

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

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PROVO RESERVOIR COMPANY,
a corporation,

Plaintiff,

vs.

PROVO CITY, et al.,
ESTHMA TANNER,

Defendants,

No. 2888 Civil.

P E T I T I O N

The petition of Esthma Tanner respectfully shows:

1. That Ed H. Watson is now, and has been during the whole of the year 1945, the duly appointed, qualified, and acting State Engineer of the State of Utah, and is now, and has been during the year 1945, in charge and control of the distribution of the waters of the Provo River System in Utah County, and elsewhere, in the State of Utah.

2. That on the 2nd day of May, 1921, the above-entitled court made and entered its decree in Case No. 2888 Civil (the above-entitled cause), which decree ever since has been, and now is, in full force and effect, and purports to fix, and does fix, the rights of various water users, including the petitioner herein, in and to the waters of the said Provo River System in said Utah County, and elsewhere, in the State of Utah, where water is used from said system.

3. That prior to the entry of said decree, the petitioner herein had, ever since has had, and still has, a drainage system on her land situated about five miles below the mouth of Provo Canyon, by which system she collected, and still collects, seepage and spring water accumulating and arising on her said land, and from which drainage system there was discharged, and is still discharged, substantial quantities of water into the said Provo River System, in Utah County, Utah, and particularly said drainage system discharged into the said Provo River System seepage and spring water accumulating and arising on petitioner's said land, and collected as aforesaid, in the quantities set opposite the following specific dates during the irrigation season of the year 1945, to wit:

June 30, 1945	4.15	second	feet
July 1, 1945	3.78	"	"
July 2, 1945	4.76	"	"
July 3, 1945	4.92	"	"
July 4, 1945	5.23	"	"
July 5, 1945	7.15	"	"
July 6, 1945	5.40	"	"
July 7, 1945	5.41	"	"
July 8, 1945	5.20	"	"
July 9, 1945	5.54	"	"
July 10, 1945	6.24	"	"
July 12, 1945	7.00	"	"
July 13, 1945	5.78	"	"
July 14, 1945	5.00	"	"
July 15, 1945	4.80	"	"
July 16, 1945	5.18	"	"
July 17, 1945	5.75	"	"
July 18, 1945	5.84	"	"
July 19, 1945	5.60	"	"
July 20, 1945	6.96	"	"

4. That the above measurements are indicative of the flow of water from said drainage system during the entire irrigation season of 1945, thus far elapsed.

5. That, among other provisions not in conflict with the following, said decree in Case No. 2888 Civil provides in paragraphs nos. 3 and 31 thereof:

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"That all the flow of Provo River, its tributaries, springs, seepage and percolating waters, appropriated by the defendants and the predecessors in interest of the plaintiff before May 12th, 1903, for the purposes of irrigation, domestic and municipal uses and for the generation of power, in the Provo Division, are herein denominated Class "A", and be and the same is hereby awarded to the following named parties; for the purposes of irrigation, together with the number of acres of land and the duty of water per second foot upon said land, for the purposes of domestic and municipal uses and for the generation of power; in the quantities and for the periods hereinafter set forth:

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"Esthma Tanner.

"That seepage and spring water accumulating and arising upon her land, and collected by her in the drainage system laid upon said land situated about five miles from the mouth of Provo Canyon, and she is entitled to discharge said water into Provo River and to take from said river an equal amount at the intake of the Provo Bench Canal, so long, and so long only, as the requirements of the users of water from Provo River diverting the same at points below the point of discharge of said drainage water in the said river are not supplied from seepage water, but require the turning down of water from the main flow of the river; and the said Esthma Tanner is entitled to take from said river at the said intake of the Provo Bench Canal, such quantity of water only as is required to be turned down for such lower diversions not exceeding, however, the quantity of water discharged by her into the river from said drainage system."

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6. That the rights decreed to the petitioner in the above-mentioned paragraph No. 31 of said decree are under the Provo Division of said decree.

7. That during the entire irrigation season of 1945, thus far elapsed, and up to the date hereof, the requirements of the users of water from the Provo River System, who divert their water from said system at points below the point of discharge of the petitioner's said drainage system, required the turning down of water from the main flow of said river; that such requirements from the main flow of said river were at all times during the irrigation season of 1945, to date hereof, and still are, a quantity of water in excess of the discharge of seepage and spring water so collected by said petitioner's drainage system and discharged into said Provo River System for the same dates and periods of time; and that there now is, and has been during the whole of the irrigation season of 1945, to the date hereof, sufficient water in the Provo River System to satisfy the requirements of said lower users and to satisfy the rights of the petitioner under said decree.

8. That during the irrigation season of 1945, to date hereof, and particularly during the period of time from June 30, 1945 to July 20, 1945, the said State Engineer arbitrarily and unlawfully and without regard for the provisions of said decree has distributed, and now distributes, to your petitioner 4.25 second feet of water under the terms and provisions of said paragraph No. 31 of the said decree; and that there should have been distributed to your petitioner the quantities of water discharged by the petitioner's drainage system into the Provo River System, whatever that amount may be, and for the period of time from June 30, 1945 to July 20, 1945, the amounts set forth specifically in paragraph "3" of this petition.

9. That on the 21st day of July, 1945, your petitioner made a demand on said State Engineer for the quantities of water decreed to her under the provisions of paragraph No. 31 of said decree to be distributed to her; that said State Engineer has failed, neglected, and refused, and still fails, neglects, and refuses, to comply with said demand; and that petitioner has been deprived by the arbitrary and unlawful action of said State Engineer of more than three hundred (300) acre feet of water belonging to her during the

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VERMONT JUDICIAL DEPARTMENT CLERK OF
THE STATE OF VERMONT
FRANKLIN COUNTY

FILED

SEP 18 1945

G. A. GRANT, Clerk

Klara B. Joyce Deputy