

STATE OF COLORADO, }  
 COUNTY OF FREMONT. } ss.

In the District Court.

In the Matter of the Priorities of  
 Water Rights in Water District  
 No. 12, of the State of Colorado.

The following supplemental decrees have been entered by said court in the above entitled matter amendatory to the final decree entered therein February 3rd, A. D. 1894, to-wit:—

In the Matter of the Petition of  
 John Howard, et al., praying for  
 a review of the final decree adjudicating water rights in Water  
 District No. 12. } No. 1471.

Now on this 5th day of December, 1894, the above entitled matter coming on to be heard upon the proof heretofore taken, and upon the arguments of counsel for respondent as well as for petitioners, and it appearing to the court that the irrigating ditch called and named in the final decree herein adjudicating water rights in Water District No. 12, in the State of Colorado, "The John Cox Ditch" is not entitled to a priority for water dating from January 30th,

1875, but is entitled to a priority dating from January 31st, 1881, only, and the court being fully advised in the premises, it is hereby ordered, adjudged and decreed that the aforesaid final decree herein adjudicating water rights in Water District No. 12, be and hereby is modified and amended as follows, to-wit:— that part of said decree relating to Ditch No. 178, The John Cox Ditch, named and called in said decree, is hereby modified and amended to read as follows:—

### No. 178—The John Cox Ditch.

That said ditch is entitled to Arkansas River priority No. 243, dating from Jan. 31st, 1881, which said priority is also Texas Creek priority No. 68, Brush Creek priority No. 28 and South Brush Creek priority No. 10; that said ditch is owned by John Adams; that said ditch takes water from South Brush Creek, and its headgate is situate S. 21 degrees and 30 minutes W. from the  $\frac{1}{4}$  Sec. corner between Sections 13 and 14, Tp. 46 N. R. 12 East, distant 1760 feet; that said ditch is used for the irrigation of ninety (90) acres of land; and that there be allowed to flow into said ditch for the use of said Adams, under and by virtue of said priority No. 243, dating from January 31st, 1881, constantly two and three thousand six hundred and eighty-four ten thousandths (2.3684) cubic feet of water per second of time.

(Recorded Book 8 Page 545)

In the Matter of Priorities of Water Rights in Water District No. 12, And particularly in the Matter of the Petition of H. G. Reed for a modification of the decree hereinbefore rendered in regard to said Water District, so as to give The Reed Ditch No. "2" rights to water from South Brush Creek, a stream in said Water District.

Now, on this 22nd day of November, A. D. 1894, comes the said petitioner, H. G. Reed, by Waldo and Dawson, his attorneys, and it appearing to the court that notice of said petition and of the order of the Judge of this Court in this matter heretofore made in vacation has been personally served upon all parties interested in opposition to the granting of the relief sought by said petitioner, in full accordance with the requirements of said order of said Judge, and no one appearing to oppose the granting of the modification prayed for, and it appearing from the evidence taken and returned into court in accordance with said former order of the Judge thereof and which is undisputed, that said Reed Ditch No. 2 takes its supply of water from the natural stream known as South Brush Creek, which is one of two forks which constitute the stream known as Brush Creek, and always has so derived its supply of water, and that the testimony formerly taken showing that said ditch takes its supply of water from Brush Creek was given under a misunderstanding as to the matter of the creek having a distinct name (other than Brush Creek) above the junction of said forks, and that the location of the headgate of the ditch as

shown in evidence heretofore taken, really shows that the head of said Reed Ditch No. 2 is above the point of junction of said South Brush Creek with North Brush Creek, forming Brush Creek.

It is therefore considered, ordered, adjudged and decreed by the court, that said decree as to water rights in Water District No. 12 be and is hereby amended and modified as follows, to-wit: That the numbers of the priorities on South Brush Creek, after number seventeen (17) said No. 17 and all prior thereto being not changed, shall be as follows, to-wit:—

No. 18, The Reed Ditch No. 2, original construction January 1st, 1889.

No. 19, The Hillside Ditch, 1st increased appropriation April 1st, 1890.

No. 20, The Hillside Ditch, 2d increased appropriation April 30, 1890.

No. 21, The Elizabeth Ditch, original construction June 30, 1890.

No. 22, The Gader Ditch, increased appropriation March 8, 1891.

That the specific decrees in relation to said The Hillside Ditch, The Elizabeth Ditch and The Gader Ditch be amended by inserting the above numbers in place of the former numbers for the dates above specified of priorities on said South Brush Creek.

That the specific decree in relation to said The Reed Ditch No. 2 be amended by changing the name of the natural stream from which it derives its sup-

ply of water from Brush Creek to South Brush Creek and by inserting, after its priority on Brush Creek the following: "and priority No. 18 on South Brush Creek."

(Recorded in Book 8, Page 489.)

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In the Matter of Priorities of  
Water Rights in Water District  
No. 12,

And particularly in the Matter of  
the Petition of Thomas Balman  
for a modification of the decree  
hereinbefore rendered in regard  
to said Water District so as to  
give The W. R. Voris Ditch  
rights to water from North Brush  
Creek, a stream in said Water  
District.

Now on this 22nd day of November, A. D. 1894,  
comes the said petitioner, Thomas Balman, by Wal-  
do and Dawson, his attorneys, and it appearing to  
the court that notice of said petition and of the order  
of the judge of this court in this matter heretofore  
made in vacation has been personally served upon  
the only interested party, Mrs. Elizabeth Houle, in  
accordance with the requirements of said order of  
said judge, and no one appearing to oppose the grant-  
ing of the modification prayed for in said petition  
and it appearing from the evidence heretofore taken  
by the referee of said water district, and being undis-

puted, that the W. R. Voris Ditch, to which was decreed priorities No's 205, 302 and 306 on the Arkansas River, and No's 48 and 85 on Texas Creek and No's 16 and 33 on Brush Creek, and which was numbered 250 in said water district really draws its whole supply of water from the branch of said Brush Creek which is known as North Brush Creek.

It is therefore considered, ordered, adjudged and decreed by this court that, in regard to said The W. R. Voris Ditch, said decree heretofore entered in the Matter of Priorities of Water Rights in Water District No. 12, be and is hereby modified as follows, to-wit:—

That the numbers of priorities on North Brush Creek, after the first seven (which shall remain unchanged) shall be as follows, to-wit:—

No. 8, The W. R. Voris Ditch, original construction August 1st, 1878.

No. 9, The Saw Mill Voris Ditch, original construction August 31st, 1878.

No. 10, The Adams Ditch No. 2, original construction May 31, 1880.

No. 11, The W. R. Voris Ditch, enlargement, April 30, 1884.

No. 12, The Houle Ditch No. 4, original construction June 1st, 1886.

No. 13, The Houle Ditch No. 6, original construction January 15, 1890.

No. 14, The Houle Ditch No. 4, increased appropriation May 31, 1890.

The specific decrees in relation to said The Saw Mill Voris Ditch, The Adams Ditch No. 2, The Houle Ditch No. 4, and The Houle Ditch No. 6, are amended by inserting the above numbers of priorities on North Brush Creek in place of the numbers of priorities on said North Brush Creek, which now appear therein.

That the specific decree in regard to said The W. R. Voris Ditch is amended by inserting (immediately after the words "Brush Creek" priorities No's 16 and 33) the words and North Brush Creek priorities No's 8 and 11 and by changing the sentence that said ditch takes its water from Brush Creek to that said ditch takes its water from said North Brush Creek.

And it further appearing to the court from the evidence on file that, in said specific decree as to said The W. R. Voris Ditch there is a clerical error in the description of said ditch, it is further considered, ordered, adjudged and decreed that the said decree in the part which specifically relates to said The W. R. Voris Ditch is hereby amended by changing the portion of said description which now reads "thence S. 1 degree and 39 minutes E." (the fourth course given) to "thence South 21 degrees and 39 minutes East", said change being fully in accordance with the undisputed evidence on file in this court.

(Recorded Book 8, Page 490.)

In the Matter of Priorities of Water  
Rights in Water District No. 12.  
In regard to the Water Rights of  
Stout Creek, a tributary of the  
Arkansas River in said County of  
Fremont.

JOHN A. DAVIS,  
Petitioner,  
against  
MELISSA E. STOUT,  
Claimant.

In the above entitled controversy, it is hereby stipulated and agreed by and between the parties above named that a decree may be entered by the court in the words and figures following, to-wit:

Now, on this 9th day of April, A. D. 1895, the same being the second day of the April term, A. D. 1895, of this court, comes the said John A. Davis, petitioner, by Waldo and Dawson, his attorneys, and the said Melissa E. Stout, claimant, also comes by James T. Locke, her attorney, and it appearing to the court that by the decree heretofore entered of record in said Water District No. 12 there is now decreed to said claimant certain water rights all of which, with the exception of two tenths of one cubic foot per second, decreed to The Stout Ditch No. 4 as priority No. 294, are prior to all other priorities on said Stout Creek which are not owned by said petitioner John A. Davis, so that if the water decreed to said Melissa E. Stout be decreased by the said amount of



two tenths of one cubic foot per second of time no other modification of said decree can injuriously affect any other claimants of water from said creek, except only said Davis; and it further appearing to said court that the above named parties have agreed to this order and decree which does diminish the amount of water decreed to said Melissa E. Stout more than said amount of two-tenths of one (1) cubic foot of water per second of time:

Now therefore, in accordance with said agreement of said parties hereto as shown by stipulation filed herein, it is ordered, adjudged and decreed by this court;

That the decree heretofore made and entered of record in regard to the following ditches owner by said Melissa E. Stout, to-wit:

No. 125, The Stout Ditch No. 1.

No. 152, The Stout Ditch No. 2.

No. 167, The 1874 Ditch.

No. 173, The Stout Ditch No. 3.

No. 199, The Stout Ditch No. 4.

be and the same hereby is modified and amended as follows, to-wit:

It is hereby ordered, adjudged and decreed by this court that said Melissa E. Stout, (being the owner of the five ditches last above named), and her heirs and assigns are entitled to use the amount of two

and three-quarters (2.75) cubic feet of water per second of time (and no greater quantity at any time except when no other right is interfered with), which amount of water said Melissa E. Stout may use in any of said five ditches above named, (and the water shall be measured at the head of the ditch wherein it is used and not at any point further up the stream), and may divide the same so as to use parts thereof in two or more of said ditches at the same time (as she shall choose) and which amount of water said Melissa E. Stout and her heirs and assigns may so use for such time and at such times as shall be necessary to irrigate suitably and properly for the successful raising of crops the lands now owned by said Melissa E. Stout which have, prior to the irrigating season of the year A. D. 1895 to the extent of, but not exceeding the number of acres specified in said decree heretofore entered provided that as to said Davis said Stout shall not irrigate more land than she has irrigated prior to 1895, been actually cultivated and irrigated from said ditches by her, said Melissa E. Stout, and shall not be used for any time longer than is so reasonably necessary to irrigate said lands.

It is further ordered, adjudged and decreed, that, in all particulars not herein mentioned (both as to said ditches owned by said Melissa E. Stout and as to the several ditches owned by John A. Davis), the decree heretofore made in regard to priorities of water rights in said Water District No. 12, as to the waters of said Stout Creek, and as to the ditches taking water from said creek, be, and is hereby affirmed, and shall remain unchanged; it being understood that this decree practically gives said The Stout Ditch No. 4 a real priority over all of the

ditches of said John A. Davis, to the extent above fully specified, notwithstanding the priority No. 150 given to the West Side Ditch by said decree.

The above is fully understood and agreed to by said parties.

J. A. Davis,

Waldo & Dawson, Attys. for John A. Davis.

Melissa E. Stout,

James T. Locke, attorney for Melissa E. Stout.

(Recorded in Book 10 Page 11.)

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In Re. Adjudication of Water  
Rights for Irrigation in Water  
Dist. No. 12, in said State.

Petition of John Adams, I. N. Fel-  
lows, James Walker, John H.  
Green, et al., praying for a review  
of the final decree adjudicating  
water rights in said District,

vs.

John Kick and Michael O'Leary,  
owners of the Kick and Kint Irrig-  
ating Ditch, General Priority No.  
188.

No. 1568.

### Order Modifying Said Decree.

The above entitled matter having been heretofore tried to the court, upon the pleading herein and proofs offered, and the same having been finally on February 25th, 1896, argued by the respective record attorneys of the parties thereto, Jos. H. Manpin,

Esq., appearing for petitioners, and Messrs. C. C. Dawson and James L. Cooper for the respondents, now comes on again for the findings of the court and final judgment and decree herein.

And the court being now well and fully advised in the premises, finds the issues herein joined in favor of the petitioners and against the said respondents, and that the decree heretofore made and entered in the adjudication of water rights in Water District No. 12 in behalf of the said Kick and Kint Ditch, should be altered, changed and modified in manner and form as indicated in the subjoined judgment and decree and not otherwise;

Wherefore, it is ordered, adjudged and decreed by the court, that the said Kick and Kint Ditch be, and the same hereby is numbered general priority number one hundred and eighty-eight (188), the same as before.

It is further ordered, adjudged and decreed that the ditch is entitled to Arkansas River priorities numbers one hundred and fifty-six (156) and three hundred and fifty-six (356), which said priorities are also Texas Creek priorities number thirty-two (32) and ninety-eight (98), respectively, and which said priorities are Brush Creek priorities numbers ten (10) and forty (40), respectively, and South Brush Creek priorities numbers five (5) and sixteen (16), respectively. Said priorities being the same as originally decreed. That said ditch is owned by John Kick and Michael O'Leary, jointly, each of whom owns an undivided one-half interest thereof and therein; that said ditch takes water from said South Brush Creek and its headgate is situated on the East

bank of said creek at a point North thirty-five (35) degrees East five hundred and ten feet from the South West corner of the South East quarter ( $\frac{1}{4}$ ) of the South West quarter ( $\frac{1}{4}$ ) of Section Fourteen (14) Township Forty-six (46) Range Twelve (12) East; that said ditch is used for the irrigation of one hundred and ten (110) acres of land; that there be allowed to flow into said ditch constantly for the use of said owners of said ditch under and by virtue of said priority Number one hundred and fifty-six (156) one (1) and seventy one hundredths ( $\frac{70}{100}$ ) cubic feet of water per second of time for the irrigation of seventy (70) acres of land, and that there be further allowed to flow into said ditch for the use and benefit of said owners of said ditch, under and by virtue of said priority Number three hundred and fifty-six (356) constantly, the further quantity of one (1) cubic foot of water per second of time, for the irrigation of forty (40) acres of land.

The costs of these proceedings will be taxed to the respondents and let execution issue therefor.

To which said findings and each and every thereof, and to which said judgment and decree based on said findings, both parties hereto, petitioners and respondents alike, duly object and except.

Respondents have ninety (90) days for bill of exceptions herein.

(Dated May 6th, 1896, and recorded in Book 10, page 256)

The application of Taliaferro Witcher for a modification of the decree relating to the Abbott and Pringle Ditch in Custer County, Colorado, taking water from Spruce Creek, having been heretofore heard upon the pleadings in said application, the testimony taken and the arguments of counsel, Thomas Macon, Esq., appearing as attorney for said petitioner, and Messrs. Waldo & Dawson appearing as attorneys for contestants, comes on again on this day for the findings and final adjudication and order of the court thereon, and the court being well and fully advised in the premises doth find:

That the said Taliaferro Witcher is entitled to sufficient water through said ditch to irrigate twelve (12) acres of land with priority as heretofore established by decree of this court now in force.

Wherefore, it is ordered, adjudged and decreed by the court that there be allowed to flow into said Abbot and Pringle Ditch from Spruce Creek, under General Priority Number, Texas Creek priority Number and Spruce Creek priority Number, as already established by the decree of this court sufficient water from said Spruce Creek to irrigate twelve (12) acres of land, said water so hereby allowed to flow to be used upon lands now owned or controlled by said Taliaferro Witcher.

(Dated April 29th, 1897, and recorded in Book 10 page 500)

The application of Taliaferro Witcher, for a modification of the decree relating to the Amsbury ditch in Custer County, Colorado, taking water from Spruce Creek, having been heretofore heard upon the pleadings in said application, the testimony taken and the arguments of counsel, Thomas Macon, Esq., appearing as attorney for said petitioner, and Messrs Waldo and Dawson appearing as attorney for contestants, comes on again this day for the findings and final adjudication and order of the court thereon; and the court being well and fully advised in the premises doth find:

That said Amsbury Ditch is entitled to a priority of date May 1st, 1882, with sufficient water to irrigate thirty (30) acres of land, from Spruce Creek, in the County of Custer and State of Colorado, in said Water District, said Spruce Creek being a tributary to Texas Creek therein.

Wherefore, it is ordered, adjudged and decreed by the court that there be allowed to flow in and through said Amsbury Ditch for the use and benefit of the owners or holders of said ditch, from said Spruce Creek, with a priority as of date May 1st, 1882, sufficient water to irrigate thirty (30) acres of land.

(Dated April 29th, 1897, and recorded in Book 10 page 501)

The application of Taliaferro Witcher for a modification of the decree relating to the Puett Ditch in Custer County, Colorado, taking water from Spruce Creek, having been heretofore heard upon the pleadings in said application, the testimony taken and the arguments of counsel, Thomas Macon, Esq., appearing as attorney for said petitioner, and Messrs. Waldo & Dawson appearing as attorney for contestants, comes on again on this day for the findings and final adjudication and order of the court thereon, and the court being well and fully advised in the premises thus finds,

That the said Taliaferro Witcher is entitled to sufficient water through said ditch to irrigate fourteen (14) acres of land, with priority as heretofore established by the decree of this court now in force.

Wherefore, it is ordered, adjudged and decreed by the court that there be allowed to flow into said Puett Ditch from Spruce Creek, under General Priority Number, Texas Creek priority Number, and Spruce Creek priority Number, as already established by the decree of this court, sufficient water from said Spruce Creek, to irrigate fourteen (14) acres of land, said water so hereby allowed to be for use upon lands now owned or controlled by the said Taliaferro Witcher.

(Dated April 29th, 1897, and recorded in Book 10 page 502)



In the Matter of the Priorities of  
Water Rights in Water District  
No. 12.

In this matter John H. Henderson, Mary J. Toof, Sarah E. Kelley and William B. Storm; and Bertha, Raymond, Everett and J. Archer, by their next friend, John H. Henderson, the only heirs at law of Bennett K. Henderson, deceased; and Ira R. Porter, having by their attorneys, John R. Smith, Esq. and C. D. Bradley, Esq., on the 13th day of June, 1904, suggested to this Court that the record in the above entitled matter of the final decree therein, relating to The Coleman Ditch at Page 87 of the original decree, as signed by the Judge of this Court, being recorded at Page 66, Book 9, designated "Judgment Book", of the records of this Court, contains a clerical error in regard to the amount of land that might be irrigated respectively by the said Bennett K. Henderson and Ira R. Porter from said ditch; and having submitted certain other proofs in regard thereto; and the Court having fully examined the entire record in this matter relating to said Coleman Ditch, and being now fully advised in the premises, and satisfied that such error was committed and in this, namely:

That the word each was inadvertantly omitted between the word "acres" and the word "now" in line 19 from the top, at page 87 (part 1) of said original record, and between the same words in the bottom

line at page 66 of said record, as recorded in said Book 9 of the records of this Court. So that the sentence at the point indicated now reads, "And sixty acres now irrigated by said Bennett K. Henderson and Ira R. Porter" while it should read "and sixty acres each now irrigated by said Bennett K. Henderson and Ira R. Porter; All of which clearly appears from an inspection of said record.

It is, therefore, on this 15th day of August A. D. 1904, being one of the regular days of the April term A. D. 1904 of said Court, ordered, adjudged and decreed by the Court that the word each be inserted in said final decree between the word "acres" and the word "now" in line 19 from the top at page 87 of said original decree, and between the same words in the bottom line at page 66 of said Book 9 of the records of this Court.

And it is further, on this day, as and for the day and date of said final decree in said matter, ordered, adjudged and decreed as follows, namely:

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**No. 35—The Coleman Ditch.**

That said ditch is entitled to Arkansas River priorities No.'s 36, 150 and 332, which are also Hard-scrabble priorities No.'s 5, 31 and 54; that Jesse W. Coleman, Bennett K. Henderson and Ira R. Porter are the owners thereof, each owning an undivided one third; that it takes its water from said Hard-scrabble Creek, and that its headgate is located at a point on the east side of said Creek in the south east quarter of Sec. 10, Tp. 21 South, Range 69 West; and that there be allowed to flow into said ditch for the use and benefit of the parties entitled thereto, un-

der and by virtue of said priority No. 36, two and fifty six hundred and twenty five ten thousandths (2.5625) cubic feet of water per second of time, or so much thereof as shall be needed for irrigating eightyfive acres of land now irrigated by said Jesse W. Coleman, and sixty acres each now irrigated by said Bennett K. Henderson and Ira R. Porter, and that there be further allowed to flow into said ditch under and by virtue of said priority No. 150 the further quantity of three thousand, one hundred and twenty five thousandths (0.3125) of one cubic foot of water per second of time, or so much thereof as shall be necessary to irrigate twenty five acres of land owned by said Bennett K. Henderson, and that there be allowed to flow into said ditch under and by virtue of said priority No. 332, the further quantity of three hundred and seventy five thousandths (0.375) of one cubic foot of water per second of time, or so much thereof as shall be necessary for the irrigation of thirty acres of land owned by said Ira R. Porter; the whole amount of water decreed to this ditch being three and one quarter (3.25) cubic feet per second of time; all of which amounts of water above decreed to this ditch to be allowed to flow in said ditch continuously unless not needed for the purposes aforesaid.

By the Court.

M. S. BAILEY, (Seal.)  
Judge.

(Recorded in Book 13 page 428)