



app. No. 5772

waters, being said certificate No. 2039; but denies that said certificate gives or awards priority thereunder for said 7 feet of water and denies that said certificate establishes its date of priority as of June 12, 1914 and answering said paragraph alleges that by reason of the acts of the said Plaintiff it has abandoned, waived and brought its priority under said filing and certificate down to a time and date subsequent to the filing of the Defendant herein.

12. Answering paragraph 14, Defendant admits it is the ~~max~~ owner of the filing on said source and stream but denies that it is junior and subsequent to the filing, a right and certificate of the said Plaintiff and affirmatively alleges that its right and filing is prior and paramount to any right or filing of the Plaintiff or of any of the said Defendants.

13. Answering paragraph 15, Defendant admits the allegations therein contained.

14. Answering paragraph 16, Defendant denies each and all of the allegations in said paragraph contained.

15. Further answering said Complaint and as affirmatively defense thereto, and by way of cross Complaint, Defendant alleges that the Defendant, Dry Gulch Irrigation Company, is a corporation, organized and existing under and by virtue of the laws of the State of Utah, that on the 28th day of September 1916, said Defendant did file in the office of the State Engineer of the State of Utah, its application to appropriate waters from the Sand Wash in Duchesne County, Utah to irrigate lands of its stock holders and which said application was designated in the office of the said State Engineer as File No. 6960 and was duly and regularly approved on the 6th day of March 1917 for use of the waters therefrom from April 1 until October 31.

16. That based upon said filing, Defendant commenced construction work as required by law, and diligently prosecuted its works of beneficially applying said water to the lands of its stock holders and that it did, within the time allowed by law and by the extensions of time granted, duly, regularly and legally granted by the State Engineer of the State of Utah and upon proper application for extension, did submit its proof of beneficial application and use of said water and on the 25th day of March 1925 the State Engineer of the State of Utah did duly and regularly accept proof of beneficial use and did grant his certificate of appropriation to the Defendant for the use of water from said stream for 25 second feet to be used from April 1 19 until October 31 19, which certificate of appropriation is No. 2063 in the office of said State Engineer of the State of Utah.

app. No. 6960

17. That by reason of the acts of Defendant aforesaid and of the perfecting of said right, Plaintiff has acquired the right to the use of water for 25 second feet of water from April 1 19 to October 31 19, the priority of which is 28th day of September 1916 and that said right is a first prior and paramount right to the use of 25 second feet of water during said period.

18. That the Plaintiff, Sand Wash Irrigation Company, a corporation, and the Defendants, Ira B. Cannon, Fred Case, George Potts, Percy Potts, H. J. Mitchell, Farley G. Mitchell, Ambrose Mitchell and Oscar Nelson claim rights in and to the waters of said stream by reason of filings they may have and claim therein, but that any and all of said claims are junior and subsequent in time and in right to the rights and filings of the said Dry Gulch Irrigation Company.

19. That T. H. Humphreys is the State Engineer of the State of Utah and is a necessary party to the final and complete adjudication of the rights and priorities to the use of waters from said Sand Wash and its tributaries.

WHEREFORE, Defendant prays that a hearing of this cause be had and that the court wherein determine and decree the rights and priorities of each and all of the

appropriators and users of waters of said Sand Wash and that their rights and priorities be determined, decreed and established and that the Defendant, Dry Gulch Irrigation Company, be decreed the owner and holder of its right and priority in and to 25 second feet of water from April 1 1935 to October 31 1935 of each year and that Plaintiff and the other Defendants herein in the determination of and right and establishment of their priority be decreed junior and subsequent to the rights of the said Dry Gulch Irrigation Company. Said Defendant prays for his costs herein expended and for general relief.

Ray C. Williams  
Attorney for Defendant  
*Dry Gulch*

State of Utah )  
                  : ss.  
County of Duchesne )

H. L. Allred, being first duly sworn deposes and says that he is the president of the Defendant corporation, that he has ~~him~~ read the foregoing action and knows the contents thereof, that the same is true of his own knowledge, except matters therein stated on information and belief and as to such matters he verily believes the same to be true. That he is swearing to this action for and in behalf of Defendant and in his official capacity therein.

Subscribed and sworn to before me this 2 day of January A.D., 1935.  
H. L. Allred

Ray C. Williams  
Notary Public  
Residing at Roosevelt, Utah

My Commission Expires,  
April 17, 1939/