

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

IN AND FOR UTAH COUNTY, STATE OF UTAH. -

P 6

No. 2888 Civil,

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Provo Reservoir Company,
a Corporation, Plaintiff,

SEPARATE ANSWER

of

vs.

SUNRISE IRRIGATION COMPANY.

Provo City, x x x, Sunrise

one of the Defendants.

Irrigation Company, et al.

Defendants.



Comes now the Sunrise Irrigation Company, one of the defendants named in the above entitled cause, by its attorney, and answering Plaintiff's complaint filed herein admits, denies, and alleges as follows:-

1. Defendant admits the corporate existence of plaintiff, but denies that its officers have sufficient knowledge or information to form a belief with reference to all the other allegations of paragraph 1 of said complaint, relative to the objects, ^{and} purposes of said corporation or the powers of its Board of Directors ;

2. Defendant admits the allegations in paragraphs 2 to 26 inclusive of plaintiff's complaint ;

3. Answering the allegations of paragraph 27 of said complaint defendant denies that its officers have knowledge or information sufficient to form a belief with reference to the extent to which the highwaters of Provo river are in excess of what is necessary to satisfy all "Completed Appropriations" as the term is used by plaintiff in said complaint, or whether there is at any time any surplus to which no claim is made ;

4. Defendant denies that its officers have information or knowledge sufficient to form a belief with reference to the allegations of paragraphs 28 to 33 inclusive of said complaint ;

5. Defendant admits plaintiff's right to store flood waters of Provo River as alleged in paragraph 34 of said complaint ;

6. Answering the allegations in paragraph 35 of said complaint this defendant has no knowledge or information relative to the attitude or acts of its co-defendants, and denies that it is in any manner interested or responsible for their acts; This defendant admits plaintiff's right

to commingle water from other sources with the waters of Provo River and recover it again. And this defendant denies specifically that, by its Directors, officers, or agents, it has during the last two years or at any other time, diverted from said river or converted to its use, or to the use of its stockholders, any water the right to the use of which belonged to the plaintiff, and denies generally all other allegations of said paragraph 35, of said complaint ;

7. Answering paragraph 36 of said complaint the defendant denies that it, or its stockholders, have or are now using water wastefully, and specifically denies plaintiff's right to dictate to them with reference to the amount of water they shall use upon their lands, and alleges that they are making a rightful and beneficial use of all water converted by defendants through its canal, and deny that said use is in any manner in violation of any right of the plaintiff;

8. Defendant admits the allegations in paragraph 37 of said complaint, except, that defendant denies that said decree did, or attempted to, distribute " all the waters of Provo River," and defendant denies the allegations of that portion of said paragraph which reads : " In each (decree) it is assumed that the whole of the flow of the water in said river was diverted and appropriated and applied to a necessary and beneficial use therefore, and that by each of said decrees the whole of the water of said river was covered and awarded to the parties making such appropriation ",

9. Defendant denies generally the allegations of paragraphs 38 and 39 of said complaint .

This defendant further alleges by way of affirmative defence in this action :-

1. That this defendant is the owner of a "Primary" water right entitling it to a continuous flow of Four (4) cubic feet per second of the waters of Provo River, to be used upon the lands of its stockholders, during the entire irrigation season of each and every year ;

2. That the decree in the case of Wasatch Irrigation Company et al vs Edward Fulton et al, dated May 6, 1899, distributes the normal, or low

low water flow of Provo River, and that not to exceed forty (40) second feet of the Highwater of said river is distributed by said decree, in the ten (10) classes named therein, but that said decree expressly provides :

" 17. It is further ordered, adjudged, and decreed, that so long as the water in said river in any season of the year exceed in volume the aggregate quantity awarded to the several parties to said action, as herein provided, said parties shall not be restricted by any measurement of said water provided herein, but may extend the application of said waters upon any lands they own or possess, according to their necessities."

That pursuant to the terms of said decree this defendant has diverted and used upon the lands of its stockholders, during each and every year since the entering of said decree, so long as the water in said river has exceeded in volume the quantity necessary to supply the several parties to said decree the amounts awarded to them, five (5) cubic feet per second of the water of Provo River. And that ~~this defendant~~ said diversion and use has been peaceable, open, notorious, uninterrupted and continuous so long as the supply of water existed during each and every year, and adverse to this plaintiff and to all the world, and under a bonafide claim of right. And that this defendant is now the owner of a right to highwater from the Provo River to the amount of five (5) cubic feet per second, subordinate only to the highwater rights defined in and fixed by said decree;

3. That defendant's canal, for about 6,600 feet from the point of diversion, is constructed over sandy bottom land and along the slope of a bench where the soil is extremely gravelly, rocky, loose and porous, and that a large per cent. of the water sinks into ^{the} bed of the canal and rises to the surface again some distance below, rendering it necessary to divert into said canal a much larger amount of water than what is actually used by defendant's stockholders. That several years ago the defendant corporation constructed and provided, and have since maintained a waste ditch below defendant's canal, wherein the seepage from their said canal is collected, conveyed, and returned to the main stream of Provo

River; that this condition is known and has been recognized by the co-
defendants in this action, and that ⁱⁿ all measurements that have been made
of the water decreed to this defendant under the decree mentioned herein
allowance has been made for such seepage so that this defendant should
have the amount decreed to it for the use of its stockholders to apply
to their lands, and this defendant claims as against this plaintiff, as
and of a right that this defendant is entitled to construct and maintain
its measuring device at a point Two Thousand feet below the
point of diversion of its canal, at a point above where any of the water
in its canal is used for irrigation purposes, or else that defendant is
entitled to measure the volume of water returned to the river through
its waste ditch, and have a corresponding quantity of water added to the
volume of water that it is entitled to divert and apply on the lands of
its stockholders at the headgate of its canal if the volume of water
diverted by this defendant shall be measured at or near the point of diver-
sion from the main stream.

Wherefore this defendant prays that plaintiff take nothing as against
this defendant, and that the right of this defendant, the Sunrise Irri-
gation Company, a corporation, to the use of the water of Provo River be
defined, decreed, confirmed, and forever quieted as follows:-

I. A "Primary" right to four (4) cubic feet per second during the
entire irrigation season of each and every year ;

II. A "High-water" right to the use of five (5) cubic feet per second
during the irrigation season of each and every year, so long as the volume
of water in Provo River is in excess of the aggregate quantity awarded to
the several parties named in the decree of this court in the case of
Wasatch Irrigation Company et al. vs. Edward Fulton et al. dated May 6th,
A.D. 1899. and

III. That the point for measuring the water of the defendant be located
at a point Two Thousand feet below the headgate of the defend-
ant's canal, at a point in said canal above where any of the waters of said
canal is used for irrigation purposes; or , that in measuring the water
to which defendant is entitled the seepage water returned to the Provo
River through the defendant's waste ditch be measured and a corresponding

quantity added to the volume to which defendant is entitled if the water of defendant is to be measured at or near the headgate of defendant's canal.

4. Defendant prays for general relief.

Chas. J. Wahlquist
Attorney for defendant,
Sunrise Irrigation Company.

State of Utah,)
) (ss.
County of Summit.)

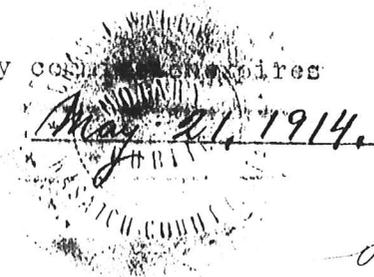
David A. Bisel being first duly sworn, on his oath deposes and says: That he is one of the officers of the Sunrise Irrigation Company, a corporation, the defendant named above, to-wit the President, that he is familiar with the business of said corporation and with the canal through which it conveys water to the lands of its stockholders, that he has read the foregoing answer and knows the contents thereof; that the allegations therein are true of his own knowledge, except as to such as are stated upon information and belief, and that as to all those he verily believes them to be true.

David A. Bisel

Subscribed and sworn to before me this 12th day of April, A. D. 1914.

Chas. J. Wahlquist
Notary Public

My commission expires



Helmer Weath
Service accepted May 15th as in time
W. B. Hatch, Jacob Evans,
A. L. Booth and A. J. Evans
3 A. C. Hatch
attorneys for plaintiff

No. 2888

In the Fourth District
Court.

Utah County, Utah.

Provo Reservoir Co.

vs.

Provo City, et al.

Separate Answer of
Defendant,

Sunrise Irrigation Company.

Filed May 21 , 1914.

A. W. Robinson

Clerk.

J. M. Chapman
Deputy