

B.

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

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PROVO RESERVOIR COMPANY, :
a corporation, :

Plaintiff, :

-vs- :

PROVO CITY, et al, T. F. :
WENTZ , :

Defendants. :

No. 2888 Civil.

A N S W E R.

oOo

Come now the defendants, ~~T. F. Wentz, Commissioner,~~
The Provo Bench Canal & Irrigation Company, The Upper East
Union Irrigation Company, The Timpanogos Canal Company, The
West Union Canal Company, The East River Bottom Water Company,
The Little Dry Creek Irrigation Company, and The Lake Bottom
Canal Company, and answering the amended petition of the
plaintiff on file herein, admits, denies and alleges as follows:

I.

These defendants admit the allegations contained
in paragraphs one, two, three and four of said petition.

II.

Answer^{ing} paragraph five of said petition, these
defendants admit that the rights to the storage water of the
plaintiff, referred to in said petition, is based upon water
applications in the State Engineer's office of the State of
Utah, as described and numbered in paragraphs 38 and 42 of
the decree in this cause, and that said applications provide
for the impounding and storage of flood waters in Provo river
at the head thereof, and the releasing of said waters during
the irrigation season of each year, into the said Provo river
and the comingling of said waters with the natural flow thereof;
and that plaintiff's diverting works for said water are located

at a point upon said river known as Heiselt's dam, near the mouth of Provo Canyon; these defendants further admit that plaintiff has correctly copied the paragraphs from the decree in said cause referred to in said cause. As to each and every other allegation contained in said paragraph five, these defendants deny the same.

III.

Answering paragraph six of said amended petition, these defendants admit that the final decree in this cause was made and entered into on the second day of May, A. D. 1921, and that the same has not been appealed from, or modified, and that said decree is now in full force and effect, and that no application has been made to the court by any party to this action, under or pursuant to the provisions of paragraph 117 of said decree, for a hearing to determine the amount of loss in transmission of the storage waters and other waters mentioned in said paragraph, and that the Court has not of its own motion held such a hearing. These defendants deny each and every other allegation contained in said paragraph six.

IV.

Answering paragraph seven of said amended petition, these defendants admit that by reason of the provisions of paragraphs 117 and 118 of the decree in said cause, it was at all times herein mentioned and is now the duty of the Water Commissioner to permit the plaintiff's storage waters to be released from petitioner's reservoir at the head of Provo river, during the irrigation season of each and every year, into the channel of Provo river, and there be comingled with the natural flow of said river and be conducted along the channel thereof, to the power dam of the Utah Power and Light Company. These defendants deny each and every other allegation contained in said paragraph seven.

V.

Answering paragraph eight of said amended petition, these defendants allege that they have not sufficient knowledge or information upon which to base a belief with respect to the allegations contained therein, and therefore and upon that ground these defendants deny the same.

VI.

Answering paragraph nine of said amended petition, these defendants deny each and every allegation contained therein.

VII.

Answering paragraph ten of said amended petition, these defendants deny each and every allegation contained therein.

VIII.

Answering paragraph eleven of said amended petition, these defendants deny each and every allegation therein contained.

IX.

Answering paragraph twelve of said amended petition, these defendants deny each and every allegation therein contained.

X.

Answering paragraph thirteen of said amended petition, these defendants deny each and every allegation therein contained.

XI.

Answering paragraph fourteen of said amended petition, these defendants deny each and every allegation contained therein.

XII.

These defendants deny each and every allegation

contained in said amended petition not herein specifically admitted or denied.

FURTHER ANSWERING said amended petition, these defendants respectfully represent and show to the court as follows:

1. That these defendants and each of them are the owners of what are designated in said decree as Class "A" right to the waters of the Provo river water shed; that is to say; The Provo Bench Canal & Irrigation Company is the owner of Class "A" rights of from 76 cfs to 92 cfs; The Upper East Union Irrigation Company is the owner of Class "A" rights of from 14 cfs to 10 cfs; The Timpanogos Canal Company is the owner of Class "A" rights of from 14 cfs to 11 cfs; The West Union Canal Company is the owner of Class "A" rights of from 32 cfs to 26 cfs; The East River Bottom Water Company is the owner of Class "A" rights of from 7 cfs to 6 cfs; The Little Dry Creek Irrigation Company is the owner of Class "A" rights of from 9 cfs to 7 cfs; and the Lake Bottom Canal Company is the owner of Class "A" rights of from 15 cfs to 10 cfs.

2. That since on or about the first day of August, A. D. 1935, none of these defendants have received more than from sixty to sixty-five percent of the amount of water they are entitled to under the decree in said cause.

3. That none of the plaintiff's storage water has, at any time by the Commissioner, been diverted to or used by these defendants and, on the contrary, the plaintiff has received all of its storage water which has arrived at its diverting works in Provo river, and that if the plaintiff has failed to receive the amount of water at its diverting works in Provo Canyon which it has released from its reservoir into Provo river, minus four percent thereof, it is not because of any failure on the part of the Commissioner to perform

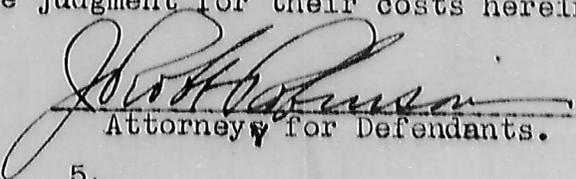
his duty under and pursuant to the decree in said cause, but that it is due to the plaintiff's failure to keep the channel through which said water flows in proper and adequate repair so that the same will transmit said waters to its diverting works without loss therefrom.

4. Further answering said amended petition, these defendants allege that what the plaintiff is, in effect, asking the court to do in this matter, is to grant to the plaintiff an exchange of these defendants' Class "A" water rights for plaintiff's water which is lost by and on account of the plaintiff failing and neglecting to keep the channel through which its water flows in proper and adequate repair.

5. That the plaintiff has received, and is now receiving at its diverting works in Provo Canyon, all of its storage waters which it is and has been entitled to, and for the Commissioner to divert or distribute any more water to the plaintiff than he has been diverting to the plaintiff, it would be necessary either for the plaintiff to release more water into the river channel, or for the Commissioner to take from the defendants water which is specifically decreed to them by the decree in said cause.

6. These defendants further allege that at no time during this irrigation season has the Commissioner, in any way or manner whatsoever, violated the decree in said cause, and on the contrary, said Commissioner has at all times distributed the water to the parties entitled thereto strictly in accordance with and pursuant to the provisions of said decree.

WHEREFORE, having fully answered plaintiff's amended petition, these defendants pray that the same be dismissed, and that these defendants have judgment for their costs herein incurred.


Attorneys for Defendants.