

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

PROVO RESERVOIR COMPANY, :
a corporation, : No. 2888
 :
Plaintiff, :
 :
-vs- : AFFIDAVIT AND
 : PETITION FOR ORDER TO
 : SHOW CAUSE.
PROVO CITY, et al, WASATCH :
IRRIGATION COMPANY, a corporation, :
and THOMAS MOULTON, JOHN F. OHLWILER, :
WADKIN BRIRELY, and T. F. WENTZ, :
Commissioner, :
Defendants. :

STATE OF UTAH)
 : SS.
COUNTY OF UTAH)

R. J. MURDOCK, being first duly sworn on his oath says:
That he is an officer of Provo Reservoir Company, a corporation,
the above named plaintiff, to-wit, the Secretary thereof; that
he is familiar with the facts hereinafter set forth and makes
this affidavit for and in behalf of said plaintiff, as follows:

1. That on the 2nd day of May, 1921, the plaintiff in
Cause No. 2888 Civil, in the above entitled action filed and pend-
ing in the Fourth District Court of the State of Utah, and for
Utah County, obtained a decree of said Court in said cause of
action against the above named defendants, wherein it was ordered,
adjudged and decreed among other things and matters, as follows:-

"That under this decree the Provo River System is sub-divided
into divisions, namely: the Provo Division and the Wasatch division.
The Provo Division includes all that area below and including what
is known as and commonly called the Wright Ranch, which is near
the head of Provo Canyon in Wasatch County, State of Utah. The
Wasatch division includes all that area above what is known as
and commonly called the Wright Ranch", and "the rights to the use
of water into the Provo division are herein subdivided according
to dates;

and as stipulated by the parties herein, and such subdivisions are designated Classes A, B, C, D, E, F, G, H, I, J; and that in Paragraph 39 of said decree the plaintiff and one of the defendants above named, Sego Irrigation Company, had awarded and decreed to them as a Class "C" water right, certain rights in and to the waters tributary to the Weber River, situated in Summit County, Utah, all of which is more particularly set forth in said decree as follows, to-wit:-

CLASS "C" RIGHTS.

-39-

Provo Reservoir Company:
Sego Irrigation Company:

The water of the Provo Reservoir Company and the Se-go Irrigation Company, under application to the State Engineer of the State of Utah, number 944, bearing date of June 12, 1906, are herein denominated Class "C", and the quantities of water to which the said parties are awarded is as follows:

(a) Provo Reservoir Company:

The plaintiff the Provo Reservoir Company as a successor in interest of the Timpanogos Irrigation Company, under application to the State Engineer of the State of Utah, number 944, bearing date of June 12, 1906, for ⁷⁵⁵65 acre feet of water from Shingle Creek, and Beaver Creek a tributary of the Weber River hereinbefore referred to is entitled to 26/28 of said water and water right, and is entitled to complete said appropriation and make final proof thereof;

And, pending the time designated by the said State Engineer for the completion of said appropriation as the same may have been or may hereafter be extended, as long as said application is in good standing in said State Engineer's office, the said plaintiff is entitled to the said water or such portion thereof as may be available from year to year and time to time under said application;

And, upon and after the completion of said appropriation the said plaintiff is entitled to said water or such portion thereof as may be available from year to year and time to time under the terms of the certificate of completion of appropriation issued by the said State Engineer:

Provided, however, that the priority and quantity of this appropriation is conditioned upon compliance with the terms of the application upon which said appropriation is based, to-wit: Application No. 944 filed in the office of the State Engineer of Utah, and the same is subject to the provisions of the laws of the state of Utah governing the issuance of certificates of completion

of appropriation by said State Engineer.

(b) Segoe Irrigation Company:

The defendant the Segoe Irrigation 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 750²acre feet of water from Shingle Creek, and Beaver Creek a tributary of the Weber River, hereinbefore referred to, is entitled to 2/28 of said water and water right, and is entitled to complete said appropriation and make final proof thereof;

And, pending the time designated by the said State Engineer for the completion of said appropriation as the same may have been or may hereafter be extended, as long as said application is in good standing in said State Engineer's office, the said defendant is entitled to the said water or such portion thereof as may be available from year to year and time to time under said application;

And, upon and after the completion of said appropriation, the said defendant is entitled to said water or such portion thereof as may be available from year to year and time to time under the terms of the certificate of completion of appropriation issued by the said State Engineer;

Provided, however, that the priority and quantity of this appropriation is conditioned upon compliance with the terms of the application upon which said appropriation is based, to-wit: Application No. 944 filed in the office of the State Engineer of Utah, and the same is subject to the provisions of the laws of the State of Utah governing the issuance of certificates of completion of appropriation by said State Engineer.

2. That after the entry of said decree, May 2, 1921, and specifically on or about the 13th day of February, 19___, the said Segoe Irrigation Company above named, sold, assigned, transferred and conveyed to the plaintiff all its right, title and interest in and to the said Class "C" water rights set forth in said decree, and said plaintiff is now the successor in interest and owner of said rights under the application mentioned in said decree, and as decreed by said Court to the said Segoe Irrigation Company and to said plaintiff.

3. That on or about the 1st day of March, 1933, the plaintiff filed in the State Engineer's office of the State of Utah,

an application for change of point of diversion and place of use of the waters applied for in application No. 944, from said Shingle Creek; that point of diversion is at point on said Shingle Creek and is described as follows, to-wit:

South 85° 41' East 1888 ft. from the Northwest corner of Section 35, Township 2 South, Range 7 East, Salt Lake Base and Meridian, in Summit County, Utah

that thereafter, to-wit, on the 21 day of June, 1933, said application known as A-1222 was granted and approved by said State Engineer.

4. That on or about March 15, 1933, the said plaintiff filed an application with the State Engineer of the State of Utah, to segregate 5,000 acre feet from said application No. 944, said segregated application being number 944B; that said application to segregate was approved by the State Engineer on or about the _____ day of _____, 19____; that said plaintiff has proceeded to construct the necessary diversion works and canals called for in said application No. 944, and in the subsequent applications for change of point of diversion and place of use and said application to segregate; that plaintiff has beneficially used and appropriated the waters described in said segregated application No. 944, and in accordance with the terms of said application, and that said application is now in good standing in the State Engineer's office of the state of Utah.

5. That said Class "C" water rights which plaintiff is now the owner of as heretofore alleged, are waters from the Weber River water shed; that by the terms of the decree in Cause No. 2888 Civil, heretofore referred to, plaintiff is entitled to divert said waters from said Shingle Creek into the Provo River, and combine said waters with the waters of Provo River and by

pass said waters along the said river to the point of its diversion of its main canal on said river in Provo Canyon, known as Heiselts Dam, and there divert said waters through said canal to the lands of water users under contract with plaintiff, in Utah and Salt Lake Counties.

6. That Paragraph 125 of said decree provides as follows:

"It is further ordered, adjudged and decreed, that each and all of the parties to this action, and their successors in interest, whether heirs, executors, administrators, successors or assigns, and they, and each of their agents, servants, and employees, and all persons acting for them, or in their interest, are 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 waters, by the commissioner.

7. That said Wasatch Irrigation Company is a corporation organized under the laws of the State of Utah as a mutual Irrigation company, operating in Wasatch County, State of Utah, and that the other defendants named in the title hereof are officers, agents, servants, and employees of the said Wasatch Irrigation Company. That said Company was one of the principal defendants in Cause No. 2888 Civil, in which action the said orders and decrees were made, the plaintiff herein being the plaintiff in said action. That said decree has never been revised or modified, and is now in full force and effect.

8. That by said decree all of the waters of Provo River and its tributaries, together with certain of the waters of Chingle Creek and Beaver Creek situated in Summit County, were awarded to the plaintiff by said decree or were by said decree adjudicated or awarded to the said defendant having the right to the use thereof.

9. That T. F. Wentz is the duly constituted and acting

commissioner appointed by the above named court to superintend and direct and control the diversion of the waters of said Provo River as they are awarded to the various parties defendant in said cause of action.

10. That on or about the 12th day of April, 1934, and for several days prior thereto, there was, and at the present time there is, being diverted by said plaintiff from said Shingle Creek a tributary of said Weber River, more than 15 second feet of water into the said Provo River and there comingled with the waters of said river for the purpose of being diverted by said plaintiff at Heiselts Dam on said Provo River for its use and benefit as provided for in said decree and in said applications.

11. That on or about the said 12th day of April, 1934, and at divers times since said date, the said above named defendant, Wasatch Irrigation Company and its officers, agents, servants, and employees, in willful disregard of the said decree and injunction and in willful contempt of the same and wrongfully and in willful disregard of the rights of said plaintiff herein under said decree, have by means of their diverting works situated on said River in Wasatch County, diverted and conveyed the said waters adjudged to and decreed by said Court to be the waters of said plaintiff, to and into the diverting works and canal of said defendant corporation, and to the stockholders of the same to be used by them upon their said lands in Wasatch County. That by so doing, said defendants have deprived the plaintiff of the use of said waters as awarded to the plaintiff by said decree and to the use thereof to which the plaintiff is entitled by virtue of said decree.

12. That said water commissioner, T. F. Wentz, has failed to have diverted to the said plaintiff the said waters, notwithstanding the plaintiff has requested that as the officer of said Court in charge of the distribution of said waters that he cause that the same be by passed by the said defendant's diversion works in said river and allowed to be carried along said river to plaintiff's canal and diversion works in Provo Canyon known as Heiselts dam; and that unless ordered by said Court the said T. F. Wentz will continue to refuse and neglect to have said waters diverted and distributed to said plaintiff as provided for in said decree and as herein alleged.

13. That the plaintiff has at divers times since the beginning of the wrongful acts by the defendants aforesaid, protested against their diversion of the said waters to and into the canal of said defendants, but not withstanding the protests of the said plaintiff said defendants have willfully continued in the wrongful acts aforesaid; that the plaintiff has been obliged to employ counsel to prosecute this action, and plaintiff alleges that unless the defendants are punished for their wrongful acts that they will continue to violate the rights of the plaintiff and hold this Court and the said decree in contempt.

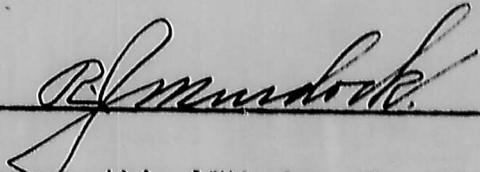
14. That the said water users under the irrigation system of the plaintiff are without water to irrigate their lands and crops and that by reason of the extreme drought which now prevails, and the shortage of water for irrigation purposes an acute emergency exists with said water users, and with said plaintiff, and that their crops will be utterly wasted and destroyed for lack of water unless they are given immediate and summary relief in the protection of their rights; that, but for the acts of the said defendants heretofore alleged, the said plaintiff, by reason of

its rights as set forth in said decree, would now have water to distribute to said water users to save their crops from being destroyed. That by reason of the acts of the said defendants as heretofore set forth, the plaintiff has been damaged in the sum of \$10,000.00.

15. That by reason of the provisions of water Applications Nos. 944 and 944-B, and the provisions of said decree, said plaintiff is entitled to divert all of the waters of the said Shingle Creek into said Provo River, and to be used by said plaintiff as heretofore alleged up to and including May 1st from and after October 1st of each year; that from and after May 1st to October 1st of each year it is entitled to divert and use for its benefit as alleged herein all of the water of said creek except approximately 52 second feet thereof; that by reason of the urgent need for irrigation water by the water users under plaintiff's irrigation system at the present time, it is necessary that the time be shortened in which said defendants be allowed to show cause why they should not be punished for contempt in violating the provisions of said decree, and also that the time be shortened for said water commissioner to appear before said Court for the purpose of showing cause to said Court why he should not immediately cause to be diverted and distributed to said plaintiff, the said water belonging to said plaintiff as provided for in the said decree, and as heretofore set forth.

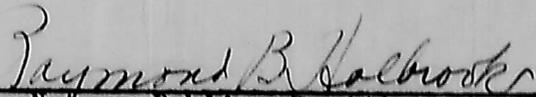
16. That said plaintiff is without an adequate remedy at law in the premises, that the damages it has suffered, and that it will suffer, by reason of the continued wrongful acts of defendants are practically impossible of determination.

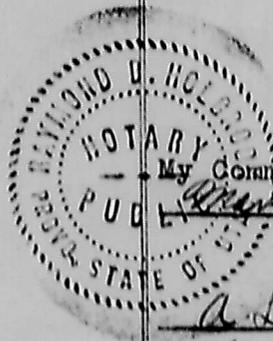
WHEREFORE, plaintiff prays that said defendants and each of them be ordered to appear before this Court at such time as the Court may appoint; that said time be shortened by reason of the emergency as set forth herein; that said defendants be required to show why they violate the said decree and to show cause why they should not be punished for contempt of this court; and at the conclusion of said hearing that they may be dealt with in such manner as to the Court may seem just and proper; and that said water Commissioner, T. F. Wentz, be required to appear with said defendants, at the same time and place, to show cause if any he has, why he should not immediately divert and distribute to said plaintiff the waters herein claimed by said plaintiff under and by virtue of said decree; and that plaintiff be awarded damages against said defendants in the sum of \$10,000.00, and for its costs in its behalf expended.



Subscribed and sworn to before me this 17th day of April,

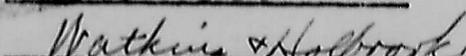
A. D. 1934.


Notary Public, Residing at
Provo, Utah,



My Commission Expires

May 11, 1936



Attorneys For Plaintiff.