

LITTLE COTTONWOOD TANNER DITCH COMPANY
977 EAST 5600 SOUTH
SALT LAKE CITY, UTAH 84121
261-1922

February 10, 1999

RECEIVED

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**WATER RIGHTS
SALT LAKE**

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF WATER RIGHTS
STATE OF UTAH
1594 WEST NORTH TEMPLE
SALT LAKE CITY, UTAH 84114

Dear Robert Morgan:

This is a response to the January 5, 1999 letter to Robert Morgan from Sandy City and Mike Wilson. In this letter, Mr. Wilson states certain water in the Little Cottonwood Creek are a decreed water right, and that Sandy City, Sandy Irrigation Company, and Midvale City own the water right. I will refute this Sandy City assertion and I will explain the motives behind them.

The Little Cottonwood Creek Distribution Committee was organized in 1998. This committee is under the authority of the Division Of Water Rights of the State of Utah. The committee is charged with the distribution of the the water in the Little Cottonwood Creek. The distribution of the water is according to the Morse Decree June 16, 1910. There is an assessment made by the Distribution Committee through the State to the decreed water right owners or there successors to fund the workings of the Distribution Committee. Many of the decreed water right owners have exchange agreements or leases where the owners of the exchange agreements or leases will pay these kinds of assessments. The problem is this, Sandy City and Salt Lake City claim the water right in question is owned by Sandy City, Midvale City, and Sandy Ditch Company. The Little Cottonwood Tanner Ditch Company, Richards Ditch Company, Cahoon and Maxfield Ditch Company, and Walker Ditch Company maintain the water right is owned by them. The water in question is the 10% of the flow of the second primary water right. This water has been referred to by many names. In our ditch company, it is referred to as the leased water. I will refer to this water from now on as the perpetually leased water which will aid in following the history of this water.

HISTORY

The perpetually leased water began in a March 1, 1878 agreement between the forefathers of the Tanner, Cahoon and Maxfield, Richard, Walker, and Union and Jordan ditches (party of the first part) and several railroads and mining companies (party of the second part). This is an agreement where the party of the second part

gets the use of 1/10 of the flow of the creek for \$25 per month, with the warning to the party of the second part from the party of the first part to use the water with great economy as to not need all of the 1/10 of the flow in the summer months (1).

Through the years, the second parties sold and bought this perpetual lease, all the while continuing to pay \$25 per month to the first party. In these transactions of the second parties, the perpetually leased water was referred to as "use of the one-tenth of the flow"(2), "title to the use of one-tenth flow"(3), "to the use of one-tenth of the flow of the waters of the Little Cottonwood Creek was confirmed in the Salt Lake County Water Company"(3) (A judgment June 20, 1908 (4) which we do not have a copy of but was referred to in the November 21, 1908 agreement (3). The November 21, 1908 also listed Salt Lake County Water Company as the successor to the second parties of the perpetual lease), "use of 1/10 of the flow of the water"(5) (This agreement also refers to the judgment in the third district court on or about June 20, 1908 (4). It also states the Sandy Irrigation Water Company must pay the \$25 per month for the perpetual lease) "so that the parties hereto will not forfeit or lose their rights in said contract to the use of said water therein provided for" (5).

June 16, 1910 Judge Morse in a case titled Union and East Jordan Irrigation Company as plaintiff against several irrigation companies wrote the decree (7) which we use today to establish water right in the Little Cottonwood Creek. In this decree, he refers to the decree of November 12, 1909 (6) (we do not have a copy) which his decree of June 16, 1910 was based on. He also stated if his 1910 decree were to be vacated, the water right would go back to the November 12, 1909 decree. Judge Morse states, "the Salt Lake County Water Company, by agreement and consent, is to have perpetually and continually, except as hereinafter stated, turned into the Sandy Ditch one-tenth of the primary water". He then goes on to list the owners of the decreed water. Salt Lake County Water Company is not listed as an owner of decreed water, but as an owner of the perpetual lease as long as they abide by certain stipulations. One of these stipulations was to pay the irrigation companies \$75 per month in advance. Another of the stipulations is, "If said water company (Salt Lake County Water Company) shall be in default hereunder for twenty days after written notice to make payment, then it shall, at the option of the five ditches at once forfeit all rights"(7).

From the June 16, 1910 Morse Decree, the perpetually leased water of the Salt Lake County Water Company has been partitioned and ascribed to many successors. In some instances, these successors aren't certain how much water they are entitled to from their ownership of the perpetual lease, or if certain parties have purchased the same part of the perpetual lease twice. At this time, Midvale City and Sandy City cooperate in the \$75 per month payment to the owners (five ditch companies) of the water right in the June 16, 1910 Morse Decree.

As this perpetual lease changed successors, it has been referred to as "perpetual use of all that portion of the flow of the water of the Little Cottonwood Creek, in the Salt Lake County, Utah, now owned by the first party or which now owned by the

first party or which first party is entitled to use-----under the agreement made on the first day of March 1878-----title to use of one-tenth of the flow of certain of the primary waters of the Little Cottonwood Creek in the Salt Lake County, Utah-----it being the intention and agreement between parties (Salt Lake County Water Company party of the first part and Sandy Irrigation Company party of the second part) hereto that the party of the first part shall make payments necessary under the decree or contract in force so that the parties hereto will not forfeit or lose their rights in said contract of decree to use of said water"(8) (said water is the perpetually leased water).

In the purchase by Midvale City (1917) of the Old Mingo Water Right from Wilson, Butler, Greenwood, and Nelson who purchased some of the perpetual lease from Salt Lake County Water Company, they use the wording "perpetual lease", "right to use", and "water right" (9). In a letter from the mayor of Midvale to the office of the state engineer (1959) referred to the perpetual lease as, "Salt lake County Water company lease right" (14). The 1934 Data on the Morse Decree refers to the perpetual leased water as "agreement" (11). The letter from D. Howe Moffat to Reed Atkinson (1967) refers to the perpetually leased water and the Morse Decree as, "the perpetually leased by agreement and consent" (12). The letter from the state engineer to Mayor Beckstead of Midvale City refers to the perpetually leased water as, "Salt Lake County Water Company lease rights" (13). The Midvale letter to the state engineer (1975) refers to the perpetual leased water as "perpetual lease of 1/10 " (15). The letter from Midvale to the Metropolitan Water District refers to the perpetually leased water as "perpetual lease" (18). The Summary Of The Little Cottonwood Water Rights by Charles Wilson (no date, but probably before 1961 since Horace Godfrey was mentioned and he died in about 1961) referred to the perpetually leased water as, "perpetual lease"(page 11) (17).

In the Sandy City Table of Action (October 9, 1959) which lists their water, the perpetually leased water is referred to as, "Salt Lake County Water Company lease right in Little Cottonwood" (14). In the exchange agreement between Salt Lake City and the Little Cottonwood Tanner Ditch Company of May 29, 1931, this agreement discusses the perpetually leased water as, "the company (Little Cottonwood Tanner Ditch) reserves to itself all rights set forth in paragraph 34 (perpetually leased water) of the decree of court case 4802 (Morse Decree) above referred to , which paragraph and right thereunder are based upon the company (Little Cottonwood Tanner Ditch Company) and other water users of the stream are lessors and Sandy City Corporation by assignment as the lessee" (10)(not included in Sandy documents, but page attached to this letter). This exchange agreement was certainly understood and considered by the board of the Little Cottonwood Tanner Ditch Company and their legal council and Salt Lake City and their legal council. I consider this to be the true understanding of the perpetually leased water in question (11).

CONCLUSIONS

As to the argument Sandy City makes in their letter to Robert Morgan dated January 5, 1999, #4 they discuss the lease mentioned in the documents dated

November 21, 1908 and September 28, 1909 as a reason for confusion. There is no confusion as I read it. the perpetually leased water is referred to as, "title to the use of one-tenth", and "title to the use of 1/10 flow" respectively.

The ditch companies are very concerned with the listing of the Salt lake County Water Company as a decreed owner in the Morse Decree of June 16, 1910.

* The Salt Lake County Water Company is not a listed decreed owner of water rights, but the assigned owner of a perpetual lease.

* They are not in the list of owners. They have no bill of sale for the purchase of this water. The only recorded money to change hands is the \$25 per month or \$75 per month to maintain the perpetual lease which they enjoy.

* This water must be listed under the ditches who are the lessors to show the proper continuity and ownership.

* As to the assessment made by the Little Cottonwood Creek Distribution Committee, we have included an assessment sheets which reflects this ownership (19). The assessment should be made to the water right owners who can pass the bill along to the lessees.

* Sandy City does not even use or own the majority of the perpetually leased water in discussion.

* As to the motive, Sandy City would like to cloud our position in the history of this water. The Little Cottonwood Creek Distribution Committee records will probably go on for hundreds of years. The history may be lost and Sandy City will inherit the water right by misrepresentation.

* This perpetually leased water is clear in the 1910 Morse Decree and we do not wish it to made unclear.

Sincerely,

Max G. Reese

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Vice Chairman

Little Cottonwood Creek Distribution Committee

cc: Lee Sim, Division Of Water Rights
Mike Wilson, Sandy City
Jeff Niermeyer, Salt Lake City
Robert Tuttle, Richards Ditch
Tony Rezac, Cahoon & Maxfield Ditch
Glen Humphries, Walker Ditch
Ron Vance, South Despain Extension Ditch
Brian Smith, Murray City
Reed Atkinson, Sandy Ditch

REFERENCES

- 1- 1878 MARCH 1 AGREEMENT TO LEASE TO RAILROADS
- 2- 1903 OCTOBER 7 SANDY PIPELINE COMPANY AND SANDY IRRIGATION
- 3- 1908 NOVEMBER 21 SALT LAKE COUNTY WATER COMPANY AND SANDY IRRIGATION
- 4- 1908 JUNE 20 JUDGMENT NO COPY
- 5- 1909 SEPTEMBER 28 SALT LAKE COUNTY WATER COMPANY AND SANDY IRRIGATION
- 6- 1909 NOVEMBER 12 DECREE NO COPY
- 7- 1910 JUNE 16 UNION AND EAST JORDAN MORSE DECREE
- 8- 1910 JULY 29 SALT LAKE COUNTY WATER COMPANY AND SANDY IRRIGATION
- 9- 1917 JANUARY 16 OLD MINGO RIGHT
- 10- 1931 MAY 29 SALE AND EXCHANGE AGREEMENT SALT LAKE CITY AND LITTLE COTTONWOOD TANNER DITCH COMPANY PAGE ATTACHED
- 11- 1934 DATA ON ADJUDICATION LITTLE COTTONWOOD CREEK
- 12- 1967 MARCH 22 LETTER FROM MOFFAT TO REED ATKINSON
- 13- 1959 AUGUST 21 STATE ENGINEER TO BECKSTEAD
- 14- 1959 OCTOBER 9 SANDY CITY WATER RIGHTS
- 15- 1975 MAY 27 LETTER MIDVALE TO STATE ENGINEER
- 16- 1976 APRIL 27 LETTER MIDVALE TO STATE ENGINEER
- 17- 1961 WATER RIGHTS BY CHARLES WILSON
- 18- 1975 MAY 27 LETTER MIDVALE TO METROPOLITAN WATER DISTRICT
- 19- ATTACHED ASSESSMENT SHEETS