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Defendants Exhibit
Case No. 2888 Civil
FH Court Reporter.

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

PROVO RESERVOIR COMPANY,) No. 2888 Civil
a corporation,) Contempt Proceeding
Plaintiff,)
vs.) Copy of the Proceedings in the
PROVO CITY, et al,) above entitled Cause, February
Defendants,) 19, 1921, P.M. Found in First Part
-----) Vol. XI. of Official Transcript of
Evidence given in said Cause,
Pages 79 to 92, Both Inclusive
also first Part of page 1

Page 1 - THE COURT: I take it, gentlemen, that the matter of suggestions as to errors and corrections in the proposed decree are properly to be heard this morning. I will hear any matters. *****.

Page 19, - MR. RICHARDS: The next one is substitution for a re-draft of subdivision "B" on page 30, to make definite and come within the requirements of the decision, and this substitute is offered:

"That said defendant Provo City has appropriated, and has the right to collect by its pipe line and waterworks system as now located and constructed in Provo Canyon, Utah County, Utah, and is entitled to divert into its said waterworks system and to convey and use for domestic and municipal purposes at Provo City and adjacent thereto all of the waters of South Guard Quarter Spring, which arises in a ravine above the flume line of the Utah Power & Light Company, and below the ditch known as the Johnson Ditch, situated in the southwest quarter of Section 33, in Township 5, South of Range 3 East, of the Salt Lake Base & Meridian. Also all of the waters of all springs arising between the county road, as now located and used, and the flume line of the Utah Power & Light Company and down from the county highway bridge crossing said river near the mouth of Bridal Veil Falls to the west line of the northeast quarter

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of Section 5 in Township 6, South of Range 3 East of the Salt Lake Base & Meridian; excepting therefrom, however, all of the waters of Maple or commonly called Yellow Jacket Spring, measuring about one-fourth of a second foot."

THE COURT: Any objection to that?

MR. HATCH: Yes, your Honor, The stipulation provides as follows, copy of transcript page 4159, Volume 9:

THE COURT: Gentlemen, have you something to offer at this time?

Mr. EVANS: If the court please, after conference between the plaintiff and defendant Provo City, the following agreement has been entered into:

'It is stipulated by and between the plaintiff and the defendant Provo City as follows:

First, The court shall make and enter its findings and decree awarding to Provo City all the waters arising and flowing from the springs in Provo Canyon claimed by the defendant Provo City, and flowing into its pipe line and waterworks system, except the waters of the spring referred to as Maple or Yellow Jacket spring, which was taken into the Provo pipe line and water system in the year 1914, or thereabouts, and which has an approximate flow of one-fourth of a second foot.

Second. The court shall find and decree to Provo City 16.5 second feet constant flow of the waters of Provo River flowing in and through

the Factory Race.

Third. The defendant, Provo City, withdraw and waives its objections to classification of waters of Blue Cliff right in the proposed decision of the court!"

Now, this goes much farther than the stipulation, and would permit them, as we understand, to take all the waters that are awarded to us which find their way into the Blue Cliff Canal at a point below where they have diverted water, and waters that they never have had in their pipe lines. It is broader, embraces every spring down to a certain point, whether they have ever used it or not. We conceded all of those springs that they had then in their pipe line, other than the one spring, and the other springs go to make up our quantity of the waters of the Blue Cliff. That is as I understand it, and paragraph "e", subdivision "e" of this paragraph, covers the stipulation in the case as we understand it, and the paragraph they propose to substitute for "e" would be a violation, we we believe, of the stipulation, and is not in accordance with the findings of the court in the tentative decision. The decision fixes the matter, the decision gives them a certain quantity of water.

THE COURT: The decision did not include these matters, they were stipulated afterwards.

MR. HATCH: These were stipulated afterwards, and subdivision "e", as we take it, is in conformity with the stipulation, and ought to remain.

MR. RICHARDS: May it please the court, this matter was threshed out, your honor will remember, at length, and if you will permit me, I will read from the record, which will bring us briefly to it. As Judge Hatch has read, I will now follow from that. Mr. Jacob Evans stated the stipulation, when he concluded I made this remark: "That is correct, your Honor", then:

"Mr. A.C.HATCH: I understand that it goes a little farther than that too, and you withdraw the objection that you may have as to the award made to the plaintiff as to the Blue Cliff right?

MR. C. C. RICHARDS: I don't know that is right, that has not been suggested.

MR. A. C. HATCH: That was part of the discussion I made when I was in there, to withdraw your objection in any--

MR. C. C. RICHARDS: Any objection we have made, and all objections we have made, we withdraw and waive.

MR. A.C. HATCH: And they are no longer--

MR. C. C. RICHARDS: And we do not expect to raise those objections or renew those objections. We use the word 'waive' there for that purpose to cover.

THE COURT: That seems to be broad enough.

MR. JACOB EVANS: I might suggest, if the court please, that the two paragraphs of the stipulation which were discussed--

MR. A. C. HATCH: There is another matter, just a moment until I get through.

THE COURT: Let me ask if I understand what you mean, so that there will be no misunderstanding about the stipulation. In the second paragraph, 'the court shall find and decree to Provo City 16.5 second feet constant flow of the water of Provo River,' then you say 'flowing in and through the Factory Race!'

MR. EVANS: That was intended, if the court please, to substitute the figures.

THE COURT: I understand there is a substitution between the 13 and 16, but the flowing in and through the Factory Race may be construed as being limited to what is now flowing in the Factory Race.

MR. C. C. RICHARDS: No, our idea was to be river water,

THE COURT: I understand you to mean the flow of 16.5 is to be taken into the Factory Race.

MR. EVANS: In other words, 16.5 is substituted for the figures 13.75.

THE COURT: So I understand it, this is not descriptive, it is merely defining where it is to be taken.

MR. EVANS: It is the power right water."

THE COURT: I understand the objection is not what you refer to, but the objection is you have included some other springs.

MR. RICHARDS: Are there any other springs? I understand not, it is not intended to include any other.

MR. HATCH: Oh yes, there are springs all along our Blue Cliff Canal that seep in and to to make up three or four second feet of water, remainder of our fifty feet we take from the Provo River.

MR. RICHARDS: Can you designate what they are?

MR. HATCH: No, because they are not named, drifts and seeps and flows along the bank there into our canal, and under your proposed amendment it would entitle you to take all of them and will divert them into your pipe.

MR. RICHARDS: It is not our purpose to take any of your springs, simply take the springs we have been taking and use that water.

Mr. Hatch: The other fixes it definitely.

MR. RICHARDS: No, there isn't definiteness enough there, it should be necessary for us to name those springs.

MR. HATCH: And you are limited then to a certain quantity in your pipe line by further agreement entered into here.

MR. RICHARDS: This is the last agreement we have. Let me read the conclusion of it.

"MR. HATCH: There is another matter, they also have an objection to our amending our complaint as we have set forth. I understand that is also--

MR. F.S. RICHARDS: No, we have not made any objection or expressed any opinion on at all, that matter don't come up, I understand, until the next time.

THE COURT: I understand he merely asked whether he would have an opportunity to be heard.

MR. EVANS: I want to say if they are going to object to us amending our complaint so as to make it conform to the proof that has been offered, which was the purpose of that amendment, or if they are going to make any objections or retard us in proceeding with the trial of this case, then it was not our understanding that this stipulation which has just been read is to be of any binding force or effect upon us.

MR. RICHARDS: Mr. Evans, we have not given your amendment the slightest consideration. You proposed it, and for ought we know it to be entirely satisfactory. This wipes out two of the four points of difference.

MR. HATCH: Not necessarily.

MR. EVANS: If it is not satisfactory, we want it understood now.

MR. RICHARDS: What other differences have we with you?

MR. HATCH: There are technical objections that might be raised to defeat our Blue Cliff claim, and we do not at this time propose to be put into a position whereby the parties

may take advantage of any technicality in order to attempt to defeat such claim as we have established by the proof.

THE COURT: Now, I understood they waived all objection to your Blue Cliff claim, that is the way I understood it.

MR. HATCH: And that, if the court please, might be as set forth in our original complaint. We are now before the court proposing to amend

Mr. RICHARDS: We are referring to the proposed decision, that the change in his proposed decision is to classify you as a primary instead of secondary right. I used that term, and the objection was made to that.

THE COURT: You withdraw that?

MR. RICHARDS: I withdraw it and waive it. That is what we mean by this, and think we have told it in plain language.

THE COURT: It seems so to the court.

MR. EVANS: Let it be understood then the City, through their attorneys, or otherwise, at the time the question comes before the court as to whether or not we will be permitted to amend our complaint is heard, object to it, that amendment, that this stipulation as now made and read into the record may be withdrawn. In other words, we understood as far as we were concerned all objections in this matter were being withdrawn, they would no further retard us.

THE COURT: The court will not hear you upon the application to withdraw this stipulation, neither will I hear them upon any objection to the Blue Cliff.

MR. RICHARDS: Let us be frank. This was written and read and read by you, so that we all knew before we come in what it meant. It is not our purpose to change it.

MR. WEDGWOOD: It is the spirit of the act and intent.

MR. RICHARDS: We are not hear to play fast and loose with our language."

Now, it seems to us perfect faith has been kept with these people, and it was agreed the water of those springs should be awarded to Provo City, and we are simply putting it in such shape it will be definite enough to answer the requirements of the Supreme Court as to quantity.

THE COURT: The objection is you have included springs that are not in the stipulation. I don't know about that.

MR. RICHARDS: I don't either.

THE COURT: What springs, Judge Hatch, or Mr. Evans?

MR. HATCH: They are not named. The court has been by the Blue Cliff line of the canal and saw the condition that exists there.

THE COURT: I don't think you understand me, what springs do you contend were included in the stipulation?

MR. HATCH: Every spring they had then flowing in their pipe line.

THE COURT: What were those?

MR. HATCH: I don't know, but I do know there were some springs that would be included within this proposed amendment, they did not have flowing in their pipe line, and that is my objection to it, and their amendment would give to them those springs within the area, whether they were flowing in the pipe line or whether they were not any time.

THE COURT: That would be true of the findings as prepared, as far as they go, wouldn't it?

MR. HATCH: I don't think so, It says all those waters now flowing from **springs** into said waterworks system.

THE COURT: And the springs and water to which the said defendant Provo City is entitled and more particularly described as follows: The springs known as the South Guard Quarter Spring, which arises in a ravine above the flume line of the Utah Power & Light Company and below the ditch known as the Johnson Ditch.

MR. RICHARDS: I have no objection--

MR. EVANS: If this designates all the springs you have taken into your pipe line, then why do you add some other springs?

MR. RICHARDS: We do not understand we have. I have no objection this going in, we except the Yellow Jacket Spring and any springs arising in the Blue Cliff canal,

if that is the bone of contention, any springs except what we are already connected with.

MR. EVANS: This stipulation was made with a view of limiting the city to the water they had taken in their pipe line. We conceded a great deal at the time we made this stipulation, we gave them a great deal more water than the court had awarded to them, by saying they might have the water taken into their pipe line. Now they come back and want more than what we conceded.

THE COURT: The difference between you is a question of fact, I take it, as ^{to} what was being taken into the pipe line at that time. They are protesting they do not want any water at all except what was taken in at that time. That is an indefinite and uncertain designation, to say water taken in at that time without some description.

MR. HATCH: We have no objection to the description the court had.

THE COURT: If it can be designated, the springs that were supplying that.

MR. EVANS: They say all water arising in the springs between the county road and the flume line of the Power & Light Company. They do not say the water they have taken in.

THE COURT: That is your presentation.

MR. RICHARDS: I remember there was very serious contest over fifty feet of water in the Blue Cliff canal that they were anxious to get out of the way, and we stipulated.

THE COURT: I understood so, there were concessions on both sides.

MR. HATCH: We have no objection to their having all they had in their pipe line at the time, and to their defining what it is, making it definite and specific, but we do not want the particular proposition laid down-- I understand they had exact surveys and measurements and plats of all of the waters they have appropriated and diverted into their pipe line.

MR. RICHARDS: We took days at that, and it culminated in this stipulation. We were told not to waste time of the court to prove title. If your honor wishes me, I can put my hand on it in a few minutes, where one of two of the gentlemen, I am not certain whether Judge Hatch or General Wedgwood or Mr. Ray insisted we should not take time, and finally the court said perhaps we wanted to make a record against the other defendants not here consenting. I said that is exactly what we want to do, so as to make the record, and we run through our proof hurriedly. Now, this matter was absolutely agreed. Now, I have no objection to excepting anything that raises above and flows into the Blue Cliff Canal, or rises in the Blue Cliff Canal.

THE COURT: Is that satisfactory to you, if there is excepted all springs rising above and flowing in or rising in the canal.

MR. HATCH: I think there can be no objection to it.

THE COURT: Then this will be adopted, if you will so amend it to make that plain.

MR. RICHARDS: That is all spring rising above the Blue Cliff Canal which flow into the canal, or springs arising in the canal?

THE COURT: Yes.

MR. HATCH: Just a moment, if the court please, it seems I wholly misunderstood my clients here in regard to their acquiescence in that matter, and if the court will permit me I will ask to withdraw it.

THE COURT: You may withdraw your consent. The court adopts your substitution with that exception.

MR. RICHARDS: I just learned I made my statement a little too broad. It seems some of the springs that we have had connected up all the time are above the canal, so that the exception of all springs above would cut off some that are already in, and were at the time connected up with our system, but the exception could be made there of all that had not been.

THE COURT: If you noticed the language of the court as to the exception, I think it would cover what you want. The exception was all those springs arising above and flowing into the canal or those arising in the canal.

MR. RICHARDS: Of course, our ^{water} ~~water~~ would not be flowing into the canal.

MR. EVANS: I take it you have taken no additional springs in since this stipulation was made?

MR. RICHARDS: I understand nothing.

MR. EVANS: And you don't intend to take any other additional springs in or develop the springs already taken in, so that they shall flow a greater quantity of water. What you intend is take the water you had at that time.

MR. RICHARDS: We intend to take the water flowing from those springs.

MR. EVANS: Do you intend to deepen them?

THE COURT: The court is not interested in that, Mr. Evans. That is a matter you will have to determine when it comes up.

MR. RICHARDS: Just a clerical suggestion, finding 92 subdivision "b", first line, page 49, after the words "Sego Irrigation" the word "Company" ought to be added.

Our next objection, 156 is covered, the annual appointment of a commissioner.

Now, at page 91 of the findings, 169, the assessment to the power users, in the opinion of the city, is disproportionate to the amount that should be assessed, I do not presume to state what they should be, but the intimation is the amount suggested is disproportionate to the amount and service rendered, and they should be increased.

Then the changes in the decree will be as stated in our suggestions, and to comport with the amendments to the findings.

MR. HATCH: What did you suggest as to the findings as to payments, 169?

MR. RICHARDS: The suggestion is made at the instance of my clients, in the making of the assessment a larger sum should be charged against the power users than the figures named. Just what it should be--

MR. HATCH: You think Heber City Mills ought to be charged more?

MR. RICHARDS: Yes, because of the service they are getting disproportionate as to the charge of the farmers.

MR. HATCH: They get no service from the commissioner, or any other person, except the distributing of waters for irrigation purpose to the Wasatch Canal.

MR. RICHARDS: Isn't that service, isn't the supervision of the commissioner on the whole river service?

MR. HATCH: This is not on the river. It is six miles from the river, and the water is simply applied for power purposes as it is used by the canal company, needs not to be measured at any time by the commissioner. And as to Joseph R. Murdock, who doesn't use the water at all, and has not for several years, and may never use it, he pays seventy-five cents a quarter, \$1.50 a month, whatever it is, it is 169. It may be some power users ought to be taxes more.

MR. RICHARDS: I do not suggest going into the details, but call the court's attention to that, however, and leave it with the court.

THE COURT: Without more information than I have, I

would not be able to say whether it is proportionate or disproportionate with the assessments made.

MR. STORY: I suppose it is based more or less on the experience the commissioner has had in the distribution of the water, and this is assumed to be a fair proportionate charge based on that experience.

MR. RICHARDS: Let us suggest this then. Our suggestion is inadequate, and I refer your honor to the commissioner as the best evidence what is being done between the different users, and leave it there. In other words, I am willing to leave our objection to the court and let the court inquire of the commissioner, and take such action as the court deems proper.

THE COURT: Are you willing to do that?

MR. STORY: I don't know, your honor. I have no objection to the court getting all the information he can, but to say I am going to consent in advance-- this is what we have been objecting to all along, we think it is high.

MR. HATCH: These figures were fixed, we think before the commissioner had the experience he now has. I think the suggestion of Brother Richards is proper.

THE COURT: If satisfactory, I will consult with the commissioner, and get what information I can from him, and make the adjustment accordingly; that is according to my judgment, after getting the facts from him. I have no idea what proportion this represents, nor how it compares with the other large users of water.

pipes and water system except the Maple Spring, and that is what they said was all they wanted. I call the court's attention to the testimony of Mr. Swan, who was the city engineer, Vol.2, page 835, of the transcript. He says, from the Hoover Ranch down there is return seepage coming in practically all the way down the river. There are just above Spring Dell particularly, there are springs on both sides of the canyon clear down to the water's edge, and probably large returning seepage water coming up in the bed of the river just above the Spring Dell and from there on down.

THE COURT: Is the city taking into their pipes this water?

MR. HATCH: No, that new springs were being opened down to and even after the commencement of this suit, as ~~shown~~ shown by Provo City's witness Swan, Vol.2, page 744, (Reading)

Now, this is page 745 (Reading).

Now, the appropriation of springs by Provo City have been fully completed at the time of the hearing when the stipulation between the plaintiff and Provo City was made, as is shown by the testimony of Provo City's witness Thompson, transcript Vol.9 page 4160. This is a portion of his testimony.

"Q. Do you know whether all the waters of the springs rising in the canyon that are claimed by the city are turned into and used in the distributive system?

"A. They have been this summer. (That is at the time of his testimony.) I judge before that, but this summer I have watched it very carefully."

Mr. C.C. Richards, in his statement before the court in the discussion of this matter, distinctly limited the city's rights in the spring to those that were taken in at the time of the stipulation. Vol.9.

"MR. RICHARDS: Gentlemen, I have got a bunch of notices of appropriations of the springs only that we have taken into the pipe line system.

MR. JACOB EVANS: I should like to make an inquiry concerning them, whether or not the notices are notices of appropriation of springs only that have taken into the pipe line system?

"Mr. RICHARDS: We claim for nothing else.

Mr. EVANS: Then we have no objection to their introduction. In any event, if there are notices there that cover some springs that were not taken into the system, you would claim nothing for those springs that were not taken into the system.

MR. RICHARDS: Oh, no."

Now, that there were other springs contiguous and practical to divert into the waterworks system is shown by the testimony of Mr. Swan. Vol. 2, page 928:

"Q. Have you all the water in your pipe line system that you can put into it except you take it from the river itself?

A. No.

Q. Why not?

A. Because we can put more in.

Q. From Springs?

A. Yes, there are other springs.

Q. Why haven't you put them in?

A. We have been putting them in, some nearly every year."

Now, the testimony is that there are many springs that had not at the time of this testimony been taken into the system, at the time of this stipulation, that are there, that can yet be taken in, and even though the plaintiff were not objecting, it is diverting virtually from the seepage and spring water that finds its way into the Provo River quantities that ought not to be diverted; especially ought not to after they stipulated with us as they have here. Now, I do not wish to be understood that we want to take from Provo City anything we stipulated they should have. The stipulation was to settle differences between us, and yesterday it was rather urged we were seeking something from them and were willing to concede much in order to get what we wanted. Admit that we wanted them to concede to us something which we believed we were absolutely entitled to, what did we concede to them? It was water for the waterworks system. We were here showing that they were-- trying to show, and I believe did almost conclusively show, that with a proper use as they then had it they could probably not use the lowest quantity found to have been flowing in their pipe line at any time when the measurements were given, four and some second feet, four and a fraction second feet, as I remember, what^{we}/were contending was all they were entitled to. In the stipulation we granted to them not less in effect than-- well not less than-- here it is, the lowest quantity measured 5.16 to 12.88 second feet of water in their pipe line, when we were contending that four

something-- four second feet, I am reminded by Mr. Tanner, in the tentative decree was the finding of their water works system. Now, I am informed that this inflow of the river, springs and other water, as testified to by Mr. Swan, will amount to 12 second feet of water.

THE COURT: From the springs mentioned in this amendment?

MR. HATCH: In this amendment, and they are not all the springs that have not been taken into their pipe line up to the present time.

THE COURT: I understood Mr. Richards to say they claimed nothing that had not been taken into their pipe lines at the time of this stipulation.

MR. HATCH: He says that, but my objection is the decree and finding says more. It give them all the springs between certain points except only those that flow into the Blue Cliff Canal, or rise in the Blue Cliff canal under the exception as suggested by the court yesterday. Now, the Blue Cliff Canal is on the north and west side of the river and all of the springs on the south side not yet put into the pipe line might under this be even hereafter diverted into the pipe line. Our objection was that it did not, the proposed amendment does not confine them to the springs that are now in their pipe line, and I understand--

THE COURT: Will you read the proposed amendment, Mr. Richards gave me a copy of it and I put it in here, but I do not find it now.

MR. HATCH: Subdivision E.

"That said defendant Provo City has appropriated, has the right to collect by its pipe line and water works system, as now located and constructed in Provo Canyon, Utah County, Utah, and is entitled to convey and use for domestic and municipal purposes at Provo City, Utah and adjacent thereto, all those waters of South Guard Quarter Springs, which arises in a ravine above the flume line of the Utah Power & Light Company, and below the ditch known as the Johnson Ditch, situate in the southwest quarter of Section 33, in Township 5 South of Range 3 East of the Salt Lake Base & Meridian. Also all of the waters of all springs arising between the county road as now located and used, and the flume line of the Utah Power & Light Company, and down from the county highway bridge, crossing said river, near the mouth of Bridal Veil Falls to the west line of the northeast quarter of Section 5, Township 6, South of Range 3 East of the Salt Lake Base & Meridian, excepting therefrom, however, all of the waters of Maple or commonly called Yellow Jacket spring, measuring about one-fourth of a second foot."

Then the further amendment as suggested is,

"All of the waters of all the springs which flow into or rise in the Blue Cliff Canal."

The objection to the proposed substitute is it nowhere attempts to limit them to the waters they have appropriated and to the water that is conceded to them in the stipulation. Now, if your honor please, under the first clause of this stipulation they are especially confined to the water flowing into their pipe line and water works system, but it is possible

under the amendment as it was submitted yesterday, and as substituted for Subdivision E for them to claim, as I understand, approximately 12 second feet of water in addition, and to later take it into their pipe line.

THE COURT: What is the capacity of their pipe line?

MR. THOMPSON: It will carry 15 second feet.

MR. HATCH: They sometimes now have with the springs they have heretofore diverted, 12.88 feet.

THE COURT: They could not take 12 more.

MR. HATCH: No, but they could by diverting these other springs keep it to 12.88 all the time, and that is what we object to. Sometimes the springs they have diverted now gives them a quantity of only 5.15 second feet. I call your honor's attention to the exhibit, the plat that was filed in the case here, 303, placed in the files this 9th. day of April, 1920, in place of tracing, by order of Judge Morse. Now, I understand this is in evidence in the case. Mr. Tanner, if you will point out to me the river bridge where the head of this award will begin. Where is the river bridge?

(Discussion between court, counsel and Mr. Tanner as to map not audible.)

MR. RICHARDS: Now, our understanding of the situation is just this. I am informed that the water that Mr. Swan referred to that might be taken into our pipe line additional to what was being taken in, was the water coming from the springs or of the

springs in the Blue Cliff Canal, and not otherwise, It is also true there are no other springs in there. If there are, we don't want them. We simply want a definite description what there is here, and these are in the nature of percolations rather than springs. If they were known by some name that we could designate them in the decree and in the findings, that is all we would ask, but they have no name, they are all here and there, just as they have been shown. Now, our brethern have not yet pointed out, and if I am correctly informed, cannot point out any other and different springs than these we have excepted in that section. I said before and say it now, we are not trying to get anything more than the stipulation suggested. We have the water of those springs running into our pipe.

MR. HATCH: If the stipulation says that, we will be satisfied, but it does not confine it.

MR. RICHARDS: Just a minute, Judge, let me talke a minute.

MR. HATCH: Pardon me, I though you wanted me to say something.

MR. RICHARDS: I did. The suggestion has been made as to that identification, and that is all we are seeking to get here, is indentification. We cannot name the springs, they have no names. It seems to us the only way was to get it by some designation upon the ground by natrual objects, or actual survey. We are not seeking for percolations, we are not seeking for anything except the waters that have been entering our pipe lines, and the water that comes from the springs that we have developed that do go there, and with these explanations as made the other day, and my brethern made here today, and as they make it now, they do not point out there is any other spring. If there is any

other spring there, it must be known to some of these engineers. This does not give us the right to go there and undermine that country and drain it. We do not ask that right. It is to designate the springs in this locality, so we will have something definite in our decreed.

MR. EVANS: Mr. Richards, could it be arranged to limit this by saying it shall be limited to the quantity heretofore taken into the pipe line.

MR. RICHARDS: That was not the stipulation. The stipulation was we were to have the water of those springs, five feet or six feet, or whatever they flowed. That is all we are asking for, and I insist on having that specifically. Now, if there is another spring up there, you people must know it, point it out. It would give us no title to it anyway.

MR. HATCH: If the court please, as to that, that is all we want, is to have it specific. There are probably a hundred springs in Provo Canyon, no one of which is known by any definite name, but each flowing a quantity of water. They only have names given to them for some particular purpose, little springs of water flowing three or four inches per second, probably. Calling attention, - one or two springs just below this river bridge on the county road in Provo Canyon. Your honor has driven through the canyon, will probably remember them coming out of the mountainside and flowing across the road. Now, I do not think there is a man in the court house than can give a name to identify either of those springs, but they are there. They are not in the pipeline, but they may be put into it under this amendment, and there are probably thirty or forty other

springs similar to them. I take it that there must be, under the testimony of Mr. Swan, as he has given it here in the record, and it is to avoid that that we are now objecting to that particular grant of all of the springs arising between certain points, that they never have used and some of them they probably never will, but it leaves it wide open for them to go in there and take up the 12 second feet of water, 13 second feet of water, or capacity of the pipe, during the entire season every year, and that is not the stipulation. I take it that is not what the court intended to give them, and they never have had it, they are not entitled to it, and don't claim it now

Now, I have been informed that Provo City has a survey definitely locating every seep and spring they have put into their pipe line. I may be misinformed. If they have it can be definitely fixed here now.

THE COURT: Is that correct?

MR. SWAN: That map there.

THE COURT: I didn't ask you about the map. Is that correct, that you have a survey that shows every spring that goes in?

MR. SWAN: Nothing more than the survey from which the data was put on the map.

THE COURT: YOU HAVE no such information ?

MR. SWAN: That is all the information we have.

THE COURT: You don't care to answer the question?

MR. RICHARDS: Have you any additional information

relative to the location of the springs other than the information on the map?

MR. SWAN. No sir.

MR. HATCH: Doesn't this show every intake into your pipe line?

MR. SWAN: Shows every branch and lateral, but doesn't show every intake, because the intakes are along in galleries, many places, it is impossible to locate it in a definite spring. The whole mountainside there is moved, and the water changes along that line, and you cannot definitely locate those springs.

MR. HATCH: There are springs between the Provo River bridge in the canyon, on the county road, and the west line of--

MR. RICHARDS: I am told by Mr. Swan--

MR. HATCH: West line of Section 5.

MR. RICHARDS: I am told by Mr. Swan, there is no spring, or anything that could be called a spring within that territory that has been described in our proposed finding and decree, that could be taken into our pipe line except those that are excepted by the Blue Cliff and Yellow Jacket. There are no other waters in that section that could be taken into the system.

MR. HATCH: As now constructed-- he doesn't qualify it by that-- but the pipe line may be extended when they are awarded the right to all these waters. They are not limited to their present pipe line.

MR. RICHARDS: Then my statement, if our pipe line were extended across the territory we have name here, there would not be any others.

MR. HATCH: Then I would dispute it, and have absolutely no question about proving conclusively that it is not right.

MR. RICHARDS: I am not suggesting water could not be carried from outside, but within the limits.

MR. HATCH: Between the bridge and west line?

MR. RICHARDS: Yes.

MR. HATCH: It seems to me so plain anybody traveling through the canyon could not help but see.

MR. RICHARDS: Let us have a suggestion then.

MR. HATCH: I say you ought to be confined to the stipulation, the springs you have diverted into your pipe line water works system, as it was constructed, at the time of the stipulation. Your honor has the stipulation, and that confines them to the springs they had then diverted into their pipe line, and the testimony shows that from those springs they received into their pipe line at the times of the different measurements. The lowest quantity was 5.16 and highest quantity 12.88 second feet, and we had that when we stipulated, and they confined themselves then to the water of these particular springs. Now, if they don't know the names of them, they having diverted them and put them into their pipe line and used them, how can they expect us to know the names of those springs.

THE COURT: I do not think it is material at all as to the names. If they can be identified, of course, there ought to be some identification of the springs. It is not desirable in any decree that an expression is used which would require evidence in order to make it definite and certain, and if this, the language of the stipulation, was carried into the decree, it would be uncertain. If we can make it certain we ought to do it, of course.

MR. HATCH: I do not know of any way to make it certain except from their notes. If they cannot do it, having surveyed and diverted, it, and made their applications that Mr. Richards put in, it would seem to be a question that could not be made certain, but it would be up to them to make it certain.

THE COURT: The court hasn't any information that would enable the court to make it certain, but I think since we examine this stipulation here there should be something in the decree expressing the substance of this stipulation in respect to the fact that the waters contemplated by the stipulation are the waters from the springs that have been taken into the pipe line that time.

MR. EVANS: Why couldn't that be carried into this amendment and thereby limited? It seems to me it is only a question of language.

MR. HATCH: I thought the finding, as it originally stood, covered it. page 30.

THE COURT: I have it right before me, I have been

reading it.

MR. HATCH: The last line there is after "Johnson Ditch", "springs arising between the county road and the flume line of the Utah Power & Light Company, and down from the county highway bridge crossing said river near the Bridal Veil Falls to the west line of the northeast quarter of Section 5, in Township 6 South of Range 3 East, of the Salt Lake Base & Meridian." But all of this is qualified, all those waters now flowing from springs into said waterworks system, that covers it. Then they specifically except, however, the waters of Maple, or commonly called Yellow Jacket Spring, and the springs or water to which the said defendant Provo City is entitled, are more particularly designated as follows. Now, if they can be designated any more particularly than they are in this paragraph, I take it it is their duty to so designate them, but that they be confined to the language of the paragraph before the word "spring",- all preceding that. Then the balance of the paragraph as it was in the original finding, attempts to point out the particular springs that flow into their system, and does it, I take it, so far as it is possible to do it from the evidence, and if the evidence was not sufficient to identify their rights, that is their fault, not ours; but they should not be permitted by a broad taking in of springs to cover anything that they are not entitled to, and they are clearly not entitled to that 12 second feet of water in addition to their 12.88 when their pipe will only hold 13.

THE COURT: Now, Mr. Richards, what additional territory is included in the description you have given in your proposed amendment to that that is given in the subdi-

vision E, paragraph 57.

MR. RICHARDS: Can you point it out, Mr. Swan?

MR. SWAN: There is the bridge, near the east line here on this map, little ways west of this section corner, short distance right there, shown on the map where the county road crosses the river. The other point is the west line of northeast quarter of Section 5. That would be half way down this line here. This is the northeast corner of Section 5, and northeast quarter would be along here between these two points, being it down here.

THE COURT: That is the description in the original draft. Now what is the description you have in this, what does it take in?

MR. SWAN: Description is limited to the same distance, and includes the territory between the flume of the Power Company and the county road, which is shown here on this map, with the exception of this one spring which is especially designated which comes above.

MR. HATCH: The flume is on the north side of the river, and county road on the south for practically the entire distance.

MR. SWAN: Yes sir, all the distance.

MR. HATCH: And it takes in every seep and spring that comes into that river during that entire course, without any limitation, under the proposed substitute.

MR. RICHARDS: You wouldn't suggest the word "spring" # covers percolation and seepage, and we could drain the whole country?

MR. HATCH: No, but anything coming to the surface out of the ground is designated a spring, regardless of the quantity. We call it spring, that is the general definition of the term. You would not be permitted to dig except you were allowed to develop and increase the flow of your springs that are awarded to you.

MR. RICHARDS: Exactly, and simply apply to the present conditions, or the condition that obtained at that time. Do you understand there is any change in the conditions now and what they were?

MR. HATCH: I don't understand there is, but if you confined yourself to the waters you have diverted into you ditch, I am contending you shall be confined to the waters you have appropriated regardless of the quantity. We admit it is less than six feet to twelve second feet. We are not questioning that, but what we do question is the ~~xxxxxx~~ broad taking in of everything in sight.

THE COURT: Gentlemen, from reading the draft of this subdivision on page 30, and the proposed change, I see no difference whatever in them, except that in the draft it is limited to the waters that had been taken into their pipe at that time. The description is just the same. I do not see any difference at all. Is there any difference?

MR. HATCH: I think there isn't any except one limits

them to the water they had actually.

THE COURT: Yes.

MR. HATCH: And the other does not. The other takes in all that that they have not, if there be any, and the evidence shows there is 12 second feet.

THE COURT: I think under the evidence, they are entitled to all that was running at that time from this territory.

MR. RICHARDS: There are only two points I suggest by the change in that subdivision. The first was to show only it was not some indefinite quantity that was flowing in the pipe, so as to leave a question the court hereafter would say there is no specific or definite quantity named, and fixed it as being all the water coming from the springs so that it would be definite from those particular springs. Then not being able to name them, the lines were drawn, as I was told that would include nothing else but just those.

THE COURT: It is drawn in both of them. There is no difference in the lines. That is the reason I asked Mr. Swan where these places where, the description of the territory in which these springs arise, and you are entitled to all of them under either of these drafts. It is just the same, isn't it, Mr. Swan?

MR. SWAN: We aimed to make it exactly the same.

THE COURT: And under the language of each of these

proposed drafts, you are entitled to all of the water from all the springs in that territory, limited, however, to the fact you had not had it in your pipe before.

MR. HATCH: I don't so read it, your honor. The defendant Provo City has appropriated, has the right to collect by its pipe line and waterworks system as now located and constructed in Provo Canyon, all those waters now flowing from springs into said water works system, except, however, the waters of Maple, or commonly called Yellow Jacket Spring. The other wording says, they are entitled to divert into its said waterworks system, and to convey and use for domestic and municipal purposes.

THE COURT: Judge Hatch, that is exactly what I suggested a moment ago, that the springs described in the two are just the same territory in which the springs arise, and all the springs are referred to in both instances, but in the draft that was prepared, original draft, there is a limitation contained in the first part of the paragraph to the water that was taken into their pipe line as then constructed; isn't that correct?

MR. HATCH: Yes.

THE COURT: That is the only difference.

MR. HATCH: As to that we offer no objection to the original "e", but we object to the proposed substitute.

THE COURT: I do not think the substitute, when I come to see the stipulation, conforms to the stipulation. I think it leaves out some important factors in the stipula-

tion, and does not make it any more definite and certain than the original does. The stipulation is uncertain, there is no certainty to it.

MR. RICHARDS: It was not intended to limit anything, and I shall be glad to tell you what happened.

THE COURT: You have left out, all those waters now flowing from said springs into said waterworks system.

MR. RICHARDS: We have a right to collect them, and elimination of the phrase was simply to avoid the question arising of double construction, whether it would be possible to construe the water flowing as being an indefinite quantity, and to make that definite, I used the term, all of the water of those springs, so to avoid the question of uncertainty or double construction.

THE COURT: The difficulty with you gentlemen seems to be you are satisfied with the language in the stipulation which was much more indefinite and uncertain than any language that is proposed in either of these findings.

MR. RICHARDS: I will say this, your honor please, of course at the time of the stipulation it was understood, as we understand it here, that it was to include the waters of those springs and the springs that we had been using. We are using all the waters of those springs. ~~That is all we want now,~~ That is all we want now, but when we come to putting it in the form of a decree, we want to put it so that it will be definite and adjudge something to us; not be so indefinite it will be

meaningless. The question is whether under the language of the first draft it should be regarded as the water that runs through the pipe line, not specifying anything definite. The court might say it was meaningless. It was to avoid that construction of the decree I put the other in; then whether it is one foot, five feet or twelve feet, the language covers it, because it would be all the water flowing from those springs. The other was simply for the purpose of locating the springs. If there can be a better definition of the location of the springs, I should be glad to get it.

MR. HATCH: I call the court's attention further that they--

THE COURT: Let me ask, I understood you to say you made no objection to "e" as originally drawn. The substitute may be adopted if you make no objection to the fact that the springs that are included in your stipulation are the springs that arise and all of the springs that arise within this territory here.

MR. HATCH: But we do. Either I don't understand the court, don't understand the original "e" as the court understands it, because we do object to all the springs in that territory.

THE COURT: I think, gentlemen, that the reasonable construction to put upon this is to say you meant those springs within that territory, if that is the territory that is covered by your stipulation.

MR. HATCH: If the court please, our stipulation-- I don't know the territory is covered-- we stipulate as to the

water and the springs, but I do not think we cover any territory, I don't remember.

THE COURT: No, you don't.

MR. HATCH: We do not cover any territory, but conceded them all the springs wherever located they had in their pipe line. They have interjected this territory into this, and we do not object--

THE COURT: The committee having this in charge injected that part of it.

MR. HATCH: I don't know, someone did, but if the language in "e" were all those waters now flowing from springs into said waterworks system except Yellow Jacket Spring, that fixes a right. Now, if it is not definitely located, if their springs are not definitely fixed, that are going into their system, they should not be permitted to take advantage of that neglect and acquire something largely additional to what they have ever appropriated or used or now claim the right to use under-- and you know what springs they are, according to this testimony that never were in this pipe line, their own testimony. That is why we are objecting. Springs all along the course they never have had, and within this territory they never have had within their pipe line.

MR. RICHARDS: Judge, will you permit me, Mr. Swan has come to me twice and is here asking I shall explain the testimony you read, you interrogating him all over the field, as he puts it, cross examining him in regard to it, and the testimony that he gave you, as he understood it there, and

understands it now, is that there is no water there to go--
within ~~the~~ ^{this} territory that would go into our pipe, except
that which has been excepted and is excepted.

MR. HATCH: As to that, this is, as I understand,
the direct testimony of Mr. Swan, It is not cross examination.
He was testifying on direct testimony when he made these
statements, and it was with regard to a different subject
matter, I take it, as to Provo River being a constantly in-
creasing river, and he was testifying at that time to get
all the water into the river he possibly could. May be that
he was led into exaggerating the matter a little bit, but
I do not believe he was. I think he told the truth.

THE COURT: The proposed amendment is allowed.
Now we will take up the matter of the appointment of the
commissioner. *****.

THE COURT: You may do that.

If there is nothing further, this department of the
court will be adjourned without day.
