

Globe Equity No. 59**In the District Court of the United States
In and for the District of Arizona**

THE UNITED STATES OF AMERICA

vs.

GILA VALLEY IRRIGATION DISTRICT, ET AL.

DECREE ENTERED JUNE 29, 1935**Page 6**

This cause came on to be heard at this term, and thereupon it was shown to the court:

That the plaintiff and the parties defendant whose claims and rights have been presented by answer or stipulation and remain for determination herein, have concluded and settled all issues in this cause as between plaintiff and said parties defendant, and as between said defendants and each of them and every other thereof, and mutually have agreed--all as evidenced, for plaintiff, by the assenting signatures, endorsed at the end hereof, of its solicitors of record and the Attorney General and Secretary of the Interior of the United States, and for said defendants, by the assenting signatures, likewise endorsed at the end hereof personally, or of their several solicitors of record--that such settlement should be embodied in and confirmed and made effective by way of the within decree of the Court in this cause defining and adjudicating their claims and rights as against each other in identical form and substance as hereinafter set forth; and the Court upon consideration thereof and of the record herein as to the disposal of the parties defendant who have been separated from the cause, and being duly informed in said premises, doth find, order, adjudge, and declare its decree herein to be as follows, namely:

I

That by the orders of this Court dated January 22, 1929, and March 11, 1930, this suit and the amended complaint herein, upon the motion of plaintiff, were dismissed as to defendants:

John S. Abbott; Charles A. Adams; A. Allen; Francisco Alvidrus; Paul Beeker; George P. Bennett; Mary E. Benscoe; Bentz Brothers; J. W. Bentz; George A. Bigler; C. O. Billingsley; Est. of Paul Blackmore; B. A. Boyles; Sam Brown; Newton Bradley; Juan Cachon; Ella Carpenter; J. C. Carpenter; Rachel Carr; John Castro; Chono Celayo; Tim Chapman; Ben M. Crawford; W. J. Davis; G. H. Dinsmore; John Eastman; Dud Eldridge; J. F. English; Helen T. French; Mattie M. Hall; Hawkins & Simms Milling & Irrigating Company; A. W. Heath; Mrs. Clara Hicks; James Henshall; Jacob Hildebaugh; J. I. Hinkle; J. P. Hinkle; A. M. Hooper; Roger Hoopes; J. G. Hopkins; R. T. Horrell; Arthur Houser; S. L. Johns; Bennet J. Kellner; Ernest F. Kellner; H. D. Kepper; J. H. Kerby; J. H. Lacey; John Laffey; Louise LeBaron; James LeHoxi; W. A. Leonard; Mrs. Frank Lewis; J. W. Lightfoot; George Lobb; Gordon McLean; B. Mately; Rafael Memos; Manrico Mijia; Sidney B. Moeur; E. C. Montgomery; Charles Morrell; Reputio Moriz; George Olmstead; Lillian W. Pearl; James A. Perkins; Marie C. Peters; S. K. Phillips; Frederick M. Putnam; John Ralston; Gabriel Robles; H. N. Russel; Victoriana Ruiz; J. Ryan; H. Salazar; Manuel Serano; S. Schultz; Charles H. Vann; Walter Shayeb; Estate of Charles R. Sligh; Nolberto Subia; Edward H. Sinclair; George Thompson; Jose Tonis; J. G. Turney; Manual Urtiaga; Elijah Urtiaga; Judd Webster; George W. Wells; and O. H. Brown;

W. L. Cauthen; W. R. Elliott; William Jackson; J. F. Kepper; D. T. McGuire; and H. B. Sweeting;

it having been found and determined by the Court in that relation that they and each of them were not proper or necessary parties defendant in this cause; which said action of the Court in these premises hereby confirmed.

II

That by way of amended complaint, as filed herein on the 5th day of December, A.D., 1927, and orders of this Court bringing in new parties defendant under said amended complaint,

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this suit and the amended complaint herein were directed against each and all of the defendants named below, to-wit:

D. Bertoglio; Beatrice Perry; and H. B. Wiggins;

Also, James R. Pruett; Antonio Specia and H. B. Summers;

Also, American Smelting and Refining Company; A. A. Anderson; John N. Anderson; Mary A. Antenoll; Estate of Walter Baitty, Homer H. Martin, Administrator; J. W. Baker; Henry Bamesberger; Ruth R. Barham; Estate of Thomas Barrett, Dan T. Peart, Administrator; Pansy Kenower Bartlett; Madelene Bassler; Albert C. Becken; Grace R. Becken; Charles F. Bennett; Jarvus D. Bennett; Francis D. Blair, Clifton Bogard; C. D. Bradley; Ida M. Bradley; John R. Bradshaw; Esther A. Brockway; Ira S. Brayton; Marshall F. Brockway; Charlotte Hall Brown; Elizabeth Brown; J. P. Brown; Sarah B. Brown; Thresa Hall Brown; Estate of W. F. Brown, P. D. Overfield, Administrator; John J. Buggs; John W. Burris; Lee Robinson Burris; L. B. Cadwell; Casa Grande Valley Bank; Mike Celaya; Estate of W. B. Charlton, John E. Charlton, Administrator; Albert J. Christensen; Edith M. Clemans; Hazel H. Clemans; Winnefred W. Clemans; W. J. Clemans, Jr.; W. P. Clements; Mrs. Charles E. Cleveland; Inez H. Conrad; Thomas A. Crow; Jennie Davidson; Maurice Dodd; Tracy Eastman; Christobell G. Ellis; Joe Erny; Jesus Espinosa; Jose T. Espinosa; Salvador S. Feliz; C. A. Fitzgerald; James D. Freeman; Fidelity Savings & Loan Association; First National Bank of Florence; May E. Furback; Kathrina Gack; Estate of George F. Gallagher, Robert Denton, Administrator; L. D. Gamble; M. L. Gilbert; George F. Graham; Nellie R. Gochenouer; Joseph Greene; Virginia Hales; John Hamilton; A. T. Hammons, Receiver; May Catlin Hansen; J. B. Harsha; Vernon W. Havins; John Hendricks; W. E. Herron; Edith B. Jamieson; James C. Jayne; E. R. Johnson; Richard J. Jones; Julia R. Julian; Fred R. Kenover; Ola R. Kenover; H. B. Klingenberg; Anna E. Kochsmeier; Frederick Kochsmeier; Henry Kochsmeier, Sr.; Henry D. Kochsmeier; Maria Kochsmeier; Gustav K. Kratzka; James J. Kruse; J. E. LaFleur; W. W. Lane; Dirk Lay; Elizabeth L. Lay; Estate of Lola W. Lee, Dan T. Peart, Administrator; David A. Little; Minnie Lobb; Estate of W. H. Lonergan, T. A. Lonergan, Administrator; May H. McBennett; A. L. McCann; Alpha E. McCann; Minnie M. McCann; James K. McCarty; Carrie McDowell; M. W. McDowell; Gertrude B. McGee; Glen C. McKenzie; Elizabeth P. McMurray; Melanie Mendell; Rita Marquez; Ivey Marshall; Ralph K. Marshall; Joe Marta; David Omer Martin; Ben B. Mathews; Josiah J. Maxey; R. D. Melick; Lillian C. Merchant; John B. Michea; J. L. Mills; Mary L. Miles; R. M. Miller; Lillian I. Mitchell; Henry G. Moeller; Fayette Moore; Ethel M. Moorehouse; H. W. Moorehouse; Vashti B. Moorehouse; Margarete L. Murphy; J. S. Murry; C. H. Niemeyer; Lillian O'Connor; Olive J. O'Connor; Lewis Olesen; Antonio S. Padilla; Florence Palamounter; Howard G. Palamounter; Lee Patrick; Roy F. Patrick; George W. Pattee; Harriet E. Pattee; Estate of Earl P. Patterson, Thomas D. Derry, Administrator; Willie K. Pearson; Emma Pennington; Walter J. Pennington; Amandus C. Peters; Addie Phillips; Margaret E. Pierce; Pinal Investment Company; Frank Pinkley; Eli E. Piper; W. M. Pollock; Grace P. Pottebaum; Robert H. Pottebaum; Estate of W. Y. Price; Mrs. W. Y. Price; Alice M. Prouty; Lloyd W. Prouty; W. Scott Prouty; Edwin Ralph; Henderson H. Raybourn; A. V. Read; Martin J. Reed; Fern M. Richardson; H. G. Richardson; S. H. Rorabaugh; Ralph M. Rounds; Andris V. Salazar; Christiana Salazar; John Saxman; B. W. Scholtz; Estate of Elizabeth Schultz, Fred T. Armstead, Administrator; William J. Schultze; Charles M. Schwab; Emma B. Schwarm; Clara C. Seago; George P. Sellers; Mary S. Scheafe; Elizabeth Shannon; Mary L. Shannon; Chloren B. Shiflet; John Sigfrid; Carrie S. Sigler; George W. Sigler; J. O. Simmons; Southern Arizona Bank & Trust Company; Herbert G. Sparks; C. C. Springer; Mary E. Stevens; T. V. Stokes; Walter W. Stovall; Tim Sullivan; Surety Abstract

& Realty Company; J. C. Swan; Estate of John W. Sweeney, Sam Sweeney, Administrator; Chas. F. Tantlinger; S. E. Tellyer; Frank A. Thackery; Augusta Thor; Fred Thor; Mae Tiffany; Mrs. Billie

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Treat; S. Louise Trezell; Mary E. Truman; E. S. Turville; Mrs. A. C. Urban; F. A. Urban; Valley Bank of Phoenix; Calbert L. Vance; Viola C. Vance; Ed G. Van Haren; Gregorio Vasquez; Augustine Villar; Joe Villar; George P. Walker; Harry Ward; Roy S. Ward; C. E. Waterbury; Josie Waterbury; Katie E. Weaver; Adolphus Weyrick; Natalia M. White; Dorcas E. Whitlow; Josephine R. Wills; Sophia Wind; Jessie P. Woody; Soren Yensen; and Elsie DeWolf Zellweger;

That original process thereunder by way of Subpoena Ad Respondendum, or by Court Order under section 57 of the Judicial Code, was duly issued and served, with a copy of the amended complaint, upon each of the aforementioned defendants, and each of said defendants failed and neglected to make or file an answer or otherwise defend or make a plea to said amended complaint as required by Rule 16 of the Rules of Practice for Courts of Equity of the United States; that orders taking the amended complaint as confessed by them and each of them were duly made herein and entered in the Order Book on the 25th day of November, 1929, the 11th day of March, 1930 and on the 19th day of December, 1934, in the office of the Clerk of this Court: each such order being so made and entered after the failure of each of the particular defendants named therein to make answer, defense or other plea as aforesaid; that no proceeding has been taken or initiated by them or any of them since the entry of said orders, and each thereof; and said defendants and each and every of them are now and remain in default of any answer, defense or other plea herein, and more than 30 days have elapsed since the entry of said orders and each thereof.

That under the orders Pro Confesso aforesaid, the amended complaint is taken as confessed, and it is ordered, adjudged and decreed herein, that the defendants above named in this article and each thereof, as against any of the parties plaintiff or defendant in this cause, their assigns or successors in interest, or their rights as herein decreed; that said defendants and each of them have no right to the use of water from the Gila River as against the parties to this action other than those set up in this decree, and they and each of them and, their heirs, executors, administrators and assigns or successors in interest are debarred and estopped from asserting or claiming any different or other, right, title or interest in or to the water or the use of any water from the Gila River as against the rights of the plaintiff and those of the defendants determined and set up in this decree.

III

That, upon the motion of the plaintiff, by Order of this Court dated March 30, 1935, this suit and the amended complaint herein were dismissed without prejudice as to the following defendants, to-wit:

S. B. Blake; Cluff & Mitchell; Colvin-Jones Consolidated Ditch Co.; John H. Davidson; W. P. Ferris; Jose Gonzales; T. Hinton; Layton & Ison; James Layton; E. D. McEuen; Roy A. Martin; Ed Moody; J. C. Norton; George A. Olney; Asa Packard; N. E. Platt; W. E. Posy; S. A. Powell; Pursley & Nash; Mrs. Mary Reynolds; Bert E. Rose; Smithville Extension Canal Company; Cinaoo Telles; E. L. Tidwell; Louis Voelokel; W. J. Walton; T. W. Wamslee; Estate of Webster, F. A. Webster, Administrator; Estate of J. R. Williams; B. D. Wilson; Young & Ridgway;

Also, Bank of Duncan; D. E. Barlow; J. W. Becker; Billingsley Canal Company; R. T. Bishop; Harry H. Boyer; Burcher Ditch Company; Estate of W. C. Cheatham; Edward C. Cole; Consolidated Canal Company; J. H. T. Cospers; Cospers-Wilson Canal Company; Ethel M. Cunningham; E. C. DeMoss; Double Circle Cattle Company; Thomas Edwards; Bonnie Elrage; Mangus Elrage; Mrs. Geo. J. Filleman; J. J. Filleman; Franklin Canal Company; Fred J. Fritz; Mrs. Katie Fritz; Furr & Blain; Harve K. Gatlin; Gila Ranch Company; Greenhorn Ditch Company; Greenhorn Irrigating Canal; County of Greenlee; O. C. Greenwell; Ole Hagan; William F. Hagan; S. P. Hale; Francelle Heywood; Mrs. Clara Hicks; County of Hidalgo; Hill Ditch; Francis M. Hodges; Lettie

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F. Hunt; M. J. Jensen; M. L. Jensen; D. L. Johnson; F. E. Johnson; R. S. Johnson; A. L. Jones; J. H. Jones, Sr., Estate; Martin & Pearson Ditch; Martin & Pearson Irrigating Canal Company; Arven Mortensen; T. J. Nations; G. O. Payne; C. V. Peery; T. M. Peters; Dell M. Potter; Fred Powell; R. Richardson; Romney Brothers; Romney & Lunt; Rucker Ditch; School District No. 30; J. M. Smelley; A. F. Smith; The Estate of Spoon, Ira L. Spoon, Adm.; A. G. Stevenson; W. R. Stevenson; Sunset Irrigating Canal Company; D. H. Thompson; W. Plune Tibbets; H. P. Trainor; Virden Ward; Ward & Courtney Dam Company; T. M. Williamson; State of New Mexico;

Also, Phelps Dodge Corporation; Arizona Copper Company;

Also, Morenci Water Company;

Also, Aztec Mutual Canal Company; James Leroy McCarthy; Richard E. Geyler; Frank C. Elwell.

Said action was had and taken in pursuance of those certain five stipulations between the plaintiff and the defendants above named through their solicitors of record, on file herein, wherein and wherefrom it appeared that said defendants and each of them had been named in this action and amended complaint, as parties defendant herein, through and by inadvertance, mistake and error, and that their claims and rights, if any, were and are outside the scope of said suit as same was and is outlined and defined in the amended complaint herein, and that they and each of them should be dismissed and eliminated from said cause, although some of them had filed their answers setting up their claims and rights to the use of certain waters from some of the tributaries of the Gila River, and said answers were filed through mistake and a misunderstanding as to the scope of said cause as outlined and defined in plaintiff's said amended complaint. It was agreed in said stipulations that the dismissal of said defendants should be accomplished upon motion of the plaintiff and Order of this Court as aforesaid, and that said Order should provide as in fact it does, as made and entered, of record herein that: said action and dismissal should be without prejudice to said defendants and each of them and/or to any of the other parties in this cause, or to any claim or rights to the use of water which said defendants, or any of them, or said other parties or any of them, now or hereafter may have, against the other or others, and that said defendants, and each of them, should be left as though they never had been named or made parties defendant herein; which said action heretofore taken by the Court in the premises, is hereby confirmed, and the provisions herein recited in reference thereto are made a part of this decree to protect their rights in that respect.

That, upon motion of the plaintiff, by Order of this Court dated March 30, 1935, this suit and the amended complaint were dismissed as to the following named defendants, to-wit:

A. P. Angle; Arizona Hercules Copper Company; Josephine Burks; Simon Cisneros; Louis Gilson; Gold Bullion Mining Company; Charles J. Gross; John M. Hatfield; G. H. Head; London Gila Mining Company; Theodore Lujan; Katherine S. Mellon; Luis Santos; and Manuel Tibbets;

Also, Frisco Placer Mining Company; Anna M. Gale; A. A. Larona; Brotten Lunt; Jose Sanchez; William Whelin; Harry C. White; and the White Mountain Lumber Company.

Said action having been taken for the reason that; from said motion on file herein it appeared that said defendants and each of them has no interest in the issues of this action and that none of them were or are necessary parties defendant; the action heretofore taken in these premises is hereby confirmed.

That, upon motion of the plaintiff, by Order of this Court dated March 30, 1935, this suit and the amended complaint were dismissed, without prejudice, as to the following named

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defendants, to-wit:

Castilo Ditch; Thomas Crabtree; Ed Elrage; Dale M. Garden; Jensen Brothers; J. B. Johns; F. Vernon Jones; William L. Keppler; Randall Lunt; Vernon Lunt; M. J. McClaren; Hugh McKeen;

William Milligan; Alfred Mortenson; Nichols & Company; Tomas Ponce; Serano R. Sexton; Ernest D. Shade; C. M. Short; Frank Shriver; A. R. Snyder; S. Stewart; T. L. Stockton; J. A. Suydam; Luther T. Sweeting; Miss E. A. Swofford; O. F. Swofford; Bonnie Ulrage; J. F. Wardner; and W. F. Willis;

said action having been taken, because it appeared from said motion on file herein and the records; that said defendants and each of them were brought into the action by inadvertance and mistake and each was and is not a necessary party to this action, for the reason that they have no interests or that they are outside the scope of the suit as defined in the amended complaint herein. The action taken heretofore in these premises is hereby confirmed.

That at the same time and in the same order this suit and amended complaint were dismissed as to the following defendants, to-wit:

W. B. Barham; J. M. Biddle; Mary W. Bradshaw; Jackson Branaman; Martha W. Brockway; Fred D. Carpenter; E. D. Chandler; Dessa Harbison; Jim Harper; Jacob Helfenstein; A. S. Henry; Mrs. Alice Huntsman; John A. Johnson; A. E. Keoler; T. A. Lonergan; Clara B. McFarland; Gordon McMurray; William C. McNatt; R. B. Maley; Martha M. Merrill; Estate of Lizzie B. Murphy; W. F. Murphy, Sr., Administrator; John Nash; Ansel Phelps; Georgiana Phelps; George W. Sheerer; Chas. D. Stahlberg; Glodine Stahlberg; Phoebe E. Templeton; Estate of Jose Vasquez, Charles F. Bennett, Administrator; Albert Warren; Alice E. Nixon; Virginia Griffin; Horace J. Johnson; Mary Johnson; Lula O. Lockerd; and John C. Swan;

said action having been taken and had, for the reasons shown in said motion, to wit: that each of said defendants had been brought in as parties defendant through inadvertance and mistake or that they had transferred their interests to others who are parties defendant herein, and they are necessary parties defendant herein. The action heretofore taken in these premises is hereby confirmed.

That upon motion of the plaintiff, by Order of this Court, dated March 30, 1935, this suit and the amended complaint herein were dismissed, as to the following defendants, to-wit:

Henry W. Blough; John F. Brown; Fred E. Gack; John MacGregor Goodale; Frank E. Hamilton; Frederick K. Kratzka; J. T. Lewis; James F. McManis; George W. Morrell; John O'Brien; Margaret T. Randall; Jennie Roberts; Earl F. Smiley; Ole H. Smith; A. W. Sydnor; M. E. Templeton; Bert Vidans; Fannie Wallrich; W. G. Williams; S. H. Wynn;

said action having been taken and had, for the reasons shown in said motion on file herein--as well as from the records herein, that; said and every of the last named parties are not necessary parties defendant herein; that their lands are embraced within and constitute a part of the San Carlos Irrigation and Drainage District; that each of them has entered into a contract with the United States, in relation to his land and water rights therefor and that because of said contractual relationship his lands have been and are designated as a part of the United States San Carlos Indian Irrigation Project; that their and each of their interests have been and are represented in this cause by said District and the plaintiff and that their and each of their water rights have been and are set up and provided for in this decree. The action taken heretofore by the Court in these premises is hereby confirmed.

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That, upon motion of the plaintiff, by Order of this Court on the 30th day of March, 1935, this suit and the amended complaint were dismissed as to the defendants: Estate of Della Tharp, Edward Tharp, Administrator; Estate of James Tharp, Edward Tharp, Administrator; said action was taken and had pursuant to said motion on file herein and for the reasons therein given that; the lands and water rights thereunto belonging were by said parties covered into the Florence-Casa Grande Project by contract with the United States, the plaintiff herein; that their and each of their interests have been presented to the Court by the Florence-Casa Grande Water Users Association and their and each of their interests have been and are represented herein by the United States; that they are not necessary parties defendant in this action; that their and each of their interests are and have been set up and provided for in this decree and given their proper place in the Priority Schedule, a part of this decree, which said action is hereby confirmed.

That, upon motion duly made, by Order of this Court dated April 3, 1935, the Kennecott Copper Corporation, a corporation, was made a party defendant herein, by substitution, as the successor in interest of the Nevada Consolidated Copper Company and the Ray Consolidated Copper Company. The action heretofore taken in these premises is hereby confirmed.

IV

That the following named defendants own land as follows: Estate of Dora M. Clark, the NW1/4, Section 22, Township 6 South, Range 7 East, Gila and Salt River Base and Meridian; Margaret P. Brown, the SW1/4, Section 15, Township 6 South, Range 7 East, Gila and Salt River Base and Meridian; and H. H. McNeil, the N1/2? SE1/4, Section 9, Township 5 South, Range 9 East, Gila and Salt River Base and Meridian; and Otis J. Baughn, 80 acres of land in the N1/2? SW1/4 of Section 8, Township 6 South, Range 8 East, Gila and Salt River Base and Meridian; and that they and each of them in the past and prior to this decree, have made diligent and extensive efforts and have expended sums of money in an effort to secure water from the Gila River for the irrigation of their and each of their lands, but notwithstanding said efforts and expenditures, they and each of them were and have been unable to make use of said water upon their said lands and have not acquired any right to the use of said water from the Gila River upon their said lands, and that they and neither of them has a right to use water from the said river for the irrigation of their said lands as against the parties to this cause.

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V

That each of the parties named in the Schedule of Rights and Priorities set out below and made part hereof (hereinafter for convenience often referred to as the Schedule or Priority Schedule), in proper person or in the representative capacity indicated, has acquired and owns the right or rights accredited to him in said Schedule; that the Gila River is the stream from which the water called for under each of said rights is and may be diverted; that the point of such diversion, the name or description of the dam, canal, or other appliance through which said diversion is accomplished and said waters are carried to the lands through the irrigation of which said right has been acquired, together with--as to individual defendants, and plaintiff where the appropriation rights of others have been conveyed to it as hereinafter further described--the description of said lands and the number of irrigable acres thereof in each quarter or quarter-quarter section, or lot or lots as the case may be, to which said right applies, are as stated in said schedule opposite the name of each of said parties in appropriately designated columns thereof; that the priority date of each of said rights is as stated for each owner in the column so designated, and such owner is entitled thereunder and as of the date of said priority to divert from the natural flow of the stream, at the point of diversion so designated and to carry and convey to, and apply to beneficial use upon, said lands for the irrigation thereof, during each irrigation season, a total amount of water not exceeding 6 acre feet per each acre of said lands, which said amount shall not be diverted from the stream at any time during said season at a greater rate than one-eightieth ($1/80$) of a cubic foot per second for each acre of said lands, except as hereinafter provided; that the right of direct diversion from the natural flow of the stream for each of said parties, therefore, may be readily calculated, for the area then being irrigated, as follows:

No. of acres times 6 = Total allowable diversion in acre-feet during each irrigation season;

No. of acres times $1/80$ = Rate of diversion in cubic feet per second which shall not be exceeded in making said draft;

provided, however, that the water commissioner hereinafter provided for, in order to take proper advantage of sudden freshets or other periods of more plentiful natural flow in the stream, may authorize and provide for, and as to the lands of defendants above the San Carlos Reservoir shall permit, when no injury will result to others not being so accommodated, diversions therefrom under said rights at a greater rate than $1/80$ of a cubic foot per second, but subject to the explicit condition that the total diversion for the lands involved shall not exceed during the irrigation season the said total of 6 acre feet per acre; that the right of each of said parties, based upon the total area involved in each instance, is stated in acre feet per irrigation season, and in cubic feet per second (maximum rate of diversion as aforesaid), opposite the names of said party, respectively in the last two columns of said schedule; that this right for each of said parties entitles him to a first and prior call to the extent thereof upon the available natural flow of the stream as against other whose rights as listed in

said Schedule bear later dates of priority than his own, while others, when their rights have earlier dates of priority than his, have a first and prior call to the extent thereof upon said stream flow as against him; that each of said rights is gauged by and limited to the amount of water which has been and can be beneficially diverted and applied to the irrigation of said lands; that this quantity is determined and adjudged herein to be the amount in acre-feet per acre for the irrigation season stated above, which shall include and be charged with all conveyance loss from the point of diversion from the stream to the lands; that said lands require that there be applied thereto, and therefore diverted from the stream, somewhat larger amounts of water in the hotter summer months of the irrigation season than at any other times therein, of which account is taken by providing herein for a considerably larger diversion right than would be required at constant even flow to produce 6 acre-feet per acre during each irrigation season; that where the figures and data given for a single water right priority are set opposite the names of more than one defendant in said Schedule, each of the same is deemed and held to have an undivided interest in the whole there described under such mutual contractual relations as may obtain between them, which are not defined or determined in this decree; that certain of the rights accredited to plaintiff in said Schedule may be classified as rights by purchase in that they were acquired by the United States by way of conveyances from the owners of the private lands through the irrigation of which they were acquired, said conveyances being made by way of the "Agreement of Landowners to induce the Secretary of the Interior to undertake the Florence-Casa Grande Irrigation Project, and for the building and operation thereof in case the same is declared feasible" and the "Landowners Agreement with the Secretary of the Interior, San Carlos Project, Act of June 7, 1924," entered into by the United States and such owners, which were executed and put into effect under and in connection with the Florence-Casa Grande and San Carlos Projects; that these rights, having priorities in great number, ranging from the year 1868 to 1914 inclusive, are set down in their

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order in said Schedule and totaled for each year under the name of the United States, with the description in each instance of the lands through the irrigation of which they were acquired by appropriation and beneficial use; also, in an appropriate column in each instance the names of the landowners making the conveyances, or their successors in interest, made formal parties defendant herein, are set down; all to the end that said rights may be identified and preserved; that plaintiff, in accord with said agreements and conveyances, is hereby authorized and empowered to divert from the Gila River the waters called for under said rights for use by irrigation upon the lands of the Florence-Casa Grande and San Carlos Projects as hereinafter further described; that the other rights of plaintiff, which may be generally described as those owned by the United States for and on account of the Indians of the Gila River and San Carlos Indian Reservations and as reservations and appropriations made by the United States for and on account of the Florence-Casa Grande and San Carlos Projects, are set down and outlined in their proper order in said Schedule as a matter of convenience, but each of said rights furthermore is specifically defined and decreed in later Articles hereof; including the right of the United States, as of the year 1924, to store the waters of the Gila River in the San Carlos Reservoir, which is specifically defined in Article VI and is of different character than the rights directly to divert from the natural flow of the stream, with which this Article of the Decree and the Priority Schedule made part hereof primarily has to do; that certain of the rights of plaintiff, as same are set down and referred to in said Schedule, do not accumulate, as is specifically stated and described in the last paragraph of Article VI of this decree; that also certain of the rights of the Nevada Consolidated Copper Company, as same are set down in said Schedule, do not accumulate, as is specifically stated in the first paragraph of Article IX hereof; that as to all other rights to divert the waters of the Gila River which are set down and defined in said Schedule, including the so-called rights by purchase of the United States (which for convenience here comes within the designation "concern"), when rights of different priorities are ascribed to the same person or concern, said rights as thus accredited to that person or concern do accumulate, so that the total amount of water in acre feet per season which can be taken from the stream, under the priority of any certain date and the priorities of previous dates (ascribed to that person or concern in said Schedule), with the maximum rate of diversion in cubic feet per second governing same, may and shall be ascertained by adding together the number of acre feet per season set down under each of said priorities; that maximum rate at which same can be diverted being also the sum of the maximum rates, in cubic feet per second, given under each of said dates of priority; that rights to divert the waters of the Gila River are decreed to the various canal companies and are set down under their names in the Priority Schedule as of various dates of priority; that the description in each instance of the lands through the irrigation of which said rights were acquired by appropriation and beneficial use and the names of the landowners or their successors in interest, made formal parties defendant herein (and set down under the heading "PARTIES OWNING SAID LANDS WHEN JURISDICTION ACQUIRED HEREIN"), whose beneficial application of water to said lands supported said appropriations are also listed under the names of each of said canal companies, the amounts of water in acre feet per season, with the maximum rates of diversion, allowed for the irrigation

of the various subdivisions of said lands being given in the so-called individual columns under the general heading "Diversion Right" in said Priority Schedule; all to the end that the diversion rights of said canal companies may be adequately defined, and the individual rights of said defendant landowners to maintain, arrange or contract for, under applicable statutes and provisions of law, the diversion and carriage of water from the stream to said lands under and in accord with said rights may be identified and preserved; that the irrigation season referred to in this Article of the Decree, which shall as well apply to all rights adjudicated herein, is hereby defined as and determined to be the period beginning on January 1st of each year and ending on December 31st of the same year; that the Schedule above referred to and made part hereof is as follows:

[tables of priority rights and holders]

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VI

That plaintiff has and owns rights in the waters of the Gila River, and in and to the use of said waters, as follows:

(1) The right on behalf of the Pima and other Indians of the Gila River Indian Reservation, their descendants, successors and assigns, to divert 210,000 acre feet of the waters of the Gila River during each irrigation season, from the natural flow in said river at the Ashurst-Hayden and Sacaton diversion dams--as of an immemorial date of priority and to the extent that such waters are available under said priority--at a rate of diversion not exceeding 437.5 cubic feet per second at any time during such season for the reclamation and irrigation of the irrigable Indian allotments on said reservation, which amount to 49,896 acres, as they now are or hereafter may be made, and of the administrative area on said Reservation which amounts to 650 acres, to the extent that the herein described water right, which is sufficient for and limited to the needs of 35,000 acres, will reclaim and irrigate the same. The waters available under this right and priority shall be divided and distributed to the lands of the Florence-Casa Grande Project as decreed and provided in subdivision (3) of this Article.

(2) The right, on behalf of the Apache and other Indians of the San Carlos Indian Reservation, their descendants, successors and assigns, to divert 6,000 acre feet of the waters of the Gila River, during each irrigation season, from the natural flow in said river at diversion points on said river within said reservation--or above the eastern boundary thereof under such rights of way as may now exist or be acquired therefor; due measures being taken to avoid injuries to other water users by said last mentioned diversions,--as of a date of priority of the year 1846 and to the extent that such waters are available under said priority--at a rate of diversion not exceeding 12.5 cubic feet per second at any time during such season, for the reclamation and irrigation of 1000 acres of the irrigable lands within the said reservation (or in part or wholly within the valley of the Gila River above the eastern boundary of said Reservation, if lands are there acquired by the United States for that purpose), situated in the County of Graham, State of Arizona, and more particularly described as within said reservation and that portion of the valley of the Gila River above the San Carlos Reservoir and flow line thereof; that said water right, however, if or when sanctioned by law, at the discretion of the Secretary of the Interior and with the consent of the San Carlos Irrigation and Drainage District expressed by its board of directors, may be purchased by or for the benefit of the San Carlos Project and used for said project as other of that project's stream flow right below the San Carlos Reservoir are or may be used under this decree, provided, however, that such right is and shall be treated as a project right to which no individual or individual lands shall have or assert an interest or priority as against any lands given rights in the Priority Schedule; and defendants, Gila Valley Irrigation District, Virden Irrigation District and Franklin Irrigation District through their boards of directors, having offered and agreed to facilitate the aforesaid purchase of said water right so that it may be transferred and used as aforesaid for the benefit of the San Carlos Project as other of that Project's stream flow rights are or may be used below said reservoir under this decree and to pay the United States therefor the sum of Sixty-Two Thousand Five Hundred (\$62,500.00) Dollars, said payments to be made by each of said Districts, in the proportion that the number of acres of land in said district decreed water rights herein bears to the whole number of acres of land in said three districts' so decreed water rights, and to pay said sum within two years from the acceptance of said offer, if said offer shall be accepted within five years from the date of this decree. Said offer, however, to be considered as made by said districts only when all requirements of Arizona law with regard to making binding offers of such a character shall have been complied with, it is hereby decreed that if said offer is made and accepted at said purchase price sum or at any other sum agreed upon by the said three districts and the United States, the said water right shall be transferred as aforesaid for the benefit of the San Carlos Project, but, in no event shall be used or usable or be asserted as against the lands given rights in the Priority Schedule above the San Carlos reservoir on account of which have

been paid the full proportionate per acre share of the cost of said purchase.

(3) The right to divert 372,000 acre feet of the waters of the Gila River, during each irrigation season, from the natural flow in said stream at the Ashurst-Hayden and Sacaton diversion dams, as of the date of priority of 1916, and to the extent that such waters are available under said priority--at a total rate of diversion not exceeding 775 cubic feet per second at any time during such season, for the reclamation and irrigation of the 62,000 acres of the irrigable lands of the so-called Florence-Casa Grande Project, or its equivalent, more particularly described as follows:

- a. The aforesaid Indian allotments now or hereafter made on the said Indian Reservation, and the said administrative area, amounting in the aggregate to 50,546 acres to the extent that thirty-five sixty-seconds of the herein described water right, which is sufficient for and limited by the needs of 35,000 acres, will reclaim and irrigate the same.

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- b. 27,000 acres of land in the private ownership of White persons (also referred to herein as "White lands") described as follows:
[tables of "White lands"]

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That in accord with the 'Agreement of Land Owners to Induce the Secretary of the Interior to Undertake the Florence-Casa Grande Irrigation Project, etc.' entered into between the owners of said privately owned lands and the United States, it is hereby further specifically ordered, adjudged and decreed that suitable devices for measuring the flow of water available and susceptible of being diverted by the aforesaid dam or dams to the canals of the said Florence-Casa Grande Project (now a part of the San Carlos Project system) shall be maintained and daily or more frequent measurements of said flow shall be made; that the first 300 cubic feet per second or less of water flowing in the river at the said dam or dams, available as a whole under the several rights and priorities of plaintiff, including its immemorial right described and set up in subdivision 1 of this article and the so-called rights by purchase, and susceptible of being diverted for the said project, shall be divided and distributed, less deductions for project canal losses as hereinafter provided, sixty and six-tenths per centum thereof to the Indian lands of said project and thirty-nine and four-tenths per centum to the White lands thereof; that of the next 300 second-feet of water or less thus flowing and available, less deductions on account of losses as aforesaid, fifty-one and seven-tenths per centum thereof shall be apportioned to the said Indian lands, and forty-eight and three-tenths per centum thereof to White lands; that all water available as aforesaid in excess of said 600 second-feet shall be divided, less deductions on account of losses as aforesaid, fifty-six and one-tenth per centum to said Indian lands and to said privately owned lands, forty-three and nine tenths per centum, except that during periods of high water when it shall be possible and practicable to divert water for the use of the Indian lands within said project, or some of them, by means of the Sacaton Dam, the entire amount of water diverted for the said project by the said Ashurst-Hayden Dam shall be used for the irrigation of privately owned lands and of such of said Indian lands as cannot be adequately supplied from said Sacaton Dam; that furthermore the amounts of water thus apportioned to the White lands within said project shall be distributed to said lands in the following order:

(a) Certain of said lands to the extent of some 9,752.83 acres together with 790 acres in Sections 1 and 2, Twp. 5 S., Range 8 E., G. and S.R.B. and M., being identical with those tracts which are described in the Schedules of Rights and Priorities set out under Article V hereof and identified in said article as applying to the so-called rights by purchase of plaintiff, shall have a call upon the waters available under such apportionment in the order of their priorities as set out in said schedule.

(b) The remainder of said lands, amounting to some 17,247.17 acres, shall have the next three successive calls upon such waters as are available under such apportionment and in the following order:
[table of priorities]

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(c) That the Secretary of the Interior or his agents in dividing the waters of the said Florence-Casa Grande Project shall see that the losses of water in the whole system of project canals (now a part of the San Carlos Project System) are shared as equitably as may be to the end that, with respect to such losses, no water right under the project shall enjoy any advantage of location, position or otherwise over any other project water right; but losses occurring in the Indian and private canals leading from said project canals shall be disregarded in the division of water hereinabove provided for; and furthermore whenever the quantity of water diverted into the canals of said project shall, in the aggregate, be so small that, after deducting the losses of transmission in the project canals and then dividing the residue between the Indian lands and the lands in private ownership as hereinabove provided for, the share allotted to the Indian rights would be too small to reach the Indian reservation, the Secretary of the Interior, or his agent in charge of said project, shall permit all of said water to be applied to the irrigation of privately owned lands in accordance with their priorities.

(4) The right to divert 603,276 acre feet of the water of the Gila River, during each irrigation season from the natural flow in said stream at the Ashurst-Hayden and Sacaton Dams above described--as of the date of priority of not later than June 7, 1924 (and for the purposes of this decree and for them only as of said date) and to the extent that such waters are available under said priority--at a total rate of diversion not exceeding 1256.5 cubic feet per second at any time during such season, for the reclamation and irrigation of the 100,546 acres of the irrigable lands of the San Carlos Project and for supplying water to the State of Arizona, and towns, villages and municipalities of that state, and federal agencies, as provided in the Act of March 7, 1928, and in the so-called Repayment Contract bearing date the 8th of June, 1931 said 100,546 acres of project lands being more particularly described as follows:

(a) 49,896 acres of land within the Gila River Indian Reservation which have been, or may be allotted to individuals among the Indians thereof (also referred to herein as "Indian Lands"), together with 650 acres within said reservation comprising the School Farm, Agricultural Experiment Station and Administrative Area.

(b) 50,000 acres of land in private ownership of white persons (also referred to herein as "White Lands"), made up of such White Lands designated to come into the San Carlos Project by order of the Secretary of the Interior of April 25, 1928, and August 9, 1934, said designated lands being described as follows:

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(5) The right, as of the date of priority of not later than June 7, 1924, - and for the purpose of this decree and for them only as of said date--to store the waters of the Gila River in the San Carlos Reservoir of the aforesaid San Carlos Project by means of the Coolidge Dam (said Reservoir and Dam being situate within the San Carlos Indian Reservation) to the extent of the full 1,285,000 acre-feet capacity of said Reservoir at all times when said waters are available above said dam for such storage under the aforesaid priority; and the right in that relation to accomplish and control the release from said reservoir of the waters so stored and thus reduced to ownership, and to conduct the same down the channel of the Gila River to the Ashurst-Hayden and Sacaton diversion dams of the San Carlos Project and there to recapture and divert, and control the diversion of, the same by means of said dams for conveyance in the canals leading therefrom to the above described 100,546 acres of the lands of said Project for the reclamation and irrigation thereof, and for the supplementation of amounts available therefor at said dams from the natural stream flow under plaintiff's rights as same are decreed herein, and for State and Federal purposes under act of March 7, 1928 as hereinbefore described.

(6) The right, as against and only against the parties to this cause, to divert from the Gila River 17,950 acre feet of water, -- for the irrigation of 2992.5 acres of Indian lands at the Gila Crossing District on said Reservation--each irrigation season at a rate of diversion not exceeding 37.4 cubic feet per second of time, from the waters occurring or recurring in said river beginning at the point where the Southern Pacific Railway crosses said river in Section 13, Township 3 South,

Range 4 East of Gila and Salt River Base and Meridian or between said point and a point one hundred feet above where the Salt River empties into the Gila River, at the diversion points on said reservation as now or hereafter located, as for the following dates of priority:

For 954 acres of said lands January 1, 1873.

For 587 acres of said lands January 1, 1876.

For 660 acres of said lands January 1, 1877.

For 139 acres of said lands January 1, 1900.

For 58.5 acres of said lands January 1, 1903.

It is further provided that water rights with the priorities fixed as aforesaid are for the irrigation of said Gila Crossing Indian lands, but subject at all times, to all rights on said Gila River above said point hereinabove described, and provided also that said rights are subject to the right of the San Carlos project, to divert and use return flows, or water otherwise occurring in the river above said point and the right of said project to pump and otherwise interfere with and control the return flow from the lands within said project.

That certain of the foregoing rights, as listed under items (1), (3) and (4) above are inclusive one of the other so that diversions thereunder do not accumulate, and the amounts in acre feet per season and cubic feet per second stated in the 3rd item include those given in the 1st and those stated in the 4th item include those given in the 1st and 3rd; in each instance representing the total diversion allowable under that priority and those prior thereto as described in said items.

VII

That all Indian lands and all white lands now or hereinafter designated by the Secretary of the Interior as within the San Carlos Project and under said San Carlos Reservoir shall be entitled to share equally in all of the stored and pumped water of said Project in so far as that shall be physically feasible, and said lands shall share equally in all of the water of said Project of every nature as long as the stored and unstored water supply for said Project shall be sufficient for Project needs, and as far as that shall be physically feasible; but when, through lack of stored and pumped water, there shall be an insufficient supply of water for all of the lands of said Project lying under said reservoir, which condition or fact shall be determined by the Secretary of the Interior or his duly authorized agent, the lands so situated, in addition to their proper share of such stored and pumped waters as may be available to the Project, shall be entitled to and have apportioned to them the unstored flow of the Gila River which is available as a whole, and susceptible of being diverted, for the Indian and White lands of the aforesaid Florence-Casa Grande Project together with the 790 acres in Sec. 1 and 2 T. 5 S., R. 8 E., G. and S.R.B. and M., hereinbefore mentioned, under and in pursuance of the various rights and priorities of the United States decreed herein for said lands, as follows, to-wit: said flow shall be divided between said Indian and White lands and distributed to such lands, whether the same shall be also included in the San Carlos Project or not, in accordance with the apportionment and division ordered and decreed in the third subdivision of Article VI hereof, and any surplus which may remain and be available in said river, under the priorities of plaintiff, for other lands (beyond those of the Florence-Casa Grande Project and said 790 acres) included in San Carlos Project under the priorities of plaintiff and provisions of this decree, shall first go to such of the Indian Lands in the San Carlos Project, and then in equitable proportion to such of the private and public lands thereof as are not also included in the Florence-Casa Grande Project and said 790 acres.

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VIII

That the diversions of water from the Gila River by the so-called upper valleys defendants (parties defendant to whom rights to divert water from the Gila River at points above the San Carlos Reservoir are decreed herein), comprising the defendant canal companies named below, with the parties defendant named in the Priority Schedule and attached tables who are decreed rights through the canals of said companies and are served thereunder, and certain individual parties defendant who are accredited with rights to divert directly from the stream through private ditches, to-wit:

Albert Canal Company, Billingsley Extension Canal Company, Black & McClerskey Canal Company, Brown Canal Company, Colmenero Canal Company, Colvin-Jones Canal Company, Cospers & Windham Canal Company, Cospers & Windham Extension Canal Company (Under contract whereby Cospers & Windham Canal Company makes actual diversion) Curtis Canal Company, Dodge-Nevada Canal Company, Duncan Canal Company, Fort Thomas Consolidated Canal Company, Fourness Canal Company, Graham Canal Company, Moddle Canal Company, Montezuma Canal Company, San Jose Canal Company, Sexton Canal Company, Shriver Ditch Company, Smithville Canal Company, Sunflower Canal Company, Sunset Canal Company, Tidwell Canal Company, Union Canal Company, Valley Canal Company, York Canal Company, York Cattle Company;

R. H. Angle, J. H. Brown, T. D. Burton, W. C. Craufurd, J. W. Foote, R. C. Gilleland, J. H. Henderson, C. C. Hester, F. E. Ross, R. Sexton, Laura Short;

and/or their predecessors in interest, for the irrigation of the lands described in said Priority Schedule made part of Article V hereof; since their inception have been made under rights which were and are junior and subject to certain extensive rights of plaintiff to divert the waters of said stream at points below the diversions of said defendants and also below the San Carlos Reservoir, which said rights of plaintiff are set down and referred to in said Priority Schedule, but are further identified and particularly described in Article VI and VII hereof, it being evidenced thereby that the earliest right of plaintiff is prior in time to all and every of the rights of said defendants, and certain of plaintiff's other rights are prior in time to certain of the rights of said defendants; that, however, plaintiff and said defendants, in recognition of the desirability of making it practicable for said defendants to carry on the irrigation of said upper valley lands to the extent to which the areas to which their said rights apply heretofore have been irrigated and so that the said San Carlos Act shall inure in part to their benefit and this suit may be compromised and settled, have agreed that the following provisions shall be and they are hereby embodied in this decree, which said provisions in turn, and in so far as they affect the other parties in this cause, shall inure to the benefit of and be binding upon them, to-wit:

(2) That on the first day of January of each Calendar year, or as soon thereafter as there is water stored in the San Carlos Reservoir, which is available for release through the gates of the Coolidge Dam for conveyance down the channel of the Gila River and for diversion and use on the lands of the San Carlos Project for the irrigation thereof, then the Water Commissioner, provided for herein, shall, to the extent and within the limitations hereinafter stated, apportion for the ensuing irrigation year to said defendants from the natural flow of the Gila River an amount of water equal to the above described available storage, and shall permit the diversion of said amount of water from said stream into the canals of said defendants for the irrigation of said upper valleys lands in disregard of the aforesaid prior rights of plaintiff used on lands below said reservoir; the diversion of said amount of water by said defendants to be in accord with the priorities as between themselves stated in said Priority Schedule and for the irrigation of the lands covered by the rights accredited to said defendants in said Priority Schedule and the quantity of water permitted to be taken by said defendants in disregard of prior rights of the United States below is in addition to and not exclusive of the rights of said defendants to take from the stream in the regular order of their priorities as shown by the Priority Schedule, but of course within the duty of the water limitations of this decree; that if and when at any time or from time to time in any year, water shall flow into said reservoir after said date of first apportionment and shall be stored there and become added to the available stored water in said reservoir, the said commissioner shall make further and additional apportionments to said defendants of the natural flow of said stream as the same is available at the diversion points of said defendants, which said apportionments shall in turn correspond with and be equivalent in quantity to the amount of such accessions or newly available stored water supply; that in calculating apportionments of the stored water supply the Water Commissioner shall make appropriate deductions for losses for evaporation, seepage or otherwise that may be suffered between the time of the apportionment and that of the diversion of a corresponding quantity of water

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from the stream; that such apportionments, corresponding with net accessions during each annual period after first apportionment, shall be made by said Water Commissioner at least as frequently as once per calendar month (provided accessions to stored supply have occurred during that period) and at such more frequent intervals as the conditions in his judgment may demand--his decisions in these regards to be subject to summary review by the Court as provided in

Article XII hereof--and said Water Commissioner shall see to it that his said apportionments, when made, forthwith shall be placed of record herein and so posted or published as to inform all interested parties in that regard with reasonable promptness and despatch; it being herein explicitly provided that no apportionment or apportionments, made during any calendar year, shall carry over or be available in any manner for the succeeding year; that the diversions made by said defendants of the natural flow of the Gila River thus apportioned to them in disregard of the said prior rights of plaintiff shall be regulated by the Water Commissioner (under the authority and powers given him by this decree and/or by such further orders of the Court as may be made in that relation) in accord with the rights and priorities accredited to each of said defendants in said Priority Schedule, provided always that such diversions shall be limited to the amount of water then apportioned, as aforesaid, and in any event, during each irrigation season, do not and shall not exceed the total amount of water called for under the right accredited in said Priority Schedule to any given defendant, namely; 6 acre feet per acre for the irrigation season as defined in Article V hereof; and provided further that the drafts on the stream by the upper valleys defendants shall be limited to a seasonal year diversion which will result in an actual consumptive use from the stream of not to exceed 120,000 acre feet of water; said consumptive use made in any seasonal year shall be determined by adding the recorded flows at a gauging station located in the Gila River at Red Rock Box Canyon above the heading of the Sunset Canal in New Mexico and a gauging station located in the San Francisco River immediately above its confluence with the Gila River and deducting from said sum the recorded flows at a gauging station located on the Southern Pacific Railway bridge crossing the Gila River near Calva, Arizona; and the Water Commissioner shall determine what diversions are permissible and reduce diversions in the inverse order of their priorities when and to the extent necessary to accomplish the aforesaid result. The aforesaid measurements shall include the whole flow of the stream, including floods, at the three points of measurement, and no allowance shall be made for accretions or additions to the flow between the point of measurement at Red Rock Box Canyon, and the confluence of the Gila and San Francisco Rivers, and in turn between the confluence of the Gila and San Francisco Rivers, and the aforesaid gauging station at the Southern Pacific Railway bridge. Said method of measurement is adopted as sufficiently accurate for practical purposes and as better suited for administering this decree than any more refined method of determining actual consumptive use.

(3) Upon agreement made by the owner of any right set forth in the Priority Schedule for land in the Safford Valley water may be diverted by the owner of land in the Duncan Valley within the duty of water in this decree set forth and within the apportionment of water for said Duncan Valley land in disregard of such Safford Valley right or rights, and that such waiver shall in no way deprive the Safford Valley lands thus waiving of their full apportionment of water herein provided for based on water stored in the San Carlos Reservoir or their full right to take from the stream, in accordance with their priority and within the duty of water fixed by the decree as against water rights of the United States held on account of the San Carlos Project, but the right of the United States to insist upon its priorities as defined and modified herein as against Duncan Valley Lands shall not be abridged by this provision.

(4) That water released at the will of the plaintiff and for the purposes of the plaintiff from the San Carlos Reservoir at any time after the date of this decree other than for the proper irrigation of 80,000 acres of land or its equivalent in the San Carlos Project, shall be considered as stored in the San Carlos Reservoir at and after the date of such releases, and available as a basis for the above described apportionment of the natural flow to said defendants as it would be if such withdrawals had never been made.

(5) PROVIDED ALWAYS, that if by reason of lack of available storage in the San Carlos Reservoir no apportionment of the natural flow of said river is or can be made available to said defendants, then the diversions of said defendants, of or as soon as apportionments previously made to them have been consumed, shall no longer be made in disregard of the prior rights of plaintiff below said San Carlos Reservoir, but shall instead be made under and in accord with the rights and priorities set down in Article V, and the Priority Schedule made part hereof, and Article VI of this decree to-wit: in accord with their several priorities as same are set down in said Priority Schedule and subject to the prior rights of plaintiff as same are referred to therein and further described in Article VI of this decree.

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IX

(1) That the defendant Kennecott Copper Corporation shall be entitled, as of the dates of priority set down in the Priority Schedule made part of Article V hereof, for industrial, municipal, domestic and related beneficial purposes, to divert from the underground waters of the Gila River by means of its pumps, as same are or may be located within the lands described in said Priority Schedule under the heading "Point of Diversion," during the annual period beginning January 1st of each

year, the amounts of water stated in said schedule, at the rate of diversion in cubic feet per second there given; subject, however, to the proviso that the total amount of water diverted and maximum rate of diversion, under the rights for such purposes accredited to said defendant in said Priority Schedule as of the priority dates of 1878, 1879, 1880, 1884, 1885, 1887, 1890, 1895, 1906, 1908, and 1909, shall not exceed the quantity of water in acre feet per annum or rate of diversion in cubic feet per second stated for the right of 1909, to wit: 16,221 acre feet and 22.22 cubic feet per second; that the rights for industrial, municipal, domestic and related purposes accredited to said defendant as of the dates of priority named below were first initiated, and thereafter perfected, by the diversion and application of the waters of the Gila River, through canals leading from the stream, to the irrigation of those certain acreages of the lands described below which are set down opposite said dates of priority, which said dates respectively represent the year in which said acreages were first irrigated, to-wit:

<u>Date of Priority</u>	<u>Number of Acres</u>	<u>Area Containing Lands Thus Irrigated</u>
1878	65.00	SE1/4 and SE1/4 SW1/4, Section 9;
1879	95.00	S1/2? SW1/4, Section 10;
1880	130.00	NW1/4 SW1/4, S1/2? SW1/4 and SW1/4 SE1/4, Section 14;
1884	165.00	SE1/4, NE1/4 and NW1/4 Section 15;
1885	60.00	NE1/4 Section 16; and
1887	60.00	N1/2 NW1/4 and N1/2 NE1/4 Section 23;
1890	10.00	
1895	40.00	
1906	15.00	
1908	153.00	All in Township 5 South, Range 15 East of the Gila and Salt River Base & Meridian

That the use for irrigation under said rights, when the pumps and plant of said defendant were put in operation in the year 1909, was changed and transposed into uses for industrial, municipal, domestic and related purposes, and the waters called for under said rights and priorities, or so much thereof as was available, since have been diverted from the stream or the underground waters thereof by means of the pumps of said defendant and continuously and beneficially applied to said purposes;

(2) That the requirements of said defendant each year for the above described purposes demand that it divert from the underground waters of the Gila River, in so far as same can be made available in that relation, at the continuous rate of ten thousand gallons per minute, or 22.22 cubic feet per second; same being equivalent by volume measurement to a maximum of 16,221 acre feet per annum; that prior to the construction of the San Carlos Reservoir and the storage of water therein the natural flow of the Gila River at and/or in the vicinity of the reduction plant and pumps of said defendant maintained an underground water plane, which when pumped from to meet the said requirements of defendant, had averaged an approximate minimum elevation, as gauged at said defendant's test well at that place, of 1920 feet above sea level (Nevada Consolidated Copper Company datum) and an approximate maximum elevation of 1930 feet above sea level (datum idem); that said diversions by said defendant then were, and since to the extent undertaken have been, made under rights which were and are junior and subject to certain extensive rights of plaintiff to divert the waters of the Gila River at points below the diversions of said defendant, and also below the San Carlos Reservoir, which said rights of plaintiff

are set down and referred to in Article V hereof and the Priority Schedule included therein, and further defined in Article VI and VII hereof, it being evidenced hereby that the early right of plaintiff is prior in time to all and every of the rights of said defendant and certain of plaintiff's other rights are prior in time to certain of said defendant's rights and

thereby are credited with dates of priority earlier than those of said defendant; that, however, plaintiff and defendant by way of consent hereto, in recognition of the desirability of making it practicable for said defendant to continue and further carry on its operations to the extent of its aforesaid requirements and so that this suit may be compromised and settled, have agreed that the following provisions shall be embodied in this decree, which said provisions in turn, and in so far as they affect the other parties in this cause, shall inure to the benefit of and be binding upon them, to-wit:

(3) That said defendant shall be entitled to divert, by means of its said pumps as they now exist or may be replaced, so much of the underground waters of the Gila River as may be available at its said pumps and as will meet its said requirements--but not to exceed the amount of 16,221 acre feet during each annual period reckoning from January 1st of each year as aforesaid, and limited to a maximum rate of diversion of 10,000 gallons per minute, viz. 22.22 cubic feet per second--in disregard of the said prior diversions rights of plaintiff below said San Carlos Reservoir as same are set out and defined in this decree as aforesaid; that if during those periods when no appreciable releases of water from the San Carlos Reservoir are being made into the channel below the Coolidge Dam, the said diversions of defendant by means of said pumps (limited to the amounts required for beneficial application to the above described industrial, municipal, domestic and related purposes and in any event to the said 16,221 acre feet per year and 22.22 cubic feet per second) shall cause the pumping water plane to fall below 1920 feet above sea level, as gauged at said test well of defendant (Nevada Consolidated Copper Company datum), or some other mutually agreed upon point and datum, then, if there is any natural flow in the Gila River at the point where said stream enters the San Carlos Reservoir, so much thereof (or so much as is available if the amount is insufficient) as will bring the level of said pumping water plane, as gauged at said test well of defendant, or other point aforesaid, to the average of the approximate maximum and minimum elevations aforesaid to wit: 1925 feet above sea level (datum idem), will be allowed to flow through said reservoir into the channel below--if the storage level in said reservoir is high enough physically to permit its release through the Coolidge Dam--said operations to be of simultaneous character in that releases through said Coolidge Dam, equivalent to the natural flow entering the reservoir or such portion thereof as may be sufficient for the above described purpose, shall be made forthwith when it is determined (mutually by the plaintiff and defendant, or in case of disagreement by the Water Master, whose decision may be reviewed as provided in Article XII hereof) that the pumping water plane, under the conditions above described, has fallen below the 1920 foot level aforesaid; that such releases of natural flow through the Coolidge Dam shall be accomplished so as to make the most practical and workmanlike use of the amount available for the purposes thereof, taking into consideration the vital necessity of avoiding in so far as possible the waste of water into the stream below the gravels in which the pumping water plane is being maintained;

(4) That the diversions of water from the Gila River by said defendant and its predecessors in interest for the irrigation of the lands described in the Priority Schedule for which said defendant is accredited rights for irrigation as of the dates of priority of 1908, 1916, and 1926, since their inception have been made under rights which were and are junior and subject to those certain and extensive rights of plaintiff to divert the waters of said stream at points below the said diversions of defendant; which said rights of plaintiff are set down and referred to in Article V hereof and the Priority Schedule included therein and are further defined in Article VI and VII hereof, it being evidenced thereby that the early right of plaintiff is prior in time to all and every of the rights of said defendant and certain of plaintiff's other rights are prior in time to certain of said defendant's rights, and thereby are accredited with priorities which are earlier than the aforesaid rights of defendant; that, however, plaintiff and defendant, by way of consent hereto and in recognition of the desirability of making it practicable, in so far as possible, for said defendant to carry on the irrigation of its said lands to the extent of the acreages to which its said rights of 1908, 1916 and 1926 apply, and so that this suit may be compromised and settled, have agreed that the following provisions shall be embodied in this decree, which said provisions in turn, and in so far as they affect the other parties in this cause, shall inure to the benefit of and be binding upon them, to-wit:

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(5) That when, under the rule and method of apportionment stated in Article VIII of this decree, there is apportioned to the so-called upper valleys water users amounts of water from the natural flow of the Gila River corresponding with the available storage in the San Carlos Reservoir, then there also shall be apportioned to the defendant Kennecott Copper Corporation, from the natural flow of said river as hereinafter defined, for the irrigation of its said lands, an amount of

water per acre thereof corresponding with the amount per acre apportioned to said upper valleys as aforesaid; and thereupon, said defendant shall be entitled to divert--in disregard of the said prior diversion rights of plaintiff below as same are set out and defined in this decree as aforesaid--at the points of diversions and by means of the ditches ascribed to it in the Priority Schedule, so much of the natural flow of the Gila River, limited always to the amount of water then apportioned to it as aforesaid, as can be beneficially applied to the irrigation of the lands to which said rights apply; said diversions as of course to be limited in any event to the amounts of water in acre feet per irrigation season and rates of diversion in cubic feet per second stated for said rights in the Priority Schedule; that in as much as the waters flowing in the Gila River at defendant's said points of diversion, during a great portion of the irrigation season, will be made up in large measure of stored water which has been released from the San Carlos Reservoir and is being piloted down the stream channel to the diversion dams and distributing canals of the San Carlos Project, the natural flow available as aforesaid to said defendant, under the limitations of said apportionment, shall be gauged by and deemed to correspond with the natural flow of the Gila River and San Carlos River at the points where said streams enter the San Carlos Reservoir, plus such contributions thereto between the Coolidge Dam and said diversion points of defendant as may occur, but subject to such drafts upon such total as may be made by owners of rights of diversion under this decree prior to said rights of defendant (if any there are) between said Coolidge Dam and said diversion points of defendant.

(6) PROVIDED ALWAYS, that the foregoing provisions of this Article IX are hereby explicitly made subject to the proviso that whenever under Article VIII hereof, by reason of lack of available storage in the San Carlos Reservoir and the consumption of previous apportionments thereunder, no apportionment of the natural flow of said river is or can be made available to the so-called upper valleys defendants in disregard of the prior rights of plaintiff below said reservoir, and therefore diversions by said defendants and plaintiff are required to be made under and in accord with the rights and priorities set down in Article V (and the Priority Schedule therein) and VI of the decree, then the diversions of defendant, as against all the other parties in this cause, whether for industrial, municipal, domestic and related purposes as described in subdivisions (1) to (3) above--or for irrigation as described in subdivisions (4) and (5) if or when its apportionment in that relation also has been consumed--shall be subject to and be made in accord with its priorities as same are stated in the Priority Schedule and not otherwise, saving and excepting only that its diversions for said industrial, municipal, domestic and related purposes as against plaintiff's prior rights of diversion below shall still be regulated and controlled as provided in subdivisions (2) and (3) of this Article; subject to the further proviso, however, that the natural flow of the Gila River as measured where it enters the San Carlos Reservoir, or drafts upon it in conformity with priorities against later rights above, will not be available in any event below said reservoir unless the storage level therein is sufficiently high to permit its release through the Coolidge Dam. It is further provided that the pumped diversions of said defendant when being made under subdivisions (2) and (3) of this Article, at times of greater peak loads, may exceed by 10% the rate of 22.22 cubic feet per second stated above, if water therefor is available at said pumps, but that the total diversions for any year (January 1st to December 31st inclusive) in such event shall still be limited to 16,221 acre feet.

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X

(1) That the diversions of water from the Gila River by defendants Joseph J. Anderson, Grady L. Herring and T. H. B. Glasspie, and their predecessors in interest for the irrigation of the lands described in the Priority Schedule made part of Article V hereof, for which said defendants are accredited rights for irrigation as of the dates of priority named in said schedule, since their inception have been made under rights which were and are junior and subject to those certain and extensive rights of plaintiff to divert the waters of said stream at points below the said diversions of defendants; which said rights of plaintiff are set down and referred to in Article V hereof and the Priority Schedule included therein and are further identified in Articles VI and VII hereof, and thereby are accredited with priorities which are earlier than the aforesaid rights of defendants; that, however, plaintiff and said defendants, by way of consent hereto and in recognition of the desirability of making it practicable in so far as possible for said defendants to carry on the irrigation of their said lands to the extent of the acreages to which their said rights apply and so that this suit may be compromised and settled, have agreed that the following provisions shall be embodied in this decree, which said provisions in turn, and in so far as they affect the other parties in this cause, shall inure to the benefit of and be binding upon them, to wit:

(2) That when, under the rule and method of apportionment stated in Article VIII of this decree, there is apportioned to the so-called upper valleys water users amounts of water from the natural flow of the Gila River corresponding with the available storage in the San Carlos Reservoir, then there also shall be apportioned to said defendants, from the natural

flow of said river as hereinafter defined, for the irrigation of their said lands, an amount of water per acre thereof corresponding with the amount per acre apportioned to said upper valleys as aforesaid; and thereupon, said defendants shall be entitled to divert--in disregard of the said prior diversion rights of plaintiff below as same are set out and defined in this decree as aforesaid--at the points of diversion and by means of the ditches ascribed to them in the Priority Schedule, so much of the natural flow of the Gila River, limited always to the amount of water then apportioned to them as aforesaid, as can be beneficially applied to the irrigation of the lands to which their said rights apply; said diversions as of course to be limited in any event to the amounts of water in acre feet per irrigation season and rates of diversion in cubic feet per second stated for said rights in the Priority Schedule; that in as much as the waters flowing in the Gila River at defendants' said points of diversion, during a great portion of the irrigation season, will be made up in large measure of stored water which has been released from the San Carlos Reservoir and is being piloted down the stream channel to the diversion dams and distributing canals of the San Carlos Project, the natural flow available as aforesaid to said defendants, under the limitations of said apportionment, shall be gauged by and deemed to correspond with the natural flow of the Gila River at the point where said stream enters the San Carlos Reservoir, plus such contributions thereto between the Coolidge Dam and said diversion points of defendants as may occur, but subject to such drafts upon such total as may be made by owners of rights of diversion under this decree prior to said rights of defendants (if any there are) between said Coolidge Dam and said diversion points of defendants.

(3) PROVIDED ALWAYS, that the foregoing provisions of this Article X are hereby explicitly made subject to the proviso that whenever under Article VIII hereof, by reason of lack of available storage in the San Carlos Reservoir and the consumption of previous apportionments thereunder, no apportionment of the natural flow of said river is or can be made available to the so-called upper valleys defendants in disregard of the prior rights of plaintiff below said reservoir, and therefore diversions by said defendants and plaintiff are required to be made under and in accord with the rights and priorities set down in Article V (and the Priority Schedule therein) and VI of the Decree, then the diversions of the defendants above named, as against all the other parties in this cause--if or when their apportionment in that relation also has been consumed--shall be subject to and be made in accord with their priorities as same are stated in said Priority Schedule and not otherwise; subject to the further proviso, however, that the natural flow of the Gila River, as measured where it enters the San Carlos Reservoir, will not be available below said reservoir on occasions when the storage level therein is not sufficiently high to permit its release through the Coolidge Dam.

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XI

That the lands within the Gila River watershed for the irrigation of which rights are decreed herein are arid or semi-arid in character and require irrigation in order that crops of value may be produced thereon; that except as herein specifically provided no diversion of water from the natural flow of the stream into any ditch or canal for direct conveyance to the lands shall be permitted as against any of the parties herein except in such amount as shall be actually and reasonably necessary for the beneficial use for which the right of diversion is determined and established by this Decree, to-wit: shall be made only at such times as the water is needed upon their lands and only in such amounts as may be required under the provisions hereof for the number of acres then being irrigated; that in cases where by this Decree water is allowed to be diverted by and through any ditch by the owner thereof for another party, the terms of the contractual relations existing between them are not intended to be determined herein; that whenever the total area under a particular canal is decreed more than one water right, each having the same or different priorities or in its different parts having different rights and priorities, the total area may have used upon it all of its several rights in the order of their priorities, subject only to the requirement that no greater net draft on the stream be made than if each right in the order of its priority were used only on the particular lands for which it was originally acquired or reserved; that rotation, which is a well known, recognized and effective practice in irrigation administration (constituting in effect the combining of flows allowed to be diverted from a given stream under two or more rights so as to provide for the alternate use of more adequate irrigation heads as between neighboring or other ditches taking from such stream), shall be permitted at all times and shall be required whenever necessary in order to obtain reasonable economies in the use of water or in order to give to each ditch or water user a more advantageous method of irrigation, providing that such rotation shall not injuriously affect any of the rights determined or allowed by this decree; that the Water Commissioner provided for herein shall arrange for and enforce such rotation, but shall consult with, and endeavor to obtain the agreements of, such water users as in his judgment should resort thereto, and shall embody his action in this regard into such reports as he may make or be required to make to the Court herein; that if no valid objection thereto be made by other water users, an owner of any right decreed herein, when

the allowable diversion thereunder in the judgment of the Water Commissioner does not constitute an adequate irrigation head for his lands, may with or without agreement for rotation, when permitted by said Water Commissioner, divert a larger head or flow into his ditch for short periods of time in lieu of the smaller flow allowed to him under his said right providing always that such use shall not exceed for the irrigation season the amount in acre-feet herein specified and allowed to be diverted from the stream for his lands; that appropriations and priorities of the same date rank as having rights of the same standing, and as having a simultaneous call upon the stream source in the proportion which said rights, as decreed herein, bear to each other in amounts entitled to be diverted thereunder; that any of the parties to whom rights to water have been decreed herein shall be entitled, in accord with applicable laws and legal principles, to change the point of diversion and the places, means, manner or purpose of the use of the waters to which they are so entitled or of any part thereof, so far as they may do so without injury to the rights of other parties as the same are defined herein.

XII

That a Water Commissioner shall be appointed by this Court to carry out and enforce the provisions of this decree, and the instructions and orders of the Court, and if any proper orders, rules or directions of such Water Commissioner, made in accordance with and for the enforcement of this decree, are disobeyed or disregarded he is hereby empowered and authorized to cut off the water from the ditch then being used by the person so disobeying or disregarding such proper orders, rules or directions; promptly reporting to the Court his said action in such case and the circumstances connected therewith and leading thereto; that whenever the necessities of the situation appear to the Court so to require, the Court shall authorize the employment by the Water Commissioner of such person or persons to assist that officer as to the Court may seem necessary to carry out properly the provisions of this decree and the orders of the Court; that the term of employment, expenses and compensation of said Water Commissioner and his assistants, the payment thereof and the means and methods for securing funds with which to pay the same, shall be fixed by orders which the Court may hereafter from time to time make; that any person, feeling aggrieved by any action or order of the Water Commissioner, in writing and under oath, may complain to the Court, after service of a copy of such complaint on the Water Commissioner, and the Court shall promptly review such action or order and make such order as may be proper in the premises; that the owner or owners of each ditch or canal herein authorized to divert water from the natural flow of the Gila River for direct conveyance to and irrigation of lands, unless specifically excused by the Court or Water Commissioner, shall at his own expense install and at all times maintain at any appropriate place at or near the head of said ditch,

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a reliable and readily operated regulating headgate and a measuring box, flume or other device which may be looked and set in position--the same to be approved by the Water Commissioner--so that the water diverted into said ditch or canal at any and all times may be regulated and measured; that upon failure of any owner or owners to install structures of the above described character on or before one year from the date of this decree or on or before such different day as the Court or Water Commissioner shall set or determine--after due notice from the Water Commissioner so to do--the said Water Commissioner is herein authorized to cut off diversions of water into said ditch or canal until such devices and structures shall be installed and maintained.

XIII

That each and all of the parties to whom rights to water are decreed in this cause (and the persons, estates, interests and ownerships represented by such thereof as are sued in a representative capacity herein), their assigns and successors in interest, servants, agents, attorneys and all persons claiming by, through or under them and their successors, are hereby forever enjoined and restrained from asserting or claiming--as against any of the parties herein, their assigns or successors, or their rights as decreed herein--any right, title or interest in or to the waters of the Gila River, or any thereof, except the rights specified, determined and allowed by this decree, and each and all thereof are hereby perpetually restrained and enjoined from diverting, taking or interfering in any way with the waters of the Gila River or any part thereof, so as in any manner to prevent or interfere with the diversion, use or enjoyment of said waters of the Gila River or any part thereof, so as in any manner to prevent or interfere with the diversion, use or enjoyment of said waters by the owners of prior or superior rights therein as defined and established by this Decree; that nothing herein shall prejudice the rights of any of the parties hereto or of their grantees, assigns or successors in interest, under any transfer or legal succession in interest after the commencement of this action, to any of the rights hereby adjudicated; that except as hereinbefore mentioned or otherwise stated, the provisions of this Decree shall bind, and inure to the benefit of, the

grantees, assigns and successors in interest of the owners of rights and parties hereto, whether substituted as parties or appearing in this case or named herein or not; that the several parties to this suit shall pay their own costs in this action as directly incurred or authorized by them respectively, provided that any compensation of the Water Commissioner, or amounts shown to be coming to him or the reporter, if any there be, shall be paid in such manner, at such times and by such parties as may be ordered by the Court; that the Court retains jurisdiction hereof for the limited purposes above described, this decree otherwise being deemed a final determination of the issues in this cause and of the rights herein defined.

ALBERT M. SAMES,

Judge

Done in Open Court this twenty ninth day of June, 1935.

Page 1

STIPULATION FOR AND CONSENT TO THE ENTRY OF A FINAL DECREE

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF

ARIZONA IN THE CASE OF UNITED STATES OF AMERICA, V. GILA

VALLEY IRRIGATION DISTRICT, ET AL.

Come now the parties hereto, either in person or by their solicitors, and inform the Court that they have reached a settlement of the issues in this cause and have adjusted and settled their respective claims as between each other; that they have set up in the within and foregoing decree the respective rights of all parties hereto, and request the Court to adopt said decree as its finding herein and that it be entered as its final decree in this cause, settling and adjudicating the rights of the parties hereto.

For the United States of America

HOMER CUMMINGS,

The Attorney General

HAROLD L. ICKES,

The Secretary of the Interior

CLIFTON MATHEWS, F. E. FLYNN,

Clifton Mathews, Esq. June 24, 1935

United States Attorney, Solicitors for the plaintiff April 11,
1935

GERTRUDE M. CONVERSE,

Gertrude M. Converse, Solicitor for the San Carlos Irrigation and Drainage District, defendant heretofore ranged in interest, on the side of the plaintiff, and for the following other defendants:

Archie L. Bartlett; Fred W. Bassler; Maude M. Bassler; George W. Burgess; Louis Cathemer; Hazel A. Converse; Eldora Curry; Roland Curry; Salvadore S. Feliz; Juan S. Feliz; Manuel S. Feliz; Pedro S. Feliz; J. J. Fraser; F. P. Jamieson; J. C. Jamieson; W. O. Kidder; Edith Knappenberger; Frank Knappenberger; Ed Lacy; Elizabeth M. Martin; Rolland H. Moorehouse; L. S. Nafziger; M. N. Nafziger; Leon M. Nowell; George W. Smith; C. H. Southworth; Dugald Stewart; James R. Treat; Louise M. Trezell; and Don A. Trezell.