

-No. 341.-

State of Colorado,
County of Park, ss.

In the District Court of the Fourth
Judicial District of the State of Col-
orado, sitting in and for Park County.

In the Matter of a certain Petition
for adjudication of the Priority of
Rights to the use of Water for Irri-
gation, in Water District No. Twenty
Three (23) in said State.

- DECREE. -

Now, on this 18th day of October in the year of our
Lord one thousand eight hundred and eighty nine, this matter
coming on for final hearing and adjudication upon the report
of George L. Horine, Referee appointed herein, and to whom
this matter was by order of ^{this} Court, entered on the 20th day
of November A.D. eighteen hundred and eighty eight, referred
for the purposes in said order mentioned, as well upon the
several findings upon the evidence produced in this matter
as upon the evidence taken by and before the said Referee;
and the Court being satisfied from the several notices, cer-
tificate of publication, affidavits and certificates of said
Referee, that the said testimony returned, and upon which the
findings herein returned have been made.

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several orders of this Court in that behalf made and entered, and that the notice of the time set for filing exceptions in this matter to said report and findings, and of the time set for final hearing thereof and of this cause have been duly served on all the parties entitled to notice under the order of this Court in that behalf heretofore entered in manner and form as by said order required; and further, that all interested in this matter, and entitled to notice in any stage of the proceedings therein have at all times been notified according to law and the orders of this Court, and the report of the said, George L. Horne, together with the returns of service of notices, affidavits, lists, indices and findings, being found in due form, and the Court now here having in open Court heard all parties and their attorneys so far as they desired to be heard, respectively touching the several matters herein:

It is by the Court in consideration of all the premises hereby ordered, adjudged and decreed, that the several findings of the said Referee, as reported to and filed in this Court, be in all things approved and confirmed, and that they be taken, deemed and held in all respects as the findings of the Court in this matter; and further it is upon like consideration by the Court here, ordered, adjudged and decreed in respect to all and singular the said findings of said Referee, in respect to each ditch in said findings and lists numbered one to two hundred and nine inclusive as found in the return thereof in the certain book numbered book 2, and marked "findings by Referee", subject, however, to the following next mentioned provisions to wit:

-I-

No part of this decree shall in any case be taken, deemed or held to confirm, impair or in any manner affect any claim of right or property held or claimed by any person, association or corporation in or to any ditch, canal or reservoir, or any part thereof, or to the land or any part thereof, on which any of the same may be situated, or the land held or claimed as right of way of any of them, or any right, interest or claim of property whatever in or relating to any of them.

-II-

No part of this decree shall be taken, deemed or held as affecting in any manner any question or claim of right between the owners or claimants of any such ditch, canal or reservoir, as between each other; whether as part owners or share holders therein, or as stock-holders in any corporation or joint stock company, claiming or to claim the same or any part thereof, nor shall it affect the rights, interest or claims of any consumers of water for irrigation or domestic purposes, whether as part owner, lessee, shareholder or stockholder in any corporation holding or controlling the same, as against the rights, interest or claims of any other party or parties interested or claiming interest or right in or to such ditch, canal or reservoir as owner, lessee or part owner thereof or as shareholders or stockholders in any corporation claiming the same, or as purchasers of water therefrom; neither shall it affect any claim of priority made or resisted as between the parties using water for said purposes from the same ditch, canal or reservoir as to such water.

-III-

No part of this decree shall in any manner affect any question between two or more parties claiming or owning priorities as herein adjudged on the same stream in any case where the water in such stream sinks and rises to the surface again between the location of the headgates of their respective ditches or in any dispute as to the identity of the water appropriated by either party out of such sinking and rising stream.

-IV-

This decree shall not affect any question of priority between claimants or owners of ditches used in whole or in part for milling or manufacturing or water power for other purposes, as to any water carried in said ditches for said purposes.

-V-

This decree shall not affect any claim, interest or right of any corporation as to the right of property in any ditch, canal or reservoir, or the ground upon which the same may be situated, or any question which may arise between the stockholders thereof or between them and the State, people, or any party upon the dissolution of such corporation by expiration of its charter or otherwise, as to any appropriation of water or rights secured by condemnation proceedings by such corporation during its legal existence.

-VI-

No part of this decree shall affect in any way any right claim or interest now or hereafter held or claimed to any

-VII-

No part of this decree shall be taken or held as adjudging to any claimant or present or future representatives to any claim to any ditch or canal or reservoir, or party holding, using or controlling the same, any right to take and carry by means of any ditch, canal or reservoir herein mentioned, or by virtue of any appropriation herein adjudged any water from any natural stream, except to be applied to the use for which the appropriation was made, nor to allow any excessive use or waste of water whatever, nor to allow any division of water except for lawful and beneficial purposes, nor to allow the storage of water in reservoirs when the same is needed for immediate use for domestic or irrigation purposes.

-VIII-

This decree shall be taken, deemed and held as intended to determine and establish the several priorities of right by appropriation of water from the streams of said water district No. twenty three (23), for irrigation, of the several ditches, canals and reservoirs in said district, concerning which testimony has been offered in this matter, according to the construction, enlargement or extension thereof, with the amount of water held to have been appropriated thereby; subject to the several last mentioned eight provisions; it is further, as to said ditches and the several appropriations of water by means of them respectively claimed in this matter, ordered, adjudged and decreed, as in and by the findings of said Deference as follows:

The several appropriations of water for said ditches and their respective enlargements, are hereby numbered and declared, with the dates of said appropriations to be as follows:

-00-

- The Beery Ditch, original construction June 15th. 1861. ✓
The Trout Creek Ditch, original construction, July 1st. 1862. ✓
1 The Borden Ditch, original construction, May 1st. 1866. ✓
The Crozier Ditch, original construction, May 1st. 1866.
The Mill Ditch, original construction, August 1st. 1866.
The Garraud Ditch, original construction, July 1st. 1867.
The Canon Ditch, original construction, July 15th. 1867.
The Small Ditch, original construction, May 1st. 1868.
The Four Mile Ditch, original construction, June 1st. 1868
The Prince Ditch, original construction, August 1st. 1868.
The Wilkin Ditch, original construction, May 15th. 1871.
The Ratcliff No. 1 Ditch, original construction, May 1st. 1872.
13 The Hopson Ditch, original construction, May 15th. 1872.
The Rock Creek Ditch, original construction, June 15th. 1872.
The Stevens No. 1 Ditch, original construction, July 1st. 1872.
The Stevens No. 2 Ditch, original construction, September 1st 1872
The Ratcliff No. 2 Ditch, original construction, May 20th. 1873.
The Miller and Chapman Ditch, original construction, May 23 1873
The Sigfus Ditch, original construction, May 25th. 1873.
The Haver No. 1 Ditch, original construction, June 25th. 1873.
The Anderson No. 3 Ditch, original construction, July 1st 1873
The Alden and Milligan Ditch, original construction, Aug. 1873.
~~Churchman Ditch, original construction, June 1st. 1873.~~

And said ditches are entitled to said Appropriations and Priorities on the aforesaid numbers as follows:

-Ditches-	Priority No.	
No. 1- The Beery Ditch,	1	
No. 2- The Trout Creek Ditch,	2	
No. 3- The Borden Ditch,	3	109
No. 4- The Crozier Ditch,	4	
No. 5- The Mill Ditch,	5	
No. 6- The Guiraud Ditch,	6	
No. 7- The Canon Ditch,	7	
No. 8- The Small Ditch,	8	
No. 9- The Four Mile Ditch,	9	190
No. 10- The Prince Ditch,	10	58
No. 11- The Wilkin Ditch,	11	
No. 12- The Ratcliff Ditch,	12	
No. 13- The Hopson Ditch,	13	225
No. 14 The Rock Creek Ditch,	14	27
No. 15- The Stevens No. 1 Ditch,	15	
No. 16- The Stevens No. 2 Ditch,	16	
No. 17 The Ratcliff No. 2 Ditch,	17	
No. 18- The Miller and Chayman Ditch,	18	89
No. 19- The Sigfus Ditch,	19-43	69
No. 20- The Haver No. 1 Ditch,	20	
No. 21- The Anderson no. 3 Ditch,	21	
No. 22- The Alden and Milligan Ditch,	22	
No. 23- The Chapelle Ditch,	23	
No. 24- The Kester Sweet Ditch,	24	

No data given.
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should be 58 1/2 by date 20
see page 20
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No. 2- The Holtzusen No. 1 Ditch-

120-

6

1.35

3.3

- House Creek Ditch-

No. 1- The Crosier Ditch-

4- entire flow

-Dead Man's Gulch Ditch-

No. 1- The Baker and Lilley Ditch-

51-

14.6

-No- Name creek Ditch-

No. 1 -The pol thusen Ditch-

54-

1.31

-Quakenasp Gulch Ditch-

No. 1 the Lanack no. 2 Ditch-

80-

3.

-The Spring Ditch-

No. 1-the Spring Branch Ditch-

104-entire flow

-Mountain Stream Ditch-

No. 1- The Henry ditch-

106-

1.

-Beaver Creek Ditch-

No. 1- The Beaver Creek Ditch-

187-

16.

-Kenosha Creek Ditch-

No 1- The Kenosha Ditch-

196-

8.

- No. 4. The Crosier Ditch. -

That said ditch is entitled to priority No. 4. The claimant is Adelia Borden; that it is used for the irrigation of lands, taking the entire flow of water in House Creek; the headgate thereof is located on House Creek in the N.E. $\frac{1}{4}$ of the S.E. $\frac{1}{4}$ of section 16, Township 9, south of Range 74 West, in Park County, Colorado: ✓

And it is hereby adjudged and decreed that there be allowed to flow into said ditch ^{all the water} ~~from~~ said Creek for the use aforesaid and for the benefit of the party lawfully entitled thereto under and by virtue of the appropriation by original construction -priority No. 4- the entire flow of water in said House Creek.

- No. 5. The Mill Ditch.

That said ditch is entitled to priority No. 5. The claimant is Olney A. Borden; that it is used for the irrigation of lands, taking its water from Tarryall Creek; the headgate thereof is located on Tarryall Creek in the S.E. $\frac{1}{4}$ of the N.W. $\frac{1}{4}$ of section 8, Township 9, south of Range 74 West in Park County, Colorado: ✓

And it is hereby adjudged and decreed that there be allowed to flow into said ditch from said Creek for the use aforesaid and for the benefit of the party lawfully entitled thereto under and by virtue of the appropriation by original construction -priority No. 5- 43.46 cubic feet of water per second of time.