IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

IN AND FOR UTAH COUNTY, STATE OF UTAH.

Provo Reservoir Company,
Plaintiff,

vs

Provo City, et al,
Defendants.

Civil 2388

Answer to affidavit for Order to Show cause.

Comes now Esthma Tanner, and answering the petition of the said Lake Bottom Canal Company herein filed, admits denies and alleges:

1. Admits Lake Bottom Canal Co., is a corporation and has its office at Provo, Utah.

2. Admits that Wentz is appointed as Commissioner by the Court for the purpose of regulating the waters of Provo River.

3. Admits that she claims some rights on Provo River to water for the purposes of irrigation on Spring Creek and on Lake Bottom canal;

4. Admits that she receives water on tickets according to schedules

5. Admits that she diverts water above the petitioner on the said canals;

6. Except as hereinabove specifically admitted or denied the undersigned Esthma Tanner denies each and all of the allegations of the said petition;

As and for an affirmative defense the undersigned alleges;

1. That she is the owner of about 60 acres of lands irrigated from Spring Creek and the Lake Bottom canal referred to in the said petition, and has 50 acres of water right on said lands;

2. That said lands are irregular as to contour and elevation and that to use water economically thereon requires a great number of turn outs from the said ditches referred to, to wit, eight turnouts on her said property or premises; said turn outs are all made so that waters may economically applied for the irrigation of herr said lands and so that such waters can be so used without unnecessary waste;

3. That five of said turn outs are on Spring Creek and that the said stream is too small in the low water season for economical use when same is split and that the said system as proposed by the petitioner would require the splitting of the said stream without any reasonable necessity therefore if the said stream is put on turns and that such a system would be for the best interest of the undersigned and without any damage to the applicant; that the costs proposed by the applicant to be placed against the undersigned is prohibitive

and confiscatory of the protestants property [illegible] which property is irrigated thru the said ditch, [illegible] there is no reasonable necessity for the proposed change;

4. That all of the said water can be properly measured and apportioned by the indirect method of placing a weir on the South end of the protestants premises at a cost of proximately ten dollars;

5. That the system of irrigation and use of irrigation water on protestants said lands has been in use on the said premises for a period of fifty years and is a reasonable method of irrigation, and that to measure the water rights usuable on the said lands and will be most economically seen by placing a weir on the southerly side of protestants premises.

6. That with respect to the proposed change at point numbered 3 of the said proposed changes there is difficulty in getting a flow of water from ~~Provo River into~~ the said Lake Bottom canal by reason of elevation and lack of fall of the lands over which the lateral runs from Provo River and that the proposed construction will further increase the difficulty by producing an obstruction in the said channel;

7. That it is entirely feasible and economical to place a weir in the said ditch at a point lower down than the intake of the said canal which will not measurably obstruct the flow of the said stream and which will permit the waters of the said River to flow into the said canal and the proposed change is not economical and is not reasonably necessary;

8. Referring to diversion number 4 of the said petition this protestant alleges that the said Tanner Bonny ditch crosses her said lands and that same has done so in its present location for a period of 50 years as also has the said Clyde citch; that neither the said Lake Bottom Canal Company or the said River Commissioner nor the above entitled Court has any jurisdiction in this proceeding to change the easements on the lands of this protestant by making the said proposed change which change proposed subjects the lands of the protestant to new servitudes and uses, and such without this protestants consent and against the will of protestant.

Wherefore protestant prays that the said prayer of said petition be denied;

Esthma Tanner
Protestant.

STATE OF UTAH)
COUNTY OF UTAH) SS

Esthma Tanner, being first duly sworn deposes and says; that she is the protestant named in the above and foregoing answer and protest; that she has read the same and knows the contents thereof ant that the same is true of her own knowledge except as to matters and things stated therein on information and belief and as to such matters she believes it to be true.

Esthma Tanner

Subscribed and sworn to before me this 22nd day of December, 1933.

A. Sherman Christensen
Notary public; residing Provo, Utah.
My commission expires April 10, 1927

A. SHERMAN CHRISTENSEN NOTARY PUBLIC COMMISSION EXPIRES APRIL 10, 1927 PROVO, STATE OF UTAH

2888

IN DIST. COURT
UTAH CO., UTAH
FILED
DEC 29 1933
Frank Salisbury Clerk
Priscilla Christensen Deputy