07-12-1965: documentation of water rights; july 12, 1965

Southwest Region
P.O. Box 728
Santa Fe, New Mexico
87501

L54

JUL 12 1965

Memorandum

To: Director

From: Assistant Regional Director, Operations

Subject: Documentation of Water Rights, Hanksville Irrigation Company vs. Torrey Irrigation Company, et al., Civil No. 167, Capitol Reef National Monument

We have enclosed a copy of a letter to the Acting State Engineer of Utah from the Regional Solicitor of Utah. This letter documents the date and manner of acquisition of our water rights at Capitol Reef National Monument. It also stipulates the amount in c.f.s. which we claim and lists title evidence. These were sent to the State Engineer along with the letter.

These documents, according to the laws of the State of Utah, should have been forwarded to the State Engineer by the County Clerk. Mr. Thomas Parker the Assistant Solicitor checked with the State Engineer and discovered this had not been done and he was kind enough to submit these documents.

We have placed a copy of this letter in our Capitol Reef Docket No. 1 under Part I, "Acquisition by United States". By copies of this memorandum we are sending this item to Chief, WORO and Superintendent, Capitol Reef for insertion in their docket.

(SIGNED)

George W. Miller

In duplicate

Enclosure

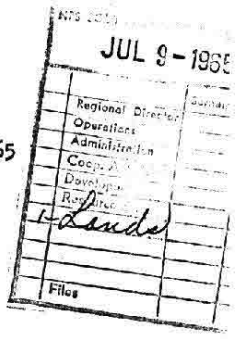
cc: Chief, WORO (2), w/enc.
Superintendent, Capitol Reef, w/enc.

WEFields:dmr
7/12/65

07-06-1965: letter to mr. harold donaldson, adjudication engineer; july 06, 1965

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR

IN REPLY REFER TO:



July 6, 1965

Mr. Hubert Lambert,
Acting Utah State Engineer
State Capitol Building
Salt Lake City, Utah

Attention: Mr. Harold Donaldson, Adjudication Engineer

Dear Mr. Lambert:

In a recent meeting in your office the water rights of the United States Department of the Interior, National Park Service at Capitol Reef National Monument were discussed. These water rights have been acquired from private individuals in connection with the purchase of land within the Monument. As you are aware, the Bates Decree of July 15, 1935 defines the water rights for the "Fruita residents" as being 8.0 c.f.s. This 8.0 c.f.s. right is a Class A right on the Fremont River. You are familiar with the Freeman Tanner Report dated July 23, 1937 which defined the individual rights of the Fruita residents as primary rights and the number of c.f.s. per owner was stated.

The National Park Service has acquired 7.65 c.f.s. of the total of the 8.0 c.f.s. recited in the Bates Decree. The following tabulation is submitted showing the source of these acquisitions:

Fruita Resident	Date acquired by National Park Service	Manner of Acquisition	Water Right (c.f.s)
Clarence L. Mulford, et ux.	October 31, 1962	Warranty Deed	1.77
William Clarence Chesnut	July 14, 1962	Warranty Deed	1.38
Dean R. Brimhall (Successor to Arvil Mott)	December 19, 1961	Warranty Deed	.44

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Care

Fruita Resident	Date acquired by National Park Service	Manner of Acquisition	Water Right (c.f.s)
Max L. Kreuger, et ux. (Successor to M. V. Oyler)	May 22, 1961 Dec. of Taking	Judgment in Condemnation	1.37
Richard W. Sprang, et ux. (Successor to Dewey Gifford)	May 22, 1961 Dec. of Taking	Judgment in Condemnation	.75
Richard W. Sprang, et ux. (Successor to Merin Smith)	May 22, 1961 Dec. of Taking	Judgment in Condemnation	1.133
Merin Smith, et ux.	May 22, 1961 Dec. of Taking	Judgment in Condemnation	0.147
Alma Chesnut	July 23, 1942	Judgment in Condemnation	.66
		Total	7.65

Enclosed herewith are the following evidences of title wherein the National Park Service acquired the land and the water rights listed in the above tabulation:

Attachment No. 1 - Deed from Clarence L. Mulford, et ux.

Attachment No. 2 - Deed from William Clarence Chesnut, et ux.

Attachment No. 3 - Deed from Dean R. Brimhall, et ux.

Attachment No. 4 - Final Judgment in Condemnation

Attachment No. 5 - Judgment on Declaration of Taking

This submittal is made pursuant to Section 73-1-10, Utah Code Annotated, 1953 as amended. Should you have any question concerning the water rights of the National Park Service from Fremont River I would appreciate hearing from you.

Sincerely yours,

J. Stuart McMaster

J. Stuart McMaster
Regional Solicitor

Enclosures

cc: Regional Director, Southwest Region, Santa Fe, New Mexico
Superintendent, Capitol Reef National Monument, Torrey, Utah

WR Copy
Extra Copy

Southwest Region
Santa Fe, New Mexico
87501

JAN 22 1965

L54
CARE

AIR MAIL - CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Wayne D. Criddle
State Engineer
State of Utah
Salt Lake City, Utah

RE: APPLICATION NO. a-4187

Dear Sir:

We are enclosing a notarized original and duplicate original Form 58 which is Proof of Permanent Change of Point of Diversion, Place, Purpose, and Period of Use of Water. This proof form is intended to prove permanent change of point of diversion, different place and method of use at Capitol Reef National Monument.

In addition we have enclosed the original linen tracing and one copy of a standard map drawn to your specifications, Drawing No. NM-CR-7124. The tracing has sheets 1 of 2 and 2 of 2.

Under this change application we now take 0.0557 cfs of water from the Fremont River, treat and chlorinate it and utilize it in the visitor center, residental areas and campground.

If there is any additional information required it will be transmitted upon request.

Sincerely yours,

Daniel B. Beard
Regional Director

Enclosures

cc: Director (2) w/encs. ✓
Chief, WODC (2) w/encs.
Superintendent, Capitol Reef w/encs.

Southwest Region
Santa Fe, New Mexico

L54
CARE

11/30/62

Wayne D. Criddle
Office of State Engineer
State of Utah
Salt Lake City, Utah

RE: Application No. a-4187

Attention: Jack A. Barnett
Application Engineer

Dear Sir:

Reference is made to your letter of November 21, 1962, wherein you state the above-numbered application has been reviewed by your office and that you are ready to proceed with the advertising of the application.

There did seem to be a question as to the ownership of the water rights which we propose to transfer.

Enclosed is a copy of the Findings of Fact and Judgment of Civil Suit No. 376 in the District Court of the United States for the District of Utah, Central Division, signed by Tillman D. Johnson, Judge of the U. S. District Court and filed on June 3, 1943, said Findings of Fact and Judgment being the result of a judgment of Declaration of Taking filed July 23, 1942 in the matter of condemnation of the Emma and Alma Chesnut property.

This particular condemnation suit placed the title of the land and water rights in the name of the United States of America. Any additional information which you might need has been recorded in the office of the Recorder, Wayne County, Utah, and if you will let us know what additional information is needed (if any) we can supply you with book and page numbers of recorded instruments.

Sincerely yours,

Thomas J. Allen
Regional Director

Enclosure

WEFields:ew 11/30/62

10-19-1962: u.s. postal money order no. 7,383,981,867; october 19, 1962

Southwest Region
Santa Fe, New Mexico

10/19/62

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CARE

Office of the State Engineer
403 State Capitol
Salt Lake City 14, Utah

Dear Sir:

Enclosed is a U. S. Postal Money Order No. 7,383,981,867 in the amount of $30.00 as payment for the filing fee of the unnumbered application submitted by this office October 15, 1962. This application was for a change in place and method of use of a water right from the Fremont River Capitol National Monument.

We have alos enclosed a Standard Form 1166 which is a receipt for cash which we would like for you to sign and return to this office.

Sincerely yours,

Arvel M. Koehler
Acting Regional Director

Enclosures (2)

WEFields:dv 10/19/62

10-12-1962: application for permanent change of point of diversion; october 12, 1962

WR Copy

Southwest Region
Santa Fe, New Mexico

1962

L54
CARE

OCT 12 1962

CERTIFIED MAIL

Mr. Wayne D. Criddle
State Engineer, Utah
403 State Capitol
Salt Lake City 14, Utah

(ref. w/3/26 transmittal

Dear Sir:

Enclosed are two copies of Form 107 which is an Application for Permanent Change of Point of Diversion, Place and Nature of Use of Water.

This application proposes to change the point of diversion of a portion of the water right owned by the United States of America at Capitol Reef National Monument from the Fremont River in Wayne County. We propose to change this water right from irrigation to municipal purposes as a water supply for Capitol Reef National Monument. The water use will be 25 gpm and will serve campgrounds, the residential area and headquarters area.

We have enclosed no purchase order for fees because on the first page of the Act which amended the state water laws for the State of Utah on May 10, 1955 there is a statement under 73-2-14 that the United States of America shall not be required to pay any fees provided by this section except for preparing copies of any and all documents. If this section has been further amended and we are required to make payment would you please notify us and we will send you a purchase voucher for the correct amount.

We have enclosed two copies because we would like for you to sign and approve both and return one for our files.

Sincerely yours,

Thomas J. Allen
Regional Director

Enclosures

Copy to: Director (2) w/o enclosures
Chief, WOBC (2) w/o enclosures
Supt., Capitol Reef w/o enclosures

C O P Y

IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF UTAH

IN AND FOR THE COUNTY OF WAYNE

HANKSVILLE CANAL COMPANY, a Corporation, :

Plaintiff, :

vs. :

TORREY IRRIGATION COMPANY, A Corporation, CAINEVILLE IRRIGATION COMPANY, a Corporation, EDMUND KING, JOSEPH HISKEY, DEZ HICKMAN, WILLIAM HICKMAN, CHARLES COOPER, DEWEY GIFFORD, CLARENCE MULFORD, WILLIAM CHESTNUT, MERIN SMITH, ALBERT CHESTNUT, M. V. OYLER, MARY ANN STEELE, Custodian of MICHAEL STEELE, GEORGE DURFEE, RICHFIELD COMMERCIAL & SAVINGS BANK, a Corporation, RUDOLPH COOK, ATHOL JENSEN, JAMES LANNING, ROYAL BRINKERHOFF, A. M. MYRUP, G. T. BEAN, EDGAR LARSEN, and DAN ADAMS, : DECREE

Defendants.

In accordance with the foregoing Findings of Fact and Conclusions of Law, and on motion of all the attorneys for the respective parties who appear in this action, jointly made, it is hereby ORDERED, ADJUDGED, and DECREED:

I.

That all rights subject to pro rated distribution, and the parties entitled thereto, are divided into two Sections, namely, Section "A" and Section "B", and the parties to this action are the owners of the right to the use of the waters of Fremont River, and the tributaries, streams, and springs arising and flowing within its drainage basin within the respective sections heretofore specified, in quantities and at times as follows, to-wit:

SECTION "A".

That the primary rights of the parties hereto in Section "A" are as follows, to-wit:

Hanksville Canal Company	10 c.f.s.
Caineville Irrigation Company	12 c.f.s.
Joseph Hiskey	6 c.f.s.
Charles Cooper and William Hickman, jointly	3.5 c.f.s.
William Hickman	1.1 c.f.s.
Edmund King, H.C. Larson and Richfield Commercial & Savings Bank, jointly	5 c.f.s.
FRUITA RESIDENTS, namely: Clarence Mulford, Dewey Gifford, William Chestnut, Alma Chestnut, Merin Smith, M.V.Oyler and Dan Adams, a total of (According to their respective individual rights)	8 c.f.s.
Edgar Larsen	1.66 c.f.s.

Edmund King---------- 40. c.f.s.
(For power purposes for grist mill, 3.33 c.f.s. of which may be used for irrigation purposes of his said lands near the grist mill. The said 3.33 c.f.s. for irrigation purposes is classed as primary right.)

Mary Ann Steele, custodian of Michael Steele---------- 1.50 c.f.s.
Haskin Lyman---------- 1 c.f.s.
G.T.Bean (To be used on lands in Twp. 29 S.R. 8 E. S.L.M.)---- 3 c.f.s.

SECTION "B"

The second class rights to the use of waters of said River are as follows:

William Hickman and Dez Hickman, jointly---------- 2.5 c.f.s.
Torrey Irrigation Company----------35 c.f.s.

II.

That each of the parties hereto and herein are hereby required to construct weirs of the design approved by the State Engineer of this State, under the direction and supervision of the commissioner to be appointed by this Court, and maintain the same in their respective canals and ditches for the purpose of accurately measuring the quantities of water decreed to them; and thereafter shall maintain and keep all dams, headgates, flumes, canals, and other means by which said waters are diverted, conveyed, or used, together with said weirs, in a good state of repair, to the end that no unnecessary loss from seepage or leakage shall occur, and that the waters shall be economically applied to the uses for which they are awarded, and all waters diverted from said river and the streams, springs, and tributaries within its drainage basin, by any of the parties hereto, shall be measured at their respective weirs and by means thereof.

III.

That the title of the parties hereto to the right to the use of said waters, as herein decreed, is hereby quieted as against each and every other party to this action; and each and every party hereto, their successors and assigns, and their agents, servants, and employees, are hereby forever enjoined from in any manner or at all interfering one with the other in the full, free, and unrestricted use of the quantities of water decreed to them, and from in any manner or at all interfering with each others' canals, dams, or headgates, or from in any manner or at all interfering with the distribution of said water by the commissioner of this Court, or by his agents or assistants.

IV.

That the rights herein decreed are founded upon appropriations of water for beneficial uses, and the rights herein decreed are subject to the condition that they are required and necessary for beneficial uses, and such rights are subject to the limitations and conditions that the same are used for beneficial purposes, economically and without waste.

V.

For the purpose of carrying this decree into effect, according to its true intent and meaning, a commissioner will be appointed by order of this Court made from time to time, to superintend and direct the measurement and division of the waters of the Fremont River and the Springs, streams, and tributaries within its drainage basin, according to the provisions of this decree, and to direct the construction and to supervise and inspect all means and appliances for the measurement thereof, and the diversion, conveyance, and use of the same, and to report from time to time to the Court relating to all waters and any violation of the provisions of this decree. Said commissioner to receive such compensation to be apportioned among the parties, as may be agreed upon, if practicable, if not, to be fixed from time to time as necessary by order of this court.

VI.

That the waters involved in this action are the waters that arise in and flow into the Fremont River or basin at a point designated as the Township line between Township 28 and 29, Range 3 East of the Salt Lake Meridian, and below said point, and does not apply to the rights that have heretofore been settled by the Court to all rights above that point.

VII.

It is further provided herein, that 2 c.f.s. of the water decreed to the Torrey Irrigation Company shall not be subject to pro rata distribution but shall be a right for culinary and domestic purposes for the use of the inhabitants of the town of Torrey, Wayne County, Utah.

VIII.

Unless otherwise limited by special provision, the primary rights herein decreed are absolute, unqualified rights during the period through which they extend, and rights in any class subsequent to primary rights are available only when all rights in preceding classes have been fully supplied.

IX.

That original jurisdiction of this cause and the subject matter thereof and of the parties thereto, is hereby retained for the purpose of making all necessary supplemental orders and decrees which may be required, to make effectual the rights decreed herein.

Dated this 15 day of July, A.D. 1935.

Nephi J. Bates
Judge.

STATE OF UTAH)
) SS
COUNTY OF WAYNE)

I, Elsie Eckersley, County Clerk and Ex-officio Clerk of the District Court in and for Wayne County, State of Utah, hereby certify that the foregoing is a full, true and correct copy of the original decree in the matter of Hanksville Canal Company, a corporation plaintiff vs Torrey Irrigation Company, et al, Defendants, as appears on file in my office.

Witness my hand and seal this 27th day of February, A.D. 1942.

(SEAL)

/s/ Elsie Eckersley
Clerk of the District Court

Southwest Region
Santa Fe, New Mexico
November 28, 1962

L54
CARE

Memorandum

To: Director

From: Regional Director

Subject: Analysis of Water Rights at Capitol Reef National Monument

When Mr. Dunn and Mr. Reed were in the Regional Office they expressed an interest in all of the data compiled by Civil Engineer Fields in attempting to analyze and bring the water rights at Capitol Reef National Monument up to date.

Following is a list of items obtained by searching all of the available abstracts for the lands at Capitol Reef:

1. Final decree by Judge Nephi J. Bates, Sixth Judicial District Court, Wayne County, State of Utah, dated July 15, 1935, recorded in Book "A" of Water Rights, page 228-230, in Wayne County Records wherein Fruita residents, namely, Clarence Mulford, Dewey Gifford, William Chestnut, Alma Chestnut, Merin Smith, N. V. Oyler and Dan Adams were allotted 8 cfs of water (according to their respective individual rights) but no individual rights were cited or defined.

2. a. Clarence Mulford on September 30, 1942 quitclaimed Alma Chesnut his right to .66 cfs of the 8 cfs (Entry 14820, Office of Recorder, Wayne County, recorded November 14, 1942 in Deed Book "G", page 205),

b. Dewey Gifford on September 28, 1942 quitclaimed Alma Chestnut hig right to .66 cfs of the 8 cfs (Entry 14821, Office of Recorder, Wayne County, recorded November 14, 1942 in Deed Book "G", page 205).

c. Orval Nott on September 29, 1942 quitclaimed Alma Chesnut his right to .66 cfs of the 8 cfs (Entry No. 14822, Office of Recorder, Wayne County, recorded November 14, 1942 in Deed Book "G", page 205).

d. William Chesnut on November 23, 1942 quitclaimed Alma Chesnut his right to .66 cfs of the 8 cfs (Entry No. 14950, Office of Recorder, Wayne County, recorded June 3, 1943 in Deed Book G, page 245).

e. Merin Smith on November 4, 1942 quitclaimed Alma Chesnut his right to .66 cfs of the 8 cfs (Entry No. 14951, Office of Recorder, Wayne County, recorded June 3, 1943 in Deed Book "G", page 245).

f. M. V. Oyler on August 15, 1942 quitclaimed Alma Chesnut his right to .66 cfs of the 8 cfs (Entry No. 14955, Office of Recorder, Wayne County, recorded June 3, 1943 in Deed Book "G", page 247).

3. A Judgement on Declaration of Taking dated July 23, 1942, Recorded August 7, 1942 in Deed Book "G", page 185-186, as Entry No. 14781, Office of the Recorder, Wayne County, Utah by Judge Tillman D. Johnson of United States District Court gave us title to 5 parcels of land and .66 cfs of water from Alma Chesnut.

4. By deed dated August 12, 1936, recorded August 27, 1936 in Water Right Record "A", page 130 as Entry No. 13637, Office of Recorder, Wayne County, Utah; Clarence Mulford, et al, conveyed to William Chesnut 1.3 cfs as his share.

5. By deed dated January 15, 1936, recorded January 18, 1936 in Water Right Record "A", page 126, Entry No. 13404, Office of Recorder, Wayne County, Utah; Clarence Mulford, et al, conveyed to Dewey Gifford 11/80 of 8 sec. feet which is .582 cfs.

6. By deed dated December 8, 1937, recorded February 1, 1938 in Book "A" of Water Rights, page 143, Entry No. 13949, Office of the Recorder, Wayne County, Utah; Clarence Mulford, et al, conveyed to M. V. Oyler 31 acres of water being 1 and 67/181 second feet of the 8 second feet. (This calculates to 1.37 sec. feet and 31 acres at .0442 sec. foot/acre calculates to 1.37 sec. feet).

7. By warranty deed dated September 30, 1941 recorded December 8, 1941 in Deed Book "G", page 144, Entry No. 14680, Office of Recorder, Wayne County, Utah, M. V. Oyler and wife deeded their land and 1 and 67/181 sec. feet of water to Max L. and Aliene W. Krueger (1 and 67/181 = 1.37 sec. feet).

8. On March 26, 1955, Clarence Mulford signed an affidavit that he had 1.76 cfs of water of the 8 sec. feet. This instrument was recorded March 30, 1955 in Water Right Record "A", page 261 as Entry No. 33226, Office of Recorder, Wayne County, Utah.

9. On March 26, 1955, Beatrice Adams, widow of Dan Adams signed an affidavit that she had .44 cfs of the 8 sec. feet. This instrument was recorded March 30, 1955 in Water Right Record "A", page 262 as Entry No. 33227, Office of Recorder, Wayne County, Utah.

10. On March 26, 1955, Dewey Gifford signed an affidavit that he had 1.10 cfs of the 8 sec. feet. This instrument was recorded March 30, 1955 in Water Right Record "A", page 263 as Entry No. 33228, Office of Recorder, Wayne County, Utah.

11. On March 26, 1955, Dicey Chesnut, widow of William Chesnut, signed an affidavit that she had 1.3 cfs of the 8 sec. feet. This instrument was recorded March 30, 1955 in Water Right Record "A", page 264 as Entry No. 33229, Office of Recorder, Wayne County, Utah.

12. On June 14, 1954 Dewey Gifford and wife conveyed by warranty deed to T. A. Claridge a tract of land which had .55 cfs of water, being a part of the 8 cfs. This instrument was recorded July 9, 1954 in Book "I" of Deeds, page 198-199, Office of the Recorder, Wayne County, Utah.

13. On January 17, 1956 Dewey Gifford and wife conveyed by warranty deed to T. A. Claridge 9.21 acres of land which had .20 cfs of water from the 8 sec. feet. This instrument was recorded January 31, 1956, Deed Record "I", page 559-560, as Entry No. 40611, Office of Recorder, Wayne County, Utah.

14. By warranty deed of February 24, 1956, T. A. Claridge and wife conveyed land and water rights listed in 12 and 13 above to Maxwell H. and Elizabeth Lewis. This instrument was recorded March 6, 1956, Deed Book "I", page 588-589, as Entry No. 40754, Office of Recorder, Wayne County, Utah. (This instrument also conveyed 1.133 cfs originally from Merin Smith to the Lewises).

15. By warranty deed dated September 29, 1936 from William and Dicey Chesnut to A. L. Inglesby two tracts totalling 5.957 acres with no water rights defined. This instrument was recorded April 10, 1937 in Book "F" of Deeds, page 512 and April 22, 1937 in Book F of Deeds, page 514 in Wayne County, Utah.

16. By warranty deed dated February 14, 1957 William Chesnut et al. sold to Elizabeth Lewis a tract of land with no water rights. This instrument was recorded February 20, 1957 in

Deed Book "J", page 211, as Entry No. 43270, Office of Recorder, Wayne County, Utah.

17. By warranty deed dated July 16, 1962 William C. Chesnut and Ruby Chesnut sold to U.S.A. all of their property less that sold to Inglesby and Elizabeth Lewis as listed above with all improvements and water rights. This instrument recorded July 16, 1962 in Deed Book "L", page 128-129 as Entry No. 67719, Office of Recorder, Wayne County, Utah.

18. By warranty deed of February 14, 1928 Margaret Blackburn conveyed land to Merin Smith with all water rights pertaining to said land. Said instrument filed in Office of Recorder, Wayne County, Utah, April 5, 1930 in Deed Book "F", page 104, as Entry 12405.

19. By warranty deed of December 23, 1933 Merin and Cora Smith conveyed same land to Cora Smith with all water rights. Said instrument recorded in Office of Recorder, Wayne County, Utah on January 23, 1934 in Book "F", page 261, as Entry No. 13007.

20. On July 31, 1948 A. L. Inglesby and wife by warranty deed sold V. A. Rosenberger, George F. Mason and wives a portion (2.59 acres) of land acquired from William and Dicey Chesnut with no water rights defined. This instrument recorded on November 24, 1948 in Deed Book "H", page 274 as Entry No. 17067, Office of Recorder, Wayne County, Utah.

21. Rosenberger to Mason same as 20 except included water rights not defined, on April 25, 1953. Recorded April 29, 1953 in Deed Book "I", page 82, as Entry No. 20392, Office of Recorder, Wayne County, Utah. (Sometime before August 15, 1956 Archie and Emma Bird acqqired this property).

22. On January 12, 1959 A. L. Inglesby deeded the remainder of land acquired from William and Dicey Chesnut (should have been 3.267 acres, no acreage given) to Ruth C. Waldo with water rights. This instrument recorded on July 20, 1959 in Deed Book "K", page 115-116, as Entry No. 65752, Office of Recorder, Wayne County, Utah.

23. On March 7, 1959 Merin and Cora Smith sold to A. L. Inglesby 1.06 acres with no water rights mentioned. This instrument recorded March 9, 1959 in Deed Book "K" as Entry No. 36567, Office of Recorder, Wayne County, Utah.

24. Under item 2C Orval Mott established himself as successor to Dan Adams.

25. By warranty deed of March 18, 1943 Orval Mott and wife sold 53 acres of land to Dean R. Brimhall together with all water rights decreed by Judge N. J. Bates and that Sand Creek water filed on by Aaron Holt. This instrument recorded in Office of Recorder, Wayne County, Utah on June 23, 1943 in Deed Book "G", page 253 as Entry No. 14972.

26. On June 14, 1945 Aaron Holt signed an affidavit that he diverted from ½ to 1½ sec. feet from Sand Creek to irrigate 40 acres starting in 1902. This instrument recorded June 16, 1945 in Deed Book "G", page 393, as Entry No. 15393, Office of Recorder, Wayne County, Utah.

27. Clarence Mulford, et al, deed to Dean R. Brimhall on June 16, 1945, .44 cfs of water from Fremont River. Recorded June 18, 1945 in Deed Book "G", page 394 as Entry No. 15395, Office of Recorder, Wayne County, Utah. Same water as Adams.

28. Merin Smith and Cora Smith to Owen M. Davis certain land with all water rights on December 15, 1945 and recorded in the Office of Recorder, Wayne County, Utah, on January 29, 1945 (probably 6) in Book "G" of Deeds, page 573 as Entry No. 16050.

29. Owen M. Davis and wife to T. A. Claridge warranty deed dated March 29, 1955 which defined water rights mentioned in 28 as 1.133 cfs. Recorded March 30, 1955 in Book "I" of Deeds, page 337-338 as Entry No. 33230, Office of Recorder, Wayne County, Utah.

30. Warranty deed dated February 24, 1956 from T. A. Claridge and wife to Maxwell and Elizabeth Lewis selling lands and a total of 1.883 sec. feet of water. Recorded March 6, 1956, Deed Book "I", page 588-589 as Entry No. 40754, Office of Recorder, Wayne County, Utah.

In analyzing these thirty or more instruments we find that Clarence Mulford had 1.76 cfs, Dewey Gifford had 1.10 cfs, William Chesnut had 1.3 cfs, Alam Chesnut had .66 cfs, M. V. Oyler had 1.37 cfs, and Dan Adams or Orval Mott had .44 cfs. According to the abstracts we can find no defined water rights for Merin Smith but by subtraction Merin Smith would have had title to 1.37 cfs. A Water Master Report by Water Commissioner Freeman Tanner dated July 23, 1937 indicates the following breakdown of water rights:

Name	Cfs
Clarence Mulford	1.77
Dewey Gifford	1.10
William Chesnut	1.38

Name	Cfs
Alma Chesnut	.66
Merin Smith	1.28
M. V. Oyler	1.37

This report also indicates that this amount of water was actually being used by these people.

Through various land transactions which we have shown in the enclosed chart we find that the United States now has title to 7.523 cfs of water. We arrive at this figure as follows: Technically we have purchased all of the water rights at Capitol Reef except that part retained by Dewey Gifford, which is .35 cfs. However it is our opinion that both the Waldo and Bird properties have appurtenant water rights by inference even though they were not mentioned in the deeds, that is, according to the rule that water goes with the land. From an aerial photograph of 1958 we estimated the maximum amount of irrigated land on the Waldo and Bird properties and came up with the following figures: Waldoss had 1.95 acres of irrigated land and Birds had .93 acres of irrigated land. The total decree was originally for 8 cfs for 181 acres, which breaks down to .0442 cfs per acre. By direct multiplication we then arrive at the .041 for Birds and .085 for Waldoss. These of course are not of record but we think that think that they are a maximum amount that these land owners can claim.

Here is an analysis of our plans for use of the water in the future:

> Our present construction plans for the water system alone are estimated to cost $95,330. This includes a diversion from the Fremont River at a point whence the section corner common to Sections 14-15-22 and 23, T. 29 S., R. 6 E., SLM, bears S. 51° 09' W. 646.84', a 26 gpm river intake pump, alum solution feeders, a 750-gallon flocculation tank, 6000-gallon sedimentation tank, 12½ square feet of filters, water treatment plant building with hypochlorinators, a 1200-gallon clear well sump, a 50-gpm, two-stage centrifugal pump, a 100,000-gallon storage reservoir, and a water system with 1760' of 1" CI pipe, 1250' of 2" CI pipe, 1778' of 3" CI pipe, 3252' of 4" CI pipe, and 4543' of 6" CI pipe. Use area for these pipelines will be SW¼ Sec. 14, NW¼NW¼ Sec. 23, and S½NW¼ Sec. 15, T. 29 S., R. 6 E., SLM.

We have already made application for a change in place and method of diversion to the State Engineer's Office in Utah for the 25 gpm or 0.0557 cfs to be used by the above-described water system.

For the purpose of this application we transferred a portion of the .66 cfs of water obtained from Alma Chesnut which has already been documented in the State Engineer's files. The remainder of the water rights for the present will be used for irrigation, largely under special use permit. As soon as possible we plan to incorporate the entire sum of the water rights under one municipal use similar to what was done at Zion National Park.

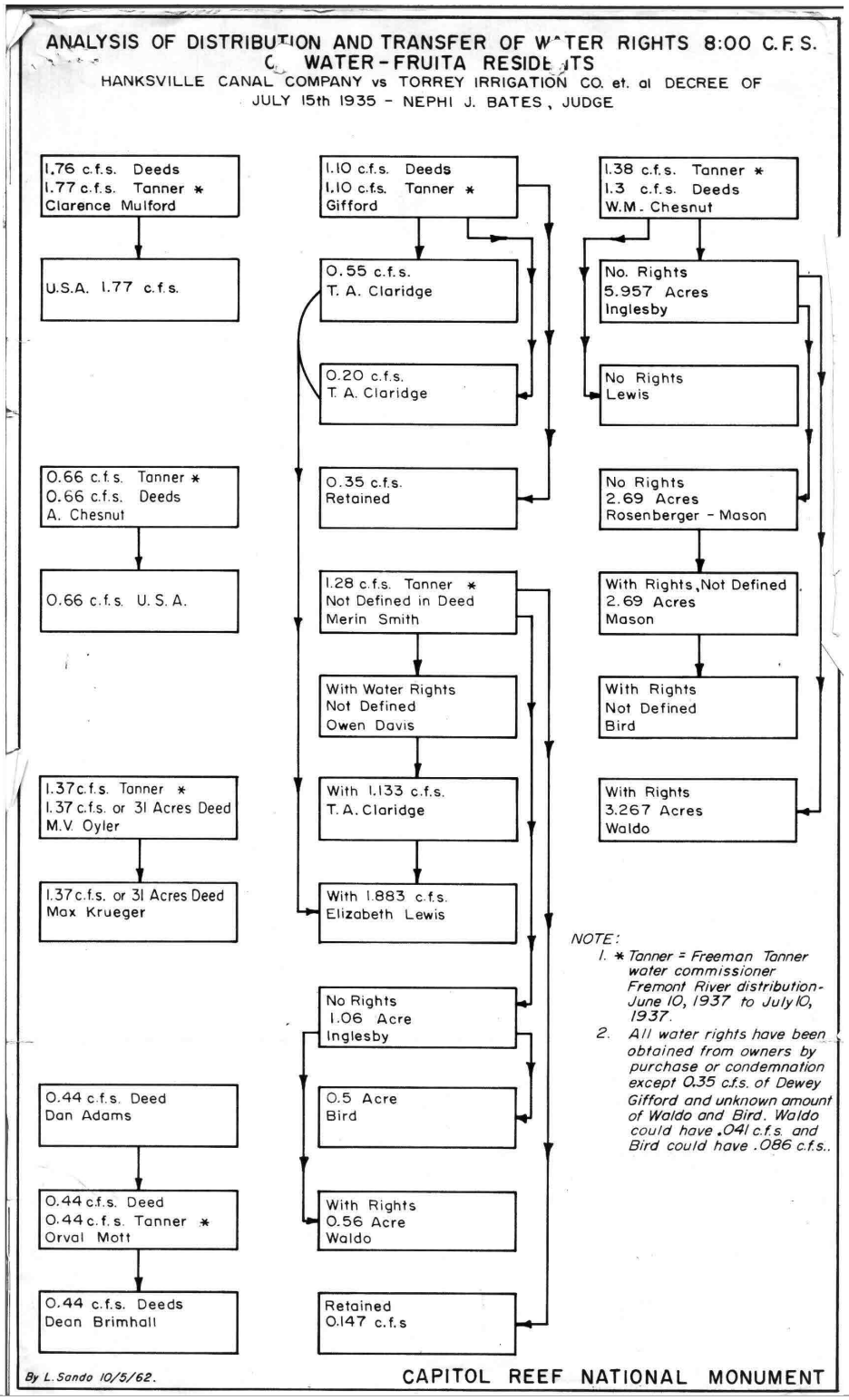
Thomas J. Allen
Regional Director

In duplicate

Enclosure

WEFields:ew 11/28/62

00-00-0000: analysis of distribution and transfer of water rights



00-00-0000: capitol reef national monument water rights

Some of the Instruments relative to the 8.0 c.f.s. of the water awarded to the people of Fruita, Wayne County, State of Utah, as Decreed in that certain Decree in an action entitled "Hanksville Canal Company, a corporation, VS. Torrey Irrigation Company, a corporation, et al, Defendants

CAPITOL REEF NATIONAL MONUMENT WATER RIGHTS.

Prepared by Nellie H. Taylor,
Licensed Abstracter, Loa, Utah

CAPTION

Some of the instruments relative to the 8.0 c.f.s. of water awarded to the people of Fruita, Wayne County, State of Utah, as Decreed in that certain Decree in an action entitled "Hanksville Canal Co,pany, a corporation, Plaintiff, vs. Torrey Irrigation Company, a corporation, et al, Defendants

1.	CLARENCE L. MULFORD et al	DEWEY GIFFORD	DEED	A	126
2.	CLARENCE MULFORD et al	WILLIAM CHESNUT	DEED	A	130
3.	CLARENCE MULFORD et al	M. V. OYLER	DEED	A	143
4.	THE UNITED STATES OF AMERICA	THE PUBLIC	JUDGMENT	G	185
8.	CLARENCE MULFORD	ALMA CHESNUT	QCD	G	205
9.	DEWEY GIFFORD	ALMA CHESNUT	QCD	G	205
10.	ORVAL MOTT	ALMA CHESNUT	Q. C. D.	G	205
11.	WILLIAM CHESNUT	ALMA CHESNUT	Q. C. D.	G	245
12.	MERIN SMITH	ALMA CHESNUT	Q. C. D.	G	245
13.	M. V. OYLER	ALMA CHESNUT	Q. C. D.	G	247
14.	MAX L. KRUEGER ET AL	THE UNITED STATES OF AMERICA	WATER DEED	G	246
15.	CLARENCE L. MULFORD	WHOM IT MAY CONCERN	AFFIDAVIT	A	261
16.	BEATRICE ADAMS	DO	DO	A	262
17.	DEWEY GIFFORD	DO	DO	A	263
18.	DICEY CHESNUT	DO	DO	A	2644

CERTIFICATE of Nellie H. Taylor, Licensed Abstracter, dated July 5, 1962 at 1:00 P. M..

D E E D

DATED Jan. 15, 1936
RECORDED Jan. 18, 1936 in Water Right Record "A" page 126

ENTRY NO. 13404, OFFICE OF THE RECORDER WAYNE COUNTY, STATE OF UTAH

CLARENCE L. MULFORD et al

to

DEWEY GIFFORD

CLARENCE L. MULFORD & MARIE MULFORD, his wife WM CHESTNUT & DICEY CHESTNUT his wif , MERIN SMITH & CORA SMITH his wife DAN C. ADAMS & BEATRICE ADAMS, his wife M. V. OYLER AND ELVERA OYLER his wife, ALMA CHESTNUT widower DEWEY GIFFORD & NELLIE GIFFORD his w wife, all of Fruita, Utah, Grantors, hereby convey & grant to DEWEY GIFFORD Grantee for the sum of one dollar and other valuable considerations 11/80 of 8 sec. feet of water in the Fremont River Decreed to the above Grantors.

WITNESS the hands of said Grantors this 15th day of Jan 1936.

Signed in Presence

CLARENCE L. MULFORD	MARIE MULFORD
ALMA CHESNUT	
WM CHESNUT	DICEY CHESNUT
MERIN SMITH	CORA SMITH
M. V. OYLER	ELVERA OYLER
DAN C. ADAMS	BEATRICE ADAMS

STATE OF UTAH)
)SS
COUNTY OF WAYNE)

On the 15 day of Jan 1936, Personally appeared before me Charles Snow a Notary Public in and for said county and state CLARENCE L. MULFORD MARIE MULFORD WM CHESTNUT DICEY CHESTNUT MERIN SMITH CORA SMITH M. V. OYLER ELVERA OYLER ALMA CHESTNUT DEWEY GIFFORD NELLIE GIFFORD DANIEL C. ADAMS & BEATRICE ADAMS his wife The signers of the within Instrument who duly acknowledged to me that they executed the same.

CHARLES SNOW

NOTARY PUBLIC

S E A L

My commission expires Jan. 1, 1937

Residing at Teasdale, Utah

08-12-1936: transfer of deed; august 12, 1936

D E E D

CLARENCE MULFORD et al

to

WILLIAM CHESNUT

DATED August 12, 1936
RECORDED August 27, 1936 in Water Right Record "A" page 130

ENTRY NO. 13637, OFFICE OF THE RECORDER WAYNE COUNTY, STATE OF UTAH

CLARENCE L. MULFORD and MARIE MULFORD his wife, WM. CHESNUT and DICEY CHESNUT, his wife, MERIN SMITH and CORA SMITH, his wife, DAN C. ADAMS and BEATRICE ADAMS, his wife M. V. OYLER and ELVERA OYLER, his wife, ALMA CHESNUT a widower and DEWEY GIFFORD and NELLIE GIFFORD, his wife, all of Fruita, Utah, Grantors, hereby convey and grant to WILLIAM CHESNUT, Grantee for the sum of One dollar and other valuable consideration,

1.3 second feet of water in the Fremont River, Decreed to the above Grantors

WITNESS the hands of said Grantors this 12 day of Aug. A. D. 1936.

Witness:

Guy Smith

Orval Mott

DEWEY GIFFORD

NELLIE GIFFORD

CLARENCE MULFORD

MARIE MULFORD

MERIN SMITH

CORA SMITH

M. V. OYLER

ELVERA OYLER

ALMA CHESNUT

BEATRICE ADAMS

WM CHESNUT

DICEY CHESNUT

STATE OF UTAH)
)SS
COUNTY OF WAYNE)

On the 12 day of Aug. A. D. 1936, personally appeared before me, a Notary Public in and for said county and State, CLARENCE MULFORD and MARIE MULFORD, his wife; Wm. Chesnut and Dicey Chesnut, his wife, MERIN SMITH and CORA SMITH, his wife; M. V. OYLER and ELVERA OYLER, his wife; ALMA CHESNUT, DEWEY GIFFORD and NELLIE GIFFORD, his wife; DANIEL C. ADAMS And BEATRICE ADAMS, his wife, the signers of the within instrument, who duly acknowledged to me that they executed the same.
(No commission expiration shown)

S E A L

Geo. C. Brinkerhoff, Notary Public
Bicknell, Utah

D E E D

CLARENCE MULFORD et al

to

M. V. OYLER

DATED Dec. 8, 1937
RECORDED Feb. 1, 1938 in Book "A" of Water Rights page 143.

ENTRY NO. 13949, OFFICE OF THE RECORDER WAYNE COUNTY, STATE OF UTAH

CLARENCE MULFORD and MARIE MULFORD his wife, Wm. Chesnut and DICEY CHESNUT, his wife; MERIN SMITH and CORA SMITH, his wife; M. V. OYLER and ELVERA OYLER, his wife, ALMA CHESNUT DEWEY GIFFORD and NELLIE GIFFORD, his wife; and ORVAL MOTT and LAURA MOTT, his wife all of Fruita, Utah, hereby convey and grant to M. V. OYLER Grantee of Fruita, Utah, for the sum of One Dollar and other valuable consideration,

31 acres of water in the Fremont River, being 1 & 67/181 Second feet of the 8 second feet of water decreed to the residents of Fruita, Utah by the District Court.

Witness the hands of said Grantors this 8th day of Decembet A. D. 1937,

WITNESS:

Clifton Sorenson
Elva Ernstsen
Tirza Hansen

M. V. OYLER
WM CHESNUT
DICEY CHESNUT
DEWEY GIFFORD
NELLIE GIFFORD
CLARENCE MULFORD
MARIE MULFORD
MERIN SMITH
CORA SMITH
LAURA MOTT
ORVAL MOTT
ALMA CHESNUT
ELVERA OYLER

STATE OF UTAH)
)SS
COUNTY OF WAYNE)

On this 8th day of December A. D. 1937, personally appeared before me, a Notary Public in and for Wayne County, Utah, Clarence Mulford and Marie Mulford his wife, Wm Chesnut and Dicey Chesnut, his wife; Dewey Gifford and Nellie Gifford his wife, Alma Chesnut, Merin Smith and Cora Smith, his wife; M. V. Oyler and Elvera Oyler, his wife; and Orval Mott and Laura Mott his wife, the signers of the foregoing instrument, who

duly acknowledged to me that they executed the same.

Arthur Brian

Notary Public

Residence Loa, Utah

Commission expiration not shown. Seal not recorded.

12-00-0000: judgment on declaration of taking

JUDGMENT ON DECLARATION OF TAKING

DATED July 23, 1942
RECORDED Ausugt 7, 1942 in Deed Book "G" page 185-186

ENTRY NO. 14781, OFFICE OF THE RECORDER WAYNE COUNTY STATE OF UTAH

THE UNITED STATES OF AMERICA

TO

THE PUBLIC

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF UTAH

UNITED STATES OF AMERICA
Petitioner

vs

Five parcels of Land and Certain Water Rights in Wayne County, State of Utah, Alma Chesnut, et al

CIVIL NO. 376

JUDGMENT ON DECLARATION OF TAKING

.....

In the matter of acquisition by the United States of America of five pieces or parcels of land situate, lying and being in Wayne County, State of Utah, and certain water rights for use in connection with the Capitol Reef National Monument of the National Park Service, United States Department of the Interior.

.....

It appearing to the Court that on jyly 22, 1942, the United States of America filed herein its petition for condemnation of 66 acres of land, more or less, in Wayne County, Utah, together with certain water rights hereinafter described, and also filed a declaration of taking by the Secretary of the Interior of the United states under and by virtue of the provisions of the Acts of Congress as follows:Act of Congress approved August 1, 1888 (25 Stat. 357, 40 U. S. C. 257 and 258)and acts supplementary thereto and amendatory thereof, authorizing the acquisition of land by condemnation, and the Act of Congress of June 28, 1941 (55 Stat. 303, 352) authorizing the investigation and establishment of water rights including the purchase thereof, or of lands, or interests in lands, or rights of way for use and protection of water rights necessary and beneficial in connection with the administration and public use of the National Parks and Monuments, and appropriate money for such purposes; that said petition for condemnation sets forth the taking of the fee simple title to said parcels of land for a public use, to-wit: CAPITOL REEF NATIONAL MONUMENT of the NATIONAL PARK SERVICE, Department of the Interior. That said petition for dondemnation and the declaration of taking attached thereto also sets forth the ascertaining of just compensation for the taking of said water and land

in the sum of $1800.00, and that said amount has been deposited in the registery of the Court for the use of the persons entitled thereto; that said land is located in Wayne County, Utah, together with the water, and is described as follows:

PARCEL I

Commencing 18 rods north and 3½ rods east of the NE corner of SW¼ of SW¼ of Section 14, T. 29 S. R 6 E., S. L. M., in a wash or dry stream bed, thence running northwesterly approximately N 18°30' W., along said wash 9 rods 11½ feet more or less to a point 27 rods north of the said NE corner of the SW¼ of SW¼ of Section 14 and on the east line of the NW¼SW¼ of said Section; thence North 53 rods, more or less, along said east line NW¼SW¼ to the East-West center line of said section; thence westerly along said center line 19 rods; thence southerly and parallel to east line of NW¼ of SW¼ of said section 14, 64 rods more or less, to a point in the center of a lane between a stone wall and fence; thence easterly along said lane 12 rods; thence North of east on an angle of approximately 13° 30' 10 rods 5½ feet to the place of beginning, containing 7 acres and 108 square rods more or less.

PARCEL II

Commencing on the east line of SW¼ of the SW¼ 16 rods south of the NE corner of the SW¼ of the SW¼ of Section 14, T. 29 S., R. 6 E., S. L. M., running thence southwesterly at an angle of approximately 3° of west 24 rods and 4 feet; thence northeasterly at an angle of approximately 13° east of north along the general course of a lane 33 rods and 8 feet to the southwest corner of Parcel 1; thence easterly along the south line of Parcel 1, 3 rods; thence southeasterly at an angle of approximately 24° east of south 36 rods to the place of beginning, containing 3 acres, more or less.

PARCEL III

The NE¼ of the SE¼ of Section 14, T. 29 S., R. 6 E., S . L. M.

PARCEL IV.

Commencing at the SW corner of the NE¼ of the SE¼ of Section 14, T. 29 S., R. 6 E., S. L. M., thence west along the south line of the N½ of the SE¼ of said section 56 rods; thence in a northeasterly direction to the NW corner of the NE¼ of the SE¼ of said Section 14; thence south along the west line of said NE¼ of the SE¼ 80 rods to the place of beginning, and containing 14 acres, more or less.

Parcels 1, 2, 3, and 4, described above, being the land conveyed to Alma Chesnut by Clarence L. Mulford and Marie Mulford, his wife, by deed dated July 22, 1926, and recorded in the Recorder's Office of Wayne County, Utah in Book E of Deeds, page 366.

PARCEL V.

Commencing at the NE corner of the SW¼ of the SW¼ of Section 14, T. 29 S., R. 6 E. S. L. M., THENCE easterly along the north line of the SE¼ of the SW¼ of said section 5½ rods; thence northwesterly 18 rods, more or less, along a wash and its prolongation to a point 18 rods north and 3½ rods east of said NE corner of the SW¼ of the SW¼ of Section 14, which is also the SE Corner of Parcel 1; thence southwesterly along the south line of said Parcel 1, 10 rods 15½ feet; thence westerly along the south line of said Parcel 1, 9 rods, to the NE corner of parcel 2; thence southeasterly along the east line of said Parcel 2 to a point on the north line of the said SW¼ of the SW¼ of Section 14, approximately 8 rods 8 feet west of the point of beginning; thence easterly along the north line of said SW¼ of the SW¼ 8 rods 8 feet to point of beginning, containing 2½ acres, more or less.

Parcel 5, described above, being land conveyed to Alma Chesnut by Elvera Oyler and Cora Oyler by deed dated August 20, 1926, and recorded in the Recorder's Office of Wayne County, Utah, in Book E of Deeds, page 522.

Containing in all 66 acres 148 square rods more or less.

Also the primary water right acquired under and by virtue of the laws of the State of Utah to divert .66 second feet of water for use during the entire year, as determind and established by decree of the District

Court of the Sixth Judicial District in and for Wayne County, State of Utah, in an action entitled "Hanksville Canal Company, a corporation, vs. Torrey Irrigation Company, a corporation et al.," confirming said right to Alma Chesnut, which said decree was made on July 15, 1938.

Together with any and all water rights and all ditch rights appurtenant to the above-described parcels of land.

And it further appearing to the court that the Secretary of the Interior is of the opinion that the ultimate award for said land and water will probably be within any limits prescribed by law as the price to be paid therefor;

It is hereby ORDERED, ADJUDGED AND DECREED that the fee simple title absolute is hereby vested in the United States of America to the said parcels of land and water, and that petitioner is hereby granted the immediate and exclusive possession and control of said land and water.

It is further ordered that a copy of this judgment with the certificate of the Clerk of this court showing the payment into the registry of the court of the sum of $1800.00 hereinabove set forth, be served upon the owners of said land and water, and all other persons claiming any right, title, or interest in said land or water.

It is further ORDERED that due and legal service be had upon all persons, firms and corporations having or claiming to have any right, title or interest in said or to said property, and that all such persons be required to answer in this action setting forth any claim, right, title, or interest they may have in said property or be forever barred from so doing.

Dated this 23rd day of July, 1942.

TILLMAN D. JOHNSON
JUDGE, UNITED STATES DISTRICT COURT

FILED in United States District Court,
District of Utah, July 23, 1942 at 1:00 P. M.

W. B. Wilson, Clerk
By V. P. Ahlstrom, Deputy

D. C. Form No. 30

CERTIFIED COPY
UNITED STATES OF AMERICA)
)SS
DISTRICT OF UTAH)

I, W. B. Wilson, Clerk of the United States District Court in and for the District of Utah, do hereby certify that the annexed and foregoing is a true and full copy of the original Judgment on Declaration of Taking signed by Judge Tillman D. Johnson, and filed on July 23, 1942 at 1:00 P. M., in Case No. 376

United States of America

v

Five Parcels of Land and Certain Water Rights in Wayne County, State of Utah, Alma Chesnut et al

now remaining among the records of the said Court in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Salt Lake City, this 3rd day of August A. D. 1942

SEAL

By Margaret Johnson, Dep. Clerk W. B. Wilson, Clerk

09-30-1942: quit claim deed from clarence mulford to alma chestnut; september 30, 1942

QUIT CLAIM DEED

DATED Sept. 30, 1942
RECORDED Nov. 14, 1942 in Deed Book "G" page 205

ENTRY NO. 14820, OFFICE OF THE RECORDER WAYNE COUNTY, UTAH

CLARENCE MULFORD

TO

ALMA CHESTNUT

CLARENCE MULFORD of Fruita, Wayne County,Utah, Grantor, for and in consideration of the sum of One Dollar ($1.00) hereby quitclaims to ALMA CHESTNUT, Grantee, .66 cubic feet per second of water in the Fremont River, under that certain decree dated July 15, 1935 in the District Court of Wayne County, Utah, in the case of Hanksville Canal Company a corporation, plaintiff, vs. Torrey Irrigation Company, a corporation, et al., defendants, wherein, the Fruita residents were granted 8 cubic feet per second of water in the Fremont River, including the Grantor and The Grantee. The .66 cubic feet per second of water hereby conveyed out of the said 8 cubic feet per second.

WITNESS the hand of the said Grantor this 30th day of Sept., 1942.

CLARENCE MULFORD

STATE OF UTAH)
)SS
COUNTY OF WAYNE)

On this 30th da of Sept., 1942, personally appeared before me Clarence Mulford, the signer of the foregoing instrument, who duly acknowledged to me that he executed the same.

J MONROE PACE
Notary Public

My commission expires
Jan. 17, 1945

Residing at Torrey, Utah

S E A L

09-28-1942: quit claim deed from dewey gifford to alma chesnut; september 28, 1942

QUIT CLAIM DEED

DATED Sept. 28, 1942
RECORDED Nov. 14, 1942 in Deed Book "G" page 205

ENTRY NO. 14821, OFFICE OF THE RECORDER WAYNE COUNTY, UTAH

DEWEY GIFFORD

TO

ALMA CHESNUT

DEWEY GIFFORD, of Fruita, Wayne County, Utah, Grantor, for and in consideration of the sum of One Dollar ($1.00) hereby quitclaims to ALMA CHESTNUT, Grantee, .66 cubic feet per second of water in the Fremont River, under that certain decree dated July 15, 1935 in the District Court of Wayne County, Utah, in the case of Hanksville Canal Company, a Corporation, plaintiff, vs. Torrey Irrigation Company, a corporation et al., defendants, wherein the Fruita Residents were granted 8 cubic feet per second of water in the Fremont River, including the Grantor and the Grantee. The .66 cubic feet per second of water hereby conveyed out of the said 8 cubic feet per second.

WITNESS the hand of the said Granto this 28th day of September, 1942.

DEWEY GIFFORD

STATE OF UTAH)
)SS
COUNTY OF WAYNE)

On this 28th day of September, 1942, personally appeared before me, Dewey Gifford the signer of the foregoing instrument, who duly acknowledged to me that he executed the same.

J. Monroe Pace
Notary Public

Residing at Torrey, Utah

S E A L

My commission expires: January 17, 1945

09-29-1942: quit claim deed from orval mott to alma chesnut; september 29, 1942

QUIT CLAIM DEED

DATED Sept. 29, 1942
RECORDED Nov. 14, 1942 in Deed Book "G" page 205

ENTRY NO. 14822, OFFICE OF THE RECORDER WAYNE COUNTY, UTAH

ORVAL MOTT

TO

ALMA CHESNUT

ORVAL MOTT, of Fruita, Wayne County, Utah, Grantor, successor in interest of Dan Adams, under that certain decree entered July 15, 1935 in the District Court of Wayne County State of Utah, in the case of Hanksville Canal Company, a corporation, et al., defendants, wherein the Fruita residents were granted 8 cubic feet per second of water in the Fremont River, for One Dollar ($1.00), hereby quit claims to ALMA CHESTNHT Grantee, .66 cubic feet per sedond of water in Fremont River so granted in said decree.

WITNESS the hand of the said Grantor this 29 day of Sept., 1942.

ORVAL MOTT

STATE OF UTAH)
)SS
COUNTY OF WAYNE)

On this 29 day of Sept. 1942 personally appeared before me Orval Mott, the signer of the foregoing instrument, who duly acknowledged to me that he executed the same.

E. P. Pectol

Notary Public

Residing at Torrey, Utah

S E A L

My commission expires May 18, 1943.

11-23-1942: quit claim deed from william chesnut to alma chesnut; november 23, 1942

QUIT CLAIM DEED

WILLIAM CHESNUT

DATED Nov. 23, 1942
RECORDED June 3, 1943 in Deed Book "G" page 245

ENTRY NO. 14950, OFFICE OF THE RECORDER WAYNE COUNTY, UTAH

TO

ALMA CHESNUT

WILLIAM CHESNUT, of Fruita, Wayne County, Utah, Grantor, for and in consideration of the sum of one dollar ($1.00) hereby quitclaims to ALMA CHESNUT, Grantee, .66 cubic feet per second of water in the Fremont River, under that certain decree dated July 15, 1935 in the District Court of Wayne County, Utah, in the case of Hanksville Canal Company, a corporation, plaintiff, vs. Torrey Irrigation Company, a corporation, et al., defendants, wherein the Fruita Residents were granted 8 cubic feet per second of water in the Fremont River, including the grantor and the Grantee. The .66 cubic feet per second of water is hereby conveyed out of the said 8 cubic feet per second.

WITNESS the hand of the said Grantor this 23 day of Nov. 1942.

WILLIAM CHESNUT

STATE OF UTAH)
)SS
COUNTY OF WAYNE)

On this 23rd day of November, 1942, personally appeared before me William Chesnut the signer of the foregoing instrument, who duly acknowledged to me that he executed the same.

J. Monroe Pace
Notary Public

Residing at Torrey, Utah

My commission expires Jan. 17, 1945

S E A L

QUIT CLAIM DEED

DATED Nov. 4, 1942
RECORDED June 3, 1943 in Deed Book "G" page 245

ENTRY NO. 14951, OFFICE OF THE RECORDER WAYNE COUNTY, STATE OF UTAH

MERIN SMITH

TO

ALMA CHESNUT

MERIN SMITH, of Fruita, Wayne County, Utah, Grantor, for and in consideration of the sum of One Dollar ($1.00) hereby quitclaims to ALMA CHESNUT, Grantee, .66 cubic feet per second of water in the Fremont River, under that certain decree dated July 15, 1935 in the District Court of Wayne County, Utah, in the case of Hanksville Canal Company, a corporation, plaintiff, vs. Torrey Irrigation Company, a corporation, et al, defendants, wherein the Fruita residents were granted 8 cubic feet per second of water in the Fremont River, including the Grantor and the Grantee. The .66 cubic feet per second of water is hereby conveyed out of the said 8 cubic feet per secon. said water being the portion of the water the grantee became entitled to under the decree.

WITNESS the hand of the said Grantor this 4 day of November, 1942.

MERIN SMITH

STATE OF UTAH)
)SS
COUNTY OF WAYNE)

On this 4th day of November, 1942, personally appeared before me Merin Smith the signer of the foregoing instrument, who duly acknowledged to me that he executed the same.

ELSIE ECKERSLEY
County Clerk

Residing: Loa, Utah

S E A L

08-15-1942: quit claim deed from m. v. oyler to alma chesnut; august 15, 1942

QUIT CLAIM DEED

M. V. OYLER

TO

ALMA CHESNUT

DATED August 15, 1942
RECORDED June 3, 1943 in Deed Book "G" page 247

ENTRY NO. 14955, OFFICE OF THE RECORDER WAYNE COUNTY, UTAH

M. V. OYLER, of Loa, Wayne County, Utah, Grantor for and in consideration of the sum of one dollar ($1.00) hereby quitclaims to ALMA CHESNUT, Grantee, .66 cubic feet per second of water in the Fremont River, under that certain decree dated July 15, 1935 in the District Court of Wayne County, Utah, in the case of Hanksville Canal Company, a corporation, plaintiff, vs. Torrey Irrigation Company, a corporation, et al., defendants, wherein the Fruita residents Were granted 8 cubic feet per second of water in the Fremont River, including the grantor and the Grantee. The .66 cubic feet per second of water is hereby conveyed out of the said 8 cubic feet per second. and is the portion of the water that the grantee became entitled to by virtue of the aforesaid decree.

WITNESS the hand of the said grantor this 15 day of august, 1942.

M. V. OYLER

STATE OF UTAH)
)SS
COUNTY OF WAYNE)

On this 15 day of August, 1942, personally appeared before me, M. V. Oyler the signer of the foregoing instrument, who duly acknowledged to me that he executed the same.

S E A L

N. J. Bates
Notary Public

My commission expires
April 26, 1945

Residing:

WATER DEED

DATED March 31, 1943
RECORDED June 3, 1943 in
Deed Book "G" page 246

ENTRY NO. 14952, OFFICE OF
THE RECORDER WAYNE COUNTY,
UTAH

MAX L. KRUEGER and ALIENE WINCHESTER
KRUEGER, husband and wife

to

THE UNITED STATES OF AMERICA

Max L. Krueger and Aliene Winchester Krueger, husband and wife GRANTORS, of North Hollywool, California, hereby QUITCLAIM to the United States of America, GRANTEE, for the sum of One Dollar, all the interest in the following described water rights in Wayne County, State of Utah:

Six & 114/181 Cubic Feet of the water decreed to M. V. Oyler, Wm. Chestnut, Dewey Gifford, Clarence Mulford, Merin Smith, Orval Mott, and Alma Chestnut in a decree entered in the District Court of Wayne County, Utah on the 15th day of July A. D. 1935, in a case entitled Hanksville Canal Company, a corporation, vs. Torrey Irrigation Company et al defendants, wherein the residents of Fruita were granted eight cubic feet of water per second of time of the waters of Fremont River.

The remaining 1 & 67/181 Cubic Feer of water of said eight cubic feet per second so decreed, was conveyed to these grantors (Max L. Krueger and Aliene Winchester Krueger) by M. V. Oyler and his wife, it having been conveyed to said M. V. Oyler and his wife by the other parties above named, as their share of said eight feet of water. The said 1 & 67/181 Cubic Feet of water are retained by these grantors as their own property and are not included in the property hereby quitclaimed.

WITNESS our hands at LOS ANGELES, California, this 31 day of March, A. D. 1943.

MAX L. KRUEGER
ALIENE WINCHESTER KRUEGER

STATE OF CALIFORNIA)
)SS
COUNTY OF LOS ANGELES)

On this 31st day of March A. D. 1943, before me personally appeared Max L. Krueger and Aliene Winchester Krueger, husband and wife, the signers of the foregoing instrument who duly acknowledged to me that they executed the same.

Holt R. Gregory
Notary Punlic

SEAL

My commission Expires August 14, 1945

A F F I D A V I T

DATED March 26, 1955
RECORDED March 30, 1955 at 10:30 A. M. in Water Right Record "A" page 261
ENTRY NO. 33226, OFFICE OF THE RECORDER WAYNE COUNTY, UTAH

CLARENCE L. MULFORD

TO

WHOM IT MAY CONCERN:

CLARENCE L. MULFORD, being first duly sworn upon oath, deposes and says:
That I am a resident of Fruita, Utah, and that I have resided at or near Fruita, Utah in Wayne County, State of Utah, since prior to the year 1935 and that I am well and personally acquainted with the real property located at and near Fruita, Utah, and with the water rights in connection therewith.

That I am one and the same person as Clarence Mulford named as one of the Parties Defendant in that certain Civil Action entitled "Hanksville Canal Company Incorporated, Plaintiff, vs. Torrey Irrigation Company, a Corporation, et al, Defendants, "Civil No. 161 in the Sixth Judicial District Court in and for the County of Wayne, wherein and whereby the waters of Fremont River were adjudicated as, between and among the various parties to said action; that Affiant, Clarence Mulford, together with Merin Smith, Dewey Gifford, William Chestnut, Alma Chestnut, M. V. Oyler and Dan Adams, all of who were residents of Fruita, Utah at the time of entry of said Decree and who were farming real property in the vicinity of Fruita, Utah,were awarded and decreed a total of 8 c.f.s. to the hereinabove named persons was based upon a total beneficial use of said water upon 181 acres of irrigated and cultivated property owned by said persons and that .0442 c.f.s. of said water was allocated for use upon each and every irrigated and cultivated acre included in said 181 acres; that at the time of the entry of the Decree in said Action, to-wit, upon the 15th day of July, A. D. 1935, Affiant was the owner of 40 acres of real property included within the total of 181 acres for which were awarded 8 c.f.s. of water from Fremont River as aforesaid, and that by reason of the ownership of said 40 acres of property affiant was, under the terms and provisions of said Decree hereinabove referred to, entitled to and did own and was thereby decreed a total of 1.76 c.f.s. of water in Fremont River.

/s/ Clarence L. Mulford

Subscribed and sworn to me before this 26 day of March, A. D. 1955.

/s/ John T. Vernieu
Notary Public

Seal My Commission expires: 3/5/59 Residing at Richfield, Utah

AFFIDAVIT

BEATRICE ADAMS

TO

DATED March 26, 1955
RECORDED March 30, 1955 at 10:30 A. M. in Water Right Record "A" page 262

ENTRY NO. 33227, OFFICE OF THE RECORDER WAYNE COUNTY, UTAH

WHOM IT MAY CONCERN:

BEATRICE ADAMS, being first duly sworn upon oath deposes and says:

That I am a resident of Loa, Wayne County, Utah, and that I am well and personally acquainted with the real property located at and near Fruita, Utah, and with the water rights in connection therewith.

That I am the widow of Dan Adams, and Dan Adams having been named as one of the Parties Defendant in the Certain Civil Action entitled "Hanksville Canal Company, Incorporated, Plaintiff, vs., Torrey Irrigation Company, a Corporation, et al, Defendants" Civil No. 161 in the Sixth Judicial District Court in and for the County of Wayne, wherein and whereby the waters of Fremont River were adjudicated as between and among the various parties to said action; that Affiant's deceased husband, Dan Adams, together with Merin Smith, Clarence Mulford, Dewey Gifford, William Chestnut, Alma Chestnut and M. V. Oyler, all of whom were residents of Fruita, Utah at the time of entry of said Decree and who were farming real property in the vicinity of Fruita, Utah were awarded and decreed a total of 8 c.f.s. of the waters of Fremont River according to their respective rights; that I know of my own knowledge and hereby state the facts to be that said award of 8 c.f.s. to the hereinabove named persons was based upon a total beneficial use of said water upon 181 acres of irrigated and cultivated property owned by said persons, and that .0442 c.f.s. of said water was allocated for use upon each and every irrigated and cultivated acre included in said 181 acres; that at the time of the entry of the Decree in said Action, to-wit, upon the 15th day of July, A. D. 1935, Affiant's deceased husband Dan Adams was the owner of 10 acres of real property included within the total of 181 acres for which were awarded 8 c.f.s. of water from Fremont Rivwr as aforesaid and that by reason of the ownership of said 10 acres of property said Dan Adams was, under the terms and provisions of said Decree hereinabove referred to, entitled to and did own and was thereby decreed a total of .44 c.f.s. of the water in Fremont River, prior to any sales or conveyances of said water rights to third persons.

/s/ Beatrice Adams

Subscribed and sworn to before me this 26th day of March A. D. 1955.

SEAL Residing at Richfield, Utah /s/ John T. Vernieu, Notary Public

My Commission Expires 3/5/59

A F F I D A V I T

DEWEY GIFFORD

TO

DATED March 26, 1955
RECORDED March 30, 1955 at

10:30 A. M. in Water Right Record "A" page 263

ENTRY NO. 33228, OFFICE OF THE RECORDER WAYNE COUNTY, STATE OF UTAH

WHOM IT MAY CONCERN:

DEWEY GIFFORD, being first duly sworn upon oath, deposes and says: That I am a resident of Fruita, Utah, and that I have resided at or near Fruita, Utah, in Wayne County State of Utah, since prior to the year 1935, and that I am well and personally acquainted with the real property located at and near Fruita, Utah, and with the water rights in connection therewith.

That I am one and the same person as Dewey Gifford named as one of the Parties Defendant in that certain Civil Action entitled "Hanksville Canal Company Incorporated, Plaintiff, vs. Torrey Irrigation Company, a corporation, et al, Defendants" Civil No. 161 in the Sixth Judicial District Court in and for the County of Wayne, wherein and whereby the waters of Fremont River were adjudicated as between and among the various parties to said action; that Affiant, Dewey Gifford, together with Merin Smith, Clarence Mulford, William Chestnut, Alma Chestnut, M. V. Oyler, and Dan Adams, all of whom were residents of Fruita, Utah, at the time of entry of said Decree and who were farming real property in the vicinity of Fruita, Utah, were awarded and decreed a total of 8 c.f.s. of the waters of Fremont River According to their respective rights; that I know of my own knowledge and hereby state the facts to be that said award of 8 c.f.s. to the hereinabove named persons was based upon a total beneficial use of said water upon 181 acres of irrigated and cultivated property owned by said persons, and that .0442 c.f.s. of said water was allocated for use upon each and every irrigated and cultivated acre included in said 181 acres; that at the time of the entry of the Decree in said action, to-wit: upon the 15th day of July A. D. 1935, Affiant was the owner of 25 acres of real property included within the total of 181 acres for which were awarded 8 c.f.s. of water from Fremont River as aforsaid and that by reason of the ownership of said 25 acres of property Affiant was, under the terms and provisions of said Decree hereinabove referred to, entitled to and did own and was thereby decreed prior to June 14, 1954, a total of 1.10 c.f.s. of water in Fremont River.

/s/ Dewey Gifford

Subscribed and sworn to before me this 26 day of March, A. D. 1955.

My commission expires 3/5/59 S E A L /s/ John T. Vernieu, Notary Public
Residing at Richfield, Utah

A F F I D A V I T

DICEY CHESNUT

TO

WHOM IT MAY CONCERN:

DATED March 26, 1955
RECORDED March 30, 1955 at 10:30 A. M. in Water Right Record "A" page 264

ENTRY NO. 33229, OFFICE OF THE RECORDER WAYNE COUNTY, UTAH

DICEY CHESNUT, being first duly sworn upon oath, deposes and says: That I am a resident of Fruita, Utah, and that I have resided at or near Fruita, Utah, In Wayne County, State of Utah, since prior to the year 1935, and that I am well and personally acquainted with the water rights in connection therewith.

That I am the widow of William Chestnut, said William Chestnut having been named as one of the Parties Defendant in that certain Civil Action entitled "Hanksville Canal Company Incorporated, Plaintiff, vs., Torrey Irrigation Company, a corporation, et al, Defendants" Civil No. 161 in the Sixth Judicial District Court in and for the County of Wayne, State of Utah, wherein and whereby the waters of Fremont River were adjudicated as between and among the various parties to said action; that Affiant's deceased husband, William Chestnut, together with Merin Smith, Clarence Mulford, Dewey Gifford, Alma Chestnut, M. V. Oyler, and Dan Adams, all of whom were residents of Fruita, Utah, at the time of entry of said Decree and who were farming real property in the vicinity of Fruita, Utah, were awarded and decreed a total of 8 c.f.s. of water of Fremont River according to their respective rights; that I know of my own knowledge and hereby state the facts to be that said award of 8 c.f.s. to the hereinabove named persons was based upon a total beneficial use of said water upon 181 acres of irrigated and cultivated property owned by said persons and that .0442 c.f.s. of said water was allocated for use upon each and every irrigated and cultivated acre included in said 181 acres; that at the time of the entry of the Decree in said action, to wit, upon the 15th day of July, A. D. 1935, said William Chestnut was the owner of 30 acres of real property included within the total of 181 acres for which awarded 8 c.f.s. of water from Fremont River as aforesaid and that by reason of the ownership of said 30 acres of property said William Chestnut was, under the terms and provisions of said Decree hereinabove referred to, entitled to and did own and was thereby awarded a total of 1.30 c.f.s. of water in Fremont River, Prior to any sales or conveyances of said water rights to third persons.

/s/ DICEY CHESNUT

Subscribed and sworn to before me this 26th day of March A. D. 1955.

My commission expires 3/5/59 SEAL Residing at Richfield, Utah John T. Vernieu, Notary Public

CERTIFICATE

STATE OF UTAH)
)SS
COUNTY OF WAYNE)

THIS CERTIFICATE WITNESSETH, That the undersigned Abstracter, in consideration of the payment of its fee therefor, does hereby certify:

That the foregoing abstract, consisting of pages numbered from 1 to 18, both inclusive, is a true an d correct abstract of the following:

1. All instruments, (Including Federal Tax Liens) filed or recorded in the office of the County Recorder of said County and State, since inception of records in the office of the Recorder and Clerk of the County of Wayne, State of Utah, that refer to or in any manner affect the title to the following water rights:

8.0 c.f.s. of water awarded to the people of Fruita, Wayne County, State of Utah, as Decreed in that certain DECREE in an action entitled "Hanksville Canal Company, a corporation, Plaintiff, VS. Torrey Irrigation Company, a corporation; EDMUND KING, JOSEPH HISKEY, DEZ HICKMAN, WILLIAM HICKMAN, CHARLES COOPER, DEWEY GIFFORD, CLARENCE MULFORD, WILLIAM CHESTNUT, MERIN SMITH, ALBERT CHESNUT, M. V. OYLER, MARY ANN STEELE, Custodian of MICHAEL STEELE, GEORGE DURFEE, RICHFIELD COMMERCIAL & SAVINGS BANK, a corporation, RUDOLPH COOK, ATHOL JENSEN, JAMES LANNING, ROYAL BRINKERHOFF, A. M. MYRUP, G. T. BEAN, EDGAR LARSEN and DAN ADAMS, Defendants, EXCEPT those pertaining to the DEAN BRIMHALL property.

This ABSTRACT does not include a copy of the Decree above recited; neither does it pretend to cover those instruments that MAY HAVE BEEN RECORDED but that do not appear in any of the Indices; searches for such instruments would have to be made by a page by page search of the records, which includes the Water Right Record "A" and Deed Records, where many appear to have been recorded.

IN WITNESS WHEREOF, I, NELLIE H. TAYLOR have caused this certificate to be signed and my seal affixed this fifth day of July A. D. 1962 at 1:00 o'clock P. M..

Nellie H. Taylor
LICENSED ABSTRACTER.

07-16-1962: warranty deed for william and ruby chesnut; july 16, 1962

United States
Filed for record at request of of America Date July 16,1962 @ 10:
Recorded in Book L of Deeds Page 128-129 Wayne Co. Utah Reco
Wayne County Recorder

67719

WARRANTY DEED

WILLIAM CLARENCE CHESNUT AND RUBY CHESNUT, husband and wife, GRANTORS of Torrey, Wayne County, Utah, hereby warrant and convey to the UNITED STATES OF AMERICA and its assigns GRANTEE, for the sum of TWENTY-THREE THOUSAND FOUR HUNDRED DOLLARS ($23,400) and other good and valuable consideration, the following described real property situate in Wayne County, State of Utah:

PARCEL 1

Beginning 27 rods East of the Northwest Corner of the Northeast Quarter of the Northeast Quarter of Section 22, Township 29 South, Range 6 East, S.L.M.; running thence East 32 rods 1-1/2 feet; thence Southeasterly in a straight line 48 rods more or less, to the forty line, and to a point 43 rods South of the Northeast Corner of said Northeast Quarter of said Section; thence South 37 rods to forty corner; thence West on forty line 17-1/2 rods; thence Northwesterly in a straight line 87 rods, more or less, to place of beginning.

PARCEL 2

Also: Beginning 17 rods East of the Southwest Corner of the Northwest Quarter of the Northwest Quarter of Section 23, Township 29 South, Range 6 East, S.L.M.; running thence West on forty line 17 rods to forty corner; thence North on the forty line 37 rods; thence Southeasterly in a straight line forty rods, more or less, to place of beginning.

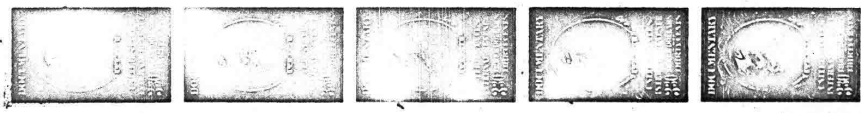
PARCEL 3

Also: Beginning at a point 36 rods North of the Southwest Corner of the Southwest Quarter of the Southwest Quarter of Section 14, Township 29 South, Range 6 East, S.L.M.; running thence Southeasterly in a straight line 50 rods, more or less, to forty line and to a point 32 rods East of the Southwest Corner of said Southwest Quarter of the Southwest Quarter of Section 14; thence East 48 rods to forty corner; thence North on forty line 26 rods; thence Northwesterly in a straight line 100 rods, more or less, to a point 5 rods North of the Northwest Corner of the Southwest Quarter of the Southwest Quarter of said Section 14; thence South on forty line 49 rods to point of beginning.

PARCEL 4

Also: Beginning 34 rods North of the Southeast Corner of the Northwest Quarter of the Northwest Quarter of Section 23, Township 29 South, Range 6 East, S.L.M.; thence North on forty line 46 rods to forty corner; thence West on forty line 48 rods; thence Southeasterly in a straight line 64 rods, more or less, to beginning.

LESS: Beginning at the Southwest corner of the Northwest Quarter Southwest Quarter of Section 14, Township 29 South, Range 6 East, S.L.M.; thence South 0° 10' East 330'; thence East 16.5'; thence North 12° East 337.7'; thence West 82.5' to the point and place of beginning.



LESS: 5.957 acres deeded to A. L. Inglesby in Section 14, Township 29 South, Range 6 East, S.L.M., and more particularly described as follows: Beginning at a point on the East line of the Southwest Quarter Southwest Quarter of Section 14, Township 29 South, Range 6 East, S.L.M.; whence the Southeast corner of said Southwest Quarter Southwest Quarter bears South 198'; thence North 51° 48' 30" West 630'; thence North 16° 00' West 237.2'; thence North 51° 48' 30" West 206.3'; thence South 28° 16' East 112.3'; thence South 18° 21' East 35.8'; thence North 72° 21' West 546'; thence North 12° East 337.7'; thence West 82.5'; thence North 0° 10' West 82.5'; thence South 51° 48' 30" East 1650' to the point and place of beginning.

LESS: Commencing at a point on the West line of Section 14, Township 29 South, Range 6 East, S.L.M.; running thence North 0° 10' West 735 feet from the Southwest Corner of said Section 14, and running thence South 71° 18' East 593 feet; thence South 1° 56' East 53 feet; thence South 64° 11' West 355 feet; thence North 43° 32' West 356 feet, more or less, to the West line of said Section 14; thence North 0° 10' West 141 feet, more or less, to point of beginning.

THE property herein conveyed totals 40.9 acres, more or less, together with all improvements and water rights thereunto belonging and appertaining.

WITNESS the hands of said Grantors this 16th day of July A.D. 1962.

William Clarence Chesnut
WILLIAM CLARENCE CHESNUT

Ruby Chesnut
RUBY CHESNUT

STATE OF UTAH)
(ss
COUNTY OF WAYNE)

ON the 16th day of July A.D. 1962 personally appeared before me William Clarence Chesnut and Ruby Chesnut, husband and wife, the signers of the within instrument, who duly acknowledged to me that they executed the same.

Notary Public
NOTARY PUBLIC

My Commission Expires:
January 1, 1963
Loa, Utah
Residing at:

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. 284.31 ACRES OF LAND, MORE OR LESS, IN THE COUNTY OF WAYNE, STATE OF UTAH, RICHARD W. SPRANG, ET AL., AND UNKNOWN OWNERS, Defendants.	Civil No. C-95-61 FINAL JUDGMENT IN CONDEMNATION Filed in United States District Court, District of Utah. NOV 30 1962 Time: /s/ Wayne Christoffersen Clerk

It appearing to the Court, and the Court finds, that the following named persons, including those designated as "Unknown Owners", called Defendants in this cause, have been duly served with notice pertaining to this matter either personally or by publication and have failed to make appearance and the time for so appearing having expired, and the affidavit of Craig T. Vincent, Assistant United States Attorney, respecting the military service of those defendants who were personally served, having been duly filed herein in compliance with Title 50 App., Section 520 U.S.C.A., the default of the said persons is duly entered herein, said persons being:

"Unknown Owners"

Mrs. William Clark, if alive, and if deceased, the unknown heirs of Mrs. William Clark;

Mrs. Jehu Blackburn, if alive, and if deceased, the unknown heirs of Mrs. Jehu Blackburn;

William Johnson and Lilly May Johnson, his wife, if alive, and if deceased, the unknown heirs of William Johnson and Lilly May Johnson;

Dez Hickman and Jane Doe Hickman, his wife;

Dicey Chesnut;

Abey Clark and Martha Kathryn Clark, his wife;

Mary Clifford;

Morgan Thomas and Jane Doe Thomas, his wife;

Naomi Hendrecksen;

Claude Holt;

Leone P. Holt

Wayne Lee Holt;

Blanche Melba Holt, and

Ruby Stewart.

And it appearing to the Court, and the Court finds and concludes, that all times covered by this proceeding plaintiff has and has had the full right and authority to take and acquire the lands and property involved in this proceeding, which are more fully and in detail described in the Declaration of Taking and in plaintiff's Complaint filed herein, to which reference is hereby made, by right and power of eminent domain for the use in connection with the administration, protection and development of the Capitol Reef National Monument, administered by the National Park Service of the Department of the Interior of the United States of America, and for such other uses as may be authorized by Congress or by Executive Order, subject to the payment of just compensation to the proper persons for such taking, and that all outstanding right, title, equity and interest of any and all persons claiming any interest in and to the said lands and property should be vested in plaintiff as of June 2, 1961, the date of the filing of the aforesaid Declaration of Taking and Complaint; and

It further appearing to the Court, and the Court finds and concludes, that adjudication has been fully made by this Court as to the ascertainment and proper distribution of just compensation payable on account of the taking by plaintiff of all of the tracts of land and property involved in this action;

WHEREFORE, by reason of the law and in view of the aforesaid findings and conclusions and the premises, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

1. At all times covered by this action, plaintiff has and has had the full right and authority to take and acquire the lands and property involved in this proceeding, which are more fully and in detail described in the Declaration of Taking and in plaintiff's Complaint duly filed herein, to which reference is hereby made, by right and power of eminent domain for the use of the National Park Service, Department of the Interior of the United States of America, in connection with the administration, protection and development of the Capitol Reef National Monument, administered by the National Park Service of the Department of the Interior of the United States of America, and for such other uses as may be authorized by Congress or by Executive Order, subject to

payment of just compensation to the proper persons for such taking, and the proceedings in this cause are regular and proper in all respects;

2. The fee simple title in and to all of the lands and property involved herein, which are more fully and in detail described in the Declaration of Taking and in plaintiff's Complaint duly filed herein, and to which reference is made, be and is vested in the United States of America as of June 2, 1961;

3. Adjudication is, and has been, fully made as to the ascertainment and proper distribution of just compensation payable on account of the taking by plaintiff of all of the tracts of land and property involved in this action and said compensation constitutes and is just compensation; and

4. All matters involved in this action be and are finally determined.

Dated this 30 day of Nov., 1962.

/s/ A. Sherman Christensen
UNITED STATES DISTRICT JUDGE

10-31-1962: warranty deed: no. 67886

67886

L 197-198

67886

Filed for record at request of Nellie H. Taylor Date Oct. 31, 1962 @ 11:00 A. M.
Recorded in Book L of Deeds Page 197-198 Wayne Co. Utah Records
Wayne County Recorder

WARRANTY DEED

CLARENCE L. MULFORD AND VERA MULFORD, husband and wife, GRANTORS of Torrey, Wayne County, Utah, hereby warrant and convey to the UNITED STATES OF AMERICA and its assigns GRANTEE, for the sum of THIRTY-EIGHT THOUSAND DOLLARS ($38,000) and other good and valuable consideration, the following described real property situate in Wayne County, State of Utah:

The southeast one quarter of the northwest one quarter and the southwest one quarter of the northeast one quarter of section 22, Township 29 South, Range 6 East, Salt Lake Meridian; also commencing at the northwest corner of the southeast one quarter of the northeast one quarter of section 22, Township 29 South, Range 6 East; thence east 8 rods 7-3/4 feet; thence south 27° 9' east 22 rods 8 feet; thence west 49° 31' south 4 rods 10.4 feet; thence south 37° 32' east 10 rods 9.6 feet; thence south 8° 45' west 49 rods 7.5 feet; thence west 13 rods; thence north 80 rods to beginning, containing 88 acres.

Commencing at the southeast corner of the southeast one quarter of the northeast one quarter of section 22, Township 29 South, Range 6 East, Salt Lake Meridian; and running thence north 80 rods 9-1/2 feet; thence west 71 rods 8-3/4 feet; thence south 27° 9' east 22 rods 8 feet; thence west 49° 31' south 4 rods 10-2/5 feet; thence south 37° (31°) 22' east 10 rods 9-3/5 feet; thence south 8° 45' west 49 rods 7-1/2 feet; thence east 66 rods 3-1/2 feet to beginning, containing 34.5 acres more or less.

Also commencing at a point 17 1/2 rods west of the southeast corner of the northeast one quarter of the northeast one quarter of Section 22, Township 29 South, Range 6 East, Salt Lake Meridian; running thence west 62 1/2 rods; thence north 80 rods; thence east 27 rods; thence southeasterly to the place of beginning, containing 22 acres more or less.

10-31-1962: warranty deed from mulford to u.s.a., part 2; october 31, 1962

THE property herein conveyed totals 144.5 acres, more or less, together with all improvements and water rights thereunto belonging and appertaining.

WITNESS the hands of said Grantors this 31st day of October A.D. 1962.

Clarence L. Mulford
CLARENCE L. MULFORD

Vera Mulford
VERA MULFORD

STATE OF UTAH)
(ss
COUNTY OF WAYNE)

ON the 31st day of October A.D. 1962 personally appeared before me Clarence L. Mulford and Vera Mulford, husband and wife, the signers of the within instrument, who duly acknowledged to me that they executed the same.

Notary Public
NOTARY PUBLIC

My Commission Expires:

January 1, 1963
Residing at:

Loa, Utah

06-01-1965: recorder's certificate; june 01, 1965

RECORDER'S CERTIFICATE

STATE OF UTAH,
County of Wayne } ss.

I, Grace M. Potter, the duly elected, qualified and acting County Recorder in and for the County of Wayne, State of Utah, do hereby certify that the foregoing is a full, true and correct copy of the original WARRANTY DEED Clarence L. Mulford and Vera Mulford to United States of America

as appears of record in my office in Book L of Deeds Page 197-198

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at Loa, Wayne County, Utah, this 1st day of June, A. D. 19 65.

Grace M. Potter
County Recorder

By
Deputy Recorder

10-15-1962: united states district court for the district of utah; october 15, 1962

Smith
Krueger

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CORA SMITH, MAX L. KRUEGER
and ALIENE KRUEGER, his wife,

Defendants.

C-95-61

Filed in United States District
Court, District of Utah.

Time: OCT 15 1962

Wayne Christoffersen
Clerk

We the Jury, duly impaneled in the above entitled cause, find that the fair market value of the respective parcels of land to be as follows:

Parcel number 7, consisting of 35 acres, more or less, belonging to Cora Smith: $26,000.00/100

Parcel number 9, consisting of 65.38 acres, more or less, belonging to Max L. Krueger and Aliene Krueger, his wife: $43,000.00/100

DATED, this 15th day of October, 1962 at Salt Lake City, Utah.

John B. Burnham
FOREMAN

Utah, Records of ... Book ... of ... Page 152-154, Wayne Co

EASEMENT

KNOW ALL MEN BY THESE PRESENTS:

This easement made the 22nd day of August 1962, by and between C. Dewey Gifford and Nellie J. Gifford, husband and wife, as grantors and the United States of America, grantee,

WITNESSETH:

That as a donation for public purposes under the authority of the Act of June 5, 1920 (41 Stat. 917) and on the conditions hereinafter set forth, the grantors herein do hereby grant to the UNITED STATES OF AMERICA and its assigns, an easement across the real property hereinafter described, for the construction, installation, and maintenance of a water and sewer line. This water and sewer line is to be constructed over and across a portion of the SW¼SW¼ of Section 14 and the NW¼NW¼ of Section 23, Township 29 South, Range 6 East, Salt Lake Meridian, County of Wayne, State of Utah and more particularly described as follows:

All that land within the boundaries of the property of C. Dewey Gifford and Nellie J. Gifford, husband and wife, situate in the SW¼SW¼ of Section 14, and NW¼NW¼ of Section 23, T. 29 S., R. 6 E., SLBEM for the purpose of installing a water and sewer line; said easement being 20 feet in width with the sides being parallel to and 10 feet on each side of the centerline. The centerline of the easement is more particularly described as follows:

Beginning at a USGLO Brass Cap which is the corner common to Sections 14, 15, 22, and 23, T. 29 S., R. 6 E., thence North 75° 07' East a distance of 168.00 feet to a Brass Cap located in the SW¼SW¼ of the above-described Section 14 and a point on the Gifford property line; thence South 38° 07' West a distance of 212.00 feet to the true point of beginning of the easement; thence North 64° 36' East a distance of 247.57 feet to a point; thence North 32° 36' East a distance of 22.59 feet to a point on the northeasterly boundary of the Gifford property.

The above-described property shall be used for the purpose of construction, maintenance, and operation of a water and sewer line leading to the National Park Service campground to be located on Government land partially in Sections 22 and 23, Township 29 South, Range 6 East. In the event of the termination or discontinuance of the use of the water and sewer line at some future date all rights granted herein shall revert to the grantors, their heirs and assigns, subject to a right of removal by the grantee of the structures and equipment installed by the grantee under the grant herein made.

The area of the easement 20 feet in width for the water and sewer line is shown on Drawing No. NM-CR-7112, attached as a part of this easement.

IN WITNESS WHEREOF, the grantors have hereunto set their names the day and year first above written.

signed
G. Dewey Gifford

signed
Nellie J. Gifford

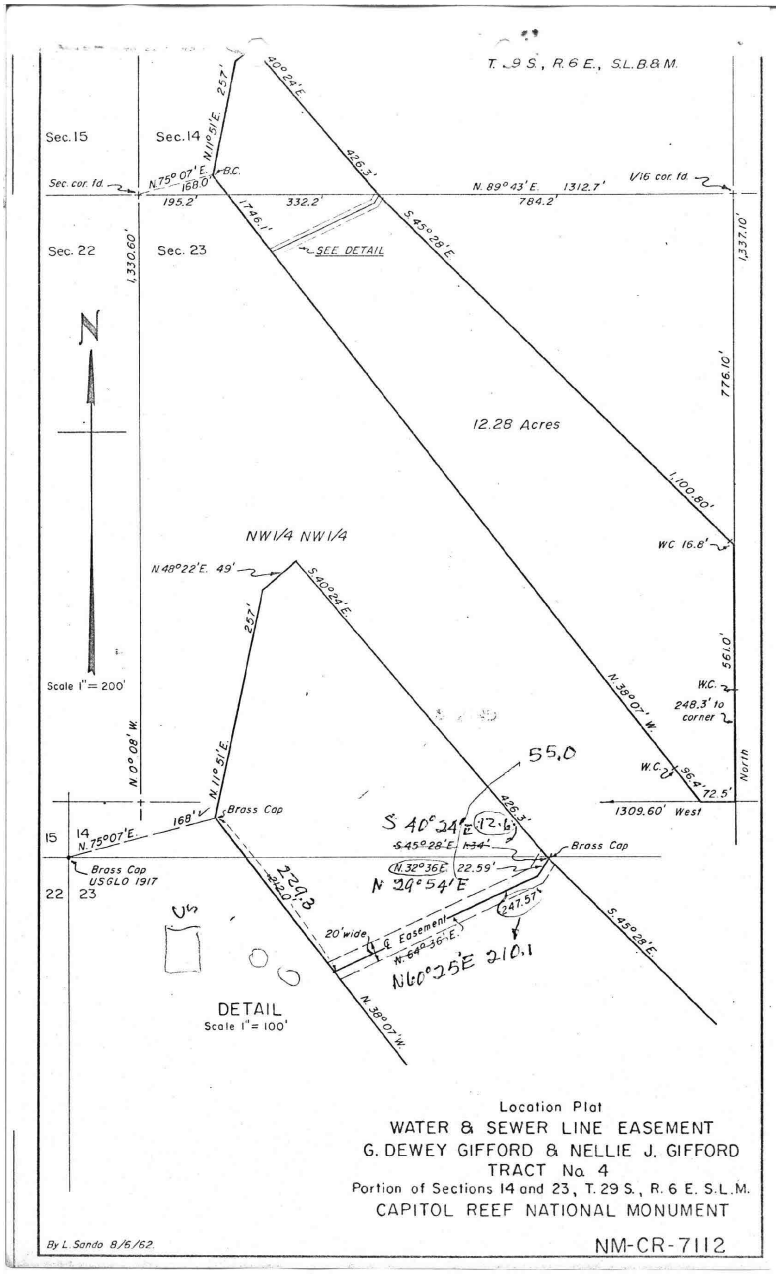
STATE OF UTAH)
) ss
COUNTY OF WAYNE)

ON the 22nd day of August A.D. 1962 personally appeared before me G. Dewey Gifford and Nellie J. Gifford, husband and wife, the signers of the within instrument, who duly acknowledged to me that they executed the same.

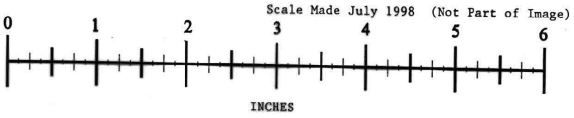
Not signed
NOTARY PUBLIC

By Commission Expires:
Jan. 1, 1963
Residing at:
Loa, Utah

08-22-1962: topographic map of location plot: water and sewer line easement; tract no. 4, portion of sections 14 and 23, t. 29s., r.



Scale Made July 1998 (Not Part of Image)



07-09-1962: quit claim deed; july 09, 1962

Filed for rec[illegible] request of United States of America Date July 13, 1962 @ 10:00 A.M.
Recorded in B[illegible] of Deeds P. 126-127 Wayne Co. Utah Records
[illegible] Wayne County Recorder

67717

QUITCLAIM DEED

Pursuant to the authority of Sections 27-2-7 (4) and 27-2-9 Utah Code Annotated, 1953, the STATE ROAD COMMISSION OF UTAH, for good and sufficient consideration, hereby quitclaims to the UNITED STATES OF AMERICA and its assigns, all the right, title and interest of the State of Utah in and to that certain license and easement conveyed to the State Road Commission of Utah by deed dated August 14, 1956 and recorded in the office of the Recorder of Wayne County, Utah in Book "J" of deeds, page 168, in which deed William C. Chesnut and Ruby Chesnut, his wife, and Jay Chesnut and Bessie Ree Chesnut, his wife, were grantors, the premises covered by the license and easement being more particularly described as follows:

A tract of land situated in the SW¼SW¼ of Sec. 14, T 29 S R 6 E S.L.M. Said tract of land is 30.0 feet wide 15.0 feet on each side of the following described center line.

Beginning at a point 15.0 feet southerly from the southerly right of way line at highway known as Project No. S-0371(1) at Engineer's Station 613+98, said point also being approximately 970 feet north and approximately 88 feet east from the SW corner of said Sec. 14; thence Southeasterly 201 feet, more or less, parallel to said right of way line to a point opposite Engineer's Station 616+00.

The above described tract of land contains 0.14 acre, more or less.

The United States of America, grantee herein, is the successor in interest to the original grantors in the above-mentioned deed to the State Road Commission of Utah, and the license and easement hereby quitclaimed are no longer necessary or useful for any highway purpose.

WITNESS the hand of said grantor this 9th day of July, 1962.

STATE ROAD COMMISSION OF UTAH

By [signature]
Director

APPROVED:

[signature]
Governor

Quitclaim Deed - Page Two

STATE OF UTAH)
) ss
COUNTY OF SALT LAKE)

On the 9th day of July, 1962, personally appeared before me, C. J. Burton, who by me duly sworn, did say that he is the Director of the State Road Commission of Utah, and that said instrument was signed on behalf of said agency by authority of law and resolution of the State Road Commissioners, and said C. J. Burton acknowledged to me that said agency executed the same.

Franklyn B. Matheson
Notary Public
Residing at Salt Lake City, Utah

My commission expires:
May 12, 1965

05-15-1962: united states district for the district of utah; may 15, 1962

certified

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. 284.31 ACRES OF LAND, MORE OR LESS, IN THE COUNTY OF WAYNE, STATE OF UTAH, RICHARD W. SPRANG, ET AL., AND UNKNOWN OWNERS, Defendants.	)	Civil No. C-95-61 JUDGMENT RE: TRACT NO. 8, DEAN R. BRIMHALL AND LILA BECCLES BRIMHALL, HIS WIFE

Filed in United States District Court, District of Utah.

Time: MAY 16 1962

Wayne Christoffersen
Clerk

The Stipulation of Plaintiff and Defendants Dean R. Brimhall and Lila Beccles Brimhall, his wife, through their respective counsel, having been filed herein, by which there is settled all issues as to just compensation to be paid for the taking of the lands and property described in Schedule "A" hereto attached, and the Court being fully advised in the premises finds that such Stipulation should be and is approved and it is, therefore,

ORDERED, ADJUDGED AND DECREED that the United States of America be and is vested with fee simple title in and to all of the lands and property described in said Schedule "A" attached hereto as of June 2, 1961; and it is further

ORDERED, ADJUDGED AND DECREED that the sum of $6,500.00, inclusive of interest, is full and just compensation to be paid by the United States of America for the taking of said lands and property, and judgment be and is entered against the United States of America in the amount of $6,500.00, inclusive of interest;

And it further appearing that by order previously entered on August 1, 1961 herein the sum of $6,000.00 was distributed from the funds in this case, and that by order previously entered on December 29, 1961 herein the sum of $500.00 was distributed from the funds in this case, and that there remain no funds on deposit in the Registry of the Court to the credit of said land, no further sum is due said defendants.

Dated this 15 day of May, 1962.

/s/ A. Sherman Christensen

UNITED STATES OF AMERICA)
DISTRICT OF UTAH) ss

I, THE UNDERSIGNED, CLERK OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND FULL COPY OF AN ORIGINAL ENTRY ON FILE IN MY OFFICE AS SUCH CLERK.
WITNESS MY HAND AND THE SEAL OF SAID COURT
THIS ... DAY OF ... A.D. 19...
WAYNE CHRISTOFFERSEN, CLERK

05-10-1962: united states district for the district of utah; may 10, 1962

certified

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

Filed in United States District Court, District of Utah.

Time: MAY 16 1962

Wayne Christoffersen

UNITED STATES OF AMERICA, Plaintiff, vs. 284.31 ACRES OF LAND, MORE OR LESS, IN THE COUNTY OF WAYNE, STATE OF UTAH, RICHARD W. SPRANG, ET AL., AND UNKNOWN OWNERS, Defendants.	))))))	Civil No. C-[illegible]61 **STIPULATION** RE: TRACT NO. 8, DEAN R. BRIMHALL AND LILA ECCLES BRIMHALL, HIS WIFE

It is hereby stipulated by and between the United States of America, hereinafter referred to as "Plaintiff" and Defendants Dean R. Brimhall and Lila Eccles Brimhall, his wife, hereinafter referred to as "Defendants", as follows:

1. That on June 2, 1961, the United States of America filed in this proceeding its Complaint and Declaration of Taking by which title was vested in the United States to all of the lands described in Schedule "A" attached hereto.

2. That pursuant to an order of the above entitled Court, the United States entered into possession of the said land on June 27, 1961, and since said date has retained full and exclusive possession of said lands; that as of the date of entry of the United States, as aforesaid, each and all of the Defendants own or claimed some interest in and to said lands, and said Defendants claim to be the sole and only persons having any right, title or interest thereto, and are, therefore, entitled to receive compensation in this proceeding.

3. That Defendants stipulate and agree that the lands taken by the United States in the proceeding are taken for a public purpose of the United States, and Defendants waive any and all defenses they may have had to the taking thereof by the Plaintiff.

4. That the fair and just compensation to be paid by the Plaintiff for all right, title and interest of every kind of said Defendants taken by Plaintiff in said lands is the sum of $6,900.00, without interest.

5. That Plaintiff has heretofore deposited in the Registry of the Court the total sum of $6,500.00, which amount Defendants have heretofore withdrawn.

6. Defendants hereby waive all notice, service of notice and any and all right to hearing or trial in this proceeding on the issue of just compensation, and waive any and all claim against the Plaintiff for interest, relocation expense or any other claim of damage arising from the taking of the said lands.

7. That judgment in accord with this Stipulation may be entered by the Court without further notice to the Defendants.

Dated this 10 day of May, 1962.

WILLIAM T. THURMAN
United States Attorney

Address: 200 Federal Building
Salt Lake City, Utah

By CRAIG T. VINCENT
CRAIG T. VINCENT
Assistant United States Attorney

Attorneys for Plaintiff

Address: Walker Bank Bldg.
Salt Lake City, Utah

A. M. PEDRO
A. M. PEDRO

Attorney for Defendants

UNITED STATES OF AMERICA } ss
DISTRICT OF UTAH

I, THE UNDERSIGNED, CLERK OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, DO HEREBY CERTIFY THAT THE ABOVE AND FOREGOING IS A TRUE AND FULL COPY OF THE ORIGINAL DOCUMENT ON FILE IN MY OFFICE AS SUCH CLERK.
WITNESS MY HAND AND THE SEAL OF SAID COURT
THIS 16 DAY OF May 1962
WAYNE CHRISTOFFERSON, CLERK
BY [signature] DEPUTY

SCHEDULE "A"

TRACT NO. 8

Part of Section 15, Township 29 South, Range 6 East, SLM, Wayne County, Utah, described as follows:

PARCEL NO. 1. The North half of the North half of the Northeast quarter of the Southwest Quarter ($N\frac{1}{2}N\frac{1}{2}NE\frac{1}{4}SW\frac{1}{4}$) of Section 15, Township 29 S., Range 6 E., Salt Lake Meridian, except the land conveyed by Dean R. Brimhall and Lila Eccles Brimhall to the State Road Commission of Utah by that certain warranty deed, dated August 14, 1956 and recorded September 17, 1956 in Book J of Deeds, Page 138, of records, Wayne County, Utah, and containing approximately 10 acres more or less.

PARCEL NO. 2. A portion of the Westerly part of the Northwest quarter Southeast Quarter ($NW\frac{1}{4}SE\frac{1}{4}$) of Section 15, T. 29 S., R. 6 E., described as follows:

Beginning at the Northwest corner of the Northwest Quarter of the Southeast Quarter ($NW\frac{1}{4}SE\frac{1}{4}$) the point of beginning; thence East 28 rods, thence South 40 rods, thence West 28 rods, thence North 40 rods to place of beginning containing 7.0 acres more or less; reserving to the husband, Dean R. Brimhall, a life estate in a portion of Parcel No. 2 described as follows: Beginning at a point 330 feet south of the Northwest corner of the Northwest Quarter of the Southeast Quarter ($NW\frac{1}{4}SE\frac{1}{4}$) of Section 15, T. 29 S., R. 6 E., SLM; thence East to the center of Sulphur Creek, thence following the Center thread of Sulphur Creek in a general Southeasterly direction to a point on the South boundary line of Parcel No. 2, thence West to the Southwest corner of Parcel No. 2, thence North 330 feet to point of beginning.

Together with water rights described as follows:

Sixteen hundredths (.16) cubic feet per second (c.f.s.) of the water of the Fremont River comprising a part of the .44 c.f.s. conveyed to Seller by that certain deed from Clarence and Marie Mulford, et al. dated June 16, 1945 and recorded June 18, 1945 in Book G of Deeds, page 394, Records of Wayne County, Utah.

And together with all of the seller's interest in diligence water rights from Sand Creek also known as Sulphur Creek and more particularly described in that certain affidavit of Aaron E. Holt dated June 14, 1945, and recorded June 16, 1945 in Book G of Deeds, page 393, Wayne County Records.

Filed for record of Nellie H. Taylor Dec.28,1961 @ 10:00 A.M.
Recorded in Bo. K Deeds Page 585-586
Wayne County Recorder

67365

WARRANTY DEED

DEAN R. BRIMHALL and LILA ECCLES BRIMHALL, his wife, Grantors of Fruita, County of Wayne, State of Utah, hereby convey and warrant to THE UNITED STATES OF AMERICA, Grantee, for the sum of Twenty-Eight Thousand Five Hundred Dollars ($28,500.00) the following described tracts of land in Wayne County, State of Utah:

The Northeast quarter of the Southwest Quarter (NE¼SW¼) of Section 15, Township 29 South, Range 6 East, Salt Lake Meridian, except the North half of the North half of the Northeast quarter of the Southwest quarter (N½N½NE¼SW¼), and excepting the land conveyed by Dean R. Brimhall and Lila Eccles Brimhall to the State Road Commission of Utah by that certain Warranty Deed, dated August 14, 1956, and recorded September 17, 1956 in Book J of Deeds, page 138, Records of Wayne County, Utah, containing approximately thirty (30) acres, more or less.

Together with all buildings and improvements located thereon and together with twenty-eight hundredths (.28) of a cubic foot per second of water from the Fremont River. This .28 c.f.s. being a portion of the water of the Fremont River conveyed to the Seller by that certain deed from Clarence and Marie Mulford, et al., dated June 14, 1945 and recorded June 18, 1945 in Book G of Deeds, page 394, Records of Wayne County, Utah.

The Grantors also convey all of their right, title and interest in a 14" metal pipeline conducting water from the point of diversion on the Fremont River to the above described property. Together with rights of way or easements across Mulford and other properties for purpose of maintaining replacement or repair of said pipeline.

also

A portion of the Westerly part of the Northwest Quarter of the Southeast quarter (NW¼SE¼) of said Section 15, Township 29 South, Range 6 East, SLM, as follows:

Beginning at a point 660 feet South of the Northwest corner of the Northwest quarter of the Southeast quarter (NW¼SE¼) of Section 15, Township 29 South, Range 6 East, Salt Lake Meridian, the true point of beginning:

thence East 28 rods, thence South 40 rods, thence West 28 rods, thence North 40 rods to beginning. Containing 7.0 acres, more or less.

The conveyance of the aforementioned property is made subject to a life estate reserved by the Grantors to Dean R. Brimhall

in the above described property and a right of use in the above described water rights, and the above described pipeline during his lifetime.

The said Grantor, Dean R. Brimhall, shall be entitled to a continuous flow of said water.

The United States shall maintain and operate said pipeline from its point of diversion to the above described property without cost to said Grantor. The United States shall also have the right to extend the pipeline or construct a ditch, flume or pipeline east of and generally parallel to the existing State Route No. 24 across the property covered by the said life estate.

WITNESS the hands of said Grantors this 19th day of December A. D., 1961.

Signed in the Presence of

C. M. Tew

Wesley R. Brimhall

Lila Eccles Brimhall

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

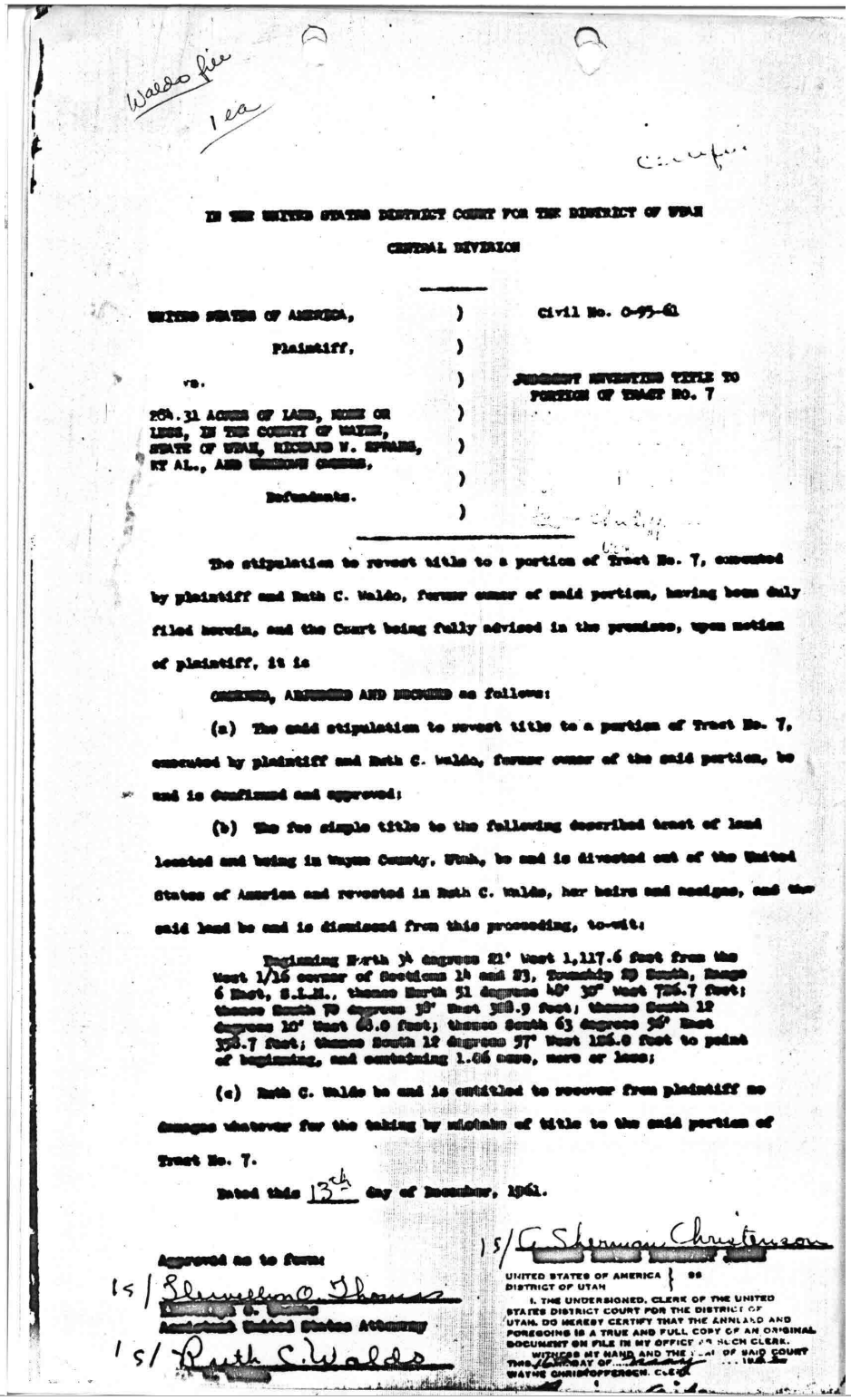
On the 19th day of December A. D., 1961, personally appeared before me, DEAN R. BRIMHALL and LILA ECCLES BRIMHALL, the signers of the within instrument, who duly acknowledged to me that they executed the same.

Notary Public

My commission expires:
May 3, 1965

Residing at: Kearns, Utah

12-13-1961: united states district court for the district of utah; december 13, 1961



Waldo file
1 ea

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff,	)	Civil No. C-93-61
vs.	)	JUDGMENT REVESTING TITLE TO PORTION OF TRACT NO. 7
254.31 ACRES OF LAND, MORE OR LESS, IN THE COUNTY OF WAYNE, STATE OF UTAH, RICHARD W. EYRARD, ET AL., AND UNKNOWN OWNERS, Defendants.	)	

The stipulation to revest title to a portion of Tract No. 7, executed by plaintiff and Ruth C. Waldo, former owner of said portion, having been duly filed herein, and the Court being fully advised in the premises, upon motion of plaintiff, it is

ORDERED, ADJUDGED AND DECREED as follows:

(a) The said stipulation to revest title to a portion of Tract No. 7, executed by plaintiff and Ruth C. Waldo, former owner of the said portion, be and is confirmed and approved;

(b) The fee simple title to the following described tract of land located and being in Wayne County, Utah, be and is divested out of the United States of America and revested in Ruth C. Waldo, her heirs and assigns, and the said land be and is dismissed from this proceeding, to-wit:

Beginning North 34 degrees 21' West 1,117.6 feet from the West 1/16 corner of Sections 14 and 23, Township 29 South, Range 6 East, S.L.M., thence North 51 degrees 40' 30" West 726.7 feet; thence South 70 degrees 30' East 388.9 feet; thence South 12 degrees 10' West 68.0 feet; thence South 63 degrees 56' East 358.7 feet; thence South 12 degrees 37' West 126.0 feet to point of beginning, and containing 1.66 acres, more or less;

(c) Ruth C. Waldo be and is entitled to recover from plaintiff no damages whatever for the taking by mistake of title to the said portion of Tract No. 7.

Dated this 13th day of December, 1961.

/s/ [redacted] Chrisfferson
UNITED STATES DISTRICT JUDGE

Approved as to form:

/s/ [redacted] Thomas
[redacted]
Assistant United States Attorney

/s/ Ruth C. Waldo

UNITED STATES OF AMERICA } ss
DISTRICT OF UTAH

I, THE UNDERSIGNED, CLERK OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, DO HEREBY CERTIFY THAT THE ANNEXED AND FOREGOING IS A TRUE AND FULL COPY OF AN ORIGINAL DOCUMENT ON FILE IN MY OFFICE AS SUCH CLERK.

WITNESS MY HAND AND THE SEAL OF SAID COURT THIS [illegible] DAY OF [illegible] 19[illegible]

WAYNE CHRISTOFFERSEN, CLERK

DESCRIPTION - SMITH PROPERTY

Capitol Reef National Monument

Owned by

Merin and Cora Smith, husband and wife

Probably Cora Smith as her sole and separate property

of

Wayne County, Utah

Salt Lake Meridian, Wayne County, Utah

Township Twenty-nine (29) South, Range Six (6) East

Section 14.

Commencing 16 rods South of the Northeast corner of the Southwest Quarter of the Southwest Quarter (SW^4SW^4) of Section 14, Township 29 South, Range 6 East, Salt Lake Meridian, running thence South 38 rods; thence in a northwesterly direction 98 rods; thence North 75 rods; thence East 56 rods; thence South 64 rods; thence Southwest 33 rods 8 feet; thence North of East 24 rods and 4 feet; to the place of beginning. Containing 28 acres more or less together with all improvements and water rights pertaining to said land.

Subject to easements and rights-of-way of record.

EXHIBIT-V

00-00-0000: declaration of taking

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

United States of America,

Plaintiff

v.

284.31 acres of land, more or less, in the County of Wayne, State of Utah, Richard W. Sprang, et al.,

Defendants

Civil No. C-95-61

In the matter of the acquisition by the United States of America of certain parcels of land situate, lying and being in the County of Wayne, State of Utah, for use in connection with the Capitol Reef National Monument of the National Park Service of the Department of the Interior.

DECLARATION OF TAKING

Pursuant to the authority delegated on February 17, 1959, by the Secretary of the Interior under subparagraphs (6) and (7) of 210.2.2 Departmental Manual of the Department of the Interior (24 F. R. 1348), to the Solicitor of the Department of the Interior, I do hereby make and cause to be filed this Declaration of Taking under and in accordance with the act of Congress approved February 26, 1931 (46 Stat. 1421; 40 U.S.C., sec. 258a), and acts supplementary thereto and amendatory thereof, and declare that:

FIRST: (a) The lands shown on the exhibits attached hereto are taken pursuant to and under authority of the Department of the Interior and Related Agencies Appropriation Act, 1961 (74 Stat. 104), which makes funds available for such purposes.

(b) The lands described in the exhibits have been selected by me for acquisition by the United States for use in connection with the development of the Capitol Reef National Monument, administered by the National Park Service of the Department of the Interior, and are required for immediate use.

RECEIVED WITH MEMO OF 4/3/62

(c) In my opinion it is necessary, advantageous, and in the interest of the United States that said lands be acquired by judicial proceedings as authorized by the act of August 1, 1888 (25 Stat. 357; 40 U.S.C., sec. 257).

(d) The public use for which such lands are taken is as follows:

The lands are needed for road construction and for national monument purposes for the benefit and enjoyment by the visiting public.

SECOND: Pursuant to law, I have selected for acquisition for the purposes of the acts of Congress cited above certain lands and premises located in the County of Wayne, State of Utah, described in Exhibits I through V and shown on plats marked Exhibits "A" through "E", respectively, which are annexed hereto, in the attached pocket, and made a part hereof as follows:

Tract No.	Description	Plat
3	Exhibit I	"A"
8	Exhibit II	"B"
9	Exhibit III	"C"
10	Exhibit IV	"D"
7	Exhibit V	"E"

aggregating 284.31 acres of land, more or less.

Together with all and singular the water rights and other rights, tenements, hereditaments, and appurtenances thereunto belonging or in any wise appertaining.

THIRD: The estate taken for such public use is the full fee simple title in and to the said lands, subject to existing roads and easements for sewer, gas and water pipe lines, and other public utilities, if any.

FOURTH: The total sum estimated by me as just compensation for the lands taken hereunder is One hundred thirty thousand, eight hundred fifty dollars ($130,850), which sum I hereby deposit in the Registry of

the Court for the use and benefit of the parties entitled thereto as follows:

Tract 3	Ostensible Owners: Sprang, Richard W. and Elizabeth (nee Lewis) the sum of $77,500
Tract 8 (part)	Ostensible Owners: Brimhall, Dean R. and Lila Eccles the sum of $6,500
Tract 9	Ostensible Owners: Krueger, Max L. and Aliene the sum of $29,850
Tract 10	Ostensible Owner: Utah Wonderland Stages, Inc. the sum of $5,000
Tract 7	Ostensible Owners: Smith, Merin and Cora the sum of $12,000

Total sum - $130,850.

I am of the opinion that the ultimate award for said lands will probably be within the limits of allocations and allotments made and provided for the purpose of acquiring same.

IN WITNESS WHEREOF, I have signed this Declaration of Taking in the City of Washington, District of Columbia, this 2nd day of May, 1961.

/S/ FRANK J. BARRY

Solicitor of the Department
of the Interior of the
United States of America

[redacted]

CERTIFIED A TRUE C[redacted]

[redacted]
Attorney Advisor
Branch of Nat[redacted]
Office of the [redacted]
Department of the Interior

DESCRIPTION - SPRANG PROPERTY

Capitol Reef National Monument

Owned by

Richard W. & Elizabeth nee Lewis Sprang

of

Wayne County, Utah

Salt Lake Meridian, Wayne County, Utah

Township Twenty-nine (29) South, Range Six (6) East

Parts of Sections 14, 15, 22 and 23

Deed Book 1, Page 588, 589, 590, Wayne County, Utah

PARCEL I - East one-half of the southeast one quarter and the northwest one quarter of the southeast one quarter of Section 15, Township 29 South, Range 6 East, SLM, less and except the following: beginning at a point 28 rods east of the northwest corner of the northwest one quarter of the southeast one quarter of Section 15, Township 29 South, Range 6 East, SLM, thence south 80 rods; thence west 28 rods; thence north 80 rods; thence east 28 rods to beginning.

PARCEL II - Beginning at the southwest corner of the northwest one quarter of the southwest one quarter of Section 14, Township 29 South, Range 6 East, SLM; thence south 20.0 rods; thence east 1.0 rods; thence northerly 20 rods, more or less to a point 5 rods east of the place of beginning; thence west 5 rods to beginning.

EXHIBIT-I

Together with any and all water and ditches, rights, fixtures, improvements, appurtenances, easements, tenements and herditaments thereunto appertaining or in anywise belonging.

Filed: March 6, 1956 at 11:30 AM, Recorders Office, Wayne County Court House, Loa, Utah, Book 1 of Deeds. Pages 588, 589, 590, recorded by recorder Norma Blackham.

The above lands etc. obtained from Tass A. Claridge otherwise known as T. A. Claridge and Thenalda Claridge to Maxwell H. Lewis and Elizabeth Lewis, husband and wife, for the sum of $29,000.

ALSO: Book J, Page 211, From William Clarence and Ruby Chesnut; Jay and Bessie Chesnut and Dicey Chesnut

Commencing at a point on the west line of Section 14, Township 29 South, Range 6 East, SLM, north 0° 10' west 735 feet from the southwest corner of said Section 14, and running thence south 71° 18' east 593.0 feet; thence south 1° 56' east 53 feet; thence south 64° 11' west 355 feet; thence north 43° 32' west 356 feet more or less to the west line of said Section 14; thence north 0° 10' west 141 feet, more or less, to the point of beginning.

ALSO: Less land deeded to the Utah State Highway Commission for project 0371, executed August 14th, 1956 and recorded Deed book J, Page 139, containing 6.21 acres.

Together with 1.133 c.f.s. of water of the Fremont River in Wayne County, Utah, being part of the 8.0 c.f.s. of water awarded Dewey Gifford and others as Fruita residents in and by the terms of the decree of the court dated July 15, 1935 in that certain action filed in the Sixth Judicial District Court in and for Wayne County, State of Utah and entitled "Hanksville Canal Company", a corporation, plantiff, vs. Torrey Irrigation Company, a corporation, et al, defendants.

PARCEL III - Commencing at a point north 75° 57' east 168.0 feet from the southwest corner of the southwest one quarter of the southwest one quarter of Section 14, Township 29 South, Range 6 East, SLM, and running thence south 37° 22' east 26.0 chains, more or less, to the south boundary line of the northwest one quarter of the northwest one quarter of Section 23, Township 29 South, Range 6 East, SLM; thence west 14.5 chains, more or less, to a point 17.0 rods east of the southwest corner of the northwest one quarter of the northwest one quarter of said Section 23; thence diagonally in a northwesterly direction to a point 37.0 rods north of the southwest corner of the northwest one quarter of the northwest one quarter of said Section 23; thence diagonally in a northwesterly direction to a point located 110.0 feet south and south 61° 51' west 260.0 feet from the north-

west corner of the northwest one quarter of the northwest one quarter of said Section 23; thence north 61° 15' east 260.0 feet to a point 110.0 feet south of the northwest corner of the northwest one quarter of the northwest quarter of the said Section 23; thence northeasterly along the southeast bank of the Fremont River to the place of beginning.

Together with ~~1.115~~ 0.55 c.f.s. of water of the Fremont River in Wayne County, Utah, being part of the 8.0 c.f.s. of water awarded Dewey Gifford and others etc. (See former water description for additional).

PARCEL IV - Commencing at a point north 0° 10' west 594 feet from the southeast corner of Section 15, Township 29 South, Range 6 East, SLM, and running thence south 43° 32' east 368 feet; thence south 48° 27' west 49 feet; thence south 11° 51' west 257 feet; thence south 46° 35' west222.9 feet; thence south 61° 14' west 260.1 feet; thence north 26° 32' west 263.17 feet; thence north 89° 52' west 645.0 feet; thence north 60° 31' east 1135.4 feet; thence north 0° 10' west 33 feet to beginning.

Together with 0.20 c.f.s. of water of the Fremont River in Wayne County, Utah, being part of the 8.0 c.f.s. of water awarded Dewey Gifford and others etc. (See first water description for addition).

Subject to a strip of land for a Highway known as Project No S-0371, situated in the East half of the southeast quarter ($E^{\frac{1}{2}}SE^{\frac{1}{4}}$) and the Northwest quarter of the southeast quarter ($NW^{\frac{1}{4}}SE^{\frac{1}{4}}$) of said Section 15. Above described tract of land for highway purposes contains 6.21 acres more or less. The land with an appurtenance for highway purposes is more particularly described in that certain warranty deed dated the 14th day of August 1956 and executed by Elizabeth Lewis and recorded at the request of the State Road Commission of Utah on September 17,1956 at 9:00 o'clock A.M. in Book J of Deeds, Page 139 of the Records of Wayne County, Utah.

DESCRIPTION - BRIMHALL PROPERTY

Capitol Reef National Monument

Owned by

Dean R. Brimhall and Lila Eccles Brimhall, husband and wife

of

Wayne County, Utah

Salt Lake Meridian, Wayne County, Utah

Township Twenty-nine (29) South, Range Six (6) East

Section 15, consisting of Parcels Nos. 1 and 2.
Detailed description as follows:

PARCEL NO. 1

The North half of the North half of the Northeast quarter of the Southwest Quarter ($N^2N^2NE^4SW^4$) of Section 15, Township 29 S., Range 6 E., Salt Lake Meridian, except the land conveyed by Dean R. Brimhall and Lila Eccles Brimhall to the State Road Commission of Utah by that certain warranty deed, dated August 14, 1956 and recorded September 17, 1956 in Book J of Deeds, Page 138, of records, Wayne County, Utah, and containing approximately 10 acres more or less.

PARCEL NO. 2

A portion of the Westerly part of the Northwest quarter Southeast quarter (NW^4SE^4) of Section 15, T. 29 S., R. 6 E., described as follows:

EXHIBIT - II

Beginning at the Northwest corner of the Northwest quarter of the Southeast quarter (NW^4SE^4) the point of beginning; Thence East 28 rods, thence South 40 rods, thence West 28 rods, thence North 40 rods to place of beginning containing 7.0 acres more or less; reserving to the husband, Dean R. Brimhall, a life estate in a portion of Parcel No. 2 described as follows: Beginning at a point 330 feet south of the Northwest corner of the Northwest quarter of the Southeast quarter (NW^4SE^4) of Section 15, T. 29 S., R. 6 E., SLM: thence east to the center of Sulphur Creek, thence following the Center thread of Sulphur Creek in a general Southeasterly direction to a point on the south boundary line of Parcel No. 2, thence west to the Southwest corner of Parcel No. 2, thence North 330 feet to point of beginning.

Together with water rights described as follows:

Sixteen hundredths (.16) cubic feet per second (c.f.s.) of the water of the Fremont River comprising a part of the .44 c.f.s. conveyed to Seller by that certain deed from Clarence and Marie Mulford, et al. dated June 16, 1945 and recorded June 18, 1945 in Book G of Deeds, page 394, Records of Wayne County, Utah.

And together with all of the seller's interest in diligence water rights from Sand Creek also known as Sulphur Creek and more particularly described in that certain affidavit of Aaron E. Holt dated June 14, 1945, and recorded June 16, 1945 in Book G of Deeds, page 393, Wayne County Records.

DESCRIPTION - KRUEGER PROPERTY

Capitol Reef National Monument

Owned by

Max L. Krueger and Aliene Winchester Krueger, husband and wife

of

Wayne County, Utah

Salt Lake Meridian, Wayne County, Utah

Township Twenty-nine (29) South, Range Six (6) East

Section 14.

Beginning at a point 3 1/2 rods East of the Southwest corner of the Northeast Quarter of the Southwest Quarter (NE^4SW^4) of Section 14, Township 29 South, Range 6 East, Salt Lake Meridian; thence East 105 1/2 rods, thence in a northeasterly direction to the Northeast corner of the Northwest Quarter of the Southeast Quarter (NW^4SE^4) of said section (a calculated distance of 1611.25 feet); thence West 160 rods to the Northwest corner of the Northeast Quarter of the Southwest Quarter (NE^4SW^4) of said section; thence South 53 rods; thence South 18 degrees 30 minutes East 9 rods 11 1/2 feet to a point 18 rods North and 3 1/2 rods East of the Southwest corner of the Northeast Quarter of the Southwest

EXHIBIT - III

Quarter (NE^4SW^4) of said section; thence South 18 rods to place of beginning (excepting those portions of land described in a quiclaim deed of March 31, 1943 as recorded June 3, 1943 in Deed Book "G", page 246, Records of Wayne County, Utah) and containing 65.38 acres, more or less, together with the water rights used upon and being appurtenance to the described premises, said water right consisting of 31 acres of water in the Fremont River, being I & 67/181 Cubic Feet of Water per second of the eight cubic feet per second decreed to the Residents of Fruita by the District Court of Wayne County, Utah, in an action entitled Hanksville Irrigation Company vs. Torrey Irrigation Company et al.

Subject to easements and rights-of-way of record..

DESCRIPTION - UTAH WONDERLAND STAGES, INC., PROPERTY

Capitol Reef National Monument

Owned by

Utah Wonderland Stages, Inc.
Stewart C. Campbell, President
John C. Campbell, Secretary

of

Wayne County, Utah

Salt Lake Meridian, Wayne County, Utah

Township Twenty-nine (29) South, Range Six (6) East

Section 13.

The Northeast Quarter of the Southwest Quarter (NE^4SW^4) of Section 13, Township 29 South, Range 6 East, Salt Lake Meridian, containing 40 acres, more or less.

Coal and other minerals reserved by the State of Utah. Subject to easements and rights-of-way of record, if any, and subject to the reservations in the patent from the State of Utah to Stewart C. Campbell.

EXHIBIT - IV

03-07-1959: merin and cora smith warranty deed; march 07, 1959

65367

Filed for record at request of Willie H. Taylor Date March 9, 1959 @ 9.00
Recorded in Book 7 of Deeds Page 44 Wayne Co. Utah Records
Thurmit Brown Wayne County Recorder

WARRANTY DEED

MERIN SMITH and CORA SMITH, husband and wife, Grantors of Loa, in the County of Wayne, State of Utah, hereby convey and warrant to A. L. INGLESBY, Grantee of Fruita, in the County of Wayne, State of Utah, for the sum of one dollar and other good and valuable consideration, the following described tract of land in Wayne County, State of Utah, to-wit:

Beginning North 34 degrees 21' West 1,117.6 feet from the West 1/16 corner of Sections 14 and 23, Township 29 South Range 6 East S. L. M., thence North 51 degrees 48' 30" West 726.7 feet; thence South 70 degrees 38' East 308.9 feet; thence South 12 degrees 10' West 68.0 feet; thence South 63 degrees 56' East 358.7 feet; thence South 12 degrees 57' West 126.0 feet to point of beginning, and containing 1/06 acre, more or less.

WITNESS THE HANDS of said Grantors, this 7 day of ~~February~~ March A. D. 1959.

Signed in the presence of:
Willie H Taylor

Merin Smith
MERIN SMITH

Cora Smith
CORA SMITH

STATE OF UTAH)
) SS
County of Wayne)

On this 7th day of ~~February~~ March A. D. 1959, personally appeared before me, a Notary Public in and for the State of Utah, MERIN SMITH and CORA SMITH, husband and wife, the signers of the above instrument, who duly acknowledged to me that they executed the same.

Willie H Taylor
Notary Public

My commission expires
Jan. 1, 1963.

Residing at Loa, Utah

08-15-1956: archie and emma bird, quit claim deed; august 15, 1956

Filed for record at request of State Road Commission Date Nov. 15, 1956 at 1:30 P.M.
Recorded in Book J of Deeds 166
Rosena Beckstrom County Recorder

43025

Quit Claim Deed

0371:17

Archie Bird and Emma Bird, his wife, grantors of Fruita, County of Wayne, State of Utah, hereby quit claim to STATE ROAD COMMISSION OF UTAH, Grantee for the sum of Twenty-five and no/100 Dollars, the following described tract of land in Wayne County, State of Utah, to-wit:

Land for highway known as Project No. 0371 situated in the $SW\frac{1}{4}$ $SW\frac{1}{4}$, of Section 14, T. 29 S., R. 6 E., S.L.M. Said tract of land is 33.0 ft. wide on the northeasterly side of the center line of survey of said project. Said center line is described as follows:

Beginning at the intersection of the west boundary line of the grantors land and said center line of survey at Engineer's Station 613+25.1 which point is 1038.8 ft. north and 32.2 ft. east from the SW corner of said Section 14; thence Southeasterly 181.1 feet along the arc of a 4°00' curve to the left to Engineer's Station 615+06.2 Back which equals 615+07.1 Ahead (Note: Said curve is tangent at the point of beginning to a line bearing S. 71°15' E.); thence S. 78°30' E. 114.4 feet to the intersection of said center line of survey at Engineer's Station 616+21.5 and the east boundary line of said grantors land, which point is 966.3 ft. north and 326.2 ft. east from the SW corner of said Section 14 as shown on the official map of said project on file in the office of the State Road Commission of Utah. Above described tract of land contains 0.23 acre, more or less, of which 0.21 acre, more or less, is now occupied by the existing highway. Balance 0.02 acre, more or less.

The grantors also hereby grant to the grantee permission to locate and construct within the grantors land and outside the limits of the highway right of way all irrigation and/or waste water ditches made necessary by the construction of said project. After the above described ditches are constructed, the grantee is thereafter relieved of all responsibility for the maintenance of said ditches.

Any and all water rights pertaining to the above described land are hereby reserved by the grantor and the grantee shall not be liable for any water assessment now due or which shall become due.

WITNESS, the hands of said grantors, this 15th day of August, A. D. 1956

Signed in the presence of
Joseph Parmley

Archie Bird
Emma Bird

STATE OF UTAH }
County of Wayne } ss.

On the 15th day of August, A. D. 1956 personally appeared before me Archie Bird and Emma Bird, his wife, the signers of the within instrument, who duly acknowledged to me that they executed the same.

My Commission expires Sept. 20, 1959

Joseph Parmley
Notary Public

Form RW-5—Service Press

10-02-1956: g.f. and kathryn boyd mason, quit claim deed; october 02, 1956

Filed for record at request of State Road Commission Date Nov. 15, 1956 at 1:30 P.M.
Recorded in Book J of Deeds Page 167 Wayne Co. Utah Records
Velma Benblum Wayne County Recorder

43026

Quit Claim Deed

0371:17:1

G. F. Mason (also known as George F. Mason) and Kathryn Boyd Mason, his wife, grantors, of North Hollywood, County of Los Angeles, State of ~~Utah~~ California, hereby quit claim to the STATE ROAD COMMISSION OF UTAH, Grantee for the sum of Twenty-five and no/100- Dollars, the following described tract of land in Wayne County, State of Utah, to-wit:

Land for highway known as Project No. 0371 situated in the SW¼ SW¼, of Section 14, T. 29 S., R. 6 E., S.L.M. Said tract of land is 33.0 ft. wide on the northeasterly side of the center line of survey of said project. Said center line is described as follows:

Beginning at the intersection of the west boundary line of the grantors land and said center line of survey at Engineer's Station 613+25.1 which point is 1038.8 ft. north and 32.2 ft. east from the SW. corner of said Section 14; thence Southeasterly 181.1 feet along the arc of a 4°00' curve to the left to Engineer's Station 615+06.2 Back which equals 615+07.1 Ahead (Note: Said curve is tangent at the point of beginning to a line bearing S. 71°15' E.); thence S. 78°30' E. 114.4 feet to the intersection of said center line of survey at Engineer's Station 616+21.5 and the east boundary line of said grantors land, which point is 966.3 ft. north and 326.2 ft. east from the SW. corner of said Section 14 as shown on the official map of said project on file in the office of the State Road Commission of Utah. Above described tract of land contains 0.23 acre, more or less, of which 0.21 acre, more or less, is now occupied by the existing highway. Balance 0.02 acre, more or less.

The grantors also hereby grant to the grantee permission to locate and construct within the grantors land and outside the limits of the highway right of way all irrigation and/or waste water ditches made necessary by the construction of said project. After the above described ditches are constructed, the grantee is thereafter delivered of all responsibility for the maintenance of said ditches.

Any and all water rights pertaining to the above described land are hereby reserved by the grantor and the grantee shall not be liable for any water assessment now due or which shall become due.

WITNESS, the hands of said grantors, this 2nd day of October, A. D. 1956.

Signed in the presence of

X G F Mason

X Kathryn Boyd Mason

STATE OF ~~Utah~~ California
County of Los Angeles ss.

On the 2nd day of October, A. D. 1956 personally appeared before me George F Mason and Kathryn Boyd Mason, the signers of the within instrument, who duly acknowledged to me that they executed the same.

My Commission expires November 4, 1957

Louise Gleichen
Notary Public
My Commission Expires Nov. 4, 1957

Prepared by W.H.L., 3/8/56

08-14-1956: william and ruby chesnut, license and easement; august 14, 1956

Filed for record at request of State Road Commission Date Nov. 15, 1956 at 1:30
Recorded in Book J of Deeds Page 168 Wayne Co. Utah Records
Norma Beckham Wayne County Recorder

43027

LICENSE AND EASEMENT 0371:18:E

William C. Chesnut & Ruby Chesnut, his wife; and Jay Chesnut and Bessie Ree Chesnut, his wife , GRANTOR s

of Fruita, Wayne County, State of Utah , hereby license and permit STATE ROAD COMMISSION OF UTAH , LICENSEE, for the sum of Twenty-five and no/100- - - - - - - - - - - - - - - - - - Dollars, to use the following described premises situated in Wayne County, Utah, for the purpose of constructing thereon an irrigation facility. Said GRANTORS further hereby grant and convey to Max Kruger, etal GRANTEE, an easement over said premises. The premises which are the subject of this LICENSE and EASEMENT are particularly described as follows:

A tract of land situated in the SW¼ SW¼ of Section 14, T. 29 S., R. 6 E., S.L.M. Said tract of land is 30.0 feet wide 15.0 feet on each side of the following described center line.

Beginning at a point 15.0 feet southerly from the southerly right of way line at highway known as Project No. S-0371(1) at Engineer's Station 613+98, said point also being approximately 970 feet north and approximately 88 feet east from the SW. corner of said Section 14; thence Southeasterly 201 feet, more or less, parallel to said right of way line to a point opposite Engineer's Station 616+00.

The above described tract of land contains 0.14 acre, more or less.

After the above mentioned facility is constructed on said premises at the expense of said LICENSEE, said LICENSEE is thereafter relieved of all further duties, liabilities, and expenses in connection with said facility, and said GRANTEE shall thereafter have the right to use said premises for maintenance of said facility.

WITNESS, the hands of said grantors , this 14th day of August A.D. 1956

Signed in the presence of:

Joseph Parmley

William C. Chesnut
Ruby Chesnut
Jay Chesnut
Bessie Ree Chesnut

STATE OF)
: ss.
County of Wayne)

On the 14th day of August A.D. 1956, personally appeared before me William C. Chesnut & Ruby Chesnut, his wife; and Jay Chesnut and Bessie Ree Chesnut, his wife the signer s of the within instrument, who duly acknowledged to me that they executed the same.

My Commission expires: Sept. 20, 1959
Form RW-9A Prepared by R.G., 7/25/56

/s/ Joseph Parmley
Notary Public

08-14-1956: elisabeth lewis, warranty deed; august 14, 1956

Filed for record at request of State Road Commission Date Sept. 17, 1956 at 9:00
Recorded in Book J of Deeds Page 139 Wayne Co. Utah Records
42861 Wayne County Recorder

WARRANTY DEED

0371:15

Elizabeth Lewis grantor
of Altadena, County of Los Angeles, State of California
hereby conveys and warrants to STATE ROAD COMMISSION OF UTAH grantee
for the sum of Two Thousand Thirteen and 60/100- - - - - - - - - - - - - - - - - - Dollars,
the following described tract.. of land in Wayne County, State of Utah, to-wit:

Land for highway known as Project No. 0371 situated in the E½ of the SE¼ and the NW¼ SE¼ of Section 15, T. 29 S., R. 6 E., S.L.M.

Said tract of land is bounded on the northerly side from the west boundary line of the grantors land in said NW¼SE¼ to Engineer's Station 607+49.8 by a line parallel to and 50.0 feet perpendicularly distant northerly from the center line of survey of said project; thence by a straight line to a point 33.0 feet perpendicularly distant northerly from said center line at Engineer's Station 610+00; thence by a line parallel to and 33.0 feet perpendicularly distant northerly from said center line, to the east boundary line of said Section 15. Said tract of land is also bounded on the southerly side from the west boundary line of said grantors land in said NW¼SE¼ to Engineer's Station 602+28.1 by a line parallel to and 80.0 feet perpendicularly distant southerly from said center line; thence by a straight line to a point 50.0 feet radially distant southerly from said center line at Engineer's Station 603+67.5; thence by a line parallel to and 50.0 feet radially distant southerly from said center line to Engineer's Station 607+49.8; thence by a straight line to a point 33.0 feet perpendicularly distant southerly from said center line at Engineer's Station 610+00; thence by a line parallel to and 33.0 feet perpendicularly distant southerly from said center line to the east boundary line of said Section 15. Said center line is described as follows:

Beginning at the intersection of the west boundary line of said grantors land in said NW¼ SE¼ and said center line of survey at Engineer's Station 589+37.3 which point is 3108.9 ft. east and 1066.8 ft. south, from the W¼ corner of said Section 15; thence N. 87°15' E. 158.2 feet to a point of tangency with a 4°00' curve to the left; thence Northeasterly 321.7 feet along the arc of said curve; thence N. 74°23' E. 306.6 feet to a point of tangency with a 12°00' curve to the right; thence Easterly 504.3 feet along the arc of said 12°00' curve; thence S. 45°06' E. 139.4 feet to a point of tangency with a 5°00' curve to the left; thence Southeasterly 382.3 feet along the arc of said 5°00' curve; thence S. 64°13' E. 399.3 feet to a point of tangency with a 4°00' curve to the left; thence Southeasterly 143.3 feet along the arc of said 4°00' curve to the intersection of said center line of survey at Engineer's Station 612+92.4 and the east section line of said Section 15, which point is 1047.2 ft. north along said east section line from the SE. corner of said Section 15 as shown on the official map of said project on file in the office of the State Road Commission of Utah. Above described tract of land contains 6.21 acres, more or less, of which 2.85 acres, more or less are now occupied by the existing highway. Balance 3.36 acres, more or less.

The grantors also hereby grant to the grantee permission to locate and construct within the grantors land and outside the limits of the highway right of way all irrigation and/or waste water ditches made necessary by the construction of said project. After the above described ditches are constructed, the grantee is thereafter relieved of all responsibility for the maintenance of said ditches.

Any and all water rights pertaining to the above described land are hereby reserved by the grantor and the grantee shall not be liable for any water assessment now due or which shall become due.

WITNESS, the hand.. of said grantor , this 14th day of August A. D. 19 56

Signed in the presence of: Elizabeth Lewis
Joseph Pamley

STATE OF UTAH }
County of Wayne } ss.

On the 14th day of August A. D. 19 56 personally appeared before me Elizabeth Lewis

the signer of the within instrument, who duly acknowledged to me that she executed the same.

My Commission expires Sept. 20, 1956 Joseph Pamley
Notary public

Form R W-1 Prepared by W.H.J., 2/6/56

08-14-1956: dean r. and lila e. brimhall, warranty deed ; august 14, 1956

Filed for record at request of State Road Commission Date Sept 17, 1956 at 9:00 A.M.
Recorded in Book J of Deeds Page 138 Wayne Co. Utah Records
Wayne County Recorder

42800

WARRANTY DEED 0371:14

Dean R. Brimhall and Lila Eccles Brimhall, his wife grantors
of Torrey, County of Wayne, State of Utah
hereby convey.. and warrant.. to the STATE ROAD COMMISSION OF UTAH grantee
for the sum of One Thousand Fifty and no/100- Dollars,
the following described tract.. of land in Wayne County, State of Utah, to-wit:

Land for highway known as Project No. 0371 situated in the NE¼ SW¼ and the NW¼ SE¼ of Section 15, T. 29 S., R. 6 E., S.L.M. Said tract of land is bounded on the northerly side by a line parallel to and 40.0 feet perpendicularly distant northerly from the center line of survey of said project, from the north boundary line of said NE¼ SW¼ to a point radially opposite Engineer's Station 585+04.5; thence by a straight line to a point 50.0 feet perpendicularly distant northerly from said center line of survey at the easterly boundary line of the grantors land.

Said tract of land is also bounded on the southerly side by a line parallel to and 50.0 feet perpendicularly distant southerly from said center line, from the north boundary line of said NE¼ SW¼ to Engineer's Station 582+00; thence by a straight line to a point 80.0 feet radially distant southerly from said center line at Engineer's Station 584+30.4; thence by a line parallel to and 80.0 feet perpendicularly distant southerly from said center line to the east boundary line of the grantors land. Said center line is described as follows:

Beginning at the intersection of the north boundary line of the S½ of said Section 15 and said center line of survey at Engineer's Station 568+77.4 which point is 1570.1 ft. east along said north boundary line, from the W¼ corner of said Section 15; thence S. 31°15' E. 743.4 feet to a point of tangency with a 6°00' curve to the left; thence Easterly 1025.0 feet along the arc of said 6°00' curve, thence N. 87°15' E. 291.5 feet to the intersection of said center line of survey at Engineer's Station 589+37.7 and the east boundary line of said grantors land, which point is 3108.9 ft. east and 1066.8 ft. south from the W¼ corner of said Section 15 as shown on the official map of said project on file in the office of the State Road Commission of Utah. Above described tract of land contains 4.73 acres, more or less, of which 2.69 acres, more or less, now occupied by the existing highway. Balance 2.04 acres, more or less.

The grantors also hereby grant to the grantee permission to locate and construct within the grantors land and outside the limits of the highway right of way all irrigation and/or waste water ditches made necessary by the construction of said project. After the above described ditches are constructed, the grantee is thereafter relieved of all responsibility for the maintenance of said ditches.

Any and all water rights pertaining to the above described land are hereby reserved by the grantor and the grantee shall not be liable for any water assessments now due or which shall become due.

WITNESS, the hands of said grantors, this 14th day of August, A. D. 1956

Signed in the presence of:

Joseph Parmley

Dean R. Brimhall

Lila Eccles Brimhall

STATE OF UTAH }
County of Wayne } ss.

On the 14th day of August A. D. 1956 personally appeared before me Dean R. Brimhall and Lila Eccles Brimhall, his wife

the signers of the within instrument, who duly acknowledged to me that they executed the same.

My Commission expires Sept. 20, 1956

Joseph Parmley
Notary public

Form R W-1
Revised by B.J., 8/3/56

08-29-1947: field notes of the dependent resurveyed of a portion of the boundaries; august 29, 1947

EB Copy A 10,133 ✓

4—679
(April 1933)

UNITED STATES
DEPARTMENT OF THE INTERIOR
~~GENERAL LAND OFFICE~~
BUREAU OF LAND MANAGEMENT

FIELD NOTES

OF THE

DEPENDENT RESURVEY OF A PORTION OF THE BOUNDARIES, AND SURVEY OF THE SUBDIVISION OF THE SOUTH HALF OF SEC. 14, T. 29 S., R. 6 E.,

Of the Salt Lake *Meridian,*

In the State of Utah

EXECUTED BY

Elliot Bird, Cadastral Engineer

Under special instructions dated December 10 *, 19* 45 *., which provided for the surveys included under Group No.* 314 *, bearing the approval of the Commissioner of the General Land Office under date of* December 21, 1945 *and assignment instructions dated* August 5 *, 19* 47 *.*

supplemental

Survey commenced August 13 *, 19* 47 *.*

Survey completed August 29 *, 19* 47 *.*

U. S. GOVERNMENT PRINTING OFFICE 6—451

13

INDEX DIAGRAM.

Township 29 South, *Range* 6 East

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6—151

Subdivision of sec. 14; pages 8 to 13

T. 29 S., R. 6 E.

The supplemental special instructions for the survey of group 314, Utah, dated December 10, 1945, based upon the application of Acting Chief Engineer, A.W. Burney of the National Park Service, provide for the completion survey of sec. 14, T. 29 S., R. 6 E., Salt Lake Meridian, Utah, and the subdivision of its south half into quarter-quarter sections in order to define all boundaries between the public land and existing private tracts within the section.

Due to a series of white sandstone domes and buttes about 600 feet high which form the terrane of the north half of sec. 14, it was impossible to complete the survey of the boundaries of this section. Three days time was spent with a party of experienced assistants in attempts to project lines over this unsurveyable area and at no place could the lines be projected through the north half of the section. The east and west center line of the section was therefore determined and used as a control in subdividing the south half of the section into quarter-quarter sections.

The south and west boundaries and the south half mile of the east boundary of sec. 14, was surveyed by A.D. Perron and A. Jessen, U.S. Deputy Surveyors in 1895, as shown upon plat approved March 21, 1896. All the original corners of these lines were found except the ¼ sec. cor. of secs. 13 and 14, and the cor. of secs. 10, 11, 14, and 15. All indications show that this section corner was never set as the point for the cor. falls on the face of inaccessible ledges where it is impossible to reach the cor. point.

The resurvey was commeced August 13, 1947 and executed with Buff and Buff solar transit No. 26592, used by Elliot Bird, Cadastral Engineer. The instrument is equipped with a Smith solar attachment and has a full vertical circle. The horizontal limb has two double verniers placed opposite to each other and read to single minutes of arc, which is also the least count of the verniers of the latitude and declination arcs and vertical circle. The instrument was approved for use on this survey by the Regional Cadastral Engineer for Region No. 4, in assignment instructions dated August 5, 1947.

All identified corners are remonumented in their original positions and lost corners were reestablished and remonumented at positions based upon the governing record.

The bearings of the lines were determined by deflection angles from true meridians established by observations made upon Polaris during the progress of the work. The lines were carried forward by taking the mean of direct and reversed sights at each instrument station. A degree of accuracy was maintained in this survey to make it conform to that of a mineral survey.

The measurements were made with a Lallie steel tape 5 chains in length, graduated every link for the first 100 links and thereafter at intervals of 10 links. The tape was tested and found correct, comparison being made with a Lufkin standard steel tape 1 chain in length. The measurements were made on the slope, the vertical angle determined at each interval with the transit and the slope measurements properly reduced to true horizontal distances which appear in this record.

The official plat of the survey of T. 29 S., R. 6 E., approved October 27, 1921, gives the SE. cor. of the township as being in latitude 38°15' N., and longitude 111°14' W.

The mean magnetic declination was found to be 16°00' E.

U. S. GOVERNMENT PRINTING OFFICE 6—8155

DEPENDENT RESURVEY PORTION SUBDIVISION, T. 29 S., R. 6 E.

Chains

Reestablishment of surveys executed by A.D. Ferron and A. Jessen, U.S. Deputy Surveyors, in 1895.

The cor. of secs. 14, 15, 22, and 23, is marked by the 1895 survey monument, a lava stone, 18 x 12 x 8 ins., firmly set, marked 3 notches on S. edge and 2 notches on E. edge. Cor. has no accessories and is set in a fruit orchard.

At the cor. point:

Set an iron post, 3 ft. long, 2 ins. in diam., 27 ins. in the ground, with the stone cor. monument deposited alongside, with brass cap marked

T29S R6E
S15 | S14
S22 | S23

1947

From this cor., the ¼ sec. cor. of secs. 22 and 23, bears S. 0°12' E., 40.32 chs. dist. Cor. is marked by the 1895 survey monument, a sandstone, 16 x 10 x 5 ins., firmly set in an old mound of stone. All marks on the cor. monument had worn off.

At the cor. point:

Set an iron post, 3 ft. long, 1 in. in diam., 27 ins. in the ground and a large mound of stone, with the stone cor. monument deposited alongside, with brass cap marked

¼
S22 | S23

1947

August 13, 1947: Stationed at the cor. of secs. 14, 15, 22, and 23, in approximate latitude 38°18' N., longitude 111°16' W., at 10h 38.4m a.m. correct 105th meridian standard time, I make an hour angle observation upon Polaris west of the meridian, making four observations, two each with the telescope in direct and reversed positions, reading the horizontal deflection angle from a point of a ledge about 40 chains to the north, in a counter clockwise direction to the star.

Local mean time of observation..... 10h 17.3m a.m.
Mean horizontal deflection angle..... 1°05'30"
Azimuth of Polaris..... 1°15'30" W.
True bearing to point of ledge..... N. 0°10' W.

I deflect an angle of 89°53' to the right of the reference point, thence, from the cor. of secs. 14, 15, 22, and 23.

N. 89°43' E., on a dependent resurvey line, bet. secs. 14 and 23.

Through fruit orchard belonging to Dewey Gifford.

2.50 Fremont River, stream 50 lks. wide, 10 ins. deep, flows northeasterly; continue through orchard.

10.30 Utah State Highway No. 24, at the E. side of orchard, bears N. and S.; ascend steep broken W. slope of high lava bench to the E.

U. S. GOVERNMENT PRINTING OFFICE 6—8155

DEPENDENT RESURVEY PORTION SUBDIVISION, T. 29 S., R. 6 E.

Chains	
19.89	Proportionate point for the W. 1/16 sec. cor. of secs. 14 and 23; on steep W. slope, 320 ft. above the Fremont River. Set an iron post, 3 ft. long, 1 in. in diam., 20 ins. in the ground to solid rock and in a large mound of stone, with brass cap marked W 1/16 S14/S23 1947 Deposit a lava stone, 12 x 10 x 10 ins., at the base of post, marked X.
20.70	Top of W. rim of lava bench, 40 ft. above cor., bears NW. and S.; thence over rolling top of bench through very scattered scrub juniper and pinon and short undergrowth.
28.74	From this point, a point on a nearly vertical sandstone wall about 290 ft. high, bearing NE. and SW., marked W ¼ C, bears South, 8 lks. dist. There is no official record of these marks.
29.00	Top of nearly vertical sandstone rim facing NW., which forms the top of the N. breaks of the Fremont River, bears NE. and SW.; thence descend gradually over NE. and E. slopes over broken sandstone surface rock and outcroppings.
39.78	The ¼ sec. cor. of secs. 14 and 23, which is marked by the original cor. monument of the 1895 survey, a sandstone 18 x 10 x 6 ins., firmly set in a mound of stone. Stone was weather worn but had no visible markings. At the cor. point, on gradual E. slope of sandstone surface rock, 120 ft. below the rim of the Fremont River, mark a cross (X), over which. Set an iron post, 3 ft. long, 1 in. in diam., in a mound of stone, 5 ft. base, 3 ft. high, with the original cor. monument deposited alongside the iron post, with brass cap marked ¼ S14/S23 1947 Thence, S. 89°48' E., beginning new measurement.
7.80	Bottom of rough rocky gulch, 190 ft. below the ¼ sec. cor., drains NE.; ascend abrupt ledgy NW. slope.
13.80	Ledgy spur, 100 ft. above gulch, slopes N. 60° E.; descend gradual NE. and E. slopes over sandstone ledges and surface rock.
20.06	Point for the E. 1/16 sec. cor. of secs. 14 and 23, at proportionate distance. Set an iron post, 3 ft. long, 1 in. in diam., 6 ins. in the ground to solid rock and in a large mound of stone, with brass cap marked

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DEPENDENT RESURVEY PORTION SUBDIVISION, T. 29 S., R. 6 E.

Chains	
	E 1/16 $\frac{S14}{S23}$ 1947 Deposit a sandstone, 10 x 10 x 8 ins., at base of post, marked X.
40.12	The cor. of secs. 13, 14, 23, and 24, which is marked by the cor. monument of the 1895 survey, a sandstone, 24 x 12 x 10 ins., firmly set in a mound of stone. Stone was weather worn and had no visible markings. At the cor. point, on sandstone surface rock, mark a cross (X), over which: Set an iron post, 3 ft. long, 2 ins. in diam., in a mound of stone, 5 ft. base, 3 ft. high, with the original cor. monument deposited alongside the iron post, with brass cap marked T29S | R6E S14 | S13 S23 | S24 1947 Cor. is 160 ft. below spur and on the level top of a sandstone outcropping. Land, broken breaks of the Fremont River. Soil, shallow pockets of sand on the sandstone surface rock; 4th rate. Timber, very scattered scrub juniper and pinon. Undergrowth, short browse, weeds, and grass. Poor grazing land.
	N. 0°01' W., (record course) bet. secs. 13 and 14. Descend general NE. slope over broken surface rock and ledges, through very scattered scrub juniper and pinon timber and short undergrowth.
20.00	Point for the S. 1/16 sec. cor. of secs. 13 and 14 at proportionate distance. Set an iron post, 3 ft. long, 1 in. in diam., 10 ins. in the ground to solid rock and in a large mound of stone, with brass cap marked S 1/16 S14 | S13 1947 Deposit a lava stone, 12 x 10 x 10 ins., at base of post, marked X. Cor. set on general N. slope, 260 ft. below the sec. cor.
21.50	Sandstone gulch, 80 ft. below cor., drains NE.; ascend abruptly.
23.20	Spur, 80 ft. above gulch, slopes NE.; descend abrupt N. slope.

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DEPENDENT RESURVEY PORTION SUBDIVISION, T. 29 S., R. 6 E.

Chains	
25.30	Top of vertical sandstone rim on S. side of Fremont River, 80 ft. high, bears E. and W.; descend abruptly to river.
28.20	The Fremont River, 50 lks. wide, 10 ins. deep, in bottom of canyon, 180 ft. below spur, flows E.
30.56	Base of vertical ledge on N. side of canyon, 80 ft. high, bears E. and W.
	At this point on S. face of vertiacl ledge, about 5 ft. above the ground.
	Set an iron post, 1 ft. long, 1 in. in diam., 10 ins. in a hole drilled in the solid sandstone, for a line monument, with brass cap marked S14 | S13 L | M 1947
	Thence ascend abrupt N. breaks of the Fremont River.
33.00	Top of N. breaks of the Fremont River, 350 ft. above stream, bears E. and W.; thence ascend gradually over broken sandstone outcroppings.
34.50	Rocky spur, 20 ft. above rim, slopes E.; descend gradually over ledgy N. slope.
40.00	Record distance; find no trace of the ¼ sec. cor. of secs. 13 and 14.
	In bottom of sandstone gulch locally known as Bridge Canyon, 100 ft. below spur, drains E.
	Set an iron post, 2 ft. long, 1 in. in diam., 10 ins. in a hole drilled in the solid sandstone and in a large mound of stone, 5 ft. base, 1 ft. high, with brass cap marked ¼ S14 | S13 1947
	from which
	A pinon, 8 ins. in diam., bears N. 50° 15' E., 64 lks. dist., marked ¼ S13 BT.
	A pinon, 6 ins. in diam., bears S. 67° W., 63 lks. dist., marked ¼ S14 BT.
	From this ¼ sec. cor., a small Indian cliff dwelling, located on a shelf of a ledge in N. breaks of Bridge Canyon, about 60 ft. above bottom, bears N. 78°38' W., 2.00 chs. dist.
	Note: About 10.00 chs. to the N. of the ¼ sec. cor. of secs. 13 and 14, is the base of white sandstone domes about 600 ft. high, bearing westerly and southeasterly over which it is impossible to project a line, I therefore discontinue the survey to the N. at this ¼ sec. cor.
	Land, broken breaks of the Fremont River. Soil, shallow loose sand in the depressions of the sandstone surface rock; 4th rate.

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DEPENDENT RESURVEY PORTION SUBDIVISION, T. 29 S., R. 6 E.

Chains	
	Timber, very scattered scrub juniper and pinon. Undergrowth, scattered short browse, weeds, and grass. Poor grazing land.
	From the cor. of secs. 14, 15, 22, and 23.
	N. 0°10' W., bet. secs. 14 and 15.
	Across fruit orchard.
0.50	Leave fruit orchard and ascend gradual S. slope of rolling land, through short undergrowth, bears NE. and SW.
6.80	Small irrigation ditch, flows N. 80° E.
8.90	Rock fence on a curve, bears southwesterly and southeasterly.
11.10	Top of volcanic spur, 185 ft. above sec. cor., slopes E.; descend steep N. slope.
13.30	Recross irrigation ditch, drains W.
15.59	Base of descent, 150 ft. below top of spur, bears E. and W. From this point, the NE. cor. of a small frame house belonging to O.M. Davis, bears S. 68°45' W., 27 lks. dist. The SE. cor. of O.M. Davis' dwelling house, bears N. 7°22' W., 1.96 chs. dist. The SW. cor. of a fence inclosing a tourist lodge under construction, bears N. 75°30' E., 83 lks. dist.
15.80	Utah State Highway No. 24, bears E. and W.; thence across cultivated land.
20.01	Point for the S. 1/16 sec. cor. of secs. 14 and 15 at proportionate distance.
	Set an iron post, 3 ft. long, 1 in. in diam., 27 ins. in the ground and a large mound of stone, with brass cap marked S 1/16 S15 | S14 1947
	Deposit a lava stone, 12 x 10 x 10 ins., at base of post, marked X.
	Cor. set on S. bank of wash of Sand Creek, 5 ft. high, bears N. 80° W. and S. 80° E.
21.30	Sand Creek, stream of muddy alkali water, 10 lks. wide, 3 ins. deep, flows S. 80° E.
23.60	N. bank of Sand Creek, 5 ft. high, bears N. 80° W. and S. 80° E.; continue through the E. edge of an orchard and the W. edge of school grounds.
28.00	Base of talus slope of high ledges to the N., bears E. and W. From this point, the NW. cor. of a school house, bears S. 32°30' E., 3.00 chs. dist. The vertical angle on line to the N. at top of ledges is plus 52°15'. Thence ascend abruptly over broken S. slope to base of nearly vertical S. face of ledge.

U. S. GOVERNMENT PRINTING OFFICE 6—8735

DEPENDENT RESURVEY PORTION SUBDIVISION, T. 29 S., R. 6 E.

Chains

35.20 Base of nearly vertical sandstone cliff, 629 feet high, bears NW. and S. 70° E. and faces SW.

At this point of SW. face of ledge, about 5 ft. above base:

Set an iron post, 1 ft. long, 1 in. in diam., 10 ins. in a hole drilled in the solid sandstone, for a line monument, with brass cap marked

S15 L | S14 M

1947

I determine the distance of 38.81 chs. on line, to top of ledges by triangulation from the cor. of secs. 14, 15, 22, and 23.

Base bears S. 89°50' W., 16.474 chs. dist.
Angles - 90°00', 23°00', and 67°00'.

38.81 Triangulation point at top of N. rim of breaks of the Fremont River or the S. rim of the Capitol Reef, bears NW. and S. 70° E., 629 ft. above base of nearly vertical ledge and 920 ft. above Sand Creek; thence over broken sandstone surface rock and outcroppings.

40.02 The ¼ sec. cor. of secs. 14 and 15, which is marked by the cor. monument of the 1895 survey, a sandstone, 16 x 10 x 6 ins., firmly set in a mound of stone on top of sandstone surface rock. The cor. monument was badly weather worn and no markings were visible.

At the cor. point, on smooth top of sandstone surface rock, mark a cross (X), over which:

Set an iron post, 3 ft. long, 1 in. diam., in a mound of stone, 5 ft. base, 3 ft. high, with brass cap marked

¼

S15 | S14

1947

The line to the N. of this cor. passes over a series of white sandstone domes and buttes which are inaccessible and over which it is impossible to project a line. As the record of the 1895 survey appears to be fictitious to the N. of this ¼ sec. cor., and it being impossible to reach the point for the cor. of secs. 10, 11, 14, and 15, I discontinue the resurvey of his line at this cor.

Land, broken breaks of the Fremont River and Capitol Reef.
Soil, deep loose sand in the cultivated portions; 2nd rate.
Timber, a few cottonwood along banks of Sand Creek.
Undergrowth, sage and black brush, shadscale, browse, and weeds.
Poor grazing land.

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SUBDIVISION OF SOUTH HALF SEC. 14, T. 29 S., R. 5 E.

Chains	
	From the ¼ sec. cor. of secs. 14 and 15.
	N. 89°5[illegible]' E., on true E. and W. center line of sec. 14.
	Descend gradually over nearly barren sandstone broken by numerous outcroppings and deep crevices with nearly vertical walls. Line follows near the top of the N. breaks of the Fremont River or the top of the S. rim of the Capitol Reef.
20.00	Point for the center W. 1/16 sec. cor. of sec. 14.
	On sandstone surface rock, 190 ft. below the ¼ sec. cor.
	Set an iron post, 1 ft. long, 1 in. in diam., in a hole drilled 10 ins. in the sandstone surface rock, and surrounded by circular mound of stone, with brass cap marked C — W 1/16 — C S14 1947
	Continue gradual descent over surface rock broken by deep crevices.
40.00	True point for the center ¼ sec. cor. of sec. 14, falls on the vertical face of a sandstone outcropping, where it is impossible to reach the cor. point.
41.45	Point for the witness cor. to the center ¼ sec. cor. of sec. 14, on sandstone surface rock, 200 ft. below the center W. 1/16 sec. cor.
	Set an iron post, 1 ft. long, 1 in. in diam., in a hole drilled 10 ins. deep in the sandstone surface rock, and surrounded by a circular mound of stone, with brass cap marked WC C ¼ S14 1947
60.00	True point for the center E. 1/16 sec. cor. of sec. 14, falls on top of a sharp inaccessible sandstone rib, where it is impossible to reach the cor. point, therefore, at a point S. 0°04' W., 1.85 chs. dist. from the true cor. point, and point for the witness cor. to the center E. 1/16 sec. cor. of sec. 14.
	Set an iron post, 3 ft. long, 1 in. in diam., 10 ins. in the ground to solid rock and in a large mound of stone, with brass cap marked WC C — E 1/16 — C S14 1947
	Deposit a sandstone, 10 x 10 x 8 ins., at base of post, marked X.
	Witness cor. set at the S. base of nearly perpendicular sandstone ledge and 75 ft. high, faces S. and bears NW. and SE., 220 ft. below the true point for the center ¼ sec. cor.

U. S. GOVERNMENT PRINTING OFFICE 6—8165

SUBDIVISION OF SOUTH HALF SEC. 14, T. 29 S., R. 6 E.

Chains	
	Continue N. 89°58' E. from the true point for the center E. 1/16 sec. cor.
61.76	From this point, the W. edge of the S. base to the arch of a scenic natural bridge, bears North, 2.95 chs. dist. Bridge has a span of 2.10 chs. N. and S., and its arch is 75 ft. high. This bridge is considered as one of the scenic wonders of the Wayne County Wonderland which is located within the boundaries of the Capitol Reef National Monument.
69.00	Bottom of sandstone gulch locally known as Bridge Canyon, drains S. 85° E.; thence along N. breaks of canyon near bottom.
80.00	The ¼ sec. cor. of secs. 13 and 14, 230 ft. below the true point for the center E. 1/16 sec. cor.
	Land, broken sandstone. Soil, shallow loose sand in the depressions of the surface rock; 4th rate. Timber, a few scattered scrub juniper and pinon. Undergrowth, very scattered browse and weeds. Poor grazing land.

From the ¼ sec. cor. of secs. 14 and 23.

N. 0°09' E., on true N. and S. center line of the S. half of sec. 14.

Over broken top of high ledgy plateau, through very scattered timber and undergrowth.

10.90	Top of nearly vertical ledge at top of S. breaks of the Fremont River, bears N. 80° E. and S. 80° W. Thence descend abruptly over ledgy N. face of breaks.
16.50	Base of breaks, 480 ft. below cor., bears N. 80° E. and S. 80° W.; thence over sandy bottom lands of the Fremont River.
19.92	Point for the center S. 1/16 sec. cor. of sec. 14 at proportionate distance; on S. bank of present channel of the Fremont River, bears N. 80° E. and S. 80° W.
	Set an iron post, 3 ft. long, 1 in. in diam., 27 ins. in the ground and surrounded by a large mound of stone, with brass cap marked

C

S 1/16 | S14

C

1947

Deposit a sandstone, 10 x 10 x 8 ins., at base of post, marked X.

21.00	The Fremont River, 50 lks. wide, 10 ins. deep, flows N. 80° E.
22.10	Top of N. bank of river, 10 ft. high, bears N. 80° E. and S. 80° W.
24.00	Base of nearly vertical ledge, 70 ft. high, at S. base of talus slope of N. breaks of Fremont River, bears N. 80° E. and S. 80° W.

U. S. GOVERNMENT PRINTING OFFICE 6—8155

SUBDIVISION OF SOUTH HALF SEC. 14, T. 29 S., R. 6 E.

Chains	
30.13	Base of vertical sandstone ledge, 480 ft. high, bears E. and W., 80 ft. above river. At a point on the S. face of ledge, about 5 ft. above base. Set an iron post, 1 ft. long, 1 in. in diam., 10 ins. in a hole drilled in the solid sandstone, for a line monument, with brass cap marked S14 L | M 1947 I determine the distance of 39.84 chs. on line to true point for the center ¼ sec. cor., by triangulation from the ¼ sec. cor. of secs. 14 and 23. Base bears S. 89°43' W., 39.78 chs. dist. Angles - 90°26', 44°44'30", and 44°44'30".
39.84	To triangulation point at the true point for the center ¼ sec. cor., which is S. 89°58' W., 1.45 chs. dist. from the witness cor. to the cor. of said sec., 760 ft. above the Fremont River. Land, broken breaks of the Fremont River. Soil, sandy bottom lands of river and shallow loose sand in the depressions of the surface rock; 2nd and 4th rates. Timber, scattered cottonwood along bottom lands of river. Undergrowth, very scattered browse and weeds. Poor grazing land.
	From the E. 1/16 sec. cor. of secs. 14 and 23. N. 0°04' E., on true N. and S. center line of the SE¼ sec. 14. Descend gradual NE. slope of broken top of high rocky and ledgy plateau, through very scattered scrub timber and short undergrowth.
12.40	Rocky gulch, 75 ft. deep, drains NE.
19.96	Point for the SE. 1/16 sec. cor. of sec. 14, at the intersection with the true E. and W. center line. Mark a cross (X) on the sandstone surface rock, over which: Set an iron post, 3 ft. long, 1 in. in diam., in a large mound of stone, 6 ft. base, 3 ft. high, with brass cap marked SE 1/16 S14 1947 Cor. set at the top of nearly vertical sandstone ledge facing N. and which forms the top of N. breaks of the Fremont River, bears N. 85° W. and N. 85° E. I determine the distance, 10.28 chs. on line to bottom of canyon by triangulation from the SE. 1/16 sec. cor. Base bears S. 66°59' W., 3.455 chs. dist. Angles - 19°36', 66°55', and 93°29'. Vertical angle from cor. to bottom of canyon is minus 24°00'.

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SUBDIVISION OF SOUTH HALF SEC. 14, T. 29 S., R. 6 E.

Chains	
28.00	The Fremont River, 50 lks. wide, 10 ins. deep, in bottom of canyon, 302 ft. below the SE. 1/16 sec. cor., flows easterly; thence across bottom lands of canyon.
30.24	To point of trianulation; continue across bottom land of canyon.
31.60	Point on nearly vertical S. face of sandstone ledge at the base of N. breaks of the Fremont River, bears East and West.
	At a point on S. face of ledge about 5 ft. above the ground.
	Set an iron post, 1 ft. long, 1 in. in diam., 10 ins. in a hole drilled in the solid sandstone, for a line monument, with brass cap marked
	S14 L | M 1947
	The line to the N. of this point ascends the inaccessible N. breaks of the Fremont River, I therefore determine the distance of 18.11 chs. from the SE. 1/16 sec. cor. to the witness cor. to the center E. 1/16 sec. cor.
	Base bears N. 89°55' W., 11.13 chs. dist. from the SE. 1/16 sec. cor. Angles - 89°59', 31°35', and 58°26'.
38.07	Triangulation point at the witness cor. to the center E. 1/16 sec. cor. sec. 14, 540 ft. above the Fremont River; continue ascent over ledges.
39.92	The true point for the center E. 1/16 sec. cor. of sec. 14.
	Land, broken breaks of the Fremont River and the Capitol Reef. Soil, shallow loose sand in the bottom of canyon and in the depressions of the surface rock; 4th rate. Timber, a few scattered scrub juniper and pinon. Undergrowth, browse and weeds. Poor grazing land.

From the S. 1/16 sec. cor. of secs. 13 and 14.

N. 89°55' W., on true E. and W. center line of the SE¼ sec. 14.

Ascend gradually over broken sandstone outcroppings and surface rock, through very scattered timber and undergrowth. Line follows near top of the S. breaks of the Fremont River.

1.00	Rocky gulch, 50 ft. deep, drains NE.
5.00	Low spur, slopes NE., about 7.50 chs. dist. to end.
8.20	Rocky gulch, 75 ft. deep, drains NE.
20.03	The SE. 1/16 sec. cor. of sec. 14, 190 ft. above the S. 1/16 sec. cor. of secs. 13 and 14.
31.20	Top of nearly vertical sandstone rim, 320 ft. high, bears N. 85° E. and S. 85° W.

SUBDIVISION OF SOUTH HALF SEC. 14, T. 29 S., R. 6 E.

Chains	
	The line to the W. of this point is impracticable to chain, I therefore determine the distance of 8.86 chs. on line to the center S. 1/16 sec. cor. of sec. 14 by triangulation from this point.
	Base bears N. 0°09' E., 10.21 chs. dist. Angles - 89°56', 40°59', and 49°05'. Vertical angle is minus 28°42'.
31.62	Base of nearly vertical rim, 320 ft. below top, bears N. 85° E. and S. 85° W.
	At this point in the face of rim, about 5 ft. above the ground.
	Set an iron post, 1 ft. long, 1 in. in diam., 10 ins. in a hole drilled in the solid sandstone, for a line monument, with brass cap marked
	$\frac{L}{M}$ S14
	1947
	Thence over nearly level bottom lands of the Fremont River.
40.06	The center S. 1/16 sec. cor. of sec. 14.
	Land, broken S. breaks of the Fremont River and Capitol Reef. Soil, shallow red sand; 4th rate. Timber, a few scattered scrub juniper and pinon. Undergrowth, browse and weeds. Poor grazing land.
	From the W. 1/16 sec. cor. of secs. 14 and 23.
	N. 0°01' W., on true N. and S. center line of the SW¼ sec. 14.
	Along W. edge of broken volcanic bench through scattered short undergrowth.
0.70	Top of W. rim of bench, 10 ft. above cor., bears N. 20° W. and SE; thence descend gradually over rolling N. slope.
10.40	Top of S. rim of Fremont River, bears N. 80° E. and S. 80° W.; descend abruptly over ledgy N. slope.
17.00	The Fremont River, 60 lks. wide, 10 ins. deep, in bottom of canyon, 290 ft. below cor., flows E.; thence across bottom lands of canyon.
19.96	Point for the SW. 1/16 sec. cor. of sec. 14, in bottom lands of canyon, at the intersection with the true E. and W. center line of the SW¼ sec. 14.
	Set an iron post, 3 ft. long, 1 in. in diam., 27 ins. in the ground and in a mound of stone, 5 ft. base, 1 ft. high, with brass cap marked
	SW 1/16 S14
	1947

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SUBDIVISION OF SOUTH HALF SEC. 14, T. 29 S., R. 6 E.

Chains	
	Deposit a cobble stone, 10 x 10 x 8 ins., at base of post,
20.75	Enter fruit orchard, bears E. and W.
22.00	Leave fruit orchard and ascend steep S. face of talus slope of N. breaks of the Fremont River, bears E. and W.
30.90	Base of nearly vertical sandstone cliff, 525 feet high, faces S. and bears E. and W.
	At this point on face of cliff, above 5 ft. above the ground and 240 ft. above the Fremont River.
	Set an iron post, 1 ft. long, 1 in. in diam., 10 ins. in a hole drilled in the solid sandstone, for a line monument, with brass cap marked
	S14 L | M 1947
	The line to the N. of this point ascends the inaccessible N. breaks of the Fremont River, I therefore determine the distance, 39.92 chs. on line to the center W. 1/16 sec. cor. by triangulation from the W. 1/16 sec. cor. of secs. 14 and 23.
	Base bears S. 89°43' W., 39.78 chs. dist. Angles - 90°16', 44°46', and 44°58'.
39.92	To point of triangulation at the center W.1/16 sec. cor. sec. 14, 730 ft. above the Fremont River.
	Land, broken breaks of the Fremont River and the Capitol Reef. Soil, shallow loose sand; 4th rate. Timber, a few scattered juniper and pinon with cottonwood along bottom lands of river. Undergrowth, browse and weeds. Poor grazing land.

	From the center S. 1/16 sec. cor. of sec. 14.
	S. 89°51' W., on true E. and W. center line of the SW¼ sec. 14.
	Over bottom lands of the Fremont River
1.00	Fremont River, 50 lks. wide, 10 ins. deep, flows N. 80° E.
12.00	Recross river, flows S. 80° E.
18.10	Recross river, flows N. 30° E.
19.94	The SW. 1/16 sec. cor. of sec. 14.
20.40	Enter fruit orchard, bears N. and S.
35.30	Leave same and enter channel of Sand Creek, bears NW. and SE.
37.40	Sand Creek, stream of muddy alkali water, 10 lks. wide, 2 ins. deep, flows S. 80° E.
39.88	The S. 1/16 sec. cor. of secs. 14 and 15.

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SUBDIVISION OF SOUTH HALF SEC. 14, T. 29 S., R. 6 E.

Chains	
	Land, bottom lands of the Fremont River. Soil, deep loose sand; 3rd rate. Timber, scattered cottonwood along banks of river. Undergrowth, browse and weeds. Fair grazing land.

GENERAL DESCRIPTION SOUTH HALF SEC. 14, T. 29 S., R. 6 E.

The land within the boundaries of the south half of sec. 14, T. 29 S., R. 6 E., Salt Lake Meridian, Utah, in general consists of the broken north and south breaks of the Fremont River, which also form the breaks of the Capitol Reef National Monument. The breaks are of a sandstone formation and are rimmed with a nearly vertical sandstone cliff which in places is 630 ft. high. From the base of this cliff, a steep rough talus slope reaches to the bottom lands of the canyon through which the Fremont River flows. The coloring and formation of the ledges are very scenic. Near the north boundary of the NE¼ SE¼, of section 14, is a very scenic natural bridge and an old Indian cliff dwelling.

Small areas of the bottom lands of the canyon are being satisfactorily cultivated and a good grade of fruit in commercial quantities is being produced. Several families live in the surveyed area and Utah State Highway No. 24, bears in a northerly and southerly direction through the west portion of the SW¼ of the SW¼ sec. 14. The greater portion of the town of Fruita, Utah, is located in the SW¼ of the section. Except for the privately owned land, all of the surveyed area is within the boundaries of the Capitol Reef National Monument.

No indications of coal, oil, oil shale, or mineral were found.

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4-680
(Revised May 1934)

UNITED STATES
DEPARTMENT OF THE INTERIOR
~~GENERAL LAND OFFICE~~
BUREAU OF LAND MANAGEMENT

FIELD ASSISTANTS

NAMES	CAPACITY
Fred R. Chappell	Chainman
Scott Matheson, Jr.	Chainman
Allen E. Allred	Flagman
Robert Hanson	Cornerman
Gilbert H. Howard	Axeman

6—8412

08-29-1947: certificate of surveyor; august 29, 1947

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CERTIFICATE OF SURVEYOR

I, Elliot Bird, Cadastral Engineer, HEREBY CERTIFY upon honor that, in pursuance of ~~special~~ supplemental instructions bearing date of the 10th day of December 1945, received from the district ~~cadastral~~ regional engineer for Region No. 4, with assignment instructions dated August 5, 1947, I have ~~surveyed~~ made a dependent resurvey of a portion of the boundaries, and a survey of the subdivision of the south half of section 14, T. 29 S., R. 6 E.,

of the Salt Lake Meridian, in the State of Utah, which are represented in the foregoing field notes as having been executed by me and under my direction; and that said survey has been made in strict conformity with said instructions, the Manual of Instructions for the Survey of the Public Lands of the United States, and in the specific manner described in the foregoing field notes.

Salt Lake City, Utah. Elliot Bird

December 1, 1946 Cadastral Engineer

CERTIFICATE OF APPROVAL

~~Office of Supervisor of Surveys~~,

Washington, D.C. JAN 4 1946, 19

The foregoing field notes of the ~~survey of~~ dependent resurvey of a portion of the boundaries and a survey of the subdivision of the south half of section 14, T. 29 S., R. 6 E., Salt Lake Meridian, Utah

executed by Elliot Bird, Cadastral Engineer, under ~~special~~ supplemental instructions dated December 10, 1945, and assignment instructions dated August 5, 1947, having been critically examined, and the necessary corrections made prior to their certification by the engineer, the said field notes, and the survey therein described, are hereby approved.

~~Supervisor of Surveys.~~

Chief, Division of Engineering

CERTIFICATE OF TRANSCRIPT

I CERTIFY that the foregoing transcript of the field notes of the above-described surveys in T. 29 S., R. 6 E., Utah, is a true copy of the original field notes on file in the public survey office.

Earl G. Harrington

~~Supervisor of Surveys.~~

Chief, Division of Engineering

U. S. GOVERNMENT PRINTING OFFICE 6—8412

COPY

OFFICE OF THE ATTORNEY GENERAL
WASHINGTON, D. C.

March 2, 1944

Honorable Harold L. Ickes
Secretary of the Interior
Washington, D. C.

My dear Mr. Secretary:

I have examined the abstract of title and transcript of record in the condemnation proceeding entitled United States of America v. Five parcels of land and certain water rights in Wayne County, Utah, Alma Chesnut, et al., Civil 376 in the United States District Court for the District of Utah, Central Division, pertaining to the acquisition of all of the land and the primary water right included in this proceeding, together with any and all water rights and all ditch rights appurtenant to the aforesaid land, in connection with the Capitol Reef National Monument Project.

The land is more fully described in the declaration of taking filed in this proceeding.

In the final judgment dated July 12, 1943, it is determined that the just compensation for the taking of this land and the primary water right acquired under and by virtue of the laws of the State of Utah, as set forth in the judgment, is the sum of $1,800, which amount was deposited into the registry of the court at the time of the filing of the declaration of taking. The proceeding has been regularly conducted to date, the judgment is satisfied, and a valid title to the aforesaid land and primary water right has heretofore vested in the United States of America, as stated in the opinion of this Department dated August 4, 1942.

Enclosed are the abstract of title prepared by B. W. Pace, Abstracter, whose certificate is satisfactory in form, the transcript of record, including a certified copy of the final judgment, and related papers.

Respectfully,

(Sgd) Francis Biddle

Attorney General

02-09-1944: certificate of inspection and possession; february 09, 1944

COPY

DEPARTMENT OF THE INTERIOR
Office of Park Superintendent

Capitol Reef National Monument Project

CERTIFICATE OF INSPECTION & POSSESSION

I, Fred C. Fagergren, Chief Park Ranger of Zion National Park, hereby certify that on the 1st day of February, 1944, I made a personal examination and inspection of that certain land situate in the County of Wayne, State of Utah, and containing approximately 66 acres, acquired by the United States of America in connection with the Capitol Reef National Monument Project from all owners in the case of United States of America v. Five Parcels of Land and Certain Water Rights in Wayne County, Utah, Alma Chesnut, et al, Civil No. 376.

1. That I am fully informed as to the boundaries, lines and corners of said tract; that I found no evidence of any work or labor having been performed or any materials having been furnished in connection with the making of any repairs or improvements on said land; and that I made careful inquiry of the above-named vendor (and of the occupants of said land* and ascertained that nothing had been done on or about said premises within the past six months that would entitle any person to a lien upon said premises for work or labor performed or materials furnished.

2. That to the best of my information and belief after actual and diligent inquiry and physical inspection of said premises there is no evidence whatever of any vested or accrued water rights for mining, agricultural, manufacturing or other purposes; nor any ditches or canals constructed by or being used thereon under authority of the United States, nor any exploration or operations whatever for the development of coal, oil, gas or other minerals on said lands; and that there are no possessory rights now in existence owned or being actively exercised by any third party under any reservation contained in any patent or patents heretofore issued by the United States for said land.

3. That there is no outstanding right whatsoever in any person to the possession of said premises nor any outstanding right, title, interest, lien or estate, existing or being asserted in or to said premises except such as are disclosed and evidenced by the public records.

Dated this 9 day of February, 1944.

(Signed) Fred C. Fagergren (NAME)

Chief Park Ranger (TITLE)

APPROVED:

Chas. J. Smith, (NAME)

Superintendent (TITLE)

COPY

UNITED STATES OF AMERICA
IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

UNITED STATES OF AMERICA, Petitioner, v. Five Parcels of Land and Certain Water Rights in Wayne County, State of Utah, Alma Chesnut, et al., Defendants.	CIVIL NO. 376 ACCEPTANCE OF AMOUNT OF DEPOSIT

Comes now Alma Chesnut and Emma Chesnut, his wife, and shows to the court:

That on November 9, 1942, this court made its order to pay to these defendants the sum of $1275.00, leaving a balance of $525.00 to be retained by the Clerk of the Court because of title difficulties as follows:

That from the records of Wayne County, Utah, Nels Johnson appeared to own a tract of land approximately three rods wide and 62 rods long running through the center of Parcel No. 1 herein described; that said gap is caused by the description in two deeds, one description starting east and running west, and the other description starting west and running east, but failing to meet, thereby leaving a gap as aforesaid; that notwithstanding, the said Nels Johnson has never made any claim to said property, and these defendants and their predecessors in interest have been in the open, notorious, peaceful and adverse possession of said land, paying all taxes thereon for more than 20 years; that said Nels Johnson died years ago, his estate being probated in Wayne County, Utah, and said estate has been closed, and the administrator discharged in the year 1922; that in said estate the property involved was not inventoried and no claim was made to said property by the Administrator of said estate, nor have any of the heirs of said estate made any claim to said property; that the said Nels Johnson left surviving him two children, to-wit, Mrs. Lillian Edwards residing at Tory, Utah, upon whom personal service has been made in this action and her default entered, and a son, William Johnson, an unmarried man, who died intestate in Salina, Utah, in February, 1927; that by reason of said facts these defendants allege that they are the absolute owners in fee of the property herein described, have good title to the same, and that the said Nels Johnson does not have any right, title or interest of any kind or character in said property, nor do the only heirs of the said Nels Johnson claim any interest in said property:

That all taxes on said property have been paid, and that defendants are entitled to be forthwith paid the sum of $525.00, less the fee for recording six quit-claim deeds which it is necessary to record in order clear said defendant's title to said land and .66 second feet of water in Fremont River, and the sum of $100.00 to be paid to Max L. Krueger and Ailene Winchester Kruger, his wife, for two of the said quit-claim deeds; said land and water being described as follows:

PARCEL 1.

Commencing 18 rods north and 3½ rods east of the NE corner of SW¼ of SW¼ of Section 14, T. 29 S., R. 6 E., S.L.M., in a wash or dry stream bed, thence running northwesterly, approximately N 18 deg. 30' W., along said wash 9 rods 11½ feet more or less to a point 27 rods north of the said NE corner of the SW¼ of SW¼ of Section 14, and on the east line of the NW¼ SW¼ of said section; thence north 53 rods, more or less, along said east line NW¼ SW¼ to the East-West center line of said section; thence westerly along said center line 19 rods; thence southerly and parallel to east line of NW¼ of SW¼ of said section 14, 64 rods more or less, to a point in the center of a lane between a stone wall and fence; thence easterly along said lane 12 rods; thence north of east on an angle of approximately 13 degrees 30 minutes 10 rods 5½ feet to the place of beginning, containing 7 acres and 108 square rods more or less.

PARCEL 2

Commencing on the east line of SW¼ of the SW¼ 16 rods south of the NE corner of the SW¼ of the SW¼ of Section 14, T.29 S., R. 6 E., S. L. M., running thence southwesterly at an angle of approximately 3 degrees of west 24 rods and 4 feet; thence northeasterly at an angle of approximately 13 degrees east of north along the general course of a lane 33 rods and 8 feet to the southwest corner of Parcel 1; thence easterly along the south line of Parcel 1, 3 rods; thence southeasterly at an angle of approximately 24 degrees east of south 36 rods to the place of beginning, containing 3 acres, more or less.

PARCEL 3

The NE¼ of the SE¼ of Section 14, T. 29 S., R. 6 E., S.L.M.

PARCEL 4

Commencing at the SW corner of the NE¼ of the SE¼ of Section 14, T. 29 S., R. 6 E., S.L.M.; thence west along the south line of the N½ of the SE¼ of said section 56 rods; thence in a northeasterly direction to the NW corner of the NE¼ of the SE¼ of said Section 14; thence south along the west line of said NE¼ of the SE¼ 80 rods to the place of beginning, and containing 14 acres, more or less.

PARCEL 5

Commencing at the NE corner of the SW¼ of the SW¼ of Section 14, T. 29 S., R. 6 E., S.L.M., thence easterly along the north line of the SE¼ of the SW¼ of said section 5½ rods; thence northwesterly 18 rods, more or less, along a wash and its prolongation, to a point 18 rods north and 3½ rods east of said NE corner of the SW¼ of the SW¼ of Section 14, which is also the SE corner of Parcel 1; thence southwesterly along the south line of said Parcel 1, 10 rods 5½ feet; thence westerly along the south line of said Parcel 1, 9 rods, to the NE corner of Parcel 2; thence southeasterly along the east line of said Parcel 2 to a point on the north line of the said SW¼ of the SW¼ of Section 14, approximately 8 rods 8 feet west of the point of beginning; thence easterly along the north line of said SW¼ of the SW¼ 8 rods 8 feet to point of beginning, containing 2 ¼ acres, more or less.

Containing in all 66 acres 148 square rods more or less.

Also the primary water right acquired under and by virtue of the laws of the State of Utah to divert sixty-six one-hundredths (.66) second feet of water for use during the entire year, as determined and established by decree of the District Court of the Sixth Judicial District in and for Wayne County, State of Utah, in an action entitled "Hanksville Canal Company, a corporation, v. Torrey Irrigation Company, a corporation, et al.," confirming said right unto Alma Chesnut, which said decree was made on July 15, 1935.

Together with any and all water rights and all ditch rights appurtenant to the above described parcels of land.

Dated this 31st day of May, 1943.

Emma Chesnut

Alma Chesnut

Filed June 3, 1943

#14953

JIT CLAIM DEED.

Max L. Krueger and Aliene Winchester Krueger, his wife, of North Hollywood, California, grantors, for the sum of $100, hereby quit claim to the United States of American the following described land in Wayne County, State of Utah:

Commencing at a point 56 rods west from the southeast corner of the northwest quarter of the southeast quarter of Section 14, Township 29 south, Range 6 east, Salt Lake Meridian; thence in a northeasterly direction to the northeast corner of the northwest quarter of the southeast quarter of said section; thence in a southwesterly direction to a point 5 rods east of the place of beginning and on the south boundary line of the northwest quarter of the southeast quarter of said section; thence westerly along said 40 line to the place of beginning. Also commencing at a point 3½ rods east of the southeast corner of the northwest quarter of the southwest quarter of section 14, Township 29 south, Range 6 east, Salt Lake Meridian; thence easterly along the quarter section line 2 rods; thence northwesterly 18 rods, more or less, along a wash and its prolongation to a point 18 rods north and 3½ rods east of the said southeast corner of the northwest quarter of the southwest quarter of said section; thence south to the place of beginning.

WITNESS the hands of said grantors this 2 day of March, A. D., 1943.

Max Krueger

Aliene Winchester Krueger

STATE OF CALIFORNIA
: ss
COUNTY OF LOS ANGELES

On this 31st day of March, 1943, personally appeared before me Max L. Krueger and Aliene Winchester Krueger, his wife, signers of the within quit claim deed, who acknowledged to me that they executed the same.

Holt R. Gregory
Notary Public, residing at

[redacted]

My commission expires:

My Commission Expires August 14, 1945

2

No. 14953

Quit-claim deed (Land)

Max L. Krueger and wife
Grantors

United States of America
Grantee
Dated March 2, 1943

Recorded June 3,1943

In Book G. of Deeds page 246

.....R.W.Rose.....

Recorder Wayne County

COPY

M. 31802.

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON

May 29, 1942

MEMORANDUM for the Director,
National Park Service.

There are returned herewith the deed, abstract of title and related data pertaining to the proposed purchase by the United States from Alma Chestnut and Emma Chestnut, his wife, of 66 acres of land, more or less, in Wayne County, Utah, together with certain water rights for a consideration of $1800, under Contract No. I-lp-18043, approved July 14, 1941, for use in connection with the Capitol Reef National Monument.

Before an opinion as to the validity of the title can be rendered, it will be necessary for the vendor to quiet the title to the lands under consideration in an action brought for that purpose. This requirement is made because of the following objections and defects:

1. The descriptions contained in the various deeds comprising the chain of title to the several parcels as set forth in the abstract are so uncertain and indefinite that it is impossible to determine whether there are any intervening gores or strips of land outstanding and whether the vendor has acquired a valid title to all of the lands proposed to be conveyed to the United States. It appears that in an effort to determine the intentions of the grantors in the various deeds and to reconcile the ambiguous descriptions, a study of the property lines as shown by visible evidence on the ground was made by the National Park Service engineers. See Drawing No. NM-CR6980. However, since this study cannot be considered sufficient to establish the property lines, it can only be considered as factual evidence to be submitted in a quiet title or other action to determine the ownership.

2. At page 17 of the abstract appears a deed dated March 24, 1919, from M. V. Oyler to Leo P. Pendleton and at page 27 appears a deed dated July 11, 1922, from M. V. Oyler to Elvera Oyler, Carrie Oyler and Cora Oyler. Said M. V. Oyler acquired title to a portion of this property by deed from George M. Carrell and wife in 1916 (page 26). However, the abstract fails to disclose the manner in which title to the remainder of this property proceeded from the patentees to become vested in M. V. Oyler.

3. The first parcel of the land deeded by M. V. Oyler, at page 27, appears to encroach on the west side of Parcel No. 4. See Drawing

No. NM-CR6980. Attention is directed to the fact that various monuments set by the county surveyor in October 1941 in connection with the sale of this parcel by M. V. Oyler were found by the engineers in making the property line study. These monuments would appear to substantiate Oyler's claim to the overlap.

4. The interests of the heirs of Carrie Oyler, deceased, in and to Parcel No. 5, appear to be outstanding. By deed dated July 11, 1922 (page 27), Elvera Oyler, Carrie Oyler and Cora Oyler obtained title to certain lands including this parcel. Thereafter, on August 20, 1926, (page 29), Elvera Oyler and Cora Oyler conveyed their interests in Parcel No. 5 to Alma Chestnut. By decree entered in the district court on January 22, 1942, the interest of Carrie Oyler, deceased, was distributed to M. V. Oyler and Elvera Oyler (page 28). The abstract, however, fails to show that these outstanding interests have been acquired by Alma Chestnut.

Since none of the record descriptions are sufficiently accurate to serve as a basis for quitclaim deeds from the adjacent property owners, it will be necessary for the vendor to quiet his title to the lands under consideration.

The file discloses that it may be impracticable for the vendor to quiet his title to the lands. In this event consideration should be given to the advisability of acquiring the property under condemnation proceedings.

For the Solicitor,

(Sgd) Theodore Spector

Theodore Spector,
Chief, Property Acquisition Division.

Enclosure 2925411.

14952

WATER DEED

Krueger A.W.K.

Max L. Krueger and Aliene Winchester,/Husband and wife GRANTORS, of North Hollywood California, hereby QUITCLAIM to the United States of America, GRANTEE, for the sum of One Dollar, all their interest in the following described water rights in Wayne County, State of Utah;

Six & 114/181 Cubic Feet of the water decreed to M. V. Oyler, Wm. Chestnut, Dewey Gifford, Clarence Mulford, Merin Smith, Orval Mott, and Alma Chestnut in a decree entered in the District Court of Wayne County, Utah on the 15th day of July A. D. 1935 in a case entitled Hanksville Canal Company, a corporation vs. Torrey Irrigation Company et al defendants, wherein the residents of Fruita were granted eight cubic feet of water per second of time of the waters of Fremont River.

The remaining 1 & 67/181 Cubic Feet of water of said eight cubic feet per second so decreed, was conveyed to these grantors (Max L. Krueger and Aliene Winchester Krueger) by M. V. Oyler and his wife, it having been conveyed to said M. V. Oyler and his wife by the other parties above named, as their share of said eight feet of water. The said 1 & 67/181 Cubic Feet of water are retained by these grantors as their own property and are not included in the property hereby quitclaimed.

WITNESS our hands at LOS ANGELES California, this 31 day of March, A. D. 1943.

Max Krueger

Aliene Winchester Krueger

State of California ;
; SS
County of LOS ANGELES ;

On this 31st day of March A. D. 1943 before me personally appeared Max L. Krueger and Aliene Winchester Krueger, husband and wife, the signers of the foregoing instrument who duly acknowledged to me that they executed the same.

Holt R. Gregory
Notary Public

My Commission Expires August 14, 1945

No. 14952

Quit-claim deed (Water)

Max L. Krueger and wife
Grantors
United States of America
Grantee

Dated March 31,1943

Recorded June 3, 1943

In Book G. of Deeds page 246

.....Pierce.....

Recorder Wayne County

H97R c

39 acres
14 acres
53 acres

WARRANTY DEED

Orval Mott and Laura Mott his wife,

Grantors, of Torrey, in the County of Wayne

State of Utah, hereby convey and warrant to Dean R. Brimhall 20 South 13 East SLC

Grantee, of 20 South 13 East, Salt Lake City, Utah.

for the sum of Thirty five hundred 3500.00 DOLLARS

the following described tract of land in Wayne County, State of Utah, to-wit:

The Northeast quarter of the Southwest quarter of Section 15, Township 29 South Range 6 East, S. L. M. less the following easement to the United States:
A strip of land 100 feet wide, being 50 feet on each side of the following described line:
Beginning at a point 1571.15 feet east of the quarter corner of sections 15 and 16, township 29 South Range 6 East S. L. M. thence South 29 degrees, 21 minutes east, 141.05 feet : thence to the left on a 1487.48 foot radius, curve 298.89 feet, this point being South 78 degrees, 33 minutes East 1848.82 feet of the said quarter corner of sections 15 and 16 containing 0.96 acres.

Containing 39 acres more or less, together with all water rights ~~as decreed by the court by Judge N. J. Bates, also the Sand Creek~~ water as filed on by Aaron Holt in the State Engineers office.

Also Commencing at the Northeast corner of the Northeast quarter of the Southwest quarter of Section 15, Township 29 South, Range 6 East, S. L. M. thence East 28 rods; thence South 80 rods; thence West 28 rods; thence North 80 rods to beginning, Containing 14 acres more or less.



WITNESS THE HAND of said Grantors, this 18 day of March, A. D. 19 43

Signed in the presence of

Orval Mott
Laura Mott

STATE OF UTAH,
County of Wayne } ss.

On the 18 day of March, A. D. 1943, personally appeared before me, a Notary Public in and for the State of Utah, Orval Mott and Laura Mott his wife,

the signers of the above instrument, who duly acknowledged to me that they executed the same.

Notary Public

My commission expires ..... Residence Loa, Utah.

No. 14972

WARRANTY DEED

Orval Mott and Laura Mott
his wife
Grantor

Dean R. Brimhall
Grantee

Date March 18, 1943

Recorded at the request of
Dean R. Brimhall
June 23, 1943, at 1 o'clock P.M., in Book G of Deeds, Page 253

Recorder Wayne County, Utah
Deputy

Received by
Recorded by
Proof-read by
Indexed { Grantor / Grantee
Abstracted { Book / Page
Fees Paid, $
Mail to

NO. 101 NEW CENTURY PRINTING CO., PROVO, UTAH
NEW CENTURY BLANKS

WARRANTY DEED

05-22-1936: memorandum of services; may 22, 1936

MEMORANDUM OF SERVICES, FEES, STS, DISBURSEMENTS, ETC.

RICHFIELD, UTAH.

May 22, 1936

Orval Mott

IN ACCOUNT WITH

ERICKSON & ERICKSON

ATTORNEYS AND COUNSELORS AT LAW

RICHFIELD COMMERCIAL BANK BLDG.

RICHFIELD, UTAH

Received of Orval Mott the sum of $50.00, as retainer fee in water suit.

Balance due on said suit $50.00.

J. Vernon Erickson

By: Dorothy Baker

05-22-1936: deed of beatrice adams; may 22, 1936

Richfield

DEED

Beatrice Adams, of _____, Grantor, hereby conveys and grants to Dean R. Brimhall of Salt Lake City, Utah, Grantee, for the sum of One Dollar and other valuable considerations

Forty-four hundredths (.44) of a second foot of water in the Fremont River, Decreed to the above grantor and others according to their respective individual rights.

Witness the hand of said Grantor this 16 day of July, 1945.

Beatrice Adams
Beatrice Adams

STATE OF Utah :
: SS.
COUNTY OF Sevier :

On the 16 day of July, 1945, personally appeared before me Beatrice Adams, the signer of the above instrument who duly acknowledged to me that she executed the same.

Dorothy Baker
Notary Public, Residing at
Richfield, Utah.

My Commission expires Apr. 18-1949

6

08-10-1927: letter to mr. a.p. adams from state of utah regarding filing on water, app. no. 9978

THE STATE OF UTAH
OFFICE OF STATE ENGINEER
SALT LAKE CITY

GEO. M. BACON
STATE ENGINEER

Aug. 10, 1927.

Mr. A. P. Adams,
190 North 3rd East,
Springville, Utah.

Dear Sir;

RE: APP. NO. 9978.

Answering your letter of Aug. 9 with reference to filing on water from Sand Creek I would say that this application by A. L. Chaffin asks for the right to use unappropriated water and that is all the right given him by the approval of the application by this office.

In other words if you have what you term a diligence right meaning a right initiated before 1903 by beneficial use and continued use since then it is a perfectly good right and Mr. Chaffin's application is made and granted subject to that right.

Trusting that this answers your inquiry, I remain,

Yours very truly,

Geo. M. Bacon
State Engineer.

GMB/E

05-00-0000: to whom it may concern

TO WHOM IT MAY CONCERN.

I Aaron Holt the signer of this instrument here by certifies that I have used water for Irrigation purpose out of Sulphur or Sand creek as known name Situated in Section 15. Twp 29 south range 6th East. In Wayne County State of Utah. Continously ever since the year of 1933. Inclusive and up untill the present date by me and others who worked this land, and used this water to Irrigate said land described above.

Aaron E. Holt

STATE OF UTAH.

COUNTY OF WAYNE.

On the Eight day of July A D 1939. Personally appeared before me Aaron Holt the signer of the above Instrument who duly acknowledged to me that he executed the same.

R. H. Riley

06-16-1943: deed to convey and grant to dean r. brimhall; june 16, 1943

15395

Recorded June 18/45

DEED

Clarence Mulford and Marie Mulford, his wife; Wm. Chestnut and Dicey Chestnut, his wife; Merin Smith and Cora Smith, his wife; M. V. Oyler and Elvira Oyler, his wife; and Dewey Gifford and Nellie Gifford, his wife, all of Fruita, Utah, Grantors, hereby convey and grant to Dean R. Brimhall, Grantee, for the sum of One Dollar and other valuable considerations

Forty-four hundredths (.44) of a second foot of water in the Fremont River, Decreed to the above grantors according to their respective individual rights.

Witness the hands of said Grantors this 16th day of June, 1945

Clarence Mulford
Clarence Mulford

Marie Mulford
Marie Mulford

his X mark
Wm. Chestnut

Dicey Chestnut
Dicey Chestnut

Merin Smith
Merin Smith

Cora Smith
Cora Smith

M. V. Oyler
M. V. Oyler

Elvira Oyler
Elvira Oyler

Dewey Gifford
Dewey Gifford

Nellie Gifford
Nellie Gifford

STATE OF UTAH :
: SS.
COUNTY OF WAYNE:

On the 16 day of June, 1943 personally appeared before me Clarence Mulford, Marie Mulford, Wm. Chestnut, Dicey Chestnut, Merin Smith, Cora Smith, M. V. Oyler, Elvira Oyler, Dewey Gifford and Nellie Gifford, the signers of the foregoing instrument, who duly acknowledged to me that they executed the same.

Jacob Coleman
Notary Public
Residing at Torrey, Utah

My Commission expires Aug. 25, 1948

Filed for record at the request of

Dorella Bown

June 18, 1945, 19

at minutes past 5 o'clock

P M and Recorded in Book G

of Deeds

page 394 Records of Wayne County, Utah

Nellie N. Taylor
WAYNE COUNTY RECORDER

by DEPUTY

.75

Paid by Mrs. Brown -

5

(COPY)

UNITED STATES OF AMERICA
IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

UNITED STATES OF AMERICA, Petitioner, v. Five Parcels of Land and Certain Water Rights in Wayne County, Utah, Alma Chesnut, et al., Defendants.	CIVIL NO. 376 FINAL JUDGMENT OF CONDEMNATION.

It appearing to the court that on July 22, 1942, a petition for condemnation together with a declaration of taking was filed in this action, and that on the 23rd day of July, 1942, a judgment on said declaration of taking was entered in this action by the above entitled court, vesting the title to the land and water herein described in the United States of America, and that with said petition and declaration of taking there was deposited in the registry of this court the sum of $1800.00 as the estimated compensation for said land and water;

And it further appearing that said sum of $1800.00 has been paid to Alma Chesnut and Emma Chesnut, his wife, and that title to said land and water is free and clear of all encumbrances and all outstanding claims:

It is now, therefore, ORDERED, ADJUDGED AND DECREED that on the 23rd day of July, 1942, the absolute fee simple title to said land and water vested in the United States of America free and discharged of all claims and liens of every kind whatsoever, which said land and water is described as follows:

PARCEL 1: Commencing 18 rods north and 3½ rods east of the NE corner of SW¼ of SW¼ of Section 14, T. 29 S., R. 6 E., S.L.M., in a wash or dry stream bed, thence running northwesterly, approximately N. 18 degrees, 30 minutes W., along said wash 9 rods 11½ feet more or less to a point 27 rods north of the said NE corner of the SW¼ of SW¼ of Section 14 and on the east line of the NW¼ SW¼ of said section; thence north 53 rods, more or less, along said east line NW¼ SW¼ to the East-West center line of said section; thence westerly along said center line 19 rods; thence southerly and parallel to east line of NW¼ of SW¼ of said Section 14, 64 rods more or less, to a point in the center of a lane between a stone wall and fence; thence easterly along said lane 12 rods; thence north of east on an angle of approximately 13 degrees 30 minutes 10 rods 5½ feet to the place of beginning, containing 7 acres and 108 square rods more or less.

PARCEL 2: Commencing on the east line of SW¼ of the SW¼ 16 rods south of the NE corner of the SW¼ of the SW¼ of Section 14, T.29 S., R.6 E., S.L.M., running thence southwesterly at an angle of approximately 3 degrees of west 24 rods and 4 feet; thence northeasterly at an angle of approximately 13 degrees east of north along the general course of a lane 33 rods and 8 feet to the southwest corner of Parcel 1; thence easterly along the south line of Parcel 1, 3 rods; thence southeasterly at an angle of approximately 24 degrees east of south 36 rods to the place of beginning, containing 3 acres, more or less.

PARCEL 3: The NE¼ of the SE¼ of Section 14, T. 29 S., R. 6 E., S.L.M.

PARCEL 4: Commencing at the SW corner of the NE¼ of the SE¼ of Section 14, T. 29 S., R. 6 E., S.L.M.; thence west along the south line of the N½ of the SE¼ of said section 56 rods; thence in a northeasterly direction to the NW corner of the NE¼ of the SE¼ of said Section 14; thence south along the west line of said NE¼ of the SE¼ 80 rods to the place of beginning; and containing 14 acres, more or less.

Parcels 1, 2, 3, and 4, described above, being the land conveyed to Alma Chesnut by Clarence L. Mulford and Marie Mulford, his wife, by deed dated July 22, 1926, and recorded in the recorder's office of Wayne County, Utah, in Book E of deeds, page 366.

PARCEL 5: Commencing at the NE corner of the SW¼ of the SW¼ of Section 14, T. 29 S., R. 6 E., S.L.M., thence easterly along the north line of the SE¼ of the SW¼ of said section 5½ rods; thence northwesterly 18 rods, more or less, along a wash and its prolongation, to a point 18 rods north and 3½ rods east of said NE corner of the SW¼ of the SW¼ of Section 14, which is also the SE corner of Parcel 1; thence southwesterly along the south line of said Parcel 1, 10 rods 5½ feet; thence westerly along the south line of said Parcel 1, 9 rods, to the NE corner of Parcel 2; thence southeasterly along the east line of said Parcel 2 to a point on the North line of the said SW¼ of the SW¼ of Section 14, approximately 8 rods 8 feet west of the point of beginning; thence easterly along the north line of said SW¼ of the SW¼ 8 rods 8 feet to point of beginning, containing 2½ acres, more or less.

Parcel 5, described above, being the land conveyed to Alma Chesnut by E. vera Oyler and Cora Oyler by deed dated August 20, 1926, and recorded in the Recorder's office of Wayne County, Utah, in Book E of deeds, page 522.

Containing in all 66 acres 148 square rods more or less.

Also the primary water right acquired under and by virtue of the laws of the State of Utah to divert sixty-six one-hundredths (.66) second feet of water for use during the entire year, as determined and established by decree of the District Court of the Sixth Judicial District in and for Wayne County, State of Utah, in an action entitled "Hanksville Canal Company, a corporation, vs. Torrey Irrigation Company, a corporation et al.," confirming said right unto Alma Chesnut, which said decree was made on July 15, 1935.

7

Together with any and all water rights and all ditch rights appurtenant to the above-described parcels of land.

Dated this 12th day of July, 1943.

TILLMAN D. JOHNSON
Judge, United States District Court

Filed July 13, 1943.

(COPY)

UNITED STATES OF AMERICA
IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

UNITED STATES OF AMERICA, Petitioner, v. Five Parcels of Land and Certain Water Rights in Wayne County, Utah, Alma Chesnut, et al., Defendants.	CIVIL NO. 376 FINDINGS OF FACT AND JUDGMENT

This matter coming on regularly for hearing upon the application of Alma Chesnut and Emma Chesnut, his wife, to draw down the balance of the money due them, and the court having heard evidence in support of said application, and the cause being submitted, now makes and enters the following Findings of Fact and Judgment:

FINDINGS OF FACT

The court finds that on November 9, 1942, it made its order to pay to the said defendants the sum of $1275.00 which amount was paid from the registry of the court to said defendants, leaving a balance of $525.00 to be retained in the registry of the court because of title difficulties as follows:

That from the records of Wayne County, Utah, one Nels Johnson appeared to own a strip of land approximately 3 rods wide and 62 rods long running through the center of Parcel No. 1 herein described; that said gap is caused by the description as given in two deeds by the said Nels Johnson, one description starting east and running west, and the other description starting west and running east, but failed to meet thus leaving a gap as aforesaid; that the said Nels Johnson has never made any claim to said property, and that the defendants and their predecessors in interest have been in the open, notorious, peaceful and adverse possession of said land, paying all taxes thereon for more than 20 years; that the said Nels Johnson died many years ago; that his estate was probated in Wayne County, Utah, and was closed in the year 1922; that in said estate the property involved herein was not inventoried and no claim made to said property by the administrator, nor has any claim to said property ever been made by any of the heirs of the said Nels Johnson; that the said Nels Johnson left surviving him two children, to-wit, Mrs. Lillian Edwards now residing at Torrey, Utah.

upon whom personal service has been made in this action and her default entered, and a son, William Johnson, an unmarried man who died intestate in Salina, Utah, in February, 1927.

That by reason of said facts said defendants claim, and the court finds that, subject to these proceedings said defendants are the absolute owners in fee of the property herein described, having good title to said property based upon a deed to said property, and also the open, notorious, peaceful and adverse possession, and that the said Nels Johnson does not have any right, title or interest of any kind or character in said property, nor do the heirs of the said Nels Johnson or anyone claiming under him have any interest in said property.

That the said defendants in their acceptance herein filed authorize the sum of $100.00 to be paid to Max L. Kruger and Ailene Winchester Kruger, his wife, for two quit-claim deeds which have been received and recorded, for certain land and water referred to in said deeds, and being a part of the land and water taken in this action; that the land and water being taken is described as follows:

PARCEL 1.

Commencing 18 rods north and 3½ rods east of the NE corner of SW¼ of SW¼ of Section 14, T. 29 S., R.6 E., S.L.M., in a wash or dry stream bed, thence running northwesterly, approximately N 18 deg. 30' W., along said wash 9 rods 11½ feet more or less to a point 27 rods north of the said NE corner of the SW¼ of SW¼ of Section 14 and on the east line of the NW¼ SW¼ of said section; thence north 53 rods, more or less, along said east line NW¼ SW¼ to the East-West center line of said section; thence westerly along said center line 19 rods; thence southerly and parallel to east line of NW¼ of SW¼ of said section 14, 64 rods more or less, to a point in the center of a lane between a stone wall and fence; thence easterly along said lane 12 rods; thence north of east on an angle of approximately 13 degrees 30 minutes, 10 rods 5½ feet to the place of beginning, containing 7 acres and 108 square rods more or less.

PARCEL 2.

Commencing on the east line of SW¼ of the SW¼ 16 rods south of the NE corner of the SW¼ of the SW¼ of Section 14, T. 29 S., R. 6 E. S.L.M., running thence southwesterly at an angle of approximately 3 degrees of west 24 rods and 4 feet; thence northeasterly at an angle of approximately 13 degrees east of north along the general course of a lane 33 rods and 8 feet to the southwest corner of Parcel 1; thence easterly along the south line of Parcel 1, 3 rods; thence southeasterly at an angle of approximately 24 degrees east of south 36 rods to the place of beginning, containing 3 acres, more or less.

PARCEL 3.

The NE¼ of the SE¼ of Section 14, T.29 S., R. 6 E., S.L.M.

PARCEL 4.

Commencing at the SW corner of the NE¼ of the SE¼ of Section 14, T.29 S., R.6 E., S.L.M.; thence west along the south line of the N½ of the SE¼ of said section 56 rods; thence in a northeasterly direction to the NW corner of the NE¼ of the SE¼ of said Section 14; thence south along the west line of said NE¼ of the SE¼ 80 rods to the place of beginning, and containing 14 acres, more or less.

PARCEL 5.

Commencing at the NE corner of the SW¼ of the SW¼ of Section 14, T. 29 S., R. 6 E., S.L.M., thence easterly along the north line of the SE¼ of the SW¼ of said section 5½ rods; thence northwesterly 18 rods, more or less, along a wash and its prolongation, to a point 18 rods north and 3½ rods east of said NE corner of the SW¼ of the SW¼ of Section 14, which is also the SE corner of Parcel 1; thence southwesterly along the south line of said Parcel 1, 10 rods 5½ feet; thence westerly along the south line of said Parcel 1, 9 rods, to the NE corner of Parcel 2; thence southeasterly along the east line of said Parcel 2 to a point on the north line of the said SW¼ of the SW¼ of Section 14, approximately 8 rods 8 feet west of the point of beginning; thence easterly along the north line of said SW¼ of the SW¼ 8 rods 8 feet to point of beginning, containing 2 ¼ acres, more or less.

Containing in all 66 acres 148 square rods more or less.

Also the primary water right acquired under and by virtue of the laws of the State of Utah to divert sixty-six one-hundredths (.66) second feet of water for use during the entire year, as determined and established by decree of the District Court of the Sixth Judicial District in and for Wayne County, State of Utah, in an action entitled "Hanksville Canal Company, a corporation, v. Torrey Irrigation Company, a corporation, et al.," confirming said right unto Alma Chesnut, which said decree was made on July 15, 1935.

Together with any and all water rights and all ditch rights appurtenant to the above described parcels of land.

JUDGMENT

Accordingly, it is hereby ORDERED, ADJUDGED AND DECREED that the fee simple title in and to said land and water vested in the United States of America as of the 23rd day of July, 1942, and that title to said land is hereby quieted in the United States of America as against the said Nels Johnson and the said Lillian Edwards, and all persons claiming under them, and the claims, if any, of said Nels Johnson and the said Lillian Edwards and all persons claiming under them are forever barred in and to said land and each and every part thereof; and the clerk of the court is author-

ized and directed to pay from the registry of the court, to O. K. Clay, who advanced the fee for recording all deeds which were recorded in this action in connection with clearing the title to said property, the sum of $10.00, and to pay to Max L. Krueger and Ailene Winchester Krueger, his wife, the sum of $100.00, and to Alma Chesnut and Emma Chesnut, his wife, the sum of $415.00.

Dated this 3 day of June, 1943.

TILLMAN D. JOHNSON
Judge, United States District Court

Filed June 3, 1943

14950

QUITCLAIM DEED

William Chesnut, of Fruita, Wayne County, Utah, Grantor, for and in consideration of the sum of One Dollar ($1.00) hereby quitclaims to ALMA CHESNUT, Grantee, .66 cubic feet per second of water in the Fremont River, under that certain decree dated July 15, 1935 in the District Court of Wayne County, Utah, in the case of Hanksville Canal Company, a corporation, plaintiff, vs. Torrey Irrigation Company, a corporation, et al., defendants, wherein the Fruita residents were granted 8 cubic feet per second of water in the Fremont River, including the Grantor and the Grantee. The .66 cubic feet per second of water is hereby conveyed out of the said 8 cubic feet per second.

WITNESS the hand of the said Grantor this 23 day of Nov, 1942.

William Chesnut

STATE OF UTAH)
: ss.
COUNTY OF WAYNE)

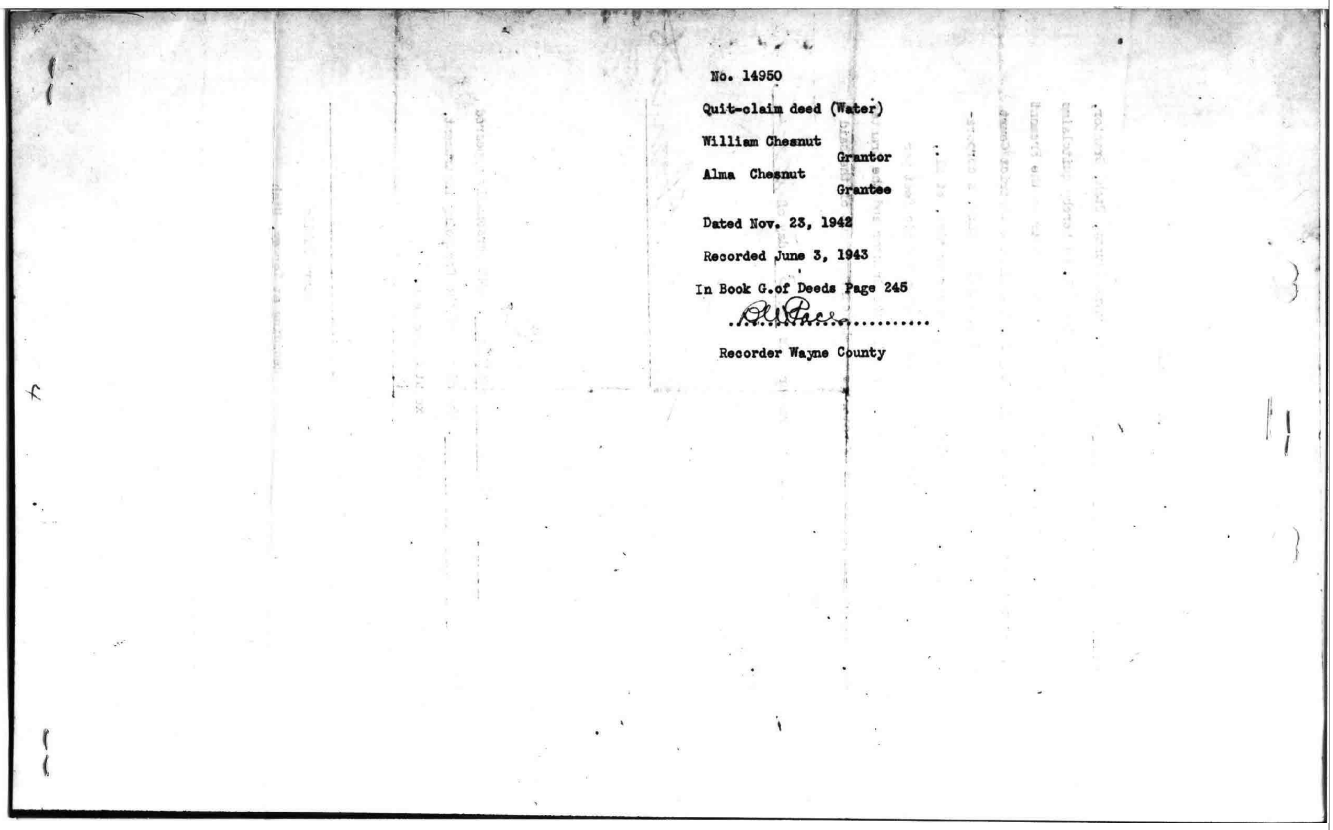
On this 23rd day of November, 1942 personally appeared before me William Chesnut, the signer of the foregoing instrument, who duly acknowledged to me that he executed the same.

Notary Public
Residing at Torrey, Utah

My commission expires:

Jan 17, 1945

3



No. 14950

Quit-claim deed (Water)

William Chesnut
Grantor

Alma Chesnut
Grantee

Dated Nov. 23, 1942

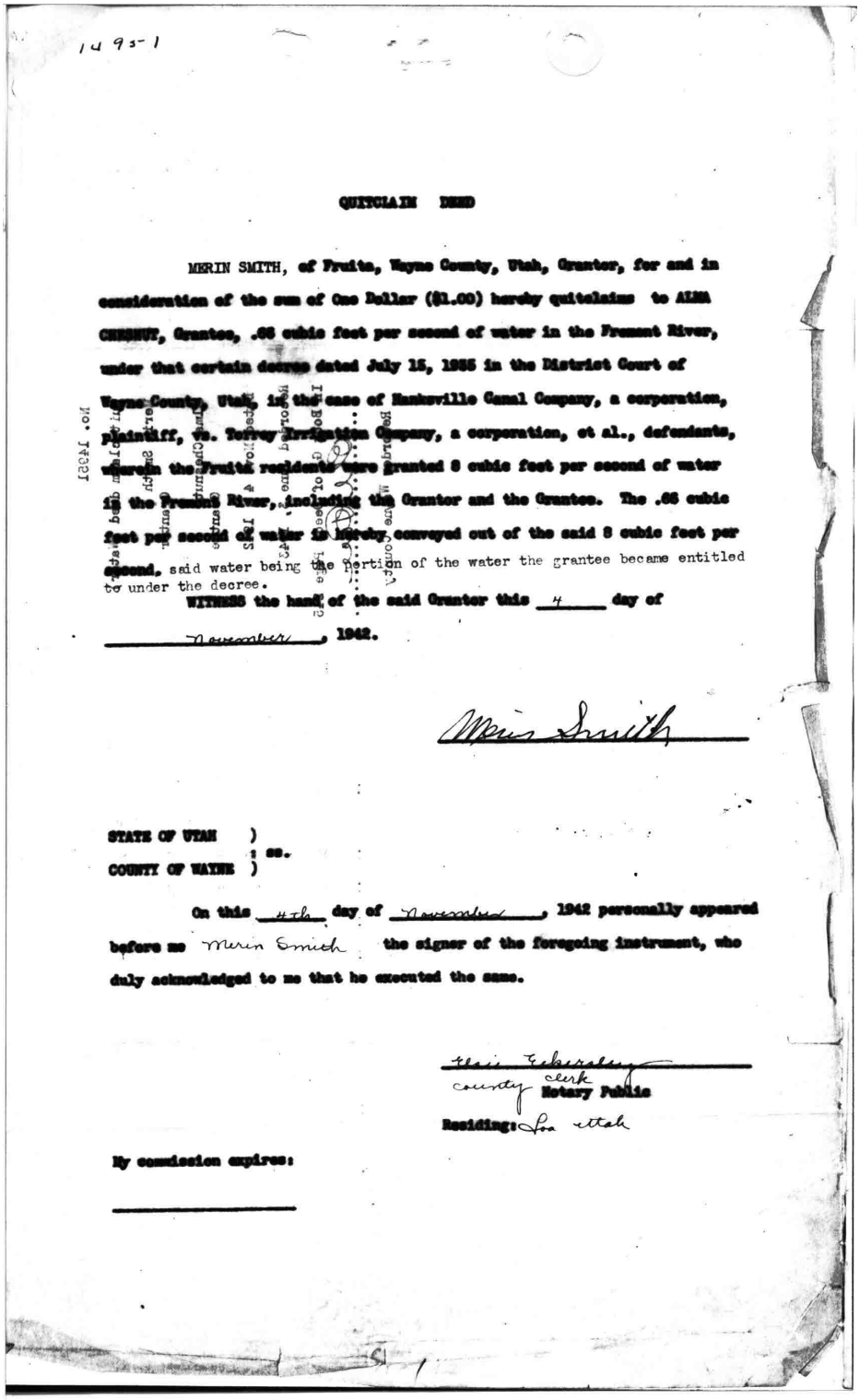
Recorded June 3, 1943

In Book G.of Deeds Page 245

O. U. Pace

Recorder Wayne County

11-04-1942: quit claim deed from merin smith to alma chesnut; november 04, 1942



14 95-1

QUITCLAIM DEED

MERIN SMITH, of Fruita, Wayne County, Utah, Grantor, for and in consideration of the sum of One Dollar ($1.00) hereby quitclaims to ALMA CHESNUT, Grantee, .66 cubic feet per second of water in the Fremont River, under that certain decree dated July 15, 1935 in the District Court of Wayne County, Utah, in the case of Hanksville Canal Company, a corporation, plaintiff, vs. Torrey Irrigation Company, a corporation, et al., defendants, wherein the Fruita residents were granted 8 cubic feet per second of water in the Fremont River, including the Grantor and the Grantee. The .66 cubic feet per second of water is hereby conveyed out of the said 8 cubic feet per second, said water being the portion of the water the grantee became entitled to under the decree.

WITNESS the hand of the said Grantor this 4 day of November, 1942.

Merin Smith

STATE OF UTAH)
: ss.
COUNTY OF WAYNE)

On this 4th day of November, 1942 personally appeared before me Merin Smith the signer of the foregoing instrument, who duly acknowledged to me that he executed the same.

Flois Tobiasen
County clerk
Notary Public
Residing: Loa Utah

My commission expires:

_____

No. 14951

Recorded Nov 4 1942 at 10:45 A.M.
In Book G of Deeds Page 365
Records Wayne County
Clerk
Deputy

QUITCLAIM DEED

MERIN SMITH, of Fruita, Wayne County, Utah, Grantor, for and in consideration of the sum of One Dollar ($1.00) hereby quitclaims to ALMA CHESNUT, Grantee, .88 cubic feet per second of water in the Fremont River, under that certain decree dated July 18, 1938 in the District Court of Wayne County, Utah in the case of Manderfield Canal Company, a corporation, Plaintiff, vs. Torrey Irrigation Company, a corporation, et al., defendants, wherein the District Court awarded 8 cubic feet per second of water to the Fremont River, including the Grantor and the Grantee. The .88 cubic feet hereby conveyed out of the said 8 cubic feet per second, said water being the proportion of the water the grantor became entitled to under the decree.

WITNESS the hand of the said Grantor this 4 day of November, 1942.

STATE OF UTAH)
: ss.
COUNTY OF WAYNE)

On this 4th day of November, 1942 personally appeared before me Merin Smith the signer of the foregoing instrument, who duly acknowledged to me that he executed the same.

Notary Public
residing at Fruita, Utah

My commission expires:

10-29-1942: affidavit, alma chesnut; october 29, 1942

AFFIDAVIT

STATE OF CALIFORNIA)
: ss.
COUNTY OF Marin)

ALMA CHESNUT, being first duly sworn, deposes and says:

That he is the same person mentioned as the Party of the First Part in that certain oil and gas lease with Ross C. Davis of Salt Lake City, Utah, party of the second part, dated July 3, 1930, covering the land herein described.

That he states the following to be the exact facts in connection with said lease: That the said Ross C. Davis referred to in the lease as the Second Party did not commence active work to develop said lands for oil or gas on or before the 1st day of January, 1933 as provided in said lease or at any other time. That a well producing oil or natural gas in paying quantities was not completed on said land by the 1st day of July, 1933 or at any other time. That the said Second Party did not pay to Alma Chesnut, the First Party, ground rent at the rate of 50¢ per acre per annum or any other sum or amount per annum or otherwise or at all from the 1st day of July, 1933 or at any other time.

Affiant further states that natural gas or petroleum was not discovered on said premises in paying quantities or at all, and that said lease is accordingly null and void and the First and Second Parties are released from all liabilities thereunder, as is fully set forth in said oil and gas lease as appears from the records of Wayne County, Utah, in Book A of Oil and Gas Leases, page 92, recorded August 5, 1931.

Affiant further states that the present address of the said Ross C. Davis is unknown, and that he makes this affidavit for the purpose of inducing the United States Government to pay him the full purchase price of the land herein described which is being taken by the said United States Government as a part of National Reef Monument.

Said property is located in Wayne County, Utah and described as follows:

NE¼ SE¼; Com. at SE cor. NW¼ SE¼, thence W. 56 rds., NE to NE cor. NW¼ SE¼, thence S. 80 rds. to beg.; Com. 18 rds. N. of NW cor. SE¼ SW¼, thence E. 3½ rds., N. 62 rds., W. 16½ rds., S. 62 rds., E. 13 rds. to beg.; Com. 8 rds. 8 ft. W. of NE cor. SW¼ SW¼, thence N. 18 rds., W. 3 rds., SW 38 rds., SE 28 rds., N. 22 rds., NW 17 rds. to beg., Sec. 14, Twp. 29 S., R. 6 East, S.L.M., containing 64½ acres more or less.

Alma Chesnut

Subscribed and sworn to before me this 29 day of ~~November~~ October 1942.

Kent M. Harper

Notary Public
In and for said County and State
Residing:

My commission expires:
12/4/43

09-30-1942: quit claim deed, clarence mulford; september 30, 1942

QUITCLAIM DEED

CLARENCE MULFORD, of Fruita, Wayne County, Utah, Grantor, for and in consideration of the sum of One Dollar ($1.00) hereby quitclaims to ALMA CHESNUT, Grantee, .66 cubic feet per second of water in the Fremont River, under that certain decree dated July 15, 1935 in the District Court of Wayne County, Utah, in the case of Hanksville Canal Company, a corporation, plaintiff, vs. Torrey Irrigation Company, a corporation, et al., defendants, wherein the Fruita residents were granted 8 cubic feet per second of water in the Fremont River, including the Grantor and the Grantee. The .66 cubic feet per second of water is hereby conveyed out of the said 8 cubic feet per second.

WITNESS the hand of the said Grantor this 30th day of Sept., 1942.

Clarence Mulford

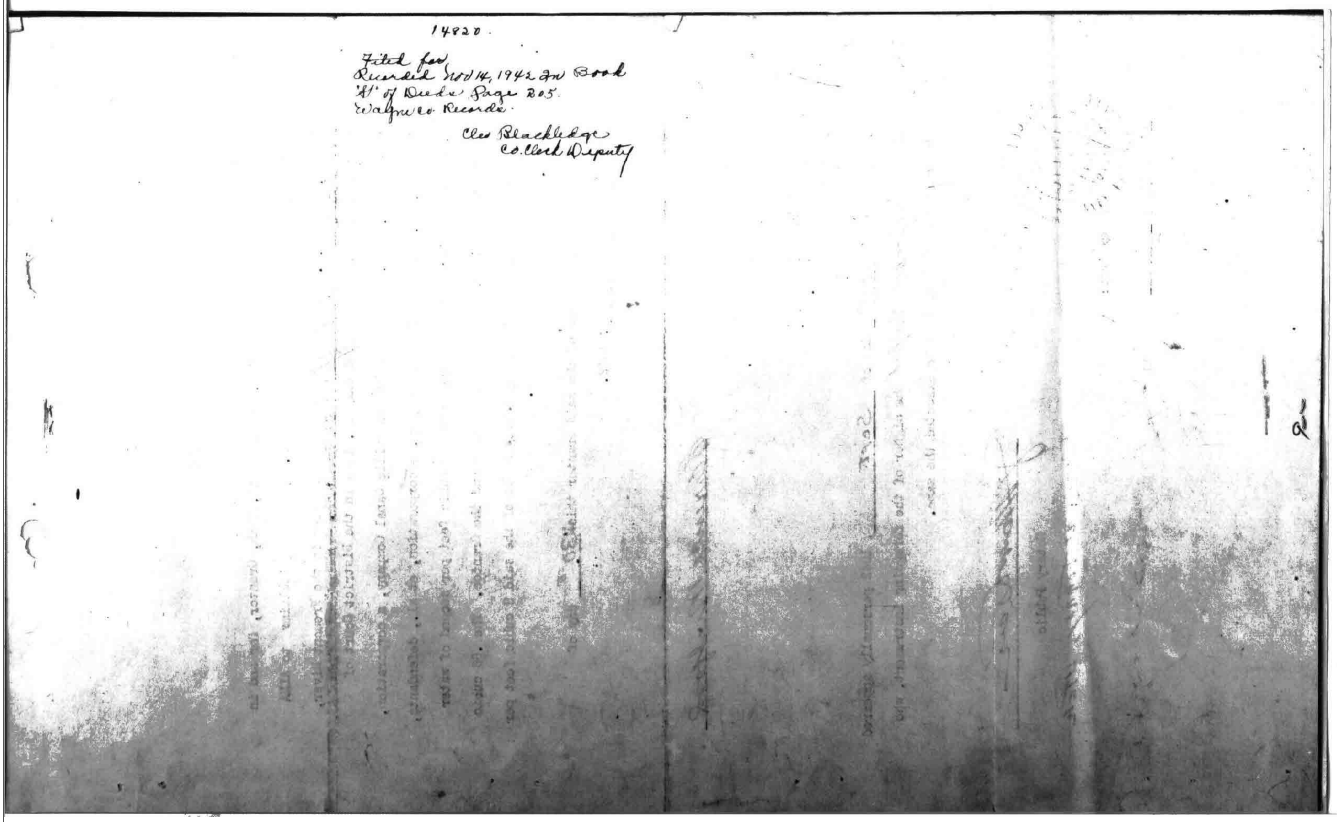
STATE OF UTAH)
: ss.
COUNTY OF WAYNE)

On this 30th day of Sept., 1942 personally appeared before me Clarence Mulford the signer of the foregoing instrument, who duly acknowledged to me that he executed the same.

J. Marvel Carr
Notary Public
Residing: at Torrey, Utah

My commission expires:
Jan 17, 1946

3



14820

Filed for
Record Sept 14, 1942 2m Book
"A" of Deeds Page 205
Walpole Records

Cleo Blackledge
Co. Clerk Deputy

09-29-1942: quit claim deed, orval mott; september 29, 1942

QUITCLAIM DEED

ORVAL MOTT, of Fruita, Wayne County, Utah, Grantor, successor in interest of Dan Adams under that certain decree entered July 15, 1935 in the District Court of Wayne County, Utah in the case of Hanksville Canal Company, a corporation, plaintiff, vs. Torrey Irrigation Company, a corporation, et al., defendants, wherein the Fruita residents were granted 8 cubic feet per second of water in the Fremont River, for One Dollar ($1.00), hereby quitclaims to ALMA CHESNUT, Grantee, .66 cubic feet per second out of the said 8 cubic feet per second of water in Fremont River so granted in said decree.

WITNESS the hand of the said Grantor this 29 day of Sept., 1942.

Orval Mott

STATE OF UTAH)
: ss.
COUNTY OF WAYNE)

On this 29 day of Sept., 1942 personally appeared before me Orval Mott, the signer of the foregoing instrument, who duly acknowledged to me that he executed the same.

E. P. Pratt

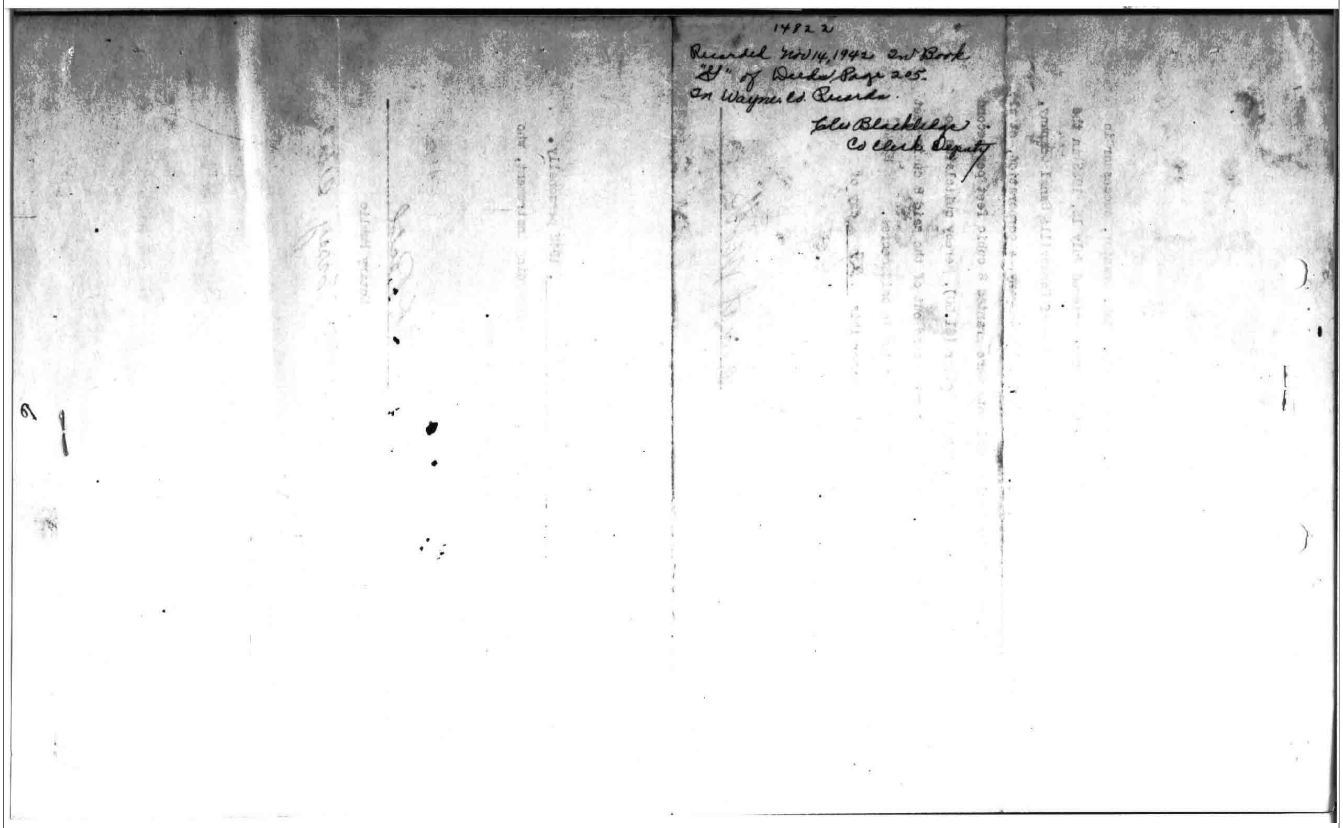
Notary Public

Residing: Torrey, Utah

My commission expires:

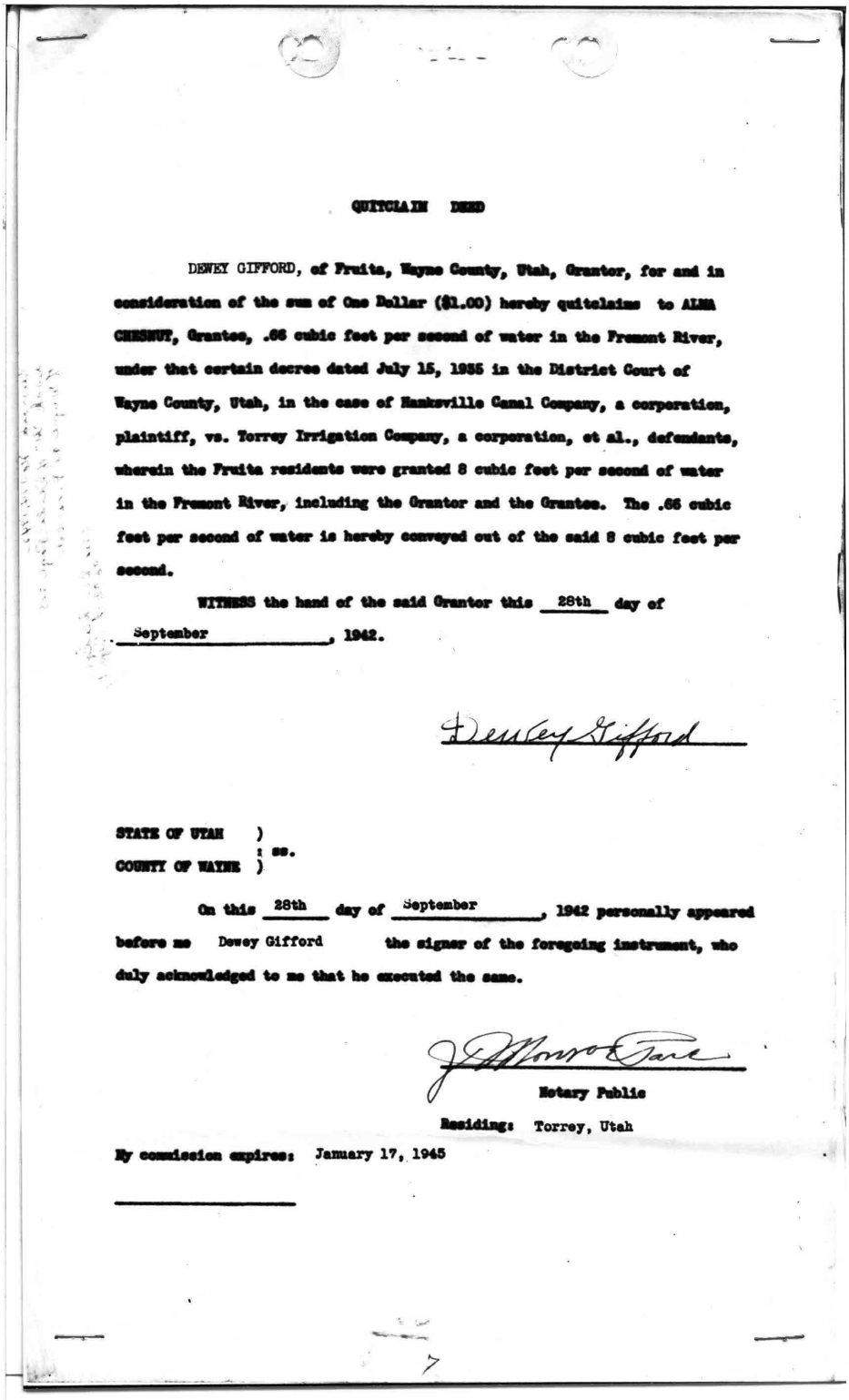
May 18, 1943

5



14822
Recorded Nov 14, 1942 in Book
"H" of Deeds, Page 205.
in Waymired Records.
Tolo Blackledge
Co Clerk. Deputy

09-28-1942: quit claim deed, dewey gifford; september 28, 1942



QUITCLAIM DEED

DEWEY GIFFORD, of Fruita, Wayne County, Utah, Grantor, for and in consideration of the sum of One Dollar ($1.00) hereby quitclaims to ALMA CHESNUT, Grantee, .66 cubic feet per second of water in the Fremont River, under that certain decree dated July 15, 1935 in the District Court of Wayne County, Utah, in the case of Hanksville Canal Company, a corporation, plaintiff, vs. Torrey Irrigation Company, a corporation, et al., defendants, wherein the Fruita residents were granted 8 cubic feet per second of water in the Fremont River, including the Grantor and the Grantee. The .66 cubic feet per second of water is hereby conveyed out of the said 8 cubic feet per second.

WITNESS the hand of the said Grantor this 28th day of September, 1942.

Dewey Gifford

STATE OF UTAH)
: ss.
COUNTY OF WAYNE)

On this 28th day of September, 1942 personally appeared before me Dewey Gifford the signer of the foregoing instrument, who duly acknowledged to me that he executed the same.

J. Monroe Gale
Notary Public
Residing: Torrey, Utah

My commission expires: January 17, 1945

7

Recorded Sept. 14, 1942
Book "N" of Deeds Page 205
of Wayne Co. Records.

Fees Blackridge
Co Clerk Deputy

08-15-1942: quit claim deed, m.v. oyler; august 15, 1942

14950

QUITCLAIM DEED

M. V. OYLER, of Loa, Wayne County, Utah, Grantor, for and in consideration of the sum of One Dollar ($1.00) hereby quitclaims to ALMA CHESNUT, Grantee, .66 cubic feet per second of water in the Fremont River, under that certain decree dated July 15, 1935 in the District Court of Wayne County, Utah, in the case of Hanksville Canal Company, a corporation, plaintiff, vs. Torrey Irrigation Company, a corporation, et al., defendants, wherein the Fruita Residents were granted 8 cubic feet per second of water in the Fremont River, including the Grantor and the Grantee. The .66 cubic feet per second of water is hereby conveyed out of the said 8 cubic feet per second, and is the portion of the water that the grantee became entitled to by virtue of the aforesaid decree

WITNESS the hand of the said Grantor this 15 day of August, 1942.

M. V. Oyler

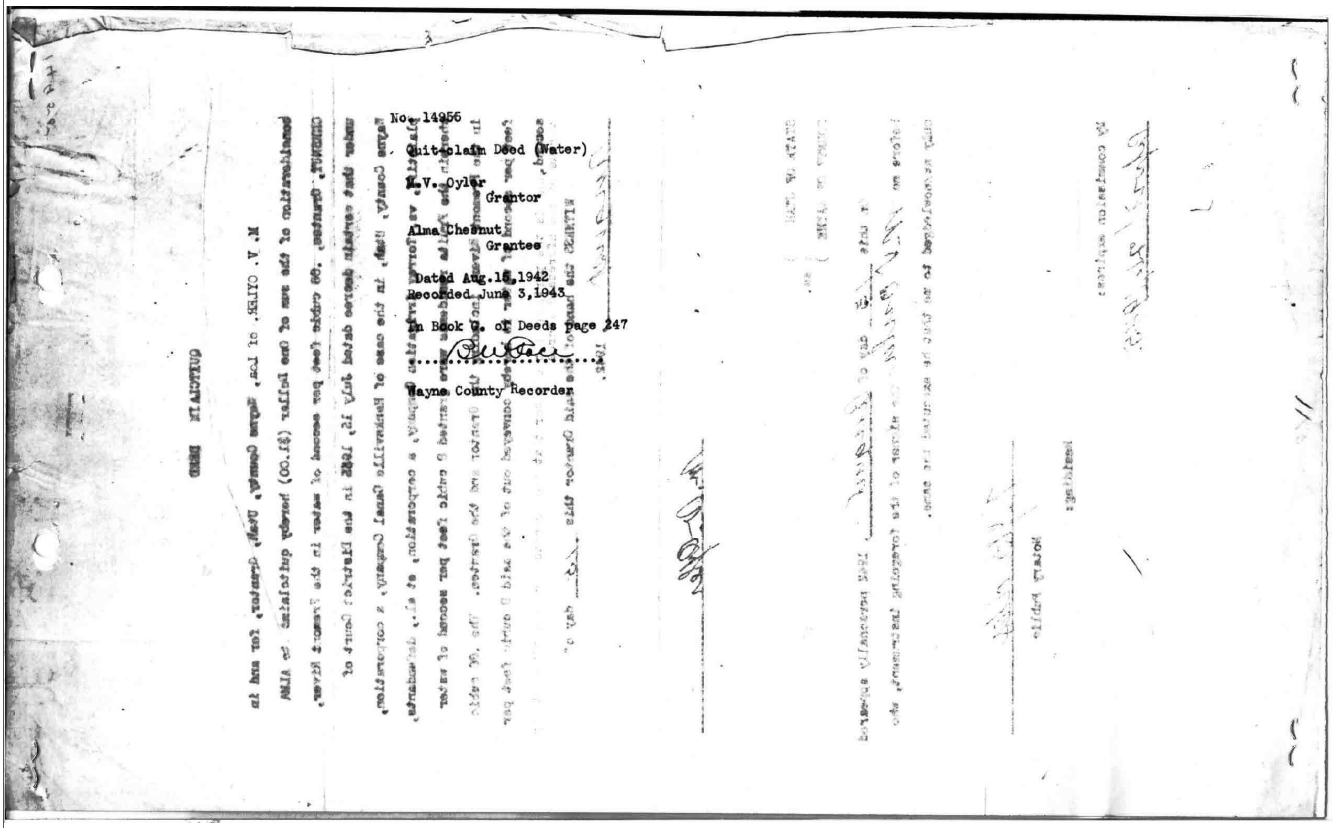
STATE OF UTAH)
: ss.
COUNTY OF WAYNE)

On this 15 day of August, 1942 personally appeared before me M V Oyler the signer of the foregoing instrument, who duly acknowledged to me that he executed the same.

N J Bates
Notary Public
Residing:

My commission expires:
April 7th 1945

10



No. 14956

Quit-claim Deed (Water)

M.V. Oyler

Grantor

Alma Chesnut

Grantee

Dated Aug.15,1942

Recorded June 3,1943

In Book V. of Deeds page 247

.....

Wayne County Recorder

#14954

QUITCLAIM DEED

MICHAEL V. OYLER, also known as M. V. OYLER, and ELVERA OYLER, his wife, Grantors, of Loa, Wayne County, Utah, hereby quitclaim to the United States of America, Grantee, for the sum of One ($1.00) Dollar, the following described tract of land in Wayne County, Utah, to-wit:

Commencing at the Southeast corner of the Northwest Quarter of the Southwest Quarter of Section 14, Township 29 South, Range 6 East, Salt Lake Meridian; thence easterly along the south line of the Northeast Quarter of the Southwest Quarter of said Section 3½ rods; thence North 6° 18' West 297.84 feet; thence South 76° 30' West 170.5 feet; thence West 148.5 feet; thence South 24° East to a point on the south line of the Northwest Quarter of the Southwest Quarter of Section 14 approximately 8 rods and 8 feet West of the point of beginning; thence easterly along the south line of the said Northwest Quarter of the Southwest Quarter 8 rods 8 feet to the place of beginning, containing 2¾ acres, more or less.

WITNESS the hands of said Grantors this 15 day of August, 1942.

M. V. Oyler

Elvera Oyler

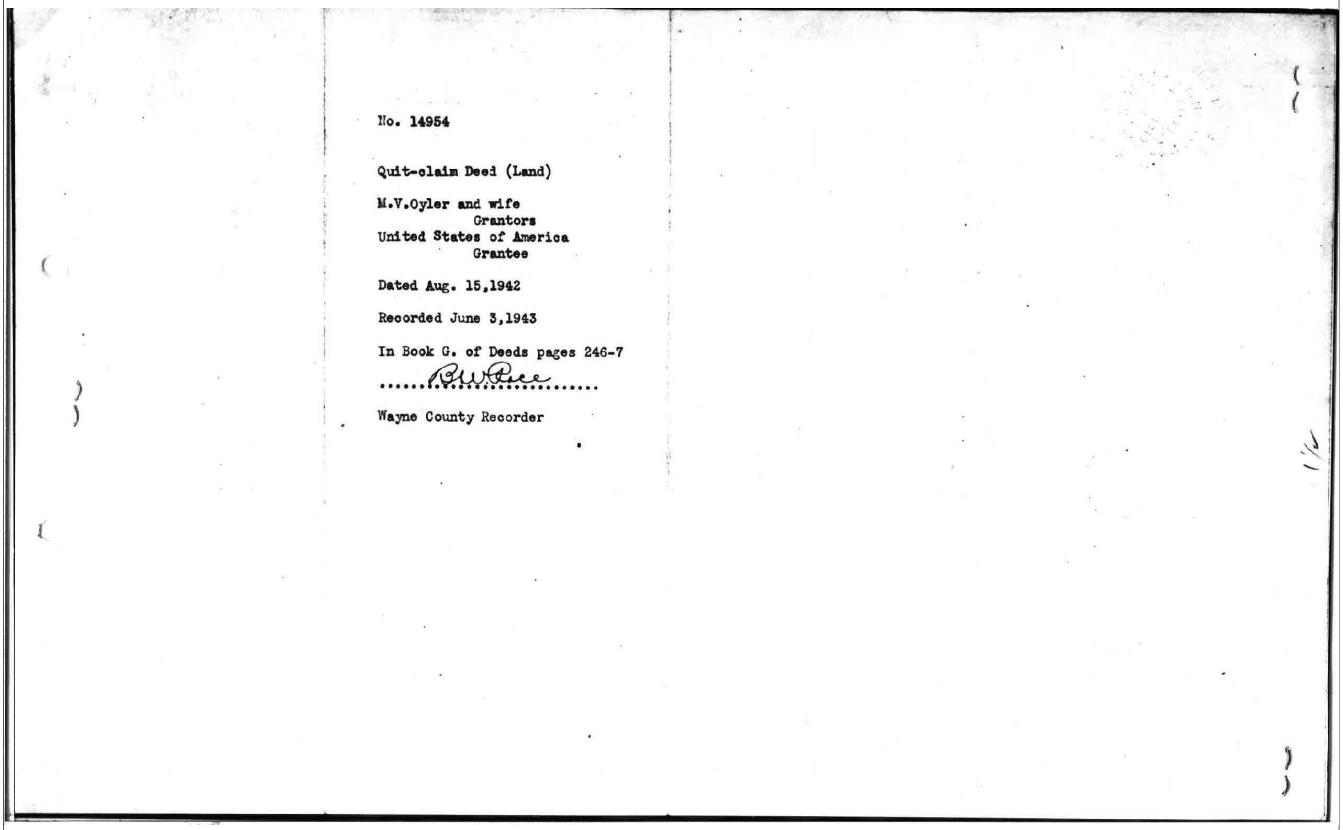
Witness:
N J Bates

STATE OF UTAH)
: ss.
COUNTY OF WAYNE)

On this 15 day of August, 1942 personally appeared before me Michael V. Oyler, also known as M. V. Oyler, and Elvera Oyler, his wife, the signers of the foregoing instrument, who duly acknowledged to me that they executed the same.

N J Bates
Notary Public
Residing at Loa, Utah

My commission expires:
April 26, 1945



No. 14954

Quit-claim Deed (Land)

M.V.Oyler and wife
Grantors
United States of America
Grantee

Dated Aug. 15,1942

Recorded June 3,1943

In Book G. of Deeds pages 246-7

.....R W Rice.....

Wayne County Recorder

07-15-1935: warranty deed, alma and emma chesnut; july 15, 1935

WARRANTY DEED

Alma Chesnut and Emma Chesnut, his wife, Grantors, of El Cerrito, in the County of Contra Costa, State of California, hereby convey and warrant to the United States of America, Grantee, for the sum of One Thousand Eight Hundred ($1,800) Dollars, the following described tracts of land in Wayne County, State of Utah, to-wit:

Parcel 1

Commencing 18 rods north and 3½ rods east of the NE corner of SW¼ of SW¼ of Section 14, T. 29 S., R. 6 E., S.L.M., in a wash or dry stream bed, thence running northwesterly, approximately N. 18°30' W., along said wash 9 rods 11½ feet more or less to a point 27 rods north of the said NE corner of the SW¼ of SW¼ of Section 14 and on the east line of the NW¼ SW¼ of said section; thence north 53 rods, more or less, along said east line NW¼ SW¼ to the East-West center line of said section; thence westerly along said center line 19 rods; thence southerly and parallel to east line of NW¼ of SW¼ of said Section 14, 64 rods more or less, to a point in the center of a lane between a stone wall and fence; thence easterly along said lane 12 rods; thence north of east on an angle of approximately 13 degrees 30 minutes 10 rods 5½ feet to the place of beginning, containing 7 acres and 108 square rods more or less.

Parcel 2

Commencing on the east line of SW¼ of the SW¼ 16 rods south of the NE corner of the SW¼ of the SW¼ of Section 14, T. 29 S., R. 6 E., S.L.M., running thence southwesterly at an angle of approximately 3 degrees south of west 24 rods and 4 feet; thence northeasterly at an angle of approximately 13 degrees east of north along the general course of a lane 33 rods and 8 feet to the southwest corner of Parcel 1; thence easterly along the south line of Parcel 1, 3 rods; thence southeasterly at an angle of approximately 24 degrees east of south 36 rods to the place of beginning, containing 3 acres, more or less.

Parcel 3

The NE¼ of the SE¼ of Section 14, T. 29 S., R. 6 E., S.L.M.

Parcel 4

Commencing at the SW corner of the NE¼ of the SE¼ of Section 14, T. 29 S., R. 6 E., S.L.M.; thence west along the south line of the N½ of the SE¼ of said section 56 rods; thence in a northeasterly direction to the NW corner of the NE¼ of the SE¼ of said Section 14; thence south along the west line of said NE¼ of the SE¼ 80 rods to the place of beginning; and containing 14 acres, more or less.

7—1404

U. S. GOVERNMENT PRINTING OFFICE

Parcels 1, 2, 3, and 4, described above, being the land conveyed to the grantor Alma Chesnut by Clarence L. Mulford and Marie Mulford, his wife, by deed dated July 22, 1926 and recorded in the Recorder's Office of Wayne County, Utah, in Book E of deeds, page 366.

Parcel 5

Commencing at the NE corner of the SW¼ of the SW¼ of Section 14, T. 29 S., R. 6 E., S.L.M., thence easterly along the north line of the SE¼ of the SW¼ of said section 5½ rods; thence northwesterly 18 rods, more or less, along a wash and its prolongation, to a point 18 rods north and 3½ rods east of said NE corner of the SW¼ of the SW¼ of Section 14, which is also the SE corner of Parcel 1; thence southwesterly along the south line of said Parcel 1, 10 rods 5½ feet; thence westerly along the south line of said Parcel 1, 9 rods, to the NE corner of Parcel 2; thence southeasterly along the east line of said Parcel 2 to a point on the north line of the said SW¼ of the SW¼ of Section 14, approximately 8 rods 8 feet west of the point of beginning; thence easterly along the north line of said SW¼ of the SW¼ 8 rods 8 feet to point of beginning, containing 2¼ acres, more or less.

Parcel 5, described above, being the land conveyed to the grantor Alma Chesnut by Elvera Oyler and Cora Oyler, his wife, by deed dated August 20, 1926 and recorded in the Recorder's Office of Wayne County, Utah, in Book E of deeds, page 376.

Containing in all 66 acres 148 square rods more or less.

Also the primary water right acquired under and by virtue of the laws of the State of Utah to divert sixty-six one-hundredths (.66) second feet of water for use during the entire year, said right having a priority of _____ as determined and established by decree of the District Court of the sixth judicial district in and for Wayne County, State of Utah, in an action entitled "Hanksville Canal Company, a corporation, vs. Torrey Irrigation Company, A Corporation" et al, confirming said right unto Alma Chesnut, grantor herein, which said decree was made on July 15, 1935,

Together with any and all water rights and all ditch rights appurtenant to the above-described parcels of land.

WITNESS THE HAND of said Grantor, this _____day of _____A. D. 1942.

Signed in the presence of) _____
) _____
_____)

7—1404

U. S. GOVERNMENT PRINTING: 1938

STATE OF CALIFORNIA)
) ss.
County of _____)

On the _____day of _____A. D. 1942, personally appeared before me, a Notary Public in and for the State of California,_____

_____

the signers of the above instrument, who duly acknowledged to me that they executed the same.

_____
Notary Public

7—1404

U. S. GOVERNMENT PRINTING OFFICE

12-00-0000: judegment of declaration of taking

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

UNITED STATES OF AMERICA, Petitioner, v. Five Parcels of Land and Certain Water Rights in Wayne County, State of Utah, Alma Chesnut, et al., Defendants . . . . . . In the matter of acquisition by the United States of America of five pieces or parcels of land situate, lying and being in Wayne County, State of Utah, and certain water rights, for use in connection with the Capitol Reef National Monument of the National Park Service, United States Department of the Interior.	Civil No. 376 JUDGMENT ON DECLARATION OF TAKING FILED in United States District Court, District of Utah July 23, 1942 1:00 P.M. W.B. Wilson, Clerk By V.P. Ahlstrom, Deputy

It appearing to the court that on July 22, 1942, the United States of America filed herein its petition for condemnation of 66 acres of land, more or less, in Wayne County, Utah, together with certain water rights hereinafter described, and also filed a declaration of taking by the Secretary of the Interior of the United States under and by virtue of the provisions of the Acts of Congress as follows: Act of Congress approved August 1, 1888 (25 Stat. 357, 40 U.S.C. 257 and 258), and acts supplementary thereto and amendatory thereof, authorizing the acquisition of land by condemnation, and the Act of Congress of June 28, 1941 (55 Stat. 303, 352) authorizing the investigation and establishment of water rights including the purchase thereof, or of lands, or interest in lands, or rights of way for use and protection of water rights necessary and beneficial in connection with the administration and public use of the National Parks and Monuments, and appropriate money for such purposes; that said petition for condemnation sets forth the taking of the fee simple title to said parcels of land for a public use, to-wit, Capitol Reef National Monument of the National Park Service, Department of the Interior. That said petition for condemnation and the declaration of taking attached thereto also sets forth the ascertaining of just compensation for the taking of said water and land, in the sum of $1800.00, and that said amount has been deposited in the registry of the court for the use of the persons entitled thereto; that said land is located in Wayne County, Utah, together with the water, and is described as follows:

PARCEL 1

Commencing 18 rods north and 3½ rods east of the NE corner of SW¼ of SW¼ of Section 14, T. 29 S., R. 6 E., S.L.M., in a wash or dry stream bed, thence running northwesterly, approximately N. 18 degrees, 30 minutes W., along said wash 9 rods 11½ feet more or less to a point 27 rods north of the said NE corner of the SW¼ of SW¼ of Section 14 and on the east line of the NW¼ SW¼ of said section; thence north 53 rods, more or less, along said east line NW¼ SW¼ to the East-West center line of said section; thence westerly along said center line 19 rods; thence southerly and parallel to east line of NW¼ of SW¼ of said section 14, 64 rods more or less, to a point in the center of a lane between a stone wall and fence; thence easterly along said lane 12 rods; thence north of east on an angle of approximately 13 degrees 30 minutes 10 rods 5½ feet to the place of beginning, containing 7 acres and 108 square rods more or less.

PARCEL 2

Commencing on the east line of SW¼ of the SW¼ 16 rods south of the NE corner of the SW¼ of the SW¼ of Section 14, T. 29 S., R. 6 E., S.L.M., running thence southwesterly at an angle of approximately 3 degrees of west 24 rods and 4 feet; thence northeasterly at an angle of approximately 13 degrees east of north along the general course of a lane 33 rods and 8 feet to the southwest corner of Parcel 1; thence easterly along the south line of Parcel 1, 3 rods; thence southeasterly at an angle of approximately 24 degrees east of south 36 rods to the place of beginning, containing 3 acres, more or less.

PARCEL 3

The NE¼ of the SE¼ of Section 14, T. 29 S., R. 6 E., S.L.M.

PARCEL 4

Commencing at the SW corner of the NE¼ of the SE¼ of Section 14, T. 29 S., R. 6 E., S.L.M., thence west along the south line of the N½ of the SE¼ of said section 56 rods; thence in a northeasterly direction to the NW corner of the NE¼ of the SE¼ of said Section 14; thence south along the west line of said NE¼ of the SE¼ 80 rods to the place of beginning; and containing 14 acres, more or less.

Parcels 1, 2, 3 and 4, described above, being the land conveyed to Alma Chesnut by Clarence L. Mulford and Marie Mulford, his wife, by deed dated July 22, 1926, and recorded in the Recorder's Office of Wayne County, Utah, in Book E of deeds, page 366.

PARCEL 5

Commencing at the NE corner of the SW¼ of the SW¼ of Section 14, T. 29 S., R. 6 E., S.L.M., thence easterly along the north line of the SE¼ of the SW¼ of said section 5½ rods; thence northwesterly 18 rods, more or less, along a wash and its prolongation, to a point 18 rods north and 3½ rods east of said NE corner of the SW¼ of the SW¼ of Section 14, which is also the SE corner of Parcel 1; thence southwesterly along the south line of said Parcel 1, 10 rods 5½ feet; thence westerly along the south line of said Parcel 1, 9 rods, to the NE corner of Parcel 2; thence southeasterly along the east line of said Parcel 2 to a point on the north line of the said SW¼ of the SW¼ of Section 14, approxi-

mately 8 rods 8 feet west of the point of beginning; thence easterly along the north line of said SW¼ of the SW¼ 8 rods 8 feet to point of beginning, containing 2½ acres, more or less.

Parcel 5, described above, being the land conveyed to Alma Chesnut by Elvera Oyler and Cora Oyler by deed dated August 20, 1926, and recorded in the Recorder's Office of Wayne County, Utah, in Book E of deeds, page 522.

Containing in all 66 acres 148 square rods more or less.

Also the primary water right acquired under and by virtue of the laws of the State of Utah to divert sixty-six one-hundredths (.66) second feet of water for use during the entire year, as determined and established by decree of the District Court of the Sixth Judicial District in and for Wayne County, State of Utah, in an action entitled "Hanksville Canal Company, a corporation, vs. Torrey Irrigation Company, a corporation et al.," confirming said right unto Alma Chesnut, which said decree was made on July 15, 1935.

Together with any and all water rights and all ditch rights appurtenant to the above-described parcels of land.

And it further appearing to the court that the Secretary of the Interior is of the opinion that the ultimate award for said land and water will probably be within any limits prescribed by law as the price to be paid therefor:

It is hereby ORDERED, ADJUDGED AND DECREED that the fee simple title absolute is hereby vested in the United States of America to the said parcels of land and water, and that petitioner is hereby granted the immediate and exclusive possession and control of said land and water.

It is further ORDERED that a copy of this Judgment with the certificate of the clerk of this court showing the payment into the registry of the court of the sum of $1800.00 hereinabove set forth, be served upon the owners of said land and water, and all other persons claiming any right, title or interest in said land or water.

It is further ORDERED that due and legal service be had upon all persons, firms and corporations having or claiming to have any right, title or interest in or to said property, and that all such persons be required to answer in this action setting forth any claim, right, title or interest they may have in said property or be forever barred from so doing.

Dated this 23rd day of July, 1942.

TILLMAN D. JOHNSON
Judge, United States District Court

UNITED STATES OF AMERICA)
) ss:
District of Utah)

I, W. B. Wilson, Clerk of the United States District Court in and for the District of Utah, do hereby certify that the annexed and foregoing is a true and full copy of the original

Petition for Condemnation,
Declaration of Taking and
Judgment on Declaration of Taking

filed in Case No. 376, Civil

United States of America
v.
Five Parcels of Land and Certain
Water Rights in Wayne County, State
of Utah, Alma Chesnut, et al

now remaining among the records of the said Court in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Salt Lake City this 23rd day of July, A. D. 19 42.

W. B. WILSON
Clerk.

By (Sgd) Margaret Johnson
Deputy Clerk.

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

UNITED STATES OF AMERICA, Petitioner, v. Five Parcels of Land and Certain Water Rights in Wayne County, Utah, Alma Chesnut, et al., Defendants . . . . . . In the matter of acquisition by the United States of America of five pieces or parcels of land situate, lying and being in Wayne County, State of Utah, and certain water rights, for use in connection with the Capitol Reef National Monument of the National Park Service, United States Department of the Interior.	Civil No. 376 PETITION FOR CONDEMNATION FILED in United States District Court, District of Utah Jul 23, 1942 W.B. Wilson, Clerk By V.P. Ahlstrom, Deputy

THE HONORABLE JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH:

The petition of the United States of America, a sovereign, brought by Dan B. Shields, United States Attorney for the District of Utah, acting under the instructions of the Attorney General and at the request of the Secretary of the Interior of the United States, respectfully shows:

1. That pursuant to the provisions of the Act of Congress approved August 1, 1888 (25 Stat. 357, 40 U.S.C. 257 and 258), and acts supplementary thereto and amendatory thereof, authorizing the acquisition of land by condemnation, and the Act of Congress of June 28, 1941 (55 Stat. 303, 352), authorizing the investigation and establishment of water rights including the purchase thereof, or of lands, or interest in lands, or rights of way for use and protection of water rights necessary and beneficial in connection with the administration and public use of the National Parks and Monuments, and appropriating money for such purposes, the Secretary of the Interior has determined that it is necessary, advantageous and in the interest of the United States to acquire by condemnation certain water rights and five parcels of land in Wayne County, Utah, aggregating 66 acres, more or less, ostensibly owned by Alma Chesnut and Emma Chesnut, his wife, for use in connection with Capitol Reef National Monument of the National Park Service, Department of the Interior, and are required for immediate use; that the land and water rights are more particularly described in the Declaration of Taking attached to the original petition for condemnation herein filed and by reference made a part hereof, and is also hereinafter

described.

2. That the estate taken for said public use is the full fee simple title in and to the land and water rights hereinafter described; that it is necessary that the title thereto be vested in the United States immediately, and to that end the Secretary of the Interior has this day filed with the court a Declaration of Taking together with United States Treasurer's check for the sum of $1800.00, being the estimated compensation for the taking of said parcels of land and water, for the use and benefit of the persons entitled thereto; that it is also necessary and convenient that the petitioner have the immediate and exclusive possession of said property; that the ostensible owners have agreed in writing to sell the said land and water rights to the United States of America for the sum of $1800.00, and said amount has been deposited in the registry of the court as aforesaid, subject to the examination of the title to said land, and have further consented to give petitioner the immediate and exclusive possession of said land, and petitioner desires the court to forthwith issue a judgment on the declaration of taking vesting the fee simple title in and to said property in the United States of America, together with the right of immediate and exclusive possession of said property.

3. That the said sum of $1800.00 so deposited in the registry of the court as aforesaid is the estimated just compensation for said land and water rights, with all buildings and improvements thereon and all appurtenances thereunto belonging, including any and all interest of whatsoever kind or character for the use and benefit of the parties entitled thereto, and the Secretary of the Interior is of the opinion that the ultimate award for said land and water rights will probably be within the limits of allocations and allotments made and provided for the purchase of said property.

4. That a plat showing the parcels of land to be taken designated by parcel numbers, together with the name of the ostensible owners of said parcels, is attached to the said declaration of taking and filed with the original petition and is by reference made a part hereof, and all persons claiming any right, title, estate or interest in or lien upon said land and water rights are hereby made parties to the action.

5. That all of said parcels of land are situate in Wayne County, Utah, together with the water being taken in this action, and are more particularly described as follows:

PARCEL NO. 1

Commencing 18 rods north and 3½ rods east of the NE corner of SW¼ of SW¼ of Section 14, T. 29 S., R. 6 E., S.L.M., in a wash or dry stream bed, thence running northwesterly, approximately N. 18 degrees, 30 minutes W., along said wash 9 rods 11½ feet more or less to a point 27 rods north of the said NE corner of the SW¼ of SW¼ of Section 14 and on the east line of the NW¼ SW¼ of said section; thence north 53 rods, more or less, along said east line NW¼ SW¼ to the East-West center line of said section; thence westerly along said center line 19 rods; thence southerly and parallel to east line of NW¼ of SW¼ of said Section 14, 64 rods more or less, to a point in the center of a lane between a stone wall and fence; thence easterly along said lane 12 rods; thence north of east on an angle of approximately 13 degrees 30 minutes 10 rods 5½ feet to the place of beginning, containing 7 acres and 108 square rods more or less.

PARCEL 2

Commencing on the east line of SW¼ of the SW¼ 16 rods south of the NE corner of the SW¼ of the SW¼ of Section 14, T. 29 S., R. 6 E., S.L.M., running thence southwesterly at an angle of approximately 3 degrees of west 24 rods and 4 feet; thence northeasterly at an angle of approximately 13 degrees east of north along the general course of a lane 33 rods and 8 feet to the southwest corner of Parcel 1; thence easterly along the south line of Parcel 1, 3 rods; thence southeasterly at an angle of approximately 24 degrees east of south 36 rods to the place of beginning, containing 3 acres, more or less.

PARCEL 3

The NE¼ of the SE¼ of Section 14, T. 29 S., R. 6 E., S.L.M.

PARCEL 4

Commencing at the SW corner of the NE¼ of the SE¼ of Section 14, T. 29 S., R. 6 E., S.L.M.; thence west along the south line of the N½ of the SE¼ of said section 56 rods; thence in a northeasterly direction to the NW corner of the NE¼ of the SE¼ of said Section 14; thence south along the west line of said NE¼ of the SE¼ 80 rods to the place of beginning; and containing 14 acres, more or less.

Parcels 1, 2, 3, and 4, described above, being the land conveyed to Alma Chesnut by Clarence L. Mulford and Marie Mulford, his wife, by deed dated July 22, 1926, and recorded in the Recorder's Office of Wayne County, Utah, in Book E of deeds, page 366.

PARCEL 5

Commencing at the NE corner of the SW¼ of the SW¼ of Section 14, T. 29 S., R. 6 E., S.L.M., thence easterly along the north line of the SE¼ of the SW¼ of said section 5½ rods; thence northwesterly 18 rods, more or less, along a wash and its prolongation, to a point 18 rods north and 3½ rods east of said NE corner of the SW¼ of the SW¼ of Section 14, which is also the SE corner of Parcel 1; thence southwesterly along the south line of said Parcel 1, 10 rods 5½ feet; thence westerly along the south line of said Parcel 1, 9 rods, to the NE corner of Parcel 2; thence southeasterly along the east line of said Parcel 2 to a point on the North line of the said SW¼ of the SW¼ of Section 14, approximately 8 rods 8 feet west of the point of beginning;

thence easterly along the north line of said SW¼ of the SW¼ 8 rods 8 feet to point of beginning, containing 2½ acres, more or less.

Parcel 5, described above, being the land conveyed to Alma Chesnut by Elvera Oyler and Cora Oyler by deed dated August 20, 1926, and recorded in the Recorder's Office of Wayne County, Utah, in Book E of deeds, page 522.

Containing in all 66 acres 148 square rods more or less.

Also the primary water right acquired under and by virtue of the laws of the State of Utah to divert sixty-six one-hundredths (.66) second feet of water for use during the entire year, as determined and established by decree of the District Court of the Sixth Judicial District in and for Wayne County, State of Utah, in an action entitled "Hanksville Canal Company, a corporation, vs. Torrey Irrigation Company, a Corporation et al.," confirming said right unto Alma Chesnut, which said decree was made on July 15, 1935.

Together with any and all water rights and all ditch rights appurtenant to the above-described parcels of land.

WHEREFORE, petitioner prays judgment vesting the fee simple title in and to the above described land and water in the United States of America based upon the declaration of taking, and for an order of immediate and exclusive possession, and also for final judgment upon clearing the title to said parcels of land and the payment of the amount deposited in the registry of the court to the person or persons entitled thereto, vesting the fee simple title in petitioner; that the court will enter all orders, judgments and decrees as may be necessary to bring all of the said land before the court and to make all persons, firms and corporations having or claiming any interest therein parties defendant, and to make all orders, judgments and decrees necessary to vest the complete and unencumbered fee simple title in the United States of America, and to quiet title in the petitioner against all persons claiming any right, title or interest in and to said land and water or any part thereof, and to make all other orders and judgments that may be just and proper in the premises.

Dated at Salt Lake City, Utah, this 22nd day of July, 1942.

UNITED STATES OF AMERICA

DAN B. SHIELDS
United States Attorney

Address:

200 Federal Building
Salt Lake City, Utah.

07-22-1942: petition for condemnation, civil no. 376; july 22, 1942

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

UNITED STATES OF AMERICA, Petitioner, v. Five Parcels of Land and Certain Water Rights in Wayne County, Utah, Alma Chesnut, et al., Defendants . . . . . . In the matter of acquisition by the United States of America of five pieces or parcels of land situate, lying and being in Wayne County, State of Utah, and certain water rights, for use in connection with the Capitol Reef National Monument of the National Park Service, United States Department of the Interior.	Civil No. 376 PETITION FOR CONDEMNATION FILED in United States District Court, District of Utah Jul 23, 1942 W.B. Wilson, Clerk By V.P. Ahlstrom, Deputy

THE HONORABLE JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH:

The petition of the United States of America, a sovereign, brought by Dan B. Shields, United States Attorney for the District of Utah, acting under the instructions of the Attorney General and at the request of the Secretary of the Interior of the United States, respectfully shows:

1. That pursuant to the provisions of the Act of Congress approved August 1, 1888 (25 Stat. 357, 40 U.S.C. 257 and 258), and acts supplementary thereto and amendatory thereof, authorizing the acquisition of land by condemnation, and the Act of Congress of June 28, 1941 (55 Stat. 303, 352), authorizing the investigation and establishment of water rights including the purchase thereof, or of lands, or interest in lands, or rights of way for use and protection of water rights necessary and beneficial in connection with the administration and public use of the National Parks and Monuments, and appropriating money for such purposes, the Secretary of the Interior has determined that it is necessary, advantageous and in the interest of the United States to acquire by condemnation certain water rights and five parcels of land in Wayne County, Utah, aggregating 66 acres, more or less, ostensibly owned by Alma Chesnut and Emma Chesnut, his wife, for use in connection with Capitol Reef National Monument of the National Park Service, Department of the Interior, and are required for immediate use; that the land and water rights are more particularly described in the Declaration of Taking attached to the original petition for condemnation herein filed and by reference made a part hereof, and is also hereinafter

described.

2. That the estate taken for said public use is the full fee simple title in and to the land and water rights hereinafter described; that it is necessary that the title thereto be vested in the United States immediately, and to that end the Secretary of the Interior has this day filed with the court a Declaration of Taking together with United States Treasurer's check for the sum of $1800.00, being the estimated compensation for the taking of said parcels of land and water, for the use and benefit of the persons entitled thereto; that it is also necessary and convenient that the petitioner have the immediate and exclusive possession of said property; that the ostensible owners have agreed in writing to sell the said land and water rights to the United States of America for the sum of $1800.00, and said amount has been deposited in the registry of the court as aforesaid, subject to the examination of the title to said land, and have further consented to give petitioner the immediate and exclusive possession of said land, and petitioner desires the court to forthwith issue a judgment on the declaration of taking vesting the fee simple title in and to said property in the United States of America, together with the right of immediate and exclusive possession of said property.

3. That the said sum of $1800.00 so deposited in the registry of the court as aforesaid is the estimated just compensation for said land and water rights, with all buildings and improvements thereon and all appurtenances thereunto belonging, including any and all interest of whatsoever kind or character for the use and benefit of the parties entitled thereto, and the Secretary of the Interior is of the opinion that the ultimate award for said land and water rights will probably be within the limits of allocations and allotments made and provided for the purchase of said property.

4. That a plat showing the parcels of land to be taken designated by parcel numbers, together with the name of the ostensible owners of said parcels, is attached to the said declaration of taking and filed with the original petition and is by reference made a part hereof, and all persons claiming any right, title, estate or interest in or lien upon said land and water rights are hereby made parties to the action.

5. That all of said parcels of land are situate in Wayne County, Utah, together with the water being taken in this action, and are more particularly described as follows:

PARCEL NO. 1

Commencing 18 rods north and 3½ rods east of the NE corner of SW¼ of SW¼ of Section 14, T. 29 S., R. 6 E., S.L.M., in a wash or dry stream bed, thence running northwesterly, approximately N. 18 degrees, 30 minutes W., along said wash 9 rods 11½ feet more or less to a point 27 rods north of the said NE corner of the SW¼ of SW¼ of Section 14 and on the east line of the NW¼ SW¼ of said section; thence north 53 rods, more or less, along said east line NW¼ SW¼ to the East-West center line of said section; thence westerly along said center line 19 rods; thence southerly and parallel to east line of NW¼ of SW¼ of said Section 14, 64 rods more or less, to a point in the center of a lane between a stone wall and fence; thence easterly along said lane 12 rods; thence north of east on an angle of approximately 13 degrees 30 minutes 10 rods 5½ feet to the place of beginning, containing 7 acres and 108 square rods more or less.

PARCEL 2

Commencing on the east line of SW¼ of the SW¼ 16 rods south of the NE corner of the SW¼ of the SW¼ of Section 14, T. 29 S., R. 6 E., S.L.M., running thence southwesterly at an angle of approximately 3 degrees of west 24 rods and 4 feet; thence northeasterly at an angle of approximately 13 degrees east of north along the general course of a lane 33 rods and 8 feet to the southwest corner of Parcel 1; thence easterly along the south line of Parcel 1, 3 rods; thence southeasterly at an angle of approximately 24 degrees east of south 36 rods to the place of beginning, containing 3 acres, more or less.

PARCEL 3

The NE¼ of the SE¼ of Section 14, T. 29 S., R. 6 E., S.L.M.

PARCEL 4

Commencing at the SW corner of the NE¼ of the SE¼ of Section 14, T. 29 S., R. 6 E., S.L.M.; thence west along the south line of the N½ of the SE¼ of said section 56 rods; thence in a northeasterly direction to the NW corner of the NE¼ of the SE¼ of said Section 14; thence south along the west line of said NE¼ of the SE¼ 80 rods to the place of beginning; and containing 14 acres, more or less.

Parcels 1, 2, 3, and 4, described above, being the land conveyed to Alma Chesnut by Clarence L. Mulford and Marie Mulford, his wife, by deed dated July 22, 1926, and recorded in the Recorder's Office of Wayne County, Utah, in Book E of deeds, page 366.

PARCEL 5

Commencing at the NE corner of the SW¼ of the SW¼ of Section 14, T. 29 S., R. 6 E., S.L.M., thence easterly along the north line of the SE¼ of the SW¼ of said section 5½ rods; thence northwesterly 18 rods, more or less, along a wash and its prolongation, to a point 18 rods north and 3½ rods east of said NE corner of the SW¼ of the SW¼ of Section 14, which is also the SE corner of Parcel 1; thence southwesterly along the south line of said Parcel 1, 10 rods 5½ feet; thence westerly along the south line of said Parcel 1, 9 rods, to the NE corner of Parcel 2; thence southeasterly along the east line of said Parcel 2 to a point on the North line of the said SW¼ of the SW¼ of Section 14, approximately 8 rods 8 feet west of the point of beginning;

thence easterly along the north line of said SW¼ of the SW¼ 8 rods 8 feet to point of beginning, containing 2¼ acres, more or less.

Parcel 5, described above, being the land conveyed to Alma Chesnut by Elvera Oyler and Cora Oyler by deed dated August 20, 1926, and recorded in the Recorder's Office of Wayne County, Utah, in Book E of deeds, page 522.

Containing in all 66 acres 148 square rods more or less.

Also the primary water right acquired under and by virtue of the laws of the State of Utah to divert sixty-six one-hundredths (.66) second feet of water for use during the entire year, as determined and established by decree of the District Court of the Sixth Judicial District in and for Wayne County, State of Utah, in an action entitled "Hanksville Canal Company, a corporation, vs. Torrey Irrigation Company, a Corporation et al.," confirming said right unto Alma Chesnut, which said decree was made on July 15, 1935.

Together with any and all water rights and all ditch rights appurtenant to the above-described parcels of land.

WHEREFORE, petitioner prays judgment vesting the fee simple title in and to the above described land and water in the United States of America based upon the declaration of taking, and for an order of immediate and exclusive possession, and also for final judgment upon clearing the title to said parcels of land and the payment of the amount deposited in the registry of the court to the person or persons entitled thereto, vesting the fee simple title in petitioner; that the court will enter all orders, judgments and decrees as may be necessary to bring all of the said land before the court and to make all persons, firms and corporations having or claiming any interest therein parties defendant, and to make all orders, judgments and decrees necessary to vest the complete and unencumbered fee simple title in the United States of America, and to quiet title in the petitioner against all persons claiming any right, title or interest in and to said land and water or any part thereof, and to make all other orders and judgments that may be just and proper in the premises.

Dated at Salt Lake City, Utah, this 22nd day of July, 1942.

UNITED STATES OF AMERICA

DAN B. SHIELDS
United States Attorney

Address:

200 Federal Building
Salt Lake City, Utah.

12-00-0000: judgement on declaration of taking, civil no. 376



IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

UNITED STATES OF AMERICA, Petitioner, v. Five Parcels of Land and Certain Water Rights in Wayne County, State of Utah, Alma Chesnut, et al., Defendants In the matter of acquisition by the United States of America of five pieces or parcels of land situate, lying and being in Wayne County, State of Utah, and certain water rights, for use in connection with the Capitol Reef National Monument of the National Park Service, United States Department of the Interior.	Civil No. 376 JUDGMENT ON DECLARATION OF TAKING FILED in United States District Court, District of Utah July 23, 1942 1:00 P.M. W.B. Wilson, Clerk By V.P. Ahlstrom, Deputy

It appearing to the court that on July 22, 1942, the United States of America filed herein its petition for condemnation of 66 acres of land, more or less, in Wayne County, Utah, together with certain water rights hereinafter described, and also filed a declaration of taking by the Secretary of the Interior of the United States under and by virtue of the provisions of the Acts of Congress as follows: Act of Congress approved August 1, 1888 (25 Stat. 357, 40 U.S.C. 257 and 258), and acts supplementary thereto and amendatory thereof, authorizing the acquisition of land by condemnation, and the Act of Congress of June 28, 1941 (55 Stat. 303, 352) authorizing the investigation and establishment of water rights including the purchase thereof, or of lands, or interest in lands, or rights of way for use and protection of water rights necessary and beneficial in connection with the administration and public use of the National Parks and Monuments, and appropriate money for such purposes; that said petition for condemnation sets forth the taking of the fee simple title to said parcels of land for a public use, to-wit, Capitol Reef National Monument of the National Park Service, Department of the Interior. That said petition for condemnation and the declaration of taking attached thereto also sets forth the ascertaining of just compensation for the taking of said water and land, in the sum of $1800.00, and that said amount has been deposited in the registry of the court for the use of the persons entitled thereto; that said land is located in Wayne County, Utah, together with the water, and is described as follows:

PARCEL 1

Commencing 18 rods north and 3½ rods east of the NE corner of SW¼ of SW¼ of Section 14, T. 29 S., R. 6 E., S.L.M., in a wash or dry stream bed, thence running northwesterly, approximately N. 18 degrees, 30 minutes W., along said wash 9 rods 11½ feet more or less to a point 27 rods north of the said NE corner of the SW¼ of SW¼ of Section 14 and on the east line of the NW¼ SW¼ of said section; thence north 53 rods, more or less, along said east line NW¼ SW¼ to the East-West center line of said section; thence westerly along said center line 19 rods; thence southerly and parallel to east line of NW¼ of SW¼ of said section 14, 64 rods more or less, to a point in the center of a lane between a stone wall and fence; thence easterly along said lane 12 rods; thence north of east on an angle of approximately 13 degrees 30 minutes 10 rods 5½ feet to the place of beginning, containing 7 acres and 108 square rods more or less.

PARCEL 2

Commencing on the east line of SW¼ of the SW¼ 16 rods south of the NE corner of the SW¼ of the SW¼ of Section 14, T. 29 S., R. 6 E., S.L.M., running thence southwesterly at an angle of approximately 3 degrees of west 24 rods and 4 feet; thence northeasterly at an angle of approximately 13 degrees east of north along the general course of a lane 33 rods and 8 feet to the southwest corner of Parcel 1; thence easterly along the south line of Parcel 1, 3 rods; thence southeasterly at an angle of approximately 24 degrees east of south 36 rods to the place of beginning, containing 3 acres, more or less.

PARCEL 3

The NE¼ of the SE¼ of Section 14, T. 29 S., R. 6 E., S.L.M.

PARCEL 4

Commencing at the SW corner of the NE¼ of the SE¼ of Section 14, T. 29 S., R. 6 E., S.L.M., thence west along the south line of the N½ of the SE¼ of said section 56 rods; thence in a northeasterly direction to the NW corner of the NE¼ of the SE¼ of said Section 14; thence south along the west line of said NE¼ of the SE¼ 80 rods to the place of beginning; and containing 14 acres, more or less.

Parcels 1, 2, 3 and 4, described above, being the land conveyed to Alma Chesnut by Clarence L. Mulford and Marie Mulford, his wife, by deed dated July 22, 1926, and recorded in the Recorder's Office of Wayne County, Utah, in Book E of deeds, page 366.

PARCEL 5

Commencing at the NE corner of the SW¼ of the SW¼ of Section 14, T. 29 S., R. 6 E., S.L.M., thence easterly along the north line of the SE¼ of the SW¼ of said section 5½ rods; thence northwesterly 18 rods, more or less, along a wash and its prolongation, to a point 18 rods north and 3½ rods east of said NE corner of the SW¼ of the SW¼ of Section 14, which is also the SE corner of Parcel 1; thence southwesterly along the south line of said Parcel 1, 10 rods 5½ feet; thence westerly along the south line of said Parcel 1, 9 rods, to the NE corner of Parcel 2; thence southeasterly along the east line of said Parcel 2 to a point on the north line of the said SW¼ of the SW¼ of Section 14, approxi-

mately 8 rods 8 feet west of the point of beginning; thence easterly along the north line of said SW¼ of the SW¼ 8 rods 8 feet to point of beginning, containing 2½ acres, more or less.

Parcel 5, described above, being the land conveyed to Alma Chesnut by Elvera Oyler and Cora Oyler by deed dated August 20, 1926, and recorded in the Recorder's Office of Wayne County, Utah, in Book E of deeds, page 522.

Containing in all 66 acres 148 square rods more or less. 66.31

Also the primary water right acquired under and by virtue of the laws of the State of Utah to divert sixty-six one-hundredths (.66) second feet of water for use during the entire year, as determined and established by decree of the District Court of the Sixth Judicial District in and for Wayne County, State of Utah, in an action entitled "Hanksville Canal Company, a corporation, vs. Torrey Irrigation Company, a corporation et al.," confirming said right unto Alma Chesnut, which said decree was made on July 15, 1935.

Together with any and all water rights and all ditch rights appurtenant to the above-described parcels of land.

And it further appearing to the court that the Secretary of the Interior is of the opinion that the ultimate award for said land and water will probably be within any limits prescribed by law as the price to be paid therefor:

It is hereby ORDERED, ADJUDGED AND DECREED that the fee simple title absolute is hereby vested in the United States of America to the said parcels of land and water, and that petitioner is hereby granted the immediate and exclusive possession and control of said land and water.

It is further ORDERED that a copy of this Judgment with the certificate of the clerk of this court showing the payment into the registry of the court of the sum of $1800.00 hereinabove set forth, be served upon the owners of said land and water, and all other persons claiming any right, title or interest in said land or water.

It is further ORDERED that due and legal service be had upon all persons, firms and corporations having or claiming to have any right, title or interest in or to said property, and that all such persons be required to answer in this action setting forth any claim, right, title or interest they may have in said property or be forever barred from so doing.

Dated this 23rd day of July, 1942.

TILLMAN D. JOHNSON
Judge, United States District Court

UNITED STATES OF AMERICA)
) ss:
District of Utah)

I, W. B. Wilson, Clerk of the United States District Court in and for the District of Utah, do hereby certify that the annexed and foregoing is a true and full copy of the original

Petition for Condemnation,
Declaration of Taking and
Judgment on Declaration of Taking

filed in Case No. 376, Civil

United States of America
v.
Five Parcels of Land and Certain
Water Rights in Wayne County, State
of Utah, Alma Chesnut, et al

now remaining among the records of the said Court in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Salt Lake City this 23rd day of July, A. D. 19 42.

W. B. WILSON
Clerk.

By (Sgd) Margaret Johnson
Deputy Clerk.

00-00-0000: declaration of taking

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

UNITED STATES OF AMERICA, Petitioner, v. Five Parcels of Land and Certain Water Rights in Wayne County, Utah, Alma Chesnut, et al., Defendants. * In the matter of acquisition by the United States of America of five pieces or parcels of land situate, lying and being in Wayne County, State of Utah, and certain water rights, for use in connection with the Capitol Reef National Monument of the National Park Service, United States Department of the Interior. *	NO. 376

DECLARATION OF TAKING

I, E. K. BURLEW, First Assistant Secretary of the Interior of the United States, acting in such capacity, do hereby make and cause to be filed this Declaration of Taking under and in accordance with an Act of Congress approved February 26, 1931 (46 Stat. 1421; 40 U. S. C. 258a), and acts supplementary thereto and amendatory thereof, and declare that:

FIRST: (a) The land and water rights hereinafter described are taken pursuant to and under the provisions of the Interior Department Appropriation Act, 1942, approved June 28, 1941 (55 Stat. 303, 352), authorizing the investigation and establishment

of water rights, including the purchase thereof or of lands or interests in lands or rights-of-way for use and protection of water rights necessary or beneficial in connection with the administration and public use of the national parks and monuments.

(b) The said land and water rights hereinafter described have been selected by me for acquisition by the United States for use in connection with the Capitol Reef National Monument of the National Park Service, Department of the Interior, and are required for immediate use.

(c) In my opinion, it is necessary, advantageous, and in the interest of the United States that said land and water rights be acquired by judicial proceedings as authorized by an Act of Congress approved August 1, 1888 (25 Stat. 357; 40 U. S. C. 257, 258), and Acts supplementary thereto and amendatory thereof.

(d) The public uses for which said land and water rights are taken are as follows:

The land and water rights are needed in connection with the administration and public use of the Capitol Reef National Monument in the State of Utah.

SECOND: Pursuant to law, I have selected for acquisition for the said public uses the following described land and water rights:

Those five certain pieces or parcels of land situated in Wayne County, Utah, more particularly described as follows:

PARCEL 1

Commencing 18 rods north and $3\frac{1}{2}$ rods east of the NE corner of $SW\frac{1}{4}$ of $SW\frac{1}{4}$ of Section 14, T. 29 S., R. 6 E., S.L.M., in a wash or dry ~~s~~tream bed, thence running northwesterly, approximately N. 18 degrees, 30 minutes W., along said wash 9 rods $11\frac{1}{2}$ feet more or less to a point 27 rods north of the said NE corner of the $SW\frac{1}{4}$ of $SW\frac{1}{4}$ of Section 14

and on the east line of the NW¼ SW¼ of said section; thence north 53 rods, more or less, along said east line NW¼ SW¼ to the East-West center line of said section; thence westerly along said center line 19 rods; thence southerly and parallel to east line of NW¼ of SW¼ of said Section 14, 64 rods more or less, to a point in the center of a lane between a stone wall and fence; thence easterly along said lane 12 rods; Thence north of east on an angle of approximately 13 degrees 30 minutes 10 rods 5½ feet to the place of beginning, containing 7 acres and 108 square rods more or less.

PARCEL 2

Commencing on the east line of SW¼ of the SW¼ 16 rods south of the NE corner of the SW¼ of the SW¼ of Section 14, T. 29 S., R. 6 E., S.L.M., running thence southwesterly at an angle of approximately 3 degrees of west 24 rods and 4 feet; thence northeasterly at an angle of approximately 13 degrees east of north along the general course of a lane 33 rods and 8 feet to the southwest corner of Parcel 1; thence easterly along the south line of Parcel 1, 3 rods; thence southeasterly at an angle of approximately 24 degrees east of south 36 rods to the place of beginning, containing 3 acres, more or less.

PARCEL 3

The NE¼ of the SE¼ of Section 14, T. 29 S., R. 6 E., S.L.M.

PARCEL 4

Commencing at the SW corner of the NE¼ of the SE¼ of Section 14, T. 29 S., R. 6 E., S.L.M.; thence west along the south line of the N½ of the SE¼ of said section 56 rods; thence in a northeasterly direction to the NW corner of the NE¼ of the SE¼ of said Section 14; thence south along the west line of said NE¼ of the SE¼ 80 rods to the place of beginning; and containing 14 acres, more or less.

Parcels 1, 2, 3, and 4, described above, being the land conveyed to Alma Chesnut by Clarence L. Mulford and Marie Mulford, his wife, by deed dated July 22, 1926, and recorded in the Recorder's Office of Wayne County, Utah, in Book E of deeds, page 366.

PARCEL 5

Commencing at the NE corner of the SW¼ of the SW¼ of Section 14, T. 29 S., R. 6 E., S.L.M., thence easterly along the north line of the SE¼ of the SW¼ of said section 5½ rods;

thence northwesterly 18 rods, more or less, along a wash and its prolongation, to a point 18 rods north and 3½ rods east of said NE corner of the SW¼ of the SW¼ of Section 14, which is also the SE corner of Parcel 1; thence southwesterly along the south line of said Parcel 1, 10 rods 5½ feet; thence westerly along the south line of said Parcel 1, 9 rods, to the NE corner of Parcel 2; thence southeasterly along the east line of said Parcel 2 to a point on the north line of the said SW¼ of the SW¼ of Section 14, approximately 8 rods 8 feet west of the point of beginning; thence easterly along the north line of said SW¼ of the SW¼ 8 rods 8 feet to point of beginning, containing 2½ acres, more or less.

Parcel 5, described above, being the land conveyed to Alma Chesnut by Elvera Oyler and Cora Oyler by deed dated August 20, 1926, and recorded in the Recorder's Office of Wayne County, Utah, in Book E of deeds, page 522.

Containing in all 66 acres 148 square rods more or less.

Also the primary water right acquired under and by virtue of the laws of the State of Utah to divert sixty-six one-hundredths (.66) second feet of water for use during the entire year, as determined and established by decree of the District Court of the Sixth Judicial District in and for Wayne County, State of Utah, in an action entitled "Hanksville Canal Company, a corporation, vs. Torrey Irrigation Company, A Corporation et al.," confirming said right unto Alma Chesnut, which said decree was made on July 15, 1935,

Together with any and all water rights and all ditch rights appurtenant to the above-described parcels of land.

A plat of the above-described land is annexed hereto as Exhibit "A" and made a part hereof.

THIRD: The estate taken for said public uses is the full fee simple title thereto of the land and water rights hereinabove described.

FOURTH: The sum estimated by me as just compensation for said land and water rights, with all buildings and improvements thereon and all appurtenances thereunto belonging, and including any and all interest whatsoever, is ONE THOUSAND, EIGHT HUNDRED and no/100 DOLLARS ($1,800.00), which sum I hereby deposit in the registry of this court

for the use and benefit of the parties entitled thereto. I am of the opinion that the ultimate award for said land and water rights will probably be within the limits of allocations and allotments made and provided for the purchase of the properties.

IN WITNESS WHEREOF, I have signed this Declaration of Taking and caused the seal of the Department of the Interior to be affixed hereto on this 26th day of JUNE , A. D., 1942, in the City of Washington, District of Columbia.

(Signed) E. K. BURLEW

E. K. Burlew,
First Assistant Secretary of the Interior
of the United States of America.

FILED in United States District
Court, District of Utah
July 23, 1942
W.B.Wilson, Clerk
By V.P. Ahlstrom, Deputy

COPY

M. 31802.

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON

May 29, 1942

MEMORANDUM for the Director,
National Park Service.

There are returned herewith the deed, abstract of title and related data pertaining to the proposed purchase by the United States from Alma Chestnut and Emma Chestnut, his wife, of 66 acres of land, more or less, in Wayne County, Utah, together with certain water rights for a consideration of $1800, under Contract No. I-lp-18043, approved July 14, 1941, for use in connection with the Capitol Reef National Monument.

Before an opinion as to the validity of the title can be rendered, it will be necessary for the vendor to quiet the title to the lands under consideration in an action brought for that purpose. This requirement is made because of the following objections and defects:

1. The descriptions contained in the various deeds comprising the chain of title to the several parcels as set forth in the abstract are so uncertain and indefinite that it is impossible to determine whether there are any intervening gores or strips of land outstanding and whether the vendor has acquired a valid title to all of the lands proposed to be conveyed to the United States. It appears that in an effort to determine the intentions of the grantors in the various deeds and to reconcile the ambiguous descriptions, a study of the property lines as shown by visible evidence on the ground was made by the National Park Service engineers. See Drawing No. NM-CR6980. However, since this study cannot be considered sufficient to establish the property lines, it can only be considered as factual evidence to be submitted in a quiet title or other action to determine the ownership.

2. At page 17 of the abstract appears a deed dated March 24, 1919, from M. V. Oyler to Leo P. Pendleton and at page 27 appears a deed dated July 11, 1922, from M. V. Oyler to Elvera Oyler, Carrie Oyler and Cora Oyler. Said M. V. Oyler acquired title to a portion of this property by deed from George M. Carrell and wife in 1916 (page 26). However, the abstract fails to disclose the manner in which title to the remainder of this property proceeded from the patentees to become vested in M. V. Oyler.

3. The first parcel of the land deeded by M. V. Oyler, at page 27, appears to encroach on the west side of Parcel No. 4. See Drawing

No. NM-CR6980. Attention is directed to the fact that various monuments set by the county surveyor in October 1941 in connection with the sale of this parcel by M. V. Oyler were found by the engineers in making the property line study. These monuments would appear to substantiate Oyler's claim to the overlap.

4. The interests of the heirs of Carrie Oyler, deceased, in and to Parcel No. 5, appear to be outstanding. By deed dated July 11, 1922 (page 27), Elvera Oyler, Carrie Oyler and Cora Oyler obtained title to certain lands including this parcel. Thereafter, on August 20, 1926, (page 29), Elvera Oyler and Cora Oyler conveyed their interests in Parcel No. 5 to Alma Chestnut. By decree entered in the district court on January 22, 1942, the interest of Carrie Oyler, deceased, was distributed to M. V. Oyler and Elvera Oyler (page 28). The abstract, however, fails to show that these outstanding interests have been acquired by Alma Chestnut.

Since none of the record descriptions are sufficiently accurate to serve as a basis for quitclaim deeds from the adjacent property owners, it will be necessary for the vendor to quiet his title to the lands under consideration.

The file discloses that it may be impracticable for the vendor to quiet his title to the lands. In this event consideration should be given to the advisability of acquiring the property under condemnation proceedings.

For the Solicitor,

(Sgd) Theodore Spector

Theodore Spector,
Chief, Property Acquisition Division.

Enclosure 2925411.

106673

UNITED STATES
DEPARTMENT OF THE INTERIOR
National Park Service

I-1P-18043

OPTION TO SELL REAL ESTATE TO THE UNITED STATES GOVERNMENT

THE UNDERSIGNED, hereinafter known as the vendor, in consideration of the examination and appraisal of the land hereinbelow described by the United States and other good and valuable consideration, the receipt of which is hereby acknowledged, does hereby agree for himself, herself, or themselves, or heirs, administrators, executors and assigns, as follows:

(1) That at any time within three months from the date of this instrument, if requested so to do by an authorized representative of the United States, the said vendor will sell and at his, her, their, or its own expense, convey, free of all encumbrances whatsoever, to the United States or its nominee by proper deed of conveyance with general warranty of title, under conditions hereinafter provided, all of that tract or tracts of land situate and lying in the County of Wayne, State of Utah, containing sixty-six acres, more or less, and more particularly described as follows:

Commencing 18 rods north and 3½ rods east of the NE corner of the SW¼ of the SW¼ of Section 14, Township 29 South, Range 6 East, S.L.M., thence running NW on an angle 18 degrees 30' 9 rods 11½ feet, to a point 27 rods north of the NE corner of the SW¼ of the SW¼ of Sec. 14, thence north 53 rods, thence west 19 rods; thence south 64 rods; thence east 12 rods, thence north of east on an angle 13 degrees 30' 10 rods 5½ feet to the place of beginning, containing 7 acres, 108 square rods, more or less.

Also commencing 16 rods south of the NE corner of the SW¼ of the SW¼ of Section 14, T. 29 S., Range 6 East, S.L.M., running thence SW at an angle of 3 degrees south of west 24 rods and 4 feet, thence NE at an angle of 13 degrees, east of north 33 rods and 8 feet; thence east 3 rods; thence SE at an angle of 24 degrees east of south 36 rods to the place of beginning, containing 3 acres, more or less.

Also the NE¼ of the SE¼ of Section 14, containing 40 acres, more or less.

Also commencing at the SW corner of the NE¼ of the SE¼ of Section 14 in Township 29 South of Range 6 East, S.L.M., thence West 56 rods; thence in a NE direction to the NW corner of the NE¼ of the SE¼ of Section 14; thence South 80 rods to the place of beginning, containing 14 acres, more or less.

Also commencing at the NE corner of the SW¼ of the SW¼ of Section 14, Township 29 South, of Range 6 east, S.L.M., thence running East 5½ rods; thence northwest 18 rods; thence southwest 10 rods 5½ feet; thence west 9 rods; thence southeast to a point 8 rods 8 feet west of beginning, thence east 8 rods 8 feet to beginning, containing 2½ acres, more or less; containing in all 66 acres, more or less.

The property intended to be sold and conveyed at the option of the United States is all the land and appurtenances connected therewith, owned by the vendor in Section 14, Township 29 South, range 6 east, Salt Lake Meridian.

And all water rights held by the vendor.

(2) That the price at which said land will be sold to the United States as hereinbefore provided shall be $ Eighteen Hundred Dollars.

(3) That in case the vendor is unable to show and establish title to the above-described lands satisfactory to the United States Government, then, and in that event, the vendor agrees that the United States may, in its discretion, institute condemnation proceedings for the acquisition of said lands and that the price hereinabove set forth is hereby agreed to by the vendor as to the value of the land to be acquired under said condemnation proceedings.

(4) That, at the date of this instrument, the title to said lands is clear, free and unencumbered, except Federal Land Bank loan of Two Hundred Twenty-Eight and Sixty-Seven One-Hundredths Dollars ($228.67).

which said vendor agrees to have released and has the full right, power, and authority to convey to the United States an unencumbered fee simple title to the aforesaid lands.

(5) That, when requested by the proper representative of the United States, at any time after the exercise of this option in the manner hereinafter specified, the said vendor will promptly at his or her own expense, furnish an abstract of title which shall later be extended to include any instrument subsequently required to be recorded by the United States in connection with the title to said lands to show unencumbered fee simple title or a title certificate, and will also record the deed of conveyance and/or other necessary papers made pursuant to this instrument; provided, that if said vendor fails to furnish a proper abstract of title, or title certificate, within sixty (60) days after such request, then the United States may procure same at the expense of said vendor and deduct the cost thereof from the purchase price hereinabove set forth.

(6) That during the period covered by this instrument the said vendor does hereby grant to the officers and accredited agents and representatives of the United States, at all proper times, unrestricted right and privilege to survey or enter said lands for all proper and lawful purposes in connection with the negotiations for the acquisition thereof.

(7) That when the United States of America acting through the Secretary of the Interior, or other authorized representative, shall have approved and signed this option for the purchase of the lands as herein provided then, in that event, this instrument shall constitute a contract of bargain and sale between the parties hereto.

(8) No member of or delegate to Congress or resident commissioner shall be admitted to any share or part of this contract or to any benefit that may arise therefrom. Nothing in this paragraph, however, shall invalidate this contract if made with a corporation for its general benefit.

In witness whereof they have set their hands and seals to these presents on this tenth day of June, 1941.

Signed, sealed and delivered in the presence of:
(2 witnesses to each signature)

	(SEAL)
	(SEAL)
Albert L. Thurm	Alma Thurmond (SEAL)
Mrs. R. Redmond	(SEAL)
Albert L. Thurm	Emma McDermott (SEAL)
Mrs. R. Redmond	(SEAL)
	(SEAL)
	(SEAL)

Approved JUL 14 1941
(Date)

John L. Dempsey
UNDER Assistant Secretary of the Interior

STATE OF CALIFORNIA

CITY AND COUNTY OF SAN FRANCISCO

On this 23rd day of September 1941, before me personally appeared Albert L. Johnson, personally known to me to be the same person whose name is subscribed to the above instrument as a witness thereto, who, being by me duly sworn, deposed and said that he resides in Piedmont, County of Alameda, and State of California; that he was present and saw Alma Chesnut, personally known to him to be the signer of the above instrument as a party thereto, sign and deliver the same, and heard him acknowledge that he executed the same, and that he, the deponent, thereupon signed his name as a subscribing witness thereto at the request of said Alma Chesnut.

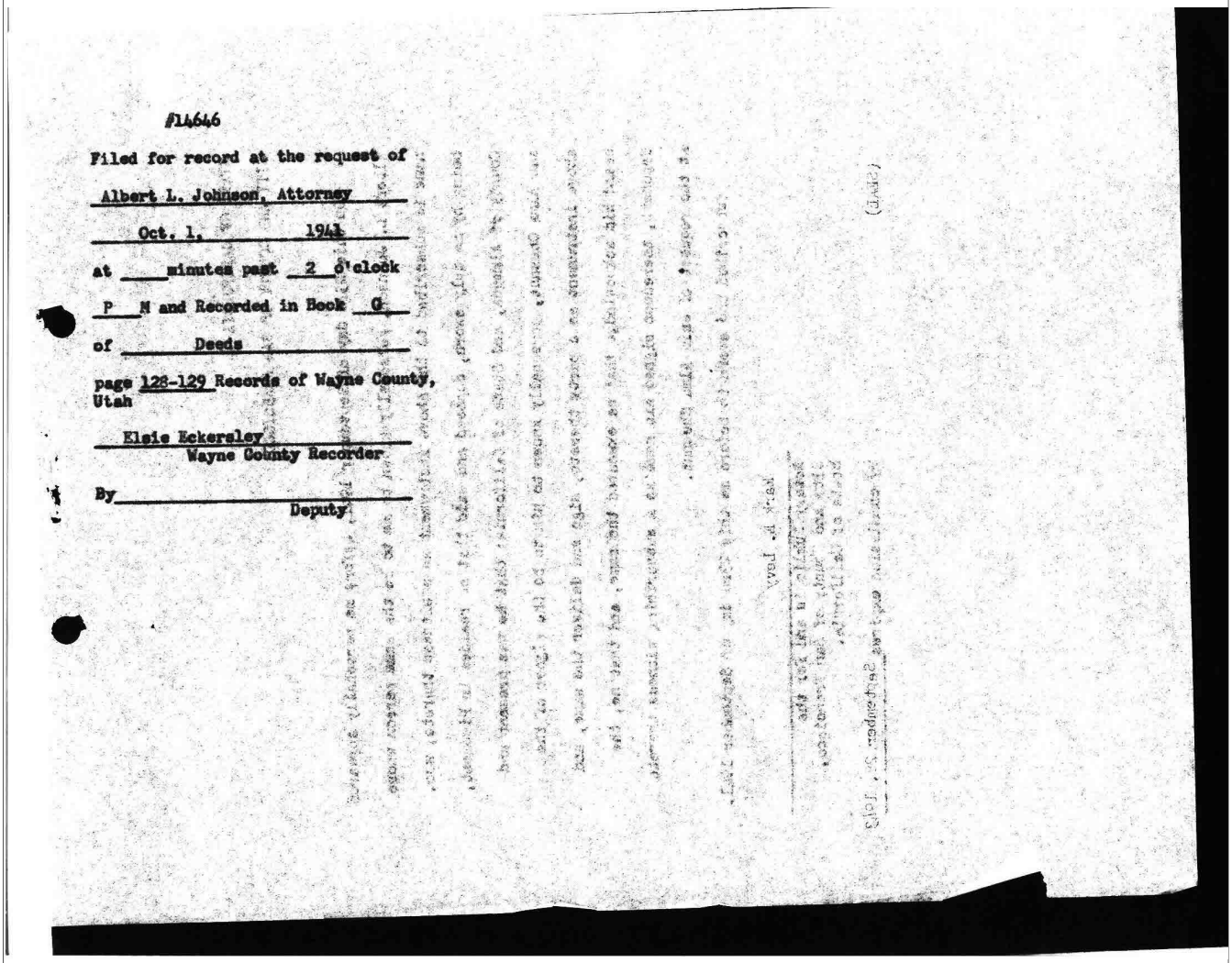
Subscribed and sworn to before me this 23rd day of September 1941.

Mark E. Levy

Notary Public in and for the
City and County of San Francisco,
State of California.

(SEAL)

My commission expires September 28, 1943



#14646

Filed for record at the request of

Albert L. Johnson, Attorney

Oct. 1, 1941

at ____ minutes past 2 o'clock

P M and Recorded in Book G

of Deeds

page 128-129 Records of Wayne County, Utah

Elsie Eckersley
Wayne County Recorder

By _____
Deputy

05-07-1941: appraisal sheet; may 07, 1941

APPRAISAL SHEET

Date May 7, 1941

Present Owner Alma Chesnut — Fruita, Wayne County Courthouse

Tract No 12 and 14 — Acres 66± acres

Location Section 14, Twp. 29S., S.L.M.

A. Land

1. Cleared

(a) Under cultivation	8 7 Acres	@	$ 10.00 100.00	per Ac.	$ 80.00 700.00
(b) Uncultivated	Acres	@	$	per Ac.	

2. Uncleared Land

(a) Timber Land	0 Acres	@	$	per Ac.	
(b) Brush and cut over land	52- Acres	@	$ 1.00	per Ac.	52.00

Total Value of Land $ 832.00

B. Improvements - Present value.

1. Dwelling or dwellings	$ 400.00
2. Outbuildings	100.00
3. Fences	300.00
4. Other tangible values	1250.00
Total value of improvements	$ 2050.00
Total value of land	832.00
Total value of property	2882.00

Remarks Land located within Capitol Reef National Monument. Water and land of importance for administration and for road, trail and picnic ground development. Location plat inside appraisal sheet. Photographs attached.

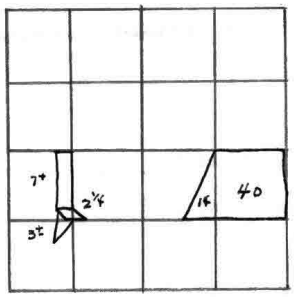
Approved: Board. Dunn
Hydraulic Engineer.

Prepared by Paul R. Franke
Superintendent

Approved: Ernest L. Johnson
Associate Attorney

T29S RGE

Sec 14 SLBM



Other tangible values:

Water, Fremont River, appraised at 1,000 c.f.s.	$750
Cistern	100
Orchard trees on 4 acres	400
	$ 1250

04-09-1941: pictures of alma chesnut property; april 09, 1941

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF NATIONAL PARKS,
BUILDINGS, AND RESERVATIONS
ZION AND BRYCE CANYON NATIONAL PARKS
UTAH

OFFICE OF THE SUPERINTENDENT
P. O. ADDRESS:
SPRINGDALE, UTAH



(1) Alma Chesnut House - Fruita, Wayne County, Utah
Looking North 4-9-41



(2) Chesnut house -North end of house
Note corrals and barn in right foreground.
4-9-41

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF NATIONAL PARKS,
BUILDINGS, AND RESERVATIONS
ZION AND BRYCE CANYON NATIONAL PARKS
UTAH

OFFICE OF THE SUPERINTENDENT
P. O. ADDRESS:
SPRINGDALE, UTAH



(3) Barn and Shed on Chesnut property
4-9-41



(4) Orchard and truck garden North-west of house
4-9-41



5,6 & 7

Left: 8 acres of washed out orchard land.
Freemont River in foreground-looking down river

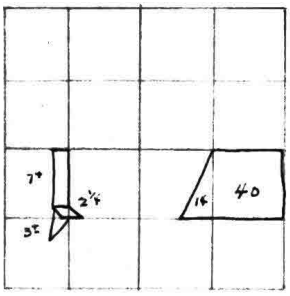
Center: Trail around cliff.

Right: Trail at base of cliff.

Note holes drilled in cliff to hold irrigation flume (center picture)

T29S RGE

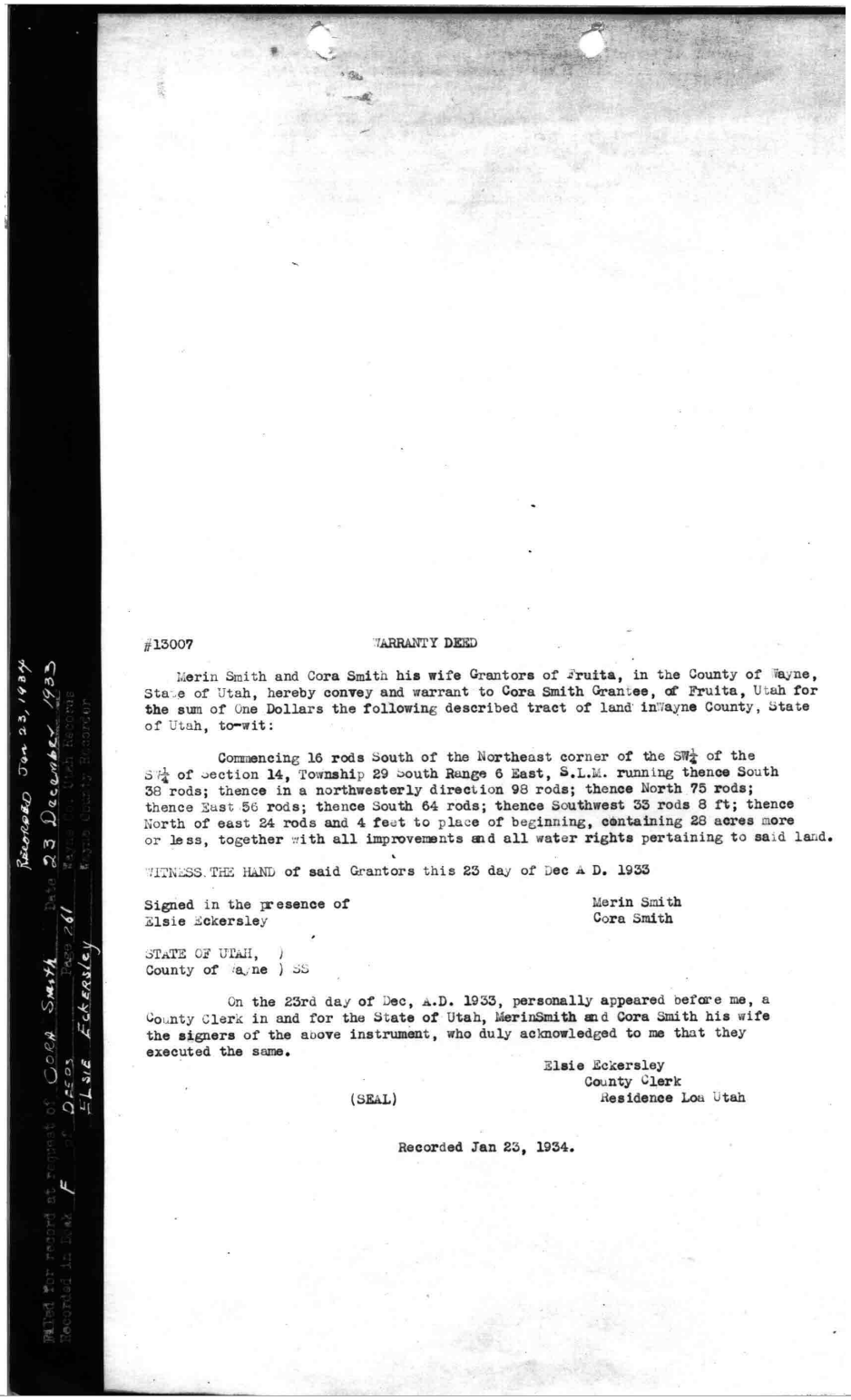
Sec 14 SLBM



Other tangible values:

Water, Fremont River, appraised at 1,000 c.f.s.	$750
Cistern	100
Orchard trees on 4 acres	400
	$ 1250

00-00-0000: warranty deed, merin and cora smith



Filed for record at request of Cora Smith Date Recorded Jan 23, 1934
Recorded in Book F of Deeds Page 261 Wayne County, Utah Records
Elsie Eckersley Wayne County Recorder

#13007 WARRANTY DEED

Merin Smith and Cora Smith his wife Grantors of Fruita, in the County of Wayne, State of Utah, hereby convey and warrant to Cora Smith Grantee, of Fruita, Utah for the sum of One Dollars the following described tract of land inWayne County, State of Utah, to-wit:

Commencing 16 rods South of the Northeast corner of the SW¼ of the S½ of Section 14, Township 29 South Range 6 East, S.L.M. running thence South 38 rods; thence in a northwesterly direction 98 rods; thence North 75 rods; thence East 56 rods; thence South 64 rods; thence Southwest 33 rods 8 ft; thence North of east 24 rods and 4 feet to place of beginning, containing 28 acres more or less, together with all improvements and all water rights pertaining to said land.

WITNESS THE HAND of said Grantors this 23 day of Dec A D. 1933

Signed in the presence of
Elsie Eckersley

Merin Smith
Cora Smith

STATE OF UTAH,)
County of Wayne) SS

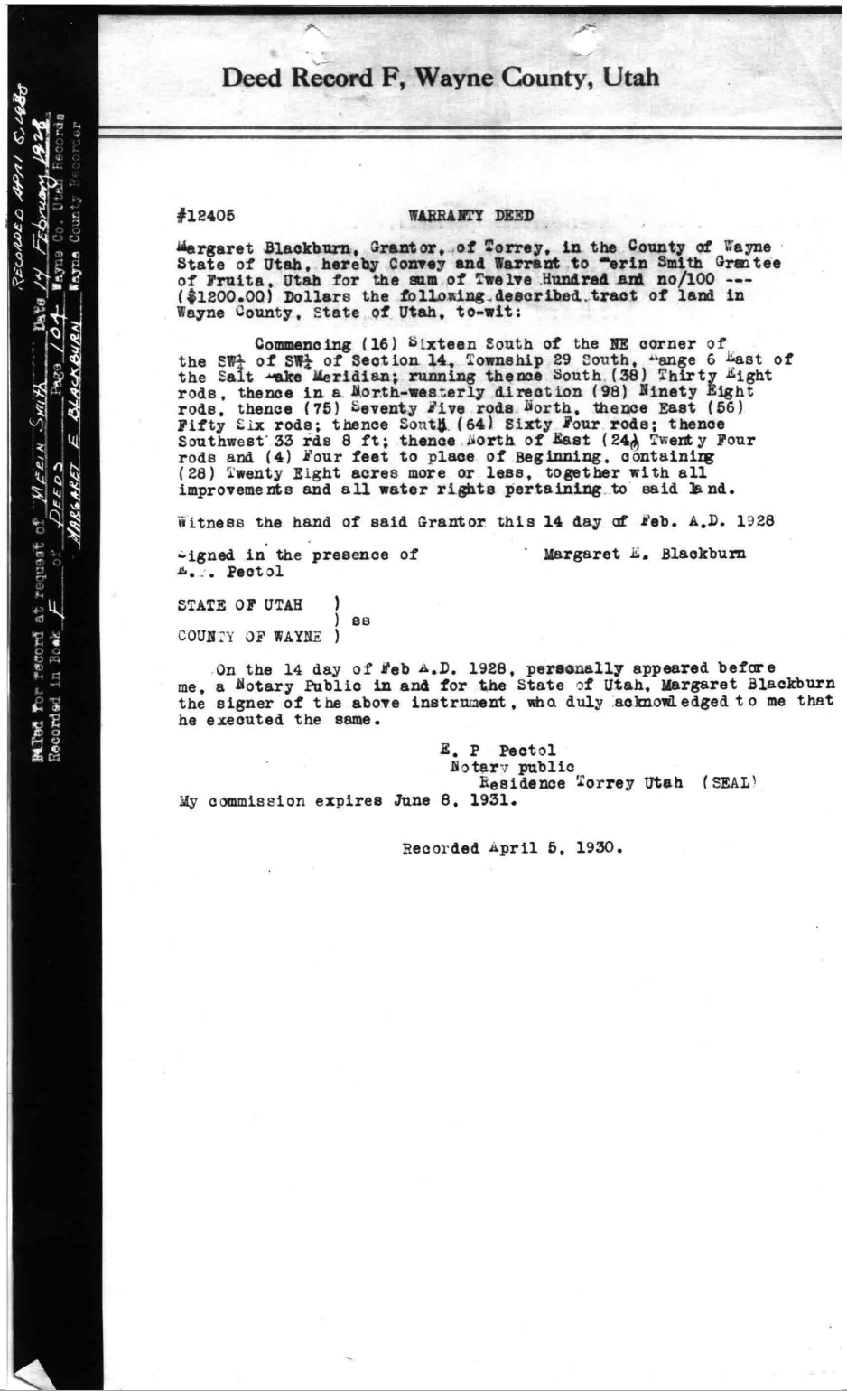
On the 23rd day of Dec, A.D. 1933, personally appeared before me, a County Clerk in and for the State of Utah, MerinSmith and Cora Smith his wife the signers of the above instrument, who duly acknowledged to me that they executed the same.

Elsie Eckersley
County Clerk
Residence Loa Utah

(SEAL)

Recorded Jan 23, 1934.

00-00-0000: warranty deed, blackburn



Deed Record F, Wayne County, Utah

#12405 WARRANTY DEED

Margaret Blackburn, Grantor, of Torrey, in the County of Wayne State of Utah, hereby Convey and Warrant to Merin Smith Grantee of Fruita, Utah for the sum of Twelve Hundred and no/100 --- ($1200.00) Dollars the following described tract of land in Wayne County, State of Utah, to-wit:

Commencing (16) Sixteen South of the NE corner of the SW¼ of SW¼ of Section 14, Township 29 South, Range 6 East of the Salt Lake Meridian; running thence South (38) Thirty Eight rods, thence in a North-westerly direction (98) Ninety Eight rods, thence (75) Seventy Five rods North, thence East (56) Fifty Six rods; thence South (64) Sixty Four rods; thence Southwest 33 rds 8 ft; thence North of East (24) Twenty Four rods and (4) Four feet to place of Beginning, containing (28) Twenty Eight acres more or less, together with all improvements and all water rights pertaining to said land.

Witness the hand of said Grantor this 14 day of Feb. A.D. 1928

Signed in the presence of Margaret E. Blackburn
E. P. Pectol

STATE OF UTAH)
) ss
COUNTY OF WAYNE)

On the 14 day of Feb A.D. 1928, personally appeared before me, a Notary Public in and for the State of Utah, Margaret Blackburn the signer of the above instrument, who duly acknowledged to me that he executed the same.

E. P Pectol
Notary public
Residence Torrey Utah (SEAL)

My commission expires June 8, 1931.

Recorded April 5, 1930.

Filed for record at request of Merlin Smith Date 14 February 1928
Recorded in Book F of DEEDS Page 104 Wayne Co. Utah Records
MARGARET E BLACKBURN Wayne County Recorder

RECORDED APRIL 5, 1930

Administrative Agreements

Form 10-114
(Rev. Oct. 1958)

UNITED STATES DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE

This permit contains ___ of ___ pages

PERMIT NO. 14-10-0333-875 | EXPIRES 12/31/63
PREVIOUS PERMIT NO. None

SPECIAL USE PERMIT

CAPITOL REEF NATIONAL MONUMENT
(Area)

Mr. Worthen Jackson, of Fremont, Utah is hereby authorized during the period from January 1, 1962, to December 31, 1963, to use the following-described land in the above-named area: In Township 29 South, Range 6 East, SLM

Parcel 1 - Old Max Krueger property, that area south of the Fremont River Road in the NE¼SW¼ Section 14 and the orchard north of the same highway in the SW¼NE¼ Section 14. Approximately 10 acres.

Parcel 2 - Old Cora Smith property, the orchard and cultivated lands south and a narrow strip north of the Fremont River Road in NW¼SW¼ Section 14 Approximately 3.5 acres.

Parcel 3 - Old Sprang property, orchard and cultivated lands south of the Fremont River Road and north of the monument road in NW¼SE¼ Section 15 and NE¼SE¼ Section 15. Approximately 12 acres.

Parcel 4 - Old Sprang property, the orchard east of the monument drive in the NW¼NW¼ Section 23 and the NE¼NE¼NE¼ Section 22. Approximately 4 acres.

for the purpose of The above orchard and cultivated land consists of approximately 29.5 acres. Irrigating the existing orchards, trees and fields in order to maintain the character of the land and area. In a similar manner as previously existing prior to the acquisition of the property and to protect, through beneficial use, the water rights acquired with the land.

subject to the conditions on the reverse hereof and attached pages and to the payment to the Government of the United States of the sum of Four Hundred and Fifty Dollars ($ 450.00), in advance Annually (Monthly, semiannually, etc.), or as follows: ~~$100.00 upon execution of this permit and $350.00 following the harvest season and not later than December 31 of each year.~~ See Special Condition No. 16.

payment to be made to the Superintendent by Express or Postal Money Order, Certified Check, or Draft payable to the National Park Service, or Cash.

Issued at Capitol Reef Mon. (City), this 10th day of March, 1962

William Finger
(Superintendent)

The undersigned hereby accepts this permit subject to the terms, covenants, obligations, and reservations, expressed or implied, therein.

TWO WITNESSES TO SIGNATURES		* PERMITTEE (SIGNATURE)	
NAME	Kenneth Clark	NAME	J. Worthen Jackson
ADDRESS	Torrey, Utah	ADDRESS	Fremont Utah
NAME	Earl O. Reunion	NAME	
ADDRESS	Capitol Reef National Monument Torrey Utah	ADDRESS	

APPROVED: (If approval is required by higher authority)

NAME	TITLE	DATE

* If permittee is a corporation, permittees should sign as "members of firm," for corporation the officers authorized to execute the instruments of such corporation are attested by the Secretary, with corporate seal, and two witnesses.

(This copy for the Regional Office Files)

PAGE 1

CONDITIONS OF THIS PERMIT

1. **Regulations.**—The permittee shall exercise this privilege subject to the supervision of the Superintendent, and shall comply with the regulations of the Secretary of the Interior, or other authorized officer of the Government, governing the area.

2. **Definition.**—The term "Director, National Park Service" as used herein shall include the appropriate Regional Director or Superintendent as the representative of the Director.

3. **Rights of the Director.**—Use by the permittee of the land covered hereby is subject to the right of the Director, National Park Service, to establish trails, roads, and other improvements and betterments over, upon, or through said premises, and further to the use by travelers and others of such roads and trails as well as of those already existing. If it is necessary to exercise such right, every effort will be made by the National Park Service to refrain from unduly interfering or preventing use of the land by the permittee for the purpose intended under this permit.

4. **Nondiscrimination.**—If use of the land covered by the permit will involve the employment by the permittee of a person or persons, the permittee agrees to observe the following nondiscrimination provisions in connection with the use to which the lands covered by this permit may be devoted: SEE PAGE 2-A ATTACHED

In connection with the performance of work under this contract, the contractor agrees not to discriminate against any employee or applicant for employment because of race, religion, color, or national origin. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post hereafter in conspicuous places, available for employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of the nondiscrimination clause.

The contractor further agrees to insert the foregoing provisions in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials. (Executive Order 10557, September 3, 1954.)

5. **Damages.**—The permittee shall pay the United States for any damage resulting from this use which would not reasonably be inherent in the use which the permittee is authorized to make of the land described in this permit.

6. **Construction.**—No building or other structure shall be erected under this permit except upon prior approval of plans and specifications by the Director, National Park Service, and the premises and all appurtenances thereto shall be kept in a safe, sanitary, and sightly condition.

7. **Removal of structures and improvements.**—Upon the expiration of this permit by limitation of time or its termination for any reason prior to its expiration date, the permittee, if all charges due the Government hereunder have been paid, shall remove within such reasonable period as is determined by the Superintendent, but not to exceed 90 days unless otherwise stipulated in this permit, all structures and improvements placed on the premises by him, and shall restore the site to its former condition under the direction of the Superintendent. If the permittee fails to remove all such structures and improvements within the aforesaid period, they shall become the property of the United States, but that will not relieve the permittee of liability for the cost of their removal and the restoration of the site.

8. **Water Rights.**—The United States reserves the rights to perfect title to all rights for water which may be developed or used in connection with this permit and shall furnish water to the permittee, when available, at reasonable rates to be approved by the Director, National Park Service. Should such water service be unavailable or inadequate, the permittee may, with prior approval of the Director, provide the same at his own expense, subject to such special requirements as may be prescribed.

9. **Disposal of refuse.**—The permittee shall dispose of brush and other refuse as required by the Superintendent.

10. **Timber cutting.**—No timber may be cut or destroyed without first obtaining a permit therefor from the Director, National Park Service.

11. **Fire prevention and suppression.**—The permittee and his employees shall take all reasonable precautions to prevent forest, brush, grass, and structural fires and also shall assist the Superintendent in extinguishing such fires in the vicinity of any tract which may be used hereunder.

12. **Soil erosion.**—The permittee shall take adequate measures, as directed and approved by the Superintendent to restrict and prevent soil erosion on the lands covered hereby and shall so utilize such lands as not to contribute to erosion on adjoining lands.

13. **Benefit.**—Neither Members of, nor Delegates to Congress, or Resident Commissioners shall be admitted to any share or part of this permit or derive, either directly or indirectly, any pecuniary benefit to arise therefrom: *Provided however*, That nothing herein contained shall be construed to extend to any incorporated company, if the permit be for the benefit of such corporation.

14. **Assignment.**—This permit may not be transferred or assigned without the consent of the Director, National Park Service, in writing.

15. **Revocation.**—This permit may be terminated upon breach of any of the conditions herein or at the discretion of the Director, National Park Service.

U. S. GOVERNMENT PRINTING OFFICE: 1956 16—35988-5

Form 10-114a
(Dec. 1956)

UNITED STATES DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE

SPECIAL USE PERMIT CONTINUATION SHEET

AREA	PERMIT NO.	PAGE NO.
Capitol Reef National Monument	14-10-0333-879	2

16. As recited on the face of the permit, the permittee will deliver a payment of $100.00 to the Superintendent, Capitol Reef National Monument, upon acceptance and delivery of the permittee's copy of this Special Use Permit. The balance of the first year's payment of $350.00 will be paid following the harvest season and not later than December 31, 1962. The fee for the 1963 calendar year will be paid $100.00 between January 1, 1963 and February 28, 1963 and the $350.00 payment following the 1963 harvest season or before December 31, 1963.

17. Damages to property, or injuries to persons resulting from the activities conducted in the performance of work of this permit are the responsibility of the permittee.

18. There will be no changes or disturbances in the existing condition of the area covered by this permit except as specified by the provisions herein or as are incident to the normal farming operations such as cultivating, plowing, fertilizing or weed control. Areas formerly used as garden plots will not be authorized for use as vegetable gardens but the areas that were formerly cultivated as gardens may be planted to grass or alfalfa which the permittee may harvest under the authorization of this permit.

19. The permittee will familiarize himself with the rules and regulations referred to in Item 1 of these Special Provisions.

20. This permit does not provide for the grazing of livestock.

21. No Fruit Stands will be permitted upon park lands except those which may be permitted by Richard W. and Elizabeth Sprang upon lands reserved for their use until December 31, 1963. Arrangements for such use will be made between the permittee and the Sprangs. Sign design and placement will be only by the approval of the Superintendent.

22. All orchards and other lands used for agricultural purposes will be kept free of weeds and debris.

23. The permittee must furnish all necessary tools, equipment, seed and supplies, etc., as may be necessary to properly conduct the agricultural activities involved.

24. Fertilization, spraying and other farm management activities will be the responsibility of the permittee and will be accomplished according to the good management practices recommended by the Wayne County Agricultural Agent and/or approved by the Superintendent.

25. The irrigation of the crops will be according to the practices recommended by the Wayne County Agricultural Agent and/or approved by the Superintendent. A log of the irrigation activities will be kept with the area and number of hours irrigated recorded. Such log will be given to the Superintendent at the end of each month during the irrigation season.

26. No access road or other roads will be constructed by the permittee.

U. S. GOVERNMENT PRINTING OFFICE 16—73101-1

Form 10-114f
(Dec. 1958)

NITED STATES DEPARTMENT OF THE INTE...OR
NATIONAL PARK SERVICE

SPECIAL USE PERMIT CONTINUATION SHEET

AREA	PERMIT NO.	PAGE NO.
Capitol Reef National Monument	14-10-0333-875	4

27. Any part of the lands herein described for agricultural use may be removed from use as a part of this permit without claim upon the National Park Service. In the event any substantial irrigated crop-bearing land area under this permit is withdrawn from use for construction purposes, the permittee will be given ninety (90) days written notice. In such event no reduction in the permit fee will be made during the first calendar year.

If a substantial irrigated crop-bearing area is removed from production because of National Park Service construction before December 31, 1962, the permit will be renegotiated based on the reduced acreage for the 1963 calendar year, or, at the option of the permittee, this permit will remain in effect at the same rate for the 1963 calendar year.

28. Arrangement for farming government lands in life estate to Dr. Dean R. Brimhall will be by arrangement between Dr. Brimhall and the permittee and is not part of this permit.

29. All routine and normal maintenance including cleaning of the ditches will be done by the permittee at no expense to the government. Disasters, Acts of God damage, major improvements or replacements of the permanent irrigation structures will be the responsibility of the United States.

30. All fences, trees, buildings, grounds, roads and other utilities within the permitted areas will be maintained by the permittee in a condition at least as good as found at the commencement of this permit or as may be improved by the permittee or the government during its duration.

31. The permittee agrees that upon being issued this agricultural permit that he will clean all orchards of present debris and will remove dried weeds presently in the trees as left by past weed control practices prior to the 1962 growing season.

U. S. GOVERNMENT PRINTING OFFICE 16—72101-1

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
10-114
(June 1950)
(Revised)

COPY

No. 14-10-345-6

REVOCABLE SPECIAL USE PERMIT

CAPITOL REEF NATIONAL MONUMENT
Fruita, Utah

Year, 19 53

L 54 - CARE

Max Krueger, of Fruita, Utah, is hereby authorized

during the period from January 1, 19 53, to December 31, 1958, to use the following-described land in the above-named area: Two irregularly shaped tracts of land at Capitol Reef National Monument. These tracts lie south of the Superintendent's residence at the monument, they are Govt. land, and described as Parcel No. 2 and Parcel No. 5. They contain a total of five and one-quarter (5¼) acres more or less. The lands covered by this permit are shown on the blackline print of Dwg. NM-CR-7101 attached as page three of this permit.

for the purpose of raising alfalfa or pasture mixtures by irrigation through the use of an existing N.P.S. water right.

subject to the conditions on the reverse hereof and to the payment to the Government of the United States of the sum of One dollars ($ 1.00), in advance, or as follows:

Check, payment to be made to the Superintendent by express or postal money order, certified check, or draft payable to Treasurer, United States.

Signed at Fruita, Utah, this 4 day of April, 19 53

Concurred: /s/ Paul R. Franke
Supt., Zion and Bryce Canyon National Parks

/s/ Charles Kelly
Charles Kelly *Superintendent.*

The undersigned hereby accepts this revocable permit subject to the terms, covenants, obligations, and reservations, expressed or implied, therein.

Two witnesses to signatures:

/s/ Jean C. Glass
Address 407 Clay, Laramie, Wyo.

/s/ Albert R. Marr
Address Rock Springs, Wyo.

* /s/ Max Krueger
Max Krueger
Address MAX L. KRUEGER
1500 Grand Avenue
Laramie, Wyoming
Phone 4574

Address

APPROVED: Regional Director, Region Three, National Park Service.

/s/ M. R. Tillotson

Date April 28, 1953

*Sign name or names as written in body of permit; for copartnership, permittees should sign as "members of firm"; for corporation, the officer authorized to execute contracts, etc., should sign, with title, the sufficiency of such signature being attested by the Secretary, with corporate seal, in lieu of witnesses.

16—35968-2

SPECIAL CONDITIONS OF THIS PERMIT

1. Permittee shall exercise this privilege subject to the supervision of the Superintendent and shall comply with the regulations of the Secretary of the Interior governing the area.

2. Use by the permittee of the land covered hereby is subject to the right of the Director, National Park Service, to establish trails, roads, and other improvements and betterments over, upon, or through said premises, and further to the use by travelers and others of such roads and trails as well as of those already existing.

3. The United States reserves the right to perfect title to all rights for water which may be developed or used in connection with this permit and shall furnish water to the permittee, when available, at reasonable rates to be approved by the Director, National Park Service. Should such water service be unavailable or inadequate, the permittee may, with prior approval of the Director, provide the same at his own expense, subject to such special requirements as may be prescribed.

4. No building or other structure shall be erected under this permit except upon prior approval of plans and specifications by the Director, National Park Service, and the premises and all appurtenances thereto shall be kept in a safe, sanitary, and sightly condition.

5. Permittee shall dispose of brush and other refuse as required by the Superintendent.

6. Permittee shall pay the United States for any damage resulting from this use.

7. Permittee and his employees shall take all reasonable precautions to prevent forest fires and also shall assist the Superintendent to extinguish forest fires in the vicinity of any tract which may be used hereunder, and in the preservation of good order within the metes and bounds of the area.

8. No timber may be cut or destroyed without first obtaining permit therefor from the Director, National Park Service, in writing.

9. This permit may not be transferred or assigned without the consent of the Director, National Park Service, in writing.

10. This permit may be terminated upon breach of any of the conditions herein or at the discretion of the Director, National Park Service.

11. Neither Members of, nor Delegates to Congress, or Resident Commissioners, officers, agents, or employees of the Government shall be admitted to any share or part of this permit or derive, either directly or indirectly, any pecuniary benefit to arise therefrom: *Provided*, however, that nothing herein contained shall be construed to extend to any incorporated company, if the permit be for the general benefit of such corporation.

12. All uranium, thorium, and all other materials determined pursuant to section 5 (b) (1) of the Atomic Energy Act of 1946 (60 Stat. 761) to be peculiarly essential to the production of fissionable material, contained, in whatever concentration, in deposits in the lands covered by this permit are hereby reserved for the use of the United States, together with the right of the United States through its authorized agents or representatives at any time to enter upon the land and prospect for, mine, and remove the same, making just compensation for any damage or injury occasioned thereby.

13. Permittee shall take adequate measures, as directed and approved by the Superintendent, to arrest and prevent soil erosion on the lands covered hereby and shall so utilize such lands as not to contribute to erosion on adjoining lands.

14. Upon abandonment, termination, revocation, or cancellation of this permit, the permittee shall remove within a reasonable time all structures and improvements except those owned by the United States, and shall restore the site, unless otherwise agreed upon in writing or in this permit. If the permittee fails to remove all such structures or improvements within a reasonable period, they shall become the property of the United States, but that will not relieve the permittee of liability for the cost of their removal and restoration of the site.

U. S. GOVERNMENT PRINTING OFFICE 16—85968-2



15. The permittee may clear or remove dead fruit trees or other trees within the cultivated area under the direction of the Superintendent, Capitol Reef National Monument.

16. Protective vegetation growing along the streambank at the south boundary of the property consisting of willows and cottonwoods shall not be removed.

17. Permittee to provide all labor and assume expense necessary to provide for the Government's share of maintenance in the West Lower Ditch, its culverts and flumes, and improve and maintain ditches necessary for the distribution of water to parcels No. 2 and No. 5 in a manner to make beneficial use of and protect the appurtenant water right.

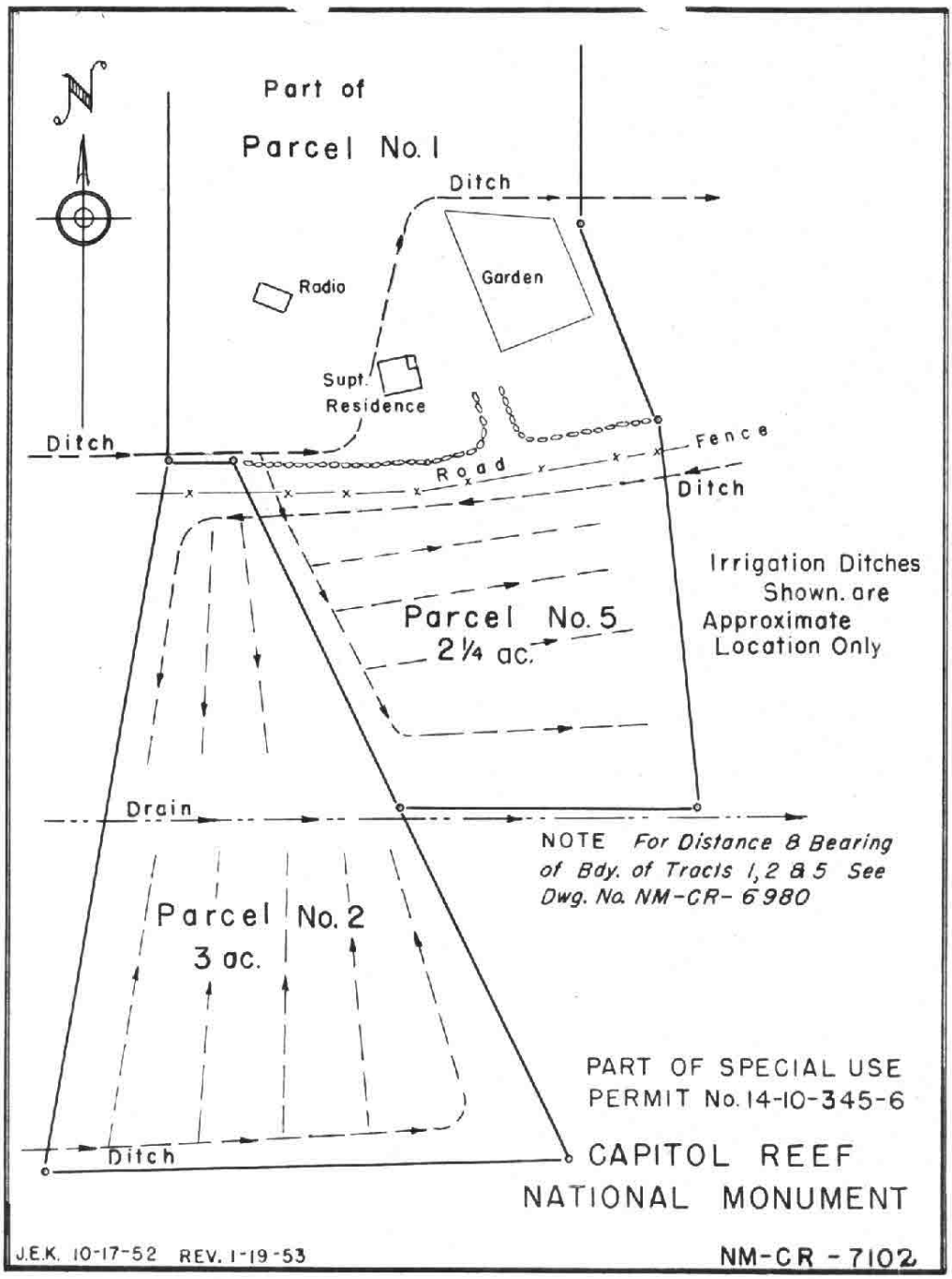
18. All tail water drains and ditches shall be protected with adequate drop structures to prevent soil erosion.

19. The land shall be used to raise alfalfa or pasture grass mixtures such as perennial rye grass, orchard grass, tall fescue grass, black medic clover, alsike clover, and burr clover.

20. The alfalfa or pasture mixtures shall not be plowed up or destroyed without written permission of the Superintendent.

21. This permit is for a five-year period with the fee payable annually. However, the permittee shall advise the Superintendent each fall not later than November 15 if he wishes to continue to use the land authorized under this permit.

00-00-0000: special use permit: map of irrigation ditches



00-00-0000: memorandum re: special use permit, max krueger

Capitol Reef National Monument
Torrey, Utah

C O P I

April 7, 1953

Memorandum

To: Superintendent, Zion National Park

From: Superintendent, Capitol Reef National Monument

Subject: Special Use Permit, Max Krueger

Mr. Max Krueger has signed and returned the special use permit submitted to him, together with his check for $ 1.00. Terms of the permit as now written appear to be to the best interest of the Monument.

Justification for this permit is as follows:

1. There is no sort of organization among the water users in Fruita, with the usual result that no one assumes any responsibility for maintenance or repair and there is constant quarreling among the various users. Since Mr. Krueger is the last man on the ditch and according to local custom is compelled to do nearly all the maintenance, this permit will eliminate the government from local squabbles over water.

2. The peach trees on this tract were mostly dead from old age. A planting of alfalfa or other hay crop will greatly improve the appearance of the property and will benefit the soil.

3. When planted to hay, the permittee will be compelled to make beneficial use of the water or lose his crop, thus protecting the government water right.

(ss) Charles Kelly

Charles Kelly
Superintendent

Supporting Hydro Data

WELL LOCATION AT CAPITOL REEF (Well Drilled in 1993)

The well location was calculated in the fall of 1993 with a Trimble Basic Plus GPS unit. The following coordinates are the average of the post-processed point locations (using Trimble software). The base station was located near the campgrounds at either survey marker TA3 or TA4. Arc/Info software was used to convert State Plane coordinates to and from UTM values. An approximate elevation was obtained from digital contours. (Two-foot contours were generated from stereo-pairs of the Fruita Valley.)

Coordinate System: UTM, zone 12
Datum: Nad27
Spheroid: Clarke 1866
Units: meters
Coordinates: 477574 E, 4236557 N

Coordinate System: State Plane, zone 5501
Datum: Nad27
Spheroid: Clarke 1866
Units: feet
Coordinates: 2069934 E, 587044 N

Elevation: 5487 feet

Coordinates for the nearest PLSS section corner in Fruita (between sections 14, 15, 22, and 23) were obtained from the Geographic Coordinate Data Base (GCDB) maintained by the state BLM office in Salt Lake City. The coordinates in this database are NOT the official record of survey but are graphical representations of the record of survey. A GPS location has not been calculated for the monument location, although the level of accuracy of our resource grade GPS unit is perhaps similar to that of the GCDB coordinates.

Coordinate System: UTM, zone 12
Datum: Nad27
Spheroid: Clarke 1866
Units: meters
Coordinates: 478343 E, 4237104 N

Coordinate System: State Plane, zone 5501
Datum: Nad27
Spheroid: Clarke 1866
Units: feet
Coordinates: 2069934 E, 587044 N

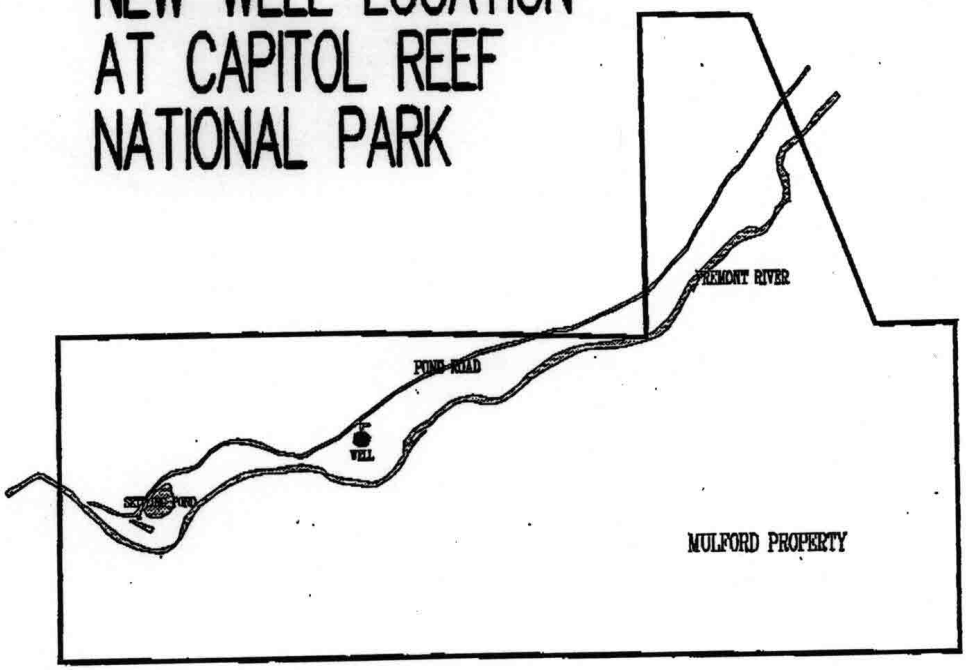
Elevation: 5424 feet

Distance and bearing from the well location to the section monument described above were calculated with Arc/Info software in State Plane coordinates. A Magellan 5000 Pro was also used to determine distance and bearing based solely on the UTM coordinates listed above.

Arc/Info Distance: 3098.8 feet
Arc/Info Bearing: 54 degrees, 13 minutes, 1 second
Magellan Distance: 3092 feet (0.59 miles)
Magellan Bearing: 54 degrees

00-00-0000: map of well location

NEW WELL LOCATION AT CAPITOL REEF NATIONAL PARK



Well location was subsequently surveyed by Don Naser of Richfield, Utah (under contract with park).

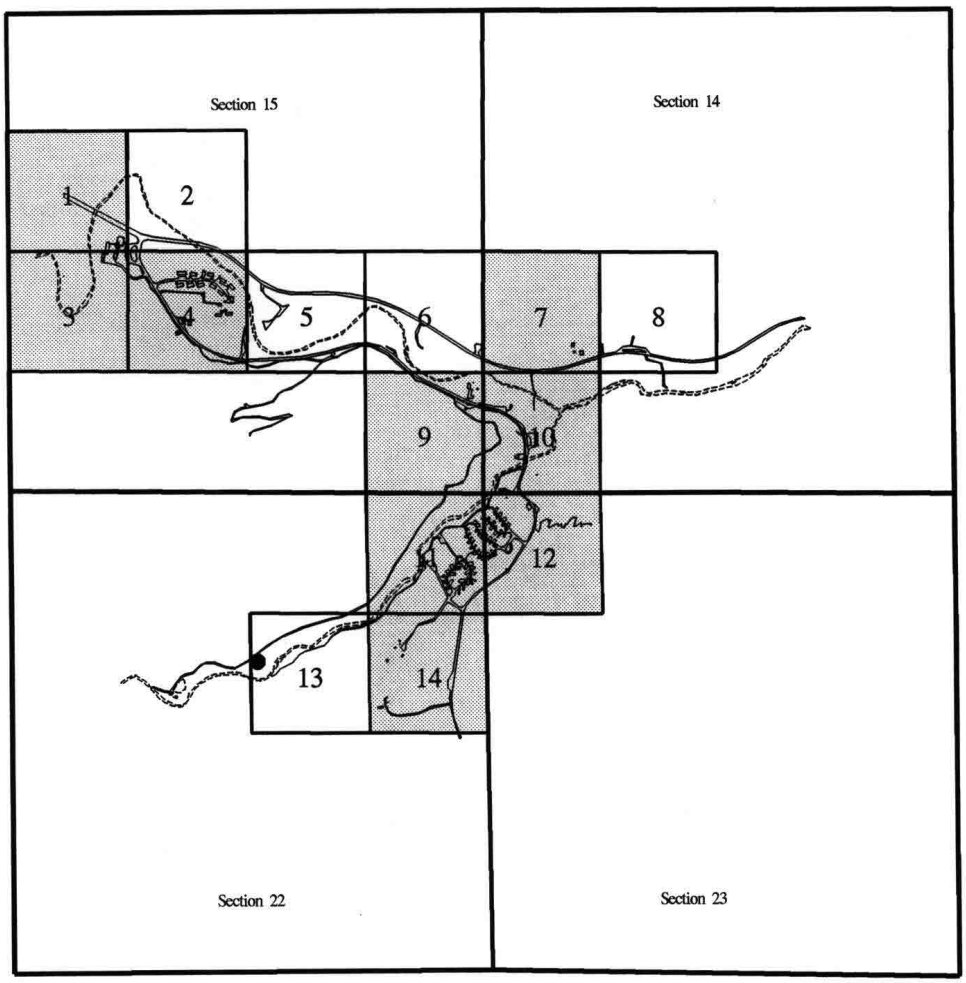
Naser's results: 2755' west and 1748' south of the NE corner of Section 22

00-00-0000: map of well location



AREA OF USE: CARE MUNICIPAL/DOMESTIC USE ~~RIGHT~~

LEGAL DESCRIPTIONS OF 40 ACRE TRACTS IN FRUITA



Culinary Water Being Used

● Well Location

Developed by CARE staff
(Jennifer Norton) Jan 1994

LEGAL DESCRIPTIONS OF 40 ACRE TRACTS IN FRUITA

* 1. SW1/4, NW1/4 of Section 15, Township 29 South, Range 6 East, Salt Lake B&M
2. SE1/4, NW1/4 of Section 15, Township 29 South, Range 6 East, Salt Lake B&M
* 3. NW1/4, SW1/4 of Section 15, Township 29 South, Range 6 East, Salt Lake B&M
* 4. NE1/4. SW1/4 of Section 15, Township 29 South, Range 6 East, Salt Lake B&M
5. NW1/4, SE1/4 of Section 15, Township 29 South, Range 6 East, Salt Lake B&M
6. NE1/4, SE1/4 of Section 15, Township 29 South, Range 6 East, Salt Lake B&M
* 7. NW1/4, SW1/4 of Section 14, Township 29 South, Range 6 East, Salt Lake B&M
8. NE1/4, SW1/4 of Section 14, Township 29 South, Range 6 East, Salt Lake B&M
* 9. SE1/4, SE1/4 of Section 15, Township 29 South, Range 6 East, Salt Lake B&M
* 10. SW1/4, SW1/4 of Section 14, Township 29 South, Range 6 East, Salt Lake B&M
* 11. NE1/4, NE1/4 of Section 22, Township 29 South, Range 6 East, Salt Lake B&M
* 12. NW1/4, NW1/4 of Section 23, Township 29 South, Range 6 East, Salt Lake B&M
13. SW1/4, NE1/4 of Section 22, Township 29 South, Range 6 East, Salt Lake B&M
* 14. SE1/4, NE1/4 of Section 22, Township 29 South, Range 6 East, Salt Lake B&M

* Tracts where culinary water is currently being used.

00-00-0000: letter re: fremont river distribution, freeman tanner

Hill Copy

FREMONT RIVER DISTRIBUTION
June 10, 1937 to July 10, 1937
by Freeman Tanner
Water Commissioner

(Copied from report loaned to Acting Superintendent Davis, Zion National Park, by Mr. S. E. Tanner, Water Master for the Fremont River Distribution.)

Copies mailed Director, Regional Chief, and Supt. Beasley 1/29/41

Mr. Dennis copy mailed U.S. Atty. at Salt Lake City. 8/31/42.

00-00-0000: letter re: fremont river

July 23, 1937

Honorable T. H. Humpherys
Utah State Engineer
Salt Lake City, Utah

Dear Sir:

Herewith is submitted my report as River Commissioner on the Fremont river between Thurber dam site and Hanksville, inclusive, covering the period from June 10 to July 10, 1937.

Respectfully submitted,

/s/ Freeman Tanner

Water Commissioner

FT:ff

RIVER COMMISSIONER'S REPORT ON LOWER FREMONT RIVER

June 10 to July 10, 1937

INTRODUCTION

This report contains a record of water distribution from Fremont river for June 10 to July 10, 1937. It consists of tables of water measurements, gage readings and discussions of matter relating to the distribution system.

That portion of the river under my jurisdiction began at Thurber dam site and ended at Hanksville - a distance of 66 miles. It was a part-time job which required my services when the water supply was not sufficient to satisfy all the rights. Until 1935, a help-yourself system was in vogue on this part of the river with special mutual concessions in times of shortage. From 1930 to 1935, water shortage became more acute each year until disagreements finally lead the Hanksville Irrigation Company, one of the lower users, to cite a large percentage of the other water users into court for adjudication.

On July 15, 1935, Judge Nephi J. Bates of the Sixth Judicial District Court entered a stipulation to a decree and appointed a River Commissioner who acted until the end of the irrigation season of 1936. In June, 1937, I received my appointment as River Commissioner.

DISTRICT

The Lower Fremont river serves four communities - Torrey, Fruita, Cainville and Hanksville - with an area of 3228 acres of irrigable land under its canals and ditches, 1718 acres of which are classed as improved irrigated farms according to Wayne county records, as shown on page . The Thurber Grist Mill near Bicknell marsh and the People's Power & Light plant near Torrey are the only power units.

RIGHTS

Rights to divert water from the river are based on the Court's Decree of July 15, 1935, of used rights and upon applications to appropriate water filed in the State Engineer's Office. These rights are of three classes - culinary, primary and secondary - each taking precedence in the order named and limited to beneficial use.

WATER DECREED, USED, & LAND IRRIGATED FROM LOWER FREMONT RIVER

NAME	ADDRESS	DECREE SEC. FT.	AVERAGE USED SEC. FT.	USED AC. FT.	LAND CLASSIFICATION IN ACRES A	B	C	TOTAL ACRES	CLASS OF RIGHT
Hanksville Canal Co.	Hanksville	10.00	9.00	536	447	42	40	529	primary
Cainville Canal Co.	Cainville	12.00	12.00	714	254	237	2	493	primary
G. T. Bean	Richfield	3.00	none	none	20	20	0	40	primary
Mary Steele	Hanksville	1.50	none	none	51	10	0	61	primary
Clarence Mulford	Fruita	1.77	1.77	99				40	primary
Dewey Gifford	Fruita	1.10	1.10	61				25	primary
William Chesnut	Fruita	1.38	1.38	77		22.4		31	primary
Alma Chesnut	Fruita	.66	.66	37		22.7		15	primary
Merin Smith	Fruita	1.28	1.28	71		22.7		29	primary
M. V. Oylar	Fruita	1.37	1.37	76		22.6		31	primary
Arvil Mott	Fruita	.44	.44	24		22.7		10	primary
Joseph Hickman	Teasdale	.50	.50	28	51	0	5	56	primary
William Hickman	Torrey	3.00	3.00	228	53	3	17	73	primary
Joseph Hiskey	Teasdale	6.00	6.00	333	90	0	33	123	primary

NAME	ADDRESS	DECREE SEC. FT.	AVERAGE USED SEC. FT.	USED AC. FT.	LAND CLASSIFICATION IN ACRES A	B	C	TOTAL ACRES	CLASS OF RIGHT
*Edmond King	Teasdale	3.33	3.33	185	94	15	45	154	primary
" "	"	5.00	5.00	278					
Loren Barger	Torrey	1.00	(Not allowed in Torrey canal as primary right)						
Marvin Forsyth	Torrey	1.66	1.66	92	15	0	60	75	primary
**Torrey Canal Co.	Torrey	35.00	19.87	1011	476	227	485	1188	secondary
Dez Hickman	Torrey	1.25	1.25	69	46	10		56	secondary
William Hickman	Teasdale	1.25	1.25	69	See William Hickman above				secondary
TOTALS		92.49		1422	1597	564	687	3029	
Thurber Grist Mill by Edmond King	Teasdale	40.00	15.00		No water power used. It was wasted back to the river.				
People's Light & Power by Teasdale Ekersley	Loa	43.00	30.00		This right not in Court Decree. Final proof pending in office of State Engineer				

* Being sold to Mr. Williams

**Note: 2 c.f.s. of Torrey canal water are decreed for culinary purposes and do not prorate with any other of the decreed water

Land Classification: A - Improved Farm - Irrigated
(taken from Wayne county records) B - Unimproved Farm - Not Irrigated
C - Grazing Land - Partly Irrigated

Note: gage readings from Hanksville came at uncertain intervals by mail on Mondays, Wednesdays, and Saturdays.
There is no telephone system.
Fruita river gage readings came to me through M. V. Cyler when he came to Torrey once a week.

The table on the page following gives the names of the water users, their decreed rights, the average amount of water used in sec. ft., the amount in ac. ft., its class, and classification of land upon which it is used as taken from Wayne county records at Loa, Utah. The average amount of water used in sec. ft.,is based upon actual measurements, gage readings at intervals, and interpolation.

WATER SUPPLY

The source of water supply comes mainly from Bicknell marsh which, in turn, is supplied by springs within its area and by surface water of the Upper Fremont river drainage. Added to this there is considerable return flow along the course of the Lower Fremont from the irrigated areas on both sides, as well as the mountain tributary streams which materially contribute to its flow.

For most of the year, water is wasted over the Hanksville diversion dam after supplying all the required rights along the river. However, there are usually one to three months during the spring and summer when the supply is below that necessary to care for all the users' rights.

The water supply this year has been ample except for a few short periods in June and July. The following table attached shows the delivery of water in ac. ft. to users on the Lower Fremont river from Thurber dam site to Hanksville, inclusive.

DISTRIBUTION AND RECOMMENDATIONS

Since frequent floods make it necessary to replace diversion dams along the river several times each year, they are of crude rock and brush construction with the exception of the one at Hanksville. Spillways are few and there are practically no measuring weirs. I was informed that measuring devices had been installed previously but had been washed out during the spring floods. Those found in place were a cheap design and poorly constructed so that in most cases water was going either through them or under them. These cheap temporary structures along the river have been forced upon the water users by the numerous floods which eliminate the possibility of permanent structures at any reasonable cost. However, an improvement in design, especially of weirs and measurung flumes, would make possible a more accurate distribution at little extra cost. Designs

WATER DELIVERED IN ACRE-FEET
FREMONT RIVER SYSTEM - THURBER DAM SITE TO HANKSVILLE
BY FREEMAN TANNER

June 10 to July 10, 1937

WATER RIGHTS:

Decreed To	Present User	ADDRESS	AC. FT.
Hanksville Canal Co.	Hanksville Canal Co.	Hanksville	536.00
Gainville Canal Co.	Gainville Canal Co.	Gainville	714.00
Clarence Mulford	Clarence Mulford	Fruita	99.00
Dewey Gifford	Dewey Gifford	Fruita	61.00
William Chesnut	William Chesnut	Fruita	77.00
Alma Chesnut	Alma Chesnut	Fruita	37.00
Marvin Smith	Marvin Smith	Fruita	71.00
M. V. Cyler	M. V. Cyler	Fruita	76.00
Dan Adams	Arvil Mott	Fruita	24.00
Joseph Hiskey	Joseph Hiskey	Teasdale	333.00
Charles Cooper	Joseph Hickman	Teasdale	28.00
William Hickman	William Hickman	Torrey	297.00
Edmond King	Edmond King	Teasdale	463.00
Marvin Forsyth	Marvin Forsyth	Torrey	92.00
Dez Hickman	Dez Hickman	Torrey	69.00
Torrey Canal Co.	Torrey Canal Co.	Torrey	1011.00
	TOTAL IRRIGATION RIGHTS		3988.00
People's Power & Light Co.	People's Power & Light Co.	Loa	1785.00
	TOTAL POWER RIGHTS		1785.00
	GRAND TOTAL		5773.00

The following rights have made no use of their decreed water:
Edmond King for Thurber Grist Mill - 36.67 c.f.s. - primary - power
Loren Barger - 1.00 c.f.s. - primary
Mary ann Steele - 1.50 c.f.s. - primary
G. T. Bean - 5.00 c.f.s. - primary

for suitable weirs and rating flumes for small streams were distributed to members of the Water Users' Committee where needed. No new installations were made, but a number were promised after the busy haying season. Two of the upper users purchased new material for weirs to be constructed later.

Since the loss of water by evaporation and seepage along the river channel from Cainville to Hanksville is extreme, the main problem in distribution is to keep the Hanksville Irrigation Company supplied. Beginning at Cainville, the water spreads out in a flat bed of sand a distance of one-half mile in places, so that it completely wastes away when a small stream is being carried down the river.

To test the feasibility of distributing the water in turns and to prove the storage capacity of the diversion dam at Hanksville, all rights on the upper river between Thurber dam site and Fruita, inclusive, turned loose 60 c.f.s. for 48 hours on June 19. Of this amount 22 c.f.s. reached Hanksville while about 50 c.f.s. passed Cainville. This proved three things - first, that the Hanksville diversion dam has little storage capacity; second, that any shortage of water at Hanksville will have to be anticipated 46 hours in advance if the supply is to be regulated at Bicknell marsh; and third, that water loss between Cainville and Hanksville on hot, windy days is as much as 44 per cent with streams of 50 c.f.s.

Having these facts in mind, I established temporary gages on the river at Grover road bridge and below Fruita. By getting frequent reports of gage readings at Hanksville, Fruita and Gorver road bridge, I was able to make distribution satisfactorily.

It is my judgement that in dry years a continuous stream for Cainville and Hanksville will be unsatisfactory, causing serious loss to secondary rights and, in extreme cases, working a hardship even on Cainville and Hanksville users. I suggest that during such seasons a rotation system be applied -- that is, that each week or ten days the entire secondary right be turned loose and that Cainville and Hanksville use the extra amount for the duration of a turn, then give the secondary canals a full head for a period in keeping with their right. It is possible that

the return flow to the river will always supply Cainville with a flow sufficient to satisfy their right, in which case only Hanksville need be considered. Such a method was advocated by the former River Commissioner but was never carried into effect. It also meets the approval of all secondary rights for the reason that small flows in their canals run up their percentage loss in evaporation and seepage, and for the further reason that large streams are required on their gravelly soils to get effective irrigation since small streams sink in the upper stretches of their fields and are lost to the underground water.

SOIL, CLIMATE, CROPS, ROAD

There are four separated districts served by the river between Bicknell marsh and Hanksville diversion dam, having an elevation difference of 2000 ft. They are the high plateau of Torrey, the canyon of Fruita, and the two small valleys of Cainville and Hanksville. In the Torrey district, for the most part, is a light gravelly soil with little water-holding power which requires frequent and light irrigation. The Fruita area, being river-washed gravel covered with a shallow coating of sand, has much the same irrigation requirements. The Cainville and Hanksville areas are a deep sandy loam with better water-holding power.

The climate varies from a three-month growing season at Torrey to the semi-gropical climate at Hanksville. The Torrey district is devoted to the raising of hay and a very little grain. Fruita is almost exclusively planted to peaches. Cainville and Hanksville farmers raise mostly corn and alfalfa. Much of the population of all the districts is engaged in the livestock business with farming as a sideline.

A graveled Utah State highway runs through the Torrey district. From Torrey to Hanksville is an earth road often blocked by floods and at all times rough.

STORAGE AND FLOOD CONTROL

Water storage and flood control are imperative for any further development along the Lower Fremont river. Nearly half of the land under present canal systems is unimproved due to water shortage at the critical growing season when one irrigation may determine success or failure.

The lower valleys near Cainville and Hanksville are being gradually washed away by the severe floods which year by year eat into the land adjoining the river channel, thus making economical service to the present cultivated area impossible.

The best storage site is at Bicknell marsh which is now under investigation as a possible fish and game reserve with storage as a secondary feature. Effective flood control for the lower valleys can be secured only by storage near Cainville, but such a structure could hardly be justified under present development.

WATER MEASUREMENTS AND GAGE READINGS

A U.S.G.S. gage was established on the Fremont river just below the proposed dam site at Bicknell marsh on April 18, 1937. I established enamel gages on the left bank of the Torrey canal 200 feet southwest of this gage, and on the left bank of the Thurber Grist Mill canal 75 feet northeast of it. Gage readings and current meter measurements of all three streams together with others along the Lower Fremont river as far as Hanksville are given in the table on page 11. True ratings on the Torrey and Thurber canals near Bicknell marsh were made impossible by moss growth. Individual measurements were also made of the Fremont river below Fruita, the Cainville canal, Hanksville canal and the Robinson ditch which diverts water on the opposite side of the river from the Hanksville canal and, as I understand, is part of the Hanksville Irrigation Company.

CANAL AND RIVER GAGE AND MEASUREMENT LOCATIONS

U.S.G.S. gage on Fremont river	NE¼, Sec. 7, T 29 S, R 4 E.
Enamel gage on Torrey canal	Same as above
Enamel gage on Thurber Grist Mill canal	Same as above
Temporary gage Fremont river	SE¼, Sec. 20, T 29 S, R 5 E
Temporary gage Fremont river	Sec. 15, T 29 S, R 6 E
Temporary gage Cainville canal	NE¼, Sec. 16, T 29 S, R 9 E
Measurement of Fremont river	Same as above
Temporary gage Hanksville canal	NW¼, Sec. 16, T 28 S, R 11E
Head of Robinson ditch	Same as above
Thurber dam site	Sec. 7, T 29 S, R 14 E

WATER USERS' COMMITTEE

The committee members as I contacted them from time to time time were cooperative in matters of agreement on proper dist-

ribution. They seemed unable to get weirs installed, but this may have been caused by the busy season.

The membership of the committee follows:

Clarence Mulford, Chairman, Fruita
J. Monroe Pace, Secretary, Torrey
Marvin Forsyth, Committeeman, Torrey
P. T. Duncan, Committeeman, Cainville
Joy Robinson, Committeeman, Hanksville

REQUESTED LOCATION OF THE WEIR OR RATING FLUME

A letter of request is now in the State Engineer's Office from the Torrey Irrigation Company requesting permission to move their measuring device from the head of their canal to a point about three miles down to Pedon cut where they have a timber waste gate for turning their water into the river channel. Above this point in their canal are diversions of 6.66 c.f.s. of primary water. I am informed that they are willing to bear the loss of evaporation and seepage that may occur in transit. I recommend that the change be granted if a suitable place can be found to place their weir or flume below the waste gate at Pedon cut. There are two reasons for the change, which follow:

-1- The wood stave pipe which carries the Torrey canal water over the river from the south to the north side should be kept full of water at all times.

-2- In dry seasons practically all Torrey canal water is turned into the river channel to supply the lower users, then, in a few days or a week, turned back again. When the canal is low the primary rights above Pedon point put dams in the canal to divert their water, and sometimes when the water is again turned back into the canal these dams have not been removed. As a result, the canal overflows its banks and sometimes breaks.

GAGE READINGS & DISCHARGE IN SECOND FEET

Date	FREMONT RIVER AT THURBER Gage Height	C. F. S.	TORREY CANAL Gage Height	C. F. S.	THURBER GRIST MILL CANAL Gage Height	C. F. S.	HANKSVILLE CANAL Gage Height	C. F. S.	ROBINSON DITCH (Hanksville) Gage Height	C. F. S.
June 8	1.12	11.30								
June 10			4.54	31.12	4.38	18.68				
June 12	1.12	11.49								
June 14	1.12	11.40	4.54	31.10	4.38	18.70	1.25	8.86	-	3.60
June 16	1.08	10.70	4.52	29.00	4.44	19.50				
June 19	1.10	11.00	4.56	32.20*	4.54	19.50*	-	0.00		
June 20							-	0.00		
June 21**							1.95	18.72		
June 22							1.95	18.72	-	2.50
June 23	1.12	11.40	4.54	31.10*	4.64	17.50*	1.35	10.30		
June 24	1.18	16.50	4.51	27.20*	4.74	17.00*	1.00	6.80		
June 24			4.26	18.78*						
June 25							-	0.00		
June 27							1.35	10.00		
June 28	1.20	18.00	4.48	26.50*	4.73	14.50*				
June 29	1.21	19.00	4.50	26.90*	4.75	14.00*				
July 1	1.24	22.00	4.68	32.90*	4.78	13.00*				
July 5							1.10	6.80		
July 6	1.14	13.00	4.72	34.10*	4.82	10.50*	-	10.00		
July 6	1.32	29.00	4.52	27.50*	4.84	10.20*				
July 12	1.49	42.43	4.92	37.60	4.92	6.58*				

* Moss in canal affecting gage
** 1.00 c.f.s. wasting over Hanksville diversion dam

Underlined discharges are current meter measurements

GAGE READINGS & DISCHARGE IN SECOND FEET

Date	FREMONT RIVER AT GROVER BRIDGE Gage Height	C. F. S.	FREMONT RIVER AT FRUITA Gage Height	C. F. S.	FREMONT RIVER AT GAINVILLE Gage Height	C. F. S.	GAINVILLE CANAL Gage Height	C. F. S.
June 15							0.80	10.42
June 22							0.90	14.70
June 24			1.50	19.07				
June 25			1.70	32.72	None	11.43	0.85	12.87
June 28	1.70		1.72	33.10				
June 29	1.73							
July 1			1.75	33.60				
July 2			1.70	32.70				
July 3			1.70	32.70				
July 4			1.68	32.30				
July 5	1.70		1.65	31.80				
July 6			1.65	31.80				

Underlined discharges are current meter measurements

Total Discharge Fremont River
at Thurber Dam Site

Average flow - 64.00 c.f.s. - June 10 to July 10
Acre-feet - 3808.00 c.f.s. - June 10 to July 10

HYDROGRAPHIC REPORT ON THE UPPER FREMONT RIVER

This is a report of the water sources of Fremont river above the Thurber dam site in what is known as Rabbit valley. It includes current meter measurements of springs and mountain streams contributing to the river flow, a report on Johnson reservoir by Reid Jerman, a report on Forsyth reservoir by myself, and typical sections of the Highline canal, the Loa-Fremont canal, and the Blackburn canal. When these sections were taken, on June 30, the canals were carrying about 40, 17, and 20 c.f.s., respectively, in their upper sections. One lateral diversion at the All weir was not sectioned. It carried about 3 c.f.s., being diverted on the east side of the river.

Field work began June 8 and was completed July 15. It was a part-time job during which I was not occupied as River Commissioner on the Lower Fremont river.

GAGES

An enamel gage was set in the Robinson creek spillway cove just east of the north end of the steel bridge in the NW¼, Sec. 16, T. 28 S., R. 11 E., to show what water wasted over the diversion dam below the canals of the Hanksville Irrigation Company. It was later found that this gage was improperly placed since small streams flow on the south side of the channel, but gage readings for some of the larger flows were reported to me by Glen Johnson, the mail carrier, and are given below. They represent floods of short duration:

July 6 - Gage reading - 1.0 ft.
July 12- Gage reading - 8.0 ft.
July 14- Gage reading - 8.0 ft.
July 16--Stream on opposite side of channel too low for gage.

Gages on the two canals - Thurber Grist Mill and Torrey - just below the Thurber dam site gave trouble because of the moss growing there. A temporary gage was set immediately above the All weir divider of the left hand bank or east side of the Upper Fremont river.

WATER SOURCES

These may be classed as Spring flows, controlled flows, and uncontrolled flows.

SPRING FLOWS

Brian spring — June 18 - 12.2 c.f.s.
July 12 - 14.4 c.f.s.

The measurement of this spring June 18 had to be estimated in part because a small side stream was overflowing the bank to the north. The measurement on July 12 was taken after a week of rains. Measurements were taken one-half mile down stream from the spring's source at its first divider, which is in the NE¼ Sec. 25, T 27 S., R. 2 E.

Rasmusson springs and two unnamed springs - A and B

Rasmusson	June 16 - 14.43 c.f.s.
A spring	June 16 - 0.98 c.f.s.
B spring	June 16 - 1.34 c.f.s.

Rasmusson springs are located in SW¼ Sec. 2, T. 29 S., R. 3 E. W. A spring is 100 yards southeast of Rasmusson springs, while B spring is three-fourths of a mile southeast of Rasmusson springs.

UNCONTROLLED STREAMS

Road creek

This creek is fed by three streams - South Fork, West Fork and North Fork - the former two of which are considered constant, being supplied by springs near-by, while North Fork has a rather large drainage area which contributes to its heavy spring runoff and summer floods. There is a small reservoir site just east of the junction of these two creeks. West Fork and North Fork are used on the ranches above the junction of the three creeks, hence measurements had to be taken separately.

South Fork	June 18 - 3.58 c.f.s.
West Fork	June 18 - 1.34 c.f.s.
North creek	June 18 - 0.55 c.f.s.
Total flow of Road creek	June 18 - 5.37 c.f.s.

South Fork located in Sec. 3, T. 28 S., R. 2 E.
West Fork located in Sec. 34, T. 27 S., R. 2 E.
North creek located in Sec. 34, T. 27 S., R. 2 E.

Pine creek

On June 10 this creek was carrying 1.96 c.f.s. The measurement was made above all irrigation in Sec. 15, T. 29 S., R. 3 E.

This spring the runoff was reported to have been the heaviest in years, but the water marks could not be distinguished from those of the summer flood of 1936 which measured 50 ft. wide and 8 ft. high.

Government creek

A measurement of this creek, taken above all irrigation in Sec. 7, T. 29 S., R. 3 E. on June 10, showed a flow of 0.6 c.f.s. Deep cut washes in the mouth of the canyon indicate that the stream carries large floods at times.

CONTROLLED STREAMS

The main streams which supply irrigation water to the valley of the Upper Fremont river, known as Rabbit valley, are supplied from two reservoirs which act as controls and are drawn upon when needed by the Fremont Irrigation Company, their owner. These are designated as the Johnson reservoir and the Forsyth reservoir, reports on which are included herein on pages 18 to 20. The streams from these two reservoirs join in Sec. 34, T. 26 S., R. 3 E. The first divider on the river is a rock masonry structure 20 ft. wide in the NW¼ Sec. 3, T. 27 S., R. 3 E., to which I refer as the All weir or divider.

Current meter measurements and gage readings at the All divider are as follows:

June 12 - gage reading - 1.50; flow - 131.55 c.f.s.
June 19 - gage reading - 1.45;
June 26 - gage reading - 1.42; flow - 100.20 c.f.s.
July 7 - gage reading - 1.38;
July 12 - gage reading - 1.27; flow - 89.83 c.f.s.

The river distribution is made from one lateral which is taken out on the east side of the All divider and three main canals - the Highline, the Blackburn, and the Loa-Fremont. I have sketched their approximate locations in red on the Wayne county map which is included in this report. Under the District Court decree made by W. M. McCarty on March 8, 1902, the river was allotted to the users in percentage of the stream and not in cubic feet per second, hence the divider system is used in proportioning the water. In case the flow in

any of the canals is questioned, these dividers are converted into weirs by using flash boards.

RETURN FLOW

It is generally known that the flow of water at the Thurber dam site runs in three stages - the heavy spring runoff drops to a minimum in early June, then begins to rise about the middle of July to a point well above that needed to supply all users below the Thurber dam site - and that this flow continues well into the winter months. It is mainly the return flow from irrigation to Rabbit valley which increases the water passing the Thurber dam site, although summer storms are of course a contributing factor.

According to measurements and gage readings on the streams of Rabbit valley from June 10 to July 15, there is an average flow of 146.2 c.f.s. Aside from this there are numerous springs and seeps in the marsh area of Bucknell bottoms. With the exception of the flow from Rasmusson springs and A and B springs, the 146.2 c.f.s. represents irrigation water. The average flow out of Bicknell marsh as measured just below the Thurber dam site, in the Thurber Grist Mill canal, the Torrey canal, and the Lower Fremont river for the same period was 61.5 c.f.s. The difference between these two amounts is 85.1 c.f.s. which may be considered as having been used up in ground water, plant life, and evaporation. The flow of the ground water is cut off at the Thurber dam site by the rock ledge which dips into the marsh area. This causes the ground water to rise in the marsh and form at least part of the flow that goes to make up the Lower Fremont river. Since underground water moves slowly, except in the case of underground streams, its return may be delayed as much as 60 days after irrigation starts and continue for a like period after irrigation is ended. This theory, I believe, gives the reason for the major portion of the increased flow of the river at the Thurber dam site beginning about the middle of July.

DAM SITE NEAR THURBER

Surface indications reveal that the dam site near Thurber is one of the best. The rock formation on both sides of the stream dips in a gentle slope to the west with indications that all underground water from Bicknell marsh is cut off. The fact that there are no live springs in the canyons below indicates that their source may be in the Bicknell marsh. Sand, loam, gravel, clay and rock are to be had near the proposed site.

In his letter to me of June 5, 1937, Mr. Humpherys instructed me to make investigations of the Thurber reservoir. In connection with this study, he stated that it would be necessary to make an inspection of the Johnson and Forsyth reservoirs, securing all information on both which should be on file in the State Engineer's office.

My report on the Forsyth reservoir was included in my letter to Mr. Humpherys of July 9, 1937. Mr. Jerman visited the Johnson reservoir on July 9 after making some observations of Fish lake, and since he gathered all necessary data concerning this reservoir, I am including a copy of his memorandum, together with my letter mentioned above, in this report.

Torrey, Utah
July 9, 1937

Mr. T. H. Humpherys
State Engineer
Salt Lake City, Utah

Dear Sir:

The following is my report on the Forsyth reservoir.

On July 7, 1937, in company with Myron Guyman I made my examination of the dam and measured the water being released and that being supplied to the reservoir.

History by Report

The storage dam was built about 1919. In 1921 a 12 foot section of the dam washed out at the spillway on the southeast end. The following year or two the washed-out section was rebuilt by sluicing material from the sandy loam and gravel hill to the southeast of the washout. The old wood stave pipe was plugged and abandoned and a new steel and concrete outlet installed to the southeast of it which passed through a checked porphyry intrusion. In this same rock section a new spillway was built.

General Description of Dam

The dam consists of two earth fills separated by a porphyry intrusion, with a maximum elevation equal to the height of the dam, through which the spillway has been built. These fills have been offset from each other by 81 feet at the spillway and their center lines run nearly parallel. The top width of the earth fill is 8 to 10 feet. The face of the dam, which is riprapped, has a slope of 3 to 1 and a back slope of 2 to 1 on the earth fills.

The new outlet tunnel as exposed on the back of the dam is concrete having an inside measurement of 3.3 x 5.0 feet. Sixty feet northwest of the new outlet is the old wood stave pipe outlet, partly crushed, from which a small stream flows.

Near the northwest side of the spillway at the top of the dam stands the 4x4 foot collar of the concrete shaft leading to the gate chamber. The old wood ladder extending down the shaft was unsafe, therefore, an examination of the gate chamber was not made.

Top of Dam

The length of the earth fill to the southeast of the porphyry intrusion is 194 feet and extends from the natural earth and gravel hillside to the spillway. The cut for the spillway at this point is 32 feet wide at the surface.

After crossing the spillway and shifting 81 feet along the spillway to the northeast the old earth fill begins and runs northwest 325 feet, terminating in solid rock at the northwest end of the dam.

Spillway

The spillway is between the two earth fills and runs at nearly right angles to the center line of the dam. Its course throughout lies in checked porphyry as a base. Beginning at the face of the dam in a masonry wing with a width of 22 feet the structure curves slightly to the left for 52 feet in a contracting section which ends with a flashboard control having a bottom width of 11.2 feet. From this point in a uniform section it continues straight in concrete lined rock 71 feet, then in solid rock to the brink overlooking the river channel. The thickness of the concrete lining in the rock section is 5" to 8" thick. For 58 feet from the face the concrete lining is 4.9 feet high and for the remainder of the distance 3.5 feet high. Both walls have a 0.7 foot batter per foot. The grade of the lined section is 3 feet in 122 feet.

Water Storage and Seepage

Water level in the reservoir is 17 feet below the spillway. At the base of the dam on the lower side are three seeps, all running clear. Under the southeast fill the flow is 0.3 c.f.s. About 100 feet southeast of the outlet tunnel, at the base of the solid rock is a small flow near the water level of the outflowing stream. Sixty feet northwest of the outlet tunnel, at the old wood stave pipe outlet is a flow of 0.3 c.f.s. Along the entire base of the northwest fill there is a damp strip in the middle of which is a shallow channel which may indicate a small flow at the higher stages of the reservoir.

Water being released from the reservoir was 59.0 c.f.s. Streams flowing into the reservoir were as follows - Short creek with a scant 0.1 c.f.s., Robinson springs 3.5 c.f.s., and U. M. creek 27.0 c.f.s., making a total inflow of 30.6 c.f.s.

Respectfully,

/s/ Freeman Tanner

Freeman Tanner
Torrey, Utah

00-00-0000: memorandum, johnson valley reservoir dam

Memorandum by Reid Jerman

July 15, 1937

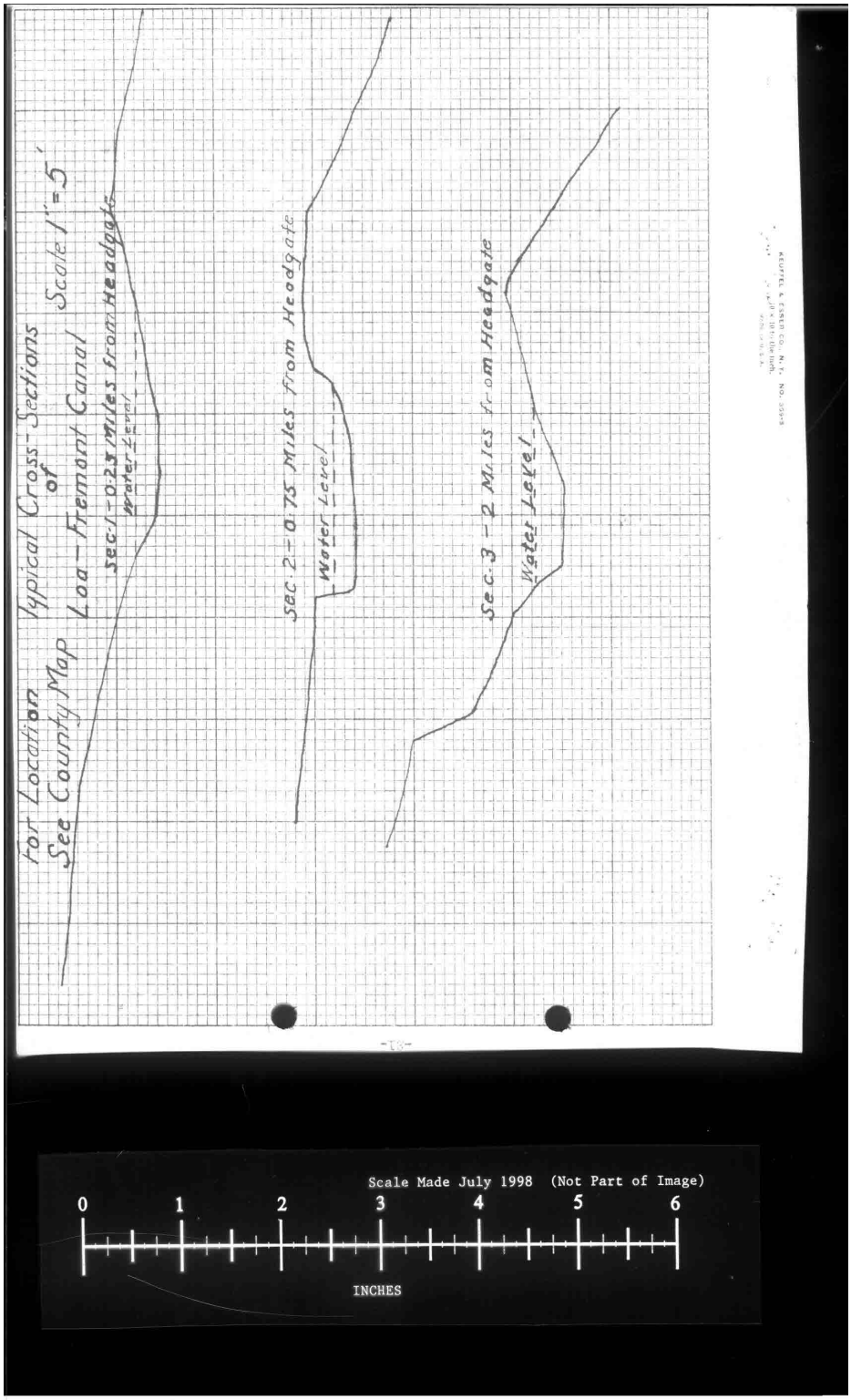
REL: JOHNSON VALLEY RESERVOIR DAM

July 9, after making some observations of Fish lake, I visited the Johnson Valley Reservoir dam which is located on the Fremont river approximately four miles below the outlet of Fish lake in the SE¼NW¼ of Sec. 30, T. 25 S., R. 3 E., SLB & M. The major tributaries supplying water to the reservoir are Fish lake, the waters of which enter at Johnson reservoir on the west side of the reservoir, and Seven Mile creek which enters from the north. Fremont river was furnishing to the reservoir approximately 22 sec. ft. of water and Seven Mile creek was supplying approximately 8 sec. ft. I estimated that there was being discharged from the reservoir approximately 35 sec. ft. The water in the reservoir stood about 5 ft. below the high water line. The dam has a freeboard of 5 ft., has a minimum top width of 30 ft., is 360 ft. long and 22 ft. high, over the outlet. The spillway is constructed around the north abutment, the major part being through shattered rock in place. It is approximately 10 ft. deep and 10 ft. wide, controlled by two lumber gates, each 5 ft. wide and 5 ft. high. The side walls of the spillway are concreted for the first 45 ft., the remainder of the spillway being in most part through the shattered rock in place. The spillway, for the first 100 ft., is approximately level. From here to the stream bed, which is only a short distance, it has about a 6% grade. The high water mark on the reservoir is near the top of the 5 ft. control gates in the spillway. Both slopes of the dam are very steep, not exceeding 1:1 and they are heavily riprapped with rock, a good percentage of which is larger than man size. The outlet consists of a 22 inch wood staff pipe which, I understand, has been in use for more than 20 years with a control gate on the downstream end. Over the control gate is constructed a lumber shack.

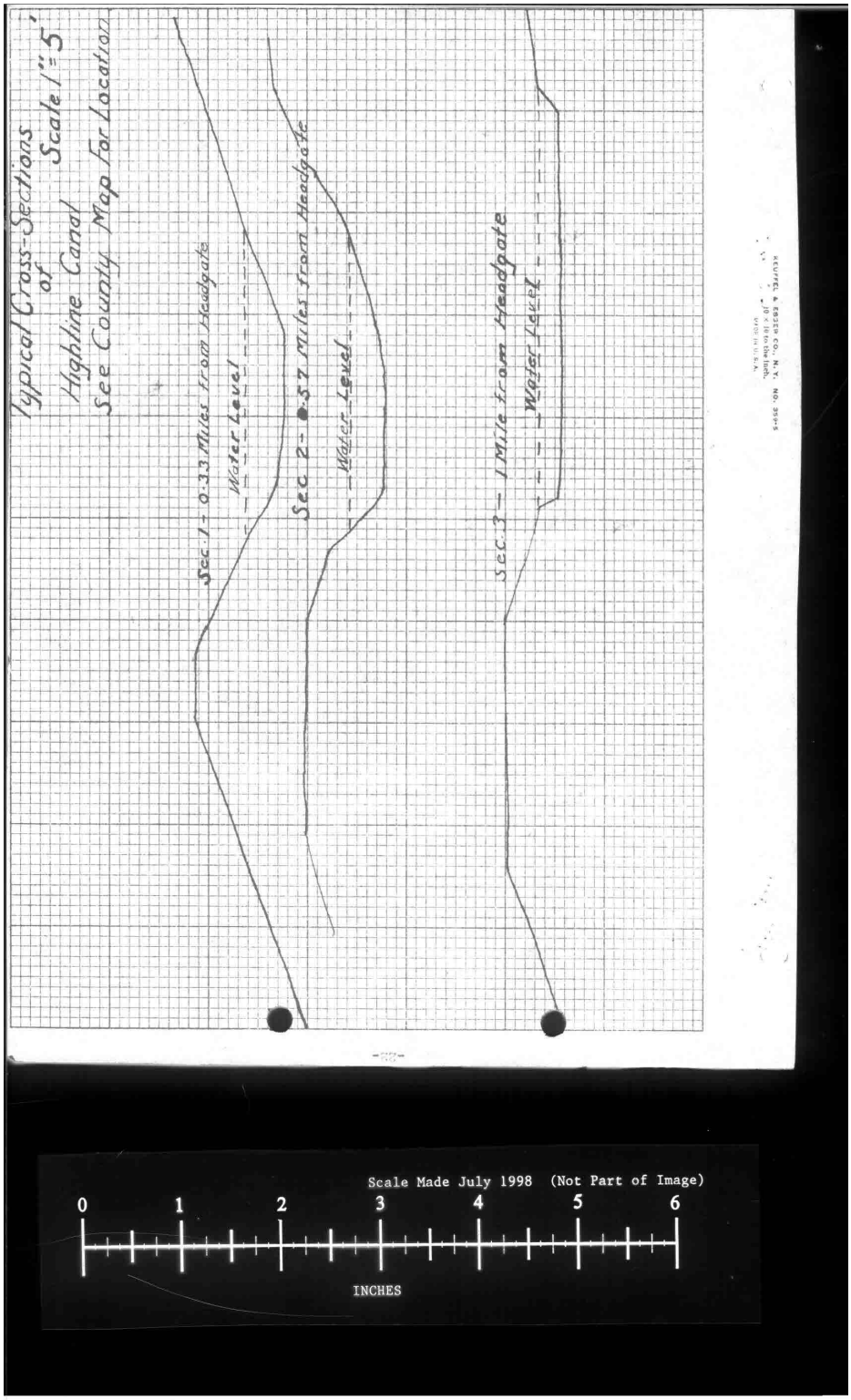
In addition hereto is a sketch map - 1 sheet - showing approximate dimensions of the dam, spillway etc.

2:7

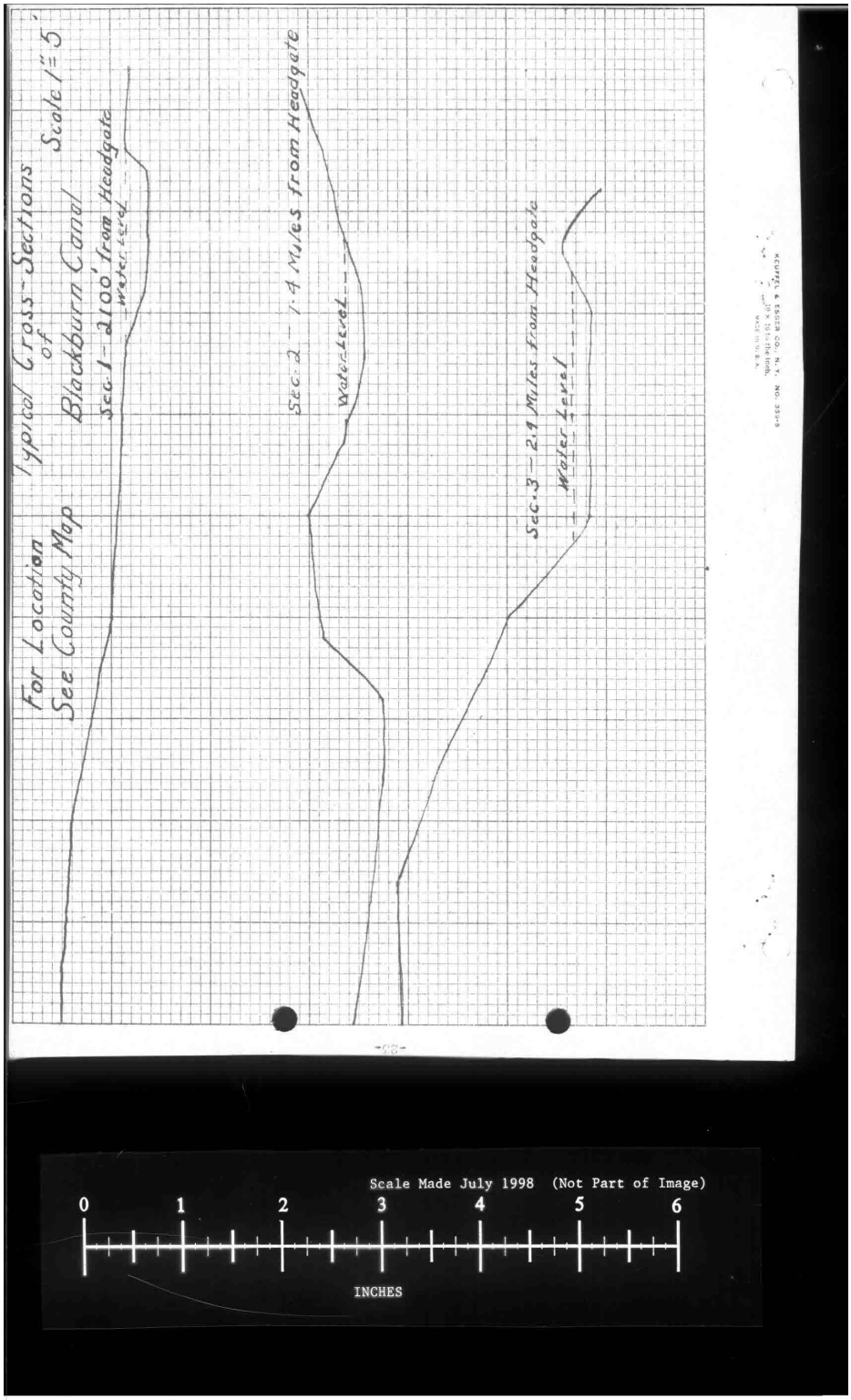
00-00-0000: map, johnson valley reservoir dam



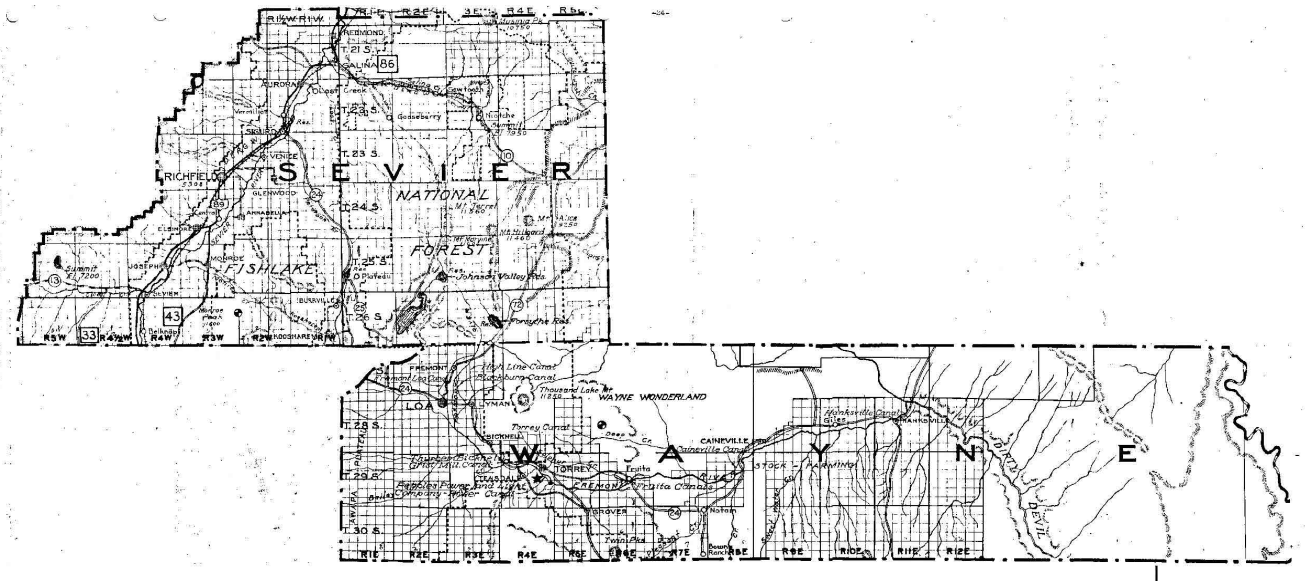
07-15-1937: typical cross-sections of highline canal



07-15-1937: typical cross-sections of highline canal, page 2



07-15-1937: map; july 15, 1937



Other Supporting Information

07/07/93
JSA

Re: General review of NPS-WRD docket files regarding CARE water rights referenced by the "Bates Decree". In addition, a specific review of the priority date of CARE's current "municipal purpose" water right. This right derives from the Alma Chestnut right, which was included in the Bates Decree.

The WRD docket files reference a Utah District Court case "Hanksville Canal Company vs. Torrey Irrigation Company", presided over by Judge Nephi Bates. WRD documents commonly cite the judgement from this case as the "Bates Decree". Some of the rights that were the subject of the Bates Decree were originally owned by Fruita residents and then became United States' property through CARE land acquisitions. This review is intended to assist claims preparation for an ongoing adjudication that includes the Fremont River basin (Utah Civil No. 435), and to interpret historical details associated with CARE's current "municipal purpose" water right. This right derives from an original right owned by Alma Chestnut, one of the Fruita residents.

1) A document titled "Transcript--Hanksville Irrigation Company, Ptf. vs. Torrey Irrigation Company, et al. Dfts."

The transcript pertains to testimony given before Judge Bates in the Wayne County District Court on April 9, 1935. From a cursory review of the transcript it appears that the litigants had reached a pretrial settlement that they wanted to court to accept. However, another individual (G.T. Bean) had entered the case as a defendent through a cross-complaint. Bean asserted that he had water rights that would be ignored by the proposed stipulation.

The transcript centers on the Hanksville and Torrey lawyers' attempts to minimize or eliminate Bean's participation in the proceeding, and Bean's effort to get the court to consider his water right claims relative to other defendants. Testimony ends without clear resolution of the case. There is an indication that some aspects of the case would be carried forward at another hearing.

With respect to Fruita rights, testimony is provided by one Fruita resident (Clarence Mulford) on pp. 44-57 of the document. Mulford testified that the residents used a combined total of 7-8 cfs. He estimated acreages irrigated by each resident and stated his belief (knowledge?) that these uses dated back to at least 1896.

2) A document dated July 15, 1935 and marked "COPY", which appears to be the Bates Decree

The decree places the water rights in two categories or "sections". Section A rights are termed "primary" rights and are described as "absolute, unqualified rights". Section B rights are termed "second class" rights and are described as being "available only when...[culinary and primary rights]... have been fully supplied". Specific priority dates are not indicated in the decree. It may be that the judge considered all rights within a particular section to be on equal footing.

Within each section, diversion rates are specified for a list of irrigation companies and/or individuals. Fruita residents are granted collective water rights in the sum of 8 cfs. Even though their individual rights are not quantified, the Fruita water users are named and an attached comment indicates the 8 cfs should be subdivided "According to their respective individual rights".

The decree also states that "all rights [are] subject to pro rated distribution". It is not known (by this reviewer) whether this strictly refers to subdivision of water right totals as reported for Fruita residents and irrigation companies, or whether--reinforcing the idea of equal footing for rights within a section--also indicates how diversions for rights are supposed to be adjusted when water is in shortage.

The decree says a commissioner will appointed from time to time to superintend and direct measurement and diversion of the waters subject to the ruling.

3) A document titled "Fremont River Distribution--June 10, 1937 to July 10, 1937, by Freeman Tanner, Water Commissioner"

An attached cover letter indicates that this report was submitted by Tanner to the Utah State Engineer's Office. By way of introduction, Tanner says that water rights from the Fremont River became an issue because of dry conditions from 1930 to 1935, resulting in the court case and consequent Bates Decree. Tanner was appointed commissioner in 1937, following an appointment by a previous individual.

With respect to the Fruita residents, and others listed in the decree, Tanner prepared a table showing water decreed and average water used. The acreages shown for each resident are very close to the acreages estimated by Mulford during his testimony (see item 1). **The amounts listed by Tanner as decreed/used by individual Fruita residents adds up to 8.0 cfs, and is consistent with all subsequently-dated NPS docket references to what each individual's water rights were.**

4) A 1942 letter from the State Engineer to NPS regarding water rights for Alma Chestnut

The state letter, in response to an NPS inquiry, says that the NPS hadn't yet demonstrated a basis for quantifying A. Chestnut's right at 0.66 cfs (NPS apparently got this quantity from Tanner's Report). This water right had been, or was in the process of being acquired by NPS. The state suggested that NPS research county records regarding "improved irrigation areas" as a basis to determine A. Chestnut's share of Fruita's 8 cfs of water rights.

5) Change Application a-4187 filed with the state of Utah in 1962 to convert diversion location, place and purpose of use for a small part A. Chestnut's right

This changed 0.0557 cfs (25 gpm) of the right to municipal purposes at CARE campgrounds, headquarters, and residences. This process was finalized by Certificate a-462, issued by Utah in 1966. The certificate reports the original right priority date as being the date of the Bates Decree.

6) A 1965 letter from the Solicitor's Office to the Utah State Engineer

This letter is intended as documentation of the "date and manner" of CARE water right acquisitions. The amounts of water reported for individual Fruita rights are consistent with the amounts indicated in the Tanner Report, with one exception. Tanner shows Dewey Gifford as having 1.10 cfs of rights, NPS records show acquisition of 0.75 cfs of Gifford's rights in 1965 (NPS hadn't purchased all of Gifford's irrigated land?). Thus, in 1965, NPS claimed 7.65 cfs of Fruita's decreed water rights. Priority dates are not specified in the Solicitor's letter.

7) Water Right Claims that appear to have been submitted by the United States to Utah in 1983 as part of the basin adjudication

These claims include 7.65 cfs of CARE-acquired Fruita water rights (claim numbers 95-3994 through 95-4002). Note that one Fruita water right (Merin Smith right) is broken into two claims (claims 95-3997 and 95-3998) since the land parcel had been divided, and thereby involved separate acquisitions by the United States. A number of the claims appear to contain minor errors. For example, they state a priority date that is equivalent to the date of the Bates Decree while also stating that water has been beneficially used since 1902.

Need to check with CARE regarding current and anticipated uses of other Fruita rights...

IN THE SIXTH JUDICIAL DISTRICT COURT IN AND FOR THE COUNTY OF WAYNE, STATE OF UTAH

HANKSVILLE IRRIGATION CO., Plaintiff,	:	
vs.	:	TRANSCRIPT OF TESTIMONY
TORREY IRRIGATION CO., et al. Defendants	:	Case No. 167

BE IT REMEMBERED that the above entitled case came on regularly for hearing before the Honorable Nephi J. Bates, Judge of the Sixth Judicial District Court, sitting without a jury on the 9th day of April, 1935 at Loa, Wayne County, Utah, and the following proceedings were taken and had.

Appearances:

For the Plaintiff:

Henry E. Beal, Esq.

For the Defendant Torrey Irrigation Co.:

Joseph H. Erickson, Esq.,

For the Defendant G. T. Bean:

G. T. Bean, Esq.

Ina Hunt, Court Reporter

I N D E X

WITNESSES:

For the Defendants:	Direct	Cross	Redirect	Recross
Reuban Meeks	5	9		
Arthur Meeks	18	22	24	24
Alfred Osberg	25	27		
Joseph Hiskey	31	33	34	
Jud Mott	35	36	39	
Recalled			57	
Clarence Mulford	41	49		
William D. Hickman	58	61	62	
Silas Tanner	63	68	88	91
			93	94
			97	
Lee Pierce	75	77	83	86
Des Hickman	86	88		
Edmund King	97	102		
For the Defendant G. T. Bean				
G. T. Bean	103	136		
Recalled	118	144		
Silas Tanner	148			

April 9, 1935. Loa, Wayne County, Utah

10:00 A. M.

BY THE COURT: Court is in session.

MR. ERICKSON: Your honor please, in this action now before this court entitled Hanksville Canal Company, a corporation, plaintiff, verses The Torry Irrigation Company, a Corporation, and others, now the parties have all been in court and I think they are all here this morning and their counsel, and they have all stipulated and agreed to the issues and the rights to the use of water in Fremont River that arises below Bicknell in this County, with the exception of the rights as claimed by Mr. G. T. Bean, and I understand that he is here ready to present his case to his rights. As to the other rights I haven't quite prepared the stipulation, but we will have that ready so that we can present that in court.

MR. BEAN: I don't know whether that is the proper method for them to take. I am of the opinion that the pleadings should be read and that they should not stand for them to claim that much water, that they should get in and show they are entitled to it and not throw that burden upon me to try this entire lawsuit, and they go together and eliminate me. I've got 962 acres of patented land down there that is all irrigated by water out of that river and I would like to have them put in their proof. I don't think it is fair for them to get together on those corporations and just eliminate the little fellow out. I have spent $7,000 down in that country and I would like to know if I'm ever to get any of it back.

I think I have made them a very very liberal offer rather than go to trial. They say, 'This is it. Take it or go to trial.' and I have told them to go ahead and try this case. I would like to cross examine the witnesses.

BY THE COURT: Well, I suppose I can't tell you how to proceed.

MR. ERICKSON: Very well.

MR. BEAL: If the court please, are witnesses are all here, if Mr. Bean is desirous of examining them. We are here subject to his call, All of the parties to the controversy, as has been indicated by Judge Erickson, have reached a decision as to their respective rights. We are satisfied. We are ready to enter a findings of fact, conclusions of law and a decree based on the stipulation of the other parties involved. If Mr. Bean has any objection to the stipulation he is at liberty to make those objections. If he has any proof to make we are anxious that he make the proof, but other than that the rest of the parties are, I think, well ready to enter a stipulation.

MR. BEAN: Well, I think they should try the case. That is what we are here for, to show the Court what we think in fairness that much land both of these defendants have here and I think at all times it has, the great majority of it, at least has been irrigated and many years gone by, and recently they use their stipulations and with my water, as I believe. They are saying, well now, the Torrey gets so much. We'll get along. We think we have got you, but we will get along, providing you concede to give us 10 second feet of water at our dam down there at Hanksville. These boys up here can afford

to do that, but I can't. That means that I have got my land here, and will have to contribute at least another 10 feet in order to get this, because this water to reach our point of diversion at the head of the canal in Hanksville. I don't believe that I ought to stand -- and I don't think Torrey ought to, but they are satisfied and I am satisfied so far as they are concerned, but I don't believe that we have got to make Hanksville absolutely whole for all the water that they have been losing by reason of the erosion of this river, which when they irrigated their lands a few years ago and measurements were made, the river was a small river, the channel was very small. It is now from 5 to 10 times as large as it was at that time and all filled with quick sand and debris. I think they are going to take the water away from me to take all they need and have me run that -- lose all the water to ship it way down there. Well they say it won't reach us. We have got to have any way more than 20 feet turned in the river. I take the point that is their misfortune, that they are located where they are. I am a poor man, I can't afford it -- some of these people probably can. They off 2 second feet of water for 962 acres of land. Hanksville gets 10 second feet and we put it to the head of their dam and that means 20 second feet that we are contributing. I don't think it is right. I would like to have them try this case.

MR. ERICKSON: I will suggest this. If Mr. Bean has any objection to the stipulation that's been made, if he has, why of course the parties can soon put on their proofs as to that and Mr. Bean may proceed to cross examine, but if Mr. Bean will concede that they are entitled to the amount of

water they have stipulated and agreed to so far, why then -- and is not satisfied with the amount they are willing to concede to him, why then he might proceed to put on his evidence, but if not willing -- if Mr. Bean is not willing to concede that these parties now, the plains and the defendants are entitled to the amount of water they have agreed upon by stipulation, then I see no other way than we will simply have to put on the witnesses here for that purpose. He is entitled to a hearing on his answer and we want the matter concluded now, settled now. That is the only way we can do.

BY THE COURT: I was just going to make an inquiry, in view of this situation, as to whether or not the plaintiff desires to offer any proof. I suppose it is their right to go ahead if they desire.

MR. BEAL: I have no desire to offer any proof so long as the other parties have stipulated.

BY THE COURT: Apparently one party isn't stipulating.

MR. BEAL: Just one. If the Court please, if Mr. Bean will admit the right of use of 10 second feet of water which has been beneficially used on 583 acres of land date of use dated from 1882, it will be unnecessary for me to put on any witnesses in support of those counts. I think that will be conceded by the parties represented by Judge Erickson. If that is the case we can expedite by having that as admitted for us in the records and upon that showing it will be unnecessary for the plaintiff to introduce any evidence.

BY THE COURT: That is admitted, is it?

MR. BEAN: I will admit that.

BY THE COURT: And admitted by the Defendants?

MR. ERICKSON: As to the Hanksville Irrigation Co.

MR. BEAL: Yes.

MR. ERICKSON: Oh yes, we have stipulated as to that.

BY THE COURT: That is water for 583 acres of ground priority date of 1882.

MR. BEAL: With the decree of 10 cubic feet per second which can be and has been previously used on the land described, approximately 60 acres per cubic foot of water, that is all for the plaintiff.

MR. BEAN: You rest?

MR. ERICKSON: Well, we have been -- if you desire to examine any of our witnesses, I would say this that --

(Informal conference)

Call Reuban Meeks.

REUBAN MEEKS

sworn on behalf of the defendant Torrey Irrigation Company, testified as follows:

DIRECT EXAMINATION BY MR. ERICKSON:

Q. State your name please.

a. Reuban meeks.

q. Where do you reside?

a. Bicknell.

q. In this county?

a. Yes sir.

q. Now do you represent the Cainsville Irrigation Company, the defendant in this action?

a. Yes Sir.

q. And do you hold any position as an officer of that company?

a. I am Secretary.

q. How long have you been secretary of the company?

a. Two years.

q. Three?

a. Two.

q. Two years. Two. Now, Mr. Meeks do you know appoximately when the company was organized, that is approximately?

a. No, I don't.

q. You don't recall the year?

a. No sir.

q. Well, how many years would you say, just in your best judgment?

a. I would imagine 50 years.

q. Since they were incorporated, what is known as the Cainsville Irrigation Company.

a. Cainsville Irrigation Company, about 12 years.

q. Two?

a. Yes.

q. But prior to that time was there a company preceding the Cainsville Irrigation Company?

a. Yes sir.

q. Representing the same rights as you represent now?

a. Yes sir.

q. And that was known as the Wayne County Irrigation Company, was that?

a. That is the understanding I have, yes sir.

q. Name of it, and that took in the Hanksville Irrigation and Canal Company and the Cainsville and Giles, you recall that?

a. No sir, I don't.

q. You don't recall that? a. No sir, I don't.

q. Well now, Mr. Meeks your company was organized for the purpose of furnishing irrigation water? a. Yes sir.

q. To the stockholders of the company? a. Yes sir.

q. About what amount of land does your stockholders irrigate under that system?

a. I judge around 700 acres.

q. Approximately 700 acres? a. Yes sir.

q. Will that land produce anything without irrigation, I mean the land itself is barren and dry and unproductive without irrigation?

a. Yes sir.

q. Well then, it becomes necessary to irrigate it in order to produce crops? a. Yes sir.

q. What kind of crops do you raise there?

a. Alfalfa, some corn and garden stuff.

q. And from what ditch or canal do you take the water out in the river?

a. Known as the Cainsville Irrigation Ditch.

q. About where is that located? Can you inform the court?

a. It is in Cainsville precinct?

a. Yes sir and we designate it as the foot of the Blue Dugway to those that is acquainted.

q. Near what is called the Blue Dugway? a. Yes sir.

q. That is taken out from what river?

a. The dirty devil river.

q. That is known sometimes as the Fremont River? a. Yes sir.

q. Now the water that you claim under this system, is that

water in the Fremont River that arises below the Town of Bicknell in this County?

a. State that again please.

q. Well, I say, the water that flows in there, that supplies your canal, is water that arises in the river below Bicknell in this County?

a. The majority of it, yes sir.

q. Any from any other source? a. Yes.

q. The water above Bicknell, I understand, is all decreed and settled in this county.

a. According to my understanding.

q. But the rights involved in this action involve the rights to the water that flows into the river or arises in the river below Bicknell?

a. Yes sir.

q. And from there on down to Hanksville? a. Yes.

q. There are, of course, some tributaries and other waters that run into the river below? a. Yes sir.

q. Pleasant Creek and maybe other small tributaries? a. Yes.

q. I see. Well now, how long have you been connected with this company?

a. Twenty or twenty-five years.

q. From whom did you get your rights?

a. From my brother.

q. From one of your brothers? a. Yes sir.

q. I see, well you have a list of the stockholders, how many stockholders do you have?

a. I can't give you the number of stockholders exactly.

q. I see, approximately?

a.

a. I'd say fifteen.

q. About how much stock, shares?

a. We have 523 shares.

q. I see. a. Yes sir.

q. Well, I believe that is all with this witness, Mr. Bean, if you wish to examine him.

CROSS EXAMINATION BY MR. BEAN:

q. Mr. Meeks, you say that you are the secretary of that company? a. Yes sir.

q. You stated there was an old corporation some 35 years ago or such a matter?

a. Some years back.

q. And, well what became of that? a. I don't know.

q. Well when you were organized, I will say that corporation was the Wayne County Irrigation Company, wasn't it, or do you know?

a. That is the understanding, yes sir.

q. And that comprised -- it was one general corporation, but in three branches, was it not, the Hanksville, Giles and Cainsville?

a. I can't answer that.

q. You don't know. You know what became of the stockholders of that corporation. What I mean by that is you know whether that corporation met and dissolved their corporation before you Cainsville people acted in incorporating?

a. I don't know.

q. You don't know whether if I should show you a certificate of stock where -- if I have it here. Is that -- what does that signify? a. I have never seen one of those.

q. Does not this corporation embrace the same water and the same canal and the same lands you have just now testified to?

a. It might.

q. Miss clerk I will ask you to mark that as Defendant's Exhibit No.1 on cross examination. (Exhibit marked)

q. Will your corporation acknowledge that certificate of stock?

a. No, I don't think so.

q. Why not?

a. Because I haven't got any right to.

q. Why not?

a. Not in my power to do so.

q. You are occupying the canal that covered that. I want to offer this as evidence.

MR. ERICKSON: What have you got there.

MR. BEAN: Look at it and see.

MR. ERICKSON: What do you want to do with it?

MR. BEAN: Well, I want to see whether I am recognized with my certificates in that corporation.

MR. ERICKSON: What do you want to do with it now.

MR. BEAN: Your Honor, I offer that exhibit.

MR. ERICKSON: Are you offering it?

MR. BEAN: Yes.

MR. ERICKSON: Well, we will object to it as incompetent, irrelevant and immaterial and has no bearing, nothing to this action, this cross examination. Witness doesn't know anything about it. It appears -- he is evidently trying to put some affirmative matter before the court upon cross examination. We object to it as incompetent, irrelevant and immaterial, and improper on cross examination.

BY THE COURT: I think it is improper cross examination of this witness. I don't recall any testimony of his. He is secretary of the company and the Wayne County Irrigation Company preceded these people, but all I can see in it is to suggest that you might be interested in their company.

MR. BEAN: Yes, I think I am interested in their company, or they have incorporated without dissolving this company and without taking care of the stockholders, and I am a stockholder. If that be true then I think that his corporation, is illegal because it is based --

MR. ERICKSON: I object to that an incompetent, irrelevant and immaterial and out of the question, absolutely.

BY THE COURT: I am inclined to think it is improper cross examination. From that view point I will sustain the objection at this time.

MR. BEAN: Exception.

q. All right, Mr. Meeks, how much land do you own under that corporation?

a. I own 160 acres.

q. How long have you owned it?

a. I received the deeds 12 years ago, I think.

q. How much have you irrigated on it?

a. Oh, approximately 45 acres.

q. And that is about all you can irrigate isn't it?

a. No sir.

q. You use it largely for pasturage, do you not?

a. Some.

q. And you raise any hay on it? a. Yes sir.

q. Crops. About how much of it is used in that way?

a. Beg pardon.

q. About how much is used as pasturage?

a. Oh, I'd say 100 acres.

q. It is just dry and you have it fenced do you?

a. Part of it.

q. And you stated that there was about 700 acres, did you not, under cultivation under that canal?

a. Approximately.

q. Can you figure out 500 that is irrigated by that canal water? a. Yes, I think so.

q. You think you can? a. Yes sir.

q. That is irrigated, each and every year, is that right, practically all?

a. It may not be irrigated every year.

q. Well, how much would you say is being irrigated practically every year, right along in that canal?

a. Better than 500 acres.

q. That would be your best judgment? a. Yes sir.

q. And now that canal, it runs around and down the canyon and it is very steep and draws water very rapidly does it?

a. Yes.

q. And you think there is about 500 acres that is irrigated year after year, practically? a. Yes, there is that many.

q. You are asking here, your corporation, for 12 second feet of water. Now, you don't need that much do you?

a. Well, I think we do.

q. Well, what causes you to think so?

a. In actual use.

q. Now have you any idea --

MR. ERICKSON: Well, now, your Honor please, I object to that cross examination as improper cross examination. I haven't asked this witness anything as to the duty of water at all. I didn't question him at all on that part of it, and I think it is going into a matter that I haven't examined him on direct examination, never brought out on direct examination.

BY THE COURT: There is nothing in this witness's testimony with reference to the duty of water. You have his testimony as to 700 acres of ground he calls sterile, raising crops. I recall nothing with reference to duty of water.

MR. ERICKSON: No. he says not over 500 in the canal.

BY THE COURT: But there wasn't anything in his evidence going --

MR. BEAN: No, I don't think there was either.

BY THE COURT: Objection sustained.

q. Well, I will ask you, Mr. Meeks, if you have ever measured the water in that canal? a. No sir.

q. You never did. So you don't know whether it requires 12 second feet or not, do you?

a. I never measured it.

q. You just use what water is turned down to you and let it go at that?

a. What water we can get, yes.

q. How is it distributed to you and the stockholders?

a. Through latterals and in turns.

q. You have a watermaster do you? a. Yes sir.

q. Who is he?

a. Well, our present watermaster is Milan Groover.

q. Is he here? a. No sir.

q. He has not been watermaster more than a year, hashe?

a. No sir.

q. So you don't know anything about what water runs down the canal?

a. Not exactly.

q. As regards second feet? a. No sir.

Mr. BEAN: I think that is all.

MR. ERICKSON: That is all.

BY THE COURT: Well, it's 12:00 o'clock. Possibly just as well recess.

MR. ERICKSON: I'd just as leave at this time take a recess.

2:00 P. M.

MR. ERICKSON: Your honor please, I omitted to call to your attention yesterday that I should be entered here as associate counsel for the following named defendants. I omitted that. It appears from the records that J. Vernon Erickson is counsel for these defendants I am to name, but I would like the record to show that as of yesterday that I appear as associate counsel with him for the following named defendants: Torrey Irrigation Company, a corporation; Cainsville Irrigation Company, a corporation; Edmund King, Joseph Hiskey, William Hickman, Dez Hickman, Charles Cooper, M. V. Oyler, Merin Smith, William Chesnut, Alma Chesnut, Dewey Gifford, Clarence Mulford, Dan Adams, Edgar Larsen, and then the Richfield Commercial & Savings Bank of Richfield, also King and Larsen in connection with them, the record might show.

BY THE COURT: Maybe you can indicate which of these

defendants you do not represent.

MR. ERICKSON: The balance of the defendants -- I don't know.

BY THE COURT: That you don't represent, which of them. Can you name them?

MR. ERICKSON: The balance of them, we don't represent.

BY THE COURT: Just read those.

MR. BEAL: Rudolph Cook, A. Jensen, James Reading, Roy Brinkerhoff, A. M. Myer, G. T. Bean, Blue Valley Irrigation Company, Charles E. Norton.

BY THE COURT: I don't find Blue Valley Irrigation Company named in the pleadings.

MR. BEAL If the court please, the Blue Valley Irrigation Company and Charles E. Norton were named at a date later in the proceedings here. They were named for the reason that a complaint in intervention was filed by Mr. Norton in his own behalf and in behalf of the Blue Valley Irrigation Company.

BY THE COURT: Is there a paper of that kind.

MR. BEAL: It isn't filed in the file here, but an answer was sent to me and I think the other counsel interested in this case and based upon the answer -- I assumed that same was filed. I prepared and filed a reply to that answer. Thereafter Mr. Norton appeared by motion only raises the question especially and asks that the complaint as to him may be dismissed for the reason and on the ground no complaint was served upon him. That is how he comes into the picture, but in this present proceedings, there is nothing to bring him before the court.

BY THE COURT: He is out of the picture.

MR. BEAL: Except on this motion. The files will show he has been served with Summons and special appearance made attacking the service for the reason and on the grounds as mentioned that no copy of the complaint was served on him. It very definitely shows from what the attorneys know in this matter that he did receive a copy of the complaint and furthermore that he has filed an answer or submitted an answer, a copy of which was sent to Mr. Bean and one to me and one to Mr. Erickson.

BY THE COURT: His motion reads this way: (Reads) Now the thought that struck me when I saw that situation, that motion should be granted because there is nothing in the pleadings that brings him into court.

MR. BEAL: The return of the Sheriff brings him into court.

BY THE COURT: Yes, I know, but it only brings him in to answer any complaint filed against him.

MR. BEAL: An amended complaint has been filed against him for reply in any event.

BY THE COURT: I am a little bit doubtful whether Mr. Norton is before the court.

MR. BEAL: Your honor please, if he files an answer, that is an acknowledgment , of course, that he has received a copy of the complaint.

BY THE COURT: I don't see he has filed an answer.

MR. BEAL: He served a copy on counsel.

BY THE COURT: He might deliver lots of papers to counsel that wouldn't bring him into court.

MR. ERICKSON: That is an argument. That is all we had to go by. We had a right to take it for granted he is in court.

MR. BEAN: Your honor please, he wrote me asking me if I would kindly send him a copy of the complaint and asked me if I would consent that he filed an aswer. I promptly mailed him a copy of the complaint and told him yes, be glad to consent he file it so far as I was concerned, and he sent me a -- sent me a copy of his answer and I have it here in my files.

BY THE COURT: Is that the complaint in intervension.

MR. BEAN: THat is the complaint in intervension.

BY THE COURT: He didn't file it apparently.

MR. BEAN: Believing his words that he was anxious to try and get consent, and I did what I could and sent him a copy of the complaint. I went right along presuming he was on the square.

BY THE COURT: I am a little bit doubtful.

MR. BEAN: I think any way he is trifling with the court and with the attorneys, it is detestible and unprofessional. He ought to be taught a lesson if we can do it. I acted in good faith.

MR. BEAL: I didn't know there was no complaint in intervension in the file. So did I act in good faith. I filed a reply.

BY THE COURT: I can't see a thing in these files that amounts to an appearance outside of that special motion to quash service of summons.

MR. BEAN: I actually do not believe there is any-

thing there. But my answer presuming there was is there and I don't suppose that it is doing any harm.

BY THE COURT: Well, it appears to me that this is the situation so if he wanted to he could come in later and upset the apple cart. Well, what could be gained in any event. Enter Judge Erickson as assistant counsel with the defendants named.

MR. ERICKSON: Is the Court ready?

BY THE COURT: Go ahead.

MR. ERICKSON: Call Mr. William Meeks. I mean Arthur Meeks.

ARTHUR MEEKS

sworn on behalf of the defendants represented by Mr. Erickson, testified as follows:

DIRECT EXAMINATION BY MR. ERICKSON:

q. State your name please.

a. Arthur Meeks.

q. Where do you reside? a. Bicknell.

q. Are you connected with whatis known as the Cainsville Irrigation Company? a. Yes sir.

q. Do you hold any official position in that company?

a. No sir.

q. You are a stockholder, of course? a. Yes sir.

q. How long have you been associated with it?

a. Twenty years.

q. How many? a. Twenty.

q. Ever since it was organized? a. Yes sir.

q. Now whereabouts is the -- does this company operate?

a. It operates from --

q. Cainsville? a. Yes sir.

q. Is that where its place of -- the office of the corporation is? a. Yes sir.

q. And what is the company engaged in?

a. Irrigation system, farming.

q. Furnishing water for the stockholders? a. Yes sir.

q. From what source?

a. From the Dirty Devil River.

q. That is sometimes known as the Fremont River also?

a. Yes sir.

q. That runs all through this valley down to the Colorado River? a. Yes sir.

MR. BEAN: You testify more than your witness. Lead too much, I think. I object to it on that ground.

q. Whereabouts is the land situate that the water is used that is handled by this company?

a. In range 8 west and 9 east.

q. But the land, where is it situate?

a. Cainsville.

q. In Cainsville? a. Yes sir.

q. And about how much land does this company furnish water for?

a. Six or seven hundred acres.

q. Between six and seven hundred? a. Yes.

q. I see, and what is the nature of this land, what kind of land would you say?

a. Majority of it be clay land I would think.

q. Clay. a. Yes.

q. Any other kind? a. Yes, sand.

q. Some of it sandy loam? a. Yes sir.

q. Well, this land produces crops without artificial irrigation? a. No sir.

q. You have to water it? a. Yes sir.

q. In order to produce crops? a. Yes sir.

q. And you have been connected with it for you say 22 years?

a. Yes sir.

q. Prior to that time who was -- who had the land.

a. The Cainsville people.

q. I see. You know how long before you got it, this land was watered, irrigated?

a. Well, I have been acquainted with it for maybe 32 years, 35.

q. About 35 years? a. Yes sir.

q. I see. How long is your irrigation season about, when does it commence?

a. Well, it is varied since I have been there.

q. I mean every year. How soon in the year do you have to start to irrigate?

a. You can start in April.

q. The first of April, along there?

a. If you could get it.

q. Not before that?

a. We have never been successful. We have had trouble with the water and we have had to -- yes.

q. How long does it last?

a. It last all September.

q. Until the last of September? a. Yes.

q. That would be the first of October then, about? a. Yes sir.

q. Well, are there stockholders living on this land?

a. Yes sir.

q. How many? a. I would judge maybe fifteen.

a. Fifteen? a. Yes.

q. They have their families there? a. Yes sir.

q. And does it require any water for domestic and culinary purposes? a. Should do, yes sir.

q. And how -- that is -- they use that all year, I presume?

a. No.

q. You have to use that all the time?

a. We use it but we do not use it out of the ditch all the time.

q. Any other source of supply?

a. We have cisterns.

q. Well, you have to fill the cisterns from the ditch?

a. Yes sir.

q. Have you an idea how much water it would take per family?

a. No sir.

q. You haven't a judgment as to it? a. No sir.

q. That is in second feet? a. No sir, I wouldn't say.

q. Well now, have you ever seen water measured?

a. Very little.

q. You haven't. Have you a judgment as to a second foot of water? a. No sir.

q. You haven't? a. No sir.

q. What do you raise down on that land?

a. Alfalfa, corn, vegetables.

q. Well now, the water that you have used, you take that through what canal? a. Cainsville Canal.

q. Cainsville Canal? a. Yes sir.

q. And about what is the size of your canal?

a. Well it varies.

q. Well? a. It will average four and a half feet deep.

q. You know a chain isn't any stouter than its weakest link. It is about 4? a. Four and a half feet.

q. Wide? a. Yes.

q. And how deep? a. Two feet deep.

q. And it has a pretty good fall? a. Good fall.

q. About how long is your canal? a. About 8 miles long.

q. I see, and that is turned out about what point?

a. It is turned out at the foot of the Blue Dugway, the old bridge, the old river bridge, just about.

MR. ERICKSON: I believe that's all.

CROSS EXAMINATION BY MR. BEAN:

q. Mr. Meeks you stated there is between six and seven hundred acres of land continuously irrigated or almost continuously?

a. Not almost continuously, irrigated yes.

q. What do you mean? a. Has been irrigated.

q. That had been irrigated? a. Yes sir.

q. How long ago? a. I couldn't say how long ago.

q. What do you mean then, by being irrigated -- that it had been, years ago, irrigated? a. Yes sir.

q. And then considerable of it cut out?

a. Yes sir, that is what I mean.

q. So there is a considerable of this 600 or 700 acres that has not been irrigated for some considerable time?

a. Yes sir, could be.

q. What is your best judgment about the number of acres that

has been irrigated along reasonably regularly?

a. Better than 600 acres.

q. How long ~~could~~ you readily take this paper and pencil and mark out who are the owners of those lands?

a. Yes, I think I can.

q. Do that please.

a. The clerk can take it.

q. I didn't have it then. You have a pencil.

a. That ought to be about correct.

q. Thank you. Now, Mr. Meeks, you never measured this have you? a. No sir.

q. How do you get your information?

a. Well by just looking, by observation.

q. Nobody told you? a. No sir.

q. So you are going along the road, you make this as an estimate? a. Yes sir, I do.

q. From the way it appears to you? a. Yes sir.

q. That is the only information you have? a. Yes sir.

q. Now, you know the duty of water? a. No sir.

MR. ERICKSON: He said he --

q. How much have you irrigated?

a. I have 80 acres.

q. Is it all irrigated from this source? a. Yes sir.

q. Where does it situate, this side of Cainsville?

a. Some of it is.

q. It is in different parcels? a. Yes sir.

q. Some below the town? a. Yes sir.

MR. BEAN: Well, that is all.

REDIRECT EXAMINATION BY MR. ERICKSON:

q. Just one more question. The water that you have been using during the time you have been connected with this irrigation company down there, state to the court as to whether or not that water has been used economically and for a beneficial purpose.

a. Yes sir. Yes sir, it has.

Q. That is, you haven't wasted the water? a. No sir.

RECROSS EXAMINATION BY MR. BEAN:

q. Now, you were asked the question whether or not this water has been used economically and all of that. You haven't paid any particular attention to that have you?

a. Yes.

q. You've seen all of these people irrigate, have you?

a. I have.

q. And did you examine to see whether they were using it in that way and manner?

a. Yes, I have been called on, yes.

q. Did you have some special duty or special --

a. Yes sir.

q. What wasit?

a. For to see that the water was distributed economically.

q. You hold any position?

a. Just as a stockholder.

q. Stockholder? a. Yes sir.

q. And you found that each and all of them distributed it economically? a. Yes.

MR. BEAN: That's all.

MR. ALFRED OSBERG

sworn on behalf of the defendants represented by Mr. Erickson, testified as follows:

DIRECT EXAMINATION BY MR. ERICKSON:

q. State your name please. a. Alfred Osberg.

q. Where do you reside? a. Cainsville.

q. How long have you resided there?

a. Since 1905, May, 1905.

q. I see. Are you acquainted with what is known as the Cainsville Irrigation Company? a. Yes sir.

q. And with the lands that are irrigated by this company?

a. Yes sir.

q. And where is that situated?

a. Yes sir, it is situated, well, in 28 and 29, Range 8 and 9 East, Salt Lake Meridian.

q. And what township, you mean?

a. Township 28 and 29 south.

q. And -- a. And 8 and 9 east.

q. Oh yes, 8 and 9 east. Now, are you familiar with approximately the number of acres that is irrigated by the Cainsville Irrigation Company?

a. Yes sir, I am, approximately acquainted with them, even measured them to see.

q. You have been engaged, have you -- what kind of work during your living down there?

a. Why farming some, coal mining, some surveying.

q. I see, well have you had experience in the measurement of water? a. A little.

q. I see, you have seen water measured? a. Yes sir.

q. How many times? a. Oh, I couldn't answer that.

q. Well for how many years past?

a. For the past 25 or 30 years.

q. I see. Well, you have a judgment do you, as to the -- as to a second foot, a cubic foot of water by second of time?

a. Yes, I figured I could have a pretty good guess.

q. Yes, well you have a judgment as to the size of the stream?

a. Yes, I think so.

q. Well now, you know the nature, do you, of that land that is irrigated by this company? a. Yes sir.

q. And the kind of land? a. Yes sir.

q. As to the requirements for water of that land in order to produce crops? a. Yes sir.

q. And I will ask you then what in your judgment would be the duty of water there for that land?

a. Why, I should judge on an average about 40 feet, 40 acres to a second foot.

q. Second foot, cubic second foot?

a. Yes.

q. I see. And you think that amount economically used would be sufficient? a. Yes sir.

q. Well, prior to the time of 1905 you wouldn't know anything about the country then? a. Very little.

q. Very little?

a. I carried mail in there a little bit when they were farming there.

q. Well, how long before that did you know they were farming that land?

a. 1893 was the first time I was in through the town.

q. 1893, I see. And they were living then in the town there?

a. There were some of them in the town, some of them scattered down on the ranches. They built the town later than that.

q. This land was cultivated?

a. Yes the land was in cultivation.

MR. ERICKSON: You may take the witness.

CROSS EXAMINATION BY MR. BEAN:

Q. Mr. Osberg, what is the quality of the land there that is irrigated, if you have --

a. A portion of it is sandy loam and a portion of it is a very stiff clay loam.

q. Now what part of that will it require -- which of that kind will it require a second foot of water to irrigate 40 acres of it?

a. I gave that as about an average. The clay land will take more and the sandy land less.

q. Have you ever tested that out to know? a. Yes sir.

q. Where? a. Right there on my own farm.

q. What is the purpose of that?

a. Well, just simply come under my general observation.

q. So that it requires, you would say 40 -- one second foot to irrigate 40 acres of that land that is irrigated from that canal?

a. I don't know whether 40 would reach it on the blue land. The blue is so stiff it cracks open and the moisture escapes.

q. You know it is pretty generally understood and admitted that a second foot will irrigate 60 acres of land?

a. I know it is under State filings.

q. Almost any other filings except --

a. I hardly understood your question.

q. You are not so positive that a second foot of water will not properly irrigate 60 acres of the land that is irrigated from the Cainsville Canal?

a. I would venture to say it would not do so on blue clay ground.

q. But the facts are you don't know very much about that?

a. Why, I have never tried it with 60 acres to a second foot, never tried it out, but I know the crops need it.

q. But did know if you applied a second foot of water to 40 acres you got it well watered?

a. I know I can raise a crop.

q. But you don't know how much it might water successfully?

a. Well --

q. Well. That would be enough on that excepting I want to ask you if you know how much land is irrigated from that canal?

a. Well, I should judge approximately somewhere between 600 and 700 acres.

q. You say you would judge. You have no definite knowledge?

a. I haven't measured it, no.

q. You haven't measured it. You wouldn't have any way of finding it out. That is you haven't found it out definitely?

a. No, I haven't.

q. Enough to tell this court how much land is irrigated. You know everybody's land that is irrigated?

a. Yes sir.

q. And about their holdings. That is I mean the holdings that have been irrigated?

a. Yes sir.

q. Could you mark that down without spending too much time?
a. I couldn't give you the acres of land. I don't know them. I have been on them, but I don't know them all definitely.
q. Then if you don't, I don't know that your testimony on that part will aid me so far as I am concerned, much. I thought if you knew the holdings of each person that irrigated their lands from this canal, if you knew how much they owned, that they irrigated from it, I would like to have you put it down.
a. I don't know exactly how much each one owns.
q. You know approximately?
a. Well yes, I know approximately.
q. Put it down then.

BY THE COURT: Is that going to the question of lands irrigated or the lands that are owned?

MR. BEAN: Lands irrigated by the water of that canal. Not that are owned.

a. I think that these have been irrigated about last year, as near as I can remember.
q. And that that was irrigated last year?
a. There is lots of pieces that have been irrigated not specified there. Lots of pieces that have been irrigated.
q. How long ago about?
a. Oh, they have been irrigated some of them quite lately, some of them a few years back.
q. Why have they not been irrigated?
a. Because they have so much trouble with our canals, people haven't had time to --
q. So the people abandoned --

a. No they haven't abandoned, they simply had to let it lay for a while.

q. That is, you don't know whether it was intended as an abandonment. You know they haven't irrigated?

a. Well, they say not.

q. Who is they?

a. The people down there, we talk about our farms.

q. Who have you talked to about it?

a. Everybody down there pretty much.

q. They say they wasn't going to irrigate?

a. They say they can't reach all their farms on account of our lateness of getting the water on account of trouble with their canals.

q. Can you add this about in a minute?

a. Oh, I don't know as I can add it in a minute, I can add it.

q. Don't change any of those figures, Brother Osberg.

a. No, no, I won't bother them at all. Needn't worry.

q. You through. I think you did it in three-fourths of a minute.

a. I will not look at the other fellow's sheet.

MR. BEAN: That's all, then.

MR. ERICKSON: I will call Mr. Hiskey at this time.

MR. BEAN: Are you through with Cainsville?

MR. ERICKSON: I am through with Cainsville.

MR. BEAN: May I then ask Mr. Meeks to add up his?

MR. ERICKSON: That is a matter of computation.

MR. BEAN: Well, yes.

JOSEPH HISKEY

sworn on behalf of the defendants represented by Mr. Erickson, testified as follows:

DIRECT EXAMINATION BY MR. ERICKSON:

q. State your name please? a. Joseph Hiskey.

q. Where do you reside? a. Teasdale, Utah.

q. You are one of the defendants in this action? a. Yes sir.

q. I will ask you where your land is situated.

a. It is situated in Section 24, 13 and 14, Township 29, 4 West.

q. And are you irrigating that land? a. Yes sir.

q. I see. How much land have you there?

a. 400 acres.

q. Now what is the nature of that land?

a. It is sandy and gravel.

q. I see. And how is that land situated with reference to what is known as Fremont River or the Dirty Devil River?

a. It is on both sides of it.

q. River runs right through it?

a. Drains right back to the river.

q. Well now that land will that produce any crops without artificial irrigation?

a. No sir.

MR. BEAN: We will concede and have conceded it all the time, it will not --

q. All right, we will save that time, I hadn't understood that. Very well. Now about how long has that land been irrigated, Mr. Hiskey?

a. I think this water has been used on there from what inform-

ation I can gather, from 1788.

q. State what you know yourself.

a. What I know, been used since 1914.

q. Who was your predecessor in interest, who was it before you?

a. John S. Hiskey.

q. John S.? a. Yes sir.

q. Is that your father? a. My uncle.

q. You are his nephew? a. Yes sir.

q. Now -- well you know that he was in possession, used it when you got it?

a. I operated it for him.while he owned it.

q. You operated it for him how long? a. Four years.

q. I see. Well, do you know, personally, how long he was there of your own knowledge?

a. He wasn't on it at all. I operated it for him.

q. How?

a. I operated it for him, he owned it.

q. Yes, but how long back can you recall you operated that for him?

a. 1916 to 1920 when I purchased it for him.

q. Well 19 on --

a. 1916 he bought it from John E. Jacobs.

q. That was the first you became acquainted with the land?

a. Yes sir.

q. You have been engaged in farming, have you, pretty near all your life? a. Yes sir.

q. You were acquainted with the duty of water? a. Yes sir.

q. And you know -- ever see what measured? a. No sir.

q. Well, you have a judgment, have you, yourself as to what constitutes a cubic foot of water per second of time?

a. No sir, I do not.

q. You haven't? a. No, I never seen water measured.

q. You don't know then, just the number of cubic feet that you have used on that land?

a. Yes, had it measured in 1922.

q. That is what I am asking. You had it measured when?

a. 1922.

q. What was its measurement?

a. In both ditches it was a fraction less than 11 second feet of water.

q. I see, almost 11 second feet of water?

a. Yes sir, Mr. Tanner measured the water.

MR. BEAN: Mr. Tanner, did he say?

a. Yes.

MR. ERICKSON: You may cross examine.

CROSS EXAMINATION BY MR. BEAN:

Q. What was your initials? a. J. B. Hiskey.

q. And how many acres of land did you say that you own?

a. 440 acres patented ground.

q. How long has that 440 been irrigated.

a. Oh, 400 isn't irrigated. I said I own 440.

q. But I asked you howmuch of that 440 acres have you irrigated?

a. About 125 acres of it.

q. How long have you irrigated 125 acres?

a. Since 1920.

q. 1912? a. 1920.

q. 125 acres you said? a. Approximately, yes.

q. What crops were you rasining on that during this time?

a. Grain and alfalfa.

q. And it has been irrigated about each and every year, or has it?

a. Every year.

q. And you say that you had two ditches, one on each side of the River and -- a. Yes sir.

q. And in 1922, did you say? a. Yes sir.

q. You had it measured by Mr. Tanner? a. Yes sir.

q. And there was a fraction less than 11 second feet of water being used in the two ditches? a. Yes sir.

q. On 125 acres? a. Yes sir.

q. You give it pretty good water? a. Yes sir, it takes it.

q. I suppose so. You think you have been using that pretty nearly ever since?

a. Well, I don't know as I have been using that much ever since. I had it measured at that time, that is what was in the ditch.

q. Were you present when it was measured? a. No sir.

q. So you don't know only what he told you? a. That's all.

q. Did he tell you how he measured it? a. No sir.

MR. BEAN: That's all.

REDIRECT EXAMINATION BY MR. ERICKSON:

q. Just another question if you will permit me. Now, Mr. Hiskey, state if this land for any reason requires a larger amount of water than ordinary land that is out say from the River?

a. Well, it is gravely and sandy ground, steep, it drains

back towards the river.

q. The water goes right back into the River?

a. Yes sir, I have to flood it, I can't lay it off, it goes through too fast. I have to flood it to irrigate, so --

q. So that the reason why you have to apply, perhaps, more water than might be needed on other lands?

a. Yes sir.

q. I see. I believe that's all.

MR. BEAN: That's all.

JUD MOTT

sworn on behalf of the defendants represented by Mr. Erickson, testified as follows:

DIRECT EXAMINATION BY MR. ERICKSON:

Q. State your name please.6 a. Jud Mott.

q. Where do you reside? a. Torrey.

q. Now how long have you resided there?

a. At Toreey about 21 or 22 years.

q. How many? a. About 22 years.

q. How long have you resided in this County?

a. It's been so long I can't remember, hardly.

q. About how long? a. About 47 or 8

q. 27 or 8? a. 47.

q. Oh, yes, 47 years. Now, I will ask you whether or not you are acquainted with the lands that were described by Mr. Joseph Hiskey?

a. Yes sir.

q. And did you -- were you acquainted with that prior to the time that he came there? a. Yes sir.

q. How long a time?

a. Well for any way 20 years before he got it.

q. At least 20 years before? a. Yes.

q. Who was operating it then?

a. John Jacobs.

q. I see. And that land was that irrigated then at that time?

a. Yes sir.

q. Have you ever seen water measured, Mr. Mott?

a. Yes sir.

q. I see, you have a judgment, do you, as to about what size stream would constitute what is known as a cubic foot per second of time? a. Yes sir.

q. Well now, have you ever observed as to approximately the amount of water that's been used on this land?

a. On the Hiskey land?

q. Yes.

a. Well, no, I don't know as I could say.

q. But your judgment, approximately?

a. I think he would use, probably 5 second foot, just guesing it.

q. I see. a. I don't know, never seen it measured, never paid particular attention.

q. You know at least he has used that much? a. I would think he had.

q. That was used a long time before he came there? a. Oh, yes

q. Way back 20 years before? a. Yes.

q. Well, that's all.

CROSS EXAMINATION BY MR. BEAN:

q. Who have you seen measure water, Mr. Mott?

a. I have see several measurements.

q. Have you measured it?

a. I have tried to.

q. You know how to measure water?

a. I know how its done.

q. Have you ever really actually done it? a. Yes.

q. How long ago? a. Every day pretty near.

q. You are in the business, qu watermaster?

a. Part of the time, watermaster.

q. So that you measure water nearly every day?

MR. ERICKSON: Will you kindly tell the court for what purpose -- . Your honor please, I object to that as improper cross examination. He didn't testify on direct examination that he was measuring this water. I asked him if he had seen water measured and if he had a judgment as to what size stream would a second foot, a cubic foot of water constitute.

BY THE COURT: It seems to me if he has measured, his method of measuring would necessarily go to his judgment as to what constitutes a second foot of water. Objection overruled. Go ahead.

q. Well, Mr. Mott, you say that you saw that land irrigated?

a. Yes sir.

q. When? a. Well, see it every year pretty near.

q. You go down there to see how they are irrigating?

a. I have been passing from and by because I had a farm on the other side of the River where I had to pass.

q. Did you examine it purposely to see how much water he was using?

a. Only crossing forward and back. I didn't go over to see how much water he was using.

q. How close -- When you were going to the farm, how far would you be in passing from the head of his canal?

a. Sometimes 100 yards, 200 yards in head of his canal.

q. Sometimes farther away? a. Yes.

q. So that you would tell the court, would you, that you can pass a man's ditch where he is irrigating from 100 yards to 200 yards and farther and tell pretty well the number of second feet of water he is using?

a. I can guess if I am crossing it. I had to cross it.

q. You had to cross it? a. Yes.

q. Where at the head?

a. One or two hundred yards down from the head.

q. Andyour best judgment is that he was using about 5 second feet?

a. I would think about that.

q. May not been as much? a. Be that much in his ditch,

q. In his ditch? a. Could have been more. He had quite a large ditch.

q. But as to that you don't know. Well, so that after all you haven't been measuring water as an expert or an engineer?

a. Oh, no.

q. For a number of years?

a. I have assisted the State Engineer measuring water.

q. When?

a. Well, I have done it two or three times when he has been in the country.

q. How long ago? a. 20 years ago.

q. So you take it from that assisting of the State Engineer that you have measured water and have a good judgment as to what you think was the amount?

a. I have seen a lot of it measured was all. I had an idea.

MR. BEAN: That's all.

REDIRECT EXAMINATION BY MR. ERICKSON:

q. Now, Mr. Mott, you have referred to the amount of water used just on one side of the river or both of them?

a. Well, he has the ditch on both sides. I couldn't say whether he had water in both ditches at times or not.

q. Now, but when you estimate about 5 second feet, that has been used on the farm, you would refer to the land on both sides of the creek?

a. I figured the ditch on the west side, the water in that ditch.

q. Is it watered on the other side?

a. They had a ditch on the other side, came out below.

q. You didn't see that measured?

a. No, I didn't see it measured.

q. Well, do you know about how much land there was on the other side then that was irrigated.

a. Well, I couldn't say exactly. I would think any way 20 acres, maybe 25 acres, I don't know.

q. Well, I believe that's all.

MR. BEAN: That's all, I guess.

a. I never went on the man's farm to measure it, or anything of that kind.

q. Your very best judgment is the most water you have ever seen on that farm at any one time they were irrigating was

about 5 second feet?

a. I would think that was in the ditch on the west side.

q. How much was in on the east side?

a. Well, I don't know.

q. Well was there any? a. Yes.

q. What would you say?

a. I'd say from one to two second feet.

q. How far was you from it?

a. Sometimes crossed it.

q. Crossed it where?

a. Where the trail crosses going through the field.

q. A trail through his field?

a. One trail up around his field by his house, another half way from the field, and another down below that.

q. You were never asked to estimate the water he was using nor never was asked to measure it?

a. No, I didn't measure it.

q. You expected to be called in so you just carefully took a look at it and said it must be 5 second feet.

a. Yes, because I water with 1/2 second foot and I thought that looked awful big.

q. That would be what he needed?

a. I couldn't say because the ground needs more water than some of us others.

MR. BEAN: If the court please, may I offer these computations of these other men. I would like to get them before the court.

(Defendant's Exhibit 2 and 3 marked)

CLARENCE MULFORD

sworn on behalf of the defendants represented by Mr. Erickson, testified as follows:

DIRECT EXAMINATION BY MR. ERICKSON:

q. State your name please. a. Clarence Mulford.

q. Where do you reside? a. Fruita, Wayne County, Utah.

q. How long have you resided there?

a. Well, I have been there permanently for 16 years.

q. Your father reside there? a. Yes he did.

q. How long did he reside there?

a. Well, he was there permanently possibly for 15 years.

q. Prior to that? a. Prior to which.

q. About how far back was it when your father --

a. I see, well about 1882.

q. 1882. a. Yes sir.

q. You are acquainted, are you, with the lands that are irrigated there in what is known as Fruita?

a. Yes sir.

q. There is no corporation? a. No.

q. It's all watered, the land is irrigated, individual rights?

a. Yes sir.

q. But about how many ditches do you have there?

a. There is, practically, let's see--we have two on either side of the River, and then there is an individual ditch there, making about a total of five.

q. So that there may be two or three of your interested in one ditch, and two or three or four in another?

a. Yes sir.

q. Maybe some of the same ones in both? a. Yes.

q. And that is the way?

a. That is the condition, yes sir.

q. It is arranged. Now, Mr. Mulford, are you familiar with practically the amount of land there that is artificially irrigated?

a. Yes, I should say approximately 180 acres.

q. I see, about 180? a. Yes sir.

q. And about how many families are there living there?

a. There is 8, I think, interested in that.

q. I see. I will ask you whether or not they use this water for domestic purposes?

a. Yes, they do.

q. Culinary and for watering cattle and so forth?

a. Yes sir.

q. And what kind of crops do you produce there, Mr. Mulford?

a. Chiefly fruit and hay, alfalfa hay.

q. Do you do any truck driving down thre?

a. Yes sir, I do, yes sir.

q. And can you -- does it require a -- what you might call more water for raising fruit and the kind of crops that you raise there than it would for ordinary farm crops.

a. That is the case, yes sir.

q. And are you located near the river thre?

a. Yes sir, the land is practically all bordering on the River.

q. Right bordering on to the stream? a. Yes sir.

q. And in applying the water to the land, state to the court whether that -- if it perculates right back into the River soon after?

a. That is the condition, yes sir, it does. Due to the fact that it is --

q. About how long each year do you have to use that water there?

a. Well, near 8 or 9 months.

q. I see, and that starts about when?

a. About March 1st.

q. And ends?

a. Well, that would make it November.

q. The Fall? a. November 1st.

q. Make it about November 1st. a. Yes.

q. Now the water you use for culinary and domestic purposes you have to use that all the year around?

a. Yes.

q. About what would you think that each family, the amount of water they have to use?

a. I should think about 1/5 of a second foot.

q. For each family.

a. Yes.

q. And there are 8 living there? a. Yes, I think that is right.

q. I see. Well now, one ditch that is called the lower ditch, low ditch, and on which side of the River is that?

a. That applies to either side.

q. There is a low ditch taken out on the north side and one on the south side? a. Yes sir.

q. I see, now the one on the south, can you state as to what parties drawn water from that? a. Yes sir.

q. Just give that, will you, to the water.

a. There is myself and W. M. Chesnut and Dewey Gifford.

q. I see. a. Yes.

q. Have you a judgment as to the amount of land -- you know about what each one waters through that ditch?

a. Approximately, I do, yes sir.

q. Can you give that to the Court? a. Yes sir.

q. Clarence Mulford, that is, yourself, how many acres there?

a. Approximately 40 acres.

q. And Will Chesnut? a. 21, about 21 acres.

q. About 21 and Dewey Gifford?

a. Dewey Gifford, I should say about 25.

q. Now, there is also, as I understand, what is known as the low ditch on the north side, and there is a group that irrigate from that same ditch? a. Yes.

q. Can you give their names?

a. There was a proportion of this land of Mr. Chesnut's, perhaps is on the north that I stated in the total there.

q. Well now, who are the people that use the water from the low ditch on the north side? a. North side.

q. Yes.

a. There is M. V. Oyler, Merin Smith, Alma Chesnut, W. N. Chesnut.

q. Can you give approximately the amount they have irrigated and do irrigate from that source?

a. Well, yes. Merin Smith, I rather think, about 5 or 6 acres. Alma Chesnut perhaps 4 or 5.

q. William Chesnut? a. About 6.

q. And M. V. Oyler?

a. M. V. Oyler from the low ditch on that side, I should say

about 6 acres.

BY THE COURT: Is that 6 Mr. Chestnut uses on the northside part of the 21?

a. Yes.

BY THE COURT: 21 all told on both sides?

a. No, I think they have a total of about 31 acres. You see it is about 20 on the south and 6 on the north.

BY THE COURT: That would be 26.

a. They would have more than that on the south.

q. You gave on the south the figures? a. Yes.

q. You gave yourself as about 40 acres?

a. Well, that was a total.

q. A total of your land? a. Yes sir.

q. Well, but I mean the total you have that you irrigate through this low ditch?

a. Oh, pardon me.

q. On the south side?

a. Well, we've got that all wrong.

q. Then give that over again.

a. On the low ditch on the south, I own myself approximately 10 acres.

q. I see. William Chesnut?

a. William Chesnut I should think about 21.

q. And Dewey Gifford? a. Dewey Gifford approximately 20 acres.

q. Then we come to the low ditch on the north side. a. Yes.

q. Very well. Now to Mr. Oyler you said about 6?

a. Yes, I think about 6.

q. William Chesnut about 5.

a. Possibly 6, I have had no occasion to measure that.

q. But Alma Chestnut about 4? a. Yes, 4 or 5.

q. And Merin Smith about 7? a. 6 or 7 on the low ditch on the north side.

q. Well now, Mr. Mulford, then you have also down there another ditch known as the high ditch on the north side?

a. Yes sir.

q. Very well, and there is a group of people that take water out there? a. Yes sir.

q. And who are they? a. I am at the head of it.

q. Very well.

a. Yes, under that I have approximately 15 acres.

q. I see. a. Yes.

q. And Dewey Gifford. He takes water out of there?

a. Yes, he has I should say 2 or 3 acres.

q. How many? a. 2 or 3. As I understand the total on the high ditch on the north.

q. On the north? a. Yes.

q. And Merin Smith? a. Merin Smith, oh 22 or 23 acres, something like that.

q. Very well, now I understand that there are some individual ditches then, where perhaps only one or two are interested?

a. Yes. Mr. Oyler, I think has an individual ditch which would cover approximately 22 acres or about.

q. I see, well the ditch where Alma Chestnut and M. V. Oyler are interested in together, you know approximately what they have there?

a. Yes, Alma Chestnut, I should say has about 15 acres there and perhaps 4 for M. V. Oyler.

q. Now have you a high ditch on the south side? a. Yes.

q. Very well, do you have some interest there? a. Yes sir.

q. And about how many acres?

a. I have about 15 under the high ditch on the south.

q. Anyone else with you?

a. Mr. Chestnut about one acre.

q. That is William Chestnut? a. Yes, pardon me.

q. There is another party by the name of Dan Adams, you are acquainted with him?

a. We left him out on this high ditch on the north.

q. I see, and he has approximately how many acres?

a. I should say 10.

q. Now, Mr. Mulford, do you have a judgment as to the duty of water there for that kind of land, this fruit land?

a. Yes sir.

q. And that makes a total, you say, of approximately 180 maybe a little more? a. Yes, I would think.

q. What in your judgment would that land, a total acreage there require, that is say for culinary and for the irrigation purposes?

a. Per acre, you mean?

q. Yes.

a. How many feet?

q. Yes, the total amount. Howmany second cubic feet per second?

a. I should think it would take care of about 30 acres on that sort of soil.

q. But the amount, how many feet would it require for the whole supply?

a. 7 or 8 second feet, I should think would care for it.

q. You think 8 cubic feet, would that be sufficient to take care --

a. Yes sir, I should think so.

q. That would include the culinary water too?

a. Well, I would think so.

q. Or would you add that to the water?

a. Well, that would make a difference of about a second foot or a little bit for the right.

q. About 8/5 more, that would add to it?

a. Yes.

q. That would be one second and 3/5? a. Yes sir.

q. Well now, in your judgment has that water been used economically? a. Indeed so.

q. Well, have you -- you know that's been used economically?

a. Yes sir.

q. And the carrying capacity of these ditches, they are large enough so that they would carry at least that amount of water?

a. Yes sir, I should say they would.

q. Who was the earliest resident there?

a. Well, of course, that would apply to several.

q. Well, do you know? How far does your knowledge reach back to the use of that water there?

a. Well, I might cite you to the fact that I was there myself in 1896, but I couldn't say that I had the knowledge of the fact of the water being used.

q. Then you have the recollection of the use of it at that time? a. Yes.

q. As early as 1896? a. Yes sir.

MR. ERICKSON: You may cross examine.

CROSS EXAMINATION BY MR. BEAN:

q. How old are you? a. What did you say?

q. I say, how old are you? a. About 42, yes sir.

q. You were raised down on Pleasant Creek, weren't you?

a. Well, not altogether.

q. Well where were you -- did you finish your raising?

a. Well, I put in some of my time at Fruita.

q. When you put in your time at Fruita, you was a married man, was you not?

a. No sir.

Q. Who were you working for there?

a. Well, we was there as a family. I guess I worked for whoever we could get money to work for.

q. Did you father and mother live there?

a. Yes sir, oh, indeed, yes sir.

q. Now, Mr. Mulford, you stated in the beginning, you testified you had about 40 acres of land?

a. Approximately 40.

q. Well, you know whether it is approximately or about exact?

a. That is near.

q. You have the titles, the deeds? a. Yes.

q. The 40 acres there and then some? a. Yes sir.

q. And then you stated you had considerable experience in the irrigation of lands? a. Yes sir.

q. Where? a. Right there.

q. Fruita? a. Yes sir.

q. That is the only place? a. No sir.

q. Where? a. In various places.

q. I thought you must lived down at Fruita? a. No sir.

q. Well, where did you have other experience in irrigating of lands?

a. The place you referred to, for one.

q. What is what I say. When I started to say down at Pleasant Creek you said, no sir. I was wondering what you meant by that?

a. I meant various places.

q. Well now, the land you own, you say you have had experience in irrigating of the land, that is on this 40 acres, isn't it?

a. Yes sir.

q. That is fruit land. You've got it mostly planted to fruit?

a. I wouldn't say that.

q. What proportion of it?

a. I should think there is 15 or 16 acres, something like that.

q. In fruit? a. Yes.

q. And the balance is planted to alfalfa? a. Yes sir. And we have some in reserve for other purposes that isn't in to alfalfa.

q. In reserve? a. For garden and the likes of that.

q. Oh, I see. Now you stated to your attorney, Mr. Erickson?

a. Yes sir.

q. That you had had considerable experience in the measurement--

a. No, I didn't state I had considerable experience in measuring water.

q. Have you? a. No sir.

q. So you don't know then how much -- haven't much of an idea of how much land a second foot of water --

a. Yes I do.

q. How did you find that out?

a. By experience, yes sir.

q. Have you been measuring?

a. I have seen water measured, yes sir.

q. Down there? a. No sir.

q. Where have you seen it measured, one?

a. One upon the Boulder Mountain.

q. Who measured it there?

a. Mr. Hanks measured it there?

q. You saw him measure it? a. Yes sir.

q. Go through the formula of measuring it? a. Yes sir.

q. How did he measure it, briefly state it?

a. He had a weir, he boxed it up.

q. That way you saw it measure on the Boulder Mountain?

a. I don't know, in that particular form --

q. Where did you see it measured again?

a. I have saw it measured at Torrey.

q. When? a. I don't just remember the--

q. By whom? a. I don't remember that.

q. That never impressed you much about then?

a. Not a great deal. Tried not to make a profession of it.

q. Now down where you are gardening and raising fruit here at Fruita, you were asked about what is required per family, how much water, culinary and domestic purposes? a. Yes.

q. And you stated about what?

a. I stayed about 8 second feet.

q. 8 second feet for the families that are down there?

a. Yes sir.

q. Now you don't use that -- any water other than out of the creek there, do you, to water your stock? a. No.

q. You corrals are right there, you turn down to the River?

a. We don't always down at the River.

q. Most all the time?

a. 9 months we water from the streams.

q. And you don't have the water in your ditch only when you are irrigating?

a. We have it in there continuously.

q. You think you are entitled to it continuously?

a. Well, that is what we are trying to test out, I guess. We have had it there, however.

q. Now you have testified to the land all these men own here and on each side of the creek you stated, didn't you?

a. Yes.

q. Do you have in mind then the River when you said creek?

a. Did I? I have in mind the River. Sure that is what we are talking about.

q. Chestnuts, one of them owns land on each side of the River?

a. Yes.

q. And you stated, I think, 21 acres owned by one?

a. That might be the case, yes sir.

q. Now that takes in the entire River, River bed and bottom.

a. You mean where he farms.

q. Well, in order to get the 21 acres you don't -- you don't mean to say he has got that in actual land. Part of it is river bed and river water?

a. I think he has a deed covering more land than this.

q. You don't know? a. I didn't say that I knew.

q. You don't know anything about his deeds?

a. His deeds, I do.

q. You don't know anything about the amount of land in each piece or parcel of land, you merely estimated it in your mind and judgment?

a. As I stated, I had never measured it.

q. That is the case with all the rest of these men?

a. I wouldn't apply that to them all.

q. They don't all use culinary water do they from the -- I mean from the streams of water?

a. A big proportion of the year we do.

q. The water is turned out of the canals and ditches a good deal of the time?

a. No.

q. And that water --

a. No, no.

q. They don't?

a. They don't turn it out a good deal of the time, they leave it in there.

q. Did you figure up the acreage carefully when you say it was about 180 acres of land?

a. Well, not so carefully.

q. You didn't figure it there to see --

a. We can do it.

q. If I should go over it now, hastily, can you tell me about the amount of acreage.

a. That they total.

q. Yes.

a. I should say about 180 acres.

q. Please. I amean that -- can you tell us the amount of lands each man owns?

a. I think so.

q. Let's have it.

a. All Right, where do you want to start off?

q. I don't care.

MR. ERICKSON: He has given that, your Honor, it is repetition, we have a record of it.

BY THE COURT: Cross examination is repetition though.

MR. ERICKSON: I don't see it is necessary to have him repeat it again.

MR. BEAN: I didn't know you had told it.

a. We can give it to you again and try it.

MR. ERICKSON: I object to the fact that counsel don't keep track of it.

MR. BEAN: In order to keep from having a fight, I will withdraw the question. Are you happy now?

MR. ERICKSON: Well, I would like to go on with this matter. Is that all?

MR. BEAN: I said I was through. What do you think I mean by that?

a. Is that all you want.

MR. ERICKSON: I believe that's all.

QUESTIONS BY THE COURT: That 7 or 8 feet of water you testify as being used, is that used all the time in the irrigation of that 180 acres of land?

a. Practically all the time.

q. Just what do you mean by that?

a. Well, in other words, I might put it that we use it when we need it, don't use it all all the time. Of course, you can't figure it out that way.

q. You keep that amount of water running through those ditches?

a. Well no, we don't do that.

q. Just what do you do then?

a. As I stated, we use it when we need it, when we don't we turn it back.

q. Have you a judgment as to what part of that water actually in those ditches during the summer months?

a. Yes, I should think so.

q. What is your judgment?

a. I should say 2/3 of the time, the entire total.

q. How far is the canal from the River channel?

a. Well, that would differ. About a mile would be the farthest away. I guess that it wouldn't be that. There is one place that might be 3/4 mile away.

q. That would be the fartherest?

a. Yes, that is the 10 acres referred to of Mr. Mott's.

q. Then what would be the closest distance these ditches are from the River?

a. Well, they reach, of course, as you know a distance. We take them on a gravity plan. Of course it would be nearer to or 300 feet.

q. You suggested here 7 or 8 feet of water to irrigate 180 acres of ground?

a. Yes sir.

q. That means about 20 or 25 acres with a cubic foot of water per second?

a. I should think that is the way it would figure out, yes sir.

q. Over a period of eight months time?

a. Eight to eight and a half, something like that.

q. As a matter of fact your judgment is it is used only about

two thirds of the time?

a. I should think so, of course.

q. Is water used in all these ditches you have mentioned at the same time or do they alternate in the period of time the water is used?

a. Well, it possible that would apply to them all at some times.

q. That is to say the water might be running in all of them?

a. Yes sir.

q. Well, it is when the water would be running in all of them it would be using about that quantity of water?

a. That is my judgment.

q. If the water were running in all of them it might mean only one fourth of that amount of water?

a. Yes.

q. And then varies just depending on the number of ditches in use at different times?

a. Yes.

q. What wouldyou say as to whether or not that water could be alternated in those various ditches so as to make approximately a uniform stream of water or quantity of water serving all those ditches by constant use?

a. Well, it might could be accomplished.

q. That would be a mere matter of adjustment, you think?

a. That would be due to weather conditions, I should say. The nature of that ground in that locality is steep and shallow and has a gravely subsoil which causes it to dry out very fast.

q. Does that mean there is a comparitively large return flow to the River?

a. Indeed it does. It is a peculiar condition there as to the

irrigation.

q. This water you are using is taken out the River and whatever is returned goes back in to the River about the point where Mr. Bean claims his right of diversion.

a. Oh, yes, indeed. It really requires more water than any irrigation I have ever had any experience with trying to irrigate due to that fact. It is inclosed there in that box canyon, ridges on either side. It dries out very rapidly. Then it has, as I stated, a shallow soil with a heavy gravel subsoil which causes a quick get away. You see it developes those springs along the banks to the River. It's a hard condition to compare as to that.

BY THE COURT: That's all.

MR. ERICKSON: That's all.

JUD MOTT

recalled to the stand and testified as follows:

REDIRECT EXAMINATION BY MR. ERICKSON:

q. Mr. Mott, how long have you been acquainted with what is known as the little place called Fruita?

a. 45 years any way.

q. 45 years. Were there people living there then?

a. Yes sir.

q. And this land that Mr. Mulford has testified to, was that then irrigated?

a. Yes sir.

q. And you know at least it's been neighborhood and farmed for 45 years?

a. There were people living there when I first went there 45

years ago. Then a lot of ground was put in within the next year or two, within the next two or three years after that.

MR. BEAN: you are a brother-in-law to Mr. Mulford?

a. Not this one. I am a brother-in-law to his father.

MR. BEAN: That settle it. That's all.

BY THE COURT: Probably better take a recess for a few minutes.

Resumed session

4:00 P. M.

WILLIAM D. HICKMAN

sworn on behalf of the defendants represent by Mr. Erickson, testified as follows:

DIRECT EXAMINATION BY MR. ERICKSON:

q. State your name please? a. William D. Hickman.

q. Where do you reside? a. On my ranch.

q. You are one of the defendants in this action?

a. Yes sir.

q. You are acquainted also with Dez Hickman?

a. Yes sir.

q. That is your brother? a. My son.

q. Your son? And Charles Cooper? a. Yes sir.

q. I see. You are interested in farming are you?

a. Yes sir.

q. Along in what place?

a. On the farm they called the Dave Steward farm. That is the man I bought it of.

q. Who is interested in that? a. Myself.

q. Just yourself? a. I own 316 acres.

q. I see. a. On this farm.

q. How much of that land do you irrigate?

a. I farm about 105 acres.

q. How long has that been irrigated to your knowledge.

a. I couldn't say just how long.I have been there 18 years. I have been in the country I know of 37 years. I know it's been farmed.

q. You know that it was farmed for 37 years?

a. 37 years I know of.

q. You have owned it for 18 years? a. 18 years.

q. What kind of crops do you raise there?

a. I raise hay and grain.

q. Has that been irrigated each and every year during the time that you have mentioned, this 18 years?

a. Yes sir.

q. Let's see what ditch is that taken out of?

a. Well, I have three ditches.

q. Three of them? a. Yes sir. I have one runs down to my house. Me and Mr. Cox uses it. He has 10 acres of water under that ditch. I irrigate about 45 acres under that ditch and he irrigates about 10.

q. I see.

a. Take it out of the River just above my house.

q. Well, have you a judgment as to the amount of water that has been used on this land?

a. Well, I never seen water measured. I never done it, but I have talked to fellows that's measured water.

q. Have you seen them measure it? a. No, I haven't.

q. You haven't yourself. What is the nature of the soil?

a. Well, it is sandy and gravely.

q. And how is it located with reference to the Fremont River?

a. Right along the river.

q. Borders right along the River? a. Yes sir.

q. On both sides?

a. Well this land is on the one side, on the north side of the river.

q. But you, yourself, you couldn't give it in cubic feet per second?

a. No, I couldn't do that.

q. As to the amount of water? a. No sir.

q. Who owned the water of this land before you?

a. Dave Steward is the man I bought it of.

q. Who? a. Dave Steward.

q. But, personally, you have known that to be farmed and irrigated for 37 years?

a. Yes sir, been farmed ever since I came in the country.

q. How much does your brother have?

a. My son has 160 acres.

q. And about how much of that --

a. He is farming about 45 acres.

q. 35 to 40? a. 45. That comes under another ditch.

q. Yes, but that has been irrigated, has it, for practically the same length of time?

a. Well, about since 1900, when they started to farm this land.

I see. Then Mr. Cooper, how much land does he have there?

a. He has 10 acres he irrigates under this ditch, this first ditch.

q. All about the same character, this land?

a. Yes sir.

q. What would you say as to the amount of water that is required on that land as compared with land way off from the river in the valley somewhere?

a. Well, it takes more water. You have to have more water to up on the land to get it over it because it runs right back in the river. The way I do, I put on a good head of water, get it over it.

q. Does the water percolate right back in the River?

a. Only runs a little ways till it's back in the river. Land is all short, it runs along the River.

MR. ERICKSON: I believe you may take the witness.

CROSS EXAMINATION BY MR. BEAN:

q. How often do you usually irrigate?

a. Well, I try, in the summer time, I try to get my land watered about every 14 days.

q. You've always taken the water whenever you thought you needed it?

a. Yes, when I thought I needed it, I took it and used it.

q. That water was taken for 105 acres? a. Yes.

q. You know that is the amount?

a. I have got? That is about what I am farming there.

q. You don't know how much water you use? a. I couldn't say.

q. So far as second feet is concerned?

a. I wouldn't say.

q. Now, you go to your brother's land, what is his name?

a. Dez Hickman, that is my son.

q. Oh, son. And he has 45 acres? a. 45 acres.

q. That he irrigates? a. Yes sir.

q. Is that near your land? a. Yes, joins.right on it.

q. Use the same ditch?

a. We use the same ditch for part of it. For part of the land we take that water on turns, I am him.

q. In turns? a. Yes sir.

q. He irrigates fully that much land, you think?

a. Yes sir.

MR. BEAN: That's all.

MR. ERICKSON: I believe that's all.

MR. BEAN: Where is this situated?

a. 5 miles below Torrey.

BY THE COURT: That is above Mr. Bean's property?

a. Yes. Yes it is out here by Torrey. Just 5 miles from Torrey.

REDIRECT EXAMINATION BY MR. ERICKSON:

q. Just a moment, I might ask you another question. This water that flows into the River, that is used by yourself and all these other defendants below, where does that water arise, the biggest part of it?

a. The water we use?

q. Yes.

a. It rises right up here in the Bicknell Bottoms.

q. That is where the water comes from those springs?

a. That is where the water comes from those springs.

q. The biggest part of it?

a. The biggest part of it as soon as they start irrigating along down the creek and the water starts springing up.

MR. ERICKSON: I believe that's all.

SILAS TANNER

sworn on behalf of the defendants represented by Mr. Erickson testified as follows:

DIRECT EXAMINATION BY MR. ERICKSON:

q. State your name please? a. Silas Tanner.

q. Where do you reside? a.

a. Fremont, up here on the farm.

q. Between Loa and Fremont? a. Yes sir.

q. How long have you lived in this county?

a. 48 years.

q. What business have youbeen employed in?

a. Oh, I am farming, cattle raising, I have distributed the water of this system for a number of years.

q. Have you had experience in distributing water in Wayne County? a. Yes sir.

q. Haveyou had experience in distributing the water from the Dirty Devil or the Fremont River from Bicknell down to Hanksville down that way? a. Yes sir.

q. And for how long a time have you be acquainted with that?

a. Well, I have been acquainted with that River system ever since I came here. I haven't, however, distributed water only just last year. The first I did any actual distributing other than for the Torrey Irrigation Company.

q. Have you had occasion to measure the water frequently?

a. Yes sir.

q. You have had experience in measuring water? a. Yes sir.

q. And I will ask you whether or not you are acquainted with the Cainsville Irrigation Company? a. Yes sir.

q. And how long to your knowledge do you know that that land

that is irrigated now to the Cainsville Irrigation Company has been farmed down there?

a. They were farming 48 year ago when I came here.

q. I see. Have you measured the water at different times in their canal down there?

a. Yes, I have measured it a time or two.

q. About when did you measure it?

a. Well, I have measured it, oh, just -- it's been three or four years ago, 4 or 5 when I first measured it.

q. I see, what did the measurements show?

a. As I recall at the time I measured it, that was substantially 10 feet.

q. About 10 feet? a. At that time.

q. Was that in the Cainsville?

a. That was Cainsville.

q. The canal? a. Yes, in the canal.

q. Well, are you acquainted with practically the amount of land that is irrigated down there?

a. Well, no, I am not familiar with all the lands that are irrigated there.

q. I see, but you measured the water, that was practically 10 second feet? a. That is as I recall.

q. It was being used on the land?

a. Oh, yes, it was in that canal.

q. Now as to the people in Fruita, have you a knowledge of the time that the water has been used there?

a. Well I was there. We wintered a bunch of cattle there, I think it was in 86 or 7, I think it was 87 and they had water out there then and they had trees growing.

q. How many years ago? a. That is 48 years.

q. Have you ever measured the water in their ditches down there?

a. Not in all their ditches. I measured it in one or two of them.

q. But not in all of them? a. No, I haven't.

q. You have a judgment as to the amount of land that they irrigate?

a. Yes, I say I have a judgment. I classify all that land through there, land at Cainsville and in fact the county.

q. You classify it?

a. Classified it a couple of times. I am acquainted with it, but to say off hand just what it is, I wouldn't like to do that.

q. Well, you heard the testimony of Mr. Mulford, didn't you?

a. Yes sir.

q. Assuming that there is 180 acres there that is used for the purpose it has been used there, for fruit and different things, you are familiar with that? a. Yes sir.

q. And what in your judgment would you say that the amount of water that would be required there for culinary and for irrigation purposes?

a. Well, now, I never applied any water on that particular land.

q. The total amount?

a. I am of the opinion it would require considerable water in order to properly irrigate it due to the fact that it is close to the River channel, there is a draw there that the water wouldn't remain in the soil, it would run off readily. I take it, if they've got 25 or 30 acres to the second foot would be substantially --

q. Taking all those conditions into consideration, what would you say that the total number of cubic feet per second would be required when it is used fairly and economically and having a beneficial use?

a. I am of the opinion they would use substantially 8.

q. Practically 8 second feet?

a. For the last number of years, yes, I think.

q. Well, in your judgment you have been classifying lands, measuring water and in your judgment would it require that amount there to properly take care of the irrigation of that land and for the water for domestic and culinary purposes?

a. Oh, I would think so.

q. Well now, with reference to Mr. Hiskey's land, are you acquainted with that, Joseph Hiskey?

a. Yes sir.

q. And you know that has been irrigated for practically the same length of time?

a. It was being irrigated when we came here, pretty near half a century ago.

q. Well, knowing that and what would you say, and have you a judgment as to the amount that he is irrigating?

a. Well, I classify the land and to the acres, and I measured his water at his request a number of years ago to determine the quantity, but so far as applying the water on the land, I haven't had any experience.

q. No, but the amount of water used, how much was that?

a. The amount of water , as I recall, he had substantially seven feet in one canal and about 4 in the other.

q. Almost 11 feet, somewhere near?

a. Yes, substantially eleven feet.

q. Andhave you a judgment as to the duty of water on that land?

a. I would think the duty of water would be rather low due to the gravely, sandy condition and slope it has and the irregular shapes it is in. I think we consider it doing well if you have got 25 acres watered to the second foot, I think you would do well.

q. Well now, are you acquainted with what is known as this land of William Hickman and his brother?

a. Yes.

Q. And Cooper? a. Yes.

q. And is that practically the same character of land?

a. Well, it joins that on the east.

q. Have you measured that at any time?

a. I haven't measured the water there. I measured the land.

q. Have you classified that Land?

a. Yes, yes I classified that land.

q. Well, you heard him testify as to about the amount he was irrigating? a. Yes.

q. And what in your judgment would be the amount of water required to properly irrigate that?

a. I think there would be very little difference in the class of soil, while it might be a little more level, little more flat, I wouldn't think there would be much difference, while part of the land on the bench has a run-off difficult to hold water on it.

q. That would be a cubic foot for how much?

a. I would think 25 or 30 acres.

q. Well now, are you familiar with the Torrey Irrigation Co.?

a. Yes sir.

q. And you have been acquainted with that for what length of time?

a. Oh, I have seen that started to irrigate there.

q. I see, and when was that?

a. As I recall they was working on that about the year 1900.

q. 1900? a. Yes.

q. You know approximately the amount of water that is irrigated on that system? a. Yes.

q. About what is it?

a. Well, that is varied in different years somewhat, I think around 30 to 35 feet is the maximum.

q. Of water that's been used?

a. Of water that's been used.

q. Put on the amount of land?

a. The land, as I recall, while I can't remember as to the acres and the number, I would think that would be a maximum from 1500 to 2000 acres that would be covered in that irrigation.

q. You would say between 1500 and 2000 acres that is irrigated?

a. I would think that.

MR. ERICKSON: I believe you may cross examine.

CROSS EXAMINATION BY MR. BEAN:

a. Mr. Tanner, how old are you?

a. Well, I am just right on the border line of 62.

q. You have testified here that 45 years ago you knew of them irrigating land in Fruita?

a. Yes sir.

q. And you were a pretty small boy?

a. No, I was 14 years old as I recall.

q. You think that a boy of 14 years of age going through the country or stopping in the country will notice and begin to figure on how much water a fellow is using.

a. Well, I don't know that I would figure that normally.

q. How much land is farmed by way of acreage?

a. They wasn't a lot of land farmed at that time.

q. There was only two or three families?

a. Wasn't any families, just Nels Johnson.

q. Did he have a family? a. No.

q. Well, you have no idea how much water he used, nor how often he used it, nor how much land he irrigated?

a. Yes, I knew. We took a bunch of cattle in there one winter and stayed there with him and saw what he had by way of planting.

q. That didn't change your mind how much he used up today, at this time, would it?

a. No, he didn't have a lot of land under cultivation at that time.

q. So that Nels Johnson was irrigating a little land there, watering a little?

a. He had an orchard and some very fine trees, grape vines and stuff of that kind.

q. Now you told this court, in your judgment that you thought you had a judgment as to the duty of water on that land, and that you thought that 25 second feet to 25 acres was a fair estimate, didn't you?

a. I said 25 to 30 acres is general.

q. I will ask you whether you ever did in any country at any

time, ever heard of that estimate before, other than just what you say before?

a. I think not. I think that is my own judgment.

q. You know that the State estimate is that a second foot of water will properly irrigate 60 acres, don't you?

a. Well, I have heard them rate it as high as 70.

q. Yes, clear up to 70, and never in your life rated even down to 30 feet, never in your life before?

a. But that basis was against subsequent appropriation.

q. How is that?

a. That was against subsequent appropriation.

q. So that the force there, you don't know how much water was used there do you?

a. Substantially, yes, I have been over there and visited, measured their lands.

q. How do you measure water, by the way, measure the flume measurement?

a. Rectangular weir.

q. Rectangular weir? a. Yes.

q. And when you don't you just throw a cork or flume in the creek or stream and guess at it, don't you?

a. No, I don't do that because guessing -- lot of fellows guessing as well as I do. I use a "V" that's been brought in to use by Mr. Lyman. It's been put out by the University of Utah, and that is why I use our rules largely in measuring small quantities of water.

q. So that you have no records of any of these measurements, have you? a. Oh, yes, I think so.

q. Can you get them in the morning?

a. Well I might could. I've got records of measurements for years. I think I could find some any place in the country.

q. I say that the records are the best evidence. Better than the man's memory and bring them in the morning, can you do it? I guess we will be here tomorrow.

a. I was in hopes we would get through.

q. Well, so was I, but you hold on so "duced" long.

a. Well, you are the ones that holds on.

q. Now you stated in the Cainsville Canal you say you measured that at one time?

a. Yes.

Q. Where did you measure it?

a. Pretty well to the head.

q. Pretty well to the head. Who was with you when you measured it?

a. I don't recall who was with me. I have measured those streams -- I do it when I pass, some fellow will say: "What water have I got?" The one I referred to is just simply a measurement to determine the quantity.

q. You don't remember anything about what that measurement was or measurements, do you?

a. I don't remember the exact quantity anything more than it was substantially 10 feet.

q. And you stated about the land that this water was irrigated. You stated you thought about eleven feet a while ago?

a. No, I think not.

q. I think you did. Maybe I am in error. That is as I remember it you stated.

a. The reporter would have it here.

q. Yes, it would be about 11 second feet, but you don't remember, it was 10 or 11 or 8 or 9, anything about?

a. The way I remember it, it was substantially 10 feet.

BY THE COURT: That is the Cainsville stream.

a. Yes.

BY THE COURT: Water in the Cainsville ditch?

a. At that particular time.

q. How long ago was that?

a. I wouldn't say whether it was last summer or a year or two before, but I have measured all those streams.

q. You wouldn't say how much land was being irrigated by that water?

a. No, I didn't have that information I would like to put out.

q. You didn't know anything about whose land it was being used on or where it went to?

a. I didn't follow it down until it exhausted itself going out in streams.

q. So that you then don't know whether that water was used, economically or otherwise?

a. No, I wouldn't like to say.

q. You stated that you was acquainted with the Hiskey land?

a. Yes.

q. I think you stated in your judgment, is that -- that the water he was using? I mean that it would require about a second foot to the 25 acres there?

a. Yes, I think 25 to 30 acres is what I said.

q. 25 to 30 acres. Well now, have you any way of estimating that when all the measurements you ever run across, known anything about always estimated it and it measured up never less

than 40 any any time and up to 70 feet.

a. I think I told you a while ago, I relied on my own judgment and information on that. I think maybe I had measured as much and applied as much as the other fellows that made these measurements.

q. What do you mean by that?

a. I think that the topography or what we might call the natural condition of the land would contribute largely to the quantity of water necessary. Now the mere fact it was necessary to apply a second foot of water to 25 or 30 acres of land, wouldn't indicate there wouldn't be an excessive of quantity that water percolate and get back in to the stream where the land lies along the stream or where there is considerable drain there, especially where it is a gravel subsoil, it's pretty difficult to hold the moisture.

q. But, Mr. Tanner, you have testifed here you have measured water and estimated its duty required amount per acre and now for many years, and in fact you have been noticing all these things for 45 years. Now, there hasn't been one statement you are acquainted with all this land. You state you have gone through and examined all this land, testied the quality of the land and looked all through and you have not yet -- that I have noticed -- stated that this water down here, this Dirty Devil water will irrigate to exceed 25 to 30 acres of the land you have testified to. How do you account for that when you know that the usual State allowance is not less than 60 to 70 acres per second foot?

a. I think that I have told you, I didn't know the exact amount of land in Cainsville, but assuming it is better than

500

five hundred, I think they would run that up to better than 50 acres to the second foot if I can figure right on the basis that I indicated.

q. And all this is from memory ans as you say, your judgment?

a. Yes.

q. Your way of looking at it, and you have no records that you know certain about?

a. Yes, I have records. That is I have made notations. I have made a memorandum of measurements of water. I think I could find memorandums where I have measured water for 30 years.

q. And this Hickman land, was it, you stated you had measured the two ditches?

a. That was, yes. No, it was Hiskey.

q. You stated you had measured two ditches there and two ditches, as I remembered there was about 11 feet of water?

a. Substantially 11 feet, that is what I said.

q. And you say that Mr. Hiskey invited you to come and measure it? a. Yes.

q. When was that?

a. I think it was about 1920 or 1922.

q. 1920 or 1922, and you don't know, do you whether they fixed those ditches on purpose, filled them up full so that you would make a record that it took 11 second feet of water to supply them. You don't know anything about that, do you?

a. Here's my memory of it. I think he employed me to come down and measure the water. I measured the water that was in the ditches. I didn't at that time follow those ditches out to see what if anything was being done with it. I haven't any information as to whether or not that was the amount

necessary at that particular time. But I did measure the water at that time and that was the quantity.

q. You are satisfied they didn't go and turn part of the water out before they started you to measuring?

a. There was all the water he needed, no question as to the quantity. I don't know why he wanted the measurement made.

q. I am not asking you these questions to cast any reflection on Mr. Hiskey. I was just showing you the possibilities, if there couldn't be a possibility of that fact, where they would send for you to come and measure and have both ditches full, running over?

a. No.

q. Just full?

a. I don't know they were full. I believe they could have held more water.

LEE PIERCE

sworn on behalf of the defendants represented by Mr. Erickson, testified as follows:

DIRECT EXAMINATION BY MR. ERICKSON:

q. State your name please? a. Lee Pierce.

q. Where do you reside? a. Torrey.

q. Are you acquainted with the Toreey Irrigation Company?

a. Yes sir.

q. And in what way?

a. I am a stockholder.

q. And you hold any official position? a. Yes sir.

q. What is it? a. Secretary.

q. How long have you been connected with this company?

a. About fifteen years.

q. Fifteen? a. Yes sir.

q. Do you know approximately the amount of land that is irrigated from the water of Fremont River or the Dirty Devil River as they call it, by this Torrey Irrigation Company?

a. Approximately, maybe 1700, somewheres there.

q. You haven't any figures definitely on that?

a. No sir.

q. But you have gone over it?

a. I have been over the ground.

q. Acquainted with it from year to year?

a. Yes sir.

q. Well now, do you recall when there was a decree rendered here in this court involving the rightsof this water between Hansen (?) and Torrey Irrigation Company and others?

a. I remember ofit, yes sir.

q. You remember of that, and do you recall the water that was decreed to the Torrey Irrigation Company then?

a. I think it was 35 second feet.

q. I will ask you whether or not you have been using that amount of water ever since? a. Yes sir, I think so.

q. And does it require -- would you say it requires that amount to properly irrigate the lands of the stockholders?

a. Well, most of the stockholders have been crying shortage of water while they have been using it.

q. Now, I am asking you, you are a farmer are you?

a. Yes sir.

q. You have farmed how many years?

a. 15 years.

q. You know about what it takes to produce crops with artificial irrigation?

a. Yes sir.

q. Well, I will ask you whether or not that this water, this 35 feet that was decreed to them at that time, whether that has been used each and every year since that?

a. Yes sir.

q. And has it been used -- state to the court whether it's been used economically?

a. Well, I think it has.

q. And you know, don't you?

a. I know so far as my part of it and my nearest neighbors.

q. You have seen others irrigate haven't you?

a. Yes.

q. Well, would you say that that amount of land that is owned by the stockholders would require this amount of water, this 35 second feet in order to properly produce crops there?

a. Yes sir.

MR. ERICKSON: You may take the witness.

CROSS EXAMINATION BY MR. BEAN:

q. I think I understood you to say you were Secretary of that company? a. Yes sir.

q. And you have been acquainted with that irrigation system for fifteen years, am I right? a. Yes sir.

q. And you stated that you thought about 1700 acres of land irrigated? a. Yes sir.

q. As as to that you don't know do you, the number of acres?

a. Not exactly, no, I didn't measure it.

q. And 15 years ago, when you first got acquainted with that irrigation system there wasn't over half the land that you mentioned being irrigated, was there?

a. Yes, there was more than half of it fifteen years ago.

q. I will ask you if it isn't the fact that about that time --when was your irrigation system organized, incorporated?

a. About 1900.

q. About 1900 and you know about that do you?

a. Yes sir.

q. Well, at that time there was a few men down there incorporated an irrigation system, and the first few years after getting the water out, flumed it across the river, didn't they in the start?

a. Yes sir.

q. And the flume would go out occasionally and put it in again?

a. No sir.

q. Didn't? a. No sir.

q. You would put what you cal them, underneath?

a. Yes sir.

q. What do you call it?

a. Underground flume.

q. Viaduct. Well, whatever it is. Anyhow it conveys the water under the River. That was the system?

a. Yes, it conveys it down.

q. And then up? a. Yes sir.

q. Syphened it up into the canal. At that time you only had about 500 acres of land being irrigated there, isn't that a fact?

a. I don't know just what they had.

q. Just a small amount of land there, and as that land was continued to be irrigated it began to get chaulky, didn't it?

a. Some of it.

q. Quite a considerable. There is a hard pan under the land there?

a. Yes sir, some of it.

q. Regular hard pan. Yes, I guess that explains it. It begins to get chaulky and not productive excepting a poor kind of grass.

a. A portion of it gets chaulky.

q. Quite a large portion?

a. Not a great deal.

q. About what would you say is the acreage that had to be abandoned to pasture by reason of its being chaulky?

a. Oh, probably 100 acres.

q. Probably 200 or 300?

a. No, I think not. Not that much, no.

q. So that when that got water-logged, chaulky, the water was moved on to higher land, wasn't it?

a. No sir.

q. It wasn't just keep irrigating the chaulky land?

a. Yes sir.

q. Would you say there hasn't been a lot of new land taken up under that canal system?

a. Yes sir, there has been land taken up and farmed.

q. Doubled and trebled the amount of acreage, haven't they?

a. They haven't trebled it since that time.

q. They have more than doubled it, you would say that wouldn't you?

a. Maybe.

q. Only recent years here, just lately, they have taken-- they have moved their water rights up on to higher land to use this higher land because this lower land they used to farm has turned chaulky by reason of the hard pan beneath?

a. No sir.

q. How do you account for it then?

a. The land is lower there, the land is below the chaulky land.

q. Well, then it is different land any way, isn't it?

a. It is different land. It was under filing at that time.

q. But they would move the water on to different land, wouldn't they, in order to farm it?

a. They farm more land on both sides.

q. They have gradually been bringing in more land that wasn't chaulky, isn't that true?

a. That is natural.

q. I didn't say anything about natural. But you did it, didn't you, the people down there. But you abandoned the chaulky land?

a. No sir.

q. You are using that for hay?

a. Part of it.

q. And for pasturage?

a. Yes sir.

q, And you have broadened your acreage more than double out in the last few years?

a. No sir. Not in the last few years.

q. How long has it been?

a. In fifteen years.

q. You have been gradually extending it, aren't you?

a. Very little.

q. Some? a. Very little.

q. It's been extended some in the last two years, hasn't it?

a. No sir, I don't believe so.

q. You, as secretary understand that don't you?

a. Yes sir.

q. You say then there is no water been extended in the last two years?

a. There is no new land been farmed in the last two years.

q. Let me refresh your memory just a little. Lawrence Lees hasn't he taken his farm out on that dry land in the -- on the bench?

a. He hasn't watered it.

q. He hasn't watered it? a. He hasn't watered it.

q. Made a ditch? a. Part way.

q. And you acknowledge that he has a claim in the canal, in your canal whereby he expects to irrigate a 40 or 80 acres there?

a. I don't know what he is going to do with his water. He has water in the canal.

q. I see, but you would think that the land hadn't been doubled in acreage, hasn't been increased more than about double?

a. Not in 15 years.

q. But a little every year. Nearly every year?

a. Well, it's natural that a farmer will farm a little more each year as he gets it under cultivation.

q. It is natural he would do it, and he has done it down there?

a. You wouldn't think a man could put in 100 acres of ground

the first year he got the water.

q. But he would put in some more the next year?

a. Yes.

Q. And more the next, and he has been increasing the acreage in that way ever since, in the last 15 years?

a. Before 15 years. In the last 15 it has not been increased very much?

q. Not so much? a. No sir.

BY THE COURT: Well, I thought the acreage had doubled in the last 15 years?

a. It hadn't doubled in the last 15 years, it probably doubled since the time they took the water out. The corporation that come there first got the water out.

q. Well, I thought two or three times you said the acreage had doubled in the last 15 years?

a. I didn't mean it was doubled in the last 15 years, not for 15 years. You misunderstood me at that time.

q. But you did say that they have been -- it's natural and the farmers down there have increased their acreage a little every year?

a. Some little increase, yes.

q. What do you mean by little?

a. Naturally a few acres, probably here and thre they would bring under cultivation.

q. Last few years, 15 to 20 acres a year?

a. No, I don't think so.

q. That would be about what you think?

a. I don't think. Not to each person.

q. No, some would increase it more than others, depending on

their man, horse power and such as that?

a. Yes sir.

q. And the amount of land they own. But they have been increasing it all the time, more or less?

a. Yes, we believe in progress in our town to some extent.

q. And you have been progressing pretty rapidly down there.

MR. BEAN: That's all.

BY THE COURT: Better recess, it's a quarter after 5:00. Adjourn until tomorrow morning at 10:00 o'clock.

10:00 A. M.

April 10, 1935

BY THE COURT: You may proceed.

MR. ERICKSON: Recall Mr. Pierce, just a minute.

LEE PIERCE

recalled testified as follows:

REDIRECT EXAMINATION BY MR. ERICKSON:

q. Now, Mr. Pierce, about at what point on the Fremont River does the Torrey Irrigation Canal Company divert their water?

a. About a quarter of a mile west -- northwest of the Grist Mill.

q. And that is just below Bicknell? a. Yes sir.

q. About how far below the town?

a. I think about three miles.

q. I see, well now how many canals come under the Torrey Irrigation Company?

a. One canal.

q. Just one canal? a. Out of the River.

q. All of the water diverted from one canal?

a. Yes sir.

q. From the River? a. Yes sir.

q. Well now, that water that is used for power purposes for the Grist Mill there, isn't it, before it reaches you people for irrigation?

a. No sir. Our diversion point is above the diversion point which goes to the Grist Mill.

q. Well, but this water that is used for power, isn't that?

a. For the light, you mean the light people, Power and Light Company.

q. Not for the Grist Mill, there, Mr. King's mill?

a. Oh, it comes out below where our point of diversion.

q. From your point of diversion? a. Yes sir.

q. Well, the water you take out from the Fremont River, that water, is that water used for the power purposes at all?

a. No sir, not at the Grist Mill.

q. So it isn't? Anyhow, that is known as the Torrey Canal, this canal you speak of? a. Yes sir.

q. Torrey Irrigation Company Canal? a. Yes sir.

q. Now, I believe counsel spoke to you something about the -- you recall about when that was constructed, do you, first?

a. I think it is some time in 1900 is when they first started.

q. But at the time the first, the original canal, as it were, would that cover all of the lands that are owned by the stockholders of the company? a. Yes sir.

q. The canal has never been moved up on higher ground has it, since? a. No sir.

q. Never at any time? a. No sir.

q. I see, and during each and every year for a number of years

at first, the system was improved, as I understand it?

a. Yes sir.

q. In order to cover the entire amount of irrigated land that you now irrigate? a. Yes sir.

q. Now, I believe I asked you yesterday, have you checked up any more as to approximately the number of acres of irrigated land?

a. Well, just kind of run over in my head.

q. You just checking it up in your own mind?

a. Yes sir.

q. From your own knowledge? a. Yes sir.

q. And observations? a. Yes sir.

q. Well, about what would you say then is the number of acres?

a. I would still say it is around 1700 acres.

q. About 1700? a. Yes sir.

q. You know how many stockholders you have there?

a. Yes sir, 42.

q. 42 stockholders? a. Yes sir.

q. And this Torrey Irrigation Company furnishes the water for these stockholders for irrigation purposes? a. Yes sir.

q. And is there any used for culinary purposes, also?

a. Not for culinary, it is for domestic.

q. Any of it used for domestic purposes for the town there?

a. For watering animals and stuff like that,

q. How?

a. Just for watering animals.

q. Just for the watering of animals, they use that for all the year around, do they? a. No sir.

q. About when does the irrigation season start?

a. We try to have the water in between the 15th of May and the first of April, some time.

q. Between those dates? a. 15th of March and the first of April, instead of May.

q. And then it continues for what length of time?

a. Well, until the time frost begins to freeze so hard.

q. Usually how long does that continue?

a. First of November.

MR. ERICKSON: That's all, your honor.

RECROSS EXAMINATION BY MR. BEAN:

q. Mr. Pierce, where does this water you have in your canal, you say you don't turn it out until frost begins to--well until freezing weather in the Fall?

a. Yes sir.

q. After you quit irrigating your crops, what becomes of the water, you say you keep it in your canal all the time?

a. Turn it out after we quit using it.

q. Do you irrigate clear up to the first of November?

a. Yes sir.

q. And use the entire canal flow?

a. They water their alfalfa and pasture ground, up to that date, of course the grain ground is harvested.

MR. BEAN: That's all.

MR. ERICKSON: That's all.

DES HICKMAN

sworn on behalf of the defendants represented by Mr. Erickson, testified as follows:

DIRECT EXAMINATION BY MR. ERICKSON:

q. State your name please? a. Des Hickman.

q. Where do you reside? a. I reside just two miles from Torrey, south.

q. How long have you resided there? a. Four years.

q. Are you acquainted with Edgar Larsen?

a. Yes sir.

q. I see. Have you had anything to do with the distribution of water down in that part of the -- a. Yes sir. I was watermaster on the canal for two years, on the Torrey Canal.

q. Is that the Torrey? a. Torrey Irrigation.

q. Canal. Well now would Mr. Edgar Larsen, would you say, have any interest there? a. Yes.

q. You distributed water to him?

a. I was with the watermaster when he distributed it, with Mr. Tanner when he distributed it?

q. Whereabouts is his land situated?

a. Situated just below the mill on the south side of the River.

q. You know how much he has there?

a. How much water?

q. Land.

a. Well, I couldn't say to the land.

q. The amount of land? a. No. No.

q. You don't know as to that, but do you know how much -- was water distributing there to him.

a. I did know just exactly. It is a second foot and a third or two thirds, it is one of those.

q. You are not certain whether it was one third or two thirds?

a. It could be either one. I believe it is one second foot

and two-thirds.

q. How long did you say you had been acquainted with the system down there? a. 12 years. I owned a farm in Torrey.

q. You know whether that water has been used by Mr. Larsen down there all the time so far as your recollection?

a. I know it was used steady for the two years I was there. The stream there steady.

q. I see, I believe that's all.

CROSS EXAMINATION BY MR. BEAN:

a. Well, Mr. Larson's holdings there, land, is just a narrow strip, is it not? Is it possible to use one and two-thirds second foot of water on that very small strip of land there?

a. Well, the strip isn't so small, looks like 40 acres or better there.

q. You think there is 40 acres there?

a. Never measured. I would guess there was that much.

q. You have an idea where the lands are, do you, that is the lands irrigated?

a. Yes, I rode across it.

MR. BEAN: I think that's all.

SILAS TANNER

recalled.

REDIRECTION EXAMINATION BY MR. ERICKSON:

q. Mr. Tanner, you are familiar with this land owned by Mr. Edgar Larsen that was mentioned?

a. Yes sir.

q. And how long have you been acquainted with that?

a. Well for about 48 years.

q. I see, and during that time you know whether or not that has been irrigated? a. Yes, it has.

q. And owned by Mr. Larsen?

a. And his father. His father preceded him.

q. How?

a. His father, I say, owned it prior. This boy came on.

q. You know about the amount that is sued?

a. Yes.

q. Will you state?

a. One and two-thirds second feet was the amount that I distributed for them.

q. I see. Are you familiar with the land and the character of the land?

a. Well, yes, while I haven't done any irrigating on it or anything of that kind, but I have distributed --

q. Well you know what kind of land, where it is?

a. Yes.

q. What would you say as to your judgment as to the amount of water required there?

a. I think that is just normal land down along the River. I think it is probably of 60 acres, maybe.-- maybe a little more than that. I think about 100 probably in the holdings, but I think they probably wouldn't be irrigating more than 50 or 60 acres.

q. He has quite a bit more than there that isn't --

a. The land, of course, runs out on the ridges, and up on the side hills.

q. That he can irrigate? a. Yes.

q. Now, Mr. Tanner, you know anything about the measurements of the Fremont River during the past years as to the amount of water in the Fremeont River measured below, just below Bicknell, before it is used for irrigation?

a. Well, I know that the Government --

q. Now do you know that?

a. Yes, I know that we conducted a measurement for a year or two. I made a measurement of the River at the time there was a decree entered, I think that was right along back in 1915. As I recall 80 odd for it, 82 or 86.

q. When was that?

a. 1913 or 195, at the time there was a decree, in favor of Nels Hansen for --

q. Well now what kind of year was that?

a. Well, I don't know whether that was normal or abnormal.

q. Well, do you know any -- how many you say, about 80 second feet or 80 cubic feet per second?

a. Yes that is right.

q. Have you measured it since that and before, or seen it measured or have any recollection of official records?

a. I have measured it two or three times last year.

q. Very well, what time did you measure it last year?

a. I think I measured it around the 7th of June. I think was the first time. It was right in the early part of the year.

q. What did you find then? a. 37 feet as I recall.

q. About in june?

a. I think it was around the 7th of June.

q. Did you measure it any other time?

a. Yes, I measured it about three weeks later.

q. What did you find then? a. 65 feet.

q. 65. Well, have you ever had a record or seen a record of measurements, official measurements from the River for covering a period of years?

a. Only what C.E. Norton set up in his claim, in his complaint in intervension, he sent me a copy of.

q. Have you seen any official record yourself?

a. No, I haven't.

q. Talked with the Engineers? a. No.

q. Well now, judging from the measurements that you made last year and prior to that time, what would you say would be about the average flow of the River?

a. Well, I would think the average flow would be around 100 second feet, the average flow.

q. About 100 second feet?

a. That would be my best judgment.

MR. ERICKSON: You may examine if you desire.

CROSS EXAMINATION BY MR. BEAN:

q. Well, Mr. Tanner, this land of Larsen's. You say you have been acquainted with it for 45 years and know that it's been farmed? a. Yes sir.

q. And irrigated, has been? a. Yes sir.

q. I will ask you whether or not when you first became acquainted with the land, was there as much of the land farmed then as now?

a. Well, I don't recall as to that exactly, but I do recall it was a well established place when I first saw it.

q. As to whether or not it had been gradually brought under cultivation for some years after you first became acquainted with it, you are not certain as to that?

a. No, I would think, there hasn't been any additional land brought under cultivation in 25 or 30 years, however --

q. And reverting now to the water in the River, you have been well acquainted with that River for many years?

a. Yes sir.

q. I mean the Dirty Devil River, Fremont?

a. Yes sir.

q. And you have had considerable experience measuring water and such. It is your best judgment is it, that you might say the normal flow of that River is at least 100 second feet?

a. Oh, I MR. ERICKSON: Oh, he said the average flow as I understood him. average, that is what I want to know.

MR. BEAN: If he said average, that is what I want to know.

a. It is subject to considerable variation, however. That is, the run-off water from considerable area finds its way in to that particular section of the River. Now it depends when the run-off water is extremely low it might run down below 100 and in extreme dry days. Now, to my knowledge, it got as low as 37 feet last year, but in three weeks, without any apparent reason, it comes back to 65 feet. While that was due probably to cloudy weather and stormy condition.

q. That country is subject to floods, freshets, and washes?

a. Yes.

q. About what time of the year do those floods usually appear?

a. Well, of course, the floods that come from the rain storms usually are late in the season, say July or August, September, while if there is considerable snowfall toward Dark Valley and Antilope country, a heavy run-off, it would probably last

up until well in June.

q. But those floods do come practically every year?

a. Oh, yes, it is some time in the year.

q. And greater or less force?

MR. BEAN: That's all.

REDIRECT EXAMINATION BY MR. ERICKSON:

q. There is just another line of consideration, Mr. Tanner, were you acquainted with what was known as the Hyrum Williams and H. C. Larsen Ranch? a. Yes sir.

q. Where is that located?

a. The H. C. Larsen Ranch is the Larsen Ranch we have been discussing just a few moments ago, and the Hyrum Williams Ranch would join it on the southeast.

q. Well now, you are familiar with that land, that ranch of Williams? a. Yes sir.

q. Who owns that now?

a. Well, I suppose Edmund King owns it now. At least he is the occupant.

q. That is your understanding?

a. Yes, that is my understanding.

q. How long have you been familiar with that land?

a. As long as I have with the other land.

q. I see. Do you know the amount of water that was used each year by those people?

a. Well, for a number of years I have distributed the water for them, whenever it's come --

q. How much did you distribute for them?

a. Three and one-third second feet.

q. Three and one-third? a. Yes sir.

q. And you say that was Mr. Edmund King in possession of that now? a. Yes.

q. And for at least 45 years, you say, you have been acquainted with that and know that's been used?

a. It hasn't all been used that long. Chaffin had a place established there when I first came in the first year, and he had a small amount broke up, put in the entire field then.

MR. ERICKSON: I believe that's all.

RECROSS EXAMINATION BY MR. BEAN:

q. How much land did you understand you were irrigating when you distributed this water to them?

a. I don't know that I had exactly the quantity of land. They have a large holding there and I don't know. I classified it, but I couldn't remember just how much, but they produce as much as 300 tons of hay out there and some other crops, so I would think -- well I wouldn't like to state, but it is considerable land. The water is not out of proportion to the amount of land they have.

q. Do they irrigate that from the water of the Torrey Canal?

a. Well, the Toreey Canal took in their canals. They had their canal before the Torrey built there. They went right by and enlarged that. They have been using that as water, since.

q. Now, Mr. Tanner, you have distributed considerable water as you have testified to for various people here?

a. Yes sir.

q. Now when you say, for instance, this case as an illustration, I mean now the Kings? a. Yes.

q. You say you distribute that form three and one half second feet? a. Three and one third.

q. Three and one-third. Now you don't pretend to say that they use that continuously or anything of that kind?

a. Yes.

q. You distribute it to them for one irrigation?

a. That is for the season.

q. For the season? a. Yes sir.

q. And is that the case also with the Larsen property?

a. Yes sir.

q. So that and -- if the Larsen farm, for instance, is 40 acres, as has been testified to here by -- what was your judgment?

a. There is more than 40 acres, I would think around 60 acres.

q. That is only -- that is your estimate? a. Yes.

q. And you distribute a second foot, a second and two-thirds feet for the season? a. Yes sir.

q. And you think that it requires that much water to water even 60 acres of land?

a. Yes, I would rather think so.

q. They have that during the entire season?

a. Of course, it would be subject to some variation due to what water might be in the canal, the canal could recede or raise. The distribution is made on the basis of that particular quantity as against the Torrey Irrigation Company.

q. Don't you believe that the same results would be acquired by them using that say for a week and then cut off for two weeks and somebody else use it. Don't you think that is regular irrigating system?

a. Well, I couldn't say. There doesn'tseem to be any of the land very much over watered.

q. You know all through any other country I know anything about, you take water in turns. They distribute a man's water. He can have it for three days on his acreage then he must go without say two weeks or such a matter, but you don't in this country under this River follow any such a method as that?

a. Well --

q. Give them the whole --

a. This upper end of the country they take the water in turns. We distribute the water here on a basis varying from 120 to 180 ten thousandths of a second foot per share. That gives room for the variation in flow. Well, that is we run in streams, well probably not to exceed three or four feet in the maximum. Go down to considerable under one foot in order to meet the convenience of irrigators so they can apply it on lands that require it, but the water is usually taken in turns. Turns sometimes run 15 to 20 days apart.

q. Well, in distribution of this water, you took into consideration that the duty of water was about, say 25 to 30 acres to the second foot and you have distributed the water with that in view.

a. No, I didn't take it so far as the Larsons and King water was concerned. When I distributed that, I took into account the quantity of water decreed to them and used that as the basis of decree. I didn't, as I know of, at any time, attempt to determine exactly the quantity that was really necessary to produce their crops. While, as I observed their fields, I never saw any place that appeared to be over watered.

MR. BEAN: That's all.

REDIRECT EXAMINATION BY MR. ERICKSON:

q. Just one more question. When did you find the greatest amount of water flowing into the River there below Bicknell, what time of the year?

a. Well, there is usually the largest quantity would be, that is some years, up to June 15th.

q. When?

a. Prior to June 15th of each year.

q. Well yes, but from what period, covering what period?

a. Well, it would come from probably the first of April.

q. The first of April? a. Yes.

q. And what would you imagine or would you say from your observation that the flow of water would be along there in the Spring of the year, approximately up to that time?

a. Why, I think that could run, it could run 150 feet, it could run 200 some years. It would depend largely upon what we might call the run-off water, the amount of snow been --

q. But usually it is over 100 feet for anyway?

a. I think so. Last year was an exception to that rule.

MR. ERICKSON: Well, that's all I desire.

MR. BEAN: That's all.

EDMUND KING

sworn on behalf of the defendants represented by Mr. Erickson, testified as follows:

q. State your name please? a. Edmund King

q. Where do you reside, in this country?

a. Yes sir, in Teasdale.

q. How long have you resided there, Mr. King?

a. Well, it's been my home about 20 to 25 years, about 25 years.

q. About 25 years. Were you acquainted with this country prior to that time?

a. No, just since that time.

q. Just since that time?

a. Yes sir.

q. Do you hold any interest by way of real estate down below Bicknell anywheres?

a. Yes sir.

q. Where is that situated?

a. Well, I couldn't tell you the township or ranges, it is known as the Williams Ranch.

q. The Hyrum Williams Ranch? a. Yes sir.

q. Larsen and Williams there?

a. Yes, adjoining there.

q. Well --

a. They also hold the other mill property.

q. Then you own the mill property, also?

a. Yes sir.

q. And who is your predecessor in interest?

a. How is that.

q. Who was your predecessor in interest in the mill property, the man you got it from?

a. Why, we got it from Hans Nelson, Niels Hansen.

q. Niels Hansen? a. Niels Hansen.

q. And you have been in possession of it ever since, haveyou?

a. Practically ever since. Kind of partners with J. E. Syrett, then we bought him out.

q. Mr. Kind that land that you secured from Williams and so forth, about how much that is there there?

a. 320 acres

q. And any portion of that irrigated?

a. Biggest part of it is.

q. Biggest part of it is irrigated?

a. And pasture and farming land together.

q. Improved land? a. Yes.

q. And you have farmed that, have you, each and every year, since that time?

a. I have just owned it for one year.

q. One year, who owned it before?

a. I got it of the Richfield Commercial Bank.

q. You purchased it from the Richfield Commercial and you have been acquainted with it? a. Oh, yes.

q. For the last 25 years? a. Practically, yes.

q. You know, that is, it's been farmed each and every year since then? a. Yes sir.

q. The amount of water -- do you have a judgment as to the amount of water you have applied on that?

a. We have had our three and one third second feet of water every year.

q. I see. Three and one-third second feet. I will ask you have you been engaged in farming in the past for yourself?

a. Well, just off and on.

q. Well, off and on. Well, how do you mean?

a. Well, at the mill, you see, I have been farming that land.

q. I mean in the country where you have been?

a. Practically in the livestock business.

MR. ERICKSON: I have here, your honor -- I don't want to mark it, this is an official file of this court. It is for identification. It is numbered 61, and entitled Nels Hansen, plaintiff vs. Torrey Irrigation Company, Hyrum Williams, H. C. Larsen, defendants, and designated as a judgment. You want to see that Mr. Beal?

MR. BEAL I know what the contents are.

MR. BEAN: If it is offered, I want to object to the introduction.

MR. ERICKSON: Are you familiar with it?

MR. BEAN: No.

MR. ERICKSON: You want to look at it.

MR. BEAN: I don't have to look at it to object.

MR. ERICKSON: Then, I offer it, your Honor.

MR. BEAN: Your honor, I object to it as irrelevant, immaterial and incompetent so far as this case is concerned, and could have no binding effect upon these many stockholders and citizens here.

MR. ERICKSON: Binding effect upon all -

MR. BEAN: You are not representing these stockholders.

MR. ERICKSON: I suppose as between the Torrey Irrigation Company and Mr. Bean --

MR. BEAN: It would be competent and material as to them that are mentioned in that instrument, but not as to me and to other of these litigants I am referring to, Hanksville.

MR. ERICKSON: I object, your honor please to counsel assuming to speak on behalf of Hanksville.

BY THE COURT: I suppose the objection would go to

himself only. I am a little doubtful. Well, it may have some bearing in determining --

MR. ERICKSON: The same rights are involved in this case as are involved in that case, for that reason we would like to have it incorporated so far as we are concerned.

BY THE COURT: Objection overruled. It will be admitted.

MR. BEAN: We will note an exception.

MR. ERICKSON: I believe that's all, Mr. King.

BY THE COURT: Any cross examination?

CROSS EXAMINATION BY MR. BEAN:

q. Mr. King, you stated that the most -- I think you stated-- I don't remember just how you what proportion, in fact, you did not state what proportion of your land was irrigated. I think you said the biggest portion -- it wasn't definite. I am now asking you if you can make that more definite and specific? a. No, I cannot.

q. So you really can't tell how much land you are irrigating?

a. No sir.

q. Can you approximate it?

a. Somewhere around 200 acres.

q. Around what?

a. Two hundred acres, probably a little more, I can't tell. I have only had it one year, and I haven't measured it.

MR. BEAN: That's all.

MR. ERICKSON: I believe that's all.

MR. ERICKSON: We rest our case, your honor.

MR. BEAN: Your honor please, I very much dislike to take the witness stand in my own behalf when I am not

represented by an attorney, but it looks like almost necessary for me to do so. I tru t these attorneys will be very modest and merciful to me. I want to make a statement before I am sworn. My son, L. J. Bean and my daughter, Lora B. Holman, she is of Salt Lake and my son is of Los Angeles, California, and my daughter Alta B. Herrick of St. Louis, and myself, own in the Cainsville District, 540 acres of land. I, individually own 422 acres in what is called the Blue Valley District, Giles country. And, I thought I would ask these attorneys if they require me to present the deeds.

MR. BEAL: Well, when you get to that stage of the proceedings, we will see one way or another.

G. T. BEAN

sworn on behalf of himself, testified as follows:

DIRECT EXAMINATION:

MR. BEAN: I guess I had better repeat what I just stated so far as the lands are concerned. I will say that myself, my son, L. J. Bean and daughter Lora B. Holman, and another daughter, AltaV. Herrick, are the owners and possessors of 540 acres of land in Cainsville Precinct.

MR. BEAL: At this time, your honor, I move that the question be stricken, or the testimony be stricken from the record for the reason and on the grounds that this matter and no affirmative matter whatsoever is properly before the court under the pleadings in this case. A scrutiny of the files will reveal that a complaint was filed by the plaintiff in this case, that thereafter answeres were filed in behalf of a number of the defendants, practically all of them then rep-

resented by Mr. Michelson. Thereafter, Erickson & Erickson were gaged by all of them save and except Mr. Bean and one or two others, and they filed in this action, set up their pleadings, and the issues were defined. Thereafter, Mr. Bean, witness in this case, files a separate answer. It is entitled a Separate Answer of G. T. Bean to Plaintiff's Complaint, Defendant's Answers and a Complaint in Intervention. Now, that is the only paper that's been filed by Mr. Bean save and except a demurrer to the complaint, which was overruled.and denied. I invite the court's attention to this document filed in this case, with the consideration definitely in view that the only purpose in which Mr. Bean could appear here at this time is as a friend of this court and not otherwise. There is nothing whatsoever raised in his pleadings that would justify any affirmative relief or any relief whatsoever. I call the Court's attention to the preliminary statement on the introduction of this pleading. "Comes now G. T. Bean, one of the defendants above named and answering the question in intervention of Blue Valley Irrigation Company and Charles E. Norton, denies, admits and alleges as follows:" The court has decided and properly so, that no complaint in intervention has been filed by the Blue Valley Irrigation Company or Charles E. Norton, therefore, and thereby any answer contained in that preliminary statement, or any matters and things contained in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 have reference solely and exclusively to a complaint in intervention which has not been filed in this action, therefore and thereby there is nothing that should be or could be under any stretch of the imagination admissive in this proceedings. There is no

reference whatsoever in the first section of that complaint to any right claimed by the plaintiff in this action. There is no denial of the plaintiff's rights, and furthermore there is no denial of any rights set up by any of the plaintiffs in their affirmative matter. The only way that could be attacked as the court knows, is through a cross-complaint filed on behalf of the intervenor, so-called, in this action. Now I call the court's attention to the only affirmative matters which appears on page 3 of this instrument which I have called the court's attention to: "By way of further answer and defense to the said complaint in intervention, this defendant alleges." There is no reference here, if the court please to any complaint filed by the plaintiff. There is nothing stated here as to any relief sought to be had by this intervenor against any of the defendants in this action, and by reading and analyzing what has been set forth here, it resolves itself into a private dispute between a party who has ficticiously mislead all the people here, perhaps, but in misleading has not filed anything that brings before the Court for determination, because unfortunately for this intervenor there is no complaint in intervention filed and the answer and the relief sought in this matter by Mr. Bean is based upon ficticious and supposititious fact that one has been filed, while in truth and in fact, no appearance as a matter of record and nothing appears in the pleadings in this case that would justify or warrant in any small part the appearance of Mr. Bean in this action or allows of any affirmative relief. I, therefore, move upon the records and file in this matter that no affirmative things whatsoever be or enter in this case.

this case conflicting the right of the plaintiff or the respective defendants.

MR. ERICKSON: Now, your honor, on behalf of the defendants represented by J. Vernon Erickson and myself, a list of whom I presented yesterday, I incorporate in my motion -- the motion that has been made by counsel for the plaintiff in this action and further than that, I, on behalf of all these defendants, I wish also to offer an objection to Mr. Bean presenting any evidence whatsoever in support of his statement which he made to the court as to what he intended to prove or any evidence whatsoever concerning his purported rights which he claims, for the reason and on the grounds as set up by counsel for the plaintiff and on the same grounds we object to it on that for the reason that there is no issue between Mr. Bean. No issue raised between him and any of the defendants that we represent in this action. There is no affirmative relief that is shown against them. There is no complaint or complaint of intervention or cross-complaint that would justify the court in spending one -- well, there isn't anything that would justify the court to spend any time whatsoever in listening to evidence from Mr. Bean as to his purported rights which he claims against the Blue Valley Irrigation Company and Mr. Norton. Mr. Norton has never filed a complaint of intervention and if Mr. Bean had any and was entitled to any hearing at all, it would only effect the rights of Mr. Norton in that complaint of intervention and would not and does not effect any right or any claim whatsoever concerning any of the defendants in this action. And, for that reason I join with counsel for the plaintiff in this matter in objecting to any evidence whatsoever.

MR. BEAN: Your honor please, Mr. Norton wrote me asking me if I could send him a copy of the complaint of the plaintiff in this case. He stated that--and I have his letter here somewhere--he stated he wanted to file an answer and he asked me if I would kindly accommodate him that way and I did. I sent him a copy of the complaint. He then sent an answer to me, a copy, and Mr. Beal here says he sent him one also, and then Mr. Norton asked if I would consent that he file that answer of his with the court. I wrote him that so far as I was concerned, why of course I would consent, and I am told by Mr. Beal that he wrote Mr. Norton that he would consent, and that he had also. Now, we live over there at Richfield, quite a distance from this county seat. I presumed that he sent me a copy of his complaint or answer and asked permission to file it that he had filed it. I, therefore, filed an answer. This is the way I worded it.

BY THE COURT: I have the original before me.

MR. BEAN: It says, I have a copy here -- "Separate answer of G. T. Bean to Plaintiff's complaint, defendants answers and complaint in intervention.

BY THE COURT: Apparently the expression 'Plaintiff's Complaint, Defendants' answers," has been written in after the document was originally written, but it was there in the original.

MR. BEAN: Then doesn't that specify the purpose and use it shall be applied to. Why,of course. It doesn't matter what's been written in. It's all been written in. I guess it is just the same.

BY THE COURT: Just the same, yes.

MR. BEAN: And I want to say father, this man Beal and I talked this matter over. We talked this matter over in his office, the question now, whether Mr. Norton was before this court.

MR. BEAL: I will admit everything you said is a fact.

MR. BEAN: He says Mr. Norton is in this case and he says he believed that the court would so hold, and he says that the letter he had received from North and these pleadings that Norton had served on us, he and I, was enough to place him in this court and compel him to answer, or that he was subject to a default and, so I acted on that and here we are.

MR. BEAL: I will frankly admit that represents what happened in the case, and last November when I came over here, I prepared a verified answer, had my client sign it and intended to file it. The complaint was on file, the complaint in intervention, but that doesn't excuse the situation whatsoever. The fact that in the caption of this pleading, filed by Mr. Bean, a reference is made to the plaintiff's complaint and defendants' answer, that is the only reference that can be found by carefully analyzing the paper filed, and of course, unless there is some reference or some relief sought, none can be granted and it is an unfortunate situation, but that is the way it is. There is no relief and the court wouldn't be justified in accepting any evidence; as set forth here your case is a private dispute between Mr. Norton and Mr. Bean. There is no relief sought, nothing asked against the plaintiff. There is nothing claimed against the plaintiff or defendants. There are no rights sought against the defendants, so it would

be just a waste of time to question any -- introduce any affirmative matter whatsoever based upon this action. This is some other action. This matter should be thrashed out, not and certainly not the matter that is now before the court.

MR. ERICKSON: On behalf of the defendants which we represent, I call attention to the fact that there is no issue here between these defendants and Mr. Bean. Mr. Bean has never filed any cross complaint as a defendant here against these defendants, setting up any rights as against them. None whatsoever, and the court, of course, would be without jurisdiction and could not possibly settle any rights or attempt to settle any rights as between Bean and these defendants. There is none here. If Mr. Bean had any claim against the rights of these defendants, why he would have to come in to this action and file his answer to the complaint and he would have to file a cross complaint asking affirmative relief against the defendants here and there isn't anything and I have been wondering somewhat, myself, as to why Mr. Bean has been cross-examing all my witnesses.

MR. BEAN: You objected did you.

MR. ERICKSON: I didn't know just your object in that, but I certainly object to your attempting to establish your rights as against them.

BY THE COURT: I have no question in my mind, gentlemen, in saying to you that Mr. Norton is not in court. I am quite confident it don't make any difference how many papers may pass between attorneys, how many answers or complaints or summons, or anything else may be handed back and forth between attorneys. The thing that gives the court

jurisdiction of the parties is the filing of your papers in the court room. I can't find that Mr. Norton has ever filed anything here, so I have no hesitancy in saying Mr. Norton is not in court, and no matter what should be done, itcouldn't have any effect either one way or the other with reference to Mr. Norton. I also have no hesitancy in saying that a paper purporting to answer or reply or meet some document that has never been filed in the court room can't have any effect insofar as the paper is concerned. There is no issue here raised by Mr. Norton, no claims made by him and it necessarily fallows that nobody either can meet or deny any of those claims and by doing it establish any right with reference to Mr. Norton. Now this paper that we have in front of us, Mr. Bean's Answer, in the body of it is denominated, "Separate Answer of G. T. Bean to the plaintiff's complaint, defendants' answer, and complaint in intervention. That is in the caption or title of the case only. Then, when we get down in to the body of the document, it says: "Come now, G. T. Bean, one of the defendants above named and answers the complaint in intervention of the BlueValley Irrigation Company, and Charles E. Norton, denies, admits and alleges as follows". That is the first paragraph and so the allegations are there, limited to those two defendants or those two parties who are not in court at all. Then, when we go to the affirmative matter, the titled part is: "By way of further, separate answer and defense to the said complaint in intervention,"this defendant alleges" -- and so it again appears that the pleader has in mind the meeting of Mr. Norton's or the Blue Valley Irrigation Company's claims, which everyone seemed to think has been

presented, but which has not been presented to the court. But, there is this much more, gentlemen, in it. There is in that caption enough to indicate that Mr. Bean had in mind meeting the entire issue. Now, when we go down in to the allegations, we have the allegation of ownership of land, and sterile condition, the allegations of diversion of water back in the year 1883 sufficient to irrigate that 540 acres of land. And then comes in paragraph 5, the allegation of the proper irrigation of those lands until 1910 when the flood took the water out and succeeding attempts to replace, and then in paragraph 7 that the right, title and interest of this defendant in and to the water of Fremont River and suffient thereof to irrigate the above mentioned lands is prior and superior to that of the rights of the plaintiff, the defendants and complainants in intervention.

MR. BEAN: That's all the cross complaint a person needs in a water case.

BY THE COURT: And in paragraph 8, an allegation of rights being asserted adverse to this defendant. While I think the pleading is clearly defective, yet I would hesitate very much with that much being in front of me to just arbitrarily decide that the defendant, Mr. Bean, has no right to any hearing, And, I am thinking this, as the pleadings now stand, I should sustain the motion, but I should do it with leave to amend the pleadings.

MR. BEAN: Your honor please, I move to amend the pleadings and I will admit everything that refers to the intervenor or intervenors, Mr. Norton and by striking from the caption the words 'complaint in intervention'. I think --

BY THE COURT: Well, I am not sure, Mr. Bean, that that would meet it, but I will give you leave to make such amendment as you see fit. I am inclined to think, gentlemen, we will do better to recess for a little while and give him an opportunity to make such amendment as is proper. Better to proceed with these things with the issues framed.

MR. BEAN: May we have an exception to the ruling of the court.

MR. ERICKSON: Well, your honor please, I would like the record to show that we except to the order of the court permitting Mr. Bean to make any amendments as to this matter.

MR. BEAN: I have a perfect right to amend.

BY THE COURT: Let the record so show. Recess.

2:00 P. M.

MR. BEAN: Well, we are ready to proceed, your honor.

BY THE COURT: The court's ready.

MR. ERICKSON: Your honor please, I would ask now that the record may show, inasmuch as we have just been served with a copy of the answer of Mr. Bean in this case, and his prayer and cross-complaint and affirmative rights which he sets up against the defendants for Judge Erickson and J. Vernon Erickson represent, I wish the record may show that as a reply to that,as I might term it, although it is the first copy, it is really an answer to his affirmative matter. I want the record to show that the answer of all of the defendants which we represent, to the affirmative matter and the claim of right of Mr. Bean, effecting any of these defendants, that we enter a general denial to each and all of the rights which he claims

as effecting our rights and in order to expedite business and proceed, I would ask simply that we may prepare the proper answer and it may be filed in the records afterwards.

BY THE COURT: It may beso understood.

MR. BEAN: I have no objections to that.

MR. BEAL: I desire to make some preliminary pleadings, myself, but I desire to have a chance to read it so I will know what I am pleading to. (Pause) If the court please, at this time the plaintiff will interpose a motion to the proposed amended answer of Mr. Bean. This motion is directed to that portion of paragraph 2 of the amended answer where the following is stated: "Answering paragraph 5, admits there has been no decrees determining the rights of said River". This is the point I desire to direct my motion against. The residue of said paragraph, "but denies that the rights of plaintiff are superior to the rights of this defendant". I make this motion, your honor, on the grounds that same is frivolous and sham, inasmuch as the defendant, Mr. Bean, affirmatively pleads in his answer, a priority of 1883. In open court here yesterday, it was stipulated and agreed and consented to by the defendant that the plaintiff's rights were initiated and that the water had been beneficially used since the year 1882. I, therefore, move that that particular portion setting forth that his rights are superior to the rights of the defendant based upon the stipulation heretofore made. I would like a ruling on that before I proceed.

BY THE COURT: Perhaps we had better read this answer.

MR. BEAN: (Reads answer) I ask permission to file this, your honor.

BY THE COURT: It may be filed.

MR. ERICKSON: Now, your honor please, in going over this answer just as Mr. Bean has read it, and as I have a copy now, I wish now that the record may show that all of the defendants represented here by myself and J. Vernon Erickson, that they-- The affirmative matter to the rights of the water of Fremont River, as set up in their answers, separate answers to the complaint of the plaintiff, that the same affirmative matter may be set up by all of these defendants, respectively as to the rights of what Mr. Bean terms a cross-complaint here, does answer, in addition to the general denial which we have filed. As it appears that he is apparently trying to bring an action to quiet title. That's all I can see. He doesn't state that anybody has interferred with his rights or anything of that kind. He is merely setting up a sort of an answer and then what he terms a cross complaint, but he doesn't attack in reality. He merely says it is superior to these others which in order to save any controversy and save the rights of these defendants, I want the record to show that each and every one of them hereby set up as affirmative their respective rights to the water as they have set up here in their answers to the complaint as against that, and of course, the Court has already heard the evidence, but in order to perfect the record, so there will be no question about it, I want that privilege and we will have to take time to file the answer in accordance with that, later on, if they have to proceed. Have any objection?

MR. BEAN: I was wondering about stipulating in the record we would accept this testimony.

MR. ERICKSON: That is agreed to by you, so far as our answers may be filed.

MR. BEAN: For you, certainly. I have no objection to that.

BY THE COURT: Well, as I see the pleadings, you have given everyone of those concerned that have set up their affirmative claim. Mr. Bean has set up claims his clients have set up claims.

MR. ERICKSON: Yes, against him. He is merely coming in here and asking us to set up our rights.

BY THE COURT: Which you have already done.

MR. BEAL: Which wehave already done, but not as against him. That is the only point. I wanted that to show, that we have already gone over this matter and, of course, I take it that the court would be willing and Mr. Bean would be willing to stipulate that the evidence that we have already presented in this case may apply.

MR. BEAN; I will be as good as you, prepare and file it.

MR. ERICKSON: You've got to get at this right or else we can't go on. I want, if you will agree that the evidence--now,that we have presented in support of our rights, that that evidence, the court is authorized to take that -- which of course has been the understanding of the court -- as evidence against the rights which you set up.

MR. BEAN; I have no objection if the court considers all the evidence that has been heretofore heard in this case.

MR. ERICKSON: Very well.

MR. BEAN: Either consider it as --

MR. BEAL: Based upon that statement, your honor, I again renew my request or motion that the particular portion of paragraph 5 of his answer be stricken as sham and frivolous and having heretofore been stipulated, and agreed that the right of the Hanksville has a priority date of 1882.

MR. BEAN: I object to it.being stricken as frivolous but I do not object as to the year. This says 1883, the stipulation sayd 1882. We can just as well change that. I don't object to the year.

MR. BEAL: You have no quarrel then with the Hanksville rights?

MR. BEAN: No.

MR. BEAL: That's all right. Furthermore, if the court please, at this time I reserve the right, in order to complete the files in this case, to file a reply. However, I will dictate into the record my reply and what it consists of so that the matter may be complete.

MR. BEAN: Of course, well --

MR. BEAL: Title of the court and cause, Reply of Plaintiff to the Amended Answer of G. T. Bean. Comes the plaintiff in the above entitled action and replying to the amended answer and purported cross complaint of the defendant, G. T. Bean, admits, denies and alleges as follows, to wit:
1. Replying to paragraph 1 in said cross complaint contained, plaintiff denies the same for want of information and belief.
2. Replying to paragraph 2, plaintiff admits the same.
3. Replying to paragraph 3, plaintiff admits the allegations in said paragraph contained. 4. Replying to paragraph 4, plaintiff is not advised of the trurth or falsity of the

allegations therein contained and hence denies the same. 5. Replying to paragraph 5, plaintiff is not advised of the correctness, truth or falsity of the allegations in said paragraph contained, and hence denies the same and puts defendant upon his proof. 6. Replying to paragraph 6, plaintiff is not advised of the truth or falsity of the allegations in said paragraph contained and hence denies the same. 7. Replying to paragraph 7, plaintiff is not advised of the correctness, the truth or falsity of the allegations therein contained and himself denies the same and places the defendant upon his proof. WHEREFORE, Plaintiff prays that the said complaint of defendant, G. T. Bean, may be held at naught insofar as the rights of plaintiff is concerned, and as to the plaintiff that no relief or redress be granted to the answering defendant.

MR. BEAN: Your honor please, I don't understand this counsel here for the plaintiff, after I have stipulated and yesterday and --

MR. BEAL: Just to complete the files, so the record will be complete.

MR. BEAN: Now he goes to say we, therefore, put him on his proof. I have got to prove my case after I admitted his case.

MR. BEAL: Yes, you have admitted mine, I haven't admitted yours.

MR. BEAN: I have heard tell --

MR. BEAL: I won't admit any part of your case.

MR. BEAN: Let's get to work.

BY THE COURT: The motion to strike will be denied. I am of the opinion that the stipulation is evidential and not

the pleadings. The pleadings may stand and the stipulation will be considered evidence as applying to them.

MR. BEAL: That's satisfactory.

BY THE COURT: Very well, ready to proceed then.

G. T. Bean

resumed the stand.

G. T. BEAN; I am one of the defendants in this action as heretofore stated. I own and have control over 540 acres of land in Cainsville Precinct.

MR. BEAL: I object to that as not being the best evidence.

BY THE COURT: I am going to overrule the objection. Might be some merit, but I believe I am going to admit it.

a. I also have 422 acres of land in Blue Valley.

MR. BEAL: May I have the same objection for the same reason, it is not the best evidence.

BY THE COURT: Same ruling. How many acres is that, four hundred --

MR. BEAN: 22 in Blue Valley I have. In order to irrigate this 540 near Cainsville, I have spent close to $7,000.

MR. BEAL: I object to that as incompetent, irrelevant and immaterial, if the court please, there is nothing in the pleadings or anything else on which a right can be based to show the amount of money he has spent on matters of this kind.

BY THE COURT: Sustained.

MR. BEAN: I will say we have been--there is 50 acres of land, of this land has been farmed for more than 30 years. I have

known personally, been acquainted with it and known it's been farmed since -- well for 30 years, by my predecessors and me. I have farmed it since 1920, or had it farmed under my direction and every year but one with the waters of this River. The water has been diverted through a ditch or canal known as the Ben Durfee Ditch from the River on to the land and it's been conveyed for about four miles of ditch -- land runs in this way, that is it's laid out or situate -- it requires a ditch of about four miles in length to convey the water to the extreme end of the land, and that canal has been constructed by me and I have conveyed the water to the extreme end. I have -- about 1911 I put in -- I farmed something over about 130 acres of this land myself and partly my successors in interest to 320 acres of it, 320 acres of it. Let's see, yes, 320. No, 40, that would be farmed, about 200 acres.

BY THE COURT: I am not clear as to whether you are referring to the Blue Valley?

MR. BEAN: Cainsville now. I am confining myself on this proof to Cainsville. That is, J..E. and CharlesDurfee farmed, they each owned a quarter section of land which I have since succeeded to the ownership and out of their quarter sections, they farmed about 200 in 1920 as I remember it.

MR. ERICKSON: 1930.

MR. BEAN: 1920. I know that they farmed it, but much of this land had been farmed 15 years prior to that time, but was farmed just periodically for the reason that Mr. Durfee was in the section of the country at the time, but he come back and assumed control of his land and drug off land he had not had cleared before and he farmed, he and his son farmed this

land for two years. This canal they conveyed the water onto his land and mine, was -- we found it would be washed out with freshets, built around those different points of rocks. Each time a freshet would arise and come down the canal or River, it seemed like it would wash out our ditch, so after about three years successive working, repairing our ditch, in 1920 we drove a tunnel through the point of the mountain 330 feet through the rock in order to miss these floods and there had been prior to that time another tunnel lower down we called Black Tunnel, about 4 to 500 feet long, constructed by the Durfees and as I say, I finished the ditch for about four miles long, covered all of my land. I planted 80 acres of land in one tract, I planted 30 acres of it in alfalfa, I planted another 30 acres in alfalfa under this same ditch. I planted year after year on one of the tracts, been farming ever since, part of it, we have not been farming ever since for the reason.

MR. BEAL: I object to the reasons being stated.

BY THE COURT: It may or may not be. I am going to let him testify.

MR. BEAN: There is a creek or a wash over there called Sand Creek. We had to use it. It has been constructed for years and used before I was interested in that country, and I repaired it quite a good deal and in about the year 1910, I think it was, no it was after that. It was about 1920, a flood came down that wash and a cottonwood tree rolling down the wash in the flood struck our tunnel, our flume put in by Mr. Durfee and his son and myself and knocked our flume out. I immediately, along with the Durfees ordered a bill of lumber

to put the flume back in place.

MR. BEAL: I object to that an incompetent, irrelevant and immaterial and ask that the testimony be stricken.

BY THE COURT: Objection overruled.

MR. BEAL: Exception.

MR. BEAN: We prepared to put the flume back in again so that we could continue to farm our lands that was under that, across that Sandy Wash. I had some of this side we have been farming ever since because it don't interfere with it quite so much. So that when we got material on hand, prepared to start to repair our flume, which by the way it became quite an expensive thing, the wash having -- or creek having washed out more than twice as wide, took much more material and we hauled material from Boulder Mountain, lumber to put on the ground and a part of it was stolen.

MR. BEAL: May it please the court, I object to all this an incompetent, irrelevant, immaterial as to what he has been doing. The only purpose he would have to it would be to have nonabandonment, it doesn't make any difference what he has spent. The only thing we are claiming is priority, which he claims under these pleadings.

BY THE COURT: As the pleadings now stand, there is no issue on the question of abandonment.

MR. BEAL: Then its immaterial; that is the very point I raise. Unless that is for that purpose only, why then it would certainly not be admissible in this case, what he has spent. The only thing is the time he started to use this water and how much he has used. He says 1883 to the present time for the use of the lands he has described. Now,

it seems to me that is very well defined and to say what he has been doing down there, the court is not interested in it.

BY THE COURT: If there is no issue on the question of abandonment.

MR. BEAL: There is no issue in the pleadings, general denial, that may be developed, but certainly, there is nothing to show at the present time.

BY THE COURT: With the construction of the pleadings that there is no issue on abandonment, the objection should be sustained.

MR. BEAN: Note an exception.

BY THE COURT: So ordered.

MR. BEAN: WE may not show then that we have every year since that made efforts to irrigate thisland.

BY THE COURT: As I understand it, there is no issue along that line. They don't seem to --

MR. BEAL: If he wants to show that we will very promptly raise the issue of abandonment. Otherwise it is not material.

MR. BEAN: I put on that ground what is known as knocke fence, land of 80 acres.

MR. BEAL: I object to that as what he fenced. It is incompetent, irrelevant and immaterial, if he has fenced every foot of it.

BY THE COURT: It is a question of cultivation, objection sustained.

MR. BEAN: Well, I will say that I cultivated about -- let's see. We -- on the east side of the Sand Creek, so you can understand, across the wash where the flume went out, me and

Durfees farmed, I put in 80 acres over there and Durfees put in about 200 acres and farmed it for three and four years, I don't know just how long they did. I only could mine two years by reason of the flume going out, and we haven't been able to get the water on it since. But I improved in in other ways. I fenced it, by putting material on the grounds --

MR. BEAL: I ask that the fencing and material on the ground be stricken as incompetent, irrelevant and immaterial.

BY THE COURT: Objection sustained.

MR. BEAN: I have had water certificates that I have secured, paid money for them, supposing that I was securing water rights there.

MR. BEAL: I object to that as not the best evidence and as incompetent, irrelevant and immaterial, not within the issues framed by the pleadings.

BY THE COURT: Well, there is nothing offered now.

MR. BEAL: I ask that his testimony be stricken concerning that point.

BY THE COURT: What is it?

MR. BEAN: I offer now a water certificate, Wayne County Irrigation Company, calling for 177/50 which was since to have been 17.75 shares of water. You may mark those three instruments.

(Defendant, G. T. Bean's Exhibits No. 4 and 5. marked for identification)

MR. BEAN: I now offer Defendant's Exhibit 5, and Defendant's exhibit 4 and Defendant's Exhibit 1, I offer then in evidence.

MR. BEAL: I note from the proposed exhibits that some name appears thereon that is foreign to any name or any corporation

corporation or any party involved in this controversy. I object to it further on the grounds it is incompetent, irrelevant and immaterial, has no bearing upon any matters and things framed by the complaint or answer or cross-complaint of the defendant in this case.

MR. ERICKSON: In behalf of all these defendants, I also join in the objection made by the attorney for the plaintiff, and also add that we object to it as irrelevant and immaterial and no evidence as against any right of any of these defendants and no evidence as -- in favor of the claims of the defendant in this action.

BY THE COURT: Well, I can't tell, gentlemen, if this represents water that is being used down there in some way, it might have some bearing. I don't see how I can tell at this time whether it is material. I am going to overrule the objection at this time.

MR. BEAL: Note an exception.

MR. ERICKSON: Note an exception.

MR. BEAN: This land that is on this side of the wash that I was mentioning, I know has been farmed for I was using it in 1909. The Buchanans owned it at that time and I saw them there farming it and they were farming about 75 acres at that time, had it all inclosed, raising fruit at that time, had fruit trees planted on it and building two houses. They were residing in the two houses and it's been farmed ever since.

BY THE COURT: What year was that, you say?

MR. BEAN: 1909, that I knew. I don't know how much longer prior to that time, I think Mr. Tanner stated yesterday.

MR. BEAL: I object to what Mr. Tanner stated. It

is already in the record and would be repetitious.

BY THE COURT: It would be repetitious. Sustained.

MR. BEAN: But that land has been farmed ever since. The other land has not been farmed only as I have stated, but we have been working on diversion works and preparing to improve it and to irrigate it.

MR. BEAL: I asked that that be stricken as not within the issues of this case, what else he has been doing down there.

BY THE COURT: Sustained.

MR. BEAN: I will say that this 80 acre tract of Knoche land, as you call it. I bought it of Knoche, Grand Junction, give him $800 for it and I saw that it had been farmed for many years before that. It had two foraces built on the land in different places, one at each place where molasses, sorgham had been made, and the land showed that it had been farmed and irrigated and the ditch showed where it was taken out of the River and on this land, and I would say I spent what money I had and could raise, down there, hoping --

MR. BEAL: I object to that as incompetent, irrelevant and immaterial.

MR. BEAN: I want to say to the court --

MR. BEAL: I know you do, but I make the objection, it is incompetent, irrelevant and immaterial.

MR. BEAN: You have said that.

BY THE COURT: Money spent, I am of the opinion that is immaterial.

MR. BEAN: I will say that owing to these freshets and floods in that country, people have spent all their money and had to

leave even the people --

MR. BEAL: I object to that as incompetent, irrelevant and immaterial.

MR. BEAN: -- and gone elsewhere, moving them out so they wouldn't starve. I didn't quite starve.

MR. BEAL: I ask that that evidence be stricken, your honor.

BY THE COURT: Yes, what the people did may go out.

MR. BEAN: That's all, I, personally, know about the farming in this Cainsville District and I would move the court, now, at this time, for permission to amend my answer to show that this land we have never abandoned trying to get diverting works to stand under these flood so that we can cultivate it and farm it.

MR. BEAL: Do I understand you propose another amendment to the complaint.

MR. BEAN: Yes.

MR. BEAL: In what way?

MR. BEAN: I want to show we have never abandoned the land , but have been working diligently so far as our means would permit.

MR. BEAL: Would you just refer to it so we can make our copies conform, so we can answer it.

BY THE COURT: So far as that is concerned, it rather seems to me that paragraph has an allegation on his part.

MR. BEAL: That is denied by us, if the court so construes that, we take that to raise that issue, that is denied in my reply.

MR. BEAN: That don't make your reply any truer than this because you happen to deny it.

MR. BEAL: Not at all.

MR. BEAN: That is what I thought.

MR. BEAL: Not at all.

MR. BEAN: I thought I was pleading no abaondonment, but you seem to think I haven't.

BY THE COURT: Paragraph 5 refers to the lands in Range 10 East. You have given a lot of testimony here with reference to lands near Sandy Creek. Whether that is the lands in 10 East or the lands referred to in paragraph 6 as 8 East.

MR. BEAN: I think that is 8 East, my testimony has been chiefly.

BY THE COURT: In that event there is nothing here with reference to that question of abandonment, so I have consistently ruled. There is no question of abandonment before the court.

MR. BEAN: May I amend so that pleading shows abandonment?

BY THE COURT: It is your right to amend. Even though it is late, the allegation with reference to lands in 8 East, as I see it, does not contain any allegation with reference to abandoning, and there isn't anybody claiming there is an abandonment.

MR. BEAN: Does your honor hold that paragraph 5 --

BY THE COURT: Paragraph 5 sets out the conditions that have existed in reference to those lands, range 10 East.

MR. BEAN: Then I think I can amend that very easily

by changing the -- when I get it amended, I will. I move the court to amend by interliniation so as to make paragraph 5 read as follows: "That in each and every year since the diversion and the application referred to in the above paragraph, this defendant and his predecessors in interest, diverted sufficient water to properly irrigate the lands hereinbefore mentioned as laying in township 28 South, Range 10 East, Salt Lake Meridian, also the land situate in Township 29 South, Range 8 East, Salt Lake Meridian, until the year 1910 when an unusually large flood came down said Fremont River and destroyed the diverting works of this defendant and his predecessors in interest; that since 1910 this defendant and his predecessors in interest have diligently and continuously labored to restore the dam and diverting works in said Fremont River, but the same have been destroyed and taken away at intervals by acts of nature in the shape of unusually large floods caused from cloud bursts in the water shed of the said Fremont River.

MR. BEAL: You only wish to incorporate the following in line 4: "Also the lands situate in Township 29 South, Range 8 East, Salt Lake Meridian" ?

MR. BEAN: That is the only change.

MR. BEAL: And, if the court please, may my reply, or the reply of the plaintiff be amended to read as follows: "Replying to Paragraph 5 --

BY THE COURT: I had better make an order. The order is that this defendant be permitted to make the order as suggested.

MR. BEAL: And may I be permitted to amend my reply in order to conform with the present amendment granted to the

defendant as follows: "Replying to paragraph 5 of defendant's cross-complaint, plaintiff alleges that if any right had been obtained as set up in said paragraph 5, that the same has been lost and abandoned through non-use, Further answering said paragraph, the plaintiff denies the same and the whole thereof.

BY THE COURT: Amendment may bemade as prayed for.

MR. ERICKSON: Now, your honor please, on behalf of the defendants which we represent here. In view of this amendment, again, to defendants cross complaint and answer, I would ask, of course, to amend our answer to that so as to deny the allegations set forth there, in addition, and to file such answer as will cover the issues in this case now before the court. I haven't had time to study the real full of it, but I want that privilege to file such an answer as will make an issue as to the rights between Mr. Bean and these defendants.

BY THE COURT: Ver well. It is your right.

MR. BEAN: I will say that our canal would not hold, by reason of these freshets, floods, and decided that the only thing we could do was to drive a tunnel through the point of the hill or mountain.

MR. BEAL: I object to that as repetitious.

BY THE COURT: You testified as to driving of the tunnels, you have covered that.

MR. BEAN: May I not testify to it once more?

BY THE COURT: I am inclined to think the question, what is done, not the question of the money expended.

MR. BEAN: Don't you have to know what it cost?

BY THE COURT: It seems to me the physical things

MR. BEAL: I object to what you thought, and ask that it be stricken.

MR. BEAN: Don't get excited.

BY THE COURT: Objection overruled.

MR. BEAN: Mr. Durfee was considerable of an engineer, carpenter.

MR. BEAL: I ask that that be stricken, doesn't make any difference what he was so far as this case is concerned. Ask for a ruling.

MR. BEAN: You are making yourself a little bit rediculous and very tiresome.

BY THE COURT: Objection sustained.

MR. BEAN: His plan that he drew, we ordered the lumber, sawed and hauled it on the ground. It was finally, part of it, stolen and we ordered it again.

BY THE COURT: When was that, Mr. Bean?

MR. BEAN: Thatwas 1920, I believe. Yes, as I remember. We then had our lumber taken the second time. I then made a contract with a hired man to come down and put that flume across. When we went to find our timbers they were gone again, pulledout on the county road, some of it, found down here on the county road so that we was unable to reach there.

BY THE COURT: When was that?

MR. BEAN: That was in 1920 or 1921. There were two tunnels, I have described one. The other one, I don't know the exact length of it, but it is about 500 feet along I think as nearly as I can estimate it and I helped clean that out some, but Mr. Durfee did the most of it. That cost, I don't know what it cost, but it would cost, I suppose, the

way mining men would figure it, I have a little bit of an idea driving tunnels for mines than I have through ordinary rock, but I guess the cost would be the same. It would be about $9.00 a feet. That was completed. And that ditch in the meantime filled up by reason of freshets and I had much of that cleaned out and had the expense of two teams.

BY THE COURT: That was when.

MR. BEAN: About 1921, while we were getting the material for the big flume. We thought we had things going in pretty good shape but the floods washed out our dam up here at the head of our canal. It was a little reservoir formed there, seemed to be the cheapest and best way to fix it so as to get the water and a flood came down again, down the River. It filled up our tunnel about one-half of it was filled up again with debris and our reservoir was washed away again.

MR. BEAL: Who do you mean when you say we all the time.

MR. BEAN: Who do I mean?

MR. BEAL: Yes.

MR. BEAN: I mean G. T. Bean and the man he had hired. I mean G. T. Bean and the man he had on the farm. It seemed we had considerable trouble that way. We had a gate at the head of the canal with cedar posts and lumber and that was washed off. Had another put in and that was washed out, so to be honest, we have just been spending every dollar that I could raise.

MR. BEAL: I object to that as incompetent, irrelevant and immaterial.

BY THE COURT: Objection overruled.

MR. BEAL: Exception.

MR. BEAN: In order to see if we couldn't get something in that would stick and that we could begin to realize a little profit somewhere out of it, and all the time we were paying taxes on this land year after year, but unfortunately the floods seemed to take out our dams.

MR. BEAL: I object to that as repetitious, hasno probative value and is selfpserving, not confined to the facts, already been testified to at great length.

BY THE COURT: Repetitious.

MR. BEAN: Of course, I suppose it is immaterial to say that I also built about 5 miles of 4-wire fence and cedar posts toward improving the land showing good faith.

MR. BEAL: I ask that that be stricken as a conclusion of the witness. He can testify what the facts are, but certainly he is testifying a conclusion.

MR. BEAN: It is not a conclusion, it is a fact.

BY THE COURT: Of course, there is no question but what things of that kind are proper intention, a man can testify as to what their real intentions were.

MR. BEAN: Those were good intentions. I carried them along up to the present time. Only a short time ago I bout 250 feet of wire cable because people that seem to know something about building flumes said that was the proper way to put --

MR. BEAL: I object to that as hearsay.

BY THE COURT: Objection overruled.

MR. BEAL: Donst make any difference --

MR. BEAN: So I bought the cable, it is lying over to Frank Hatt's now. Here very recently we have had some lumber hauled there hoping to be able to put in the flume across so we could bring in the major part of that land. I will say that in clearing off the land, grubbing it and feeding my teams and my resources being depleted, I haven't moved as rapidly as I did for the first two years there, but my intentions have been just as good or I would not have kept paying taxes on this land. Now, as to the -- I now go down to the Blue Valley country. I bought the land down there that I've got here, excepting -- paid cash for it -- excepting a certain tract of land here that I think I would like to show the court a decree. It was believed by a number of owners of land in that section of the country that a dam could be put in the river there and Blue Valley could be redeemed, brought back to cultivation, people had all exhausted their means and efforts.

MR. BEAL: I object to that as incompetent, irrelevant and immaterial, not within the issues of this case.

MR. ERICKSON: Can't you tell, Mr. Bean, right off, whether you claim to have become the owner of that land. Right the year. Give that approximately.

MR. BEAN: No, I am going to give it exactly so that you -- I am trying to find it, in a case entitled Chris Johnson, plaintiff vs. Arthur C. Reeves, D. H. Mc Mortry (?), Jeremiah Stokes, Jr., and Nobel Stvens, a corporation, the defendants, and G. T. Bean and T. A. Hunt, intervenors.

MR. BEAL: What do you claim for that, maybe we can save time by stipulating.

MR. BEAN: I claim under this decree and judgment

219-2/3 acres of land.

MR. BEAL: If that is what the decree says, we will admit it.

MR. BEAN: And being an undivided 1/3 interest in 659 acres.

MR. BEAL: All right we will admit it.

MR. ERICKSON: What is the date of the decree?

MR. BEAN: It says this was signed September 6, 1922, and of course, the findings her also, that was decreed to Mr. Hunt. I succeeded to his interest and can prove it here from this deed.

MR. BEAL: What is the date of the deed.

MR. BEAN: It is recent, 28th of December, 1934.

MR. BEAL: That is after this action was started.

MR. BEAN: Now I have never done anything other than secure the land, as I have, mostly by purchase and through the decree there in Blue Valley excepting in a direct way where I was interested in the dame that was being constructed down there by George Okerlund and son, other people, and Arthur Chaffin.

MR. BEAL: Is that anything to do with the issues here?

MR. BEAN: It's simply to show -- I want to show that that land has been, was farmed at one time and settled there.

MR. BEAL: If you know let's have it and save a little time, when and how much.

MR. BEAN: Houses were constructed on the land and all of that, about $20,000 was expended there by those people.

MR. BEAL: I object to that as incompetent, irrelevant and immaterial, not within the issues of these pleadings or case whatsoever.

BY THE COURT: It might go to the question of the settlement of the ground.

MR. BEAN: That dam went out and has never been built. That is about all I can say for that. I had a matter in my mind that would be immaterial. That is the only thing so far as the Blue Valley land is concerned. I bought it intending to put the water out on it and help others put the water on Blue Valley and we have failed up to date and we have not abandoned or propose to do it, but I will say --

MR. BEAL: I object to that statement, 'not abandoned it". That is a question of law, that is only a conclusion there that he states, that part of it.

MR. BEAN: I spent $7,000 down here trying to do something to colonize this land and now I haven't got any more money to spend, only hard work. I can work a little yet, but we are still at it. Now, you may cross examine.

CROSS EXAMINATION BY MR. BEAL:

Q. You don't claim any water right down at Blue Valley?

a. Yes.

q. What do you claim? a. That land was --

q. What do you claim?

a. I claim a primary right to 4.

q. What do you claim, you ought to know, in Blue Valley, how much water.

a. I am trying to say that paper I had here a few minutes ago

I have got 422 acres --

q. That is now answering my question. My question is simply what water do you claim there, how much for Blue Valley and upon what do you base that claim. That is a simple question.

a. I claim for the Blue Valley land, I claim a primary water right at the rate of a second foot of water to every 60 acres.

q. A second foot of water for every 60 acres. How many acres have you got? a. 422.

q. Upon what do you base that claim, Mr. Bean?

a. I base it --

q. Have you ever used any water down there in your life?

a. No.

q. When did you get possession of this property, 1922, isn't that your statement here, September 6, 1922?

a. Yes and no.

q. 13 years ago?

a. I got possession of 3 --229 acres, an undivided one-third of 659 acres.

q. The decree you showed us. That was in 1922.

a. I have claimed ever since that this land, but I had bought land --

q. You haven't used water on that at all since 1922 to the present date have you, not a drop?

a. Not a drop that I know of.

q. That is 13 years.

MR. ERICKSON: He has never used --

a. I never used any, but my predecessors lived there and grew fruit trees and harvested fruit and alfalfa and corn, all that.

q. You have never used any yourself?

a. A nice colony there called Giles.

q. I am asking questions.

a. I have answered that three times. I never used any water on that Blue Valley land.

q. All right then, we pass on to Cainsville land. All of this land you claim is unimproved land. All this land you own here is Wayne County is unimproved land?

a. No, it is all improved, every bit of it.

q. All unimproved land?

a. It is all improved land.

q. What does the record show?

a. I don't know that what the record shows. I haven't examined the record. I know what I did and I know what my predecessor did in part.

q. I will ask you if you didn't appear before the Board of County Commissioners sitting as a board of equalization and didn't appear and get your taxes down and so forth. The minutes do not show that all of this land in Cainsville Precinct you claim is not classified as unimproved land, at your request?

a. No.

Q. Would you say that isn't a fact?

a. I say that isn't exactly a fact, but I will express what is a fact.

q. I was just asking you that question?

a. I want to make an explanation.

q. Did you say yes or no on that?

a. I say not that way, the statement I did not make, but I say that I got them to cut down my taxes, and I told them this

I says I have spent over $7,000 in this county.

q. I don't care, you answer my questions, you are a witness now.

a. I won't do it unless you will let me explain, and I said this, I have never got $10 revenue off of the land and I have been paying lots of taxes in this County. I have paid more taxes than any other man down there, and I says, I ought now that I am broke or poor and spent all of my life's long earnings down here, I want to get my taxes reduced.

q. Never mind you speech. Just answer questions.

BY THE COURT: That is going quite a way, Mr. Bean.

q. You did appear and tell them, as you say, that you haven't ever got $20 off this place down there?

a. Got the record?

q. That is what you just said, I am just quoting you.

a. Well, I will let you get the record.

q. Last year, how much did you farm down at Cainsville, how much land?

a. I had a farmer on there, he didn't do much.

q. How much did you farm yourself? a. Individually?

q. Yes. a. I didn't do any.

q. How much did your farmer farm?

a. He didn't do so very much, he has got possession of --

q. I say, how much did he irrigate last year, that is easy enough to answer?

a. It isn't for me. I don't know.

q. All right. a. He has got possession.

q. I am asking you how much, if you know, did he irrigate in 1934? a. Well I don't know for certain.

q. How much do you know approximately?

a. He is occupying --

q. I am asking if you don't -- do you know approximately?

a. There is 50 -- between 50 and 60 acres of land there that he has farmed quite generally and I told him to put it all in, and I don't know whether he did or not.

q. You don't know then, even approximately what was farmed last year, do you?

a. Well, he must have farmed 30 acres any way.

q. All right, we will put here, down, he must have farmed 30 acres in 1933. How much land, if any did you personally farm there a year ago?

a. I am not a farmer.

q. Who did you employ to farm in 1933?

a. I had a man by the name of Groover.

q. Did you employ anybody?

a. Yes yes, employed Groover.

q. What is his name?

a. It is Groover, way down at Frank Hatt's.

q. You know what he farmed in 1933?

a. Well, he farmed, I suppose --

q. Don't you know?

a. Not exactly, be about 40 acres.

q. 40 acres. In 1932 did you farm any personally?

a. Not me.

q. Did you employ anybody in 1932 to farm any land down there belonging to you?

a. I think Mr. Groover was on the place two years.

q. Don't you know? a. Well, I don't recall just now.

q. In other words, you didn't know to your present recollection, anybody do anything there the year 1932.

a. I rented the place to 1933 to Jack Tappin.

q. That was 1933?

a. I am trying to think, but it was 1932 or 1933. Oh, it would be 1933.

q. Then it wasn't this man Groover in 1933 you just mentioned?

a. I think Groover was there in 1932.

q. Groover was there in 1932, what did he do in 1932, how much land did he irrigate in 1932, do you know?

a. I suppose about 40 acres.

q. You don't know, but you suppose 40, is that it?

a. Well --

q. All right, I will say, I suppose 40 acres. That is as near as you know for 1932, isn't it. All right, now Mr. Bean, for 1931, how much was irrigated at your request in 1931 and who was operating your place?

a. I just can't think now who or -- I have had so many different people on there.

q. You don't know whether anybody was there or whether they irrigated that land?

a. Yes, there has been somebody every year there but one.

q. Who was there in 1931? a. 31.

q. And how much did they irrigate?

a. Well, I don't just remember who was there at that time. I have had --

q. All right, you don't know, we will skip that. Now, 1930, who was there and how much did they irrigate in that year?

a. Well, I will tell you, I had one son on there for 5 years.

I guess.

q. That was Leland, wasn't it? When did Leland leave?

a. Leland was there and Roy was there, also for three years. I really can't remember just what years.

q. So 1930, you don't have any recollection, is that your present testimony?

a. My present testimony is that I have had somebody on that place every year but one and then I couldn't get the water through the canal by reason of a freshet filling it up.

q. Now, as a matter of fact, Mr. Bean, during the last ten years, has anybody at any time irrigated more than 40 acres of land down on your Cainsville property, anybody at any time?

a. Why yes.

q. Who and when?

a. Knoche land, 80 acres, I farmed.

q. Who farmed that Knoche land in 1926 and how much?

a. Well Roy helped me, and I helped him.

q. In 1926, sure?

a. I won't say, 1926.

q. When will you say, let's find out?

a. Well, 1922, I think.

q. Yes, that would be 13 years ago.

a. We went to farming.

q. Isn't this the case, Mr. Bean, that since -- that you have not had anybody down there and if you have had anybody down there during the last 15 years that they have at no time irrigated 50 acres of land, isn't that a fact ?

a. I will say that I have had somebody on that land for the last --

q. You asked me a question. You can ansswer my question without explaining anything. Isn't it a fact that for 15 years and more you have had nobody down there that has irrigated during any growing irrigation season in excess of 40 acres of land, isn't that true?

a. In 1922, I farmed myself or helped put it in, 80 acres of land over there just back of Frank Hatt's.

q. How do you place that in 1922, how do you know that is 1922?

a. As I remember it, I looked at the deed.

q. How did the deed tell you?

a. Well, I didn't farm it for somebody else.

q. How could the deed tell you, it was 1922, that is our question?

a. If I got the deed then. If I got the deed, then I got the land, didn't I?

q. Did you say you got this land in 1922, this Cainsville land?

a. Some of it.

q. I thought it was the Blue Valley land you introduced in 1922?

a. You get excited then, you go off on a tangent.

q. Now I am not excited. I am just asking you if that isn't the case. Isn't it a fact you introduced a decree and said you got the Blue Valley land on September 26, 1922, isn't that your case?

a. No, not that. If I said that that is true.

q. You said it. Why do you recall what is there in some deed, you mentioned, that induced you to say in 1922 you personally planted 80 acres of crops?

a. It was this land that I bought of a man by the name of Knoche.

q. When did you buy it?

a. I was trying to find that deed to tell you.

q. In other words you don't know as a matter of fact, your answer to my question about 1922 do you?

a. Just wait a minute here, let's see. Oh, it would be, I got it, that Knoche land in 1920.

q. You got the deed there?

a. Because I got these files of water certificates.

MR. ERICKSON: What year?

a. 1920.

q. Have you the deed here, Knoche?

a. Well, I was looking for it just now, but you talk so much I can't hardly -- and you look so wild too. That is, got a crop of it all right, year after year.

BY THE COURT: I think we had better take a ten minute recess.

Resumed session.

MR. BEAL: Go ahead Judge Erickson.

CROSS EXAMINATION BY MR. ERICKSON:

q. Mr. Bean, you refer to a deed you received from Mr. Knoche?

a. Yes.

q. That was in 1920, I believe?

a. Yes, I showed it to you just now, I think it was 1920.

q. Well, that is the date, 1920? a. Yes.

q. And that is 40 acres? a. Eighty.

q. Don't that --

a. There are two deeds.

q. Is there another deed there? a. Yes.

q. For another 40? a. I've got the deed here.

q. We will pass that for the moment, you may find that later on. Now, Mr. Bean, was there any water right tothat land before you got it? a. Yes.

q. At the time you got it? a. Yes.

q. You know anything about that? a. Yes.

q. Well, what do you know?

a. Look at these certificates of water right.

q. Thanks. That is -- a. Look at them.

q. That is the only evidence you claim that you have --

a. Well, that land had been quite highly improved and among other things it had two ~~---~~what do you call them -- of molasses vats, and a man by the name of Vest had occuplied that land and owned it for a number of years.

q. But, do you know personally?

a. Before Knoche. Knoche got it, bought it of Lorenzo Hatch in 1911.

q. 1911? a. Yes.

q. I see, here is the deed from them, you don't claim anything prior then to 1911 as to any water right.

a. Yes, I don't know how much prior, I don't know who owned it before this. A man by the name of Vest farmed it there for years.

Q. You stated that, but I say you don't know any prior to that time?

a. Not personally, no.

q. But you claim that the evidence of water right that you have for that at the time that you got it is proved by these certificates?

a. Well, it had been irrigated, I could say that, and a ditch that got out of the River.

q. Yes, but you don't know how long?

a. No, I don't.

q. Now, you got some land from Durfees, did you? a. Yes.

q. Now, do you know how much of that land that had a water right prior to the time that you got it?

a. No, I don't. I know that they had been working on the land, working on that long tunnel for a number of years and I know that they broke up, grubbed a lot of that land and planted it.

q. But how much of this Durfee land, then, did you farm?

a. I never farmed a foot of it.

q. How much?

a. I never farmed the Durfee land. No, I farmed this 80 acres of Knoche land.

q. But you never farmed the Durfee land?

a. No. Charles Durfee and his father each owned a quarter section there and they leveled it off some and farmed it and some had been farmed before.

q. I believe you mentioned something about a dam going out in Blue Valley some time? a. Yes.

q. You know how many years that was before you acquired a title to some of this land down there?

a. Well, Johnathan Hunt, a man named Stelson and another or two worked there for a number of years.

q. You don't know?

a. Well, I don't know how many years they worked there, for a number of years, 'till they couldn't go any longer, and

Jonathan Hunt asked me and Stelson asked me to help them.

q. You don't know how many years before 1922?

a. No.

q. That's all.

a. But I know up before 1911.

q. Well, but before 1922, you say you got that by foreclosure proceedings?

a. But not the Knoche land.

q. This land in Blue Valley? a. Yes.

q. I am talking about the Blue Valley land?

a. No, you haven't got it quite right. There is land that I know, the Giles land, 40 acres.

q. Well, but here --

a. I bought that, I have got the deed here, somewhere, I paid $100 to Mrs. Durfee for that land and performed some legal service. I have got the check here.

q. What you call the Blue Valley land?

a. That is what I am talking about, the parcel of 40 acres, was there, was there I bought it of the Con Wagon & Machine Company. I have got the deed for 21⅛ acres, and I have got

q. Well, I am not interested now any more, but you say you bout 40 acres of that, but that land, I say, has never been farmed since you got it, the Blue Valley Land?

a. No.

q. And you don't know how many years it was prior to the time that you got the land that their dams washed out?

a. Not certain, I don't remember.

q. Well, if you don't remember, that is all right, I want to know.

a. I was through the valley here a few times and see them here and I know that they -- Jonathan Hunt and these fellows worked on that ditch and got the water out onto the level, way out to the mouth of the canyon and some fellow went down and blowed their dam out and they laid that to Reeves.

MR. BEAL: I object to that as not responsibe.

BY THE COURT: No, it is not responsive.

MR. ERICKSON: I believe that's all.

MR. BEAL: I would like to see that other deed of 40 acres from Knoche if you've got it.

MR. BEAN: Are you through with me?

MR. ERICKSON: That's all.

MR. BEAN: I would like to call Mr. Tanner.

SILAS TANNER

DIRECT EXAMINATION BY MR. BEAN:

q. Mr. Tanner you say you have been acquainted with that lower country for 45 years? a. Yes sir.

q. Well, I will ask you when was the Blue Valley occupied and irrigated?

a. I couldn't exactly say, the last date, but it's been probably more than 25 years.

q. More than 25 years ago? a. Yes.

q. When you first was acquainted?

a. Oh, when I first was acquainted. I have been acquainted with it 48 years ago.

q. Well, it was occupied then? a. Yes.

q. Thriving little village? a. Yes.

q. Called Giles? a. Yes.

q. And they irrigated their lands from the Dirty Devil River, didn't they? a. Yes.

q. And they raised fruits and --

a. There was three or four fruit orchards there, yes.

q. You know that Chris Jorgenson land?

a. Yes, I knew of that country at one time.

q. That was irrigated and farmed?

a. Yes, they irrigated. Now all of Blue Valley wasn't irrigated at any time, but there was sections of it irrigated for a number of years and produced large crops.

q. Well, in the heart of the valley it was mostly irrigated, wasn't it and farmed?

a. No, it was what we might call it here, an elevation setting. They never did irrigate on -- they irrigate around the edges.

q. Well, the land that Chris Jorgenson owned was farmed, wasn't it?

a. There was quite a lot of that land farmed. Chris came in there later, he wasn't the earlier settlers.

q. He bought land that was being irrigated?

a. Yes.

q. That was why he bought it, interested in land and selling his sheep?

a. I think so.

q. And do you know this Pierce 40 in the center of the valley?

a. Yes, I knew the Pierce place, that was occupied, as I recall by Whites.

q. You remember his initials, white?

a. There were three or four. The old gentleman White, I don't

recall his initials. Then there was Nephi, then there was another one.

q. And they were married and had a house built on it?

a. Yes, there were a number of houses, I think there was probably, oh, I would think 25 families, maybe 30 at one time.

q. So that you know this Pierce land then was farmed at that time?

a. Well, when Pierce was there, Pierce wasn't very much of a farmer. He didn't farm very much at a time, I wouldn't think he would farm all of it at any time.

q. 40 acres.

a. 40 acres there.

q. Living there as his home?

a. He lived there as his home.

q. Did you know Stelson right across the road?

a. I don't remember having met Stelson.

q. You remember that property?

a. I knew all them old places that was there when they changed hands.

q. Stelson right across from the Durfee, the Pierce land. You know the Daniel Cook land, you know that don't you?

a. Yes, I am familiar with that.

MR. BEAL: May it please the court, I object to all this evidence as incompetent, irrelevant and immaterial for the following reason: The witness to date in this case has heretofore testified that from the time he acquired title to this property, a good many years ago, that he has farmed no part of it, that he has not irrigated any part or parcel of the land in Blue Valley. Then, based upon the law controlling

in this case it becomes apparent that there has been, so far as this case is concerned, a definite abandonment of this property. Abandonment is defined and set forth in the R.S.U. 33, Title 100, Chapter 1, Section 4, as follows(Reads). Now, according tothe testimony and according to the evidence heretofore introduced in this case, it becomes readily apparent there has been a reversion of whatever right defendant had there, back to the public and there has been an abandonment of the water rights claimed by the defendant, and I, therefore, urge that the evidence and all of it be stricken from the record that the rights established by the defendant, himself, has definitely been abandoned.

MR. BEAN: If they are working on a project that is placing the blame on capital as against the laboring man.

MR. BEAL: It is the law.

MR. BEAN: If a man is struggling to live and struggling to get water on his land, areyou going to get it from him because he is rich.

MR. ERICKSON: On behalf of the defendants, I make the same objection as made by counsel there so that.

(Argument)

BY THE COURT: I don't think the Supreme Court, in the situation as has been called to our attention has quite definitely decided that the question of intent enters into the thing. Abandonment, when the very nature of things, as it states, the deliberate and intention of forfeiting of all rights. A mere non-user, unless it has also that element, cannot be construed as an abandonment, because it is out of the question lots of time. I rather think it is a question that the court

must determine from all the circumstances. Objection overruled.

(Argument)

BY THE COURT: I don't think you need to argue any longer. I am quite convinced that this question of abandonment of water is a question of fact that must be determined from all the surrounding circumstances. I feel quite satisfied it is the right of anybody to introduce whatever evidence he may have that may bear one way or the other upon that question as to whether or not under all the conditions there has been an abandonment. I am quite sure it It is my idea to listen to the evidence and with the evidence in, to determine that question. Objection overruled.

MR. BEAL: We are willing to admit that this is the case. The only question I care to ask is when that dam went out. That is a geographic and historical fact.

MR. BEAN: You will admit that ground was irrigated there, what I am claiming here?

MR. ERICKSON: Certainly, don't have to prove that fact.

MR. BEAN: And that they were working to reestablish our diversion works up until two years ago when that, the other dam went out.

MR. ERICKSON: Prove that, we won't admit that.

BY THE COURT: Go ahead with your proof.

q. Did you know, Mr. Tanner, John Vest? a. Yes.

q. You know whether or not he farmed this Knoche land?

a. I am not clear as to the location of the Knoche land. I knew John Vest and I knew the land where he was and the land he farmed.

q.Would you know it, if I gave you the description of it?

a. Well, possibly.

q. Did you know Ceyburn J. Golding? a. Yes sir.

q. You know where he lived?

a. Well, I don't know that I know where the boy lived, his father lived down below Cainsville, where he was raised.

BY THE COURT: Is this Blue Valley land in the Cainsville area. This Knoche land in the Cainsville or Blue Valley?

MR. BEAN: It is in Cainsville.

q. You know George W. Carroll? a. Yes.

q. You know where he lived? a. Yes.

q. I will -- a. I think in Cainsville.

q. In the town or -- a. In the town.

q. You know whether or not he farmed this Vest land?

a. As I recall the Vest land was abandoned so far as farming was concerned, many years ago due to the fact that the River washed out the irrigation ditches there.

q. Well.

a. The Vest land was farmed, however, when I first came in the country, but I don't think Vest has been here for over 40 years.

q. Vest and Golding?

a. Many years since Golding was there.

q. Carroll?

a. Carroll stayed there later. I don't know just how long he is at Manti now, as I recall.

q. Well, you know the Lanes property in Blue Valley?

a. Yes.

q. You know how much land Lanes had there?

a. No, I wouldn't say just exactly how much land he had but I knew where his house was, knew what he was farming.

q. Do you know that he had let the Con Wagon and Machine Company have 21⅛ acres of land?

a. No, I didn't know that.

q. Well, the Lanes land was irrigated, wasn't it, improved?

a. Yes, part of it, yes sir.

q. And you know, wasn't it practically all?

a. As I recall he had some on the upper end of Blue Valley, the River cut through some part of it and not irrigated.

q. You don't know whether he let the Con Wagon --

a. No.

Q. Do you know the Stelson land?

a. I don't have any recollection of Stelson at all.

q. You knew Dan Cook? a. Yes, I knewhim.

q. Do you know where he lived? a. Yes.

q. I will ask you if it isn't a fact that he occupied section, land in section 20, it was 20 south, range 10 east, and that he owned the northwest quarter and the west half of the southeast quarter of the northeast quarter and lot 2 of block 3, Giles Townsite?

a. Well, I don't know that, I could state that I knew that particular description. I knew where Dan Cook resided, I knew the place before Dan ever went there.

q. It was irrigated then? a. Part of it, yes. Parts of it, as I recall, the old lot place there at the time of the great Blue Valley flood, the lower end taken out and no irrigation for years afterwards as I have --

q. Well, of course, all of these people that lived in that

country, they were irrigating lands, and that is the way they lived, wasn't it, through farming their lands and raising fruit?

a. Yes, they farmed, I think, a certain percent of their holdings. I don't think there is any holdings down there that farmed the entire area they held at any time in the history of the valley.

q. You knew about 1912 to 1913, along there, that Jonathan Hunt and some others were putting in a dam in the River in the same place that the floods had washed there former dam out?

a. I don't know that I knew that. I knew where John Hunt resided, I knew he had water down there early in the year in the ditchen place. I don't recall anything about construction there. I knew there were some people that held on after the abandonment.

q. I asked the question if the witness did not know that while the former owners that he says left, abandoned, if it wasn't the fact that other people came in and secured their possessions improved it?

a. No, I don't think that was generally the case. I think there was times there, quite a lot of the time when there was not more than two or three places, probably, that were occupied, the rest of the houses were empty.

q. Well, isn't it a fact that Lanes leased of these people, planted orchards, the orchards were grown and bearing fruit and apples by the hundreds of bushels?

MR. ERICKSON: We admit that was done before the dam went out.

MR. BEAN: Well, if you admit it.

a. There was a number of orchards there.

MR. BEAN: Well, if you admit all that was irrigated?

MR. BEAL: We have admitted that a long time ago.

MR. BEAN: There seems to be no question when that dam went out. That was in 1912.

MR. BEAL: Pleadings say 1910, your honor.

q. Which was it?

a. I wouldn't be right certain. It wasn't this side of 1912.

MR. BEAN: I think it was 1910.

BY THE COURT: It seems as though the questions involved hinge around things that may have happened since that dam went out.

q. Well, you did know, anyhow, that Dan Cook lived on this land I just described here.

a. I knew Dan Cook lived on the old Archie Young or Lanes place.

q. You know he farmed?

a. Not Cook, he didn't farm a lot himself.

MR. BEAN: Well, I guess that is probably all.

MR. ERICKSON: That's all.

MR. BEAL: The dam went out, your recollection is, in 1912?

a. At that time, close. I wouldn't like to say definitely just when it was.

MR. BEAL: Right around there?

a. Yes.

MR. BEAL: Since that time it has been generally abandoned?

a. Yes.

MR. BEAL: To the present?

a. Yes.

MR. BEAL: That's all.

MR.BEAN: Now I want to correct some of these attorneys, if I may be permitted to take the stand again.

G. T. BEAN

resumed the stand.

MR. BEAN: I answered Judge Erickson's question when he asked me if I ever had irrigated or done anything toward the irrigation of land in Blue Valley, wasn't it, that is what you --

MR. BEAL: Judge didn't ask that question.

BY THE COURT: Go ahead.

MR. BEAN: Well he says I did and I said that I hadn't irrigated any land in Blue Valley and that I want to say that I have contributed, however, toward the building of dams and attempts to build dams and I will say that Jonathan Hunt and I think it was Mayhew Stelson and two or three other man after the dam went out, the continued to live there in Blue Valley and they worked on the dam, kept working and working and they finally got the water out of the River and out tothe mouth of the hollow there and when someone came and blowed out thier--put some dynamite in the head of their canal and blowed their cap off from the anchor, the big rock there in the River, and the dam then went down the River;and I will say another thing that these men that lived at Giles and Blue Valley, didn't all go away and abandon as has been testified to, all those they tried to put their dam in.

MR. BEAL: I object to that explanation. He is now trying to impeach hisown witness.

MR. BEAN: Well, if he is in error and I happen to know the fact.

BYTHE COURT: The witness may state the facts if he understands them. Proceed.

MR. BEAN: I will say that after the first dam wnet out they stayed there, most of the people stayed there and tried to put it back, but the country become more subject to freshets and they tried to build that dam three different times in Blue Valley;before they would get it up, and finally they did get it up because they had to go away and earn a living. Those that were there, excepting, Jonathan Hunt and these men that I have stated and after they had got the water out, the way I stated, their dam was blown out by Dynamite and that discouraged them and they had to quit.

BY THE COURT: When was that?

MR. BEAN: That must have been about 1920, I believe. I don't just remember. Mr. Hunt died later.

MR. ERICKSON: Did you have any interest then when you say the dam went out the last time?

MR. BEAN: I had an interest, yes, because right a way a crop was formed.

MR. ERICKSON: But did you own anything down there at the time you say that dam was blown up?

MR. BEAN: Yes.

MR. ERICKSON: What land did you own?

MR. BEAN: All of it, all that I own down there now, excepting this Chris Jorgenson, undivided one-third interest to 659 acres.

MR. ERICKSON: You bought some prior to that time,

did you? a. Yes.

q. Before you got the Jorgenson land?

a. Oh, yes. All that I owned down there I had bought before that.

q. But since that time there hasn't been anything down there?

a. Yes, the George Okerlund Company.

q. How?

a. George Okerlund and friends company, organized a corporation.

q. Well, but recent, I mean, work on the River? Any work on the River?

a. They put in a dam there and spent $20,000 at it.

q. That had nothing to do with you, isn't that right?

a. I was interested in that myself.

q. You was? a. Yes, I was.

q. When was that?

a. Well, I think that went out three years ago.

q. Three years ago? a. Yes.

q. Oh, I see. That went on then from --

a. Maybe it was four years ago. Now its about 3 I guess.

q. I see, then that went from 1922 until about 3 or 4 years ago, Okerlund? a. Oh, yes.

q. What became of the dam that they had? a. Okerlund?

q. Yes, did they put in one?

a. They put in one they spent $20,000 putting one in, more than $20,000.

q. Did they put the dame in the River?

a. Yes.

q. And get the water out?

a. No.

Q. That's all I want to know.

a. That is I had no stock interest,but I was interested. Yes, they were to give me 80 acres of land with water right to it.

q. But that was never carried out?

a. No, but the dame was carried down.

q. The agreement was never carried out and the dame went out?

a. And they turned us back our land, and that is what we are quarreling over now.

q. That's all.

QUESTIONS BY THE COURT: What land did you own in Blue Valley before 1912. As I understand you, your testimony is 440 acres in that section. Now didyou own all of that before 1912.

a. No.

q. Did you own any excepting the Jorgenson tract before 1912.

a. I can just look at the deed here.

q. Would these help you any?

a. Not in Blue Valley.

MR. ERICKSON: The Jorgenson property, he says, was acquired in 1922.

a. Yes, the Morgenson property, we had their land before that, April 16, 1919, I acquired what we called the Pierce land, 40 acres.

q. Does that help you to tell whether you had any as early as 1912.

a. I am quite certain I had.

q. Whatever land you acquired in Blue Valley, you acquired in 1912? a. Yes.

q. And that was after the dame went out?

a. Yes, after the old.

q. After the old dam went out. Well now, when you acquired the Pierce land, did you at that time acquire any specific water right with that Pierce land?

a. I think the deed just says together with all water rights appurtaining thereto.

q. Does it say that?

a. I think it does. I think we acquired this land -- yes -- it says: Ellen Durfee of Aurora, County of Sevier, State of Utah, hereby conveys and warrants to G. T. Bean, grantee, of Richfield, Sevier County, for the sum of $100 the following described tract of land in Wayne County, State of Utah, the southwest quarter of the southwest quarter of section 10, township 28 south, range 10 east, Salt Lake Meridian, containing 40 acres, together with all water rights belong to said lands, including any stock in the Wayne County Irrigation Company appurtenant thereto or in any way thereto belonging.

MR. ERICKSON: What was the date of that deed?

a. 1908. I had it recorded April 16, 1919, and I here Oscar T. White and his wife.

q. What is the date of that deed you are referring to now?

a. This is from White to her, 19th day of May 1908.

q. That was conveyed to her then before the dam went out, then it came to you in what year?

a. It came to me in 1919, I guess.

q. Now, Mr. Bean is that part of the land that Mr. Tanner referred to as having been cultivated and irrigated when he went down in that country 40 years ago. You know whether that is part of the land that he referred to?

a. He says this man White was occupying it at that time, and here is his deed to Nancy M. Durfee.

q. Well now what. Who was the White grantee?

a. George Henry Pierce and he died and --

q. I see, who is White's grantee. Who did white sell to?

a. To George Henry, George H. Pierce of Giles.

q. Well now, did White sell to him or did he sell to White?

a. White sold to Pierce and later Pierce died.

q. How did Nancy Ellen Durfee get the deed?

a. Nancy Ellen Durfee was the window of Pierce, this man George H. Pierce, and then she married a man by the name of Durfee.

q. And she conveyed it to you?

a. The estate was probated. I probated the estate and gave her $100 for the property, and there is my check.

q. Well, now what, if anything, was your predecessors doing there to maintain their water rights with reference to this piece of ground?

a. Well, they were doing -- trying to get the water out. You remember that all of these people there were working, struggling to put in the dam again, hoping --

q. Were these people you refer to, were they struggling along with the rest?

a. Yes, they lived there and had a house built on thisland when I bought this land. There was a house on it, but some fellow stole it.

q. After you became owner what did you do by way of preserving those water rights?

a. Well, I kept paying the taxes, don't mean preserving water,

but I supplied Jonathan Hunt and these others, they were still--

q. Were they there when you became the owner of those pieces of ground?

a. Yes, they were working on this canal, ditch as I told you, getting the water out on the land there when the dam was blowed up. I was helping them some.

BY THE COURT: Well, I haven't anything further. Anything else?

MR. BEAN: I think I will rest.

BY THE COURT: Any rebuttal?

MR. ERICKSON: Well --

MR. BEAN: I suppose your Honor understands, you are taking into consideration the number of acres which I gave you. Of course, here's a deed for 120 acres for Dan Cook, then I have got the Con Wagon and Machine Company deed to all that.

BY THE COURT: Anything further?

MR. BEAL: Plaintiff has no rebuttal. However, we would like the record to show, your honor, that it's been stipulated prior to the commencement of this trial by all parties involved, what the plaintiff's rights are. At this time, also, I desire that the record show that plaintiff has agreed with the defendants and all of them as to a tentative distribution which will later be set forth in a stipulation and filed upon which it is proposed to make plaintiff and the defendants, with the exception of Mr. Bean, and of course, that findings and conclusions and decree be based and that --

MR. BEAN: Except Mr. Bean, well I believe there's one or two other defendants named there that have waived their rights.

MR. BEAL: Yes, I have a stipulation from the ones who have not appeared here with the exception of the Steel brothers. There is the defendant that has not appeared or has not stipulated or agreed in the matter, that is, belonging to the estate of Michael Steel, deceased, and I talked the matter over some. I understand there is 10 acres through Richards, the Steels have not appeared to claim their interest. I understand Mr. Tanner is guardian of the estate.

MR. ERICKSON: We can and will agree on that stipulation so far as the rights are concerned.

BY THE COURT: The agreement will be ironed out between the parties with the exception of Mr. Bean.

MR. BEAN: Except Mr. Bean.

BY THE COURT: What do you desire of argument.

MR. ERICKSON: I haven't any. All of these defendants have agreed to our rights and we will file that stipulation.

BY THE COURT: Any argument with reference to the claim of Mr. Bean?

MR. ERICKSON: Of course, that part of it, that is a separate affair. I think we could just as well present that right now if the court wants to hear it, or we can argue that over to Richfield, Mr. Bean, over there, take a little more time for preparation, give the matter a little fuller consideration.

BY THE COURT: Probably be better.

MR. BEAN: I wouldn't care to argue it much, but if the court would like to hear from you --

BY THE COURT: There may be a few questions.

MR. ERICKSON: Don't you agree, Bean, that we fix a

time at Richfield?

MR. BEAN: Yes, that is agreeable.

MR. BEAL: Would the court desire to indicate just what points either in law or facts he would like to have covered in that matter. So far as I am concerned, only one or two matters of law.

BY THE COURT: I hardly think I can indicate to you with any certainty. There are a number of problems in my mind today, but when we get together I will indicate the parts.

MR. BEAN: I suppose these exhibits should be left in the case.

BY THE COURT: I am going to have an order taking them on to Richfield.

MR. BEAL: May I withdraw the files of Rand King, deceased for hearing at Richfield, to be returned to the Clerk in not to exceed two weeks?

BY THE COURT: It may be entered. Court is adjourned to August 1st.

STATE OF UTAH

County of Salt Lake, SS.

I, Ina Hunt, former Official Reporter for the Sixth Judicial District Court of the State of Utah, do hereby certify that I reported the foregoing entitled case in shorthand to the best of my skill and ability; and that I afterwards transcribed the same into typewriting; and that the foregoing transcript from page 1 to 166 inclusive constitutes and is a full, true and correct transcript of the testimony and proceedings had on the trial of said cause as the same was given and had.

IN WITNESS WHEREOF, I have hereunto set my hand at Salt Lake City, Utah, this 31st day of March, A. D. 1942.

Ina Hunt

Reporter

00-00-0000: 1965 calendar year analysis

Southwest Region
P.O. Box 728
Santa Fe, New Mexico
87501

154

FEB 4 1966

Memorandum

To: Director

From: Acting Regional Director

Subject: 1965 Calendar Year Analysis of Flume Readings, Capitol Reef National Monument

Our Land and Water Rights Division has prepared the enclosed table which reflects the measured beneficial use in the four ditches at Capitol Reef National Monument.

We have placed a copy of this table in our Docket No. 1 under Part II - Water-Rights Definition. By copies of this Memorandum we are sending this to Chief, WODC and Superintendent, Capitol Reef for insertion in their dockets.

(SIGNED)

George W. Miller

In duplicate

Enclosure

cc:
Chief, WODC (2), w/enc.
Superintendent, Capitol Reef
w/enc.

WEFields:dmr
2/4/66

Station No.1 Lower Ditch North Side.
Station No.2 Lower Ditch South Side (Lower [illegible]d)
Station No.3 [illegible]pper Ditch North Side (Pipe L[illegible]tch)
Station No.4 Upper Ditch South Side (Upper Mulford)

CAPITOL REEF NATIONAL MONUMENT
ANALYSIS OF FLUME READINGS

Covering The Period: 4/1 19 65 To 11/30 19 65

MONTH	STATION No.1 Aver. Acre Feet	STATION No.2 Aver. Acre Feet	STATION No.3 Aver. Acre Feet	STATION No.4 Aver. Acre Feet	REMARKS
April	28.58	7.62	69.02	15.95	
May	86.08	101.45	219.73	58.08	
June	101.16	152.93	316.56	69.02	
July	82.39	121.13	270.46	73.79	
August	72.56	87.93	296.98	45.22	
September	69.62	76.17	238.61	59.98	
October	113.14	92.23	187.54	76.36	
November	20.03	16.26	27.47		

Capitol Reef National Monument
Torrey, Utah 84775

L54 June 1, 1965

Memorandum

To: Regional Director

From: Superintendent, Capitol Reef

Subject: Fremont River Water Users Hearings - Hanksville Irrigation Company V. Torrey Irrigation Company, et. al, Civil No. 167

Enclosed is a copy of notice of hearings to clarify certain water rights and to evaluate water distribution practices relating to the above Civil Action. Mr. William C. Fields wanted to be notified of these hearings so that he could be present.

William T. Krueger

Enclosure

THE STATE OF UTAH
OFFICE OF STATE ENGINEER
SALT LAKE CITY

May 28, 1965

	SUPERINTENDENT
	STATE ENGINEER CHIEF RANGER
	NATURALIST
	ADMINISTRATIVE ASST.
	MAINTENANCE
	FILE

Notice to Water Users on the Lower Fremont River, Oak and Pleasant Creek Distribution Systems:

The annual water users meeting of the Oak and Pleasant Creek and Fremont River Systems was held May 5, 1965 in the Courthouse at Loa. To clarify certain water rights and to evaluate water distribution practices, the following hearings have been set at the Wayne County Courthouse at Loa, Utah, on Tuesday, June 8, 1965:

I. 10:00 a. m. - Ann Steele Decreed Water Right
   - A. To determine the proper place of use.
   - B. To determine the extent of use.
   - C. To discuss delivery of water under this right.

II. 11:00 a. m. - Gar-Kane Power Canal Operations
   - A. To discuss the present operation of the Power Canal and any method whereby future operations could be directed toward easing of the problems caused by fluctuations of water to the downstream users.

III. 1:00 p. m. - Behunin and Ekker Spring
   - A. To discuss water division between the two parties in their use of this spring.

IV. 2:30 p. m. Oak and Pleasant Creek Distribution
   - A. To discuss present diversion structures and the need for additional ones.
   - B. To discuss present water distribution practices and to develop future policies.

(4)

All interested water users should attend any of the hearings in which they have an interest.

Yours very truly,

Hubert C. Lambert

Hubert C. Lambert
ACTING STATE ENGINEER

EMS/DEN/wh

RECEIVED
MAY 28 1965
CAPITOL REEF NATIONAL MONUMENT

Care

11-06-1964: in response to your request; november 06, 1964

RECEIVED
NPS SOUTHWEST REGIONAL OFFICE
NOV 9 1964
Surname | Date
Regional Director
Operations
Administration
Resources
Chief
Lands
Fields

Capitol Reef National Monument
Torrey, Utah 84775
L54 November 6, 1964

Mr. Thomas Chappell, Water Commissioner
Lyman, Utah

Dear Mr. Chappell,

In response to your request for a statement of water which was used for culinary purposes since April, 1964 you are advised of the following.

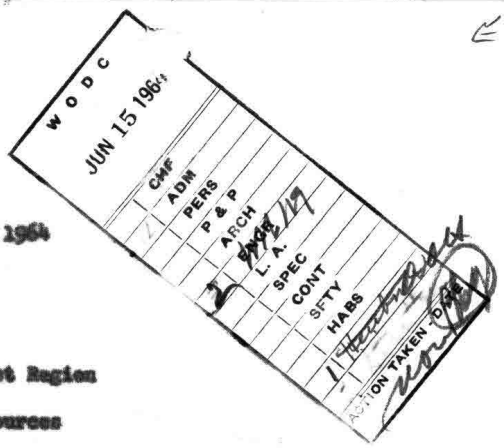
Culinary water use through water treatment plant at Capitol Reef National Monument April 1, 1964 to 10/31/64

1,755,300 gallons

William T. Krueger
Superintendent

Copy to: Regional Director, Southwest Region
National Park Service

L54 Cure



June 12, 1964

15h-SLW

Memorandum

To: Regional Director, Southwest Region

From: Chief, Branch of Water Resources

Subject: Water Assessment Payment, Hankerville Canal Company vs. Torrey Irrigation Company, Civil No. 167, Capitol Reef

We acknowledge receipt of Mr. G. W. Miller's May 28 memorandum transmitting copies of the State Engineer's Standard Form 144 and signed CRO for insertion into Docket No. 1.

This is to advise that the costs connected with this adjudication proceeding are properly chargeable to the Water Rights Acquisition Account 14X1035 (General Ledger Account 102.5 - Work Order 3-WR-64B). We note from our copy of the CRO that the water assessment fee of $182.97 has been charged to the Water Resources Studies MAP Account 143.2. If feasible, this charge should be reversed out of the MAP Account and properly charged against Work Order 3-WR-64B under the Water Rights Acquisition Account.

All costs associated with adjudications, condemnations, and other suits needed to acquire or establish, define, preserve, and protect Federal water rights including the cost of investigations and analyses of recorded water rights, water resources, and water use which are needed in connection with these proceedings are properly financed from Acquisition funds.

SIGNED

E. W. Reed

cc:
Superintendent, Capitol Reef
Chief, WODC (2)

FORM 144 3-58 10M

THE STATE OF UTAH

OFFICE OF STATE ENGINEER

SALT LAKE CITY

By Law, the current assessment is due on or before May 1 of each year. Failure to remit payment on or before above date will necessitate legal action by the ATTORNEY GENERAL OF UTAH.

APR 1 1964

National Park Service
Capitol Reef National Monument
William Krueger, Supt. Torrey, Utah

Your 19 64 share of expenses for the Fremont River Distribution System is as follows:

STATE ENGINEER ACCOUNT NO. 13-A

Water Assessment $ 182.97
Previous Delinquency
Water Association

TOTAL AMOUNT DUE $ 182.97

MAKE CHECK OR MONEY ORDER PAYABLE TO STATE ENGINEER and RETURN THIS NOTICE WITH YOUR REMITTTANCE to:

442 State Capitol
Salt Lake City 14, Utah
84114

PLEASE READ OTHER SIDE

COPY

(Southwest Region Form No. 9)

CERTIFICATE OF RECEIVING OFFICER

I certify that the services covered by the attached bill, rendered by State Engr. State of Utah dated April 1, 1964, in amount of $182.97, were received on 6 April 1964, that the services were performed as stated; that they were necessary for the public service; and that the prices charged are just and reasonable and in accordance with agreement. The services were for the following purposes:

Water Assessment for Fremont River, Capitol Reef National Monument Water Rights.

Cost Accounts:

R.O. 143.2 $182.97

(Signed) John E. Kell

(Title) Regional Chief of Lands

62-638

(Southwest Region Form No)

CERTIFICATE OF RECEIVING OFFICER

I certify that the services covered by the attached bill, rendered by State Engr. State of Utah dated 4/1/64, in amount of $182.97, Contract No. _____, were received on 6 April 1964 (date), that the services were performed as stated; that they were necessary for the public service; and that the prices charged are just and reasonable and in accordance with agreement. The services were for the following purposes:

Water Assessment for Fremont River, Capitol Reef National Monument Water Rights.

Cost Accounts:

R.O. 1143.2 $182.97

(Signed) John E. Kell

(Title) Regional Chief of Lands

62-638

FORM 144 9-58 10M

THE STATE OF UTAH

OFFICE OF STATE ENGINEER

SALT LAKE CITY

By Law, the current assessment is due on or before May 1 of each year. Failure to remit payment on or before above date will necessitate legal action by the ATTORNEY GENERAL OF UTAH.

APR 1. 1964

National Park Service
Capitol Reef National Monument
William Krueger, Supt. Torrey, Utah

Your 19 64 share of expenses for the Fremont River Distribution System is as follows:

STATE ENGINEER ACCOUNT NO. 13-A

Water Assessment	$	182.97
Previous Delinquency		
Water Association		
TOTAL AMOUNT DUE	$	182.97

MAKE CHECK OR MONEY ORDER PAYABLE TO STATE ENGINEER and RETURN THIS NOTICE WITH YOUR REMITTTANCE to:

442 State Capitol
Salt Lake City 14, Utah
84114

PLEASE READ OTHER SIDE

Rec'd w/memo 8 May 28, 1964

(Southwest Region Form No.)

CERTIFICATE OF RECEIVING OFFICER

I certify that the services covered by the attached bill, rendered by State Engr. State of Utah dated 4/1/64, in amount of $182.97, Contract No. _____, were received on 6 April 1964 (date), that the services were performed as stated; that they were necessary for the public service; and that the prices charged are just and reasonable and in accordance with agreement. The services were for the following purposes:

Water Assessment for Fremont River, Capitol Reef National Monument Water Rights.

Cost Accounts:

R.O. 143.2 $182.97

(Signed) John E. Kell

(Title) Regional Chief of Lands

62-638

Rec'd w/memo of May 28, 1964

01-30-1964: installation of flumes, irrigation system; january 30, 1964

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
Southwest Region
Santa Fe, New Mexico

IN REPLY REFER TO:

L54
CARE

JAN 30 1964

Memorandum

To: Director

From: Regional Director

Subject: Installation of Flumes, Irrigation System, Capitol Reef National Monument

During 1963 F.Y. we purchased measuring devices and recorders for the four irrigation ditches, Capitol Reef National Monument. During this Fiscal Year under Item No. 1, Work Order 3WR64B, we have installed these devices and recorders. The work was done by Park personnel and was completed on November 6, 1963.

The Superintendent has transmitted Face Sheet for a Completion Report which lists fixed assets, a Cost Statement for 1963 and 1964 F.Y. and a Narrative Completion Report.

This is a very comprehensive report and we have placed this in our Docket No. 1, Capitol Reef National Monument. Docket No. 1 for this area has been labelled and includes only the .66 c.f.s. water rights which were decreed to Alma Chestnut and sold to the United States. Therefore, we have changed the Docket so that it will include all the data pertaining to the 8.0 second feet decreed to all of the residents of the town of Fruita, Utah, which we have acquired by purchase or condemnation.

We have placed the above named items under Part II, Water Right Definition and by copies of this memorandum are sending them to WODC and Capitol Reef for insertion in their Docket. At the same time we are requesting that all areas change the label on Docket No. 1 so that it includes all of the 8.0 second feet decreed to the residents of the town of Fruita, Utah.

Daniel B. Beard

In duplicate
Enclosures: 1 — w/d in WR-3WR0

cc: WODC (2) w/c enc.
Superintendent, Capitol Reef, w/c enc.

01-08-1964: face sheet for completion report; january 08, 1964

Form 10-174
(June 1962)

UNITED STATES DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE

FACE SHEET FOR COMPLETION REPORT

Work Order No. None
Acct. 3WR63B, 3WR64B
Fund Symbol
14X1035
Year Programmed
1963 & 1964
PCP No.
none
Master Plan No.
none
Master Plan Corrected By
none
As Built Drawings By
Region
Date Started
May 21, 1963
Date Completed
November 6, 1963

Park
Capitol Reef National Monument

Region
Southwest

Location in Park
Headquarters Area

State(s)
Utah

County or Counties
Wayne

☐ Contract and/or ☒ Day Labor

Work Order Title
Installation of Flumes and Recorders

DESCRIPTION OF FIXED ASSETS (For completion by employee in charge of project)	TOTAL COSTS (For completion by FFO)
Fixed Assets Account **100.9, Grounds Improvement - Irrigation Systems** **Type F Stevens water level recorders with metal cover, no port, complete with operating equipment, sharts,etc. 4 each** **Parshall Measuring Flume, 9" wide x 15" deep, 12 gage, galv. steel, 3.07 cfs capacity - 3 each** **Parshall Measuring Flume, 12" wide x 15" deep, 12 gage, galv. steel, 4.00 cfs capacity - 1 each** **21" Stilling Wells for 15" deep Flumes, 12" diameter with with 1" pipe connection, 12 gage galv steel - 4 each** **Boxes to house Stevens water levelrecorders, frame construction with metal roof and shelf, 36"w x 36"L x 36"H front and 30H back** **30' Corrugated Metal Pipe, 14", Diversion Structures.**	
TOTAL	$

DISTRIBUTION No.	To

THE FIXED ASSET DESCRIBED ABOVE HAS BEEN COMPLETED IN ACCORDANCE WITH APPROVED DRAWINGS, SPECIFICATIONS, AND AUTHORIZED CHANGES

Submitted By: **William T. Krueger** Title: **Superintendent** Date: **1/8/64**

Approved By: _____ Title: _____ Date: _____

COSTS VERIFIED BY _____ Title: _____ Date: _____

11360

01-08-1964: cost statement; january 08, 1964

COST STATEMENT

1963FY

*Purchase Order No. RO 33-486, dated 5/21/63, Thompson Pipe and Steel Company, Denver, Colorado for the purchase of Flumes, Recorders and Stilling Wells.....$981.83

1963FY Total... 981.83

1964FY

FPO 33-194 CARE, Brown Builders, dated 8/29/63.....	$ 22.00
FPO 33-199 CARE, Brown Builders, dated 10/11/63.....	34.92
FPO 33-200 CARE, Jackson Lumber Company, dated 10/11/63.....	10.00
FPO 33-201 CARE, Brown Builders, dated 10/28/631.....	14.95
Payroll 9/1 thru 9/14/63.....	339.73
Payroll 8/18 thru 8/21.....	189.80
Payroll 10/13 thru 10/26.....	68.90
Payroll 10/27 thru 11/9/63.....	87.45
1964FY Total.....	767.75

Summary:
1963FY

Equipment..... $981.83

Summary
1964FY

Personal Services.....	$ 685.88
Supplies and materials.....	81.87
Total	767.75

Grand Total Value of Installation: $1,749.58

* Note: We note that the cost of this item for Flumes, Recorders and Stilling Wells was included in our Receiving Report No. 64-5., and perhaps should not be included in this cost but in any event not included on the fixed assets records twice.

COMPLETION REPORT

Installation of Flumes and Recorders

1963 and 1964 Fiscal Years

Capitol Reef National Monument

NARRATIVE STATEMENT

During the years of 1961, 1962, and 1963 the National Park Service was very actively engaged in the acquisition of private lands in the Monument as required for Park purposes. Accompanying these acquisitions came the rights to use in excess of 7.0 cfs of water from the Fremont River. The irrigation systems acquired with the acquisition of lands were badly deteriorated and the Service since, has been in the process of rehabilitation of the systems. On the 6th day of May, 1963 Civil No. 167, Notice of suit between Hanksville Irrigation Company, plaintiff and Torrey Irrigation Company, defendents was issured in the Sixth Judicial District Court of Utah. This notice established a meeting of all water users of the Fremont River water below the Town of Torrey. This appeared to be the beginning of adjutication for the redistribution of the water in question. A water commissioner was assigned to administer the water and it was apparrent that written records of use would be important.

On May 21, the Southwest Regional Office issued purchase order No. RO 33-486 for the purchase of Parshall Flumes, Stevens Recorders and Stilling Wells. This equipment arrived on June 26. As a separate project the Monument was involved in rehabilitation of the irrigation system in certain other locations. This delayed the completion of installation of the facilities as well as the difficulty to recruit personnel to accomplish the work.

Earlier in the 1963 fiscal year headgates had been installed as near as possible to pointed diversions. The Parshall Flumes were placed behind the headgates at a distance necessary to allow undisturbed water to flow through them. It became apparent that diversions to return water back to the river would be necessary in order to control the amount of water reaching the headgates on three of the ditches and to release any flood water prior to the time it reached the headgates. Diversions are not used to irrigate additional lands. The diversions were constructed of corrugated metal pipe which was salvaged in acquisition of lands and therefore there were no costs chargable to the project other than the labor to place them. approximately 30 ft. of c.m.p. was installed.

After installation of the Flumes and diversions the Stilling Wells were placed and the boxes for the Stevens Recorders were constructed installed and painted, and the project was completed on November 6,

1963. The installation of the Flumes, Stilling Wells and Recorders was accomplished in accordance with Drawing No. NP-CC-7110 with only minor alteration in location of the Recorder Houses and the addition of metal covering on the roof.

The installation took place on the four principle irrigation ditches in the Monument, namely, the Pipeline Ditch where the 4.0 cfs flume was located, the Lower Chesnut Ditch, the Upper Mulford Ditch, and the Lower Mulford Ditch. The first two are located on the north side of the Fremont River and the last two on the South Side of the River.

Difficulty was experienced in getting materials to the sites where installation was to take place on the Upper and Lower Mulford Ditches due to high water which had to be crossed to reach the site of the Upper Mulford ditch and in the transporting of materials by trail to the site on the Lower Mulford Ditch. It was necessary to haul the concrete aggregate from a site near Bicknell, Utah, 26 miles from the Monument. On the afternoon following the installation of the Parshall Flume in the Lower Mulford Ditch in September, a flood washed out the structure and it had to be replaced.



Plate I
Box to House Stevens Recorders
Note Parshall Flume and Stilling Well



Plate II
Metal Container for Stevens Recorder
This is Housed in Box in Plate I

Project: Installation of Flumes and Recorders, 1963 and 1964; FY
Capitol Reef National Monument



Plate III
Stevens Recorder with lid of
Container in Plate II Removed.

Project: Installation of Flumes and Recorders, 1963 and 1964FY
Capitol Reef National Monument

D. 1 Cap. Reef

ANALYSES BY GEOLOGICAL SURVEY, UNITED STATES DEPARTMENT OF THE INTERIOR

(Results in parts per million except as indicated)

Salt Lake City Laboratory Number	25936					
Date of collection	3-7-63					
Silica (SiO_2)	33					
Iron (Fe)	.34					
Manganese (Mn)	.07					
Calcium (Ca)	82					
Magnesium (Mg)	11					
Sodium (Na)	17					
Potassium (K)	3.5					
Bicarbonate (HCO_3)	177					
Carbonate (CO_3)	0					
Sulfate (SO_4)	116					
Chloride (Cl)	18					
Fluoride (F)	.2					
Nitrate (NO_3)	1.7					
Boron (B)	.07					
Dissolved solids						
Calculated	370					
Residue on evaporation at 180° C.	380					
Hardness as $CaCO_3$	249					
Non carbonate hardness as $CaCO_3$	104					
Alkalinity as $CaCO_3$						
Percent Sodium	13					
Sodium-Adsorption Ratio	.5					
Specific Conductance µmhos @25°C	552					
pH	7.7					
Color (units)						
Carbon Dioxide (CO_2), Calculated						

25936 - Fremont River, Capitol Reef National Monument, Fruita, Wayne County. Poc: intake of water treatment plant. Treatment: Flocculation, Sedimentation, chlorination, soda ash, alum, chlorine. Use: domestic, surface water. Cloudy. Coll. by Bernard G. Tracy, maintenance man.

GPO 831637

05-20-1963: court order concerning redistribution of water in fremont river; may 20, 1963

Capitol Reef National Monument
Torrey, Utah

L54 May 20, 1963

Memorandum

To: Regional Director

From: Superintendent, Capitol Reef

Subject: Court Order Concerning Redistribution of Water in Fremont River.

Enclosed is a Copy of Court Order signed by Judge Ferdinand Erickson concerning the Redistribution of Water in the Fremont River, Civil No. 167, Hanksville Canal Company vs. Torrey Irrigation Company. The order concerns the installation of diversion structures and measuring devises before the 1st day of June, 1963 in accordance with Exhibit "A" of the Order. We are not listed in Exhibit "A" and this may be an oversight. According to the Water Commissioner, Mr. Thomas Chappell, Lyman, Utah the installation of such structures also applies to us.

William T. Krueger
Superintendent

Enclosure (2)

Copy to: Director, National Park Service

00-00-0000: order, hanksville canal company vs. torrey irrigation company

IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF UTAH IN AND FOR THE COUNTY OF WAYNE

---o---

HANKSVILLE CANAL COMPANY, a corporation,

Plaintiff :

-vs- ORDER

TORREY IRRIGATION COMPANY, a corporation et al

Defendants.

---o---

This court did on Mar. 12, 1963, make its Order appointing a Commissioner whose duty and authority is to distribute the waters of the Fremont River between Torrey and Hanksville in the County of Wayne, State of Utah. That said Order further provided "That the parties shall be responsible for the installation of such measuring devices as will be needed to effect a distribution as herein contemplated."

It has been made known to the Court that a reconnaisance was made of the Lower Fremont River from Torrey to Hanksville as of April 23, 1963, and it was noted that all diversions within this segment of the River lack proper control structures.

It is therefore ordered that the parties herein concerned shall, on or before the 1st day of June, 1963, install in each of said diversions the installations and structures noted in the attached Exhibit "A".

Failure to conform to the Order within the time fixed will necessitate withholding waters so decreed until such time of compliance.

It is further ordered that the Commissioner so appointed will approve all installations and structures herein required.

Dated this 3rd day of May, A.D. 1963.

Edmund Jenkins

DISTRICT JUDGE

EXHIBIT "A"

It is noted that all diversions lack proper control structures as follows:

1. Torrey Irrigation Company has concrete headgate with screw-type gate but no measuring device.
2. Arville Maxfield has uncontrolled and unmeasured turnouts from the Torrey Canal.
3. Harold Allen diversion has no headgate nor measuring device.
4. Garkane power canal has concrete heading with screw-type gate. No measuring device was observed from hill across the river.
5. All diversions from Garkane power canals were not visited but the Leavitt and Hickman turnout has a screw-type gate but no measuring device.
6. Caineville Irrigation Company has an adequate headgate but their Parshall flume is submerged and is not operating properly.
7. Hanksville Irrigation Company has a rock diversion dam with a screw-type headgate and a Parshall flume in their canal. It was noted, however, that these are unmeasured turnouts above their measuring device.
8. Johnson ditch diverts from the north side of the Hanksville diversion dam. Flow to the ditch is controlled by "lever" gate and does not have a measuring device. This ditch may have been used without a right. Mr. Johnson was visited and told to contact the court and get any claimed diligence right acknowledged or it would be necessary for the commissioner to close his diversion.

11-24-1962: irrigation log; november 24, 1962

	SUPERINTENDENT
	SUPERVISORY RANGER
	MAINTENANCE
	FILE

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
Capitol Reef National Monument

Monthly
Irrigation Log Oct 1962

Locations: Spring-south
Sprang-Guy
Lizard Farm
Sprang Residential
Sprang-north Sulphur
Smith-orchard
Smith-garden
Krueger - upper
Krueger - middle
Krueger - lower

Area Description	Kind of Crop	Apprx. Acres	Date and Time Start Irrigation	Date and Time Stop Irrigation
Sprang Guy	Fruit	5	25th 7:00PM	28th 4:30PM
Lizard Farm	"	3	24th 6:30PM	28th 5:00PM
Sprang Resid	"	1	2nd 6:11PM	3 8:01AM
" "	"	"	24 3:00PM	25 7:30AM
" N Sulphur	4	5	28 5:00PM	31 5:30PM
Smith orchard	"	4	30 5:00PM	Nov 2 6:00PM
" Garden	None			
Krueger upper	"	2	28 5:00PM	31 5:30PM
" middle			28 5:30PM	31 5:00PM
" Lower	"		31 5:30PM	Nov 3

RECEIVED
NOV 24 1962
CAPITOL REEF
NATIONAL MONUMENT

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
Capitol Reef National Monument

Monthly
Irrigation Log

Sept.

Locations: Spring-south
Sprang-Guy
Lizard Farm
Sprang Residential
Sprang-north Sulphur
Smith-orchard
Smith-garden
Krueger - upper
Krueger - middle
Krueger - lower

Area Description	Kind of Crop	Apprx. Acres	Date and Time Start Irrigation	Date and Time Stop Irrigation
Sprang So	Fruit Trees	6	1, 6:AM	2, 6:30PM
" & Guy	Fruit	5	2, 7 "	4, 8:00PM
" "	"	5	26, 4PM	29 8AM
Lizard Farm	"	3	17, 6:30AM	20 8AM
Sprang Res.	"	1	7 7:00AM	8, 8AM.
" N. Sulphur	"	5	15, 2:00PM	18 7AM
Smith Orchard	"	4	Aug 28	3 12:30PM
" "	"	4 & 4	15 4:30PM	18 3:00PM
Smith Garden			Each Weekend.	
Krueger Upper	"	2	21, 8:00AM	22 7PM
" "	Orchard	1	6 7:00PM	8: 6:00AM
" Middle	Fruit	5	25 6:30AM	28 12:00 Noon
" Lower	"	4	8 6:00AM	15 8:PM.

1

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
Capitol Reef National Monument

Monthly
Irrigation Log Aug 1962

Locations: Spring-south
Sprang-Guy
Lizard Farm
Sprang Residential
Sprang-north Sulphur
Smith-orchard
Smith-garden
Krueger - upper
Krueger - middle
Krueger - lower

Area Description	Kind of Crop	Apprx. Acres	Date and Time Start Irrigation	Date and Time Stop Irrigation
Sprang So	Fruit Pasture	6	2. 7:00 PM	8, 6:00 AM
" "	Peaches "	"	29. 7:00 AM	30 8 PM
Sprang Guy	Peaches	5	7, 8:00 AM	9 7:00 PM
" "	"	"	27. 4:00 AM	30, 6:00 PM
Lizard Farm	Peaches apricots	3	1, 6:00 AM	5, 7:00 AM
" "	" "	3	17 1:30 PM	21 8:00 AM
Sprang Resid.	Fruit	1	8 6:30 AM	9. 2:00 AM
" "	"	"	20 6:00 PM	21 7 PM
Sprang N Sulphur	Fruit	"	17 7:00 PM	21. 7:30 PM
" "			25: 4:00 P.M	26 6:00 PM
" "	apples		30 7:00 AM	31 7:00 PM
Smith place	Fruit	4	7 8:00 AM	9 8 PM
" "	"	"	28 6:00 AM	30 6:30 AM
Smith Garden	Garden	Friday or Sat.		
Krueger Upper	Fruit trees	2	8 6:00 AM	10: 5:00 PM
" "	"		22 AM	23 7: PM
Krueger middle	"	5	8, 7:00 AM	10 7:30 PM

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
Capitol Reef National Monument

Monthly
Irrigation Log — August 1962

Locations:
Spring-south
Sprang-Guy
Lizard Farm
Sprang Residential
Sprang-north Sulphur
Smith-orchard
Smith-garden
Krueger - upper
Krueger - middle
Krueger - lower

Area Description	Kind of Crop	Apprx. Acres	Date and Time Start Irrigation	Date and Time Stop Irrigation
Krueger Middle	Fruit	5	19. 5 P.M	21 7:10 PM
Krueger Lower	Fruit	4	1	6 6:00 PM
"	" apples	"	27, 7 AM	30 11:00 AM

07-00-1962: irrigation log; july, 1962

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
Capitol Reef National Monument

Monthly
Irrigation Log July 1962

Locations: Spring-south
Sprang-Guy
Lizard Farm
Sprang Residential
Sprang-north Sulphur
Smith-orchard
Smith-garden
Krueger - upper
Krueger - middle
Krueger - lower

Area Description	Kind of Crop	Apprx. Acres	Date and Time Start Irrigation	Date and Time Stop Irrigation
Sprang South	Fruit, Pasture	6	7: 6PM	13. "
" "	"	"	15, 6PM	17 7AM
" Guy	Fruit	5	15 6,00AM	19 8:10PM.
Lizard Farm	apricot Peaches	4	1 6:00P.M	5 9:00A.M
" "	" "	4	30 6:30AM	to aug 5th
Sprang Residence	Fruit	1	28 8:00AM	29, 2:00A.M
" N. Sulphur	"	5	4 2:00P.M	6, 10:00A.M
" " "	"	4 19th 2:00P.M	to	22, 7:00P.M
Smith orchard	"	13	13, 8:00AM	15th 10:00A.M
" Garden			12th Each Friday a Lot.	
Krueger upper	Fruit	2	12 6:30P.M	13 6:00PM.
" "	Grapevine	"	20 8:00PM	22 2:00AM
" "	Fruit	"	27 2:00AM	28 7:30P.M
Krueger Middle	Fruit	5	10: 5:00P.M	13. 5:00P.M
" Lower	"	4	1 We're on From July.	3, 8:00PM.
" "	"	"	28, 10:30AM	To aug 6
" "	S. East of Rd		28 AM	29 7:30AM

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
Capitol Reef National Monument

Monthly Irrigation Log June 1962

Locations:
Spring-south
Sprang-Guy
Lizard Farm
Sprang Residential
Sprang-north Sulphur
Smith-orchard
Smith-garden
Krueger - upper
Krueger - middle
Krueger - lower

Area Description	Kind of Crop	Apprx. Acres	Date and Time Start Irrigation	Date and Time Stop Irrigation
Sprang So.	Fruit Pasture	6	12th 6.00PM	18th 7AM
" Guy.	Peaches apples	5	19th 600AM	22nd 5PM
Lizzard Farm	" sprouts	3	8 630AM	12th 7AM
" "	Peaches	3	15 7.00PM	18 8A.M.
" "	Apricots	1	28 600AM	30 8:30PM
Sprang Resident	Fruit	1	6th 7.00AM	8 630AM
" "	"	1	24th 800AM	26 700AM
" " East	apricots	1/5	27th 200AM	28 800PM
" North Sulphur	apples.	1/2	8th 6.00AM	9th 500PM
" " "	Fruit	4 1/2	18th 700AM	20th 900PM
Smith orchard	Fruit Grass	4	13th 600PM	17th 600PM
" "	"	"	24th 600PM	28th 7P.M.
" Garden	Vegetables	1/4	Each Friday or Sat.	
Krueger Upper.	Fruit alfalfa.	2	5th 700AM	7th 800PM
" "	"	2	26th 6P.M	28th 700AM
Krueger Middle	"	5	4th 8.AM	6th 5.00PM.
" "	"	5	25th	26th

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
Capitol Reef National Monument

Monthly Irrigation Log June 1962 continued

Locations:
Spring-south
Sprang-Guy
Lizard Farm
Sprang Residential
Sprang-north Sulphur
Smith-orchard
Smith-garden
Krueger - upper
Krueger - middle
Krueger - lower

Area Description	Kind of Crop	Apprx. Acres	Date and Time Start Irrigation	Date and Time Stop Irrigation
Krueger Lower	Fruit	4	8th 6:00 PM	13th 7 P.M.
" "	"	"	30th AA	—

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
Capitol Reef National Monument

Monthly
Irrigation Log May

Locations: Spring-south
Sprang-Guy
Lizard Farm
Sprang Residential
Sprang-north Sulphur
Smith-orchard
Smith-garden
Krueger - upper
Krueger - middle
Krueger - lower

Area Description	Kind of Crop	Apprx. Acres	Date and Time Start Irrigation	Date and Time Stop Irrigation
sprang South	Fruit Pasture	6	1 Continued	2 7:00PM
" "	" "	6	24, 6:00AM	26 7:30PM
" Guy	Peaches apples	5	28 6:30PM	31 8:30PM
" Lizard Farm	" apricots	3	12 7:00AM	15 5:00PM
" Residential	Fruit	1	16 6:00PM	17 6PM
" N. Sulphur	"	5	1 5:01PM	4 8:00PM
" "	"	"	23 6:30AM	26 7:00PM
Smith Orchard	"	4	16, 7:00AM	17 8:00PM
" "	"	"	26 6:00AM	28 6:00PM
" Garden			12hr Each Watering	
Krueger Upper		2	26 6:00AM	27 6:00PM
" "		2	2 6:00	24 6:00AM
" "		2	24 5:30PM	25 8:00PM
" Middle. Fruit		5	3 6:00AM	5 7:30PM
" "	"	"	24 6:00AM	24 6:30AM
" Lower			7 7:00AM	8 8:30PM
" "			12 6:30PM	14 7:00PM

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
Capitol Reef National Monument

Monthly
Irrigation Log

april 1962

Locations:
Spring-south
Sprang-Guy
Lizard Farm
Sprang Residential
Sprang-north Sulphur
Smith-orchard
Smith-garden
Krueger - upper
Krueger - middle
Krueger - lower

Area Description	Kind of Crop	Apprx. Acres	Date and Time Start Irrigation	Date and Time Stop Irrigation
Sprang Residential	apples, apricots	1	14, 8AM	15, 6 AM
Lizard Farm	Peaches, apricots	3	15 6AM	16, 8 P.M
"	"	"	17 6PM	18 6PM
Guy & Clara	apples Peaches	5	22 6AM	25 7PM
sprang north sulphur	Fruit & Kinds	5	26 6AM	28 8 AM
Smith orchard	"	3	2 0 6AM	Water stopped
4 "	"	"	28 6AM	29 7PM
Krueger Upper	Fruit	1	19 8AM	21 8PM
" middle	"	4	29. 7AM	30 —
sprang So.	Peaches. Pasture	6	29 7 P.M	30 —
sprang Res	Lawn.		Each Weekend	
High side West of River	Bridge Cottonwoods.		22, 7PM	24 8AM

IRRIGATION RECORD

Source	* Location (Code)	Date and Time Began	Date and Time Ended	Total Hours Time
Fremont River	2,3,4,6,7	7/16/62 8:40 A	7/17/62 4:30 P	31 50 min hours
Sulphur Creek	1	7/17/62 8:50 A	7/17/62 4:45 P	7 55 min hours
Fremont River	5	7/17/62 9:30 A	7/17/62 1:00 P	4½ hours
Fremont River	5	7/20 3:00 P	7/20 7:30 P	4½ hours
Sulphur Creek	1	7/23 9:30 A	7/23/62 4:50 P	7 20 min hours
Fremont River	2,3,4,6,7	7/26/62 8:30 A	7/27/62 4:50 P	31 20 min hours
" "	2,3,4,6,7	7/31/62 8:30 A	7/31/62 4:40 P	7 10 hours
Sulphur Creek	1	" 8:50 A	7/31 4:30 P	7 40 min hours
Fremont River	2346 7	8/13/62 8:30 A	8/13/62 4:40 P	8 10 min hours
Fremont River	2346 7	8/23/62 8:30 A	8/23/62 1:30 P	5 hrs
Sulphur Creek	1	8/23/62 9:00 A	8/23/62 4:00 P	7 hrs
Sulphur Creek	1	8/30/62 9:00 A	8/30/62 4:30 P	7½ hrs
Fremont River	5	8/30/62 5:00 P	8/31/62 8:00 P	3 hrs
Fremont River	2346 7	9/17/62 8:35 A	9/17/62 4:45 P	8 10 hours
Sulphur Creek	1	9/17/62 9:00 A	9/17/62 4:00 P	7 h
Fremont River	2346 7	10/1/62 8:35 A	10/1/62 4:50 P	8 h 15 hrs
Fremont River	5	10/13/62 8:30 A	10/13/62 1:00 P	4½ hrs
Fremont River and Sulphur Creek	2,3,4,6, 1,7	10/17/62 8:30 A	10/17/62 5:00 P	8½ hr

*1. Office and Office Campground
2. New Residential
3. School House and trees
4. Old Chesnut (Supt's) grounds, trees, pasture
5. Old Chesnut (Supt's) Garden
6. Petroglyphs Area
7. Lower Krueger (South)

IRRIGATION RECORD

1962

Source	*Location (Code)	Date and Time Began	Date and Time Ended	Total Hours Time
Fremont River	2,3,4,5,6,7	3/21/62 8 AM	3/21/62 5 PM	9 hrs
FREMONT River	2,3,4,5,6,7	3/28/62 8:30AM	3/28/62 5 PM	8 hrs
FREMONT River	2,3,4,5,6,7	4/17/62 8:30AM	4/18/62 5 PM	32 hrs
Sulphur Creek	1	4/18/62 8:30AM	4/18/62 4:30PM	8 hrs
Fremont River	2,3,4,5,6,7	4/30/62 8:30AM	5/1/62 4:45PM	8 h 15 min
Sulphur Creek	1	4/30/62 9:00AM	4/30/62 5:00PM	8 hrs
Fremont River	2,3,4,5,6,7	5/1/62 8:30 A.	5/14/62 4:30P	32 hrs
Sulphur Creek	1	5/14/62 9:00 A	5/14/62 4:30P	7½ hrs
Fremont River	2,3,4,5,6,7	5/29/62 9:00A	5/29/62 5:00P	8 hrs
Sulphur Creek	1	6/11/62 8:30A	6/11/62 4:30P	8 hrs
Fremont River	2,3,4,5,6,7	6/11/62 8:15A	6/11/62 4:45P	8½ Hrs
Fremont River	5	6/14/62 4:00 PM	6/14/62 7:00PM	3 Hours
Fremont River	2,3,4,6,7	6/18/62 8:30AM	6/18/62 4:00PM	7½ Hours
Fremont River	2,3,4,6,7	6/25/62 8:30 AM	6/26/62 4:45P	8¼ hours
Sulphur Creek	1	6/26/62 8:30AM	6/26/62 4:30P	8 hours
Fremont River	5	6/27/62 3:00 P	6/27/62 8:00 P	5 hours
Fremont River	5	7/3/62 1:00 P	7/3/62 6:00 P	5 hours
Sulphur Creek	1	7/5/ 9:00 A	7/5 4:50P	7 50 hours
Fremont River	2,3,4,6,7	7/6/ 8:50 A	7/6 4:10 P	7 20 hours
" "	5	7/7/62 9:00A	7/7 2:00 P	5 hours
" "	5	7/10/62 9:00A	7/7 1:30P	4½ hours
" "	5	7/13/62 10:30A	7/13 12:00 P	1½ hours

1962 FY

1963 FY

*1. Office and Office Campground
2. New Residential
3. School House and trees
4. Old Chesnut (Supt's) grounds, trees, pasture
5. Old Chesnut (Supt's) Garden
6. Petroglyphs Area
7. Lower Krueger (South)

00-00-0000: irrigation logs for 1962 season

Capitol Reef National Monument
Torrey, Utah

D5043
Irrigation

November 27, 1962

Memorandum

To: Regional Director

From: Superintendent, Capitol Reef

Subject: Irrigation Logs for 1962 Season

Enclosed are the irrigation logs kept by Mr. Worthen Jackson according to his special use permit to maintain and harvest from the orchards in Capitol Reef National Monument. Also enclosed are those logs of irrigation activities of Monument personnel to maintain other areas than orchards. Records began on March 3, 1962 the first irrigation season following the acquisition of the majority of the lands and water rights in connection with the condemnation of lands for the construction of the Fremont River Road.

These records may be valuable in the event the Fremont River water is adjudicated. Photocopies have been retained for our files.

William T. Krueger
Superintendent

Enclosure

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
Capitol Reef National Monument
Torrey, Utah

IN REPLY REFER TO:
~~D5043~~

July 27, 1962

RECEIVED
AUG 1 -
Director
Natural Sciences
Hist & Archeology
Ranger Service
Files
OPNS. & MAINT.
Chief
Land Arch.
Engineer
Archite
Maint

Memorandum

To: Regional Director

From: Superintendent, Capitol Reef

Subject: Improvements to Monument Irrigation System in the 1962 Fiscal Year, Capitol Reef National Monument

During the period of June 1, 1961 to June 30, 1962 the Monument irrigation system was considerably improved. On June 2 the Government acquired 284.31 acres of private lands, making it possible to accomplish certain improvements which before were impossible without the cooperation of other water-users and land-owners involved. The construction of the new Fremont River Road began in July 1961, and this road construction made necessary some relocation and establishment of new ditches in order to serve the same property as before construction. Certain day-labor work was necessary to replace old and dilapidated flumes. The water conveyed by the improved ditches and structures flows more efficiently and is more effective in irrigation.

Following is the classification and location of the improvements, listing the concurrent costs involved:

A. Improvements incident to the construction of the new Fremont River Road:

1. Old "Guy" place--Former Sprang Property
   894 feet primary open ditch
   16 feet CMP (round culvert), 18"-14 Gage

2. Old Sprang Property West of School House
   640 feet primary open ditch
   64 feet CMPA (pipe arch), 29"X18"-14 Gage with metal end sections

3. Old Cora Smith Property
   100 feet primary open ditch
   64 feet CMPA (pipe arch), 29"X18"- 14 Gage with metal end sections

D5039
Care

4. Old Alma Chesnut Property Site
   160 feet primary open ditch
   122 feet CMPA (pipe arch), 29"X18"-14 Gage with metal end sections

5. Old Max Krueger Property
   1,460 feet primary open ditch
   16 feet CMP (round culvert), 18"-14 Gage

Cost Summary

Construction 3,254' primary open ditch, 1 ft. @ $0.10	$ 325.40
Excavate, place, backfill 32' 18" CMP, 1 ft. @ $3.00	96.00
Excavate, place, backfill 250' 29"X18" CMPA, 1 ft. @ $7.00 . . .	1,750.00
Placement of metal end sections 29"X18" CMPA, 8 ea. @ $30.00 . .	240.00
Total	$2,411.40
Value of 894' of old ditch replaced by new, 1 ft. @ $0.05 . . .	- 44.70
Total Value of Improvement	$2,366.70

(Refer to Receiving Report No. CARE 63-4)

B. Improvements accomplished by Monument Day-Labor:

1. Replacement of Old Irrigation Flume West of Building No. 2, Old Alma Chesnut Property

   a. 80' of 16"-10 Gage spirally welded steel pipe, mill coated with concrete head boxes
   b. Armco # 150 Gate with 10' pipe added - 18"
   c. Armco # 150 Gate with 2' pipe added - 18"
   d. Armco # 150 Gate with 4' pipe added - 8"

Supplies and Materials	$525.88
Personal Services	262.27
Other Direct Expense (Equipment Rental)	12.00
Total	$800.15
Old flume destroyed by rock slide, No Value . .	- None
Total Value of Improvement	$800.15

(Refer to Receiving Report No. CARE 63-1)

2. Replacement of Irrigation Flume North of Building No. 2, Old Alma Chesnut Property Site, April 1962

   a. 40' of 16"-10 Gage spirally welded steel pipe, mill coated with concrete head boxes

Supplies and Materials	$154.65
Personal Services	72.00
Total	$226.65
Estimated value of old flume	- 20.00
Total Value of Improvement	$206.65

(Refer to Receiving Report No. CARE 63-2)

3. Replacement of three old Irrigation Flumes---Old "Guy" Place: Former Sprang Property, May 1962

   a. 40' of 16"-10 Gage spirally welded steel pipe, with concrete head boxes

   b. 40' of 15" Hel-Cor galvanized pipe with 20° elbow and connecting band and with concrete head boxes

Supplies and Materials	$260.13
Personal Services	180.00
Total	$440.13
Estimated value of old flumes, No Value	- None
Total Value of Improvement	$440.13

(Refer to Receiving Report No. CARE 63-3)

Grand Total of Improvements, 1962 Fiscal Year $3,813.63

Receiving Reports for addition of the above improvements to the Fixed Assets records, General Ledger Accounts 10 0-9, have been submitted.

William T. Krueger
Superintendent

154-CBL



January 6, 1959

Memorandum

To: Regional Director, Region Three

From: Chief, Water Resources Section

Subject: Land Acquisition Program, Capitol Reef National Monument

The attached print, in duplicate, of Drawing NM-CR-6980 is offered in reply to the last paragraph of Mr. Kell's memorandum of December 12. So far as we know this is the only map, showing the existing irrigation ditches in Section 14.

Presumably, the ditch with diversion in extreme lower left corner is the upper north ditch, and has a lateral to the Brimhall property in NE¼ Sec. 15 which is not shown. The lower north ditch is believed to be that shown with diversion near southwest corner of Parcel 2 of former Chesnut Tract.

It is not clear on what basis Mr. Kell has determined the private land to which water rights attach. There was no diversion of the 8 sec.ft. decreed to the residents of Fruita, and it took a court case to define the 0.66 sec.ft. which the U.S. acquired with the Chesnut property. There has doubtless been some understanding between land owners and the water master, but we have only one report of the latter on water use for a few years, without too much detail.

We should also like to know what has resulted from the recent hearing for "readjudication" of the rights to the Freemont River. This may have resulted in some reduction of rights where formerly irrigated land has been lost.

It is true that there is one problem to acquire the land needed for MISSION 66 development, and a separate one to provide the water supply, including necessary water rights. However, the two cannot be treated entirely separately.

SIGNED
A. van V. Dunn
Chief, Water Resources Section

Attachment

Copy to: Superintendent, Capitol Reef
Chief, WCDC

L-1428
L-L-34

Region Three
Santa Fe, New Mexico

DEC 12 1958

Memorandum

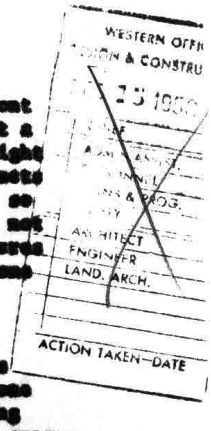
To: Director

From: Regional Chief of Lands

Subject: Land Acquisition Program, Capitol Reef National Monument

In reply to Mr. Dunn's memorandum of September 26, the primary problem at Capitol Reef is land first, and water as a secondary interest. The United States' right to 0.46 sec. ft. of water from the Fremont River with proper amendments filed with the State Engineer might probably be sufficient for our needs.

As you probably know, the present plan proposes a road down the Fremont River Gorge with the "headquarters area" somewhat less defined. If the road follows the Fremont as planned, the Krueger, Utah Wonderland Stages and at least a part of the Cora Smith property must be obtained for road right of way purposes. The Krueger and Utah Wonderland Stages tracts are located geographically in relation to the proposed road so that anything less than acquisition of the entire tracts is not practical. There is no water right attached to the forty acres owned by the Utah Wonderland Stages, but we would acquire some water rights with the acquisition of the Krueger property.



The Mulford tract is not required for the Torrey-Hanksville road proposed down the Fremont Gorge, but it was proposed for acquisition as an "optional purchase." It is one of the largest tracts of private land at Fruita and according to the appraiser's report eight cu. ft. of water is divided among the property owners in Fruita in proportion to the number of acres irrigated.

Early master plan studies proposed a campground development which would require acquisition of a portion of the Brimhall oilfield field. The presently proposed headquarters area is so located that it is believed water could be obtained from the upper ditch by gravity without crossing any portion of the Brimhall tract.

The present headquarters area, as shown on NM-Ch-2102-C, approved by the Director November 18, 1957, shows the headquarter area well below the Brimhall property. The circle indicating the area is in the general vicinity of the SE¼ SE¼ of Section 13 and the SW¼ of Section 14 T. 29 S., R. 6 E. It is probable the developed area would be south of Sulphur Creek and the circular area shown on the above mentioned master plan would indicate the Chestnut and Eglesby tracts.

Our map showing the upper and lower ditches has been misplaced, and we are unable to answer Mr. Dunn's question about the upper and lower ditch.

(SIGNED)

John E. Hall
Regional Chief of Lands

In duplicate

Copy to: Superintendent, Zion (2)
Chief, WORO

A5427-L

C 6

September 26, 1958

Memorandum

To: Regional Director, Region Three

From: Chief, Water Resources Section

Subject: Land Acquisition Program, Capitol Reef National Monument

To supplement the memorandum of September 23 from Mr. Lee my major suggestion is to evaluate what the United States now owns before proposing new acquisitions by purchase or appropriation.

The United States has rights to 0.66 sec.ft. of water from the Freemont River, subject to the results of the pending "readjudication" by the State Engineer. Part of the rights are probably not now exercised because the former irrigated land has been ruined or destroyed by floods. Those rights can be amended as to point of diversion, method of conveyance, or place or purpose of use. However, the decree was not too specific on some of these matters, and better definition rather than amendment seems to be in order.

I do not recall, without some review of the docket, whether Alma Chesnut obtained water from both the upper and lower north ditches, or just from the lower. I seem to recall that both served the lands which we purchased from him. If he used the upper, the United States now has a conduit right-of-way in that ditch. Mr. Brimhall, at least, is also interested in seeing the United States exercise interests in that ditch, and assume (at least) its share of the maintenance costs. If the rest of owners of interests in the ditch will agree to proportionate shares of maintenance, that ditch would probably provide the cheapest conveyance of water for irrigation at the new headquarters. All water formerly used on Parcels 3 and 4 of the Chesnut property should, I believe, be transferred to a conduit to the new headquarters. This matter should be fully considered.

As this suggests, the only remaining right-of-way which may be needed for gravity water supply from the Freemont River on the new headquarters area may be across Mr. Brimhall's adjacent land. Even the water right acquisition funds look pretty tight for 1959 at this time, but I think personnel limitations, and winter weather in the north, are going to show a surplus in the next month or so. Hence,

I suggest that right-of-way acquisitions with funds from 0343 be considered in lieu of fee simple land acquisition, where suitable. However, one of the first problems is to get out a proposed water system plan, and I believe that is a function of WODC. The 1960 estimate now includes $3,500 for rights of way, but it might be advanced to 1959 if firm justification is provided.

SIGNED

A. van V. Dunn
Chief, Water Resources Section

Copy to: Superintendent, Capitol Reef
Chief, WODC
MISSION 66
Mr. Montgomery
Mr. Siler
Mr. Dunn

AvVDunn:lct

L54-L

July 2, 1958

Memorandum

To: Regional Director, Region Three

From: Chief, Water Resources Section

Subject: Proposed Readjudication of Rights to Waters of Freemont River, Utah, Including Federal Interests at Capitol Reef National Monument

You and WODC do not appear to have been supplied with copies of the attached memorandum of June 17 from Superintendent Kelly. Also attached is a copy of our resulting letter to the State Engineer.

The Federal interests of all departments will be handled by the Department of Justice in a consolidated claim. We will advise you later on that phase of the case.

The readjudication is doubtless in part to determine rights which have lapsed through nonuse, and thus to strengthen those rights which have been established by application and permit since the decree of July 15, 1935. It is also another one of a number of adjudications of the rights to waters of the Upper Colorado River system which are now scheduled or in progress in Utah and Colorado to clarify interests.

The Federal rights to 0.66 sec.ft. are vulnerable, may or may not be adequate, and may or may not be applicable to the proposed groundwater source. You and WODC will have to supply a more tangible water system plan and outline of water needs than we now have, even for conditional claims to submit for adjudication. The attached print of Drawing NM-CR-6980 has been modified for illustration.

Homer: Should we attempt to get field info? Would a Preliminary Master Plan serve? Don't need to indicate our intents. Paul.

1. The irrigable land in Parcels 3 and 4 in N½ SE¼ Sec. 14, and the ditches, are all reported to have been washed away. The rights are subject to lapse if not exercised on another area.

2. Under Special Use Permit 14-10-345-C, Max Krueger is authorized to exercise part of the rights on 5½ acres of Parcels 2 and 5, south of the old Alma Chesnut house, but our records suggest that not more than 3.77 acres remain for irrigation after river erosion.

W O D C
JUL 7 '58
CHF.
ADM.
P & P
ARCH.
ENGR.
CADD B. S.
ACTION TAKEN-DATE

Mission 66 Mortenson working Studies

Miller Key III about this and told him all we had was Mission 66 prospectus on need for water P&D.

3. Mr. Chesnut had an irrigated orchard and shallow well which probably derived its water from the same ditch on Parcel 1 but the records suggest that the orchard may have been abandoned. I believe that the house and well are still used by Mr. Kelly.

4. There are general plans under PCP-U-1-6 for a well and extensive developments at the checking station area in SW¼ NW¼ Sec. 15, but there appear to be no construction plans, and no scheduled construction before 1960 or 1961.

The decree of 1935, in Docket 1, does not indicate that even the points of diversion of the existing ditches were defined, but the rights were to be exercised through Upper and Lower North Ditches, Upper and Lower South Ditches, Oyler Ditch, and Oyler-Chesnut Ditch, which have been the subject of correspondence and reports of which you have copies.

We now need ties from all former ditch diversions to section corners, and from the proposed well and any new or proposed ditch diversions. The points should be described identically in all claims by Fruita residents, where the claims of several are appurtenant to a common ditch. There should also be a complete map of all ditch systems, formerly, now, or hereafter to be used by the Park Service, and of any existing and proposed Federal pipelines.

We also need descriptions of existing and proposed headgates and water systems, the hydraulic properties, and the existing and proposed ultimate water use for different purposes. It will also be necessary to describe past and future irrigated areas by metes and bounds.

The PCP-U-1-6 of 1956 indicates a project to develop a domestic water supply to use 0.25 sec.ft., which we may be able to claim as either part of, or supplemental to the decreed 0.66 sec.ft. The 1935 decree does not limit the portions of the right which may be used for domestic and irrigation purposes, but it does specify that the water was obtained from the Freemont River.

The required information is partially a development and construction plan, and partially a statement of claim and proof for water rights. I am proposing to allot enough additional funds under

the water right Account 347 to start each of the three western regions off with a total of $25,000 for 1959, including their carry-over. The amount can be increased if needed.

Part of this money should be combined with a proper share of D&C funds, and further allotted between your office and WODC to obtain the information as soon as possible. We do not know the final date for completion and filing of Federal claims at this time, of course, but you should treat the work as an emergency need for completion this summer.

SIGNED

A. van V. Dunn
Chief, Water Resources Section

Attachments 3

Copy to: Superintendent, Capitol Reef, w/c 2 attachments
Chief, WODC, w/c 3 attachments

L54-L

June 25, 1958

Mr. Wayne D. Criddle
State Engineer
State Capital
Salt Lake City, Utah

Re: Proposed Readjudication of Rights to Freemont River, and Federal Interests for Capitol Reef National Monument

Dear Mr. Criddle:

We have been advised of the meeting you called at Loa on June 16, at which the Freemont River water users were advised of a proposed readjudication of the rights to that River.

The United States has acquired rights to 0.66 sec.ft. of the 8 sec.ft. of water decreed to the Fruita residents in the Sixth Judicial District on July 15, 1935. It is also planning to drill a well to provide the potable water supply for the Monument from either the subsurface flow of a tributary of the River, or lower groundwater with undetermined relation to the Freemont River waters. The final plans for the ultimate development under our MISSION 66 construction program are not completed even though scheduled for completion by 1966.

We should like to obtain a copy of any notice of the adjudication that may be published. If not explained therein, we should like to know: (1) whether it is planned to reconsider the decree of 1935; and (2) whether it is planned to adjudicate rights to both the surface and groundwaters in the Freemont River drainage.

Very truly yours,

SIGNED

A. van V. Dunn
Chief, Water Resources Section

Copy to: Regional Director, Region Three
Superintendent, Capitol Reef
Chief, WODC

THE STATE OF UTAH
OFFICE OF STATE ENGINEER
SALT LAKE CITY

January 10,1942

ED. H. WATSON
STATE ENGINEER

JAN 12 1942
FILE

Mr. A. van V. Dunn
Hydraulic Engineer
National Park Service
601 Sheldon Building
San Francisco, California

Dear Sir: REL: FREMONT RIVER DISTRIBUTION

Reference is made to your letter of January 3, 1942, requesting information relative to the rights of Alma Chesnut, et al, for diversions from the Fremont River for use in Sec. 4, T. 29 S., R. 6 E., SLB&M.

In your letter you mention the Court Decree of July 15, 1935, a copy of which is filed in this office. However, this office does not have the information you seek, as the above mentioned decree, in listing the primary rights of the parties hereto in Section A, gives for Fruita residents, i. e. Clarence Mulford, Dewey Gifford, William Chesnut, Alma Chesnut, Merin Smith, M. V. Oyler and Dan Adams, a total of 8 sec. ft., and does not segregate their individual rights. You call attention to Water Commissioner Freeman Tanner's report on the Fremont River Distribution from June 10, 1937 to July 10, 1937, wherein the Commissioner tabulates .66 sec. ft. of primary water in the name of Alma Chesnut. Inasmuch as the decree does not designate the rights of the individual users listed as Fruita residents, it is possible that the court accepted the classification of improved irrigated areas, according to records filed in Wayne County. It appears that the information you desire and the maps to substantiate it, may be obtained by writing to the Recorder for Wayne County at Loa, Utah. You may also be able to supplement this information by corresponding directly with Mr. Freeman Tanner, former Water Commissioner, at Fremont, Utah. The map and voucher enclosed with your letter of January 3, are returned herewith.

I regret that we are unable to furnish you with more definite information, but will be glad to be of any further assistance to you.

Yours very truly,

Ed. H. Watson

Ed. H. Watson
STATE ENGINEER

RER/vm
Enc:Map
Voucher

copies to Director, 1/12/42
Region Three
Supt Fruita

FREMONT RIVER DISTRIBUTION
June 10, 1937 to July 10, 1937
by Freeman Tanner
Water Commissioner

(Copied from report loaned to Acting Superintendent Davis, Zion National Park, by Mr. S. E. Tanner, Water Master for the Fremont River Distribution.)

July 23, 1937

Honorable T. H. Humpherys
Utah State Engineer
Salt Lake City, Utah

Dear Sir:

Herewith is submitted my report as River Commissioner on the Fremont river between Thurber dam site and Hanksville, inclusive, covering the period from June 10 to July 10, 1937.

Respectfully submitted,

/s/ Freeman Tanner

Water Commissioner

FT:ff

/ER COMMISSIONER'S REPORT
ON
LOWER FREMONT RIVER

June 10 to July 10, 1937

INTRODUCTION

This report contains a record of water distribution from Fremont river for June 10 to July 10, 1937. It consists of tables of water measurements, gage readings and discussions of matter relating to the distribution system.

That portion of the river under my jurisdiction began at Thurber dam site and ended at Hanksville - a distance of 66 miles. It was a part-time job which required my services when the water supply was not sufficient to satisfy all the rights. Until 1935, a help-yourself system was in vogue on this part of the river with special mutual concessions in times of shortage. From 1930 to 1935, water shortage became more acute each year until disagreements finally lead the Hanksville Irrigation Company, one of the lower users, to cite a large percentage of the other water users into court for adjudication.

On July 15, 1935, Judge Nephi J. Bates of the Sixth Judicial District Court entered a stipulation to a decree and appointed a River Commissioner who acted until the end of the irrigation season of 1936. In June, 1937, I received my appointment as River Commissioner.

DISTRICT

The Lower Fremont river serves four communities - Torrey, Fruita, Cainville and Hanksville - with an area of 3228 acres of irrigable land under its canals and ditches, 1718 acres of which are classed as improved irrigated farms according to Wayne county records, as shown on page . The Thurber Grist Mill near Bicknell marsh and the People's Power & Light plant near Torrey are the only power units.

RIGHTS

Rights to divert water from the river are based on the Court's Decree of July 15, 1935, of used rights and upon applications to appropriate water filed in the State Engineer's Office. These rights are of three classes - culinary, primary and secondary - each taking precedence in the order named and limited to beneficial use.

NAME	ADDRESS	DECREE SEC. FT.	AVERAGE USED SEC. FT.	USED AC. FT.	LAND CLASSIFICATION IN ACRES A	B	C	TOTAL ACRES	CLASS OF RIGHT
*Edmond King	Teasdale	3.33	3.33	185	94	15	45	154	primary
" "	"	5.00	5.00	278					
Loren Barger	Torrey	1.00	(Not allowed in Torrey canal as primary right)						
Marvin Forsyth	Torrey	1.66	1.66	92	15	0	60	75	primary
**Torrey Canal Co.	Torrey	35.00	19.87	1011	476	227	485	1188	secondary
Dez Hickman	Torrey	1.25	1.25	69	46	10		56	secondary
William Hickman	Teasdale	1.25	1.25	69	See William Hickman above				secondary
TOTALS		92.49		1422	1597	564	687	3029	
Thurber Grist Mill by Edmond King	Teasdale	40.00	15.00		No water power used. It was wasted back to the river.				
People's Light & Power by Teasdale Ekersley	Loa	43.00	30.00		This right not in Court Decree. Final proof pending in office of State Engineer				

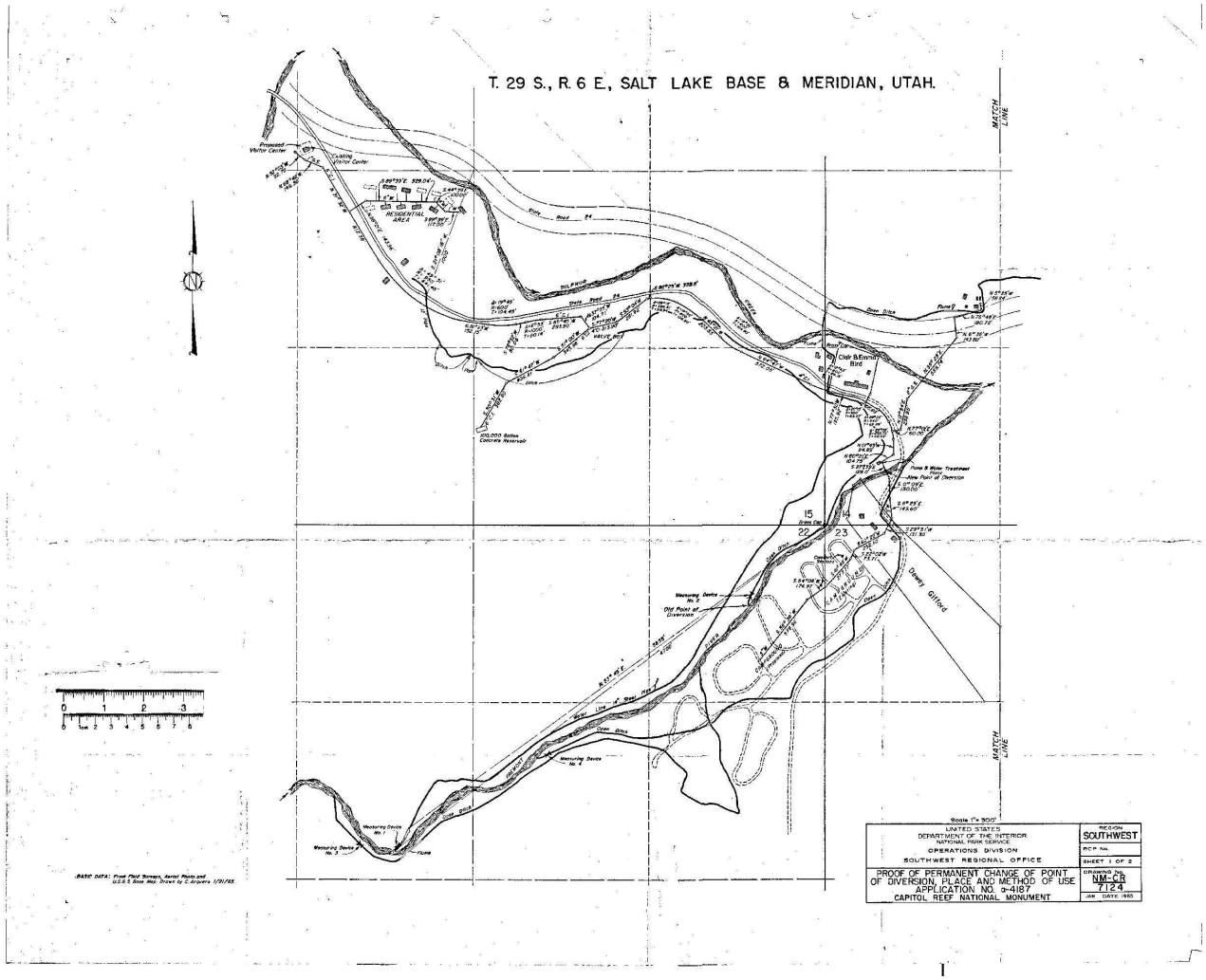
* Being sold to Mr. Williams

**Note: 2 c.f.s. of Torrey canal water are decreed for culinary purposes and do not prorate with any other of the decreed water

Land Classification: (taken from Wayne county records)
A - Improved Farm - Irrigated
B - Unimproved Farm - Not Irrigated
C - Grazing Land - Partly Irrigated

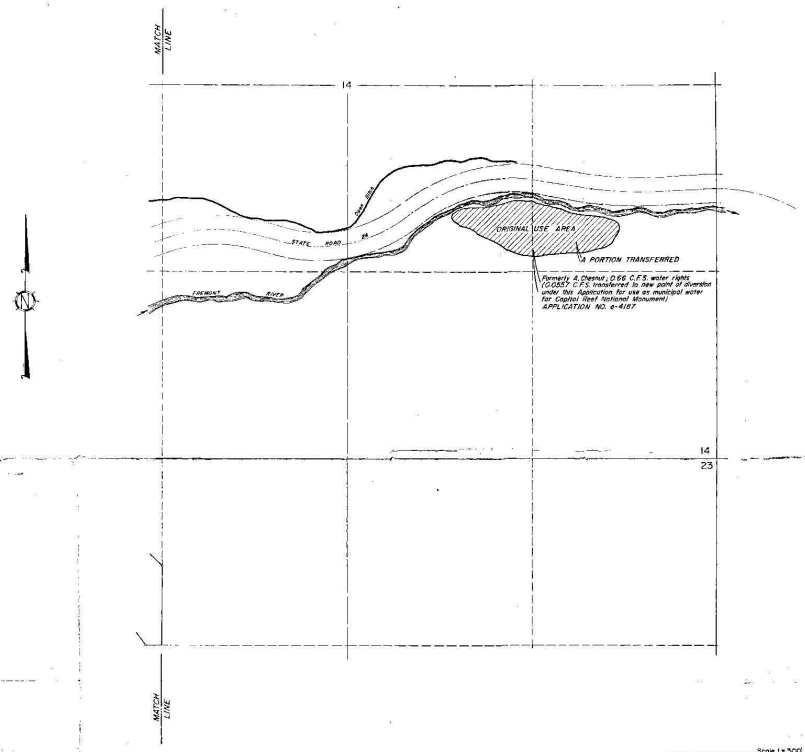
Note: gage readings from Hanksville came at uncertain intervals by mail on Mondays, Wednesdays, and Saturdays.
There is no telephone system.
Fruita river gage readings came to me through M. V. Oyler when he came to Torrey once a week.

00-00-0000: map, salt lake base, meridian, utah



00-00-0000: map, salt lake base, meridian, utah

T. 29 S., R. 6 E., SALT LAKE BASE & MERIDIAN, UTAH.

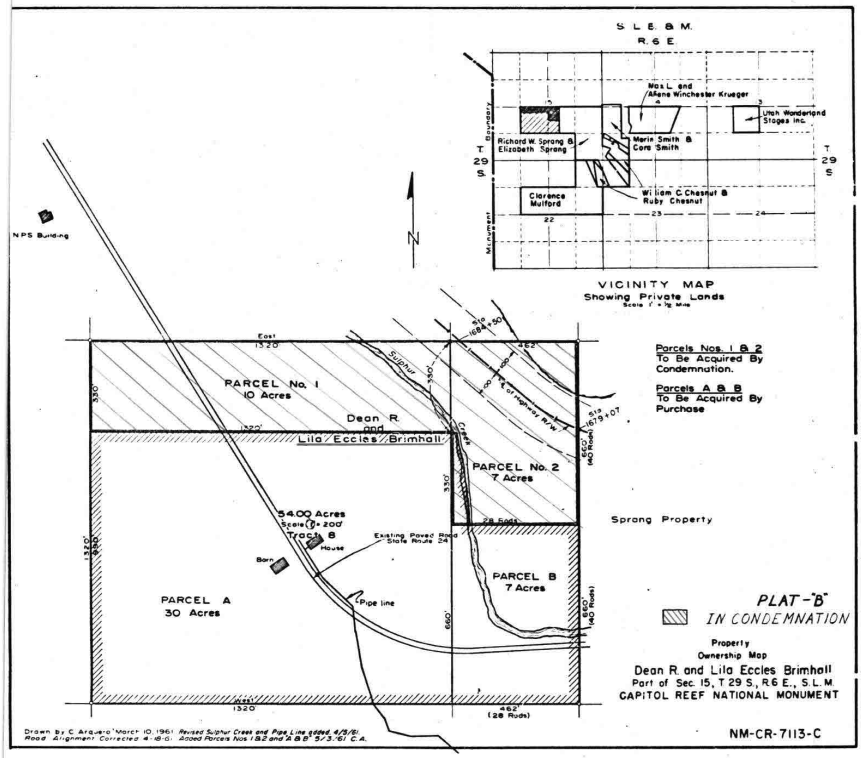


Scale 1 = 300'

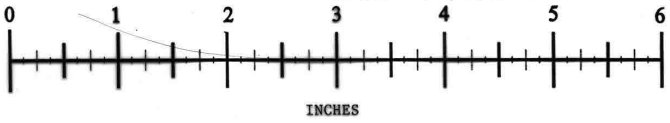
UNITED STATES DEPARTMENT OF THE INTERIOR NATIONAL PARK SERVICE OPERATIONS DIVISION SOUTHWEST REGIONAL OFFICE	REGION SOUTHWEST PCP SHEET 2 OF 2
PROOF OF PERMANENT CHANGE OF POINT OF DIVERSION, PLACE AND METHOD OF USE APPLICATION NO. a-4187 CAPITOL REEF NATIONAL MONUMENT	DRAWING NO. NM-CR 7124 JAN. DATE 1965

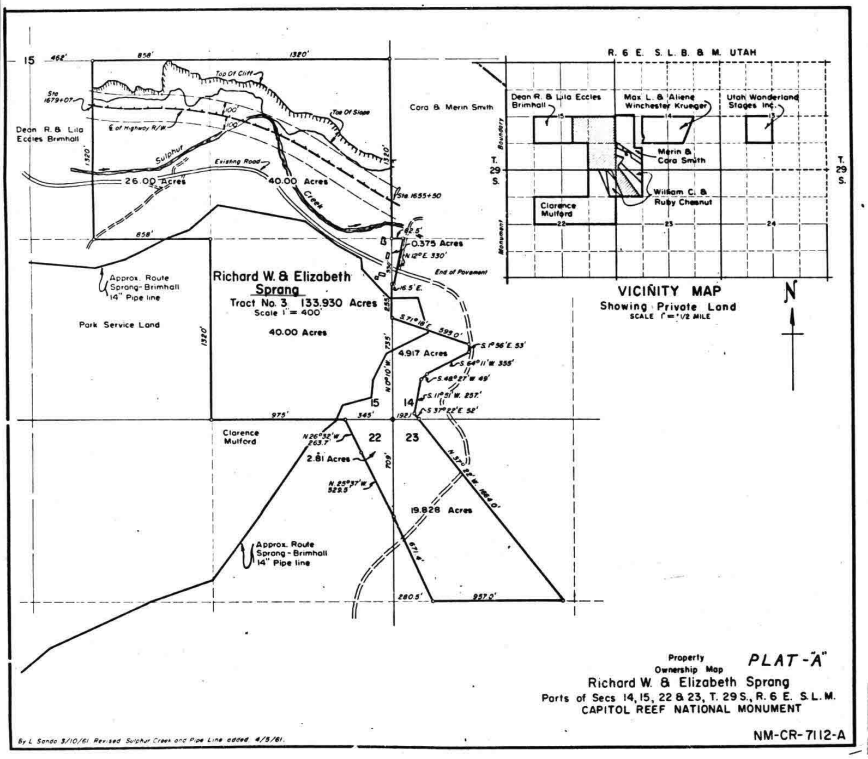
BASIC DATA: From Field Surveys, Aerial Photo and U.S.G.S. Base Map. Drawn by C. Alvarez 1/21/65.

01-06-1959: vicinity map showing private lands

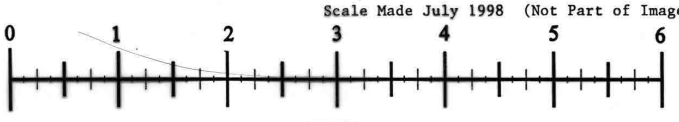


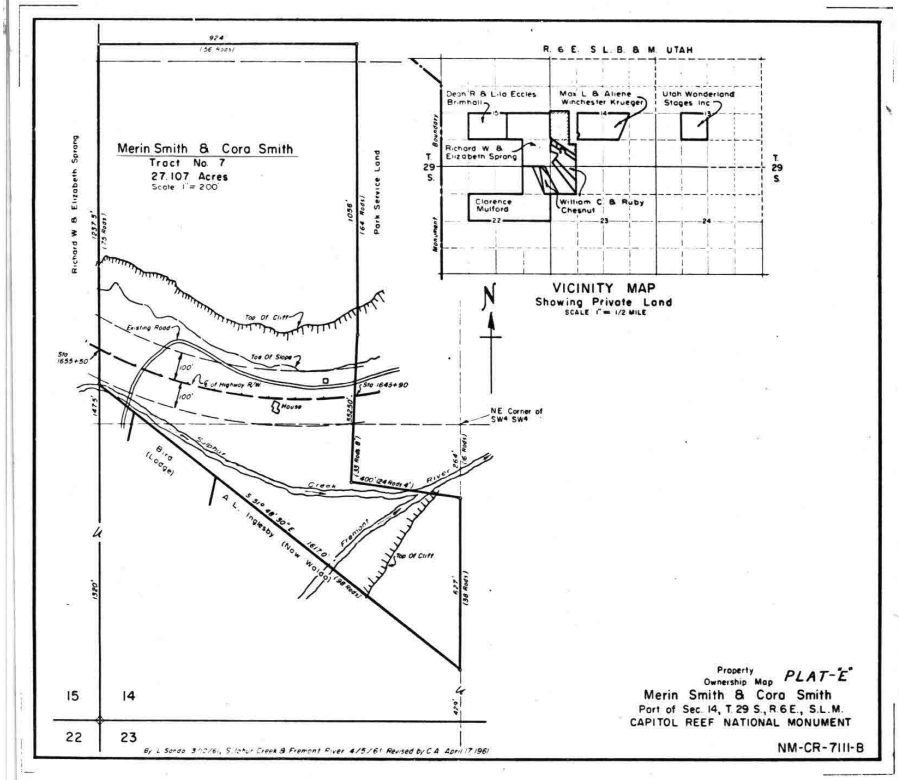
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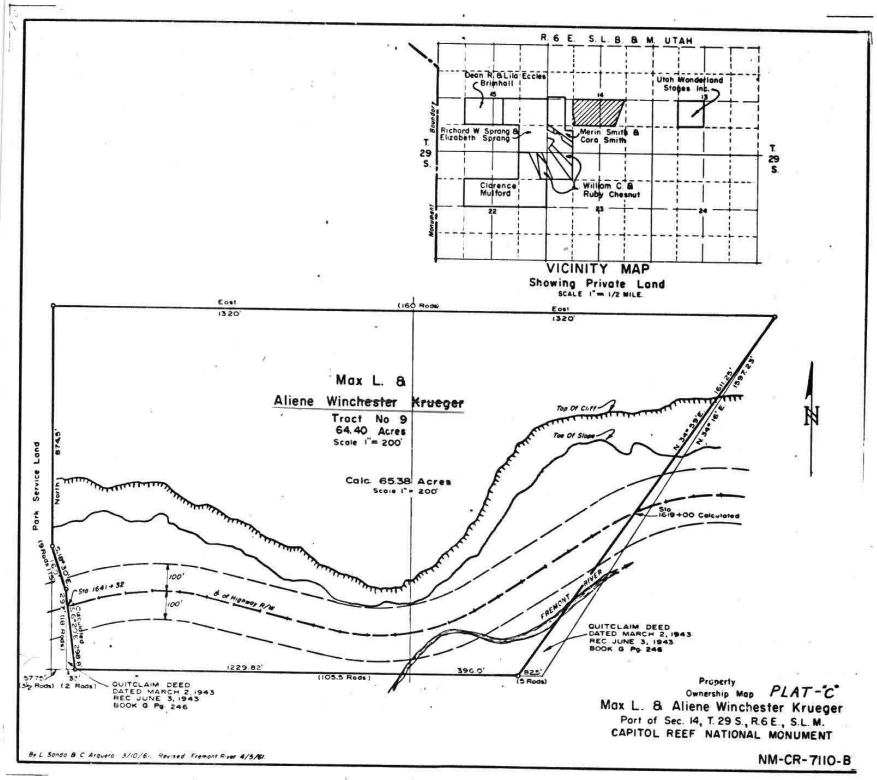
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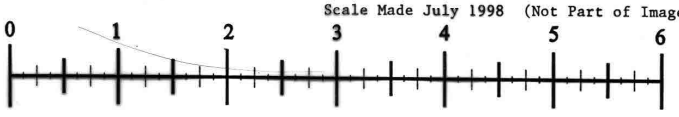


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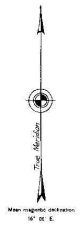


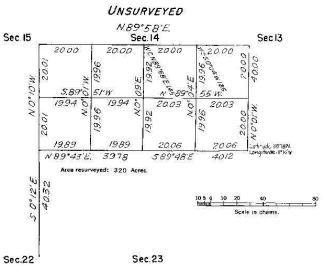
00-00-0000: map

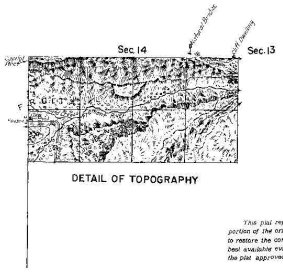
TOWNSHIP 29 SOUTH, RANGE 6 EAST, OF THE SALT LAKE MERIDIAN, UTAH.

SUBDIVISION OF THE SOUTH HALF OF SECTION 14

DEPENDENT RESURVEY







DETAIL OF TOPOGRAPHY

MEMORANDUM

This plat represents a remeasurement and reestablishment of a portion of the original survey of the subdivisional lines designed to restore the corners to their original positions according to the best available evidence. The bearings and areas are as shown on the plat approved March 21, 1896.

Survey authorized by General Land Office letter 1650356 "E." dated September 6, 1945.

Subdivisional lines surveyed in 1896. Survey executed by Elliot Bird, August 13 to 25, 1947, under special instructions for Group No. 314, dated December 10, 1946.

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Washington, D. C. January 4, 1949

This plat is strictly conformable to the approved field notes, and the survey, having been correctly executed in accordance with the requirements of law and the regulations of this bureau, is hereby accepted.

For the Director:

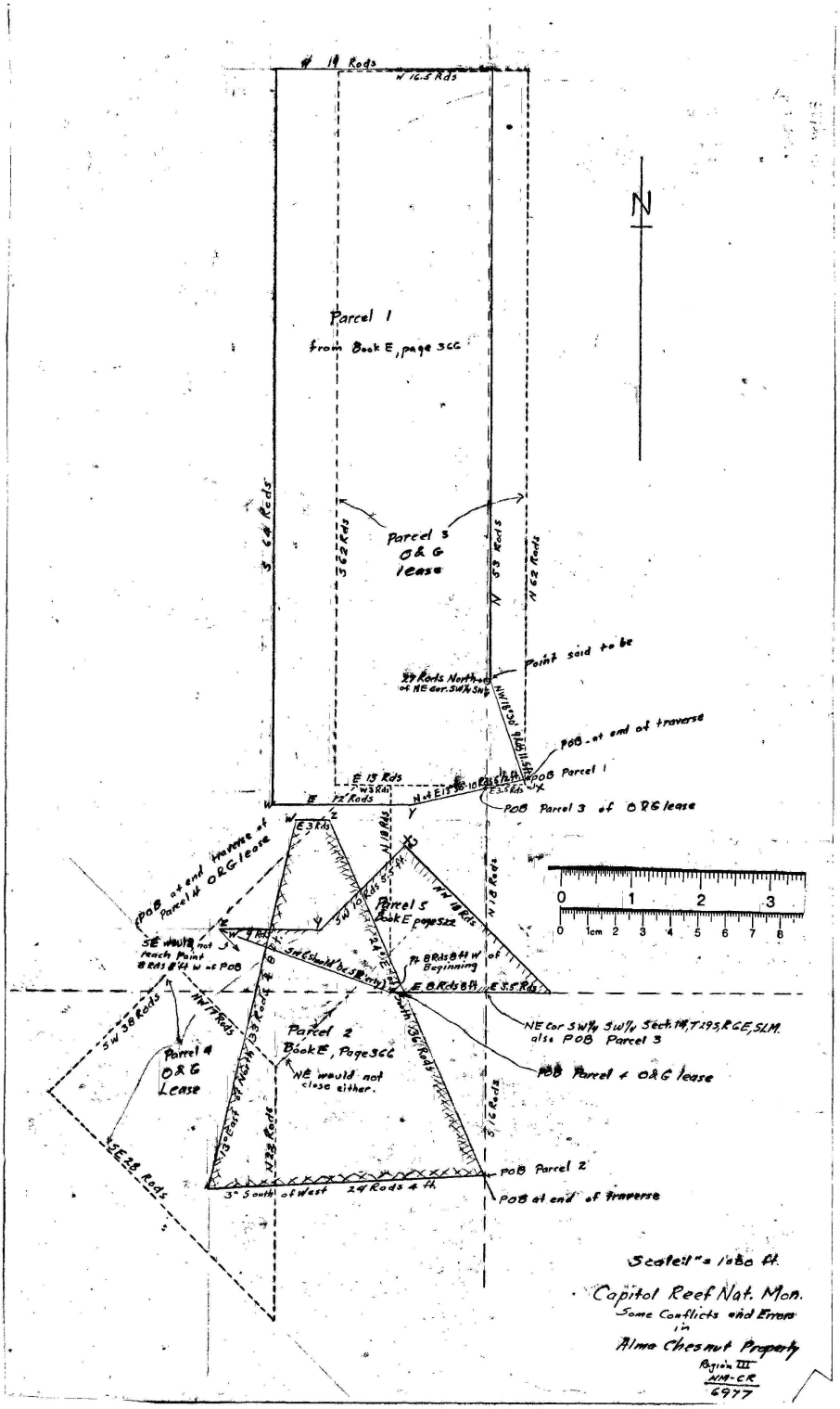
William Richards

Chief, Branch of Surveys

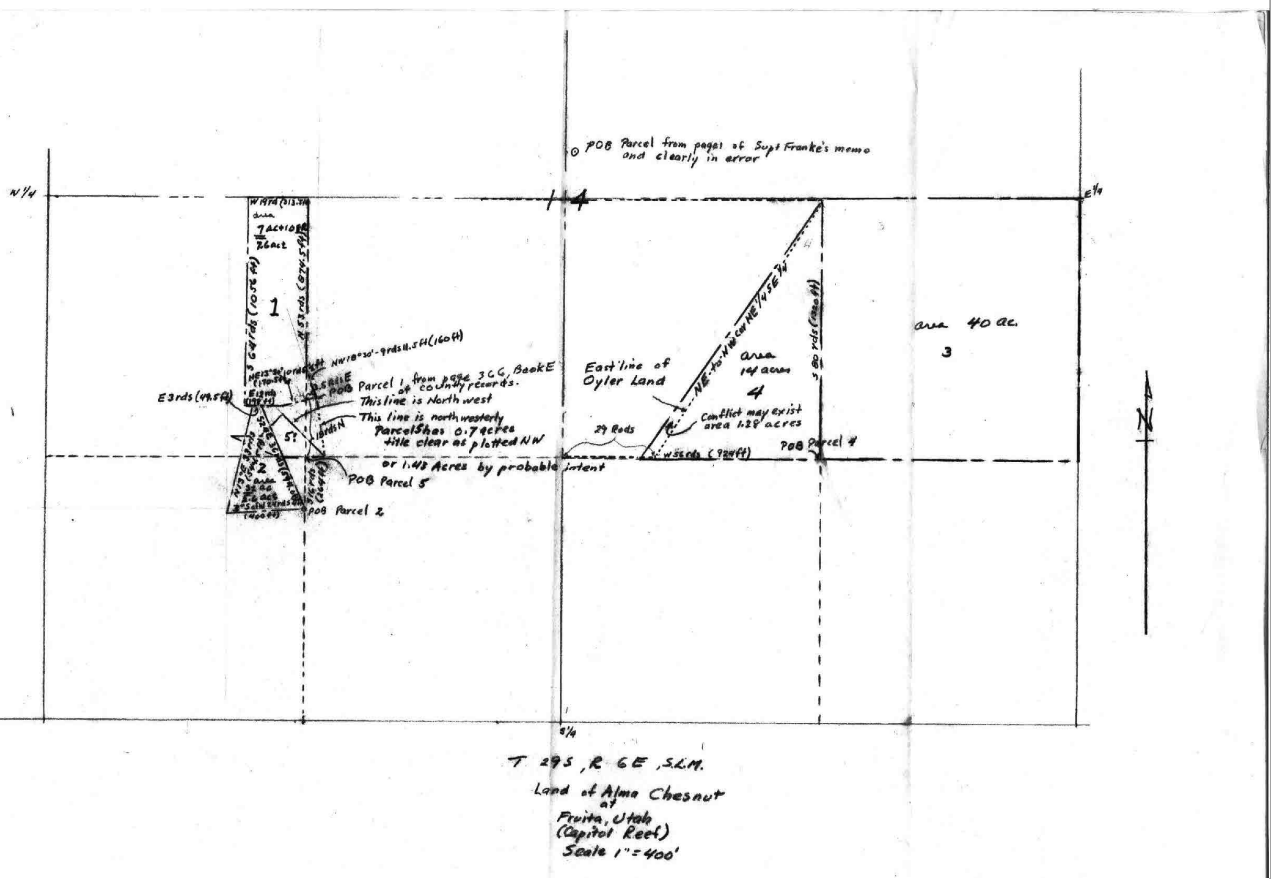
00-00-0000: map



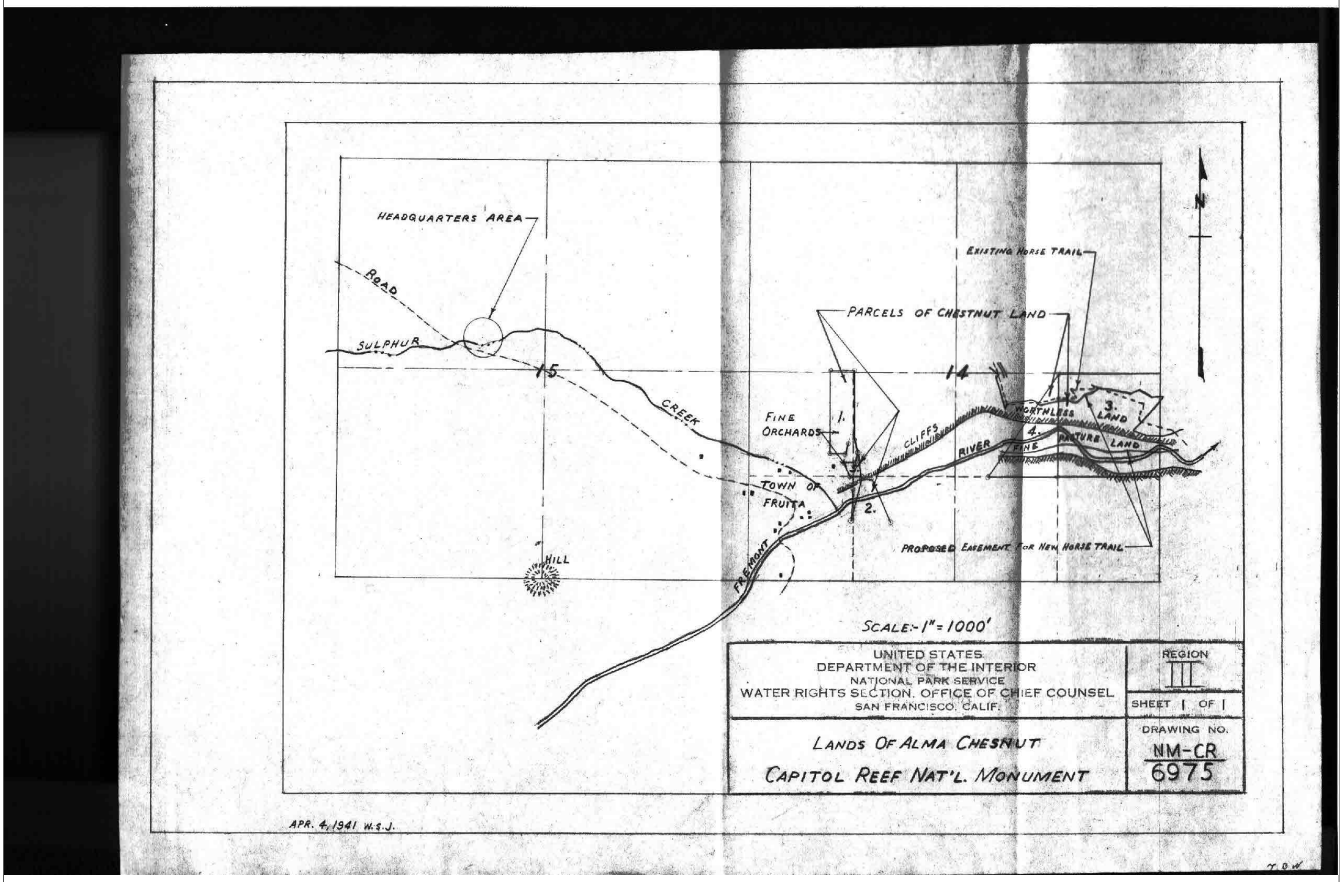
00-00-0000: map, conflicts and errors in alma chesnut property



00-00-0000: map, land of alma chesnut



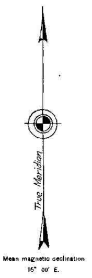
00-00-0000: map, land of alma chesnut

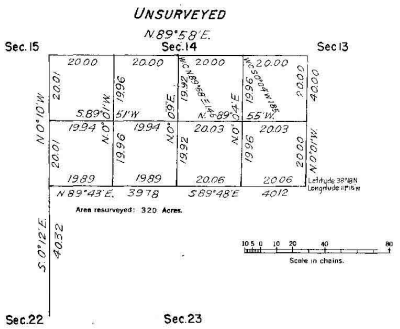


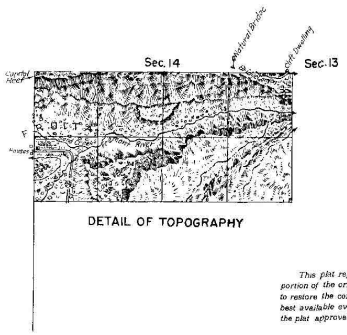
TOWNSHIP 29 SOUTH, RANGE 6 EAST, OF THE SALT LAKE MERIDIAN, UTAH.

SUBDIVISION OF THE SOUTH HALF OF SECTION 14

DEPENDENT RESURVEY







DETAIL OF TOPOGRAPHY

MEMORANDUM

This plat represents a retracement and reestablishment of a portion of the original survey of the subdivisional lines designed to restore the corners in their original positions according to the best available evidence. The lottings and areas are as shown on the plat approved March 21, 1896.

Survey authorized by General Land Office letter 1660.3.65 "E," dated September 8, 1945.

Subdivisional lines surveyed in 1896. Survey executed by Elliot Bird, August 13 to 29, 1947, under special instructions for Group No. 314, dated December 10, 1945.

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Washington, D. C. January 4, 1949

This plat is strictly conformable to the approved field notes, and the survey, having been correctly executed in accordance with the requirements of law and the regulations of this bureau, is hereby accepted.

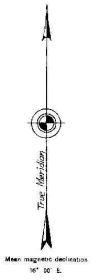
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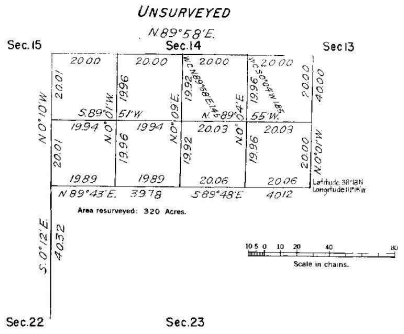
William F. Richards

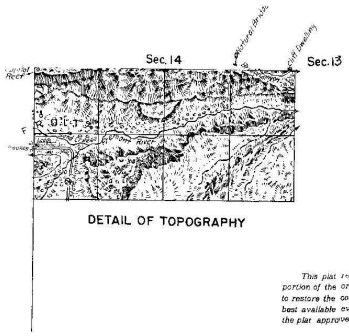
Chief, Branch of Surveys

TOWNSHIP 29 SOUTH, RANGE 6 EAST, OF THE SALT LAKE MERIDIAN, UTAH.

SUBDIVISION OF THE SOUTH HALF OF SECTION 14
DEPENDENT RESURVEY







DETAIL OF TOPOGRAPHY

MEMORANDUM

This plat represents a retracement and reestablishment of a portion of the original survey of the subdivisional lines designed to restore the corners in their original positions according to the best available evidence. The bearings and areas are as shown on the plat approved March 21, 1896.

Survey authorized by General Land Office letter 1660855 "E," dated September 5, 1946.

Subdivisional lines surveyed in 1896. Survey executed by Elliot Bird, August 13 to 29, 1947, under special instructions for Group No. 314, dated December 10, 1946.

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Washington, D. C. January 4, 1949

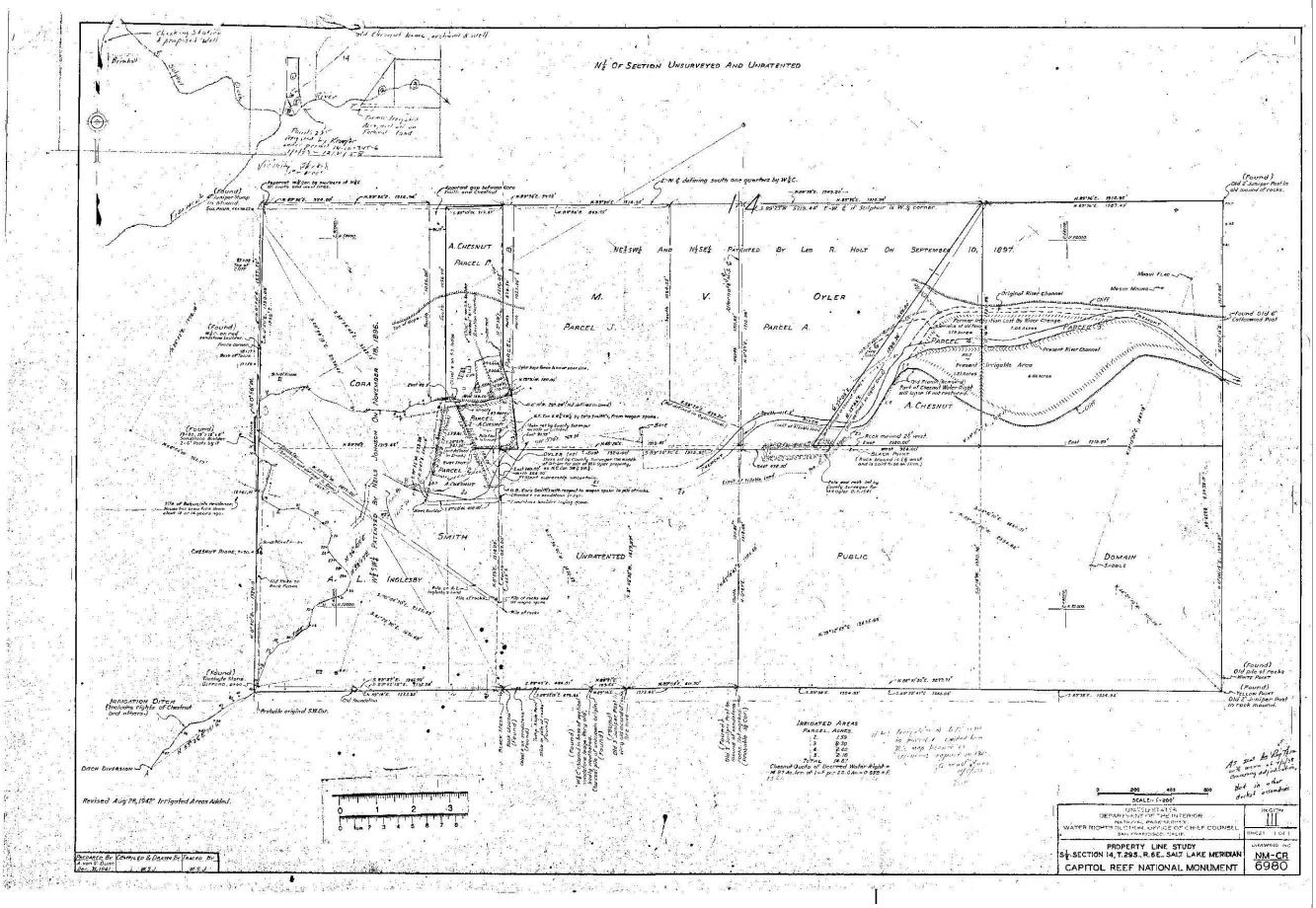
This plat is strictly conformable to the approved field notes, and the survey, having been correctly executed in accordance with the requirements of law and the regulations of this bureau, is hereby accepted.

For the Director:

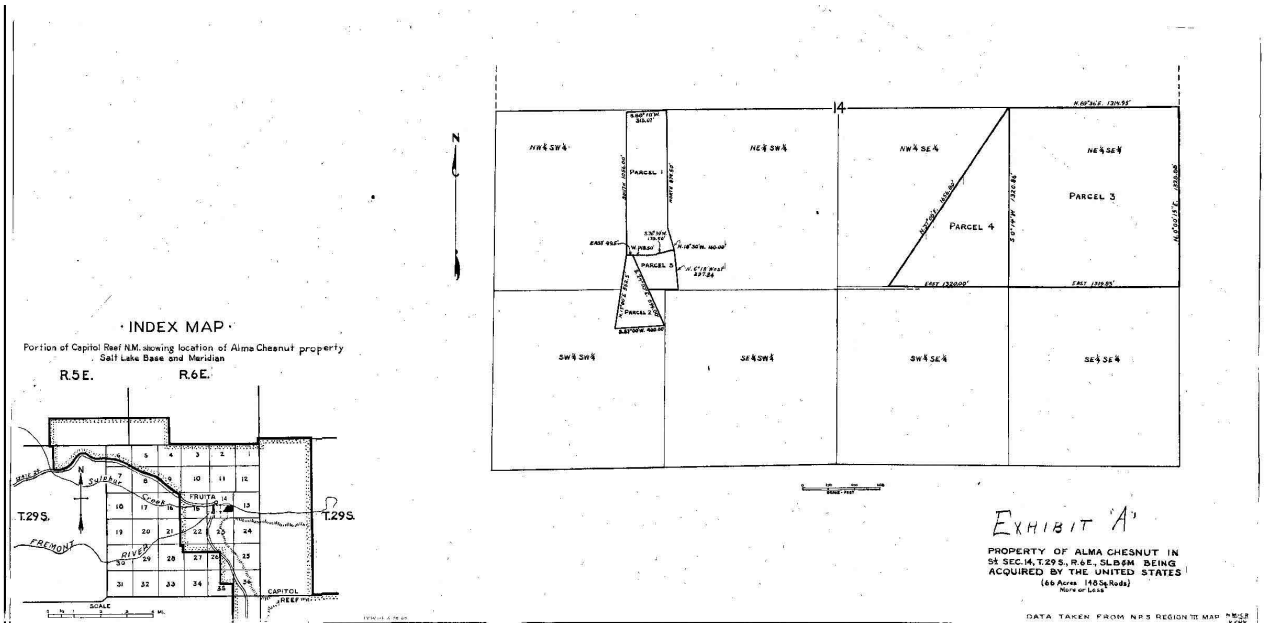
William F. Richards

Chief, Branch of Surveys

00-00-0000: map



00-00-0000: index map



Docket Information

Number of Documents in Docket 455

Documents Dated from 8/10/1927 to 7/7/1993

Docket Compiled: 2/2/2011