

D I S T R I B U T I O N .

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Foreword:

In the year 1902 the Provo River was before the Court for adjudication, the users in the Utah Valley appeared as Plaintiffs and Defendants, and in this cause they now appear as Defendants. In the action of 1902 the Court did not find the areas of land irrigated, the specific requirements, nor the amount of water to which Provo City was entitled to conduct through it's waterworks system.

The Court did find that the existing rights to the use of water were founded upon appropriation made under the existing laws and customs of this State and Territory since the diversion of the waters of the Provo River.

The Court did find that the parties that are now the Defendants in this action were appropriators of water to the amount that they had used for some beneficial purpose; providing such use was necessary. The Court did not find that a party had appropriated, or could under any rule, custom or law, appropriate water more than was necessary for the particular purpose to which it had been used, and that use must have been a necessary and a beneficial use. No matter what amount of water had been diverted by a party or for how many years that diversion had continued, the party was found to have only appropriated the necessary amount, and the quantity that had been put to a beneficial use.

For example, assume that at the time of the 1902 hearing there was being irrigated by the parties 14,000 acres of land, and further assume that one second foot was sufficient and necessary

to irrigate 70 acres of this land then in reality, the Court found that 200 second feet of the water of Provo River were appropriated.

And the Court decreed "That all the rights fixed, declared, and decreed, are subject in their exercise to the conditions that they are required and necessary for some beneficial use and that all such rights are expressly subject to the limitations and conditions that such waters are used for some beneficial purpose, and are used economically without waste, and with due care, and are reasonably and fairly necessary for such use," and the quantity (Underscore Inserted) of water to which the parties were found and decreed to be the owners of the right to the use is subject to the forgoing limits and conditions.

All water that is not diverted, and all water that is diverted in excess of the actual amount necessary, and all water that is not used to a beneficial purpose, and all water that is wasted- is UNUSED and UNAPPROPRIATED, and is not decreed, and using the example and assumption heretofore given the waters of Provo River in the Utah Valley in excess of 200 second feet have never been appropriated, by the parties to the 1902 hearing, and have never been adjudicated or decreed and have been and are subject to appropriation.

It matters not what the quantity of diversion has been, or what length of time it has continued, or whether the diversion was made by the individual himself or by the Court Commissioner acting in disregard of the decree and laws governing the rightful use and appropriation of water: neither of these conditions can place the unappropriated waters of this river in the appropriated column.

We now find at the hearing fourteen years after the 1902 case, that there is no defined amounts of water appropriated, and we further find that our river for adjudication is nearly double the 1902 adjudicated river, and we also find the parties to the 1902 hearing disregarding their priorities, if there were any, and claiming their percentage of the 1916 river, and seemingly forgetting the conditions that give a party the right to the use of water, and actually demanding their proportionate percentage of the 1916 river, when such proportions were based on a small river, presumably a river of 10,000 minute feet.

At that time the "Provo" was but partially developed, its discharge in the Summer months was increasing directly as its flood waters were diverted and conserved.

It was a stream whose greater volume ran unused, in the spring months, from its six hundred square miles of tributary area to Utah Lake, it was, and is, a natural stream in an arid land.

Nature provided for this part of the Arid West the Provo River, waiting the application of its waters, thousands of acres have lain in their barren and desert state, in their reclamation priority of diversion did not give right to the whole stream or in any way lessen the title of the yet unreclaimed land. So long as a part of these waters remain unused, additional areas may claim and receive their inherent right.

Because "Our Fathers" came on this stream irrigating a small area, does not constitute

a reason of perpetual deprivation to the other thousands of acres or consign them, forever, to sterility.

Plain, indeed, the rains, the snows, and the waters on this great domain are not the property of individuals to monopolize or waste, under our civilization we must acknowledge the precipitation, the air, and the sunshine, as mutual property of the commonwealth.

Claims most absurd and without a semblance of propriety met the Commissioner at the outset of the season of 1916. By the Court order, in effect for the season, the distributing officer is not authorized to deliver to any party more than their actual necessities, it was his duty to use his judgment as to what quantities were necessary, and with the areas of land coupled with their duty supply the requirement. And further, it was the duty of the Commissioner to, First: Supply sufficient water for the maturing of all the crops on the Provo River System, and Secondly: to use the waters wisely and keep peace among the parties to save the Court making orders during the trial of the case.

The Court was engaged from time to time in hearing the case as the parties came regularly in their order, at the end of the season not all were heard, and no rebuttal had been introduced. When a party made a demand for an excessive and unnecessary amount and their claim showed on its face a lack of competent engineering or wise legal advise, or both, and this party threatened to appeal to the Court from the decision of the Com-

missioner, and require of the Court a finding of its rights before the evidence was heard; to avoid such a procedure it was plainly the option of the Commissioner to satisfy that party, although that additional amount was directly contradictory to the testimony of the Commissioner in the case. This method was followed during the whole season, until the Commissioner almost appeared benevolent, though not consistent it served its purpose and the case may be concluded along the lines intended.

Where these excessive quantities appear in the sheets of Mr. Wentz, they are to be construed viewing all the conditions and facts and the "Beyond Comprehension" attitude of some of the Utah Valley Defendants during the 1916 season.

Fully the necessary amount to each party was delivered at their measuring stations and the Commissioner properly assumed it the duty of the parties to provide a canal free from plant growth, to maintain laterals in a good condition of repair and to use and conserve the waters allotted to them, and to assist in an equitable distribution pending the adjudication, and to give the physical potent factors collected by trained men that have worked with and for the irrigators to the end that water may be wisely used.

The writer, in former reports to the Court, has outlined the sources of supply of the Provo River, during the 1916 season, much the same plan was followed as in 1915, beginning early in the year large quantities of water were diverted on the upper stretches of the

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stream for irrigation and for storage in the subsurface fill. This system is necessary and reasonable and fair, for when we remember that in the settlement on this stream, this river watered a small tract of land near the city of Provo, its runoff was early and quick and of great volume, and its low water flow scant, later upon this stream came "Invaders" The West Union, the Provo Bench, The Timpanogos Canal Co., The Wasatch, The North Field, The South Kamas, The Washington, Midway Irrigation Co., the Charlestons, the Timpanogos Irrigation Company, and others, and now we find that annually during the season of flood waters, more than a thousand second feet are diverted and spread over the lands under this river, and that in the one valley alone, the Provo Valley, nearly 30,000 acre feet is stored and conserved, and is released to the lower river, and during the period that formerly presented a scant flow we supplied to Utah Valley during August 1916 - an average of 322 second feet of water. And in contrast to the small area that this stream originally irrigated, we now, from this same watershed with the same-may I say annual precipitation, are irrigating lavishly 43,000 acres of land, and with proper conservation can yet reclaim many thousand acres,--thanks to the "Invaders".

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With the hydrograph in view, and the total of the necessities of the parties to the 1902 hearing, describe the line of total necessities for each of the irrigating periods, the conclusions are irresistible--the source of

supply exceeds the requirements of those parties, and priorities with the Defendants in this case have ceased to exist.

Stated directly, these facts are designed to awaken in the minds of the parties and council a better understanding of this case.

WASATCH DIVISION:

View the hydrograph of this river, during May the bulk of the runoff comes from the lower altitudes, we may have a discharge of 2,000 second feet, and our snows in the higher altitudes and on our river above Woodland remain untouched, this was true in 1916, during May our stream was high and turbid, and our river at Woodland small and clear. In June with the approach of Summer and the warmer and longer days, our supply from the lower altitudes has exhausted, and we are drawing from the higher deposits of snow, and we find that lower streams are now clear and our upper streams turbid.

When these two sources of supply are exhausted the Provo must and does depend exclusively upon the storage in the earth, in the subsurface fill, in the natural reservoirs, the July, August, and September Provo River show conclusively, how well themeans nature has provided, have been used.

To know and to observe the fillings of these natural storage reservoirs the height of ground water plane is carefully watched, during 1915 a number of wells on the upper river areas were frequently measured, ~~d~~uring 1916, this line of observation was confined to the vicinity of Charleston, the "J.S.Brown Well" and the river discharge. The J.S.Brown Well is located three-fourths mile north of the town of Charleston, near the center of the lower end of the Provo Valley, three fourths mile from the river, and approximatedly forty feet higher in elevation than the bed of the stream. On June 10, 1916, after forty days of applying flood waters the water in this well stood 4.2 feet below the surface. This condition to the present Commissioner, though not good or desirable for this particular land, yet it means a "big lower river" and when we approach the first of July, with natural storage basins full, do not feel that the lower river user need feel at all alarmed.

When the runoff had ceased to flow and the upper river on July 6. was down to its low water stage the application of all the available water was diverted on the upper river and so continued, excepting a very small amount, until the evening of August 21.

The outlet openings from this storage basin at the beginning of the season discharge about 120 second feet of water, these openings are never closed and continue their discharge while the filling is going on, the capacity of the basin and the outlet must be turned in to reach the maximum height, and out discharge is increasing some three second feet daily, after this method has been in for sixty days from May 1st. to July 1st our outlet discharge is some 300 second feet.

From the beginning of the season to July 6, no restrictions were placed upon the users of water in Wasatch and Summit Counties, continuous encouragement to the users was given to keep their areas well supplied during the period of plenty.

When the river began to recede and a division was necessary the quantity was apportioned according to their respective areas of land, this method was continued until the supply had receded to an amount of one second foot per 55 acres of land, gross duty, that is measured at the heads of the canals or measuring stations, at this stage and below the prior rights were maintained at the 55 acre gross duty and the decreasing amount was borne by the late appropriators. When the supply had receded to the amounts specified by the "Fulton Decree" the distribution was made according to this decree as ordered by the existing stipulation and Court order.

The Supervision and Drawing of water from the Big Elk Lake Reservoir was directly under Mr. Knight, and advised by Mr. Wentz. The Union Reservoir Company Reservoirs, The North Fork System, the Haystack System, and the Lost Lake system were directly managed and controlled by Mr. Wentz. The measurement and distribution of the waters from the

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Ontario Drain Tunnel was made by Mr. Wentz and Mr. Knight.

When the cut of July 6 was made, the Timpanogus Irrigation Company ordered 30 second feet of storage water, with the adjustment of July 7 and a properly distributed river the Commissioner advised the Timpanogus Irrigation Company to cut storage supply to 20 second feet, this was concurred in, and done, and raised again to 30 second feet on July the 13th.

Near the last of July the Timpanogus Irrigation Company supply of storage water was exhausted, the Commissioner with Mr. Jones examined conditions under this canal, finding some 312 acres of grains that needed one more irrigation, and by following the schedule would require to August 6 to be covered. Fifteen second feet of water coming from the reservoirs was intended to be given to the Provo Reservoir Company in Utah Valley, but the Utah Valley River was supplying more than was necessary, the Commissioner took this 15 second feet and the Ontario Tunnel water belonging to the Provo Reservoir Company and continued to supply the Timpanogus Irrigation Company with 30 second feet of water. A week later, with our lower river more than ample, the Timpanogus Irrigation Company applied to continue the use of the quantity of water, to be used for "a second crop of hay" this amount was continued until Aug. 12, and from Aug. 12 to 18th, 20 second feet was given the Timpanogus Irrigation Company.

It may be inquired, possibly by the Provo Reservoir Company by what right the Commissioner diverted water, that has a defined ownership, to another company, I answer- more interest was given to the full production of crops, than to the approval of any litigant in this case.

The details of distribution and the tabulated discharge of the canals in this division are reserved for another part of this report.

Provo Division:-

From the beginning of the season of 1916 to June 30th, no restrictions in the use of water were placed upon the users in the Provo Division. On June 29th the lower users called for distribution of the waters, we were to the season of "Normal Flow". Our discharge was plentiful and we had passed the period of "First Irrigation."

The trial of the case had been postponed to August 21, with the Plaintiffs case and one defendant-Provo City, submitted, the areas of irrigated land by the several users had been given by the plaintiff, and the areas of Provo City agreed upon.

Using the areas given by Mr. Stewart, and the respective duties submitted by the Commissioner in evidence, a table was made showing the amounts to each party in the Utah Valley for the period of June 20th to July 20th the following is an excerpt, and is designated and marked Table 1.

TABLE 1

June 20th to July 20.

Name	Acres Irrig.	Duty	Second Feet.
Provo City Waterworks			5.35
Provo City Acreage	2058.6	63	32.68
Provo City Lots	200	50	4.00
Timpanogos Canal Co.	847.	66	12.83
Provo Bench	4332.53	63	68.77
West Union et al	1900.	63	30.16
Upper East Union	762.18	63	12.09
Little Dry Creek	506.	66	7.67

Table I. Concluded.

Name	Acres Irrig.	Duty	Second Feet.
Young Ditch	32.86	63	0.52
Dixon Ditch	22.58	63	0.36
Baum Ditch	18.57	63	0.30
First Ward Pasture	147.	66	2.23
East River Bottoms Water Co. et al	344.44	57	6.04
Park & Nuttal Ditch	73.54	55	1.34
Barton & Young Ditch	53.71	55	0.98
Spring Creek Users	326.00	55	5.93
Faucott Field	108.75	57	1.91
Fort Field	574.28	90	6.38
Lake Bottom Canal Co.	1275.00	90	14.17
Machine Interest Factory Race			15.00
Total			226.71
----- Estimated Transmission Losses.			
Provo City Acreage		5% -	1.64
Provo Bench		10% -	6.90
Timpanogos Canal Co.		10% -	1.30
Upper East Union		10% -	1.20
Total			11.04
Grand Total			239.75

And for the period of July 20th to Sept. 1st, the following is an excerpt, and is marked and designated Table II.

Name	Acres Irrig.	Duty	Second ft.
Provo Waterworks			535
Provo City Acreage	2058.6	70	29.40
Provo City Lots	200.	50	4.00
Timpanogus Canal Co.	847.	75	11.30
Provo Bench	4332.53	70	61.89
West Union et al	1900.	70	27.14
Upper East Union	762.18	70	10.89
Little Dry Creek	506	75	6.75
Young Ditch	32.86	70	.49
Dixon Ditch	22.58	70	.32
Baum Ditch	18.57	65 70	.28 26
First Ward Pasture	147.	65 75	2x23 1.95
East River Bottoms Water Co. Et al.	344.44	55 65	5.60
Park & Nuttal Ditch	73.54	63	1.17
Barton & Young Ditch	53.71	63	.85
Spring Creek users	326	63	5.18
Faucett Field	108.75	65	1.67
Fort Field	574.28	100	5.74
Lake Bottom Canal Co.	1275.	100	12.75
Machine interest Factory Race			15.00
Total	13583.04		207.70
Estimated Transmission losses			
Provo City Acreage		5% =	1.5

Table II for the period of July 20th to September 1st. - Concluded.

Name.	Second Ft.
Provo Bench	10% - 6.1
Timpanogos Canal Co.	10% - 1.1
Upper East Union	10% - 1.1
Total	----- 9.8
Grand Total	217.50

With only the area of Provo City acreage agreed upon, and knowing positively the areas of a limited number of other users, and with the question of- How much of the total area in the Platted portion of Provo City is actually irrigated? and with a number of users scattered along the River Bottoms that would not confine themselves to regularity or reasonable amounts, it seemed best to continue the areas used in 1915, and to continue the gross amount to Provo City for municipal purposes and the amount to the Factory Race as used in 1915. It was hoped by this method to deliver a quantity great enough to all users to offset the repeated disturbances, and to place beyond question the areas assumed for a basis of distribution.

The following is a copy of page 33 of the "sheets of Mr. Wentz"

June 20 to July 20.
for the proposed distribution; which is self explanatory.

Name	Acres	Duty	Sec.ft.	Total.
Provo City Municiple Right assumed.			24.00	24.00 0
Factory Race assumed			19.30	19.30 0
Timpanogus Canal C o.	847	66	12.83	14.11
Provo Bench " "	4333	63	68.78	75.66
West Union et al.	1900	63	30.16	30.16
East River Bottoms W. Co.	500	57	8.77	8.77 0
<i>Bartlett</i> & Young Ditch	54	55	1.00	1.00
Park & Nuttall Ditch	100	55	1.80	1.80 0
Upper East Union	762	63	11.78	12.96
Faucett Field	109	57	1.91	1.91
Provo City Acreage	2454	63	39.00	40.95 0
Young - Dixon & Baum	120	63	2.00	2.00 0
Little Dry C reek	506	66	7.67	7.67
Lake Bottoms	1275	90	14.17	14.17
Fort Field	574	90	6.38	6.38
Spring Creek Users	326	55	6.00	6.00
Total				266.84
Reserveix for lack of Control				<u>21.56</u>
Amount by Stipulation				288.40

Amounts marked 0 are probably excessive this method appears at present the better way than to reduce parties to actual necessities during trial of case. I do not believe that river will recede to an amount that will require a precise distribution.

T. F. Wentz.

When river is above this point to dependant users maintain the 1st and 2nd items constant and divide in proportion to the foregoing amounts.

T.F.Wentz.

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The following is a copy of page 68 of the "Sheets
of Mr. Wentz for the Proposed distribution July 20, to Sept. 1st.

Name	Acres	Duty	Total.	
Provo City Municipal Right			24.00	⊙
Factory Race.			19.30	⊙
East River Bottoms			13.00	⊙
Timpanogus Canal Co.	847	75	12.40	
Provo Bench " "	4333	70	12.40	
West Union et al.	1900	70	27.10	
Barton & Young	54	63	.90	
Park & Nuttal	100	63	1.60	⊙
Upper East Union	762	70	13.00	
Faucett Field	109	65	1.70	
Provo City Acreage	2454	70	37.00	⊙
Young, Dixon & Baum	120		3.00	⊙
Little Dry Creek	506	75	6.80	
Lake Bottom	1275	100	12.75	
Fort Field	574	100	5.74	
Spring Creek Users	326	63	5.20	
			251.49	

Pending Settlement

Amounts marked thus ⊙ are probably excessive.
I do not believe river will recede to require a close distribution.

When supply is above this amount held the first three items and Young- Dixon & Baum ditches constant and apportion to the others.

T. F. Wentz.

The distribution of July 20th to September 1st was carried into September.

The hearing of the case had been in progress, and on September 1st was continued to November 13th., not all the Defendants had been heard.

"Before breakfast" on the morning of September 4th the Provo Bench reported 44 second feet of water going to Utah Lake through Provo City, and on September 2nd, 42 second feet was passing through Provo City to the Lake and unused. The Provo Bench demand that this water be turned to their canal. On this date the Commissioner made no changes, on the morning of September 5th with practically the same flow, T. C. Thompston, Provo City Water master, calls by phone and asks for more water. In the Commissioner's memorandum appears these words "At this time I am undecided just what to do in these matters". The Provo Bench were assured that their supply would be continued sufficient for all necessities, and Mr. Thompston was advised to consult the Provo City

attorneys, and was advised of the report of the Provo Bench.

Does a call asking for more water during a litigation signify a condition of want?

The river was measured on September 8th, and the distribution outlined is shown by page 108 of "Sheets of

Mr. Wentz" a copy of which follows:

Name & Number	Sq.Ft.in Canal	G.H.	Time	Sec.ft.	de- add duct	Remarks
Provo Reservoir Co.	83.27	220	8:09a	83.27		
Sego Irrig. Co.	2.18	35	9:03a	2.18	160	
Timpanogus Canal "	14.00	95	9:48a	12.40		
Provo Bench C&I Co.	72.22	163	8:09a	68.00	478	9 s.f. to Provo Res.
W. Union, Smith Carter	30.18	78	8:22a	27.10	308	
Barton & Young	.93	20	9:14a	1.00	07	
Park & Nuttal	3.03	43	8:25a	1.60	143	
River Bottoms	.75		9:20a			
d.	00		9:26a			
e.	00		9:27a			
f.	00		9:28a			
g.	.10		9:32a			
h.	00		9:34a			
i. (H2 time 9:58)	5.76	105	9:38a			
j.	6.50	100	10:00a			
k.	00		10:12a			
l.	3.60	48				
m.	.75		10:16a			
n.	1.25		10:15a			
o.	4.11	50	10:22a			
p.	00		10:33a			
q. Total	22.82					
r. Young Ditch	2.11	70	10:40a	13.00	982	
s. Baum Ditch	35	14	10:42	3.00	121	
t. Dixon Ditch	1.75		11:17a			
Upper E. Union F. Field	19.76	77	9:44a	14.70	506	
Upper East Union	13.60	60	10:28a			Water over banks
Provo City	77.06			53.75	23.31	
Upper East Union	14.61	65	11:20a			
Factory Race	35.26	76	11:22a			
City Race	8.24	64	11:04a			
Tanner Race	10.95	53	11:35a			
Waterworks	8.00			45.10	4510	Reserve
Little Dry Creek	7.40	75	11:50a	6.80	.60	
Spring Creek Co.						
Lake Bot. Can. Co.	22.95			17.95	5.00	Assumed some as 8-26-16.
River below Fort Field	.50				50	
Fort Field	4.08	1	12:27p	5.74	160	
Totals	364.59			364.59	51.61	51.61

(Note) I call Provo City attorney Coleman, I give him the reports of Provo Bench observations of water going to lake. I should cut Provo City to their necessities. Mr. Coleman protests against any further cut. I will try and satisfy parties and keep this matter out of Court. You will note: Provo City is left as found. Received protest from Provo Bench, to-day.

Note the Provo City and Factory Race amount is 53.75 second feet, following the outline of Table II.

With an increasing discharge it was not necessary to put all of this outlined distribution into effect.

During the remainder of the Month of September, no one made request for additional water, excepting the Provo Pressed Brick Company.

When the Provo Pressed Brick Company made application for more water the Commissioner went over the system above the brick plant, the West Union and the Upper East Union had voluntarily reduced their diversion below the amounts outlined, the East River Bottoms water Company were reduced to approximately 10 second feet, the Provo Bench was reduced to the outlined amount,--there was no diversion, excepting the East River Bottoms Water Company, drawing more than was necessary. On September 30th the Provo Pressed Brick Company made demand on their filing number 1221 for 100 second feet, as against the Provo Reservoir Company, this demand was refused, and their application for the 100 second feet denied, for full details of this matter see correspondence.

On the evening of September 30th the fall storms set in, intense irrigation ceased, since that date no restrictions have been placed upon any user, and large quantities of water have been flowing down the natural bed of the stream to Utah Lake.

Conclusion:

During the period since the filing of this cause the law of necessity and utilization has been constantly advocated to the users on this system.

The Wasatch and Summit County parties have absorbed this law of requirement. The distribution has been made pleasantly, and the commissioners have been able to do good service. For this 23,000 acres of land not a protest has been filed, though the source of supply in the summer months is far below sufficient. The old contentions that existed between the Heber and Kamas users have ceased.

The Utah Valley parties have had the opportunity to see the "Provo" on a normal year--the 1916. Submitted is the "average low water flow." It is sincerely hoped the parties will use the added information wisely and understandingly.

Observed negligence and misuse are not called to review, optimism for development and maintainance overshadow the adverse course.

Whatever may be the interpretation placed upon the 1916 distribution, with the existing conditions and attitudes, it cannot detract from direct and conclusive evidence. Operating a river so complex under a tentative order may not approach idealism. However it has served to bring vividly before the parties the need of an adjudication, of control and regulation.

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