IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE

COUNTY OF MODOC.

J. Victor Scammon

Edward E. Keller and Sarah M. Keller, his wife, Richard M. Keller and Edna Faye Keller, his wife, W. P. Heryford and Mary E. Heryford, his wife, F. M. Green and Cora Green, his wife, J. D. Heryford and Delia Heryford, his wife, A. C. Robnett and Frances Robnett, his wife, PLAINTIFFS, vs. George M. Perkins and Sadie M. Perkins, his wife, J. D. Baker and Millie Baker, his wife, J. G. Cundiff and Ethel D. Cundiff, his wife, Elsie Converse, Pearl Seligmann, substituted herein by Order of Court in the place and stead of J. Frankl, Pearl Steward and Effie J. Steward, his wife, G. H. Hamersly and Flora Hamersly, his wife, Ernest Robnett and Myra Robnett, his wife, Evert Reid and Lillian B. Reid, his wife, O. J. Cook and Mattie Cook, his wife, Clay Lawson and Mrs. Clay Lawson, his wife, Nannie O'Neil, E. E. Crom and May E. Crom, his wife, B. E. McCrary and Elizabeth A. McCrary, his wife, N. P. Jensen, Walter Butler and Anna Butler, his wife, W. H. Cooper and Mary E. Cooper, his wife, John Doe and Jane Doe, Richard Moe and Jane Moe, and Thelma Butler and Delbert Cloud, Successor in interest to a portion of the property and interest of J. Frankl.	JUDGMENT and DECREE ~~#2629~~ 2639 See Bottom Page

The above entitled action came on regularly for trial before the above entitled court, sitting without a jury, on the 30th day of June 1925, Honorable F. M. Jamison, Judge of said Court presiding; the plaintiffs being personally present and represented by their attorneys, ROBNETT and WYLIE, and the action having been dismissed as to the defendants, John Doe, Jane Doe, Richard Moe and Jane Moe, and proof having been adduced, showing that the defendant, J. Frankl, had, since the commencement of this action transferred and assigned all his rights in said action, and in and to any properties and water rights involved in said action, to Pearl Seligmann and to Delbert Cloud, and said Pearl Seligmann having, by Order of

Court, been duly substituted in the place and stead of said J. Frankl, and it having been ordered by said court that the Summons and Complaint and a copy of said Order of Substitution be served upon her, and said service having been duly and regularly made upon her and her time for appearing in said action having expired according to law, and her default having been duly entered, and all the other defendants in said action having been served with a Summons and Complaint in said action and their time having expired for appearing therein, and their default having been duly and regularly entered in the premises, and the said Delbert Cloud having filed herein an appearance, and it appearing to the court that the said court has jurisdiction over all the parties defendant to said action, including the said substituted parties, and the said defendants, and each of them, having failed to appear in said action, or at the trial thereof, and the plaintiffs having adduced and presented to the court oral and documentary evidence in support of the allegations of said complaint, from which it appears that all the allegations of said complaint were, and are, true and that the said contracts referred to in said complaint were made and entered into in good faith, and the Court being fully advised in the premises, and by reason of the default of the parties herein no Findings of Fact being required:

NOW THEREFORE IT IS HEREBY ORDERED, ADJUDGED and DECREED as follows:

1. That the plaintiffs are respectively the owners of the respective pieces and parcels of land described in said complaint and of which they are alleged to be the owners.

2. That there is a certain natural stream of water known as and called Pine Creek and sometimes called New Pine Creek, which said stream rises on the western side of the Warner Range of mountains, east of said lands of said plaintiffs in the

County of Modoc, State of California, and flows thence in a general westerly and northwesterly direction, to, upon, over, and through and across a portion of the lands of the said plaintiffs, W. P. Heryford and Mary E. Heryford, his wife, and F. M. Green and Cora Green, his wife, and flows thence to the County of Lake, State of Oregon, and to, upon, over and across the lands of J. D. Heryford and Delia Heryford, his wife, and A. C. Robnett and Frances Robnett, his wife, and said stream has so flown in well defined channels since the memory of man.

3. That the said plaintiffs were respectively the owners of rights in and to the waters of said stream at the time of commencement of this action and for many years past have been the owners of rights in the waters of said stream by virtue of appropriations and uses and some of said plaintiffs lands are riparian to said stream.

4. That the said defendants are respectively the owners of various pieces and parcels of land situated in the County of Modoc, State of California, which said various and respective parcels of land are referred to in said complaint and are described in the exhibits attached to said complaint and all the lands of all the parties, plaintiff and defendant, are set forth and delineated upon a map, prepared by one S. A. Mushen, a civil engineer, and said map was duly admitted in evidence in said case and is on file in the records of said case and is hereby made a part of this judgment by reference thereto for the purpose of showing the various lands of the various parties hereto and the kind and character of crops grown thereon and the amount of irrigated lands held and owned by the said parties hereto. It appears from the proof that the said J. Frankl, since the commencement of this action, has transferred and assigned to Pearl Seligmann, who has been substituted as defendant, in this action, the following described portion of the properties

owned by said J. Frankl, and since the time of the commencement of this action turned over to said Pearl Seligmann those certain lots, pieces and parcels of land, situate, lying and being in the County of Modoc, State of California, and particularly described as follows, to-wit:

> Lot 4 of Section 1, Lot 1 of Section 2, Township 47 North, Range 14 East, M.D.M. and East one-half of Southeast quarter and Northwest quarter of southeast quarter and Lot 3 of Section 35, Township 48 North, Range 14 East, M.D.M., less about six and 76/100 acres deeded to N. C. O. Railway for right-of-way. (F.M. J. Judge)

And it also appearing that said J. Frankl, or said Pearl Seligmann, since the commencement of this action, has transferred and assigned to Delbert Cloud the following described lands, situate in said county and state, together with any water rights appurtenant thereto; to-wit:

> The South half of the Northeast quarter and Lot Two in Section Thirty-five, Township Forty-eight North, Range 14 East of Mount Diablo Meridian, containing 96.54 acres of land. (F.M.J.) (Judge)

5. That heretofore and on the 11th day of July 1923, the following named plaintiffs and defendants entered into a contract in writing, a copy of which is attached to plaintiffs' complaint, marked Exhibit A and made a part thereof; to wit: Pearl Steward, Effie J. Steward, George W. Perkins, Saide M. Perkins, J. G. Cundiff, Ethel D. Cundiff, Elsie Converse, Edward E. Keller, Richard M. Keller, Edna Faye Keller, F. M. Green, Mrs. F. M. Green, J. D. Heryford, Delia Heryford, W. P. Heryford, Mary E. Heryford, C. J. Cook, Mrs. Mattie Cook, Clay Lawson, Mrs. Clay Lawson, J. D. Baker, Millie Baker, Ernest Robnett, Myra Robnett, Evert Reid, Lillian B. Reid, A. C. Robnett, Frances Robnett, G. H. Hamersly and J. Frankl.

6. That thereafter and on the 14th day of January 1924, the parties to said agreement Exhibit A, entered into a supplemental agreement in writing with defendants E. E. Crom, Mae E. Crom, Nannie O'Neil, Elizabeth A. McCrary, Thelma Butler, N. P. Jensen, and B. E. McCrary, a copy of which agreement is attached to said complaint marked Exhibit B and made a part thereof.

7. That thereafter and on the 15th day of January 1924 all of the

parties to said agreement marked Exhibit B entered into a further supplemental agreement with Walter Butler, Anna Butler, W. H. Cooper and Mary E. Cooper, which said last named agreement is attached to said complaint marked Exhibit C and made a part thereof.

8. That in and by said agreements, Exhibits A, B, and C, attached to said complaint, the said parties so executing the same; namely, all of the plaintiffs and all of the defendants herein, settled and adjusted as between themselves their respective and correlative rights in and to the waters of said stream and to the use thereof, and by said contracts said parties, stipulated and agreed that this court should have the right to adjudge and decree all of the rights of the said parties, plaintiff and defendant, in and to said stream and the waters thereof and define said rights in accordance with the terms, conditions and provisions of said contracts and further provided that this court might enter a permanent injunction mutually enjoining and restraining each and every party to said contracts from doing anything in contravention of said contracts or from interfering with any other party to said contracts in the exercise of the right or rights granted any such party by the provisions of said contracts.

9. In accordance with the said agreements and with the evidence adduced at said trial it is further ordered, adjudged and decreed, that as between the said parties plaintiff and the said parties defendant herein, said parties are the owners of and entitled to divert and use the waters of said stream in the following amounts at the following times and under the following conditions and not otherwise; to-wit:

I

The said plaintiff Edward E. Keller and Sarah M. Keller, his wife, and Richard M. Keller and Edna Faye Keller, his wife, have the right to use water from said stream for the purposes of furnishing power to operate a flour mill, situate upon their said lands in the State of Oregon, County of

Lake, and they are the owners of and entitled to divert and use as a first right against each and all of the defendants sufficient water to operate said mill, not exceeding one-hundred and fifty (150) inches, measured under four (4) inch pressure, such measurement to be made at the intake of the ditch commonly known as the Mill Ditch and commonly used for conveying water from said creek to said mill and they shall have the right at all times when they are running water through said mill Ditch and for the operation of said mill to divert from said Mill Ditch and convey to their dwelling on said premises, through a three-quarter (3/4) inch pipe such water as will run through such pipe and use the same at their said dwelling for domestic purposes and for garden use; it is decreed that the right to divert and use said one-hundred and fifty (150) inches of water of said stream, measured under four (4) inch pressure by said last named plaintiffs is subject to the following limitations and conditions; namely:

FIRST. Said water shall not be used wastefully and said Mill Ditch shall be kept in a reasonably good state of repair so as to convey said water to said mill without any unnecessary loss by seepage and said water after being used for power purposes in the operation of said mill shall be, by said last named plaintiffs, returned to the main channel of said creek by a mill-tail ditch, which said mill-tail ditch is already in use for said purposes and said water shall be so returned to the main channel of said creek without waste or loss and without use by said last named plaintiff or by any other persons and shall be so returned at the point where the said mill-tail ditch now empties into the said main channel;

SECOND. That commencing with the fifteenth (15th) day of July of each year and extending to the fifteenth (15) day of August of each year said mill owners shall not divert water through said mill ditch to exceed one-half (½) of said last named period and shall not during said period run the water through said ditch for a continuous one-half (½) of said period but shall so arrange the running of said mill that the water

shall not be run through said mill ditch for a period of at least two (2) days in each seven (7) day period; that is, water shall not be run through said mill ditch during said period from July 15th to August 15th to exceed five (5) continuous days at any one time and after the same has been used for said period of five (5) days they shall cease diverting any water into said mill ditch for a period of at least two (2) days and the total time said mill owners are diverting said water through said mill ditch during said period from July 15th to August 15th shall not exceed one-half (½) of said period.

II

That subject to the said right of said mill owners as hereinbefore decreed the other parties, plaintiff and defendant, herein, as between themselves are the owners of and entitled to divert and use the water of said creek in the following manner and in the following amounts and at the following times, respectively:

1. That the said parties, plaintiff and defendant, are respectively the owners of the following acres of orchard and garden land set opposite their respective names; to-wit:

J. D. Heryford and wife	10½	acres
A. C. Robnett and wife	3¼	"
Evert Reid and wife	9¼	"
W. P. Heryford and wife and F. M. Green and wife	30 3/4	"
Geo. Hamersly and wife	5½	"
Mrs. Nannie O'Neil Service Sta	1	Acre
E. E. Crom and wife	1	"
B. E. McCrary and wife	3	acres
C. J. Cook and wife	1 3/4	"
J. D. Baker and wife	66 4¼	"
Geo. W. Perkins and wife	23	"

Mill

66 mill
53 in City
24 above

53
15
68

15
9"

46
15
61 - 73

J. G. Cundiff and wife	3 3/4	acres
Elsie Converse	7	"
Clay Lawson and wife	1¼	"
Ernest Robnett and wife	7	"
Pearl Seligmann	3 3/4	"
Pearl Steward and wife	3¼	"
N. P. Jensen (Fielder Place)	5	"
N. P. Jensen (Keller Place)	4	"

2. It is further ordered, adjudged and decreed that the said parties, plaintiff and defendant, are respectively the owners of the following irrigated lands in the respective amounts set opposite their respective names, said amounts representing the total amount of irrigated land owned by said parties and each of them including lands so owned and irrigated by them and growing orchard and garden; to-wit:

J. D. Heryford and wife	101½	acres
A. C. Robnett and wife	93¼	"
Evert Reid and wife	32	"
W. P. Heryford and wife and F. M. Green and wife	524 3/4	"
Geo. Hamersly and wife	16½	"
Lee + George Johnstone ~~Mrs. Nannie O'Neil~~	1	acre
E. E. Crom and wife	1	"
B. E. McCrary and wife	7½	acres
C. J. Cook and wife	1 3/4	"
Clara Vernon ~~J. D. Baker and wife~~	38	"
Geo. W. Perkins and wife	66½	"
J. G. Cundiff and wife	28 3/4	"
Elsie Converse	16¼	"
Clay Lawson and wife	15	"
Ernest Robnett and wife	33¼	"
Pearl Seligmann and Delbert Cloud	34½	"

Pearl Steward and wife	$27\frac{1}{2}$	acres
N. P. Jensen (Fielder Place)	5	"
N. P. Jensen (Keller Place)	4	"

III

It is further ordered, adjudged and decreed that the following named defendants divert water from said creek and convey the same to their said irrigated lands through a common ditch, jointly used by them, and which ditch is commonly known as and called "The California Ditch"; to-wit:

1. George W. Perkins and Sadie M. Perkins; J. D. Baker and Millie Baker; J. G. Cundiff and Ethel D. Cundiff; Elsie Converse; Clay Lawson and Mrs. Clay Lawson; Pearl Seligmann, Delbert Cloud; Ernest Robnett and Myra Robnett; Pearl Steward and Effie J. Steward.

2. That the heirs and estate of C. M. Taylor, deceased are the owners of the following described lands situate in the County of Modoc, State of California; to-wit:

> The South 920 feet, more or less of Lot 4, and the south 26.9 acres of the northeast quarter of Southeast quarter of Section 31, and the south 26.9 acres of the Northwest quarter of the Southwest quarter of Section 32, and lot 5 and the Southeast quarter of the Southeast quarter of Section 31, and the Southwest quarter of the Southwest quarter of Section 32, Township 48 North, Range 15 East, M.D.M. and lot 3 of Section 5, Township 47 North, Range 15 East, M.D.M.

That the said defendants Lillian B. Reid and Thelma Butler are heirs of C. M. Taylor, deceased, and are parties to said agreements, Exhibits, A, G, and C, and are interested in the land and estate of C. M. Taylor, deceased, above described, but that there are other heirs of said C. M. Taylor, deceased, who did not sign said agreements, A, B, and C, and that by virtue of their failure to sign said agreements that said agreements are not effective as to them, and on motion of the attorneys for the plaintiffs it is ordered, adjudged and decreed that this decree shall not affect the estate of said C. M. Taylor, deceased, or the said lands belonging to said estate, nor shall it affect the rights of said Lillian B. Reid and Thelma Butler in and to said lands of said C. M. Taylor,

deceased, but the rights of the parties hereto as and to the estate of said C. M. Taylor, deceased, and the lands and water rights belonging thereto are expressly reserved from the operation of this decree for future determination or adjudication. Said reservation, however, not to be construed as in any way vitiating the affect of said contract as against the said heirs of said estate who have signed the same.

V.

That said W. P. Heryford and Mary E. Heryford and F. M. Green and Cora Green are the owners of one (1) share in said California Ditch and of the waters running or hereafter to run therein, which said one (1) share equals one-sixth (1/6) thereof.

VI.

That said parties to said agreement agreed that during the irrigating season it required and does require a continuous flow of one (1) inch of water measured under four (4) inch pressure, per acre of land to properly irrigate the irrigated lands of the parties to this action and the court hereby decrees that said amount of water is a reasonable amount and is reasonably required for the purposes of irrigation of said lands.

VII.

That the usual irrigating season in said neighborhood commences about the first of the month of March and continues until about the first of July, as to most of the lands of the parties hereto and as to the others continues until about the month of August of each year.

That during the early part of said irrigating season said stream flows a large quantity of water and at times there is flowing therein more than one (1) inch of water under four (4) inch pressure for each acre of irrigated lands of the parties hereto as hereinbefore found, but as the season advances the quantity of said stream diminishes perceptibly and for a portion of said irrigating season there is not sufficient water in said stream to allow one (1) inch of water under four (4) inch pressure to each

acre of irrigated lands of the parties hereto and by reason of said conditions it is necessary that in the early part of the season when there is sufficient water flowing in said stream for the parties hereto to divert and use more than one (1) inch of water per acre measured under four (4) inch pressure in order to make up for the deficiency in the water of said stream during the later period of the irrigating season and said parties hereto require at all stages of the irrigating season all of the water that may be flowing in said stream whether the same be in excess of one (1) inch per acre for their irrigated lands or not.

VIII.

It is further ordered, adjudged and decreed that during the usual irrigating season, commencing sometime about the month of March of each year and ending with the last day of June of each year that all of the parties hereto, saving and excepting W. H. Cooper and Mary E. Cooper and Walter Butler and Anna Butler, owning irrigated lands as hereinbefore decreed shall share proportionally in the waters flowing in said stream according to their irrigated acreage as hereinbefore decreed (subject to the conditions and exceptions hereinafter decreed); that is to say, each person so owning irrigated land shall be entitled to the prorata of the water flowing in said stream that his irrigated lands bear to the total amount of irrigated lands of all of the parties hereto as hereinbefore decreed.

X.

It is further ordered, adjudged and decreed that during said period up to the first of July of each year and at times when the said mill owners are diverting water for the operation of said mill that the amount of water so diverted by such mill owners shall be calculated as a part of the flow of said stream for irrigation purposes and shall be counted as a part of the water which said plaintiffs W. P. Heryford and wife, F. M. Green and wife, J. D. Heryford and wife and A. C. Robnett and wife and said defendant Evert Reid and wife are at said time entitled to for the reason that said mill-tail ditch so used to return the water

so used by said mill owners for propelling said mill returns the water so used by said mill owners to the said main channel of said creek at a point above the principal diversions of said last named plaintiffs and defendants, Evert Reid and wife.

XI.

It is further ordered, adjudged and decreed that said defendants Walter Butler and Anna Butler, his wife, are the owners of nine and one-half (9½) acres of land as shown on said map and they are hereby decreed the right to divert from said creek between the first day of April and the twentieth day of May of each year for a continuous period of time, not exceeding six (6) days, a sufficient quantity of water, not exceeding at any time twenty (20) inches, measured under four (4) inch pressure, to properly irrigate said nine and one-half (9½) acres, and they are further decreed the right from the twentieth day of May to the twentieth day of June of each year to divert from said stream for a continuous period of time, not exceeding six (6) days, a sufficient quantity of water, not exceeding twenty (20) inches, measured under four (4) inch pressure, to properly irrigate said nine and one-half acres, as a second irrigation and said rights herein decreed to said last named defendants are the only rights they shall have in and to the waters of said creek.

XII.

It is further ordered, adjudged and decreed that said defendants W. H. Cooper and Mary E. Cooper, his wife, are the owners of eighteen (18) acres of land as shown on said map and they are hereby decreed the right to divert from said creek between the first day of April and the twentieth day of May of each year for a continuous period of time, not exceeding six (6) days, a sufficient quantity of water, not exceeding at any time thirty-six inches, measured under four (4) inch pressure, to properly irrigate said eighteen (18) acres, and they are further decreed the right from the twentieth day of May to the twentieth day of June of each year to divert from said stream for a continuous period of time, not exceeding six (6)

days, a sufficient quantity of water, not exceeding thirty-six (36) inches measured under four (4) inch pressure, to properly irrigate said eighteen acres as a second irrigation and said rights herein decreed to said last named defendants are the only rights they shall have in and to the waters of said creek.

XIV.

It is further ordered, adjudged and decreed that commencing with the first day of July of each year for the remainder of the season of each year when the waters of said creek are used for irrigation and subject to the said rights of said mill owners as hereinbefore decreed, the waters of said stream shall be owned and used by the parties hereto, saving and excepting the said Walter Butler and Anna Butler, his wife, and W. H. Cooper and Mary E. Cooper, his wife, as follows:

A. All of said parties owning orchards and gardens or either as hereinbefore decreed shall have the right to divert and use one (1) inch of water, measured under four (4) inch pressure for each acre of orchard or garden owned by them when there is flowing in said stream in addition to the said quantity of water decreed to said mill owners a sufficient quantity of water to allow each and every owner of orchard or garden to have a full allotment of one (1) inch of water, measured under four (4) inch pressure for each acre of orchard and garden and if at any time the quantity of water flowing in said stream in excess of the said water so allotted to said mill right shall be insufficient to allow a full allotment of one (1) inch to the acre, measured under four (4) inch pressure for each acre of orchard or garden owned by the parties hereto that then and at such times said owners of said gardens or orchards shall share in the water flowing in said stream, in excess of said mill right, proportionally. That is to say, each owner of orchard or garden shall be entitled to such a portion of said water flowing in said stream, in excess of said mill right, as the number of acres of orchard and garden owned by any such owner, bears to the total number of acres of orchard and garden of all of

the parties hereto as hereinbefore decreed.

B. That at all times, commencing with the first day of July of each year, when there is flowing in said stream any water in excess of the quantity of water herein decreed to the said mill owners as a first right, and in excess of the total allotment of water for orchards and gardens as in subdivision A. of this paragraph decree, that then and at all such times the said water so flowing in said stream in excess of said mill right and in excess of said garden and orchard rights, shall be owned, diverted and used by the parties hereto as follows:

FIRST. Said plaintiffs, J. D. Heryford and wife, and A. C. Robnett and wife, shall have a first and preferential right to said excess water for general irrigation purposes to the extent of one (1) inch of water, measured under four (4) inch pressure, per acre for each and every acre of their irrigated lands.

SECOND. That subject to the said first right of said mill owners and to the said second right of said garden and orchard owners and to the said third right of said plaintiffs, J. D. Heryford and wife and A. C. Robnett and wife, if there is flowing in said stream at any time, commencing with the first of July, more water than the amount alloted to said mill owners as a first right and to the said garden and orchard owners as a second right and to said J. D. Heryford and wife, and A. C. Robnett and wife as a third right, that then and at all such times the owners of rights in the said "California Ditch" shall be entitled to divert and use, proportionally, according to their acreage supplied by said California Ditch, all water flowing in said stream in excess of said first three preferential rights, not exceeding, however, one (1) inch of water measured under four (4) inch pressure, per acre for the irrigated lands of said California Ditch and if at any time after the first day of July of each year the quantity of water flowing in said stream should exceed all of said preferential rights, then and at all such times the excess water flowing

in said stream over and above said preferential rights shall be owned and used by the other parties hereto who have not been granted preferential rights, except said defendants Walter Butler and wife, and W. H. Cooper and wife, proportionally, according to their irrigated acreage.

C. It is further ordered, adjudged and decreed that if at any time any of the parties owning rights in said California Ditch shall not require any water for garden and orchard purposes or shall not require the full allotment of water for garden and orchard purposes by this decree granted them and there is then flowing in said stream more water than is required for stock use and for the operation of said mill, that then and at all such times, the said parties on the California Ditch not needing or requiring water for said garden or orchard purposes or not needing or requiring the full allotment of water for said purposes by this decree granted them shall not divert from said stream any water not so needed by them but shall permit such water to flow in said stream to the lands of A. C. Robnett and wife and J. D. Heryford and wife.

XV.

It is further ordered, adjudged and decreed that at times when said mill owners are diverting water from said creek for propelling said mill that the amount of water so being diverted by such mill owners shall be counted as a part of the water which said plaintiffs W. P. Heryford and wife, F. M. Green and wife, J. D. Heryford and wife and A. C. Robnett and wife and said defendant, Evert Reid and wife, are at such time entitled to under the provisions of this decree but, if at any time the said mill owners are not diverting water through said ditch to said mill then, at all such times, said last named plaintiffs and defendant Evert Reid and wife, shall receive their allotment of water that they may at such time be entitled to under the provisions of this decree, through the main channel of said creek, or that said A. C. Robnett and wife and J. D. Heryford and wife, may, if they so elect and for the purposes of conservation of the water divert the quantity of water to which they may

be entitled into said mill ditch and convey the same through said mill ditch and thence through said mill-tail ditch and back to the main channel of said stream and thence to their point of diversion and in so doing they shall not forfeit any right or rights to the waters of said stream.

XVI.

It is further ordered, adjudged and decreed that the rights hereinbefore decreed to the said mill owners are so decreed upon the express agreement of said mill owners, contained in said agreements, that they will return the said water, saving and excepting the quantity running through a three-quarter inch pipe to their house and garden, to the main channel of said stream through and by means of said mill-tail ditch, all without diminution, except the natural and unpreventable loss by seepage or evaporation and it is ordered, adjudged and decreed that the rights herein decreed to said mill owners are decreed with said condition annexed and said mill owners are hereby ordered and directed to return the water so diverted by them from said creek to the main channel of said creek through and by means of said mill-tail ditch, all without diminution, except unavoidable seepage and evaporation.

XVII.

It is further ordered, adjudged and decreed that this is intended as a full and complete decree and adjudication of all of the rights of all of the parties to this action in and to the waters of said creek, and if at any time, any person or persons, not parties to this action and who does not acquire rights of parties to this action shall by decree of any court of competent jurisdiction establish that such person or persons have rights in and to the waters of said creek as against the other parties hereto or as against any of them, such rights so established shall be taken from the total or aggregate flow of the waters of said creek and this decree shall remain operative as to all remaining waters of said creek.

XVIII.

It is further ordered, adjudged and decreed that the parties hereto shall, within a reasonable time after the entry of this decree and as soon

as it is practicable, construct and install or have constructed and installed in the main channel of said creek at or near the diversion of said Mill Ditch and at a point above or at the diversion of said California Ditch a permanent measuring device of such kind and character as will properly, accurately and effectively measure, show and indicate the amount of water running in said creek at all times, to the end that any and all of the parties hereto may be able to determine upon an inspection of said device the quantity of water then flowing in said creek at said point for the purpose of determining what, if any, amount of water such person or persons may at such time or times be entitled to. It is further ordered, adjudged and decreed that the cost and expense of so installing said measuring device in said main channel of said creek shall be paid pro-rata by the parties hereto according to their acreage as hereinbefore decreed; such measuring device to be so installed according to plans and specifications, or under the direction of a competent irrigation engineer.

XIX.

It is further ordered, adjudged and decreed that each and all of the parties hereto using any ditch or other means of diverting water from said creek shall construct and install a proper measuring device at or near the diversion of said ditch or ditches which shall accurately measure and indicate at all times the amount of water being diverted by means of said ditch or other diversion and will be so constructed that each and all of the parties hereto upon inspection thereof at any time can determine the amount of water so being diverted through such ditch or other means of diversion. The cost and expense of so constructing and installing such measuring device shall respectively be paid for by the party or parties using such diversion or diversions and shall be installed according to the directions of or under the supervision of a competent irrigation engineer.

XX.

It is further ordered, adjudged and decreed that the allotments of water to the parties hereto under any of the terms of this decree are

intended to be calculated at the head of the respective diverting ditches from the main channel of said creek used by any such party or parties, except that the said parties who divert water from the channel of said creek below the diversion of California Ditch shall be alloted the water which they are so entitled to, at or near the point of diversion of said California Ditch, or, if they so elect, they may receive such allotment at the point of diversion of said Mill Ditch and they may, if they so elect, at times when said Mill Ditch is not carrying water for propelling said mill, divert any water they may then be entitled to through said Mill Ditch and from there to said mill-tail ditch and thence back to the main channel in lieu of running the same down the main channel and in so doing they shall not forfeit any rights decreed to them hereby.

XXI.

It is further ordered, adjudged and decreed that the said defendants, and each of them, their and each of their agents, servants, attorneys, employees, assigns and grantees are hereby perpetually enjoined and restrained from interfering with, impeding or obstructing the flow of the waters of said creek to which the said plaintiffs are, under this decree, entitled or from doing any act or thing in contravention of the terms and provisions of this decree, or from in any way, manner, or form obstructing or interfering with the said plaintiffs in the diversion and use of the waters of said stream to which said plaintiffs or any of them are entitled under the terms of this decree, and said plaintiffs and each of them, their and each of their agents, servants, attorneys, employees, assigns and grantees are likewise perpetually enjoined and restrained from interfering with, impeding or obstructing the flow of the waters to which the said defendants or any of them are entitled under the terms of this decree or from doing anything in contravention of the terms and provisions of this decree or from interfering with the said defendants, or any of them, in the diversion and use of the waters of said stream to which the said defendants are by

the terms of this decree entitled.

It is further ordered, adjudged and decreed that all of the heirs of C. M. Taylor, deceased, did not sign said agreement but as hereinbefore decreed part of them did sign said agreement, but on motion of the plaintiffs herein this action is not a determination of the rights of said heirs of C. M. Taylor, deceased, or any of them, as such heirs, and is not a determination of the rights that the property of C. M. Taylor, deceased, might have in the waters of said creek, but said rights are expressly withdrawn from said action, and this decree, and may be the subject of a future action for the determination of such rights, and it is ordered, adjudged and decreed that when the rights of the heirs of said C. M. Taylor, deceased, as such heirs, or when the rights of the property of said C. M. Taylor, deceased, in and to the waters of said creek are determined by contract, or decree of court, that such rights shall affect all of the parties hereto proportionally as provided by said agreement, Exhibit A, attached to plaintiffs' complaint. It is [illegible]r ordered, adjudged and decreed that said Exhibits A, B, and C, [illegible]xpressly made a part of this decree and this decree is not intended [illegible] alter or change any of the provisions of said contracts.

Done in open court this 15th day of August 1925.

F. M. JAMISON

Judge of said Court.