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WATER RIGHTS
SALT LAKE

TO: ROBERT (BOB) L. MORGAN, P.E.
STATE OF UTAH, DEPT. OF NATURAL RESOURCES
DIVISION OF WATER RIGHTS

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REFERENCE: WATER DISTRIBUTION ON THE SANTA CLARA RIVER DRAINAGE. UPPER GUNLOCK AND LOWER GUNLOCK TO THE SANTA CLARA SEEP DITCH COMPANY DIVERSION

FROM: HERBERT B. STRATTON, PRESIDENT OF THE SANTA CLARA SEEP DITCH COMPANY, AND OWNER OF SOUTHGATE GOLF COURSE, ST. GEORGE, UTAH.
1975 SOUTH TONAQUINT DRIVE
ST. GEORGE, UTAH 84770
DATE: AUGUST 27, 1990

DEAR MR. MORGAN:

I APPRECIATE HAVING THE OPPORTUNITY TO MEET WITH YOU AND MR. SIMMS REGARDING THE EMERGENCY WATER PROBLEM ON THE SANTA CLARA RIVER DRAINAIGE AND ITS IMPACT ON THE SANTA CLARA SEEP DITCH COMPANY WHICH HAS RESULTED IN A NEAR ZERO WATER DELIVERY TO SOUTHGATE GOLF COURSE AND THE OTHER USERS IN THE SANTA CLARA SEEP DITCH COMPANY.

IN THIS LETTER I WOULD LIKE TO CHRONOLOGICALLY DISCUSS THE EVENTS THAT HAVE TRANSPIRED AND MY INVESTIGATION AND OBSERVATIONS RELATIVE THERETO.

1. APPROXIMATELY JUNE 25TH WE WERE NOTIFIED BY ROD LEAVITT, THE SANTA CLARA RIVER WATER MASTER, THAT HE HAD RECEIVED AN ORDER FROM JERALD STOKER, THE SOUTHERN UTAH DIVISION WATER ENGINEER FROM YOUR DIVISION TO STOP THE RELEASE OF ALL WATER FROM THE GUNLOCK RESERVOIR.

DISCUSSION: WE IMMEADIATELY TOOK EMERGENCY MEASURES TO BRING ABOUT SUPPLEMENTARY WATER FROM UNDERGROUND WELLS. WE HAD ALREADY BEEN USING ONE WELL THAT HAD BEEN PUMPING PART OF THE SUMMER DUE TO THE CRITICAL SUPPLY OF WATER. WE TESTED ONE OTHER WELL FOR THREE WEEKS BUT COULD NOT GET ANY SIGNIFICANT FLOW. WE ALSO WENT ON A 50% WATERING SCHEDULE TO SAVE AS MUCH WATER AS POSSIBLE. OUR SOURCE OF WATER THROUGH THE SEEP DITCH DIVERSION DROPPED TO A TRICKLE, THE TURF WAS BURNING AND TURNING BROWN AND WE HAD TO FACE THE POSSIBLITY OF A COMPLETE BURNOUT ON ALL 107.5 ACRES OF TURF GRASS.

IT WAS AT THIS TIME THAT WE CONTACTED THE CITY OF ST. GEORGE TO DETERMINE WHETHER THEY WOULD SELL US EMERGENCY WATER DURING THIS CRISIS. THEY AGREED TO HELP US AT THE RATE OF $.80 PER 1000 GALLONS. WE IMPROVISED A LINE RUNNING FROMTHE CITY FIRE HYDRANT OVER TO THE SEEP DITCH COMPANY DITCH. WE HAVE BEEN USING THIS EMERGENY SOURCE OF WATER SINCE THAT TIME AS REQUIRED IN ORDER TO KEEP THE TURF AT THE GOLF COURSE IN PLAYABLE CONDITION. THE CITY HAS HAD TO SHUT OFF OUR SUPPLY ONLY ONE TIME DURING THIS PERIOD OF USE DUE TO LOW WATER RESERVES TO THEIR OWN SYSTEM. WE STARTED THIS SUPPLY ON JULY 26, 1990.

2. ON JULY 2, 1990 MR. ROD LEAVITT EXECUTED THE ORDER HE WAS GIVEN AND HE SHUT OFF THE WATER SUPPLY AT THE DIVERSION RELEASE GATE AT THE GUNLOCK STORAGE RESERVOIR.

DISCUSSION: THE CONSEQUENCES OF THAT ORDER ARE FAR REACHING AS YOU WILL NOTE FROM THE SUBSEQUENT EVENTS THAT HAVE TRANSPIRED.

3. ON AUGUST 5TH SOUTHGATE GOLF COURSE RECEIVED THE FIRST BILL FROM THE CITY OF ST. GEORGE LISTING THE AMOUNT OF METERED WATER THAT WAS USED. THE BILL ENUMERATED 9,000,000 GALLONS OF WATER HAD BEEN USED AT A COST OF $7,200.00. IT IS ESTIMATED THAT IF THE EMERGENCY CONTINUES THROUGHOUT THE REST OF THE SUMMER AND FALL THAT OUR TOTAL BILL WILL PROBABLY REACH $50,000.00.

DISCUSSION: NEEDLESS TO SAY, SOUTHGATE GOLF COURSE IS NOT IN A FINANCIAL POSITION TO DEAL WITH AN ADD-ON COST OF THIS MAGNITUDE. WE WOULD THEREFORE RESPECTFULLY REQUEST THAT THE STATE OF UTAH USE ITS RESOURCES TO RE-IMBURSE SOUTHGATE GOLF COURSE FOR THE AMOUNT OF THE EMERGENCY WATER USED AND THE OTHER ADD-ON COSTS RESULTING FROM THE ORDER ISSUED THROUGH YOUR OFFICE. SUBSEQUENT EVENTS WILL REVEAL FURTJER JUSTIFICATION FOR THIS REQUEST.

4. ON WEDNESDAY, AUGUST 22ND, AFTER EXTENSIVE LEGAL RESEARCH INTO THE DISTRIBUTION OF WATER RIGHTS ALONE THE SANTA CLARA RIVER DRAINAGE BY AND THROUGH MR. TIMOTHY B. ANDERSON OF THE LAW FIRM OF JONES, WALDO, HOLBROOK AND MCDONAUGH. BY PR-ARRAINGED APPOINTMENT WE WENT TO GUNLOCK, UTAH WITH MAPS AND DIVERSION POINT LOCATIONS TO RIDE AND WALK THE RIVER WITH MR. ROD LEAVITT.

DISCUSSION: THE PURPOSE OF THE APPOINTMENT WITH MR. LEAVITT WAS TO AQUAINT OURSELVES WITH THE DIVERSION POINTS ALONG THE RIVER, AND TO INVESTIGATE THE NATURE OF THE PROBLEM. THE FOLLOWING INNFORMATION WAS REVEALED TO US THROUGH MR. LEAVITT WHO WAS VERY GRACIOUS TO US AS OUR HOST FOR THE DAY.

A. GUNLOCK RESERVOIR WAS STILL DRY DAMMED AT THE EXIT.
THE RESERVOIR WAS HOLDING BACK APPROXIMATELY 37000 ACRE FT. OF WATER.
A CONSERVATION POOL OF 23000 ACRE FT. IS REQUIRED BY AGREEMENT WITH THE DIVISION OF WILDLIFE RESOURCES FOR THE STATE OF UTAH AND THE FEDERAL DIVISION OF FISHERIES AND WILDLIFE AT DENVER, COLORADO. THERE IS ALSO A 10000 ACRE FT. SILT CONSERVATION POOL IN RESERVE THAT IS PARTIALLY USED WITH SILT, (APPROXIMATELY 10 TO 15 % BEING ESTIMATED AND THE BALANCE OF THE AREA IS FILLED WITH EXTRA WATER).

NOTE: IT IS OUR UNDERSTANDING THAT THE DIVISION OF WILDLIFE RESOURCES AT THE REQUEST OF THE BUREAU OF INDIAN AFFAIRS SENT A REQUEST TO THE FEDERAL DIVISION OF FISHERIES AND WILDLIFE AT DENVER, COLORADO TO RELEASE AN ADDITIONAL 1000 ACRE FEET OF WATER BUT THAT THE REQUEST WAS DENIED. AT OUR LAST VISIT TO GUNLOCK RESERVOIR THE ELEVATION READING AT THE DAM SHOWED 3749 TO 3750 ACRE FT. OF WATER WAS STORED. WE VISITED GUNLOCK ON SEPTEMBER 5TH, 1990 AND EXAMINED THE SITUATION. IT WOULD APPEAR THAT THE SILT POOL AND THE EXTRA ACRE FT. OF WATER COULD BE DRAWN OFF THE RESERVOIR NOW, LOWERING THE RESERVOIR TO A READING OF 2500 ACRE FT. WITHOUT TOUCHING THE CONSERVATION POOL OF 2300 ACRE FT.

B. IT WOULD APPEAR TO US IN THE SEEP DITCH CORPORATION THAT THE WATER, INSTEAD OF SILT, THAT IS LAYING IN THE SILT CONSERVATION POOL, COULD AND SHOULD HAVE BEEN RELEASED IN ORDER TO KEEP A STREAM FLOW AT THE SEEP DITCH AND BLOOMINGTON CANAL COMPANY GATES.

C. UTAH POWER NON-CONSUMPTIVE USE WAS REVIEWED WITH MR. LEAVITT. IT WAS OBSERVED THAT THE POWER COMPANY HAD BEEN AND WAS DIVERTING WATER INTO THEIR TWO RESERVOIRS, BOTH THE UPPER AND LOWER. IN-AS-MUCH AS THEY WERE BOTH AT CAPACITY IT WAS ESTIMATED THAT THEY HAD APPROXIMATELY 125 ACRE FEET STORED IN THE TWO PONDS. NO WATER WAS OR HAD BEEN RELEASED BACK INTO THE SANTA CLARA RIVER FOR A NUMBER OF WEEKS, ACCORDING TO MR. LEAVITT. IN ADDITION THE USING AND STORING THE WATER, EVEN THOUGH THEY HAVE A NON-CONSUMPTIVE USE IN ORDER TO GENERATE ELECTRICITY IN THEIR GENERATING PLANTS, THEY WERE ARBITRARIALLY USING AND STORING THE WATER.

WE NOTE FROM YOUR MEMORANDUM DATED JUNE, 18, 1990 THAT AN ORDERWAS ISSUED BY YOUR OFFICE TO UTAH POWER AND LIGHT COMPANY TO CEASE THE DIVERSION OF WATER FROM THE SANTA CLARA RIVE INTO THEIR CANAL SYSTEM SUPPLYING THE UPPER SAND COVE AND GUNLOCK POWER PLANTS.

YOUR OFFICE GRANTED A STAY ON YOUR ORDER ON JUNE 15, 1990 AT THE REQUEST OF THE POWER COMPANY. IN OBSERVING THE CONDITIONS AT THE LOWER SAND COVE RESERVOIR ON SEPTEMBER 5, 1990 WE PHOTOGRAPHED THE WATER STILL FLOWING INTO THE RESERVOIR FROM THE UPPER SAND COVE. OUR ASSUMPTION IS THAT THE REQUEST FOR THE STAY IS STILL IN EFFECT.

IT IS OUR CONSIDERED JUDGEMENT THAT THIS WATER SHOULD NEVER LEAVE THE SANTA CLARA RIVER AND WOULD SIGNIFICANTLY BUILD THE STREAM FLOW INTO GUNLOCK. IT HAS BEEN ESTIMATED THAT IF THE WATER HAD FLOWED THROUGH LIKE YOU INTENDED IN YOUR LETTER, THE RESERVOIR WOULD HAVE STORED ANOTHER 1500 ACRE FEET THAT COULD HAVE BEEN RELEASED AND THUSLY KEPT THE STREAM FLOW AT THE SEEP DITCH DIVERSION GATE.

4. ON AUGUST 24TH, 1990 MR. STRATTON CAME TO YOUR OFFICE TO DISCUSS THE PROBLEM. AN APPOINTMENT WAS MADE FOR A MEETING WITH YOU AND MR. SIMMS FOR THE FOLLOWING MONDAY AFTERNOON. IN THE MEANTIME WE TOOK THE OPPORTUNITY TO TALK WITH MR. C.R. (CARLY) BURTON, PACIFIC POWER-UTAH POWER, NOW KNOWN AS PACIFICORP. WE ADDRESSED THE PROBLEM OF THE USE OF WATER, AND THE MANNER IT WAS BEING DISTRIBUTED. HE CONFIRMED THE NON-CONSUMPTIVE CONTRACT. MR. BURTON IS THE HYDROLOGICAL SUPERVISOR FOR THE COMPANY. WE DID DISCUSS THE WATER LOSSES IN THE LENGTHY SYSTEM THEY OPERATE AND HE DISCUSSED THE DIFFERENCE BETWEEN THE STREAM FLOW AT THE ENTRANCE TO GUNLOCK vs. THE STREAMFLOW AT THEIR DIVERSION, THE STUDY AND THEIR CONCLUSIONS. WE (SEEP DITCH CORPORATION) DISAGREE WITH THEIR CONCLUSIONS DUE TO THE FACT THAT THE NATURAL SEEPAGE AND INFLOW INTO THE SANTA CLARA RIVER IS SUBSTITUTING FOR THE WATER THEY ARE TAKING AND CONSUMING IN THEIR SYSTEM.

MR. BURTON EXPLAINED THAT THEY WERE WAITING FOR ACTION FROM YOUR OFFICE RELATIVE TO THE ORDER YOU ISSUED. WHEN MR. BURTON WAS QUESTIONED AS TO WHETHER THEY WOULD VOLUNTARIALLY STOP USING THE WATER AND LEAVE IT IN THE RIVER-ADDING IT TO THE STREAM FLOW - HIS ANSWER WAS THAT AN ADMINISTRATIVE ORDER WOULD HAVE TO BE ISSUED BY A VICE-PRESIDENT IN ORDER FOR THEM TO STOP USING THE WATER.

IT IS OUR CONSIDERED JUDGMENT THAT THE WATER USED AND BEING USED BY PACIFICORP IN THE UTAH POWER SYSTEM WHERE-IN THE PLANTS ARE NOT GENERATING POWER HAS BEEN DIVERTED AND NOT RETURNED. THE WATER HAS BEEN: 1) WASTED THROUGH LEAKAGE IN THEIR SYSTEM; 2) A BREAK IN THE SAND COVE DAM WHERE THE WATER RAN UNCHECKED INTO THE SAGEBRUSH AND ROCKS FOR A PERIOD OF TIME; 3) TRANSPORATION THROUGH HEAVY GROWTH ALONG THEIR CANAL SYSTEM; AND 4) EVAPORATION AND TRANSPORATION LOSSES IN THEIR SAND COVE RESERVOIRS.

WE FEEL THE WATER SHOULD NOT LEAVE THE SANTA CLARA RIVER SYSTEM AND BE DIVERTED AT THEIR DIVERSION.

MR. GERALD STOKER AREA ENGINEER DISCUSSED THE PROBLEMS WITH ME BY PHONE. THE INFORMATION SUPPLIED BY HIM WAS VERY HELPFUL IN TRYING TO INVESTIGATE THE PROBLEM.

5. ON MONDAY AUGUST 27TH I MET WITH YOU AND MR. SIMMS AT YOUR OFFICE TO REVIEW THE PROBLEMS AS STATED ABOVE. YOU INVITED ME TO WRITE YOU A LETTER DISCUSSING THE NEED TO RELEASE THE SAME AMOUNT OF WATER FROM GUNLOCK RESERVOIR AS ENTERS THE RESERVOIR.

IN CIVIL #184, WASHINGTON COUNTY CLERKS' OFFICE IT DISCUSSES THE SANTA CLARA RIVER DECREE

STIPULATIONS DATED JULY 1, 1921

BLOOMINGTON 3.19 CFS FOR 196.7 ACRES

BEEP DITCH 3.95 CFS FOR 239.0 ACRES

BOTH LISTED AS SANTA CLARA CREEK SEEPAGE WATER

BOTH WITH PRIORITY PRIOR TO 1890

BOTH USES FROM JANUARY 1 TO DECEMBER 31, BOTH WITH DUTY OF 60, WHICH EQUALS NUMBER OF ACRES, 1 CFS DIRECT FLOW IS REQUIRED TO IRRIGATE.

BOTH USES ARE CLASS 1 RIGHTS

WATER CLAIMANT BLANK FOR BLOOMINTON RECITES DILIGENCE RIGHT 1890 FOR 3.73 CFS FROM JANUARY 1 TO DECEMBER 31 FOR VARIOUS CROPS

WATER CLAIMANT BLANK FOR SEEP DITHC RECITES 4 CFS...WATER USE BEGAN ABOUT 1865. FOR GRAIN AND ALFALFA FROM JANUARY 1 TO DECEMBER 31 1ST CLASS WATER WISTH 244 SHARES SUBSCRIBED

FILE RECITES THE QUANTITY DISTRIBUTED TO ANY USER OR APPROPRIATOR SHALL BE MEASURED AT OR NEAR THE POINT WHERE SAID WATER IS DIVERTED FROM THE SANTA CLARA RIVER. IN MEASURING THE QUANTITY OF WATER IN SAID RIVER, EXCEPT AS HEREIN PROVIDED, THE TOTAL FLOW OF SAID RIVER SHALL BE DETERMINED BY MEASURING THE QUANTITY OF WATER DIVERTED AT EACH POINT OF DIVERSION AND TAKING THE AGGREGATE QUANTITY OF SUCH MEASUREMENT.

FILE RECITES THE FULL QUANTITY OF CLASS 1 WATER RIGHTS SHALL BE SUPPLIED BEFORE ANY WATER IS SUPPLIED TO THOSE HOLDING SUBSEQUENT RIGHTS; AND IN THE EVENT THERE IS INSUFFICIENT WATER TO SUPPLY ALL OF THE FIRST CLASS RIGHTS, THE HOLDERS OF SUCH RIGHTS SHALL TAKE WATER IN THE PROPORTION WHICH THE QUANTITY TO WHICH THEY ARE ENTITLED BEARS TO THE ENTIRE FLOW OF THE STREAM. EXCEPT THE CULINARY AND DOMESTIC USES SHALL NOT BE REDUCED OR DIMINISHED.

NOTE: IT IS OUR UNDERSTANDING THAT THE UTAH POWER NON-CONSUMPTIVE USE BEGAN IN 1925. THE LOWER GUNLOCK USERS RIGHTS BEGAN PRIOR TO 1870. ACCORDING TO THE 1922 SANTA CLARA RIVER DECREE.

DISCUSSION: IT IS OUR CONSIDERED JUDGMENT THAT THE SAME AMOUNT OF WATER THAT FLOWS INTO THE GUNLOCK RESERVOIR SHOULD BE RELEASED FROM THE GUNLOCK RESERVOIR. THE RIVER SHOULD NEVER BE ALLOWED TO GO DRY DUE TO STOPPING THE WATER IN GUNLOCK. CONSTANT FLOW IS NECESSARY IN ORDER TO KEEP THE RIVER SOAKED UP, TREES AND PLANTS RECEIVING WATER, AQUIFERS FULL ALONG THE WATERWAY ETC. ONCE THE RIVER IS "SOAKED" UP AND NOT ALLOWED TO "DRY" UP THE AMOUNT OF WATER TO MAINTAIN THE FLOW IS REDUCED AND FLOW INTO THE SEEP DITCH DIVERSION CAN TAKE PLACE. IF STORMS AND OTHER CONDITIONS DEVELOP TO THE POINT THAT THERE IS "EXCESS" WATER ABOVE THE NECESSARY AMOUNT TO KEEP THE RIVER "SOAKED" AND THE NECESSARY AMOUNT AVAILABLE AT THE DIVERSIONS, THEN THE WATER COULD AND SHOULD BE STORED IN THE GUNLOCK RESERVOIR FOR THE CONSERVATION POOL AND FOR FUTURE USE.

SUMMARY: IN SUMMARY WE URGE THE STATE ENGINEER'S OFFICE TO CORRECT THE PROBLEMS RELATIVE TO THE INTERUPTION OF THE STREAM FLOW ALONG THE SANTA CLARA RIVER, AND TO TAKE THE NECESSARY STEPS

TO PAY FOR THE COST (SEE ATTACHED BILLING FROM THE CITY OF ST. GEORGE TO SOUTHGATE GOLF COURSE) OF REPLACING THE WATER THAT HAS BEEN DIVERTED AWAY FROM THE SANTA CLARA SEEP DITCH CORPORATIONS LATERAL BY THE UPSTREAM USERS AND ADMINISTRATIVE AND DISTRIBUTION POLICIES GOVERNING THE ALLOCATION AND STORAGE OF WATER THROUGH THE GUNLOCK RESERVOIR.

RESPECTFULLY SUBMITTED THIS 12TH DAY OF SEPTEMBER, 1990 TO THE STATE OF UTAH, DEPARTMENT OF NATURAL RESOURCES, DIVISION OF WATER RIGHTS, MR. ROBERT (BOB) L. MORGAN, P.E. STATE ENGINEER.

HERBERT B. STRATTON, PRESIDENT OF SANTA CLARA SEEP DITCH CORPORATION, A UTAH CORPORATION

HERBERT B. STRATTON, OWNER OF SOUTHGATE GOLF COURSE, 1975 SOUTH TONAQUINT DRIVE, ST. GEORGE, UTAH 84770 --- PHONE 628-0000

CC: SANTA CLARA SEEP DITCH CORPORATION SHAREHOLDERS
GERALD STOKER, AREA ENGINEER
ROD LEAVITT, RIVER COMISSIONER
JONES, WALDO, HOLBROOK & McDONOUGH
CALVIN M. RAMPTON AND TIMOTHY B. ANDERSON

ENCLOSURES: BILLING FROM CITY OF ST. GEORGE