

IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH

THE ESTATE OF JOANNE)	
L. SHRONTZ, by and)	Deposition of:
through Herbert C.)	
Livsey, Personal)	<u>JEFFRY T. NIERMEYER</u>
Representative,)	
)	
Plaintiff,)	Civil No. 090921163
)	
vs.)	Judge John P. Kennedy
)	
TOWN OF ALTA, UTAH, a)	
Utah municipality, and)	
SALT LAKE CITY)	
CORPORATION, a Utah)	
municipality,)	
)	
Defendants.)	

May 25, 2011 * 9:02 a.m.

Location: Snell & Wilmer
15 West South Temple -- Suite 1200
Salt Lake City, Utah

Reporter: Denise M. Thomas, CRR/RPR
Notary Public in and for the State of Utah

**HEARING SUBMITTAL TO
DIVISION OF WATER RIGHTS**

Right No.: a 2854B & a 28545

Date: 7/13/2011

Submittee: Kevin Talters

Applicant

200 I pages

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2/1/00 BS

ALSO PRESENT:

John Guldner
Herbert Livsey

I N D E X**JEFFRY T. NIERMEYER****PAGE**

Examination By Mr. Sullivan	5
Examination By Ms. Brabson	193

E X H I B I T S**NUMBER****DESCRIPTION****PAGE**

208	6-24-92 Application For Permanent Change of Water, Bates Nos. SHRONTZ003804-003808	45
209	5-27-97 Letter to LeRoy W. Hooten [sic], Jr., from Doug Evans, Bates Nos. SLC 00895	102
210	9-26-06 Water Agreement between Salt Lake City Corporation, Town of Alta and Salt Lake County Service Area No. 3, Bates Nos. TOA005542-005545	120
211	2-9-99 Memo to Jody and Duane Shrontz from John Guldner, Bates No. TOA002771	159
212	9-13-99 Memorandum to Karryn Greenleaf from Linda Cordova, Bates No. SHRONTZ018816	170
213	10-19-99 e-mail to LeRoy Hooton, et al., from Matthew Williams, Bates No. SHRONTZ018817	171
214	1-14-82 Memorandum of Understanding with attachments, Bates Nos. SHRONTZ018932-018941	181

E X H I B I T S (Continued)

<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
215	7-10-08 Letter to Jeff Niermeyer from Skip Branch, Bates Nos. SLC00730-00731	182
216	9-3-08 Letter to Skip Branch from Jeff Niermeyer, Bates Nos. SLC 00732-00733	183
217	12-30-08 Letter to Jeffrey T. Niermeyer from Alan L. Sullivan with attachments, Bates Nos. SLC 00737-00784	184
218	3-10-09 Letter to Alan Sullivan from E. Russell Vetter, Bates Nos. SLC 00785-00790	185
219	4-30-09 Letter to E. Russell Vetter from Alan L. Sullivan, Bates Nos. SLC 00791-00793	186
220	5-5-09 Letter to Alan Sullivan from E. Russell Vetter, Bates No. SLC 00794	186
221	8-7-09 e-mail exchange between Tracie Kirkham and Al Soucie, Bates No. USFS004	189
222	10-22-09 e-mail to Jeff Niermeyer from Catherine Kahlow, Bates No. SLC 00931-00932	190
223	10-23-09 Letter to Alan Sullivan from E. Rusty Vetter, Bates Nos. SLC 00817-00818	191
224	7-10-09 Letter to E. Russell Vetter from Alan L. Sullivan	192
225	7-31-09 Letter to Alan Sullivan from E. Russell Vetter	193

P R O C E E D I N G S

JEFFRY T. NIERMEYER,

having been first duly sworn to tell the truth, was examined and testified as follows:

EXAMINATION

BY MR. SULLIVAN:

Q. Mr. Niermeyer, would you state your name for the record.

A. Jeffry T. Niermeyer, and that's J-e-f-f-r-y Niermeyer, N-i-e-r-m-e-y-e-r.

Q. Mr. Niermeyer, where do you reside?

A. Salt Lake City, or Salt Lake County, technically.

Q. Salt Lake County?

A. (Witness nodding head affirmatively.)

Q. How are you employed?

A. I'm employed with the Department of Public Utilities for Salt Lake City.

Q. What is your position?

A. I'm the director of the Department of Public Utilities.

Q. During what period of time have you held that position?

1 A. I was appointed director in 2007.

2 Q. What part of 2007?

3 A. I think it was the fall.

4 Q. And have you served continuously in that
5 capacity since then?

6 A. I have.

7 Q. Now, I understand that you've been an
8 employee of the Department of Public Utilities for a
9 period of time before you became director --

10 A. That's true.

11 Q. -- true?

12 A. That's correct.

13 Q. When did you begin your employment with
14 the Department of Public Utilities?

15 A. In October of 1991.

16 Q. And what position did you hold?

17 A. It was Engineer 5 storm water.

18 Q. What were your duties and responsibilities
19 in that capacity?

20 A. The City had just formed a storm water
21 utility, so I helped get that utility off the ground.

22 Q. And during what period of time did you
23 hold that position?

24 A. Probably about two years.

25 Q. So in approximately 1993 did you assume a

1 different position?

2 A. I moved up a series of engineering steps,
3 so to an Engineer 6, then to an Engineer 7.

4 Q. And were your responsibilities during that
5 period of time relating to storm water?

6 A. They broadened to include all of the
7 utilities.

8 Q. All right. So during what period of time
9 did you hold those engineering positions?

10 A. Again -- let's see. It was about every
11 year, so probably in '94 I became the Engineer 6, the
12 year after that became the Engineer 7.

13 Q. What was your next position?

14 A. The position after that was treatment and
15 operations administrator, something along that title.

16 Q. When was that?

17 A. That was probably in '95, maybe early '96.

18 Q. What were your responsibilities as
19 treatment and operations administrator?

20 A. I had a broad range. I did development
21 review, I did operational engineering for each of the
22 three utilities, I was involved in water rights and
23 the contracts associated with lands in the canyons.

24 Q. All right. Then what was the next
25 position that you held?

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1 A. In '97 I was appointed deputy director.

2 Q. And during what period of time did you
3 hold that position?

4 A. Until 2007, when I was appointed director.

5 Q. What were your duties and responsibilities
6 as deputy director?

7 A. In a broad range of utilities across
8 all -- in the utilities across all three enterprise
9 funds, did a lot more water rights and contracts at
10 that point in time but still was involved in
11 developments and development approvals and
12 operational issues related to the water, sewer and
13 drainage utility funds.

14 Q. Did you first become involved in Surplus
15 Water Agreements and the watershed in the 1995-1996
16 time frame?

17 A. '95 was probably the most.

18 Q. So you've had direct involvement in that
19 aspect of the department's business since 1995?

20 A. Correct.

21 Q. Now, you mentioned three enterprise funds.

22 A. Yes.

23 Q. What are those?

24 A. Enterprise fund is a unit within local
25 government that is basically -- lives off of its own

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1 revenue that it generates, so it's separate than the
2 general fund, which is typically funded by taxes.
3 So, for example, the water fund is funded through
4 water sales, the sewer fund is for the collection of
5 wastewater, based both on strength and volume, and
6 storm water is based on the amount of hard surfacing,
7 so each fund operates as an individual business so to
8 speak.

9 Q. What are the revenues associated with
10 storm water? Explain that to me.

11 A. Storm water is there are -- every building
12 and residence has a certain amount of hard scape that
13 when it rains on it water runs off from it, so we
14 have what's called an equivalent residential unit,
15 and that equivalent residential unit has a certain
16 dollar charge that's charged to each customer on a
17 monthly basis.

18 Q. All right. What about the water fund?
19 The City sells water; right?

20 A. Yes.

21 Q. So that is one of the three enterprise
22 funds --

23 A. Yes.

24 Q. -- right? And is there an accounting
25 procedure that you use in order to basically have the

1 Water Department funded by the water fund?

2 A. Yes.

3 Q. That's how it works?

4 A. Yes.

5 Q. All right. And I truly do not know the
6 answer to the next question that I'm going to ask.

7 I mean, how do you measure the water users
8 to whom you sell water, to whom Salt Lake City sells
9 water? Do you just have a number of users?

10 A. There's a number of meters is what we
11 generally use.

12 Q. Meters?

13 A. Meters.

14 Q. And would those meters be both inside the
15 boundaries of Salt Lake City and outside the
16 boundaries of Salt Lake City?

17 A. Yes. We have both.

18 Q. Approximately how many meters are inside
19 the boundaries of Salt Lake City?

20 A. I know our total meters are about 92,000,
21 and about two-thirds of those are within
22 Salt Lake City.

23 Q. So approximately 60,000 within
24 Salt Lake City?

25 A. Yes.

1 Q. And about 30,000 outside Salt Lake City?

2 A. Approximately.

3 Q. And how do you quantify the water that you
4 make available to those 92,000 meters?

5 A. I don't understand your question.

6 Q. How much water do you sell to the people
7 to whom you sell water each year?

8 A. On average, the City delivers about
9 90,000 acre feet of water.

10 Q. Is that on an annual basis?

11 A. On an annual basis.

12 Q. Did you say, I'm sorry, 92?

13 A. Ninety thousand acre feet.

14 Q. Ninety thousand.

15 A. But it's highly variable. Obviously, this
16 spring we're not selling much water.

17 Q. And do you have information that you can
18 share with me on the source of that 90,000 acre feet?

19 A. We have multiple sources. Starting to the
20 north we have City Creek. We have water that comes
21 out of Emigration Canyon, we have water that comes
22 out of Parley's Canyon, we have water that comes out
23 of Big Cottonwood Canyon, we have water that comes
24 out of Little Cottonwood Canyon, and then through our
25 association with Metropolitan Water District of

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1 Salt Lake and Sandy we have water that comes through
2 the Deer Creek Project, which is water that can
3 originate in the Duchesne River, the Provo River or
4 the Weber River, and then through our association
5 again with the Metropolitan Water District of
6 Salt Lake and Sandy we have water that comes through
7 the Central Utah Project, the Bonneville unit,
8 through the Provo water users, through Metropolitan
9 water users of Salt Lake and Sandy, which is
10 primarily through a series of elaborate exchanges,
11 water that is Colorado River water.

12 Q. How much of the 90,000 acre feet comes
13 from the watershed as it's defined in the Watershed
14 Ordinance?

15 A. On average, about 60 percent of our water
16 comes from what I call the local watershed.

17 Q. And of that 60,000 acre feet how much --

18 A. Sixty percent.

19 Q. Oh, I'm sorry, 60 percent.

20 So that would be about 50 some odd
21 thousand acre feet per year, is that right, would
22 come from the local watershed?

23 A. Approximately.

24 Q. And of that 50,000 or so acre feet each
25 year, how much of that comes from Little Cottonwood

1 Canyon?

2 A. On average, 12 to 14 percent. I need to
3 go back. There's also a component of ground water
4 that we use on our sources.

5 Q. Okay. Now, I understand that before you
6 went to work for the Department of Public Utilities
7 in 1991 you -- I don't need to ask you about all of
8 your professional experience, but there was a time
9 when you worked for Eckhoff, Watson and "Preeter."

10 A. Preator.

11 Q. Preator. Is that true?

12 A. That's correct.

13 Q. And that would be between 1978 and 1980?

14 A. Yes. That was '78. Long time ago.

15 Q. Long time ago. And what were your duties
16 and responsibilities for Eckhoff, Watson?

17 A. I was a consulting engineer. I primarily
18 worked in the Price area and Wellington, Utah, area.

19 Q. Did it ever come to your attention that
20 Eckhoff, Watson and Preator provided consulting
21 services, or a predecessor firm provided consulting
22 services for the Town of Alta water system?

23 A. Not that I have any recollection, no.

24 Q. Have you ever seen documentation relating
25 to Eckhoff's advice or consulting services for the

1 Town of Alta in the construction of the original
2 Town of Alta water system in 1977?

3 A. Nothing that comes to mind.

4 Q. Did you prepare for your deposition today?

5 A. I did.

6 Q. What did you do?

7 A. Let's see. I read an ordinance, looked at
8 LeRoy Hooton's deposition, read a few of the letters
9 that we responded back to the Shrontz estate through
10 you, looked over some of the historical documents.

11 Q. Did you meet with anybody?

12 A. My attorneys.

13 Q. When did you meet with your attorneys in
14 preparation for this deposition?

15 A. Friday.

16 Q. Did you say Friday?

17 A. I think Friday, yeah.

18 Q. And how long?

19 A. We spent about an hour and a half.

20 Q. Did you speak with anyone else about your
21 deposition or in preparation for your deposition?

22 A. I spoke with numerous people that I'm
23 getting deposed, but not in preparation for the
24 deposition.

25 Q. Did you discuss the substance of your

1 deposition with anybody other than your attorneys?

2 A. No.

3 Q. Did you discuss your deposition with
4 Mr. Hooton?

5 A. My deposition?

6 Q. Yes, sir.

7 A. No.

8 Q. Or with Mr. Bramhall?

9 A. No.

10 Q. Or with anybody from the Town of Alta?

11 A. No.

12 Q. I'm going to ask you some questions about
13 the water supply contracts that are the subject of
14 this lawsuit, especially the 1975 Water Supply
15 Agreement that's mentioned in the Complaint in this
16 case and the 1976 Intergovernmental Agreement, but
17 I'd like to ask you generally about the state of your
18 knowledge of those agreements and comparable
19 agreements.

20 Did there come a time when you made a
21 study or an investigation of Salt Lake City's Surplus
22 Water Supply Agreements?

23 A. Over the years I looked at many, many
24 agreements as issues have come up but have not sat
25 down specifically to study the nature of the

1 agreements as a class per se.

2 Q. All right. I want to ask you, first of
3 all, about the 1974 Agreement, and I'll show you --
4 well, actually, it's Exhibit 1. You have some
5 binders there in front of you. The first of the
6 binders should have an Exhibit 1 tab in there, and
7 I'd just ask you to turn to the exhibit.

8 For the record, Exhibit 1 is a letter
9 dated July 29, 1974, from Andrew R. Nelson to Charlie
10 Wilson. It is dated July 29, 1974, and it is a
11 transmittal letter that attaches an agreement that is
12 dated 1974 among Alta Peruvian Lodge and other
13 private parties, among a group of private parties,
14 including Alta Peruvian Lodge and John D. Cahill
15 doing business as Patsey Marley Development.

16 Have you seen this agreement before?

17 A. I have seen a version of this agreement.
18 I recall having more signatures than some of these
19 pages have.

20 Q. Did you have occasion to review this
21 agreement?

22 A. I have seen this agreement and looked at
23 it in the past, yes.

24 Q. And when was the first time you looked at
25 it?

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1 A. Probably in the late '90s.

2 Q. Late '90s?

3 A. (Witness nodding head affirmatively.)

4 Q. But not before then?

5 A. Not that I specifically recall.

6 Q. And what was the occasion in the late '90s
7 that prompted you to look at this agreement?

8 A. There were always questions relative to --
9 particularly raised by Alta Ski Lifts on -- I would
10 get these random calls from Onno saying we need to
11 find water. I would say okay. So we just kind of
12 reviewed the various agreements that applied to that
13 area.

14 Q. Have you ever investigated the purposes of
15 this agreement?

16 A. I have not, since the City was not a party
17 to it.

18 Q. Have you ever interviewed or talked with
19 people who were party to this agreement?

20 A. I have not.

21 Q. From reading this agreement, do you have
22 an understanding as to the agreement's purposes?

23 A. I think the agreement speaks for itself,
24 but it was the individuals here that essentially says
25 if we could get water, this is what we would do with

1 it amongst ourselves.

2 Q. Did you understand from this agreement and
3 the transmittal letter that one of the purposes of
4 the agreement was to provide a mechanism for these
5 landowners who were parties to the agreement to
6 provide a mechanism for the sharing of the water and
7 the sharing of expenses of the transmission system
8 and the storage system?

9 A. That appears to be what the intent of the
10 agreement says.

11 Q. And did you understand from your review of
12 the agreement that the parties anticipated obtaining
13 a surplus water contract with respect to the Quincy
14 Mine water source?

15 A. Not entirely clear, no.

16 Q. Did you understand from your review of the
17 agreement that these landowners intended to pool
18 their resources to build a transmission and storage
19 system?

20 A. I think there are mentions within the
21 agreement of a reservoir and a distribution system,
22 yes.

23 Q. And did you understand that one of the
24 parties to the agreement was Patsey Marley,
25 John Cahill doing business as Patsey Marley?

1 A. Let me look back and see. Morley as
2 opposed to Marley.

3 Q. And did you understand from your review of
4 the agreement that one of the things that John Cahill
5 intended to do was develop a subdivision called
6 Patsey Morley or Patsey Marley?

7 A. Without reading the agreement, I don't
8 know specifically what his intent was, no.

9 Q. Right. But do you know from your general
10 knowledge, from your general investigation of the
11 facts surrounding this case, that, in fact, in 1974
12 John Cahill intended to build a subdivision
13 consisting of single family homes on Patsey Marley
14 Hill?

15 A. Again, from my review, I don't think
16 that's clear that in 1974 that was the intent. My
17 recollection of the documents is that became more
18 clear a little bit later in time.

19 Q. All right. And when did that become clear
20 based upon your review of the documents?

21 A. I think in the '77-'78 time frame.

22 Q. All right. Do you know how the Patsey
23 Marley Hill property was zoned in the year 1974 when
24 Exhibit 1 was entered into?

25 A. I don't.

1 Q. If I told you that it was zoned by
2 Salt Lake County for single family homes, would you
3 have any reason to disagree with that?

4 A. I have no basis of knowledge to agree or
5 disagree.

6 Q. Do you know how the Patsey Marley Hill
7 property is zoned today?

8 A. I do not.

9 Q. Have you made an investigation of that
10 topic?

11 A. No.

12 Q. So your testimony is that you have no
13 information as to how Patsey Marley Hill is zoned
14 today?

15 A. From the Town of Alta I have not a
16 specific.

17 Q. Do you know that Patsey Marley Hill was
18 annexed in the year 1980 to the Town of Alta?

19 A. I have seen documents that approximately
20 in 1980 this was annexed in the Town of Alta.

21 Q. And do you know what the zoning for the
22 Patsey Marley Hill property was upon its annexation
23 in 1980?

24 A. I do not.

25 Q. The next document I'd like you to take a

201/200 JS

1 look at is Exhibit 4, please, in the same binder.

2 For the record, Exhibit 4 is the Water
3 Supply Agreement between Salt Lake City Corporation
4 on the one hand and Alta Peruvian Lodge and others,
5 including John D. Cahill, dba Patsey Morley
6 Development.

7 You've read this?

8 A. I have read this document.

9 Q. And you've read it carefully, I assume?

10 A. Several times, yes.

11 Q. And when was the first time that you had
12 occasion to review this agreement?

13 A. Probably again in the mid to late '90s.

14 Q. Have you investigated the circumstances
15 surrounding the formation of this contract,
16 Exhibit 4?

17 A. No.

18 Q. Have you ever spoken with any of the
19 people who participated in the drafting or the
20 negotiation of the agreement?

21 A. I have not.

22 Q. In other words, you've never spoken with
23 Ray Montgomery about this agreement?

24 A. I have not.

25 Q. Have you ever spoken with LeRoy Hooton

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1 about this agreement?

2 A. We have.

3 Q. And when was the first time?

4 A. Again, probably the mid to late '90s.

5 Q. All right. Did you have more than one
6 conversation with him about this agreement?

7 A. Over the years that I served with LeRoy,
8 probably numerous discussions.

9 Q. Can you summarize them for me?

10 A. Well, there was a question whether or not
11 it was a valid agreement, and there was a question
12 relative to its impact on the Alta agreement. There
13 were questions relative to the -- what, if any,
14 beneficiaries to anybody else still were within the
15 contract.

16 Q. I didn't catch that.

17 A. If there were any still beneficiaries to
18 the contract.

19 Q. Okay. What did you and he talk about in
20 relation to the validity of the agreement?

21 A. We, I'm sure, over the years came to a
22 recognition that the department felt that there may
23 be some beneficiaries under the agreement because it
24 had not been canceled.

25 Q. Did you and Mr. Hooton conclude that the

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1 agreement was valid when you reviewed it in the late
2 1990s?

3 A. I don't think we came to that conclusion.
4 We said there were unanswered questions relative to
5 it.

6 Q. What were the unanswered questions?

7 A. Whether it was valid or not.

8 Q. And can you break that down for me? Can
9 you tell me what you and he talked about in that
10 regard?

11 A. Well, was a contract that was some
12 30 years old still valid? There had been no use
13 under the contract, so just a lot of various
14 questions relative to an old contract that was in our
15 files.

16 Q. Wasn't there a period of time during which
17 Alta Ski Lifts took water under the contract?

18 A. Not under this contract that I'm aware of.

19 Q. So it's your belief that there have been
20 no -- none of the parties as signatories to the 1975
21 agreement, Exhibit 4, have taken water under the
22 agreement?

23 A. No. I believe that Peruvian Alta Lodge
24 has taken water under the agreement.

25 Q. During what period of time?

1 A. Probably from closest to the time of the
2 agreement until some time into the future. I'm not
3 sure exactly when they hooked on to the town system.

4 Q. And when you and Mr. Hooton discussed
5 whether the agreement was valid in light of the fact
6 that none of the parties has utilized water under the
7 agreement, did you have reference to any particular
8 provision of the agreement?

9 A. No, just that, again, it was an old
10 contract, and to our knowledge people were not, when
11 we were having the dialogues, using the water, and so
12 I don't think we looked at a specific provision other
13 than the entire body of the contract.

14 Q. Okay. Is there any provision of the
15 agreement of which you are aware that provides for
16 the expiration or the termination of the contract
17 where the private parties to the agreement failed to
18 utilize water under the agreement for a period of
19 time?

20 A. Well, if they failed to meet any of the
21 terms of the contract, I think it's terminable, and,
22 again, because it's a permissive contract, we always
23 believed that it's terminable.

24 Q. I understand that you believe that it's
25 terminable, but my question is whether there is any

1 specific provision in your view that requires the
2 termination of the agreement if one or more of the
3 parties doesn't use the supply of water provided
4 under the agreement?

5 A. It does not require that.

6 Q. All right. Now, you also discussed with
7 Mr. Hooton the impact on the Alta agreement, and by
8 that I think you mean the 1976 Intergovernmental
9 Agreement.

10 Is that true?

11 A. That would be the contract I'm referring
12 to, yes.

13 Q. And what did you and Mr. Hooton discuss in
14 these conversations that you had with him concerning
15 the impact of this 1975 Water Supply Agreement on the
16 Alta agreement?

17 A. That if there was found to be a
18 beneficiary under the '75 contract the quantity of
19 water, whatever that amount may ultimately end up
20 being, needed to be reduced from the commitment to
21 the Town of Alta under the '76 contract.

22 Q. And did you reach that conclusion on the
23 basis of paragraph 2 of the -- we'll get to that in a
24 moment.

25 A. Okay.

25I/2005

1 Q. We'll get to that in a moment.

2 So the conclusion that you and Mr. Hooton
3 reached when you discussed this issue is that to the
4 extent one or more of the parties under the 1975
5 agreement were utilizing or still had a right to
6 water under the 1975 agreement, the availability of
7 water to the Town of Alta would be reduced by that
8 amount?

9 A. Right. An amount undetermined, but by
10 some amount.

11 Q. Okay. And the third thing I think you
12 mentioned that you and Mr. Hooton discussed was
13 whether there was still any beneficiaries under the
14 1975 agreement.

15 What was your discussion in that regard?

16 A. Well, again, I think it came up in the
17 Haik case, which I believe was in the 1994 time
18 frame, and, again, that was reviewed at that time
19 again by the attorneys handling that case, and,
20 again, because the contract had not specifically been
21 canceled, there was still this question was there
22 still a beneficiary under the 1975 agreement.

23 Q. What did you and Mr. Hooton conclude?

24 A. Again, it was an unanswered question.

25 Q. Have you reached an answer in your mind

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1 today?

2 A. Still unanswered.

3 Q. Has any of the parties to the 1975
4 agreement terminated their interest, to your
5 knowledge?

6 A. I've not seen a specific document, written
7 document, terminating their interest. I think by
8 actions taken relative to developments with
9 properties that were referenced in the '75 contract
10 and then later served by Alta they have, by operation
11 of contracts, terminated that.

12 Q. And why do you say that?

13 A. So they don't get benefit under both
14 contracts.

15 Q. They what?

16 A. They don't get the benefit under both
17 contracts.

18 Q. So you would say that if, for example,
19 Alta Ski Lifts at a certain point in time took water
20 from the Town of Alta municipal water system, that
21 they forfeit -- would you say forfeited their right
22 under the 1975 agreement?

23 A. I would use terminated, and, again, I'm
24 not sure, I'd have to look, that Alta Ski Lifts is
25 actually a beneficiary of the 1975 agreement. I

1 don't believe they are.

2 Q. It is. It's listed on the very first
3 page, Alta Ski Lifts, a Utah corporation.

4 A. Okay. I was looking at the signature
5 pages. I didn't see them signing it.

6 Q. Assume for me that they did sign.

7 My question is whether if Alta Ski Lifts
8 at a certain point in time, let's say in the 1970s or
9 early 1980s, started to take water from the Town of
10 Alta, that in your view that would result in a
11 termination of Alta Ski Lifts' rights under this 1975
12 Water Supply Agreement?

13 A. Yes.

14 Q. And is there a provision that you rely
15 upon for that in the Water Supply Agreement itself?

16 A. I think it's the body of the agreement
17 that essentially said that if Alta serves these
18 people, or doesn't serve these people, it's kind of
19 done in the negative, then the amount of
20 150,000 gallons per day will be reduced from the
21 contract, but the intent of the contract was to have
22 these individuals within the town boundaries served
23 by the town system, and without carefully reading
24 each paragraph -- there's one paragraph about --

25 MR. DRANEY: You're referring to the '76

28 I/200 JS

1 agreement.

2 THE WITNESS: Am I?

3 MR. DRANEY: Yeah.

4 THE WITNESS: Okay. The '76 agreement
5 says if they're not served, then it will be
6 terminated.

7 Q. (By Mr. Sullivan) Didn't you say it was
8 the intent of the parties to have these 1975 water
9 users served by the Town of Alta water system?

10 MR. DRANEY: Objection. Mischaracterizes
11 his former testimony.

12 Q. (By Mr. Sullivan) Go ahead and answer.

13 MR. DRANEY: He said those within the town
14 limits were --

15 THE WITNESS: I think those that were in
16 the 1976 agreement. It's very specific as to its
17 terms, and those were the ones that were intended to
18 be served.

19 Q. (By Mr. Sullivan) But would you agree
20 with me that there's nothing in the 1975 agreement
21 that provides for the termination of an individual
22 user's rights under the 1975 agreement in the event
23 that they switch to the Town of Alta system?

24 A. It doesn't make sense that there would be
25 a provision because the '76 agreement came

29 I/20 JS

1 afterwards, so to put a paragraph in the '75
2 agreement --

3 Q. Sure.

4 A. -- assuming --

5 Q. Sure.

6 A. So tying into the '76 doesn't make sense,
7 but there is not a specific provision for
8 termination.

9 Q. All right. Now, let's take a look --

10 A. Other than the surplus nature of the
11 contract. Let me be clear on that.

12 Q. Sure. Paragraph 1 of the 1975 agreement
13 of course says that the City agrees to make available
14 to the users for their use 150,000 gallons per day
15 from the source, which is defined as the Quincy Mine.

16 Do you see that?

17 A. I do.

18 Q. And then paragraph 2 -- I'm not going to
19 read the whole thing, but one of the things that
20 paragraph 2 does is to obligate the users to
21 construct or have constructed from the water source
22 diversion points to the various users a transmission
23 and storage system for the water from the Quincy
24 Mine; is that right?

25 A. It talks about, yes, a distribution

1 system.

2 Q. Excuse me?

3 A. It does talk about a distribution system.

4 Q. But, I mean, the point I was trying to get
5 at is that it actually obligates those users to build
6 or have constructed a transmission system and a
7 storage system for the Quincy Mine water; right?

8 A. I guess obligates I think is a little
9 strong. I think it provides that they may.

10 Q. Well, it says "users agree to construct."
11 Would you call that an obligation?

12 A. Yeah, but I think generally these terms of
13 these contracts are to say that it's the user's
14 responsibility, not Salt Lake City's responsibility.
15 That's the purpose of this paragraph.

16 Q. And then paragraph 7 and paragraph 8 of
17 the agreement provide for the termination or the
18 circumstances under which the agreement could be
19 terminated.

20 Is that your understanding of this
21 agreement?

22 A. Basically, yeah. It's the standard form
23 of the surplus nature of the contract.

24 Q. Sure. And in the second sentence of
25 paragraph 7, the contract says, "If at any time or

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1 for any reason, in City's sole judgment, it is
2 unable to furnish the water provided for under
3 this Agreement, it may cancel and/or terminate
4 this Agreement upon 30 days written notice by
5 personally serving or mailing by certified or
6 registered mail written notice thereof to the
7 last known address of each individual user," and
8 then it says in a proviso, "providing, however,
9 that the foregoing shall in no way prohibit the
10 City from assigning or transferring its
11 obligations thereunder to another supplier, or
12 from making other arrangements for the supply of
13 water to Users."

14 Was that a standard form provision in all
15 of the Surplus Water Supply Agreements entered into
16 by the City during this era?

17 A. I would have to go back and read them all
18 again to say that with definitive knowledge.

19 Q. But you know that that is a --

20 A. Surplus language is clearly in all of
21 them, and it's had various forms over the years.

22 Q. Well, in each of the surplus water
23 agreements that the City has entered into in the
24 watershed, would it be true that the City may
25 terminate the agreement if, in its judgment, it is

1 unable to furnish the water provided for under this
2 agreement in light of its prior obligations to
3 deliver water to the inhabitants of the City?

4 A. Yes.

5 Q. Has the City ever terminated a surplus
6 water agreement on that ground?

7 A. We terminated surplus agreements for
8 nonuse.

9 Q. That's not my question.

10 A. Okay.

11 Q. My question was whether the City has ever
12 terminated an agreement because it has concluded that
13 it is unable to furnish the water provided for under
14 the agreement in light of its prior obligations to
15 deliver water to inhabitants?

16 A. Not in my tenure, it has not happened.

17 Q. Have you heard of any termination that may
18 have predated your tenure?

19 A. Again, there were -- in the droughts of
20 the '30s there was a lot of stuff going on, but not
21 in any what I would call more modern times has the
22 provision, or an agreement been terminated for lack
23 of being able to provide water.

24 Q. Now, would you agree with me that this
25 provision does not permit the City to terminate a

1 surplus water agreement for just any reason?

2 Rather --

3 MR. DRANEY: Objection. Calls for a legal
4 conclusion.

5 MR. SULLIVAN: Would you let me finish my
6 question.

7 MR. DRANEY: I thought you did. Sorry.
8 You hesitated.

9 Q. (By Mr. Sullivan) Would you agree with me
10 that this provision does not permit the City to
11 terminate a surplus water agreement for just any
12 reason, but, rather, requires a determination by the
13 City that it is unable to furnish the water provided
14 for under the agreement in light of prior obligations
15 to deliver water to inhabitants, firms and
16 corporations in the City?

17 MR. DRANEY: Objection. It
18 mischaracterizes the terms of the agreement and calls
19 for a legal conclusion.

20 THE WITNESS: My answer is it says for any
21 reason in the City's sole judgment, so I don't think
22 it's characterized if at any time for any reason in
23 the City's sole judgment.

24 Q. (By Mr. Sullivan) But in your view would
25 the City have to make the determination in its sole

1 judgment --

2 MR. DRANEY: Objection.

3 MR. SULLIVAN: Would you let me finish my
4 question.

5 MR. DRANEY: You hesitated. I thought you
6 were done. I'm sorry. I'm not trying to interrupt
7 you, Alan.

8 MR. SULLIVAN: You are interrupting me.

9 MR. DRANEY: Well, I'm not trying to. I
10 said I'm sorry.

11 Q. (By Mr. Sullivan) Would you agree with me
12 that in order to exercise its authority to terminate
13 the agreement in paragraph 7, the City must make a
14 determination in its sole judgment that it is unable
15 to furnish the water provided for under this
16 agreement?

17 MR. DRANEY: Objection. Calls for a legal
18 conclusion and mischaracterizes the document.

19 THE WITNESS: Again, I think we have the
20 ability, because it is a surplus agreement, and if it
21 wasn't terminable would put us afoul of the
22 constitution, so I think that's why the language if
23 for any reason in the City's sole judgment is in
24 there.

25 Q. (By Mr. Sullivan) But you're not

1 responding to my question.

2 I really want to ask whether the City
3 needs to make a determination that it is unable to
4 furnish the water under the agreement before you can
5 exercise your right to terminate under this
6 provision?

7 MR. DRANEY: Objection.

8 THE WITNESS: I don't believe so.

9 Q. (By Mr. Sullivan) You don't believe so?
10 Okay.

11 So your view is that paragraph 7
12 authorizes the City to terminate a Water Supply
13 Agreement regardless of whether it is able or unable
14 to supply water under the Water Supply Agreement?

15 A. I believe it does, yes.

16 Q. Okay. Paragraph 8 says, "It is understood
17 and agreed that the City may terminate its
18 obligation hereunder immediately as to an
19 individual User. Or to the Users collectively,
20 for the violation of any of the terms and
21 conditions hereof or for the violation of any
22 applicable City ordinance or state law, or any
23 sanitary regulation of Salt Lake City Board of
24 Health in effect at the time of such violation."

25 By the way, this is a standard provision

1 in Water Supply Agreements, is it not?

2 A. A form of this is generally in there, yes.

3 Q. Do you recall whether Salt Lake City has
4 ever terminated a Surplus Water Supply Agreement
5 based upon a clause under this type of provision?

6 A. I do not recall.

7 Q. All right. Does Salt Lake City contend in
8 this lawsuit that either the estate, which is the
9 Plaintiff in this case, or its predecessor in
10 interest has violated the terms or conditions of this
11 agreement or violated the terms of any applicable
12 City ordinance or state law or sanitary regulation?

13 A. Not relative to this agreement, no.

14 Q. Okay. You said "not relative to this
15 agreement."

16 Do you qualify that for a reason? Do you
17 believe that there have been other violations of
18 which the estate or its predecessor has been guilty?

19 A. In the 2002 agreement, yes.

20 Q. The 2002 agreement. Okay. We'll get to
21 that.

22 Turn, if you would, to Exhibit 6, which is
23 the Counterclaim in this case. This is the Amended
24 Answer, Counterclaim and Jury Demand filed on
25 November 15, 2010, in this case by Salt Lake City.

1 Did you review this before it was filed?

2 A. I did.

3 Q. Have you read this recently?

4 A. I have not.

5 Q. Turn to page 40, if you would, please, and
6 look with me at paragraph 61 where the Counterclaim
7 addresses in the Fourth Cause of Action paragraphs 7
8 and 8 of the Water Supply Agreement which we've just
9 gone over, and this provision of the Counterclaim
10 says under paragraph 7 and 8 of the 1975 Water Supply
11 Agreement, "Salt Lake City has the right to terminate
12 that Agreement as to the Shrontz Estate for any
13 reason and in Salt Lake City's sole discretion
14 or for the violation of any terms of that
15 Agreement or City ordinance or State law."

16 Do you believe that that's accurate?

17 A. I do.

18 Q. And just so the record is clear, you do
19 not believe that Salt Lake City's right to terminate
20 is limited by a determination that it is unable to
21 provide water under the Water Supply Agreement?

22 A. I don't.

23 Q. Turn to Exhibit 8, please.

24 A. Did you say 8?

25 Q. Yes, sir. Exhibit 8 has been previously

1 identified as a letter to Robert A. Peterson from
2 Ray L. Montgomery. It's dated May 8, 1979, and
3 Robert A. Peterson was the lawyer for John Cahill.

4 Have you read this letter before?

5 A. I have seen it before, yes.

6 Q. And you'll see that on the first page of
7 the letter there is a reference to Article 7 of the
8 May 20, 1975, agreement and the proviso in that
9 provision that says, "Provided, however, that the

10 foregoing shall in no way prohibit the City from
11 assigning or transferring its obligations
12 hereunder to another supplier, or from making
13 other arrangements for the supply of water to
14 users."

15 And then Mr. Montgomery comments on that
16 and says, "It is the City's position that the
17 'other arrangements' for the supply of water to
18 the users was made through the town of Alta."

19 Do you agree with Mr. Montgomery's
20 conclusion that it was the City's position at that
21 time that the other arrangements referenced in
22 Article 7 of the 1975 agreement was for the users
23 under the 1975 agreement to obtain water through the
24 Town of Alta?

25 MR. DRANEY: Objection to form, lacks

1 foundation.

2 Q. (By Mr. Sullivan) Go ahead and answer.

3 A. Yeah. First of all, I was not present
4 with the City in 1979, so I don't know what the
5 City's position was, and I think the document speaks
6 for itself.

7 Q. All right. Would you have any reason to
8 disagree that this was the City's position back in
9 1979?

10 A. I believe this was Mr. Montgomery's
11 thoughts. I don't know that that was the City's
12 position.

13 Q. Do you know one way or the other?

14 A. I don't.

15 Q. You've not made an investigation of that?

16 A. I have not.

17 Q. Have you ever talked with Mr. Montgomery
18 about this letter?

19 A. I have not.

20 Q. Have you talked to Mr. Hooton about this
21 letter?

22 A. I have no specific recollection of that.

23 Q. Did you know Mr. Charlie Wilson?

24 A. I did have the opportunity to know
25 Charlie.

40 F/200 JS

1 Q. Have you ever talked to Mr. Wilson about
2 this letter?

3 A. Never.

4 Q. Did you ever talk to Mr. Glen Greener
5 about this?

6 A. Never.

7 Q. Do you understand the circumstances under
8 which this letter was issued by Mr. Montgomery?

9 A. I think I have a general knowledge of what
10 was going on at the time from reviewing documents.

11 Q. What's your understanding of that?

12 A. I think there was an issue relative to a
13 water line. There was proposed settlements, dialogue
14 going on in this time frame but never really resolved
15 in any final settlement.

16 Q. You understand that in 1979 there was a
17 lawsuit pending between Cahill and the Town of Alta?

18 A. I've seen those documents, yes, some of
19 them.

20 Q. And do you understand that during the
21 course of that lawsuit Mr. Peterson, on behalf of
22 Mr. Cahill, specifically asked Commissioner Greener
23 of Salt Lake City whether Salt Lake City would
24 consent to a connection between the Patsey Marley
25 Hill property and the Town of Alta water system?

1 A. I don't have any recollection of a
2 dialogue with Mr. Greener or documents to
3 Mr. Greener.

4 Q. Do you know that there was an inquiry by
5 Mr. Cahill or his lawyer to Salt Lake City about
6 whether Salt Lake City would consent?

7 A. I believe there was an inquiry.

8 Q. And do you understand that this letter was
9 the answer to that inquiry?

10 A. I don't think, because it doesn't
11 necessarily talk about consent. It just says here
12 there's several options. I think it was more about
13 how to get water to the Cahill property than it was
14 consenting to connecting to the Town of Alta system.

15 Q. Take a look at the top paragraph on the
16 second page --

17 A. Correct.

18 Q. -- where Mr. Montgomery writes:

19 "Salt Lake City has and would have no
20 problem in authorizing the extension of the Alta
21 City's service lines and its serving water
22 outside its limits to Mr. Cahill if that is the
23 desire of the City," speaking of Alta City, "and
24 if such is requested in writing."

25 Do you see that?

1 A. I see that paragraph, yes.

2 Q. And do you understand that that was
3 Mr. Montgomery's response to the inquiry that
4 Mr. Peterson had made to Commissioner Greener?

5 A. I think the entire letter was the response
6 to Mr. Peterson relative to the inquiry, including
7 other options enumerated in the next paragraphs.

8 Q. I think you mentioned a moment ago that in
9 your experience surplus water agreements with
10 Salt Lake City have been terminated for nonuse.

11 A. Yes.

12 Q. Under what circumstances?

13 A. Again, there were old contracts that had
14 not been used, no monies had been paid on them, and
15 it didn't appear there was going to be any use and
16 they were terminated.

17 Q. All right. And can you give me some names
18 of contracting parties?

19 A. I think there was a Peterson. There's
20 three or four of them.

21 Q. Do you remember any others?

22 A. Not off the top of my head, no.

23 Q. If a party expresses an interest in use of
24 water under a contract, has it been your practice to
25 terminate them nevertheless?

1 A. Not if they're meeting the terms and
2 conditions of the agreements, no.

3 Q. Have you investigated whether at the time
4 this agreement, the 1975 agreement, was being
5 negotiated that the Town of Alta was actually in the
6 process of planning to build its own municipal water
7 system?

8 A. I've not done an investigation along those
9 lines. I've seen documents that it was occurring in
10 that time frame.

11 Q. You're aware from your review of the
12 documents that the Town of Alta was planning its
13 water system at that time?

14 A. I'm not sure when the planning started. I
15 know at some point they did have a desire to build
16 their own system.

17 Q. Okay. Let me ask you to turn to -- before
18 we go to that, I may have asked you this question
19 earlier. I think you mentioned that you'd not seen
20 any documentation indicating that any of the
21 signatories to the 1975 agreement have terminated
22 their interests in the 1975 agreement. True?

23 A. I don't recall seeing any document along
24 those lines.

25 Q. Has Salt Lake City issued any notice of

44I/200/S

1 termination or what would be comparable to a notice
2 of termination to any of the users?

3 A. We have not, to my knowledge.

4 Q. Did Salt Lake City file a change
5 application with respect to the 1975 agreement?

6 A. We did.

7 Q. And when would that have been filed; do
8 you recall?

9 A. '92 time frame, I believe.

10 MR. SULLIVAN: I'm going to show you a
11 document that I will ask the court reporter to mark
12 as Exhibit 208.

13 **(EXHIBIT 208 WAS MARKED.)**

14 Q. (By Mr. Sullivan) I'm showing you for
15 what has been marked for identification purposes as
16 Exhibit 208, and it is an Application For Permanent
17 Change of Water. It is signed by Mr. Hooton on the
18 second to the last page. Pardon me. On the third to
19 the last page, and there's a date stamp on the first
20 page of June 24, 1992.

21 Is this the Application For Permanent
22 Change of Water relating to the Quincy water source?

23 A. Yes.

24 Q. Do you know what prompted Salt Lake City
25 to file this Application For Permanent Change of

1 Water in 1992?

2 A. Yes.

3 Q. Tell me about that.

4 A. There was a court case involving Nephi
5 that basically wound its way through the Supreme
6 Court, and it essentially became evident that prior
7 to that cities believed that they could not lose a
8 water right, so there was some dialogue with the
9 state engineer, and they suggested that the City go
10 through and file change applications on all of its
11 surplus contracts in the canyons, so there were
12 dozens of them that were filed in this time frame.

13 Q. All right. Turn, if you would, to the
14 second page.

15 Item 15 identifies the Quincy Mine Tunnel
16 as the water source. True?

17 A. Yes.

18 Q. Then it has points or point of diversion
19 under item 17, and then it has property description.

20 Is that basically the mouth of the Quincy
21 Mine Tunnel?

22 A. I would assume so. I've personally never
23 plotted it to confirm that.

24 Q. Thank you. And then paragraph 22 says,
25 "Place of Use, Legal description or place of use by

467/200 JS

1 40 acre tracts," and there is another property
2 description being the southwest quarter of the
3 northwest quarter of Section 5, Township 3 South,
4 Range 3 East, Salt Lake Basin Meridian.

5 What does that describe?

6 A. That describes the area of use that's
7 allowed under the water right.

8 Q. Okay.

9 A. Every water right that files basically has
10 the nature of use, the quantity of water and the area
11 of use.

12 Q. All right. Do you know what this property
13 description has to do with the properties that were
14 identified in the 1975 agreement?

15 MR. DRANEY: Objection to the form. I
16 don't know that there were properties identified in
17 the 1975 agreement.

18 Q. (By Mr. Sullivan) Go ahead and answer if
19 you can.

20 A. Yeah. Again, it covers the area where I
21 believe water was being used, or at least the City
22 believed there may have been a use in 1992.

23 Q. And what area would that have been?

24 A. It was primarily the Town of Alta
25 boundaries. They have a round Town of Alta

1 boundaries and a square of section corner, so it
2 doesn't always line up.

3 Q. Would this place of use have included the
4 Patsey Marley Hill property?

5 A. Actually, I have plotted that out and it
6 does not.

7 Q. You have plotted it out and it does not?

8 A. Correct.

9 Q. Did you intentionally exclude the
10 Patsey Marley Hill property from the place of use?

11 A. I didn't prepare this, so I don't know the
12 answer.

13 Q. Who did prepare it?

14 A. I actually had a consultant at the time
15 working for the City.

16 Q. Did this consultant give any direction
17 to -- did the City give any direction to the
18 consultant to exclude Patsey Marley?

19 A. I don't know.

20 Q. Do you know if the exclusion of
21 Patsey Marley from place of use was intentional or
22 not?

23 A. I don't know.

24 Q. Can you think of a reason why
25 Patsey Marley would have been excluded from the place

48I/100 JS

1 of use?

2 A. Because it was outside the '76 boundary.

3 Q. This has to do with the Quincy water
4 source, does it not?

5 A. Correct.

6 Q. And what would the '76 boundary of the
7 Town of Alta have to do with the Quincy water source?

8 A. That's where water was essentially --
9 could have been used and was being used. There was
10 no water being used, so the area of where water was
11 being used would have been in with this geographic
12 boundary, paragraph 22.

13 Q. Would you agree with me that the
14 Patsey Marley Hill property was one of the intended
15 beneficiaries of the 1975 Water Supply Agreement?

16 A. Again, if there is water to the Patsey
17 Marley Hill property under the '75 agreement.

18 Q. I'm sorry.

19 A. If there is water available to the
20 Patsey Marley 27 acres, it was under the 1975
21 agreement.

22 Q. All right. But my question was whether
23 you would agree with me that Patsey Marley Hill
24 property was one of the intended beneficiaries of the
25 1975 agreement?

1 MR. DRANEY: Objection to the form of the
2 question, lacks foundation.

3 Q. (By Mr. Sullivan) Go ahead and answer.

4 A. Yeah, the Patsey Marley is listed. There
5 is not a property description, so you'd have to
6 connect some dots to get to that point.

7 Q. Sure. But there were no property
8 descriptions for any of the other beneficiaries, were
9 there?

10 A. That's correct.

11 Q. Now, if you'd turn to paragraph 24, the
12 form that you're dealing with -- I assume this is a
13 form from the state engineer's office; is that right?

14 A. That's correct.

15 Q. The form says, "The following is set forth
16 to define more clearly the full purpose of this
17 application. Include any supplemental water rights
18 used for the same purpose. (Use additional pages of
19 same size if necessary): See attachment," and then
20 there's an attachment that is the second to the last
21 page of the document that I assume was prepared by
22 somebody working for Salt Lake City; is that right?

23 A. Yes.

24 Q. And if you go to item 24, I want to direct
25 your attention on this attachment to the very last

1 paragraph of the Explanatory item at the bottom of
2 the second to last page, which says, "A contract has
3 been made between Salt Lake City Corporation and
4 Alta Peruvian Lodge and others for these users
5 to divert up to 167.9 acre-feet of water
6 annually" -- that's 150,000 gallons per day --
7 "for domestic requirements of Alta Peruvian
8 Lodge incidental uses and for 13 homes," and one
9 of the others to which this refers is the Patsey
10 Marley Hill property.

11 Would that be right?

12 MR. DRANEY: Objection to the form of the
13 question, lacks foundation.

14 THE WITNESS: It says "incidental uses and
15 for 13 homes," and I don't believe that the Patsey
16 Marley Hill property was defined as 13 homes.

17 Q. (By Mr. Sullivan) Okay. My question is:
18 The form says a contract has been made between Salt
19 Lake City Corporation and Alta Peruvian Lodge and
20 others for these users to divert up to that amount of
21 water for domestic requirements of Alta Peruvian
22 Lodge incidental uses and for 13 homes.

23 Is it your testimony that this change
24 application excluded the Patsey Marley Hill property?

25 MR. DRANEY: Objection to the form of the

1 question.

2 THE WITNESS: Several levels of the change
3 application does exclude the Patsey Marley property.

4 Q. (By Mr. Sullivan) And was that
5 intentional?

6 A. I don't know. I did not prepare this
7 document.

8 Q. Do you think it was a mistake?

9 A. I don't.

10 Q. You don't?

11 A. I don't know.

12 Q. Well, why was it not a mistake?

13 A. I have no basis in knowledge that it
14 wasn't delivered either, so I don't have any
15 knowledge as to how the consultants and the direction
16 that the City gave the consultant putting this
17 document occurred.

18 Q. If the Patsey Marley Hill property was an
19 intended beneficiary under the 1975 Water Supply
20 Agreement, would you agree with me that this change
21 application should have included the Patsey Marley
22 Hill property?

23 MR. DRANEY: Objection. Calls for a legal
24 conclusion.

25 THE WITNESS: Again, not necessarily

521/200 JB

1 because of the timing relative to our Surplus Water
2 Sales Agreement in 1991. This was done after that,
3 so, again, I do not know the thought process that
4 went through with everybody when they prepared this,
5 so I have to read it at its face value.

6 MR. DRANEY: You do know, Alan, it
7 wouldn't have been consistent with the law's
8 inclusion. It's a speculation, speculative use.

9 You do know that's not allowed; right?

10 Q. (By Mr. Sullivan) Now, since 1992 has
11 Salt Lake City requested an extension of this change
12 application?

13 MR. DRANEY: By extension, you mean
14 extension of time in which to submit proof?

15 Objection to the form. It's vague and
16 ambiguous.

17 Q. (By Mr. Sullivan) Go ahead and answer,
18 please.

19 A. Yes. If you're referring to an extension
20 of time on which to submit proof, typically they come
21 up every five years, so I believe there would be one
22 or two of them since 1992.

23 Q. All right. Do you know when the most
24 recent one was?

25 A. Not off the top of my head, no.

1 Q. If I tell you 2011, would you have any
2 reason to disagree with that?

3 A. There appears to be a form with our
4 signature on it, so yes.

5 Q. And what do you do when you make that kind
6 of application for an extension? I mean, what is the
7 effect of that?

8 A. It essentially allows the change
9 application to remain valid within the state
10 engineer's system and essentially saying that there
11 may be potential uses that have not been developed so
12 that it doesn't make sense to quantify at this time.

13 Q. Have you ever advised the state engineer,
14 in this context or in any other context, that the
15 1975 agreement is invalid?

16 A. I have not.

17 Q. Have you ever advised the state engineer,
18 in this context or in any other context, that any of
19 the named beneficiaries under the 1975 agreement no
20 longer have rights under that agreement?

21 A. Never had any dialogue with the state
22 engineer.

23 Q. Thank you. Take a look now at Exhibit 7,
24 please.

25 A. What's my number again?

1 Q. Seven. For the record, Exhibit 7 is an
2 Intergovernmental Agreement between Salt Lake City
3 and the Town of Alta.

4 Who drafted this agreement?

5 A. I don't know.

6 Q. Have you ever made an investigation
7 concerning the circumstances under which this
8 agreement was put together?

9 A. I have not.

10 Q. Have you discussed that topic with
11 Mr. Hooton?

12 A. No, not specifically along the lines of
13 that question. I mean, it was a surplus agreement
14 that the City entered into.

15 Q. Have you ever had conversations with
16 people at the Town of Alta concerning the
17 circumstances under which this agreement was put
18 together?

19 A. I have not.

20 Q. And so you have no information as to who
21 the drafts people were or any of the specifics of the
22 negotiation of the agreement?

23 A. As to form, Ray Montgomery was on the top.

24 Q. Apart from that?

25 A. No.

55 I/2000 JS

1 Q. So you would have no information
2 concerning what the parties to the agreement actually
3 anticipated in terms of who the beneficiaries of this
4 1976 agreement would be?

5 A. All I can do is what the document says.

6 Q. Right. Have you ever discussed with
7 anyone the question whether Salt Lake City
8 anticipated that if the town built a water system, it
9 would serve all of the parties to the 1975 Water
10 Supply Agreement?

11 A. Could you repeat the first part of that
12 question again.

13 Q. Yeah. Sure. Have you ever discussed with
14 anyone the question whether Salt Lake City
15 anticipated that if the town built a water system, it
16 would serve all of the parties to the 1975 Water
17 Supply Agreement?

18 A. I think we discussed that with our legal
19 counsel, probably with Mr. Hooton, but the 1976
20 agreement specifically excluded it because it was
21 outside the town boundaries in 1976.

22 Q. You discussed that with Mr. Hooton?

23 A. Uh-huh (yes).

24 Q. I don't want to ask you about questions or
25 issues that you discussed with your counsel, but I do

56 F/200 JS

1 want to ask about your discussions with Mr. Hooton on
2 that score.

3 When did you first discuss that issue, and
4 the issue I'm talking about is whether Salt Lake City
5 anticipated back in 1976, when this Exhibit 7 was put
6 together, that all of the beneficiaries under the
7 1975 Water Supply Agreement would be served by the
8 Town of Alta?

9 A. It was probably in the 2000 time frame
10 when the Shrontzes approached the City with various
11 ways to get water to the proposed property.

12 Q. All right. Were you in a mode of asking
13 questions to Mr. Hooton about what he recalled?

14 A. No.

15 Q. What was your discussion?

16 A. We were discussing what the document said
17 and meant.

18 Q. All right. So neither of you was calling
19 upon your memory to try to understand what was
20 actually anticipated; rather, you were looking at the
21 document to derive an intent from the document
22 itself?

23 A. Yes.

24 Q. And have you ever discussed that question
25 with anyone other than your counsel and with

1 Mr. Hooton?

2 A. I believe at various forms we've had
3 discussions with Jody Shrontz, with Ira, I believe
4 Herb in the early meeting. The question was is --
5 you know, can the Shrontz property be served with
6 water and which would the source be?

7 Q. And tell me about those discussions.

8 Are we talking about one meeting or more
9 than one meeting?

10 A. Probably multiple meetings at various
11 times.

12 Q. Okay. Tell me what you can recall about
13 the --

14 A. Again, the dialogue of the question was
15 can they be served off the Town of Alta system, and
16 in a review of the document we didn't believe that it
17 could, that if there was water available to the
18 Shrontz property, it would be available under the '75
19 agreement.

20 Q. Is that it?

21 A. Yeah.

22 Q. Do you recall anything more about your
23 discussion on that topic?

24 A. No. Again, I'm sure there were many more
25 words used, but that's the essence of the dialogues.

1 Q. Now, you remember that paragraph 1 of
2 Exhibit 7 says that the City agrees to make available
3 to Alta for its use up to 265,000 gallons per day
4 from these sources. The first source listed is the
5 Bay City Mine.

6 Have you visited the Bay City Mine water
7 source?

8 A. I've not been inside the tunnel, no.

9 Q. All right. And what about the alternate
10 point of diversion from Snake Pit on Little
11 Cottonwood Creek?

12 A. No.

13 Q. Have you ever visited that water source?

14 A. No.

15 Q. Do you know how much water the Town of
16 Alta has taken from the alternate source over the
17 years?

18 A. I have no knowledge of taking water from
19 an alternate source.

20 Q. Is it your belief that they have taken
21 none from the alternate source?

22 A. I just don't have the basis of any --

23 Q. You don't know one way or the other?

24 A. I don't know one way or the other.

25 Q. All right. Have you ever advised the

1 Town of Alta in substance or effect that it has
2 abandoned that alternate source?

3 A. I don't know if it's been abandoned. I
4 have not had that dialogue.

5 Q. You just have no information on that?

6 A. No.

7 Q. The second paragraph of this Exhibit No. 7
8 says, "If the Agreement between the City and Alta
9 Peruvian Lodge and others, dated May 20, 1976,
10 is not terminated within one year from the date
11 on which Alta first begins using water
12 hereunder, the maximum amount of water to which
13 Alta is entitled under Article 1 hereof shall be
14 reduced thereafter by 150,000 gallons per day."

15 You understand, do you not, that the
16 reference to the May 20, 1976, agreement here in
17 paragraph 2 should actually be the May 20, 1975,
18 Water Supply Agreement, do you not?

19 A. That has been my understanding.

20 Q. All right. And would you agree with me
21 that the May 20, 1975, Water Supply Agreement was not
22 terminated within a year from the date upon which
23 Alta first began using water under this 1976
24 agreement?

25 A. There was no formal termination of that

60I/200 JS

1 agreement.

2 Q. Right. And since there was no formal
3 termination of that agreement, would you agree with
4 me that paragraph 2 requires the conclusion that the
5 amount of water available under this 1976 agreement
6 has been reduced by 150,000 gallons per day?

7 MR. DRANEY: Objection. Calls for a legal
8 conclusion.

9 THE WITNESS: I would not agree with that,
10 no.

11 Q. (By Mr. Sullivan) Why not?

12 A. Because there have been other uses that
13 this, the '75 agreement, covered and then were
14 incorporated into the water service provided by the
15 1976, so there's been this gradation of uses that the
16 '75 -- some beneficiaries of the '75 agreement are
17 using water under the '76 agreement, so the total
18 amount that would be available would be less than
19 150,000 gallons per day.

20 Q. And is it your belief that because some
21 water users actually switched over from the 1975
22 agreement to the Town of Alta water system, that that
23 fact resulted in -- that that fact did not require
24 termination -- reduction by 150,000 gallons per day?

25 A. It did, I think by action, reduce the

1 150,000 gallons a day left to any beneficiaries of
2 the 1975 agreement.

3 Q. All right. So you'd say that even though
4 the 1975 agreement is still in effect, still valid,
5 nevertheless, the amount of water available to the
6 Town of Alta under this 1976 agreement was what?

7 A. Unknown volume.

8 Q. Unknown volume?

9 A. (Witness nodding head affirmatively.)

10 Q. What are the options? I mean, how would
11 you calculate it?

12 A. How would I calculate it?

13 Q. Yeah. Something less than 265,000
14 gallons; right?

15 A. Something less than 150,000 gallons.

16 Q. Well, we start with 265,000 gallons per
17 day; right?

18 A. Correct.

19 Q. That's according to paragraph 1.

20 A. Maybe I misunderstood your question.
21 Would you repeat it.

22 Q. Sure. In light of the fact that the 1975
23 agreement has not been terminated within the meaning
24 of paragraph 2, what would you say the availability
25 of water is to the Town of Alta under paragraph 1?

621/200 JS

1 Would it be something less than 265,000 --

2 A. It would be less than 265,000 gallons per
3 day, and the less amount would be equal to whatever
4 ultimate amount is finally approved under the 1975
5 agreement.

6 Q. So that if one of the parties obtains the
7 rights to 30,000 gallons per day under the 1975
8 agreement, just to pick a number, then the amount
9 available to the Town of Alta would be 265,000
10 gallons less 30,000 gallons?

11 A. Based on your hypothetical situation, yes.

12 MR. DRANEY: Is this now a good time for a
13 break?

14 MR. SULLIVAN: Sure. Any time you want a
15 break. Take five minutes?

16 THE WITNESS: Sure.

17 (Recess from 10:19 a.m. to 10:29 a.m.)

18 MR. SULLIVAN: Back on the record.

19 Q. (By Mr. Sullivan) Mr. Niermeyer, I need
20 to ask you just for a second to go back to Exhibit 4,
21 the 1975 agreement, and I want to refer you again to
22 paragraph 7, and just a reminder and to focus your
23 attention, the second sentence of paragraph 7 of this
24 1975 agreement begins by saying, "If at any time or
25 for any reason, in City's sole judgment, it is unable

63I/200 JS

1 to furnish the water provided for under this
2 Agreement."

3 Has the City ever made the determination
4 that it is unable to furnish the water provided for
5 under the 1975 agreement?

6 A. Restate your question. I don't understand
7 the question.

8 Q. Has the City ever made the determination
9 that it's unable to furnish the water provided for
10 under the 1975 agreement in light of its prior
11 obligations to deliver water to inhabitants, firms,
12 corporations within the City?

13 MR. DRANEY: Objection. Mischaracterizes
14 the terms of the agreement.

15 THE WITNESS: Now, again, we've not made a
16 formal determination that we don't have water
17 available for this -- there are other reasons we
18 believe --

19 Q. (By Mr. Sullivan) Have you -- sorry. I
20 didn't mean to interrupt.

21 A. There are other reasons that we looked at.

22 Q. Other reasons what?

23 A. Other reasons why, by the terms of your
24 question not having the water, we've not made that
25 determination.

1 Q. All right. And you said you've not made a
2 formal determination that that's the case that
3 there's not enough water, but have you made an
4 informal determination that there's --

5 A. We've made no determination.

6 Q. You've made no determination that there is
7 an inadequate source of supply of water --

8 A. Right.

9 Q. -- true?

10 A. We've made no determination.

11 Q. Right. Turn the page to Exhibit 208.

12 That was the Application For Permanent Change of
13 Water, and you pointed out to me that on the second
14 to the last page with the attachment there is a
15 reference to 13 homes that would be the users along
16 with Alta Peruvian Lodge and incidental uses, and I
17 wonder if you know what 13 homes those are?

18 A. I do not.

19 Q. If you look at the very first page of
20 Exhibit 4, which identifies the parties to the 1975
21 Water Supply Agreement, which of those water users
22 would constitute the 13 homes?

23 A. I don't.

24 Q. And so you would have no information as to
25 how the person who prepared this attachment to

1 Exhibit 208 came up with the 13 homes?

2 A. I don't.

3 Q. All right. Turning back then to Exhibit
4 No. 7, and referring specifically to paragraph No. 2,
5 have you had communications with representatives of
6 the Town of Alta about whether or to what extent
7 their water availability has been limited under the
8 provisions of paragraph 2?

9 A. I have.

10 Q. And when did those discussions start?

11 A. Early 2000s. I had dialogues with
12 Mayor Levitt, I've had dialogues with Mayor Pollard.

13 Q. And how many conversations on this topic
14 did you have with Mayor Levitt?

15 A. At least one or two.

16 Q. And what can you remember about those
17 conversations?

18 A. The conversations were along the lines
19 that any amount of water that is ultimately
20 determined to be beneficiary under the 1975 agreement
21 will be reduced from the town as 265,000 gallons per
22 day under the 1976 agreement.

23 Q. And what was his response?

24 A. He understood. I think he understood. I
25 didn't get thrown out of the office.

GGF/800 JS

1 Q. Well, was this a conversation that you had
2 in his office?

3 A. I can't remember where the conversation
4 was, if it was in the town offices or where.

5 Q. And do you recall what event or events
6 prompted this discussion you had with him?

7 A. Again, it was under the dialogue if there
8 was water available to the Shrontz property, the
9 25 acres, whether or not how that would impact the
10 town system -- the town's volume of water under its
11 contract.

12 Q. And you said you spoke about this with
13 Mayor Pollard.

14 How many conversations have you had with
15 Mayor Pollard on that topic?

16 A. Probably one or two.

17 Q. And when were those conversations?

18 A. Probably midterm of his first term.

19 Q. Can you give me a year?

20 A. Let's see. He's been reelected three
21 years maybe, so back in the 2008/2009 time frame.

22 Q. And what was the event that prompted this
23 conversation?

24 A. Again, just everything that's been going
25 on relative to the Shrontz property, and if there was

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~~66A~~ JS

1 ultimately a determination of water available under
2 the '75 agreement it would be coming out of the town
3 agreement.

4 Q. Anything else that you can recall about
5 that discussion?

6 A. No.

7 Q. Has paragraph 2 ever been modified, to
8 your knowledge?

9 A. No, there's been no written modification.

10 Q. Do you have an understanding that Alta
11 Peruvian Lodge used Quincy Mine water until the mid
12 1990s?

13 A. I have seen a reference to where they may
14 have used water.

15 Q. Do you have any personal knowledge about
16 that?

17 A. No.

18 Q. Do you know John Cahill?

19 A. I do not.

20 Q. To your knowledge, did Salt Lake City do
21 anything to terminate Alta Peruvian's connection to
22 the Quincy Mine water source?

23 A. I believe I sent a letter. There was some
24 knowledge that came forward that they may still be
25 using it, and we, I think, sent a letter to -- I

67 I/200 JS

1 can't remember if it was a letter or conversation
2 somebody had with them saying that if you're using
3 it, you can't be using it under both contracts.

4 Q. By both contracts, you mean --

5 A. The 1975 contract and the 1976 contract.

6 Q. I see. So was it your understanding that
7 Cahill was taking water from both the Town of Alta
8 water system and the Quincy Mine water system for the
9 Alta Peruvian Lodge?

10 A. At some point I became aware that there
11 may have been a connection, but I never verified that
12 that connection actually existed.

13 Q. All right. And after you sent your
14 letter, did things change, to your knowledge?

15 A. I'm trying to think. My recollection is
16 that somehow they said that they weren't doing that.

17 Q. Did it ever come to your attention that
18 the Town of Alta actually billed Alta Peruvian Lodge
19 for water that came from the Quincy Mine?

20 A. It's never come to my attention.

21 Q. Let me ask you to take a look at
22 Exhibit 11, please.

23 For the record, Exhibit 11 is a submission
24 of court requested information in the Haik case.
25 That's H-a-i-k. It's submitted by Steve Allred,

68I/200 JS

1 Chris Bramhall, Craig Wentz and others as counsel for
2 Salt Lake City in the Haik case.

3 Have you seen this document before?

4 A. I may have seen it a long time ago.

5 Q. This was submitted to the court in the
6 Haik case in 1997.

7 Do you recall if you played a role in the
8 preparation of this document?

9 A. I did not.

10 Q. Take a look at page 4 of the document,
11 which discusses the May 20, 1975, agreement, which is
12 identified as the Peruvian Contract, and there's a
13 discussion of the interplay between the 1975
14 agreement and the 1976 Intergovernmental Agreement,
15 and then the last sentence in the text on page 4
16 says, "Accordingly, the Town of Alta under the 1976
17 Water Supply Agreement may have only a contractual
18 claim to 115,000 gallons per day," and if you look at
19 the document, you get to 115,000 by subtracting
20 150,000 from 265,000.

21 Are you with me so far?

22 A. Yeah.

23 Q. Has Salt Lake City ever taken the position
24 that the Town of Alta only has contractual claim to
25 115,000 gallons per day under the 1976

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JS

1 Intergovernmental Agreement?

2 A. Formal position, no.

3 Q. Informal position on that score?

4 A. Essentially this document says it's an
5 unknown, and I think our position has been that if
6 there is beneficiary under the '75 agreement, any
7 volume that's ultimately determined will be reduced
8 from the Town of Alta's water.

9 Q. Now I want you to take a look at
10 Exhibit 50.

11 A. Five-zero?

12 Q. Five-zero. Exhibit 50 is what I'll call a
13 draft amendment of the 1976 agreement. It's dated
14 November 9, 1988, and it is signed by Mayor Levitt,
15 but it is not signed by the Mayor of Salt Lake City,
16 and on this copy of this document there is the words
17 "Voided, Not signed by Mayor. SB."

18 Have you made an investigation as to the
19 circumstances under which this amendment was prepared
20 but not signed by Salt Lake City?

21 A. The only investigation that I've made is
22 that this agreement was never signed by
23 Salt Lake City.

24 Q. Do you know the reasons?

25 A. I do not.

70 I/200 JS

1 Q. And you've never talked about that topic
2 with Mr. Hooton or Charlie Wilson or anybody else?

3 A. No.

4 Q. I take it that, given the date you
5 would -- this was before your time with
6 Salt Lake City; right?

7 A. That's correct.

8 Q. Have you ever investigated the
9 configuration of the Town of Alta water system as it
10 was initially built in the 1970s?

11 A. I have not.

12 Q. We've seen some documents in other
13 depositions in this case that there was some
14 communication between a man named Chuck Eubank, who
15 worked for the Town of Alta in developing the Town of
16 Alta water system, and Charlie Wilson in the planning
17 stages of the town's water system.

18 Do you have any information on that topic?

19 A. I have none.

20 Q. Do you know from any source whether
21 Salt Lake City gave its approval to the design of the
22 Town of Alta water system?

23 A. I do not.

24 Q. Did it ever come to your attention that
25 the town's system from the very beginning of the

711/2005

1 construction of the town system physically crossed
2 the Patsey Marley Hill property?

3 A. Can you restate the preface to your
4 question again, please.

5 Q. Sure. Did it ever come to your attention
6 that the town's system physically crossed the Patsey
7 Marley Hill property?

8 A. Yes, a line of the town system crosses the
9 Patsey Marley property, the lower property.

10 Q. The lower property, so the 26-27 acres;
11 right?

12 A. Correct.

13 Q. And when did you learn that?

14 A. Probably in the more recent past as issues
15 surrounding the property came forward.

16 Q. Have you ever advised the town that the
17 extension of the water lines across the Patsey Marley
18 Hill property was a violation of either the 1976
19 agreement or the Watershed Ordinance?

20 A. We have not.

21 Q. Have you made a determination about
22 whether the extension of the line across the Patsey
23 Marley Hill property constitutes a violation of
24 either the 1976 agreement or the Watershed Ordinance?

25 A. I have not made a formal determination.

72 I/8/85

1 In thinking about it, the mere crossing of a piece of
2 property in my view does not raise to a violation.

3 Q. Have you ever had any communication with
4 anybody from the Town of Alta about the fact that the
5 water system crosses the Patsey Marley Hill property?

6 A. I've talked with Keith Hanson, who's not
7 with the Town of Alta but was the contract operator
8 for the town system, and I believe I've talked with
9 John Guldner just trying to understand what the line
10 did or didn't do and what size it was.

11 Q. And first tell me when you spoke with
12 Keith Hanson.

13 A. Probably a couple years ago maybe trying
14 tie things together.

15 Q. Was this one conversation or several
16 conversations?

17 A. One conversation primarily.

18 Q. Tell me everything you can remember about
19 that conversation.

20 A. Again, I was trying to understand at that
21 time the relative elevation of the town's system
22 relative to the Shrontz property. I was just trying
23 to understand how the system was configured.

24 Q. And what else do you remember about that
25 conversation?

1 A. Keith told me what he knew about how it
2 was configured.

3 Q. Did he tell you that the town water system
4 crossed the Patsey Marley Hill property?

5 A. He said there was a small diameter, I
6 believe an inch and a half line, that crossed the
7 Patsey Marley Hill property.

8 Q. Did he tell you that it crossed the
9 Patsey Marley Hill property pursuant to an easement?

10 A. He did not.

11 Q. Do you know that it crosses Patsey Marley
12 Hill property pursuant to an easement that was
13 granted by Cahill?

14 A. I've seen documents referencing the
15 transaction in the late '70s.

16 Q. Have you investigated the circumstances
17 under which that easement was granted --

18 A. I have not.

19 Q. -- by Cahill to the Town of Alta?

20 A. I have not.

21 Q. Is there anything else about your
22 conversation with Mr. Hanson that you can recall?

23 A. No.

24 Q. I think you also said you talked to
25 Mr. Guldner about the fact that the system crosses

1 the Patsey Marley Hill property; is that right?

2 A. Not so much that it crossed the Patsey
3 Marley Hill property. It's just how is the water
4 system configured in that area.

5 Q. And what did he tell you?

6 A. Again, that there was a small diameter
7 line that went up there.

8 Q. Anything else?

9 A. That's essentially the essence of the
10 conversation.

11 Q. Now, one of the documents that we've --
12 well, let me ask you this question: Have you ever
13 made an investigation as to whether the engineering
14 work that was done in planning the Town of Alta water
15 system actually anticipated service to the Patsey
16 Marley Hill property?

17 A. I've not made at the time of planning. I
18 know that the system as designed is incapable of
19 servicing the Patsey Marley property.

20 Q. But my question is whether the system as
21 designed, based upon the engineering estimates by
22 Mr. Eckhoff, actually anticipated service to the
23 Patsey Marley Hill property?

24 A. I have not made that investigation, but
25 since it's hydraulically not feasible, I don't know

75I/200/5

1 why it would have included it.

2 Q. All right. In other words, you would not
3 know whether the actual population of the Patsey
4 Marley Hill property as it was anticipated envisioned
5 by Mr. Cahill were actually included in the capacity
6 estimates prepared by Mr. Eckhart?

7 A. Eckhoff.

8 Q. Eckhoff. You don't know that?

9 A. No, I do not know that.

10 Q. All right. Take a look, if you would, at
11 Exhibit 13.

12 Exhibit 13 is a letter dated September 10,
13 1977, sent by Chuck S. Eubank, Junior, public works
14 director, Alta, to John Cahill, and the first
15 sentence of the letter says -- it's dated
16 September 10, 1977.

17 The first sentence says, "On behalf of the
18 Town of Alta, we hereby grant you the right and
19 privilege to hook on and receive water from the
20 Town Culinary Water System."

21 You've seen this before, have you not?

22 A. I have.

23 Q. Do you understand that this grant was
24 given in return for the easement that crossed the
25 Patsey Marley Hill property for the Town of Alta

76 I have B

1 water system?

2 A. I don't know that.

3 Q. Have you ever made an investigation to
4 determine whether this grant was valid or invalid?

5 A. I have.

6 Q. And tell me what your investigation
7 consisted of.

8 A. It's a violation of the 1976 agreement.

9 Q. All right. Is that it?

10 A. That's it.

11 Q. Is that your investigation?

12 A. Yeah.

13 Q. And it would be a violation of the 1976
14 agreement according to you because why?

15 A. Because it's servicing an area outside of
16 the 1976 town boundaries.

17 Q. Under the 1976 agreement, it would be
18 possible, would it not, to serve areas outside the
19 town boundaries if Salt Lake City gave its consent.

20 True?

21 A. If Salt Lake City gave its consent, if
22 there was an option within the contract, yes.

23 Q. Yes. Have you investigated any other
24 reasons why this grant would be invalid?

25 A. No.

1 Q. I will ask you to take a look now at
2 Exhibit 14, and this is an easement across the Patsey
3 Marley Hill property. It's dated September 19, 1977.

4 Have you seen this before?

5 A. I have.

6 Q. When did you first become aware of this?

7 A. Sometime in the recent past. I don't know
8 the specific date.

9 Q. And did you read it when you first saw it?

10 A. Did I read it?

11 Q. Did you read the entire Grant of Easement?

12 A. Yeah, I've read it.

13 Q. And the very first line or two says, "In
14 exchange for the right to connect a water line to the
15 Culinary Water System for the Town of Alta," and then
16 it goes on the easement is granted.

17 From this, did you understand that the
18 Grant of Easement from Cahill to the Town of Alta for
19 the water line over Patsey Marley Hill was granted in
20 return for the right to connect to the Town of Alta
21 water system?

22 A. The document speaks for itself. I didn't
23 make any determination along those lines.

24 Q. All right. But you would have no reason
25 to disagree that there was an exchange of

1 consideration between the Town of Alta and Cahill;
2 that is, an easement in return for the right to
3 connect to the Town of Alta water system?

4 A. I think that is an item that was contested
5 back in the '70s and is still not settled.

6 Q. Tell me what you know about that.

7 What was contested back in the '70s?

8 A. Well, there was the lawsuit with Cahill,
9 you know, there was the whole line, that the line was
10 in the wrong location, Cahill or his agents was
11 requesting that the line be moved. There was all
12 this dialogue that occurred from '78, '79, 1980, then
13 the record just goes dead.

14 Q. Do you have any reason to believe,
15 however, that there was not an exchange of
16 consideration; that is, that the easement was granted
17 in return for the right to connect?

18 MR. DRANEY: Objection to the form of the
19 question. Asked and answered.

20 THE WITNESS: Again, I was not present at
21 this time, so I don't know what all the assumptions
22 was going on. All I can do is read the documents.

23 Q. (By Mr. Sullivan) Did you ever talk to
24 Mayor Levitt during his lifetime about that issue?

25 A. No.

79 I/200 JS

1 Q. Did you ever talk to Mr. Guldner about
2 that issue?

3 A. No.

4 Q. Have you ever talked to Mayor Pollard
5 about that issue?

6 A. No.

7 Q. Have you ever talked to anybody at Alta
8 about that issue?

9 A. Not that I recall.

10 Q. Turn to Exhibit 18. We've talked a little
11 bit about the lawsuit between Cahill and the Town of
12 Alta, and I gather from some of your answers that
13 you've investigated or researched that lawsuit.

14 Would that be accurate?

15 A. That's probably more detailed than what
16 I've done. I'm familiar that there was a
17 disagreement and that there was a lawsuit, but I've
18 not done an investigation to speak of.

19 Q. Looking at Exhibit 18, have you ever read
20 the Complaint by Cahill against the Town of Alta,
21 which is Exhibit 18? It's dated in November of 1978.

22 A. I may have perused it, but I don't have a
23 recollection of it.

24 Q. Do you understand that one of the things
25 that Cahill was complaining about was the enforcement

80 I/200 JS

1 of the easement and the grant letter in Exhibits 13
2 and 14 that we just looked at?

3 A. I believe that was one of the issues in
4 the lawsuit.

5 Q. And did you know that during the course of
6 the lawsuit Mr. Cahill's lawyer actually wrote to
7 Commissioner Greener asking whether the Town of
8 Alta -- whether Salt Lake City as part of the
9 settlement would consent to the connection of the
10 Patsey Marley Hill property to the Town of Alta water
11 system?

12 A. I believe there is a letter, but whether
13 or not it says everything you just restated, I don't
14 know.

15 Q. Take a look at Exhibit 19.

16 Is that the letter that you've looked at
17 before?

18 A. It appears to be, yes.

19 Q. All right. When did you first see this
20 letter?

21 A. Hard to say, but some time ago in the
22 recent past.

23 Q. So you've read this letter in the context
24 of this lawsuit?

25 A. Yes.

1 Q. And do you see on page 2, the first full
2 paragraph, I'm not going to read the whole thing, but
3 there is a sentence about a third of the way through
4 that paragraph in which Mr. Peterson writes to
5 Commissioner Greener and says, "Nonetheless, in the
6 context of the present litigation, it is
7 important that Mr. Cahill be apprised as to
8 whether the City would consent to the Town's
9 supplying water to the single family dwellings
10 to be constructed."

11 Did you understand that that is the
12 inquiry that Mr. Peterson, as Mr. Cahill's lawyer,
13 was making to Salt Lake City at that time?

14 A. I believe the document speaks for itself.
15 That's my only understanding.

16 Q. And looking again at Exhibit 8, do you
17 understand that Exhibit 8, which is Mr. Montgomery's
18 letter back to Mr. Peterson, was Salt Lake City's
19 response to Mr. Peterson's inquiry?

20 MR. DRANEY: You asked if it was the
21 City's response as opposed to Ray Montgomery's
22 response?

23 Q. (By Mr. Sullivan) Yeah, the City's
24 response?

25 A. I believe it was Ray Montgomery's

1 response.

2 Q. Was he acting on behalf of the City at the
3 time?

4 A. Only to the extent that he could connect
5 on behalf of the City.

6 Q. He was a lawyer, was he not, at this time?

7 A. He was a lawyer for the City.

8 Q. And was he authorized to send this letter?

9 A. That, I don't know.

10 Q. You don't know one way or the other?

11 A. I do not.

12 Q. Do you know of any other response that
13 Mr. Cahill or his lawyer got to the inquiry made in
14 the letter to Mr. Greener?

15 A. I don't.

16 Q. Do you understand from your investigation
17 that the lawsuit between Cahill and the Town of Alta
18 was settled by means of an annexation?

19 A. I don't understand that.

20 Q. What do you know about the settlement of
21 the lawsuit? What investigation have you made?

22 A. I looked up through '77 -- '77 through the
23 1980 time frame there seemed to be a lot of dialogue,
24 but I've never seen a settlement agreement.

25 Q. Do you know how the lawsuit ended?

1 A. I don't.

2 Q. Have you ever discussed that with anybody
3 from the Town of Alta?

4 A. I remember having conversations with
5 Mayor Levitt, but I've never seen a settlement
6 agreement, so it was more question than a --

7 Q. And what did Mayor Levitt say?

8 A. I don't recall. I don't think he had a
9 good answer either.

10 Q. But you don't recall what he said?

11 A. I don't.

12 Q. Okay. So you don't know whether the
13 lawsuit was settled through an annexation of the
14 Patsey Marley Hill property to the Town of Alta?

15 MR. DRANEY: Object to the form. Asked
16 and answered. He's already told you.

17 THE WITNESS: I do not know that there was
18 a settlement of this issue.

19 Q. (By Mr. Sullivan) Do you know that as
20 part of the settlement the Town of Alta made promises
21 to connect the Patsey Marley Hill property to the
22 Town of Alta water system? Do you know that one way
23 or the other?

24 A. Again, I've testified I do not know that
25 there was a settlement of this issue.

841/200/15

1 Q. Do you have any information as to the
2 reasons why Cahill developed the Patsey Marley Hill
3 property after the year 1980?

4 A. I don't.

5 Q. In the early to mid 1990s, did it come to
6 your attention that the Town of Alta undertook to
7 upgrade its water system?

8 A. I don't have a specific recollection to
9 that, no.

10 Q. I take it that you did not have any role
11 in reviewing or approving the plans for the upgrade
12 of the Town of Alta water system?

13 A. Did not.

14 Q. Do you know if anybody in Salt Lake City
15 did?

16 A. No. That would not be our function.

17 Q. Did you know that as part of the upgrade
18 the line that went over the Cahill property was
19 actually replaced?

20 A. I do not.

21 Q. Did you know that a 10,000 gallon storage
22 tank was built as part of the upgrade in 1993?

23 A. I do not. I know there's a 10,000 gallon
24 tank. I don't know when it was built.

25 Q. Did Salt Lake City have any role in

85 I/aww B

1 approving or reviewing the siting of the 10,000
2 gallon tank?

3 A. Not to my knowledge.

4 Q. Did you know that the 10,000 gallon tank
5 is actually located on the Patsey Marley Hill
6 property?

7 A. I have no knowledge.

8 Q. I ask you to look at Exhibit 17, please.
9 Exhibit 17 is a letter dated February 8, 1995, from
10 Gregory Potter, Sunrise Engineering, to LeRoy Hooton
11 regarding Alta water improvements project.

12 Have you ever seen this letter before?

13 A. I don't recall it.

14 Q. We don't have the attachment that goes to
15 this, but in this letter Mr. Potter says that he has
16 included the feasibility study for the project
17 completed by Sunrise Engineering to show the proposed
18 improvements to the Alta water project, Alta water
19 system.

20 Does this prompt any recollection you
21 might have about your involvement in reviewing those
22 matters?

23 A. No. I had no involvement in reviewing
24 this matter.

25 Q. Who would have?

1 A. The State Division of Drinking Water.

2 Q. But who at Salt Lake City would have
3 reviewed the feasibility study, if anybody?

4 A. I'm not sure anybody would have. It may
5 have just been a transmittal.

6 Q. Okay. I take it that one of your
7 responsibilities is the interpretation and
8 enforcement of the Watershed Ordinance?

9 A. Yes.

10 Q. Turn to Exhibit 24, which is a copy of the
11 Watershed Ordinance.

12 I want to ask you some questions about the
13 provisions of the Watershed Ordinance, and I'll ask
14 you to turn first to -- on this copy it's page 614,
15 and the provision that I want to ask you to look at
16 is 17.04.020 sub A.

17 A. 17.04 --

18 MR. DRANEY: It starts on the previous
19 page. Part of it fits on to 614.

20 THE WITNESS: Okay. I'm not sure I'm
21 still with you, but ask your question.

22 MR. DRANEY: He's talking about this right
23 here (indicating).

24 Q. (By Mr. Sullivan) Sub A (indicating).
25 Okay?

87I/200 JS

1 A. Okay.

2 Q. Which says, and I quote: "No permits
3 issued prior to enactment of the ordinance
4 codified in this chapter may be amended except
5 as to the sources of supply of the water," and
6 then it says, "No permit shall be amended to
7 enlarge the service boundary or increase the
8 water supply."

9 Mr. Niermeyer, did this provision apply to
10 snowmaking contracts?

11 A. Snowmaking is basically a permitted use
12 under --

13 Q. Well -- go ahead. I'm sorry.

14 A. I answered.

15 Q. So what you would say is that snowmaking
16 contracts may be amended for really any reason and
17 not just as the sources of supply?

18 A. Yes.

19 Q. And that snowmaking contracts may be
20 amended to enlarge the service boundary or increase
21 the water supply?

22 A. Yes.

23 Q. And how do you get there in terms of your
24 reading of this?

25 A. Well, I'll go back. There's a provision

88I/100 JB

1 in here on except for --

2 MR. DRANEY: It's in that same section,
3 just above subsection A.

4 THE WITNESS: Yeah. So it's in the
5 preamble. It says pumping used for snowmaking and
6 for fire protection. No more permits --

7 Q. (By Mr. Sullivan) Don't mumble into the
8 record. The court reporter gets --

9 A. I'm trying to read at the same time. I
10 apologize. So it's the paragraph above, which is
11 about the middle of the first paragraph on 17.04.020,
12 the preamble. It says --

13 Q. And are we on page 613?

14 A. 613. It says, "The city has determined
15 that except for snowmaking, fire protection and
16 water from possible canyon springs it does not
17 have surplus water for sale in its watershed
18 canyons."

19 Q. All right. And you would say that that
20 language except snowmaking from the requirements of
21 paragraph A that we've read just a moment ago?

22 A. Yes.

23 Q. And that snowmaking contracts are
24 permitted to enlarge the service boundary or increase
25 the water supply?

897/200 JS

1 A. Yes.

2 Q. Now, looking at paragraph B, there's a
3 specific reference to snowmaking contracts, is there
4 not? In other words, paragraph B, which is just
5 below paragraph A, says, "No new use of

6 Salt Lake City water in the watershed areas of
7 the city shall be made by any individual
8 whomsoever without such person obtaining a
9 permit for such water used from the city.

10 Subject to the other terms of this chapter, a
11 permit may be issued on an interruptible basis
12 only to," and then subparagraph 2 below that
13 talks about snowmaking and fire protection; right?

14 A. Yes.

15 Q. So there can be new contracts for
16 snowmaking and fire protection?

17 A. Yes.

18 Q. And if you look at H, paragraph H,
19 paragraph H says, "The geographic area served
20 pursuant to an issued permit shall not be
21 expanded beyond the original geographic area
22 which is to be served under the permit on the
23 date it is issued."

24 My question to you is whether that
25 limitation applies to the snowmaking contracts as

1 well as other contracts?

2 A. No.

3 Q. What's the rationale for that?

4 A. The rationale?

5 Q. Yeah.

6 A. Is that snowmaking basically provides a
7 means of artificial storage, to increase the storage
8 to make water more available into the season when
9 it's in higher demand, so it essentially creates a
10 virtual reservoir.

11 Q. Referring again to paragraph H, has
12 Salt Lake City consistently administered its surplus
13 water contracts in the watershed to prohibit
14 expansions beyond the original geographic area?

15 A. I believe we have.

16 Q. Have there been any exceptions?

17 A. There have been interpretations, but I
18 don't believe exceptions, no.

19 Q. So you're saying that you're not aware of
20 any circumstances under which the geographic area
21 served pursuant to an existing permit has been
22 expanded beyond the original geographic area?

23 MR. DRANEY: Just so I'm clear, you're
24 asking areas other than what he's already talked
25 about, snowmaking, fire protection?

9/11/00 JS

1 MR. SULLIVAN: Yeah.

2 Q. (By Mr. Sullivan) I'm not talking about
3 snowmaking or fire protection because he's told me
4 that this limitation does not apply to those
5 contracts.

6 A. So there are several contracts where there
7 was a termination under an existing use that
8 clarified that use.

9 Q. Let me ask you about a couple of those.
10 The first one I want to ask you about is Service Area
11 No. 3.

12 Do you know what Service Area No. 3 is?

13 A. I do.

14 Q. That's Snowbird, is it not?

15 A. Generally, yes.

16 Q. And would you agree with me that the
17 Snowbird service area has been expanded since the
18 enactment of Salt Lake City's Watershed Ordinance in
19 1991?

20 A. I would not.

21 Q. I ask you to first look at Exhibit 25.

22 Can you identify Exhibit 25 as the
23 original Surplus Water Agreement between Service Area
24 No. 3 and Salt Lake City Corporation dated
25 December 28, 1972?

92F/1000 JS

1 A. I must be on the wrong exhibit. Did you
2 say 25?

3 Q. Yeah.

4 A. I'm on 26. I apologize. This is actually
5 an agreement, yes, between the service area and
6 Salt Lake City.

7 Q. All right. And this is the original Water
8 Supply Agreement for Salt Lake City Service Area
9 No. 3, Snowbird. True?

10 A. With Service Area No. 3, yes.

11 Q. Okay. If you'd take a look at paragraph 3
12 of this exhibit, I want to direct your attention to
13 the last sentence of paragraph 3, which happens to be
14 underlined in this copy, and it says, "It is
15 expressly understood and agreed that said
16 pipelines shall not be extended to supply any
17 properties or facilities not within the
18 jurisdiction of the Company unless prior written
19 consent therefor is given by the City."

20 How was the company's jurisdiction defined
21 at that time, if you know?

22 A. I do not know.

23 Q. I don't see anything in the agreement that
24 actually defines what the jurisdiction of special
25 Service Area No. 3 is, and that's the reason I'm

93I/200 JS

1 asking the question. Okay?

2 Do you know?

3 A. I don't.

4 Q. Have you talked with anybody about that?

5 A. I don't.

6 Q. You have not talked with anybody about
7 that?

8 A. Relative to the 1972 agreement, no.

9 Q. Now take a look at Exhibit 26, which is
10 the Supplemental Agreement to the same Water Supply
11 Agreement, and I'll ask you if you can identify this
12 one as a Supplemental Agreement to what we just
13 looked at as Exhibit 25? It's dated July 15, 1980.

14 A. It appears to be, yes.

15 Q. And all that did was add some sources of
16 supply. Isn't that true?

17 A. Uh-huh (yes).

18 Q. And now I'd like you to take a look at
19 Exhibit 27, which is a letter from Mr. Montgomery to
20 Doug Evans, Salt Lake County Service Area No. 3,
21 dated November 14, 1989, and this relates to the
22 Water Supply Agreement dated December 28, 1972.

23 Have you seen this letter before?

24 A. I don't have a recollection of it, but I
25 probably have.

54 I/200 JS

1 Q. All right. And do you recall that there
2 was a time -- this would have been before your
3 joining the Public Utilities Department, would it
4 not?

5 A. Yes.

6 Q. Did you know that there had been this
7 request by Salt Lake County Service Area No. 3 to
8 furnish water to the site for Wasatch Powderbird
9 Guide's heliport facility, which is outside the
10 boundaries of the service area?

11 Did you know that there was that request?

12 A. I know there was a request, yeah.

13 Q. And did you know that that request was
14 denied because the heliport was outside the original
15 boundaries of the service area?

16 A. I think it was more -- at that time there
17 was a general moratorium that was in place from 1981
18 to 1991 on all Surplus Water Agreements.

19 Q. Well, if you look at the last paragraph on
20 page 1, Mr. Hooton writes to Mr. Evans: "The City
21 does not give its consent to the extension of service
22 of water outside of the service district boundary
23 which was in existence as of December 28, 1972," and
24 just prior to that he quotes the provision in
25 paragraph 3 that we just read; right?

1 A. After that he quotes the moratorium.

2 Q. All right. So there were a couple of
3 reasons to deny the request; right?

4 A. I think the -- well, they don't have to
5 give a reason. Paragraphs, on the second page, 1 and
6 2 talk about the reasons.

7 Q. Turn to Exhibit 29, if you would, please.
8 Exhibit 29 is a June 9, 1995, report by Mr. Hooton to
9 Mayor Deedee Corradini, and this is one of the Weekly
10 Summary Reports of which we've seen several.

11 Have you seen this before.

12 A. No specific recollection, no.

13 Q. Were you one of the people who contributed
14 to these reports back during this period of time in
15 1995?

16 A. No.

17 Q. I'd like you to take a look at the second
18 page and to a long bullet in the middle of the page
19 where Mr. Hooton writes to Mayor Corradini:

20 "Snowbird is proposing to make several
21 improvements to its ski resort during the next 5
22 years," and then he says, skipping a sentence,
23 "We have had discussions with Snowbird regarding
24 its water supply contract to service a proposed
25 3-story restaurant and retail facility on Hidden

1 Peak. Currently there is a small building used
2 for coffee and toilet facilities," and then he
3 says, "The new proposed facility will require a
4 new water storage reservoir to serve the
5 increased water supply needs. We have been in
6 consultation with the City and County Health
7 Department regarding this matter. We both agree
8 that hauling water is a violation of the health
9 code. Also, the sewer line to the facility does
10 not meet the watershed standard. Met with the
11 Public Utilities Advisory Committee watershed
12 subcommittee. Then it says, "It is our position
13 that we will not provide water to this new
14 facility through a new water pipe as it is an
15 enlargement of their water supply agreement and
16 is outside the service boundary at the time the
17 Water Supply Agreement was signed in 1972."

18 Do you see that?

19 A. I do.

20 Q. Were you aware that Salt Lake City took
21 this position at that time in 1995?

22 A. I was not.

23 Q. Take a look now at Exhibit 28, and, for
24 the record, Exhibit 28 is a letter from Mr. Hooton to
25 Doug Evans and Lee Kapaloski, and it's dated

97I/100 JS

1 April 21, 1997, and this relates to the same Water
2 Supply Agreement for Service Area No. 3, and do you
3 recall that there was this request -- have you seen
4 this letter before?

5 A. I have.

6 Q. Do you recall that there was this request
7 for clarification of the agreement as to, among other
8 things, what the boundaries would be for the Water
9 Supply Agreement?

10 A. Yes.

11 Q. And if you look at paragraph (b), which is
12 at the bottom of the first page, Mr. Hooton writes:

13 "The City recognizes the service area of
14 the Company to consist of the tax boundaries of
15 the Company as determined on September 3, 1970,
16 by Salt Lake County and the June 15, 1977,
17 annexation of the Blackjack area."

18 Do you see that?

19 A. Yes.

20 Q. Then in paragraph (c) there is a paragraph
21 that says Further Expansions, and Mr. Hooton writes
22 then: "The City's 1991 Watershed Ordinance prohibits
23 the expansion of service areas under existing
24 contracts. Consequently, the City will not
25 consent to the delivery of water outside of the

1 present boundaries of the Company, except as
2 historically recognized or specified in the
3 amendment."

4 Did Mr. Hooton consult with you as to the
5 exception for historically recognized uses?

6 A. Yes.

7 Q. And what was your dialogue on that?

8 A. The dialogue was that there was these
9 pockets of use that were within the Snowbird master
10 plan area that existed, hence the confusion of what
11 actually -- if you go back to the original contract,
12 under the company's jurisdiction, what that meant, so
13 there was actually a lot of dialogue between us and
14 Snowbird saying that we would only recognize the
15 historic use and nothing new.

16 Q. So did you consult with Mr. Hooton on this
17 at that time, in 1997?

18 A. Yes.

19 Q. And your decision was that even if a
20 particular use was outside the recognized boundaries
21 of the service area, if there had been a historic
22 use, you would permit that historic use even though
23 it was outside the boundaries?

24 A. Well, again, outside the boundaries is a
25 difficult question because the original contract said

1 under the company's jurisdiction, and, as you said,
2 there was not a boundary description, so what this
3 letter did, it says here is what we are going to
4 consider the boundary from this time forward, and we
5 will recognize these historic uses.

6 Q. Were the historic uses that were
7 recognized in this letter outside the tax boundaries?

8 A. I believe they are.

9 Q. And that would include the Hidden Peak
10 facility and the Mid Gad facility and the maintenance
11 facility. True?

12 A. Yes.

13 Q. And you believe that there was a
14 justification for this exception to the general rule
15 because there was some lack of clarity as to what the
16 original boundaries were; correct?

17 A. Correct. It was within the company's
18 jurisdiction.

19 MR. SULLIVAN: Now I'd like you to take a
20 look at a document that I will -- did you seek
21 documentation, by the way, for historic use?

22 THE WITNESS: Yes.

23 Q. (By Mr. Sullivan) Did you get it?

24 A. We did.

25 MR. SULLIVAN: I'll show you a document

1 that I will ask the court reporter to mark as
2 Exhibit 209.

3 **(EXHIBIT 209 WAS MARKED.)**

4 Q. (By Mr. Sullivan) Can you identify
5 Exhibit 209 as a letter received by your department
6 from Doug Evans of Salt Lake County Service Area
7 No. 3 relating to this same issue?

8 A. Yes, and the letter appears to be
9 incomplete. There's no attached table.

10 Q. This is how we got it.

11 A. I'm just saying the document refers to a
12 table.

13 Q. Right. I want to just focus your
14 attention on the second paragraph where Mr. Evans
15 writes -- he refers to item (f), which refers to a
16 paragraph in Exhibit 28 that we just looked at
17 relating to the maintenance facilities, and Mr. Evans
18 writes: "Item (f) in the letter regarding

19 maintenance facilities, I assume this means both
20 the Snowbird Maintenance Shop and the Gad Valley
21 Parking Lot Restroom facility. Both of these
22 facilities are outside of our contract and I
23 believe have little if no documentation of their
24 water use or approval. Attached hereto is a
25 table showing the best available flow data for

1 these two facilities that I hope can become a
2 starting point for arriving at contract flow
3 limits as we discussed."

4 After this date, did you get any
5 additional historic information on use of water at
6 either the Snowbird maintenance shop or the Gad
7 Valley parking lot restroom facility?

8 A. Yes. I believe we got estimates of how
9 they calculated what would have been used in the
10 historical time frame we were talking about.

11 Q. So they told you that they used the water,
12 but they didn't have any documentation and they
13 basically estimated what they had been using?

14 A. They didn't have any meter readings or
15 specific water record of the snow, but they did tell
16 us, I believe, the uses and how they calculated what
17 would have been used.

18 Q. In your view, is there an exception for
19 historic use in the Watershed Ordinance itself?

20 A. Again, we would generally recognize
21 that -- you have to take it in the context of the
22 entire contracts, body of contracts and amendments,
23 but we have generally tried to recognize that if
24 there was an active use, that we weren't going to cut
25 that off. As contracts became clearer, a better term

1 is what we needed.

2 Q. Would you allow this historic use to be
3 expanded?

4 A. No.

5 Q. So it would be limited to historic use?

6 A. Yes.

7 Q. And that would be true, you would allow
8 the historic use even if it was outside the
9 jurisdiction of the district?

10 A. Again, it's hard to say in a generalized
11 question like that. It has to be based on the merits
12 of each situation.

13 Q. Okay. Would you say that if it was
14 anticipated back when the original Water Supply
15 Agreement was drafted that a particular property or
16 facility would be serviced, that that's enough to
17 meet the historic use?

18 A. I would not. I would say there would have
19 to have been a wet use of water.

20 Q. A wet use of water?

21 A. Water was actually being used that was
22 wet, not some anticipatory use.

23 Q. Okay. Now I'd like you to take a look at
24 Exhibit 31, which I think is the next letter in the
25 series insofar as we've got.

1 This is a letter dated June 13, 1997, and
2 this is just a couple weeks after the letter we just
3 looked at as Exhibit 209, and this is another letter
4 from Doug Evans to Mr. Hooton on this topic.

5 Did you get a copy of this?

6 A. Yes, since my name's on there, it appears
7 I did.

8 Q. In fact, your writing's on this letter,
9 isn't it?

10 A. It is.

11 Q. And this refers to the famous Gad restroom
12 where -- he discusses the Gad restroom, and then in
13 the second to last paragraph he says, "This is also
14 the facility that I provided the flow numbers
15 for in the last letter (May 27, 1997) I wrote to
16 you, and that letter will explain the situation
17 we are in, especially in regard to expansion and
18 renovation. We would appreciate an allocation
19 for this that would enable some improvements to
20 be made to this aging facility. Please advise
21 if I should meet with you or your staff to
22 clarify further this facility and how it should
23 be handled."

24 And then Mr. Hooton sends a note to you,
25 doesn't he, at the top? It says, "Jeff -- this is a

1 loose end that didn't get finished before Tim retired.

2 See that?

3 A. I do.

4 Q. And Tim is Tim Doxey. True?

5 A. Yes.

6 Q. And so you basically took over. The baton
7 was passed to you to deal with this issue when
8 Mr. Doxey retired; right?

9 A. So to speak.

10 Q. And then right at the bottom you say -- if
11 I can read your writing, it says, "LeRoy, this
12 represents an expansion of service. Need to limit to
13 current use."

14 What did you mean by that?

15 A. It means that the use of the water needs
16 to be limited to the volume of water that was
17 historically used at this location.

18 Q. All right.

19 A. As best as can be determined.

20 Q. I'd like you to take a look at a document,
21 Exhibit 30, which is about a year later. Exhibit 30.

22 A. Three-zero.

23 Q. And this is another Weekly Summary Report.
24 This one's dated June 26, 1998.

25 Have you ever seen this before?

1 A. LeRoy would e-mail it to me, so yes. Not
2 that I read every one, by the way.

3 Q. You didn't read every one?

4 A. I didn't.

5 Q. Why not?

6 A. Because they were long.

7 Q. Okay. Did you play a role in preparing
8 these Weekly Summary Reports?

9 A. Generally not.

10 Q. Take a look at the second page,
11 paragraph 4, which deals with the general topic of
12 the City's relation to Snowbird and some developments
13 in that regard, and I don't want to read the whole
14 paragraph into the record, but I do want to focus
15 your attention on -- about the middle of the
16 paragraph it says, "The State Engineer has held a
17 hearing on Crawford's application (now owned
18 98 percent by Snowbird) and has not yet made a
19 decision, and Snowbird has asked the State Engineer
20 to put their application on hold," and then here's
21 what I want you to focus on.

22 "We were approached several months ago to
23 see if Snowbird could work something out with
24 Salt Lake City. Prior to their Crawford
25 application acquisition and their own

1 application, Public Utilities had renegotiated
2 the Service Area's Water Sales Agreement with
3 Doug Evans to reflect new information that had
4 been found by the department relative to water
5 service to the Mid-Gad facilities and Hidden
6 Peak. We found in old records that it was
7 anticipated that water would be provided to
8 these facilities, but it was not included in the
9 Water Sales Agreement. Through negotiations we
10 were willing to include these sites in an
11 amended agreement -- that is, before Snowbird
12 acquired Crawford's and they filed their own
13 application on the Wasatch Drain Tunnel."

14 My question is whether the old records
15 that you reviewed showed that it was anticipated that
16 water would be provided to those facilities?

17 A. Yeah. These were records that Snowbird
18 provided to us showing their kind of master
19 development plan back in the early time frame area
20 that these waters were to be served to, so it goes
21 back to that company, or --

22 Q. And why was it relevant that the old
23 records showed that it was anticipated by the parties
24 back then that water would be provided to these
25 facilities?

1 A. Again, it goes to the notion of trying to
2 determine the boundary of the area of use, coupled
3 with the actual use of water.

4 Q. All right. Now I want to move quickly to
5 Exhibit 32. Exhibit 32 is a Restated Water Supply
6 Agreement.

7 Can you identify this as a Restated Water
8 Supply Agreement of the original December 28, 1972,
9 Water Supply Agreement?

10 In other words, this is the restated
11 version of Exhibit 25; right?

12 A. Well, I think it tried to restate all of
13 the up to five amendments that had occurred of the
14 chain of contracts.

15 Q. Sure. Really, all I'm asking is that this
16 is the restated agreement of the agreement we
17 originally looked at as Exhibit 25 plus its
18 amendments?

19 A. Plus its amendments; correct.

20 Q. Okay. And did you negotiate this on
21 behalf of Salt Lake City?

22 A. Yes.

23 Q. Who else was involved?

24 A. LeRoy and Chris Bramhall.

25 Q. And who on behalf of Service District

1 No. 3?

2 A. Bob Bonar, Jim Baker and Doug Evans. I
3 think Doug Evans was providing information. I don't
4 recall him being at meetings necessarily.

5 Q. All right. Was there a lawyer
6 representing Service District No. 3?

7 A. There was a lawyer, but his name escapes
8 me at this point.

9 Q. Take a look, if you would, at paragraph 2
10 on page 3. It says, and this is paragraph 2, "In
11 addition to the foregoing supply of water,
12 the City agrees to supply and make available to
13 the Service Area for its use the normal flow of
14 raw, untreated water in an amount not to exceed
15 20 gallons per minute," and then a
16 parenthetical, "emanating from a water source in
17 Gad Valley."

18 And so one of the purposes of this
19 agreement was to add a water source.

20 Is that true?

21 A. It was to recognize the historic use of
22 water at the Mid Gad Restaurant facility.

23 Q. So up to this time had there been any
24 agreement pursuant to which this water source was
25 actually utilized by Service District No. 3 at that

1 location?

2 A. I don't understand your question.

3 Q. Had there been a prior agreement between
4 Salt Lake City and Service District No. 3 to use this
5 water at that location?

6 A. There was the, again, first agreement that
7 said under the company's jurisdiction, and so this
8 was, again, a recognition that there was a historic
9 use, there was a source that it was being used for
10 that was historic, and it was, again, trying to
11 recognize that historic use.

12 Q. But would you agree with me that the
13 original agreement did not include this particular
14 water source?

15 A. The original agreement did not include
16 that.

17 Q. So you're adding this water source to the
18 agreement. True?

19 A. We're adding this water source to the
20 agreement.

21 Q. Okay.

22 A. Based on an understanding of what we're
23 trying to accomplish.

24 Q. Right. Then if you turn to the next
25 paragraph over on the next page, I'm looking at the

1 portion of paragraph 3 that begins with the second
2 full sentence on page 4. It says, "It is expressly
3 understood and agreed that said pipeline shall
4 not be extended to supply any property or
5 facilities not within the jurisdiction of the
6 Service Area, except as provided in paragraph
7 11, unless prior written consent therefor is
8 given by the City."

9 Do you see that?

10 A. Actually, I'm lost.

11 Q. Turn to page 4.

12 A. Four; right.

13 Q. And go to the top of the page.

14 A. Okay.

15 Q. And then go to the second full sentence.

16 A. "It is expressly." Okay. I see that.

17 Q. It says again, "It is expressly understood
18 and agreed that said pipeline shall not be
19 extended to supply any property or facilities
20 not within the jurisdiction of the Service Area,
21 except as provided in paragraph 11, unless prior
22 written content therefor is given by the City."

23 Do you see that?

24 A. Yes.

25 MR. DRANEY: For the record, it goes on to

1 define service area jurisdiction.

2 MR. SULLIVAN: Sure. It does.

3 Q. (By Mr. Sullivan) So if I understand the
4 way this restated agreement is structured is that it
5 defines the service area, and then there are some
6 exceptions to the service area which are expressly
7 provided for in paragraph 11.

8 Would that be true?

9 A. Yes.

10 Q. And if we turn then to paragraph 11, it
11 says, "The Service Area is authorized to provide
12 water service to the following property or
13 facilities outside of the jurisdiction of the
14 Service Area, as defined in paragraph 3 hereof,
15 provided that such service is limited as
16 expressly provided below," and then it refers to
17 Hidden Peak, Mid Gad Day Lodge, Maintenance Facilities
18 and Gad Valley Facilities. True?

19 A. Yes.

20 Q. And your view is that this paragraph 11
21 did not violate the Watershed Ordinance. True?

22 A. True.

23 Q. And you believe it did not violate the
24 Watershed Ordinance because it was anticipated back
25 at the time that the original agreement was entered

112I/200 JS

1 into that these facilities would be served and they
2 had received some historical water from various
3 sources. True?

4 A. Not quite true.

5 Q. Tell me how I messed up. Tell me how you
6 would put it.

7 A. That they were continuing and they had an
8 active use of water is where I disagree with you.

9 Q. All right. And is it your view that all
10 of these were active uses of water from the very
11 beginning of the implementation of the Water Supply
12 Agreement in 1972?

13 A. No. I guess basically that sometime in
14 the period before we came to try to resolve what the
15 area under jurisdiction meant these facilities were
16 built and were using water.

17 Q. Okay. So if the agreement was entered
18 into in 1972, when did the Hidden Peak facility start
19 using water?

20 A. I don't recall.

21 Q. When did the Mid Gad Day Lodge start to
22 use water?

23 A. I don't recall.

24 Q. And you don't know when the maintenance
25 facilities would have started to use water?

1131/200 

1 A. I don't recall.

2 Q. But it would have been some time after
3 1972; right?

4 A. Yes. Well, I don't even necessarily know
5 that for sure. I don't know when these facilities
6 specifically were built.

7 Q. Did you investigate that?

8 A. Again, in the information they provided, I
9 think they did provide us when they were built. I
10 just don't recall.

11 Q. Now I want to go on to a slightly
12 different topic but related to Snowbird.

13 There was an interconnect agreement
14 between the Town of Alta and Service District No. 3.
15 True?

16 A. There is an interconnect agreement, yes.

17 Q. Is there an interconnect agreement that is
18 in force today?

19 A. I mean, I know there's an interconnect.
20 I'd have to review the agreements. I don't recall
21 the specific agreement.

22 Q. Well, let me ask this question: Is there
23 a physical connection today between the water system
24 for special Service District No. 3 and the Town of
25 Alta water system?

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1 A. There is an emergency connection between
2 the two systems, yes.

3 Q. And does water flow through that
4 connection, from the Alta system to the Service
5 District No. 3 and vice versa today?

6 MR. DRANEY: Let me understand the
7 question. Functionally today it's open, the valve's
8 open, or you're just asking can it?

9 Q. (By Mr. Sullivan) Does it?

10 A. No, it does not. It's normally on an
11 emergency basis as I understand how the system works.

12 Q. And what's an emergency?

13 A. Primarily, as I understood, the role was
14 that if there was a fire and one system may be down,
15 they wanted to be able to provide off the other.

16 Q. So is it your belief that the interconnect
17 between Snowbird and the Town of Alta system only
18 operates in cases of an emergency like a fire?

19 A. Yes.

20 Q. Let me ask you to look at Exhibit 33.
21 Exhibit 33 is a Memorandum of Understanding dated
22 sometime in July of 1995 between Salt Lake City and
23 the Town of Alta.

24 Have you seen this before?

25 A. I don't actually recall seeing it. I'd

1 note that it's not signed by Salt Lake City.

2 Q. I guess that's one of my questions.

3 Do you know if this was ever signed by
4 Salt Lake City?

5 A. I don't recall seeing this in our files.

6 Q. All right. Paragraph 1 of the document,
7 after the Recitals, on page 2 says, "Alta Town and
8 Snowbird District agree to construct and
9 maintain an interconnection with respective
10 water delivery systems at a point specified in
11 Exhibit A attached hereto," and then it says,
12 "The use of the interconnection shall be solely
13 for temporary delivery of water from Snowbird
14 District to Alta Town during the construction
15 period of Alta Town's water improvement
16 project."

17 So you don't know if that interconnection
18 was actually made or whether water went back and
19 forth during that period of time?

20 A. I know there is an interconnection.
21 Whether or not water went back and forth during the
22 construction period, I don't know.

23 Q. All right. Take a look at Exhibit 34, if
24 you would, please.

25 Can you identify Exhibit 34 as the

1 original interconnect agreement among Salt Lake City,
2 special Service District No. 3 and Town of Alta?

3 A. It appears to be.

4 Q. All right. This one was signed by
5 Salt Lake City, was it not?

6 A. There is a signature of LeRoy Hooton on
7 this document, yes.

8 Q. And this is dated July 31, 2005.

9 Did you negotiate this?

10 A. I did not.

11 Q. Do you know who did?

12 A. I don't.

13 Q. Have you ever read it before?

14 A. It's not ringing a bell with me, to be
15 honest.

16 Q. Look at paragraph 2. Maybe this will ring
17 a bell. It says, "The City and the Service Area
18 shall, during the Term of this Agreement, permit
19 Alta to take delivery of water from a source
20 identified in the Service Area Water Contract as
21 a tunnel on the J.P. Lode Mining Claim (referred
22 to herein as the 'Peruvian Source'), subject to
23 the following conditions," and then there are
24 the conditions.

25 Does that ring any bells?

1 A. Yeah. I think this is what I call a water
2 blending project.

3 Q. Tell me what that is.

4 A. Alta was having a problem with their water
5 source in terms of meeting an antimony requirement,
6 and they were wanting to explore various alternatives
7 that they may pursue short of a full-on treatment
8 plant, and one of those options was there an
9 opportunity to blend down with other waters the
10 antimony levels, and so this was an agreement that we
11 said on a short term basis we'll allow you to
12 investigate that alternative.

13 Q. What happened?

14 A. They ultimately ended up building a
15 treatment plant.

16 Q. Was there a period of time during which
17 the water was blended between the two systems?

18 A. There was.

19 Q. Do you know what that period of time was?

20 A. It was probably less than a year.

21 Q. And would it have been after July of 2005?

22 A. Yes.

23 MR. SULLIVAN: Now take a look, if you
24 would, at what I will ask the court reporter to mark
25 as Exhibit 210.

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(EXHIBIT 210 WAS MARKED.)

Q. (By Mr. Sullivan) Exhibit 210 is a Water Agreement signed by Mr. Hooton for Salt Lake City Corporation and Mayor Pollard for the Town of Alta and Keith Hanson as general manager of Salt Lake County Service Area No. 3.

Can you identify this as the current interconnect agreement among those parties?

A. Again, this is, I believe, still a blending agreement.

Q. All right. So this is not the interconnect agreement?

A. Right.

Q. So if you look at Recital C, it says, "Alta desires to have access to water from an alternative source in addition to the sources specified in the Alta Water Contract so that Alta can blend water from such alternative source of water from its existing sources to determine whether Alta can achieve lower levels of" --

A. Antimony.

Q. -- "antimony in its water."

So this was basically an extension of the agreement that we saw in Exhibit 34; right?

A. Yes.

1 Q. Then in paragraph 4 of this agreement it
2 talks about an extension.

3 Do you know if any extensions were
4 requested?

5 A. I don't recall that they were. I know at
6 some point they built a treatment plant.

7 Q. Do you know if this agreement is still in
8 effect?

9 A. Just on its face, it would expire.

10 Q. I've shown you what I have in terms of
11 interconnect agreements.

12 Do you know if there is another one?

13 A. I don't recall a specific interconnect
14 agreement.

15 Q. Do you know if there is currently in force
16 an agreement that allows the interconnection of the
17 two systems in cases of emergencies as you have
18 described them?

19 A. I know there's an understanding on our
20 part that there is an interconnection between the two
21 systems for emergencies. I don't recall an
22 agreement.

23 Q. All right. Is it your belief that there
24 is not a written agreement?

25 A. I've not -- I just have no recollection of

1 one.

2 Q. Okay. And is it your belief that the only
3 circumstances under which the two systems
4 interconnect is in the event of an emergency, a
5 fire-type emergency or something similar?

6 A. Right.

7 Q. And your understanding on that point is
8 from whom?

9 A. It's from my understanding of the systems
10 and our contracts and our ordinance that we're not
11 trying to leave systems vulnerable. We understand we
12 have interconnects with other water systems in town,
13 so it's just a prudent thing to do with a water
14 system.

15 MR. SULLIVAN: Okay. I've got a little
16 bit to go, and it's now about five to.

17 Do you want to take a break now?

18 MR. DRANEY: Yes, please.

19 MR. SULLIVAN: Is that all right with you?

20 MR. DRANEY: That would be fine.

21 MR. SULLIVAN: How long do you want to
22 break for? It's up to the witness.

23 THE WITNESS: I'm easy.

24 MR. DRANEY: It takes a good 45-50 minutes
25 anyway to get lunch, I would think, if we're going

1 downstairs.

2 Should we just be back in an hour?

3 MR. SULLIVAN: That would be fine.

4 (Lunch recess from 11:51 a.m.

5 to 12:59 p.m.)

6 Q. (By Mr. Sullivan) You ready?

7 A. I'm ready.

8 Q. Do you mind turning to Exhibit 154,
9 please.

10 A. That's a new binder. 154?

11 Q. Yes. Exhibit 154 is the Agreement and
12 Water Supply Permit for Snow Making for Alta Ski
13 Lifts. It's dated April 12, 1993, and,
14 Mr. Niermeyer, I understand this has been amended
15 from time to time since 1993, and we've got those
16 amendments in the record, but I want to refer you to
17 one clause in this agreement in paragraph 1.

18 Paragraph 1 says, "The City agrees, for
19 ten years from the date hereof, to supply up to
20 five million gallons of water annually, if
21 available, from the below-described sources, so
22 long as the removal of said water from the
23 diversion point does not interfere with the
24 rights of others," and then it goes on, and I
25 want to focus your language on the phrase "so

1 long as the removal of said water from the
2 diversion point does not interfere with the
3 rights of others."

4 Have you had occasion to interpret that
5 provision or the comparable provision in the
6 snowmaking agreements?

7 A. I have not.

8 Q. Do you know if the "others" that are
9 referred to in that clause would refer to the parties
10 who might have a right in the same water source?

11 A. That's what I would assume that it refers
12 to, yes.

13 Q. Okay. So I need to ask you this question.
14 You remember we looked at the 1975 Water Supply
15 Agreement that would permit the Patsey Marley Hill
16 property to take water from the Quincy Mine water
17 source.

18 Do you know of any reason why it's rights
19 in the Quincy Mine water source would be subordinate
20 to the rights conferred on Alta Ski Lifts in this
21 snowmaking agreement?

22 A. I guess in my mind it's because there has
23 been no use of that Quincy Mine water under the
24 '75 agreement where there's been a current use, and
25 if you look at Utah water law, based on the notion of

1 beneficial use, so if there has been an existing
2 beneficial use going on, I think I would view that as
3 my understanding.

4 Q. Have you been called upon to make an
5 interpretation in that regard of a snowmaking
6 agreement in the past?

7 A. I have not.

8 Q. So what you'd say, I guess, is that if
9 Patsey Marley Hill had been using the Quincy Mine
10 source from a date before April 1993, then there
11 would be no reason why its rights would be
12 subordinate to the snowmaking contract to favor
13 Alta Ski Lifts?

14 A. Because there wouldn't be any
15 interference. Because there was no use, there was no
16 interference.

17 Q. Right. If Patsey Marley Hill were to
18 start tomorrow to use the water source, would you
19 believe that under this agreement, Exhibit 154, that
20 Alta Ski Lifts would be required -- would its rights
21 be subject to the obligation that it not interfere
22 with the rights of Patsey Marley Hill?

23 A. I don't necessarily -- I don't think I
24 would agree with that. Again, I think it goes back
25 to the notion of beneficial use and that Alta Ski

1 Lifts has been making beneficial use of that water
2 source.

3 Q. Do the legal authorities that you're
4 thinking of have anything to do with snowmaking
5 agreements?

6 A. Beneficial use?

7 Q. Yes.

8 A. It's a use of water.

9 Q. I'm just asking if the legal authorities
10 that you're thinking of in that regard have anything
11 to do with snowmaking agreements?

12 MR. DRANEY: Asked and answered.

13 THE WITNESS: It has to do with water use
14 in general. Snowmaking is one of those uses.

15 Q. (By Mr. Sullivan) I want to ask you some
16 questions about Solitude, and I'd like you to take a
17 look at Exhibits 97 and 98.

18 A. Okay. I'm at 97.

19 Q. Our documentation may be incomplete on
20 either of these particular water users, but I'm
21 directing your attention to Exhibit 97, and that is a
22 Water Supply Agreement dated March 23, 1976, between
23 Salt Lake City and Bravo Ski Corporation.

24 Have you seen this agreement before?

25 A. Yes.

1 Q. Do you understand that this is the
2 original agreement that supplied surplus water to the
3 Solitude Ski Resort?

4 A. I understand that, yes.

5 Q. Has it been amended since that time?

6 A. Yes, it has.

7 Q. Is it still in effect --

8 A. There has actually been a transfer of some
9 of the rights to a mutual irrigation company, so a
10 chain of the agreement -- you know, this is the
11 foundation of a series of chain of agreements.

12 Q. All right. What is the mutual irrigation
13 company?

14 A. Mutual irrigation company is a form of
15 water company --

16 Q. No. What is the name of the mutual
17 irrigation company?

18 A. I honestly don't know. I assume it's like
19 Solitude Mutual Irrigation Company or something. I
20 don't know the name specifically.

21 Q. Okay. Then take a look at Exhibit 98,
22 which is an agreement dated August 22, 1995, between
23 Salt Lake City and Giles Flat water Users
24 Association, and have you reviewed that agreement
25 before?

1 A. I have.

2 Q. And do you understand that this relates to
3 the use of water from a particular water source for
4 the benefit of 17 lots in a place called Giles Flat?

5 A. Yes.

6 Q. And do you understand that Giles Flat is
7 adjacent to or abuts Solitude Ski Resort?

8 A. Yes.

9 Q. And was there a time when these agreements
10 were modified to permit the Giles Flat water users
11 group to obtain water through the Bravo Ski
12 Corporation or Solitude water transmission system?

13 A. Yes. Again, I believe that the Giles Flat
14 area is also within the permit and boundary areas of
15 Solitude.

16 Q. So if we look at Exhibit 97, and if we
17 look at paragraph 2 of Exhibit 97, it continues over
18 to page 2, and the last sentence of that paragraph 2
19 says, "It is expressly understood and agreed that
20 said pipeline shall not be extended to supply
21 any properties or facilities not directly
22 connected with said ski resort at present, or
23 not within the bounds of property owned or
24 leased by User as of the effective date of this
25 Agreement, unless prior written consent

1 therefore is first obtained from City."

2 Do you see that?

3 A. Yes.

4 Q. Is it your testimony that the Giles Flat,
5 I guess you call it subdivision, was within the
6 boundary referenced in that paragraph 2 of
7 Exhibit 97?

8 A. Yeah, I've not made a study of how it
9 looked in 1976 specifically.

10 Q. And that would be relevant to your
11 inquiry, wouldn't it?

12 I mean, that would be the relevant
13 boundary, would it not, for purposes of paragraph 2?

14 A. For the purpose of this contract, yes,
15 '76.

16 Q. Yeah. And would you agree with me that if
17 the boundary referenced in paragraph 2 as of 1976
18 excluded the Giles Flat Subdivision, that it would be
19 a violation of the Watershed Ordinance and this
20 provision to provide water through those pipes to
21 Giles Flat?

22 A. Again, the first of paragraph 2 talks
23 about the resort. Again, not knowing the definition
24 of that resort -- it's the fourth line up from the
25 bottom, so I would have to make what was contemplated

1 as the resort, because, again, the '76 agreement is
2 not the defined boundary.

3 Q. Tell me what you can recall about the use
4 of the Solitude water system to supply water to the
5 Giles Flat Water Users Association.

6 A. Well, Solitude was constructing a series
7 of homes as part of their resort development within
8 the Giles Flat area, and they were using water volume
9 available to them and their system as part of their
10 resort boundary to provide water to those homes that
11 Solitude was building.

12 Q. And those homes became the subdivision
13 that is referenced in Exhibit 98.

14 Is that your testimony?

15 A. No. There were existing lots in the
16 Giles Flat subdivisions. Solitude acquired those
17 lots at some point, I'm not sure when, and Solitude
18 was building homes on those lots as part of their
19 overall development plan.

20 Q. I see. When did Solitude acquire those
21 lots?

22 A. I don't know specifically.

23 Q. Was it after 1976?

24 A. I don't know specifically.

25 Q. Do you believe that it was after 1976?

1 A. Again, I don't know what land they
2 acquired when they acquired the ski area from Bravo
3 and what Bravo owned.

4 Q. Okay. And so at the present time are the
5 17 lots in Giles Flat Water Users Association taking
6 water through the water source identified in the
7 Exhibit 97 as amended?

8 A. First of all, I don't think there are
9 17 lots built, so those lots that Solitude has built
10 on I believe are taking water from the Solitude
11 system.

12 Q. And does Exhibit 98 only relate to lots
13 that were developed by Solitude? Is that your
14 testimony?

15 A. It refers to Giles Flat. I know there are
16 some lots in there that are not owned all by
17 Solitude.

18 Q. And are they developed?

19 A. I don't know specifically.

20 Q. Are they getting water through the
21 Solitude system?

22 A. I have a recollection that they also have
23 one other source as well, which is the original
24 Giles Flat agreement.

25 Q. Okay. And are there actually what you

1 call two systems, the Giles Flat system and the
2 Solitude system?

3 A. It's kind of a hybrid system, yes.

4 Q. And are they connected to each other?

5 A. In places, yes.

6 Q. And does Solitude take water from the
7 Giles Flat system and vice versa?

8 A. I don't know that.

9 Q. Okay. Thank you. I need to ask you this
10 question: Is there an agreement in effect, an
11 interconnect agreement, to which Solitude is a party
12 that allows the interconnection of these two water
13 systems?

14 A. There would not be what I call an
15 interconnect agreement. There's morphing of the
16 Solitude boundary as it relates to its development,
17 to its contract, and the boundary of the Solitude ski
18 area development includes the lands within Giles
19 Flat.

20 Q. At present?

21 A. Yes.

22 Q. Now, is it your position that under the
23 Watershed Ordinance that an approved well may only
24 serve one residence?

25 MR. DRANEY: You said an approved well.

1 MR. SULLIVAN: I'm sorry. Let me ask the
2 question again. I asked the wrong question.

3 THE WITNESS: Okay.

4 Q. (By Mr. Sullivan) Is it your position
5 that under the Watershed Ordinance an approved spring
6 may only serve one residence, one single family
7 residence?

8 A. Every single family residence must be
9 supplied by an approved spring, new contracts, but
10 there are provisions that a single family resident
11 application can go to a spring that already has a use
12 on it. That's built into the ordinance.

13 Q. Will you show me in the ordinance. It's
14 Exhibit 24. Just give me a second to find my copy of
15 the Watershed Ordinance. Okay. I've got it in front
16 of me.

17 So direct me to the provision in the
18 Watershed Ordinance that has the effect that you just
19 described.

20 A. There are multiple provisions, so if you
21 want to talk about a residence, so if you'd go to the
22 definitions, under 17.04.10, paragraph A-1 says
23 Salt Lake City Health Department regulations for a
24 residence within the watershed, "a" being singular.

25 If you then go down through all the

1 definitions --

2 Q. Well, can I just pause there?

3 A. Sure.

4 Q. What it says is that an "Approved spring"
5 means a naturally occurring spring which produces
6 each day an amount of water equal to the minimum
7 quantity of water required by state law for a
8 residence within the watershed area; right?

9 A. Correct. That's correct.

10 Q. Okay.

11 A. Okay. Then if you go down through all of
12 the definitions, you know, there's no definition of
13 subdivision, there's no definition of commercial
14 development, but there is a definition for residence,
15 and that means a single family dwelling.

16 Then if you go down to paragraph B-1 on
17 page 614 of my document, it says no new use of
18 Salt Lake City water in the watershed areas of the
19 City shall be made by any individual whatsoever
20 without first -- without such person first obtaining
21 a permit for such water use from the City subject to
22 the terms, and then it says the owner or lessee where
23 the owner is a governmental agency of property in the
24 watershed area for the purpose of supplying water
25 from an approved spring source for a residence,

1 singular.

2 Q. All right. Is that it?

3 A. And then you asked -- I guess the second
4 part of your question was does that limit a spring
5 source solely to a residence, and there are
6 provisions here that say, under E, once the
7 application has been approved for a residence, then
8 they can go to a spring that has another surplus
9 agreement on it but would have to get permission from
10 those that have the legal ground around that, so,
11 again, the City's rights are to the water, not to the
12 physical infrastructure that may be there, so they
13 need to get easement rights and permissions.

14 Q. So tell me again what the effect of
15 paragraph E is to you.

16 A. E is -- it says -- again, going back to if
17 somebody comes in today and says we want a connection
18 to a spring source, so we will determine that it is a
19 single family residence based on what I outlined
20 before. Then they will say, well, we want to use
21 this spring, and we will go through the definitions
22 of an approved spring.

23 If there are any connections made to that
24 spring from other residents or historic contracts,
25 then we will say that we can grant permission to go

1 to that spring, but you have to get all the
2 permissions. We will give you the right to use the
3 water from that spring, but physical connections and
4 stuff have to be worked out with those people that
5 are currently working, or taking water from that
6 spring.

7 Q. So if post the enactment of the Watershed
8 Ordinance a party locates an approved spring and has
9 a single family residence and your office approves
10 use of the water for that spring for that
11 residence --

12 A. Yes.

13 Q. -- and then the next day another water
14 user comes along and wants to use the same approved
15 spring for it, do you approve that?

16 A. Yes, we would approve that, provided it
17 met all the rest of the intent of the ordinance.

18 Q. So effectively, so long as they were done
19 in sequence, a single spring could provide water to
20 multiple single family residences?

21 A. Yes, as long as they're individual
22 systems. What it doesn't allow for is a subdivision
23 system to be built off of a spring, because that
24 violates the "a residence" provisions ahead of that.

25 Q. And why does it violate the first

1 residence rights?

2 A. Because they're asking for multiple
3 residences. They're asking to develop a water system
4 for multiple homes, not an individual, a resident.

5 Q. So if you have a spring and you have a
6 series of residences that hook onto the spring, it's
7 permitted so long as it's not a system, a subdivision
8 system, but it is permitted so long as there are
9 individualized pipes going from the spring to the
10 residence?

11 A. The ordinance was designed to basically
12 allow individual lot owners or property owners to
13 connect a residence to a spring, and it was also
14 designed to basically minimize the amount of
15 watershed damage that may occur by having multiple
16 lines running to every spring out there.

17 Q. If you have individual lines going to
18 individual residences from a single spring, how does
19 that result in any more watershed damage than if you
20 have a system running off a single pipe from a
21 spring?

22 A. I didn't say that. What it does is it
23 allow us to have multiple uses off of a same spring
24 as opposed to going to every other spring that may
25 not have a system to it.

1 Q. Okay. I understand your position on that.

2 And is it your interpretation of the
3 Watershed Ordinance that commercial uses are not
4 permitted to be supplied water by an approved spring?

5 A. Yes.

6 Q. Are there exceptions to that?

7 A. No. Well, I mean, unless it's for fire
8 protection or for snowmaking.

9 Q. All right. I'll ask you to turn to a
10 document marked as Exhibit 100. This is a letter to
11 Russell Vetter from Lee Kapaloski regarding the Big
12 Cottonwood Pine Tree Water Company contract.

13 Have you seen this document before?

14 A. I have.

15 Q. Are you acquainted with the Big Cottonwood
16 Pine Tree Water Company contract?

17 A. I am.

18 Q. Does that involve a spring that serves 38
19 single family cabins?

20 A. Yes.

21 Q. And is that based upon a 1993 agreement
22 with Salt Lake City?

23 A. I'm unclear of the date, but it is based
24 on an agreement with Salt Lake City.

25 Q. I don't have a copy of that agreement.

1 Can you tell me who the contracting
2 parties were in that 1993 agreement?

3 A. It would be the Pine Tree Subdivision
4 users, and I don't know if it was them individually.
5 I know the lots were listed specifically as to which
6 lots could be served. I don't recall if it's a water
7 company or if it's a -- go ahead.

8 Q. Okay. But at any rate, you have -- at
9 least up until this letter you have a single spring,
10 and I believe it's called the Turnbow Spring.

11 Does that ring a bell to you?

12 A. No, they are not served from the Turnbow
13 Spring.

14 Q. Okay. What's the spring called?

15 A. The Pine Tree Spring.

16 Q. Okay. You have a single spring, the
17 Pine Tree Spring, that serves 38 single family
18 cabins. True?

19 A. True.

20 Q. And that was based upon a 1993 agreement
21 between the Water Users Association and
22 Salt Lake City; right?

23 A. Right. And I think there are actually
24 previous agreements to that '93 agreement.

25 Q. In your view, does that agreement violate

1 your interpretation of the Watershed Ordinance?

2 A. Does the '93 agreement?

3 Q. Yeah.

4 A. No.

5 Q. Why?

6 A. Because coming off of a spring going to --
7 and it also goes back to historic contracts that
8 aren't referenced in that -- there are previous
9 agreements previous to 1993. The '93 is the latest
10 reincarnation of it.

11 Q. I see. So that's an amendment of an
12 earlier agreement?

13 A. I believe so.

14 Q. And were those earlier agreements with
15 Salt Lake City or were they with Little Cottonwood
16 Water Company?

17 A. Salt Lake City.

18 Q. And is there a water system that comes off
19 the spring that serves the 38 lots?

20 A. Yes.

21 Q. And was that water system in place before
22 1991?

23 A. Yes.

24 Q. So you would say, in effect, that system
25 was grandfathered against the rule in the Watershed

139 II/200 B

1 Ordinance at the present time?

2 A. Yes. So it had existing contracts prior
3 to '91.

4 Q. Now, in this Exhibit 100, Mr. Kapaloski
5 asks Mr. Vetter whether there could be included an
6 additional spring source through an amendment to the
7 1993 agreement.

8 Is that how you read that?

9 A. Yes.

10 Q. And what was the result of that inquiry?

11 A. There was, I believe, a modification to
12 the agreement that allowed them to add a diversion
13 from the Turnbow Spring, which was an existing spring
14 serving what I call the Turnbow contract, which would
15 provide them a source, because their existing spring
16 under the previous '93 agreements would run dry at
17 certain times of the year, and so this would provide,
18 again, a backup source to approve that spring.

19 Q. So the Turnbow Spring that is the subject
20 of this letter was a new water source for this group
21 of 38 homes?

22 A. Yes.

23 Q. And is the system that developed from that
24 spring a water system, or is it a set of 38 different
25 pipes coming from the same spring?

1 A. There's multiple pipes, but it's not 38.

2 Q. Okay. Is it a water --

3 A. It's a water system.

4 Q. It's a water system that comes from the
5 Turnbow Spring and serves the various homes?

6 A. It comes from an area in the Forest
7 Service, comes down, and then Turnbow Spring can be
8 added to it.

9 Q. Take a look at Exhibit 101.

10 Can you identify this as -- well, what is
11 it? It's called Amended And Restated Water Supply
12 Permit Agreement, and can you identify this as --

13 A. It appears to be the restated agreement
14 for the Pine Tree Water Company.

15 Q. And if you look at paragraph 1 on page 2,
16 are those two springs that are identified as the
17 water sources, the Turnbow Spring and the one earlier
18 spring that was utilized by those homes?

19 A. Yes.

20 Q. Turn, if you would, to Exhibit 35.

21 Can you identify Exhibit 35 as the Water
22 Supply Agreement between the Corporation of the
23 Episcopal Church in Utah and Salt Lake City
24 Corporation dated July 11, 1991?

25 A. Yes.

1 Q. And does this involve utilization of a
2 spring for Camp Tuttle?

3 A. Yes.

4 Q. Was this agreement entered into after the
5 Watershed Ordinance was passed?

6 A. I don't know. I'd have to go back and
7 look when the watershed -- it issues '91.

8 Q. It was '91, yeah. I don't know when.

9 A. I don't know when it was actually passed.

10 Q. Does this agreement constitute a violation
11 of the Watershed Ordinance?

12 A. I don't believe it does.

13 Q. Why?

14 A. First of all, there was an historical use
15 there. It's really not a new use. It was a
16 recognition of that historic use and it was, again,
17 putting it under contract.

18 Q. Is there a reference to a historic use in
19 this agreement, to your knowledge?

20 A. Not to my knowledge.

21 Q. But you're saying there was a historical
22 use, so the City felt that it could enter into a new
23 Water Supply Agreement?

24 A. Again, I don't know if it was being used
25 without an agreement or if this modifies an agreement

1 that was in use. I'd have to go back and research
2 the file.

3 Q. In fact, the first whereas clause in the
4 recital says that Camp Tuttle in Big Cottonwood
5 Canyon "has been using water from a spring located on
6 or near Camp Tuttle which has for many years been
7 used by the owners of Camp Tuttle without express
8 authorization or a permit from the City."

9 A. Yes.

10 Q. It's your understanding that Camp Tuttle
11 had no authorization to use that spring?

12 A. Right.

13 Q. All right. Take a look at Exhibit 189.
14 For the record, Exhibit 189 is a Water Supply
15 Agreement dated March 15, 1997, between
16 Salt Lake City and Alta Ski Lifts Company.

17 Have you seen this agreement before?

18 A. I have.

19 Q. Do you understand that this is the Water
20 Supply Agreement pursuant to which what was then
21 known as Watson Shelter and what was then known as
22 Alpenglow Shelter and the Alta Ski Resort received
23 culinary water?

24 A. I would have to read. These are the
25 spring sources, yes, so this is their culinary water.

1 Q. All right. And do you see in paragraph 1,
2 right after the Recitals, that this agreement
3 identifies two springs as the water sources, one for
4 Watson Shelter and one for Alpenglow Shelter; right?

5 A. Yes.

6 Q. And would you agree with me that these are
7 commercial uses and not residential uses?

8 A. They are commercial uses.

9 Q. And you'll see that this Water Supply
10 Agreement was preceded by an agreement between Alta
11 Ski Lifts and Little Cottonwood Water Company dated
12 December 1, 1992?

13 A. Yes.

14 Q. Do you believe that this agreement is a
15 violation of the Watershed Ordinance?

16 A. I don't.

17 Q. Why not?

18 A. Again, because there was historic use
19 there between the Little Cottonwood Water Company.
20 When the Little Cottonwood Water Company was
21 dissolved, these came to the City, and the City
22 basically put the use under a Salt Lake City
23 contract, so, again, it goes back to having an active
24 historic use.

25 Q. And does it make any difference to you

1 that the active historic use began after the
2 Watershed Ordinance was passed?

3 A. The active historic use began long before
4 the Watershed Ordinance was passed.

5 Q. And how do you know that?

6 A. Watson Shelter has been there for decades
7 before '91 and Alpenglow as well.

8 Q. Do you know if Alpenglow and Watson
9 Shelter were using water from these springs prior to
10 1991?

11 A. My understanding is that they were, but I
12 have not --

13 Q. And do you know if they used water from
14 those springs pursuant to any written authorization
15 from anybody?

16 A. There are Little Cottonwood Water Company
17 agreements.

18 Q. Well, there was a Little Cottonwood Water
19 Company contract dated December 1, 1992.

20 My question is: Prior to the advent of
21 that contract in December of 1992, do you know if
22 there was any written authorization from Little
23 Cottonwood Water Company or Salt Lake City for those
24 facilities to use that water?

25 A. I don't know. I've not studied that issue

1 specifically.

2 Q. Are you aware of any agreement for that
3 water prior to December 1, 1992?

4 A. Not that comes to mind, no.

5 Q. And are you aware that today these two
6 facilities receive water not only from these springs
7 but also from the Town of Alta water system?

8 A. I know there was a connection. I'm not
9 sure how much water they actually received, and I
10 believe actually the connection's only to the
11 Alpenglow, not to Watson's.

12 Q. All right. To your knowledge, has
13 Salt Lake City authorized the connection of those two
14 facilities to the Town of Alta water system?

15 A. Not a specific authorization, no, but it's
16 within the 1976 boundaries.

17 Q. Do you know that these two facilities
18 received water for their toilets and for dish washing
19 from the snowmaking line for the Bay City Tunnel?

20 A. Well, there is a provision in that
21 contract that we amended with Alta Ski Lifts that
22 allows them under, again, emergency conditions when
23 the spring sources cease to flow the opportunity to
24 flush toilets off of their snowmaking lines, which
25 includes other water sources, not just the Bay City

1 Tunnel.

2 Q. Right. But it does include the Bay City
3 Tunnel?

4 A. It's one of their water sources.

5 Q. So Salt Lake City has approved the use of
6 snowmaking water at these two facilities for, as you
7 say, emergency culinary water purposes?

8 A. Emergency sanitary purposes and --

9 Q. Sanitary purposes?

10 A. -- culinary water.

11 Q. Okay. Does the Public Utilities
12 Department have a priority list of critical watershed
13 properties earmarked for acquisition?

14 A. We have a map that we use occasionally.

15 Q. Have you conducted an inventory of
16 properties in the canyons and prioritized properties
17 for acquisition?

18 A. There was some stuff that went through in
19 the '90s I believe with the Public Utilities Advisory
20 Board outlining the properties, and essentially what
21 they said is that all properties that become
22 available would be included in the priority list
23 we're trying to acquire.

24 Q. Do you maintain that priority list
25 up-to-date?

147I / 200 B

1 A. We maintain properties that are available,
2 or properties that are vacant and available for
3 purchase we will evaluate, so we have the original
4 list, but we don't go through and scratch off once
5 we've acquired.

6 Q. Well, if I were to ask for an inventory of
7 properties prioritized for acquisition in the
8 canyons, would there be a document that I could look
9 at?

10 A. Yes.

11 Q. And do you maintain that? Is that in your
12 office?

13 A. It's in our office.

14 Q. Is Patsey Marley Hill on that list
15 somewhere?

16 A. That, I don't know. Sorry.

17 (Cell phone interruption.)

18 THE WITNESS: Could I just answer this to
19 see if it's an emergency?

20 MR. SULLIVAN: You bet.

21 (Brief pause in the proceedings.)

22 THE WITNESS: I apologize.

23 Q. (By Mr. Sullivan) When did you first
24 learn that the Patsey Marley Hill property was for
25 sale?

1 A. I guess I'm not -- for sale, I know that
2 there were interests of people trying to acquire it.

3 Q. Did there come a time in the year 1998 in
4 which you learned that Alta Ski Lifts had entered
5 into, in effect, an option agreement to purchase the
6 Patsey Marley Hill property?

7 A. I never knew about any option or form of
8 agreement to purchase it. There was some dialogue
9 with Onno, again under his typical hypothetical
10 questioning, if we were going to acquire this
11 property would there be water available.

12 Q. And when did that dialogue occur?

13 A. '98/'99 time frame.

14 Q. Did it occur in 1997?

15 A. May have. I don't specifically know.

16 Q. Let me ask you to take a look at
17 Exhibit 162.

18 MR. DRANEY: 162?

19 MR. SULLIVAN: Yes.

20 Q. (By Mr. Sullivan) Exhibit 162 is a letter
21 from Allen L. Orr, Ray, Quinney and Nebeker, to Tim
22 Doxey. It's dated March 20, 1997, Re: Availability
23 of Water to Cahill property.

24 Have you ever seen this letter before?

25 A. I believe I have.

1 Q. Did you see it about the time that it was
2 received by Mr. Doxey?

3 A. No.

4 Q. In this letter, Mr. Orr asks: "It would
5 help Onno and I tremendously to have your feedback on
6 the availability of water to the Cahill property."

7 Do you know what response, if any,
8 Mr. Doxey gave to Mr. Orr?

9 A. I do not.

10 Q. Was it after this point in time that you
11 became involved in discussions with Mr. Wieringa?

12 A. Yes, after the retirement of Tim.

13 Q. And Mr. Doxey retired sometime in 1997; is
14 that right?

15 A. Yes.

16 Q. We've discussed your conversations with
17 Mr. Wieringa before, and I think you told me that you
18 had over the period of time several conversations
19 with him.

20 A. I had a lot of conversations with Onno
21 about various issues.

22 Q. But I'm talking just about the
23 availability of water to the Patsey Marley Hill
24 property.

25 A. Yes, several conversations.

150 I/250 JS

1 Q. And can you tell me how those
2 conversations developed?

3 A. Again, Onno would come in and give me kind
4 of a generic description of what they were going to
5 do and asked would there be water available, and,
6 again, my typical response would be if there was any
7 water available, it would be under the '75 agreement.

8 Q. And by that point in time you had
9 researched the 1975 agreement?

10 A. Right.

11 Q. And did he tell you what Alta Ski Lifts
12 had in mind for the Patsey Marley Hill property?

13 A. He did not.

14 Q. Did you tell him in any of these
15 conversations that there would be no water available
16 under the 1975 agreement for the Patsey Marley Hill
17 property?

18 A. No. We said if there was water available,
19 it would only be under the '75 agreement. We didn't
20 make a commitment that it was available, but that was
21 the only contract out there that may have a
22 beneficiary to that property.

23 Q. But did he ask you if there was water
24 available under the 1975 contract for the Patsey
25 Marley Hill property?

1 A. I don't think he ever asked the question
2 specifically like that. He said if we are going to
3 give water to this property, what are the mechanisms
4 to do that.

5 Q. And during this period of time, let's say
6 1997, 1998 into 1999, did you talk to Mr. Guldner
7 about that same topic?

8 A. Again, I think John was involved in some
9 meetings at several levels, not necessarily with Onno
10 there, that, again, if water was available, it was
11 available under the '75 agreement.

12 Q. And were these communications with
13 Mr. Wieringa before Alta Ski Lifts acquired the
14 Patsey Marley Hill property?

15 A. Some of them may have been.

16 Q. And did your conversations with
17 Mr. Guldner occur before Alta Ski Lifts acquired the
18 Patsey Marley Hill property?

19 A. I don't believe they did.

20 Q. I'm going to ask you to look at a document
21 that's been marked as Exhibit 199. There's no reason
22 to believe you've seen this before, unless you saw it
23 in preparation for your deposition.

24 Exhibit 199 is a set of handwritten notes
25 which I believe were prepared by Mr. Guldner, but I

1 can't tell you that for sure. They were produced by
2 the Town of Alta in this case. It reflects a
3 conversation dated December 15, 1998, which I believe
4 were among yourself and Karryn Greenleaf and John
5 Guldner, and I want to know if you can recall either
6 an in-person meeting or a phone conversation with
7 Mr. Guldner on that date relating to the availability
8 of water at Patsey Marley?

9 A. I don't have specific recollections of a
10 conversation at that date.

11 Q. All right. Do you remember telling
12 Mr. Guldner in or about December 1998 that Patsey
13 Marley Hill property does have water rights?

14 A. I would never have told him they have
15 water rights because that's not true.

16 Q. Do you remember telling him that Patsey
17 Marley Hill property's water rights do affect the
18 town's 265,000 gallons per day?

19 A. Again, I think we need to clarify
20 ourselves on terms. Patsey Marley has no water
21 rights.

22 Q. All right. Do you recall telling him
23 something about 22 percent of the 150,000 gallons per
24 day is available to the Patsey Marley Hill property?

25 A. The conversation that I typically have had

1 with people, because people always try and go back to
2 the 1974 Agreement and try to quantify how much water
3 may be available to the Patsey Marley property, which
4 Salt Lake City was not a party to, but that is
5 typically what I've seen is people trying to quantify
6 that, but it's not a number that we've agreed to.

7 Q. Looking at these notes, does this assist
8 you in any way in remembering what you said and what
9 Mr. Guldner said in that conversation?

10 A. Does not.

11 Q. That was on December 15 of 1998, and now
12 I'd like you to take a look at Exhibit 200.

13 Can you identify Exhibit 200 as your
14 handwritten notes?

15 A. It appears to be my handwritten notes,
16 yes.

17 Q. And would that be of a meeting that you
18 had on December 29, 1998, with Onno Wieringa and
19 Tom Ward?

20 A. Yes.

21 Q. What was the subject of the meeting?

22 A. It appears to be the water available to
23 the Quincy property, or, excuse me, to the Shrontz
24 property.

25 Q. Of course, the Shrontzes didn't own the

1 property at this time.

2 You're aware of that?

3 A. Yes.

4 Q. It was owned by Cahill at the time, was it
5 not?

6 A. I believe so, yes.

7 Q. And this was prior to the time that Alta
8 Ski Lifts and the Shrontzes acquired the property;
9 right?

10 A. Yes.

11 Q. And was this a face to face meeting that
12 you had with Mr. Wieringa and Mr. Ward?

13 A. Based on the notes, I would say yes.

14 Q. And are these notes that you made to
15 reflect what actually happened in the meeting?

16 A. They're notes just, I guess, of dialogue
17 that occurred in the meeting.

18 Q. Did you tell Mr. Wieringa that water is
19 available under the 1975 contract to Cahill?

20 A. What I always told Onno was if water is
21 available, it would be only under the 1975 contract.

22 Q. All right. I note that this note doesn't
23 say if water is available. It says water is
24 available.

25 Is that what you told --

1 MR. DRANEY: And, in fairness, it has a
2 question mark there, too.

3 MR. SULLIVAN: I don't see a question
4 mark.

5 THE WITNESS: I see a circle. Again,
6 these are just my handwritten notes to myself to
7 reflect, but it was not a commitment for water. If
8 we were going to commit for water, we would do it by
9 contract.

10 MR. SULLIVAN: Where's the question mark?

11 MR. DRANEY: It's a circle. I think
12 that's what that is.

13 THE WITNESS: It's circling the word.

14 MR. SULLIVAN: I don't see one
15 (indicating).

16 MR. DRANEY: Interesting.

17 Q. (By Mr. Sullivan) Does yours have a
18 circle on it?

19 A. (Witness indicating.)

20 Q. And the second bullet in your note says,
21 "Will be deducted from 1976 Alta Contract."

22 What did you mean by that?

23 A. Again, as I testified before, any water
24 that would be available under the 1975 agreement to a
25 beneficiary would then be deducted out of the 265,000

1 gallons of the 1976 agreement available to Alta.

2 Q. Okay. And then I can't read the next
3 bullet. Can you read it for us?

4 A. It says volume and rate not determined
5 yet -- approximately 22 percent of 1500. I can't
6 read the last four digits. I think it's meant to be
7 150,000.

8 Q. What's the last squiggle in that note
9 after the 150,000?

10 A. I have no idea.

11 Q. Does that note refer to 22 percent of
12 150,000, more or less?

13 A. Approximately.

14 Q. And what did you say about 22 percent of
15 150,000?

16 A. Again, it goes back to this dialogue that
17 Onno and I have typically had on he tries to
18 calculate it based on the '74 contract, and so it was
19 just my notes to myself of where Onno was coming at
20 it from.

21 Q. All right. The squiggle before the
22 22 percent, what is that?

23 A. Approximately.

24 Q. Were you telling Onno that it would be
25 approximately 22 percent of 150,000 gallons?

1 A. I was not. It says the volume and rate
2 not determined, so I'm telling him it's not
3 determined, and he was telling me he thinks it's
4 around 22 percent.

5 Q. I see. And then the last bullet says,
6 "Source -- Quincy Mine" --

7 A. Yes.

8 Q. -- right? Do you remember anything more
9 about that conversation than you've told us here
10 today?

11 A. No.

12 Q. Do you remember what Mr. Wieringa's
13 reaction was?

14 A. (No audible response.)

15 Q. No?

16 A. Just a meeting.

17 MR. SULLIVAN: I'm going to show you now a
18 document that I will have the court reporter mark as
19 Exhibit 211.

20 **(EXHIBIT 211 WAS MARKED.)**

21 Q. (By Mr. Sullivan) Exhibit 211 is another
22 document that I have no reason to believe you have
23 ever seen before. It is dated February 9, 1999. It
24 comes from the Town of Alta's files, and it is a memo
25 to Jody and Duane, probably meant to be Jody and

1 Duane Shrontz, from John Guldner, and I'll ask you
2 just to look at it for a second so you can read it
3 over.

4 A. Okay.

5 Q. Okay. Do you remember in February of 1999
6 that you or others in your office provided John
7 Guldner with a copy of the 1974 Agreement that we
8 looked at earlier as Exhibit 1?

9 A. I don't have a specific recollection that
10 we provided the agreement, but it says we did, so
11 I'll assume I did.

12 Q. Certainly, as of this time you had a copy
13 of the 1974 Agreement; right?

14 A. Yes.

15 Q. And did you tell Mr. Guldner that it is
16 Salt Lake City's position that the 1975 agreement was
17 valid but that Patsey Marley is the only user left
18 under that contract?

19 A. I think our standard dialogue was that if
20 there's any beneficiaries to or if the property, the
21 Cahill property, lower Cahill, had any water
22 available to it, it would be under the '75 agreement.
23 We did not go so far as to say it's valid or invalid
24 or anything else was said.

25 Q. So you deny that you told John Guldner

159 F/2005

1 that the 1975 agreement was valid?

2 A. Those are not my words.

3 Q. Did you tell Mr. Guldner at that time that
4 the percentages are correct giving Patsey Marley
5 22 percent of 150,000 gallons per day, or slightly
6 over 33,000 gallons per day?

7 A. I did not.

8 Q. Does this refresh your recollection at all
9 about any conversation you had with Mr. Guldner at
10 this time?

11 A. It does. I don't have a recollection of a
12 specific meeting, but I do have recollections of
13 having similar conversations along these lines.

14 Q. Did you discuss with Mr. Guldner during
15 this period of time the validity of the 1975
16 agreement?

17 A. Again, we didn't discuss it at all. We
18 just said if there's water, it's only available under
19 this agreement.

20 Q. Showing you what has been marked as
21 Exhibit 95, if you'd turn to that.

22 A. If after these lines of questions I could
23 take a break, I'd appreciate it.

24 Q. Sure. I'll be done in just one second.
25 I'd just like to ask you a question about this.

1 A. Okay.

2 Q. Have you seen Exhibit 95 before?

3 A. Which is from John Guldner to Lee
4 Kapaloski?

5 Q. Yeah.

6 A. I don't recall.

7 Q. This was dated the same date as the memo
8 that we just saw to Jody and Duane, Exhibit 211, and
9 you can read it yourself. It refers to Patsey Marley
10 shares being 33,000 gallons per day. Patsey Marley
11 is the only area left, and then Mr. Guldner says, "I
12 got this and my information from Jeff Niermeyer on
13 December 15, 1998."

14 Do you remember ever telling Mr. Guldner
15 that the Patsey Marley Hill property's share would be
16 33,000 gallons per day?

17 A. No. What I told Mr. Guldner is here's how
18 people have tried to calculate it.

19 Q. Okay.

20 A. So this is an overstatement of what I
21 said.

22 MR. SULLIVAN: Let's take a break.

23 THE WITNESS: Okay. Five minutes. Be
24 right back.

25 (Recess from 1:57 p.m. to 2:06 p.m.)

1 Q. (By Mr. Sullivan) Mr. Niermeyer, the
2 record developed so far shows that in the latter part
3 of February of 1999 Jody Shrontz purchased the Patsey
4 Marley Hill property from Alta Ski Lifts.

5 Prior to the time that the purchase was
6 finalized, had you spoken with Jody Shrontz?

7 A. I have not, or did not. Excuse me.

8 Q. All right. And prior to that time did you
9 know that the Shrontzes were going to be the ultimate
10 purchasers of the 26 acres?

11 A. I did not.

12 Q. Or 25 acres. Did not?

13 A. Did not.

14 Q. And after the purchase did you have
15 communications with either Ms. Shrontz or her lawyer,
16 Ira Rubinfeld?

17 A. I don't recall any conversation until we
18 had a meeting sometime in, I believe -- several
19 months after the property was acquired.

20 Q. All right. Several months after the
21 property was acquired.

22 In the year 1999?

23 A. I don't know if it was '99 or 2000. I'd
24 have to look at some documents to refresh my memory.

25 Q. Who was present at the meeting?

1 A. There was a meeting actually that
2 Bill Levitt requested we attend, and there was
3 Bill Levitt, John Guldner, Jody and Duane Shrontz,
4 Ira Rubinfeld, and I believe Herb Livsey was there,
5 myself and LeRoy Hooton.

6 Q. And where did the meeting occur?

7 A. I believe it was at the Alta Lodge.

8 Q. How long did it last?

9 A. Hour, hour and a half.

10 Q. What was the subject of the meeting?

11 A. Again, the subject was that Jody was
12 looking to develop a hotel on the property and again
13 talking about if water, or how water may be available
14 for that development.

15 Q. What can you remember about the meeting?
16 What was said by each person?

17 A. Again, Jody kind of described her vision
18 of the project. I think it was a 60 or 80 bedroom
19 hotel. Mayor Levitt described how it would be a
20 benefit to the town, and we I guess mostly listened
21 to what they were saying.

22 Q. Okay. And what did you say during the
23 meeting, if anything?

24 A. Again, I think, if anything, we said that
25 if water was available, it would be under the 1975

1 agreement.

2 Q. Do you recall saying anything else at that
3 meeting?

4 A. There were dialogues -- at some point
5 there was a dialogue about conservation of the
6 remaining property. There were, you know, ideas
7 floated around in terms of hooking to the Alta
8 system, but they were just ideas.

9 Q. Okay. At that meeting did you discuss the
10 possibility of hooking the Quincy water source to the
11 Town of Alta water system and delivering water to the
12 Patsey Marley Hill property through at least some
13 portion of the Town of Alta water system?

14 A. There were some dialogues under what I
15 call the wheeling concept.

16 Q. All right. And what did you say about
17 your views concerning the wheeling concept?

18 A. Initially that it probably was not
19 feasible because it would violate the Watershed
20 Ordinance, but we'd think about it.

21 Q. All right. Do you recall any other
22 conversation on that topic?

23 A. About the wheeling topic?

24 Q. Yes.

25 A. There were various conversations that

1 occurred post that time. I don't have specific
2 recollections.

3 Q. You don't have specific recollections?

4 A. I just remember that was a topic, but how
5 many conversations I had, I don't recall.

6 Q. Before we go on to those, do you remember
7 anything else that was said at the meeting at Alta
8 Lodge with Mayor Levitt and with Jody and Duane
9 Shrontz and Ira Rubinfeld and Mr. Livsey and yourself
10 and Mr. Hooton?

11 A. Not specific recollections, just a
12 general. That was almost a decade ago or more, so
13 it's hard to remember specific conversations.

14 Q. Is there anything that you can remember
15 now that you haven't told me about concerning that
16 meeting? I want to exhaust your memory of that
17 meeting.

18 A. Yeah. What I know now is that -- I can
19 give you the essence of the meeting. Specific words
20 and conversations I don't have a clear recollection
21 of.

22 Q. After that meeting, what was your next
23 communication with either the Shrontzes or
24 Mr. Rubinfeld or Mr. Livsey or the Town of Alta
25 concerning the water for the Patsey Marley Hill

1 property?

2 A. Again, there was -- well, let me
3 backtrack. I do recall now. I think there was some
4 dialogue on the need to consent to the agreement, to
5 the assignment, so that may have occurred in the
6 larger meeting.

7 Q. All right.

8 A. So there were, I guess, documents that
9 Jody sent our way saying here's what we know about
10 the development, and there was a whole series of
11 meetings and conversations -- at least conversations.
12 I don't know that there were meetings between our
13 attorney, Chris Bramhall, and Ira.

14 Q. What about conversations in which you were
15 involved with the Shrontzes or with the Town of Alta
16 concerning water?

17 A. Again, I don't recall specific
18 conversations after that initial one.

19 Q. Do you recall any subsequent conversations
20 about the wheeling issue, and by wheeling I mean
21 delivering Quincy Mine water to the Patsey Marley
22 Hill property through at least a portion of the Town
23 of Alta water system.

24 A. I remember internal conversations between
25 myself and Chris Bramhall.

1 Q. I don't want to ask you about that.

2 A. Correct. But I don't recall having
3 additional, you know, dialogue. Again, these
4 conversations may be melding back and forth between
5 various dialogues.

6 Q. Sure. Do you remember discussing with the
7 Shrontzes or their representatives the possibility of
8 Salt Lake City purchasing a portion of the Patsey
9 Marley Hill property?

10 A. There was a dialogue relative to the
11 property that wasn't used for the lodge to be placed
12 under some sort of conservation effort, but it wasn't
13 a specific purchase of the property.

14 Q. But would the idea be that Salt Lake City
15 would pay some money for the property?

16 A. There was some dialogue I think actually
17 advanced by the Town of Alta that it would help if
18 Salt Lake City could pay some money, but there was no
19 commitment to pay money.

20 Q. All right. Was there an expression on
21 your part that there might be some interest in paying
22 some money for a portion of the property?

23 A. I think we said that if we had funds
24 available and it was within fair market value, we
25 would consider participating in that.

1 Q. Now, the Shrontzes died in January of
2 2003.

3 A. I'll take your word for that.

4 Q. Do you recall any other meetings with the
5 Shrontzes or communications with the Shrontzes or
6 Mr. Rubinfeld up until that time?

7 A. Again, I know that Jody would occasionally
8 send me a document or have John send a document.

9 Q. John Guldner?

10 A. Guldner, relative to what they were
11 thinking. I know there were some conversations that
12 they were expanding what they were thinking about in
13 terms of they'd done some preliminary work, that
14 hotels themselves wouldn't pan out, that they would
15 need to "condomize," whatever that word is.

16 Q. Condominiumize?

17 A. Condominiumize some of the floors in order
18 to have it pencil out.

19 Q. Okay. Do you recall any other
20 communications between you and the Shrontzes or
21 Mr. Rubinfeld or --

22 A. Not specifically.

23 Q. -- the Town of Alta?

24 A. Not specifically.

25 MR. SULLIVAN: Okay. I'm going to show

1 you a document that I will ask the court reporter to
2 mark as Exhibit 212.

3 **(EXHIBIT 212 WAS MARKED.)**

4 Q. (By Mr. Sullivan) Can you identify this
5 as a Memorandum from Linda Cordova to Karryn
6 Greenleaf with a copy to you dated September 13,
7 1999?

8 A. Yes.

9 Q. What was the purpose of this, or put this
10 memo into context, if you will.

11 A. Again, I think it was subsequent to the
12 Shrontzes' willingness at that time to place the
13 balance of the property under some sort of
14 conservation easement or straight out -- you know, I
15 don't think they wanted to sell the property straight
16 out, but I think there was dialogue they were willing
17 to put it under a conservation easement, and this
18 was -- I probably asked Karryn Greenleaf to talk to
19 our property management folks to see if they could
20 assess some indication of value for me.

21 Q. All right. And what was the result of
22 that inquiry?

23 A. They came back at some value in a
24 subsequent memo that I don't recall the number.

25 MR. SULLIVAN: Showing you what I will ask

1 the court reporter to mark as Exhibit 213.

2 **(EXHIBIT 213 WAS MARKED.)**

3 Q. (By Mr. Sullivan) Exhibit 213 looks like
4 an e-mail dated October 19, 1999, which is just over
5 a month after the previous exhibit.

6 Is this the response that you received
7 pursuant to your inquiry?

8 A. It's from Matt Williams, which is a
9 property management person. Twenty-five acres. Yes,
10 it appears to be.

11 Q. Right. Just so the record is clear, the
12 e-mail says, "Recent sales information of larger
13 parcels indicate a value of approximately \$2,000
14 per acre. I'm not sure we would be able to
15 pay less, even for the wetlands acreage. I
16 don't know how motivated they would be to sell."

17 Then I see a note that looks to be in your
18 handwriting at the bottom of the document.

19 Is that your handwriting?

20 A. It is.

21 Q. And would you read that for us?

22 A. It says, "Karryn, we need more than this.
23 See me. Jeff."

24 Q. And why did you believe you needed more?

25 A. Well, what he was looking at was -- you

1 know, how did he come up with \$2,000?

2 Q. And did you have a subsequent conversation
3 with Mr. Williams?

4 A. I probably did.

5 Q. Do you recall what that conversation was?

6 A. I don't specifically.

7 Q. Take a look, if you would, at Exhibit 38.

8 Exhibit 38 is a letter from Chris Bramhall to Ira

9 Rubinfeld dated April 26, 2000.

10 You've seen this document before. True?

11 A. I have.

12 Q. And did you see a draft of the document
13 before it was sent to Mr. Rubinfeld?

14 A. I believe I did.

15 Q. Did you approve the contents of the
16 document?

17 A. I agreed with the contents of the
18 document.

19 Q. All right. And the second paragraph says
20 in part, "You have asked the City to consent to the
21 above-referenced assignments. As required by
22 the Agreement. The City is currently reviewing
23 the assignments and certain issues raised
24 therein regarding Mr. Cahill's reservation of
25 rights under the Agreement for other property.

1 The City considers the Agreement to be in full
2 force and effect. The City is not aware of and
3 has not notified any of the parties to the
4 Agreement of any breach thereunder. The City
5 has no objection in concept to the assignment of
6 rights under the Agreement to JoAnne Shrontz
7 relating to the 25.165 acres of property which
8 she acquired, assuming the duties and
9 obligations under the agreement are assumed by
10 JoAnne Shrontz, the terms, conditions and
11 limitations of the Agreement are unchanged and
12 the reservations by Mr. Cahill do not effect an
13 expansion of the agreement." And then the
14 letter says, "The quantity of water available
15 would be at least sufficient to meet Salt Lake
16 County requirements for the development of 16
17 family residences."

18 At the time that this letter was sent,
19 were you aware that Mr. Cahill was attempting to
20 obtain water under the 1975 agreement for a piece of
21 property known as Cedar 111?

22 A. He already had water to Cedar 111 through
23 a separate contract agreement.

24 Q. Were you aware that he was trying to get
25 water for that property under the 1975 agreement?

1 A. I was not aware that he was trying to get
2 water under the '7 -- that's the question that was
3 raised.

4 Q. Now, the second sentence of the paragraph
5 I just read relates to Mr. Cahill's reservation of
6 rights under the agreement for other property.

7 What did you understand that to refer to?

8 A. In the warranty deed Cahill reserved a
9 bunch of rights for water use. He listed three,
10 maybe four, different categories of property, and so
11 he was only assigning his rights relative to the
12 upper and lower Patsey Marley property and then
13 reserved rights for these other ones, and we had
14 questions as to exactly what that meant.

15 Q. And what were the questions that you had?

16 A. What was he reserving, how much, what were
17 the properties, what did it mean.

18 Q. How did you resolve those issues?

19 A. We haven't.

20 Q. All right. Mr. Bramhall writes: "The
21 City considers the Agreement" -- that's referring to
22 the 1975 agreement -- "to be in full force and
23 effect."

24 Did you agree with that?

25 A. At that time, yes.

1 Q. And then the next sentence says, "The City
2 is not aware of and has not notified any of the
3 parties to the Agreement of any breach thereunder."

4 Was that accurate?

5 A. Yes.

6 Q. And then Mr. Bramhall writes:

7 "The City has no objection in concept to
8 the assignment of rights under the Agreement to
9 JoAnne Shrontz relating to the 25.165 acres of
10 property which she acquired, assuming the duties
11 and obligations under the Agreement are assumed
12 by JoAnne Shrontz, the terms, conditions and
13 limitations of the Agreement are not changed,
14 and the reservations by Mr. Cahill do not effect
15 an expansion of the agreement."

16 Did you agree with that?

17 A. Again, it was a conceptual agreement, yes.

18 Q. The last sentence says, "The quantity of
19 water available would be at least sufficient to meet
20 Salt Lake County requirements for the development of
21 16 single family residences."

22 Did you agree with that?

23 A. We agreed that the source produces enough
24 water for 16 lots.

25 Q. I'd like you to look at Exhibit 40,

1 please.

2 A. Four-zero?

3 Q. Yes. Exhibit 40 is a Mayor's Weekly
4 Summary dated March 7, 2002, and I'll ask you if you
5 had some hand in drafting this document?

6 A. No. LeRoy normally wrote these by
7 himself.

8 Q. All right. So if you turn to page 4, the
9 description of the Patsey Marley Hill property in
10 Little Cottonwood Canyon, did you review this before
11 it was sent by Mr. Hooton to the Mayor?

12 A. No. Normally he just would cc me.

13 Q. All right. Take a look at Exhibit 39,
14 please.

15 You've seen Exhibit 39 before, haven't
16 you?

17 A. I have.

18 Q. This is the April 18, 2002, letter from
19 Mr. Hooton to JoAnne L. Shrontz.

20 Did you review this document before it was
21 sent?

22 A. Yes.

23 Q. Did you approve of its terms before it was
24 sent?

25 A. We consulted with each other and we agreed

175I/2008

1 to it, yes.

2 Q. All right. Before this was sent on
3 April 18 of 2002, did you have any communications
4 with Ms. Shrontz or Mr. Livsey or Ira Rubinfeld about
5 the consequences that would result if JoAnne Shrontz
6 signed the Receipt and Acknowledgment on the last
7 page of the document?

8 A. Our attorney was clearly talking with
9 Ira Rubinfeld, and I don't believe it is our duty to
10 inform somebody that's represented by counsel of some
11 consequence. That's a paid, highly qualified
12 counsel.

13 Q. Sure. I'm not asking about anybody's
14 duty. I'm just asking you if you had communications
15 with Ms. Shrontz or Mr. Rubinfeld about the
16 consequences of executing this acknowledgment,
17 Receipt and Acknowledgment?

18 A. I do not.

19 MR. DRANEY: I object. The question's
20 been asked and answered.

21 THE WITNESS: I did not have any direct
22 conversation with any of those three individuals.

23 Q. (By Mr. Sullivan) All right. To ask the
24 question more specifically, did you ever tell
25 Ms. Shrontz or Mr. Rubinfeld that Ms. Shrontz would

1 have to waive her rights under the 1977 agreement in
2 order to get the City's consent?

3 MR. DRANEY: Objection to form. Asked and
4 answered.

5 THE WITNESS: I think that's what the
6 contract says, or agreement. I view this as an
7 agreement between the two parties, and the agreement
8 is very clear that this is the terms and conditions
9 on which, after two years of negotiations, we all
10 came to an agreement on.

11 Q. (By Mr. Sullivan) My question is really
12 whether you had a conversation at any time between
13 your -- there was a conversation between yourself and
14 Ms. Shrontz or yourself and Mr. Rubinfeld or anybody
15 else representing Ms. Shrontz in which you told her
16 or her representatives that in order to get the
17 City's consent, she would need to waive her rights
18 under these agreements?

19 MR. DRANEY: Objection. Asked and
20 answered twice.

21 THE WITNESS: I think the agreement speaks
22 for itself. The conversation was between her
23 attorney and our attorney.

24 Q. (By Mr. Sullivan) I just want to know if
25 you had conversations --

1 A. I did not have direct conversations with
2 Jody.

3 Q. About that topic?

4 A. Yes.

5 Q. Did you have any direct conversations with
6 Ira Rubinfeld about that topic?

7 A. No.

8 Q. All right. Turn to Exhibit 41.
9 Exhibit 41 is another Mayor's Weekly Summary dated
10 April 22, 2002, from Mr. Hooton to Mayor Anderson,
11 and I take it your belief is this was prepared by
12 Mr. Hooton and you didn't have any input to it?

13 A. Correct.

14 Q. And you didn't review this before it was
15 sent off?

16 A. I don't. I didn't.

17 Q. I want to direct your attention to page 4
18 and direct your attention to the very last paragraph.
19 It goes on to the next page where Mr. Hooton says to
20 Mayor Anderson: "First thoughts were to withhold the
21 assignment of the Cahill water sales agreement
22 to the Shrontz'; however, the legal advice from
23 the City Attorney's Office was that under the
24 circumstances, this could not be withheld.
25 Based on this opinion, it was decided to approve

1 the assignment of the water sales agreement.
2 Any development would have to use the Quincy
3 Mine Tunnel source, which is some distance away
4 and will probably require a water treatment
5 plant to make it potable. Under the Town of
6 Alta water sales agreement, Salt Lake City can
7 reduce the Town's water supply quantity by the
8 amount contained in the Cahill agreement."

9 Is all that accurate as far as you were
10 concerned?

11 A. I think the advice from the attorney's
12 office is overstated. They were just saying it would
13 be a difficult prospect, and so they were advising us
14 to try and work through the process.

15 Q. And what did your attorney say about that
16 topic?

17 MR. DRANEY: I'm going to object. Calls
18 for attorney-client communication. I don't think the
19 door's been opened by this witness.

20 MR. SULLIVAN: You don't think what?

21 MR. DRANEY: I don't think the door's been
22 opened by this witness in his conversation, or his
23 answer. I object.

24 MR. SULLIVAN: Are you instructing the
25 witness not to answer?

1 MR. DRANEY: Yes.

2 MR. SULLIVAN: 214.

3 **(EXHIBIT 214 WAS MARKED.)**

4 THE WITNESS: Thank you.

5 Q. (By Mr. Sullivan) I'm going to show you a
6 document that the court reporter has marked as
7 Exhibit 214. There's a cover sheet indicating
8 adoption of a resolution No. 5 in 1982, an approved
9 agreement by Mayor action in 1982, and then attached
10 to that is a Memorandum of Understanding between
11 the U.S. Forest Service and Salt Lake City
12 Corporation.

13 Have you seen this document before?

14 A. I have.

15 Q. Is this Memorandum of Understanding still
16 in effect between Salt Lake City and the Forest
17 Service?

18 A. We still refer to it occasionally.

19 Q. Has it been amended, to your knowledge?

20 A. I have a vague recollection there was an
21 amendment, but I can't say for sure.

22 Q. That's all I have on that one.

23 Do you recall that in July of 2008
24 Skip Branch, the Chair of the Planning Commission,
25 posed a series of questions to you concerning the

180 I/200 JS

1 Patsey Marley Hill property?

2 A. I do.

3 MR. SULLIVAN: I'm going to show you a
4 document that I will ask the court reporter to mark
5 as Exhibit 215.

6 MR. DRANEY: 215?

7 **(EXHIBIT 215 WAS MARKED.)**

8 Q. (By Mr. Sullivan) And I'll ask you if
9 this is the letter that Mr. Branch sent to you in or
10 about July 2008?

11 A. It appears to be, yes.

12 Q. Prior to the time that you responded to
13 this letter, did you have any communications with
14 anybody from the Town of Alta about what your
15 response would be?

16 A. No, not specifically. That is, I don't
17 have specific recollections.

18 Q. Did you have a conversation with
19 Mr. Branch about it?

20 A. I've actually never talked to Mr. Branch.

21 Q. Did you ever talk to Mr. Guldner about it?

22 A. May have had some passing comments
23 relative to we got this letter, we're responding to
24 it, but I don't recall a specific, detailed
25 conversation.

1 Q. How about Mayor Pollard?

2 A. I don't recall a specific, detailed
3 conversation.

4 Q. Do you recall in general, other than the
5 letter's coming or we got the letter, anything about
6 the substance of your response?

7 A. So --

8 Q. Do you recall any conversation about the
9 substance of your response?

10 A. No. Basically, at this time we were being
11 very cautious, and anything we were saying was done
12 in writing.

13 MR. SULLIVAN: Showing you what I'll ask
14 the court reporter to mark as Exhibit 216.

15 **(EXHIBIT 216 WAS MARKED.)**

16 Q. (By Mr. Sullivan) Can you identify
17 Exhibit 216 as your letter dated September 3, 2008,
18 that responded to Mr. Branch's earlier letter?

19 A. Yes.

20 Q. I want to refer you to question No. 2.
21 The question is whether or not the estate's right to
22 acquire from the Quincy Mine is valid, and the first
23 sentence of your answer is: "Salt Lake City believes
24 that the Estate has a valid contractual
25 agreement to use the water from the Quincy Mine

1 for the proposed Patsey Marley Hill Subdivision.

2 Was that your position at the time?

3 A. It was.

4 Q. Question 3 asks: "If the Estate does have
5 a valid right to water from the Quincy Mine
6 whether or not the amount of water available to
7 the estate has been quantified, and, if so, how
8 much water is available to the Estate?"

9 And the answer is, what you have here is:
10 "The amount of water available to the property
11 under the 1975 agreement has not been quantified
12 by Salt Lake City."

13 And that was your position at the time,
14 was it not?

15 A. That's correct.

16 Q. Has it been quantified since that time?

17 A. It has not.

18 MR. SULLIVAN: I'm going to show you now a
19 document that I will ask the court reporter to mark
20 as Exhibit 217.

21 **(EXHIBIT 217 WAS MARKED.)**

22 Q. (By Mr. Sullivan) this is a letter from
23 me to you, and it's dated December 30, 2008.

24 Can you identify this as a letter that I
25 sent to you on December 30, 2008?

1 A. I recall getting this letter, yes.

2 MR. SULLIVAN: I'm now going to show you a
3 document that I will ask the court reporter to mark
4 as Exhibit 218. It's dated March 10, 2009, and I
5 will ask you if this is your response to my letter,
6 or Mr. Vetter's response to my letter?

7 **(EXHIBIT 218 WAS MARKED.)**

8 THE WITNESS: Yes, this appears to be the
9 response to your letter of December 30th.

10 Q. (By Mr. Sullivan) And what was your
11 involvement in the preparation of this letter?

12 A. Again, Rusty and I had talked a lot about
13 this response.

14 Q. And in the first paragraph Mr. Vetter says
15 that "We have conducted our own review of the facts
16 and do not agree with your interpretation of some of
17 the facts."

18 Who was involved in that review of the
19 facts?

20 A. Myself and Rusty Vetter.

21 Q. Just the two of you?

22 A. We may have had Karryn Greenleaf pulling
23 documents for us.

24 MR. SULLIVAN: I'm going to show you a
25 document that we'll have marked as Exhibit 219.

1 **(EXHIBIT 219 WAS MARKED.)**

2 Q. (By Mr. Sullivan) Can you identify
3 Exhibit 219 as a letter that I sent to Mr. Vetter on
4 April 30, 2009, requesting consent from
5 Salt Lake City to use water available to the estate
6 under the 1975 Water Supply Agreement from a well
7 that would be located on the Patsey Marley property?

8 A. Yes.

9 MR. SULLIVAN: And can you identify what I
10 will have marked as Exhibit 220, Mr. Vetter's
11 response.

12 **(EXHIBIT 220 WAS MARKED.)**

13 Q. (By Mr. Sullivan) So can you identify
14 Exhibit 220 as Mr. Vetter's response to my letter?

15 A. Yes.

16 Q. And I take it you reviewed this before it
17 was sent?

18 A. Yes.

19 Q. And then second to the last paragraph,
20 second to the last sentence, Mr. Vetter writes:

21 "Any permission to move the source of the
22 water supply" -- that would be under the 1975
23 agreement -- "would only apply to moving the
24 source to an approved spring. We are not aware
25 of a spring on the Patsey Marley Property that

1 would provide an adequate water supply to meet
2 the needs of any development on the property."

3 Prior to the preparation of this letter,
4 did you or anyone from Salt Lake City take a look at
5 the springs on the Patsey Marley Hill property?

6 A. I have not looked at the springs ever.

7 Q. Do you know if anybody has from
8 Salt Lake City?

9 A. Not that I'm aware of.

10 Q. Are you aware that homes in Grizzly Gulch
11 were historically served by water from the springs on
12 the Patsey Marley Hill property?

13 A. I am not aware of that. It is only in
14 this lawsuit that it has come to the forefront.

15 Q. Okay. So you've never been to any of
16 those springs on the Patsey Marley Hill property?

17 A. No. I've seen studies on them.

18 Q. And what studies did you see?

19 A. There's a -- well, not of the springs
20 themselves but on the wetlands that are fed by water
21 sources in that area, Steve Jensen's wetlands
22 delineations and, I believe, Stantec's wetlands
23 delineations.

24 Q. Steve Jensen and Stantec?

25 A. Yes.

1 Q. Who's Steve Jensen?

2 A. Steve Jensen used to be employed by
3 Salt Lake County as their water quality person and
4 had a project where he was going through and
5 delineating wetlands.

6 Q. What do these reports say about the
7 springs on the Patsey Marley Hill property; do you
8 recall?

9 A. Talk about wetlands, that there were
10 wetlands on those properties.

11 Q. Okay. Have you had in the past three
12 years communications with the U.S. Forest Service
13 about the Patsey Marley Hill property?

14 A. They have called me, and I met with them
15 once.

16 Q. And what have been the topics of your
17 conversations with the people at the Forest Service?

18 A. The Forest Service wanted to know
19 essentially the -- I guess I'm trying to go back.
20 The request for the estate for a water facility, so
21 they had some questions relative -- around that, what
22 I knew and how did that relate to the City
23 ordinances.

24 Q. What questions did they have?

25 A. Again, questions was there water to this

1 property, was it available. They got a telephone
2 conversation that said why can't they just hook up to
3 the town system.

4 Q. And what did you say in response to these
5 questions?

6 A. Again, if there was any water available,
7 it was under the '75 agreement and that, no, they
8 could not just hook up to the town system.

9 Q. And did you tell them why they couldn't
10 hook up to -- why Patsey Marley couldn't hook up to
11 the town system?

12 A. Because it would violate the ordinance,
13 and physically it wouldn't work.

14 MR. SULLIVAN: Let me show you a document
15 that I will ask the court reporter to mark as
16 Exhibit 221.

17 **(EXHIBIT 221 WAS MARKED.)**

18 MS. BRABSON: This is 221?

19 MR. SULLIVAN: 221.

20 Q. (By Mr. Sullivan) Have you seen this
21 before?

22 A. I have a vague recollection of it, yes.

23 Q. Okay. This is two e-mails dated on
24 August 7, 2009, between Al Soucie at the U.S. Forest
25 Service and Tracie Kirkham.

1 Does Tracie Kirkham work for you?

2 A. She does.

3 Q. And what is her position?

4 A. She's a water resource scientist.

5 Q. What did you understand this inquiry to
6 request?

7 A. So, again, same question. Are there water
8 agreements relative to the development of this
9 property.

10 Q. Okay. And then you'll see a note at the
11 bottom. It says, "as of 9/30/09 I never got a
12 response from SLC on my note."

13 Do you know if there was a response to
14 this inquiry?

15 A. Not to this specific note, no.

16 MR. SULLIVAN: Showing you what I will ask
17 the court reporter to mark as Exhibit 222.

18 **(EXHIBIT 222 WAS MARKED.)**

19 Q. (By Mr. Sullivan) Can you identify
20 Exhibit 222 as an e-mail from you to Cathy Kahlow at
21 the U.S. Forest Service?

22 A. Yes.

23 Q. And this is dated October 22, 2009?

24 A. Yes.

25 Q. Was the information that you provided to

1 Ms. Kahlow in this e-mail completely accurate?

2 A. To the best of my understanding at that
3 time.

4 MR. SULLIVAN: Thank you. Let me show you
5 a document that I will ask the court reporter to mark
6 as Exhibit 223.

7 **(EXHIBIT 223 WAS MARKED.)**

8 Q. (By Mr. Sullivan) Can you identify this
9 as a letter sent on behalf of the City by Russell
10 Vetter to me on October 23, 2009?

11 A. Yes.

12 Q. I want to direct your attention to the
13 last sentence on the first page. It says,

14 "Assuming that the final number of
15 residences is ten, the maximum amount that will
16 be made available is 8,000 gallons per day for
17 peak flows to the Patsey Marley Hill Subdivision
18 under the 1975 agreement with the City."

19 Did you have some input into the
20 computation of that number?

21 A. Yes.

22 Q. And can you tell me how that works?

23 A. The State Division of Drinking Water has
24 regulations for a single family residence that say
25 that the source of supply to a development has to

190 I/200 JB

1 have a minimum of 800 gallons per day per connection
2 at the time of maximum use.

3 Q. And so you multiplied that by ten --

4 A. Yes.

5 Q. -- to come up with a maximum amount --

6 A. Yes.

7 Q. -- that would be available?

8 A. Yes.

9 Q. Is that how you've done that with other
10 uses for single family dwellings?

11 A. Yes.

12 Q. And is that the formula that you always
13 follow in computing water that would be available to
14 single family dwellings?

15 A. In newer times. There was stuff done in
16 the '40s that there's rules applicable back then.

17 MR. SULLIVAN: Showing you what I will ask
18 the court reporter to mark as Exhibit 224, a letter
19 from me to Mr. Vetter dated July 10, 2009.

20 **(EXHIBIT 224 WAS MARKED.)**

21 Q. (By Mr. Sullivan) Can you identify
22 Exhibit 224 as a letter that I sent to Mr. Vetter
23 requesting the City's consideration of a number of
24 options to get water to the Patsey Marley Hill
25 property?

1 A. Yes.

2 MR. SULLIVAN: 225.

3 **(EXHIBIT 225 WAS MARKED.)**

4 Q. (By Mr. Sullivan) Mr. Niermeyer, can you
5 identify Exhibit 225 as Mr. Vetter's response to my
6 letter, Exhibit 224?

7 A. Yes.

8 Q. And that's dated July 31, 2009, is it not?

9 A. Yes.

10 Q. And did you read this before it was sent?

11 A. Yes.

12 Q. Did you approve of its contents?

13 A. I agreed with the contents.

14 MR. SULLIVAN: Let's take a little break.

15 I believe I'm about done.

16 MR. DRANEY: Cool.

17 (Recess from 2:51 p.m. to 2:59 p.m.)

18 MR. SULLIVAN: No further questions.

19 MS. BRABSON: I do have just a couple
20 questions. Jeff, my name is Kate Brabson, and, as
21 you know, I represent the Town of Alta, and I just
22 have a couple of follow-up questions for you.

23

24

EXAMINATION

25

BY MS. BRABSON:

1 Q. If I could have you pull out Exhibit 216,
2 that should be in the stack to your right. That's
3 one that was marked today.

4 A. Okay.

5 MR. DRANEY: It's your response to
6 Skip Branch.

7 Q. (By Ms. Brabson) Yeah, it's your response
8 of September 3, 2008, your response to Skip Branch.

9 A. 216, yes.

10 Q. 216. You recall you were asked about that
11 earlier. If you will look at the answer to
12 question 1, and the very last sentence says
13 Salt Lake City's ordinance "prohibits an amendment of
14 the 1976 Agreement service boundary; therefore,
15 consent would not be given by the City."

16 And my question is: Other than the letter
17 from Skip Branch addressed to you and your response,
18 are you aware of any other efforts that the Town of
19 Alta made to obtain the consent of Salt Lake City to
20 provide water to Patsey Marley through the Alta Town
21 system?

22 A. Again, there were conversations where they
23 said could it happen, so I don't think it rises to
24 the level of trying to obtain consent. It's more
25 just inquiries.

1 Q. All right. And in your opinion as the
2 director of the public utilities division, is there
3 anything that Alta could have said to you or
4 presented to you that would have influenced your
5 decision in any way whether or not Salt Lake City
6 would give its consent?

7 MR. SULLIVAN: Object. No foundation,
8 calls for speculation.

9 THE WITNESS: Again, our ordinance stands
10 on its own, and it was interpreted by Salt Lake City
11 on our own. Again, while we would listen to what the
12 Town of Alta had to say to us, the ultimate decision
13 will be Salt Lake City's on the interpretation of our
14 ordinance.

15 Q. (By Ms. Brabson) All right. And more
16 specifically, if the Town of Alta would consult with
17 Salt Lake City and request that Salt Lake City give
18 its consent you say to connect a water line to the
19 Quincy system, and I think you described that earlier
20 that wheeling water is in the town system, either
21 wholly or in part.

22 If the Town of Alta would ask
23 Salt Lake City to consent to that kind of proposal,
24 would that change your opinion?

25 MR. SULLIVAN: Same objection.

1 THE WITNESS: No. Again, we'd say that
2 under our determination it would be a violation of
3 the Alta contract for the expansion of the service
4 area.

5 Q. (By Ms. Brabson) Are you aware of any
6 other instances in which the Town of Alta has made
7 inquiries or requests for Salt Lake City to consent
8 to others using the Alta Town system to receive water
9 outside that 1976 boundary?

10 A. No.

11 MS. BRABSON: That's all I have.

12 MR. SULLIVAN: I have no further
13 questions. Thank you for your time.

14 THE WITNESS: Thank you.

15 (Deposition concluded at 3:03 p.m.)

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Deponent's Certificate

I, JEFFRY T. NIERMEYER, deponent herein,
do hereby certify and declare the within and
foregoing transcription to be my deposition in said
action taken on May 25, 2011; that I have read,
corrected, and do hereby affix my signature to said
deposition.

DATED this _____ day of _____,
2011.

JEFFRY T. NIERMEYER

STATE OF UTAH)
) ss.
)

SUBSCRIBED AND SWORN to before me this
_____ day of _____, 2011.

Notary Public residing in

My Commission Expires:

Reporter's Certificate

State of Utah)
) ss.
County of Salt Lake)

I, Denise M. Thomas, Certified Shorthand Reporter, Registered Professional Reporter, and Notary Public for the State of Utah, do hereby certify:

THAT the foregoing proceedings were taken before me at the time and place set forth herein; that the witness was duly sworn to tell the truth, the whole truth, and nothing but the truth; and that the proceedings were taken down by me in shorthand and thereafter transcribed into typewriting under my direction and supervision;

THAT the foregoing pages contain a true and correct transcription of my said shorthand notes so taken.

IN WITNESS WHEREOF, I have subscribed my name and affixed my seal this 3rd day of June, 2011.

Denise M. Thomas, CRR/RPR
Notary Public

My Commission expires:
July 26, 2012

197 I/200 JS

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Deponent's Certificate

I, JEFFRY T. NIERMEYER, deponent herein,
do hereby certify and declare the within and
foregoing transcription to be my deposition in said
action taken on May 25, 2011; that I have read,
corrected, and do hereby affix my signature to said
deposition.

DATED this 20 day of June,
2011.

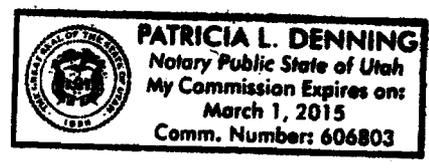
Jeffrey T. Niermeyer
JEFFRY T. NIERMEYER

STATE OF UTAH)
) ss.
)

SUBSCRIBED AND SWORN to before me this
20 day of June, 2011.

Patricia L. Denning
Notary Public residing in
Salt Lake County

My Commission Expires:
3/1/2015



199 I / 200 JS

