

F-1  
IN THE FOURTH JUDICIAL DISTRICT COURT IN AND FOR  
THE STATE OF UTAH, COUNTY OF UTAH.

PROVO RESERVOIR COMPANY,  
A Corporation,  
Plaintiff,

vs

A N S W E R

PROVO CITY ET AL, including  
the defendants answering.

Come now the defendants, South Kamas Irrigation  
Company, Washington Irrigation Company, and James Prescott,  
Ernest J. Prescott, William L. Prescott, Hattie J. Prescott  
Page, Martha E. McNeil, Nephi Moon, Heber Moon, Hyrum Moon,  
John Swift, Mary E. Pace, Christy Bisel, William Lewis, Samuel  
Gines, Sr., Ellen Gines, Samuel Gines, Jr., Charles L. Gines,  
Abram Gines, James Leffler, Marshall Leffler, Milton O. Turnbow,  
William Lemon, James A. Knight, R. W. Barnes, Riley Fitzgerald,  
Ether Webb, (named in plaintiff's complaint as "Esther") John  
D. F. Bradshaw, Ernest H. Horton, George R. Hardman, Ola W. Larsen,  
Rasmus Larsen, Fred A. Peterson, Mary E. Pace, Mary A. White,  
Mary A. White, Administratrix of the estate of Thomas H. White,  
deceased, Mims Lark, and Mims Lark Administrator of the estate of  
William Lark, George O. Ellis, Henry Fraughton, Julia Potts, William  
Moon, Benjamin Turnbow, Frank Turnbow, Abram Leffler, Abram Leff-  
ler, Jr., James Duncan, John Leffler, and S. A. Peterson, and  
answering for themselves and not for other defendants, make  
answer to the complaint of the plaintiff filed herein, and  
admit, deny and allege as follows, to-wit:

1. These defendants admit all of the allegations  
of the said plaintiff's complaint from the first paragraph to

the twenty-sixth paragraph inclusive.

2. Answering paragraph twenty-seven in said complaint, these defendants deny each and every allegation therein.

3. Answering paragraphs twenty-eight, twenty-nine, twenty-nine (a) twenty-nine (b), twenty-nine (c), twenty-nine (d), these answering defendants deny that they have any knowledge or information sufficient to form a belief as to the matters therein stated, and on that ground deny the same.

4. Answering paragraph twenty-nine (e), they admit that the plaintiff claims the whole of the waters therein referred to and the right to the use of the same for irrigation purposes, but deny each and every other allegation in said paragraph contained.

5. Answering paragraph thirty of the said complaint, these defendants deny that there are one hundred second feet of unappropriated water in said river as set out in said paragraph or at all, and as to the remainder of said paragraph, these defendants have not sufficient knowledge or information to form a belief as to the matter therein stated, and on that ground, deny the same.

6. Answering paragraphs thirty-one, thirty-two, and thirty-three of the said complaint, they deny that they have any knowledge or information sufficient to form a belief as to the matters therein stated, and on that ground, deny the same.

7. Answering paragraph thirty-four of said complaint, these defendants admit that plaintiff claims a right to store the flood waters of said Provo river in its several reservoirs mentioned in its complaint and to release the water so stored at such times and in such quantities as will best serve its interests and the interests of its stockholders and lessors, but as to the right of any right said plaintiff may

have in respect thereto, these defendants deny they have any knowledge or information sufficient to form a belief, and on that ground deny the same.

8. Answering paragraph thirty-five of said complaint, these defendants admit that they deny the right of the plaintiff to the use of the waters of Provo River as set out in said complaint, and as set out in said paragraph. They deny that they have at divers times during the past two years or at any time diverted from said River and converted to their own use, water, the right to the use of which, belonged to or was the property of the plaintiff. They deny that they threaten in violation of the plaintiff's rights or anywise or at all to use any of the waters belonging to the plaintiff, and deny all matters set out in said paragraph thirty-five except as herein admitted.

9. Answering paragraph thirty-six of said complaint, these defendants deny that they have at any time at all use any of the waters of the Provo River wastefully or in quantities largely or at all in excess of that necessary or beneficial for the irrigation of their lands, and deny that any use that these answering defendants make of the said water, deprives the plaintiff or anyone else of their right to the use of the said waters of said River, and deny each and every allegation of said paragraph in so far as same refers to these answering defendants. As to the other defendants, these answering defendants have no knowledge or information sufficient to form a belief.

10. Answering paragraph thirty-seven of said complaint and the allegations therein contained, these defendants admit the rendition of the decrees rendered in 1889 and 1905 as described in said paragraph, and that in said decrees the water of the said River was decreed to the various users thereof, but they deny that since the rendering of said decrees, and by reason of high or flood waters being stored during the first part of the irrigation season or during any part of the

ing any part of the irrigation season at all, or that the use of the water ~~exceeds that~~ so stored in reservoir for irrigating during the low water period, that the capacity of the waters of said River for irrigation has been increased to the extent claimed by plaintiff, and deny each and every other allegation of said paragraph.

11. Answering paragraphs 38 and 39 of said complaint, they deny each and every allegation thereof.

Further answering said complaint, these defendants deny generally each and every paragraph thereof and the allegations contained therein except such as are herein admitted or denied.

For a further defense and by way of counter-claim for affirmative relief, these defendants allege:

1. That all of the lands of these answering defendants which are irrigated as hereinafter set out, from the waters of the Provo River and its tributaries are arid in character and not productive without the artificial use of the water thereon for irrigation of same in the production of crops, and without such water, said lands are practically valueless.

2. That the defendant, South Kamas Irrigation Company and the defendant, Washington Irrigation Company and each of them, are corporations duly organized and existing under and by virtue of the laws of the State of Utah, doing business in Summit County, Utah, as Irrigation Companies, managing, controlling and distributing a portion of the waters of the Provo River and its tributaries among their stockholders according to their respective rights.

3. That the defendant, South Kamas Irrigation Company, in 1872 for the purpose of supplying their stockholders with water necessary to irrigate their lands by means of ditches, constructed by them, made appropriations of water which had theretofore been

unappropriated waters of the said Provo River and its tributaries described in plaintiff's complaint, and on or about said date, by means of such ditches constructed as aforesaid from said river, the said South Kamas Irrigation Company for the purpose of irrigating lands of <sup>its</sup> ~~their~~ stockholders and for culinary and domestic and other beneficial purposes, diverted from Provo River as a primary right, to be used at any and all seasons of the year when water was available, twenty-eight and one-third (28 1/3) cubic feet of water per second of time. That this quantity of water, during each and every year when available, has been used for the irrigation of ~~(1720)~~ one thousand seven hundred twenty (1720) acres of land, and said amount of water always has been, and now is necessary for the proper reclamation, cultivation and irrigation of the said lands, and for culinary and domestic uses of the stockholders of the South Kamas Irrigation Company as the same has always been used since the same was appropriated as aforesaid.

4. That the defendant, Washington Irrigation Company, in 1888, for the purpose of supplying their stockholders with water necessary to irrigate their lands by means of ditches constructed by them, made appropriations of water which had theretofore been unappropriated waters of the said Provo River and its tributaries described in plaintiff's complaint, and on or about said date by means of such ditches constructed as aforesaid from said river, the said Washington Irrigation Company for the purpose of irrigating lands of their stockholders, and for culinary and domestic and other beneficial purposes, diverted from Provo River as a primary right, to be used at any and all seasons of the year when water was available, twenty-one and one-thirtieth (21 1/30) cubic feet of water per second of time, That this quantity of water during each and every year when available has been used for the irrigation of one thousand two

hundred sixty-five (1265\*) acres of land, and said amount of water always has been, and now is necessary for the proper reclamation, cultivation and irrigation of the said lands and for the culinary and domestic uses of the stockholders of the Washington Irrigation Company as the same has always been used since ~~then~~ the same was appropriated as aforesaid.

5. That during the low water season of each and every year, the said Washington Irrigation Company is unable to procure from the natural flow of the Provo River and its tributaries, a sufficient amount of water to properly irrigate the lands of their stockholders, and in order to procure sufficient water during the low water season with which to irrigate the lands of their said stockholders, the said Washington Irrigation Company did on the 12th day of November, 1909, make application to the State Engineer of the State of Utah to appropriate five hundred (500) acre feet of the surplus and unappropriated water of Boulder Creek, a Tributary of the Provo River in Summit County, Utah, to be stored in a reservoir to be built by the said Company, said water to be stored therein each year from November 1st until the 1st day of July of the following year in said reservoir, and to be used each year between the <sup>15<sup>th</sup> day of June</sup> and the 15th day of September with which to irrigate the lands of the stockholders of the said Washington Irrigation Company, by conveying said water from said reservoir into Provo River and re-capturing the same at the intake of the canal of the said Washington Irrigation Company, where the same has been located since 1888, and conveying through said canal on to the lands of the stockholders of the said Washington Irrigation Company. That said application to appropriate said water, was approved by the State Engineer of the State of Utah on February 4, 1910. That pursuant to said application to appropriate said water, the said Washington Irrigation Company did immediately after filing the said application commence,

and at an expense of \$8,000, and in due time complete the construction of the said reservoir together with all necessary dams, gates and flumes, which said reservoir is located at the head of Boulder Creek on the North branch of the Provo River in Summit County, Utah, about 25 miles Northeasterly from point of diversion as hereinafter described, which said reservoir is ample in size and strength and capacity to, and does store therein for use at the time aforesaid, five hundred (500) acre feet of the said waters, and at all times since the year 1911 during the low water season, to wit: Between the 15th day of June and the 15th day of September, the said Washington Irrigation Company has diverted from its said reservoir, said waters through its canals into the Provo River and again re-captured the same at the intake of the Washington Irrigation Company, where the same has been located at all times since 1888, and has conveyed said waters through the said canal to and upon the lands of the stockholders of the Washington Irrigation Company in the manner and at the time and for the purpose aforesaid.

6. The said Washington Irrigation Company further alleges that by reason of the matters and things hereinbefore set out and said appropriation of the said five hundred (500) acre feet of the said water of Boulder Creek as aforesaid, that the plaintiff has caused said 500 acre feet of water to flow into and commingle with the waters of the said Provo River at the time and for the purposes aforesaid, and the said Washington Irrigation Company claims as against the plaintiff and all of the defendants herein, the ownership of and the right to the use of the said water so commingled as aforesaid, and the right to re-capture and divert the same at the head-gate and intake of the said

Washington Irrigation Company as aforesaid into the canal of the said Washington Irrigation Company, and to use the said water for its purposes as aforesaid whenever the same is flowing into the said Provo River, and the right to divert all the water covered by said application and commingle the same with the waters of the said Provo River and to re-capture and use the same upon the lands and under the canal of the said Washington Irrigation Company in Summit County, Utah, in the manner aforesaid, and the said Washington Irrigation Company further claims the right to store the flood waters of the said Boulder Creek in its said reservoir in the amounts above stated, and to release the said water so stored by the said Washington Irrigation Company at such times and in such quantities as will best serve its interests and the interests of its stockholders, and the right to commingle said water with the natural flow of the water of the said Provo River and to re-capture the same at its diverting dam hereinbefore mentioned whenever said stored water is released and commingled with the waters of the said River as aforesaid.

7. That the following named answering defendants, to-wit: James Prescott, Ernest J. Prescott, Wm. L. Prescott, Hattie J. Prescott Page, Martha E. McNeil, William Moon, Nephi Moon, Heber Moon, Hyrum Moon, John Swift, Mary E. Pace, Christy Biesel, William Lewis, Samuel Gines, Sr., Ellen Gines, Samuel Gines, Jr., Charles L. Gines, Abram Gines, James Leffler, Marshall Leffler, Milton C. Turnbow, William Lemon, James A. Knight, R. W. Barnes, Riley Fitzgerald, Ether Webb, (named in plaintiff's complaint as "Ester"), John D. F. Bradshaw, Ernest H. Horton, George R. Hardman, Ola W. Larsen, Rasmus Larsen, Fred A. Peterson, Mary E. Peace, Mary A. White, Mary A. White, Administratrix of the estate of Thomas White, deceased, Miss Lark and Miss Lark, Administrator of the estate of

William Lark, George O. Ellis, Henry Fraughton, Julia Potts, William Moon, Benjamin Turnbow, Frank Turnbow, Abram Leffler, Abram Leffler Jr., James Duncan, John Leffler, and S.A. Peterson, and their predecessors in interest, for the purpose of supplying water necessary with which to irrigate their respective tracts of land by means of dams and ditches constructed by them, made appropriations of water which had theretofore been unappropriated of the waters of the said Provo River and its tributaries described in plaintiff's complaint. That the quantity of water appropriated by them and each of them and the dates of their several respective appropriations and the number of acres upon which said water has been applied are respectfully as follows:

James Prescott

One-sixth ( $1/6$ ) of a cubic foot of water per second of time from the year 1874 from Provo River, for the irrigation of ten acres of land.

Ernest J. Prescott

One sixth ( $1/6$ ) cubic feet of water per second of time from the year 1888, from Provo River for the irrigation of ten acres of land.

Wm. L. Prescott

Five-twelfths ( $5/12$ ) of a cubic foot of water per second of time from the year 1883, from Provo River and Spring Hollow, a tributary of Provo River, for the irrigation of twenty-five acres of land.

Hattie J. Prescott Page

One-sixth ( $1/6$ ) cubic foot of water per second of time from the year 1883, from Provo River, for the irrigation of ten acres of land.

Martha E. McNeil

Seven-tenths ( $7/10$ ) of a cubic foot of water per second of time from the year 1883, from Provo River, for the irrigation of twenty-two acres of land.

Nephi Moon.

One-fifteenth ( $1/15$ ) of a cubic foot of water per second of time from the year 1874, from Provo River for the irrigation of four acres of land.

Heber Moon.

Two-fifteenths ( $2/15$ ) of a cubic foot of water per second of time from the year 1874, from Provo River, for the irrigation of eight acres of land.

Hyrum Moon

One-tenth ( $1/10$ ) of a cubic foot of water per second of time from the year 1874, from Provo River for the irrigation of six acres of land.

William Moon

Seven-sixtieths ( $7/60$ ) of a cubic foot of water per second of time from the year 1874, from Provo River for the irrigation of seven acres of land.

John Swift

one-twelveth ( $1/12$ ) of a cubic foot of water per second of time from the year 1880, ~~from the~~ ~~ix~~ from Provo River, for the irrigation of five acres of land.

Mary E. Peace

Nineteen-thirtieths ( $19/30$ ) of a cubic foot of water per second of time from the year 1875, from Provo River for the irrigation of thirty-eight acres of land.

Christy Bisel

One-thirtieth ( $1/30$ ) of a cubic foot of water per second of time from the year 1874, from Provo River for the irrigation of two acres of land.

William Lewis

Seven-twentieths ( $7/20$ ) of a cubic foot of water per second of time from the year 1874, from the Provo River for the irriga-

tion of twenty-one acres of land.

Samuel Gines, Sr.

Eleven-twelfths ( $11/12$ ) of a cubic foot of water per second of time from the year 1874, from Provo River for the Irrigation of fifty-five acres of land .

Ellen Gines

Two-thirds ( $2/3$ ) of a cubic foot of water per second of time from the year 1874 from Provo River for the irrigation of forty acres of land.

Samuel Gines, Jr.

forty-nine-sixtieths ( $49/60$ ) of a cubic foot of water per second of time from the year 1880 from the Provo River for the irrigation of forty-nine acres of land.

CHARLES L. Gines

One and one-half ( $1\frac{1}{2}$ ) of a cubic foot of water per second of time from the year 1874, from Provo River for the irrigation of ninety acres of land.

Abram Gines

One-sixth ( $1/6$ ) of a cubic foot of water per second of time from the year 1874, from Provo River, for the irrigation of ten acres of land.

James Leffler

One twentieth ( $1/20$ ) of a cubic foot of water per second of time from the year 1868, from Provo River for the irrigation of three acres of land.

Marshall Leffler

One twentieth ( $1/20$ ) of a cubic foot of water per second of time from the year 1874, from Provo River, for the irrigation of three acres of land.

Milton O. Turnbow

Three-fourteenths ( $3/14$ ) of a cubic foot of water per second of time from the year 1876, from Provo River for the irrigation of ten acres of land.

William Lemon

Two-thirds ( $2/3$ ) of a cubic foot of water per second of time from the year 1874, from Provo River for the irrigation of forty acres of land.

James A. Knight

Five and five-twelveths ( $5\ 5/12$ ) ~~of a~~ cubic ~~feet~~ of water per second of time from the year 1874, from Provo River and Twin Bridge Hollow, a tributary of Provo River, for the irrigation of three hundred twenty-five acres of land; and one-fourth ( $1/4$ ) Cubic foot of water per second of time from the year 1899 from Provo River for the irrigation of fifteen acres of land.

R. W. Barnes

One and one-tenth ( $1\ 1/10$ ) ~~of a~~ cubic ~~feet~~ of water per second of time from the year 1868, from Provo River for the irrigation of seventy acres of land.

Riley Fitzgerald

Two and one-half ( $2\ 1/2$ ) Cubic feet of water per second of time from the year 1865, from Provo River, <sup>Birch Hollow Creek</sup> ~~Webb Creek~~ and Twin Bridge Hollow, tributaries of the Provo River, for the irrigation of one hundred fifty acres of land.

Ether Webb

Five-sixths ( $5/6$ ) of a cubic foot of water per second of time from the year 1883, from Provo River and Webb Creek, a tributary of Provo River, for the irrigation of fifty acres of land.

John D. F. Bradshaw

One-half ( $\frac{1}{2}$ ) of a cubic foot of water per second of time from the year 1883, from Provo River and Spring Hollow, a tributary of Provo River, for the irrigation of thirty acres of land.

Ernest H. Horton

Three-fourths ( $\frac{3}{4}$ ) of a cubic foot of water per second of time from the year 1874, from Provo River for the irrigation of forty-five acres of land.

George R. Hardman

Three-fifteenths ( $\frac{3}{15}$ ) of a cubic foot of water per second of time from the year 1865, from Provo River for the irrigation of twelve acres of land.

Ola W. Larsen

One (1) cubic foot of water per second of time from the year 1870, from Provo River and Webb Creek, a tributary of Provo River for the irrigation of sixty acres of land.

Rasmus Larsen.

One and one-tenth ( $1 \frac{1}{10}$ ) cubic feet of water per second of time from the year 1870, from Provo River for the irrigation of sixty acres of land.

Fred A. Peterson

One(1) cubic foot of water per second of time from the year 1876 from Provo River for the irrigation of sixty acres of land.

Mary A. White and Mary A. White as Administratrix of the estate of Thomas H. White deceased.

Eleven-twentieths ( $\frac{11}{20}$ ) of a cubic foot of water per second of time from the year 1880, from Provo River for the irrigation of twenty acres of land.

Mims Lark, Administrator of the estate  
of Mims Lark, deceased.

One-third( $1/3$ ) of a cubic foot of water per second of time  
from the year 1874, from Provo River for the irrigation of twenty  
acres of land.

George O. Ellis

One (1) cubic foot of water per second of time from the  
year 1874, from Provo River for the irrigation of sixty acres of  
land.

Henry Fraughton

One-third ( $1/3$ ) of a cubic foot of water per second of  
time from the year 1874, from Provo River, for the irrigation of  
twenty acres of land.

Julia Potts

One cubic foot of water per second of time from the  
year 1874 from Provo River for the irrigation of sixty acres of  
land.

Benjamin Turnbow

One-thirtieth ( $1/30$ ) of a cubic foot of water per second  
of time from the year 1874, from Provo River for the irrigation  
of two acres of land.

Frank Turnbow

One-thirtieth ( $1/30$ ) of a cubic foot of water per  
second of time from the year 1874, from Provo River for the  
irrigation of two acres of land.

Abram Leffler

One-twelfth ( $1/12$ ) of a cubic foot of water per  
second of time from the year 1874, from Provo River for the  
irrigation of five acres of land,

Abram Leffler, Jr.

One-fortieth ( $1/40$ ) of a cubic foot of water per  
second of time from the year 1874, from Provo River for the  
irrigation of one and one-half acres of land.

John Leffler

Three fortieths ( $3/40$ ) of a cubic foot of water per second of time from the year 1874, from Provo River for the irrigation of four and one-half acres of land.

James Duncan

Five-twelfths ( $5/12$ ) of a cubic foot of water per second of time from the year 1874, from Provo River for the irrigation of twenty-five acres of land.

S. A. Peterson

Two-thirds ( $2/3$ ) of a cubic foot of water per second of time from the year 1874, from Provo River for the irrigation of forty acres of land.

8. That all of the said waters were diverted by said respective named defendants and their predecessors in interest from said Provo River ~~of~~ its tributaries at the time and in the amounts hereinbefore set out as a primary right to be used at any and all seasons of the year when the water was available, with which to properly and necessarily irrigate their said lands for the production of agricultural crops thereon.

9. That said quantities of water at all times has been used economically and prudently, and has not been sufficient to properly and successfully irrigate said land so as to fully mature the crops thereon and supply these defendants with water for domestic and culinary and other beneficial purposes, and in order to fully mature their said crops, each of the said defendants and their predecessors in interest, during what is known as the high water season and approximately from the commencement of irrigation each year until about the 15th of July, have taken and diverted from said Provo River and its tributaries, sufficient of the waters thereof to supply their necessities for the purpose above set forth.

10. That the quantity so taken and used by the said defendants and each of them during said high water period, has been approximately twice the amount of water as hereinbefore stated. That each of these answering defendants, both corporations and individuals have used during the said high water season the amount of water hereinafter stated in addition to the amount hereinbefore stated, to-wit:

South Kamas Irrigation Company	28 1/3	Cu. ft. per second of time
Washington Irrigation Company	21 1/30	Cu. Ft per second of time
James Prescott	1/6	cu. ft per second of time
Ernest Prescott	1/6	cu. ft per second of time
Wm. L. Prescott	5/12	cu. ft per second of time
Hattie J. Prescott Page	1/6	cu ft per second of time
Martha E. McNeil	7/10	cu ft per second of time
William Moon	1/15	cu ft per second of time
Nephi Moon	1/15	cu ft per second of time
Heber Moon	2/15	cu ft per second of time
Hyrum Moon	1/10	cu. ft per second of time
John Swift	1/12	cu. ft per second of time
Mary E. Pace	19/20	cu. ft per second of time
Christy Bisel	1/30	cu. ft per second of time
William Lewis	7/20	cu. ft per second of time
Samuel Gines, Sr.	11/12	cu. ft per second of time
Ellen Gines	2/3	cu. ft per second of time
Samuel Gines, Jr.	49/60	cu. ft per second of time
Charles L. Gines	1 1/2	cu ft per second of time
Abram Gines	1/6	cu. ft per second of time
James Loeffler	1/20	cu. ft per second of time
Marshall Loeffler	1/20	cu ft per second of time
Milton O. Turnbow	3/14	cu. ft per second of time
William Lemon	2/3	cu ft per second of time
James A. Knight	5 5/12	cu. ft per second of time
R. W. Barnes	1 1/10	cu. ft per second of time
Riley Fitzgerald	11/16	cu. ft per second of time

Ether Webb (named in plaintiff's complaint as "Esther")	5/6 cu. ft per second of time
John D. F. Bradshaw	1/2 cu. ft per second of time
Ernest H. Horton	3/4 cu. ft per second of time
George R. Hardman	3/15 cu ft pe second of time
Ola W. Larsen	1 cu ft per second of time
Rasmus Larsen	1 1/10cu ft per second of time
Fred A. Peterson	1 cu. ft per second of time
Mary A. White and Mary A. White Administratrix of the estate of <del>William Lark</del> Thomas White deceased	11/20 cu. ft per second of time
Mims Lark and Mims Lark administrator of the estate of William Lark	1/3 cu. ft per second of time
George O. Ellis	1 cu. ft per second of time
Henry Fraughton	1/3 cu. ft per second of time
Julia Potts	1 cu. ft per second of time
Benjamin Turnbow	1/30 cu. ft per second of time
Frank Turnbow	1/30 cu. ft per second of time
Abram Leffler	1/12 cu. ft per second of time
Abram Leffler Jr.	1/40 cu. ft per second of time
John Leffler	3/40 cu. ft per second of time
James Duncan	5/12 cu. ft per second of time
S. A. Peterson	2/3 cu. ft per second of time

That said quantities of water during both the high and low water season while crops are being irrigated, has been and is necessary when economically used to supply these defendants with the water necessary for the purposes aforesaid. And by reason of said use and appropriation of said water as aforesaid, these defendants allege that they are the owners in their own right of the right to the use of the said several amounts of water of said Provo River and its tributaries hereinbefore set opposite their respective names,

