the use, at all times during the irrigation season, of 45 cubic feet per second of time of all the waters of said Cub River and in excess or high water right to the use of 45/100ths of said stream after the primary irrigation rights herein decreed are satisfied, up to a total of 158 cubic feet per second of time, its rights to the use of said water to date from the year A.D. 1880; said water to be measured at the waste gate in said Company's canal at a point where the same is now situated and about a mile below the headgate of said canal, and to be used for the irrigation of 1800 acres of land lying in Sections 1, 2, 3, 10, 11, 12, 13, 14, 15, 21, 22, 23, 24, 25, 26, 27, and 28, Township 16 South of Range 39 East of the Boise Meridian in Franklin County, Idaho, and sections 35 and 36, Township 15 of Range 1 West of the Salt Lake Meridian, Cache County, Utah, and Sections 1, 2, 3, 11, 12, 13, 14, 15, 22, 23, 24, 25, and 26, Township 14 North of Range 1 West of the Salt Lake Meridian, Cache County, Utah, and Sections 3, 4, 5, 6, 7, 8, 9, 10, 15, 16, 17, 18, 19, 20, 21, 28, 29, 30, 31, and 32, Township 14 North of Range 1 East of the Salt Lake Meridian in Cache County, Utah.

13-0002 FOURTH: That the defendant Cub River Middle Ditch Company is the owner of a primary right to the use, at all times during the irrigation season, of 30 cubic feet per second of time of all of the waters of said Cub River, and of an excess or high water right in the order of its priority of 30/100ths of the waters of said stream, after the primary rights herein allotted for irrigation purposes are specified, up to the extent of 69.9 second feet, its right to the use of said waters to date from the year A.D. 1882; said water to be measured at the waste gate in said Company's canal, at a point where it is now situated below the headgate of said canal.

13-0003 FIFTH: That the Cub River and Worm Creek Canal Company is the owner of a primary right to the use at all times during the irrigation season of 25 cubic feet per second of time of all of the waters of said Cub River, and is also the owner of an excess or high water right in the order of its priority to the extent of $\frac{1}{4}$ of the waters of said stream, after the primary rights herein decreed are fully satisfied. The total right of said Company, nevertheless, not to exceed 85 cubic feet per second of time. The right to the use of the said waters by said Company to date from the year 1882, and the said water to be measured at the headgate of said canal company, where said canal intercepts said stream,

13-0004 SIXTH: That the defendant, Franklin Cub River Canal Company, is the owner of a primary right to use, at all times during the irrigation season, five cubic feet per second of time of all of the waters of said Cub River, its rights to the use thereof to date from the year 1882, and the said water to be measured at the headgate of said Company's canal, where the same intercepts said Cub river.

13-0005 SEVENTH: That as between the said Cub River Middle Ditch Company and the said

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13-0038 (e) If, during the said non-irrigation season, after the use of the quantity of water hereinabove specified, there shall be sufficient water for that purpose, a quantity of water for the Cub River and Worm Creek Irrigation Company, a corporation, for culinary, domestic and stock watering purposes, may be increased by an additional three (3) second feet to be used until the freezing weather shall prevent the same from running through the canal system of said company.

Done in open court this 9th day of July, 1924.

Robert M. Terrell
District Judge

Filed July 9th, 1924.

John A. Hofoed
Clerk

***** Compared J.A.H. *****

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