

IN THE DISTRICT COURT OF WIAH COUNTY, UTAH.

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Provo Reservoir Company,

Plaintiff,

-vs-

Provo City, et al.,

Defendants.

Civil Case No. 2888.

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DECISION.

This case having been heretofore tried and the arguments and briefs of counsel presented, and the court having fully considered the same, now renders the following decision.

1. That all the allegations contained in paragraphs one to twenty-six inclusive of plaintiff's complaint are true.

2. For the purpose of facilitating the statement of facts which I have found from the evidence and decreeing the rights to the use of waters of Provo River and its tributaries to the parties entitled thereto, the section of the river in Provo Canyon and below the mouth of Provo Canyon -- that is, all that section of the river below ^{+ including} what is commonly called the Wright Ranch will be referred to as the "Provo Division"; and the section of the river above what is commonly called the Wright Ranch will be referred to as the "Wasatch Division".

P R O V O D I V I S I O N .

3. The waters of the river in the Provo Division shall be and are hereby divided into classes and are designated "Class A", "Class B", "Class C", etc. "Water Right".

4. That all the waters appropriated by the defendants and the predecessors in interest of the plaintiff in the Provo Division for the purpose of irrigation and domestic use and for power purposes, together with the number of acres of land, the municipal requirements, and power requirements of such appropriators, and the quantities of water put to a beneficial use by each of said parties are as follows:

NAME	Acres	Period May 10 to June 20th		Period June 20 to July 20th		Period July 20 to Sept. 1st		Period Sept. 1 to Oct. 1st,		Period Oct. 1 to May 10th	
		Irrigated	Duty	Sec. Ft.	Duty	Sec. Ft.	Duty	Sec. Ft.	Duty	Sec. Ft.	Duty
Provo Cy. <i>For purpose</i> Farm Acres. 2058.6	2058.6	57	36.12	63	32.68	70	29.40	70	29.40	70	29.40
Provo City <i>cut date</i> Town Lots Irrigation 300.00	300.00	50	6.00	50	6.00	50	6.00	70	4.29	70	4.29
Timpanogus Canal Co. 847.00	847.00	60	14.12	66	12.83	75	11.30	75	11.30	75	11.30
Provo Bench Canal & Ir- rigation Co 4332.53	4332.53	57	76.01	63	68.77	70	61.89	70	61.89	70	61.89
Upper East Union Irri- Company 762.18	762.18	57	13.37	63	12.09	70	10.89	70	10.89	70	10.89
Little Dry Creek Irr- Company 506.00	506.00	60	8.43	66	7.67	75	6.75	75	6.75	75	6.75
First Ward Pasture 147.00	147.00	60	2.45	66	2.23	75	1.96	75	1.96	75	1.96
East River Bottoms Wt. Company 344.44	344.44	52	6.62	57	6.04	65	5.29	70	4.92	70	4.92
Ft. Field Irr. Co. 574.28	574.28	80	7.18	90	6.38	100	5.74	125	4.60	125	4.60

NAME	Acres	Period		Period		Period		Period		Period	
		Ir-	May 10 to	June 20 to	June 20th	July 20 to	July 20th	Sept. 1st	Sept. 1st	Oct. 1st	Oct. 1st
	rigated	Duty	Sec. Ft.	Duty	Sec. Ft.	Duty	Sec. Ft.	Duty	Sec. Ft.	Duty	Sec. Ft.

Lake Bot.											
Canal Co.	1221.00	80	15.26	90	13.56	100	12.21	125	9.76	125	9.76
Utah-Ida.											
Sugar Co	54.	80	.67	90	.60	100	.54	125	.43	125	.43

West Union Canal Company, Pauline Schemsky, Stephen Jones, F. T. Carter, Amos Carter, Permelia Young, D. G. Calder, J. E. Smith, Owen A. Baum, Joseph T. Carter, Edith R. Buss, Wilford Penrod, William Gammon, Abram L. Smith, A. L. Penrod, J. M. Buckner, T. J. Smith, W. F. Richins, B. F. Alger, Clara M. Stubbs, J. C. Ivie, Ann Carter, Thomas Thornly, John H. Carter, D. W. Baum, Richard Carter, D. N. Greer, Leo Baum, D. N. Penrod, Leo E. Smith, B. W. Baum, A. L. Tanner, Eliza Carter as admrx, of the estate of Aaron Carter, deceased; Cora A. Shirts, as admrx. of the estate of Benjamin Shirt, deceased; E. L. Dodder, J. W. Smith, Lottie York, and the Lincoln School District, 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 and the right to the use of water therein; Verinus Carter, R.G. Carter; John H. Carter, Jr., James M. Downs, David Carter, Lafayette Carter, R. D. Young and Mary E. Downs, as members of a voluntary association, not incorporated, under the name and style of the Carter Ditch Company, and also as individual tenants in common in the Carter Ditch and the right to the use of water therein jointly and undivided.

	1900.00	57	33.33	63	30.16	70	27.14	70	27.14	70	27.14
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James L. Meldrum, John E. Booth, George James, Merril Holden, Lewis James, Isaiah B. Lott, William Cluff as successor in interest to Benjamin B. Richmond, Joseph Faucett, Walter Lott, Ada J. Hickman and Elmer Meldrum as members of a voluntary association, not incorporated, under the name and style of the Faucett Field Ditch Company, and the use of water therein jointly and undivided.

	108.75	52	2.09	57	1.91	65	1.67	70	1.55	70	1.55
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Rudolph Riard	26.94	50	.54	55	.49	63	.43	70	.39	70	.39
Permelia Young	16.77	50	.34	55	.30	63	.27	70	.24	70	.24
Ada Young	5.00	50	.10	55	.09	63	.08	70	.07	70	.07
Hetty Y. Goodwin	5.00	50	.10	55	.09	63	.08	70	.07	70	.07

As tenants in common in the right to the use of water through the Barton & Young Ditch.

NAME	Acres	Period		Period		Period		Period		Period		
		Ir-	May 10 to	June 20 to	July 20 to	July 20 to	Sept. 1st	Sept. 1st	Sept. 1st	Oct. 1st	Oct. 1st	May 10th
	rigated	June 20th	Duty	Sec. Ft.	Duty	Sec. Ft.	Duty	Sec. Ft.	Duty	Sec. Ft.	Duty	Sec. Ft.

14 L.W. Nuttall	19.11	50	.38	55	.35	63	.30	70	.27	70	.27
Rudolph Riard & D.B. McBride	12.50	50	.25	55	.23	63	.20	70	.18	70	.18
David S. Park	41.93	50	.84	55	.76	63	.67	70	.60	70	.60

As tenants in common in the right to the use of water through the Park & Nuttall Ditch

16 Lafe. Baum	7.50	57	.13	63	.12	70	.10	70	.10	70	.10
Elmer Baum	7.50	57	.13	63	.12	70	.10	70	.10	70	.10
S.S. Cluff, Jr.	9.00	57	.16	63	.13	70	.13	70	.13	70	.13
Jacob A. Baum	10.00	57	.18	63	.16	70	.14	70	.14	70	.14
Jas. Amicome	4.00	57	.07	63	.06	70	.06	70	.06	70	.06

As tenants in common in the right to the use of water through the George Baum Ditch, Alfred Young Ditch & City Creek in Utah County.

16 William Cluff, as successor to Benjamin B. Richmond in the right to the use of water through the River Bottoms.	17.92	52	.34	57	.31	65	.28	70	.26	70	.26
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Alice Rambaud, as successor to Benjamin B. Richmond in the right to the use of water through the River Bottoms.	16.90	52	.33	57	.30	65	.26	70	.24	70	.24
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Henry V. Smith, Jr.	5.50	50	.11	55	.10	63	.09	70	.08	70	.08
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16 Provo Pressed Brick Company through the Alfred Young Ditch, the Dixon Farm Ditch and Spring Creek.	40.00	57	.70	63	.64	70	.57	70	.57	70	.57
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19 Amos Carter	3.00	50	.06	55	.055	63	.048	70	.043	70	.043
Lafayette Carter	4.55	50	.091	55	.083	63	.072	70	.065	70	.065
David Carter	4.38	50	.088	55	.079	63	.069	70	.063	70	.063
Elizabeth Carter Ashton as successor to the estate of											
Aaron Carter	9.52	50	.19	55	.173	63	.151	70	.136	70	.136
A. L. Tanner	35.00	50	.70	55	.636	63	.555	70	.5	70	.5
Esthma Tanner	50.67	50	.013	55	.921.	63	.804	70	.724	70	.724
Jas. M. Nonnie	6.00	50	.12	55	.109	63	.095	70	.086	70	.086
Szur Monson	5.00	50	.1	55	.091	63	.079	70	.071	70	.071
Jane William-son	8.88	50	.178	55	.161	63	.141	70	.127	70	.127
Mary E. Davis	12.05	50	.241	55	.219	63	.192	70	.172	70	.172
Jas. F. Clyde	17.25	50	.345	55	.314	63	.274	70	.246	70	.246
Evan Williams	3.51	50	.07	55	.064	63	.056	70	.05	70	.05
Frederick J. Pulham	2.00	50	.04	55	.036	63	.032	70	.029	70	.029
Leslie Syms	5.00	50	.1	55	.091	63	.079	70	.071	70	.071

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NAME	Acres Ir- rigated	Period May 10 to June 20th		Period June 20 to July 20th		Period July 20 to Sept. 1st		Period Sept. 1 to Oct. 1st		Period Oct. 1 to May 10th	
		Duty	Sec. Ft.	Duty	Sec. Ft.	Duty	Sec. Ft.	Duty	Sec. Ft.	Duty	Sec. Ft.
N.H. Greer	.5	50	.01	55	.009	63	.008	70	.007	70	.007
D.W. Baum	8.00	50	.16	55	.146	63	.127	70	.114	70	.114
A.B. Forsyth	24.69	50	.493	55	.449	63	.392	70	.353	70	.353
Steve Jones	6.65	50	.133	55	.121	63	.106	70	.095	70	.095
Mary A. Brown	13.12	50	.262	55	.238	63	.208	70	.187	70	.187
Albert Snider	10.42	50	.208	55	.189	63	.166	70	.149	70	.149
Maggie Pearl Brown	1.62	50	.032	55	.03	63	.026	70	.023	70	.023
Wilmirth H. Brown	2.45	50	.049	55	.044	63	.039	70	.035	70	.035
Jos. M. Brown	7.03	50	.141	55	.128	63	.112	70	.1	70	.1
Chas. H. Davis	8.59	50	.172	55	.156	63	.137	70	.123	70	.123
Fred Davies	14.30	50	.286	55	.26	63	.227	70	.204	70	.204
David Johnson	7.30	50	.146	55	.133	63	.116	70	.104	70	.104
Isabell West	4.36	50	.087	55	.079	63	.069	70	.062	70	.062
J. Joseph Johnson	4.85	50	.097	55	.088	63	.077	70	.069	70	.069
E.D. Partridge	5.05	50	.101	55	.092	63	.08	70	.072	70	.072
Olice Smith	5.00	50	.1	55	.091	63	.079	70	.071	70	.071
Ashted Taylor	22.46	50	.449	55	.408	63	.356	70	.321	70	.321
Geo. Taylor, Jr	10.19	50	.204	55	.185	63	.162	70	.146	70	.146
E.V. Vincent	10.00	50	.2	55	.182	63	.159	70	.143	70	.143

~~from Spring Creek in Utah County~~
 As individuals in the right to the use of water of Spring Creek
 and Provo River in Utah County.

5. That the following parties have individual rights to the use of water arising below the Lake Bottom Canal and whose lands lie below the lands irrigated from the Lake Bottom Canal and on the north side of Provo River.

Reed Knudson, Lewis Marriott, Lars Jacobson
 Albert Jacobson, Lewis Jacobson, Isaac P.
 Nelson, H. Knudson, William D. Lewis &
 William C. Williams.

80 80 1. 90 .88 100 .8 125 .64 125 .64

Albert Jacobson, Lewis Jacobson, Annie Glade,
 Sarah Williams, Zion's Savings Bank & Trust
 Company and Herbert D. Jobb, substituted for
 Dora Shirts, Admr.

63 80 .78 90 .7 100 .63 125 .504 125 .504

Charles Madsen, Edwin A. Madsen, Caroline H.
 Madsen, W. W. Ercoenbrack, successor to D.H.
 Madsen and Mattie Madsen and Brigham Madsen,
 deceased.

133 80 1.66 90 1.48 100 1.33 125 1.06 125 1.06

Alma Jor-
 gensen
 Andrew
 Knudson

25 80 .31 90 .28 100 .25 125 .2 125 .2

66 80 .82 90 .73 100 .66 125 .528 125 .528

77X

6. That Hyrum Heiselt is the owner and entitled to the use of .033 second feet of water to be taken from the river on his premises in Provo Canyon, and all of the waters of a small spring arising on his premises in said canyon; the said waters to be used upon his land and at no other place.

7. That John D. Dixon as successor in interest to J. H. Snider, Joshua J. Meham, John W. Hoover and Hyrum Heiselt is the owner and entitled to the use of 168 minut feet or 2.80^{2.80}_{2.80} cubic feet of water per second; all of which waters were appropriated and used upon lands in Provo Canyon and the South Fork of said canyon, the place of use of which has been changed and said water is now being used upon land located near the mouth of Provo Canyon under the contour of the canal of the Provo Reservoir Company, and such use may be continued, deducting, however, ten per cent thereof.

8. That Charles Giles and Charles Thomas as co-partners and successors in interest to Edward C. Meham are entitled to the use of .67 second feet of water to be taken from the South Fork of Provo River, and a small spring arising on the land of said parties; all of such water to be used on said land.

9. That Charles Conrad and A. M. Conrad as co-partners and as successors in interest to C. S. Conrad and J. R. Hooks, are entitled to the use of 104 minute feet or 1.73 second feet; such waters to be taken from the South Fork of the Provo River in Provo Canyon, and to be used upon their premises located therein.

10. That W. W. Incanbrack as successor in interest to the South Fork Cattle Company is entitled to the use of 22 minute feet or .37 second feet of water from the South Fork of Provo River

to be used upon his premises situated in Provo Canyon.

11. That the South Fork Trout Company, as a successor in interest to George Duke, is entitled to 30 minut feet or .50 second feet of water from the waters of South Fork of Provo River for the purpose of irrigation; said water to be used upon the premises of said party in Provo Canyon; and

The said South Fork Trout Company is the owner and entitled to the use of all of the waters of Ellen, Pine Bug and Rhoda Springs arising on the lands of said defendant in the South Fork of Provo Canyon, and 10 second feet of the waters of the South Fork of the Provo River to be used for the purpose of fish culture and to be diverted from said springs and the said creek through pipes, ditches, small lakes or ponds, nursery runs and hatchery, and to be returned to the natural channel of said creek without any diminution in quantity or deterioration in quality.

12. That the Spring Dell Resort Company is entitled to the use of one second foot of water to be taken from the Spring Dell Spring in Provo Canyon, and used upon the premises of said company,

13. That the Provo Reservoir Company, as successor in interest to Joseph R. Murdock, as administrator of the estate of William Wright, is entitled to 3.33 second feet of water for one hundred hours in each and every fourteen days, and nine-tenths of the waters of what is known as "Enoch Spring" and "The Little Springs"; also all the waters of Round Valley Creek, not exceeding, however, 3.5 second feet, excepting .033 second feet.

The plaintiff is entitled to the right to the use of all of said waters beginning at a time during each and every year which shall not in any season be earlier than the time when the plaintiff shall deem it necessary to release for use for irrigation the

waters impounded by the plaintiff in its reservoirs at or near the head waters of Provo River, which time shall not in any event be earlier in the season than June 15th, and not later than June 30th.

14. That the Provo Reservoir Company, as the successor in interest to the Blue Cliff Canal Company, is entitled to the use of water from springs originally arising in and discharging their water into the Blue Cliff Canal, including the Maple Spring, to the amount of 4th second feet.

15. That Johanna C. J. Andersen is entitled to the use of .5 second feet of water for the irrigation of thirty acres of land; said water to be taken from Deer Creek in Provo Canyon in Wasatch County, and used upon the lands of said Johanna C. J. Andersen, in said county.

16. That the Provo Pressed Brick Company under its appropriation made by application number 1221 to the State Engineer of the State of Utah, under date of February 28, 1907, to appropriate water for the generation of power, and the certificate of said State Engineer issued thereunder, is entitled ~~during the irrigation season of each and every year~~ to use for the generation of power at its brick plant all of the water awarded to and used by Provo City for the purpose of irrigation and for use by mill owners for power purposes, and diverted from The Factory Race, The City Race and The Tanner Race at points below the point at which the water used by the said Provo Pressed Brick Company is returned to said race or races; not exceeding 100 cubic feet per second.

Also such quantity of water as is required to flow down the Provo River to supply the irrigation rights of other defendants hereinbefore referred to and awarded, diverting waters from Provo

River below the point at which the water is returned to said river by said Provo Pressed Brick Company;

And the said Provo Pressed Brick Company during the non irrigation season of each year, subject to the right of storing water at the several reservoirs of plaintiff and defendants, as provided in the stipulations filed herein, is entitled to the use of 100 second feet of water for the generation of power.

17. That the defendant Provo City is entitled to the use for municipal purposes through its water works system of 4 cubic feet per second, through its weir situate near the mouth of Provo Canyon.

Said defendant Provo City, during the irrigation season of each and every year, is entitled to the use of 13.75 second feet of water for power purposes, which said water has heretofore been used under a license and grant from said city by the mill rights upon the Factory Race and other races within said city.

Said defendant Provo City during the non irrigating season of each year, subject to the rights of storing water at the several reservoirs of the plaintiff and defendants, pursuant to the terms of the stipulations filed herein, is entitled to use for said purpose sufficient water to supply the reasonable necessities of all such power users, not to exceed 65 cubic feet per second.

18. That the Utah Power & Light Company, as the successor in interest to the rights of the Telluride Power Company, and the Telluride Power & ~~Traction~~^{Transmission} Company, has the right to divert from Provo River by its dam built across said river in Section 34 Township 5 South Range 3 East, Salt Lake Base and Meridian, the same to be carried through the flume and pipe line extending from said dam to its power generating station situate in the northeast quarter of Section 7 Township 6 South Range 2 East, Salt Lake Base and Meridian at or near the mouth of Provo Canyon in Utah County, Utah, 229 second feet of water; and

The said defendant Utah Power & Light Company has appropriated and is entitled to use in addition thereto through its flume for the generation of power the waters of Lost Creek, not exceeding 6.41 second feet, also the waters of Bridal Veil Falls not exceeding 4.11 second feet; and

The said defendant Utah Power & Light Company has the right to the use for irrigation and domestic purposes the waters of Johnson or Guardquarter Springs, not exceeding .8 second feet.

That all of such waters so awarded to and used by the said defendant Utah Power & Light Company for the generation of power, must be so used as to not substantially interfere with the natural flow of such water and thus cause substantial fluctuations in the flow thereof, and said defendant must utilize and use such waters without substantial diminution in quantity or any deterioration in quality.

19. That L. L. Donnan is the owner and entitled to the use of all the waters of those certain springs arising upon the north half of the southeast quarter of Section 34 Township 5 South Range 3 East, Salt Lake Base and Meridian, for the purpose of fish culture; and

○ The said L. L. Donnan is the owner and entitled to the use of .017, second feet of water for the irrigation of one acre of land and of .08 second feet of water for the irrigation and sprinkling of four acres of lawn; such water to be used upon said land and at no other place; and

The said L. L. Donnan having made application to the State Engineer of the State of Utah by application number 4978, under date of December 23, 1912, for 20 second feet of water from Provo River for power purposes, which water is thereafter used for irrigation, and having complied with the laws and requirements relative to the appropriation of water, is entitled to complete said appropriation

and make final proof thereof to the State engineer, and upon the completion of said appropriation and the making of such final proof will be entitled to divert and use for power purposes 20 second feet of water from the Provo River; said water to be used and returned to said river without material loss in quantity or without deterioration in quality, and such water to be so used as not to cause any substantial fluctuation in the flow of the water of said river.

20. That Caleb Tanner, as the successor in interest to Charles H. Taylor, is the owner and entitled to the use of .25 second feet of water now being taken through the Provo Bench Canal and used for the irrigation of land in Section 25 Township 6 South Range 2 East, Salt Lake Base and Meridian.

21. That J. W. Hoover is the owner and entitled to the use of 14 minute feet or .233 second feet from the Provo River; also to one-tenth of the water of Enoch Spring and Little Springs; also to the flow from certain small springs arising on his farm situated in Sections 7 and 18 Township 5 South Range 4 East, Salt Lake Base and Meridian.

22. That John C. Whiting from the commencement of the irrigation season until the thirtieth day of June (or such earlier date as the Provo Reservoir Company has released for irrigation the water impounded by it in its reservoirs at the head of Provo River, in no event earlier than June 15th of every year) is the owner of and entitled to the use of the water decreed to the William Wright estate (except one-tenth of the waters of Enoch Spring and Little Springs), to-wit: 3.5 second feet of the waters of Round Valley Creek, nine-tenths of the waters of Enoch Spring, nine-tenths of the waters of Little Springs, and 3.33 second feet from Provo River for one hundred hours each and every fourteen days; and after the

tjirtieth day of June of each year (or after the releasing of the waters from the reservoirs as aforesaid, if released between June 15th and June 30th of any year) the said defendant John C. Whiting is entitled to the use of .033 second feet of water from Round Valley Creek to irrigate and mature crops on two acres of land; and

The said John C. Whiting is further the owner and entitled to the use of .092 second feet of water from the waters of Round Valley Creek, said water right being appurtenant to land formerly owned by John Hartle.

23. That Esthma Tanner is the owner and entitled to the use of the seepage and spring water accumulating and arising upon her land, and collected by her in the drainage system laid upon said land situated about five miles from the mouth of Provo Canyon, and she is entitled to discharge said water into the Provo River and to take from said river an equal amount at the intake of the Provo Bench Canal, so long, and so long only, as the requirements of the users of water from Provo River diverting the same at points below the point of discharge of such drainage water in the said river are not supplied from seepage water, but require the turning down of water from the main flow of the river; and the said Esthma Tanner is entitled to take from said river at the said intake of the Provo Bench Canal such quantity of water only as is required to be turned down for such lower diversions not exceeding, however, the quantity of water discharged by her into the river from her drainage system.

24. That the plaintiff Provo Reservoir Company, as the successor in interest of the Blue Cliff Canal Company, is the owner and entitled to the use of 46 second feet of water.

All of the waters hereinbefore referred to and awarded

are hereby classed and denominated "Class A" Water Rights".

25. That the plaintiff Provo Reservoir Company, as ^a the successor in interest of the Timpanogus Irrigation Company, ~~to all the water rights of the said Timpanogus Irrigation Company~~ under application to the State engineer of the State of Utah, number 442 under date of August 22, 1905, for 8500 acre feet of water for storage in Wall Lake, Trial Lake and Washington Lake, is entitled to 12/28 of said water and water right, and is entitled to complete its said appropriation and make final proof to the State Engineer; and upon the completion of said appropriation and the making of such final proof will be entitled to store said waters and to release and comingle said waters with the waters of Provo River and recapture the same at the point of diversion of the plaintiff at or near the mouth of Provo Canyon.

26. That the Sego Irrigation Company, as a successor in interest of the Timpanogus Irrigation Company to the said application ^{of} number 442, is the owner, and entitled to 2/28 of the water and water rights mentioned and described in said application, and jointly with the said plaintiff Provo Reservoir Company, is entitled to complete the said appropriation and make final proof to the State Engineer; and upon the completion of said appropriation and the making of such final proof will be entitled to store said waters and to release and comingle the same with the waters of Provo River and recapture the same at its point of diversion at or near the mouth of Provo Canyon.

27. That the plaintiff Provo Reservoir Company, as a successor in interest of the Timpanogus Irrigation Company, under application to the State engineer of the State of Utah, number 944, bearing date of June 12, 1906 for 7500 acre feet of water ^{from Shingle Creek - Beaver Creek tributaries of the Wall Lake River} ~~for storage upon the~~

~~head of Provo and Weber Rivers,~~ is the owner of and entitled to 26/28 of all said waters and water rights, and is entitled to complete its appropriation and ^{make} final proof to the State Engineer; and upon the completion of its said appropriation and the making of such final proof will be entitled to store said water and to release and comingle said waters with the waters of Provo River and recapture the same at its point of diversion at or near the mouth of Provo Canyon.

28. That the defendant Sege Irrigation Company, as a successor in interest to the Provo Reservoir Company and the Timpanogus Irrigation Company in the said application number 944, is entitled to 2/28 of all of said water and water rights under said application, and is entitled jointly with the plaintiff Provo Reservoir Company to complete said appropriation and to make final proof thereof to the said State Engineer; and upon the completion of said appropriation and the making of such final proof will be entitled to ~~store~~ said waters and to ~~release and~~ comingle said waters with the waters of Provo River and to recapture the same at their point of diversion at or near the mouth of Provo Canyon.

29. That pending the time designated by the State Engineer for the completion of all of said appropriations as the same may have been or may hereafter be extended, the said plaintiff Provo Reservoir Company and the said defendant Sege Irrigation Company are entitled to ^{use directly and to} store such water and to release and recapture the same as hereinbefore described.

The above and foregoing water rights are hereby denominated "Class B Water Rights".

30. That the Provo Pressed Brick Company under and by virtue of its application to the State Engineer of the State of Utah, to appropriate water for the generation of power, number 1221, under date of February 28, 1907, and under the certificate of the State Engineer issued pursuant to said application, is entitled to such quantity of water, which when added to the quantity heretofore awarded to said defendant in Class A water rights will aggregate 100 second feet; subject to the right of storing water at the several reservoirs of the plaintiff and defendants pursuant to the terms of the stipulations herein filed.

The above water right is denominated "Class C Water Right".

✓ 31. That the plaintiff Provo Reservoir Company, having duly made application to the State Engineer of the State of Utah by application number 1828, under date of April 16, 1908, for 150 second feet of water for irrigation purposes, and having from time to time secured extensions of time for the final proof of appropriation and application to beneficial use, and having shown due diligence in the construction of head works, canals and laterals, and the application of said water to a beneficial and useful purpose, and having expended in the construction of an irrigation system and in the application of said waters large sums of money, to-wit, approximately \$300,000.00, and having at all times since the said year 1908 continuously during the irrigation season diverted and used when available the waters applied for in said application, is entitled to complete its said appropriation and make final proof thereof to the State engineer; and upon the completion of said appropriation and the making of such final proof will be

entitled to divert and use for the purpose of irrigation 150 second feet of water, and pending the making of such proof and the completion of such appropriation is entitled to use such quantity of water.

32. That the plaintiff Provo Reservoir Company, having duly made application to the State Engineer of the State of Utah by application number 1847 under date of April 29, 1908, to appropriate 100 second feet of water from Beaver Creek, a tributary of the Weber River in Summit County, Utah, and having complied with the laws and requirements in relation to the appropriation of water, is entitled to complete its said appropriation and make final proof thereof to the State Engineer; and upon the completion of said appropriation and the making of such final proof will be entitled to divert said water from the Weber River watershed and comingle the same with the waters of Provo River and to recapture the same at its point of diversion at or near the mouth of Provo Canyon; and in the meantime, pending the completion of said appropriation and the making of such final proof, is entitled to make such diversion and recapture the same as above set forth.

33. That the plaintiff Provo Reservoir Company, having duly made application to the State Engineer of the State of Utah, by application number 2077 under date of September 15, 1908, for the storing of 316.6 acre feet of water, and having complied with the requirements and laws relating to the appropriation of water, is entitled to complete its appropriation and make final proof to the State Engineer; and upon the completion of said appropriation and the making of such final proof, will be entitled to store said waters and release and comingle said waters with the waters of Provo River and recapture and divert the same at its

point of diversion at or near the mouth of Provo Canyon; and pending the completion of said appropriation and the making of such final proof the said plaintiff is entitled to store, release and recapture said water as above set forth.

34. That the plaintiff Provo Reservoir Company, having duly made application to the State engineer of the State of Utah, by application numbers 2077A to 2077Q inclusive, under date of September 15, 1908, to appropriate 8282.8 acre feet of water for storage in Washington Lake, Washington Lake No. 1, Washington Lake No. 2, Washington Lake No. 3, Washington Lake No. 4, Star Lake, Lost Lake, Lost Lake No. 1, Lost Lake No. 2, North Fork Lake No. 4, North Fork Lake No. 5, North Fork Lake No. 6, Haystack Lake, Haystack Lake No. 1, Haystack Lake No. 2, Haystack Lake No. 3, Trial Lake and Wall Lake, is entitled to proceed and complete its said appropriation and make final proof thereof to the said State Engineer; and upon the completion of said appropriation and the making of such final proof, will be entitled to store said waters in said lakes and release and comingle the same with the waters of Provo River and recapture and divert said waters at its point of diversion at or near the mouth of Provo Canyon; and pending the completion of said appropriation and the making of such final proof the plaintiff is entitled to store, release and recapture and divert said waters as above set forth.

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34 1/2
35. All the right to store, release, recapture and divert water as hereinbefore set forth is subject to the provisions, terms and conditions of the stipulations made and entered into by the several parties to this action.

The water rights above found and awarded are hereby denominated "Class D Water Rights".

36. That the defendant Sego Irrigation Company, as the successor in interest to C. E. Loose and James Clove, having duly made application to the State Engineer of the State of Utah by application number 2575 under date of July 15, 1909, to appropriate ten second feet of water, and having complied with all the requirements and laws in relation to the appropriation of water, is entitled to complete its said appropriation and make final proof thereof to the State Engineer; and upon the completion of said appropriation and the making of such final proof will be entitled to divert and use the same for irrigation; and pending the completion of such appropriation and the making of such final proof is entitled to make such diversion and application.

The above water right is denominated "Class E Water Right".

37. That the defendant Samuel Reiske, as the successor in interest to John H. McEwan, having duly made application to the State Engineer of the State of Utah, by application number 2623, under date of August 7, 1909, to appropriate two cubic feet per second of water for irrigation purposes from First, Second and Third Creeks, and West Springs in Wasatch County, Utah, the same being tributaries to Provo River, and having completed said appropriation and made final proof thereof and received from the State Engineer of the State of Utah on the twentieth day of July, 1916, the final certificate of appropriation for 1.27 cubic feet of water per second from the said sources, is entitled to divert and use the same for irrigation purposes; and

Also having made application to the State Engineer of the State of Utah by application number 2624 under date of August 7, 1909, to appropriate two cubic feet per second of water from Deer

Creek in Wasatch County, Utah, the same being a tributary of P^{ro}vo River, and having completed said appropriation and made final proof thereof and received from the State Engineer of the State of Utah, on the twentieth day of July, 1916, the final certificate of appropriation for .66 cubic feet of water per second from the said source, is entitled to divert and use the same for irrigation purposes.

The above and foregoing water right is denominated "Class F Water Right":

W A S A T C H D I V I S I O N .

38. That the waters of the river in the Wasatch Division shall be and are hereby divided into classes and are designated First, Second, Third, etc. classes.

39. That all the waters appropriated by the defendants and the predecessors in interest of the plaintiff in the Wasatch Division for the purposes of irrigation and domestic use, and for power purposes, together with the number of acres of land, the municipal requirements and power requirements of such appropriators, and the quantities of water put to a beneficial use by each of said parties are as follows:

N - A - M - E	Class	Acres	Sec. Ft.
Wasatch Irrigation Company	1st	2500	41.667
	17th		20.833
North Field Irrigation Company	1st	2500	35.714
	11th		5.953
	17th		20.833
Timpanogus Irrigation Company	14th	2000	33.333
	16th	1000	16.667
	17th		35.
South Kamas Irrigation Company	1st	1050	17.5
	2nd	650	10.833
	17th		14.167
Washington Irrigation Company	5th	1262	21.033
	17th		10.517
Sunrise Irrigation Company	1st	240	4.
	11th	144	2.4
	17th		3.2
Stewart Ranch Company, as successor to J. D. Jones, R. L. Jones, John Jones, Emil Sackerson, Carl H. Wilcken and William Paul	1st	70	1.
	2nd	25	.357
	3rd	50	.833
	5th	18	.257
	6th	37	.529
	7th	18	.257
	8th	6	.086
	11th		.414
	17th		1.867
Stewart Ranch Company	14th	1000	16.667
	17th		8.333

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N - A - M - E	Class	Acres	Sec. Ft.
Extension Irrigation Company	14th 17th	800	13.333 6.667
Utah Power & Light Company, successor to William H. Walker, Jr.	1st 11th 17th	20	.286 .047 .167
James Prescott, successor to W.R. Smith	1st 17th	10	.167 .083
Ernest J. Prescott	1st 17th	10	.167 .083
William L. Prescott	1st 17th	25	.417 .209
Hattie J. Prescott Page	1st 17th	10	.167 .083
Martha E. McNiell, successor to Charles Murphy, William Reed and Robert Mitchie	1st 5th 17th	23 13	.383 .217 .3
Nephi Moon	1st 17th	4	.067 .033
Heber Moon	1st 17th	.43	.007 .003
Hyrum Moon	1st 17th	7	.117 .059
William Moon, and as successor to Mary A. Moon	1st 17th	7	.117 .059
John Swift and as successor to Mary A. Moon	1st 17th	5	.083 .041
Mary E. Page successor to Thomas P. Potts	1st 17th	35	.583 .292
Christie Bisel, successor to Robert Mitchie	1st 17th	2	.033 .017
William Lewis, successor to T. A. White and E. B. Leffler, Jr.	1st 17th	21	.35 .175
Samuel Gines, Sr.	1st 17th	57	.95 .475
Ellen Gines, successor to Samuel Gines, Sr.	1st 17th	40	.667 .333
Samuel Gines, Jr. successor to Samuel Gines, Sr. and G. O. Ellis	1st 17th	36	.6 .3
Charles L. Gines, successor to J.M. Reed <i>J.L. Larson and Wm Reed</i>	1st 17th	80	1.333 .667

N - A - M - E	Class	Acres	Sec. Ft.
Abram Gines, successor to M.O. Turnbow	1st	10	.167
	17th	3	.083
James Leffler, successor to T.P. Potts	1st	3	.05
	17th		.025
Marshall Leffler, successor to Henry Bisel	1st	2	.033
	17th		.017
Marshall Leffler, successor to Woodland School District	10th	1	.016
	17th		.008
Milton O. Turnbow	1st	11.25	.188
	17th		.094
William Lemmon, successor to John O'Driscoll	1st	40	.667
	17th		.333
James A. Knight and as successor to Henry Fraughton and J. J. Jenkins	1st	270	4.5
	17th		2.25
R. W. Barnes, successor to George O. Ellis	1st	70	1.167
	17th		.583
Riley Fitzgerald and as successor to George O. Ellis and T. P. Potts	1st	126	2.1
	17th		1.05
Ether Webb, successor to Daniel Mitchel	1st	50	.833
	17th		.417
John D. F. Bradshaw, successor to Isaac Hunter	1st	35	.583
	17th		.292
Ernest H. Horton, successor to John Benson	1st	40	.667
	17th		.333
George R. Hardman, successor to Robert Mitchie	1st	12	.2
	17th		.1
Ola W. Larsen, successor to Joseph <i>Ketchum</i>	1st	90	1.5
	5th	38	.633
	17th		1.067
Rasmus Larson, successor to Daniel Simperts	1st	60	1.
	5th	140	2.333
	17th		1.667
Fred A. Peterson and as successor to Eldora Rose and F. E. Bowers	1st	21	.35
	17th		.175
Mary A. White admrx, of the estate of Thomas H. White, deceased	1st	4.67	.077
	17th		.039
Minns Lark, admr, of the estate of William Lark, deceased	1st	40	.0667
	17th		.333
Christeen Fraughton, admrx. of the estate of Henry Fraughton, deceased, and successor to Marshall Leffler	1st	4	.067
	2nd	13	.217
	17th		.141

N - A - M - E	Class	Acres	Sec. Ft.
Julia Potts, successor to John M. Reed	1st	3	.05
	17th		.025
Benjamin Turnbow, successor to Mary A. Moon	1st	1	.017
	17th		.008
Frank Turnbow, successor to William Moon	1st	1	.017
	17th		.008
John Leffler and as successor to E. B. <i>Leffler</i>	1st	11.25	.188
	17th		.093
James Duncan	1st	25	.417
	17th		.208
S. A. Peterson	1st	20	.333
	17th		.167
Mary Ann White, - successor to Mary A. Moon	1st	34.5	.575
	17th		.287
Joseph Morris	1st	130	1.857
	9th	45	.643
	11th		.417
	17th		1.458
Harold C. Best, successor to John SWift	1st	20	.286
	11th		.047
	14th	40	.667
	16th	40	.667
	17th		.833
George B. Jordan	1st	35	.5
	3rd	30	.429
	11th		.154
	16th	25	.417
	17th		.75
John A. Johnston, to be taken from river at Upper Midway Dam	1st	90	1.5
	17th		.75
Phillip L. Ford, to be taken from river at Upper Midway Dam	1st	60	1.
	17th		.5
Jack Bates	1st	15	.214
	3rd	15	.214
	5th	25	.357
	11th		.132
	17th		.458
Isaac R. Baum and as successor to W. H. Walker, as provided in Section 32 of the stipulation	1st	122	1.743
	11th		.29
	17th		1.017
John E. Berg	1st	25	.357
	11th		.06
	16th	25	.417
	17th		.416
Mary Davis	1st	50	.714
	11th		.119
	17th		.417
Edwin Hatch and Vermont Hatch	1st	55	.786
	6th	20	.286
	11th		.178
	16th	175	2.917
	17th		2.083

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40. That pursuant to the terms of a stipulation entered into and the evidence introduced, the Spring Creek Irrigation Company is entitled to a first class water right of 12 second feet and a 17th class water right of 6 second feet for the irrigation of 720 acres of land, except during the period from July 5th to September 15th in each year said party is entitled to 14.4 second feet measured at the measuring weir as described in paragraph 34, as amended, of the stipulation.

41. That pursuant to the terms of a stipulation entered into and the evidence introduced, the Sage Brush Irrigation Company is entitled to 8.33 second feet as a 12th class water right, and 4.17 second feet as a 17th class water right for the irrigation of 500 acres of land; except during the period from July 5th to September 15th of each year said party is entitled to 10 second feet of water measured at the measuring weir as described in paragraph 34, as amended, of the stipulation.

42. That pursuant to the terms of a stipulation entered into and the evidence introduced, the Charleston Irrigation Company, through its upper canal is entitled to 10.29 second feet as a first class water right, 1.71 second feet as a 11th class water right, and 6.00 second feet as a 17th class water right, for the irrigation of 720 acres of land; during the period from July 5th to September 15th of each year said party is entitled to 12 second feet as provided in Section 34, as amended, of the stipulation.

43. That pursuant to the terms of a stipulation entered into and the evidence introduced, the Midway Irrigation Company, William Bonner, Henry T. Coleman, Frederick Ferrer, John H. Buhler, Phelix Martin, David A. Gibson, John Huber, James B. Hamilton, Jason Kummer, Gottlieb Buhler, David McGimpsey, Orson P. Matthews, Thomas Monks,

Frederick Gammund, Alice Schear, George Schear, successor to Alice Schear, Henry Watkins, Nephi Huber, Joseph Huber, Stephen H. Smith, Heber Merc. Co. a corporation, Cordelia Wilson, George Wilson and James Wilson, heirs of George Wilson, deceased, Mary Schoni, Joseph Schoni, and Maria Mitchell, heirs of Christian Schoni, deceased, Rosina Kummer, Edward Kummer, Elizabeth Hamilton and Salina Forman, as heirs of John Kummer, deceased, Henry T. Coleman as administratrix of the estate of Nathan C. Springer, deceased, and Andreas Burgener are entitled to (a) 5.5 second feet of water as described in the said Fulton decree as coming from the Ontario Drain Tunnel, which is not a part of the natural flow of Provo River, to be diverted and measured at the Midway Upper dam; (b) a first class water right to the waters of Snake Creek, Pine Creek and all springs heretofore used by them, and 2.5 second feet of the waters of Provo River to be diverted at the Midway Upper dam, or such portions thereof which when added to the 5.5 second feet of tunnel water heretofore specified, will not exceed a quantity greater than one second foot for 60 acres of land irrigated, for 3585 acres, exclusive of the Island Ditch acres; and

That whenever the water flowing in said river and the canals of the parties exceeds in volume the aggregate of the quantities specified in paragraphs 1, 2, 3, 4, 5, 6 and 7 of the stipulation referred to, the Midway Irrigation Company and parties above named, whose waters the said company controls and distributes, are entitled of such excess, in addition to the quantity above specified to be diverted at the said upper Midway dam to 12.17 second feet or such portion thereof, which when added to the quantity specified as is necessary to and will not exceed a quantity greater than one second foot for 60 acres of land irrigated as above; the same being a 13th class right; and

The said Midway Irrigation Company and the parties above named

are entitled as a 17th class water right to sufficient which when added to the foregoing will aggregate 89.62 second feet.

44. That Hyrum S. Winterton, William Van Wagoner and John Van Wagoner, Jr., are entitled to the use of all the waters, not exceeding one second foot arising in the bed of Snake Creek by springs and seepage on the George Price farm in Section 3 Township 4 South Range 4 East, Salt Lake Meridian, for the irrigation of 20.5 acres of land owned by Hyrum S. Winterton and 9.7 acres of land owned by William Van Wagoner and John Van Wagoner, Jr., in Sections 2 and 11 Township 4 South Range 4 East, Salt Lake Meridian in Wasatch County.

45. That, under the terms of a stipulation entered into and the evidence introduced Wilford Van Wagoner is entitled to the use of 2 second feet of the waters of Deer Creek to be measured at his land in Sections 9 and 16 Township 4 South Range 4 East, Salt Lake Meridian, Wasatch County, for the irrigation of 120 acres of land.

46. That, under the terms of a stipulation entered into and the evidence introduced, the Charleston Irrigation Company, through its lower canal, is entitled to water for 540 acres of land, amounting to 9 cubic feet per second, delivered at the head of the laterals of said lower canal, except in that lateral leading southward from Charleston to the lands irrigated and owned by J. M. Richie, and H. F. Watson, in Sections 22 and 27 Township 4 South Range 4 East; in which said lateral the quantity of water herein awarded shall be delivered at the dividing line running east and west between said Sections 22 and 27.

47. That pursuant to the terms of a stipulation presented and

filed and the evidence introduced, the following parties are entitled to water for the number of acres set opposite their respective names, and to be taken through the canals or ditches hereafter indicated, at the rate of one second foot of water for each sixty acres of land;

Frederick J. Remund	8	acres
Phillip L. Ford	45	
Through the Phil Smith Ditch		
Frederick Remund	18	
Joseph Abegglen	5	
Anna Elizabeth Abegglen as successor to		
Ulrick Abegglen	4	
Through the Phil Smith Slough		
Joseph Abegglen	10	
Through the Abegglen private ditch.		
J. E. Peterson	8	
Chris Mitchell	40	
Felix Martin	30	
John U. Buhler	15	
Through the Mitchell Ditch		
Jesse R. Nelson	23	
Jesse Nelson, Jr.	20	
George Nelson	20	
Alfred L. Alder, W. W. Alder and James T. Alder	20.5	
Through the Nelson Ditch		
Alanzo A. Hicken	10.98	
Through the River Slough		
Ermina C. Cummings, Lavina E. Murdock, William		
T. Averett, Addison Averett, Joseph D. Averett,		
John H. Averett, Edna Murdock, Leona Bonner,		
and Eustachia Averett, heirs at law of William		
Averett, deceased, successors to the interest		
of said William Averett, deceased	10.2	
Through drainage, seepage and springs		
on lands lying above said land.		
William H. Winterton	17.75	
Through Meaks Bottom Slough		
Hyrum S. Winterton	12.5	
Joseph E. Hanks, admr. of the estate of Mrs,		
E. L. Hanks, deceased	5.85	
William Winterton	3.75	
John B. Howers	5.	
George H. Edwards	27.	
Joseph S. Wright	15.	
E. L. Brown	10.	
Ellen C. Wright	28	
Dermint Huffaker, Admr, of the estate of D.S.		
Huffaker, deceased	15	
W. D. Wright	22.5	
Hyrum Winterton	9.	
Thomas Winterton	13.	
Through the Charleston-Midway Spring		
Creek Ditch.		

William N. Casper Through slough from Provo River	15 acres
William Winterton Through Spring Branch Charleston Lower Canal from what is known as "Upper Springs".	5.5
William Winterton (two fish ponds additional) Through Spring Branch Charleston Lower Canal from what is known as "Second Group of Springs".	17.58
William H. Winterton (two fish ponds additional) Through Spring Branch Charleston Lower Canal from what is known as "Third Group of Springs".	9.
William Winterton and William H. Winterton (four fish ponds supplied by means of private ditches from three groups of springs arising under the Charleston Lower Canal)	
John W. Stubbs, successor to the interests of the estate of John Fowers, deceased	8.5
P. W. Edwards Through the River Ditch	3.5
John W. Stubbs, successor to the interests of the estate of John Fowers, deceased, Through the Brown Slough	2.5
P. W. Edwards Through a private ditch from Springer- Tate Springs	2.7
P. W. Edwards	27.2
George H. Edwards	10.
W. D. Wright Through Bonner Slough and Soldier Hollow	28.
George H. Edwards Through North Drain Ditch	5.
John B. Fowers Through Wootton Springs	2.91
George H. Edwards Through Tate Upper Springs	14.
John W. Stubbs, successor to the interests of the estate of John Fowers, deceased,	28.
P. W. Edwards	56.
Earl Stringfellow, successor to the interests of John O. Edwards Through private ditches from Fowers Springs	10.
Earl Stringfellow, successor to the interests of John O. Edwards	18.13
Joseph S. Wright, successor to the rights of Joseph R. Murdock Through private ditches from W. D. Wright's Springs	23.22

Emma Kummer Bond, admrx, of the estate of John Kummer, deceased Through Midway Lower Town Ditch	6 acres
George H. Carlile (West Side of river) Through a slough having its source in Provo River.	20
George R. Carlile (East side of river) From springs arising near said land.	10
James Casper Through the Hicken Slough	20
J. M. Casper Through Jack Watkins Slough	18
John M. Richie 45 acres through a slough having its source in the Provo River near the north line of said land and 45 acres through a slough having its source in Provo River near the center of said land.	90
Joseph Hatch (Sec. 1, Tp. 4 S. R. 4 E., S. L. M.) Through waste ditch and private ditches having their sources in springs, drain- age and seepage from lands above said land	28
Elisha Webster (Sec. 11, Tp. 4 S. R. 4 E. S. L. M.) through Webster Spring Ditch and slough having its source in Provo River	10
William Daybell George H. Edwards Through a slough leading from Provo River and from spring near said land on what is known as the "Island" and near the Daybell springs.	28 17

And the following named parties are entitled to water for the number of acres set opposite their respective names through the Island Ditch.

Midway Irrigation Company	186	Acres
Alfred L. Alder	4	
Jesse R. Nelson	32	
William L. Van Wagoner and John Van Wagoner, Jr	10	
William Winterton	8.9	
John Murri	15	

Hyrum S. Winterton, T. Fred Winterton and Moroni Winterton	35	Acres
E. R. Bronson	15	
Joseph S. Wright	10	
William Bonner	10	
James Pyper	5	
James B. Hamilton heirs	33	
Henry Zenger	5	

The duty of water upon such lands shall during the high or flood water period be forty acres for each second foot; and during the receding waters the duty shall be upon a graduating scale decreasing to sixty acres per second foot.

48. That the following named parties are entitled to 3.5 second feet of water flowing from what is known as the Daybell Springs, arising on lands formerly owned by George Daybell and others, situated in Section 22 Township 4 South Range 4 East, for the irrigation of ~~a~~ ^{the} number of acres of lands set opposite their respective names, from the first day of April to the first day of November of such year.

George H. Edwards, successor to the interests of George Daybell, George W. Daybell, Fred Daybell and Robert Daybell, doing business as George Daybell & Sons	28	Acres
George H. Edwards	60	
John M. Richie	60	
Henry F. Watson	60	
George H. Edwards (Upper Ditch)	23	
John M. Richie (Upper Ditch)	30	
Henry F. Watson (Upper Ditch)	60	
George H. Edwards (Lower Ditch)	65	
John M. Richie (Lower Ditch)	30	

49. That Thomas Lowery and Samuel Lowery, as successors to B. A. Norris, are entitled as a first class water right to .214 second feet to be taken from the Provo River; and in addition thereto, to all of the waters flowing from what is known as the Norris Spring, arising upon and adjacent to their land, situated in Section 6 Township 35 South Range 5 East; not, however, to exceed in the aggregate .85 second feet, for the irrigation of 59.5 acres of land.

50. That the defendant J. W. Allen is the owner and entitled to the use of sufficient water from the McAfee Springs arising upon the land of said J. W. Allen, during the entire year to supply his requirements for domestic, culinary and stock watering purposes at his home, yard and corral, situate about thirty yards easterly from said spring; and

That the said J. W. Allen is the owner and entitled during the irrigation season to the use of one-sixth of the balance of the flow of said spring for the irrigation of five acres of land; and

The defendant Wilford D. Wright is the owner and entitled during the irrigation season to the use for the purpose of irrigating approximately twenty-five acres of land in Section 33 Township 4 South Range 4 East, Wasatch County, of five-sixths of the waters of said spring remaining after the water taken and used by J. W. Allen for domestic, culinary and stockwatering purposes as above set forth

The water used for irrigation as above stated shall be appurtenant to the thirty acres of land above referred to, and such water for irrigation shall be used as follows:

Wilford D. Wright shall be entitled to the use of all of the said water for five-sixths of the time.

J. W. Allen shall be entitled to the use of all of the said water for one-sixth of the time.

51. That the defendant Pioneer Irrigation Company is the owner and entitled to the use of 7.6 cubic feet of water per second from Provo River for the irrigation of 455 acres of land belonging to its stockholders.

T. W. Allen is the owner and entitled to the use of .87 second feet for the irrigation of 52 acres of land, such water to be taken through the Murdock-Allen Ditch.

John Murdock is the owner and entitled to the use of .2 second feet of water for the irrigation of 12 acres of land, such water to be taken through the Murdock-Allen Ditch.

Samuel McAfee is the owner and entitled to the use of .65 second feet of water for the irrigation of 39 acres of land, such water to be taken through the Allen-McAfee Ditches.

Arthur P. Allen is the owner and entitled to the use of .33 second feet of water for the irrigation of 20 acres of land, such water to be taken through the Allen-McAfee Ditches.

T. W. Allen is the owner and entitled to the use of .77 second feet of water for the irrigation of 46 acres of land, such water to be taken through the Allen-McAfee Ditches.

J. W. Allen is the owner and entitled to the use of 1.25 second feet of water for the irrigation of 75 acres of land, such water to be taken through the Allen-McAfee Ditches.

That the waters to which the above named defendants, including the stockholders of the Pioneer Irrigation Company, are entitled, shall be measured and distributed to each of them at their respective lands, and all of said parties shall be required to keep the ditches through which the same is conveyed in good condition and repair.

52. From the evidence it appears that Emma Wherritt, Joseph Hatch, Betsy Olsen and Anton Olsen have water rights for their lots in Heber City through the Wasatch Canal, and that the same were included in the award made to the Wasatch Canal. They therefore are not entitled to any independent award.

53. The evidence taken establishes the right of the Midway Water Works Company to the waters flowing from what are known as Gerber Springs, but an examination of the pleadings in this case fails to disclose any pleading on behalf of said Midway Water Works

Company. A pleading on their behalf may be filed to conform to the evidence, and upon the filing of such pleading this company will be awarded the flow of the said Gerber Spring.

54. That Joseph R. Murdock is the owner and entitled to the use of 50 second feet of the waters of Provo River for general power purposes during the whole of every year, to be diverted from said river at the intake of what is known as the Charleston Irrigation Company's lower canal as now located, and conveyed by means of said canal and a private ditch leading therefrom to the power site and mill owned by said defendant Joseph R. Murdock, situated on or near the section line between Sections 11 and 14, Township 4 South Range 4 East, Salt Lake Meridian; such water after being used for the production of power shall be returned to said Provo River at or near said power site without any unnecessary loss or any deterioration in quality.

55. That Ruth Hatch and Abram Hatch, executors of the last will of Abram Hatch, deceased, are the owners and entitled to the use of 18.04 second feet of the waters of Provo River for power purposes to be diverted through the canal of the Wasatch Irrigation Company, and to be used for the purpose of producing power to run the flour mill, situated in the northwest quarter of Section 4 Township 4 South Range 5 East, Salt Lake Meridian; such water after flowing through the water wheel at said mill to be returned into the said Wasatch Irrigation Company's canal without unnecessary fluctuation and without any deterioration in quality.

56. That the defendants Heber City, Midway Town Corporation and Town of Charleston, doing business under the firm name of Heber Light & Power Plant, as assignee and successor in interest of Abram Hatch, are entitled to the use of 150 cubic feet of water

per second from the Provo River, diverted at a point which bears north 55 degrees west 264 feet distant from the southeast corner of the southwest quarter of section 31 Township 2 South Range 5 East, Salt Lake Base and Meridian, for power purposes, such power to be used for electric lighting and propelling machinery; and after such water has been so diverted and used it shall be returned to the natural channel of Provo River at a point which lies 100 feet north and 400 feet east from the southwest corner of Section 7 Township 3 South Range 5 East, Salt Lake Base and Meridian; such water to be used and returned without unreasonable loss of water and without deterioration in the quality, of the same.

✓ 57. That Nels J. Johnson is entitled to take from the Provo River a sufficient quantity of water, which added to the flow of the springs known as the Burcumshaw Springs, will make 15 cubic feet of water per second, to be used for power purposes at that certain flour mill known as the Peoples Roller Mill, situated on lands owned by the said Nels J. Johnson in Section 35 Township 3 South Range 4 East, Salt Lake Meridian; such water to be returned to the Provo River at or above the intake of what is known as the Island Ditch, without substantial loss and without deterioration in quality.

58. That the defendant Utah Power & Light Company is the owner and entitled to the use of 6.04 second feet of the flow of water from the Ontario Drain Tunnel; and

The said defendant Utah Power & Light Company under and by virtue of its application to the State Engineer of the State of Utah, to appropriate water for the generation of power, number 3097, and under the certificate of the State Engineer issued pursuant to said application, number 351, bearing date April 1, 1910, is entitled to 25 cubic feet of water per second to be diverted from Snake Creek and Lavina Creek, and to be used by said Utah Power & Light Company

for the generation of electric current; such water, after it has been thus diverted and used, to be returned to the natural channel of Snake Creek at a point which bears south 41 degrees 6 minutes east, 2988.9 feet distant from the northwest corner of Section 21 Township 3 South Range 4 East, Salt Lake Base and Meridian; and

That the said Utah Power & Light Company under and by virtue of its application to the State Engineer of the State of Utah to appropriate water for the generation of power, number 3621, and under the certificate of the State Engineer issued pursuant to said application, number 439, bearing date the 11th day of November, 1916, is entitled to the use of 180 cubic feet of water per second, the same to be diverted from the Provo River and used for power for the generation of electric current; such water after having been so used to be returned to the natural channel of said river at a point which bears south 12 degrees west 2220 feet distant from the northeast quarter corner of Section 32 Township 2 South Range 5 East, Salt Lake Meridian.

That all such waters so awarded to and used by the said Utah Power & Light Company for the generation of power must be so used as to not substantially interfere with the natural flow of the water of said river, and thus cause substantial fluctuations thereof, and said defendant must utilize and use such water without substantial diminution in quantity or any deterioration in quality.

59. That the defendant, the Washington Irrigation Company, having duly made application to the State Engineer of the State of Utah by application number 2812, under date of November 12, 1909, to appropriate 500 acre feet of the surplus and unappropriated water of Boulder Creek, a tributary of the Provo River in Summit County, Utah, is entitled to complete its said appropriation and make final proof thereof to the said State Engineer, and upon the completion of said appropriation and the making of such final proof, will be

entitled to store said waters from the first day of November in each year until the first day of July of the following year, in a reservoir built by said company, and to release and comingle the same with the waters of Provo River, and to recapture and divert the said waters at the point of diversion of the said Washington Irrigation Company's Canal; and pending the completion of said appropriation and the making of such final proof, the said Washington Irrigation Company is entitled to store, release, recapture and divert said waters as above set forth.

60. That portion of the Wasatch Division from and including the Stewart Ranch down to the Hailstone Ranch is designated as the "First District" of said division; and that portion from the Hailstone Ranch down to and including the diversion at the upper Midway dam is designated the "Second District" of said division.

61. When the quantity of water hereinbefore denominated as the 17th class is insufficient to supply the two districts above named, the full amount of said 17th class, and prior to June 25th of any year, the First District shall have the right to its full amount of said class against the Second District.

62. Whenever the waters flowing in the Provo River, its tributaries, and the canals of the parties heretofore stated, exceed in volume the aggregate of the quantities heretofore specified, and all of the parties in this division are being supplied with amounts of water not less than the quantities found to be necessary for their beneficial uses, the commissioner may extend the time limit specified in the preceding paragraph.

63. That whenever a party to whom water has been awarded in the Wasatch Division, by mishap or accident to canal or ditch, or

by conditions that cannot be controlled, is deprived of his quantity of water and is in danger of sustaining material loss, and for immediate use for a period of one rotation needs a quantity of water greater than his proportion of the volume of flow, and such additional quantity can be given to such party without material injury to the other parties to this action, then it shall be the duty of the water commissioner to supply said additional quantity from the waters in excess of the first to sixteenth classes, inclusive, before specified.

64. That the plaintiff and the defendants in the above entitled cause, having reservoirs in Wasatch and Summit Counties, that appropriate and store water under applications approved by the State Engineer of the State of Utah, have the right to store quantities of water in the high or flood water season that are in excess of the quantities herein awarded; said reservoirs are also entitled to store all the waters that can be stored in them between September 15th and April 15th of each and every year.

65. That the parties hereto and the several corporations to the above entitled cause in Wasatch and Summit Counties that are above the upper Midway dam, may at any time exchange water one with another when such exchange does not conflict with or impair the rights of the other parties to this action.

66. That for the purpose of equitably dividing and distributing the waters of the Provo River, so that the parties interested therein as herein provided may receive the quantity to which they are entitled, none of the parties hereto diverting and using waters in Wasatch and Summit Counties shall have the right to extend the use of the waters awarded to them upon other lands than those now irrigated, so as to cause the seepage or drainage therefrom to be diverted away from the channel of said river, or from the lands heretofore irrigated thereby.

PROVISIONS APPLICABLE TO BOTH PROVO AND WASATCH DIVISIONS.

67. It is stipulated by the parties to this action that the plaintiff and any of the defendants having the right to store in their several reservoirs the waters of Provo River shall have the right to release the waters so stored by them, and commingle the same with the waters of Provo River, and recapture the same at their several points of diversion, any loss in transmission to be determined by the decrees to be entered herein.

The evidence upon the subject of the loss in transmission of stored waters was very unsatisfactory, and indicated that experiments and observations had not extended over a sufficient period of time to enable the court to determine the amount of loss in the transmission of such waters.

The final determination and fixing of the quantity of water that should be deducted for loss in transmission ought to be postponed until such time as observations and measurements will enable the court to fix the same with reasonable certainty. The court will therefore retain jurisdiction of this case for that purpose, and at some future time, upon the application of any party interested therein, will hear such evidence as may be available, and determine the amount of loss in transmission of such stored waters,

Pending such hearing and determination there may be deducted therefrom four per cent of such waters.

68. That whenever the quantity of water flowing in said river and in the canals of the parties entitled thereto is insufficient to supply the quantity of water herein awarded to a class, then the persons and parties in said class entitled thereto as hereinbefore stated, shall have the same distributed to them pro rata, according to the quantities to which they are entitled as hereinbefore stated.

69. That except as to stored water the ~~classes and~~ parties herein named are entitled to the right to use the waters of said Provo River in the ~~order~~ ^{classes} in which they are named in each of said divisions, and no class or party in said class shall be entitled to the use of any such water so long as the water flowing in said river and in said canals is insufficient to supply the preceding classes ~~and parties therein~~ with the quantities of water to which they are entitled as hereinbefore provided.

70. That for the purpose of equitably dividing and distributing the waters of said river so that the parties hereto may receive for use the quantity to which they are entitled, all of the waters of said river and canals shall be measured in such a way so as to include, as far as practicable, all the seepage water and inflow waters, so that the same may be distributed among the parties entitled thereto as a part and portion of the waters of said river.

71. That except as to the point of measurement of the water awarded to Provo City for municipal purposes, and the water awarded to the Midway Irrigation Company from the Ontario Drain Tunnel and from the waters of Snake Creek, Pine Creek, certain springs and the Provo River, where the flow of water in a canal is diminished by conditions that cannot reasonably be avoided, there shall be added to the amount sufficient water to make up such losses. In case the flow of a canal is increased such increase shall be counted as a part of such respective quantity, so as to give to the parties at the head of the distributing laterals the quantities hereinbefore specified.

The quantity of loss or inflow provided for in this paragraph shall be determined by the water commissioner with the [✓]system in good working order and repair, and in such condition as will reduce the losses to the lowest quantity practicable. Only the quantity of inflow that is available to the lands in the canal system as

determined by the water commissioner shall be counted as a part of the quantity of inflow as herein specified. The allowable losses shall include only the actual, reasonable, unavoidable transmission losses, and shall extend only over a section of the canal that carries more than one irrigating stream continuously.

72. All persons and corporations, parties to this action, shall respectively construct or cause to be constructed at their own expense, and under the direction and supervision of the water commissioner appointed by the court, proper appliances for the diversion and accurate measurement of the waters awarded to them respectively; and thereafter shall maintain and keep in place all dams, head gates, flumes, canals and other means by which water is diverted, conveyed or used, in a good state of repair, together with appliances for the diversion and measurement of said water; to the end that no unnecessary loss from seepage or leakage shall occur, and that the water shall be economically applied to the use for which it is awarded.

73. That all the rights awarded herein, and to be fixed, declared and decreed by the findings and decree to be entered herein, are founded upon appropriation of water necessary for some beneficial use, and all such rights are subject in their exercise to the conditions that they are required and necessary for some beneficial use; and all such rights are expressly subject to the limitations and conditions that all of such water is used for some beneficial purpose, and is used economically, without waste, and with due care, and is reasonably necessary for such use.

74. Each and all of the parties to this action, and their successors and assigns, and they, and each of their agents, servants and employees, and all persons acting for them, or in their interests shall be forever enjoined and restrained from in any manner, or at

all, interfering one with the other in the full, free, and unrestricted use of the quantity of the waters of said river awarded to them, and from in any manner, or at all, interfering with the distribution of such water by the commissioner to be appointed by the court.

75. For the purpose of the proper distribution of the waters awarded herein, and for the accurate and equitable division and distribution of the same among the parties entitled thereto, and for the purpose of carrying into effect the decree to be entered herein in all its details, this court will hereafter appoint a commissioner with full power and authority to measure, control, regulate and distribute the said waters among the parties to this action as herein awarded; and from time to time to construct or require to be constructed such dams, weirs and appliances as science and experience shall show are necessary to the equitable and economical distribution thereof.

76. The saidwater commissioner shall use due diligence and discretion to give the parties hereto the maintenance and development of the Provo River, and shall use his discretionary authority to maintain and develop such river, and to advance and maintain the crop production that is dependent upon said river.

77. The said commissioner shall be appointed by the court for the term of _____ years, and until his successor shall have been appointed and qualified. No person shall be appointed as commissioner who has not such technical and theoretical knowledge and practical experience and skill, as shall fit him for the position.

78. Said commissioner shall receive a salary of \$ _____ per annum, together with reasonable allowance for office rent, stationery, postage, telephone service, and actual and necessary traveling ⁷⁸

expenses payable in quarterly instalments by the clerk of this court from money deposited by the parties for that purpose.

79. That assistants to the commissioner may be employed by the commissioner upon the approval of the court and shall receive compensation for the time employed in the same manner as provided for the commissioner; and care takers at the several reservoirs may be employed and shall be under the direction of the commissioner and shall make reports from time to time to the commissioner as directed by him. Such care takers shall be paid in the same manner as provided for the payment of compensation of the other assistants to the commissioner, from money deposited by the owners of the reservoirs for that purpose.

80. Special or additional services rendered by the commissioner or his assistants shall be paid for by the party occasioning such special or additional services.

81. The basis of assessment to the respective parties for the expenses of administration shall be a fixed ratio annually, and the respective amounts due from each party are payable quarterly, and within ten days after receipt of notice of the amount thereof.

Upon failure to pay the same within ten days after notice thereof, said commissioner is authorized to with hold further distribution of waters to the users so in default until the same shall be paid.

82. The fixed ratio of assessment to the respective parties shall be the product of the area of land found to be entitled to a water right and the length of season of use, divided by the duty of water upon the 15th day of July.

83. The length of season of the first class rights in the Wasatch Division shall be 130 days; of the second to seventeenth class, 90 days; and of the rights in the Provo Division, 165 days.

84. The assessments to the power users shall be as follows:

Utah Power & Light Company \$15.00 per month.

Heber Light & Power Company \$5.00 per month.

Provo City for its mill rights along the Factory Race and the Provo Pressed Brick Company, the quantity of water decreed in Class A times 165 shall be used as the ratio with the irrigation rights; 1/5 of said amount to be paid by the Provo Pressed Brick Company

The ration for the Provo Pressed Brick Company for the number of days during the irrigation season it is receiving water in excess of the quantity awarded to it in Class A, shall be the quantity of water received times such number of days.

Joseph R. Murdock power right \$1.50 per month.

Ruth Hatch and Abram Hatch power right \$0.75 per month

Nels J. Johnson power right \$0.55 per month.

84. The commissioner is hereby directed to distribute the waters herein awarded in the most economical way to prevent waste. And if it shall appear that by combining the flow of a number of parties, and giving each of them an equivalent quantity with a proper sized irrigating stream for a period of time at reasonable intervals, commonly called the rotation system, thereby effecting a saving of water and at the same time meeting the full necessities of the users, said commissioner is directed to so distribute said water.

Any party may at any time petition this court to modify or change the method of distribution of the quantity of water herein awarded upon written application to the court, and said application may

83. The length of season of the first class rights in the Wasatch Division shall be 130 days; of the second to seventeenth class, 90 days; and of the rights in the Provo Division, 165 days.

84. The assessments to the power users shall be as follows:

Utah Power & Light Company \$15.00 per month.

Heber Light & Power Company \$5.00 per month.

Provo City for its mill rights along the Factory Race and the Provo Pressed Brick Company, the quantity of water decreed in Class A times 165 shall be used as the ratio with the irrigation rights; 1/5 of said amount to be paid by the Provo Pressed Brick Company and 4/5 by Provo City.

Provo City for its municipal water supply the quantity of water decreed times 165 shall be used as the ratio with the irrigation rights.

L. L. Donnan power right \$0.75 per month.

Joseph R. Murdock power right \$1.50 per month.

Ruth Hatch and Abram Hatch power right \$0.75 per month

Nels J. Johnson power right \$0.55 per month.

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Any party may at any time petition this court to modify or change the method of distribution of the quantity of water herein awarded upon written application to the court, and said application may

be heard upon affidavits or oral testimony as the parties may elect.

85. Any party to this action or his successor in interest, who is dissatisfied with any of the regulations, requirements, discretionary acts of control in the distribution, or orders of the commissioner, may apply to the court for a review thereof and for relief therefrom.

86. This court will retain original jurisdiction of this cause and the subject matter thereof and all the parties thereto, their successors and assigns, for the purpose of all necessary supplemental orders and decrees which may be required to make effectual the rights of the parties as herein awarded.

*Dated at Provo Utah
November 26th 1917*

*Clumond
Judge pro. tem.*