

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT,
UTAH COUNTY, UTAH.

Provo Reservoir Company,)	
a corporation,)	
Plaintiff.)	
vs.)	DE M U R R E R.
Provo City, Lincoln School)	
District, corporations, et al,)	
Defendants.)	
----->)	

The defendants, Provo City, The Little Dry Creek Irrigation Company, ~~Provo Pressed Brick Company~~, Provo Ice and Cold Storage Company, Smoot Investment Company, E.J. Ward and Sons Company, First Ward Pasture Company, Spring Dell Resort Company, corporations, and Upton Hoover, W. E. Hoover, Webster Hoover and Frank Hoover, as partners, doing business under the name of Excelsior Roller Mills, demur to the complaint of the plaintiff herein upon the following grounds:

First: That the complaint of the plaintiff herein does not state facts sufficient to constitute a cause of action against this defendant.

Second: That the complaint of the plaintiff is uncertain in this,--

(A) That paragraph numbered 27 of said complaint, alleges,--"That each and every year when the snow falls in the mountains at the several sources of the said river, is an average amount, and the precipitation on the watershed of said river is an average precipitation, there is a surplus of water in said river during the high water period in May and June and until on or about the 15th day of July, over and above all completed appropriations therefrom," without stating the average snow-fall at the several sources of the said river nor the average precipitation on the water shed of said river, nor the amount of water that would constitute the completed appropriations

from said river, and these defendants, from said allegations of plaintiff's complaint do not know nor can not ascertain, nor determine the amount of water that constitutes a surplusage, nor the amount of water that constitutes the completed appropriations from said river.

(B) That paragraph numbered "29b" of said complaint is uncertain for the reason that plaintiff alleges therein that it is the owner of the waters of "Enoch Spring" and the "Little Springs" except one-tenth thereof, and all the waters of "Round Valley Creek," not exceeding three and one-half second feet; and by reason of the amount of water not being stated from said sources, these defendants cannot determine nor ascertain the quantity of water from said sources, nor the amount claimed by plaintiff.

(C) That paragraph numbered "29d" of the plaintiff's complaint is uncertain for the reason that it alleges plaintiff is the owner and entitled to the use of secondary or "Class B" water right in Provo River, to-wit: "The Blue Cliff Canal Right" consisting of nine hundred and sixty, seventeen-thousand-nine hundred and sixtieths of what is known as "Class B" water right as set forth and defined in that certain civil action No. 957 tried in the District Court of the Fourth Judicial District, Utah County, State of Utah, wherein Provo City, et al. were plaintiffs and the Telluride Power and Transmission Company et al were the defendants; and these defendants cannot ascertain nor determine from said allegation whether plaintiff claims said water by virtue of an adjudication of right by said action, by a decree rendered therein, or from what proceedings had in said cause defining the amount claimed by plaintiff.

(D) That paragraph numbered "36" of plaintiff's complaint is uncertain for the reason, that it states,-

"Many of the defendants who have a prior right in point of time of appropriations, to the plaintiff's right to the use of the waters of said river, have been year after year continuously during the irrigation season, claiming to have the right to do so, using the water diverted by them wastefully and in quantities largely in excess of that necessary or beneficial for the irrigation of their lands,"; and it cannot be ascertained nor determined from said allegation what defendants, nor to what extent plaintiff claims ~~that~~ the use of said water has been wasteful or in excess of the amount necessary or beneficial for the irrigation of their lands.

(E) That said complaint of the plaintiff as a whole is uncertain for the reason that plaintiff claims thereby an interest in the water of Provo River, as against the rights of these defendants, and it cannot be ascertained from the said complaint what quantity of water plaintiff claims of right, nor what quantity of water this ~~defendant~~ plaintiff is claiming in excess of the rights of these defendants thereby.

E. E. Coffman & Jacob Coleman
Attorneys for Provo City, The Little Dry
Creek Irrigation Co., Provo Pressed Brick
Co., Provo Ice and Cold Storage Co., Smoot
Investment Co. E. J. Ward & Sons Co.,
First Ward Pasture Co., Spring Dell Resort
Co., corporations, and Upton Hoover, W. E.
Hoover, Webster Hoover, and Frank Hoover,
partners, doing business under the name
of Excelsior Roller Mills, Defendants.

Duo and legal service of within demurrer had and received
this 14th day of March, 1914.

Jacob Evans
One of the attorneys for Plaintiff.