

P-12

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

CAUSE #2888.

Provo Reservoir Company,
A Corporation,

Plaintiff

vs.

Answer, Counter-claim, and
Cross-complaint of
Provo City, a Municipal Corporation

Provo City,
A Municipal Corporation et al,

Defendants.

Now comes the defendant, Provo City a Municipal Corporation, under the laws of the State of Utah and by leave of Court and Stipulation of Counsel first had and obtained, answers the complaint of the plaintiff herein and admits, denies, and avers as follows to-wit:

1. This defendant admits the allegations in plaintiff's complaint contained of paragraphs numbers 1 to 26 both inclusive.

2. Answering paragraphs 27, 28, 29, 29 a, 29b, 29c, and 29d, this defendant alleges that it has no knowledge or information sufficient to form a belief as to the matters therein alleged, and on that ground denies the same.

3. Answering paragraph 29e, this defendant admits that plaintiff claims the right to the whole of the water therein mentioned and referred to and the right to the use of the same for irrigation purposes, but denies each and every other allegation in said paragraph 29e contained.

4. That this defendant has no knowledge, information, or belief sufficient to enable it to answer any or either of the allegations in paragraphs numbered 30, 31, 32, 33, 38, and 39, in plaintiff's complaint contained and therefore this defendant denies each and every allegation of the same.

5. Answering paragraph 34 this defendant admits that plaintiff claims the right to store the flood waters of Provo River in its alleged reservoir, and to release such quantities of water as will best serve the plaintiff and its stock-holders and lessees, and the right to commingle the said water with the natural flow of the waters of Provo River and to recapture the same at its diverting dam and at other points along the course of said river; but as to any right of the plaintiff to thus store said water or release the same the defendant denies.

6. Answering paragraph 35 of plaintiff's complaint, this defendant admits that it denies the plaintiff's right to the use of the water of Provo River as in plaintiff's complaint set forth, and that it denies the plaintiff's right to divert water from other sources or commingle the same with the waters of Provo River or recapture or use the same as claimed by plaintiff and that this defendant denies the plaintiff's right to store the flood waters of said river or to release or commingle said stored water with the waters of Provo River or to recapture the same and apply it to the use and purposes for which the plaintiff alleges that it stores said water; but denies that this defendant has at divers times, or at any time during the past two years diverted from said river or converted to its own use, waters, the right to the use of which, belong to, or was, or is, property of plaintiff, or that the defendant threatens in violation of plaintiff's alleged right or any rights of the plaintiff to continue so to do.

7. Answering paragraph 36 of plaintiff's complaint defendant denies that it has at any time or at all used any of the waters of Provo River wastefully, or used any quantity in excess of that necessary or beneficial, or in excess of its lawful right to the use of the same. or in excess of its lawful right and ownership of the same, and denies that any use of the waters of said river made by this defendant deprives the plaintiff or anyone else of their right to the use of the waters of said river.

8. Answering paragraph 37 of plaintiff's complaint this defendant admits the renditions of the decrees therein mentioned, and that in said decrees the waters of Provo River were decreed to the various users thereof; but denies that since the rendering of said decrees, by reason of high or flood waters being stored during the first part of the irrigation season in reservoirs or otherwise, the capacity of the waters of said river for irrigation or otherwise has been greatly or at all increased, or that large areas of land have been brought under cultivation ~~or that~~ or that by reason of the storage of waters in reservoirs as alleged in plaintiff's complaint for use during the low water season many or any persons not parties to said decrees have become interested in, or are now owners of, the right to the use of some or any of the waters of said river for irrigation, culinary, domestic, or other purposes.

9. Further answering the complaint of plaintiff herein this defendant denies generally each and every allegation thereof not hereinbefore specifically admitted. or denied.

Further answering the complaint~~iff~~of the plaintiff by way of Counter-claim against the plaintiff and Cross-complaint against each and all the other defendants this defendant alleges and shows to the Court;

1. This defendant alleges as a part of its counter-claim against the plaintiff and cross-complaint as to each and all of the other defendants, each and every allegation contained in paragraphs numbered 1 to 26, both numbers inclusive of plaintiff's complaint herein, the same as if here set forth in full.

2. That this defendant is now and during and upon all the times hereinafter mentioned was a municipal corporation duly organized and existing under and by virtue of the laws of the State of Utah; that this defendant, Provo City, has a population of more than ten thousand people; that among other things said city is organized for the purpose of ^{owning} controlling, regulating and distributing the waters of said river to which its inhabitants are entitled and the waters of the several ditches and canals and conduits flowing within, and

flowing through its corporate limits; that the inhabitants of said Provo City and many persons within the immediate vicinity of the corporate limits of Provo City are the owners in severalty of large tracts of agricultural lands, homes, factories, and business interests and industries within and without the corporate limits of Provo City, which when without water supply said lands in their natural condition are barren and unproductive, said homes uninhabitable, and said factories and business industries inoperative, but when supplied with water said lands produce large crops of agricultural products, said homes are tenatable, and said factories and business industries operative at great profit; that for more than fifty years last past under and by virtue of statutory law and the power therein granted, and by consent of its inhabitants and the persons living adjacent to Provo City this defendant has ^{owned} controlled, distributed, and regulated the waters of said Provo River used and owned by the inhabitants of Provo City and persons living adjacent thereto, for irrigation, motive power, domestic and culinary purposes, in the proportion of the waters of said river to which its said inhabitants and persons living adjacent to its corporate limits, for said purposes are entitled.

3. That for more than fifty years last past, this defendant and its predecessors in interest by means of dams and intakes placed in the natural channel of said Provo river and in its tributaries, and by means of ditches, canals, and conduits, connecting therewith, constructed by Provo City and its predecessors in interest at great expense, have lawfully appropriated, diverted, and used the waters of said Provo river in Utah County, Utah, for agricultural, power, domestic, culinary, and general municipal purposes in the proportion of the waters of said river to which they are entitled, and in the quantities hereinafter mentioned and set forth during each and every year of said time; and that the quantity of water so used has been necessary for the purposes above mentioned, the use thereof has been economical, without waste, and necessary, and that the continued use thereof is essential for the tillage of their lands, the operation and conducting of their factories and business ~~interests and~~ industries, the maintenance and enjoyment of their homes, and their material well-being and prosperity.

4. That during the high water stage of Provo River the quantity of water flowing therein is amply sufficient to fill all the canals, ditches, and conduits of this defendant, and all the other defendants in this action taking water at or near the mouth of Provo Canyon in said Utah County, to their full carrying capacity as they now are, and have been constructed and maintained, and that during the high water state of Provo River and until its volume becomes reduced in quantity to a volume less than sufficient to fill the canals, ditches, and conduits of this defendant and other defendants in this action taking water at or near the mouth of Provo Canyon in Utah County, to their full carrying capacity as they now are and have been constructed and maintained, each of the defendants in this action is entitled to sufficient thereof to supply their reasonable necessities without any regulation or control as between themselves.

5. That when the quantity of water flowing in said Provo River at or near the mouth of Provo Canyon in said Utah County, becomes reduced in volume to a quantity not sufficient to fill the canals, ditches, conduits, of the parties defendant hereto taking water at or near the mouth of Provo Canyon in Utah County, to their full carrying capacity as they are now constructed, distribution of the waters of said river among the parties to this action becomes necessary, and when the waters of said river become reduced to a quantity not sufficient to fill the canals, ditches and conduits of the parties defendant hereto, taking water at or near the mouth of Provo Canyon in Utah County, to their fully carrying capacity as they are now constructed and have been maintained, and until the said river becomes reduced in quantity at or near the mouth of Provo Canyon in Utah County, to a volume exceeding fifteen thousand cubic feet of water per minute, that is to say, after division so becomes necessary and while the water exceeds fifteen thousand cubic feet per minute, this defendant is entitled to the following proportion, to-wit .3489 of the total quantity of the waters of Provo river measured at or near the mouth of Provo Canyon.

6. That when the Volume of water flowing in said river at or near the mouth of said Provo Canyon in Utah County, becomes reduced

in quantity at said point to a volume not exceeding fifteen thousand cubic feet of water per minute, and until the same becomes reduced in quantity at said point to a volume not exceeding twelve thousand cubic feet of water per minute this defendant is entitled to .3859 thereof.

7. That when the volume of water flowing in said river at or near the mouth of Provo Canyon in Utah County, becomes reduced in quantity at said point to a volume not exceeding twelve thousand cubic feet of water per minute, and from then on down to the lowest stage the volume of said river may reach at said point, this defendant is entitled to .3986 thereof.

8. That the rights of this defendant to the waters of Provo river and its sources of supply as hereinbefore set forth and alleged, were settled and confirmed by decree of the District Court of the Fourth Judicial District of the State of Utah, in and for Utah County, made and entered on the 29th day of January 1902 in that certain cause number 718, wherein Provo City, a Municipal Corporation et al, were plaintiffs and the West Union Canal Company, a corporation et al were defendants, and that said decree has never been modified, vacated or appealed from; and that the alleged and pretended rights of the plaintiff herein to the use of the waters of said Provo River and its sources, if any rights the plaintiff have, were inaugurated since, and are subject to, the interest and rights of this defendant to the use of said waters as hereinbefore alleged.

9. This defendant further avers that its rights to the use of the water of Provo River, and the just proportionate share thereof that this defendant is entitled to under its appropriations, ownership and use as herein set forth, are dependent upon the natural flow of the head waters of Provo river, and its several sources of supply, and the use heretofore made thereof by the several defendants herein for irrigation and other beneficial purposes in Provo Valley in Wasatch County, and along and adjacent to the natural course of Provo river; that in truth and in fact, during each and every irrigation season, all the waters of Provo river, except when wrongfully interfered with by the plaintiff as hereinset forth, are diverted by the

defendants in this action taking and using water in Summit and Wasatch counties, and along the course of said river; and by reason of their said use being made along and adjacent to the natural channel of said river, and by reason of the contour of the country and the character of the soils adjacent to the natural channel of said river, the waters of said river so diverted by the defendants aforesaid,--except when wrongfully diverted, used, and interfered with by plaintiff-- through seepage, springs, and numerous streams arising along the course of said river, return again to the natural channel of said river practically undiminished in quantity or quality before reaching the defendants in this action using water in Utah County. That the plaintiff in this action has for more than three years last past, at divers times, and almost continuously, wrongfully stored, diverted and used water of said river to which this defendant is rightfully entitled; that said plaintiff has, during said time, wrongfully stored, diverted, and used the waters of said river on lands not adjacent to or along the course of said river, and so that after the use thereof by plaintiff, the said water does not in any manner again contribute to the flow of said river, thereby depriving this defendant of the waters of said river to which it is rightfully entitled, to the great and irreparable injury of this defendant, wrongfully claiming the right and threatening so to do.

10.--That the plaintiff and each of the other defendants herein, as this defendant is informed and believes, and therefore alleges the fact to be, assert and set up some claim or interest adverse to the ownership, title, interest, and rights of this defendant to the use of the waters of said Provo river and its several sources as claimed by this defendant herein; but this defendant has not sufficient knowledge, or information to enable it to set forth specifically the character or nature of said claims, or any of them, except as herein alleged.

11.--This defendant further avers that the several assertions, claims, and interests of the plaintiff and of each and all the other defendants made against this defendant are wrongful, without right, and unfounded in fact or law, and are a cloud on this defendant's title and right to the use, possession, ownership, and control of said water.

WHEREFORE, this defendant prays judgment that the plaintiff and each of the other defendants may be required to set forth any and every adverse claims, interest, or demand by them and each of them, in or to said waters so claimed, owned, used, and controlled by this defendant, to the end that their several adverse claims and pretensions and demands may be adjudicated and declared null and void as against this defendant; and that the title, ownership, interest, and right to the control therein of this defendant in and to said waters so claimed, owned, used, and controlled by it as herein set forth, may be quieted and confirmed as against the plaintiff and each of the defendants; and that the title, interest, ownership, and right to the control of this defendant therein as herein set forth, may be adjudged to be good and **valid**. This defendant prays for such other and further relief in the premises as to the Court may seem just and equitable and for its costs in this behalf expended.

Jacob Coleman & E. E. Corfman
 Attorneys for defendant,
 Provo City & Municipal Corporation.

State of Utah,
 County of Utah, -SS:

C. F. Decker, being first duly sworn on oath, says: I am an officer of Provo City, a Municipal Corporation, to-wit, the Mayor thereof; that I have read the above and foregoing answer, counter-claim and cross-complaint and know the contents thereof; that the same are true of my own knowledge, except as to matters and things therein stated upon information and belief, and as to these I believe them to be true.

C. F. Decker

Subscribed and sworn to before me this 14th day of December, 1914.

Jacob Coleman
 Notary Public.

Due and legal service of the foregoing answer, counter-claim, & cross-complaint had and received this 14th day of December, 1914.

Jacob Evans,
 One of the attorneys for the plaintiff