

round storage right in its reservoir<sup>11</sup> insofar as it extends Meridian's augmented water rights "to the headwaters of the tributaries of Otter Creek." Such a construction, according to Koosharem, would require all inflow into the reservoir, including seeps and springs within and around the perimeter of the reservoir and return flow from the irrigation of lands adjoining the reservoir to pass through and be made available to Meridian at its downstream dam.

In response to this averment, Meridian asserts that its rights to the entire Otter Creek channel, having been appropriated and perfected prior to the construction of Koosharem's reservoir, have priority over Koosharem's reservoir storage rights. Cited as authority for this position is U.C.A., 1953, § 73-3-21, which reads in pertinent part:

Appropriators shall have priority among themselves according to the dates of their respective appropriations, so that each appropriator shall be entitled to receive his whole supply before any subsequent appropriator shall have any right . . . .

As additional support, Meridian refers to Water and Water Rights 126 (Allen Smith Company, Vol. I), which articulates the "cardinal rule of Western Water Law" as follows:

Since priorities refer to successive appropriations, each appropriation along a stream . . . has priority over all subsequent appropriations. A water right attaches to the point of diversion and extends to the source.

Meridian also indicates that it has no desire nor intention to interfere with Koosharem's proportionate share of the waters aggregating in the reservoir. Meridian simply "wants Koosharem to leave Meridian's water alone, to let it pass through the reservoir unimpeded, and for Koosharem to take nothing more in its Reservoir than it is strictly permitted by the terms of the Decree." Meridian relies upon the case of Provo Bench Canal & Irrigation Company v. Linke,<sup>12</sup> where a reservoir had been constructed interrupting primary rights. This Court held:

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11. Koosharem's storage right in its reservoirs, found on page 25 of the Cox Decree, is as follows:

Koosharem Irrigation Company, out of the waters of Otter Creek, to be stored in a reservoir located in the natural channel of Otter Creek. 2088 acre feet.

12. 5 Utah 2d 53, 296 P.2d 723 (1956).