

THE STATE OF UTAH

OFFICE OF STATE ENGINEER

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SALT LAKE CITY

September 4, 1936

Memorandum for Office Study only, by E. J. SKEEN

REL: APPLICATIONS NOS. a-1298 and a-1299

I find that only one legal proceeding has been instituted in the district courts of this state for the determination of the question as to whether Beaver creek and Shingle creek are tributary to the Provo river. A petition was filed in the case of Provo Reservoir Company, a corporation, plaintiff, v. Provo City, etal, No. 2888, civil, in the District Court for Utah county, requiring the defendants to appear and show cause why they should not be punished for contempt for distributing the waters of Shingle creek to themselves, whereas it was alleged that the water belonged to the plaintiff. The court made the contempt order prayed for and later, in the same proceeding, it was stipulated that the order might be set aside and "That in case of litigation to prosecute or defend, to maintain the waters of Shingle creek tributary to Provo River, and the right to the use thereof, as being vested, owned, and decreed to parties in said cause No. 2888, that the expense thereof will be borne by each and all of the parties on the same basis as provided for the expense of administration". Dated October 13, 1934. The District Court made findings of fact and incorporated therein the stipulation above referred to, and also found:

"1. That Shingle Creek is naturally a tributary of Provo River, and its drainage area of approximately thirteen square miles is all within and is part of the Provo River watershed. It has its rise in the summits of the Uintah Mountains, on the East of the divide between the Provo and Weber Rivers watersheds, it flows in a Southwesterly direction parallel to the divide for four miles, then approaches near the divide at six miles, then flows South for one mile to its confluence with the main channel of Provo River.

2. That all of the waters of Shingle Creek, now flow and always have flowed naturally into Provo River, and all of said waters now flow and always have flowed into Provo River except such quantity as may have been diverted by an artificial channel to the Beaver and Shingle Creek Irrigation Company, and that none of said diverted water has ever been tributary to Weber River.

3. That said waters of Shingle Creek, prior to the 20th day of April, 1934, and for more than seventy-five years, have commingled with the waters of Provo river; and that said waters have been applied to a useful and beneficial purpose by the parties to Cause No. 2888 Civil, and said waters have been distributed, ever since the filing of the decree in said Cause on May 2nd, 1921, to the said parties in the order and priority as set forth and defined in said decree, in Cause No. 2888 Civil.

(over)

4. That the rights of ownership and use of the waters of Provo River and its tributary Shingle Creek, as between the parties to this Cause, are settled and confirmed by the decree of this court to this Cause, as filed and entered on the 2nd day of May, 1921."

The court then entered an order which, as far as relevant, provides as follows:

"3. That Shingle Creek, which has been the subject matter of the proceedings heretofore had in this case, and the decree and order which has been set aside by this stipulation, is a tributary of Provo River, and its drainage area of approximately thirteen square miles is all within and is part of the Provo River watershed. It has its rise in the summits of the Uintah Mountains, on the East of the divide between the Provo and Weber Rivers watersheds. It flows in a southwesterly direction parallel to the divide for four miles, then approaches near the divide at six miles, then flows south for one mile to its confluence with the main channel of Provo River; that all of the waters of Shingle Creek do now flow and always have flowed naturally into Provo River, and all of said waters now flow and always have flowed into Provo River, except such quantity as may have been diverted by an artificial channel to the Beaver and Shingle Creek Irrigation Company, and that none of said diverted water has ever been tributary to Weber River; that said waters of Shingle Creek, prior to the 20th day of April, 1934, and for more than seventy-five years prior thereto have commingled with the waters of Provo River and said waters have been applied to a useful and beneficial purpose by the parties to Cause No. 2888 Civil, and said waters have been distributed ever since the filing of the decree in this cause, on May 2nd, 1921, to the parties thereto in the order and priority as set forth and defined in said decree.

Dated at Provo, Utah, this 31st day of December, A. D. 1934.

BY THE COURT:

MARTIN M. LARSON
JUDGE"

The order quoted above is, of course, binding only upon the parties to the suit, which was in the nature of a general adjudication suit of the waters of Provo river. The water users on the Weber river watershed were, of course, not interested in the proceedings because they were not joined and the ruling of the court does not adversely affect their rights to in a later proceeding show that the waters of Shingle creek naturally flowed into Beaver creek and thence into the Weber river.

I understand that water rights on Shingle creek are being adjudicated in the present Weber river suit but, of course, that adjudication would not affect the rights of the Provo users unless they were joined as parties. I have found no supreme court decision on this question.

EJS:s