

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

R-1

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PROVO RESERVOIR COMPANY, a	*)	
corporation,	*)	
	*)	
Plaintiff,	*)	
	*)	
vs.	*)	ANSWER.
	*)	
PROVO CITY, et al.,	*)	
	*)	
Defendants.	*)	
-----	*)	

Now come the above named defendants, Pioneer Irrigation Company, a corporation, John^W Allen, Arthur^{V.P.} Allen, T. W. Allen and Samuel Mc^VAfee, and *and John H. Mordock* answering plaintiff's complaint filed herein, admit, allege and deny as follows, to-wit:

I. Defendants admit the allegations contained in the second, and sixth paragraphs of said complaint.

II. Defendants deny that they have any knowledge or information thereof sufficient to form a belief as to the allegations contained in paragraphs 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 28, 29, 29(a), 29(b), 29(c), 29(d), 30, 31, 34 and therefore deny the same.

III. Defendants admit that they claim an interest in and a right to the use of the waters of Provo River; that Provo River is a natural stream of water having its principal sources in Wasatch and Summit Counties, and that said stream is increased by tributaries having their sources in Utah County, and that if the water were not diverted by dams and canals, the same would reach Utah Lake.

IV. Defendants admit the allegations contained in the 25th and 26th paragraphs of said complaint.

V. Answering the 33rd paragraph of said complaint, defendants admit that plaintiff has in part constructed several reservoirs at the head of Provo River.

VI. Defendants admit that they deny plaintiff's right to store water unless there should be any surplus, and in this connection,

defendants aver that if there is any surplus plaintiff would have the right, under proper rules and regulations, to comingle the same with the waters of Provo River, and to divert the same upon any lands that it might own, but defendants aver that the plaintiff would have no right to comingle waters or divert them to the damage or injury of these defendants, or other prior appropriators of the waters of said Provo River and its tributaries.

VII. Defendants admit that a decree was entered in the Fourth Judicial District Court in and for Wasatch County, State of Utah, in the suit of Wasatch Irrigation Company, et al., vs. Edward Fulton, et al., but the exact terms and nature of said decree to these defendants are unknown. Defendants admit that in September, 1905, a decree was entered in the suit of Provo City, et al., vs. Telluride Power Transmission Company et al., but defendants aver that they have no knowledge as to the contents of said decree, and leave plaintiff to make such proof as it may desire.

VIII. Defendants deny each and every allegation of said complaint except such as are herein specifically admitted.

Further answering said complaint, and as a defense thereto, these defendants affirmatively allege:

That the Pioneer Irrigation Company is a corporation organized under the laws of Utah for the purpose of controlling and distributing to the stockholders ^{thereof} ~~the~~ portion of the waters of Provo River to which each is respectively entitled; that more than sixty years ago, ^{grants and} ~~the~~ predecessors in interest of said corporation, acquired lands upon the west side of Provo River in Sections 21, 28, 32 and 33, in Township 4 South, Range 4 East, Salt Lake Meridian, Wasatch County, Utah, and for the purpose of irrigating said lands they constructed two canals connecting with said Provo River, the heads of said canals being approximately from one to one and a half miles west of Charleston, in said County. That by means of said canals and ~~dams~~ ^{grants and} placed in Provo River, the predecessors in interest of said corporation, more than sixty years ago, appropriated of the unappropriated water of Provo River, 14 cubic feet per second, and used the same upon their said lands for culinary, domestic and irrigation

purposes; that said lands were dry and barren and required irrigation for the raising of crops thereon, and that with the application of water upon said lands, the same became and were of great value, and the same became and were productive and yielded large quantities of grain, hay and other agricultural crops. Defendant, Pioneer Irrigation Company, avers that ever since said appropriation was made, more than fifty years ago, it and its grantors and predecessors in interest have used during the irrigation season of each and every year, said fourteen second feet for the irrigation of said lands, and during the non-irrigation season, said defendant and its predecessors in interest have used of the waters of said Provo River, through said canals and upon said lands, four cubic feet of water per second; that the irrigation season varies from year to year, and depends upon whether there are late spring rains, or whether the cold season is prolonged, and upon climatic and other conditions, but generally, the irrigation season commences the 15th of April and continues until the 1st day of November, and during said period, said Pioneer Irrigation Company, and its grantors and predecessors in interest have used upon said lands said fourteen second feet of water and the same was necessary for the maturing of crops thereon. That said Pioneer Irrigation Company is the owner in trust for its said stockholders of said fourteen cubic feet of water per second, and is likewise the owner of four cubic feet per second of water during the period aforesaid, and said defendant is entitled to the full, free and unrestricted use of said quantities of water during the periods and seasons aforesaid, for distribution to its stockholders, and said water is necessary for said stockholders, and is devoted by them to a beneficial use.

The defendants, T. W. Allen and John H. Murdock, answering plaintiff's complaint, affirmatively alleges that more than fifty years ago, their grantors and predecessors in interest constructed the canal on the west side of Provo River, in Section 28, Township 4 South, Range 4 East, Salt Lake Meridian, Wasatch County, Utah, and by means of a dam placed in said river, and through said canal when constructed, they appropriated of the unappropriated waters of said river, two cubic feet per second of water during the irrigation season of each and every year;

that said grantors and predecessors in interest, were the owners of lands which without water were sterile and unproductive, but which when water was applied thereon, became productive and yielded large quantities of agricultural crops. These defendants aver that they and their predecessors in interest have used during each and every year since said appropriation, the said two cubic feet of water per second for the irrigation of said lands, and that said water was necessary for the maturing of crops thereon. That by divers~~meane~~ conveyances, these answering defendants, T. W. Allen and John E. Murdock, became the owners of said land and ~~said~~ waters, and said canal and dam, and are the owners of and entitled to the full, free and unrestricted use of said ~~two~~ cubic feet of water per second during the irrigation season of each and every year, to-wit: from the 1st of April to the 1st of December. Defendants further allege that their grantors and predecessors in interest, appropriated and used during the non-irrigation season of each and every year, one cubic foot of water per second, using the same for domestic and culinary purposes; and for more than fifty years these defendants and their grantors and predecessors in interest have used, without interruption said one second foot ~~far~~ of water during the non-irrigation season for domestic and culinary purposes aforesaid. These defendants T. W. Allen and John E. Murdock allege that by reason of said prior appropriation and use, they are the owners and entitled to the full, free and unrestricted use of the waters of Provo River taken through the canal aforesaid and by means of the dam aforesaid, the said two second feet for culinary and for irrigation purposes from the 1st day of April to the 1st day of December of each and every year, and also one ~~second~~ second foot of water for domestic and culinary purposes from the 1st day of December of each and every year to the 1st day of April of the next succeeding year.

Defendants, J. W. Allen, and T. W. Allen, Arthur[?] Allen and Samuel Heafee, answering plaintiff's complaint, affirmatively allege that more than fifty years ago, their grantors and predecessors in interest, acquired lands in Section 28 and other sections adjoining, Township 4 South, Range 4 East, Wasatch County, Utah; that said lands

were barren and unproductive without irrigation, but with the application of water thereon, they became and are productive and valuable and yield large agricultural crops; that in order to irrigate said lands, and for culinary and domestic purposes, said grantors and predecessors in interest appropriated of the unappropriated waters of Provo River, ten second feet; that in order to use said ten second feet of water, they constructed a dam in said river and a canal therefrom, the head of said canal being in said Section 28; and through said canal they flowed to and upon their said lands, and to their respective homes, said ten second feet of water; that these defendants and their grantors and predecessors in interest have used said water upon their said land and for culinary purposes during each and every year since said appropriation, and said waters have been and are necessary for culinary and domestic purposes and for the irrigation of said lands, and said waters have been applied to a beneficial use and these defendants are now the owners and are entitled to the use of said ten second feet of water during the irrigation season of each and every year, said irrigation season being from the 1st of April to the 1st of November. Defendants further allege that they and their grantors and predecessors in interest, have used for more than fifty years, last past, during the non-irrigation season, that is to say, from the 1st day of November of each year to the 1st day of April in the next succeeding year, two second feet of water for domestic and culinary purposes; that by proper conveyances, these defendants succeeded to and acquired all of the interest of said grantors and appropriators in and to said lands, and said dam, canal and water, and are now the owners of said ten second feet of water and said two second feet of water during the periods and for the purposes and to the extent aforesaid.

Defendant, J. W. Allen, answering said complaint, further alleges that he is the owner of a piece of parcel of land in Section 33, Township 4 South, Range 4 East, Wasatch County, Utah, situate on

the east side of Provo River; that upon said land a spring rises which flows approximately one cubic foot of water per second; that more than fifty years ago, defendant's grantors acquired said land and appropriated and used of the waters of said spring, and the whole thereof, for from one-third to one-half of the time during the irrigation season of each and every year, that is to say, from about the 1st day of April to the 1st day of December, and approximately one-twentieth of the waters of said spring during the non-irrigation season for domestic and culinary purposes; that said land without water was dry and unproductive, and said water so used and applied thereon was ^{only} necessary for the irrigation of said land and the maturing of crops thereon; that defendant, J. W. Allen succeeded by proper conveyance, to said land and the waters of said spring, to the extent aforesaid, and is now the owner of said land and the water of said spring to the extent aforesaid and for the purposes aforesaid. Defendant avers that one Wilford Wright claims to be the owner of the residue of the waters of said spring, and defendant avers that said Wright and his predecessor in interest have had full, free and uninterrupted use of the portion of the waters of said spring not used, appropriated and owned by said defendant, J. W. Allen. Defendant avers that said spring is not a tributary of the Provo River, but has been used by defendant and his predecessor in interest and said Wilford Wright and his predecessor in interest for more than fifty years, for irrigation and for domestic purposes.

WHEREFORE, the premises considered, these defendants pray that plaintiff take nothing by its complaint; that these defendants be decreed to be the owners of the portion of the waters of Provo River and of said spring herein set forth and in this answer described; and that the court adjudge and decree that as the owners of the quantity of water to which they are entitled and as herein set forth, they be awarded the full, free and unrestricted use of the same; and that the said plaintiff and all other persons claiming any interest adverse to these defendants, may be decreed to have no interest in said water, or any portion thereof in conflict with the rights of these defendants; and that said plaintiff and all other persons whomsoever be enjoined and restrained from in any manner interfering with the rights of these defendants, and with the use of the water of said river, and said spring, to which they are respectively entitled.

These defendants pray for such other and further relief as including general relief, as to the court may seem proper, together with their costs herein expended.

[Handwritten signature]

Attorneys for Defendants, Pioneer Irrigation Company, John Allen, Arthur Allen, F. W. Allen and Samuel McAfee.

STATE OF UTAH,)
) SS.
 COUNTY OF SAINT LAKE.)

J. W. Allen being first duly sworn upon oath deposes and says: That he is one of the defendants above named; that he has read the foregoing answer and knows the contents thereof; and that the same is true of his own knowledge, except as to matters therein stated upon information and belief, and as to such matters, he believes it to be true.

[Handwritten signature: J. W. Allen]

Subscribed and sworn to before me this 15 day of May, A. D. 1914.
 My commission expires _____.

[Handwritten signature: J. W. Allen]

Notary Public.

2888

Provo Reservoir

vs.

Provo City et al

Answer of
Provo Reservoir

AT PROVO CITY, UTAH

FILED
MAY 18 1914
FILED

BY *J. M. [Signature]* CLERK
DEPUTY