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In the District Court of the United States for the
District of Idaho, Eastern Division.

UTAH POWER & LIGHT COMPANY,

Plaintiff

vs.

THE LAST CHANCE CANAL COMPANY,
Limited, et. al.

Defendants.

In Equity

No. 203.

FINAL DECREE

Before HON. F. S. DIETRICH,
District Judge.

Filed July 14, 1920.

W. D. McREYNOLDS,
Clerk.

By PEARL ZANGER,
Deputy.

MAY 14 1996

In Equity No. 203

**In the District Court of the United States
for the District of Idaho, Eastern Division**

UTAH POWER & LIGHT COMPANY, a Corporation, *Plaintiff,*

vs.

The Last Chance Canal Company, Limited; The Tanner Canal Company, Limited; The Central Canal Company, The North Extension Canal Company, Limited; West Branch Canal Company, Limited; The Turner Canal Company, Limited; The East Branch Canal Company, The Bench Canal, and Budge Land & Live Stock Company, Limited, corporations; W. H. Larkins, Jas. Ellsmore, Geo. Hogan, Lewis S. Pond and Alex Harris as Trustees of the Gentile Valley Irrigation Company, Limited, late a corporation; The Thatcher Irrigation Company, Limited, a corporation; Nathan D. Thatcher, J. A. Folkman, Milton Robbins and Geo. M. Smith, as Trustees of Thatcher Canal & Power Company, Limited, late a corporation; Nelson Ditch Company, a corporation; A. J. Nielson, B. R. Meek, Henry McCuen, C. S. Burton and Eli Fosgreen, as Trustees of Riverdale-Preston Irrigation Company, late a corporation; The Riverdale Irrigating Company, Nielson-Meek Company and West Cache Irrigation Company, corporations; E. P. Johnson, Albert Johnson, Hyrum Johnson, Geo. D. Anderson, Joseph T. Pond, Frank W. Harris, A. C. Bosen, Hyrum J. Smith, John E. Hill, Melvin Green, Robert L. Smith, Charles Westerburg, Peter Westerburg and David P. Evans.

Horace Howard, Henry Rhinehart, Harvey W. Higley, James Monroe (or Munro), Nellie Simmons, John Baird, William Monroe (or Munro), Orrin Monroe (or Munro), Charles Monroe (or Munro), Charles Foster, Hyrum Foster, Mary Baird, John Woodall (or J. D. Woodall), George Ellis, Skinner Irrigation Company, a corporation; Heber Crane, Fred Bartschi, Charles Bartschi, David Chugg, Phillip Chugg, Fred Stauffer, William Williams, Sr. (or William Morgan Williams), William Williams, Jr. (or William Mormon Williams), Oliver Williams, E. M. Lindsay, Georgetown Irrigation Company, a corporation, and Thomas Freeman.

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Idaho Ranch Company, Limited, The Banks Investment Company, and Farmers Land and Irrigation Company of Alexander, Idaho, Limited, corporations; Frank Higgenbotham, as Statutory Trustee of Cache Valley Land & Canal Company, late a corporation; S. E. Marshall and W. W. Booth as Trustees of The Bancroft Land and Irrigation Company, late a corporation; James M. Horsley, Matilda J. Horsley, Newell J. Horsley and A. L. Cook, as Trustees of Soda Springs Electric Company, late a corporation; D. J. Lau, H. M. Lau, D. K. McLean, and W. M. Davis, as Trustees of Soda Springs Water Company, late a corporation; Soda Springs, a Municipal Corporation; Thomas H. Horsley, Joseph E. Lau, John G. Schmidt, Laura M. Lau, Colin A. Chester, Chris A. Lallathin, Walter S. Crane, Lorenzo S. Merriott (or Marriott), Hiram M. Lau, Daniel J. Lau, Arthur F. Lau, William J. Hopkins, Ellis Kackley, Ida M. Kackley, Mary E. Kelly (now Mary E. Corrigan), Herbert Horsley, A. C. Anderson (or Abraham C. Anderson), David Anderson, Nels Anderson, Landi C. Eastman, J. T. Torgenson, John Skinner, Clifford M. Reed, E. D. Whitman, C. B. Wilson, David Burnett, David Giles, George Jenkins and Thomas L. Clark.

Hans Nielson, James Strachan, Edmond Beus, Geo. A. L. Williams, Leland S. Williams, Leah Gorton, John Lauritson, Jesse Moore, Arthur Collins, James Moore, C. W. Fryar, Augustine (or Augusta) Rolando, James Rolando, Geo. G. Nelson, August Largilliere, Catherine Largilliere and Harry Horsley; Turner Trust Company, a corporation; Percy G. Turner, Ethel H. Ellsmore, John W. Harris, Alexander Wells Harris (or A. W.) Harris, Joseph L. Hansen, Louisa (or Louise) Medford, David P. (or David) Sant, Leonard Hansen, W. H. Larkins, Dora Larkins, Otto Gulbransen, H. E. Thatcher, Joseph Swenson, Charles Lund, W. J. Turner, John Harrington, Lewis S. Pond, R. E. Hansen, Walter Hogan, George M. Smith, Ira Hogan, Geo. A. Hogan, Amelia Cole, W. S. Cole, Wm. Fowler, James Calkins, Peter Patterson, Ellsworth Norris, Walter Anderson, R. N. Egbert, Charles Izatt, Minnie Walker, Samuel Bollwinkle, C. J. Martinson, J. B. Wagantz, Rosa Martinson, Nathan D. Thatcher, J. Leroy Pond, Geo. B. Folkman, Chas. A. Robbins, Norena B. Robbins and Rachel S. Thatcher.

Benjamin Clegg, Charles Sorenson, William McGee Harris, Nels L. Sorenson, Lars P. Hansen, Charles H. Bassett, Wm. Bassett, Hyrum D. Collins, Joseph Swenson, Harriet Harris, Chris Christiansen, James Fowler, Catherine Sorenson, E. L. Bennett, Wm. Wright, Joseph B. Wright, Mary Bassett, Wm. Meacham, John Meacham, Peter Anderson, John Sorenson, James C. Elliott, Don H. Bassett, Thomas M. Ellis, Charles N. Ellis, Anna J. Clegg, Merintha E. Han-

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James Swenson, Hyrum Swenson, Jos. O. Renshaw (or Joseph Olorenshaw), Hans J. Rasmussen, L. K. Bitten, Wm. H. Mendenhall, John R. Turner, J. W. Gibbs, Robt. Kirkham, Melissa Collins, Harold L. Bassett, Geo. C. Fowler, Michael Mickelson, Carston Bennett, Thomas Bennett and Lars Rasmussen; First National Bank of Logan, a corporation; Leslie Wright, E. A. Bennett, J. P. Anderson, Wm. W. Williams, Austin W. Merrill, H. J. Bennett, Matilda Bennett, Alfred (or Alpheus) Anderson, Leslie Bennett, Frank Manning, L. M. Wright, Howard L. Thomas, Thomas Panter, Alma S. Stalker, John T. Williams, Daniel Harris, Joseph Ames, Hyrum Foreman, Henry Perry, Andrew B. Gray, Joseph Perry, Jr., Sardius S. Stalker, Zina B. Cannon, Austin Pond (or L. Austin Pond), Charles Panter, Charles E. Harris, Ralph Perry, Geo. B. Collins, James D. McGregor, Jr., Wm. C. McGregor, James D. McGregor, Isabelle E. Foreman, Joseph Christensen, John Tanner, Parley Anderson, Rebecca Orrison, H. K. Thatcher, Howard E. Thatcher, B. Geo. White, Orison Thompson, Barnard G. (or Barnard J.) White and John D. Schutt.

Treasureton Irrigation Ditch Company, a corporation; William Smith, Byrum H. Prescott, George R. Ransome and A. C. Nance, as Trustees of Cleveland Irrigation Company, late a corporation; L. Edgar Merrill, James A. Hadley, R. G. Quigley, Alma Hadley, O. E. Hendricks, Heber Allen, James S. Geddes, Daniel Taylor, and John W. Hendricks, as Trustees of Stockton Reservoir Company, late a corporation; Charlotte Walton, Samuel Ames, D. M. Walton, Wm. Smith, Edwin Bennion, A. H. Rencher, J. L. Rencher, Leo Meachem, Ely Beckstead, Byrum H. Prescott, George Ransome, Isabel Ames, H. A. Ransome, Thomas Waddoups and Annie E. Cardon; Mink Creek Irrigation Company, District Number One, a corporation; James Johnson, David P. Evans, Cyrus Ward, Eugene Beckstead and J. G. Nelson, as Trustees of Preston-Riverdale and Mink Creek Canal Company, late a corporation; The Peoples Dairy Company, Limited, a corporation; James M. Keller, Thomas Jensen, Elmer Larsen, Ezra Larsen, Torval Wilde, Peter W. Peterson, Fred Barfus, S. H. Richards, Ivan Rasmussen, Mahonri Larsen, L. P. Larsen, Marinus Jepsen, F. H. Wacker, Lorenzo D. Baird, Annie L. Potter (nee Peterson), J. P. Rasmussen, Richard Olverson, Christina V. Wilde, John C. Hansen, Andrew Jepsen, Nels P. Roholt, Lars W. Nelson, Edw. Balfour, J. S. Hite, Mrs. Hans L. Nelson,

John C. Christensen, W. A. Watson, Lars C. Nelson, Martinus Larson, Ingrid Pearson, Leonard Nelson, C. G. Christiansen, Gus Olson, W. E. Crane, Hyrum Bell and Janeus Keller; Joseph Condie, William Schulbert, Jedediah Miles, Francis Clayton and Norman Nisson, as Trustees of Strong Arm Reservoir Company, late a corporation; Thos. R. Condie, Francis Clayton, Thomas Palmer, Wm. H. Carter, O. M. Seamons, Benj. Hymas, Philip Purcer, W. R. Taylor, Ezra C. Foss, Julius Johnson, Joshua Adams, Geo. Sant, Eliza A. Seamons and David Williams.

William E. Larsen, Thomas Sant, William McDermott, Oscar Maddox, and Mae E. Farmer, as Trustees of Clifton Irrigating Company, late a corporation; Rushville Irrigation Company, a corporation; S. H. Atkinson and James Atkinson; Five Mile Creek Irrigation Company, a corporation; L. M. Mendenhall, Willis Mendenhall, S. C. Chadwick and Robert C. Geddes.

Weston Creek Irrigation Company, a corporation; Isaac Jorgensen, George Cole and Thomas Preston, as Trustees of Weston Mills, late a corporation, N. P. Jensen, Yeppa Benson, Frederick Day, Peter Mickelson, and Joseph Georgensen, as Trustees of Weston Reservoir and Power Company, late a corporation; and Isaac McKay; Utah-Idaho Sugar Company, a corporation; Capital Trust Company; Largilliere Company, Bankers; Continental Life Insurance Company, Idaho State Life Insurance Company, Devereaux Mortgage Company, Peabody, Houghteling & Company, National Bank of the Republic, Utah Mortgage Loan Corporation, Peoples Bank & Trust Company, Illinois Trust & Savings Bank, American Trust & Savings Bank (now Continental and Commercial Trust & Savings Bank), and J. N. Ireland & Company, corporations; Jerome W. Wheeler, George I. McFarland, R. T. Hayes, J. P. Toone, Amy L. Toone, Daniel Balls, William O. Creer, and H. D. Maughan.

Sam Gillett, Thorg Johnson, Enoch Johnson, Thomas E. Stanton, Christian Call, Ira Call, Mrs. Freda Anderson, H. C. Atkinson, Fred Baker, Daniel Balls, Kenneth Balls, Minnie Barnard, John Bartlome, Battle Creek Irrigation Company, a corporation; Wm. Behle, Conrad Bell, C. W. Bennett, Chas. Bergquist, Edw. Bergquist, James Bigler, Birch Creek Irrigation Company Number One, a corporation (substituted for and successor in interest to the following: Frederick Barfus, James Keller, Amos Keller, Torval Keller, Ezra Larsen, Marinus Jepson, Elmer Larsen, Norman J. Larson, Walter Nelson, Ervan Larsen, Maren K. Peterson, Marinus Hansen, Elias Hansen, Hyrum Jepson, John M. Hansen, L. B. Wilde, Peter Nelson, Nancy Rasmussen, Chris Hansen, Ivan Rasmussen, Roy Cahoon, Birch Creek Irrigation Company Number One,

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a water user's association); J. J. Call; Grover C. Hogan, successor to Alex M. Christensen; Annie M. Christensen, Martin Christensen, Steffen C. Christensen, Walter Christensen; Emma Collins and Estate of J. W. Collins, deceased; E. H. Coombs, David Coombs, Albert C. Davis, Wm. J. Davis, Sam Gagon; Geo. Greene, administrator of the estate of Patrick W. Gallagher, deceased; Glencoe Irrigation Company, a corporation (substituted for and successor in interest to the following: Ezra Larsen, P. P. Carver, Emanuel Keller, A. A. Wilde, L. E. Ericksen, Hy. Johnson, Richard Peterson, Enoch Peterson, Peter Ericksen, Mrs. Carl Wallgren and Fred Egley); Robert B. Gunnell, Chris Hansen, John W. Harrington, Geo. W. Harrington, Mrs. Sarah Hess, George Harrison, Thomas J. Hopkins, J. M. Horsley, P. F. Ivie, Dave Jenkins, Joseph Larsen, Ezra E. Larsen, James Larsen, Jr., Nevada A. Larsen, John E. Martinson (or Mortenson), Arwell L. McKay, H. J. McKay, Jedediah McKay, Emma H. Meserve; Mink Creek Irrigation Company Number Four, a corporation (substituted for and successor in interest to the following: James M. Keller, Adam and Urias Keller, Hans C. Jensen, Daniel Jensen, Harry and Frank Jensen, Dora Jensen, Selestres Keller, Wm. Rasmussen, N. C. Eskelson, Christensen and Jeppson, Mrs. C. C. Christensen, J. H. Bell, Wm. D. Baird, Lorenzo S. Baird, James Keller, Lewis Keller, Roy Cahoon, Mink Creek Irrigation Company Number Four, a water user's association); Mink Creek Irrigation Company Number Three, a corporation (substituted for and successor in interest to the following: Lewis Keller, Wm. Rasmussen, Lorenzo S. Baird, Margaret Baird, J. H. Bell, Wm. D. Baird, James M. Keller, Jr., Selestres Keller, Adam and Urias Keller, Thomas Jeppson, Henry Christensen, and Mink Creek Irrigation Company Number Three, a water user's association). Christina Nelson, Wilford Nelson, Wilford Panter, Jacob Peterson, Junius F. Phillips, Mileta Pond, J. T. Pond, L. A. Pond and John Bartlome, a co-partnership known as Pond Bros. and Bartlome; John R. Reeder, J. R. Rencher, Sam Richardson, C. G. Rose, Mrs. Alonzo H. Seamons, David Seamons, Chas. Shumway, A. T. Smith, Mary E. Smith, Nathan Smith, Andrew Stauffer; Ira R. Steed, substituted for A. E. Henderson; Alnora C. Stevenson, Mary Swenson, O. A. Thompson, Dr. Tigertt, Alma Turner; Ole Hansen, Henry Larsen, George A. Smith, Anthon Nelson and Charley Christensen, a co-partnership known as Upper Cleveland Irrigation Company; Alfred Westerborg, C. T. Woodal, Eph. T. Williams, D. A. Woodal, Lawrence Wilde; E. T. Zeigler and Neil M. Sorenson, known as Sorenson & Zeigler, a co-partnership, successors to R. E. Hansen; Arthur Coombs and Lillie Coombs, (substituted for Harlow R. Hoops); Sewell Roper, Simpson Roper, Orrin Roper and Roy Roper, a co-partnership known as Roper Brothers, (substituted for J. F. Medford

and Lucinda Walker); Elmer W. Smith, successor to Frank Sant; Frank E. Ellis, (substituted for John Corrigan and Minnie Corrigan); Twin Lakes Canal Company, a corporation, (substituted for Oneida Irrigation District); Edwin D. Whitman, administrator of the estate of Joseph E. Simmons, deceased (substituted for Joseph E. Simmonds); O. H. Brown, Independent School District Number Six, a corporation; Anna L. Westrom, D. Young, Ed and Wilbur Beus; Estate of Mary Baird, deceased; Charles R. Lakey, M. E. Corrigan, the Misses Childs, W. F. Messenger, Mrs. F. J. Fryar, Mary Cox, J. A. Swenson, W. J. Kellogg, W. F. Donahue, Doctor Smedley, Alvin Myers, Eva I. Dygert, Wm. Winchell; Presbyterian Church, a religious corporation; Kate Dubry, George White, T. A. Sterrett, E. C. Foster, J. P. Wannamaker, James Watson, Ellen E. Woodall; Austin Bros. Association, a corporation; Mrs. Albi Williams, A. J. Knollin, Minnie O. Blackburn, Amelia Woodal, Ellen Lund, C. K. Bocker, Madge Bell, Church of Jesus Christ of Latter Day Saints, a religious corporation; L. P. Beus, D. A. Anderson, George Clifford, George Albrecht, D. F. Lau, John Ferebauer, Margaret F. Cully, J. P. Madsen, Henry L. Finch, Elizabeth Dorrien, Chris Panting, Priscilla Gorton, W. M. Davis, A. W. Nicholson, George Horsley, T. W. Horsley, J. J. Skinner, D. K. McLean, Sam Hopkins, Eliza Schmidt; Natural Mineral Water Company, an unincorporated association; Rosina Hopkins, J. H. Schmidt, Anna Hamilton, George R. Small, Armenta Sterrett, Oren Hansen, S. Small, Annie Wetzel, Elizabeth Williams, Ira Hardy, E. T. Wood, C. B. Johnson, Wm. Chester, Caroline D. Eastman, William Body, (substituted for George Woods); Soda Springs Mill and Elevator Company, a corporation; Jesse P. Anderson, George W. Ellis, Otto Rohall, Wm. B. Fowler, George E. Beckstead, Jr.; and Albert Capson, successor to Leo Meachem,

Defendants.

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DECREE

This case came on to be further heard at this term, additional proof being submitted, and the cause further argued by counsel, and thereupon, upon consideration thereof, it is ORDERED, ADJUDGED AND DECREED as follows, viz:

I.

1. That the Bear River is an inter-state stream with a large number of tributaries in the States of Utah, Wyoming and Idaho, said river rising in the Wasatch mountains in northeastern Utah and flowing in a general northerly direction through the States of Utah and Wyoming to a point on the boundary line between the States of Idaho and Wyoming near the town of Border in the State of Wyoming, into the State of Idaho, thence in a general northwesterly direction around the north end of Bear Lake (including North or Mud Lake) located in Bear Lake County, Idaho, and Rich County, Utah, to a point near the town of Alexander in said State of Idaho, thence in a general southerly direction through the States of Idaho and Utah, emptying into Great Salt Lake in said latter state.

That there is hereby drawn within the jurisdiction of this court, for distribution for beneficial uses, under and pursuant to the terms of this decree, all that portion of Bear River, as above described, commencing at a point directly north of Bear Lake in Section 34, Township 13 South, Range 44 East, Boise Meridian, which said point is marked and indicated by the "Stewart Dam," and headgates to the plaintiff's intake canal into Bear Lake Reservoir, known as the "Rainbow Canal," thence generally northwesterly through Idaho, to a point near the town of Alexander, thence in a general southerly direction to the boundary line between the States of Idaho and Utah, together with all intervening tributaries of the Bear River, which are decreed to constitute a single inter-dependent river system, to be administered under the terms of this decree.

2. Subject to the prior rights of the various defendants, as hereinafter decreed in the order of their respective priorities, the said plaintiff, the Utah Power & Light Company, has the right to divert at the Stewart Dam, as hereinbefore described, (and also in seasons of flood water through the "Dingle Inlet Canal" diverting from Bear River in the Northwest quarter of Section 17, Township 14 South, Range 45 East, Boise Meridian) and to impound and store in the Bear Lake Reservoir, consisting of Bear Lake and Mud or North Lake, in Rich County, Utah, and Bear Lake County, Idaho, all of the waters of Bear River to the extent of 5500 cubic feet per second of time, together with the waters naturally flowing into or arising in said lakes, all said waters to be stored in said Reservoir, and to be thereafter released from said reservoir at the said plaintiff's pleasure, through the plaintiff's embankment or "dyke" located within the lake meander lines, and extending from

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Section 16 to Section 18, in Township 14 South, Range 44 East, Boise Meridian, by means of control works located therein at a point approximately North 64°15' East 8120 feet from the Southwest corner of Section 18, Township 14 South, Range 44 East, Boise Meridian, and to be thence conveyed through the plaintiff's outlet canal, extending generally northwardly from the said control works to a confluence with Bear River, near the center of Section 6, Township 13 South, Range 44 East, Boise Meridian, and thence down the natural channel of Bear River, for use at various points of diversion now existing, or which may hereafter be established by the plaintiff for the generation of electric power, and for such irrigation or other beneficial purposes, recognized by law, as the plaintiff may devote or dedicate said released stored waters, by use, sale, rental, or otherwise.

In its exercise of the rights herein defined, the plaintiff may, to the extent of its various appropriations, divert and impound in storage, the waters of Bear River and of Bear Lake at all times, and at all seasons of the year, when by so doing it does not interfere with the exercise of any prior rights fixed by this decree, and the waters released by it from storage may be conveyed through the natural channel of the river, and shall be protected under the provisions of this decree for the distribution designated by the plaintiff, as though kept and conveyed within an artificial channel, and the return of the waters to the river, after their various uses by the plaintiff, shall not be deemed an abandonment thereof, but it is recognized by this decree, and it shall be recognized by the officers charged with the administration hereof, that the plaintiff's rights in said waters continue throughout the portion of the stream brought under this decree for use both in Idaho and beyond the Utah-Idaho state line, and all parties to this suit, their heirs, executors, administrators, successors in interest and assigns, and the agents, servants and attorneys of said parties, their heirs, etc., are hereby perpetually enjoined and restrained from in any manner using or interfering with the use by the plaintiff of the said released stored waters, except with the consent and under the authority of the plaintiff, its successors or assigns.

In administering the rights of the plaintiff herein decreed and mentioned, the following considerations shall be observed and recognized:

For the purpose of regulating and controlling the flow of the river, and in the interest of conservation of the waters thereof, the plaintiff may, at any time, divert at its Stewart Dam, and through its Rainbow Canal (and in seasons of flood through the Dingle Inlet Canal) above mentioned, the entire flow of the waters of Bear River, provided it discharges at the same time through its outlet control works, (when there is need therefor to supply the rights of prior appropriators below), and into its outlet canal, and conveys thence to the natural channel of

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Bear River, an equivalent amount of water, such quantity to be regarded as natural flow of the river, and not released stored water. In order to compensate for the natural yield of the Bear Lake area, including Bear Lake and Mud Lake, and the area between the lake meander line and Bear River, and mountainous slopes to the west, which area was formerly drained by a natural channel known and designated herein as the "natural outlet," as claimed in the cross bills of certain defendants, the plaintiff shall discharge from its reservoir, through its outlet works, (when required to supply the rights of prior appropriators below) a quantity of water sufficient to yield at a point in the plaintiff's outlet canal, at measuring devices to be installed by the plaintiff as near as practicable to the present bridge on the Montpelier-Ovid road, in the Southwest quarter of Section 7, Township 13 South, Range 44 East, Boise Meridian, the following amounts in addition to any amount of water then being discharged to equal diversions from Bear River, and regarded as "natural flow," to-wit:

From April 20 to July 1st of each year, 50 cubic feet per second;

From July 1st to July 15th of each year, 35 cubic feet per second;

From July 16th to Aug. 1st of each year, 25 cubic feet per second;

From Aug. 1st to Sept. 15th of each year, 15 cubic feet per second;

such quantity of water to be also regarded and distributed as "natural flow," and not "released stored water," and shall be full compensation for any interruption of natural flow from said Bear Lake area by the plaintiff's reservoir works.

In the delivery to the plaintiff of released stored water at its several power plants, now or hereafter established, or at such points of diversion for irrigation or other beneficial purposes as it may designate for such delivery, transit losses shall be computed as follows:

1½% of the net release from storage (after adjustments for natural flow as aforesaid), from the outlet works at dyke to points between Alexander and plaintiff's Grace Dam, situate in the Northeast quarter of Section 1, Township 10 South, Range 40 East, Boise Meridian;

An additional 1% from said Grace Dam to the headgate of the West Cache Canal Company, situate in the Southeast quarter of Section 25, Township 14 South, Range 39 East, Boise Meridian, and

An additional 1% from said West Cache headgate to the boundary line between Utah and Idaho.

In determining transit losses, or otherwise calculating the division of waters at the various principal points of diversion, as between natural flow of the river and released stored waters, a time lag of twenty-four hours shall be applied for the flow of released stored waters from the plaintiff's control works to points between Alexander and Grace Dam, and an additional twenty-four hours to points between West Cache headgates and the Utah-Idaho State line, and a proportionate time for intervening points of diversion.

3. In addition to the storage rights of plaintiff, herein decreed, the waters of Bear River and its tributaries between the points hereinbefore described, as drawn within the jurisdiction of this court for distribution under this decree, are hereby allotted and decreed for the various beneficial uses herein specified, without waste, to the plaintiff and defendants, respectively, and their successors in title and interest, in the amounts, for the purposes, and with the priorities, established and prescribed by the "Schedule of Rights" hereinafter defined.

The rights herein decreed and recognized are designated and classified as "Power Rights," "Irrigation Rights" and "Domestic Rights," respectively, and shall have the following characteristics:

"Power Rights" include the right to divert and use water for the generation of electric power, and such rights of diversion and use are continuous throughout the year without limitation to time or season.

"Irrigation Rights" include the right to divert and use water for irrigation, culinary, domestic, and agricultural purposes connected therewith, throughout the irrigation season of each year, which is defined as that portion of each calendar year which commences on the 20th day of April and closes on the 30th day of September; subject to the qualification, however, that between the 20th and 30th days of April of each year, and the 15th and 30th days of September of each year, inclusive of each of said days, no irrigation appropriator shall divert or use more than 40 per cent of his or its allotment under the "Schedule of Rights" hereinafter prescribed, except as is hereinafter specifically provided in the "Schedule of Rights." The water allotted and decreed to the parties hereto for irrigation purposes is, and shall be, appurtenant to the land upon which the same has been applied and used, as described in the schedule; subject, however, to the rights of appropriators or shareholders in any appropriating canal company to change the place of diversion or use as provided by law when no damage or injury results to others, or to make any beneficial use of such waters, or any part thereof, which does not injure other appropriators.

"Domestic Rights" include the right to divert and use water during the non-irrigating season, that is to say, from the first day of October of each year to the 19th day of April following, both dates inclusive, under agricultural appropriations and through irrigation ditches, for general domestic uses, including watering stock and culinary purposes. Each irrigation right herein decreed shall include and imply as a part thereof a domestic right to the use, during the non-irrigating season, of such of the waters allotted for irrigation purposes as are necessary for such domestic purposes and such shall be the measure of said domestic rights, and the extent of use of water through irrigation canals in the non-irrigation season,

until the amount shall be more definitely fixed under the reservation of jurisdiction hereinafter contained. Nothing herein contained shall affect specific allotments made in the schedule of rights under appropriations for domestic, culinary or other specific beneficial purposes, which rights are to be recognized and administered specifically as decreed.

All rights herein decreed to the plaintiff and the several defendants are decreed for the beneficial uses specified, and none of the parties hereto, or their successors in interest, whether heirs, executors, administrators, successors or assigns, shall have the right to divert any of the waters of said Bear River, or any of its tributaries, except for beneficial use, and whenever such use has ceased, such party or parties shall cease to divert, and shall have no right to divert, the said waters, or any part thereof, and each and every of the parties hereto, their servants, attorneys, employes and successors in interest, as aforesaid, are hereby enjoined and restrained from any and all interference with or diversion or use of the said waters, except in the manner, and to the extent, and for the purposes, provided in this decree, whenever such interference, diversion or use would in any manner interfere with the diversion or use of the water awarded by this decree to any of the other parties to this action.

The parties hereto and their successors in interest shall install and maintain suitable and efficient headgates, controlling works and measuring devices at their respective points of diversion, and all water herein allotted and decreed shall be measured at said points of diversion. Said works and devices shall be built and installed in accordance with plans and specifications to be approved by the state official charged with the duty of supervising the distribution of water, (subject to review by this court). All such devices shall be of such design as to accurately register the amount of water diverted, and in the case of ditches diverting fifty or more cubic feet per second, automatic measuring and registering devices shall be installed and maintained. All such headgates, control works and measuring devices and gauges shall at all times be subject to the inspection of either party, and to public officials or water masters having jurisdiction over the distribution and diversion of water, and no dam or other obstruction to the natural flow of the stream shall be maintained so as to divert water from the channel of the stream, except through ditches, canals or other works provided with such headgates, control works and measuring devices, and each of the parties hereto shall be perpetually enjoined from diverting from the channel of the stream or its tributaries any water through any ditch, conduit or other devices not provided with such headgates, control works and measuring device; *provided*, that in case of diversions through pipes for power purposes, measuring devices may be dispensed with where the quantity of water diverted may be otherwise determined by calculations based on power output or current meter measurements.

4. Subject to the power and duty of this court to supervise and enforce the administration of its decree from time to time as occasion may require, and to that end to appoint if necessary its commissioner for that purpose, for which jurisdiction is hereby expressly reserved, the administration of this decree shall be left in the first instance with the officials of the state of Idaho charged with the duty of supervising the distribution of the public waters within said state, the costs and expenses of such administration to be defrayed as provided by the statutes of Idaho. Any party hereto may apply at any time for directions to the watermaster, or for the appointment of a commissioner, if necessary, to enforce any provision of this decree.

The watermaster or commissioner, or other official charged with the distribution of the waters of the Bear River and its tributaries subject to this decree, need not in the first instance, by reason of the decree, undertake the detailed administration of the waters of the entire portion of the river and tributaries placed under the decree, but only of such section of the main river and such tributaries as he shall be specifically directed to administer. Such administration may be extended upon application of any party, from time to time, as the irrigation season advances and necessity therefor arises. Such watermaster, commissioner, or other official, however, shall, after his appointment, have general supervision of the entire river, and of the tributary waters, and if called upon to administer the waters of any particular tributary he may utilize any agency for the distribution of the waters of such tributary locally selected or agreed upon by the water users from such tributary, and if necessary he may appoint assistants to administer any section of the main river, or any tributary thereof, provided always that any party hereto may invoke the powers of such watermaster, commissioner, or other official, to personally direct and supervise the administration of the waters of any section of the river, or of any tributary or tributaries, in strict conformity to the provisions of this decree, both during the irrigation season, and the non-irrigating or winter season, so far as may be necessary to secure to the several parties their rights hereunder, and failing to obtain proper action by such watermaster, commissioner or other official, may apply to the court for directions in the premises.

20-12
5. The plaintiff, Utah Power & Light Company, and the defendant, Utah-Idaho Sugar Company, have certain rights to the use of the waters of Bear River with points of diversion in Utah below the Utah-Idaho state line, which rights are included in the schedule of rights herein decreed. The inclusion of said rights in the said schedule is not to be construed as a decree *in rem*, establishing said rights, or as an adjudication of title to said rights, which have attached in a state or district beyond the jurisdiction of this court, but merely as a recognition of said rights to the extent that in the administration of that part of the river within the jurisdiction of this court, and the operation of this decree as hereinbefore defined, the watermaster, com-

MAY 14 1996

missioner or other official charged with the administration of the decree, shall see that there is delivered at the Utah state line such quantity of water as is necessary, together with natural increment below said Utah state line, to satisfy said rights in accordance with their dignity and priority as herein recognized.

REPRODUCED

MAY 14 1996

DATE OF
PRIORITY

AMOUNT IN
SECOND FEET

POINT OF DIVERSION AND
PLACE OF USE

~~11-0592~~ 13-0656
285. L. Austin Pond and Mileta A.
Pond:
1875—May 1 0.74 c.f.s.

ter of Section 9, thence conveyed into the channel of King Creek and diverted therefrom in the Northeast quarter of the Southwest quarter of Section 3, for the irrigation of 37 acres of land in the Southeast quarter of the Southeast quarter and the South half of the Northeast quarter of Section 2; the Southwest quarter of the Southwest quarter of Section 1; the Northwest quarter of the Northwest quarter of Section 12, all in Township 12 South, Range 40 East.

To be diverted from said creek in the Northeast quarter of the Southwest quarter of Section 9, thence conveyed into the channel of King Creek and diverted therefrom in the Northeast quarter of the Southwest quarter of Section 3, for the irrigation of 37 acres of land in the South half of the Northeast quarter and the North half of the Southeast quarter of Section 3, all in Township 12 South, Range 40 East.

The foregoing interests and priorities in and to the use of the waters of North Hoops Creek are subject to, and limited by, the following order:

That the waters of the North Fork of Hoops Creek shall be measured at a point where a tributary from the South Fork flows into the North Fork of said creek, near the Northeast corner of the Northeast quarter of Section 16, Township 12 South, Range 40 East, B.M., and one-half of the quantity of water so determined to be there flowing shall be diverted for and subject to the several interests and priorities as immediately hereinafter adjudged, for the use of William B. Wright, Arthur Coombs and Lillie Coombs, Barnard J. White and O. A. Thompson, and the other half thereof conveyed to the channel of King Creek and comingled with the waters thereof to be diverted by and subject to the several interests and priorities as immediately hereinbefore adjudged for the use of B. George White, Howard E. Thatcher, Henry K. Thatcher and L. Austin Pond and Mileta A. Pond.

~~11-0594~~ 13-0657
286. Arthur Coombs and Lillie
Coombs, substituted for Har-
low W. Hoops:
1875—May 1 0.7 c.f.s.

To be diverted from said creek through two ditches diverting therefrom in the Southeast quarter of the Northeast quarter of Section 10, for the irrigation of 10 acres of land in the Northeast quarter of the Southwest quarter and the North half of the Southeast quarter of Section 11, through the above ditch diverting on the North side of said stream; and for the irrigation of 25 acres of land in the Northeast quarter of the Southeast quarter and

RECORDED

MAY 14 1996

All the foregoing reservations of jurisdiction shall extend after the term at which this decree is entered, and during any subsequent term prior to January 1, 1924, at which time, or at such earlier time as the court may determine these matters, this decree shall be closed. In all other respects this decree shall be final.

The court further retains jurisdiction, however, at all times, and from time to time, to make all reasonable rules touching the manner of diverting, measuring and distributing the waters, and the devices to be installed and used for such purposes where it may be impracticable to fully comply with the terms of this decree, and to direct that the parties keep accurate and detailed records of the amounts of water diverted, and to require reports to be filed from time to time of the amount so diverted, and generally to make such orders as may be found reasonably necessary to give effect to the decree, and to appoint commissioners or water masters to make distribution in accordance with its terms, and to punish the parties hereto, their officers, agents and employes, and their grantees and successors in interest, for any violation of the provisions thereof.

Done in open court this 14th day of July, 1920.

FRANK S. DIETRICH,
Judge.

MICROFILMED

MAY 14 1996

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STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
TRANSFER OF WATER RIGHT
TRANSFER NO. 70718

This is to certify that: LAWRENCE B FOX
16205 N CLEVELAND RD
PRESTON ID 83263
(208)427-6652

has requested a change to the water right(s) listed below. This change in water right(s) is authorized pursuant to the provisions of Section 42-222, Idaho Code. A summary of the changes is also listed below. The authorized change for each affected water right, including conditions of approval, is shown on the following pages of this document.

Summary of Water Rights Before the Proposed Change

Right	Origin/Basis	Priority	Rate	Volume	Acre Limit	Total Acres	Source
13-657	WR/Decreed	05/01/1875	0.7 cfs	N/A	N/A	N/A	NORTH HOOPS CREEK
13-662	WR/Decreed	06/01/1901	0.24 cfs	N/A	N/A	N/A	NORTH HOOPS CREEK

Purpose of Transfer (Changes Proposed)

Current Number	Split	POD	POU	Add POD	Period of Use	Nature of Use
13-657	NO	NO	YES	NO	NO	NO
13-662	NO	NO	YES	NO	NO	NO

Summary of Water Rights After the Approved Change

Existing Right	New No. (changed portion)	Transfer Rate	Transfer Volume	Acre Limit	Total Acres	New No. (remaining portion)	Remaining Rate	Remaining Volume	Remaining Acre Limit	Remaining Total Acres
13-657	13-657	0.70 cfs	122.5 af	35.0	47.0		N/A	N/A	N/A	N/A
13-662	13-662	0.24 cfs	42.0 af	12.0	47.0		N/A	N/A	N/A	N/A
COMBINED TOTALS		0.94 cfs	164.5 af	N/A	47.0		N/A	N/A	N/A	N/A

Detailed Water Right Description(s) attached

Dated this 7th day of October, 2003



Chief, Water Allocation Bureau

WATER RIGHT NO. 13-657
As Modified by Transfer No. 70718

In accordance with the approval of Transfer No. 70718, Water Right No. 13-657 is now described as follows.

Right Holder: LAWRENCE B FOX
16205 N CLEVELAND RD
PRESTON ID 83263

Priority Date: May 01, 1875

Source: NORTH HOOPS CREEK **Tributary:** HOOPS CREEK

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	04/20	to 09/30	0.70 CFS	122.5 AF
			0.70 CFS	122.5 AF

LOCATION OF POINT(S) OF DIVERSION:
NORTH HOOPS CREEK SENE Sec. 10 Twp 12S Rge 40E FRANKLIN County

PLACE OF USE: IRRIGATION

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
12S	40E	11																	47.0

Total Acres: 47

CONDITIONS OF APPROVAL

1. This right is limited to the irrigation of 35 acres within the place of use described above in a single irrigation season.
2. Rights 13-657 and 13-662 when combined shall not exceed a total irrigation of 47 acres.
3. Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 11.
4. The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion.
5. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 3.5 afa per acre at the field headgate for irrigation of the lands above.
6. The right holder shall accomplish the change authorized by this transfer within one (1) year of the date of this approval.
7. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.

This water right is subject to all prior water rights and shall be administered in accordance with Idaho law and applicable rules of the Department of Water Resources.

Dated this 7th day of October, 2003


Chief, Water Allocation Bureau

WATER RIGHT NO. 13-662
As Modified by Transfer No. 70718

In accordance with the approval of Transfer No. 70718, Water Right No. 13-662 is now described as follows.

Right Holder: LAWRENCE B FOX
 16205 N CLEVELAND RD
 PRESTON ID 83263

Priority Date: June 01, 1901

Source: NORTH HOOPS CREEK **Tributary:** HOOPS CREEK

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	04/20	09/30	0.24 CFS	42.0 AF
			0.24 CFS	42.0 AF

LOCATION OF POINT(S) OF DIVERSION:

NORTH HOOPS CREEK SENE Sec. 10 Twp 12S Rge 40E FRANKLIN County

PLACE OF USE: IRRIGATION

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
12S	40E	11													11.0	5.0			47.0

Total Acres: 47

CONDITIONS OF APPROVAL

1. This right is limited to the irrigation of 12 acres within the place of use described above in a single irrigation season.
2. Rights 13-657 and 13-662 when combined shall not exceed a total irrigation of 47 acres.
3. Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 11.
4. The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion.
5. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 3.5 afa per acre at the field headgate for irrigation of the lands above.
6. The right holder shall accomplish the change authorized by this transfer within one (1) year of the date of this approval.
7. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.

This water right is subject to all prior water rights and shall be administered in accordance with Idaho law and applicable rules of the Department of Water Resources.

Dated this _____ day of _____, 20____

 Chief, Water Allocation Bureau

MEMORANDUM

TO: FILE 13-00662
FROM: VAULT
RE: TRANSFER # 70718
DATE: 8-27-03

=====

Original Transfer Application, Form and correspondence regarding the above
referenced Transfer is located within:

FILE # 13-00657



START OF

RETAKE

The images appearing between this point and the "End of Retake" are true copies of records, microphotographs of which are missing, or proved unsatisfactory on inspection of the original reel.

To preserve the integrity of the files, the above mentioned records were rephotographed.



WATER RIGHT NO. 13-662
As Modified by Transfer No. 70718

In accordance with the approval of Transfer No. 70718, Water Right No. 13-662 is now described as follows.

Right Holder: LAWRENCE B FOX
16205 N CLEVELAND RD
PRESTON ID 83263

Priority Date: June 01, 1901

Source: NORTH HOOPS CREEK **Tributary:** HOOPS CREEK

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	04/20	09/30	0.24 CFS	42.0 AF
			0.24 CFS	42.0 AF

LOCATION OF POINT(S) OF DIVERSION:
NORTH HOOPS CREEK SENE Sec. 10 Twp 12S Rge 40E FRANKLIN County

PLACE OF USE: IRRIGATION

Twp	Rge	Sec	NE	NW	SW	SE	Totals
12S	40E	11	31.0	11.0	5.0		47.0

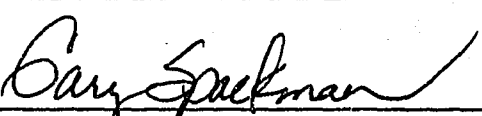
Total Acres: 47

CONDITIONS OF APPROVAL

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2. Rights 13-657 and 13-662 when combined shall not exceed a total irrigation of 47 acres.
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7. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.

This water right is subject to all prior water rights and shall be administered in accordance with Idaho law and applicable rules of the Department of Water Resources.

Dated this 7th day of October, 2003


Chief, Water Allocation Bureau

SCANNED
MICROFILMED
NOV 20 2003
OCT 15 2003



**END
OF RETAKE**