

ANALYSIS OF THE GARDNER DECREE

The Gardner Decree was rendered in the action of Salt Lake City et al. vs. Gardner, et al., Supreme Court of Utah, February 1, 1911, (114 Pac. 147).

Nature of the Action

Salt Lake City et al. against James Gardner and another to determine the rights of the defendant to appropriate a certain quantity of water from Utah Lake.

Facts

In 1905 defendants (Gardner) pursuant to the law then in effect, made and filed with the State Engineer their application to appropriate 40 cub. ft. of water per second of time from Utah Lake. Plaintiff (Salt Lake City et al.) protested the application with the State Engineer, which protest the State Engineer overruled and allowed the application whereupon the plaintiffs appealed from the ruling of the State Engineer and commenced an action in the Fourth Judicial District Court and from the decree made in the Fourth Judicial District Court an appeal was taken to the Supreme Court. Questions involved on the appeal were:

(1) Was there any unappropriated water in Utah Lake?

(2) If there were unappropriated water, did the 40 cub. ft. of water appropriated and allowed to the defendants interfere with the rights of the plaintiffs?

(3) Did the appropriators receive a vested interest in the means used to divert the water from the lake?

> The first question was answered by the court in the affirmative. The trial court had determined that during the irrigation season consisting of 180 days, the plaintiffs were entitled to and owners of 185,000 acre feet of water, which quantity of water being the equivalent to the flow of 515 cub. ft. This amount of water decreed to the plaintiffs was a great deal more than the plaintiffs had ever put to beneficial use. Therefore, the Supreme Court held that the amount decreed should be confirmed and from their analysis Utah Lake had a great deal of unappropriated water left.

The answer to the second question was in the negative. The court determined that if there were any unappropriated water in Utah Lake that others could come in and appropriate the same provided that the later appropriators conformed to the decree as set out further in answer to question 3.