

"It is true that the appellants, in some seasons, might have to commence (pumping) a little earlier." From the evidence it is made to appear that the cost to pump the appellants' supply of water amounts to \$4,000 a month. If, therefore, by reason of respondents' appropriation, appellants should be required to start their pumps but seven days and a fraction of a day sooner in any season, they would have to incur an expenditure of \$1,000 in excess of what they otherwise would. It is true that, unless appellants can obtain all the water they need by gravity flow from the lake, they, under the circumstances, are practically deprived of taking any in that way. This is so because as soon as the pumps are set in motion the gravity flow of water ceases. From the evidence it is made apparent, however, that there may be seasons when the flow of water into the lake may for some time continue to be equal to both evaporation and the gravity outflow, and it may also be that this outflow in the early part of the irrigation season when the water stands at or near compromise point may be sufficient to supply all of appellants' needs, were it not for the drawing of 40 cubic feet per second of water from the lake at the particular time and under particular circumstances. Under such peculiar circumstances, therefore, it may be that appellants may be required to start their pumping plant by reason of respondents' appropriation. True it is that such a condition could not exist for any great length of time. But it matters not how short the time might be; it still would constitute an invasion of appellants' rights. We think, therefore, that under any of the circumstances referred to, or under any other where by reason of respondents' appropriation appellants may be adversely affected in the use of their water, or may be required to incur expenses in excess of what they would otherwise have to incur in obtaining their water supply from the lake, the respondents should assume the risk of such interference and should bear the expenses, if any, that may thus have to be incurred by appellants. If through respondents' acts appellants should be threatened with a shortage of water in any season, respondents should be required to refrain from taking any water until appellants' requirements (if within the quantity allotted to them) are met. Under no condition should respondents be permitted to take water from the lake until they can do so without interfering with appellants' prior rights. If respondents, however, can take the amount of water applied for by them from the lake without such interference, or they can make such an amount of water available by causing and paying for a change in appellants' means or methods of diverting their water from the lake, or in causing the water to flow to appellants' pumping plant as now constructed, then respondents should be permitted to do so under the direction and supervision of the court. In this connection we remark that, while we approve and affirm the findings of fact made by the court, we are, nevertheless, of the opinion that the rights of appellants are not sufficiently protected, nor are the duties of respondents sufficiently defined in the decree as it now stands. For the purposes, therefore, of correcting the foregoing defects in the decree, the cause is remanded to the district court of Utah county with directions to modify the same in the following particulars:

To appoint some competent and suitable person to be designated "special court commissioner"; such commissioner to be selected by the parties to this action, or, in case they fail to do so within a reasonable time to be fixed by the court, then the court is to select and