

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

Sand Wash Irrigation Co.  
a Corporation

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Plaintiff. :

-vs-

AMENDED COMPLAINT.

Ira B. Cannon, Fred Case,  
George Potts, Percy Potts,  
N. J. Mitchell, Parley G.  
Mitchell, Ambrose Mitchell,  
Oscar Nelson, and State of  
Utah

Defendants. :

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*Sand Wash Dist*

Comes now the plaintiff, and first having obtained permission of court files this, its amended complaint, and complains and alleges:

1. That the plaintiff is now and at all times herein mentioned was a corporation organized and existing under the persuant to the laws of the State of Utah, and that the defendants are each and all residents, land owners, and water users in Duchesne County, Utah.
2. That on June 12, 1914, M. J. Benson duly filed in the office of the State Engineer of the State of Utah, his application to appropriate from the Sand Wash in said county 7 second feet of water to irrigate 1140 acres of land, and which said application was and is designated in and said office of the state engineer as File No. 5772 and was duly and regularly approved February 10, 1915 for use from March 1st to December 1st.
3. That subsequent to the time of the filing said application as aforesaid, the said M. J. Benson duly and regularly transferred and conveyed unto the plaintiff corporation all his right, title and interest in and to said filing and all privileges innitiated thereunder and that the plaintiff is the owner and holder thereof.
4. That all of the rights and privileges therunder innitiated are now in good standing. That from time to time extensions of time have been made by the State Engineer, and said filing is now in good standing in his said office.
5. That the point of diversion of said waters represented by said filing is situated at two points as follows: 6 3/7 second feet at 1810 feet W. 100 feet N. of the Northwest corner of the Northeast Quarter of Section 32, Township Two South Range Two West and 4/7 second foot at 904 feet North from the Southwest corner of Section 30, Township 2 South, Range 2 West of the U. S. M. in said Duchesne County, Utah.
6. That the defendants are land owners and water users, residing in said county and State, and their lands lie upon and adjacent to the said Sand Wash, above and said points of diversion of said plaintiff.
7. That the plaintiff have installed and established the necessary works and conduits and ditches for the diverting said waters

from said Sand Wash, and conducting it to the lands submitted and approved by the said State Engineer, and upon which the said waters were to, and are to be beneficially applied, which said lands are situate in Sections 29, 33, 34, Township Two South, Range Two West, and in Sections 3, and 4, of Township 3 South, Range 2 West of the Uintah Special Meridian.

8. That pursuant to said filing plaintiff has pursued diligently its rights thereunder, and has irrigated and beneficially applied water upon a large portion of the lands of the stockholders, for which said waters have been approved, and during all times herein mentioned has been striving to use said waters for the purpose of irrigating said lands, and beneficially applying them to the lands so designated, and for which said filing has been approved.

9. That during the spring and summer of 1928, and during the months of June, July, August and part of September and the defendants have jointly said severally and individually, wilfully, maliciously and knowingly taken and turned out of said Sand Wash, and appropriated to their own use waters of the said Sand Wash, and waters to which the said plaintiff was then entitled, and at a time when there was insufficient water flowing down said wash to aggregate said 7 second feet to which plaintiff was then entitled at its point of diversion, and which said waters so taken and used and taken and appropriated by said defendants was water to which plaintiff was entitled, and then and there needed to apply upon its lands and crops, and to which it then and there was prepared to use and could have used, and needed for its crops, then growing on its said lands.

10. That at various times during the spring and summer of said 1928 said defendants have so taken said waters and appropriated them to their own use without the consent of plaintiff or of any other person having the right to the use thereof, and now threaten to further take and use them, and to deprive the plaintiff of the use thereof, and unless enjoined from further committing said acts of trespass will cause the plaintiff and its stockholders great and irreparable damage and injury.

11. That any claims of the defendants or any of them have or allege to have if any, in and to said waters of said Sand Wash or any of its tributaries are subsequent to and junior to rights of plaintiff under said filing both in time and right.

12. That plaintiff and its stockholders have diligently been attempting to beneficially apply the waters represented by said filing to its said lands, and at all times herein mentioned have been able and prepared to use and beneficially apply the same, so that proof of beneficial use as required by law might be made, that proper certificate of appropriation might be issued to it, but that such acts of trespass as aforesaid have, and are now delaying plaintiff in applying all of said waters to all of the said lands, that if defendants continue to trespass and take said waters to which plaintiff is entitled, that it will be delayed in applying said waters to the remainder of said lands, and will thus require the plaintiff to expend sums of money in procuring an extension of time in which to apply said waters or it will be unable to submit proof of beneficial use on said lands and will thereby lose the right under said filing to said proportionate amount.

13. That plaintiff is without speedy or adequate remedy at law to redress said wrong or prevent its further perpetration.

WHEREFORE, plaintiff prays judgment against the defendants and each of them.

(a) That a temporary restraining order be made by this court, enjoining defendants and each of them from interfering with the flow of said Sand Wash, or any of its tributaries, unless and until a full 7 second feet of water be available for plaintiff's use at its said point of diversion, between March 1st and December 1st of each year.

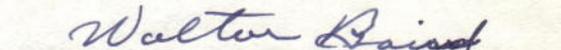
(b) That plaintiff be decreed the owner and holder of said rights during said period, and that said rights be decreed to be prior and paramount and superior in time and right to those of defendant or any of them.

(c) Plaintiff prays for costs and general relief.

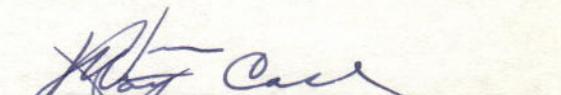
  
Attorney for Plaintiff.

STATE OF UTAH                    )  
County of Duchesne            ) ss

Walter Baird, being first duly sworn says he is the secretary of the plaintiff corporation, that he has read the foregoing complaint 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 the complaint for and in behalf of plaintiff and in his official capacity therein.

  
Affiant

Subscribed and sworn to before me this \_\_\_ day of September A.D. 1928.

  
County Clerk