

Nos. 21-1484, 22-51

In the **Supreme Court of the United States**

ARIZONA, ET AL.,
Petitioners,

v.

NAVAJO NATION, ET AL.,
Respondents.

DEPARTMENT OF THE INTERIOR, ET AL.,
Petitioners,

v.

NAVAJO NATION, ET AL.,
Respondents.

**On Writs of Certiorari to the United States
Court of Appeals for the Ninth Circuit**

**BRIEF OF *AMICI CURIAE* UTE INDIAN TRIBE OF
THE UINTAH AND OURAY RESERVATION IN
SUPPORT OF RESPONDENTS**

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Charles Wilkinson, *Fire on the Plateau, Conflict and Endurance in the American Southwest* (1999) 9, 11, 13

INTEREST OF *AMICI CURIAE*¹

The Ute Indian Tribe of the Uintah and Ouray Reservation (“Tribe” or “Ute Indian Tribe”) is a federally recognized Indian tribe, composed of three Bands of the greater Ute Nation, the Uintah, Uncompahgre and Whiteriver Bands. The Tribe’s reservation is located in northeastern Utah at the foot of the Uinta Mountains,² on an arid and high desert plateau, within the drainage of the Colorado River Basin. The Green River—the largest tributary to the Colorado River—flows for nearly two hundred miles through the eastern half of the Tribe’s reservation. Because of the extreme aridity of the reservation, the United States Congress authorized construction of an Indian irrigation project for the reservation in 1906, the Uintah Indian Irrigation Project, or “UIIP.” Congress required the Federal Government to use tribal funds to construct the UIIP.³ The Ute Indian Tribe is one of only sixteen Indian tribes in the United States with a federally-built and federally-operated

¹ No counsel for any party authored this brief in whole or in part. No person or entity other than *amici*, its members, and their counsel made a monetary contribution to fund the preparation or submission of this brief.

² According to the U.S. Board on Geographic Names, “Uinta” is the proper spelling for natural features, whereas “Uintah” is the spelling applied to political entities; however, the two spellings are often used interchangeably.

³ *Ute Indian Tribe of the Uintah and Ouray Reservation v. Utah*, 521 F. Supp. 1072, 1126 n.165 (D. Utah 1981) (quoting Floyd A. O’Neil & Kathryn L. Mackay, *A History of the Uintah-Ouray Ute Lands*, at 34 (U. Utah, American West Center 1977)).

Indian irrigation project on its reservation.⁴ And of those sixteen tribes, the Tribe is one of only two tribes in which federal statutes specify that ownership of its Indian irrigation project “shall be in the Secretary of the Interior in trust for the Indians.”⁵ The UIIP is operated by the Department of Interior (“DOI”), Bureau of Indian Affairs (“BIA”), under federal regulations which grant the Federal Government comprehensive, pervasive and exclusive management and control of both the UIIP and the tribal waters that flow through the UIIP. This means that the DOI and BIA have sole authority, *inter alia*, (i) to open and close the headgates to irrigation canals, ditches and laterals, (ii) to decide how much water is released and when it is released; (iii) to decide which lands receive tribal water and how much water each land tract receives; and (iv) to determine which tribal lands are irrigable and which are not.

The Tribe’s *Winters*⁶ or Indian reserved water rights have been quantified, both contractually and by federal court decrees. Like its sister Ute tribes in Colorado—the Southern Ute Indian Tribe and the Ute

⁴ United States Gov’t Accountability Off., GAO-06-314, Report to Subcommittee on Interior and Related Agencies, Committee on Appropriations, U.S. Senate, Indian Irrigation Projects, Numerous Issues Needed to be Addressed to Improve Project Management and Financial Sustainability.

⁵ The Act of June 21, 1906, Pub. L. 59-258, 34 Stat. 325, 375-76. The only other Indian irrigation project expressly titled in the Secretary of the Interior in trust for the Indians is the Blackfoot Indian Irrigation Project, authorized under the Act of March 1, 1907, 34 Stat. 1035, ch. 2285.

⁶ *Winters v. United States*, 207 U.S. 564 (1908).

Mountain Ute Tribe (whose *Winters* water rights are also sourced from the Colorado River Basin)—the Ute Indian Tribe of the Uintah and Ouray Reservation has a substantial interest in the availability of judicial remedies, if and when needed, to compel administrative agencies and officials within the U.S. Department of the Interior to carry out administrative trust functions lawfully, without unreasonable delay, and reasonably for the benefit of the Tribe.

The Tribe is currently engaged in litigation related to the federal government’s management of the UIIP and the Tribe’s Indian reserved water rights.⁷ In both of the Tribe’s pending cases the United States is advancing the same legal arguments that the Federal petitioners argue here, that is, that Indian tribes cannot access federal courts for redress of breach of trust claims against Federal agencies and officers unless Congress has enacted a statute that expressly authorizes the specific relief a tribe seeks. However, as explained *infra* and as demonstrated in the Ute Tribe’s two pending cases cited herein, even when an Indian tribe can *satisfy* the Federal petitioners’ narrow and exacting threshold standard, and even when Congress *has* statutorily authorized legal claims expressly and unequivocally—as Congress did for claims arising out of the Federal Government’s operation of the Uintah Indian

⁷ *Ute Indian Tribe of the Uintah and Ouray Reservation v. United States*, United States District Court for the District of Utah, case number 2:21-cv-00573, and *Ute Indian Tribe of the Uintah and Ouray Reservation v. United States*, United States Court of Federal Claims, case number 18-359 and case number 21-1880, United States Court of Appeals for the Federal Circuit.

Irrigation Project—the United States *still* maintains that the Congressional authorization is insufficient for an Indian breach of trust claim.⁸

Here, the party briefs and lower court decisions focus on the facts and laws that are specific to the Navajo Nation’s breach of trust claim. However, the Court’s decision in these consolidated appeals will likely have precedential effect on many, if not all, of the Nation’s federally recognized Indian tribes. For that reason the Tribe’s amicus brief seeks to assist the Court by widening the judicial aperture and providing the Court with insight into a broader realm of facts and laws beyond what the Navajo case alone presents. The Tribe’s amicus brief describes the facts and laws specific to the Ute Indian Tribe’s own trust relationship with the Federal government. The facts and laws specific to the Ute Indian Tribe are parallel in some respects and unique in other respects from the facts and laws specific to the Navajo Nation.

The Tribe’s amicus brief is limited to two main points. First, the question presented in the Federal petitioners’ opening brief, i.e., the nature and enforceability of the Federal government’s trust responsibility for Indian trust assets, and Indian reserved water rights in particular. Secondly, the Tribe’s brief addresses whether, as argued by the State of Colorado, the Law of the River negates the legal relief the Navajo Nation seeks.

⁸ See United States Motion for Partial Dismissal, *Ute Indian Tribe of the Uintah and Ouray Reservation v. United States*, United States District Court for the District of Utah, case number 2:21-cv-00573, ECF No. 200, PageID.952-958, filed Nov. 18, 2022.

SUMMARY OF ARGUMENT⁹

The breach of trust claim in *Navajo Nation v. United States* was dismissed under Rule 12(b) at the initial stage of litigation. Pet. App. 178-80. Therefore, the question before the Court is what an Indian tribe must allege in its complaint in order to pursue breach of trust claims related to the Federal Government’s management of Indian trust assets. Federal petitioners contend that all such claims should be dismissed outright at the onset of litigation unless a tribe can point to a federal statute in which Congress has “expressly and specifically” authorized the particular relief a tribe seeks. Fed. Brf. at 17.¹⁰ The Ute Indian Tribe agrees with its sister Ute tribes from Colorado that this statement of the law and proposed threshold standard would impose a nearly insurmountable hurdle, making it virtually impossible for *any* Indian tribe to seek recourse against its Federal trustee, notwithstanding that the United States continues to exercise trust ownership and control over tribal lands and properties in the name of the trust relationship.¹¹ The legal standard that Federal petitioners urge would also impose a

⁹ References to “Pet. App.” are to the Appendix to the Petition for Writ of Certiorari in No. 21-1484.

¹⁰ References to “Fed. Brf” are to the Brief for the Federal Parties in No. 21-1484.

¹¹ See Amicus Brief of the Southern Ute Indian Tribe and the Ute Mountain Ute Tribe, p. 4 (“Interior’s position not only contradicts prior positions advanced by the United States before this Court, but also contravenes the canons of construction employed by the Court in analyzing the scope of rights obtained by tribes through their unique relationship with the United States.”).

barrier that would apply unfairly only to Indian litigants seeking equitable relief against federal agencies and officers. The Court should reject such a simplistic, mechanistic, and overly-generalized statement of the law and threshold pleading requirement. No ground exists for arbitrarily erecting this barrier across the board to restrict all Indian trust claims involving reserved water rights or Indian trust assets in general.¹² Not only would such a barrier contravene Congressional intent and policy, but it would also undo more than a century of controlling judicial precedent.

In other contexts the Supreme Court has “repeatedly cautioned” that “generalizations” in the field of Federal Indian law can be treacherous. *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 141 (1980) (quoting *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 148 (1973)). The Court has emphasized that in deciding questions of tribal rights, courts must conduct a “particularized inquiry” into applicable treaties, statutes and other sources of substantive law applicable to each Indian tribe, and that courts should consider “the language” of these laws in relation to the “broad policies” which underlie the laws. *Bracker*, 448 U.S. at 144-45.

That same analytical framework applies to the question presented here—whether the Department of Interior can be held to account judicially for its management of Indian trust property, including

¹² See, e.g., *Foman v. Davis*, 371 U.S. 178, 181-82 (1962) (holding that complaints should not be dismissed based on mere “technicalities” of pleading.).

Winters reserved water rights. The question of whether an enforceable trust duty exists in any particular case must necessarily be decided on a case by case basis, taking into account the trust duty alleged, and all treaties, statutes, executive orders, court decisions, administrative regulations and contractual agreements involved.

The treaties, statutes and other sources of a federal trust duty must be interpreted *in pari materia* and under the Indian canons of construction. This means that a court must construe all treaties, statutes and other relevant materials liberally in favor of the Indian tribe, resolving any ambiguities in favor of the Indian tribe and for its benefit. It is axiomatic that a court must also take into account any estoppel doctrines that apply to the trust duty alleged.

The Ninth Circuit properly adhered to this analytical framework in *Navajo Nation v. United States*. And applying that analytical framework, the Ninth Circuit correctly determined that the Navajo Nation's amended complaint sufficiently alleges a colorable claim for breach of trust. The Navajo Nation should be permitted to litigate its claim. The Court should affirm the Ninth Circuit's decision. The Court should also reject the State of Colorado's argument that the Law of the River negates the relief that the Navajo Nation seeks.

ARGUMENT

I. All Treaties, Statutes, and Other Sources of a Federal Trust Duty Must Be Interpreted Under the Indian Canons of Construction

The Indian canons of construction require courts to liberally interpret treaties, statutes, executive orders, regulations and contracts between the United States and Indians in favor of the Indians. *E.g.*, *Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172, 196 (1999) (“[W]e interpret Indian treaties to give effect to the terms as the Indians themselves would have understood them.”); *see also Montana v. Blackfeet Tribe*, 471 U.S. 759, 766 (1985) (applying the Indian canons to interpret a federal statute); *Carpenter v. Shaw*, 280 U.S. 363, 367 (1930) (applying the Indian canons to interpret a contract between the Federal Government and the Choctaw and Chickasaw tribes).

The Indian canons of construction “are rooted in the unique trust relationship between the United States and the Indians.” *Oneida Cty. v. Oneida Indian Nation*, 470 U.S. 226, 247 (1985). The rule of liberal construction arises not from ordinary exegesis, but “from principles of equitable obligations and normative rules of behavior” applicable to the trust relationship between the United State and the Native American people. *Cobell v. Norton*, 240 F.3d 1082, 1102 (D.C. Cir. 2001) (quoting *Albuquerque Indian Rights v. Lujan*, 930 F.2d 49, 59 (D.C. Cir. 1991)).

It goes without saying that all relevant statutes must be construed *in pari materia*. *E.g.*, *Bryan v.*

Isasca Cty., 426 U.S. 373, 390 (1976) (construing statutes *in pari materia*).

II. The Enforceability of Trust Duties Must Be Determined on a Case By Case Basis, Taking into Account the Federal Duty Claimed and all Treaties, Statutes, Executive Orders, Court Decisions, Regulations, Agreements and Any Estoppel Doctrines Relevant to the Duty Claimed

The Ute Indians once “ranged from the Wasatch Front all the way to the Colorado Front Range—from present-day Salt Lake City to Denver.”¹³ In 1849, the year following the Treaty of Guadalupe Hidalgo, the United States executed treaties with the Indian inhabitants of the lands ceded by Mexico, and those 1849 treaties placed the Indian inhabitants of the ceded lands, including the Navajo Nation and the Ute Indians “under the exclusive jurisdiction and protection of the ... United States.” *Navajo Nation v. U. S. Dep’t. of Interior*, 26 F.4th 794, 800 (9th Cir. 2022) (citing Treaty with the Navaho, 1849 art. I (Sep. 9, 1849), 9 Stat. 974)).

The Ute Indian Tribe’s Treaty of 1849 is foundational and contains language identical to the 1849 Treaty cited in *Navajo Nation*, reserving lands from the Tribe’s much larger aboriginal land base and establishing federal control and supervision over the

¹³ Charles Wilkinson, *Fire on the Plateau: Conflict and Endurance in the American Southwest*, 128 (1999).

Tribe's aboriginal lands. Treaty With The Utah, 1849, art. I (Sep. 9, 1850), 9 Stat. 984.¹⁴

In the 174 years since the 1849 Treaty With The Utah was signed, the Federal Government's trust ownership and control of the Ute Indian Tribe's water resources has been established through a succession of subsequent treaties, statutes, executive orders, federal court decrees, administrative regulations and contracts, all of which, taken together, leave no doubt that the Federal Government has assumed enforceable trust duties to the Tribe. The intricate legal framework that at once establishes the trust relationship also at the same time necessarily places the Federal Government in the position of possessing and exercising comprehensive, pervasive, and exclusive power and control over *both* the Tribe's Indian reserved water rights and the irrigation infrastructure through which the Tribe's waters are utilized. The laws and other legal instruments that comprise this intricate trust relationship must be considered *in pari materia* and under the Indian canons of construction.

A. Indian Treaties – the Foundational Federal Laws

Following the 1849 Treaty with the Ute Indians, the Utes entered into two successive treaties with the United States, the Ute Treaty of 1863 (13 Stat., 673), and the Ute Treaty of 1868 (15 Stat., 619),

¹⁴ As authorized by the Indian Reorganization Act of 1934, 25 U.S.C. § 5123, three bands of the Greater Ute Nation organized as the present-day Ute Indian Tribe of the Uintah and Ouray Reservation in 1936. App. I, 105.

followed by the Act of April 29, 1874, Ch. 136 (18 Stat., 36). The historical record makes clear that these treaties were, at best, what today would be characterized as unilateral and unconscionable contracts, entered into under duress. Between 1849 and 1868, when the Ute Indians executed their treaties, the Utes were on the brink of starvation following years of hostilities with Mormon settlers who were moving onto the Tribe's lands in the Utah Territory. In early 1861, when the first federal Superintendent of Indian Affairs arrived in Utah Territory, he described the Utes as a defeated people, suffering in a "state of nakedness and starvation, destitute and dying of want."¹⁵ In return for the Utes' cession of hundreds of millions of acres of valuable land under its treaties at the point of starvation, the Federal Government established the Tribe's Uintah Valley Reservation in October 1861.¹⁶ It did so with full knowledge that the lands it was setting aside for the Ute reservation were virtually worthless: a team of surveyors had described the entire Uinta Basin as "one vast contiguity of waste, and measurably valueless, except for nomadic purposes, hunting grounds for Indians, and to hold the world together."¹⁷

¹⁵ *Ute Indian Tribe of the Uintah and Ouray Reservation v. Utah*, 521 F. Supp. at 1094 (quoting Letter from Sup. Davies to Comm'r Dole of June 30, 1861, in Report of the Commissioner of Indian Affairs, 1861, at 129).

¹⁶ Executive Order of October 3, 1861, confirmed by Congress in the Act of May 5, 1864, § 2, 13 Stat. 63.

¹⁷ Wilkinson, *Fire on the Plateau*, 149-50.

Like the Navajo Treaties considered in *Navajo Nation*, the Ute Treaties of 1849, 1863, and 1868 “encourage the [Ute Indians’] transition to an agrarian lifestyle.” *Navajo Nation*, 26 F.4th at 810-11. The Ute Treaty of 1868 contains provisions that are similar in form and indistinguishable in purpose from the “farming provisions” of the Navajo Nation’s 1868 Treaty, ensuring (i.e., promising) federal support for agricultural development by plowing tribal lands and supplying seeds and agricultural implements to the Indians. In addition to the 1849 and 1868 treaties, which each have an analogue to the treaties cited in *Navajo Nation*, the Federal Government’s duty to provide the means for the Tribe’s agricultural development was also acknowledged in the Ute Treaty of 1863, requiring the Federal Government to support agricultural development by supplying livestock and establishing a blacksmith shop to repair agricultural implements. Significantly, in both the 1863 and the 1868 Ute Treaties, agriculture was the only manner of livelihood that the United States committed to support.

The Federal petitioners acknowledge these treaty obligations to support agricultural development. However, Federal petitioners contend that the Navajo treaties “do not mention any duties to be undertaken by the United States *relating to water*.” Fed. Brf. at 39 (emphasis added). That statement is oxymoronic and should be rejected. The Federal Government fully understood in 1863—and fully understands today—that farm crops do not grow and farm animals cannot subsist *without water*. The Federal petitioners’ logic contravenes the Indian

canons of construction which requires Indian treaties to be construed as the Indians would have understood the treaties when the treaties were signed. The 1863 and 1868 treaties required the Navajos and the Ute Indians to cede the best portions of their aboriginal lands—lands in which they had ranged freely over vast areas for food and water, all the way from “the Wasatch Front ... to the Colorado Front Range—from present-day Salt Lake City to Denver” for the Utes.¹⁸ After signing the treaties, the Navajos and Utes were confined to much smaller reservations on substantially poorer quality lands with both tribes’ permanent reservations situated *in the desert*. In consideration for the tribes’ cessions of their aboriginal lands, the Federal Government obligated itself to assist the Navajos and the Utes in transitioning from their former way of life to a livelihood sustained by agriculture and other stationary pursuits. More broadly, the Federal Government obligated itself to assist the Navajos and the Utes in developing their respective reservations into viable tribal homelands. As emphasized above, the Federal Government fully understood that farm crops do not grow and farm animals cannot subsist without water. And the Federal Government knew that in the deserts of Arizona (for the Navajos) and Utah (for the Utes), it would be *impossible* for the Indians to cultivate their reservation lands without irrigation ditches and canals dug to divert the water from whatever surface water streams and rivers traversed the reservations.

¹⁸ Wilkinson, *Fire on the Plateau*, 128.

The Federal petitioners' contention that Navajo treaties make no mention of water is misplaced for another reason. Most Indian treaties, including the Navajo treaties, involve significant consideration—a mutual exchange between sovereigns, in which the Indians were the grantors of significant land cessions and the United States was the grantee.

The [treaty] transaction is better understood if the focus is upon the concept of “reservation.” The Indians gave up some rights, reserving all those not specifically conveyed.

* * * *

Western Indian tribes ... reserved whatever water they needed to make use of their land.... They are not obliged to show that the United States granted them the right [to appurtenant water], but only that they reserved it. They need not show that they explicitly reserved it.

* * * *

The conceptual framework, then, for interpreting the treaty is that the grant or cession in the treaty is not made from the United States to the Indians. Rather the Indians were the grantors of a vast area they owned aboriginally and the United States was the grantee. The grant from the Indians must be narrowly construed, especially in light of the

wardship existing between the Indian grantors and the grantee United States.

* * * *

[T]he Winans doctrine ... applies not only to reserved rights to land, but to reserved rights to fish, reserved rights to water and reserved or retained rights of sovereignty, i.e., the right to tribal self-government.

United States v. Michigan, 471 F. Supp. 192, 213, 254 (W.D. Mich. 1979), *aff'd*, 653 F.2d 177 (6th Cir. 1981) (citing, e.g., *Winters*, 207 U.S. 564, *United States v. Winans*, 198 U.S. 371 (1905), *United States v. Wheeler*, 435 U.S. 313 (1978) (superseded by statute)).

B. Judicial Precedent and Judicial Admissions

On the Uintah and Ouray Reservation, the Federal Government went above and beyond the Ute Treaties of 1849, 1863 and 1868 in acknowledging, establishing, and assuming trust responsibilities for the Ute Indians' reserved water rights. Similar to the facts in *Winters v. United States*, in the early twentieth century conflicts arose between the Ute Indians and their non-Indian neighbors over access to the Green River tributary streams flowing onto the Tribe's reservation. In response to the conflict, the United States and the Secretary of the Interior filed suit in 1916 as "Trustee of the Indians" to adjudicate the Ute Indians' reserved water rights in the tributary streams and rivers, and to enjoin the non-Indians' upstream interference, *United States v. Dry Gulch*

*Irrigation Co. and United States v. Cedarview Irrigation Co.*¹⁹ In its complaints in *Dry Gulch* and *Cedarview* the United States readily acknowledged the Federal Government's trust obligations to the Ute Indians. The complaints in those cases state, in pertinent part:

- that the Ute Indians are “wards” of the United States;
- that the Tribe's reservation lands are “of less value” than the lands the Tribe was forced to cede to the United States in the 1860s;
- that “all” of the Tribe's reservation lands are “arid in character and will not produce crops without irrigation” and that “unless irrigated” the Tribe's lands “are comparatively valueless”;
- that it is the “intent and policy and the *duty*” of the United States “to protect” the Ute Indians “in their rights ... and material welfare” (emphasis added);

¹⁹ Complaint, *United States and Secretary of the Interior as Trustee of the Indians v. Dry Gulch Irrigation Co., et al.*, No. 4418 (United States District Court for the District of Utah, July 10, 1916); Complaint, *United States and Secretary of the Interior as Trustee of the Indians v. Cedarview Irrigation Co., et al.*, No. 4427 (United States. District Court for the District of Utah, July 17, 1916).

- that the Ute Indians “on account of their lack of development ... and their dependent condition, are unable to cope with white men in the scramble for water”;
- that non-Indian interference with the flow of surface waters through the Reservation has “caused ...[the Ute] Indians to suffer the damage of and to lose large and valuable agricultural crops,” resulting in “great and irreparable damage and injury” to the Indians.

Ute App.²⁰ 5, 7, 8, 29, 51-52, 83.²¹ In 1923, the United States District Court for the District of Utah entered

²⁰ References to “Ute. App.” are to the Appendix to this Amicus Brief.

²¹ The United States consistently represents that it is acting as trustee for Indians. In the Bill of Complaint in *Winters*, signed by the United States attorney, the United States stated that the Federal Government was suing “for and in its own behalf, and for and in behalf of its wards, the Indians residing upon the Fort Belknap Indian Reservation.” United States Circuit Court of Appeals for the Ninth Circuit, District of Montana, *United States of America v. Winters et al.*, *Bill of Complaint* (June 26, 1905), available at <https://archive.org/details/govuscourtsca9briefs0394/page/n368/mode/1up?view=theater>, 370 (last visited Feb. 7, 2023). Likewise, in its Petition of Intervention on Behalf of the United States of America in *Arizona v. California*, the United States outlined the interests of the various parties, including the “claims of the Indians and the Indian Tribes,” and alleged that the United States’ treaties and international conventions “are legal and enforceable obligations assumed by the United States of America and binding upon itself and all parties to this cause.”

decrees in *Dry Gulch* and *Cedarview*, (i) adjudicating the Tribe's Indian reserved water rights in the tributary streams and rivers, and (ii) permanently enjoining the Tribe's non-Indian neighbors from interfering with the Tribe's decreed water rights. Consistent with the United States' complaints, the *Dry Gulch* and *Cedarview* Decrees adjudicated legal title to the Tribe's reserved water rights in the "United States of America" and "the Secretary of the Interior" in their capacity "as Trustees" of the Ute Indians. Ute App. 34, 90.

C. Statutes, Regulations, and Other Operative Instruments

The Federal Government has gone even farther beyond the Ute Treaties and the *Dry Gulch* and *Cedarview* court decrees in acknowledging, establishing, and assuming affirmative trust duties for the Ute Indians' reserved water rights. These specific and affirmative trust duties have been established and assumed by the Federal Government since the late 1800s in the form of multiple statutes, administrative regulations, and contracts between the United States and the Tribe. All of these, taken together, vest the Federal Government with comprehensive, pervasive and exclusive management and control of the Ute Indian Tribe's water rights, its water infrastructure, and the UIIP. As an example, the Ute Indian Tribe is the only Indian tribe in the

University of Colorado Boulder William A. Wise Law Library, Petition of Intervention on Behalf of the United States of America, *Arizona v. California*, No. 10, Original, 1953 Term (U.S.), (October Term 1953), available at <http://hdl.handle.net/10974/444>, 11, 27 (last visited Feb. 7, 2023).

United States that has a Congressional act which confirms the Tribe's unqualified "paramount" rights to its reservation water resources for both present and future uses.

a. The Act of 1899

In 1899, the United States Congress statutorily confirmed the Ute Tribe's rights to reservation water resources and imposed mandatory duties on the Secretary of Interior to protect the Tribe's waters. The Act of March 1, 1899, 30 Stat. 941 ("1899 Act"), authorized the Secretary to grant rights-of-way for the construction of irrigation ditches and canals on the reservation, subject to the following affirmative duty statutorily imposed upon the Secretary specifically in relation to the Ute Indians' tribal waters:

...all such [right-of-way] grants shall be subject at all times to the paramount rights of the Indians on said reservation to so much of said waters as may be appropriated, or may hereafter be appropriated or needed by them for agricultural and domestic purposes; and it shall be the duty of the Secretary of the Interior to prescribe such rules and regulations as he may deem necessary to secure to the Indians the quantity of water needed for their present and prospective wants, and to otherwise protect the rights and interests of the Indians and the Indian service.

Significantly, however, to this day the Secretary of Interior still has not fulfilled the mandatory duty

imposed under the Act of 1899, i.e., the mandate that the Secretary “prescribe such rules and regulations as...necessary to secure to the [Ute] Indians the quantity of water needed for the present and prospective wants,” and to “otherwise protect the rights and interests of the Indians.”

b. The Act of 1906

In 1905, the Commissioner of Indian Affairs described the dire conditions on the Uintah and Ouray Reservation, warning that:

[t]he future of these [Ute] Indians depends upon a successful irrigation scheme, for without water their lands are valueless, and starvation or extermination will be their fate.

Rept. of the Comm’r of Ind. Aff., 1905.²² Congress responded to the Utes’ need by authorizing construction of the Uintah Indian Irrigation Project.²³ The 1906 Act states expressly that “title to the project” is to be held “in trust for the Indians,” and further provides, expressly and specifically, for the Secretary of Interior to “sue and be sued” in relation to the UIIP:

[S]uch irrigation systems shall be constructed and completed and held and operated ... and the title thereto until otherwise provided by law shall be in the Secretary of the Interior in trust for the

²² Quoted in *Ute Indian Tribe of the Uintah and Ouray Reservation v. Utah*, 521 F. Supp. at 1126.

²³ The Act of June 21, 1906, Pub. L. 59-258, 34 Stat. 325, 375-76.

Indians, and he may sue and be sued in matters relating thereto[.]²⁴

As noted above, the DOI and BIA operate the UIIP under federal regulations which grant the Federal Government comprehensive, pervasive and exclusive management and control of the UIIP and the tribal waters that flow through it. Moreover, under the authorization of the 1906 Act, the Federal Government appropriated water rights for the specific purposes of delivering water to the Indian lands served by this federally-operated and administered irrigation project. Then, in 1923, these appropriated water rights were adjudicated as *Winters* reserved water under the 1923 *Dry Gulch* and *Cedarview* Decrees discussed *supra*.

Whether standing alone, or considered in conjunction with the Ute Treaties of 1849, 1863 and 1868, and the 1923 *Dry Gulch* and *Cedarview* Decrees, the Acts of 1899 and 1906 unequivocally establish “specific” trust duties which the Federal Government has expressly accepted. Fed. Brf. at 17. Yet, in the Tribe’s pending litigation against the Federal Government, the DOI and BIA insist that the Ute Indian Tribe’s complaint must be dismissed because the Tribe has “failed to identify any substantive source of law that establishes a specific fiduciary duty.”²⁵

²⁴ 1906 Appropriation Act, Pub. L. 59-258, 34 Stat. 325, 375.

²⁵ United States Motion for Partial Dismissal, *Ute Indian Tribe of the Uintah and Ouray Reservation v. United States*, U.S. District Court for Utah, case number 2:21-cv-00573, ECF No. 200, PageID.952, filed Nov. 18, 2022.

c. The Central Utah Project, The 1965 Deferral Agreement, and The 1992 Central Utah Project Completion Act

The Colorado River is divided into an Upper Basin and a Lower Basin. Whereas *Navajo Nation* involves the Navajo Nation's claims to Colorado River water in the Lower Basin, the Ute Indian Tribe's reserved water rights are sourced from Colorado River tributaries in the Upper Basin. Because there is little rainfall over the summer months in the arid west, the most viable source of western water is winter snowmelt and the ability to store it.²⁶ For that reason billions upon billions of federal dollars have been spent constructing massive river water storage and related water conveyance infrastructure in both basins of the Colorado River. In Utah the massive federally-funded water storage project is the Central Utah Project, or "CUP." The CUP is described on a Department of Interior website as "the largest and most complex water resources development project undertaken by the Bureau of Reclamation in the state of Utah."²⁷ The CUP effects a "transmountain" *diversion* and *transfer* of water. It collects surface waters from Colorado River tributaries in the Uinta Basin in northeastern Utah where the Ute Tribe's reservation is located, and then transports that water hundreds of miles west through huge tunnels in the

²⁶ Testimony of United States Senator Jake Garn, Utah, before the Subcomm. on Water and Power of the Senate Comm. on Energy and Nat. Res., 101st Cong., 132 (Sep. 18, 1990).

²⁷ See, e.g., United States Department of the Interior, *The Central Utah Project – An Overview*, CUPCAO, <https://www.doi.gov/cupcao/overview> (last visited Feb. 5, 2023).

Wasatch Mountains to Salt Lake City and other population centers along the western front of the Wasatch Mountains.²⁸

In the early 1960s, one significant impediment stood in the way of federal funding for the CUP. That impediment was the fact that only a portion of the Ute Tribe's *Winters* reserved water rights had been quantified under the 1923 *Dry Gulch* and *Cedarview* Decrees. And Congress would not fund the CUP without a "full" quantification of all the Tribe's water rights. So to remove that impediment, the Department of Interior, acting as the Ute Tribe's trustee, persuaded the Tribe to enter into a "Deferral Agreement" under which the Tribe agreed to defer the use and development of a portion of its reserved water rights, enough to irrigate 15,542 acres of land. As consideration for the Tribe's deferment, the other parties to the Agreement—the United States, "acting through the Bureau of Reclamation and Bureau of Indian Affairs," and the State of Utah, acting through a political subdivision, the Central Utah Water Conservancy District ("CUWCD")—agreed to the "full and complete recognition of the Tribe's water rights," as quantified in the Deferral Agreement, and specified that the quantification was to be "without resort to litigation." Ute App. 107-08. The Deferral Agreement included other consideration and promises to the Ute Tribe, including a commitment that the federally-

²⁸ See United States Department of the Interior, *Frequently Asked Questions*, CUPCAO, <https://doi.gov/cupcao/faq> (last visited Feb. 5, 2023).

funded CUP would include reservoirs and related infrastructure for storing the Tribe's waters.

By 1992, however, no CUP water storage or related infrastructure had been built to store the Tribe's waters, and the United States and the State of Utah had begun to pressure the Tribe to agree to a reduction of the agreed-upon quantification of the Tribe's water rights under the 1965 Deferral Agreement. That year Congress enacted the "Reclamation Projects Authorization and Adjustment Act of 1992," Public Law 102-575. As pertains to the Ute Tribe, the relevant sections of the Act are Titles II through VI, captioned the "Central Utah Project Completion Act" (hereinafter "CUPCA"). Title II, Section 203(f) of CUPCA authorized appropriations for the construction of a "Uinta Basin Replacement Project." The Uinta Basin Replacement Project was intended to replace previously planned water storage facilities that were to store Ute tribal waters but which have never been built. The same section of CUPCA, Title II, Section 203(f), specifies that the Secretary of the Interior "shall retain" trust responsibilities to the UIIP, the Uintah Indian Irrigation Project. And Title V, Section 501(b), specifically addresses the Ute Tribe's reserved water rights, stating that one purpose of the CUPCA was to "allow increased beneficial use" of the Tribe's Indian reserved water rights.

Today, however, the United States has repudiated the agreed-upon quantification of the Tribe's water rights under the 1965 Deferral Agreement—an Agreement that, ironically, the DOI-BIA, acting in its capacity as the Tribe's trustee, had

urged the Tribe to enter into. And today, after billions of federal tax dollars have been expended to construct the Central Utah Project, none of the CUP water storage facilities and related infrastructure have been built to serve the irrigation and water storage needs of the Ute Indians. The Ute Indian Tribe has endeavored in good faith to resolve outstanding issues and reach a negotiated settlement, but all the Tribe's efforts to date have been for naught. Ultimately, the Tribe was left with no recourse but to sue the Federal Government for breach of trust.

d. Other Sources of Trust-Imposing Duties

The substantive sources of trust duty identified above are not the only sources of an enforceable trust duty on which the Ute Indian Tribe relies, there are other examples. However, after five years of protracted litigation in its pending lawsuits against the Federal Government, the Ute Indian Tribe has concluded that it does not matter how many treaties, statutes, executive orders, regulations, contracts or other documents a tribe can cite in its complaint. Neither the number nor the specificity of the language in those source documents is ever enough. The Tribe has concluded that the Federal Government's sole objective in breach of trust litigation is simply to engage Indian tribes in long, protracted, costly litigation—and to do so at the initial pleading stage of litigation in the hope that Indian tribes will simply give up. Of course, that objective itself violates the Federal Government's most basic duty of good faith in its trust relationship with Indian tribes.

D. Policy Considerations and Estoppel Doctrines

The Ute Indian Tribe's situation makes clear that the question whether an enforceable Indian trust duty exists in any given case cannot be distilled down to the simple mechanistic formula that Federal petitioners urge. The Tribe agrees fully with the Colorado Tribes' observation that the "impacts of Interior's position would not be limited to water, but rather could extend to the trust assets of every tribe and to the express and implied duties of prudent management of those [trust] assets...."²⁹ The Federal Government's failures and shortcomings in managing Indian trust assets are well documented. *See, e.g., Cobell v. Norton*, 392 F.3d 461, 463-64 (D.C. Cir. 2004). However, the solution to that problem is not to further immunize the Department of Interior from legal accountability. Doing that would only incentivize ever greater and ever more egregious shortcomings in the Federal Government's management of Indian trust assets.

The Ute Indian Tribe's situation also makes clear that federal courts should take estoppel doctrines into account in determining whether an Indian tribe has sufficiently alleged a colorable claim for breach of trust. As pertinent to the Tribe's situation, at least three estoppel doctrines should be considered. First and foremost is the doctrine of judicial estoppel. The Federal Government's admissions in the *Dry Gulch* and *Cedarview* cases

²⁹ Amicus Brief of the Southern Ute Indian Tribe and the Ute Mountain Ute Tribe at 3-4.

constitute judicial admissions which the United States should be estopped from repudiating. *See, e.g., New Hampshire v. Maine*, 532 U.S. 742, 750 (2001) (parties are estopped from asserting one legal position in earlier litigation and a contrary legal position in later litigation because the doctrine of judicial estoppel prohibits parties from playing “fast and loose with the courts.”) (internal citations and quotations omitted).

Secondly, in a situation such as the 1965 Deferral Agreement, in which the Federal Government, in its position as a tribe’s trustee, has urged a tribe to enter into a contract with the Federal Government involving Indian trust assets, and when the tribe has fully performed its obligation(s) under the contract, the doctrines of equitable estoppel and/or promissory estoppel should apply to prevent the Federal Government from repudiating its side of the bargain.

Finally, in the Tribe’s case the Court should know that the Department of Interior files are *replete* with internal and external legal memoranda, correspondence, agency reports and other materials in which the Department of Interior itself acknowledges, time and again, its trust obligations to the Tribe under the treaties, statutes, executive orders, regulations, contracts and other documents cited in this brief. At a minimum, these materials are evidence that the Federal Government has “accepted” the trust obligations the Tribe alleges. However, in the Ute Tribe’s pending litigation, the Federal petitioners time and again urge federal courts to disregard these documents on the ground that such documents are not themselves “substantive sources of law.” Yet, these

DOI written acknowledgements constitute admissions of a party opponent under Evidence Rule 801(d)(2). And federal courts should be allowed to consider such admissions in determining whether a tribe has sufficiently alleged a colorable breach of trust case.

III. The Law of the Colorado River Does Not Negate the Relief the Navajo Nation Seeks

As characterized under the *Winters* doctrine, Indian reserved water rights exist separate from and independent of the interstate water apportionment and management framework that is discussed as the Law of the River in the State of Colorado's merits brief. CO Brf. at 2-3.³⁰

Not a single Indian tribe or tribal representative is a signatory to the 1922 Colorado River Compact which laid the foundation for the Law of the River on which the State of Colorado relies. Nor was any tribe or tribal representative invited to participate in Compact negotiations. However, the 1922 Colorado River Compact does address the rights of Indians tribes in two ways. First, Article VII of the Compact states that "[n]othing in this compact shall be construed as affecting the obligations of the United States of America to Indian tribes." The plain language of this Article disclaims any impact on the Federal Government's trust relationship with Indian tribes. Second, Article VIII provides that "[p]resent perfected rights to the beneficial use of waters of the

³⁰ References to "CO. Brf." are to the Brief on the Merits for Petitioner State of Colorado in No. 21-1484.

Colorado River System are unimpaired by this compact.”

In its 1963 opinion in *Arizona v. California*, this Court ruled that Indian reserved water rights under the *Winters* doctrine are “present perfected” water rights as that term is used in Article VIII of the 1922 Compact. *Arizona v. California*, 373 U.S. 546, 600 (1963). The Court also ruled that these water rights have retained their “present perfected” character since their date of inception. *Id.* The Court adopted Special Master Simon K. Rifkind’s findings on the distinctive legal facets of Indian reserved water rights:

The fundamental nature of a reserved water right is that it is *fully vested at the time of its creation*; nothing further need be done to perfect it. It differs radically from appropriative rights under state law, which may be initiated by a filing but which must be perfected by actual diversion and beneficial use of water within a reasonable time after the filing.

Report of the Special Master at 310, Dec. 5, 1960 (emphasis added); *Arizona v. California*, 373 U.S. at 600. The following year, the Supreme Court issued a decree in *Arizona v. California*, finding that, consistent with the 1922 Compact, the Secretary must satisfy “present perfected rights in the order of their priority dates *without regard to state lines.*” *Arizona v. California*, 376 U.S. 340, 342 (1964) (emphasis added).

Thus, the “present perfected” character of Indian reserved water rights is significant for at least

two reasons. First, it means that Indian reserved water rights are vested property rights, irrespective of whether the water rights have been quantified by compact or adjudication or are being diverted and put to beneficial use. Second, it means that the Secretary is not merely authorized but *obligated* to ensure protection of the full quantity of Indian reserved water rights as a first priority, regardless of any adverse impacts on water rights claimants under state law.

CONCLUSION

The Order and Amended Opinion of the United States Court of Appeals for the Ninth Circuit, entered on February 17, 2022, should be upheld.

Respectfully submitted.

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APPENDIX

APPENDIX

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Appendix E Deferral Agreement dated Sept. 20,
1965, between the United States,
the Ute Indian Tribe of the Uintah
and Ouray Reservation, and the
Central Utah Water Conservancy
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APPENDIX A

See Fold Out Exhibit for page 1

UNITED STATES DISTRICT COURT, DISTRICT OF UTAH

FR-60541

Division

76670

The U. S. of America (Transclin)
H. G. Bancroft, Secretary of the Interior
vs
Culch Irrigation, Co et al

4418
No. 4418
EQUITY

W. W. Ray & D. S. Coote

Attorn.

Attorn

July 10 1916 (Equity) Bills of Complaint filed, 6 affidavits in support of Motion for temporary restraining order filed. Petition for temp. restraining order filed. Order made, signed, filed & entered of temp. restraining order. Proceps of U.S. Attny. for subpoena in Eq. & copy for each dept. of restry order. Issued subpoena & 43 copies. Issued 43 certified copies of temp. restry order.

July 19 Entry called for hearing on order to show cause, & court to July 25, 1916. Order remains in full force, mean while. Appearance of cert. depts entered.

July 22 Motion of U.S. Attny. & by consent court, to July 26/16. & restraining order to remain in force - Affidavit

July 26 Demurrer to & mo. to dismiss bill filed by cert. depts.
Fornsworth Canal & Res. Co.

Depts file 13 affidavits on motion to show cause. 2 affts filed by U.S. Attny. Entry of order signed & filed overruling demurr, denying mo. to dismiss. & for injunctive & appointing Comr to measure & distribute water. J.M. Bryan

Order appointing E. S. Borquist (27) Filed Return order to show cause, served.

July 27 Filed return subpoena, Equity served.

Aug 1 1916 Entry deposit depts. to Cert Fund.

March 8 1917 Motion of U.S. Attorney to appoint Water Commissioner of Co.

March 26 " Set on motion W.W. Ray, Wedgewood & Farnsworth Consenting for hearing to appoint Water Commissioner on April 6, 1917

April 12 " Order signed and filed appointing E.S. Borquist Water Commissioner and fixing duties & pay.

May 4 1918 Notice that the U.S. will move the Court to appoint a Commissioner to administer the waters of the Uintah & Lake Fork Rivers during year 1918 - on Saturday a-m @ 10 O'clock

Oct 1 Stipulation to continue for term & order continuing same

4 Report Water Commissioner Sept 1918

March 29 1919 Motion for appoint Water Comr
Report of Juedo Water Comr for Season 1918

1919 Order appointing Water Commissioner

4418

App. 2

**IN THE DISTRICT COURT OF THE UNITED STATES
IN AND FOR THE DISTRICT OF UTAH.
IN EQUITY.
DOCKET NO. 4418**

[Filed July 10, 1916]

THE UNITED STATES OF AMERICA, and
FRANKLIN K. LANE, Secretary of the Interior, as
Trustee of the Indians of the former Uintah and Ouray
Indian Reservation,

Plaintiffs,

v.

DRY GULCH IRRIGATION COMPANY, FARMERS'
IRRIGATION COMPANY, FARNSWORTH CANAL
AND RESERVOIR COMPANY, GOOD LUCK
IRRIGATION COMPANY, LAKE FORK IRRIGATION
COMPANY, LAKE FORK WESTERN IRRIGATION
COMPANY, and UTLAND DITCH COMPANY, each
and all of the foregoing being corporations; NEW
HOPE IRRIGATION DISTRICT, a quasi municipal
corporation; LAFAYETTE BROTHERSON, WILLIAM
BROTHERSON, HAYDEN CALVERT, SETH B.
CLARK, JAMES CRYSTAL, PAUL CURRY, MARONI
FISHER, LEANDER J. GILBERT, RAY J. GILL,
HENRY HAMILTON, JAMES HARTSELL, JAMES E.
HARTSELL, HENDRICKS H. HARVEY, JOSEPH T.
HENRIE, ROBERT HYATT, ANDREW JOHANNSEN,
WILLIAM A. JOHNSTON, MIKKEL KNUDSEN, EVA
E. LEWIS, PETER O. MADSEN, CHARLES MILNE,
JAMES H. MOORE, THOMAS MURDOCK, DAVID
O'HAGAN, DAVID ORR, GEORGE PARSON, NELS

PARSON, ELISHA K. PURDY, ROBERT F. ROSS,
GEORGE T. SMITH, JAMES R. SMITH, JAMES C.
SOLOMONSON, BRIGHAM TIMOTHY, JED
TIMOTHY, and R. ERNEST WAUGH,

Defendants.

BILL OF COMPLAINT.

THE UNITED STATES OF AMERICA, and Franklin K. Lane, Secretary of the Interior, as Trustee of the Indians of the former Uintah and Ouray Indian Reservation, by William W. Ray, United States Attorney for the District of Utah, and John F. Truesdell, Special Assistant to the Attorney General, acting by the direction and authority of the Attorney General, bring this their Bill of Complaint against Dry Gulch Irrigation Company (Class "C" Ditch, Lake Fork No. 1 Canal, and Payne Lateral); Farmers' Irrigation Company (Payne Lateral); Farnsworth Canal and Reservoir Company (Farnsworth Ditch); Good Luck Irrigation Company (Company Ditch); Lake Fork Irrigation Company (Class "C" Ditch); Lake Fork Western Irrigation Company (Bonita Ditch); Utland Ditch Company (Smith-Holfeltz Ditch), each and all of the foregoing defendants being corporations organized and existing under and by virtue of the laws of the State of Utah, and citizens and residents of the State of Utah; New Hope Irrigation District (Dry Gulch Government Ditch), a quasi-municipal corporation organized and existing under and by virtue of the laws of the State of Utah and a citizen and resident of the State of Utah; Lafayette Brotherson, William Brotherson, Andrew Johannsen, William A. Johnston, George Parson and Nels Parson (Anderson Ditch);

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Maroni Fisher and Peter O. Madsen (Bonita Ditch); James Crystal (Crystal Ditches); James Hartsell and J. E. Hartsell (Hartsell Ditches); Joseph T. Henrie (Henrie Ditch); Mikkel Knudsen (Knudsen Ditches and McAfee Ditch); Henry Hamilton and Charles Milne (Means Ditch); Thomas Murdock, Paul Curry, Ray J. Gill, Robert Hyatt, and Robert F. Ross (McAfee Ditch); David O'Hagan (O'Hagan Ditch); David Orr (Orr Ditch); Elisha K. Purdy, Hayden Calvert, Seth B. Clark, Leander J. Gilbert, Hendricks H. Harvey, Eva E. Lewis, James H. Moore, James R. Smith, James C. Solomonson, and R. Ernest Waugh (Purdy Ditch); George T. Smith (Smith-Holfeltz Ditch); and Brigham Timothy and Jed Timothy (Sabey-Timothy Ditch); the said defendants being each and all citizens and residents of the State of Utah; and, for cause of action against the said defendants and each of them, the plaintiffs allege:

1. The said Franklin K. Lane is a citizen of the State of California and the Secretary of the Interior of the United States, and, by virtue of an Act of Congress approved June 21, 1906, entitled "An Act Making Appropriations for the current and contingent expenses of the Indian Department, for fulfilling treaty stipulations with various Indian tribes, and for other purposes, for the fiscal year ending June thirtieth, nineteen hundred and seven," is trustee of the Indians of the former Uintah and Ouray Indian Reservation hereinafter described.

2. The jurisdiction of this Court over this suit depends upon the fact that the United States of America is a party thereto.

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3. From before the time of the first explorations by white men of the country lying between the Rocky Mountains and the Sierra Nevada Mountains, until the cession thereof by Mexico to the United States and for many years thereafter, those certain Indians called the Ute of Utah Indians made their homes in, roved over, and claimed to own, a vast extent of territory therein, the greater part of which consisted of the country lying between the Great Salt Lake and the main range of the Rocky Mountains, and between lines that mark what are now respectively the southern boundary of Wyoming and the northern boundaries of New Mexico and Arizona. The lands so occupied and claimed contain mountain ranges, valleys and plains, and many rivers and smaller streams. Much of said land was and is suitable for grazing and much thereof was and is adapted to agriculture, but all was and is arid in character and not capable of raising crops without irrigation. They region so claimed abounded in both large and small game and fish and produced fruits and berries of considerable food value.

The Ute Indians, during their occupancy of the said extended territory, belonged to one great tribe that was in turn made up of numerous sub-tribes, or bands. They were then a warlike, nomadic, nonagricultural and nonpastoral people who lived by hunting and fishing and by gathering the natural fruits of the region they occupied and which is hereinabove described, and the same sufficiently supplied them with the necessities of their life.

Said Indians have at all times been and are now tribal Indians and wards of the Unites States.

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All of the territory above described as occupied by the Ute Indians, until the cession of parts thereof by them to the United States, as hereinafter mentioned, was Indian country, belonging to said Indians under and by virtue of the so-called Indian title of occupancy and possession.

4. It has at all times been and still is the intent and policy and the duty of the United States in its relation to the Ute Indians, as also in the relation to its Indian wards in general, to protect said Indians in their rights, promote their happiness and their moral and material welfare, and to educate and civilize them; and as a means of accomplishing said several purposes, and fulfilling said duty, it also has at all times been and now is the policy of the United States to secure and reserve to said Ute Indians so much of the lands hereinabove described as claimed and occupied by them as might be necessary or useful therefor and to encourage said Indians to farm and cultivate the same; and as to such lands of said Indians as were from time to time not deemed by the United States as necessary or useful for said purposes, it has been its policy to acquire the same from said Indians so that the lands so acquired might be settled upon and otherwise used for the benefit of the United States, but only, however, with the full agreement and consent of said Indians and upon the payment of proper considerations for the lands thus acquired.

5. In order to carry out the aforesaid general plan and policy and to discharge its said duty, the United States, beginning about the year 1859, by treaties and less formal agreements with the various bands of Ute

App. 7

Indians, and by acts of Congress and Executive orders of the President, confirmed, set off and reserved to the Ute Indians for their exclusive and perpetual use and established as Indian Reservations certain comparatively small areas of the territory above described as originally occupied by the Ute Indians, and received from said Indians the cession of and extinguished their title to the lands theretofore occupied by them outside of said reservations. The Ute Indians, in thus ceding their lands outside of said reservations to the United States, or in otherwise consenting to the extinguishment of their title thereto, in addition to other motives including their desire for education and civilization were actuated by the wish to be protected from the intrusions of the whites and the desire to hold the smaller quantities of lands comprised in their said reservations by a higher and more indefeasible title than that under which they had formerly held their whole vast territory above described. The land comprised in each reservation so established was at the time of its establishment and ever since has been and now is of less value than certain areas of equal extent within the lands ceded by the Ute Indians to the United States.

6. Among the reservations so established was that certain one known as the Uintah and Ouray Indian Reservation. The same was created by Executive order of the President on, to-wit: the third day of October, 1861, and its creation was thereafter ratified, acknowledged and confirmed by acts of the Congress of the United States. Said reservation throughout its existence as a whole, until the allotment of parts thereof to individual Indians and the throwing open of

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parts thereof to settlement as hereinafter described, comprised about 2,039,040 acres of land and occupied the whole Uintah Basin, so-called, in what was at the time of the creation of said reservation the territory of Utah, and is now the State of Utah. The said reservation was enclosed on all sides by mountains and on the north and west extended to the tops of the mountains which formed its boundary, and said mountains are of great height and the source of many streams that flow down into the floor of the basin and through the flat lands of what was the reservation. The slopes of the higher mountains within the said reservation were and are well timbered and the reservation did and does contain great tracts of land suitable for agriculture. The said agricultural land, however, and also all of said reservation except the high slopes of the mountains which have too great an altitude to be susceptible of cultivation, are arid in character and will not produce crops without irrigation and unless irrigated are comparatively valueless.

7. The Green River formed the south-east boundary of said reservation for a distance of about ten miles, but, owing to the elevation of the irrigable lands of said reservation in relation to said river, only a small part of said land is susceptible of irrigation therefrom. Except as to that part of said former reservation which is watered by the Green River or susceptible of irrigation therefrom as aforesaid, the said reservation is watered and is capable of being irrigated only from the Duchesne River and the numerous lakes and streams that form its sources and tributaries.

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The main stream of said reservation is, as aforesaid, now called the Duchesne River, and into it from the north flow two great branches thereof called, respectively, the Uintah River and the Lake Fork River. At the time of the establishment of the said reservation, that certain stream that is now called the Uintah River was called the North Fork of the Uintah River, and the stream that is now called the Duchesne River, except for the head waters thereof, was called the Uintah River, and then later that part of the Duchesne River that flows between the junction of the said river with the Uintah River and the Green River was, and to a certain extent it still is, called variously the Duchesne River and the Uintah River.

During the existence of said reservation the rivers and streams, lakes and water courses thereof, except the Green River, from their sources which are upon what was said reservation to the point where the principal stream thereof, the Duchesne River, into which all of the others flow, as aforesaid, leaves said reservation, were entirely under the control of the United States and of the Indians of said reservation and available for their use without let or hindrance of others. At all times the said waters have given and they now give the said reservation lands their chief value and they have made and make said lands available for agriculture and for the pasturing of stock and without said waters the said lands and all of them could not be used for said purposes or either of them and they would be comparatively valueless. Said waters were used at all times during the existence of said reservation and they were indispensably necessary for the domestic purposes of the Indians and of the

agents and employes and soldiers of the United States on said reservation and were used also for the watering of stock and for irrigation, and after the allotments were made as hereinafter stated and at all times since, the said waters have been used and they are now being used upon the lands of said former reservation which still belong to the United States or said Indians for all of said purposes. The use of said water for irrigation increased as the Indians grew in civilization and industry, and, so far as diversions from the Lake Fork River are concerned, the same is hereinafter particularly described.

8. The Uintah band of the Ute Indians had, from the earliest times, roamed and hunted over the said Uintah Basin and claimed to own it and soon after the establishment of said reservation they took up their permanent residence thereon. Said Uintah Ute Indians, by various treaties and agreements with the United States, in consideration of said reservation and the resources thereof being confirmed to them and to the Ute Indians in general, and in consideration of the policy and intent of the United States with regard to their civilization and welfare, and in consideration of the setting aside for their benefit of certain sums of money by the United States, ceded and released to the United States their interest in vast areas of other lands theretofore held and claimed by the Ute Indians as above described. The Uncompahgre band of Ute Indians and the White River band of Ute Indians, for like considerations and with a like purpose and by like agreements, also ceded and released to the United States their interest in vast areas of valuable lands owned and claimed by them and by the Ute Indians in

general, and also took up their permanent residence upon said reservation.

During the existence of said reservation the United States, in order to carry out its policy with respect to the said Indians as above described, and to educate said Indians and civilize them and make them self-supporting and independent by inducing them to become stock owners and farmers, established, maintained and operated agencies and schools upon said reservation for said Indians upon said reservation, which agency and school establishments consisted and consist in part of many costly buildings and of irrigated farms and gardens, and the same ever since have been and are still maintained and operated by the United States for the benefit of said Indians.

9. The Indians of said reservation during the existence of the reservation lived in part as they had before, by hunting and fishing, but under the influence of the United States, and being induced thereto by their confinement to the comparatively narrow limits of the reservation, they also become in part a pastoral people, and farmers of irrigable land upon said reservation. They also leased during said period certain of their lands on said reservation for pasture, and received and were supported in part by issues of rations and payments of money by the United States, all of which rations and payments coming, however, from tribal funds of said Indians that had been created, and held by the United States under treaties with them and which were the consideration in part for the cessions of land made by said Indians and of their

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acceptance of and confinement to said reservation as above described.

10. By an executive order of the President of date, to-wit: the third day of September, 1887, a tract of land on the Uintah River and within said reservation, comprising six square miles, was temporarily devoted to military uses and was used therefor, until by an executive order of, to-wit: August 19, 1912, the same with the exception of 150 acres thereof was entirely restored to the said reservation. During said period from 1887 to 1912, extensive military posts, with buildings, grounds and all other usual equipments, were established and for many years maintained upon said 150 acres and now the said buildings and grounds are used by the Indian Service of the United States as the headquarters of the Agency that that Service maintains in the said Uintah Basin for the aid, control and education of said Indians and said lands still form a part of said Indian Reservation and are under the control of the Secretary of the Interior.

11. In the year 1902, and thereafter, the United States being then and at all times herein mentioned and now the owner in fee of all of the lands of said reservation with the exception of such thereof as it has disposed of to white persons since the throwing open of said reservation as hereinafter described, by various statutes and various agreements with the Indians of said reservation, in order to further the civilization of said Indians and to carry out as to them its allotment policy concerning its Indian wards in general, which was adopted prior to the year 1887 and which is to induce the Indians, for their own welfare and for the

welfare of the United States, to abandon their tribal relations and their ancient habits and to take in severalty and to become the owners of and to work and develop separate tracts of land sufficient for their support and happiness in a civilized and prosperous station in life, provided for the allotment of lands in said reservation in severalty to each Indian thereof. In the years 1904 and 1905, said allotments were made and they ever since have remained, and are now, in full force and effect, except that in certain instances where the allotments originally made have turned out to be for some reason undesirable, new allotments of land theretofore unallotted have been made in lieu thereof, and similar lieu allotments probably will be made under like circumstances in the future. The lands so allotted to Indians as aforesaid were intended to be, and are, with minor exceptions, the best and most desirable lands upon what was the said reservation, and the lands thereof best adapted to irrigation from the various streams of said reservation along which they lie.

12. At about the time that the allotments on said reservation were made the United States, looking to the opening of certain of the reservation lands to settlement by white persons, set apart certain of the lands of said reservation at the head-waters of the streams thereof as forest reserve lands, so that, among other things, the water supply for said streams and for said Indians would be maintained, and the United States also set apart large tracts of said reservation lands to be held by the United States for the common use of said Indians for pasture lands, and reserved also certain tracts of land for Indian agency and school

purposes, and for reservoir sites and for other purposes, and thereafter provision was made for the throwing open to settlement by white persons of the rest of said lands and for the payment of the Indians therefor. It at all times has been and is the intention of the United States and of said Indians that only the lands and the water of said reservation that would not and will not be in any way needed for said allotments, pasture lands, Indian school and agency lands, or for any purpose or need of said Indians or of the United States, should or shall be subject to disposal in any way and that all the remainder of said lands and waters should and shall be reserved to and for said Indians and the United States.

13. The diversion and use of water for irrigation and other purposes upon said reservation prior to the making of said allotments was made by and through numerous ditches constructed by the United States and said Indians. Since the making of said allotments certain of said ditches have been and still are used for the irrigation of, and the supplying of water for domestic and other uses in connection with said allotments and other United States and Indian lands reserved for special purposes, and hereinabove stated, and certain other of said ditches have been superseded and their water is being carried by newer ditches and canals that have been constructed by the United States as hereinafter described. Said old ditches and canals are also hereinafter described and are referred to hereinafter as the "Old irrigation system."

During all of the period of arranging for the making of said allotments and the opening of said reservation

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to settlement as hereinafter mentioned, and for a long time prior thereto, the United States, in order more extensively than had already been done to irrigate with the waters of said reservation the said allotments and other lands reserved or to be reserved for Government or Indian purposes, planned and arranged for the building of a large irrigation system to supplement and in part supersede said old irrigation system, and in the month of July, 1905, the construction of the system so planned and hereafter more particularly described was begun, surveys therefor already having been made. The irrigation system so planned and begun is hereinafter called the new irrigation system.

14. By proclamation of the President of the United States, made on, to-wit: July 14, 1905, the lands of said reservation that were then unallotted and unreserved in any way were thrown open to settlement on, to-wit: August 28, 1905. On to-wit: June 21, 1906, a large sum of money was appropriated and provision for the further construction of said new irrigation system was made by Act of Congress of the United States.

15. Said old and new irrigation systems together consist of diversion dams, canals, ditches, drops, gates, measuring devices and other structures and divert and use the waters of many of the streams of what was the said reservation, and the same are designed to carry water to each Indian allotment lying thereunder, and to the lands reserved for Indian agencies and schools and other special purposes. Said new system has cost upwards of \$800,000 and the construction of all of its main features was completed in 1911. The construction of certain of the smaller main ditches and canals and of

certain of the lateral ditches belonging to said new system, has been continued since said last mentioned date and to some small extent has not yet been fully completed.

That part of said old and new irrigation systems which diverts water from the said Lake Fork River, consists of diversion dams, ditches, canals and other structures, and together with the lands irrigated and to be irrigated thereunder and thereby, and the water rights used and to be used in connection therewith, is more particularly described as follows:

PAYNE LATERAL DITCH: The head of said ditch is on the left bank of the Yellowstone River, which is a tributary of the Lake Fork River, at a point which bears approximately S. 39° 51' E. 2302 feet from the N.W. corner Sec. 21, T. 1 N., R. 4 W., U.S. B. & M. Said ditch was built by Dry Gulch Irrigation Company, one of the defendants herein, and its construction was completed by the first day of April, 1907, and the said ditch was thereafter enlarged by Farmers' Irrigation Company, also one of said defendants; and the United States has at all times since the construction of said ditch owned and now owns the right to divert from said Yellowstone River and carry through and by said ditch to the lands of the United States or said Indians lying under the same, so much of the water of said river to which they may be entitled, not exceeding, however, four second feet of water. Said ditch runs in a southeasterly direction, has a capacity of 115 second feet of water, including said 4 second feet reserve as aforesaid, covers and is designed to irrigate of the lands of the United States and said Indians 280 acres of which 80

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acres have been allotted to Indians as aforesaid. Of said 80 acres of land 20 acres have been cultivated and irrigated and have had crops raised thereon by irrigation with water from said river diverted and carried by said ditch. Of said 80 acres of land 30 acres from not later than the year 1890 until the present time, were and are now irrigated from said river by means of the Tooraroose ditch that was built and used by certain of the said Indians or the United States and is one of the ditches which constituted said old irrigation system above mentioned, and the use thereof will be discontinued and the point of diversion of the water now carried by said old ditch will be changed to said Payne Lateral Ditch.

LAKE FORK DITCH: The head of said ditch is on the left bank of the Lake Fork River at a point which bears approximately N. 26° 28' W. 2181 feet from the N¼ corner of Sec. 5, T. 1 S., R. 4 W., U.S. B. & M. Said ditch runs in a south-easterly direction, has a capacity of 163 second feet of water, covers and is designed to irrigate 11,280 acres of land, of which all, or 11,280 acres, have been allotted to Indians as aforesaid. Of said 11,280 acres of land not less than 4,671 acres already have been cultivated and irrigated and have had crops raised thereon by irrigation with water from said river diverted and carried by said ditch. From not later than about the year 1890, not less than 30 acres of land now under said Lake Fork Ditch, but not included in said allotted lands thereunder, was cultivated and was irrigated by one of said Indians from said river by means of a certain ditch that was built and used by said Indian or the United States, and from not later than about the year 1890 not less than

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15 acres of land now under said Lake Fork Ditch, but not included in said allotted lands thereunder, was cultivated and was irrigated by one of said Indians from said river by means of a certain ditch that was built and used by said Indian or the United States. Said two ditches last named were two of the ditches that constituted said old irrigation system and their use was discontinued about the time of the construction of said Lake Fork Ditch and the points of diversion of the water theretofore carried by said two ditches were then changed to said Lake Fork Ditch and said water ever since has been diverted and carried by said last named ditch and used upon allotted lands thereunder.

RED CAP DITCH: The head of said ditch is on the right bank of the Lake Fork River at a point which bears approximately N. 10° 20' E., 416 feet from the N¼ corner of Sec. 4, T. 3 S., R. 3 W., U.S. B. & M. Said ditch runs in a south-westerly direction, has a capacity of 110 second feet of water, covers and is designed to irrigate 10,000 acres of land, of which all, or 10,000 acres, have been allotted to Indians as aforesaid. Of said 10,000 acres of land, 2,962 acres already have been cultivated and irrigated and have had crops raised thereon by irrigation with water from said river diverted and carried by said ditch. Of said 2,962 acres of land, not less than 55 acres was from not later than the year 1896 until the construction of said Red Cap Ditch irrigated from said river by means of a ditch that was built and used by certain of said Indians or the United States. Said last named ditch was discontinued upon the construction of said Red Cap Ditch and the point of diversion of the water theretofore carried by said old ditch was then changed to said Red Cap Ditch

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and said water ever since has been diverted and carried by said last named ditch.

DRY GULCH DITCH: The head of said ditch is on the left bank of the Lake Fork River at a point which bears approximately N. 48° 10' E. 1872 feet from the SW corner of Sec. 12, T. 3 S., R. 3 W., U.S. B. & M. Said ditch runs in a south-easterly direction, has a capacity of 110 second feet of water, covers and is designed to irrigate 8,360 acres of land, of which all, or 8,360 acres, have been allotted to Indians as aforesaid. Of said 8,360 acres of land, 1,120 acres already have been cultivated and irrigated and have had crops raised thereon by irrigation with water from said river diverted and carried by said ditch.

16. The said Lake Fork River at various places throughout its course above the point of diversion and of the said Dry Gulch Ditch, divides into, and flows in, two or more channels and then lower down unites in one channel. Whenever the said ditches of the United States divert from said river at a point where all of the water thereof is not flowing in one channel, said ditches divert in such instance from the main channel of said river and in all such instances the United States, in order to insure there being sufficient water in said main channels to fully supply the said ditches, has, from the time of the first construction thereof, until the present, and it is its intention so to do in the future, by dams at the points where the said side or secondary channels divert from the said main channels of said river above said ditches and each of them, caused to flow in said main channels whenever there is need so much of the water that would otherwise flow in said

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side or secondary channels as is, has been, or may be, necessary there to flow to fully supply its said ditches and each of them.

17. Applications to the State Engineer of the State of Utah, in accordance with the laws of said State, were duly made by C. G. Hall, the then acting agent of the said reservation on behalf of the Indians of said reservation and of the United States to appropriate from the Lake Fork River and its branches and tributaries for use by and through certain of said ditches the respective quantities of water hereinafter set opposite the names of the said ditches and said applications were made and filed respectively as follows, to-wit:

<u>NAME OF DITCH.</u>	<u>APPLICATIONS FILED.</u>	<u>SECOND FEET OF WATER.</u>
Lake Fork	June 12, and July 5, 1905	163
Red Cap	June 16, 1905	110
Dry Gulch	June 13, June 27 and July 10, 1905	110

All of the acts and things required by the laws of the State of Utah to be done to make an appropriation of water have been duly and fully done by the United States and by the proper officials of the State of Utah under and with respect to said application and each of them to make appropriations of the full amount of water applied for with respect to each of said ditches, except that the United States has not yet applied all of said water to a beneficial use. The said State Engineer

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has, in accordance with the laws of the State, by orders made from time to time, duly fixed as the time for the completion of the application of the water to be diverted by said respective ditches to a beneficial use, 14 years from the respective dates of filing of said applications as aforesaid.

The United States, in order to comply with and conform to the said State law and in order to bring into full use said irrigation systems and in order to develop set allotments as soon as possible, has, through its officials and agents, endeavored, and is endeavoring, to put into cultivation and under irrigation all of the allotments and the other lands it intends to irrigate under the said ditches hereinabove just mentioned, and the allotments and other lands under the said Payne Lateral Ditch, as soon as possible, and especially within the time fixed as aforesaid for the completion of the application of the waters of the said ditches to a beneficial use.

18. The Indians who are the allottees of the said allotments, and the other Indians who reside upon the lands that were contained in said reservation at all times have retained and still retained their tribal relations and at all times have been and still are in a state of pupilage and the United States at all times has acted and still acts as their guardian, and in discharging its duty as such guardian, it maintains for said Indians an agent, under whose charge they are, and maintains farmers to teach and assist them in their agricultural work, and physicians to keep them in health and schools for the education of their children, and in all respects seeks to promote their welfare as a

dependent people and to lead them to civilization and independence.

In order to accomplish its purpose as aforesaid of civilizing said Indians, and as a part of its general plan to that end hereinabove described, the United States, through its agents in that regard, has endeavored, and is now endeavoring, to have the preparation of the said allotments for irrigation and the irrigation of the same and the application of said waters to the beneficial use of accomplishing said irrigation made as far as possible by the said Indians themselves, but they have as yet become only imperfect farmers and workmen and are therefore unequal to the task of reducing to cultivation and irrigation more than a small part of said allotments within the time so fixed, on which account the United States, through its agents as aforesaid, is endeavoring to have that part of said work which they cannot perform, which is a greater part thereof, done by leasing, with the Indians' consent in each case, said allotments and parts of allotments that need to be put into condition for irrigation, to white men who will obligate themselves to clear said land and put it under irrigation. Such leases, involving in the aggregate 12,882 acres of said allotted land under said ditches that take water from the Lake Fork River, have already been made.

Certain of the said Indians who were allotted lands as above described have died and in many instances when that has been the case, the Secretary of the Interior has, at the request of the heirs so to do, made sales of said lands to white men, and in each such instance he has intended thereby to transfer to said

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grantees, together with said lands, such water rights and only such as could be beneficially used upon the lands purchased and as were appurtenant to said lands while held by the deceased Indian allottees and their heirs. The purchasers of said lands are clearing the same and endeavoring to apply to such parts thereof, as are susceptible of irrigation, water from said Government and Indian ditches for that purpose, and are endeavoring to do so within the limit of time fixed as aforesaid. The number of acres of allotments so sold under the aforesaid ditches is as follows for each ditch:

<u>NAME OF DITCH.</u>	<u>NUMBER OF ACRES.</u>
Payne Lateral	0
Lake Fork	1,880
Red Cap	2,180
Dry Gulch	1,240

19. The number of acres of land already irrigated by and through said Government and Indian ditches, and the number of acres of said land that it is estimated by the officers and agents of the United States will be ready for irrigation and will need irrigation on or before the 15th day of August, 1916, and the whole number of acres of said land that the United States now intends by itself, or through said Indians or through said lessees as aforesaid, or otherwise, to put under irrigation ultimately and within the time set as aforesaid, are for said ditches taking from the Lake Fork River, respectively as follows, to-wit:

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<u>NAME OF DITCH.</u>	<u>LAND IRRIGATED.</u>	<u>LAND READY AUG. 15, 1916.</u>	<u>TOTAL CONTEMPORATED.</u>
(Tooraroose (Payne Lateral	30 acres 20 "	30 acres) 20 ")	280 acres
Lake Fork	4,671 "	4,671 "	11,280 "
Red Cap	2,962 "	2,962 "	10,000 "
Dry Gulch	1,120 "	1,120 "	8,360 "

20. The lessees of the allotments aforesaid and the said Indian allottees are, for the most part, poor men and their farming of the said allotments in the future and the farming of said allotments by other lessees, and by Indians who as yet have not been induced to farm their allotments, and the success of the endeavors of the United States, through its agents, to apply said waters to a beneficial use within the time set as aforesaid, or at all, are to a large extent dependent upon there being an abundant supply of water in the Lake Fork River at the heads of said Government and Indian ditches during the irrigation season of each year, that the same may be diverted by them to said lands, and a failure of the supply of said water at said points, or at any of them, would cause the loss of valuable crops and great and irreparable damage to said Indians, said lessees and the United States.

21. There has been beneficially used upon such of the lands lying under the said Government and said

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Indian ditches as have been irrigated since they were first put under irrigation, and there is needed and at all times has been needed for use upon said lands, and there is needed for use upon all of the irrigable portions of the rest of the lands lying under said ditches, as fast as they are made ready for irrigation, for the proper irrigation thereof and the raising of crops thereon, and for domestic uses upon said lands, and for carrying out the policy and duty of the United States with regard to said Indians as aforesaid, of the waters of said river, diverted and to be diverted by said ditches throughout the irrigation season of each year, one cubic foot of water per second for each seventy acres of said lands.

22. The said United States, in and by its treaties and agreements with said Indians, as aforesaid, by creating said Uintah Reservation and by all of the acts and things hereinabove set forth, did confirm in said Indians and reserve to them and to itself for the purpose aforesaid, and did appropriate to them and to itself, and did withhold from appropriation by others, of the waters of the said Lake Fork River, to be taken therefrom by said above described ditches and used by the United States and said Indians and said lessees and grantees thereof for the irrigation of the lands hereinabove described, and for all other proper purposes, with a priority the first in said river and antedating the establishment of said reservation as aforesaid, for each of said ditches, as follows:

<u>NAME OF DITCH.</u>	<u>SECOND FEET.</u>
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Payne Lateral and Tooraroose	4
Lake Fork	162
Red Cap	143
Dry Gulch	120

Of said several quantities of water, there is needed by the said Government and Indian lands under said ditches, for the proper irrigation thereof, and there will be needed by said lands for said purposes by the fifteenth day of August, 1916, quantities of water to be taken from said river by each of said ditches, as follows:

<u>NAME OF DITCH.</u>	<u>SECOND FEET NOW NEEDED.</u>	<u>SECOND FEET NEEDED AUG. 15, 1916.</u>
Tooraroose 3/7) Payne Lateral 2/7) 5/7	1	1
Lane Fork	67	67
Red Cap	43	43
Dry Gulch	16	16

23. Each of the defendants herein is, or claims to be, the owner or a part owner of one or more of certain ditches and canals that take water for irrigation purposes from the Lake Fork River at points above one or more of the points of diversion of the above described

Government and Indian ditches, or has, or claims to have, the right to divert from said river by and carry through one or more of said ditches, or by and through one or more of said Government and Indian ditches, water appropriated by him independently of the United States and said Indians, and each of said defendants is, either by himself or together with his co-owners or co-claimants, in control or in part control of one or more of said non-Government ditches or canals or in control or in part control of the right to divert and carry water through one or more of said Government ditches as aforesaid. Whatever water rights belong to or are attached to or are carried by said non-Government ditches, or are carried by said Government ditches by virtue of appropriations not made by or on behalf of the United States or said Indians, are and at all times have been junior and inferior to all of the water rights of the United States and said Indians as above set forth and each and every one of the water rights of the said defendants and of the said non-Government ditches was initiated under, and is based upon, an application to the State Engineer of the State of Utah to appropriate water under the laws of the State of Utah, or was attempted to be initiated under and is based upon the actual diversion or use of water, or upon no other right or title whatsoever, and each and every one of said applications, was filed with the said State Engineer later than the tenth day of July, 1905. No diversion or use of water was made from the said Lake Fork River or its tributaries, or any of them, by said defendants or any of them, or by their said ditches or any of them, prior to the first day of April, 1906.

The water supply of this said Lake Fork River, except when said river is at stages of high flow, is and at all times has been insufficient to supply the needs of the United States and said Indians for the irrigation of the irrigated lands lying under its and their said ditches above described that are and have been ready for irrigation and which the United States and said Indians desire to, and have desired to, irrigate through said ditches and at the same time to supply the claimed needs of the said defendants and their said ditches. The United States and said Indians are, as above set forth, engaged in rapidly putting a great area of new land in cultivation and in getting the same ready for irrigation under its and their said ditches, and many of the said defendants are doing likewise with the consequence that the waters of said river, unless conserved by storage, will become progressively less able to supply the needs of the United States and of said Indians and the claimed needs of said defendants. The said defendants and each of them frequently, in the past, without the license or permission of the United States, or of said Indians, and unlawfully and without right, and against the protest and objection of the officers and agents of the United States, have taken large quantities of water from the said river that were needed by the United States and said Indians for use upon and for the irrigation of its and their said lands that were in great need of irrigation and which water of right belonged to the United States and said Indians and should have been allowed to remain inside river and flow down to the ditches of the United States and said Indians above described, and the defendants have thereby caused the United States and said Indians to suffer the damage of and to lose large and valuable

agricultural crops, and thereby and by interfering with the plans of the United States for the putting in cultivation and under irrigation of said allotments for the purpose of carrying out its policy with regard to said Indians as herein described, have caused the United States and said Indians great and irreparable damage and injury. The said defendants, unless restrained by the order of this honorable court, will continue so to take said water and to cause said injury, and said injury, on account of the progressively larger amount of land needing irrigation, as aforesaid, will in the future be progressively greater.

The said Indians, on account of their lack of development in civilization, and their dependent condition, are unable to cope with white men in the scramble for water, and are without those resources of self help in the protection of their rights enjoyed by white men generally and by these defendants, and, unless their rights in and to the waters of said river are protected from the acts of said defendants as aforesaid by the injunction of this court, the said Indians will become discouraged in their efforts to become farmers and will desist therefrom and the task of the United States to bring them to habits of industry and thrift and civilize them, will be made more difficult than it otherwise would be. And also, without the relief herein prayed for, the efforts of the United States, through its agents and by the means adopted as aforesaid to bring the said allotments under cultivation and irrigation, and to apply the waters of said river owned by the United States and said Indians and all of it to such beneficial use within the time limited as aforesaid, will

fail. The United States is without an adequate remedy at law in the premises.

WHEREFORE, the United States prays:

1. For the decree of this Court establishing and declaring the rights of the United States and of said Indians to the waters of the Lake Fork River to be used in and through said ditches of the United States, as hereinabove set forth, for irrigation and domestic and other proper uses during the irrigation season of each year, and that the same are prior, senior and superior to any and all rights of the said defendants or any of them or of their ditches or any of them, and that the said rights of the United States and of said Indians are of first and immemorial priority.

2. That the defendants and each of them, their officers, agents and attorneys and employes, and all persons setting by, through or under them or any of them, be perpetually enjoined and restrained from diverting the waters of the Lake Fork River, its sources or tributaries or of any of them, to the injury of said rights or any of them, and from interfering in any manner with the water of said river appertaining thereto.

3. That immediately, and pending the determination of this cause, there issue from this Court a temporary injunction, enjoining said defendants and each of them, their officers, agents and attorneys and employes, and all persons acting by, through or under them or any of them, from diverting the waters of the Lake Fork River, its sources or tributaries or any of them to the injury of said rights or any of them, and

from interfering in any manner with the water of said river appertaining thereto, and also from in any way interfering with the flow of the water in said river so that at the heads of the said ditches belonging to the United States and said Indians, there will be at all times during the irrigation season of 1916 at least the following quantities of water available for the use of the United States and said Indians through their said ditches respectively as follows, to-wit: For the said Tooraroose and Payne Lateral Ditches, 1 cubic foot of water per second; for the said Lake Fork Ditch 67 cubic feet of water per second; for the said Red Cap Ditch 43 cubic feet of water per second; and for the said Dry Gulch Ditch 16 cubic feet of water per second.

And if and to the extent that the United States or said Indians shall increase the acreage of land under said respective ditches needing water for irrigation during the year 1916 over and above the quantities of land hereinabove stated as already irrigated, that said defendants and each of them, their officers, agents and attorneys and employes, and all persons acting by, through or under them or any of them, be also restrained from interfering with the flow of water in said river in the respective amounts of water, over and above those just above stated as already needed, in the proportion of one second foot of water to each 70 acres of additional land so needing irrigation.

5. That, if it shall seem meet to the Court upon final decree herein, or upon the granting of the temporary injunction order herein prayed for, if the same shall be granted, the Court appoint a commissioner or other officer of this Court, together with such assistants as

he may need, to carry out the orders and decrees of this Court herein and distribute the waters of said Lake Fork River, and of its sources and tributaries between the ditches on said river in accordance with the respective needs of the parties to this action, and in the order of their priorities.

6. And for such other and further relief as to the Court may seem meet in the premises, and for costs.

/s/ William W. Ray
United States Attorney.

/s/ John F. Truesdell
Special Assistant to the
Attorney General.

Attorneys for the Plaintiff.

APPENDIX B

**IN THE DISTRICT COURT OF THE UNITED
STATES, IN AND FOR THE DISTRICT OF
UTAH**

IN EQUITY

DOCKET No. 4427

[Filed: March 16, 1923]

THE UNITED STATES OF AMERICA, and ALBERT
D. FALL, Secretary of the Interior, as Trustees of the
Indians of the former Uintah and Ouray Indian
Reservation,

Plaintiffs

vs.

CEDARVIEW IRRIGATION COMPANY, COLORADO
PARK IRRIGATION COMPANY, DRY GULCH
IRRIGATION COMPANY, T. N. DODD IRRIGATION
COMPANY, OURAY VALLEY IRRIGATION
COMPANY, UINTAH INDEPENDENT DITCH
COMPANY, UINTAH RIVER IRRIGATION
COMPANY, and WHITEROCKS IRRIGATION
COMPANY, each and all of the foregoing being
corporations; GEORGE Q. ALLRED, GEORGE
AVERITT, ERASTUS S. BASTIAN, JOHN BENNETT,
RAYMOND T. BONNIN, JOHN BURGESS, WILLIAM
CHICHAS, VERNON COLLINS, HUGH COLTHARP,

W. HORACE COLTHARP, JOHN W. COOK, THOMAS DURIGAN, CHARLES ELMER, DAVID ELMER, MARY A. ELMER, RUSSELL FORSYTHE, LOU FRAUGHTON, THOMAS S. GUNN, HYRUM GURR, JOHN HALL, HAROLD F. HALL, JOSEPH H. HARDY, BERTHA E. HUGHEL, CHARLES HUTCHEON, WILLIAM KEEL, DANIEL LARSEN, HENRY B. LLOYD, RALPH MARIMON, ROBERT L. MARIMON, JOHN J. NIELSON, EDWARD L. OAKS, HYRUM E. OAKS, CHARLES R. OAKEY, JOHN H. O'DRISCOLL, LESLIE O'DRISCOLL, HENRY P. OLSEN, JOHN A. OLSEN, CULBERT L. OLSON, GEORGE S. PACE, FRANK PETERSON, SAMUEL H. PULLEN, ALBERT RASMUSSEN, ADOLPHUS SESSIONS, NEWTON SHELTON, EDWARD C. SIMS, BARBRIA E. SMITHSON, GEORGE THOMAS AND ISAAC N. WORKMAN,

defendants.

D E C R E E _

This cause having come on to be heard at this term upon the complaint of the plaintiffs, the defaults and answers of the defendants, and the stipulations herein between the plaintiffs and certain of the defendants, and thereupon, upon consideration thereof, it is ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. The plaintiffs, the United States, and the Secretary of the Interior as Trustees of the Indians on the former Uintah and Ouray Indian Reservation, and also the owners by grant of the allotments of deceased Indians on said Reservation, as against the Cedarview

Irrigation Company, Colorado Park Irrigation Company, Dry Gulch Irrigation Comapny, T. N. Dodd Irrigation Company, Ouray Valley Irrigation Company, Uintah Independent Ditch Company, Unitah River Irrigation Company and Whiterocks Irrigation Company, each and all of the foregoing being corporations: George Q. Allred, George Averitt, Erastus S. Bastian, John Bennett, Raymond T. Bonnin, John Burgess, William Chichas, Vernon Collins, Hugh Coltharp, W. Horace Coltharp, John W. Cook, Thomas Durigan, Charles Elmer, David Elmer, Mary A. Elmer, Russell Fosythe, Lou Fraughton, Thomas S. Gunn, Hyrum Gurr, John Hall, Harold F. Hall, Joseph H. Hardy, Bertha E. Hughel, Charles Hutcheon, William Keel, Daniel Larsen, Henry B. Lloyd, Ralph Marimon, Robert L. Marimon, John G. Nielson, Edward L. Oaks, Hyrum E. Oaks, Charles R. Oakey, John H. O'Driscoll, Leslie O'Driscoll, Henry P. Olsen, John A. Olsen, Culbert L. Olson, George S. Pace, Frank Peterson, Samuel H. Pullen, Albert Rasmussen, Adolphus Sessions, Newton Shelton, Edward O. Sims, Barbria E. Smithson, George Thomas and Isaac N. Workman, defendants herein, or any of them, and as against any demand or use whatever of them, or any of them, or any diversion or use of water by or through the ditches belonging to them or any of them, have the first and an exclusive right under a priority that antedates the third day of October, 1881, at all times to divert from the Uintah River and its tributaries by certain ditches and canols water in certain quantities at certain times and under certain conditions for the irrigation of certain lands and for certain domestic, culinary and stock-raising uses— all as described and fixed by the following schedule and other parts of this decree.

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Name of Ditch or Canal	Acres Irrigated Under Each Ditch	Water permitted to divert each season in Acre Feet	Water permitted to divert each season in second feet
Uintah Canal) Canal No. 1)	9374.62	28123.86	133.9
Harmes	827.88	2483.64	11.83
Bench	6836.85	20510.55	97.67
Bench	Town of Ft. Duchesne		.85
Henry Jim	1612.4	4837.2	23.03
Henry Jim	Town of Randlett		1.50
Ft. Duchesne	533.01	1600.83	7.62
Wissiuip	325.70	977.10	4.65
A (Martha Washington)	73.47	220.41	1.05
B. (Meadows)	180.2	540.60	2.57
C (Princess Pat)	82.70	248.10	1.18
D (New)	185.80	557.4	2.66
Whiterocks	4454.47	13363.41	63.63
Farm Creek	1590.35	4631.05	22.15
School Ditch No.1)	365.88	1097.64	5.23

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School D. "2	12.60	37.80	.18
Springs	80.00	240.00	1.14
Deep Creek	6895.52	20686.56	98.51
Colorado Park	425.14	1275.42	6.07
Big Six	244.70	734.10	3.50
Daniels	151.00	453.00	2.15
Duncan	115.90	347.70	1.66
Farm Creek	135.84	407.52	1.94
Proper			
Tabby White	235.46	706.38	3.36
Whiterocks School)			
Pipe Line)Domestic, Etc.		.85
Totals	34700.09	104100.27	498.88

The said 34,700.09 acres of land to be irrigated and the other uses under said ditches and canals are as more particularly described in the final certificates of appropriation for the several said named ditches and canals as the same may appear upon the records of the office of the State Engineer of the State of Utah, and which are numbered to wit: 1172, 1173, 1174, 1176, 1177, 1208, 1211, 1212, 1219, 1223, 1224, 1232, 1233, 1234, 1325, and the final certificate yet to be issued under plaintiff's filing No. 357.

The location of the head or intake of each of the said ditches or canals is as follows:

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The head of the Uintah canal is on the right bank of the Uintah River and bears N. 76–8' E. 574 ft. from the quarter corner common to secs. 9 and 10, Twp. 1 N R 1 W., U.S.M.

The head of Canal No. 1 is on the right bank of the Uintah River and bears S 76–30'E 700 ft. from the northwest corner of Sec. 25, Twp. 1 N R 1 W U.S.M.

The head of the Harmes Canal is on the left bank of the Uintah River and bears N 46–32'W 3000 ft. from the center 1/16 corner of SE^{1/4} of Sec. 6, Twp. 1 S. R 1 E. U.S.M.;

The head of the Bench Canal is on the right bank of the Uintah River and bears N 29–10'W 637 ft. from the East quarter corner of Section 18, Twp. 1 S. R. 1 E. U.S.M.;

The head of Henry Jim Canal is on the left bank of the Uintah River and bears N 47–13'W 591 ft. from the North quarter corner of Sec. 35, T 2 S R 1 E U.S.M.;

The head of the Ft. Duchesne Canal is on the right bank of the Uintah River and bears S 70–7'E. 1553 ft. from the West quarter corner of Sec. 35, T 2 S., R. 1 E. U.S.M.;

The head of the Wissiup Canal is the same as the Henry Jim and is located on the left bank of the Uintah River and bears S 77–57'W 1207 ft. from the North 1/16 corner of the SW^{1/4} of Sec. 35 Tp. 3 S., R. 2 E. U.S.M.;

The head of Ditch A is on the left bank of the Uintah River and bears N 53–5'W 1616 ft from the South quarter corner of Sec. 31, Tp. 1 N. R 1 E U.S.M.;

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The head of Ditch B is on the left bank of the Uintah River and bears N 28–17'W 1825 ft. from the North 1/16 corner of SE $\frac{1}{4}$ Sec. 7 Tp. 1 S R 1 E U.S.M.;

The head of Ditch C is on the right bank of the Uintah River and bears S 5–10'W 1575 ft. from the North 1/16 corner of SE $\frac{1}{4}$ Sec. 7 Tp 1 S. R 1 E U.S.M.

The head of Ditch D is on the right bank of the Uintah River and bears S 0–5'E 730 ft. from the north quarter corner of Sec. 7 Tp. 1 S R 1 E U.S.M.;

The head of the Whiterocks Canal is on the left Bank of Whiterocks River, a tributary of the Uintah River, and bears N 64–54'W. 2526 ft. from the east 1/16 corner of the SE $\frac{1}{4}$ Sec. 19, Tp 2 N R 1 E U.S.M.;

The head of the Farm Creek Canal is on the right bank of the Whiterocks River, a tributary of the Uintah River, and bears N 48–8'E 921 ft. from the north quarter corner of Sec. 30 Tp 2 N R 1 E U.S.M.;

The head of the school Ditch No. 1 is on the right bank of the Whiterocks River, a tributary of the Uintah River, and bears N 38–30'E 2335 ft. from the west 1/16 corner of the SW $\frac{1}{4}$ Sec. 18 T 1 N R 1 E U.S.M.;

The head of School Ditch No. 2 is on the left bank of the Whiterocks River, a tributary of the Uintah River, and bears N 16–18'E 1485 ft from the south 1/16 corner of the SW $\frac{1}{4}$ Sec 18 T 1 N R 1 E U.S.M.;

The heads of the Spring ditches are in Secs. 4 & 5 Tp. 1 S., R. 1 E. U.S.M.;

The head of the Deep Creek Canal is on the left bank of the Whiterocks River, a tributary of the Uintah

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River, and bears N 78–8'W 1550 ft. from the center 1/16 corner of the NE¼ Sec 5 Tp 1 S., R 1 E. U.S.M.;

The head of the Colorado Park Canal is on the left bank of the Uintah River and bears N 78–57'W 2250 ft. from the south quarter corner of Sec. 26, Tp 1 S R 1 E U.S.M.;

The head of the Bix Six Canal is on the right bank of the Uintah River and bears N. 57–52'E 1417 ft. from the southwest corner of Sec. 31 Tp 1 N R 1 E U.S.M.

The head of the Daniels Ditch is on the right bank of the Uintah River and bears N 50–18'W 731 ft from the east 1/16 corner of the SW¼ Sec 22 Tp 1 S R 1 E U.S.M.;

The head of the Duncan ditch is on the right bank of the Whiterocks River, a tributary of the Uintah River, and bears N 23–13'E 5500 ft. from the southwest corner of Sec. 7, Tp 1 N R 1 E U.S.M.;

The three heads of the Farm Creek Proper ditches diverting water from Farm Creek, a tributary of the Uintah River, are in Sec. 23, T 2 N., R 1 W. U.S.M.;

The head of the Tabby White ditch is on the left bank of the Uintah River and bears N 68–33'W 1195 ft. from the south 1/16 corner of the SW¼ Sec. 26, Tp 1 S R 1 E U.S.M.1

The head of the Whiterocks School Pipe Line is on the right bank of the Whiterocks River, a tributary of the Uintah River, in Sec. 18, Tp. 1 N R 1 E U.S.M.;

2. The water permitted to be diverted by said ditches and canals for irrigation shall be diverted only

during the irrigation season of each year, and said season shall not begin before the first day of March or end later than the first day of November; but water may be diverted for domestic, culinary and stock-watering purposes throughout the entire year.

3. The number of acre feet of water permitted to be diverted by each of the ditches and canals above listed, on account of the rights determined in this decree as shown in paragraph one hereof, is the amount of water which may be diverted for irrigation by each of said ditches during the said irrigation season, and in no case shall said amount be exceeded; and the number of second feet of water permitted to be diverted by each of said ditches and canals on account of said rights as shown in said paragraph one shall be the maximum amount of water each of said ditches may divert at any time on account of said rights.

4. No water shall be diverted by said ditches and canals or any of them for irrigation purposes except that which is needed for economical and beneficial use in the irrigation of crops, and no water shall be diverted for other purposes except as hereinabove in paragraph two allowed, and only such quantities thereof shall be diverted as shall be needed for economical use for said purposes. Said diversions for domestic, culinary and stock-watering uses shall be permitted as needed throughout the year.

5. The defendants herein all divert water from the Uintah River or from one or more of its tributaries, or from supporting waters of said streams through the ditches which they respectively claim to own.

6. The said defendants and their agents and employees, officers, successors, and assigns, and all persons diverting or using water through or under their ditches or any of them, they and each of them, are hereby perpetually enjoined from in any way hindering, preventing or interfering with the diversions or uses of the waters of said river herein decreed to the plaintiffs, or their assigns.

7. For the protection of the water rights herein decreed, a Water Commissioner shall be appointed from time to time, and assistants shall be given him if necessary, and his and their compensation shall be fixed and allowed, and arrangements for the payment thereof by those who benefit thereby, parties hereunto, shall be made, and said Water Commissioner shall be further directed as to his duties, all by separate orders of this Court.

8. In order further to protect the prior rights of the plaintiffs herein decreed, and to do so in the way best suited to conserve the rights and interests of the defendants, who are all junior appropriators, collectively as against the plaintiff, and as against each other, and to insure the most economical use of the waters of said stream, the Water Commissioner shall not only see that the priorities of the plaintiffs are satisfied, but shall also distribute the waters of the stream among the various defendants according to their priorities and rights as they may be ascertained from time to time by agreement between said parties or in some other proper manner. The rights and priorities of said defendants as against the plaintiffs or as among themselves are founded upon appropriations of water

by application to the State Engineer of the State of Utah and are subject to their exercise and are conditioned upon compliance with the provisions of the laws of the State of Utah relating to the appropriation of water and such rights and priorities are not hereby determined, except that they are all junior to those of the plaintiffs herein decreed, and except further that it is hereby decreed that said defendants shall be permitted to divert from said streams during the irrigation season of each year for direct irrigation, which shall not begin before the first day of March or end later than the first day of November, three acre feet of water for each acre of land irrigated and no more, and shall at no time divert more than one seventieth of a second foot of water for each said acre, and that no water shall be diverted for irrigation except that which is needed for economical and beneficial use in irrigating crops. Water may be diverted for domestic, culinary and stock-watering purposes during the entire year. No water shall be diverted for any purpose in excess of that actually needed for such purpose.

9. This decree determines the rights of the plaintiffs to divert water from the Uintah River and its tributaries as against the defendants but it does not determine any rights the plaintiffs or the defendants may have to the waters of the Duchesne River or any stream or streams into which the waters of said Duchesne River flow either mediately or immediately. This decree furthermore does not determine the right, if any, that the purchaser of any allotment of an Indian, who made such purchase prior to the entry hereof, may have to irrigate a greater acreage than that allowed by this decree.

10. Jurisdiction of this cause is retrained to enable this court, for good cause and as occasion may require, to administer this decree through a Water Commissioner or otherwise; to alter any administrative provisions hereof, and to make other necessary changes herein except to increase the total seasonal amount of water that may be diverted or to change the priority herein fixed or to increase the acreage which may be irrigated under said priority.

11. That each party hereto bear ins own costs incurred herein.

Done in open Court this 16th day of March, A. D. 1923.

Tillman D. Johnson,

JUDGE

Filed in the United States District
Court, District of Utah, March
16, 1923.

John W. Christy, Clerk.

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APPENDIX C

See Fold Out Exhibit for page 1

UNITED STATES DISTRICT COURT, DISTRICT OF UTAH

Central Division Suit over water on Injunction - No.

United States of America et al. v.s. Cedarview Irrigation Company et al. No. 4427 W W Ray & D S Cooks. EQUITY

Attor.
Attor.

July 17	1916	Complaint in Equity filed, 10 affidavits filed for temporary restraining order. Motion for Writ of Injunction filed. Order for hearing of Writ fixed for 10:30 A.M. July 26th. Praecipes for subpoenas of defendants filed. Issued original & copies subp.
"	26	" Mo. to dismiss & demurrer to bill filed by depts. Depts file two affidavits vs order to show cause. U.S. atty files 6 affidavits. Order of Court overruling demurrer, denying motion, ordering injunction, and appointing commissioners to measure & distribute water. E.S. Borquist
"	27	Filed return subpoena in equity served. " " order to show cause served.
Aug. 15		Deposit of Cedarview Irrigation Co. et al to cost fund.
Mich 8	1917	Motion of U.S. Attorney to appoint Water Commissioner - filed
"	24	" Set on motion Wm W. Ray, Wedgewood and Farnsworth consented for hearing to appoint Water Commissioner on April 6, 1917.
April 2	"	Order signed and filed appointing E.S. Borquist Water Commissioner and fixing duties and pay.
Oct 1	1918	Stipulation to continue for term - Order continuing same

~~76678~~
60542

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**IN THE DISTRICT COURT OF THE UNITED STATES
IN AND FOR THE DISTRICT OF UTAH
IN EQUITY.
DOCKET NO. 4427**

[Filed July 17, 1916]

THE UNITED STATES OF AMERICA, and
FRANKLIN K. LANE, Secretary of the Interior, as
Trustee of the Indians of the former Uintah and Ouray
Indian Reservation,

Plaintiffs,

v.

CEDARVIEW IRRIGATION COMPANY, COLORADO
PARK IRRIGATION COMPANY, DRY GULCH
IRRIGATION COMPANY, T. N. DODD IRRIGATION
COMPANY, OURAY VALLEY IRRIGATION
COMPANY, UINTAH INDEPENDENT DITCH
COMPANY, UINTAH RIVER IRRIGATION
COMPANY and WHITEROCKS IRRIGATION
COMPANY, each and all of the foregoing being
corporations; GEORGE Q. ALLRED, TILDEN H.
ANDERSON, GEORGE AVERITT, JACOB BADER,
ERASTUS S. BASTIAN, JOHN BENNETT, HENRY O.
BEST, RAYMOND T. BONNIN, JOHN BURGESS,
SAMUEL BARNHURST, JOHN T. CARLSON, JOHN
CHASE, WILLIAM CHICHAS, VERNON COLLINS,
HUGH COLTHARP, W. HORACE COLTHARP, JOHN
W. COOK, JOSEPH B. DOBSON, THOMAS
DURIGAN, GEORGE B. ELDER, CHARLES ELMER,
DAVID ELMER, MARY A. ELMER, BYRDIE D.
FESLER, MARGARET A. FIELD, RUSSELL

FORSYTHE, LOU FRAUGHTON, JOHN F. GLINES, THOMAS S. GUNN, HYRUM GURR, JOHN HALL, STEPHEN HALL, JOSEPH H. HARDY, WILLIAM R. HILL, BERTHA E. HUGHEL, CHARLES HUTCHEON, NICK JERFROS, L. O. JOHNSON, WILLIAM KEEL, CHARLES F. KEIL, DANIEL LARSEN, HENRY A. LEE, RACHEL E. LEE, HENRY B. LLOYD, RALPH MARIMON, ROBERT L. MARIMON, JOHN J. NIELSON, EDWARD L. OAKS, HYRUM E. OAKS, CHARLES R. OAKEY, JOHN H. O'DRISCOLL, LESLIE O'DRISCOLL, HENRY P. OLSEN, JOHN A. OLSEN, CULBERT L. OLSON, GEORGE S. PACE, ODIS PAPPAS, DAVID J. PETERSON, FRANK PETERSON, JAMES H. PETERSON, SAMUEL H. PULLEN, ALBERT RASMUSSEN, ADOLPHUS SESSIONS, NEWTON SHELTON, EDWARD C. SIMS, JOSEPH SIMS, BARBRIA E. SMITHSON, OLIVER B. STOUT, GEORGE THOMAS and ISAAC H. WORKMAN,
Defendants.

BILL OF COMPLAINT.

THE UNITED STATES OF AMERICA and Franklin K. Lane, Secretary of the Interior, as Trustee of the Indians of the former Uintah and Ouray Indian Reservation, by W. W. Ray, United States Attorney for the District of Utah, and John F. Truesdell, Special Assistant to the Attorney General, acting by the direction and authority of the Attorney General, bring this their Bill of Complaint against Cedarview Irrigation Company (Cedarview Ditch); Colorado Park Irrigation Company (Colorado Park Ditch); Dry Gulch Irrigation Company (Bench Ditch, Canal Number One,

and Uintah Ditch); T. N. Dodd Irrigation Company (Bonnin Ditch); Ouray Valley Irrigation Company (Whiterocks Irrigation Company's Ditch); Uintah Independent Ditch Company (Uintah Independent Ditch); Uintah River Irrigation Company (Uintah River Ditch); Whiterocks Irrigation Company (Whiterocks Irrigation Company's Ditch); each and all of the foregoing defendants being corporations organized and existing under and by virtue of the laws of the State of Utah and citizens and residents of the State of Utah; John W. Cook, Thomas S. Gunn, Leslie O'Driscoll, Frank Peterson, Samuel H. Pullen and Albert Rasmussen (Big "6" Canal); George Averitt, Raymond T. Bonnin, Samuel Barnhurst, Lou Fraughton, Bertha E. Hughel, Charles Hutcheon, L. O. Johnson, Newton Shelton and Isaac N. Workman (Bonnin Ditch); Barbria E. Smithson (Bonnin Ditch and Uintah Independent Ditch); Vernon Collins (Collins Ditch); Nick Jerfros and Culbert L. Olson (Constantinus Contis Ditch); Thomas Durigan (Durigan Ditch); Stephen Hall (Hall Ditch); John Hall, Henry A. Lee and Rachel E. Lee (Hall and Lee Ditch); Charles F. Keil (Keil Ditch); Russell Forsythe, Ralph Marimon and Robert L. Marimon (Marimon Ditch); George C. Allred (Allred Ditch); Tilden H. Anderson, Jacob Bader, Erastus S. Bastian, John Bennett, Henry O. Best, John Burgess, John T. Carlson, John Chase, William Chichas, Hugh Coltharp, W. Horace Coltharp, Joseph B. Dobson, George B. Elder, Charles Elmer, David Elmer, Mary A. Elmer, Byrdie D. Fesler, Margaret A. Field, John F. Glines, Hyrum Gurr, Joseph H. Hardy, William R. Hill, William Keel, Daniel Larsen, Henry B. Lloyd, John J. Nielson, Charles R. Oakey, Edward L. Oaks, Hyrum E. Oaks, John H. O'Driscoll, John A. Olsen, Henry P.

Olsen, George S. Pace, Odis Pappas, David J. Peterson, James H. Peterson, Adolphus Sessions, Edward C. Sims, Joseph Sims, Oliver B. Stout and George Thomas (Uintah Independent Ditch); each and all being citizens and residents of the State of Utah; and for cause of action against said defendants, the plaintiffs allege:

1. The said Franklin K. Lane is a citizen of the State of California and the Secretary of the Interior of the United States, and, by virtue of an Act of Congress approved June 21, 1906, entitled "An Act Making Appropriations for the Current and Contingent Expenses of the Indian Department, for Fulfilling Treaty Stipulations with Various Indian Tribes, and for Other Purposes, for the Fiscal Year ending June Thirtieth, Nineteen Hundred and Seven," is trustee of the Indians of the former Uintah and Ouray Indian Reservation hereinafter described.

2. The jurisdiction of this Court over this suit depends upon the fact that the United States of America is a party hereto.

3. From before the time of the first explorations by white men of the country lying between the Rocky Mountains and the Sierra Nevada Mountains, until the cession thereof by Mexico to the United States and for many years thereafter, those certain Indians called the Ute or Utah Indians made their homes in, roved over and claimed to own, a vast extent of territory therein, the greater part of which consisted of the country lying between the Great Salt Lake and the main range of the Rocky Mountains, and between lines that mark what are now respectively the southern boundary of Wyoming and the Northern boundaries of New Mexico

and Arizona. The lands so occupied and claimed contain mountain ranges, valleys and plains, and many rivers and smaller streams. Much of said land was and is suitable for grazing and much thereof was and is adapted to agriculture, but all was and is arid in character and not capable of raising crops without irrigation. The region so claimed abounded in both large and small game and fish and produced fruits and berries of considerable food value.

The Ute Indians, during their occupancy of the said extended territory, belonged to one great tribe that was in turn made up of numerous sub-tribes, or bands. They were then a warlike, nomadic, nonagricultural and nonpastoral people who lived by hunting and fishing and by gathering the natural fruits of the region they occupied and which is hereinabove described, and the same sufficiently supplied them with the necessities of their life.

Said Indians have at all times been and now are tribal Indians and wards of the United States.

All of the territory above described as occupied by the Ute Indians, until the cession of parts thereof by them to the United States, as hereinafter mentioned, was Indian country, belonging to said Indians under and by virtue of the so-called Indian title of occupancy and possession.

4. It has at all times been and still is the intent and policy and the duty of the United States in its relation to the Ute Indians, as also in its relation to its Indian wards in general, to protect said Indians in their rights, promote their happiness and their moral and material

welfare, and to educate and civilize them; and as a means of accomplishing said several purposes and fulfilling said duty, it also has at all times been and now is the policy of the United States to secure and reserve to said Ute Indians so much of the lands hereinabove described as claimed and occupied by them as might be necessary or useful therefor and to encourage said Indians to farm and cultivate the same; and as to such lands of said Indians as were from time to time not deemed by the United States as necessary or useful for said purposes, it has been its policy to acquire the same from said Indians so that the lands so acquired might be settled upon and otherwise used for the benefit of the United States, but only, however, with the full agreement and consent of said Indians and upon the payment of proper considerations for the lands thus acquired.

5. In order to carry out the aforesaid general plan and policy and to discharge its said duty, the United States, beginning about the year 1859, by treaties and less formal agreements with the various bands of Ute Indians, and by acts of Congress and Executive orders of the President, confirmed, set off and reserved to the Ute Indians for their exclusive and perpetual use and established as Indian Reservations certain comparatively small areas of the territory above described as originally occupied by the Ute Indians, and received from said Indians the cession of and extinguished their title to the lands theretofore occupied by them outside of said reservations. The Ute Indians, in thus ceding their lands outside of said reservations to the United States, or in otherwise consenting to the extinguishing of their title thereto, in

addition to other motives including their desire for education and civilization were actuated by the wish to be protected from the intrusions of the whites and the desire to hold the smaller quantities of lands comprised in their said reservations by a higher and more indefeasible title than that under which they had formerly held their whole vast territory above described. The land comprised in each reservation so established was at the time of its establishment and ever since has been and now is of less value than certain areas of equal extent within the lands ceded by the Ute Indians to the United States.

6. Among the reservations so established was that certain one known as the Uintah and Ouray Indian Reservation. The same was created by Executive order of the President on, to-wit, the third day of October 1861, and its creation was thereafter ratified, acknowledged and confirmed by acts of the Congress of the United States. Said reservation throughout its existence as a whole, until the allotment of parts thereof to individual Indians and the throwing open of parts thereof to settlement as hereinafter described, comprised about 2,039,040 acres of land and occupied the whole Uintah Basin, so-called, in what was at the time of the creation of said reservation the territory of Utah, and is now the State of Utah. The said reservation was enclosed on all sides by mountains and on the north and west extended to the tops of the mountains which formed its boundary, and said mountains are of great height and the source of many streams that flow down into the floor of the basin and through the flat lands of what was the reservation. The slopes of the higher mountains within the said

reservation were and are well timbered and the reservation did and does contain great tracts of land suitable for agriculture. The said agricultural land, however, and also all of said reservation except the high slopes of the mountains which have too great an altitude to be susceptible of cultivation, are arid in character and will not produce crops without irrigation and unless irrigated are comparatively valueless.

7. The Green River formed the southeast boundary of said reservation for a distance of about ten miles, but owing to the elevation of the irrigable lands of said reservation in relation to said river, only a small part of said lands is susceptible of irrigation therefrom. Except as to the part of said former reservation which is watered by the Green River or susceptible of irrigation therefrom as aforesaid, the said reservation is watered and is capable of being irrigated only from the Duchesne River and the numerous lakes and streams that form its sources and tributaries.

The main stream of said reservation is, as aforesaid, now called the Duchesne River, and into it from the north flow two great branches thereof called respectively, the Uintah River and the Lake Fork River. At the time of the establishment of the said reservation, that certain stream that is now called the Uintah River was called the North Fork of the Uintah River, and the stream that is now called the Duchesne River, except for the head waters thereof, was called the Uintah River, and then later that part of the Duchesne River that flows between the junction of the said river with the Uintah River and the Green River

was, and to a certain extent it still is, called variously the Duchesne River and the Uintah River.

During the existence of said reservation the rivers and streams, lakes and water courses thereof, except the Green River, from their sources which are upon what was said reservation to the point where the principal stream thereof, the Duchesne River, into which all of the others flow as aforesaid, leaves said reservation, were entirely under the control of the United States and of the Indians of said reservation and available for their use without let or hindrance of others. At all times the said waters have given and they now give the said reservation lands their chief value and they have made and make said lands available for agriculture and for the pasturing of stock and without said waters the said lands and all of them could not be used for said purposes or either of them and they would be comparatively valueless. Said waters were used at all times during the existence of said reservation and they were indispensably necessary for the domestic purposes of the Indians and of the agents and employes and soldiers of the United States on said reservation and were used also for the watering of stock and for irrigation, and after the allotments were made as hereinafter stated and at all times since, the said waters have been used and they are now being used upon the lands of said former reservation which still belong to the United States or said Indians for all of said purposes. The use of said water for irrigation increased as the Indians grew in civilization and industry and, so far as diversions from the Uintah River are concerned, the same is hereinafter particularly described.

8. The Uintah band of the Ute Indians has, from the earliest times, roamed and hunted over the said Uintah Basin and claimed to own it and soon after the establishment of said reservation they took up their permanent residence thereon. Said Uintah Ute Indians, by various treaties and agreements with the United States, in consideration of said reservation and the resources thereof being confirmed to them and to the Ute Indians in general, and in consideration of the policy and intent of the United States with regard to their civilization and welfare, and in consideration of the setting aside for their benefit of certain sums of money by the United States, ceded and released to the United States their interest in vast areas of other lands theretofore held and claimed by the Ute Indians as above described. The Uncompahgre band of Ute Indians and the White River band of Ute Indians, for like considerations and with a like purpose and by like agreements, also ceded and released to the United States their interest in vast areas of valuable lands owned and claimed by them and by the Ute Indians in general, and also took up their permanent residence upon said reservation.

During the existence of said reservation the United States, in order to carry out its policy with respect to the said Indians as above described, and to educate said Indians and civilize them and make them self-supporting and independent by inducing them to become stock owners and farmers, established, maintained and operated agencies and schools upon said reservation for the said Indians upon said reservation, which agency and school establishments consisted and consist in part of many costly buildings

and of irrigated farms and gardens, and the same ever since have been and are still maintained and operated by the United States for the benefit of said Indians.

9. The Indians of said reservation during the existence of the reservation lived in part as they had before, by hunting and fishing, but under the influence of the United States, and, being induced thereto by their confinement to the comparatively narrow limits of the reservation, they also became in part a pastoral people and farmers of irrigable land upon said reservation. They also during said period leased certain of their lands on said reservation for pasture, and received and were supported in part by issues of rations and payments of money by the United States, all of which rations and payments coming however, from tribal funds of said Indians that had been created and held by the United States under treaties with them and which were the consideration in part for the cessions of land made by said Indians and of their acceptance of and confinement to said reservation as above described.

10. By an executive order of the President of date, to-wit, the third day of September, 1887, a tract of land on the Uintah River and within said reservation, comprising six square miles, was temporarily devoted to military uses and was used therefor until by an executive order of, to-wit, August 19, 1912, the same with the exception of 150 acres thereof was entirely restored to the said reservation. During said period from 1887 to 1912, extensive military posts, with buildings, grounds and all other usual equipments, were established and for many years maintained upon

said 150 acres and now the said buildings and grounds are used by the Indian Service of the United States as the headquarters of the agency that that Service maintains in the said Uintah Basin for the aid, control and education of said Indians and said lands still form a part of said Indian Reservation and are under the control of the Secretary of the Interior.

11. In the year 1902 and thereafter, the United States, being then and at all times herein mentioned and now the owner in fee of all of the lands of said reservation, with the exception of such thereof as it has disposed of to white persons since the throwing open of said reservation as hereinafter described, by various statutes and various informal agreements with the Indians of said reservation, in order to further the civilization of said Indians and to carry out as to them its allotment policy concerning its Indian wards, in general, which was adopted prior to the year 1887 and which is to induce the Indians, for their own welfare and for the welfare of the United States, to abandon their tribal relations and their ancient habits and to take in severalty and to become the owners and to work and develop separate tracts of land sufficient for their support and happiness in a civilized and prosperous station in life, provided for the allotment of lands in said reservation in severalty to each Indian thereof. In the years 1904 and 1905 said allotments were made and they ever since have remained and now are in full force and effect, except that in certain instances where the allotments originally made have turned out to be, for some reason undesirable, new allotments of land theretofore unallotted have been made in lieu thereof, and similar lieu allotments probably will be made

under like circumstances in the future. The lands so allotted to Indians as aforesaid were intended to be and are, with minor exceptions, the best and most desirable lands upon what was the said reservation, and the lands thereof best adapted to irrigation from the various streams of said reservation along which they lie.

12. At about the time that the allotments on said reservation were made the United States, looking to the opening of certain of the reservation lands to settlement by white persons, set apart certain of the lands of said reservation at the head-waters of the streams thereof as forest reserve lands, so that, among other things, the water supply for said streams and for said Indians would be maintained, and the United States also set apart large tracts of said reservation lands to be held by the United States for the common use of said Indians for pasture lands, and reserved also certain tracts of land for Indian agency and school purposes and for reservoir sites and for other purposes, and thereafter provision was made for the throwing open to settlement by white persons of the rest of said lands and for the payment of the Indians therefor. It has been at all times and is the intention of the United States and of said Indians that only the lands and the water of said reservation that would not and will not be in any way needed for said allotments, pasture lands, Indian school and agency lands or for any purpose or need of said Indians or of the United States, should or shall be subject to disposal in any way and that all the remainder of said lands and waters should and shall be reserved to and for said Indians and the United States.

13. The diversion and use of water for irrigation and other purposes upon said reservation prior to the making of said allotments was made by and through numerous ditches constructed by the United States and said Indians. Since the making of said allotments certain of said ditches have been and still are used for the irrigation of and the supplying of water for domestic and other uses in connection with said allotments and other United States and Indian lands reserved for special purposes and hereinabove stated, and certain other of said ditches have been superseded and their water is being carried by newer ditches and canals that have been constructed by the United States as hereinafter described. Said old ditches and canals are also hereinafter described and are referred to hereinafter as the "old irrigation system."

During all of the period of arranging for the making of said allotments and the opening of said reservation to settlement as hereinafter mentioned, and for the long time prior thereto, the United States in order more extensively than had already been done, to irrigate with the waters of said reservation the said allotments and other lands reserved or to be reserved for Government or Indian purposes, planned and arranged for the building of a large irrigation system, and in the month of July, 1905, the construction of the system so planned and hereafter more particularly described was begun, surveys therefor already having been made. The irrigation system so planned and begun is hereinafter called the "new irrigation system."

14. By proclamation of the President of the United States made, on to-wit, July 14, 1905, the lands of said

reservation that were then unallotted and unreserved in any way were thrown open to settlement on to-wit, August 28, 1905. On to-wit, June 21, 1906, a large sum of money was appropriated and provision for the further construction of said new irrigation system was made by the Act of Congress of the United States.

15. Said old and new irrigation systems together consist of diversion dams, canals, ditches, drops, gates, measuring devices and other structures and divert and use the waters of many of the streams of what was the said reservation, and the same are designed to carry water to each Indian allotment lying thereunder, and to the lands reserved for Indian agencies and schools and other special purposes. Said new system has cost upwards of \$800,000 and the construction of all of its main features was completed in 1911. The construction of certain of the smaller main ditches and canals and of certain of the lateral ditches belonging to said new system has been continued since said last mentioned date and to some small extent has not yet been fully completed.

That part of said old and new irrigation systems which diverts water from the said Uintah River consists of diversion dams, ditches, canals and other structures, and together with the lands irrigated and to be irrigated thereunder and thereby and the water rights used and to be used in connection therewith, is more particularly described as follows:

WHITEROCKS DITCH: The head of said ditch is on the left bank of the Whiterocks River which is a tributary of the Uintah River at a point which bears approximately S. 49° 30' W. 2427 feet from the quarter

corner common to Sections 19 and 20, Township 2 North, Range 1 East, U. S. B. & M. Said ditch runs in a southeasterly direction, has a capacity of 75 second feet of water, covers and is designed to irrigate 4720 acres of land, all of which have been allotted to Indians as aforesaid. Of said 4720 acres, 1750 acres already have been cultivated and irrigated and have had crops raised thereon by irrigation with water from said river diverted and carried by said ditch. Of said 1750 acres of land not less than 420 acres were from not later than the year 1892 until the construction of the said Whiterocks Ditch irrigated from said river by means of a certain ditch that was built and used by certain of said Indians or the United States and was one of the ditches which constituted the said old irrigation system above mentioned and not less than 130 acres were from not later than the year 1892 until the construction of the said Whiterocks Ditch irrigated from the said river by means of a certain ditch known as the Copperfield Ditch that was built and used by certain of said Indians or the United States and was also one of said old irrigation system ditches. Not less than 489 acres of land that never had been allotted and are not included in any of the lands hereinabove and in this paragraph mentioned and 90 acres of allotted lands not included in said 1750 acres, during all of the time of use of said old ditches in this paragraph named were irrigated through the same from said river. The use of said old ditches from the Whiterocks River was discontinued upon the construction of the said Whiterocks ditch and the points of diversion of the waters thereof carried by said old ditches were then changed to said Whiterocks ditch and said water ever since has been and now is carried by said Whiterocks ditch.

FARM CREEK DITCH: The head thereof is on the right bank of the Whiterocks River at a point which bears approximately N. 48° 08' E. 921 feet from the north quarter corner of Section 30, Township 2 North, Range 1 East, U. S. B. & M. Said ditch runs in a southwesterly direction, has a capacity of 32 second feet of water, covers and is designed to irrigate 1920 acres of land, all of which have been allotted to Indians as aforesaid. Of the said 1920 acres of allotted lands 755 acres have been cultivated and irrigated and have had crops raised thereon with water from said river diverted and carried by said ditch. Of said 755 acres of land not less than 63 acres were from not later than the year 1892 irrigated from Farm Creek which is a tributary of the Uintah River, by means of certain ditches which were built and used by certain of said Indians or the United States, and not less than 150 acres thereof were from not later than the year 1896 until the year 1914 irrigated from the Uintah River by means of the old Ridley Ditch, so-called, which was built and used by certain of said Indians or the United States. All of the ditches in this paragraph referred to, with the exception of said Farm Creek Ditch, were ditches which formed a part of the old irrigation system hereinabove mentioned. Not less than 45 acres of land that never have been allotted and are not included in any of the land hereinabove in this paragraph mentioned were, during all of the time of use of said old ditches, irrigated through one or more of the same from said Whiterocks River or the Uintah River or both. The use of all of the said old ditches was discontinued upon the construction of the said Farm Creek Ditch, and the points of diversion of the water theretofore carried by said old ditches were then changed to said Farm Creek

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Ditch and said water has ever since been diverted from the Whiterocks River and carried by said last named ditch.

WHITE ROCKS AGENCY DITCH NO. 1: The head of said ditch is in the Whiterocks River at a point near those certain lands belonging to and used by the United States and known as the Whiterocks agency lands. Said ditch forms a part of said old irrigation system and ever since not later than the year 1884 has irrigated and it now irrigates with water from said river not less than 100 acres of the farms, lawns and gardens of said agency.

WHITE ROCKS AGENCY DITCH NO. 2: The head of said ditch is in the Whiterocks River near the lands of the Whiterocks agency above described. Said ditch forms a part of said old irrigation system and ever since not later than the year 1884 has irrigated and it now irrigates with water from said river not less than 78 acres of the farms, lawns and gardens of said agency.

SPRINGS DITCHES: Said ditches belong to said old irrigation system and are small and have their heads in and derive their water supply from certain springs that are situate and the Northeast quarter of Section 5, Township 1 South, Range 1 East, U. S. B. & M., and are tributary to the Whiterocks River. Said ditches have irrigated with water from said springs since not later than the year 1892 and they now irrigate not less than 80 acres of land that have been reserved by the United States as aforesaid and during all of said time have had crops raised thereon by means of said irrigation.

DEEP CREEK DITCH: The head of said ditch is on the left bank of the said Whiterocks River at a point which bears S. 68° 15' W, 1450 feet from the southwest corner of the Northeast Quarter of the Northeast Quarter of Section 5, Township 1 South, Range 1 East, U. S. B. & M. Said ditch runs in a southeasterly direction, has a capacity of 105 second feet of water, covers and is designed to irrigate 7120 acres of land, all of which have been allotted to Indians as aforesaid. Of said 7120 acres not less than 1818 acres already have been cultivated and irrigated and have had crops raised thereon by irrigation with water from said river diverted and carried by said ditch. Of said 1818 acres of land not less than 252 acres were from not later than the year 1892 irrigated from said river by means of several certain small ditches that were built and used by certain of the said Indians or the United States and which belonged to the said old irrigation system above mentioned. Not less than 200 acres of land that never have been allotted and are not included in any of the lands hereinabove in this paragraph mentioned, during all of the time of the use of said old ditches in this paragraph named, were irrigated through the same from said river. The points of diversion of the water that was carried by the said old ditches just described were, upon the building of said Deep Creek Ditch, changed to the point of diversion of the said Deep Creek Ditch and said water has ever since that time been diverted and carried by said last named ditch.

COLORADO PARK DITCH: The head of said ditch is on the left bank of the Whiterocks River at a point which bears approximately N. 35° W. 600 feet from the southeast corner of Section 27, Township 1 South,

Range 1 East, U. S. B. & M. Said ditch, as it now exists, is an enlargement and extension of one of the ditches that belonged to the said old irrigation system hereinabove mentioned. Set enlargement was made by the Colorado Park Irrigation Company, a corporation, one of the defendants herein, was completed by the first day of April, 1907 and the United States has at all times prior to the construction of said enlargement and since owned and now owns the right to divert from said Whiterocks River and carry through and by said ditch to the lands of the United States and said Indians lying under the same, so much of the water of said river to which they may be entitled, as they wish so to carry, not exceeding, however, 8 second feet of water. Said ditch runs in a southeasterly direction, has a capacity of more than 8 second feet of water, covers and is designed to irrigate of the lands of the United States and said Indians, 560 acres, all of which have been allotted to Indians as aforesaid. Of said 560 acres of land, 480 acres have been and are now being cultivated and irrigated and have had crops raised thereon by irrigation with water from said river diverted and carried by said ditch. Of said 560 acres of land, 480 acres were, from not later than the year 1892, until the enlargement of said ditch as aforesaid, irrigated from said ditch before it was enlarged, the same having been as aforesaid built and used by the said Indians and the United States.

UINTAH DITCH: The head of said ditch is on the right bank of the Uintah River at a point which approximately bears N. 76° 07' E. 574 feet from the quarter corner common to Sections 9 and 10, Township 1 North, Range 1 West, U. S. B. & M. Said ditch runs

in a southwesterly direction, has a capacity of 142.5 second feet of water, covers and is designed to irrigate 10,120 acres of land all of which have been allotted to Indians as aforesaid. Of said 10,120 acres of land not less than 3456 acres already have been cultivated and irrigated and have had crops raised thereon by irrigation with water from said river diverted and carried by said ditch and by that certain ditch known as Canal Number One, hereinafter described. Of said lands 3800 acres are under said Canal Number One, as well as under said Uintah Ditch, and of the said lands that have already been irrigated as aforesaid 1545 acres have been and are being irrigated by and through said Uintah Ditch and 1911 acres by and through said Canal Number One. It is the intention of the United States to discontinue the use of Canal Number One and to divert the water thereof through the Uintah Ditch if and when it shall be through advantageous so to do.

CANAL NUMBER ONE: The head of said ditch is on the right bank of the main channel of the Uintah River at a point which bears approximately S. 76° 30' East 780 feet from the northwest corner of Section 25, Township 1 North, Range 1 West, U. S. B. & M. Said ditch runs and a southwesterly direction, has a capacity of 140 second feet of water, covers and is designed to irrigate 3800 acres of land all of which have been allotted to Indians as aforesaid. Of said 3800 acres of land not less than 2536 acres already have been cultivated and irrigated and have had crops raised thereon by irrigation with water from said river diverted and carried by said ditch. Said ditch as originally constructed was built by certain of said Indians or the United States not later than the year

1896 and from that time until the year 1905, 345 acres of said 2536 acres were cultivated and irrigated and crops were raised thereon by irrigation with waters of the Uintah River diverted and carried by said ditch and since the said year 1905 the irrigated area of lands now allotted as aforesaid under said original ditch has been increased to 1911 acres of land. In the year 1898 certain of said Indians or the United States extended said ditch and since said time the rest of said 2536 acres of land, or 625 acres thereof, has been cultivated and irrigated with water from said river diverted and carried by said Canal Number One and its said extension.

HARMES DITCH: The head of said ditch is on the left bank of the Uintah River at a point which bears approximately N. 26° 00' West 900 feet from the center of Section 6, Township 1 South, Range 1 East, U. S. B. & M. Said ditch runs in a southerly direction, has a capacity of 10 second feet of water, covers and is designed to irrigate 500 acres of land all of which have been allotted to Indians as aforesaid. Of said 500 acres of land not less than 160 acres have been cultivated and irrigated and have had crops raised thereon by irrigation with water from said river diverted and carried by said ditch.

BENCH DITCH: The head of said ditch is on the right bank of the Uintah River at a point which bears approximately N. 9° 30' West 1856 feet from the northeast corner of the Southeast Quarter of the Southeast Quarter of Section 18, Township 1 South, Range 1 East, U. S. B. & M. Said ditch runs in a southerly direction, has a capacity of 80 second feet of

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water, covers and is designed to irrigate 5540 acres of land of which 5480 acres have been allotted to Indians as aforesaid and 60 acres are comprised in the farmlands of the Indian Agency at Fort Duchesne. All of said 60 acres of land, and of said 5480 acres not less than 3674 acres, or a total of not less than 3734 acres have been cultivated and irrigated and have had crops raised thereon by irrigation with water from said river diverted and carried by said ditch. Said ditch was first constructed by certain of said Indians or by the United States not later than the first day of May in the year 1896, and thereafter and before it was enlarged to its present size in the year 1906, and within a reasonable time from its construction as aforesaid, not less than 1460 acres of said 3674 acres now irrigated by said ditch were and ever since have been irrigated from said river by means of said ditch, and crops were and ever since have been raised thereon by irrigation with said water.

The said four ditches last named, to-wit: The Uintah Ditch, Canal Number One, the Harmes Ditch and the Bench Ditch, all divert water from the Uintah River at points above the confluence of the Whiterocks River with the Uintah River.

POST DITCH: The head of said ditch is on the right bank of the Uintah River and the Northeast quarter of the Northwest Quarter of Section 14, Township 2 South, Range 1 East, U. S. B. & M. Said ditch forms a part of said old irrigation system, covers and is designed to irrigate not less than 150 acres of the 150 acres of land that comprise the Indian Agency lands at Fort Duchesne and which have been described in

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paragraph 10 hereof. Of said 130 acres of land 50 acres have been cultivated and irrigated and have had crops raised or lawns maintained thereon by irrigation with water from said river diverted and carried by said ditch, and of said 50 acres of land not less than 40 acres have been irrigated from said ditch since not later than the beginning of the irrigation season of the year 1887, and the rest of said land or about 10 acres thereof, has been irrigated from said ditch since the beginning of the irrigation season of the year 1915.

HENRY JIM DITCH: The head of said ditch is on the left bank of the Uintah River at a point which bears approximately N. 47° 13' West 591 feet from the north quarter corner of Section 35, Township 2 South, Range 1 East, U. S. B. & M. Said ditch runs in a southeasterly direction, has a capacity of 70 second feet of water, covers and is designed to irrigate not less than 6252 acres of land, of which 6240 acres have been allotted to Indians as aforesaid, and about 12 acres are comprised in the Mission Reservation, so-called, belonging to the United States, at Randlett, of which said allotted and Mission lands not less than 650 acres already have been cultivated and irrigated and have had crops raised thereon by irrigation with water from said river diverted and carried by said ditch. The said Henry Jim Ditch originally diverted water from said river to a point about 700 feet below its present head as above described and said ditch was originally built not later than the year 1893 and from said time until its first enlargement as hereinafter mentioned, not less than 140 acres of said 630 acres herein last above described were cultivated and irrigated and had crops raised thereon by irrigation with water diverted from said

river by and through said ditch. The said ditch was first enlarged not later than the first day of May, 1898, to a capacity of 20 second feet of water and from the time of the said enlargement until the head thereof was changed to its present situation above described and it was enlarged to its present capacity in the year 1908, 345 acres of said 630 acres of land were cultivated and irrigated with water from said river diverted and carried by said ditch. Said ditch was originally built and all enlargements and changes thereof have been made by the United States or the said Indians.

FORT DUCHESNE DITCH: The head of said ditch is on the right bank of the Uintah River at a point which bears approximately S. 71° 25' East 1532 feet from the West quarter corner of Section 35, Township 2 South, Range 1 East, U. S. B. & M. Said ditch runs in a southwesterly direction, has a capacity of 15 second feet of water, covers and is designed to irrigate 1280 acres of land all of which have been allotted to Indians as aforesaid. Of said 1280 acres of land a total of 182 acres already have been cultivated and irrigated and had crops raised thereon by irrigation with water from said river diverted and carried by said ditch.

16. The said Uintah River at various places throughout its course above the point of diversion and of the said Fort Duchesne Ditch divides into and flows in two or more channels and then lower down unites in one channel. Whenever the said ditches of the United States divert from said river at a point where all of the water thereof is not flowing in one channel, said ditches divert in such instance from the main channel of said river and in all such instances the United States, in

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order to insure there being sufficient water in said main channels to fully supply the said ditches has, from the time of the first construction thereof until the present, and it is its intention so to do in the future, by dams, at the points where the said side or secondary channels divert from the said main channels of said river above said ditches and each of them, caused to flow in said main channels whenever there is need, so much of the water that would otherwise flow in said side or secondary channels as is, has been or may be necessary there to flow to fully supply its said ditches and each of them.

17. Applications to the State Engineer of the State of Utah, in accordance with the laws of the said State, were duly made by Chalmers G. Hall, the then acting agent of the said reservation, on behalf of the Indians of said reservation and of the United States, to appropriate from the Uintah River and its branches and tributaries for use by and through certain of said ditches the respective quantities of water hereinafter set opposite to the names of the said ditches and said applications were made and filed respectively as follows, to-wit:

<u>NAME OF DITCH</u>	<u>APPLICATION FILED</u>	<u>SEC. FEET OF WATER</u>
White Rocks Ditch	June 12, 1905	75
Farm Creek Ditch	June 12, 1905	32
Post Ditch	July 26, 1905	1-6/7

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Deep Creek Ditch	June 13, 1905	105
Uintah Ditch	June 12, 1905	142.5
Bench Ditch	June 12, 1905	80
Henry Jim Ditch	June 27, 1905	70
Fort Duchesne Ditch	June 27, 1905	15

All of the acts and things required by the laws of the State of Utah to be done to make an appropriation of water have been duly and fully done by the United States and by the proper officials of the State of Utah under and with respect to said application and each of them to make appropriations of the full amount of water applied for with respect to each of said ditches, except that the United States has not yet applied all of said water to a beneficial use. The said State Engineer has, in accordance with the laws of the State, by orders made from time to time, duly fixed as the time for the completion of the application of the water to be diverted by said respective ditches to a beneficial use, 14 years from the respective dates of filing of said applications as aforesaid.

The United States, in order to comply with and conform to the said State law and in order to bring into full use said irrigation systems and in order to develop said allotments as soon as possible, has, through its officials and agents, endeavored, and is endeavoring to put into cultivation and under irrigation all of the allotments and the other lands it intends to irrigate under the said ditches hereinabove just mentioned and the allotments and other lands under the said two

Agency ditches, Harmes Ditch, Springs Ditches, Canon Number One and Colorado Park Ditch, as soon as possible, and especially within the time fixed as aforesaid for the completion of the application of the waters of the said ditches to a beneficial use.

18. The Indians who are the allottees of the said allotments, and the other Indians who reside upon the lands that were contained in said reservation at all times have retained and still retained their tribal relations and at all times have been and still are in a state of pupillage and the United States at all times has acted and still acts as their guardian and in discharging its duty as such guardian it maintains for said Indians an agent, under whose charge they are, and maintains farmers to teach and assist them in their agricultural work and physicians to keep them in health and schools for the education of their children, and in all respects seeks to promote their welfare as a dependent people and to lead them to civilization and independence.

In order to accomplish its purpose as aforesaid of civilizing said Indians, and as a part of its general plan to that end, hereinabove described, the United States through its agents in that regard has endeavored and is now endeavoring to have the preparation of the said allotments for irrigation and the irrigation of the same and the application of said waters to the beneficial use of accomplishing said irrigation made as far as possible by the said Indians themselves, but they have as yet become only imperfect farmers and workmen and are therefore unequal to the task of reducing to cultivation and irrigation more than a small part of said

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allotments within the time fixed, on which account the United States, through its agents as aforesaid, is endeavoring to have that part of said work which they cannot perform, which is the greater part thereof, done by leasing said allotments and parts of allotments that need to be put into condition for irrigation, to white men who will obligate themselves to clear said land and put it under irrigation. Such leases, involving in the aggregate 35,520 acres of allotted land under said ditches that take water from the Uintah River have already been made.

Certain of the said Indians who were allotted lands as above described have died and in many instances when that has been the case the Secretary of the Interior has, at the request of the heirs so to do, made sales of said lands to white men, and in each such instance he has intended thereby to transfer to said grantees, together with said lands, such water rights and only such as could be beneficially used upon the lands purchased and as were appurtenant to said lands while held by the deceased Indian allottees and their heirs. The purchasers of said lands are clearing the same and endeavoring to apply to such parts thereof as are susceptible, irrigation water from said Government and Indian ditches for that purpose and are endeavoring to do so within the limit of time fixed as aforesaid. The number of acres of allotments so sold under the aforesaid ditches is as follows for each ditch:

<u>NAME OF DITCH</u>	<u>NUMBER OF ACRES</u>
White Rocks Ditch	680
Farm Creek Ditch	200

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White Rocks Agency Ditch No. 1	0
White Rocks Agency Ditch No. 2	0
Springs Ditches	0
Deep Creek Ditch	1120
Colorado Park Ditch	160
Uintah Ditch	1280
Canal Number One	720
Harmes Ditch	0
Post Ditch	0
Bench Ditch	1120
Henry Jim Ditch	720
Fort Duchesne Ditch	720

19. The number of acres of land already irrigated by and through said Government and Indian ditches, and the whole number of acres of land that the United States now intends, by itself or through said Indians or through said lessees as aforesaid, or otherwise, to put under irrigation ultimately and within the time set as aforesaid, are, for said ditches taking from the Uintah River, respectively as follows, to-wit:

<u>NAME OF</u> <u>DITCH</u>	<u>LAND</u> <u>IRRIGATED</u>	<u>TOTAL</u> <u>CONTEMPLATED</u>
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White Rocks Ditch	1934	4720
Farm Creek Ditch	740	1920
White Rocks Agency Ditch No. 1	100	100
White Rocks Agency Ditch No. 2	76	78
Springs Ditches	80	80
Deep Creek Ditch	1818	7120
Colorado Park Ditch	480	560
Uintah Ditch	1545	6320
Canal Number One	2536	3800
Harmes Ditch	160	500
Post Ditch	50	130
Bench Ditch	3734	5540
Henry Jim Ditch	630	6240

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Fort	182	1280
Duchesne		
Ditch		

20. The lessees of the allotments aforesaid and the said Indian allottees are, for the most part, poor men and their farming of the said allotments in the future and the farming of said allotments by other lessees and by Indians who as yet have not been induced to farm their allotments, and the success of the endeavors of the United States, through its agents, to apply said waters to a beneficial use within the time set as aforesaid, or at all, are to a large extent dependent upon there being an abundant supply of water in the Uintah River at the heads of said Government and Indian ditches during the irrigation season of each year, that the same may be diverted by them to said lands, and a failure of the supply of said water at said points, or at any of them, would cause the loss of valuable crops and great and irreparable damage to said Indians, said lessees and the United States.

21. There has been beneficially used upon such of the lands lying under the said Government and said Indian ditches as have been irrigated since they were first put under irrigation and there is needed and at all times has been needed for use upon said lands and there is needed for use upon all of the irrigable portions of the rest of the lands lying under said ditches, as fast as they are made ready for irrigation, for the proper irrigation thereof and the raising of crops thereon and for domestic uses upon said lands and for carrying out the policy and duty of the United States with regard to said Indians as aforesaid, of the waters of said river

diverted and to be diverted by said ditches throughout the irrigation season of each year, one cubic foot of water per second for each seventy acres of said lands.

22. The United States, in and by its treaties and agreements with said Indians as aforesaid, by creating said Uintah Reservation and by all of the acts and things hereinabove set forth, did confirm in said Indians and reserve to them and to itself for the purpose aforesaid, and did appropriate to them and to itself and did withhold from appropriation by others, of the waters of said Uintah River, to be taken therefrom by said above described ditches and used by the United States and said Indians and said lessees and grantees thereof for the irrigation of the lands hereinabove described, and for all other proper purposes, with a priority the first in said river and antedating the establishment of said reservation as aforesaid, for each of said ditches, as follows:

<u>NAME OF DITCH</u>	<u>SECOND FEET</u>
White Rocks Ditch	68
Farm Creek Ditch	25
White Rocks Agency Ditch No. 1	2
White Rocks Agency Ditch No. 2	2
Springs Ditches	2
Deep Creek Ditch	102
Colorado Park Ditch	8

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Uintah Ditch	91
Canal Number One	55
Harmes Ditch	8
Post Ditch	2.5
Bench Ditch	80
Henry Jim Ditch	89
Fort Duchesne Ditch	19

Of said quantities of water there is now needed by the said Government and Indian lands under said ditches for the proper irrigation thereof, quantities of water to be taken from said river by each of said ditches, as follows:

<u>NAME OF DITCH</u>	<u>SECOND FEET NOW NEEDED</u>
White Rocks Ditch	27.8
Farm Creek Ditch	10.4
White Rocks Agency Ditch No. 1	2
White Rocks Agency Ditch No. 2	2
Springs Ditches	2
Deep Creek Ditch	26.0
Colorado Park Ditch	7.0

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Uintah Ditch	22.1
Canal Number One	27.3
Harmes Ditch	2.3
Post Ditch	1.5
Bench Ditch	53.3
Henry Jim Ditch	9.0
Fort Duchesne Ditch	2.6

23. Each of the defendants herein is or claims to be the owner or a part owner of one or more of certain ditches and canals that take water for irrigation purposes from the Uintah River at points above one or more of the points of diversion of the above described Government and Indian ditches or has or claims to have the right to divert from said river by and carry through one or more of said ditches or by and through one or more of said Government and Indian ditches, water appropriated by him independently of the United States and said Indians, and each of said defendants is, either by himself or together with his co-owners or co-claimants, in control or in part control of one or more of said non-Government ditches or canals or in control or in part control of the right to divert and carry water through one or more of said Government ditches as aforesaid. Whatever water rights belong to or are attached to or are carried by said non-Government ditches or are carried by said Government ditches by virtue of appropriations not made by or on behalf of the United States or said Indians, are and at all times have been junior and inferior to all of the water rights of the

United States and said Indians as above set forth and each and every one of the water rights of the said defendants and of the said non-Government ditches was initiated under and is based upon an application to the State Engineer of the State of Utah, or was attempted to be initiated under and is based upon the actual diversion or use of water, or upon no other right or title whatsoever, and each and every one of said applications, with the exception of the application made by the above named defendant, Uintah River Irrigation Company, was filed with the said State Engineer later than the twenty-sixth day of July, 1905. No diversion or use of water was made from the said Uintah River or its tributaries, or any of them, by said defendants or any of them, or by their said ditches or any of them, prior to the first day of April, 1906. The said application of Uintah Irrigation Company, according to such information as a plaintiffs have, was filed on to-wit, the 17th day of April, 1905, but all rights, if any, gained thereby or by said company or for the ditch or canals of said company are, with the rights of the other defendants and their several ditches, inferior and junior to the rights of the United States and said Indians and their ditches as above described.

The water supply of said Uintah River, except when said river is at stages of high flow, is and at all times has been insufficient to supply the needs of the United States and said Indians for the irrigation of the irrigated lands lying under its and their said ditches above described that are and have been ready for irrigation and which the United States and said Indians desire to and have desired to irrigate through said ditches and at the same time to supply the claimed

needs of the said defendants and their said ditches. The United States and said Indians are, as above set forth, engaged in rapidly putting a great area of new land in cultivation and in getting the same ready for irrigation under its and their said ditches, and many of the said defendants are doing likewise, with the consequence that the waters of said river, unless conserved by storage, will become progressively less able to supply the needs of the United States and of said Indians and the claimed needs of said defendants. The said defendants and each of them frequently in the past, without the license or permission of the United States or of said Indians, and unlawfully and without right, and against the protest and objection of the officers and agents of the United States, have taken large quantities of water from the said river that was needed by the United States and said Indians for use upon and for the irrigation of its and their said lands that were in great need of irrigation and which water of right belonged to the United States and said Indians and should have been allowed to remain in said river and flow down to the ditches of the United States and said Indians above described, and the defendants have thereby caused the United States and said Indians to suffer the damage of and to lose large and valuable agricultural crops, and thereby and by interfering with the plans of the United States for the putting in cultivation and under irrigation of said allotments for the purpose of carrying out its policy with regard to said Indians as herein described, have caused the United States and said Indians great and irreparable damage and injury. The said defendants, unless restrained by the order of this Honorable Court, will continue so to take said water and to cause said injury,

and said injury, on account of the progressively larger amount of land needing irrigation as aforesaid, will in the future be progressively greater.

The said Indians, on account of their lack of development in civilization and their dependent condition, are unable to cope with white men in the scramble for water, and are without those resources of self-help and the protection of their rights enjoyed by white men generally and by these defendants, and unless their rights in and to the waters of said river are protected from the acts of said defendants as aforesaid by the injunction of this Court, the said Indians will become discouraged in their efforts to become farmers and will desist therefrom and the task of the United States to bring them to habits of an industry and thrift and to civilize them will be made more difficult than it otherwise would be. And also, without the relief herein prayed for, the efforts of the United States, through its agents and by the means adopted as aforesaid to bring the said allotments under cultivation and irrigation and to apply the waters of said river owned by the United States and said Indians and all of it to such beneficial use within the time limited as aforesaid, will fail. The United States is without an adequate remedy at law in the premises.

WHEREFORE, the United States prays:

1. For the decree of this Court establishing and declaring the rights of the United States and of said Indians to the waters of the Uintah River to be used in and through said ditches of the United States, as hereinabove set forth, for irrigation and domestic and other proper uses during the irrigation season of each

year, and that the same are prior, senior and superior to any and all rights of the said defendants or any of them or of their ditches or any of them, and that the said rights of the United States and of said Indians are of first and immemorial priority.

2. That the defendants and each of them, their officers, agents and attorneys and employes, and all persons setting by, through or under them or any of them, be perpetually enjoined and restrained from diverting the waters of the Uintah River, its sources or tributaries or of any of them, to the injury of said rights or any of them, and from interfering in any manner with the water of said river appertaining thereto.

3. That immediately, and pending the determination of this cause, there issue from this Court to a temporary injunction enjoining said defendants and each of them, their officers, agents and attorneys and employes, and all persons setting by, through or under them or any of them, from diverting the waters of the Uintah River, its sources or tributaries or any of them, to the injury of said rights or any of them, and from interfering in any manner with the water of said river appertaining thereto, and also from in any way interfering with the flow of the water in said river so that at the heads of the said ditches belonging to the United States and said Indians there will be at all times during the irrigation season of 1916 at least the following quantities of water available for the use of the United States and said Indians through their said ditches respectively, as follows, to-wit:

For the said White Rocks Ditch 27.8 cubic feet of water per second;

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For the said Farm Creek Ditch 10.4 cubic feet of water per second;

For the said White Rocks Agency Ditch No. 1, 2 cubic feet of water per second;

For the said White Rocks Agency Ditch No. 2, 2 cubic feet of water per second;

For the Springs Ditches 2 cubic feet of water per second;

For the said Deep Creek Ditch 26.0 cubic feet of water per second;

For the said Colorado Park Ditch 7.0 cubic feet of water per second;

For the said Uintah Ditch 22.1 cubic feet of water per second;

For the said Canal No. One, 27.3 cubic feet of water per second;

For the said Harmes Ditch 2.3 cubic feet of water per second;

For the said Post Ditch 1.5 cubic feet of water per second;

For the said Bench Ditch 53.3 cubic feet of water per second;

For the said Henry Jim Ditch 9.0 cubic feet of water per second;

For the said Fort Duchesne Ditch 2.6 cubic feet of water per second.

And if and to the extent that the United States or said Indians shall increase the acreage of land under said respective ditches needing water for irrigation during the year 1916 over and above the quantities of land hereinabove stated as already irrigated, that said defendants and each of them, their officers, agents and attorneys and employes, and all persons acting by, through or under them or any of them, be also restrained from interfering with the flow of water in said river in the respective amounts of water over and above those just above stated as already needed, in the proportion of one second foot of water to each 70 acres of additional land so needing irrigation.

4. That, if it shall seem meet to the Court upon final decree herein, or upon the granting of the temporary injunction order herein prayed, if the same shall be granted, the Court appoint a commissioner or other officer of this Court, together with such assistance as he may need, to carry out the orders and decrees of this Court herein and to distribute the waters of said Uintah River, and of its sources and tributaries, between the ditches on said river in accordance with the respective needs of the parties to this action and in the order of their priorities.

5. And for such other and further relief as to the Court may seem meet in the premises, and for costs.

/s/ William W. Ray
United States Attorney

/s/ John F. Truesdell
Special Assistant to the
Attorney General

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Attorneys for the Plaintiff.

Filed July 17, 1916

/s/

Clerk

STATE OF UTAH)
) SS.
COUNTY OF DUCHESNE)

JOSEPH M. BRYANT, of lawful age, first duly sworn, on his oath says that he is the Engineer and Special Disbursing Agent of the United States Indian Service in charge of irrigation, and the operation of the irrigation system of the United States, on the former Uintah and Ouray Indian Reservation in the State of Utah; that he has read the above and foregoing Bill of Complaint by the United States et al. against the Cedarview Irrigation Company et al. and knows the contents thereof, and that the same and all parts thereof are true to the best of his knowledge, information and belief, and that he has knowledge of the facts upon which is stated the special relief prayed for in said bill, and that as to those facts the said bill is true of his own knowledge.

/s/ Joseph M. Bryant

Subscribed and sworn to before me this third day of July, 1916. Witness my hand and official seal.

My commission expires on the 6th day of January 1919

/s/ _____
NOTARY PUBLIC.

Filed July 17, 1916

/s/
Clerk

APPENDIX D

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

No. 4427, in Equity

[Filed March 16, 1923]

THE UNITED STATES OF AMERICA, and Hubert
Work, Secretary of the Interior, as Trustee of the
Indians of the former Uintah and Ouray Indian
Reservation,

Plaintiffs,

v.

CEDARVIEW IRRIGATION COMPANY, COLORADO
PARK IRRIGATION COMPANY, DRY GULCH
IRRIGATION COMPANY, T. N. DODD IRRIGATION
COMPANY, OURAY VALLEY IRRIGATION
COMPANY, UINTAH INDEPENDENT DITCH
COMPANY, UINTAH RIVER IRRIGATION
COMPANY and WHITEROCKS IRRIGATION
COMPANY, each and all of the foregoing being
corporations; GEORGE Q. ALLRED, GEORGE
AVERITT, ERASTUS S. BASTIAN, JOHN BENNETT,
RAYMOND T. BONNIN, JOHN BURGESS, WILLIAM
CHICHAS, VERNON COLLINS, HUGH COLTHARP,
W. HORACE COLTHARP, JOHN W. COOK, THOMAS
DURIGAN, CHARLES ELMER, DAVID ELMER,
MARY A. ELMER, RUSSELL FORSYTHE, LOU
FRAUGHTON, THOMAS S. GUNN, HYRUM GURR,

JOHN HALL, HAROLD F. HALL, JOSEPH H. HARDY, BERTHA E. HUGHEL, CHARLES HUTCHEON, WILLIAM KEEL, DANIEL LARSEN, HENRY B. LLOYD, RALPH MARIMON, ROBERT L. MARIMON, JOHN J. NIELSON, EDWARD L. OAKS, HYRUM E. OAKS, CHARLES R. OAKEY, JOHN H. O'DRISCOLL, LESLIE O'DRISCOLL, HENRY P. OLSEN, JOHN A. OLSEN, CULBERT L. OLSON, GEORGE S. PACE, FRANK PETERSON, SAMUEL H. PULLEN, ALBERT RASMUSSEN, ADOLPHUS SESSIONS, NEWTON SHELTON, EDWARD C. SIMS, BARBRIA E. SMITHSON, GEORGE THOMAS and ISAAC N. WORKMAN,

Defendants.

D E C R E E

This cause having come on to be heard at this term upon the complaint of the plaintiffs, the defaults and answers of the defendants, and the stipulations herein between the plaintiffs and certain of the defendants, and thereupon, upon consideration thereof, it is ORDERED, ADJUDGED AND DECREED as follows:

1. The Plaintiffs, the United States, and the Secretary of the Interior as Trustee of the Indians on the former Uintah and Ouray Indian Reservation, and also the owners by grant of the allotments of deceased Indians on said Reservation, as against the Cedarview Irrigation Company, Colorado Park Irrigation Company, Dry Gulch Irrigation Company, T. N. Dodd Irrigation Company, Ouray Valley Irrigation Company, Uintah Independent Ditch Company, Uintah River Irrigation Company and Whiterocks Irrigation Company, each and all of the foregoing being

corporations; George Q. Allred, George Averitt, Erastus S. Bastian, John Bennett, Raymond T. Bonnin, John Burgess, William Chichas, Vernon Collins, Hugh Coltharp, W. Horace Coltharp, John W. Cook, Thomas Durigan, Charles Elmer, David Elmer, Mary A. Elmer, Russell Forsythe, Lou Fraughton, Thomas S. Gunn, Hyrum Gurr, John Hall, Harold F. Hall, Joseph H. Hardy, Bertha E. Hughel, Charles Hutcheon, William Keel, Daniel Larsen, Henry B. Lloyd, Ralph Marimon, Robert L. Marimon, John J. Nielson, Edward L. Oaks, Hyrum E. Oaks, Charles R. Oakey, John H. O'Driscoll, Leslie O'Driscoll, Henry P. Olsen, John A. Olsen, Culbert L. Olson, George S. Pace, Frank Peterson, Samuel H. Pullen, Albert Rasmussen, Adolphus Sessions, Newton Shelton, Edward C. Sims, Barbria E. Smithson, George Thomas and Isaac N. Workman, defendants herein, or any of them, and as against any demand or use whatever of them, or any of them, or of any diversion or use of water by or through the ditches belonging to them or any of them, have the first and an exclusive right under a priority that antedates the third day of October, 1861, at all times to divert from the Uintah River and its tributaries by certain ditches and canals water in in certain quantities at certain times and under certain conditions for the irrigation of certain lands and for certain domestic, culinary and stock-raising uses – all as described and fixed by the following schedule and other parts of this decree.

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Name of Ditch or Canal.	Acres Irrigated under Each Ditch.	Water permitted to divert each season in Acre Feet.	Water permitted to divert each season in Second Feet.
Uintah Canal) Canal No. 1)	9374.62	20123.86	133.9
Harmes	827.88	2483.64	11.83
Bench	6836.85	20510.55	97.67
Bench	Town of Fort Duchesne		.85
Henry Jim	1612.4	4837.2	23.03
Henry Jim	Town of Randlett		1.50
Fort Duchesne	533.61	1600.83	7.62
Wissiup	325.70	977.10	4.65
A (Martha Washington)	73.47	220.41	1.05
B (Meadows)	180.2	540.60	2.57
C (Princess Pat)	82.70	248.10	1.18
D (New)	185.80	557.4	2.66
Whiterocks	4454.47	13363.41	63.63
Farm Creek	1550.35	4651.05	22.15

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School Ditch No. 1	365.55	1097.64	5.23
School Ditch No. 2	12.60	37.80	.18
Springs	80.00	210.00	1.14
Deep Creek	6895.52	20686.56	96.51
Colorado Park	425.14	1275.42	6.07
Big Six	244.70	734.10	3.50
Daniels	151.00	493.00	2.15
Duncan	115.90	347.70	1.66
Farm Creek Proper	155.84	407.52	1.94
Tabby White	235.46	706.38	3.36
Whiterocks School Pipe Line		Domestic, etc.	.85
Totals - -	34700.09	104100.27	498.88

The said 347000.09 acres of land to be irrigated and the other uses under said ditches and canals are as more particularly described in the final certificates of appropriation for the several said named ditches and canals as the same appear upon the records of the office of the State Engineer of the State of Utah, and which are numbered, to wit: 1172, 1173, 1174, 1176,

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1177, 1208, 1211, 1212, 1219, 1223, 1224, 1232, 1233, 1234, 12-C, and 1235, and the final certificate yet to be issued under Plaintiff's filing No. 357.

The location of the head or intake of each of said ditches or canals is as follows:

The head of the Uintah Canal is on the right bank of the Uintah River and bears N. $76^{\circ} 7'$ E. 574 ft. from the quarter corner common to Secs. 9 and 10, Tp. 1 N., R. 1 W. U.S.M.;

The head of Canal No. 1 is on the right bank of the Uintah River and bears S. $76^{\circ} 30'$ E. 700 ft. from the North West corner of Sec. 25, Tp. 1 N., R. 1 W., U.S.M.;

The head of the Harmes Canal is on the left bank of the Uintah River and bears N. $46^{\circ} 32'$ W. 3000 ft. from the center one-sixteenth corner of the S.E. $\frac{1}{4}$ of Sec. 6, Tp. 1 S., R. 1 E., U.S.M.;

The head of the Bench Canal is on the right bank of the Uintah River and bears N. $29^{\circ} 10'$ W. 637 ft. from the East quarter corner of Sec. 16, Tp. 1 S., R. 1 E. U.S.M.;

The head of the Henry Jim Canal is on the left bank of the Uintah River and bears N. $47^{\circ} 13'$ W. 591 ft. from the North quarter corner of Sec. 35, Tp. 2 S., R. 1 E. U.S.M.;

The head of the Fort Duchesne Canal is on the right bank of the Uintah River and bears S. $70^{\circ} 7'$ E. 1553 ft. from the West quarter corner of Sec. 35, Tp. 2 S., R. 1 E. U.S.M.

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The head of the Wissiup ditch, appropriating water from the Uintah River, is on the left bank of the Duchesne River below its junction with the Uintah river and bears S. $77^{\circ} 57'$ W. 1207 ft. from the North one-sixteenth corner of the SW $\frac{1}{4}$ Sec. 35, Tp. 3 S., R. 2 E., U.S.M.;

The head of Ditch A is on the left bank of the Uintah River and bears N. $55^{\circ} 5'$ W. 1616 ft. from the South quarter corner of Sec. 31, Tp. 1 N., R. 1 E., U.S.M.;

The head of Ditch B is on the left bank of the Uintah River and bears N. $26^{\circ} 17'$ W. 1825 ft. from the North one-sixteenth corner of the SE $\frac{1}{4}$ Sec. 7, Tp. 1 S., R. 1 E., U.S.M.;

The head of Ditch C is on the right bank of the Uintah River and bears S. $5^{\circ} 10'$ W. 1575 ft. from the North one-sixteenth corner of the SE $\frac{1}{4}$ Sec. 7, Tp. 1 S., R. 1 E., U.S.M.;

The head of Ditch D is on the right bank of the Uintah River and bears S. $0^{\circ} 5'$ E. 730 ft. from the North quarter corner of Sec. 7, Tp. 1 S., R. 1 E., U.S.M.;

The head of the Whiterocks Canal is on the left bank of the Whiterocks River, a tributary of the Uintah River and bears N. $64^{\circ} 54'$ W. 2526 ft. from the East one-sixteenth corner of the SE $\frac{1}{4}$, Sec. 19, Tp. 2 N., R. 1 E., U.S.M.;

The head of the Farm Creek Canal is on the right bank of the Whiterocks River, a tributary of the Uintah River, and bears N. $45^{\circ} 8'$ E. 921 Ft. From the North quarter corner of Sec. 30, Tp. 2 N., R. 1 E., U.S.M.;

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The head of School Ditch No. 1 is on the right bank of the Whiterocks River, a tributary of the Uintah River, and bears N. $38^{\circ} 30'$ E. 2335 ft. from the West one-sixteenth corner of the SW $\frac{1}{4}$, Sec. 18, Tp. 1 N., R. 1 E., U.S.M.;

The head of School Ditch No. 2 is on the left bank of the Whiterocks River, a tributary of the Uintah River, and bears N. $16^{\circ} 18'$ E. 1465 ft. from the South one-sixteenth corner of the SW $\frac{1}{4}$ Sec. 15, Tp. 1 N., R. 1 E., U.S.M.;

The heads of the Springs ditches are in Secs. 4 and 5, Tp. 1, S., R. 1 E., U.S.M.;

The head of the Deep Creek Canal is on the left banks of the Whiterocks River, a tributary of the Uintah River, and bears N. $75^{\circ} 8'$ W. 1550 ft. from the center one-sixteenth corner of the NE $\frac{1}{4}$ Sec. 5, Tp. 1 S., R. 1 E., U.S.M.;

The head of the Colorado Park Canal is on the left bank of the Uintah River and bears N. $75^{\circ} 57'$ W. 2250 ft. from the South quarter corner of Sec. 26, Tp. 1 S., R. 1 E., U.S.M.;

The head of the Big Six Canal is on the right bank of the Uintah River and bears N. $57^{\circ} 52'$ E. 1417 ft. from the Southwest corner of Sec. 31, Tp. 1 W., R. 1 E., U.S.M.;

The head of the Daniels Ditch is on the right bank of the Uintah River and bears N. $50^{\circ} 15'$ W. 731 ft. from the East one-sixteenth corner of the SW $\frac{1}{4}$, Sec. 22, Tp. 1 S., R. 1 E., U.S.M.;

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The head of the Duncan ditch is on the right bank of the Whiterocks River, a tributary of the Uintah River, and bears N. 23° 13' E. 5500 ft. from the Southwest corner of Sec. 7, T. 1 N., R. 1 E., U.S.M.;

The three heads of the Farm Creek Proper ditches diverting water from Farm Creek, a tributary of the Uintah River, are in Sec. 23, Tp. 2 N., R. 1 W., U.S.M.;

The head of the Tabby White ditch is on the left bank of the Uintah River and bears N. 65° 33' W. 1195 ft. from the South one-sixteenth corner of the SW¼, Sec. 26, Tp. 1 S., R. 1 E., U.S.M.;

The head of the Whiterocks School Pipe Line is on the right bank of the Whiterocks River, a tributary of the Uintah River, in Sec. 15, Tp. 1 N., R. 1 E., U.S.M.

2. The water permitted to be diverted by said ditches and canals for irrigation shall be diverted only during the irrigation season of each year, and said season shall not begin before the first day of March or end later than the first day of November; but water may be diverted for domestic, culinary and stock-watering purposes, throughout the entire year.

3. The number of acre feet of water permitted to be diverted by each of the ditches and canals above listed, on account of the rights determined in this decree as shown in paragraph one hereof, is the amount of water which may be diverted for irrigation by each of said ditches during the said irrigation season, and in no case shall said amount be exceeded; and the number of second feet of water permitted to be diverted by each of said ditches and canals on account of said rights as shown in said paragraph one shall be the maximum

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amount of water each of said ditches may divert at any time on account of said rights.

4. No water shall be diverted by said ditches and canals or any of them for irrigation purposes except that which is needed for economical and beneficial use in the irrigation of crops, and no water shall be diverted for other purposes except as hereinabove in paragraph two allowed, and only such quantities thereof shall be diverted as shall be needed for economical use for said purposes. Said diversions for domestic, culinary and stock-watering uses shall be permitted as needed throughout the year.

5. The defendants herein all divert water from the Uintah River or from one or more of its tributaries, or from supporting waters of said stream through the ditches which they respectively claim to own.

6. The said defendants and their agents and employees, officers, successors and assigns, and all persons diverting or using water through or under their ditches or any of them, they and each of them, are hereby perpetually enjoined from in any way hindering, preventing or interfering with the diversions or uses of the waters of said river herein decreed to the plaintiffs or their assigns.

7. For the protection of the water rights herein decreed, a Water Commissioner shall be appointed from time to time, and assistants shall be given Him if necessary, and his and their compensation shall be fixed and allowed, and arrangements for the payment thereof by those who benefit thereby, parties hereunto, shall be made, and said Water Commissioner shall be

further directed as to his duties, all by separate orders of this Court.

8. In order further to protect the prior rights of the plaintiffs herein decreed, and to do so in the way best suited to conserve the rights and interests of the defendants, who are all junior appropriators, collectively as against the plaintiff, and as against each other, and to insure the most economical use of the waters of said stream, the Water Commissioner shall not only see that the priorities of the plaintiffs are satisfied, but shall also distribute the waters of the stream among the various defendants according to their priorities and rights as they may be ascertained from time to time by agreement between said parties or in some other proper manner. The rights and priorities of said defendants as against the plaintiffs or as among themselves are founded upon appropriations of water by application to the State Engineer of the State of Utah and are subject in their exercise and are conditioned upon compliance with the provisions of the laws of the State of Utah relating to the appropriation of water and such rights and priorities are not hereby determined, except that they are all junior to those of the plaintiffs herein decreed, and except further that it is hereby decreed that said defendants shall be permitted to divert from said stream during the irrigation season of each year for direct irrigation, which shall not begin before the first day of March or end later than the first day of November, three acre feet of water for each acre of land irrigated and no more, and shall at no time divert more than one seventieth of a second foot of water for each said acre, and that no water shall be diverted for irrigation except

that which is needed for economical and beneficial use in irrigating crops. Water may be diverted for domestic, culinary and stock-watering purposes during the entire year. No water shall be diverted for any purpose in excess of that actually needed for such purpose.

9. This decree determines the rights of the plaintiffs to divert water from the Uintah River and its tributaries as against the defendants but it does not determine any rights the plaintiffs or the defendants may have to the waters of said rivers on account of rights in the waters of the Duchesne River or any stream or streams into which the waters of said Duchesne River flow either mediately or immediately. This decree furthermore does not determine the right, if any, that the purchaser of any allotment of an Indian, who made such purchase prior to the entry hereof, may have to irrigate a greater acreage than that allowed by this decree.

10. Jurisdiction of this cause is retained to enable this Court, for good cause and as occasion may require to administer this decree through a Water Commissioner or otherwise; to alter any administrative provisions hereof; and to make other necessary charges herein except to increase the total seasonal amount of water that may be diverted or to change the priority herein fixed or to increase the acreage which may be irrigated under said priority.

11. That each party hereto bear its own costs incurred herein.

Done in open Court this 16th day of March, A.D. 1923.

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TILLMAN D. JOHNSON,

Judge.

FILED in United States District
Court, District of Utah
Mar 16, 1923
John W. Christy, Clerk

United States of America)
_____ DISTRICT OF UTAH) ss

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

Decree signed by Judge Tillman D.
Johnson on March 16, 1923

Order signed by Judge Johnson
on February 17, 1931,

in Case No. 4427

UNITED STATES OF AMERICA,
etc.

vs.

CEDARVIEW IRRIGATION
COMPANY, et al

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

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IN TESTIMONY WHEREOF, I
have hereunto subscribed by name
and affixed the seal of the aforesaid
Court at Salt Lake City this
10th day of April, A.D. 1935

W. B. Wilson
Clerk

By _____
Deputy Clerk

APPENDIX E

Conformed Copy

Contract No. 14-06-W-194

AGREEMENT

THIS AGREEMENT made and entered into this 20th day of September, 1965, pursuant to the Act of June 17, 1902, and acts amendatory thereof and supplementary thereto, and particularly the Act of April 11, 1956 (70 Stat. 105), by and between the United States of America acting through the Bureau of Reclamation and Bureau of Indian Affairs, Department of Interior, the Ute Indian Tribe of the Uintah and Ouray Indian Reservation, organized pursuant to the provisions of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984) as amended, and the Central Utah Water Conservancy District, a public corporation.

W I T N E S S E T H:

WHEREAS, the Central Utah project is planned for development and construction in two phases, initial and ultimate, and

WHEREAS, the project includes three major units, Bonneville, Upalco and Uintah, all or a part of which involve the Uintah and Ouray Indian Reservation within the Uintah Basin, two of which, Bonneville and Upalco, are included in the initial phase and the Uintah in the ultimate phase, and

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WHEREAS, there are approximately 36,450 acres of land served or to be served from the Duchesne River, Bonneville Unit; 33,450 acres of land served or to be served from the Lakefork River, Upalco Unit; and 39,648 acres of land served or to be served from the Uintah River, Uintah Unit, either owned by Indians or non-Indians, but all of which are supplied or are to be supplied with water through original Indian water rights, and

WHEREAS, the Indian water right land has been scheduled in five separate groups for identification purposes, described as group (1) for which a Federal Decree has been entered, 25,070 acres of which are served or to be served from the Lakefork River and 34,152 acres from the Uintah River; group (2) consisting of 18,613 acres designated by the Secretary of the Interior as a part of the Uintah Indian Irrigation Project, and for which a certificate has been issued by the State Engineer of Utah and served from the Duchesne River; group (3) consisting of 1,115 acres designated by the Secretary of the Interior as a part of the Uintah Indian Irrigation Project and served or to be served from the Duchesne River but for which no certificate has been issued by the State Engineer of the State of Utah; group (4) consisting of 1,480 acres of original Indian allotted land served or to be served from the Duchesne River; and group (5) consisting of 29,118 acres of practicably irrigable land presently not under irrigation, 15,242 acres of which are to be served from the Duchesne River, 8,360 acres to be served from the Lakefork River and 5,496 acres to be served from the Uintah River, and

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WHEREAS, development of all of group (5) land is proposed to be deferred to the ultimate phase of the Central Utah project, and

WHEREAS, the United States, acting through the Bureau of Reclamation, intends to construct the Bonneville unit of the Central Utah project as a part of the initial phase, and

WHEREAS, there are approximately 36,450 acres of land on the Duchesne River, either owned by Indians or non-Indians, but all of which are supplied or are to be supplied with water through original Indian water rights, and

WHEREAS, part of the Bonneville unit water supply will be used to irrigate approximately 10,000 acres of Indian water right lands under the existing Duchesne Feeder Canal and Midview Reservoir in order to free Lakefork River water for use upstream on lands in the Moon Lake Project, and

WHEREAS, the Ute Indian Reservation was established on the 3rd day of October 1861, embracing all of the three Unit Areas as described in the third whereas clause hereof, with the reservation of then perfected water rights sufficient to satisfy the future as well as the present need of the Indian Reservation with enough water to irrigate all the practicably irrigable acreage of the Reservation, and

WHEREAS, approximately 15,242 acres of practicably irrigable land within the Uintah and Ouray Indian Reservation of said group (5) lands and within said Bonneville Unit Area are presently not under irrigation, and

WHEREAS, the Ute Indian Tribe of the Uintah and Ouray Indian Reservation, for the considerations and subject to the conditions hereinafter stated, is agreeable to defer the use of water on said 15,242 acres of land for development under the ultimate phase of the Central Utah project;

NOW, THEREFORE, in consideration of the mutual and dependent covenants and conditions herein contained, it is agreed by the parties hereto as follows:

1. That construction of the Bonneville unit of the Central Utah project, initial phase, as authorized by the Congress of the United States, and as planned by the Bureau of Reclamation, may proceed without objection, interference or claim adverse to the water requirements for such unit, as set out in the Duchesne River Area Study Committee, Duchesne River Land and Water Resource Review dated April 1962.

2. That use of water on 21,208 acres of Indian water right land in the Uintah Basin portion of the Bonneville unit, with the priority date of October 3, 1861, described as groups (2), (3), and (4) in said report dated April 1962, is recognized and confirmed.

3. That use of water for the 15,242 acres of Indian owned land, described as group (5) in said Study Committee Report dated April 1962, may be deferred at this time upon the condition that said lands be included in the ultimate phase of the Central Utah project, as hereinafter provided.

4. That deferment of the development of said group (5) lands for irrigation purposes is granted by said Ute Indian Tribe conditioned upon the full and

complete recognition of the water rights of said tribe, with a priority date of 1861 in groups (1), (2), (3), (4) and (5) as described in the book of claims filed with the State Engineer, State of Utah, by the Ute Indian Tribe, without resort to litigation.

5. It is further understood and agreed that said deferment shall neither constitute an abandonment by said tribe, nor be construed as consent to any further deferment of the right to the use of water for the 15,242 acres referred to in paragraph 3 above. If the ultimate phase of the Central Utah project is not completed sufficiently to supply said Indian water rights by the 1st day of January, 2005, equitable adjustment will be made in accordance with said reserved and perfected water rights of the tribe to permit the immediate Indian use of the water so reserved. It is agreed that the first day of January, 2005, shall be mutually considered as the maximum date of deferment and that all phases of the Central Utah project will in good faith be diligently pursued to satisfy all Indian water rights at the earliest possible date. Under no circumstances shall the fixing of such maximum deferment date be construed as an agreement or license to interpose the satisfaction of inferior water rights delaying the satisfaction of said deferred Indian rights, except where the orderly development and construction of the Central Utah project directly requires such deferment of said Indian rights to be supplied from the ultimate phase of said Central Utah project.

6. No Indian water rights, referred to herein, shall restrict the owner thereof to agricultural uses but such rights may be used for purposes other than

agricultural, including but not limited to industrial, municipal and recreational uses.

7. That the use of water from the Duchesne River and its tributaries in the Bonneville unit area, unless otherwise agreed in writing, shall be subject (1) to a river headgate diversion allowance of 4 acre-feet per acre annually and (2) shall be delivered generally in accordance with an ideal demand curve for irrigation purposes, except for the purposes described in paragraph 6 hereof.

8. That the point of diversion from the Duchesne River of the Wissiup Leland and Ouray School canals be moved upstream by the Uintah Indian Irrigation Project to the point of diversion of the Duchesne Feeder Canal.

9. That facilities will be provided under the Colorado River Storage Act to mitigate for losses to fish, wildlife and recreation upon the lands of the Ute Indian Tribe of the Uintah and Ouray Reservation or of its members caused by the construction and/or operation of the Central Utah project. This provision shall not be construed as any limitation upon the acceptance or use of any benefits as may become available under enhancement provisions or said act.

10. That development of the Uintah Unit of the ultimate phase of the Central Utah project to provide storage of the runoff waters of the Uintah River and its tributaries, be programmed for early authorization and construction.

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11. That Bottle Hollow Reservoir be investigated at an early date with a view of including the same as a storage facility of the Uintah Unit.

12. That the exchange of Duchesne River water under the existing Duchesne Feeder Canal and Midview Reservoir for Lakefork River water in order to free Lakefork River water for use upstream on lands in the Moon Lake Project shall not impair the 1861 priority of the Ute Indian Tribe or its members either in flow or storage right, and such exchange shall not be construed as an exchange of water rights.

13. Nothing herein contained shall be construed as preventing the construction and use of facilities by the Ute Indian Tribe, the Uintah Indian Irrigation Project, or the United States for storage and use of water upon all Uintah Indian Irrigation Project lands not supplied from facilities constructed under the Central Utah project.

14. This agreement is subject to the approval of the Secretary of the Interior or his duly authorized representative.

UNITED STATES OF AMERICA

BUREAU OF RECLAMATION

By /s/ N. B. Bennett, Jr.
Acting Commissioner

BUREAU OF INDIAN AFFAIRS

By /s/ John O. Crow
Deputy Commissioner

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UTE INDIAN TRIBE OF THE
UINTAH & OURAY
RESERVATION

By /s/ Francis Wyasket
Chairman

CENTRAL UTAH WATER
CONSERVANCY DISTRICT

By /s/ Sterling D. Jones
President

RESOLUTION

Uintah and Ouray Agency
Fort Duchesne, Utah

May 6, 1965

WHEREAS, the proposed Agreement by and between the United States of America, acting through the Bureau of Reclamation and Bureau of Indian Affairs, Department of the Interior, the Ute Indian Tribe of the Uintah and Ouray Indian Reservation, and the Central Utah Water Conservancy District a public corporation, for the purpose of compromising and definitely determining certain alleged rights of the parties thereto as a prerequisite to the construction of the Central Utah Project has been made the subject of an intense study by the Tribal Business Committee, government officials and the tribal attorney over a considerable period of time; and,

WHEREAS, it appears that said Agreement adequately protects the rights of the Ute Indian Tribe

and that the execution of said Agreement is to the best interest of said Tribe.

NOW THEREFORE, BE IT RESOLVED BY THE UINTAH AND OURAY TRIBAL BUSINESS COMMITTEE for and on behalf of the Ute Indian Tribe of the Uintah and Ouray Reservation that the tribal chairman of the Tribal Business Committee is hereby authorized and directed to enter into said Agreement for and on behalf of said Tribe and to sign the necessary copies thereof and take such further action as may be required to complete the execution of the said Agreement.

/s/ Francis Wyasket /s/ Frank B. Arrowchis

/s/ Thomas G. Appak /s/ Maxie Chapoose

/s/ Howell Appawoo _____

X - his mark

CERTIFICATION

I hereby certify that the above resolution was adopted by the Uintah and Ouray Tribal Business Committee at a special meeting in Fort Duchesne, Utah, on the 6th day of May, 1965, by a vote of five for and none against.

APPROVED: May 6, 1965

/s/ Edna L. Hartman
Secretary, Uintah and Ouray Tribal
Business Committee

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/s/ M. L. Schwartz
Superintendent, Uintah
and Ouray Agency, Utah

Resolution No. 65-151