

MM-1

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

\*\*\*\*\*  
Provo Reservoir Company, \*  
a corporation, \*  
Plaintiff, \*  
vs. \*  
Provo City, A. H. DeLong et al \*  
Defendants. \*  
\*\*\*\*\*

AFFIDAVIT.

State of Utah        Y  
                          :        ss  
County of Utah      Y

Caleb Tanner being first duly sworn, on his oath says:

That he is a resident of Provo City, Utah and acquainted with the subject-matter of the litigation in the above entitled cause; that since the commencement of said action he has become the owner of certain water rights in the Provo River in issue in said action and that prior to his so becoming the owner the defendant in said action, <sup>Charles H Taylor</sup> A. H. De Long, was the owner thereof; that since this affi-  
ant became such owner the said defendant, <sup>Charles H. Taylor</sup> A. H. De Long has no interest whatever as to the water rights in relation to which he was sued in said action.

Caleb Tanner



Subscribed and sworn to before me this 2 day of March

Alfred L Booth  
Notary Public.

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ANSWER

Comes now Caleb Tanner, the successor in interest of the defendant, <sup>Charles H. Taylor</sup> ~~A. H. DeLong~~, as to certain rights to the use of the waters of Provo River involved in this action, and by leave of court first had and obtained, files this his answer to plaintiff's complaint and states:

1. That all the allegations of said complaint from the first paragraph to the twenty-second paragraph thereof, inclusive, are admitted.

2. That the 34th, 38th and 39th paragraphs of said complaint and the allegations contained therein are admitted.

3. Answering the 33rd paragraph of said complaint, it is denied that this plaintiff has any knowledge or information sufficient to form a belief as to the matters therein contained.

4. Answering paragraph 35 of said complaint as to this defendant, said paragraph and the allegations therein contained are denied, but as to the matters therein alleged against and concerning the other defendants in this action, it is denied that he has any knowledge or information sufficient to form a belief.

5. Answering the 26th paragraph of said complaint, it is admitted that many of the defendants, having a right prior in point of time of appropriations to the plaintiff's right to the use of said waters, have been using water wastefully as alleged in said paragraph, but as to the extent to which said water has been wasted and the extent of the injury caused thereby, or the effect the same may have in general or in particular, it is alleged that this defendant has no knowledge or information sufficient to form a belief.

6. Answering the 37th paragraph of said complaint and the allegations therein contained, the rendition of the decrees rendered in 1889 and 1905 as described in said paragraph, is

admitted. As to the remaining allegations in said paragraph it is denied that this defendant has any knowledge or information sufficient to form a belief concerning the same.

7. Further answering said complaint, this defendant denies each and every paragraph thereof and the allegations contained therein, except such as are herein specifically admitted or denied.

Further answering said complaint and by way of counterclaim and for affirmative relief, it is alleged:

1. That the Provo river is a natural stream of water rising in the Wasatch mountains, flowing through Provo canyon in a southerly direction through the lands adjacent to Provo City, Utah.

2. That this defendant and his predecessors in interest have for more than forty years last past, been the owners of ~~the~~ lands in the vicinity of Provo City, Utah and about five miles from the south of Provo canyon, which, in their natural state were desert and barren, but which, when brought under irrigation and cultivation yielded abundant agricultural crops.

3. That more than fifty years ago the grantors and predecessors in interest of this defendant, for the purpose of irrigating said lands, constructed a ditch connected with the Provo river about three miles below the mouth of Provo canyon and placed a dam in said Provo river for the purpose of diverting waters therefrom into said ditch and ever since said date, and up to about the year 1900 maintained said dam in said river and diverted the ~~said waters~~ flowing waters of said river and by means thereof irrigated the said lands above referred to, the said ditch through which said water was so diverted being at times commonly called the "Carter Ditch."

That on or about the year 1900 the waters theretofore diverted through said Carter ditch were taken therefrom and placed in and diverted through the West Union canal and in about the year 1903 the said waters were again transferred from said West Union canal to the Provo Bench canal and have been diverted and used through said canal, except when the use of the same has been wrongfully interfered

with contrary to the rights of this defendant.

4. That the lands upon which said water ~~have~~ <sup>has</sup> been and is now used, lying in the vicinity of Provo City, Utah, require artificial irrigation to render the same fruitful and productive and that this defendant is the owner of a right to the use of a portion of the waters appropriated as aforesaid for the irrigation of such lands as against each and all of the parties to this action, the said waters to be diverted through the Provo Bench Canal from said Provo river.

5. That the quantity of said waters of which defendant is so the owner of the right to the use for the purposes aforesaid, is ten ten-thousandths of the flowing waters of said river when the volume of the flow thereof exceeds 12,000 cubic feet per minute and eleven ten-thousandths when the total volume of the flow is less than 12,000 cubic feet per minute.

WHEREFORE judgment is prayed that the right of this defendant to the use of the quantity of water claimed as above set forth be adjudicated and determined and that the same be declared a valid existing and vested right and that the plaintiff and the co-defendants of this defendant be forever enjoined and restrained from asserting any claim of right or right to the use of this defendant and that such further order be made in the premises as is just and equitable together with costs.

*E. A. Wedgwood*  
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Attorney for Caleb Tanner.

