

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
SITTING IN AND FOR THE COUNTY
OF OTERO, TERRITORY OF NEW MEXICO.

The Tularosa Community Ditch,
a corporation,
Plaintiff,

vs

The Tularosa Land & Cattle Co.,
a corporation, et al,
Defendants.

No. 293

Recorded of bk 40.
pg 50-53
Otero County Clerk

7/31/11

Whereas, by the decree heretofore entered by the Court of this District in the above entitled cause, among other matters, the rights of the above described parties, to wit: the Tularosa Community Ditch, plaintiff, and the Tularosa Land and Cattle Company, defendants, to the waters of the Tularosa Creek and Canon and vicinity were therein adjudicated and established between the respective parties and between the said parties and other parties to said decree, and whereas, thereafter the said Tularosa Community Ditch corporation designated as plaintiff in said original cause, through its commissioners and through the individual water right owners thereof, entered into an agreement with the said Tularosa Land and Cattle Company, designated in said decree as the cross-complain^{ant} for the acquisition by the said Tularosa Community Ditch of all the water rights in said decree adjudicated and established, as the property of the said Tularosa Land and Cattle Company, cross-complain^{ant} and a preliminary stipulation providing for the acquisition of such rights by said plaintiff was entered into and mutually executed between the said plaintiff by the individual water right owners, constituting its membership and by its commission, and also by the said cross-complain^{ant}, which said preliminary stipulation or agreement is herein referred to and made a part hereof and filed herewith.

And whereas, the water rights of the plaintiff in said cause at the time of the rendition of said decree, and long prior thereto, and up to the present time, consisted and consist of 107 water rights to the water adjudicated to said plaintiff in said cause, and whereas, said agreement and stipulation between the said parties hereinbefore referred to was and is intended to operate as a merger of the respective interests and all the

interests of the/said plaintiff's and cross-complainant's in and to the waters of said Tularosa creek so adjudicated to them respectively, and was and is intended as providing for the surrender by the cross-complainant of any right in themselves or their assigns to use any portion of the water so adjudicated to them upon the lands heretofore owned by the cross-complainant in the Tularosa Canon east of the eastern boundary line of the Hattie J. Craven ranch, more commonly known as the 160 acres patented land, formerly belonging to Serapio Marquez, and was and is further intended to merge all such water rights into the property of the Tularosa Community Ditch; the said 107 water rights to be increased to the number of 157 water rights of which 107 would remain the property of the individual owners constituting up to the present time the said Tularosa Community Ditch corporation, and 50 of said water rights, that is to say, the total number of the increase of said water rights over and above the said number of 107, would be assigned to the said cross-complainant of their assignees, to be numbered 108 to 157 both inclusive upon the books and records of said Tularosa Community Ditch and to be administered by the officers of said Tularosa Community Ditch corporation, together with the original 107 water rights, as the latter have been heretofore and are now being administered by such officers.

The said 50 water rights to be each separately or collectively assigned by the proper officers of said Company to the cross-complainant in said cause free of any liability of any kind or character upon account of any indebtedness or liability now existing or claimed against the said Tularosa Community Ditch corporation, and the said 107 water rights existing up to this time and prior hereto to be held free of any indebtedness or liability heretofore existing or claimed against the 50 water rights herein provided to be merged with the said 107 water rights.

X And whereas, subsequent to the date of said preliminary agreement for stipulation herein, the said parties have mutually agreed between themselves that in addition to the merger of the water rights, as hereinbefore outlined, that the said plaintiff the Tularosa Community Ditch corporation, should become the owner by purchase and for a consideration mutually agreed upon, of all the lands of the said cross-complainant, the Tularosa Land

and Cattle Company, situated in the Tularosa Canon and adjoining the Tularosa Creek, and lying east of the Hattie J. Craven's land, hereinbefore referred to, proper and legal instruments for the conveyance of said lands to be prepared and executed at this time, as understood between the parties.

And whereas, in said original decree in said cause referred to, it was among other things provided "that any of the parties to this suit be authorized to apply to the Court at any time for the proper modification of this decree." Now, therefore, such application is hereby made to the Court for a modification of said decree, in so far as the same concerns the property rights of the respective parties hereto, and:

It is Stipulated, by and between the Tularosa Community Ditch, a corporation, and the individual water right owners thereunder, acting by their counsel, in pursuance of his general authority and in pursuance of specific authority vested in him by the commissioners of said Community Ditch, and in pursuance of the said stipulation heretofore signed and executed by such individual owners, of the one part, and the Tularosa Land and Cattle Company, a corporation, by its President and Secretary, and by its counsel, of the other part, and by the authority of said stipulation, that the final decree in the above entitled cause, dated April 29, 1909, be modified in so far as the same effects the rights of the said parties herein stipulating, to the following effect, to wit:

That the said Tularosa Community Ditch shall have and use all waters of the Tularosa Creek heretofore adjudicated and established to the Tularosa Land and Cattle Company, the said waters to be administered and used by the Tularosa Ditch corporation, together with and as a part of the waters heretofore in said decree adjudicated to said Tularosa Community Ditch corporation. The said Tularosa Community Ditch corporation to permit and provide for the use and the administration of the said waters west of the east line of the said Hattie J. Craven's 160 acres heretofore patented to Serapio Marquez, as herein stated, and not to permit the use of the said waters for the purpose of irrigation upon any lands lying easterly of the eastern line of said land of Hattie J. Craven.

EX NW & E SW 14.10.21

And it is further stipulated, that the said decree shall be modified to the effect that the commissioner heretofore appointed under said decree by the Court, shall have general supervision over the distribution of the waters of /the said Tularosa Community Ditch corporation, together with the mayor domo and the commissioners of said Tularosa Community Ditch corporation elected by such corporation, to administer its affairs; and that such administration by the said Court commissioner shall be at the expense of the said Tularosa Community Ditch corporation, and shall be as heretofore fixed, to be paid to said commissioner by the said Tularosa Land and Cattle Company and the said Tularosa Community Ditch corporation, and further, that such administration by said commissioner and by the mayor domo and said commissioners of the Tularosa Community Ditch corporation, shall extend over the distribution and handling of all said waters for the entire twelve months' term.

Tularosa Land and Cattle Company
By T. B. Catron its president
By John H. Riley its Secretary
By T. B. Catron
its Attorney and Counsel

The Tularosa Community Ditch Corporation and the water owners thereof

By Albert B. Fall, their attorney

Now the above entitled cause coming on to be heard, upon the application of the parties, and the foregoing stipulation, IT IS ORDERED, ADJUDGED AND DECREED that the decree heretofore, to wit, on April 29, 1909, entered in said cause, be modified in accordance with the said application and the terms of said stipulation; and it is further ORDERED, ADJUDGED AND DECREED that the waters heretofore in said decree adjudicated and established as the property of the Tularosa Land and Cattle Company, to be used at the times and upon the conditions set forth in said decree, by the cross-complainant, the Tularosa Land and Cattle Company, shall be merged in said Tularosa Community Ditch corporation and shall be administered and used by the said Tularosa Community Ditch corporation, complainant, in addition to the waters in said decree adjudicated to the said plaintiff.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the commissioner appointed by the Court in said original decree shall receive from the Tularosa Community Ditch corporation the compensation in said decree fixed, to be paid by said corporation, together with the compensation therein fixed to be paid by the Tularosa Land and Cattle Company, and that said commissioner conjointly with the mayor domo and commissioners of said

Tularosa Community Ditch corporation shall have the distribution and general supervision of the waters of the Tularosa Creek and Canon, which shall pass the east line of the Hattie J. Craven's, heretofore known as the Serapio Marquez, 160 acres of land, at all seasons of the year.

Done in Chambers at Alamogordo, New Mexico this 31st day of July, A.D. 1911.

E. R. Wright
Judge, etc.

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT SITTING IN AND FOR THE
COUNTY OF OTERO TERRITORY OF NEW MEXICO.

THE TULAROSA COMMUNITY DITCH,
a corporation,

PLAINTIFF,

vs

THE TULAROSA LAND & CATTLE CO.,
a corporation, et al.,

DEFENDANTS.

No. 293.

STIPULATION OF AMENDED DECREE TO BE ENTERED IN THE ABOVE CAUSE.

it is hereby stipulated, by and between The Tularosa Community Ditch, a corporation, and all of the water right owners thereunder, and The Tularosa Land & Cattle Company, a corporation, that the final decree in the above entitled cause, dated April 29, 1909, be amended so far as the same affects the rights of the parties herein stipulated, in accordance with the following:

1. That plaintiff corporation, (The Tularosa Community Ditch, a corporation, and cross-complainant, The Tularosa Land & Cattle Company, a corporation, to have, retain and use all the water flowing in the Tularosa Stream, after deducting the amount of water which may be used by James C. Carroll, the Indian of the Mescalero Apache Indian Reservation, Julia Blazer, administratrix, the Blazer heirs, the Hedges Heirs, Andrew Wilson, Juan Chavarilla, Benito A. Montoya, Henry Walters, Amelia Walters, Uby Walters, Peter Walters, Jacob Walters, Santiago Maese, Luis Chavez, Regino Molina, Lucas Escajeda, Jose D. Gutierrez, the heirs of Serapio Marquez, Jose M. Gutierrez, the lot owners in the town of Tularosa, the Hortalezas not owned by water right owners, and the domestic water, all as decreed and provided to be used in accordance with, under and by virtue of the final decree rendered in the District Court in and for the County of Otero, Territory of New Mexico on April 29, 1909,,

in the above entitled cause, excepting from the provisions of this stipulation the waters from the Serapio Marquez spring, now owned by Hattie J. Cravens; all of the waters so to be retained and used by the Tularosa Community Ditch, a corporation, and The Tularosa Land & Cattle Company, a corporation, as heretofore set forth in this paragraph, to be distributed between the parties stipulating hereto in the following manner:

The entire flow of said waters of the Tularosa Stream after making said deductions as in the preceding paragraph set forth, to be divided into one hundred and fifty-seven (157) water rights of equal proportions, quantity and time.

The Tularosa Community Ditch, a corporation, and its constituent members and water right owners, to receive one hundred and seven (107) of said water rights out of the aggregate one hundred and fifty-seven (157) water rights.

The Tularosa Land & Cattle Company, a corporation, to receive fifty (50) of said water rights out of the aggregate one hundred and fifty-seven (157) water rights.

That the said aggregate one hundred and fifty-seven (157) water rights are to be under the management of The Tularosa Community Ditch, to be distributed in the proportions aforesaid.

That each and every water right of the said one hundred and fifty-seven (157) water rights shall contain the same quantity of water, shall run for the same length of time, and be equal in every respect.

That the amendments which are to be made in said final decree, in accordance with the provisions of this stipulation, shall not alter, change or affect the water rights and interests of J. C. Carroll, the Indians of the Mescalero Apache Indian Reservation, Julia Blazer, administratrix, the heirs of Blazer, the heirs of hedges, Andrew Wilson, Juan Chavarilla, Benito A. Montoya, Henry Walters, Amelia Walters, Uby Walters, Peter Walters, Jacob Walter, Santiago Maese, Luis Chaves, Regino Molino, Lucas Escajeda, Jose D. Gutierrez, the heirs of Serapio Marquez, Jose M. Gutierrez, the lot owners in the town of Tularosa, the Hortalezas not owned by water right owners, nor anyone else not signing this stipulation to whom water rights or interests were adjudicated in said final decree.

That none of the water rights to be awarded in conformity with this stipulation to The Tularosa Land & Cattle Company, shall be applied for irrigation purposes on any lands lying east of the eastern boundary line of the Hattie J. Cravens ranch, ^{1/2 center line of 14.10.91} more commonly known as the 160 acres patented land of Serapio Marquez.

That any of the water rights to be awarded in conformity with this stipulation to The Tularosa Land & Cattle Company may be used for irrigation purposes or applied to beneficial use of whatsoever kind or nature at any place or upon any lands west of the eastern boundary line of what is known as the 160 acre patented land of Serapio Marquez.

That the provisions and amendments to said final decree, to be entered and filed in the above entitled cause, in conformity with this stipulation, shall not take effect until the 1st day of October, 1911, and then only after the transfer of the said waters as provided by law.

Rosalio Lopez	1	Adalarda Samora	3/4
J. J. Sanders	7	Clara Bullard	1/8
G. W. Maxwell	6	E. H. Simmons	4
W. A. Hyde	4	Albino Trujillo	1/4
J. H. Jackson	7	Marcos Mestas	1/8
Chas Hamilton	2 1/2	E. Prado, Estate by	
Pio Barela	1 1/2	N. Prado	1
Bibian Barreras	2	Crespina Bargas	1/8
Jose Gonsales	1	D. H. Hism	3
Benseslado Domingez	1	A. L. Herfort	1
J. J. Dale	1 1/2	L. E. Lumbley	3
M. McDonald	1	W. E. Chapman	1/2
Mike McDonald	1 1/2	M. Freudenthal	1
A. L. Neatherlin	2	W. H. Cook	4
Ida T. Tipton)		Tularosa Improvement Com-	
W. N. Turner)	2 1/2	pany By David G. Baldwin	
W. C. Hunter	1	President	5
C. B. Holden	2		
D. H. McGuire	4		
A. P. Sitton	4	The Tularosa Community Ditch	
R. W. Mitchell	6		
Chas Wohlenberg	3/4		
W. E. Carr	3	By G. A. Hyde Its President also	
Francisco Gallegos	1	By J. J. Sanders Its Secretary.	
R. B. Fields	5/8		
Thomas Martinez	2		
S. F. Murphy	1	Tularosa Land and Cattle Company	
Eli Knight	7		
D. A. Harris	1	By T. B. Catron Its President	
J. L. Johnson	3	and By John H. Riley Its Secretary	
L. Vigil	3		
Thomas Vigil	1		
C. B. Granadoso	1/2		
Chas. E. Thomas	2		
N. Salsido	1/2		
R. Baldonado	1		

Filed for record this the 5th day of August A. D. 1911 at 9.15 o'clock A. M.

By Deputy

J. M. Bowman
Probate Clerk.

No
Mention
of DAVIDS
G. O. Miller