

AND NEGLECTED
SACRIFICING IRREPARABLE DAMAGE

NOV 18 1987



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DIVISION OF WATER RESOURCES
GARDEN CITY

IN THE DISTRICT COURT OF HAMILTON COUNTY, KANSAS

IN THE MATTER OF THE APPEAL OF
FRONTIER DITCH COMPANY,
COOLIGE, KANSAS, and FORT
AUBREY IRRIGATION COMPANY,
SYRACUSE, KANSAS,

DRAFT COPY

-vs-

CHIEF ENGINEER OF THE DIVISION
OF WATER RESOURCES, KANSAS
STATE BOARD OF AGRICULTURE,

Appellants,
Case No. 4806

Appellee,

AND

IN THE MATTER OF A VESTED RIGHT
DETERMINED AND ESTABLISHED IN THE
NAME OF FORT AUBREY IRRIGATION
COMPANY OF SYRACUSE, KANSAS, TO
CONTINUE THE BENEFICIAL USE OF
WATER,

FILED
Clerk District Court
Hamilton County, Kansas

JAN 20 1987

At 2:30 O'clock P
By JANET E WEIS
jewis

FORT AUBREY IRRIGATION COMPANY,
SYRACUSE, KANSAS,

Appellant,

-vs-

Case No. 4807

CHIEF ENGINEER OF THE DIVISION
OF WATER RESOURCES, KANSAS STATE
BOARD OF AGRICULTURE,

Appellee.

STIPULATIONS OF THE PARTIES

Come now the Fort Aubrey Irrigation Company and the Frontier Ditch Company by and through their attorney, Michael K. Ramsey, of Garden City, Kansas, and the Chief Engineer of the Division of Water Resources, Kansas State Board of Agriculture, by and through Donald L. Pitts, and submit the following stipulations to the Court for consideration:

1. If the Court adopts all of the stipulations set forth herein as part of this Court's order and decree, the parties agree to waive trial and accept this Court's order as the final and complete disposition of all issues of fact and law presently pending or which could be raised at trial or appeal of these actions.

2. With regard to Vested Right File No. HM 036, appellant, Frontier Ditch Company, will enter into a rotation system with the Associated Ditches at a maximum rate of 55 cubic feet per

second and a rotation quantity of 615 acre-feet, with credit for return flows.

3. That a portion of the Fort Aubrey Vested Right File No. HM 026 will be transferred to the Frontier Ditch Company in an annual quantity not to exceed 1,946 acre-feet with a diversion rate not exceeding 35 cubic feet per second, to be diverted and placed to beneficial use for irrigation purposes by Frontier Ditch Company under and subject to the following conditions and limitations:

A. That by reason of the limitations set forth below, the portion of the Fort Aubrey Vested Right File No. HM 026 transferred to Frontier Ditch Company herein will not be required to enter into a rotation system with the Associated Ditches;

B. That Frontier Ditch Company may divert water under the Fort Aubrey Vested Right File No. HM 026 at such point or points as are presently authorized points of diversion for the existing Frontier Ditch Company Vested Right File No. HM 036 or any subsequently authorized modifications thereof;

C. That Frontier Ditch Company may apply waters diverted under the Fort Aubrey Vested Right File No. HM 026 to beneficial use for irrigation purposes only on land presently authorized as a place of use under the Frontier Ditch Company Vested Right File No. HM 036 or any subsequently authorized modifications thereof;

D. That in no event may Frontier Ditch Company simultaneously divert water under both Vested Right File No. HM 036 and Vested Right File No. HM 026;

E. That Frontier Ditch Company will not receive any credit for return flows for any water diverted under or pursuant to Fort Aubrey Vested Right File No. HM 026;

F. That Frontier Ditch Company may divert water under the Fort Aubrey Vested Right File No. HM 026 when water is being released on call from John Martin Reservoir only if the river channel capacity will allow; that Frontier Ditch Company may call for additional releases of water not exceeding 35 cubic feet per

second, with appropriate time allowed for delivery of the water to the state line, all of which will be charged to Frontier Ditch Company's portion of Fort Aubrey Vested Right File No. HM 026, whether diverted or not;

G. When water is not being released on call from John Martin Reservoir (it being understood that calls may not be placed for releases of water when there is no water currently in reservoir storage), then Frontier Ditch Company may divert the Fort Aubrey Vested Right File No. HM 026 only when any one of the following conditions is present:

- I. The flow of the Arkansas River at the state line, as defined in the Arkansas River Compact, is 35 cubic feet per second or less;
- II. The flow of the Arkansas River at the state line, as defined in the Arkansas River Compact, is greater than 35 cubic feet per second, and the Chief Engineer or his duly authorized representative, determines that less than 10% of the authorized diversion rate of any ditch currently in turn under the rotation system would reach its headgates, to be determined as if the Associated Ditches are in rotation, even if they are not; or
- III. No other ditch wants to divert water even though water may be available at its headgates.

4. That the 3,854 acre-feet of the Fort Aubrey Vested Right File No. HM 026, not transferred to Frontier Ditch Company herein will, upon transfer, be assigned to an appropriate subordinate agency of the State of Kansas or some other duly appointed public entity.

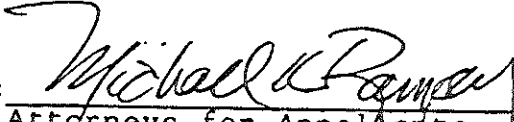
5. The change in place of use and point of diversion stipulated to herein is reasonable, will not impair existing rights and will not prejudicially or unreasonably affect the public interest, under K.S.A. 82a-708b and 82a-711, and the water diverted by Frontier Ditch Company under Vested Right No. HM 026 relates to the same local source of supply as waters formerly diverted by Fort Aubrey Irrigation Company under Vested Right No. HM 026.

6. That all unpaid court costs shall be assessed to Frontier Ditch Company.

Submitted by:

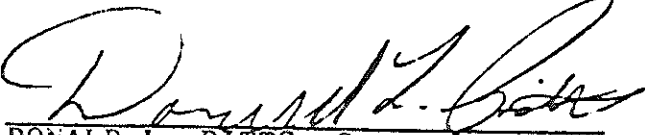
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GARDEN CITY