

UNITED STATES OF AMERICA  
SS.  
DISTRICT OF KANSAS,

IN THE UNITED STATES CIRCUIT COURT FOR THE DISTRICT OF  
KANSAS, FIRST DIVISION.

The Southwestern Irrigation Company,  
a Corporation,

Complainant,

vs

The Southwest Kansas Land and Irrigation  
Company, Limited, a corporation,  
Defendant.

In the matter of the stipulation of the United States Irrigating Company, as the successor in interest of the complainant above named, and The Kearny County Farmers Irrigation Association, as the successor in interest of the defendant above named, to modify that certain decree of this court heretofore rendered on January 29, 1897.

Now on this 14th day of March, A. D., 1911, comes The United States Irrigating Company, as the successor in interest of the complainant in the above entitled cause, by Wm. Easton Hutchison and Schuyler & Schuyler, its attorneys, and The Kearny County Farmers Irrigation Association, as the successor in interest of the above named defendant, comes by Messrs. E. R. Thorpe, Edgar Foster and W. P. Dillard, and thereupon tender and present to the Court their stipulation in writing for the modification of that certain decree heretofore rendered by this Court on the 29th day of January, 1897; and said successors of said complainant and said defendant herein unite in asking this Honorable Court that The

Garden City Irrigation Association be made a party defendant herein, for the reason that it is interested in the issues framed herein, and has united in the stipulation herein presented; and thereupon this Court being fully advised in the premises and in pursuance of said stipulation, doth consent that said decree may be modified in accordance with the terms of said stipulation, and orders and directs that said Garden City Irrigation Association be made a party hereto and defendant herein, and said Garden City Irrigation Association now and here, by its proper officers and attorneys, waives the issuance and service of process and enters its voluntary appearance herein, and consents to the terms of the proposed modified decree, and agrees that said decree limit, define and describe the rights of said Garden City Irrigation Association to the waters of the Arkansas River, as far as they relate to the interest of the other parties herein represented; and

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, as follows, to-wit:

1. As between the Great Eastern Canal and the South Side Ditch and the Garden City Ditch, the first two of which ditches are owned by the United States Irrigating Company, and the last named of which ditches is owned by the Garden City Irrigation Association, a corporation, the control of whose stock is owned by The United States Sugar and Land Company, and the Amazon Canal, the property of The Kearny County Farmers Irrigation Association, the water of the Arkansas River belonging to and available for said ditches under all of their rights and interests in and to the waters of said River, shall as between said ditches, without refer-

ence to the question of priority as between them, be hereafter apportioned, rotated and distributed from said river to and through said ditches in the following respective quantities and in the manner hereinafter set forth in this decree:

To the Garden City Ditch, one-eighth ( $1/8$ ) of said waters

To the South Side Ditch, two-eighths ( $2/8$ ) of said waters

To the Great Eastern Canal, Three-eighths ( $3/8$ ) of said waters

To the Amazon Canal, two-eighths ( $2/8$ ) of said waters.

2. The distribution and rotation of said water for the period of two years from date hereof, shall be under the supervision and direction of a distributing officer to be appointed by this Court, who shall enforce the apportionment of the water on the basis herein provided for, as between said ditches and who shall enforce as hereinafter provided the impartial distribution of that proportion of the water apportioned to the Amazon Canal among the shareholders along said Amazon Canal, having and holding rights to receive water thereunder, in strict accordance with such rights; said officer shall have power to measure the water and to supervise and enforce the delivery and distribution of said water to said respective ditches in accordance with this decree; and also enforce, in the event of disagreement between the Superintendent of said Amazon Ditch and shareholders thereof owning ten or more shares, the impartial distribution of the portion of the water apportioned to the Amazon Canal among its shareholders as aforesaid. At the expiration of said period of two years either of the parties shall have the right to apply to this Court for the

continuance of said officer for such period of time as may be desired; the owners of each of said ditches shall contribute the proportion of the salary of such officer that the proportion of water allotted to said ditches above, bears to the total amount of water applicable to said four ditches, and such payment shall be made on the first day of each month succeeding the month in which the service of such officer was rendered.

In pursuance of said order, this Court does now and here appoint James O. Parker as such officer, for the term of two years from this date, unless sooner removed by the Court or upon agreement of the parties so to do, and fixes his salary at \$1300.00 per annum, payable monthly. Such officer shall qualify by filing with the Clerk of this Court his oath taken before a qualified Notary Public to well and faithfully perform his duties under this decree.

3. Said water so to be apportioned as aforesaid, shall be distributed in such manner as to secure the greatest amount of use therefrom and to avoid waste thereof, and when none of said waters are necessary for use, or capable of being used, for direct irrigation, the said officer shall deliver the waters applicable to said four ditches in the Great Eastern Canal for the purpose of storing the same in the Great Eastern Reservoir, which waters shall thereupon become the sole property of The United States Irrigating Company, as a part of its stored water; and said water shall not be charged to said Company hereunder.

As nearly as may be, having regard for the foregoing directions as to the distribution and use of water in the

most economical manner, the following general rules are ordered for the distribution, rotation and use of said waters as between said four ditches.

1. The Amazon Ditch, three thousand (3,000) acre feet;
2. The South Side Ditch, three thousand (3,000) acre feet;
3. The Great Eastern Ditch, four thousand five hundred (4,500) acre feet, to be used by The United States Irrigating Company either for storage in its reservoir or for direct irrigating.
4. The Garden City Ditch, one thousand five hundred (1,500) acre feet.

When any one of said ditches shall have received the amount above indicated, the headgate shall be closed so as to permit the water to pass to the next one in the above named order, and after the Garden City Ditch shall have received its allotment, as aforesaid, its headgates shall be closed and the rotation shall be repeated. All the water received by any one of the ditches, except as herein otherwise stated, shall be computed and charged to the account of said ditch, except at such times only as there may be sufficient water in the river to fill all said four ditches, during which time none of the water received by any of the said four ditches shall be charged to the account of such ditches, or any of them.

Each ditch shall put in or have a weir, or measuring box, by which the water can be measured with a reasonable degree of accuracy, and such weir or box is to be located as near the intake of said ditch as possible.

There shall be no discrimination of season or years as between said ditches, but said above-described rules shall

apply to all seasons of the year and to water received at any and all times, except as above stated.

These rules for rotation and distribution shall not prevent a deviation therefrom, when in the judgment and discretion of the distributing officer, a more economical use of the water can be had by applying the water to and passing it through another ditch than that to which it properly belongs in its regular rotation and turn; but in such instance, and in all such instances, the amount of water so received shall be charged to the ditch so receiving it, and shall be deducted from its next allowance in turn.

The following rules for the distribution and rotation of water belonging to the Kearny County Farmers Irrigation Association for the said Amazon Ditch shall be observed and enforced by its superintendent and the said distributing officer, in the distribution and rotation of the water among the share holders of the Kearny County Farmers Irrigation Association; the said rules being the rules specified in the present by-laws of said Association as to the distribution and rotation of water among its shareholders, to-wit:

"The distribution of water under the water rights shall begin as nearly as practical at the head of the main canal and 25 per cent of all water rights thereafter be served with water in their order of proximity to said canal or laterals, and no member shall be permitted to parallel any canal or lateral for the purpose of securing water in advance of any other member. No water right shall be served with water the second time until all other water right holders have been furnished with their proportionate part of the water. When all water rights have been thus served this rule of rotation shall be repeated and extended as above until all water

rights have been furnished with water. Provided in case the conditions of crops or other unavoidable cause shall prevent the taking of water upon any tract of land, the superintendent in his discretion, or under the direction of the board may permit a temporary passing of said land, and water below, where this will not interfere with the general system of distribution of water. If any water right holder shall decline to water in his regular order, unless the conditions are as described in the above proviso, he shall forfeit his right to use water in his regular order for that turn."

4. The United States Irrigating Company shall have, and it is hereby given, the right to use the Amazon Canal for the purpose of conveying water from the Arkansas River through the headgate of said Amazon Canal, and along the said Canal to the point where a diversion canal therefrom runs to the Reservoir of the United States Irrigating Company at all times when none of the waters apportioned to said canal are being conveyed to the shareholders of said Kearny County Farmers Irrigation Association, as hereinabove provided; The United States Irrigating Company shall pay to the Kearny County Farmers Irrigation Association all the cost incident to the maintenance and operation of that portion of the Ditch between said headgate and the point on said ditch at which the lateral therefrom runs to the said reservoir, and damage thereto, if any, occasioned by the use of that portion of said ditch by it for the purpose of conveying said waters to the said Reservoir.

5. IT IS FURTHER ORDERED that hereafter the said Kearny County Farmers Irrigation Association, its officers, board of directors and stockholders shall allow and recognize

the right to each one share of the stock thereof to one vote in all the affairs, business and concerns of said corporation, including the election of Boards of Directors; and persons holding a fraction of a share shall have a corresponding fraction of a vote; and no shareholder shall be hereafter denied the right to have one vote for each one full share of stock that he owns, nor denied the right of a fractional vote corresponding with any fractional part of a share that he owns; no corporate action shall be taken by said The Kearny County Farmers Irrigation Association without the concurrence of three-fourths ( $3/4$ ) of the outstanding shares; the capital stock of said corporation shall remain of the present amount, to-wit: One hundred fifty (150) shares, each share representing an eighty (80) acre water right; the water apportioned to said Amazon Canal shall be delivered only to Amazon shareholders, as above provided; should delivery of water in excess of rights be compelled in favor of any one heretofore having claimed to have received water any by reason thereof to be entitled to continue in the receipt thereof, such delivery of water must be made out of the above proportion allotted to the said Amazon Canal and shall not be made by the parties out of any water in addition to said proportion.

6. Whenever The United States Irrigating Company shall indicate its desire to use a portion of the water allotted to the South Side Ditch, or any part thereof, in and through the Great Eastern Canal in lieu and instead of in and through the South Side Canal, then said proportion of the water allotted to the South Side Canal, or any part thereof, may be diverted



by The United States Irrigating Company into the Great Eastern Canal, and the waters so diverted from the South Side Canal shall be charged to the proportion of the total waters which said South Side Canal is entitled to receive.

7. The decree of this Court heretofore rendered on January 29, 1897, is hereby modified effective March 27th, 1911, to read as above set forth and provided; and the parties hereto, their successors and assigns, are perpetually enjoined, required and commanded to perform and faithfully keep and abide by the terms and conditions of the modified decree as hereinabove set forth, and to refrain from any act or action which shall constitute a departure from or interference with the effectual performance of the acts and things hereinabove in this modified decree ordered and adjudged.

By the Court:

John C. Pollock  
Judge United States Circuit  
Court. District of Kansas.

O. K.

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Irrigation Association.

Endorsed: No. 6759. The Southwestern Irrigation Company, a corporation, Plaintiff. -vs- The Southwest Kansas Land and Irrigation Company, Limited, a corporation, Defendant. Modified Decree. Filed this 14th day of March, 1911. Geo. F. Sharitt, Clerk.