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Department of Water Resources

Stephen S. Dunn

MERRILL & MERRILL  
CHARTERED

SPAULDING BUILDING  
P. O. BOX 991  
POCATELLO, IDAHO 83204  
PHONE: (208) 232-2286

ATTORNEYS FOR: Defendant  
Utah Power & Light Co.

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE  
OF IDAHO, IN AND FOR THE COUNTY OF BEAR LAKE

FRANK HIRSCHI; GROVE PHELPS; )  
REED KUNZ; PAUL KUNZ; STEPHEN )  
KUNZ; PARLEY KUNZ; WAYNE KUNZ; )  
LARRY ALLEMAN; CLOYD C. WALLEN- )  
TINE and DONNA LEE WALLENTINE, )  
husband and wife; RICHARD LOVELAND )  
and NORMA N. LOVELAND, husband )  
and wife; and LEON HARDCASTLE; )  
and DEAN KUNZ and LAURA KUNZ, )  
husband and wife, )

Plaintiffs, )

vs. )

DEPARTMENT OF WATER RESOURCES, )  
STATE OF IDAHO; UTAH POWER & )  
LIGHT COMPANY, a corporation; and )  
RUSSELL D. STOKER, as Watermaster )  
of District 11, Bear River; and WATER )  
DISTRICT II, a municipal corporation, )  
and LAST CHANCE CANAL COMPANY, )  
an Idaho corporation, )

Defendants. )

CASE NO. 2932

JUDGMENT

The above entitled matter having come on for two evidentiary hearings, briefs being submitted by all parties, and the Court having entered Findings of Fact and Conclusions of Law dated March 12, 1982,

IT IS NOW, THEREFORE, ORDERED, ADJUDGED AND DECREED that Judgment be, and the same is hereby, entered granting water rights in and to Ovid Creek, Bear River, and the Montpelier Creek Wastewater, with the priority date, time of use, diversion point, place of use and other essential requisites as set forth more fully on Tables A, B and C, attached hereto and by this reference incorporated herein as if set forth in full.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that plaintiff, Wayne Kunz, be required to install a measuring device approved by the Idaho Department of Water Resources to determine the amount of wasted

RECORDED  
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Montpelier Creek water flowing into the Bear River and that he is hereby limited to that quantity when pumping out of the Bear River for sprinkler irrigation purposes.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that plaintiff, Grove Phelps, is required to move his point of diversion so as to eliminate the use of any of the back waters of Bear River and that he be limited to his decreed water from the waste waters of Montpelier Creek as set forth above.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that plaintiff, Frank Hirschi, has forfeited any water rights he may have established prior to 1970 and that Frank Hirschi has not established any water rights in the Bear River by means of estoppel, acquiescence, or agreement with Utah Power & Light Co.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the water rights granted pursuant to this Judgment are subject to the full administration of the Watermaster for District 11 of the Idaho Department of Water Resources and with regard to Ovid Creek and Montpelier Creek is to be administered separate from the Dietrich Decree and as to the Bear River is to be administered in conjunction with the Dietrich Decree and the water rights set forth therein. Further, that all parties cooperate and comply with said Watermaster in the administration of all water rights granted in the Dietrich Decree and herein.

DATED this 25 day of March, 1982.

  
Francis J. Rasmussen  
District Judge

**RECORDED**  
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TABLE A  
SCHEDULE OF WATER RIGHTS ESTABLISHED IN ( ) CREEK

|                |                                                                                                                                                                                                                                                                                                                                                                                                                         |
|----------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. PAUL KUNZ:  |                                                                                                                                                                                                                                                                                                                                                                                                                         |
| 11-1096 (a)    | <u>Priority Date</u> 3/14/1889<br><u>Period of Use</u> 4/15 to 7/10<br><u>Amount in c.f.s.</u> 7.5<br><u>Point of Diversion</u> SW SE S.30, NWSE, S. 31, T. 12 S. R. 44 E.<br><u>Place of Use</u> NWSW, SWSW, S. 29 T. 12 S R. 44 E; NESE, NWSE, SWSE, SESE, S. 30 T. 12 S R. 44 E; NENE, NWNE, SWNE, SENE, NENW, NESW, SESW, NESE, NWSE, SENW, NWNW, SWNW, SWSE, S. 31 T. 12 S R. 44 E.<br><u>Number of Acres</u> 375  |
| 11-1114 (b)    | <u>Priority Date</u> 1955<br><u>Period of Use</u> 4/15 to 7/15<br><u>Amount in c.f.s.</u> 7.5<br><u>Point of Diversion</u> SW SE S. 30, NWSE, S. 31, T. 12 S. R. 44 E.<br><u>Place of Use</u> NWSW, SWSW, S. 29 T. 12 S. R. 44 E; NESE, NWSE, SWSE, SESE, S. 30 T. 12 S., R. 44 E; NENE, NWNE, SWNE, SENE, NENW, NESW, SESW, NESE, NWSE, SENW, NWNW, SWNW, SWSE, S. 31 T. 12 S., R. 44 E.<br><u>Number of Acres</u> 419 |
| 2. PARLEY KUNZ |                                                                                                                                                                                                                                                                                                                                                                                                                         |
| 11-1115 (a)    | <u>Priority Date</u> 3/14/1889<br><u>Period of Use</u> 4/15 to 7/10<br><u>Amount in c.f.s.</u> .5<br><u>Point of Diversion</u> (amended) <del>NENE S. 1 T. 13 S., R. 44 E.</del><br><u>Place of Use</u> NWNW S. 31 T. 12 S., R. 44 E.<br><u>Number of Acres</u> 25                                                                                                                                                      |
| 11-1116 (b)    | <u>Priority Date</u> 1955<br><u>Period of Use</u> 4/15 to 7/15<br><u>Amount in c.f.s.</u> 1.66<br><u>Point of Diversion</u> NENE S. 31 T. 12 S., R. 44 E.<br><u>Place of Use</u> (amended) <del>NENE S. 31 T. 12 S., R. 44 E.</del><br><u>Number of Acres</u> 83.3                                                                                                                                                      |