

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

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PROVO RESERVOIR COMPANY, )  
Plaintiff. )

No. 2888 Civil.

VS.

( PETITION OF THE

PROVO CITY, ET AL, )  
Defendants. )

WEST UNION CANAL COMPANY.

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Comes now, the West Union Canal Company, a defendant in the above entitled cause, and respectfully shows:-

1. That the defendants, in the above entitled cause, the West Union canal Company and Pauline Schemensky, Amos Carter, J.E. Smith, Edith R. Buss, Abram L. Smith, T.J. Smith, Clara M. Stubbs, Thomas Thornley, Richard Carter; D.N. Penrod, A.L. Tanner, Lettie York, Stephen Jones, Permelia Young, Owen A. Baum, Wilford Penrod, A.L. Penrod, W.F. Richins, J.C. Ivie, John H. Carter, D.N. Greer, Leo E. Smith, E.L. Dodder, F.T. Carter, D.G. Calder, Joseph T. Carter, William Gammon, J.M. Buckner, E.F. Alger, Ann Carter, D.W. Baum, Leo Baum, B.W. Baum, J.W. Smith; Eliza Carter Ashton administratrix of the estate of Aaron Carter, deceased; and Herbert D. Jobb, substituted for Cora A. Shirts, administratrix of the estate of Benjamin Shirts, deceased; as members of a voluntary association, not incorporated, under the name and style of the Smith Ditch Company, and also as individual tenants in common in the Smith Ditch, were awarded and decreed in this cause, by the decree filed and entered May 2, 1921, (Paragraph 15, page 15, of said decree) the following:

"Jointly and undivided

1820 Acres.

From May 10th to June 20th,	Duty 57,	31.93	second feet.
" June 20th to July 20th,	" 63,	28.89	" " "
" July 20th to May 10th,	" 70,	26.00	" " "

And the said defendants are now the owners of said water rights, and are the users thereof, as more particularly set forth in said decree, below the mouth of Provo Canyon, in Utah County, Utah.

2. That this Court has retained jurisdiction of this cause, and the subject matter thereof, and all the parties hereto named in paragraph 1, and their successors and assigns, for the purpose of from time to time making such further orders, rules and regulations as are necessary for the regulation, control and distribution of said waters according to the terms of said decree, and for the equitable and economical distribution of said waters, and for the further purpose of carrying the terms and provisions of said decree into full force and effect. (Paragraph 134 of said decree.)
3. That these defendants are entitled to the quantities of water, above set forth, at the heads of their distributing laterals.
4. That these defendants are tenants in common in the right to the use of the West Union Canal.

5. That the West Union Canal diverts from Provo River one-half mile below the Mouth of Provo Canyon, and follows a Southwesterly course for about four miles covering the Smith Bench, and then takes a Northwesterly course along the foot of the Provo Bench to the lands in Vineyard Precinct. The total length of the canal is approximately ten miles. There is forty laterals drawing water from this canal. The Smith Ditch Company's laterals are along the upper stretches of the canal and above the diversions of the West Union Canal Company. In some instances, however, waters of the West Union Canal Company and also waters of the Smith Ditch Company are used through the same laterals. These defendants, as provided in said decree, have instaled in the heads of the laterals, proper measuring devices.
6. That this defendant the West Union Canal Company, now and hereafter in order to equitably distribute to its stockholders the waters to which they are entitled at the heads of the distributing laterals, shall have the full quantity of water to which they are entitled flowing in said canal in excess of that diverted by the Smith Ditch Company.
7. That the Commissioner of this Court, has heretofore and will continue to supply to said canal the quantity of water to which these defendants are entitled to jointly, and the said quantity is determined by the total of all diversions along the canal. And the said Commissioner has no way of determining, and has no authority to segregate and allot the quantity of water to which each of these parties is entitled.
8. That the said Smith Ditch Company has at diverse times, diverted from said canal the waters to which this defendant is entitled, and will continue so to do unless restrained by an order of this Court. And such deprivation has resulted and will continue to result in irreparable loss to this defendant.
9. That the evidence in this case shows the area of the Smith Ditch Company's lands to be 376 acres.
10. That the area of the West Union Canal Company's lands is 1444 acres. ( 1820-376 )
11. That the acreage, duty, and quantity of water to which the Smith Ditch Company is entitled is as follows:-  

376 Acres.

From May 10th to June 20th,	Duty 57,	6.60	second feet.
" June 20th to July 20th,	" 63,	5.97	" " .
" July 20th to May 10th,	" 70,	5.37	" " .
12. That the acreage, duty, and quantity of water to which the West Union Canal Company is entitled is as follows:-

1444 Acres.

From May 10th to June 20th,	Duty 57,	25.33	second feet.
" June 20th to July 20th,	" 63,	22.92	" " .
" July 20th to May 10th,	" 70,	20.63	" " .

- 13. That the Smith Ditch Company now refuse to be limited to the quantities of water set out above in paragraph 11, and the Commissioner of this Court does not acknowledge it his duty to enforce the segregation as set forth above in paragraphs 11 and 12. And that, it is necessary that an order of this Court be made, binding upon these defendants, and fixing the quantities of water to which each are separately entitled.
- 14. That before said Commissioner can proceed in the distribution of the waters to which this defendant the West Union Canal Company, and the defendant the Smith Ditch Company are separately entitled and make an equitable distribution, it is necessary that the respective rights of each of these defendants be determined by this Court.
- 15. That upon information and belief this defendant states that the above matter is properly determinable by this Court, and that this Court is the only tribunal that has the power and jurisdiction to make such determination, and that such determination is necessary in order that the decree of this Court may be properly carried out and enforced.

WHEREFORE, this defendant the West Union Canal Company, prays that an order of this Court be entered fixing a day for hearing of the matter herein set forth and directing that a copy thereof and a copy of this petition be served upon the attorneys of record of said Smith Ditch Company, or upon the parties in the Smith Ditch Company, and that at such hearing such order be made in the premises as may to this Court seem just and proper.

Parker Robinson  
Attorneys for the defendant  
West Union Canal Company.

STATE OF UTAH )  
COUNTY OF UTAH ) SS.

Wilford W. Bowen, being first duly sworn, deposes and says; that he is an officer of the defendant West Union Canal Company, to-wit: President thereof, that he has read the above and foregoing Petition and knows the contents thereof; and that the same is true of his own knowledge, except as to matters therein stated on information and belief, and as to such matters he believes it to be true.

Wilford W. Bowen  
J. Robinson  
Notary Public.  
Provo City, Utah.



Subscribed and sworn to before me this 20 day of Dec 1921  
My Commission expires \_\_\_\_\_