

1956

# United States of America v. Provo Bench Canal and Irrigation Company et al : Brief of Respondents

Utah Supreme Court

Follow this and additional works at: [https://digitalcommons.law.byu.edu/uofu\\_sc1](https://digitalcommons.law.byu.edu/uofu_sc1)

 Part of the [Law Commons](#)

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors.

A. H. Christenson; Phillip V. Christenson; Cullen Y. Christenson; Christenson & Christenson; Dallas H. Young, Jr.;

---

## Recommended Citation

Brief of Respondent, *US v. Provo Bench Canal and Irrigation Co.*, No. 8391 (Utah Supreme Court, 1956).  
[https://digitalcommons.law.byu.edu/uofu\\_sc1/2407](https://digitalcommons.law.byu.edu/uofu_sc1/2407)

This Brief of Respondent is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (pre-1965) by an authorized administrator of BYU Law Digital Commons. For more information, please contact [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu).

✓  
**In the Supreme Court of the  
State of Utah**

RECEIVED

MAY 5 1956

LAW LIBRARY  
U. of U.

**FILED**

FEB 20 1956

Supreme Court, Utah

PROVO BENCH CANAL AND IRRIGATION COMPANY, a corporation; TIMPANOGOS CANAL COMPANY, a corporation; UPPER EAST UNION CANAL COMPANY, a corporation; WEST UNION CANAL COMPANY, a corporation; EAST RIVER BOTTOM WATER COMPANY, a corporation; FORT FIELD IRRIGATION COMPANY, a corporation; LITTLE DRY CREEK IRRIGATION COMPANY, a corporation; SMITH DITCH COMPANY, an unincorporated association; FAUCETT FIELD DITCH COMPANY, an unincorporated association; RIVERSIDE IRRIGATION COMPANY, an unincorporated association; and PROVO CITY, a municipal corporation,

Plaintiffs and Respondents,

vs.

HAROLD A. LINKE, as State Engineer of the State of Utah, (successor in office of Ed H. Watson, former State Engineer of the State of Utah), and UNITED STATES OF AMERICA, through its Bureau of Reclamation, Department of the Interior,

Defendants and Appellants.

**Consolidated  
Cases  
Nos. 8390  
and 8391**

**BRIEF OF RESPONDENTS**

A. H. Christenson, Phillip V. Christenson,  
and Cullen Y. Christenson,  
for CHRISTENSON & CHRISTENSON,  
Attorneys for all Plaintiffs except  
Provo City

DALLAS H. YOUNG, JR.,  
Attorney for Plaintiff Provo City

## INDEX

	Page
INTRODUCTION .....	1
FACTS .....	3-6
ARGUMENT .....	6-12
POINT 1. WAS THERE AN ERRONEOUS CONSTRUCTION OF 2888 CIVIL?.....	6-8
POINT 2. NO OFFICIAL OF THE UNITED STATES OR ANY OTHER OFFICIAL STIPU- LATED AWAY ANY RIGHTS OF THE UNITED STATES .....	8-9
POINT 3. WOULD IT IMPAIR THE VESTED RIGHTS OF THE PLAINTIFFS AND RESPOND- ENTS TO ALLOW THE CHANGE OF POINT OF DIVERSION AND PLACE OF USE OF 52.492 c.f.s. OF WATER, OR A PART THEREOF IN EX- CESS OF 9.33 c.f.s.?.....	9-12
CONCLUSION .....	12
CROSS PETITION FOR REHEARING.....	13
ARGUMENT (CROSS PETITION FOR REHEAR- ING) .....	13-14

## CASES CITED

United States vs. District Court _____Utah_____, 238 Pac. 2d 1132 (1951)...	2, 4, 7
United States vs. District Court _____Utah_____, 242 Pac. 2d 774 (1952)...	2, 4, 7
Smith vs. Sanders 189 P. 2d 701.....	7
Provo Bench Canal & Irrigation Company et al vs. Linke, 296 P. 2d 723.....	1, 11

# **In the Supreme Court of the State of Utah**

---

PROVO BENCH CANAL AND IRRIGATION COMPANY, a corporation, et al,  
Plaintiffs and Respondents,

v.

HAROLD A. LINKE, as State Engineer of  
the State of Utah (successor in office of  
Ed H. Watson, former State Engineer of  
the State of Utah), and UNITED STATES  
OF AMERICA, through its Bureau of Rec-  
lamation, Department of the Interior,  
Defendants and Appellants.

NOS.  
8390 AND  
8391

---

## **Answer to Brief of the United States of America in Support of Petition for Rehearing**

---

### **INTRODUCTION**

The plaintiffs and respondents will first answer the Petition for a Rehearing and the brief in support thereof filed by the United States of America, and thereafter submit their Cross-Petition for a Rehearing and brief in support thereof.

In its Petition for a Rehearing, and in its brief, the United States certainly does no more than reiterate the same contentions that were made in its brief in support of its most recent appeal to this Court; Provo Bench Canal and Irrigation Company, a corporation, et al, v. Harold A. Linke, et al, 296 P. 2d 723. At the argument on that appeal the matters now brought up on the Petition for a Rehearing, although mentioned in the brief of the United States, were not argued by its representatives who argued the appeal on its behalf. In fact, it would appear to one that the United States had abandoned this portion of its contention in its appeal to reverse the decision of the District Court. In his argument before this Court, Mr. William H. Veeder, appearing for the United States, limited his contentions to an assertion that the decision of the Fourth District Court should be reversed, and that the applications to appropriate water, filed before the State Engineer, should be approved to the extent of 9.33 c.f.s. We are now again confronted with the contention of the United States that the provisions of Decree in Civil Action of 2888 the Fourth Judicial District Court should be entirely disregarded, and that the contracts and agreements upon which such decree was based, should be abrogated.

Although we feel that the contentions of the United States were fully answered in the two decisions of this Court dealing with the matter heretofore reported: United States vs. District Court, \_\_\_\_\_Utah\_\_\_\_\_, 238 Pac. 2d 1132 (1951), and United States vs. District Court, \_\_\_\_\_Utah\_\_\_\_\_, 242 Pac. 2d 774 (1952), in view of the continued assertions of the United States we wish to review briefly a pertinent part of the record of this case.

## FACTS

On June 12, 1945, the United States, through its Bureau of Reclamation, filed applications A-1902, and A-1903, with the State Engineer of the State of Utah, seeking to change the point of diversion and place and nature of use of approximately 53 c.f.s. of water claimed to have been purchased from certain owners of the right to use such waters under Decree 2888, *supra*.

Such applications were protested by the Provo Bench Canal and Irrigation Company, Provo City, and approximately ten other irrigation companies.

A hearing was had before the State Engineer, and in the progress of said hearing, counsel for the United States, in view of the evidence submitted, amended said applications with the consent of the State Engineer, so that instead of claiming approximately 53 c.f.s., reduced such claim to approximately 12 c.f.s. on both applications, and as thus amended, said applications were, on February 28, 1949, approved.

Plaintiffs and respondents appealed the decision approving such applications to the District Court of the Fourth Judicial District, such appeals being filed on or about April 28, 1949. No appeals or objections to the decision of the State Engineer were filed, or made by the United States or its counsel.

Before the answers of the United States were filed, the United States, acting through the United States Attorney, Scott M. Matheson, filed before the United States District Court for Utah petitions to have the cases removed to such court. The petitions for removal were denied. These petitions for removal were filed on or about August

16, 1949. The cases were remanded to the District Court of the Fourth Judicial District, by order of the United States District Court, on October 31, 1949.

On or about October 31, 1949, in the District Court of the Fourth Judicial District, motions to dismiss in the two cases were filed by Scott M. Matheson, United States Attorney, acting for and on behalf of the United States. The alleged basis for such motions was that the United States had not consented to be sued therein.

Upon the denial of the motions by the Fourth District Court, the United States filed original proceedings with the Supreme Court of the State of Utah to prevent the Fourth District Court from taking jurisdiction of the appeal from the decisions of the State Engineer. The matter was decided by the Supreme Court as reported in the case *United States vs. District Court, \_\_\_\_\_ Utah \_\_\_\_\_*, 238 P. 2d 1132 (1951), *supra*. Subsequently a petition for a rehearing was filed by the plaintiffs, and the action of the Supreme Court is reported in 242 P. 2d 774 (1952) *supra*. William H. Veeder, one of the representatives of the United States, who appears in the petition for a rehearing herein, appeared in the latter matter before the Supreme Court.

On or about December 15, 1952, the United States, acting through the United States Attorney, filed with the District Court of the Fourth Judicial District answers in the two cases.

The cases were set for trial October 26, 1953, before the District Court of the Fourth Judicial District. As shown by the letter from J. Lee Rankin, Assistant Attorney General of the United States, dated October 7, 1953, quoted on pages 59 to 61 of the Brief of the United States, filed in the appeal of this matter, which was decided by the

Supreme Court on May 1, 1956, A. Pratt Kesler, United States Attorney of Utah, was authorized to have Mr. E. J. Skeen, who had represented the United States Bureau of Reclamation in filing the original applications before the State Engineer, and in the hearings in respect thereto, to help Mr. Kesler in representing the United States in the hearing of the matter set for trial. Part of the language of the letter from Mr. Rankin, dated October 7, 1953, is quoted as follows:

“This will refer to the above entitled matter and to your letter of October 2, 1953, relating to it. In your conversation with Mr. Veeder, of the Department, you inquired as to whether Mr. E. J. Skeen, Attorney, Bureau of Reclamation, could be authorized to represent the United States of America in this action, which is to come on for trial October 26, 1953. In the opinion of the Department, the responsibility for the protection of the interests of the United States and any appearance on its behalf in this cause must necessarily rest with and be made by you. You, however, are authorized to have Mr. Skeen assist you in representing the United States.——”

Then there follows in such letter instructions as to how the United States Attorney should proceed in filing motions to strike, etc.

On October 9, 1953, Motions to Strike in the two cases were filed by A. Pratt Kesler, United States Attorney, and E. J. Skeen, apparently representing the United States.

The cases were consolidated for trial and were tried beginning October 28, 1953, and continued from day to day until January 7, 1954, and consumed approximately eleven days of trial. Mr. Kesler, United States Attorney, appeared



at every day of the trial, although Mr. Skeen was most active in presenting the matter before the Court, and in interrogating the witnesses.

At the conclusion of the evidence, each of the parties was requested to submit briefs to the Court, but after long delays, the United States refused to do so although Mr. Skeen had prepared a brief but was refused permission by the United States to file the same. The brief was subsequently adopted and filed by Mr. Fisher Harris as Amicus Curiae.

It was not until the last day of September, 1954, that the United States began filing motions and suggestions, in order to have the cases reopened to take further evidence, or to remand the cases to the office of the State Engineer, to allow the United States to amend its applications.

### ARGUMENT

The Petition for a Rehearing of the United States seems to be based upon three main contentions.

1. The United States claims an erroneous construction of Decree 2888, Civil.

2. That an unauthorized official of the United States stipulated away valuable rights of the United States, which it did not have a right to do.

3. That to allow the United States to change the point of diversion and place of use of 52.492 c.f.s. would not impair the vested rights of plaintiffs and respondents.

#### **1. Was there an erroneous construction of 2888 Civil?**

While the United States in its brief in support of a Petition makes the bald assertion that the Court has misin-

terpreted the provisions of Decree 2888, and infers that the change of point of diversion and place of use of 52.492 c.f.s. of water could be made without impairing vested rights if the decree were properly interpreted, nowhere in their brief can there be found anything other than the unsupported conclusion that neither the Supreme Court nor the District Court of the Fourth Judicial District interpreted the decree right.

Of course, as asserted in the brief of the respondents, it is the respondents' claim that a proper interpretation of the decree would prevent the change of the point of diversion and place of use of all the 52.492 c.f.s.; and assert as the reasons therefor that the decree is *res judicata*, and that to allow such change would be an impairment of the obligation of contracts. The respondents appealed from the decisions of the State Engineer approving the applications for a change of point of diversion and place of use for approximately 12 c.f.s. of water. The United States did not appeal from such decisions, and should now be barred in this proceeding. *Smith v. Sanders*, 189 P. 2d 701; *United States v. District Court*, 238 P. 2d 1132, *supra*; *United States vs. District Court*, 242 P. 2d 774, *supra*. Counsel for the United States alludes on page 16 of their brief to a claimed "vast influx" of water into the Utah Lake area. We cannot understand how any influx of water into the Utah Lake area could in any way be determinative or in any way persuasive in this case. Counsel also refers to "hundreds of thousands of acre-feet of water from foreign watersheds" which are allegedly imported into Provo River Valley, and infers that such water may be made available to the plaintiffs and respondents. Certainly this Court knows that any part of such water which is made available from foreign

watersheds for the plaintiffs and respondents is bought and paid for by the respondents, and speculation that some of such water might get to the respondents through seepage or from any other imaginative source would have no basis in this proceeding. As stated on page 36 in the brief of Amicus Curiae, "Such demonstration could not possibly be of any significance to the hearing before the State Engineer or before the District Court." The District Court, and this Honorable Court, we assert, were correct in holding that Decree 2888 was binding on the United States as well as on the predecessors in interest of the United States; but, of course, the respondents claim that Decree 2888 should not have been limited as it was by this Court.

**2. No official of the United States or any other official stipulated away any rights of the United States.**

It is hard to believe from the record of the proceedings that went on for five years, that the office of the Attorney General of the United States did not know what was going on. Be that as it may, the applications for change were amended to conform to the theory of the representatives of the United States, and before the District Court, reductions were allowed when from the evidence it appeared that even a lesser amount of water would be saved from loss through evaporation and transpiration. See pages 17 to 21, inclusive, of respondents' brief on the appeal herein. Further, as observed on page 31 of the brief of Amicus Curiae: "There was no surrender of rights, as Messrs' Vee-der and Rankin assert. No more was done than to limit the amount of water approval of the change of which was sought by certain applications; and if the Attorney General of the United States can bring himself to do so, he and

his assistants are still free to claim the remainder." We suppose that there is nothing to prevent the office of the Attorney General, except possibly some administrative procedure, from filing an application to change the point of diversion and place of use of the balance of the water belonging to plaintiffs and respondents. We cannot think, however, that there is any possible theory on which such applications could be granted.

**3. Would it impair the vested rights of the plaintiffs and respondents to allow the change of point of diversion and place of use of 52.492 c.f.s. of water, or a part thereof in excess of 9.33 c.f.s.?**

How can the United States seriously contend, as they do in their brief, that to deprive the respondents of water in excess of 9.33 c.f.s. would not interfere with the vested rights of respondents?

Even taking Decree 2888 in its interpretation most favorable to the United States to allow the change to the extent of 9.33 c.f.s., certainly to allow the change of the point of diversion or the place of use of any water in excess of 9.33 c.f.s. would without question interfere with vested rights of the respondents. In Civil Case No. 2888, entitled Provo Reservoir Company, a corporation, vs. Provo City, a municipal corporation, et al, in which case the rights to the use of the water of Provo River by the predecessors in interest of the United States were adjudicated, it was established that the predecessors in interest of the respondents had a first and primary right to the waters of the Provo River by reason of prior applications, and that the rights of the predecessors in interest of the United States in Wasatch County were subsequent and inferior to such

rights; but that in order to promote the general interests of the land of the water users in Wasatch and Utah Counties, it was stipulated by all parties concerned, and decreed by the Court, that the Wasatch County interests mentioned might divert water from Provo River to the extent of their needs in accordance with said decree without proration with the respondents and their predecessors in interest, provided that none of the parties, the predecessors in interest of the United States, would at any time use the said water upon any other lands than those irrigated thereby, so as to cause any of the seepage or drainage therefrom to be diverted away from the channel of Provo River.

The Decree, in 2888, *supra*, based upon the stipulation and relinquishment of the priority of the Utah Valley users in consideration of the agreement that the water in Wasatch Valley would not be used on different lands so as to prevent the seepage from being available to Utah Valley users, provides among other things as follows:

“116. It is further ordered, adjudged, and decreed, that for the purpose of maintaining the volume of flow of Provo River available for use of the parties, and to maintain to the parties hereto the respective rights herein awarded and decreed, none of the parties shall change the place of use of said water so as to cause the seepage or drainage therefrom to be diverted away from the channel of said river, or canals, or from the lands heretofore irrigated thereby.”

While respondents assert, and as is further discussed in the respondents' Cross Petition for a Rehearing herein, the decree should be interpreted to include all of the water that was heretofore used on the land now inundated by the Deer Creek Reservoir, including that consumptively used

through evaporation and transpiration, the Supreme Court in this case in its decision filed May 1, 1956, Provo Bench Canal and Irrigation Company, et al, vs. Linke, 296 P. 2d 723, has interpreted the decree to mean that the point of diversion and place of use of only that water which, prior to the building of the Deer Creek Dam, was not consumptively used, could not be changed, and held that applications to change the point of diversion and place of use of the water consumptively used through evaporation and transpiration prior to the building of the Deer Creek Dam should be approved. Judge Wade, in his opinion filed on May 1, 1956, stated:

"The water rights determination (Decree 2888) does not forbid a change in the place of use of such waters. It only forbids such change as will divert the seepage and drainage from such use from the channel of the river or from the lands previously irrigated by such seepage or drainage. It merely expressly limits the right to change the place of use to the same extent as such right is limited by our statutes and by common law of western irrigation. In other words, it simply prohibits such change as will impair the vested rights of others. It deals only with a change which will divert away from the river channel or the lands previously irrigated thereby the seepage and drainage from such use. It does not award to plaintiffs the right to the use of the waters which under the older use would have been completely consumed, but merely that they retain the same right to the use of these waters as they would have had if no change had been made. As previously pointed out, this is exactly the rights which they have under the change caused by the construction of the reservoir."

As Justice Wade has pointed out, to allow a change of

any of the water not consumed by evaporation and transpiration under pre-reservoir conditions to divert away from the channel the seepage and run-off thereof, would be an interference with the vested rights of the respondents as granted under Decree 2888.

## CONCLUSION

The respondents have attempted to answer the points asserted by the United States with the statement that they do not believe the petition for a rehearing of the United States has any sound basis for its being granted. The respondents feel, however, that it might be in the best interests of all parties concerned if the Supreme Court answered the claims of the United States by a decision on the points advanced by its counsel, under the facts of the cases as consolidated. The brief of respondents in answer to the brief of the United States in support of its petition for a rehearing, is submitted in an attempt to show that the claims of the United States are without foundation. It is our contention that the applications to change the point of diversion and place of use of any of the water involved herein, including that consumed by evaporation and transpiration, were properly denied by the Fourth District Court and that the United States, by the Utah Supreme Court's direction that the applications be approved to the extent of 9.33 c.f.s. is getting more than it is entitled to. This matter will be more fully covered by the respondent's Cross Petition for a Rehearing and brief in support thereof.

## **Cross Petition for Rehearing**

The plaintiffs and respondents respectfully petition the Supreme Court of the State of Utah to grant a rehearing in this cause for the following reasons:

1. The plaintiffs and respondents are entitled to the use of 52.494 c.f.s. of water for which amount the plaintiffs and their predecessors in interest by stipulation gave up a primary right, prior to the construction of the Deer Creek Reservoir. Such primary right was awarded in Decree 2888 to certain Wasatch County land owners, provided that such water would be used only on certain specified lands in Wasatch County theretofore irrigated by the Wasatch County land owners secondary rights. When it became impossible by the construction of Deer Creek Reservoir to use such water beneficially upon such land, the lower owners are entitled to it.

### **ARGUMENT**

Prior to Decree No. 2888, Civil, in the Fourth Judicial District Court of the State of Utah, sometimes referred to as the Provo River Decree, the plaintiffs, and their predecessors in interest, had a primary right to the use of 52.492 c.f.s. of water involved herein, which primary or first right was awarded under Decree 2888 to the owners of land purchased by the United States Government, upon which to construct the Deer Creek Reservoir. In a stipulation upon which Decree 2888 was based, the plaintiffs, and their predecessors in interest, gave up their primary right to the use of that amount of water with the agreement that such water would be used on no other land; and now because of the construction of the Deer Creek Reservoir, the major



part of such land is inundated and the water cannot be beneficially used to irrigate such land, and such water should be turned down for the use of the lower users.

Had there been no Decree 2888 and no stipulation by the predecessors of the plaintiffs and the predecessors of the United States with respect to the water rights pertinent herein, we take it that the plaintiffs, at the time the Deer Creek Reservoir was constructed, still would have had their primary right to the use of such 52.494 c.f.s. of water. That water would have been running down the channel of Provo River for the use of the lower users. Upon the construction of the Deer Creek Reservoir, the obligation would have been upon the United States to recognize such primary rights and turn such amount of water as involved herein out of the Deer Creek Reservoir for the use of the lower plaintiff users. There would have been no measurable loss of water from evaporation and transpiration. Such loss from evaporation and transpiration only resulted when the primary rights were sacrificed by predecessors of plaintiffs with the understanding and agreement that the place of use of such water would not be changed.

We now strongly maintain that when the United States cannot perform the agreement of their predecessors, and all of such water cannot be beneficially used upon the land involved, it is incumbent upon the United States to put the plaintiffs in the same position they would have been, had not the stipulation and trade been made, and turn such water down the Provo River for the use of the plaintiffs and their stockholders.

We respectfully urge this Court to consider this point upon this petition for a rehearing and urge that a rehearing should be allowed and that the Supreme Court should

reverse its decision directing the approval of the applications to the extent of 9.33 c.f.s. of water, and should affirm the decision of the lower court and disapprove the applications Nos. A-1902 and A-1903, in their entirety.

Respectfully submitted,

PHILLIP V. CHRISTENSON,  
for CHRISTENSON, NOVAK & PAULSON,  
Attorneys for all plaintiffs except  
Provo City

GEORGE S. BALLIF,  
Attorney for Provo City

## INDEX

	Page
Statement of the Case.....	2
Statement of Facts.....	2
Argument:	9

### POINT I

THE RIGHT TO CHANGE THE POINT OF DIVERSION AND PLACE OF USE OF WATER IS NOT AN UNQUALIFIED RIGHT, BUT CAN ONLY BE MADE WITHIN THE INHERENT LIMITATIONS OF THE BASIC RIGHT INVOLVED AND THEN ONLY IF THE CHANGE CAN BE MADE WITHOUT IMPAIRMENT OF ANY VESTED RIGHTS WHETHER PRIOR OR SUBSEQUENT .....	9
--	---

### POINT II

THE STATUTES OF THE STATE OF UTAH PROVIDE THE NECESSARY PROCEDURE FOR A CHANGE OF THE POINT OF DIVERSION AND PLACE OF USE, TO WHICH PROCEDURE, INCLUDING ACTIONS FOR PLENARY REVIEW ON APPEAL TO THE STATE DISTRICT COURTS, THE UNITED STATES OF AMERICA AS CLAIMANT TO WATER RIGHTS IS SUBJECT .....	11
---	----

### POINT III

THE QUESTION OF WHETHER THE CHANGE APPLICATIONS OF THE UNITED STATES OF AMERICA SHOULD BE APPROVED OR REJECTED WAS PROPERLY BEFORE THE DISTRICT COURT FOR PLENARY REVIEW AND THAT COURT HAD FULL JURISDICTION TO REVERSE OR AFFIRM THE DECISIONS OF THE STATE ENGINEER.....	12
---	----

## INDEX (Continued)

Page

### POINT IV

THERE IS NO SHOWING BY DEFENDANTS THAT THE EVIDENCE WAS IN ANY MANNER INSUFFICIENT TO SUPPORT THE FINDINGS OF THE COURT, BUT IN FACT SUCH FINDINGS ARE FULLY SUPPORTED BY THE EVIDENCE ..... 13

### POINT V

THE DISTRICT COURT HAD THE RIGHT TO CONSIDER EVIDENCE GOING TO THE QUESTION OF WHETHER THE REQUESTED CHANGE APPLICATIONS COULD BE GRANTED WITHOUT THE IMPAIRMENT OF VESTED RIGHTS OF OTHERS AND IN CONNECTION THEREWITH COULD RECEIVE EVIDENCE AS TO (a) THE INHERENT LIMITATIONS OF THE RIGHT SOUGHT TO BE CHANGED, and (b) AS TO THE EFFECT OF THE ATTEMPTED CHANGE IN WORKING A NET DEPRIVATION OF WATER AS AGAINST THESE PLAINTIFFS ..... 15

### POINT VI

THE ONLY QUESTION THAT THE TRIAL COURT DETERMINED WAS THE SAME QUESTION WHICH WAS BEFORE THE STATE ENGINEER, to-wit: SHOULD THE SAID APPLICATIONS BE APPROVED OR REJECTED? AND THE DISTRICT COURT HAD THE RIGHT TO LOOK TO THE LAW AND THE EVIDENCE RELEVANT AND MATERIAL TO THAT WHOLE QUESTION, ITS DETERMINATION BEING IN AGREEMENT WITH THE LAW OF THIS CASE AS PREVIOUSLY ANNOUNCED BY THIS COURT ..... 16

## INDEX (Continued)

Page

### POINT VII

THE ATTEMPT OF THE UNITED STATES OF AMERICA TO EXTEND THE EFFECT OF THIS APPEAL TO QUESTIONS BEYOND THAT OF WHETHER THE JUDGMENT OF THE DISTRICT COURT IN REVERSING THE DECISIONS OF THE STATE ENGINEER WAS PROPER, IS UNSUPPORTABLE, AND UNJUSTIFIED IN THAT THE UNITED STATES OF AMERICA DID NOT ITSELF APPEAL OR CROSS-APPEAL FROM THE ORIGINAL DECISIONS OF THE STATE ENGINEER AND IT HAS NO BASIS WHATSOEVER IN FACT, OR IN LAW, FOR MAKING ITS PRESENT CLAIMS 17

### POINT VIII

NO ONE, WITH OR WITHOUT AUTHORITY, STIPULATED AWAY ANY RIGHT OF THE UNITED STATES OF AMERICA, AND THE REPRESENTATION OF THE UNITED STATES OF AMERICA AT THE TRIAL WAS WHOLLY ADEQUATE AND WITH FULL AUTHORITY FROM THE ATTORNEY GENERAL OF THE UNITED STATES ..... 20

Conclusion ..... 22

### STATUTORY PROVISIONS CITED

Section 73-3-3, Utah Code Annotated, 1953..... 9  
Section 73-3-14, Utah Code Annotated, 1953..... 11  
Section 73-3-15, Utah Code Annotated, 1953..... 13  
Title 43, Section 372, United States Code Annotated.... 11  
Title 43, Section 383, United States Code Annotated.... 11

# INDEX (Continued)

Page

## TABLE OF CASES

Bates vs. Hall.....	17
44 Colo. 360, 98 P. 3	
City and County of Denver vs. Northern Colorado W. C. District .....	11
276 P. 2d 992	
East Bench Irrigation Co. vs Deseret Irrigation Co....	17
2 U. 2d 172, 271 P. 2d 449	
Federal Land Bank of Spokane vs. Union Century Life Ins. Co. ....	17
51 Ida. 490, 6 22d 486	
Lehmitz vs. Utah Copper Co.....	9
118 Fed. 2d 518	
Mason Co. vs. Tax Commission.....	11
302 US 186, 58 Sup. Ct. 233, 83 L. Ed. 187	
Moyle vs. Salt Lake City.....	9
111 U. 201, 176 P. 2d 882	
Pioneer Irrigation District vs. American Ditch Associa- tion .....	11
(Ida.) 1 P. 2d 196	
Rank vs. Krug.....	11
90 Fed. Supp. 773	
Smith vs. Sanders.....	12
112 U. 517, 189 P. 2d 701	
State of Nebraska vs. State of Wyoming.....	11
295 US 40, 55 Sup. Ct. 568, 79 L. Ed. 1279	
State of Nebraska vs. State of Wyoming.....	11
325 US 589, 65 Sup. Ct. 1332, 89 L. Ed. 1815	
United States vs. Beebe.....	11
127 US 338, 8 Sup. Ct. 1083, 32 L. Ed. 121	
United States vs. Caldwell.....	9
64 U. 490, 231 P. 434	

## INDEX (Continued)

	Page
United States vs. Fourth District Court.....	5
238 P. 2d 1132	
United States vs. Fourth District Court.....	5
242 P. 2d, 774	
U. S. vs. Humboldt Lovelock Irrigation Light & Power Co. ....	11
97 F. 2d 38	