<table>
<thead>
<tr>
<th>Folio</th>
<th>Ditch</th>
<th>Acreage Irrigated</th>
</tr>
</thead>
<tbody>
<tr>
<td>279 and 324</td>
<td><strong>Riverside No.</strong> 1</td>
<td><strong>ABOUT 13,500 acres.</strong> of a total of 34,000 acres.</td>
</tr>
<tr>
<td></td>
<td><strong>Riverside No.</strong> 2</td>
<td></td>
</tr>
<tr>
<td></td>
<td>King,</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Caldwell &amp; Gardiner</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Hoge &amp; Haley</td>
<td></td>
</tr>
<tr>
<td>324</td>
<td>Hoge &amp; Haley</td>
<td>Hoges &amp; Halesy ranch and part of Riverside ranch seems to be cumulative to the above testimony.</td>
</tr>
<tr>
<td>336</td>
<td>Con Hammond, North</td>
<td></td>
</tr>
<tr>
<td>896</td>
<td>Hoge &amp; Halesy</td>
<td>1600 acres which includes acreage irrigated by Bush &amp; Holleay.</td>
</tr>
<tr>
<td>410</td>
<td>Murphy</td>
<td>about 80 acres.</td>
</tr>
<tr>
<td>411</td>
<td>O. Sodergreen</td>
<td>600 acres.</td>
</tr>
<tr>
<td></td>
<td>Last Chance</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Fischer</td>
<td></td>
</tr>
<tr>
<td>411</td>
<td>O. N. Ditch</td>
<td>640 acres (about one sec-).</td>
</tr>
<tr>
<td>412</td>
<td>Hammond N. &amp; S.</td>
<td>160 acres.</td>
</tr>
<tr>
<td></td>
<td>Smith ditches, 1 and 2</td>
<td>60 acres</td>
</tr>
<tr>
<td>412</td>
<td>North Lund</td>
<td>320 acres (about ½ Sec.).</td>
</tr>
<tr>
<td>413</td>
<td>Burg</td>
<td>200 acres.</td>
</tr>
<tr>
<td>413</td>
<td>Central Sodergreen</td>
<td>50 acres.</td>
</tr>
<tr>
<td>414</td>
<td>Sodergreen 1 and 2</td>
<td>300 to 400 acres.</td>
</tr>
<tr>
<td>414</td>
<td>O. G. Ditch</td>
<td>640 acres</td>
</tr>
<tr>
<td>414-5</td>
<td>Fischer</td>
<td>1920 or 2560 acres (3 or 4 sections)</td>
</tr>
<tr>
<td>751</td>
<td></td>
<td></td>
</tr>
<tr>
<td>750-65</td>
<td>Shows 3,000 acres susceptible of irrigation under above ditch.</td>
<td>40 or 50 acres.</td>
</tr>
<tr>
<td>415</td>
<td>South Sodergreen</td>
<td>80 acres.</td>
</tr>
<tr>
<td>416</td>
<td>Island Ditch</td>
<td>160</td>
</tr>
<tr>
<td>416</td>
<td>Charles Heidrick</td>
<td>1650 acres.</td>
</tr>
<tr>
<td>417</td>
<td>Parker</td>
<td></td>
</tr>
<tr>
<td>Ditch</td>
<td>Acresage Irrigated</td>
<td></td>
</tr>
<tr>
<td>-------------------------------</td>
<td>--------------------</td>
<td></td>
</tr>
<tr>
<td>Last Chance as extended by Popp &amp; Pahlaw *</td>
<td>1,120 acres</td>
<td></td>
</tr>
<tr>
<td>Sodergreen High Line *</td>
<td>4000 or 5000 acres</td>
<td></td>
</tr>
<tr>
<td>Bush &amp; Holliday *</td>
<td>800 acres</td>
<td></td>
</tr>
<tr>
<td>Bilderback</td>
<td>about 3,600 acres.</td>
<td></td>
</tr>
<tr>
<td>Walcott, Braden or Dowling</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lands irrigated direct from Laramie River 6,575 acres. (Dup.)</td>
<td>50 acres,</td>
<td></td>
</tr>
<tr>
<td>Martin *</td>
<td>6,000 acres.</td>
<td></td>
</tr>
<tr>
<td>Oasis Canal *</td>
<td>9,151 acres.</td>
<td></td>
</tr>
<tr>
<td>Oasis Canal *</td>
<td>The 9,151 acres is indicative of water rights but not of land actually irrigated.</td>
<td></td>
</tr>
<tr>
<td>Cooper Lake</td>
<td>750 acres.</td>
<td></td>
</tr>
<tr>
<td>Dodge &amp; South Side *</td>
<td>213 acres.</td>
<td></td>
</tr>
<tr>
<td>Crammer *</td>
<td>220</td>
<td></td>
</tr>
<tr>
<td>Gillespie-Dunn</td>
<td>140</td>
<td></td>
</tr>
<tr>
<td>Dunn</td>
<td>190</td>
<td></td>
</tr>
<tr>
<td>Lone Lake &amp; Laramie River</td>
<td>620</td>
<td></td>
</tr>
<tr>
<td>Dunn Extension</td>
<td>125</td>
<td></td>
</tr>
<tr>
<td>Hutton Pick Up</td>
<td>900</td>
<td></td>
</tr>
<tr>
<td>Cole</td>
<td>380</td>
<td></td>
</tr>
<tr>
<td>LeRoy Grant</td>
<td>307</td>
<td></td>
</tr>
<tr>
<td>Boughten</td>
<td>7,000</td>
<td></td>
</tr>
<tr>
<td>Rice</td>
<td>40</td>
<td></td>
</tr>
<tr>
<td>Upidee</td>
<td>40</td>
<td></td>
</tr>
<tr>
<td>Homer</td>
<td>100</td>
<td></td>
</tr>
<tr>
<td>Democratic</td>
<td>50</td>
<td></td>
</tr>
<tr>
<td>Pioneer Canal *</td>
<td>11,556 in 1913.</td>
<td></td>
</tr>
</tbody>
</table>

Above acreage includes 1,165 acres irrigated by seepage.
North Canal, Lake Hattie Reservoir * | 705
Pioneer Canal * (Sand Creek Ditch) | 19000 or 20000 acres in 1910, 11 and 12.
<table>
<thead>
<tr>
<th>Name</th>
<th>Ditch</th>
<th>Acres Irrigated</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alice Hardman</td>
<td>(Sand Creek Ditch)</td>
<td>400 acres</td>
</tr>
<tr>
<td>Davis Brothers No. 2</td>
<td></td>
<td>200</td>
</tr>
<tr>
<td>Fred Collins</td>
<td></td>
<td>75</td>
</tr>
<tr>
<td>Konald</td>
<td></td>
<td>420</td>
</tr>
<tr>
<td>LeRoy</td>
<td></td>
<td>600</td>
</tr>
<tr>
<td>Cook</td>
<td></td>
<td>320</td>
</tr>
<tr>
<td>Lone Tree</td>
<td></td>
<td>360 to 400</td>
</tr>
<tr>
<td>Davis Brothers No. 1</td>
<td></td>
<td>360</td>
</tr>
<tr>
<td>Sand Creek and Tributaries</td>
<td></td>
<td>5,695</td>
</tr>
<tr>
<td>Shell and Antelope Creek</td>
<td></td>
<td>5,628</td>
</tr>
<tr>
<td>Biddick</td>
<td></td>
<td>578</td>
</tr>
<tr>
<td>Little Laramie River</td>
<td></td>
<td>45,999 in 1913.</td>
</tr>
</tbody>
</table>

This includes area irrigated by James Lake System.

1,527 in 1913.

916 in 1913

515 in 1913

1500 acres previous to 1913

Both above areas are irrigated from James Lake Reservoir, through the Talmadge-Buntin system.

<table>
<thead>
<tr>
<th>Name</th>
<th>Ditch</th>
<th>Acres</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hayes &amp; Bird</td>
<td></td>
<td>400</td>
</tr>
<tr>
<td>Spring Creek</td>
<td></td>
<td>60</td>
</tr>
<tr>
<td>Hicks Ditch No. 2</td>
<td></td>
<td>140</td>
</tr>
<tr>
<td>Bellamy-Loback and Loback Extension</td>
<td></td>
<td>about 4,000 acres.</td>
</tr>
<tr>
<td>Soldier Creek irrigates</td>
<td></td>
<td>1185 acres</td>
</tr>
<tr>
<td>McGill</td>
<td></td>
<td>705</td>
</tr>
<tr>
<td>Last Chance</td>
<td></td>
<td>1200</td>
</tr>
<tr>
<td>Witnesses correct and corroborate exhibits describing ditches and acreage irrigated therefrom.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>bands irrigated from Sand Creek</td>
<td></td>
<td>320 acres.</td>
</tr>
</tbody>
</table>
Total acreage Irrigable

<table>
<thead>
<tr>
<th>Folio</th>
<th>Ditch or Canal</th>
<th>Acres.</th>
</tr>
</thead>
<tbody>
<tr>
<td>760</td>
<td>Lake Hattie North Canal *</td>
<td>43,100</td>
</tr>
<tr>
<td>761</td>
<td>Pioneer High Line *</td>
<td>37,760</td>
</tr>
<tr>
<td>781</td>
<td>Actual acreage that will be finally irrigated after deducting roads, canals, fences, houses and pastures estimated at 80 to 85 per cent of the amounts just stated.</td>
<td></td>
</tr>
<tr>
<td>785</td>
<td>Only 10 per cent of the 43,100 acres under the North Canal is now insufficiently irrigated; the other 90% not being irrigated.</td>
<td></td>
</tr>
<tr>
<td>853</td>
<td>Pioneer Canal *</td>
<td>49,000</td>
</tr>
<tr>
<td>856</td>
<td>&quot; &quot; &quot; &quot;</td>
<td>35,000 to 50,000</td>
</tr>
<tr>
<td>854</td>
<td>This total includes the acreage irrigable by the North and South canals, the Welcott, Fischer and East Chance ditches.</td>
<td></td>
</tr>
<tr>
<td>854</td>
<td>By enlargement and construction of laterals, Pioneer could serve 40,000 acres.</td>
<td></td>
</tr>
<tr>
<td>1369</td>
<td>In Albany County, 53,000 acres of natural hay meadow, of which 46,000 acres which are ranches containing hay meadows irrigated from Laramie River and tributaries including Sybille Creek and all tributaries of the Laramie River in Albany County and also the drainage basin of the Little Laramie.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>This is probably the 46,000 acres mentioned at page 18 of plaintiff's brief as irrigated from the Little Laramie and its tributaries.</td>
<td></td>
</tr>
</tbody>
</table>

Note: Where the testimony showed that a certain acreage was covered by a ditch, I considered that as merely indicative of the ditch's capacity and not the acreage actually irrigated.

There seems to be a considerable discrepancy between the testimony of the plaintiff's own witnesses relative to the irrigated acreage of the lands of the Laramie region. We wonder if these witnesses too are "strangers in a strange land" as is stated by plaintiff regarding the defendants' witnesses and their testimony, after scientific survey, of the acreage actually irrigated. (see folios 416 and 731, also my former data for actual instances of discrepancy).

There are instances in which witnesses testify they own or know certain properties, and that a certain portion thereof is irrigated, but not stating the source of irrigation, see folios 1117-21, 1157-60.

The Haley Ranch on the Big Laramie has irrigated 70,000 acres.
The Riverside on the " " 32,000
Land irrigated under Big Laramie, 5,000
See this to determine assessment of acreage in Laramie River basin

98
April 21, 1908, being the date on which application for permit No. 8612 for the Lake Hattie Supply Canal was filed in the office of the state engineer of the State of Wyoming, is the date of the earliest appropriation of water pertinent to the Lake Hattie system and in fact the earliest appropriation made for any part of the various units or diversions either constructed or claimed by the Laramie Water Company.

As we have already observed, active construction had already been progressing on the Greeley-Poudre system on the upper reaches of the stream in Colorado beginning with 1903 and to the coming of winter in the Fall of 1907, and more than seven years had elapsed from August 25, 1902, the date on which the Greeley-Poudre project was initiated.

A scrutiny of Ex. 159, a certified copy of Permit No. 8612, shows that the surveys upon which the application for this permit were predicated commenced ________19____, so if the priority dated to the beginning of the survey, as is the rule in Colorado, then the relative dates of the two appropriations would be respectively April 25, 1903 for Colorado diversion and ________ 19____ for the Wyoming (Lake Hattie) diversion.

Application for permit No. 8612 was filed by Mr. Z. E. Sevison, a civil engineer who testified as a witness for Wyoming. He verifies the date of beginning of surveys on Lake Hattie system. He said in part:

"I assisted in laying out the work of the Lake Hattie irrigation system, now carried on by the Laramie Water Company. Began the work April 16, 1908; surveyed first the Lake Hattie Reservoir, then the intake canal from the Laramie River, also preliminary surveys for outlet canals"
of distribution system. These surveys continued with slight interruptions for little over a year. The final locations of the canals was started about May 1, 1908. (1645-5) ** * At the time I began these surveys April 16, 1908, I was working for the Arnold Engineering Company. ** * This project was surveyed by the same field parties that surveyed James Lake. We shifted back and forth from one project to another. This preliminary work was under my immediate supervision. I know C. I. Speer of Chicago. He had something to do with the final part of the project. The Arnold Engineering Company was doing this work up to about the first of June, 1908."

Following the initiation of the enterprise by the filing of permit on April 21, 1908 upon application based on survey commenced by Mr. Sevison on April 16, 1908 they run a series of additional and supplemental filings having to do directly with the Lake Hattie system. These are principally as follows: Permit No. 1733 Reservoir for Lake Hattie Reservoir, May 11, 1908, and No. 1373 Reservoir for enlargement of Lake Hattie Reservoir, September 18, 1908. Also permit No. 8613 for Hattie Lake Canal No. 1, September 11, 1908 and No. 1939 Enlargement, September 18, 1908, for Hattie Canal (outlet canal of Hattie Reservoir). These four last mentioned permits were granted upon applications likewise made by Z.E. Sevison, engineer, and were evidently the result of surveys continuing after the survey which began on April 16, 1908 preceding the filing of Permit No. 8613 on April 21, 1908.

This is also borne out by the following fact:

"Supply canal for reservoir permits numbers 1372 Res. and 1373 Res. See also permits 8613 and 1939 Enl."

That they are also part of the general surveys is evidenced by an inspection of the exhibits. (Exhibits 159, 161-4)
On July 3, 1909, Mr. Z. E. Sevison again filed application resulting in permit No. 2113 granting the right to enlarge the Pioneer Canal as a part of the same general Lake Hattie project, and on December 5, 1910, by permit No. 10363, the state engineer granted the right to construct the Lake Hattie Supply Canal No. 2, in this instance diverting water from Little Laramie River for a second or additional supply to the Lake Hattie Reservoir system. This was the first permit issued for diversion of water from Little Laramie River for filling or supplying the Lake Hattie Reservoir. (3924)

From the foregoing permits, it is evident that the Lake Hattie Reservoir with its inlets from the Big and Little Laramie rivers and its outlet ditch for the irrigation of lands, including the right to use an enlargement of the old Pioneer Canal as a part of its inlet ditch from the Big Laramie River, was not fully planned until about December 5, 1910, at which time the application for permit to the inlet from the Little Laramie River was filed in the office of the state engineer at Cheyenne. In other words, the surveys of this system seem to have been continuing with changes along the same general line from April 16, 1908 to December 5, 1910, more than two and one-half years.

This is borne out by the testimony of Mr. Sevison. (645-58) Although he states that construction work started about July 17, 1909 (646), and that the old Pioneer Canal was absorbed into the Lake Hattie system in the early part of 1909. (661)

There was also surveyed and later absorbed as a part of the Lake Hattie system the Robertson-McConnell Reservoir, already referred to. This was granted by permit No. 2051 Res.
with priority date of October 15, 1909 for _______ acre feet of water from the Big Laramie River. It was situate at the inter-state line and is contemplated as a reservoir with a dam across the Big Laramie River just below the inter-state line.

Mr. Sevison says:

"I surveyed the Boswell Reservoir, later called Robertson-McConnell Reservoir, June 1, 1908. The dam is at the upper end of the canon about a mile north of the state line between Wyoming and Colorado. That was to be a part of the Lake Hattie system. (1647) * * * The water would have been backed up in the river valley had the dam been constructed. The work of construction has never been commenced on it, other than a mere survey."

(663)

A reference to the copy of the permit (Ex. 177) will show that it had been extended so that it could be completed at the time of taking testimony in this case and still have the benefit of priority as of October 15, 1909, and it therefore stands as an agreed claim against the river as of that priority and for the amount mentioned, for all purposes of this case. Whatever mention may be made of previous recognizance of this reservoir by engineer Stewart, it apparently has no connection with the work done by Mr. Sevison and the priority as fixed by the permit is conclusive on all parties.

On August 30, 1909, the Inter-state Canal No. 2, diverting water from the Big Laramie River, was granted permit No. 10384 by the state engineer of Wyoming. This permit authorizes the construction of a canal for the irrigation of 23,544 acres on the south side of the river and across from the lands supplied by the Lake Hattie system. This permit, by its terms, is secondary to and would be considered along with the permit No. 3051 granted to the Robertson-McConnell Reservoir, and was evidently the distribution canal contemplated for the application of the waters to be stored in that reservoir. This canal was also later ab-
sorbed by the Lake Hattie system and by its terms stood as an
existing appropriation permitted from the Big Laramie River at
the close of the taking of testimony in this case.

which

The same observations obtain as to the Inter-state
Canal No. 3 apply to the Sand Creek diversion canal given permit
No. 10365 with priority dated December 12, 1910.

The Stewart Canal, to divert water from the Little
Laramie River and projected by E. J. Bell, was granted permit
No. 8521 as of priority dated June 31, 1908. This canal con-
templated the irrigation of practically the same lands to be
served by the Lake Hattie project. In other words, the lands
of the two projects over-lapped. (Ex.170) Permit 8518, priority
of July 19, 1908, for Bell Supply Canal No. 1, likewise from the
Little Laramie River, was granted to E. J. Bell for supplying the
Bell Reservoir, which in turn was granted permit No. 1331 Res.
on the same date for water from the same stream. (Ex. 168)

By permit No. 8519, priority of July 6, 1908, E. J.
Bell was granted the right to construct a canal to divert the
water of Douglas Creek across the intervening divides and over
into the head-waters of the Little Laramie River. The waters
to be used in conjunction with the privileges granted by permits
Nos. 8518-8520-8521 and 1331 Res. See Ex. 173 together with
the map showing inter-watershed diversions. All four of these
units went to make up what is known as the Stewart system. Mr.
Severson says:

"I met Mr. Wendelkin and Mr. F. O. Crable in 1908.
They were not interested in the promotion of the Lake
Hattie Company, but were interested in the Stewart
project. The two projects over-lap to a certain
extent." (1661)

The record further shows that the Laramie Water Company
absorbed the Stewart system as a part of its project.
This is also evidenced by the declaration of the engineer as to the permits which the Laramie Water Company claimed on the date of the trial.

The Bath Reservoir was granted permit No. 1883 Res. as of priority September 15, 1909, to divert water from the Big and Little Laramie Rivers. This was later absorbed by the Laramie Water Company. (Ex. 171)

 Permit No. 2052 Res. for the Bell Reservoir No. 3, of priority December 5, 1910, was granted for storage of water from Little Laramie River. It was to be constructed across the channel of the stream. It was later absorbed by the Laramie Water Company. (Ex. 172)

The Bell Supply Ditch No. 2, already granted permit No. 8519, was granted permit No. 2538 Enlargement. Permit No. 2538 was granted to the Laramie Water Company, of priority March 7, 1912, for supplementary supply of water from Douglas Creek and tributaries over the divide and into the Little Laramie to augment the supply of the Stewart Canal under permit No. 8531. The Bell Reservoir, permit No. 2052 Res. Bell Reservoir, permit No. 1331 Res. of the Lake Hattie Reservoir, permits Nos. 1372 Res. and 1373 Res. and also for other units of the system.

The same observation obtains with relation to permits Nos. 11016 to 11032 inclusive of the same priority date, March 7, 1912, which relate to the various tributaries of Douglas Creek, the waters of which are intercepted by Bell Supply Canal No. 2 along its course as it passes from Douglas Creek to the crest of the divide, so that for all intents and purposes these permits cover the same general diversion as that granted in permits Nos. 8519 and 2538 Enl.
An inspection of the copies of the permits included in the record and the maps thereto attached, appearing in the record, demonstrates that the entire Laramie Water Company's system, including the various units mentioned, is composed of a series of priorities and permitted appropriations beginning April 21, 1908 and terminating March 7, 1913 and permitted the diversion of water from the Big Laramie and the Little Laramie Rivers as well as the diversion of water from Douglas Creek of the North Platte drainage to supplement the supply of the Little Laramie River, thereby making the entire enterprise several years junior to the Greeley-Poudre enterprise in Colorado, even the surveys on the Lake Hattie enterprise having been initiated on April 16, 1908, long subsequent to completion of all surveys on the Greeley-Poudre project and likewise long subsequent to the construction work proceeding in Colorado from the Spring of 1903 to the winter of 1907-8.

The Pioneer Highline Canal.

The plaintiff sought to confuse the issue of priority by injecting into the record certain references to what was termed a "Pioneer Highline Canal." Doubtless every obtainable fact which would possibly bear upon this subject was incorporated in the record. All of this we consider immaterial for the following reasons:

(a) The canal referred to as the Pioneer Highline was never surveyed or construction thereon commenced at any time prior to this suit;

(b) Because the record of the adjudication proceedings which terminated in the decree (Plaintiff's Exhibit _____) shows
that no claim for any such canal was presented to the Board of Control or to the District Court during the adjudication pro-
ceedings or the review thereof.

(c) Under the laws of Wyoming, any claims with
relation to the Pioneer Highline Canal prior to the permit,
which we will later note, are barred by Section 794 of the
Compiled Statutes of Wyoming, 1910, requiring all appropriators
to appear at the adjudication proceedings before the Board of
Control.

(d) Because the State of Wyoming is bound by permit
No. 2719 Enl. issued to the Laramie Water Company for the Pioneer
Highline Canal, January 8, 1913, and fixing a priority date as
of July 11, 1913 for said canal and is precluded by the findings
and conditions of said permit from asserting any other or differ-
ent claims or any other or different priority than that set forth
in said instrument.

We will discuss these reasons in their order.

(a) Failure of construction.

Charles Bellamy, a witness for complainant, in speaking
of this canal, says:

"In 1886 Mr. Loback and myself ran a number of lines
west of town all over that country. It was a mere re-
cognizance. (781) * * * Some recognizance work was done
in 1886 or 1887 relative to the Pioneer. They did not
proceed with the construction. It was simply to see
the possibility of some time running a ditch there. We
started with two buggies and I could get out of one, set
up the instrument and send the man ahead where I could
take a long sweep and site with my gradient what the fall
for the ditch would be, allowing it to run nearly straight
and then allow a little and then have him hold the rod
with the target the same height as the instrument. Then
I would ride to him and he would go on. We spent two or
three days going over the plains between the two rivers.
Mr. Loback did the same in '87, only he staked out a line."
No construction was done. (768) * * * In 1883, I had started to take this cut when the panic came on and everything shut down and they dropped it entirely. * * * There were no filings made on my original survey which was incomplete. (1770-1) The present works are entirely disconnected from my survey and also the surveys by Mr. Loback and me which ended in naught. Lake Hattie was not a reservoir in those days." (771)

Witness S. C. Downey for complainant speaks of surveys made for such canal in the latter part of the 80's and early 90's. (917, 927) In concluding, he says:

"The ditch was not built on that survey. (927) * * * The survey * * * made by George G. Anderson * * * in 1890 * * * was independent from the survey made by d'Hemecourt. I am not able to produce a plat of the survey made by Mr. Anderson, I don't believe one was ever made. I am unable to produce a plat of the survey made by Mr. Loback. The Anderson and Loback surveys were never filed for record to my knowledge. * * * The ditch was not constructed under the Anderson survey or the Loback survey." (927-30)

The witness then produces the maps of the Owens and Bellamy surveys and it having been admitted that the Bellamy survey was by the witness Charles Bellamy, from whom we have just quoted, the witness proceeds:

"The ditch was not constructed under the Owen survey. It was not constructed under the Bellamy survey. * * * The Wyoming Central Land and Improvement Company authorized the Owen survey for the Pioneer Canal. The same people authorized the Bellamy survey. This company had four distinct surveys made at different times in this proposed project. The last of these four was the Bellamy survey in 1893." (931)

He then speaks of certain disconnected surveys along subsequent to August 25, 1902 and again recurring to the earlier surveys, says:

"The ditch was never constructed from the head of this proposed canal as shown by the Owen survey." (933)

The witness then admitted that the Owen survey and the Bellamy surveys were in no wise similar except as thrown near
together by the topography of the country in the vicinity of Lake Hattie and the head of the Pioneer Canal. (933-5)

The present canal leading to the Lake Hattie Reservoir forms the theoretical head of the Pioneer Highline Canal as permitted by the state engineer, as we shall subsequently show. The witness, speaking of this canal, says:

"The present canal leading to Lake Hattie Reservoir does not follow the line of survey as shown by these two Exhibits, that is, the Bellamy or the Owen surveys. ** The topography of the country would naturally throw them somewhat in the same location." (935)

The witness then goes on to state that nothing was ever done toward constructing this canal because of the financial difficulties of the company and states:

"I have produced what purports to be a report made by each of four surveyors: d'Henecourt, Loback, Anderson and Owen. Each of them was an individual attempt to promote the scheme which I have outlined. Each report is an engineer's prospectus, rather than a report on a definite survey basis. By that I would say that it is a general report rather than a detailed report of the survey. ** In each of these reports the highline canal is quite evidently located at different places and in each instance is a mere open canal without any difficulties of construction. The highline ditches, in any event, in order to irrigate lands situated on the higher levels than those irrigated by the Pioneer Highline Canal would of necessity be limited in their location by the base of Sheep Mountain and Sodergreen Lake on the Pioneer Canal. ** Any competent engineer in running any line for the location of a higher line of ditch then the Pioneer Canal would be forced to place his line through this vicinity."

(939-40)

The theoretical Pioneer Highline Canal contemplated by the four recognizance made by the engineers named by Mr. Downey in the latter part of the 80's and terminating with the survey made by Mr. Bellamy in 1893, none of which were similar, seems to have lapsed into oblivion until resurrected after the filing of this suit for reasons which may be apparent as we proceed.
Witness Bellamy says:

"That was in 1893, and I had started to stake this out when the panic and everything shut down and they dropped it entirely. *** There were no filings made on my original survey which was incomplete."

(770-1)

Engineer Z. E. Sevison, as we have already noted, made the initial survey for the Lake Hattie system, beginning April 16, 1908. The so-called Pioneer Highline Canal is a part of the Lake Hattie system. When questioned regarding the highline canal by the counsel for the complainant, likewise the counsel for the Laramie Water Company, he says:

"In making the survey for the Lake Hattie Supply Canal, I found stakes of previous surveys following very closely the line of my survey. 100 to 200 feet apart was the greatest variation!"  (650)

It will be remembered that the Lake Hattie Supply Canal merely follows the course of the old Pioneer Canal to Sodergreen Lake and there branches off and runs into Lake Hattie and this is the region concerning which the various witnesses have testified. All engineers must of necessity by natural conditions, be forced to practically the same line of location.

On cross-examination relative to the same matter he said:

"The Highline Canal could not draw water from the Lake Hattie Reservoir. *** I do not know by whom those old stakes on the Highline, which Mr. Corthell mentioned, were placed. Judging from their condition they were pretty well weather-beaten, I should say they were ten years old any way. They were indicative of an old survey having been run before.

It is nothing unusual to find stakes of old surveys in running lines. This was the natural and most feasible line for the continuation of a lateral or highline from the Pioneer Canal.

No old maps were given me that I followed and no old surveys. Until I ran onto those stakes, I didn't know there had been a survey run there. I would think that these stakes had evidently been placed on some preliminary line run from the Pioneer Canal in the neighborhood of Sodergreen Lake. They would indicate a grade line from Sodergreen Lake. (660-1)

*** I ran across those old stakes *** about every 300 to 800 feet. I should say they were indicative of
a fly line survey or preliminary survey. They certainly were not final location stakes." (663)

Having spoken of a preliminary survey of the Highline Canal which he made during 1908-9, he says:

"The Highline Canal from the Pioneer and Soder-green Lake, for which I made a preliminary survey, was never constructed." (665)

The above shows conclusively that there was absolutely no connection between the preliminary surveys run twenty years previously and those made by the projectors of the Lake Hattie system under the supervision of Mr. Sevison.

Witness Roach, for complainant, after having spoken of one of the earlier preliminary surveys by Mr. Owen, to which we have already referred, and in which the witness claims he assisted, states that he ran a survey line of his own in September, 1908, leaving the Pioneer Canal in a still different position than that taken by previous engineers. It will be noted that this was after Sevison had made his surveys and long years subsequent to the initiation of the Greeley-Poudre enterprise. Evidently this road survey was a mere reconnaissance and entirely independent of every other survey and nothing every came of it, for he says:

"I think at that time R. G. Stewart was consulting engineer * * * I had orders either from him or Mr. Corthell to go out there and start one or two places and run a line. I ran a line independent of any other survey. * * * I did not run across any surveys being made at that time by the Arnold Company or their representatives. * * * I consumed about six days in the field in making this survey in 1908. Mr. Corthell and I had a dispute as to who got the plat of this survey. I do not know what became of it. (873) * * * I have been unable to give the definite location of my old highline survey. * * * No canal has been built following the line of that survey. If the Lake Hattie Supply Canal is correctly shown on the map attached to defendant's answer, then my line was different. We started at several places from the Pioneer Canal. I
did not tie to anything and everything was done with angles. ** The present Lake Hattie Supply Canal was not built from my survey."

This survey, having in no way been connected with the Lake Hattie enterprise, being a mere random six day recognition, has no part in the Pioneer Highline Canal idea as finally adopted.

The idea of actually constructing the Pioneer Highline Canal seems to have first occurred to the plaintiff and the owners of the Lake Hattie System long subsequent to the filing of this suit.

Lyman E. Bishop, the resident engineer of the construction company on the Laramie Water Company work, did not come to Laramie until July 1, 1810. (773) He says:

"During 1912 * * * made preliminary and final location surveys of * * * Pioneer Highline Canal. " (774)

On cross-examination he further says:

"The line of the proposed Pioneer Highline intercepts the Lake Hattie Supply Canal No. 2. The Pioneer Highline Canal has been finally located. * * * Practically no construction work has been done. The headgate will be * * * located in Lake Hattie Supply Canal No. 1. (785) * * * If the Pioneer Highline is ever built there will be a crossing over Lake Hattie Supply Canal No. 2 and the Pioneer Highline will be so constructed that Bell Supply No. 2 water could be run into the Pioneer Highline from that point." (795)

From the foregoing it will be noted that Mr. Bell not only finally located the line of the Pioneer Highline Canal, but as well ran all the preliminary surveys during the year 1912, simply using the Lake Hattie Supply Canal from its point of departure from the old Pioneer Canal and Lake Sodergreen down to the point where the Supply Canal discharges its waters into Lake Hattie Reservoir and then continuing the survey around on the higher contour. (Ex. 160, official map)

To briefly state it, the sum total of the evidence of the complainants relative to the Pioneer Highline Canal is as follows: That more than a quarter of a century ago some suggestion prevailed that a canal might some day be constructed to
convey water to lands situate at a higher elevation than the Pioneer Canal, but either diverting directly from the river and running in lines parallel to the Pioneer Canal, or by building a lateral or subsidiary canal from the Pioneer starting in the neighborhood of Sheep Mountain or Sodergreen Lake and utilizing waste fall in the old canal; that four different engineers looked into this subject and made recognizance or preliminary survey upon which to base their report to the company of the possibility of such a canal; that the last of these was in 1893 when engineer Bellamy made the fly line survey that he has described in the record; that the Bellamy survey and all prior surveys came to naught in 1893; that they were discontinued, no construction work took place under any of them and that any previous ideas of the construction of a canal somewhere in that district seem to have been forgotten; that engineer Sevison in April, 1908, found some of the stakes that had been set in these preliminary surveys long years before; that he did not know for what the stakes had been set, was in no way apprised of any of the former ideas of either the engineers who ran any preliminary lines or the people for whom they worked, and that his survey was entirely independent of any previous survey of which he had no knowledge.

Added to this, as we will later observe, there was a complete abandonment of these earlier ideas which is evidenced by the failure of the parties conceiving the same to obtain permits therefor or to protect the same or even make mention thereof in the adjudication proceedings which later took place in that water district.

The evidence thus shows that a permit was granted to enlarge the Lake Hattie Supply Canal, which enlargement was
designated as the Pioneer Highline Canal of priority as of July 11, 1912, long subsequent to the bringing of this suit. This Pioneer Highline Canal, so-called, by which in fact is but a branch or lateral of the Lake Hattie Supply Canal, as we shall later observe (see permit Ex.160), was granted on application made by the Laramie Water Company, Lyman E. Bishop, Engineer, and, as verified by the testimony of Mr. Bishop, was based on both preliminary and final location surveys made by him during 1912. (784)

Mr. Sevison stated that no construction work was ever done on the highline after his preliminary survey, which came to naught. (663) According to the testimony of complainant, nothing every came of any surveys previous to Mr. Sevison and none of the previous surveys had any connection with any of the work then done either by Mr. Sevison or Mr. Bellamy for the Laramie Water Company. None of the permits under which the Laramie Water Company claims, save the one granted with priority of July 11, 1912, have any bearing whatever on the Pioneer Highline. Hence it is evidence that whatever dreams or conjectures may have existed in the years previous, the idea of constructing a lateral ditch from the Lake Hattie Inlet occurred and took tangible form for the first time after that inlet had been constructed in 1909-10 and long after this suit had been filed. Then, evidently for the first time, it became imperative that some semblance of claim to such canal should be put of record. Lyman E. Bishop, was directed to make his preliminary survey during the year 1912 and later his final survey, which terminated in his making the filing for his company with the state engineer July 11, 1912, almost ten years subsequent to the initiation of the Greeley-Poudre enterprise on the Laramie River in Colorado.
An examination of the permit itself, Exhibit 160, the more reveals the actual conditions. In the first place, this permit No. 3719 specifies:

"Water to be diverted from the Laramie River for use under the terms of this application to be carried through the Pioneer Canal enlargement. (See permits Nos. 8613 and 2113 Enl.) The right sought is for permit for direct use from the Big and Little Laramie Rivers on land served from the Pioneer Highline Canal: (1) by use of the waters appropriated under permits Nos. 8613 and 2113 Enl. directly through the Pioneer Highline Canal instead of being stored in Lake Hattie Reservoir and then applied to lands described under secondary permit No. 8613; or (2) by returning stored water from Lake Hattie Reservoir (permits 1372 Res. and 1373 Res.) to the Laramie River, equal in amount to that diverted from the Big Laramie or Little Laramie River for direct use on the lands served by the Pioneer Highline Canal; or (3) by the use of water appropriated under permit 8518 directly through Bell Supply Canal No. 1 into Lake Hattie Supply Canal No. 2 into the Pioneer Highline Canal, instead of being stored in Bell Reservoir No. 1 (permit No. 1331 Res.) and then applied to the lands described under secondary permit No. 8518."

The description then designates the other permits already granted and which have been hereinbefore mentioned as belonging to the Laramie Water Company and then says:

"It is understood that nothing contained in this permit shall be construed as meaning the additional appropriation of any amount of water in excess of the total amount heretofore thus issued as a part of the Laramie Water Company's system."

In other words, this last paragraph in the application makes this canal merely a lateral canal for the service of lands from the Pioneer Enlargement as it distinctly disclaims any attempt to appropriate water from the river. Claiming no additional appropriation from the river, the canal really has no status upon the stream and no priority of right to divert water therefrom. The fact that it is merely a lateral and that no claim for appropriation from the river by virtue of this canal, if ever constructed, is further evidenced by the limitations upon which it is granted by the state engineer of Wyoming:
"I * * * do hereby grant the same subject to the following limitations and conditions. (See above) * * * Water is diverted from the Big or Little Laramie Rivers under the terms of this permit in excess of the amount covered by permits heretofore issued, must be immediately returned in equal amount to the Laramie River from the Lake Hattie reservoir, in such manner as to in no way interfere with prior rights on the Big or Little Laramie Rivers."

It is here evidence that the state engineer in granting this permit took full cognizance of the fact that prior appropriations did exist on the Big and Little Laramie Rivers and that the permit by him granted to this canal should be so limited as to never interfere with the stream. By placing the above condition and limitation upon the permit, he again declared that it was but a lateral canal whose primary purpose was distribution of waters already appropriated under the previous permits which we have mentioned as the basis of claim of the Laramie Water Company. Whatever may have been the dream of residents of the Laramie plains more than a generation ago relative to some day building a Pioneer Highline Canal, everything is merged and limited by this permit (Ex. 160), the first and last to be granted by the proper authorities of Wyoming, and that too with the limitation that its right to divert water should not exceed by virtue of its permit but rather that of prior permit, the earliest of which, as we have observed, is April 31, 1908 and based on surveys initiated April 18, 1908.

It must be borne in mind that when all is said, the Pioneer Highline Canal is still unconstructed and is known only by the stakes upon the ground, if any, and the permit issued by the state engineer of Wyoming.

As still further evidence of the fact that the Laramie Water Company and its predecessors had no thought of surveying, locating or constructing a Pioneer Highline Canal, either as a principal canal or as a mere lateral, the maps and plats filed
with each successive application for a permit starting with the first on April 31, 1908, and down to the application for permit to construct the Pioneer Highline Canal as a mere lateral, July 31, 1913, are conspicuous in their omission of any notation either by line, words or figures whereby even any inference might be drawn that such a canal was contemplated.

The first permit was No. 8613 filed April 31, 1908. An inspection of the map (Ex. 159) reveals merely the notation of the Lake Hattie Supply Canal from Pioneer Canal to Lake Hattie Reservoir and also the Highline of the Reservoir. At no place is there revealed the slightest notation indicative of any reference or thought of any Pioneer Highline Canal and also at no place in the application for a permit or the grant thereof is there any reference to any other or prior filing, claim or application of any other survey or canal projected or completed other than the mention made of permits 1373 Res., 1373 Res., 8613 and 1939 Enl. which will be next considered.

Reference to permit 8613, Exhibit 161, also reveals a complete absence of notation of any Pioneer Highline Canal either by line, name or other designation. The same observation obtains with relation to permits numbers 1372 Res. and 1373 Res. (Exhibits 162 and 163) in both of which there is complete omission of any notation relative to any Pioneer Highline Canal or any canal line similarly located or projected and in any way resembling such canal.

The same observation obtains with relation to all other permits granted to the entire Lake Hattie system save Exhibit 160 already referred to. The law of Wyoming requires that on the maps accompanying applications the intersection of the lines of the projected canal with the lines of any other canal be definitely located. In other words, all crossings must be noted on the plats.
It follows that if the Pioneer Highline Canal had been in contemplation at the time the Lake Hattie Supply Canal No. 3 diverting water from the Little Laramie River under permit No. 10363 of October 10, 1910 was initiated and permit issued, some notation would appear on the plat accompanying the application indicative of the point where this inlet canal from the Little Laramie River crossed the Pioneer Highline Canal on its way to Lake Hattie.

An inspection of the plat accompanying the permit (Exhibit 166) reveals that no such intersection is noted and that in fact there is no line upon the map indicative of any Pioneer Highline Canal or of any canal similarly situated. Evidently the Pioneer Highline Canal was not then considered. Even more startling is this fact when reference is had to Exhibit 167 for permit No. 3780 Enl. permitting the enlargement of this inlet canal from the Little Laramie River for at no place, even on this map, is there any indication of any such canal as the Pioneer Highline or of any intersection with the same.

Both these maps furnish corroboration of the evidence of engineer Bellamy, already referred to, that he made the preliminary as well as the final survey of the Pioneer Canal in 1913 and bears out the fact that the Pioneer Highline idea is an afterthought for the first time conceived by the Laramie Water Company and its predecessors in the year 1913.

The whole line of assertion of any rights from the river for the Pioneer Highline Canal other than the mere rights of substitution specified in the permit granting priority as of July 11, 1912, for use as a lateral, is borne out by another line of investigation which we will now consider.
(b) No claim of appropriation ever presented before Board of Control at adjudication of priorities on Laramie River for any such canal.

It is not only necessary under the laws of Wyoming that any person desiring to acquire right to the beneficial use of public water shall, before commencing the construction and enlargement or extension of any ditch, or performing any work in connection with any canal, make application to the state engineer for a permit, (3910, Sec. 724, Comp. Stats. Wyo. 1910) but it is also imperative that such person thereafter appear before the State Board of Control where the rights of the various claimants to the use of water upon the stream are adjudicated and determined. (3917, Sec. 794, Com. Stats. Wyo.)

The statute reads:

"Whenever the state board of control shall, as provided by law, proceed to adjudicate and determine the rights of the various claimants to the use of water upon any stream or other body of water, it shall be the duty of all claimants interested in such stream, to appear and submit proof of their respective appropriations, at the time and in the manner required by law;"

The same statute then continues:

"and any such claimant who shall fail to appear in such proceeding and submit proof of his appropriations shall be barred and estopped from subsequently asserting any rights theretofore acquired upon the stream or other body of water embraced in such proceeding, and shall be held to have forfeited all rights to the use of said stream theretofore claimed by him;" (Wyo. S. L. 1901, Chap. 67, Art. 2, Comp. Stats. Wyo. 1910, Section 794.)

An adjudication of priorities to the use of water from the Laramie River in Wyoming before the Board of Control was had and an appeal from the board's decision was taken, prosecuted and perfected to final judgment and decree prior to the filing of this suit. (1043, Plaintiff's Exhibit N)

It accordingly appears that the claims of the owners of the Pioneer Highline Canal must have either been presented before this adjudication proceedings or their claims to such canal for-
ever barred and forfeited as provided by the foregoing statute.

In order to ascertain the facts in this regard, a thorough search was made in the proper offices. Witness Carpenter testifies in part as follows:

"I made investigation of the records of the office of the state engineer at Cheyenne, Wyoming, the secretary of the Board of Control of the State of Wyoming at Cheyenne and of the clerk of the district court of Laramie County situated at Cheyenne to ascertain what, if any, statements of claim for appropriations of water from the Big Laramie River or any of its tributaries had been made and filed with the Board of Control in the proceedings for the adjudication of water rights from the stream mentioned. * * * I examined records, statements of claims and transcripts of evidence introduced before board of control in adjudication of priorities for water rights from Big Laramie and its tributaries, and found no statement of claim filed in said proceedings in behalf of or making claims for any canal designated as the Pioneer Highline Canal or any other canal which might be claimed to be the Pioneer Highline Canal, but appearing under some other name. I also found that no evidence had been submitted before the board of control in said proceeding for or in behalf of any Pioneer Highline Canal or any similar canal by any other name.

I likewise examined statements of claim and evidence submitted in connection with the Pioneer Canal and failed to find in either of those claims or the evidence submitted in support thereof any reference to any Pioneer Highline canal. I further examined proceedings before the district court on appeal from the decree given to the board of control, and after examination of all motions, applications, statements of claim and other documents filed in said proceeding, and after a thorough examination of all the evidence submitted before the district court in such proceeding, I found no reference whatever to any Pioneer Highline Canal or any statement or claim for appropriation of water for any such canal under that or any other name and failed to find any evidence introduced in support of any claim for such canal. I further examined all papers and evidence relating to the Pioneer Canal and failed or produced in such proceeding and failed to find therein any reference to any Pioneer Highline Canal. I searched throughout the decree entered by the Board of Control from which the appeal was prosecuted and found no mention in the decree in behalf of any Pioneer Highline Canal and no mention or decree on behalf of any such canal as a part of the Pioneer Canal or otherwise. I made search of the decree entered by the district court, plaintiff's Exhibit N herein, and failed to find any mention of such canal in said decree either as a canal diverting water from the Big Laramie River or as a part of the Pioneer Canal."
The above testimony and the facts therein related stand without the slightest contradiction in the record. No claim was ever presented before the board of control or the district court for any appropriation of water from the Laramie River for any proposed Pioneer Highline Canal. The entire records in the state engineer's office, the board of control and the district court, reveal no such claim save that granted of priority July 11, 1913 to the Laramie Water Company for a lateral canal from the Lake Hattiel inlet on application of Lyman E. Bishop.

As already observed, there does not even now exist any such canal as the Pioneer Highline, and the surveys and filings are the only evidence which we have of any such claim.

Any and all claims which the owners of the Lake Hattie system or their predecessors might at any time in the past have seen fit to make or press in behalf of such a canal, are, by the terms of the statute above quoted, forever barred and set at rest and the only claim that exists is that of July 11, 1913 which is merged into other permits already granted rights to divert water from the Laramie River.

(o) Claim barred by statute.

We have already discussed this topic in the preceding paragraphs. Section 794, Compiled Statutes of Wyoming, 1910, declares that all rights, claims for which are not presented and adjudicated before the board of control, shall be forfeited,
and the claimants so filing shall be barred and estopped from subsequently asserting any rights theretofore acquired from the stream. (3817) The only exception made by the statute is that permitting one year after the entry of the order or decree of the board of control within which parties who do not have notice of the proceedings may come in and present their claims, and failing so to do, their rights are by the statute forever barred.

We again urge that all claims to water from the Laramie River in Wyoming not presented and adjudicated before the board of control and on appeal from its decree to the district court and set forth in the decree, Plaintiff's Exhibit N, are forever barred and estopped from asserting any claim in this suit other or different than that set forth in said decree and that being barred from asserting such rights in the State of Wyoming, they are likewise barred from asserting the same as against any other appropriators upon said stream outside the State of Wyoming.

(d) Permit issued to Pioneer Canal No. 2719 Enl. priority as of July 11, 1918, limits Wyoming's
c
Claims.

This topic has also been sufficiently discussed in the preceding paragraphs. There we observed the terms and conditions set forth in the permit issued by the state engineer to the Laramie Water Company for this canal. We observed that it was granted in the form of an enlargement of the Lake Hattie Supply Canal but was specifically denied any appropriation for water from either the
Big or Little Laramie rivers, its rights being limited purely to those of distribution, thereby making it a mere lateral or distribution canal rather than a diversion canal from the stream. This same permit requires the Laramie Water Company to immediately place into the Laramie River exactly the same quantity of water that may at any time be diverted from the Baramie River by means of this canal so that in effect no diversion at all takes place.

This permit was granted and its terms accepted by the Laramie Water Company. That company is the owner of the canal and having accepted its terms, it is bound by them. The permit was granted by the state engineer who by the Statutes of Wyoming is vested with quasi-judicial powers in the matter of granting or refusing applications for permits. In this instance the State of Wyoming has spoken through him and rendered its decision which is embodied in the terms and conditions of the permit which was issued by the state engineer. (Ex.160)

There has been no appeal taken from this decision. It is final and the rights of Wyoming to any claims for the Pioneer Highline Canal are fixed and limited both in priority, quantity and quality, as well as sources of supply and diversion, by the terms and conditions of this permit.

THE JAMES LAKE SYSTEM.

In the preceding paragraphs we have gone at considerable length into diversions by the Lake Hattie system, so-called, diverting under priorities dated April 31, 1908 and subsequent,
having the right to over 60,000 acre feet annually from the Big and Little Laramie rivers. We also observe that the Greeley-Poudre system had been in actual process of construction for almost six years prior to the earliest priority under which the James Lake system was operated and that notwithstanding the Colorado diversions, the state engineer of Wyoming had rendered a decision to the effect that unappropriated water still existed in the stream for the benefit of the Lake Hattie system.

This decision of the state engineer not only included the priorities pertinent to the Lake Hattie and its 60,000 acre feet of water, but in addition the enormous Robertson-McConnell Reservoir with priority as of October 15, 1909, together with the Inter-state No. 3 and Sand Creek diversion canals, and still in addition the permits for the Stewart, including the Bath Reservoir, Bell Reservoir No. 3 and Stewart, together with the various diversion canals in connection with that system.

Prior to this time, but subsequent to the opening up of the enterprise in Colorado, the state engineer of Wyoming had granted a number of permits to several large systems. These additional permits are set forth in tabulated statement on page 1174 of the Abstract or 3061 of the record in this case.

The most important of these new enterprises thus granted permits is the James Lake system consisting of the James Lake, of nature a natural body of water with no outlet, but which, by means of a cut, has been converted into a large storage reservoir having an average storage capacity of about ___________ acre feet, together with its inlet ditch through the Bellamy and Loback
canals and its outlet canal for the purpose of serving the lands in the Talmadge-Buntin Carey Act project.

Twelve permits were granted to this system, the earliest having priority dated March 27, 1908 and the latest November 19, 1910. All of the units of the system to which permits were granted are completed, so that the system is now a going concern with a right to annually divert water sufficient to irrigate ___________ acres on the Laramie plains from the Little Laramie River, a tributary of the main Laramie, under priority almost six years junior to priority of the Greeley-Poudre enterprise in Colorado.

SODERGREEN HIGHLINE.

The Sodergreen Highline Canal diverts water from the Laramie River at Wood's Landing, Wyoming, some little distance above the headgate of the Pioneer Canal. It is the first canal to suffer from any shortage of water in the river occasioned by Colorado diversions. It was granted permit as of priority dated December 27, 1907 and has since been completed. Mr. Sodergreen states that it was surveyed in the year 1907 (420):

He states:

"My Sodergreen Highline Canal starts * * * just above the Pioneer. This is the third year I have been irrigating land by my highline canal. I commenced the survey of this ditch in November, 1907. I began the actual work of construction in February and March succeeding the survey. The canal is nine miles long and was taken out for irrigation. * * * I ran water through the irrigating seasons of 1911-12; * * * I have been running water through the year 1913. I stopped July 1." (445-6)
He then describes some eight sections of land for the irrigation of which the ditch was taken out. He states that his continued diversion of the water through this canal from the river was first objected to on July 1, 1913. (453)

This canal is diverting under priority more than five years junior to the Greeley-Poudre enterprise in Colorado. Mr. Sodergreen has resided near Wood's Landing for about thirty-five years. He is only about eight or ten miles from the Colorado line and is along the principal highway up and down the valley (403). It is very evident that he constructed his ditch in 1908 with full knowledge of the construction that had taken place during the years subsequent to 1902 in the upper Laramie valley in Colorado but a few miles from his ranch.

**THE WHEATLAND INDUSTRIAL COMPANY.**

The Wheatland project, so-called, is the combination of two enterprises. The earlier, or Wheatland project, was under the direction of the Wyoming Development Company. This included the two Wheatland reservoirs and the three canals in the system irrigating some 30,000 acres sold prior to June 19, 1912. (47-9) Subsequently the Wheatland Industrial Company, a subsidiary corporation, was formed for the development of the Bordeaux and Sybille Carey Act tracts. (86-7) This company also took charge of Wheatland Reservoir No. 2 on the Laramie plains. The Bordeaux Ditch is simply a continuation of the old Wheatland Canal No. 1. (67) The Sybille Tract is supplied by a separate ditch from Blue Grass Creek which was not yet completed at the time of the taking of this testimony. (67) The surveys for the Bordeaux Ditch commenced February, 1904 and
the construction took place in June, 1908. The surveys for
the Sybille Ditch were commenced in August, 1907 and construc-
tion work was done in July, 1910. (108) It will be observed
that the initial surveys on these two enterprises were commenced
in February, 1904 and August, 1907, respectively.

The state engineer of Wyoming awarded priority to the
Wheatland Industrial Company in connection with this enterprise
as follows:

April 18, 1907, Enlargement Wyoming Development Company Canal
No. 1 (Bordeaux Tract), Permit No. 1081 Enl.
August 7, 1908, Wheatland Industrial Company Canal, Permit
No. 8531, and
Sept. 11, 1912, J. Boyd Ditch (Blue Grass), No. 11446.
All of these three permits are junior in point of time to the
Greeley-Poudre system in Colorado, the earliest, or April 18,
1907, being nearly five years junior.

Any improper interference with the water supply of the
Laramie River by either the James Lake Enterprise or the Lake
Hattie enterprise would of necessity affect that portion of the
Wheatland enterprise having the first two priorities mentioned.

Other permits.

Additional permits were granted for the irrigation of
the Riverside, Hogue and other ranches in the southwestern portion
of the Laramie plains south and east of Lake Hattie. This terrri-
tory was already well-covered with early river bottom ditches.
Additional permits were granted for the Kingwater Ditch and Hutton
Lake Reservoir, together with outlet ditches with priority as of
June 3, 1909. The Kingwater Ditch is a reasonably large canal
diverting water on the south side of the river near the headgate
of the Pioneer Canal. It receives no benefit from the Little Laramie River supply. The canal was constructed under permit to fill Hutton Lake Reservoir. This was a natural body of water then in process of diversion into a storage reservoir.

The McDonald Ditch in the same vicinity was granted a permit with priority as of June 25, 1910, for the irrigation of a substantially the same body of land as that served by the Kingwater Ditch. (3961)

Summary.

The foregoing paragraphs reveal that subsequent to August 25, 1902, the state engineer of Wyoming, notwithstanding the notorious construction then going on at the head-waters of Laramie River in Colorado, saw fit to grant additional appropriations from the Laramie River in Wyoming and both its tributaries, the Big and Little Laramie rivers, for the following systems already at length described:

The Wheatland Industrial Company, with three priorities, earliest April 18, 1907;

The Sodergren Highline Canal, with priority of December 27, 1907;

The James Lake system, with twelve separate priorities beginning March 27, 1908 and ending November 19, 1910;

The Lake Hattie system, including not only Lake Hattie, but as well the Robertson-McConnell, Bell No. 3 and Bath Reservoirs, and the several canals pertinent to each of these several reservoirs, with priorities commencing April 28, 1908 and ending July 11, 1912;

The Northwestern Land and Iron Company;
The Kingwater Ditch and Hutton Lake system, June 3, 1909, and

The McDonald Ditch, of June 10, 1910.

A reference to the table furnished by the state engineer of Wyoming and appearing at page 1174 of the abstract will indicate that of the Wheatland, James Lake and Northwestern Land and Iron Company groups above named, only five were incomplete at the time of taking testimony in this case. The entire James Lake system was completed.

The same is true of the two principal units of the Wheatland Industrial system and of the McDonald Ditch, only one unit of the Wheatland Industrial system and the Kingwater Ditch enterprise remaining incomplete. The major portion of the Lake Hattie system is complete, although the Robertson-McConnel, Bath and Bell Reservoir No. 3 were incomplete at the time of taking the testimony.

The state engineer of Wyoming, of necessity passed in his quasi-judicial capacity upon the water supply available for each of these large enterprises prior to the granting of the permits. His decision that there was available water is evidenced by the permits themselves. His was the decision of the Wyoming tribunal and if the doctrine of priority were to obtain upon the stream from its source to its mouth, then it must be considered that he had in mind the Colorado diversions at the time of rendering these subsequent decisions upon contemplated Wyoming appropriations.
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