

# The Eleventh Judicial District

OF THE

STATE OF COLORADO,

IN AND FOR THE

COUNTY OF FREMONT

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IN THE MATTER OF THE ADJUDICATION  
OF WATER RIGHTS IN WATER

DISTRICT NO. 12.

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The undersigned, Referee of said Water District No. 12, respectfully reports that obedient to the orders of the Court he has prepared, and submits herewith, draft for final decree adjudicating water rights in said water district. In reaching the conclusions and making the findings embodied in said draft he has assumed that the basis of a water right is the application of water to a beneficial use, and in determining how much water has been so applied he has not been governed by the capacity of ditches nor considered himself bound by the quantity of water used, for from the evidence before him he is convinced that most persons use much more water

than is necessary; but has based his findings and suggested decree upon the number of acres of land actually irrigated. Endeavoring to ascertain, first, how many acres were irrigated by a given ditch, and, second, how much water, in cubic inches per second of time, was required for the irrigation of an acre of the quality of land irrigated from said ditch.

As to the water required per acre the soil differs materially in different sections of the district and a standard which will apply equally well to all sections of the district cannot be fixed.

On Hardscrabble Creek a cubic foot of water per second of time flowing constantly during the irrigation season, is sufficient to irrigate eighty (80) acres of land; and on that basis rights have been fixed on said creek. On Texas Creek and its tributaries a statutory inch, running constantly, is required per acre, and the least head of water that can be used to advantage is forty (40) statutory inches; and so, as to ditches taking water from Texas Creek and its tributaries, when the land aggregated forty acres or more, a statutory inch to the acre, to run constantly, has been given; and when less than forty acres were to be irrigated forty statutory inches (expressed in cubic inches per second of time) have been allowed to flow for such time and times as is sufficient for the irrigation of the number of acres irrigated. With two exceptions no material change has been made in the interlocutory decrees heretofore rendered.

However, the interlocutory decrees heretofore rendered concerning Beaver Creek and Four Mile Creek were so obviously erroneous that an attempt to reform them has been made. The proof on said two creeks was the first offered in the district and is very incomplete and unsatisfactory; and while the

interlocutory decrees heretofore rendered on said two streams conform strictly to the proof then before the referee, and to the proof directly concerning said streams now before the referee, yet in the light of the proofs since offered concerning the use of water throughout the district it is very clear that in said interlocutory decrees ditches taking water from said two creeks have been allowed from one to five times as much water as is necessary.

It is only, however, in the light of testimony concerning other portions of the district that the erroneous-ness of said interlocutory decrees appears even now, for on the proof concerning said two creeks and ditches taking water therefrom, alone, said interlocutory decrees are sound. And while the proofs concerning water rights in the district generally show beyond a possibility of a doubt that the ditches taking water from said two streams have been given a supply of water beyond all reason, yet, because of the difference in the character of the soil, and other reasons, the testimony furnishes no basis by which to accurately fix water rights on said two creeks.

The referee was, therefore, obliged to pursue one of two courses, leave the interlocutory decrees concerning said two creeks unreformed or fix a standard more or less arbitrary.

He chose the latter course and has modified the interlocutory degrees heretofore rendered on the waters of said two streams on the theory that a cubic foot of water per second of time, flowing constantly during the irrigation season, is sufficient for the irrigation of twenty-five acres of land in that vicinity; but that a cubic foot of water is the least head that can be used to advantage along said two creeks. While the referee is absolutely certain that the stand-

ard fixed is too high, yet it is as low as he felt justified in establishing it under the proofs. There is no doubt but that the lands along Beaver Creek are of such character as to require a very considerable supply of water, yet the referee is convinced that four cubic feet of water per second of time (the quantity given several ditches both on Four Mile and Beaver Creeks by the existing interlocutory decrees) is not required. Considerable proof is before the referee concerning the use of water for domestic uses, but the statutes under which this reference was made seems not to comprehend the adjudication of water rights for such purposes and no attempt has been made to do so. There are several ditches over which there is a contest, and concerning which a great mass of conflicting testimony has been offered, viz: The Davis Ditch, The Sikes, Cypert and Chatham Ditch, and the ditches of Thomas Balman and Taliaferro Witcher, yet notwithstanding the large amount of testimony offered, in some particulars the testimony concerning several of the ditches thus in contest is so imperfect and incomplete that a full adjudication of the rights of such ditches is impossible. For instance the testimony concerning the acreage irrigated by The Davis Ditch of Mr. Tribble is very unsatisfactory, and the testimony concerning Mr. T. Witcher's rights under his ditches is incomplete; in fact as to The Amsbury Ditch the proof utterly fails to show when the ditch was taken out or how many acres of land have been irrigated from it, and as to how much land has been irrigated from the other ditches owned by Mr. T. Witcher the proof is far from complete.

The referee has not yet abstracted all of the proof before him and is not at this time prepared to report

his findings, but expects to be able to report his findings and finish abstracting the testimony before the November term of the Court.

With these remarks the attached draft of decree is hereby respectfully submitted and the same recommended to the Court.

Respectfully submitted this 4th day of October,  
A. D. 1893.

JAS. L. COOPER,  
Referee.