

2-19

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

Provo Reservoir Company, a corporation,	o
	o
Plaintiff.	o
-vs-	o
Provo City, Lincoln School District,	o
The Provo Bench Canal and Irrigation	o
Company, The East River Bottom Water	o
Company, Et al,	o
Defendants.	o

Petition to be allowed to offer additional testimony.

Now comes the East River Bottom Water Company, a corporation, and respectfully prays to be allowed to put in additional testimony in its behalf in this case and for cause thereof alleges;

1. That after the complaint in this case was filed and before the time for answering had expired this defendant by its board of directors met with representatives of the plaintiff at the office of said plaintiff in Provo City, Utah County, Utah, and it was then and there by said parties mutually and verbally agreed that a certain decree, known as the "Morse Decree", as modified by a certain decree, known as the "Chidister Decree", should be binding as between the said plaintiff and this defendant, The same was so placed in the answer of this defendant, and on the hearing was so testified to by witnesses, and the same was not denied by either pleading or proof;

2. That it was believed in good faith by this defendant that said decrees were Res Judicata, as to all parties thereto and would be binding on all the parties named in said decrees;

3. This defendant relying in good faith on the facts heretofore set forth deemed it was unnecessary to offer expert testimony on the number of acres or the duty of water thereon, owned by the several stockholders of this defendant, and so far as was known such was not required, until the proposed decree in this case was submitted for consideration;

4. That upon the submission of said proposed decree it was learned for the first time that these questions were involved so far as the same affected this defendant, and then it was ascertained

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that the stockholders of this defendant were allowed water for only 344.44 acres, when in truth and in fact they were entitled to water for 364.70 acres as a primary water right, the said 364.70 acres having been judiciously and economically irrigated and valuable agricultural crops raised thereon for a period of time from twenty-five to sixty-five years prior to the bringing of this action;

5. That if the said stockholders of this defendant are limited to the amount of water named in the said proposed decree for 344.44 acres and are not allowed 364.70 acres it will be a great and permanent injury to the said stockholders of this defendant and will materially lessen the value of their several holdings.

WHEREFORE, this defendant respectfully asks that he be permitted to prove that the correct amount of land and water therefor should be 364.70 acres and not limited to 344.44 acres as is now in the said proposed decree.

J. E. Booth

Attorney for Defendant, East River
Bottom Water Company.

State of Utah
ss.
County of Utah.

Fred Ferguson being first duly sworn on his oath says; that he is the president of the East River Bottom Water Company, a corporation, and the defendant which makes the foregoing petition; that he has heard read the said petition and knows the contents thereof and that the same is true to his own knowledge except as to those matters therein stated on his information and belief, and as to those matters he believes it to be true.

Fred Ferguson.

Subscribed and sworn to before me this 29th day of August, 1918.

J. E. Booth.
Notary Public.

My commission expires March 9, 1919.

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