

2888

Provo Reservoir
vs.
Provo City et al.

Reply

AT PROVO CITY, UTAH

FILED
MAY 12 1914

BY A. R. [Signature] CLERK
[Signature] DEPUTY

Received copy of the within
Reply this 11th day of May 1914

Chase Hatch
Attorney for Defendants.

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

PROVO RESERVOIR COM-)
PANY, a corporation,

Plaintiff,

vs

PROVO CITY, et al,

Defendant.

:
:
:
: REPLY

Comes now the plaintiff in the above entitled cause and by way of reply to the answer of the defendant, Utah Power and Light Company to its complaint, as amended September 10, 1918, states:

1. That it denies that, in a suit lately pending or decided in this court, wherein Provo City, et al, are plaintiffs and the Telluride Power and Transmission Company, et al, defendants, any adjudication whatever was made between the predecessor in interest of this plaintiff and the Telluride Company, the predecessor in interest of the defendant herein the Utah Power and Light Company, and it affirmatively alleges that the said court has no power or jurisdiction whatever to make any adjudication whatever between said parties; that it denies that any issue whatever was ever submitted to the court between said parties and denies that any issue whatever was raised by the pleadings in said cause between the said parties, and further alleges that in so far as said decree attempts to define the rights between Blue Cliff Canal Company and the Telluride Company it is absolutely null, void and of no effect whatever, or at all, and it denies that by said record or said proceeding or said judgment, or that by any record, proceeding or judgment, it is estopped to assert that it is the owner of the right to the use of forty-six cubic feet per second, or of any other quantity, of the normal flow of the waters of the Provo River as a primary right.

2. Replying to said defendant's second above defense contained in paragraph three of its amended answer, plaintiff denies generally each and every allegation contained therein.

3. Replying to defendant's third affirmative defense contained in the fourth paragraph of said defendant's amended answer, plaintiff denies generally each and every allegation contained therein.

4. Replying to said defendant's fourth affirmative defense contained in the fifth paragraph of its amended answer, plaintiff denies generally each and every allegation contained therein.

WHEREFORE, plaintiff prays judgment against defendants according to the terms of its amended complaint and that it be decreed to be the owner of forty-six cubic feet per second of the flowing waters of the normal flow of the Provo River as a primary right.

Alfred L. Booth
Howard L. James
A. Booth

Attorneys for plaintiff.

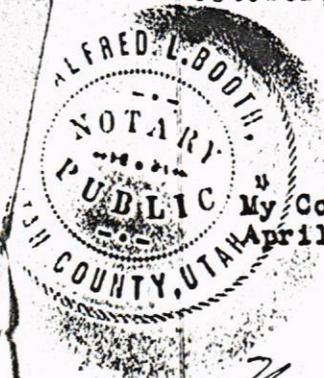
STATE OF UTAH)
 : ss
COUNTY OF UTAH)

R. J. Murdock, being first duly sworn says, that he is an officer of the plaintiff, Provo Reservoir Company, a corporation, to-wit: the Secretary thereof, and that he is acquainted with the facts set forth in the foregoing reply, and knows the contents thereof and that the same is true of his own knowledge except as to matters therein stated on information and belief, and that as to those matters he verily believes it to be true; and that as such officer he makes this verification for and in behalf of the plaintiff corporation.

R. J. Murdock

Subscribed and sworn to before me this 10 day of October, A.D. 1918.

Alfred L. Booth
Notary Public.



My Commission Expires:
April 15, 1919.

Received copy of the foregoing reply this 24 day of November, 1918.

Joseph Stegmeier
Attorneys for defendant
Utah Power and Light Co.

and counterclaim.

This reply is intended as replying only to paragraph 1.1/2 of said defendants answer and counterclaim, which said paragraph was by the court allowed to be made to said defendants answer and counterclaim by interlineation, the plaintiff relying upon its reply heretofore filed to the original answer and counterclaim of said defendant as to the other allegations of said defendants answer and counterclaim.

Al. Bates
John Evans
Al. Booth
Ag. Evans
G. R. Shuman
Attys for plaintiff.

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CLERK OF DISTRICT COURT

State of Utah,
County of Utah.

ss.

R. M. Ludok, being first duly sworn says: That he is an officer of the plaintiff, Provo Reservoir Company, a Corporation, to-wit the Secretary, thereof, that he has read the foregoing reply and knows the contents thereof, that the same is true of his own knowledge except as to these matters therein stated upon information and belief and as to such matters he believes them to be true, this verification is made for and on behalf of the plaintiff herein.

Subscribed and sworn to before me this 14 day of December, A.D. 1916.

John Evans
Notary Public.

My Commission expires Sept 2nd, 1917.

Copy of the above and foregoing reply was this 14 day of December A.D. 1916, mailed postage prepaid to Morgan Huffaker and Bradford, Attys of said defendant, addressed to said attorneys at Salt Lake City, Utah

John Evans
One of the Attys for plaintiff

No 2888.

Provo Reservoir Co.

This reply is intended as a reply to paragraph 1.1.1 of

and counterclaim, which said paragraph was

by the court allowed to be made of said defendant's answer and counter-

claim by interposition, the plaintiff relying upon its reply heretofore

filed to the original answer and counterclaim of said defendant as to

the other allegations of said defendant's answer and counterclaim.

Reply to answer

Wm. J. Van Wagoner

IN DIST. COURT
UTAH CO., UTAH.
* HILL, J.D. *

DEC 15 1916

W. J. Van Wagoner, Clerk

W. J. Van Wagoner, Deputy

2888

being first duly sworn says: That he is an officer of the plaintiff, Provo Reservoir Company, a Corporation, to-wit the [redacted] that he has read the foregoing reply and knows the contents thereof, that the same is true of his own knowledge except as to those matters therein stated upon information and belief and as to such matters he believes them to be true, this verification is made for and on behalf of the plaintiff herein.

Subscribed and sworn to before me this 14 day of December, A.D. 1916.

[Signature]

Notary Public.

Commission expires Sept 2nd, 1917.

Copy of the above and foregoing reply was this 14 day of December A.D. 1916, mailed postage prepaid to Morgan Hultaker and Bradford, Attys and defendant, addressed to said attorneys at Salt Lake City, Utah

[Signature]
One of the Attys for plaintiff

2-11
IN THE FOURTH DISTRICT COURT OF THE STATE OF UTAH
IN AND FOR UTAH COUNTY.

-----000-----
PROVO RESERVOIR COMPANY, a
corporation,

NO. 2888.

Plaintiff.

-vs-

REPLY TO ANSWER AND COUNTER
CLAIM OF PROVO BENCH CANAL
AND IRRIGATION COMPANY.

PROVO CITY, a municipal
corporation, et al, including
Provo Bench Canal & Irrigation
Company,

Defendants
-----000-----

Now comes the plaintiff and in reply to the affirmative alle-
gations of the answer and to the counter claim of the defendant
Provo Bench Canal and Irrigation Company, admits, denies and alleges
as follows,-

1.

Plaintiff admits that said defendant is now and was at all the
times mentioned in the pleadings herein, a corporation organized and
existing under the laws of Utah, for the purpose of constructing and
maintaining a canal and conveying water of the Provo river to and
upon the lands of Provo Bench lying westerly from the mouth of
Provo Canyon and to regulate and control the same for beneficial
uses, and that Provo river is a natural stream of water with its
main sources in Wasatch and Summit Counties with tributaries having
their sources in Utah County, and that said river runs through what
is known as Provo canyon and that the water thereof when not inter-
cepted discharge into Utah Lake, Utah County, Utah.

2.

Plaintiff admits that prior to the time when the plaintiff and
its predecessors in interest had acquired any rights to the use of
the water in the Provo river, the said defendant had constructed its
canal, the intake of which is as stated in its answer herein, through

which it diverted water from the said Provo river to lands of its stockholders on the Provo Bench lying westerly of the mouth of Provo canyon, for ^{the} purpose of irrigating said lands and for other beneficial uses, and that said canal when completed had a carrying capacity of not to exceed 125 cubic feet of water per second of time, and that the length of said canal from its intake to its terminus is a distance of about 8 miles, and that ever since the construction of said canal the said defendant has, during the high or flood water season of each and every year, diverted a sufficient quantity of water from the Provo river into its said canal to fill it to its capacity and that a portion of the waters so diverted by said defendant have been used upon the lands of its stockholders and others entitled to the use thereof, for purposes of irrigation, to an amount of not to exceed in the aggregate 4332 acres.

3.

Plaintiff admits that there is lying under the canal of the defendants, 6500 acres of land that might be irrigated from said canal, but denies that the said defendant, its stockholders and others having a right to the use of water from the said canal have at any time during any year, irrigated lands by the waters flowing through said canal exceeding 4332 acres, and denies that the said defendant or its stockholders or the owners of lands lying under its said canal have ever at any time acquired a right to the use of waters from the Provo river to be conveyed through said canal to irrigate lands in excess of 4332 acres, and denies that the said corporation, its stockholders and those owning lands lying under the said canal, have ever used water upon any of said lands exceeding in the aggregate 4332 acres, and denies that any of the lands lying under said canal in excess of 4332 acres are now or have been ~~in~~ dependent upon said canal and the waters flowing therein for the irrigation thereof.

Plaintiff admits that all of the lands lying under said canal both irrigated and unirrigated are barren and unproductive without irrigation, and that with irrigation they may be made productive of large agricultural and horticultural crops.

5.

Plaintiff admits that the defendant has at all times since the construction of its canal filled the said canal to its capacity with water from the Provo river during such times as it was able to secure water therefor without depriving others having equal rights with the defendant, to the use thereof, of waters to which they were entitled, and plaintiff admits that during the low water season of each and every year since the construction of its canal, the defendant has been unable to obtain sufficient water from the said Provo river to fill its canal at the intake to its capacity, without depriving others, having an equal right with the defendant to the use of the waters of said river, of water to which such others were entitled, and defendant admits that during the low water season of some years since the construction of the defendant's canal it has been unable to secure from the said river, sufficient water to properly irrigated during the month of August and a portion of the month of September, all of ~~the~~ the lands of its stockholders and others having a right to the use of waters through the said canal; but plaintiff alleges that during the irrigation season of each and every year up to on ~~at~~ or about July 10th, the defendant has diverted water into its said canal from said river to the capacity of said canal.

6.

Plaintiff admits that the Provo river runs through what is commonly called Provo Valley in Wasatch County, Utah, and that said valley is at a higher elevation than the intake of defendant's canal and that large quantities of the water of said Provo river have been during the irrigation season of each and every year for more than 35

years, diverted and applied for irrigation purposes upon the lands in said valley, and that by reason thereof some additional water is flowing in the said river at the mouth of Provo canyon above the intake of the defendant's canal during the month of August and until the 15th day of September in each year, the amount of such increase being unknown to plaintiff.

7. 7.

Plaintiff denies that the defendant is entitled to the use of 140 cubic feet of water per second from Provo river at any time during any season of any year, and denies that it is entitled to any other or greater quantity of water than sufficient to irrigate ~~4352~~ acres of the lands lying below its canal; and plaintiff alleges upon information and belief that a cubic foot of water per second measured at the intake of plaintiff's said canal, is sufficient to irrigate ~~70~~ acres of the said land, and that the aggregate quantity of water necessary for the beneficial irrigation of all the lands of plaintiff its stockholders and other entitled to the use of water therefor, through the defendant's canal, does not exceed ~~62~~ cubic feet per second.

8.

Plaintiff admits that it has for the past three years, during the high water period of each year, diverted at the intake of its canal as shown in the complaint herein, and used for necessary and beneficial uses 150 second feet ~~of~~ natural flow of the water of said river, and sufficient of the surplus water of said river to fill its several reservoirs near the head waters of the main channel of said river to their several capacities during each of said years, and that it will continue so to do unless restrained by order of this court, and plaintiff alleges that during each and every year up to July 10th which is the high water period, there has been a surplus of water in said river over and above all completed appropriations, and over and above the capacity of all canals and ditches diverting water therefrom, and alleges that during the time between October 15th and the

1st day of the following April of each and every year, all of the water of said river at the mouth of Provo canyon, except about 100 second feet, has been and now is unappropriated surplus water, and that the quantity of said surplus is approximately 250 second feet.

9.

Plaintiff admits that prior to A. D. 1910, the water-right decreed to the "William Wright Estate," as stated in the complaint, and in paragraph 8 of the counter claim herein was used upon lands adjacent to the provo river and being above the intake of defendants canal, and that plaintiff has changed and intends to continue to change the place of diversion of said water, to the intake of plaintiff's canal as described in its complaint, unless restrained from so doing by order of this Court.

10.

Plaintiff admits that it has during each of the past three years, diverted, and by dam held in its reservoirs near the headwaters of said river, sufficient of the surplus waters thereof to fill said reservoirs, and that it will continue so to do unless restrained by order of the court, and admits that some of the waters so held by plaintiff has been during the months of May and June of each of said years.

11.

Plaintiff generally denies each and every allegation of said answer and counter-claim not hereinabove admitted.

WHEREFORE plaintiff demands judgment against the said several defendants in accordance with the prayer of its complaint.

A. Hatch Just. Coors.
A. Booth & A. Thomas.
Attorneys for Plaintiff.

STATE OF UTAH,

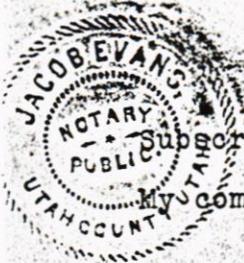
County of Utah)
) SS.

R. J. Murdoch being first duly

sworn says, that he is an officer of the plaintiff Provo Reservoir Company, a corporation, to-wit the Secretary thereof,

that he has read the foregoing reply 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 that as to those matters he verily believes it to be true, and that he makes this verification for and in behalf of the plaintiff corporation.

R. J. Murdoch



Subscribed and sworn to before me this the 4th day of April, 1914.
My commission expires on the 2nd day of Sept 1917.

Just Evans
Notary Public.

True sworn copy of the above and foregoing reply admitted this 4th day of May 1914

J. M. White
one of the atty for Sept
Provo Reservoir Company