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Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
IN AND FOR UTAH COUNTY, STATE OF UTAH

PROVO CITY CORPORATION,  
a municipal corporation of  
the State of Utah,

Plaintiff,

vs.

HUBERT C. LAMBERT, as State  
Engineer of the State of Utah;  
PROVO RIVER WATER USERS ASSOCI-  
ATION, a corporation; UTAH LAKE  
DISTRIBUTING COMPANY, a corpor-  
ation; KENNECOTT COPPER CORPOR-  
ATION, a corporation; CENTRAL  
UTAH WATER CONSERVANCY DISTRICT,  
a public corporation of the  
State of Utah; PROVO RESERVOIR  
WATER USERS COMPANY, a corpora-  
tion; HUGH MCKELLAR, as Provo  
Water Commissioner; UNITED  
STATES OF AMERICA, Bureau of Re-  
clamation, Department of Inter-  
ior; and SALT LAKE CITY, a mun-  
icipal corporation of the State  
of Utah,

Defendants.

BEFORE THE STATE ENGINEER  
OF THE STATE OF UTAH

OBJECTION TO THE PROCEEDINGS

Civil No. 34,701

Plaintiff, Provo City Corporation, by and through its coun-  
sel of record, Jackson Howard, objects to the proceedings before  
the State Engineer as they are presently being conducted for the  
following reasons:

1. The State Engineer has failed to comply with the holding  
of the Supreme Court of Utah and the Order of the District Court  
of the Fourth Judicial District in determining, by investigation,  
the use of the water rights in question. That the Order as con-  
tained in the Supreme Court Decision in Provo City Corp. v. Lam-

1 bert, 28 Utah 2d 194, 499 P.2d 1296 (1972), is as follows:

2 It is, therefore, ordered that this matter be remanded  
3 to the District Court with the recommendation that the  
4 Court refer the matter to the State Engineer for a  
5 determination from the historical or other data, or  
6 from other investigation as to the use, if any, made  
7 of the water here in question,

8 The District Court's Minute Entry, given to the State Engineer,  
9 states as follows:

10 Court ordered the case referred to the State Engineer  
11 for such determination as may be helpful in lieu (sic)  
12 of the decision of the Supreme Court. (Minute Entry,  
13 Civil No. 34,701, Sept. 22, 1972, Judge Allen B. Soren-  
14 sen.)

15 The letter of the State Engineer dated September 26, 1974,  
16 indicates his awareness of the nature of the Court Order.

17 2. The only step taken by the State Engineer in compliance  
18 with this Order, is to call a hearing.

19 3. The State Engineer has stated to counsel for this party  
20 litigant that he does not intend to call witnesses.

21 4. The State Engineer, by his conduct and procedure, has  
22 shifted the burden of investigation to the litigants.

23 5. Provo City is only partially prepared to investigate for  
24 the State Engineer in this matter. Provo City is prepared to pro-  
25 vide certain witnesses and exhibits, but it is not totally able to  
26 investigate and survey the rights involved, nor should it be re-  
27 quired to assume the burden given to the State Engineer by order  
28 of the Court.

29 6. The clear implication of the Court was to comply with  
30 U.C.A. 73-4-1, which is set out as follows:

31 Upon a verified petition to the state engineer, signed  
32 by five or more or a majority of water users upon any  
stream or water source, requesting the investigation of  
the relative rights of the various claimants to the  
waters of such stream or water source, it shall be the  
duty of the state engineer, if upon such investigation  
he finds the facts and conditions are such as to jus-  
tify a determination of said rights, to file in the  
district court an action to determine the various  
rights. In any suit involving water rights the court  
may order an investigation and survey by the state

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engineer of all the water rights on the source or system involved. (emphasis added)

The State Engineer has failed to perform his duty.

DATED this 7<sup>th</sup> day of January, 1975.

*Jackson Howard*  
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JACKSON HOWARD, for:  
HOWARD, LEWIS & PETERSEN  
Attorneys for Plaintiff

STATE OF UTAH ) SS  
COUNTY OF UTAH )  
I, THE UNDERSIGNED, CLERK OF THE DISTRICT COURT OF UTAH COUNTY, UTAH, DO HEREBY CERTIFY THAT THE ANNEXED AND FOREGOING IS A TRUE AND FULL COPY OF AN ORIGINAL DOCUMENT ON FILE IN MY OFFICE AS SUCH CLERK.

WITNESS MY HAND AND SEAL OF SAID COURT THIS  
8 DAY OF Jan, 1975  
WILLIAM F. HUISH, CLERK

BY: *Paul Peterson* \_\_\_\_\_ DEPUTY

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