

State of Colorado, }  
Chaffee County. } ss.

In the District Court.

No. 3053

In the Matter of the Adjudication of Water Rights for Uses of Water for Beneficial Purposes other than Irrigation, in Water District No. 11, in the State of Colorado. Upon the Petition of Charles M. Thiele for Adjudication of his priority rights to the use of water from Chalk Creek by means of the Thiele Ditch for Fish Culture Purposes.

This Court having heretofore and on the 29th day of December, 1930, made and entered an order, on the petition of Charles M. Thiele, praying the court to proceed to an adjudication of the priorities of rights to the use of water for purposes other than irrigation between the several ditches, canals and reservoirs in Water District No. 11, in the State of Colorado, granting said petition and fixing Monday the 13th day of July, 1931, as the time when the taking of testimony and proofs in said matter should begin, and specifying when and how notice of such proceedings should be given and served.

And this Court having sat in Salida, Colorado, on the said Monday the 13th day of July, 1931, for the taking of testimony and proofs in said matter, and having then and there, for good cause shown, continued the hearing in said matter to a subsequent date, and this court having further continued the hearing in said matter at various times to accomodate and facilitate the taking of testimony therein, the last of said continuances being to and until this date.

And this Court having made and entered an order on the 4th day of September, 1931, that all users of water have to and until the 2nd day of November, 1931, within which to file claims for water and that the time for filing such claims close on said date.

And the Court now having heard, read and considered all testimony and proofs submitted respecting such and every claim for water, or a water right, filed with the Clerk of this court, and all testimony and proofs submitted in this proceeding, and having duly considered the filings in said matter, and the proofs touching the notice given in said matter, and the manner of service of said notice, finds: That a notice to all persons, associations and corporations owning or claiming priority of rights to use of water derived from any natural stream, water course, or any other source, for beneficial purposes other than irrigation in Water District No. 11 in the State of Colorado, and embodying a copy of said order of this court made and entered on the 29th day of December, 1930, and requiring them to appear at the District Court Room in the City of Salida, in Chaffee County, Colorado, at the incoming of court on the 13th day of July, 1931, and file a statement or statements of claim under oath, if no statement or statements had been filed that time, showing the ditch, canal, reservoir or ditches, canals or reservoirs in which he, she, or they claim an interest, together with all the names of all the owners thereof, and notifying all persons, associations and corporation interested as owners or consumers of water for beneficial purposes other than irrigation in said Water District No. 11 that they might then and there present his, her or their proofs for or against any priority or right of water by appropriation sought to be shown by any party by or through any such ditch, canal or reservoir, either as owner or consumer of water drawn therefrom, was duly issued out of this court under the hand and seal of the Clerk thereof on the 29th day of December, 1930.

And that said notice was duly and regularly published in The Solida Record a semi-weekly newspaper of general circulation in the said County of Chaffee in each and every number of each issue thereof for four successive weeks, nine consecutive issues, the last publication being on January 9th, 1931, and in The Herald Democrat a daily newspaper of general circulation published in Leadville, Colorado, in Lake County, for five insertions and publications thereof in the regular edition for four successive weeks, the first publication being in its issue dated the 9th day of January, 1931 and the last publication thereof being in its issue dated the 6th day of February, 1931.

And that ten printed copies of said notice were posted in ten public places, in said Water District No. 11, more than twenty days prior to the said 13th day of July, 1931, and that a written or printed copy of said notice was served upon each person, association or corporation shown by the records of this court to have filed a statement of claim prior to the issuance of said notice, and which claim had not been adjudicated, and in the manner provided by law.

And that the State Engineer of the State of Colorado did certify to the Clerk of this court a list of all filings or claims for appropriations of water for irrigation or other purposes within Water District No. 11, not cancelled or heretofore submitted for adjudication, as the same appeared from the records of his office and that a copy of said notice was personally served upon each person, association and corporation shown by said certified list to be an owner or claimant of right or rights to the use of water from the natural stream in said Water District No. 11 that could be found and served within the State of Colorado, thirty days prior to said 13th day of July, 1931, and that each person, association or corporation shown by said certified list who could not be found and personally served within the State of Colorado was served by mailing to each such person, association or corporation, thirty days prior to the said 13th day of July, 1931, by prepaid registered mail, a true copy of said notice.

And the Court further finds that the orders of this court and the statutes and laws of the State of Colorado respecting the giving of notice, and the service of notice, in this matter have been fully observed and complied with, and that all interested persons, associations and corporations have been duly and regularly served with process and brought into this matter, and that the court has full and complete jurisdiction of the subject matter of this proceeding and of the person of any and all persons, associations and corporations.

And the Court finds that all of the natural streams named in this decree are either directly tributary to the Arkansas River, or tributary to some other streams which are tributary to the Arkansas River, and that all of the waters adjudicated in and by this decree are in Water District No. 11, and that the following persons, corporations and municipalities have filed statements of claim in this proceeding, viz:

John Carter and A. T. Hartwick, for Poncha Springs.

Walter Reed Gage, Trustee, Heywood Springs.

Denver and Rio Grande Western Railroad Company, for sixteen stations in Water District No. 11

Lizzie L. DeWitt, for Willowdale Ditch.

Sunnyside Park Ditch Company, Sunnyside Park Ditch.

Elmer W. Wright and Marie Wright, for the Knox Ditch.

Charles M. Thiele, for the Thiele Ditch.  
 City of Salida, for Salida Water System.  
 Byrd Moriarty, for the Byrd Pipe Line.  
 E. Alfred Marquard, for Marquard Pipe Line and Marquard Pipe Line No. 2.  
 Roy L. Nafziger, for an unnamed pipe line, and  
 Casper S. Hogan and Jessie E. Hogan for the Hartner Ditch No. 1 the  
 Hartner Ditch No. 2.

It is Ordered and Adjudged that the several priorities for uses other than irrigation in and by this decree ~~awarded~~ awarded are awarded expressly subject and subordinate to all priorities of water for purposes other than irrigation heretofore awarded by final decree of this court, and numbered according to the dates of their several appropriations as follows:

| Name   | Source                   | Date of Priority   |
|--|--------------------------|--------------------|
| 1. Poncha Hot Springs  | Poncha Creek             | January 1, 1868    |
| 2. Heywood Springs   | Springs near Chalk Creek | January 1, 1870    |
| 3. Salida Station of D. & R. G.                              | Arkansas River           | June 9, 1880       |
| 4. Buena Vista Station, D. & R. G.                           | Cottonwood Creek         | June 9, 1880       |
| 5. Yale Station of D. & R. G.                                | Low Pass Creek           | June 9, 1880       |
| 6. Riverside Station of D. & R. G.                           | Morrison Creek           | January 20, 1881   |
| 7. Willowdale Ditch  | Chalk Creek              | March 30, 1881     |
| 8. Grays Station   | Grays Creek              | September 23, 1882 |
| 9. Marshall Pass Station D. & R. G.                          | Marsh Creek              | September 23, 1882 |
| 10. Garfield Station of D. & R. G.                           | unnamed gulch            | December 31, 1883  |
| 11. Sunnyside Park Ditch                                     | Arkansas River           | January 3, 1884    |
| 12. Mears Junction Station D. & R. G.                        | Springs                  | December 29, 1884  |
| 13. Nathrop Station of D. & R. G.                            | Chalk Creek              | May 11, 1885       |
| 14. Shirley Station of D. & R. G.                            | Shirley Creek            | September 5, 1885  |
| 15. Silver Creek Station, D. & R. G.                         | Silver Creek             | September 5, 1885  |
| 16. Malta Station, D. & R. G.                                | Arkansas River           | June 24, 1885      |
| 17. Knox Ditch   | Chalk Creek              | June 1, 1890       |
| 18. Tennessee Pass, D. & R. G.                               | Tennessee Creek          | December 31, 1891  |
| 19. Ibez Station, D. & R. G.                                 | Big Evans Creek          | December 6, 1899   |
| 20. Municipal Water System of Salida Springs and percolation |                          | March 1, 1900      |
| 21. Cleora Station of D. & R. G.                             | Arkansas River           | December 31, 1909  |
| 22. Mile Post Station 239.42                                 | unnamed gulch            | December 31, 1918  |
| 23. Byrd Pipe Line   | Merriam Creek            | October 16, 1922   |
| 24. Marquard Pipe Line                                       | Merriam Creek            | July 22, 1923      |
| 25. Hartner Ditch No. 1                                      | West Tennessee Creek     | June 15, 1926      |
| 26. Hartner Ditch No. 2                                      | West Tennessee Creek     | July 1, 1926       |
| 27. Pipe Line claimed by Roy Nafziger                        | Merriam Creek            | November 17, 1927  |
| 28. Thiele Ditch   | Chalk Creek              | July 28, 1929      |
| 29. Marquard Pipe Line No. 2                                 | Merriam Creek            | July 3, 1930       |

And it is Ordered and Adjudged that the rights to the use of water in and by this decree awarded shall be subject and subordinate to the uses of water heretofore awarded by this court in and by any and all final decrees.

## Poncha Hot Springs.

The Court finds: That John Carter and A. T. Hartwick are the owners of the North West quarter of the South West quarter of Section 15, Township 49 North, Range 6 of the New Mexico Meridian, and that the Poncha Hot Springs are situated thereon and within a radius of approximately 300 feet from a point which is approximately 400 feet Northwest from the Southeasterly corner of said Northwest quarter of the Southwest quarter of said Section 15, and consist of two groups of springs.

That the waters of these springs are tributary to Poncha Creek, that the waters flowing from the Northerly group of said springs, and which flow approximately thirty-one hundredths of a cubic foot of water per second of time, does not reach Poncha Creek on the surface, but that the waters flowing from the Southerly group, and which flow approximately forty-four hundredths of a cubic foot of water per second of time, flow directly into said Poncha Creek undiminished except as to the amount thereof actually consumed by claimants. That since the first day of January, 1868, the waters of said springs have been used constantly for general household, domestic, and general bathing purposes as a health and bathing resort, and for a number of years last past for heating purposes also, and to the full extent of the flow of all said springs.

It is accordingly Ordered and Adjudged that said Poncha Springs are entitled to Poncha Creek Priority No. \_\_\_\_, which is Arkansas River Priority No. \_\_\_\_, with a priority therefor as of the first day of January, 1868, and that the person or persons entitled thereto are hereby awarded the right to divert and use all of the flow of water from each and all of said springs for domestic, household and heating purposes, and all other purposes reasonably necessary or proper in and about the operation of a public bathing resort, with a priority therefor as of the first day of January, 1868.

## Heywood Springs.

The Court finds: That Walter Reed Gage, Trustee is the owner of the Northwest quarter and the North Half of the Northeast quarter of Section 19, the Southeast quarter of the Southeast quarter of Section 18, the West half of the Southwest quarter, and the Northeast quarter of the Southwest quarter and the Southeast quarter of the Northwest quarter of Section 17, all in Township 15 South, Range 78 West of the 6th Principal Meridian, in the County of Chaffee, State of Colorado, upon which premises a health, pleasure and bathing resort is maintained and operated, and which resort has and maintains a hotel, bath houses, swimming pools, lighting plant and other structures and appliances usual and proper for such an institution.

That the water flowing from the Heywood Springs is hot water, and that ever since the first day of January, 1870, said waters have been used for general domestic purposes, household purposes, and bathing purposes both for health and pleasure, and for a number of years last past have also been used for heating purposes and other purposes usual in and about a bathing resort.

That the Heywood Springs are designated as the Pipeline Springs, the Bath House Spring, the Pool Spring and the Hot House Spring, and are tributary to Chalk Creek.

That the Pipeline Springs are located along the first five hundred feet of a ceiling four inch cast iron pipe, which has a fall of 18 feet and a capacity of one cubic foot per second of time, which begins at a point on the North side of said Chalk Creek from whence the East quarter corner of Section 24, Township 15 South, Range 79 West of the

6th principal meridian, bears South 42 degrees East 570 feet; that the Bath House Spring is situate at a point from whence the East quarter corner of said Section 24 bears South 34 degrees 30 minutes West 1120 feet; that the Pool Spring is situated at a point from whence the East quarter corner of said Section 24 bears South 35 degrees West 1240 feet; and said Hot House Spring is situate at a point whence the East quarter corner of said Section 24 bears South 37 degrees 1420 feet;

That said pipeline has a capacity of one cubic foot of water per second of time, that said Bath House Spring flows from one half to three quarters of a cubic foot per second of time, said Pool Spring flows, the same amount, and the said Hot House Spring flows one eighth of a cubic foot per second of time.

It is accordingly Ordered and Adjudged that said Heywood Springs, and each of them, are entitled to Chalk Creek Priority No. which is Arkansas River Priority No. , with a priority therefor as of the first day of January 1870, for all of the waters which flow from each and all said springs, and that the party or parties entitled thereto are hereby awarded the right to divert and use for domestic purposes, household purposes, bathing purposes, heating purposes, and all other purposes not irrigation, reasonably necessary in and about the operation of a pleasure and bathing resort, under and by virtue of said priority, all of the waters which flows from each and all of said Heywood Springs, and with a priority therefor dating from January 1st, 1870.

Salida Station  
Nathrop Station  
Buena Vista Station  
Riverside Station  
Yale (formerly Granite) Station  
Malta Station  
Tennessee Pass Station  
Ibex Station  
Hears Junction Station  
Shirley Station  
Grays Station  
Mile Post 239.42 Station  
Marshall Pass Station  
Silver Creek Station  
Garfield Station  
Cleora Station

The Court finds: That the Denver and Rio Grande Western Railroad Company is engaged in the general railroad business, and that along its lines within Water District No. 11, State of Colorado, it uses water at the above specified several sixteen stations for operating steam locomotives and general railroad purposes, and at some stations also for household and other domestic purposes.

That at each of these several specified sixteen stations the said railroad company has diverted, and beneficially applied to the purposes hereinafter specified the amount of water hereinafter specified and awarded and as of the date hereinafter specified and awarded.

Salida Station.

That water at this station is pumped from an intake well on the Northeast bank of the Arkansas River located at a point which bears North 24 degrees West 1100 feet from the Southeast corner of Section 32, Township 50 North, Range 9 East of New Mexico Principal Meridian, and which intake well is fed by a 12 inch gravity pipeline 1200 feet long leading from an upper well which is supplied by a seepage gallery 700 feet long extending Northerly along the Easterly side of the river.

From the intake well the water is conveyed through a six inch pipe line, with a capacity of 1.3367 cubic feet per second of time to the service tank.