

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

PROVO RESERVOIR COMPANY,	:	
a corporation,	:	
	:	
Plaintiff,	:	ANSWER OF ESTHMA TANNER TO
vs.	:	<u>PETITION OF J. M. BONNY.</u>
	:	
PROVO CITY, et-al, ESTHMA	:	
TANNER, and CALEB TANNER,	:	
GEORGE TANNER AS AGENTS	:	
AND SERVANTS AND EMPLOYEES	:	
OF ESTHMA TANNER,	:	
	:	
Defendants	:	

COMES NOW Esthma Tanner and answering the petition
of J. M. Bonny filed herein, admits, denies and alleges as follows:

1. Admits that the above-entitled court in a certain
civil action on or about the 2nd day of May, 1921, made a judgment;
that the said cause was known in said court as 2888 civil, and
verily believes that the said judgment contained the matter set
out in said petition on page 2 as the same purports to be quoted
from said judgment, and admits that she was awarded certain water
rights for irrigation purposes by the said judgment, and further
alleges that she has no knowledge of the terms of the said decree
or specific information concerning the details thereof, and admits
that she was a party to said action;

2. Answering the allegations contained in paragraphs
numbered two and three of the said petition, she verily believes
that the alleged quotations from the said judgment are correct but
has no knowledge concerning the fact;

3. Alleges as to the allegations contained in par-
agraphs numbered 4 and 5 of the said petition that she has no
knowledge concerning the same;

4. Denies the allegations of paragraph numbered 6
of the said petition except as the same is stated hereinafter;

5. Verily believes that one T. F. Wentz issued a
schedule of dates for irrigation of certain farm lands of hers, but
alleges that she is without knowledge concerning the same, and is

not able to state on account of lack of information whether the said petition states dates which have been assigned for irrigation;

6. Denies generally and specifically each and all of the allegations contained in paragraph 8-a of said petition;

7. Verily believes and therefore admits that certain of her farm lands are irrigated with water from Provo River and Spring Creek with waters used under a ticket made by one T. F. Wentz;

8. Except as hereinabove admitted or denied, she denies generally and specifically each and all of the allegations of the said petition;

FURTHER ANSWERING the said petition, said Esthma Tanner alleges:

I. That she is the owner of certain farm lands situate and being along Provo River, for which said lands she is entitled to irrigation water from Provo River or Spring Creek;

II. That she is also the owner of certain waters arising in springs and seeps on her said lands and of certain waters collected on the said lands by drains;

III. That she was decreed to be the owner of certain of such water rights in civil action 2888 in the above-entitled court and was further awarded a right in the said decree in said cause to use her said drain waters at points on Provo River away from the lands on which the said water arises; and that it is specifically provided in the said judgment that such waters might be used above her said lands from Provo River so long as waters of the said river were required to pass her said lands for use at points lower down the said stream; and that she is informed and believes that she has a right to use waters from Provo River so long as an amount equivalent to the water so used is returned to the said system for the benefit of other users;

IV. That at the specific dates mentioned in the said petition, to-wit, May 7, 25, 26 and 27, she was not in the actual possession of her said lands whereon the said drain and seepage water arises, nor was she personally operating the same; that said lands

were being farmed and used by Caleb Tanner, who is her husband, and ~~was~~ was at all such times in the personal control and operation of the said lands;

V. That she is informed and believes that for the irrigation season of the year 1934, the said Caleb Tanner leased certain water rights on Provo River above the point where the waters of the said drain run naturally into Provo River, and that some waters from said drain has been and is being used for replacement of river water so leased; and is further informed and believes that said drain is greater in quantity of flow than rights used above her said lands so far as said use is based on the said drain right; that she is the owner of, with the right to use, such excess water from the said drain on her own said lands or at other points as she may determine; that she is informed and believes that on the dates hereinabove specified there was an excess of water flowing into Provo River above rights used above her property, based on said drain right and that she was the owner of the said excess; that she is further informed and believes that on the dates above-mentioned certain of the waters arising on her said lands or coming to the same through what is known as Spring Creek, were used on her said lands and an equivalent amount of water of her said drain rights, which water was then and there her own personal property, was placed in the said Spring Creek at the lower end of her farm and permitted to run therein to lower users, and was by such lower users used at the same time and under the same conditions and under the same system of rotation, if such system exists, as would have been the case had no water been so diverted on her said lands and had no replacement been made; that she is further informed and believes that such use of the said waters were within her legal rights, and that such use of the said waters in no manner or at all interfered with the rights of the petitioner herein or of any person whomsoever, nor did the same interfere in any way with the schedules of the said river commissioner if any such existed, nor did same

violate any of the provisions of the said judgment in cause 2888 civil;

VI. Petitioner further alleges on information and belief that the decree in the said cause 2888 nowhere in terms awards the whole of the waters of Spring Creek to a particular use at any time, nor does any regulation or ticket of the said River Commissioner purport to grant all of the waters of the said Spring Creek to any person at any specific period; nor did any ticket as issued by the said River Commissioner at the times in question so provide to her knowledge;

VII. That the said J. M. Bonny the petitioner herein has not suffered any damage or detriment by any act of any party whatsoever in making such uses of water on her said lands; and that the said J. M. Bonny is not beneficially interested in the prosecution of this action and proceeding within the meaning of the laws of the State of Utah which require the prosecution of actions in the name of the real party in interest, and that the said J. M. Bonny is not the real or any party in interest in this action or proceeding and that the same appears from his petition herein;

VIII. That otherwise than as herein stated she has no knowledge of the matters and things alleged in the said petition of the said J. M. Bonny; that at no time has she done any act or thing in the premises, nor has she at any time directed or authorized any act by any person whomsoever mentioned or referred to in the said petition; that she has at no time acted or directed any action in respect to any matter or thing alleged in the said petition or involved in the said judgment in the said cause 2888 civil; that she verily believes that no act alleged in the said petition to have been done is either wrongful or unlawful, nor is any such act contumacious with respect to the said decree in said cause 2888; further alleges that at no time or at all has the petitioner or any other person whomsoever complained to her as to any act or thing being done on her said lands in any manner contrary to the terms of said judgment in said cause 2888 civil, or to the detriment of any person whomsoever.

WHEREFORE, this defendant prays that the said J. M. Bonny take nothing by his petition herein filed; that the same be dismissed as to him and that she have judgment for any costs by her herein expended.

Esthna Tanner

STATE OF UTAH)
) SS.
COUNTY OF UTAH)

Esthma Tanner, being first duly sworn, deposes and says: that she is one of the defendants in the above-entitled proceeding; that she has read the foregoing answer and knows the contents thereof and that the same is true of her own knowledge except as to matters therein stated upon information and belief, and as to such matters she believes it to be true.

Esthma Tanner

Subscribed and sworn to before me this 8 day of June, 1934.



Sherman C. Peterson

NOTARY PUBLIC

My commission expires April 10, 1934.

Received a true copy of the foregoing, this 8th day of June, A.D. 1934

Watkins & Hollbrook

#2888

IN DIST. COURT
UTAH CO., UTAH

RETURN

JUN 9 1934

Frank Salisbury
Clerk
W. B. Benson
Deputy