

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF

K-1

UTAH, IN AND FOR UTAH COUNTY.

PROVO RESERVOIR COMPANY, a Corporation.

Plaintiff.

vs.

Provo City et al.

Defendants.

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Answer of parties interested
in South Fork of Provo
Canyon.

Comes now the defendants THE SOUTH FORK TROUT COMPANY; C.S. Conrad; A.M. Conrad; Charles ^{VC}W. Giles; Charles ^WE. Thomas; and W.W. Ercanbrack, and in answer to the complaint of the plaintiff on file herein, for themselves and not for any of the other defendants, admit, deny, and allege as follows:

I.

Admit the allegations of paragraphs 1, 2, 3, 4, 5, 6, 24, 25, 26, of the said complaint;

II.

Deny the allegations of paragraphs 29 (e); 38 and 39 of the said complaint.

III.

Not having any knowledge or information sufficient to form a belief as to the truthfulness of the allegations of 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 27, 28, 29 (a), 29 (b), 29 (c), 29 (d), 30, 31, 32, 33, 34, 36, 37, of the said complaint, these defendants, on information and belief, deny all the allegations of the said paragraphs in said complaint.

IV.

Answering paragraph 35 of the said complaint these defendants admit the allegations of the first five lines of said paragraph and up to the word "FORTH" on the sixth line of said paragraph, and admit the allegations of said paragraph beginning with the word "AND" on the ninth line and continuing down to and including the word "ACTS" on next to the last line of said paragraph but deny generally and specifically all the other allegations of the said paragraph.

V.

Deny generally and specifically each and every other allegation of the

said complaint, not herein admitted or denied.

As a further answer and ~~by~~ of affirmative relief these defendants allege.

1.

That they are the owners in severalty, in the possession and entitled to the possession of large tracts of land situate in the South Fork of Provo Canyon, Utah County, State of Utah, which said lands without artificial irrigation are ~~capable of producing~~ barren and unproductive, but with artificial irrigation are capable of producing large quantities of hay, grain, potatoes, and other valueable crops.

2.

That the South Fork Creek is a tributary of Provo River, and the right to the use of the water of the said river from said creek, by these defendants, during the low water season of each and every year when the flow of Provo River measured near the mouth of Provo Canyon, is reduced in quantity to 17467 cu ft per minute, has been duly determined and ~~firmly~~ formerly adjudicated by this Court in that certain decree entered herein on the 7th day of September 1905 in case # 957, Provo City et al. vs. The Telluride Power & Transmission Co., et al, wherein these defendants, or their grantors and predecessors in interest were decreed to be the owners and entitled to the use of what is termed in said decree as Class "A" water, as follows, to-wit:

(a) The defendant The South Fork Trout Co., a Corporation, thru its grantor and predecessor in interest George J. Duke, 30 min ft.

(b) The Defendants Charles S. Conrad and A. M. Conrad, jointly and undivided thru their grantors and predecessors in interest, Charles Conrad and James R. Hooks, 80 minute ft.

(c) The defendants Charles W. Thomas and Charles E. Giles, jointly and undivided thru their grantor and predecessor in interest, Edward C. Mecham. 40 minute feet.

(d) The defendant W. W. Ercanbrack, thru his grantor and predecessor in interest The South Fork Cattle Co., 4 minute feet.

3.

That according to the decree above mentioned, the waters in Provo river over and above 17467 cubic feet per minute measured near the mouth

of Provo Canyon are termed Class "B" waters, and of such water, during the early spring and high water season of each and every year, ^{for more than 7 years} these defendants by themselves, their grantors and predecessors, have used sufficient to irrigate their land as follows:

The defendant The South Fork Trout Co., has used of said Class "B" waters and irrigated 15 acres of land.

The Defendants C.S. Conrad and A.M. Conrad have used of said Class "B" waters and irrigated 100 acres of land.

The defendants Charles W. Giles and Charles E. Thomas have used of said Class "B" waters and irrigated 90 acres of land.

The defendant W.W. Ercanbrack has used of said Class "B" waters and irrigated 25 acres of land .

4.

That the said use of the said Class "B" waters by these defendants is such that it becomes a benefit to all persons interested in the waters of said Provo River, for the reason that the said early irrigation of these defendants said lands as above stated, serves to hold back the high water when it is not needed by those persons taking water below, and thus virtually constitutes the said lands of these defendants reservoirs for the storing of said waters, and the said waters by means of seepage and percolation find their way from said lands back into the said South Fork Creek and into Provo River later in the season when the high water season is over and the waters are becoming reduced in quantity, all of the said lands of these defendants being located along ~~thaxerak~~ and adjoining the said South Fork Creek.

5.

That the defendant, the South Fork Trout Co., for the purpose of fish culture, by due and legal appropriation and use, has become and now is the owner of the right to the use of all the waters of the Ellen, The Pine Bug, and the Rhoda Springs, situate on the lands of the said defendant The South Fork Trout Co., in the South Fork of Provo Canyon aforesaid also the owner of 10 second feet of the waters of said creek. All of said water being used and owned by said defendant Company for the purpose of fish culture, and are diverted from said springs and the said creek through the pipes, ditches, dams, small lakes or ponds, nursery runs and

hatchery and used for fish culture by the defendant Company, and then again returned to the natural channel of said creek without any diminution of the said waters and without effecting the right to the use of the said waters for irrigation purposes, or in any manner injuring any of the parties entitled thereto.

Wherefore these defendants pray that in addition to the rights specifically decreed to them of the said Class "A" waters of Provo River as above set out; that they be decreed to be the owners and entitled to the use of the waters of the South Fork Creek in Provo Canyon, Utah County, Utah, when the waters of Provo River measured near the mouth of Provo Canyon exceed in quantity 17467 cu ft per minute, as follows.

That the defendant The South Fork Trout Co., be decreed sufficient of the said High Waters to ^{irrigate} ~~water~~ at least fifteen acres of land.

The defendants C.S. Conrad and A.M. Conrad be decreed sufficient of said waters to properly irrigate 100 acres of land.

The defendants Charles W. Giles and Charles E. Thomas be decreed sufficient of the said waters to properly irrigate at least 80 acres of land.

The defendant W.W. Ercanbrack be decreed sufficient of said waters to properly irrigate at least 125 acres of land.

That the Defendant the South Fork Trout Co., be decreed to be the owner and entitled to the use of the Ellen, the Pine Bug, and the Rhoda Springs, in said South Fork, and 10 second feet of the water of said South Fork creek, all to be used for fish culture and returned back to the said creek

That the defendants and each of their titles to the said waters as so stated and claimed, be forever quieted, and that the defendants recover their costs herein.

Harvey Cliff
Attorney for defendants.

State of Utah.
County of Utah.

SS. *W. W. Ercanbrack* being first duly sworn on his oath deposes and says that he is one of the defendants mentioned in the foregoing answer; that he has read the same and knows the contents thereof and that the same is true of his own knowledge except as to those matters therein stated on information and belief, and as to those he believes it to be true.

W. W. Ercanbrack

Subscribed and sworn to before me this 21st day of August 1914.

Harvey Cluff
Notary Public.



MY COMMISSION EXPIRES DECEMBER 29TH, 1914

Puro Reservoir & etc
Plaintiff

vs
Puro City et al.

Answer of
South Park Trout Co
et al.

IN DIST. COURT
UTAH CO., UTAH.

* FILED *

AUG 25 1914

A. V. Robson Clerk.

Orla R. Johnson Deputy.

Received Copy this
2nd day of Aug. 1914
J. C. Baker
Dist. Clerk