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WATER RIGHTS
SALT LAKE

KEN CHAMBERLAIN [0608]
CHAMBERLAIN ASSOCIATES
225 NORTH 100 EAST
P.O. BOX 100
RICHFIELD, UTAH 84701
TELEPHONE (435) 896-4461

IN THE SIXTH JUDICIAL DISTRICT COURT OF PIUTE COUNTY,
STATE OF UTAH

OTTER CREEK RESERVOIR COMPANY,)
a Utah corporation, RICHFIELD)
IRRIGATION CANAL COMPANY, a Utah)
corporation; SEVIER VALLEY CANAL)
COMPANY, a Utah corporation;)
MONROE SOUTH BEND CANAL COMPANY,)
a Utah corporation; MONROE)
IRRIGATION COMPANY, a Utah)
corporation; ELSINORE CANAL COMPANY,)
a Utah corporation; ANNABELLA)
IRRIGATION COMPANY, a Utah)
corporation; BROOKLYN CANAL COMPANY,)
a Utah corporation; JOSEPH)
IRRIGATION COMPANY, a Utah)
corporation; WELLS IRRIGATION)
COMPANY, a Utah corporation;)
VERMILLION IRRIGATION COMPANY,)
a Utah corporation; and)
PIUTE RESERVOIR AND IRRIGATION)
COMPANY, a Utah corporation;)

COMPLAINT

Civil No. _____

Judge _____

Plaintiffs,

-vs-

NEW ESCALANTE IRRIGATION
COMPANY, a Utah corporation,

Defendant.

LAW OFFICES
CHAMBERLAIN ASSOCIATES
225 NORTH 100 EAST, P.O. BOX 100
RICHFIELD, UTAH 84701

OTTER CREEK RESERVOIR COMPANY vs. NEW ESCALANTE IRRIGATION COMPANY
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The Plaintiffs complain of the Defendant and for cause of action allege as follows:

Each and all of the Plaintiffs are corporations and irrigation companies, are organized under the Utah Non-profit Corporation and Co-operative Association Act (the "Act"), Title 16, Chapter 6a Utah Code Annotated 1953 as amended (the "Code") and each constituent or collective company (as is Plaintiff Otter Creek Reservoir "Otter Creek") is in good standing on the records of the Department of Commerce of the State of Utah and is therefore entitled to sue under the General and Non Profit Corporations Act (the "Act") of the State of Utah.

1. The Plaintiff Otter Creek Reservoir Company ("Otter Creek"), is a corporation and under the Act; the Plaintiffs it represents are all of the constituent stock holders of Plaintiff Otter Creek. Otter Creek is therefore given the right to sue to recover entitlements and to obtain and enforce the rights of all of the companies in this action represented by Otter Creek. Plaintiff Piute Reservoir and Irrigation Company ("Piute") is entitled to seek and obtain declaratory relief for its shareholders as decided in the case of Gunnison-Fayette Canal Company vs. Gunnison Irrigation Company, 22 Utah 2d. 45, 448 Pacific 2d. 707 (1967).

2. The Plaintiff Richfield Irrigation Canal Company is a corporation under the Act; Plaintiff Annabella Irrigation Canal Company is a corporation under the Act; Plaintiff Elsinore Canal Company is a corporation under the Act; Plaintiff Brooklyn Irrigation Company is a corporation under the Act; Plaintiff Joseph Irrigation Company is a corporation under the Act; Plaintiff Sevier

Valley Canal Company is a corporation under the Act; Plaintiff Vermillion Irrigation Co. is a corporation under the Act; all of which of the foregoing irrigation companies individually named are constituent owners of the Otter Creek Reservoir Company and common users of the water stored therein.

3. Plaintiff Piute Reservoir and Irrigation Canal Company is also a non-profit irrigation corporation under the Act with significant storage and direct-flow rights and also is entitled to the remedies and its damages as are all the other Plaintiffs.

4. All of the Plaintiffs have a principal place of business in either Sevier County or Sanpete County, both counties being within the Sixth Judicial District of the State of Utah, and the holders of direct-flow or storage rights on the South and East Fork of the Sevier River as well as the entire basin and Sevier River as appears on pages 3, 4, 5, 12, 13, 30 and 31 (as constituent share holders in Otter Creek Reservoir Company) ("Otter Creek") and in the resources of Otter Creek which has the right to store 52,590 acre feet of water in Otter Creek Reservoir located in Section 28, Township 30 South, Range 2 West, Salt Lake Base and Meridian, Utah, all as set out in the Progress Printing Edition of the Sevier River Decree in the case of Richlands Irrigation Company vs. Westview Irrigation Company, et al., Case No. 843 in the Fifth Judicial District Court of the State of Utah, in and for Millard County entered on the 30th day of November, 1936, sometimes referred to as the "Cox" Decree and which will be referred to hereinafter as the "Sevier River Decree".

5. Plaintiff Piute Reservoir and Irrigation Company ("Piute") has both direct-flow and

storage rights awarded at the applicable places in the Sevier River Decree.

6. The waters asserted to be the interests of the Plaintiffs to this action are continuously damaged by an unlawful interbasin diversion of water, hereinafter sometimes referred to as the "Trans-basin Diverted Waters" or the "Diverted Waters", which should be redirected into the Sevier River Basin and ultimately to the Plaintiffs in this action (please see Exhibits "A and B" which are maps illustrative and distinguishing of the natural from the unnatural flow of the Diverted Waters by reason of the wrongful acts of Defendant). Exhibits "A and B" are incorporated by reference in this Complaint.

7. The Otter Creek Reservoir is located in Piute County as is the Piute Reservoir and it is those reservoirs and the constituent owners and shareholders therein which suffer the first damages alleged in this Complaint and those damages occur and are realized and the causes of action occur in Piute County and the damages and losses of water and storage (as well as direct-flow rights) are all reflected and are first realized in Piute County which is the proper venue for this action.

8. Defendant New Escalante Irrigation Company ("New Escalante") is a corporation organized in Utah with its principal place of business in Escalante, Garfield County, State of Utah.

9. Iron Springs is a natural spring located in Section 1, Township 33 South, Range 1 West, Salt Lake Base and Meridian and well and entirely within the natural and hydrological basin of the Sevier River.

10. Under natural conditions the Diverted Waters that would naturally and

OTTER CREEK RESERVOIR COMPANY vs. NEW ESCALANTE IRRIGATION COMPANY
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topographically flow northerly to Iron Springs Draw, and which should but now do not follow unimpeded to Iron Springs Draw, to Coyote Hollow and then continue to Antimony Creek thereafter to Otter Creek Reservoir and thence on to the East Fork of and the entirety of the Sevier River; but, because of the unlawful Trans-basin Diverted Waters, now flow into the Escalante River region, and ultimately into the basin of the Colorado River.

11. As to the Diverted Waters all such waters are awarded in the Sevier River decree to Plaintiffs in this action as are all other waters unlawfully and unnaturally diverted by the Defendant.

12. At sometime in the past Defendant New Escalante and its agents or persons acting in the Defendant's behalf and under its direction and authority constructed a diversion of the natural flow of waters from Iron Spring or the Iron Springs Draw at a point at or near East 750 feet from the Southeast corner Section 1, Township 33 South, Range 1 West, Salt Lake Base and Meridian (please see Exhibit A and B) or South 1320 feet from the Northwest corner Section 7, Township 33 South, Range 1 East, Salt Lake Base and Meridian and in the Sevier River Basin (the same being the point of diversion stated in the Diligence Claim; Exhibit C) so that all those waters now flow into the diversions and places of use of Defendant New Escalante.

13. The elevation above sea level of the unlawful diversion works and all the areas draining into and diverted by this work is at between 10,040 and 10,080 feet according to the standard United States Geological Survey Map and to all other authoritative maps demonstrating stratigraphical topography.

14. The Trans-basin Diverted Waters cross a topographic divide at a point at which the elevation above sea level is higher than the entirety of Defendant's effective diversions.

15. The construction and diverting and direction-controlled excavations, berm, and bottom or lowest point above sea level (the "Defendant's Diverting Works") are below in elevation than the topographic "rim" or stratographic or topographic divide across and over which the Trans-basin Diverted Waters are now caused or stratagraphically controlled so as to run unnaturally into the Colorado River amphitheater, rather than, and away from the Sevier River Basin.

16. The acts of the Defendant have diverted and carried, and now divert and carry unlawfully and unnaturally, the waters of Iron Springs and other "Diverted Waters" into a ditch or canal higher in elevation across the natural (topographic) divide separating the Sevier River drainage from the Colorado River drainage to a point where the waters flow into North Creek and then into other water courses tributary to the Colorado River and from which they are diverted southerly in the tributary of Escalante River and with the unlawful diversion and diversion of users and uses and for the use of the Defendant New Escalante and contrary to the law and decrees of the State of Utah, the interests, and the shareholders and away from water awarded by the Sevier River Decree to the Plaintiffs.¹

¹Each one of a number of which is described in the case of East Bench Irrigation et. al vs. Deseret Irrigation Company et. al 2 Ut 2d. 170, 271 Pacific 2d. 449 at 452 (1954).

17. That on November 22, 1991 the Department of Natural Resources, Division of Water Rights of the State of Utah wrote to the Defendant New Escalante Irrigation Company a letter, a copy of which is hereto annexed as Exhibit "D", stating that a spring diversion originating in Section 1, Township 33 South, Range 1 West, Salt Lake Base and Meridian is reversed to run into and within the Colorado River (rather than into the Sevier River) consisting of an earthen canal that intercepts Iron Spring or Spring(s) and other water sources that are tributary to the East Fork of the Sevier River which effects an unnatural (and unlawful) trans-basin diversion from the Sevier River Basin to the Escalante River drainage and ultimately into the Colorado River . These are the Trans-basin Waters described in paragraphs 4 through 6 hereof. That letter further declares (in words or substance or effect) that the canal conveys water [approximately] two miles to a point where it becomes a tributary of the North Creek and it has been determined that there is not and has never been a water right of record for this diversion and that the Defendant is in violation of §73-3-1, Utah Code Annotated 1953 and requests that "as soon as possible" the canal be backfilled and re-vegetated and the conveyance [or improper and unlawful re-diversion] of water be discontinued.

18. The Defendant failed or refused to comply with that letter and has not at any time observed the legality and correctness of nor brought itself into observance with that order (or letter); but rather on or about May 5, 1992, filed a Diligence Claim, (the "Diligence Claim") asserting a right to divert and use the Trans-basin Diverted Waters. A copy of the Diligence Claim is attached as Exhibit "B" and is incorporated by reference in this Complaint.

19. On or about July 1, 1969, Hubert C. Lambert as State Engineer of the State of Utah issued his "Proposed Determination of the Water Rights of the State Engineer in the Colorado River-Escalante River Division" (hereinafter referred to as the "Proposed Determination") as a part of a General Adjudication under Chapter 4, Title 73 Utah Code Annotated 1953 (the "General Adjudication".)

20. The Diligence Claim asserts a right to, and the status of which is represented to be, a part of the waters which the Escalante water users should or would have (or had or would have had) in the Escalante Basin ("Colorado River - Escalante River Division") were the Diligence Claim valid (or even if invalid or ineffective.)

21. A copy of New Escalante's total claims in the General Adjudication (Pre-trial Order of Judge Tibbs), and concomitantly a copy of the pertinent and material parts of the Order in that Adjudication of July 27, 1992, referred to hereinafter, is hereto annexed as Exhibit "E" and incorporated by reference the same as though fully set forth herein.

22. The purported Diligence Claim is without merit and has now been, if it ever existed, extinguished by adjudications of water rights in both the Sevier River Basin and the Colorado River Basin pursuant to Title 73, Chapter 4, Utah Code Annotated 1953, and prior enactments dating from the original "Appropriations Act" of the State of Utah. (Chaper 3, Title 73, Utah Code)

23. At pages 164 through 166 and 181 through 186 of the Proposed Determination (copies of which pages are annexed as Exhibit "F") there appear a number of substantial and

significant entries of water users' claims in that case by New Escalante Irrigation Company; and in response thereto, reciprocal awards are made.

24. There are no other claims appearing in the Proposed Determination of the General Adjudication that have ever been filed by Defendant New Escalante.

25. No other claims which have ever been filed in the General Adjudication proceedings by Defendant New Escalante appear in the Proposed Determination whether or not they appear on any of the pages attached as Exhibit "F".

26. Pursuant to §73-4-11 of the Code the Defendant New Escalante was notified that any claim not reflected in the Proposed Determination must be filed within ninety days of service of the Proposed Determination upon the Defendant, otherwise the same would be forever barred and under the provisions of §73-4-9 of the Code the Defendant is now debarred from asserting any waters described both hereinabove generally, and in the Diligence Claim.

27. Under §73-4-11 of the Code the Proposed Determination became final ninety days after the delivery to the Defendant of the Proposed Determination in the year 1969.

28. That on the 27th day of July, 1977, the Honorable Don V. Tibbs in Case No. 435 in the District Court of the Sixth Judicial District for the County of Wayne entered a decree, a copy of which is hereto annexed marked Exhibit "E" in which it is provided: -

CONFIRMATION OF RIGHTS NOT PROTESTED

The State Engineer has published the Proposed Determination of Water

Rights for the Escalante Subdivision of the Escalante River Division of the above-entitled general adjudication proceedings, and copies of said Proposed Determination have heretofore been served on those water users having water rights in said Subdivision and a copy filed with this Court pursuant to the provisions of Section 73-4-11, Utah Code Annotated 1953, as amended.

NOW, THEREFORE, IT IS ORDERED that the Proposed Determination for the Escalante Subdivision of the Escalante River Division as amended by this Pre-Trial Order is approved and the individual water rights contained in said Determination are hereby decreed to be valid existing water rights and are approved and confirmed as set forth in said Determination; those rights set forth in the "Issues to be Tried" Section of this Pre-Trial Order are excepted from the foregoing approval and confirmation to the extent that they are the subject matter of an individual protest; this Order is also subject to those changes in ownership and approved Change Applications on any rights in said Determination which have occurred since the Determination which have occurred since the Determination was published by the State Engineer; the Court further reserves the right to correct typographical errors which may have occurred in the preparation of said Determination. Provided, however, the claims which are included in said Proposed Determination for the United States of America or any agencies thereof are listed for information purposes only, since the United States has not been made a party to this action.

29. Pursuant to Section 73-4-11 of the Code, the State Engineer is required to distribute the waters pursuant to the Proposed Determination.

30. As provided in §§73-4-7, 73-4-12, 73-4-14, and 73-4-15 of the Code the Diligence Claim filed by Defendant May 5, 1992 is null and void and New Escalante Irrigation Company has no rights thereunder.

31. The Sevier River Decree is the General Adjudication of the waters of the Sevier River in Garfield, Piute, Sevier, Sanpete, and Millard Counties and its tributaries. New Escalante

has never filed, nor has any right to file a claim or receive any award, or establish a claim in that action and pursuant to statute is barred from now asserting any claim to the waters of the Sevier River; and particularly to the Diverted Waters.

32. The Defendant has continued to divert wrongfully the water described in the letter of November 22, 1991 and is in violation of Chapter 3, Title 73, U.C.A. 1953 and otherwise under the laws of the State of Utah relating to appropriation or water or water rights.

33. Plaintiff Otter Creek is entitled to divert, store and use the Trans-basin Diverted Water² and is damaged by the wrongful diversion thereof since 1991 in an amount to be determined by the Court as is Plaintiff Piute Reservoir and Irrigation Company (East Bench Irrigation Company v. Deseret Irrigation Company, 2 UT 2d 170; 271 P2d 449 [1954] Garfield County District Court [see esp. 271 P2d at 452, last paragraph left-hand column]; 2 UT 2d at p. 175 (175 at first paragraph left-hand column) These conditions advanced above and elsewhere have been the substance and subject of judicial knowledge and ratified in more than one decision of the Courts to invoke that virtually axiomatic ratification; which case(s) state "...the canyon walls and the valleys slope from the mountain ranges on each side toward the river and all the water which falls within the river's

²Illustrative copies of photographs of the unlawful diversions described in Exhibit "C" are attached as Exhibit "G". Exhibit "G" is a composite exhibit of photographs not intended to illustrate all, but is only a partial demonstration of the unnatural reversal of flows of water at times when accumulations of precipitation in the Sevier River Basin are reversed from the Sevier River Drainage to the Colorado River Drainage.

watershed and the waters which are applied on the lands on both sides quickly find their way back to the river, either by direct surface streams or underground seepage..."

DAMAGES

<u>Company</u>	<u>Primary Rights in c.f.s.</u>	<u>Percentage of Loss to Company in c.f.s.</u>
Richfield Irrigation Canal Company	85.90	22.1
Sevier Valley Canal Company	60.00	15.1%
Monroe South Bend Canal Company	41.50	10.7%
Monroe Irrigation Company	47.90	12.3%
Elsinore Canal Company	18.92	4.9%
Annabella Irrigation Company	30.40	7.8%
Brooklyn Canal Company	29.77	7.7%
Joseph Irrigation Company	25.90	6.7%
Wells Irrigation Company	10.90	2.8%
Vermillion Irrigation Company	<u>37.80</u>	<u>9.7%</u>
Total c.f.s.	388.99	100.90

34. The Plaintiff Piute Reservoir and Irrigation Company sustains additional losses of its decreed rights awarded as direct-flow and stored or impounded waters the magnitude of which will be proportionately determined in calculating the losses which have been and which are now being sustained by the unlawfully Diverted Waters.

35. In the first two weeks of April and the early portion (or days) of May 2001 an upper

Sevier River Commissioner, a representative of the Plaintiffs examined the area depicted in the photographs (Exhibit "G").

36. Using a standard and hydrologically accurate current meter, not only observed approximately but measured 11.1 cubic feet per second ("c.f.s.") of water passing through in the unlawful channel of the Trans-basin Diversion.

37. There is direct evidence of high-water marks that three or more times that amount (of 11.1 c.f.s.) had flowed through that channel in during the year in the earlier days of April and May 2001.

38. It has been determined that as much as in excess of 10,000 acre feet of water in one year have been observed by Sevier River agents and abstracted by the unlawful Trans-basin Diversion.

39. The illegal channel collects and drains highly significant amounts of water; (e.g. in the spring of the year 2001) an amount of water collected through 1,000 acres of drainage in which an official State-Federal gauging rod of Clayton Springs showed 23.9 inches of water throughout the south half of Section 1, the East half of Section 11 and the North Half of the North Half of Section 12 in Township 33 South, Range 1 West and the Southwest Quarter of the Southwest Quarter of Section 6 and the North one-half of Section 7 in Township 33 South, Range 1 East, Salt Lake Base and Meridian.

40. On the basis of the loss to the Sevier River Basin the Plaintiffs named in the foregoing paragraphs would have sustained high-water and direct-flow loss of the Sevier River waters little of which would be lost in transmission through seepage, transpiration, and shrinkage because underground or "under-flow" would not be lost in transmission through seepage, transpiration, and shrinkage and as such would have been a part of the under-flow of the tributaries of the Sevier River and as such would suffer lesser amounts of shrinkage and would have been a part of the waters in which Plaintiffs would all participate.

41. As appears on Exhibit "G" the surface of the land on which the works of the Defendant have been constructed or have been disturbed have wrongfully changed a natural pattern of the surface and subsurface of that land in the entire area where Defendant's agents have performed work or caused work to have been performed.

42. Exhibits G1 through G5 illustrate conditions after work was begun, but prior to extreme 1999 expansion; Exhibits G6 through G13 illustrate Defendant's works and conditions after extensive 1999 expansion. Exhibit G-13 exhibits height of dam after 1999 expansion (Ivan Cowley pictured.)

43. The Plaintiffs have the right to require that the land be restored to its natural condition essential to obliterate the excavations, creating the ditch and channel and building up of berm or works which cause the unlawful diversion of water so that it runs improperly into the Colorado River Basin rather than to the Sevier River Basin.

44. The waters thus diverted naturally should not run into, and the distorted features of the surface have been scarred and disturbed causing improper movement of and the course of the water to run into the channels where the Diverted Waters are now flowing.

45. The Plaintiffs have the entitlement to restore or to secure a complete restoration of and to the work necessary to achieve obliterating the man-made channels and ditches described in paragraphs 6 and 12 through 16 above so that nothing constructed by Defendant will impede the flow of water effecting or affected by the diverted waters created by those channels and ditches.

46. The courses and channels as they now exist through the unlawful works of the Defendant should be obliterated by the Defendant or by the Plaintiffs at the cost of Defendant.

47. Plaintiffs are entitled to such work, earth movement, and movement of berm and the result of other excavations made by Defendants so that a condition where natural - as opposed to unnatural - drainages occur.

48. Plaintiffs are entitled to restore or cause to be restored all of the disturbed land and area and to secure a re-vegetation of all the land surfaces affected by the wrongful excavations, channel-creating and surface disturbances which alter the natural course of the waters of the Sevier River Basin.

49. The Plaintiffs are entitled to a redirection of water now running into the Colorado River Basin; and to the completion of such works as will redirect the Diverted Waters into the Sevier River Basin so that the rights of the Plaintiffs will be restored to their natural condition and the

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condition in which they existed before the wrongful works of the Defendant so that the natural condition of the terrain and the sum of its totality as it existed prior to the wrongful acts of Defendant or those acting through or by authority of the Defendant with the entire costs to be paid for, charged and assessed to Defendant until those corrective renovations are fully complete.

WHEREFORE, Plaintiff prays judgment as follows:

A. For a Declaratory Judgment that the Defendant is entitled to none of the waters rising in Section 1, Township 33 South, Range 1 West, Salt Lake Base and Meridian or in any of the surrounding sections or any sections of the land which are tributary to the unlawful diversion described on Exhibits "A and B" and that the Defendant should be forever barred and restrained from continuing to divert water from the sources described in this Complaint and in the Exhibits.

B. That the Defendant be ordered to effect and pay the entire cost of restoring and re-vegetating all of the surface and eliminate the ditches and channels created by the Defendant or caused to have been created by the Defendant or in any manner directed and authorized by the Defendant. Plaintiffs are entitled to select competent contractors after inviting bids therefore, to complete the work of complete restoration of the surface in the areas disturbed by the Defendant or those acting by the direction or under authority of the Defendant. Should the Court direct, the Plaintiffs may submit to Defendant a contract price obtained after invitation and the opening of bids to the lowest fully and totally responsible contractor by Plaintiffs to do the work described above; or that the Defendant may obtain contractors entirely and completely to effect the same restoration

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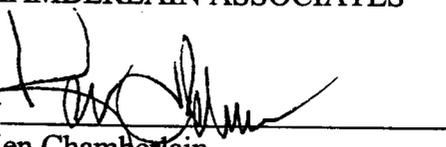
and conditions; and in any and all cases the Defendant be required to pay such contractor or contractors and all of the associated costs of restoration of the lands disturbed by the acts of the Defendant or its agents so that the Diverted Waters not only will be redirected to the Sevier River Basin but also that the natural conditions and vegetation on the disturbed lands will be restored and replaced to their natural and historic condition and in any event the Defendant be required to pay the costs of all of such restorative work.

C. For a permanent restraining and mandating injunction and order directing the Defendant to observe and comply with the rights of Plaintiffs and the orders of the Utah State Engineer (Exhibit "D") and otherwise cease to divert any waters from the Sevier River Basin into the Colorado River Basin.

D. For an award of damages sustained by Plaintiff for all losses and abstractions of water such as is proved at trial.

E. That the Plaintiffs be awarded their costs and, due to the *mens rea* of Defendant, attorneys fees, and such other relief as to the Court may appear proper.

CHAMBERLAIN ASSOCIATES

By 

Ken Chamberlain

Attorneys for Plaintiff

VERIFICATION

STATE OF UTAH)
 : ss.
COUNTY OF SEVIER)

Ivan Cowley, being first duly sworn upon oath deposes and says that he is the President of Otter Creek Reservoir Company and is the appropriate person or officer to make this affidavit.

The Affiant Ivan Cowley knows of his own knowledge that all of the facts alleged in the foregoing Complaint are true except as to those matters alleged upon information and belief and as to those matters he believes them to be true.

The Affiant states that the photographs appearing in Exhibit "G" accurately reflect and faithfully and accurately demonstrate the facts as they existed when Affiant himself, with other agents of the Plaintiff visited the premises in the late months of 1999 and in the early months of the year 2000; prior to the more deepened trench and elevation of the berm of the Defendant's works and later months in 2000 to early months of 2001; and that the photograph in which Affiant appears is an actual untouched or unaffected and unaltered condition of the premises at the time Affiant visited the area affected by the substance of this Complaint.

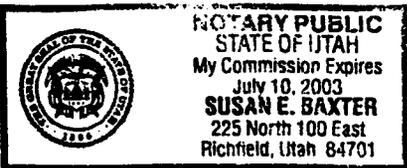
Affiant swears upon oath that all of the photographs in Exhibit "G" are true and faithful representations of the conditions as they existed when the Affiant and others in his company visited the premises which are the subject of this litigation.

Ivan Cowley
Ivan Cowley

On the 27th day of June, 2001, personally appeared before me Ivan Cowley, who being first duly sworn upon oath deposes and says that the statements contained in the foregoing verification are true except as to the matters that are alleged upon information and believe and as to those allegations he believes them to be true.

Susan E. Baxter
Notary Public

My Commission Expires: Richfield, Utah
Residing at: 7/10/2003



LAW OFFICES
CHAMBERLAIN ASSOCIATES
225 NORTH 100 EAST, P.O. BOX 100
RICHFIELD, UTAH 84701

VERIFICATION OF RAY OWENS

STATE OF UTAH)
 : ss.
COUNTY OF SEVIER)

RAY OWENS, being duly sworn on oath deposes and says that he is the duly appointed qualified and acting River Commissioner of the upper section or division of the Sevier River.

Affiant states that he has personally visited the premises affected by the allegations in the foregoing Complaint and he swears upon oath that the allegations in paragraphs 35, 36, 37, 38 and 39 and 41 through 44 are true and the same are facts which he actually observed or in circumstances where measurements were taken he, the said Ray Owens, participated in the measurement of the water using traditional current measuring meters and calculating the flow of the water as it is described in photographs annexed to the Complaint to which this verification is applicable.

Affiant further states that he has visited the premises described in the Complaint and affected by this action and he knows of his own knowledge that the allegations respecting the conditions at those premises are true of his own personal knowledge.

Affiant states that the facts therein stated are true according to his own personal knowledge and are not based on statements or representations made to him by other persons and verily states that the facts in the foregoing Verification are true.

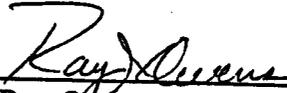
As River Commissioner he knows that the diversions of water and the construction of diverting works are contrary to the natural conditions and have the effect of transferring water described in the pertinent provisions of the Complaint and that the topographic representations at various places in the Complaint are accurate and have been observed by the Affiant and he makes this affidavit on personal knowledge of the facts in but not necessarily exclusively in paragraphs 11, 13, 14, 15, 16 and paragraph 33, as well as those enumerated above are true of his own knowledge and that the allegations in paragraph 38 are substantially if not precisely true and accurate.

The Affiant is not a licensed geologist or professional engineer but has more than twenty years experience in the behavior of water and diversions thereof and as to all matters alleged in the pertinent parts of the Complaint are true except as to the matters alleged upon information and as

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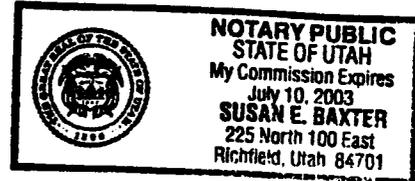
to those matters he believes them to be true.


Ray Owens

On the 29th day of June, 2001, personally appeared before me Ray Owens, who being first duly sworn upon oath deposes and says that the statements contained in the foregoing verification are true except as to the matters that are alleged upon information and believe and as to those allegations he believes them to be true.

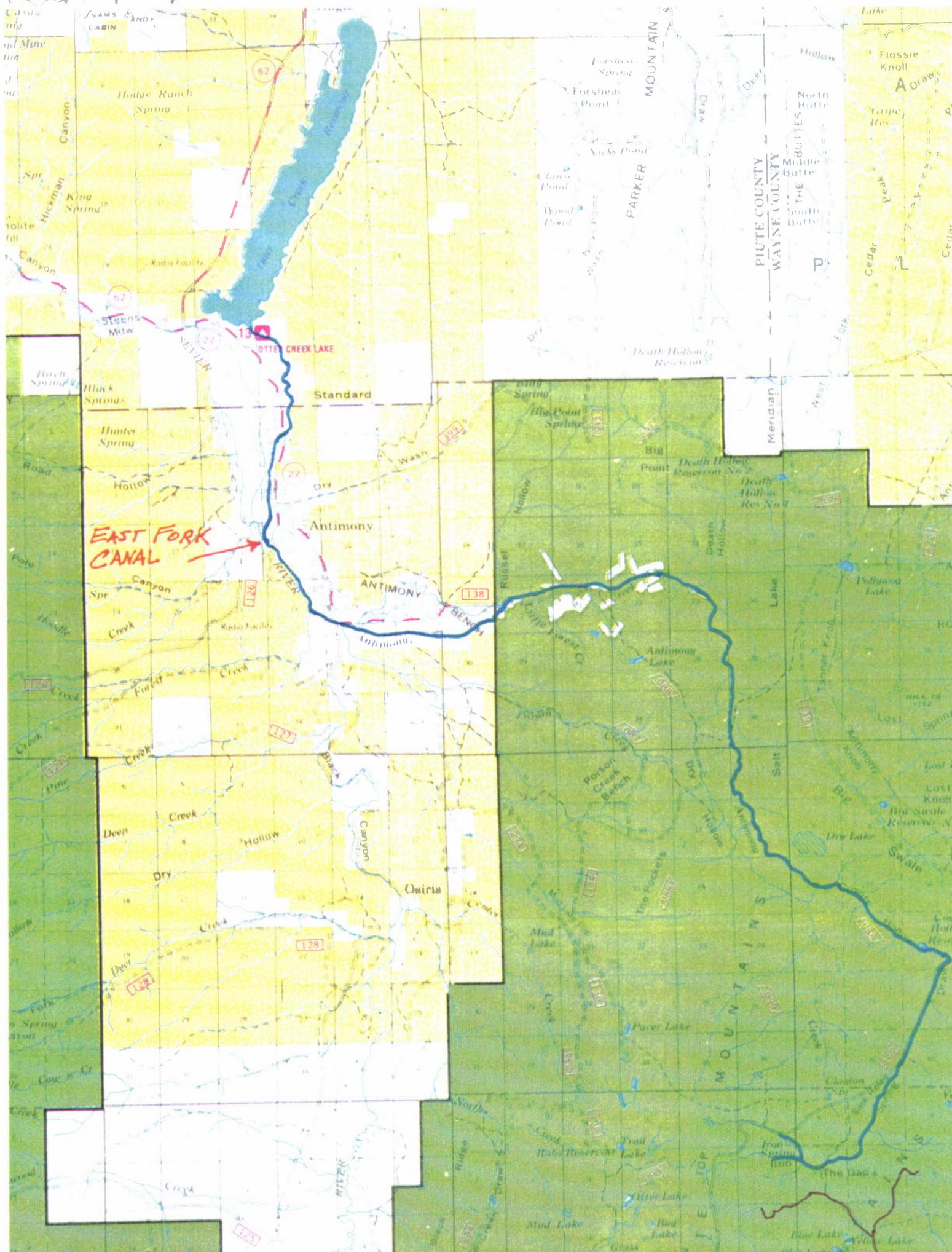

Notary Public

Residing at: Richfield, Utah
My Commission Expires: 7/10/2003



LAW OFFICES
CHAMBERLAIN ASSOCIATES
225 NORTH 100 EAST, P.O. BOX 100
RICHFIELD, UTAH 84701

EXHIBIT A



EAST FORK CANAL

LOTTE CREEK LAKE

Standard

Antimony

ANTIMONY

Antimony

Oniria

PARKER MOUNTAIN

PIUTE COUNTY
WAYNE COUNTY

MOUNTAINS

North Butte
Middle Butte
South Butte

136

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EXHIBIT B



EXHIBIT C

FILING FOR WATER IN THE STATE OF UTAH

Rec. by J.T
Fee Rec. 950.00
Receipt # 715
Microfilmed _____
Roll # _____

MAY 05 1992

DILIGENCE CLAIM

Claim to surface water by right of use, prior to March 12, 1903, is hereby made and filed with the State Engineer, as prima facie evidence of a water right in accordance with the requirements of the Laws of Utah.

* WATER RIGHT NO. 97 - 1984 * DILIGENCE NO. D5729

1. PRIORITY DATE OF RIGHT CLAIMED: 1875 * FILING DATE: _____

2. OWNER INFORMATION

Name: New Escalante Irrigation Company * Interest: _____ %
Address: P.O. Box 535
City: Escalante State: Utah Zipcode: 84726

3. QUANTITY OF WATER: 33.0 cfs and/or _____ ac-ft

4. SOURCE: Iron Spring Draw * DRAINAGE: _____
which is tributary to North Creek
which is tributary to Escalante River
POINT(S) OF DIVERSION: _____ COUNTY: Garfield
A point situated South 1,320 feet from the NW Corner of Section 7, T33S
R1E, SLB&M

Description of Diverting Works: Earthern canal

5. POINT(S) OF REDIVERSION

The water is rediverted from Escalante River at a point(s):
See: Exhibit "A" attached hereto and incorporated by reference herein.

Description of Diverting Works: Concrete Diversion Dam

6. POINT(S) OF RETURN

The amount of water consumed is _____ cfs or _____ ac-ft
The amount of water returned is _____ cfs or _____ ac-ft
The water will be returned to the natural stream/source at a point(s): _____

7. STORAGE

See Exhibit "A" attached
Reservoir Name: _____ Storage Period: from _____ to _____
Capacity: _____ ac-ft. Inundated Area: _____ acres
Height of dam: _____ feet
Legal description of inundated area by 40 acre tract(s): _____

8. List any other water rights which are appurtenant to this claim WRNIM: 97-21, 97-66,
97-88 and 97-1200

* These items are to be completed by the Division of Water Rights

9. NATURE AND PERIOD OF USE

Irrigation:	From <u>April 1</u> to <u>October 31</u>
Stockwatering:	From <u>Jan 1</u> to <u>December 31</u>
Domestic:	From _____ to _____
Municipal:	From <u>April 1</u> to <u>October 31</u>
Mining:	From _____ to _____
Power:	From _____ to _____
Other:	From _____ to _____

10. PURPOSE AND EXTENT OF USE

Irrigation: 2,712 acres. Sole supply of _____ acres
 Stockwatering (number and kind): 1,000 cattle, horses and sheep
 Domestic: _____ Families and/or _____ Persons
 Municipal (name): Town of Escalante
 Mining: _____ Mining District in the _____ Mine
 Ores mined: _____
 Power: Plant name: _____ Type: _____ Capacity: _____
 Other (describe): _____

11. PLACE OF USE

Legal description of place of use by 40 acre tract(s): See: Exhibit "B" attached

12. EXPLANATORY

The following is set forth to define more clearly the full purpose of this diligence claim. (Use additional pages of same size if necessary): See: Exhibit "A" attached

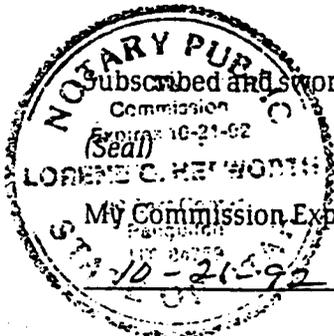
 The claimant acknowledges the accuracy of the information contained herein, at the time of filing.

STATE OF UTAH: _____ SS
 COUNTY OF GARFIELD _____

I, being duly sworn, do hereby certify that I am the claimant, or agent of the claimant, to a right to the use of water as set forth in the foregoing statement of facts.

BY: [Signature] NEW ESCALANTE IRRIGATION COMPANY,
 Signature of Claimant(s)

Subscribed and sworn to before me this 27th day of APRIL, 19 92



[Signature]
 Notary Public

EXHIBIT "A"

To Diligence Claim No. D5729, 97-1984

PARAGRAPH 5. POINTS OF REDIVERSION:

(1) North Creek Reservoir: At axis of dam, South 300 feet and East 275 feet from the North 1/4 Corner, Section 23, T34S, R1E, SLB&M.

(2) Escalante River: North 310 feet and East 800 feet from the South 1/4 Corner, Section 10, T35S, R2E, SLB&M.

(3) Wide Hollow Reservoir: At axis of dam, South 605 feet and West 275 feet from the North 1/4 Corner, Section 12, T35S, R2E, SLB&M.

PARAGRAPH 7. STORAGE:

Reservoir Name:	North Creek Reservoir
Storage Period:	January 1 to December 31
Capacity:	300 acre-feet
Inundated Area:	38 acres
Height of Dam:	40 feet
Description/Inundated Area:	SE1/4 SW1/4 and SW1/4 SE1/4 of Section 14; NE1/4 NW1/4 and NW1/4 NE1/4 of Section 23; all in T34S, R1E, SLB&M.
Reservoir Name:	Wide Hollow Reservoir
Storage Period:	January 1 to December 31
Capacity:	1400 acre-feet
Inundated Area:	145.75 acres
Height of Dam:	48 feet
Description/Inundated Area:	SW1/4 and SW1/4 SE1/4 of Section 1; E1/2 SE1/4 of Section 2; NE1/4 NE1/4 of Section 11; NW1/4 NE1/4 and N1/2 NW1/4 of Section 12; all in T35S, R2E, SLB&M.

PARAGRAPH 12. EXPLANATORY:

This Diligence Claim is filed to appropriate high water runoff of snowmelt occurring from about mid-June through mid-July of each year. The water is collected in an open, earthen canal and diverted into the headwaters of North Creek for storage and use as hereinabove set forth.

Affidavits of Gail C. Bailey, Melvin Alvey, Doyle V. Cottam and Ushur L. Spencer are attached in support of this Diligence Claim.

EXHIBIT "B"

W.U.C. USED FOR PURPOSE DESCRIBED: 21,1200 on

7.80 acs. SE₁SE₂, Sec. 10, T35S, R2E, SLBM 5.70 acs. SE₁NE₂, 5.60 acs. NE₁SW₂, 6.90 acs. NW₁SW₂, 14.90 acs. SE₁SW₂, 10.20 acs. SW₁SW₂, Sec. 11, T35S, R2E, SLBM 0.20 ac. NW₁NW₂, 13.20 acs. SE₁NW₂, 20.10 acs. SW₁NW₂ 2.30 acs. NW₁SW₂, Sec. 12, T35S, R2E, SLBM or a total of 86.90 acres.

W.U.C. USED FOR PURPOSE DESCRIBED: 21, 66, 1200 on

15.60 acs. NW₁NE₂, 7.30 acs. NE₁NW₂, 12.70 acs. SE₁NE₂, 12.40 acs. SW₁NE₂, 10.60 acs. SE₁NW₂, 8.60 acs. NE₁SE₂, 4.20 acs. NW₁SE₂, Sec. 12, T35S, R2E, SLBM. 18.20 acs. NE₁NE₂, 20.10 acs. NW₁NE₂, 17.30 acs. NE₁NW₂, 10.60 acs. NW₁NW₂, 17.80acs. SE₁NE₂, 21.30 acs. SW₁NE₂, 10.70 acs. SE₁NW₂, 17.10 acs. SW₁NW₂, 13.00 acs. NE₁SE₂, 14.80 acs. NW₁SE₂, 7.90 acs. NE₁SW₂, 9.30 acs. NW₁SW₂, 10.86 acs. SE₁SE₂, Sec. 7, T35S, R3E, SLBM 2.00 acs. NW₁NW₂, 12.50 acs. NW₁SW₂, 6.30 acs. SE₁SE₂, 10.06 acs. SW₁SE₂, 22.07 acs. SE₁SW₂, 19.04 acs. SW₁SW₂, Sec. 8, T35S, R3E, SLBM 0.60 ac. SW₁SW₂, Sec. 9, T35S, R3E, SLBM 6.00 acs. NW₁NW₂, 0.20 ac. SW₁NW₂, 1.60 acs. NE₁SW₂, 19.20 acs. NW₁SW₂, 17.30 acs. SE₁SW₂, 34.50 acs. SW₁SW₂, Sec. 16, T35S, R3E, SBLM 40.00 acs. NE₁NE₂, 20.40 acs. NW₁NE₂, 18.35 acs. NE₁NW₂, 17.38 acs. NW₁NW₂, 2.70 acs. SE₁NE₂, 10.78 acs. SW₁NE₂, 23.21 acs. SE₁NW₂, 21.74 acs. SW₁NW₂, 31.60 acs. NE₁SE₂, 39.10 acs. NW₁SE₂, 36.50acs. NE₁SW₂, 38.90 acs. NW₁SW₂, 12.90 acs. SE₁SE₂, 19.10 acs. SW₁SE₂, 10.10 acs. SE₁SW₂, 3.90 acs. SW₁SW₂, Sec. 17, T35S, R3E, SLBM 3.50 acs. NE₁NE₂, 4.39 acs. SE₁NE₂, 29.90 acs. NE₁SE₂, 11.10 acs. SE₁SE₂, 12.00 acs. SW₁SE₂, Sec. 18, T35S, R3E, SLBM 25.20 acs. NE₁NE₂, 41.30 acs. NW₁NE₂, 32.60 acs. NE₁NW₂, 39.20 acs. SE₁NE₂, 26.80 acs. SW₁NE₂, 29.60 acs. SE₁NW₂, 1.00 acs. SW₁NW₂, 40.00 acs. NE₁SE₂, 35.80 acs. NW₁SE₂, 35.00 acs. NE₁SW₂, 5.60 acs. NW₁SW₂, 27.60 acs. SE₁SE₂, 34.20 acs. SW₁SE₂, 26.30 acs. SE₁SW₂, 1.20acs. SW₁SW₂, Sec. 20, T35S, R3E, SLBM 22.50 acs. NE₁NW₂, 11.80 acs. NW₁NW₂, 12.30 acs. SW₁NW₂, 4.00 acs. NE₁SW₂, 36.30 acs. NW₁SW₂, 13.70acs. SW₁SE₂, 25.60 acs. SE₁SW₂, 40.00 acs. SW₁SW₂, Sec. 21, T35S, R3E, SLBM 5.50 acs. SW₁NW₂, Sec. 27, T35S, R3E, SLEM 21.00 acs. NW₁NE₂, 38.30 acs. NE₁NW₂, 40.00 acs. NW₁NW₂, 10.10 acs. SW₁NE₂, 10.00 acs. SE₁NW₂, 40.00 acs. SW₁NW₂, Sec. 28, T35S, R3E, SLBM 19.60 acs. NE₁NE₂, 29.40 acs. NW₁NE₂, 18.70 acs. NE₁NW₂, 35.40 acs. SE₁NE₂, 21.40 acs. SW₁NE₂, 5.40 acs. SE₁NW₂, 2.90 acs. NE₁SE₂, 39.00 acs. NW₁SE₂, 40.00 acs. SE₁SE₂, 28.00acs. SW₁SE₂, Sec. 29, T35S, R3E, SLEM 40.00 acs. NE₁NE₂, 23.00 acs. NW₁NE₂, 10.60 acs. SE₁NE₂, 2.80 acs. SW₁NE₂, Sec. 32, T35S, R3E, SLBM 35.10 acs. NE₁NE₂, 23.20 acs. NW₁NE₂, 42.00 acs. NE₁NW₂, 38.90 acs. NW₁NW₂, 11.60 acs. SW₁NE₂, 20.40 acs. SE₁NW₂, 28.00 acs. SW₁NW₂, 10.50 acs. NW₁SE₂, 38.90 acs. NE₁SW₂, 23.80 acs. NW₁SW₂, 2.10 acs. SW₁SE₂, 29.50 acs. SE₁SW₂, 37.00 acs. SW₁SW₂, Sec. 33, T35S, R3E, SLEM 28.30 acs. NE₁SW₂, Sec. 34, T35S, R3E, SLBM 15.60 acs. SE₁NW₂, 13.60 acs. SW₁NW₂, 17.20 acs. SE₁SW₂, 7.40 acs. SW₁SW₂, Sec. 3, T36S, R3E, SLEM 24.80 acs. NE₁NW₂, 9.50 acs. NW₁NW₂, Sec. 4, T36S, R3E, SLBM 15.60 acs. NE₁NW₂, 12.00 acs. NW₁NW₂, Sec. 10, T36S, R3E, SLBM or a total of 2,352.98 acres.

W.U.C. USED FOR PURPOSE DESCRIBED: 6, 12, 19, 21, 66, 1200, 1250, 1251 on

4.70 acs. NE₁NE₂, 2.80 acs. SE₁NE₂, Sec. 7, T35S, R3E, SLBM 12.70 acs. NW₁NW₂, 9.40 acs. SE₁NW₂, 29.70 acs. SW₁NW₂, 23.00 acs. NE₁SW₂, 7.60 acs. NW₁SW₂, Sec. 8, T35S, R3E, SLBM or a total of 89.90 acres

W.U.C. USED FOR PURPOSE DESCRIBED: 21, 66, 587, 1200 on

3.10 acs. NW₁NW₂, Sec. 8, T35S, R3E, SLBM or a total of 3.10acres.

W.U.C. USED FOR PURPOSE DESCRIBED: 2, 21, 66, 1200 on

13.50 acs. SE₁SE₂, 3.00 acs. SW₁SE₂, Sec. 21, T35S, R3E, SLBM 18.00 acs. NE₁NE₂, 7.50 acs. SE₁NE₂, Sec. 28, T35S, R3E, SLBM or a total of 42.00 acres

W.U.C. USED FOR PURPOSE DESCRIBED: 2, 21, 66, 1200, 1226 on

19.10 acs. SE₁NE₂, Sec. 28, T35S, R3E, SLBM for a total of 19.10 acres.

W.U.C. USED FOR PURPOSE DESCRIBED: 21, 66, 1180, 1200 on

0.40 ac. NW₁SW₂, 16.80 acs. SE₁SW₂, 7.50 acs. SW₁SW₂, Sec. 27, T35S, R3E, SLBM 0.30 ac. NE₁NW₂, Sec. 28, T35S, R3E, SLBM or a total of 25.00 acres

W.U.C. USED FOR PURPOSE DESCRIBED: 3, 21, 66, 1200, 1272 on

3.40 acs. NE $\frac{1}{4}$ SE $\frac{1}{4}$, 10.70 acs. NW $\frac{1}{4}$ SE $\frac{1}{4}$, 16.70 acs. SE $\frac{1}{4}$ SE $\frac{1}{4}$, 29.20 acs. SW $\frac{1}{4}$ SE $\frac{1}{4}$,
Sec. 34, T35S, R3E, SLBM or a total of 60.0 acres.

W.U.C. USED FOR PURPOSE DESCRIBED: 21, 66, 1200, 1255 on

5.00 acs. SW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 8, T35S, R3E, SLBM or a total of 5.00 acres.

W.U.C. USED FOR PURPOSE DESCRIBED: 21, 66, 1200, 1254 on

1.00 acs. SW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 8, T35S, R3E, SLBM or a total of 1.00 acre

W.U.C. USED FOR PURPOSE DESCRIBED: 21, 66, 1200, 1261 on

11.00 acs. SW $\frac{1}{4}$ NE $\frac{1}{4}$, 0.70 ac. NE $\frac{1}{4}$ SE $\frac{1}{4}$, 2.60 acs. NW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 28, T35S, R3E,
SLBM or a total of 14.30 acres.

W.U.C. USED FOR PURPOSE DESCRIBED: 21, 66, 1200, 1261, 1262 on

13.00 acres. NE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 28, T35S, R3E, SLBM or a total of 13.00 acres.

Total acreage under all categories combined 2712.28 acres.

January 5, 1992
Mesa, Arizona

TO WHOM IT MAY CONCERN

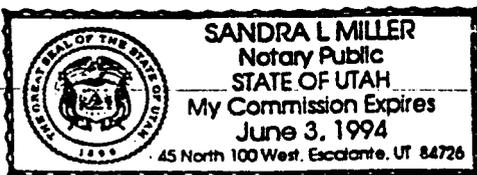
I remember being in Sink Hole Draw with my father when I was a boy of fifteen years of age. At this time there was a ditch that run the water off of the mountain into North Creek for irrigation purposes. This ditch must have been dug before 1919. I was born November 26, 1904.

Sincerely,
Gail C Bailey
Gail C Bailey

Subscribed and sworn before me this the 5th day of

January 1992,

Sandra L. Miller
Notary



Escalante, UT

Jan 12 1992

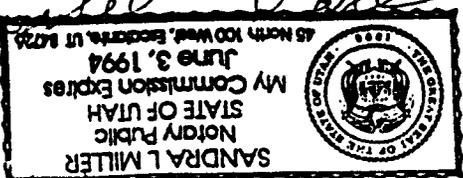
To whom it may concern

I am Doyle S. Cotton of Escalante Utah. I was born on April 11, 1921 and have lived in Escalante all my life. I have farmed in Escalante and helped my father on his farms.

I helped clean the old dirt canals as a young man when we had as many as 50 men and teams. I believe my grandfather told me some of the men who worked on the griffin top on the old canal.

I remember as a young man when the high water canal water broke loose and low water depends on this run off from the griffin top. Our farm was 10 miles SO of Escalante. This water lasted until late August.

Sincerely,
Doyle S. Cotton



Subscribed & sworn before me this January 12, 1992,
Sandra L. Miller, Notary

To whom it may Concern,

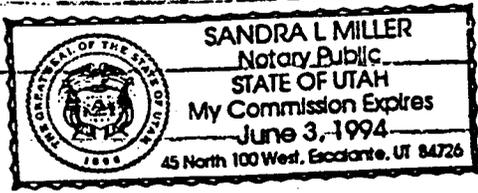
Walter R. Spencer, being a
Townsmen of Escalante, UT for the
last 8 or 9 years. prelate to some of
the things that happened, during
my lifetime, my father being a
farmer, and owning shares of
water in the Irrigation Co.
heard much of the talk that went
on, about the water - the rights
and so forth.

My dad being a bro to one of the
Person Board Members of the Co.
I knew quite a lot of what was
going on.

I was 8 or ten when I first
heard of the Griffin Top drainage
later, while I was working for the Co.
on the mt. I was 14 or 16. I saw some
of the men hitch their teams on their
Crawlers, get on one of their horses, and
go out on top of the mt. (to the Griffin) to
clean the ditch, that, brought up the water
to Escalante, I had heard before, how they
would do, but this was the first time I
saw them do it. I supposed, they had
how to do it and had done it for years.

Walter R. Spencer 1000

Subscribed and sworn before me this the 12th
day of January, 1992

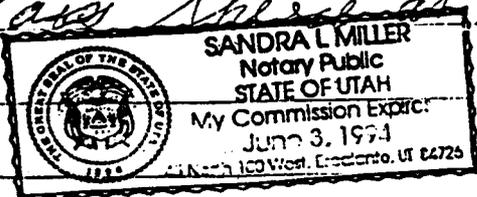


Sandra L. Miller
Notary

B. scalante, Utah
January 6, 1992

50 When it may concern
I in 1925 when I was a lad of 17 yrs
H. Arvey Bailey hired me to go drive
his team to help maintain the
ditch on the Griffin 3 of the
Mountain at the head of Snake Hole
Draw. As I recall, P. horse Campbell
was the boss of the job. I worked
there for two days with my brother
James Arvey and Lenza Wilson.
Quite a number of men were
working there among the ones I
recall were William Mitchell,
George Campbell, and Andrew
Lynch.

Also I remember going up there
with James Arvey when I was quite
young to get horses off the mountain
in the fall of the year. The ditch
was there at that time.



Garbin Arvey

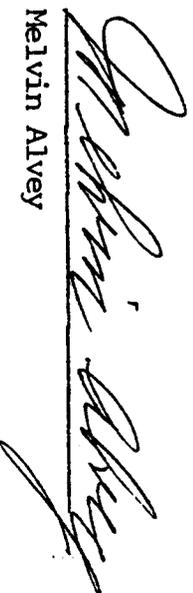
Subscribed and sworn before me this 6th day of January, 1992
Sandra L. Miller, Notary

Escalante, Utah
January 6, 1992

To Whom It May Concern:

In 1925 when I was a lad of 17 years Harvey Bailey hired me to go drive his team to help maintain the ditch on the Griffin Top of the mountain at the head of Sink-Hole Draw. As I recall, Phonse Campbell was the boss of the job. I worked there for two days with my brother James Alvey and Lenza Wilson. Quite a number of men were working there. Among the ones I recall were William Mitchell, George Campbell, and Andrew ~~W~~ Schow.

Also, I remember going up there with James Alvey when I was quite young to get horses off the mountain in the Fall of the year. The ditch was there at that time.


Melvin Alvey

MEMORANDUM

TO: The File
FROM: Marge Tempest
DATE: July 9, 1992
RE: Diligence Claim 97-1984 (D5729)

Following discussion with John Mabey of the Attorney General's Office, this memorandum is placed on file to provide background for evaluation of this diligence claim. This claim has been filed in an adjudicated area where the determination book has been presented to the court and a pre-trial order signed. The claimant, New Escalante Irrigation Company, did not protest the adjudication concerning the omission of this source or use of water. (It did protest the acre-foot duty for irrigation in the book, and this matter was settled with the pre-trial order.) Since the purpose of the adjudication was to provide a listing of all the water rights in the Escalante section of the hydrologic basin and since the court has decreed all but the unsettled protested claims, it would appear that no further diligence rights (except possibly on isolated sources which may have been missed and which do not contribute to the main stream) can be recognized. However, the irrigation company may wish to file a late protest with the court concerning this claim. It would then be decided by the court and the State Engineer whether or not to process the late protest and address this claim.

Should it become necessary to review and evaluate the claim, a couple of discrepancies need to be cleared up. It is noted that the document claims a priority of 1875 but contains information on storage reservoirs that were built much later (North Creek in 1941 and Wide Hollow in 1954). Also the explanatory section of Paragraph 12 mentions that the claim is filed to "appropriate" high water runoff. Appropriation would need to be made by a new application.

EXHIBIT D



State of Utah
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF WATER RIGHTS

Norman H. Bangerter
Governor
Dee C. Hansen
Executive Director
Robert L. Morgan
State Engineer

Southern Area
130 North Main Street
P.O. Box 563
Richfield, Utah 84701-0563
801-896-4429

November 22, 1991

New Escalante Irrigation Company
c/o Clayne Coleman
Escalante, Utah 84726

Dear Mr. Coleman:

It has been brought to the attention of the State Engineer of a spring diversion originating in Section 1, T33S, R1W, SLB&M. This diversion consists of an earthen canal that intercepts Iron Spring and other water sources that are tributary to the South Fork of the Sevier River. The canal conveys this water approximately two miles to a point where it becomes tributary to North Creek. Upon investigation, by the State Engineers office, it has been determined that there is not a water right of record for this diversion. Therefore, the diversion and use of this water is in violation of Section 73-3-1 Utah Code Annotated, which states that no appropriation of water may be made and no rights to the use thereof initiated shall be recognized except application for such appropriation first be made to the State Engineer.

I am requesting that as soon as possible, which may not be until the summer of 1992, the canal be backfilled and revegetated to discontinue the conveyance of water.

Should you wish to meet with me concerning this matter to discuss these items, I would be happy to do so.

Your earliest response would be appreciated.

Sincerely,

Kirk Forbush

Kirk Forbush, P.E.
Regional Engineer

KF/clw

cc: Lee Sim, Directing Distribution Engineer
Gerald Stoker, Regional Engineer

RECEIVED
NOV 27 1991
WATER DIV.

EXHIBIT E

97-2

DALLIN W. JENSEN
Assistant Attorney General
Attorney for State Engineer
442 State Capitol Building
Salt Lake City, Utah 84114
Telephone: 533-6071

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
IN AND FOR THE COUNTY OF WAYNE, STATE OF UTAH

IN THE MATTER OF THE GENERAL)
DETERMINATION OF THE RIGHT TO)
THE USE OF WATER, BOTH SURFACE) PRE-TRIAL ORDER
& UNDERGROUND, FOR THE DRAINAGE) Escalante Subdivision
AREA OF THE COLORADO RIVER IN) Civil No. 435
UTAH & EXCLUSIVE OF THE GREEN)
RIVER AND THE VIRGIN RIVER.)

The above-entitled matter came before the Court for a Pre-Trial Hearing on March 8, 1971, regarding the Protests which had been filed against the Alvey Wash Section of the Escalante Subdivision Proposed Determination of Water Rights. The remaining Protests filed against said Proposed Determination came before the Court for a Pre-Trial Hearing on September 18, 1974. Since both Pre-Trial Hearings involved separate segments of a single Proposed Determination of Water Rights, it is deemed appropriate to incorporate the results of both Hearings in a single Pre-Trial Order. The parties were represented by counsel as follows:

- A. ALLEN B. TIBBALS
Attorney at Law
315 East 2nd South
Salt Lake City, Utah 84111
Representing:
Leo L. Wilson
- B. CHRISTIAN RONNOM
Attorney at Law
Parks Office Building
Cedar City, Utah 84720
Representing:
J.C. and Lillie Spencer
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Representing:
Zelma Wilson
Thurman Spencer
Mrs. Paul Stead

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Representing:
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Canyon Road
Monroe, Utah 84754
Representing:
New Escalante Irrigation Company
Pine Creek Irrigation Company
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Assistant Attorney General
442 State Capitol Building
Salt Lake City, Utah 84114
Representing:
Utah State Engineer

I
JURISDICTION

This is an action to determine the rights to the use of all of the water, both surface and underground, within the drainage area of the Escalante Subdivision of the Escalante River Division of the Colorado River. This action is filed pursuant to the provisions of Chapter 4, Title 73, Utah Code Annotated 1953, as amended, and jurisdiction of the Court is not disputed and is hereby determined to be present.

II
DUTY OF WATER

1. The State Engineer, in the Proposed Determination of Water Rights, recommended a duty of water for irrigation purposes of three acre feet per acre of land on an interlocutory basis. This duty of water was protested by Mrs. Paul Steed, New Escalante Irrigation Company, and Pine Creek Irrigation Company. These protestants asserted that they could beneficially use water in excess of three acre feet per acre. The State Engineer has made a further investigation and evaluation of this matter and has recommended that the duty of water be raised from three acre feet per acre to four acre feet per acre on a trial basis, with the right of the State Engineer or any interested water user to petition the Court at any time to request that the duty of water be either raised or lowered.

NOW, THEREFORE, IT IS ORDERED that the duty of water for irrigation purposes in the area encompassed within the Escalante Subdivision is fixed at four acre feet per acre of land on an interlocutory basis. The State Engineer, or any interested water user, may petition this Court at any time to request that the duty of water be raised or lowered. Any party filing such a petition shall give reasonable notice thereof to all counsel involved. The establishment of a duty of water on an interlocutory basis is made without prejudice to the claims or assertions of any of the parties in any subsequent proceedings on the question of duty of water, and does not constitute a final determination by the Court of the duty of water for the Escalante Subdivision.

III RESOLVED ISSUES

The protest submitted by Leo L. Wilson against the Proposed Determination and which involved the rights of Thurman Spencer has been resolved by those two parties. A copy of the Stipulation which has heretofore been filed with this Court and which contains the terms and provisions of the settlement between these parties is hereby confirmed and approved.

NOW, THEREFORE, IT IS ORDERED THAT:

1. Thurman Spencer is entitled to a 27.3/88.4 interest of Certificate of Appropriation No. 363, and is entitled to .67 c.f.s. of water from Alvey Wash for the irrigation of a total of 27.3 acres of land described as follows:

Thirteen acres in the Northeast $\frac{1}{4}$ of the Southeast $\frac{1}{4}$; eleven acres in the Southwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$; .70 of one acre in the Northeast $\frac{1}{4}$ of the Southeast $\frac{1}{4}$; and 2.60 acres in the Northwest $\frac{1}{4}$ of the Southeast $\frac{1}{4}$; all in Section 28, Township 35 South, Range 3 East, Salt Lake Base and Meridian, or a total acreage of 27.3 acres.

This water is to be diverted by means of a sump in Alvey Wash located at a point South 1140 feet and East 1290 feet from the North $\frac{1}{4}$ Corner of Section 28, Township 35 South, Range 3 East, Salt Lake Base and Meridian, in lieu of the point of diversion set forth in the Proposed Determination for Thurman Spencer.

2. Leo L. Wilson is entitled to a 61.1/88.4 interest in Certificate of Appropriation No. 363, and is entitled to 3.0 c.f.s. of water under said Certificate for the irrigation of certain lands located in Section 28, Township 35 South, Range 3 East, Salt Lake Base and Meridian.

3. While said Stipulation resolved the issues in this matter between Leo L. Wilson and Thurman Spencer, there are certain issues remaining between Leo L. Wilson and the State Engineer. In accordance with the terms of the Stipulation between the parties, reserved for trial are the issues of the total number of acres Leo L. Wilson is entitled to irrigate and also the priority of his right. These issues are more fully defined in the "Issues to be Tried" Section of this Pre-Trial Order, infra.

IV
CONFIRMATION OF RIGHTS NOT PROTESTED

The State Engineer has published the Proposed Determination of Water Rights for the Escalante Subdivision of the Escalante River Division of the above-entitled general adjudication proceedings, and copies of said Proposed Determination have heretofore been served on those water users having water rights in said Subdivision and a copy filed with this Court pursuant to the provisions of Section 73-4-11, Utah Code Annotated 1953, as amended.

NOW, THEREFORE, IT IS ORDERED that the Proposed Determination of Water Rights for the Escalante Subdivision of the Escalante River Division as amended by this Pre-Trial Order is approved and the individual water rights contained in said Determination are hereby decreed to be valid existing water rights and are approved and confirmed as set forth in said Determination; those rights set forth in the "Issues to be Tried" Section of this Pre-Trial Order are excepted from the foregoing approval and confirmation to the extent that they are the subject matter of an individual protest; this Order is also subject to those changes in owner-

ship and approved Change Applications on any rights in said Determination which have occurred since the Determination was published by the State Engineer; the Court further reserves the right to correct typographical errors which may have occurred in the preparation of said Determination. Provided, however, the claims which are included in said Proposed Determination for the United States of America or any agencies thereof are listed for information purposes only, since the United States has not been made a party to this action.

V
ISSUES TO BE TRIED

1. LEO L. WILSON

A. Leo L. Wilson claims that the priority date for Water User's Claims Nos. 2 and 1226 is incorrect, and asserts that said Claims should have a priority date of September 12, 1908, which is the date the application said Claims are based upon was filed. The State Engineer admits that said Application was filed on September 12, 1908, but alleges that the Application (No. 2074) was properly lapsed and subsequently reinstated on June 3, 1914, by protestant's predecessor. This latter priority date has been carried forward and incorporated into Certificate of Appropriation No. 363, which was issued June 7, 1916. Protestant asserts that the lapsing of Application No. 2074 was improper, and that this Court should reinstate said Application with its original priority date. The State Engineer asserts that if protestant's predecessors were dissatisfied with the State Engineer's decision lapsing said Application, they were required to appeal that decision within sixty days of its issuance (§§73-3-14 & 15, Utah Code Annotated 1953, as amended), and that this Court is without jurisdiction to review this question some sixty-one years after the decision lapsing the Application was made.

B. Leo L. Wilson also asserts that he is entitled to irrigate 97.34 acres of land by virtue of his proportionate ownership of Certificate No. 363. The State Engineer asserts that the max-

inum irrigated acreage he could find on protestant's land when it was surveyed was 61.1 acres, and that protestant is limited to his beneficial use requirements for this acreage regardless of the amount of acreage set forth in Certificate No. 363, since beneficial use is the measure and limit of any water right.

The State Engineer further asserts that, in any event, protestant cannot claim more than a right to irrigate 78.3 acres of land under Certificate No. 363, since it is limited to the irrigation requirements of a total of 105.6 acres and protestant has stipulated that Thurman Spencer is entitled to the irrigation requirements of 27.3 acres. This would leave a maximum of 78.3 acres which Leo Wilson could claim under said Certificate.

2. J.C. & LILLIE SPENCER

A. The State Engineer has proposed a priority for protestants under Water User's Claim No. 1180 of 1916, based upon adverse use. Protestants assert that their predecessors in interest began the use of water in 1908 and that the priority of their right under said Claim should date from the time the use first began. The State Engineer alleges that there is no basis for a priority date for protestants ahead of that set forth in the Proposed Determination of Water Rights. The State Engineer further alleges that in this regard he prepared the Proposed Determination, based upon an understanding reached by the parties at a hearing conducted by the State Engineer prior to the preparation of the Proposed Determination of Water Rights concerning the historic use of water from this source.

Protestants claim to a 1908 priority is qualified to the extent that if no downstream user is successful in establishing a priority ahead of protestants', then protestants will accept the priority set forth in the Proposed Determination.

B. Protestants claim that all users on Alvey Nash have historically maintained dry dams at their respective points of diversion and that the various downstream rights have been satisfied by return flow or natural accretions to the stream. Protestants

assert that they have historically maintained a dry dam on Alvey Wash and are entitled to continue this practice. The State Engineer and certain of the other users allege that while there is some return flow and natural accretion to the stream it is not sufficient to satisfy the various rights along Alvey Wash during the irrigation season, and that it has not been the historical practice to place dry dams across this stream and that protestants are not entitled to any such right.

3. ZELMA WILSON

A. Zelma Wilson asserts that the proposed award of a water right to J.C. & Lillie Spencer under Water User's Claim No. 1180 is invalid, and that said claimants have not established a right to the use of the waters of Alvey Wash by adverse use or by any other means, and any right which may have been established has been lost by non-use. In the alternative, protestant alleges that if J.C. & Lillie Spencer have any right to the waters of Alvey Wash, such right is secondary in priority to all of protestant's rights from this source and could not exceed the irrigation requirements for fifteen acres of land.

B. Protestant claims a water right for the irrigation of sixty acres of land under Water User's Claim No. 3 with a June 9, 1909, priority. The State Engineer alleges that Water User's Claim No. 3 is limited to the water requirements of fifty acres of land with a flow of .50 c.f.s. as set forth in Certificate No. 235. The State Engineer further alleges that said Certificate is supplemented by Water User's Claim No. 1272 with a 1915 priority, and protestant is entitled to irrigate an additional ten acres of land under Water User's Claim No. 1440 with a 1917 priority. However, the State Engineer alleges that Water User's Claims Nos. 1272 and 1440 are predicated upon adverse use and that there is no basis for an earlier priority or additional use under said Claims. The State Engineer further alleges that said claims are in accord with the information received by the State Engineer from the protestant and other users at a Hearing con-

ducted by the State Engineer prior to the preparation of the
Proposed Determination.

Dated this 27th day of July, 1977.

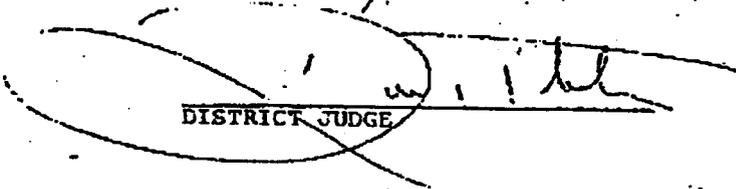

DISTRICT JUDGE

EXHIBIT F

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
OF THE STATE OF UTAH IN AND FOR
WAYNE COUNTY

**PROPOSED DETERMINATION OF WATER RIGHTS
IN COLORADO RIVER DRAINAGE**

ESCALANTE RIVER DIVISION

CODE NO. 97

ESCALANTE SUBDIVISION

PROPOSED DETERMINATION OF WATER RIGHTS IN THE COLORADO RIVER
 ESCALANTE RIVER DIVISION

W. U. CLAIM NO.	NAME & ADDRESS OF CLAIMANT	SOURCE & TYPE OF RIGHT	PRIORITY DATE	FLOW		POINT OF DIVERSION	PERIOD OF USE, Inclusive	
				cfs	ac ft		FROM	TO
660	United States of America Forest Service Federal Building Ogden, Utah	Lake Hollow Spring No. 1, Diligence Map 45	1875	.015		Stock water directly on spring located in the SE 1/4 Sec. 17, T34S, R1E, SLBGM.	June 21	Sept. 30
37	United States of America Forest Service Federal Building Ogden, Utah	Mitchell Spring No. 1 Application 15438, Cert. 3108 Map 45	Aug. 19, 1943	.0004		Stock water directly on spring located N. 540 ft. E. 1980 ft. from W 1/4 cor. Sec. 18, T34S, R1E, SLBGM.	June 1	Oct. 15
29	United States of America Forest Service Federal Building Ogden, Utah	Mitchell Spring No. 2 Application 15430 Cert. 3099 Map 45	Aug. 19, 1943	.00046		Stock water directly on spring located S. 140 ft. E. 2350 ft. from W 1/4 cor. Sec. 18, T34S, R1E, SLBGM.	June 1	Oct. 15
21	New Escalante Irrigation Company Melvin Alvey, President Escalante, Utah	North Fork Escalante River (North Creek) Application 11155, Amend. Change #2829 Cert. 5003* Map 46	June 14, 1939	1165.58 ac. ft.		S. 300 ft. E. 275 ft. from N 1/4 cor. Sec. 23, T34S, R1E, SLBGM. Point of Rediversion: N. 310 ft. E. 800 ft. from S 1/4 cor. Sec. 10, T35S, R2E, SLBGM.	April 1	Oct. 31

PROPOSED DETERMINATION OF WATER RIGHTS IN THE COLORADO RIVER
ESCALANTE RIVER DIVISION

ANNUAL WATER ALLOWED		PURPOSE, EXTENT & PLACE OF USE	CLAIMS USED FOR PURPOSE DESCRIBED	REMARKS	W. U. CLAIM NO.
Farm Headgate ac ft	Diverion from Source ac ft				
	*	STOCKWATERING: 230 cattle - Big Slope - Griffin Top Allotment SEE CLAIMS USED FOR PURPOSE DESCRIBED	For Claims Used for Purpose Described see Water User's Claim 40, Page 162.	* Diverion any, each, or all claims. Total yearly diversion under all claims mentioned 6.44 ac. ft.	660
	**	STOCKWATERING: 708 cattle - North Creek Allotment SEE CLAIMS USED FOR PURPOSE DESCRIBED	For Claims Used for Purpose Described see Water User's Claim 28, Page 153.	**Water User's Claim 37 is limited to the stockwatering requirements of 800 sheep and 25 cattle. Diverion any, each, or all claims. Total yearly diversion under all claims mentioned 19.82 ac. ft.	37
	**	STOCKWATERING: 708 cattle - North Creek Allotment SEE CLAIMS USED FOR PURPOSE DESCRIBED	For Claims Used for Purpose Described see Water User's Claim 28, Page 153.	**Diverion any, each, or all claims. Total yearly diversion under all claims mentioned 19.82 ac. ft. Water User's Claim 29 is limited to the stockwatering requirements of 800 sheep and 25 cattle.	29
**	**	IRRIGATION: 7.80 acs. SE1SE1 Sec. 10, T35S, R2E, SLB6M, 5.70 acs. SE1NE4, 5.60 acs. NE1SW4, 6.90 acs. NW1SW4, 14.90 acs. SE1SW4, 10.20 acs. SW1SW4 Sec. 11, T35S, R2E, SLB6M, 0.20 acs. NW1NW4, 13.20 acs. SE1NW4, 20.10 acs. SW1NW4, 2.30 acs. NW1SW4 Sec. 12, T35S, R2E, SLB6M, or total acreage of 86.90. SEE CLAIMS USED FOR PURPOSE DESCRIBED	21, 1200	* Storage in North Fork Reservoir from Jan. 1 to Dec. 31, Inclusive. Located in the SE1SW4, SW1SE4 Sec. 14, T34S, R1E, SLB6M, NE1NW4, NW1NE4 Sec. 23, T34S, R1E, SLB6M, with a maximum capacity of 393,652 ac. ft. **Water User's Claims 21 and 1200 are limited to the irrigation requirements of 2000 acres. Diverion any, each, or all claims. Total yearly diversion under all claims mentioned 260.70 ac. ft.	21
**	**	15.60 acs. NW1NE4, 7.30 acs. NE1NW4, 12.70 acs. SE1NE4, 12.40 acs. SW1NE4, 10.60 acs. SE1NW4, 4.20 acs. NW1SE4 Sec. 12, T35S, R2E, SLB6M, 18.20 acs. NE1NE4, 20.10 acs. NW1NE4, 17.30 acs. NE1NW4, 10.60 acs. NW1NW4, 17.80 acs. SE1NE4, 21.30 acs. SW1NE4, 10.70 acs. SE1NW4, 17.10 acs. SW1NW4, 13.0 acs. NE1SE4, 14.80 acs. NW1SE4, 7.90 acs. NE1SW4, 9.30 acs. NW1SW4, 10.86 acs. SE1SE4 Sec. 7, T35S, R3E, SLB6M, 2.0 acs. NW1NW4, 12.80 acs. NW1SW4, 6.30 acs. SE1SE4, 10.06 acs. SW1SE4, 22.07 acs. SE1SW4, 19.04 acs. SW1SW4 Sec. 8, T35S, R3E, SLB6M, 0.60 ac. SW1SW4 Sec. 9, T35S, R3E, SLB6M, 6.0 acs. NW1NW4, 0.20 ac. SW1NW4, 1.60 acs. NE1SW4, 19.20 acs. NW1SW4, 17.30 acs. SE1SW4, 34.50 acs. SW1SW4 Sec. 16, T35S, R3E, SLB6M,	21, 66, 1200	**Diverion any, each, or all claims. Total yearly diversion under all claims mentioned 7058.94 ac. ft.	

PROPOSED DETERMINATION OF WATER RIGHTS IN THE COLORADO RIVER

ESCALANTE RIVER DIVISION

(continued from former page)

CLAIMANT	SOURCE & TYPE OF RIGHT	PRIORITY DATE	FLOW		POINT OF DIVERSION	PERIOD OF USE, Inclusive	
			cfs	ac ft		FROM	TO
New Escalante Irrigation Company Melvin Alvey, President Escalante, Utah	North Fork Escalante River 11155 (North Creek), Application Amend. Change #-2829 Cert. 5003* Map 46	June 14, 1939	See Former Page		S. 300 ft. E. 275 ft. from N $\frac{1}{4}$ cor. Sec. 23, T34S, R1E, S1B6M. Point of Rediversion: N. 310 ft. E. 800 ft. from S $\frac{1}{4}$ cor. Sec. 10, T35S, R2E, S1B6M.	April 1	Oct. 31

PROPOSED DETERMINATION OF WATER RIGHTS IN THE COLORADO RIVER
ESCALANTE RIVER DIVISION

(Cont'd from former page)

Farm Headgate ac ft	Annual Water Allowed ac ft	Diverston from Source ac ft	PURPOSE, EXTENT & PLACE OF USE	CLAIMS USED FOR PURPOSE DESCRIBED	REMARKS	W. U. CLAIM NO.
**			<p>40.0 ac. NE1/4, 20.40 ac. NW1/4, 18.35 ac. NE1/4NW1/4, 17.38 ac. NW1/4NW1/4, 2.70 ac. SE1/4, 10.78 ac. SW1/4, 23.21 ac. SE1/4NW1/4, 21.74 ac. SW1/4, 31.60 ac. NE1/4, 39.10 ac. NW1/4SE1/4, 36.50 ac. NE1/4SW1/4, 38.90 ac. NW1/4SW1/4, 12.90 ac. SE1/4, 19.10 ac. SW1/4, 10.10 ac. SE1/4SW1/4, 3.90 ac. SW1/4SW1/4, 17.10 ac. R3E, S1/2, 3.50 ac. NE1/4, 4.39 ac. SE1/4, 29.90 ac. NE1/4, 11.10 ac. SE1/4, 12.0 ac. SW1/4, 4.39 ac. SE1/4, 29.90 ac. NE1/4, 25.20 ac. NE1/4, 41.30 ac. NW1/4, 32.60 ac. NE1/4, 39.20 ac. SE1/4, 26.80 ac. SW1/4, 29.60 ac. SE1/4, 1.0 ac. SW1/4, 40.0 ac. NE1/4, 35.80 ac. NW1/4, 35.0 ac. NE1/4SW1/4, 5.60 ac. NW1/4, 27.60 ac. SE1/4, 20.10 ac. SW1/4, 26.30 ac. SE1/4, 1.20 ac. SW1/4, 12.30 ac. SW1/4, 22.50 ac. NE1/4, 11.80 ac. NW1/4, 13.70 ac. SW1/4, 4.0 ac. NE1/4SW1/4, 36.30 ac. NW1/4, 13.70 ac. SW1/4, 25.60 ac. SE1/4, 40.0 ac. SW1/4, 21.10 ac. R3E, S1/2, 5.50 ac. SE1/4, 40.0 ac. T35S, R3E, S1/2, 21.0 ac. NW1/4, 38.30 ac. SW1/4, 10.10 ac. NE1/4, 10.0 ac. SE1/4, 40.0 ac. SW1/4, 27.10 ac. T35S, R3E, S1/2, 19.60 ac. NE1/4, 29.40 ac. SW1/4, 18.70 ac. NE1/4, 35.40 ac. SE1/4, 21.40 ac. SW1/4, 5.40 ac. SE1/4, 2.90 ac. NE1/4, 39.0 ac. NW1/4, 40.0 ac. SE1/4, 28.0 ac. NW1/4, 10.60 ac. SE1/4, 2.80 ac. SW1/4, 23.0 ac. NE1/4, 35.10 ac. NE1/4, 23.20 ac. NW1/4, 42.0 ac. NE1/4, 38.90 ac. NW1/4, 11.60 ac. SW1/4, 20.40 ac. SE1/4, 28.0 ac. SW1/4, 10.50 ac. NW1/4, 29.50 ac. SE1/4, 37.0 ac. SW1/4, 2.10 ac. SW1/4, 29.50 ac. SE1/4, 37.0 ac. SW1/4, 33.10 ac. R3E, S1/2, 28.30 ac. SW1/4, 17.20 ac. SE1/4, 7.40 ac. SW1/4, 13.60 ac. SW1/4, 24.80 ac. NE1/4, 9.50 ac. NW1/4, 3.10 ac. T36S, R3E, S1/2, 15.60 ac. NE1/4, 12.0 ac. NW1/4, 10.10 ac. T36S, R3E, S1/2, or total acreage of 2,352.98.</p> <p>SEE CLAIMS USED FOR PURPOSE DESCRIBED ON FORMER PAGE</p>	<p>See Former Page</p>	<p>**See Former Page</p>	21
**			<p>4.70 ac. NE1/4, 2.80 ac. SE1/4, 7.10 ac. T35S, R3E, S1/2, 12.70 ac. NW1/4, 9.40 ac. SE1/4, 29.70 ac. SW1/4, 23.0 ac. NE1/4, 7.60 ac. NW1/4, 8.10 ac. T35S, R3E, S1/2, or total acreage of 89.90.</p> <p>SEE CLAIMS USED FOR PURPOSE DESCRIBED</p>	<p>6, 12, 19, 21, 66, 1200, 1250, 1251</p>	<p>**Diverston any, each, or all claims. Total yearly diverston under all claims mentioned 269.70 ac. ft.</p>	
**			<p>3.10 ac. NW1/4, 8.10 ac. T35S, R3E, S1/2.</p> <p>SEE CLAIMS USED FOR PURPOSE DESCRIBED</p>	<p>21, 66, 587, 1200</p>	<p>**Diverston any, each, or all claims. Total yearly diverston under all claims mentioned 9.30 ac. ft.</p>	

(Cont'd on following page)

PROPOSED DETERMINATION OF WATER RIGHTS IN THE COLORADO RIVER
 ESCALANTE RIVER DIVISION

Continued from former page

W. U. CLAIM NO.	NAME & ADDRESS OF CLAIMANT	SOURCE & TYPE OF RIGHT	PRIORITY DATE	FLOW		POINT OF DIVERSION	PERIOD OF USE, Inclusive	
				acs	sq ft		FROM	TO
21	New Escalante Irrigation Company Melvin Alvey, President Escalante, Utah	North Fork Escalante River (North Creek) Application 11155 Amend. Change 2-2829 Cert. 5003* Map 46	June 14, 1939	See Former Page		S. 300 ft. E. 275 ft. from N $\frac{1}{4}$ cor. Sec. 23, T34S, R1E, SLB6M. Point of Rediversion: N. 310 ft. E. 800 ft. from S $\frac{1}{4}$ cor. Sec. 10, T35S, R2E, SLB6M.	April 1	Oct. 31
7-3	United States of America Forest Service Federal Building Ogden, Utah	North Creek, Diligence Map 61	1875			Stock water directly on stream from point where stream enters S. 170 ft. W. 1700 ft. from E $\frac{1}{4}$ cor. Sec. 25, T34S, R1E, SLB6M, to point where stream leaves NE $\frac{1}{4}$ Sec. 25, T34S, R1E, SLB6M.	June 16	Sept. 30

PROPOSED DETERMINATION OF WATER RIGHTS IN THE COLORADO RIVER

ESCALANTE RIVER DIVISION

(Cont'd from former page)

ANNUAL WATER ALLOWED		PURPOSE, EXTENT & NACE OF USE	CLAIMS USED FOR PURPOSE DESCRIBED	REMARKS	W. U. CLAIM NO.
Farm Headgate ac ft	Diversion from Source ac ft				
**		13.50 acs. SE1/4 Sec. 21, T35S, R3E, S1B6M, 18.0 acs. NE1/4 Sec. 28, T35S, R3E, S1B6M, or total acreage of 42.0.	2, 21, 66, 1200	** Diversion any, each, or all claims. Total yearly diversion under all claims mentioned 126.00 ac. ft.	21
**		SEE CLAIMS USED FOR PURPOSE DESCRIBED			
**		19.10 acs. SE1/4 Sec. 28, T35S, R3E, S1B6M. SEE CLAIMS USED FOR PURPOSE DESCRIBED	2, 21, 66, 1200, 1226	** Diversion any, each, or all claims. Total yearly diversion under all claims mentioned 57.30 ac. ft.	
**		0.40 ac. NW1/4 Sec. 16, 80 ac. SE1/4 Sec. 27, T35S, R3E, S1B6M, 0.30 ac. NE1/4 Sec. 28, T35S, R3E, S1B6M, or total acreage of 25.0.	21, 66, 1180, 1200	** Diversion any, each, or all claims. Total yearly diversion under all claims mentioned 75.0 ac. ft.	
**		SEE CLAIMS USED FOR PURPOSE DESCRIBED			
**		3.40 acs. NE1/4, 10.70 acs. NW1/4, 16.70 acs. SE1/4, 29.20 acs. SW1/4 Sec. 34, T35S, R3E, S1B6M, or total acreage of 60.0.	3, 21, 66, 1200, 1272	** Diversion any, each, or all claims. Total yearly diversion under all claims mentioned 180.0 ac. ft.	
**		SEE CLAIMS USED FOR PURPOSE DESCRIBED			
**		5.0 acs. SW1/4 Sec. 8, T35S, R3E, S1B6M. SEE CLAIMS USED FOR PURPOSE DESCRIBED	21, 66, 1200, 1255	** Diversion any, each, or all claims. Total yearly diversion under all claims mentioned 15.0 ac. ft.	
**		1.0 ac. SW1/4 Sec. 8, T35S, R3E, S1B6M. SEE CLAIMS USED FOR PURPOSE DESCRIBED	21, 66, 1200, 1254	** Diversion any, each, or all claims. Total yearly diversion under all claims mentioned 3.0 ac. ft.	
**		11.0 acs. SW1/4, 0.70 ac. NE1/4, 2.60 acs. NW1/4 Sec. 28, T35S, R3E, S1B6M, or total acreage of 14.30.	21, 66, 1200, 1261	** Diversion any, each, or all claims. Total yearly diversion under all claims mentioned 42.90 ac. ft.	
**		SEE CLAIMS USED FOR PURPOSE DESCRIBED			
**		13.0 acs. NE1/4 Sec. 28, T35S, R3E, S1B6M. SEE CLAIMS USED FOR PURPOSE DESCRIBED	21, 66, 1200, 1262	** Diversion any, each, or all claims. Total yearly diversion under all claims mentioned 39.0 ac. ft.	
**		STOCKWATERING 708 cattle - North Creek Allotment SEE CLAIMS USED FOR PURPOSE DESCRIBED	For Claims Used for Purpose Described see Water User's Claim 28, Page 153.	* Diversion any, each, or all claims. Total yearly diversion under all claims mentioned 19.82 ac. ft.	773

PROPOSED DETERMINATION OF WATER RIGHTS IN THE COLORADO RIVER
 ESCALANTE RIVER DIVISION

U. S. CLAIM NO.	NAME & ADDRESS OF CLAIMANT	SOURCE & TYPE OF RIGHT	PRIORITY DATE	FLOW		POINT OF DIVERSION	PERIOD OF USE, Inclusive	
				cu ft	ac ft		FROM	TO
1143	Lstrom, Stanley Escalante, Utah	Wide Hollow Wash, Diligence Map 62c	1875			Stock water directly on stream from point where stream enters NW 1/4 Sec. 2, T35S, R2E, SLB&M, to point located S. 790 ft. W. 650 ft. from N 1/4 cor. Sec. 12, T35S, R2E, SLB&M.	Jan. 1	Dec. 31
314	United States of America Bureau of Land Management P. O. Box 777 Salt Lake City, Utah	Cliff Dwelling Spring, Diligence Map 62c	1875	0.011		Stock water directly on spring located in the NW 1/4 Sec. 9, T35S, R2E, SLB&M.	Jan. 1	Dec. 31
161	Bailey, Gail C. & Gloria P. O. Box 17 Escalante, Utah	Escalante River, Diligence Map 62c	1875			Stock water directly on stream from point where stream enters W 1/2 Sec. 10, T35S, R2E, SLB&M, to point where stream leaves SW 1/4 Sec. 11, T35S, R2E, SLB&M.	Jan. 1	Dec. 31
66	New Escalante Irrigation Company Melvin Alvey, President Escalante, Utah	#1 - Escalante River #2 - Wide Hollow Wash Application 26833, Cert. 6025 * Map 62c	April 8, 1955			#1 - N. 210 ft. E. 800 ft. from S 1/4 cor. Sec. 10, T35S, R2E, SLB&M. #2 - S. 605 ft. W. 275 ft. from N 1/4 cor. Sec. 12, T35S, R2E, SLB&M.	April 1	Oct. 31

PROPOSED DETERMINATION OF WATER RIGHTS IN THE COLORADO RIVER
 ESCALANTE RIVER DIVISION

ANNUAL WATER ALLOWED		PURPOSE, EXTENT & PLACE OF USE	CLAIMS USED FOR PURPOSE DESCRIBED	REMARKS	W. U. CLAIM NO.
Farm Headgate ac. ft.	Diverion from Source ac. ft.				
	*	STOCKWATERING: 225 cattle, 5 horses SEE CLAIMS USED FOR PURPOSE DESCRIBED	1143, 1144, 1145, 1146, 1147, 1148, 1149, 1160, 1247	* Diverion any, each, or all claims. Total yearly diversion under all claims mentioned 6.44 ac. ft.	1143
	*	STOCKWATERING: 40 cattle - Community Allotment 28 SEE CLAIMS USED FOR PURPOSE DESCRIBED	For Claims Used for Purpose Described see Water User's Claim 1290, Page 185.	* Diverion any, each, or all claims. Total yearly diversion under all claims mentioned 1.12 ac. ft.	1314
	*	STOCKWATERING: 20 cattle, 2 horses SEE CLAIMS USED FOR PURPOSE DESCRIBED	1157, 1158, 1159, 1161, 1198, 1220	* Diverion any, each, or all claims. Total yearly diversion under all claims mentioned 0.62 ac. ft.	1161
**		IRRIGATION: 15.60 ac. NW 1/4, 7.30 ac. NE 1/4, 12.70 ac. SE 1/4, 12.40 ac. SW 1/4, 10.60 ac. SE 1/4, 8.60 ac. NE 1/4, 4.20 ac. NW 1/4, 12.35 ac. R 2E, S 18.20 ac. NE 1/4, 20.10 ac. NW 1/4, 17.30 ac. NE 1/4, 10.60 ac. NW 1/4, 17.80 ac. SE 1/4, 21.30 ac. SW 1/4, 10.70 ac. SE 1/4, 17.10 ac. SW 1/4, 13.0 ac. NE 1/4, 14.80 ac. NW 1/4, 17.90 ac. NE 1/4, 9.30 ac. NW 1/4, 10.86 ac. SE 1/4, 7.35 ac. R 3E, S 18.20 ac. NW 1/4, 12.50 ac. NW 1/4, 6.30 ac. SE 1/4, 10.06 ac. SW 1/4, 22.07 ac. SE 1/4, 19.04 ac. SW 1/4, 8.73 ac. R 3E, S 18.20 ac. NW 1/4, 1.60 ac. NE 1/4, 19.20 ac. NW 1/4, 0.20 ac. SW 1/4, 1.60 ac. NE 1/4, 16.35 ac. NW 1/4, 17.30 ac. NE 1/4, 34.50 ac. SW 1/4, 16.17 ac. R 2E, S 18.20 ac. NW 1/4, 2.70 ac. SE 1/4, 10.78 ac. NE 1/4, 18.35 ac. NE 1/4, 17.38 ac. NW 1/4, 2.70 ac. SE 1/4, 10.78 ac. NE 1/4, 23.21 ac. SE 1/4, 21.74 ac. SE 1/4, 31.60 ac. NE 1/4, 39.10 ac. NW 1/4, 36.50 ac. NE 1/4, 38.90 ac. NW 1/4, 12.90 ac. SE 1/4, 19.10 ac. SW 1/4, 10.10 ac. NE 1/4, 4.39 ac. SE 1/4, 29.90 ac. NE 1/4, 11.10 ac. SE 1/4, 12.0 ac. SW 1/4, 18.17 ac. R 2E, S 18.20 ac. NW 1/4, 41.30 ac. NW 1/4, 32.60 ac. NE 1/4, 39.20 ac. SE 1/4, 26.80 ac. SW 1/4, 29.60 ac. SE 1/4, 1.0 ac. SW 1/4, 40.0 ac. NE 1/4, 35.80 ac. NW 1/4, 35.0 ac. NE 1/4, 5.60 ac. NW 1/4, 27.60 ac. SE 1/4, 34.20 ac. SW 1/4, 26.30 ac. SE 1/4, 27.60 ac. NW 1/4, 12.30 ac. SW 1/4, 4.0 ac. NE 1/4, 11.80 ac. NW 1/4, 12.30 ac. SW 1/4, 4.0 ac. NE 1/4, 36.30 ac. NW 1/4, 13.70 ac. SW 1/4, 25.60 ac. SE 1/4, 40.0 ac. SW 1/4, 21.13 ac. R 3E, S 18.20 ac. NW 1/4, 5.50 ac. SW 1/4, 21.10 ac. NW 1/4, 21.0 ac. NW 1/4, 38.30 ac. NE 1/4, 40.0 ac. NW 1/4, 10.10 ac. SW 1/4, 10.0 ac. SE 1/4, 40.0 ac. SW 1/4, 10.10 ac. R 3E, S 18.20 ac. NE 1/4, 29.40 ac. NW 1/4, 28.73 ac. NE 1/4, 35.40 ac. SE 1/4, 21.40 ac. NW 1/4, 18.70 ac. NE 1/4, 2.90 ac. NE 1/4, 39.0 ac. NW 1/4, 5.40 ac. SE 1/4, 2.90 ac. NE 1/4, 39.0 ac. NW 1/4, 40.0 ac. SE 1/4, 28.0 ac. SW 1/4, 10.60 ac. SE 1/4, 2.80 ac. SW 1/4, 23.0 ac. NE 1/4, 2.80 ac. SE 1/4, 2.80 ac. SW 1/4, 42.0 ac. NE 1/4, 35.10 ac. NE 1/4, 23.20 ac. NW 1/4, 42.0 ac. NE 1/4	21, 66, 1200	* Storage in Wide Hollow Reservoir from Oct. 31 to March 1, inclusive, located in the SW 1/4, SW 1/4, Sec. 1, E 1/2, Sec. 2, NE 1/4, Sec. 3, NW 1/4, NW 1/4, Sec. 12, T 35S, R 2E, S 18.20 ac. NW 1/4, with a maximum capacity of 2,324.53 ac. ft. * Water User's Claims 21, 66 and 1200 are limited to the irrigation requirements of 2266.01 acres. * Diverion any, each, or all claims. Total yearly diversion under all claims mentioned 7,058.94 ac. ft.	66

(Cont'd on following page)

PROPOSED DETERMINATION OF WATER RIGHTS IN THE COLORADO RIVER

ESCALANTE RIVER DIVISION

(Cont'd from former page)

W. U. CLAIM NO.	NAME & ADDRESS OF CLAIMANT	SOURCE & TYPE OF RIGHT	PRIORITY DATE	FLOW		POINT OF DIVERSION	PERIOD OF USE, Inclusive	
				cfs	ac ft		FROM	TO
66	New Escalante Irrigation Company Melvin Alvey, President Escalante, Utah	See Former Page	April 8, 1955			See Former Page	April 1	Oct. 31

(Cont'd on following page)

PROPOSED DETERMINATION OF WATER RIGHTS IN THE COLORADO RIVER

ESCALANTE RIVER DIVISION

(Cont'd from former page)

Farm Headgate	Diversion from Source	PURPOSE, EXTENT & PLACE OF USE	CLAIMS USED FOR PURPOSE DESCRIBED	REMARKS	W.U. CLAIM NO.
**	**	38.90 acs. NW1/4NW1/4, 11.60 acs. SW1/4NE1/4, 20.40 acs. SE1/4NW1/4, 28.0 acs. SW1/4NW1/4, 10.50 acs. NW1/4SE1/4, 38.90 acs. NE1/4SW1/4, 23.80 acs. NW1/4SW1/4, 2.10 acs. SW1/4SE1/4, 29.50 acs. SE1/4SW1/4, 37.0 acs. SW1/4SW1/4, Sec. 33, T35S, R3E, SLBEM, 28.30 acs. NE1/4SW1/4, Sec. 34, T35S, R3E, SLBEM, 15.60 acs. SE1/4NW1/4, 13.60 acs. SW1/4NW1/4, 17.20 acs. SE1/4SW1/4, 7.40 acs. SW1/4SW1/4, Sec. 3, T36S, R3E, SLBEM, 24.80 acs. NE1/4NW1/4, 9.50 acs. NW1/4NW1/4, Sec. 4, T36S, R3E, SLBEM, 15.60 acs. NE1/4NW1/4, 12.0 acs. NW1/4NW1/4, Sec. 10, T36S, R3E, SLBEM, or total acreage of 2,352.98.	See Former Page	See Former Page	66
**	**	SEE CLAIMS USED FOR PURPOSE DESCRIBED ON FORMER PAGE 4.70 acs. NE1/4NE1/4, 2.80 acs. SE1/4NE1/4, Sec. 7, T35S, R3E, SLBEM, 12.70 acs. NW1/4NW1/4, 9.40 acs. SE1/4NW1/4, 29.70 acs. SW1/4NW1/4, 23.0 acs. NE1/4SW1/4, 7.60 acs. NW1/4SW1/4, Sec. 8, T35S, R3E, SLBEM, or total acreage of 89.90.	6, 12, 19, 21, 66, 1200, 1250, 1251	** Diversion any, each, or all claims. Total yearly diversion under all claims mentioned 269.70 ac. ft.	
**	**	SEE CLAIMS USED FOR PURPOSE DESCRIBED 3.10 acs. NW1/4NW1/4, Sec. 8, T35S, R3E, SLBEM.	21, 66, 587, 1200	** Diversion any, each, or all claims. Total yearly diversion under all claims mentioned 9.30 ac. ft.	
**	**	SEE CLAIMS USED FOR PURPOSE DESCRIBED 13.50 acs. SE1/4SE1/4, 3.0 acs. SW1/4SE1/4, Sec. 21, T35S, R3E, SLBEM, 18.0 acs. NE1/4NE1/4, 7.50 acs. SE1/4NE1/4, Sec. 28, T35S, R3E, SLBEM, or total acreage of 42.0.	2, 21, 66, 1200	** Diversion any, each, or all claims. Total yearly diversion under all claims mentioned 126.0 ac. ft.	
**	**	SEE CLAIMS USED FOR PURPOSE DESCRIBED 19.10 acs. SE1/4NE1/4, Sec. 28, T35S, R3E, SLBEM	2, 21, 66, 1200, 1226	** Diversion any, each, or all claims. Total yearly diversion under all claims mentioned 57.30 ac. ft.	
**	**	SEE CLAIMS USED FOR PURPOSE DESCRIBED 0.40 ac. NW1/4SW1/4, 16.80 acs. SE1/4SW1/4, 7.50 acs. SW1/4SW1/4, Sec. 27, T35S, R3E, SLBEM, 0.30 ac. NE1/4NW1/4, Sec. 28, T35S, R3E, SLBEM, or total acreage of 25.0.	21, 66, 1180, 1200	** Diversion any, each, or all claims. Total yearly diversion under all claims mentioned 75.0 ac. ft.	
**	**	SEE CLAIMS USED FOR PURPOSE DESCRIBED 3.40 acs. NE1/4SE1/4, 10.70 acs. NW1/4SE1/4, 16.70 acs. SE1/4SE1/4, 29.20 acs. SW1/4SE1/4, Sec. 34, T35S, R3E, SLBEM, or total acreage of 60.0.	2, 21, 66, 1200, 1272	** Diversion any, each, or all claims. Total yearly diversion under all claims mentioned 180.0 ac. ft.	
**	**	SEE CLAIMS USED FOR PURPOSE DESCRIBED 5.0 acs. SW1/4SE1/4, Sec. 8, T35S, R3E, SLBEM.	21, 66, 1200, 1255	** Diversion any, each, or all claims. Total yearly diversion under all claims mentioned 15.0 ac. ft.	

(Cont'd on following page)

PROPOSED DETERMINATION OF WATER RIGHTS IN THE COLORADO RIVER

ESCALANTE RIVER DIVISION

W. U. CLAIM NO.	NAME & ADDRESS OF CLAIMANT	SOURCE & TYPE OF RIGHT	PRIORITY DATE	FLOW		POINT OF DIVERSION	PERIOD OF USE, Inclusive	
				cfs	ac ft		FROM	TO
66	New Escalante Irrigation Company Melvin Alvey, President Escalante, Utah	#1 - Escalante River #2 - Wide Hollow Wash Application 26833 Cert. 6025 * Map 62c	April 8, 1955			#1 - N. 310 ft. E. 800 ft. from S $\frac{1}{4}$ cor. Sec. 10, T35S, R2E, SLBEM. #2 - S. 605 ft. W. 275 ft. from N $\frac{1}{4}$ cor. Sec. 12, T35S, R2E, SLBEM.	April 1	Oct. 31
1200	New Escalante Irrigation Company Melvin Alvey, President Escalante, Utah	Escalante River Hayes Decree, Sec. A & C dated June 25, 1919 Change App. a-1894, Cert. a-225 Change App. a-5317 - Pending Map 62c	1875	40.0		N. 310 ft. E. 800 ft. from S $\frac{1}{4}$ cor. Sec. 10, T35S, R2E, SLBEM.	April 1	Oct. 31

(Cont'd on following page)

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PROPOSED DETERMINATION OF WATER RIGHTS IN THE COLORADO RIVER
 ESCALANTE RIVER DIVISION

(Cont'd from former page)

ANNUAL WATER ALLOWED		PURPOSE, EXTENT & PLACE OF USE	CLAIMS USED FOR PURPOSE DESCRIBED	REMARKS	W.U. CLAIM NO.
Farm Headgate	Diversion from Source				
ac ft	ac ft				
**		1.0 ac. SW ¹ / ₄ SE ¹ / ₄ Sec. 8, T35S, R3E, SLBEM. SEE CLAIMS USED FOR PURPOSE DESCRIBED	21, 66, 1200, 1254	** Diversion any, each, or all claims. Total yearly diversion under all claims mentioned 3.0 ac. ft.	66
**		11.0 acs. SW ¹ / ₄ NE ¹ / ₄ , 0.70 ac. NE ¹ / ₄ SE ¹ / ₄ , 2.60 acs. NW ¹ / ₄ SE ¹ / ₄ Sec. 28, T35S, R3E, SLBEM, or total acreage of 14.30.	21, 66, 1200, 1261	** Diversion any, each, or all claims. Total yearly diversion under all claims mentioned 42.90 ac. ft.	
**		SEE CLAIMS USED FOR PURPOSE DESCRIBED			
**		13.0 acs. NE ¹ / ₄ SE ¹ / ₄ Sec. 28, T35S, R3E, SLBEM. SEE CLAIMS USED FOR PURPOSE DESCRIBED	21, 66, 1200, 1261, 1262	** Diversion any, each, or all claims. Total yearly diversion under all claims mentioned 39.0 ac. ft.	
*		IRRIGATION: 7.80 acs. SE ¹ / ₄ SE ¹ / ₄ Sec. 10, T35S, R2E, SLBEM, 5.70 acs. SE ¹ / ₄ NE ¹ / ₄ , 5.60 acs. NE ¹ / ₄ SW ¹ / ₄ , 6.90 acs. NW ¹ / ₄ SW ¹ / ₄ , 14.90 acs. SE ¹ / ₄ SW ¹ / ₄ , 10.20 acs. SW ¹ / ₄ SW ¹ / ₄ Sec. 11, T35S, R2E, SLBEM, 0.20 ac. NW ¹ / ₄ NW ¹ / ₄ , 13.20 acs. SE ¹ / ₄ NW ¹ / ₄ , 20.10 acs. SW ¹ / ₄ NW ¹ / ₄ , 2.30 acs. NW ¹ / ₄ SW ¹ / ₄ Sec. 12, T35S, R2E, SLBEM, or total acreage of 86.90.	21, 1200	* Water User's Claims 21 and 1200 are limited to the irrigation requirements of 2000.0 acres. Diversion any, each, or all claims. Total yearly diversion under all claims mentioned 260.70 ac. ft.	1200
**		SEE CLAIMS USED FOR PURPOSE DESCRIBED			
**		15.60 acs. NW ¹ / ₄ NE ¹ / ₄ , 7.30 acs. NE ¹ / ₄ NW ¹ / ₄ , 12.70 acs. SE ¹ / ₄ NE ¹ / ₄ , 12.40 acs. SW ¹ / ₄ NE ¹ / ₄ , 10.60 acs. SE ¹ / ₄ NW ¹ / ₄ , 8.60 acs. NE ¹ / ₄ SE ¹ / ₄ , 4.20 acs. NW ¹ / ₄ SE ¹ / ₄ Sec. 12, T35S, R2E, SLBEM, 18.20 acs. NE ¹ / ₄ NE ¹ / ₄ , 20.10 acs. NW ¹ / ₄ NE ¹ / ₄ , 20.10 acs. NW ¹ / ₄ NE ¹ / ₄ , 17.30 acs. NE ¹ / ₄ NW ¹ / ₄ , 10.60 acs. NW ¹ / ₄ NW ¹ / ₄ , 17.80 acs. SE ¹ / ₄ NE ¹ / ₄ , 10.70 acs. SE ¹ / ₄ NW ¹ / ₄ , 17.10 acs. SW ¹ / ₄ NW ¹ / ₄ , 13.0 acs. NE ¹ / ₄ SE ¹ / ₄ , 14.80 acs. NW ¹ / ₄ SE ¹ / ₄ , 7.90 acs. NE ¹ / ₄ SW ¹ / ₄ , 9.30 acs. NW ¹ / ₄ SW ¹ / ₄ , 10.86 acs. SE ¹ / ₄ SE ¹ / ₄ Sec. 7, T35S, R3E, SLBEM, 2.0 acs. NW ¹ / ₄ NW ¹ / ₄ , 12.50 acs. NW ¹ / ₄ SW ¹ / ₄ , 6.30 acs. SE ¹ / ₄ SE ¹ / ₄ , 10.06 acs. SW ¹ / ₄ SE ¹ / ₄ , 22.07 acs. SE ¹ / ₄ SW ¹ / ₄ , 19.04 acs. SW ¹ / ₄ SW ¹ / ₄ Sec. 8, T35S, R3E, SLBEM, 0.20 ac. SW ¹ / ₄ SW ¹ / ₄ Sec. 9, T35S, R3E, SLBEM, 6.0 acs. NW ¹ / ₄ NW ¹ / ₄ , 0.20 ac. SW ¹ / ₄ NW ¹ / ₄ , 1.60 acs. NE ¹ / ₄ SW ¹ / ₄ , 19.20 acs. NW ¹ / ₄ SW ¹ / ₄ , 40.0 acs. NE ¹ / ₄ NE ¹ / ₄ , 34.50 acs. SW ¹ / ₄ SW ¹ / ₄ Sec. 16, T35S, R3E, SLBEM, 0.60 acs. NE ¹ / ₄ NE ¹ / ₄ , 20.40 acs. NW ¹ / ₄ NE ¹ / ₄ , 18.35 acs. NE ¹ / ₄ NW ¹ / ₄ , 17.38 acs. NW ¹ / ₄ NW ¹ / ₄ , 2.70 acs. SE ¹ / ₄ NE ¹ / ₄ , 10.78 acs. SW ¹ / ₄ NE ¹ / ₄ , 23.21 acs. SE ¹ / ₄ NW ¹ / ₄ , 2.70 acs. SW ¹ / ₄ NW ¹ / ₄ , 31.60 acs. NE ¹ / ₄ SE ¹ / ₄ , 39.10 acs. NW ¹ / ₄ SE ¹ / ₄ , 36.50 acs. NE ¹ / ₄ SW ¹ / ₄ , 38.90 acs. NW ¹ / ₄ SW ¹ / ₄ , 12.90 acs. SE ¹ / ₄ SE ¹ / ₄ , 19.10 acs. SW ¹ / ₄ SE ¹ / ₄ , 10.10 acs. SE ¹ / ₄ SW ¹ / ₄ , 3.90 acs. SW ¹ / ₄ SW ¹ / ₄ Sec. 17, T35S, R3E, SLBEM, 3.50 acs. NE ¹ / ₄ NE ¹ / ₄ , 4.39 acs. SE ¹ / ₄ NE ¹ / ₄ , 29.90 acs. NE ¹ / ₄ SE ¹ / ₄ , 11.10 acs. SE ¹ / ₄ SE ¹ / ₄ , 12.0 acs. SW ¹ / ₄ NE ¹ / ₄ Sec. 18, T35S, R3E, SLBEM, 25.20 acs. NE ¹ / ₄ NE ¹ / ₄ , 41.30 acs. NW ¹ / ₄ NE ¹ / ₄ , 32.60 acs. NE ¹ / ₄ NW ¹ / ₄ , 39.20 acs. SE ¹ / ₄ NE ¹ / ₄ , 26.80 acs. SW ¹ / ₄ NE ¹ / ₄ , 29.60 acs. SE ¹ / ₄ NW ¹ / ₄ , 1.0 ac. SW ¹ / ₄ NW ¹ / ₄ , 40.0 acs. NE ¹ / ₄ SE ¹ / ₄ , 35.80 acs. NW ¹ / ₄ SE ¹ / ₄ , 35.0 acs. NE ¹ / ₄ SW ¹ / ₄ , 5.60 acs. NW ¹ / ₄ SW ¹ / ₄ , 27.60 acs. SE ¹ / ₄ SE ¹ / ₄ , 34.20 acs. SW ¹ / ₄ SE ¹ / ₄ , 26.30 acs. SE ¹ / ₄ SW ¹ / ₄ ,	21, 66, 1200	** Diversion any, each, or all claims. Total yearly diversion under all claims mentioned 7,058.94 ac. ft.	

PROPOSED DETERMINATION OF WATER RIGHTS IN THE COLORADO RIVER

ESCALANTE RIVER DIVISION

(Cont'd from former page)

W. U. CLAIM NO.	NAME & ADDRESS OF CLAIMANT	SOURCE & TYPE OF RIGHT	PRIORITY DATE	FLOW		POINT OF DIVERSION	PERIOD OF USE, Inclusive	
				cfs	ac ft		FROM	TO
1200	New Escalante Irrigation Company Melvin Alvey, President Escalante, Utah	Escalante River Hayes Decree, Sec. A & C dated June 25, 1919 Change Application a-1894 Cert. a-225 Change Application a-5317 - Pend. Map 62c	1875	40.0		N. 310 ft. E. 800 ft. from S $\frac{1}{2}$ cor. Sec. 10, T35S, R2E, S186M.	April 1	Oct. 31

(Cont'd on following page)

PROPOSED DETERMINATION OF WATER RIGHTS IN THE COLORADO RIVER
 ESCALANTE RIVER DIVISION

(Cont'd from former page)		ANNUAL WATER ALLOWED	PURPOSE, EXTENT & PLACE OF USE	CLAIMS USED FOR PURPOSE DESCRIBED	REMARKS	W.U. CLAIM NO.
Farm Headgate	Diversion from Source					
ac ft	ac ft					
**			1. 20 acs. SW 1/4 SW 1/4 Sec. 20, T35S, R3E, SLBGM, 22.50 acs. NE 1/4 NW 1/4, 11.80 acs. NW 1/4 NW 1/4, 12.30 acs. SW 1/4 NW 1/4, 4.0 acs. NE 1/4 SW 1/4, 36.30 acs. NW 1/4 SW 1/4, 13.70 acs. SW 1/4 SE 1/4, 25.60 acs. SE 1/4 SW 1/4, 40.0 acs. SW 1/4 SW 1/4 Sec. 21, T35S, R3E, SLBGM, 5.50 acs. SW 1/4 NW 1/4 Sec. 27, T35S, R3E, SLBGM, 21.0 acs. NW 1/4 NE 1/4, 38.30 acs. NE 1/4 NW 1/4, 40.0 acs. NW 1/4 NW 1/4, 10.10 acs. SW 1/4 NE 1/4, 10.0 acs. SE 1/4 NW 1/4, 40.0 acs. acs. NW 1/4 NE 1/4, 18.70 acs. NE 1/4 NW 1/4, 35.40 acs. NE 1/4 NE 1/4, 29.40 acs. SW 1/4 NE 1/4, 5.40 acs. SE 1/4 NW 1/4, 2.90 acs. NE 1/4 SE 1/4, 39.0 acs. NW 1/4 SE 1/4, 40.0 acs. SE 1/4 SE 1/4, 28.0 acs. SW 1/4 SE 1/4, 29.0 acs. T35S, R3E, SLBGM, SW 1/4 NE 1/4, 23.0 acs. NW 1/4 NE 1/4, 10.60 acs. SE 1/4 NE 1/4, 2.80 acs. SW 1/4 NE 1/4, 42.0 acs. NE 1/4 NW 1/4, 38.90 acs. NW 1/4 NW 1/4, 11.60 acs. NW 1/4 NE 1/4, 20.40 acs. SE 1/4 NW 1/4, 28.0 acs. SW 1/4 SW 1/4, 2.10 acs. SW 1/4 SE 1/4, 29.50 acs. SE 1/4 SW 1/4, 37.0 acs. SW 1/4 SW 1/4 Sec. 33, T35S, R3E, SLBGM, 15.60 acs. acs. NE 1/4 SW 1/4 Sec. 34, T35S, R3E, SLBGM, 15.60 acs. SE 1/4 NW 1/4, 13.60 acs. SW 1/4 NW 1/4, 17.20 acs. SE 1/4 SW 1/4, 7.40 acs. SW 1/4 SW 1/4 Sec. 3, T36S, R3E, SLBGM, 24.80 acs. NE 1/4 NW 1/4, 9.50 acs. NW 1/4 NW 1/4 Sec. 4, T36S, R3E, SLBGM, 15.60 acs. NE 1/4 NW 1/4, 12.0 acs. NW 1/4 NW 1/4 Sec. 10, T36S, R3E, SLBGM, or total acreage of 2,352.98.	See Former Page	1200	
**			SEE CLAIMS USED FOR PURPOSE DESCRIBED ON FORMER PAGE			
**			4. 70 acs. NE 1/4 NE 1/4, 2.80 acs. SE 1/4 NE 1/4 Sec. 7, T35S, R3E, SLBGM, 12.70 acs. NW 1/4 NW 1/4, 9.40 acs. SE 1/4 NW 1/4, 29.70 acs. SW 1/4 NW 1/4, 23.0 acs. NE 1/4 SW 1/4, 7.60 acs. NW 1/4 SW 1/4 Sec. 8, T35S, R3E, SLBGM, or total acreage of 89.90.	6, 12, 19, 21, 66, 1200, 1250, 1251	** Diversion any, each, or all claims. Total yearly diversion under all claims mentioned 269.70 ac. ft.	
**			SEE CLAIMS USED FOR PURPOSE DESCRIBED			
**			3. 10 acs. NW 1/4 NW 1/4 Sec. 8, T35S, R3E, SLBGM.	21, 66, 587, 1200	** Diversion any, each, or all claims. Total yearly diversion under all claims mentioned 9.30 ac. ft.	
**			SEE CLAIMS USED FOR PURPOSE DESCRIBED			
**			13.50 acs. SE 1/4 SE 1/4, 3.0 acs. SW 1/4 SE 1/4 Sec. 21, T35S, R3E, SLBGM, 18.0 acs. NE 1/4 NE 1/4, 7.50 acs. SE 1/4 NE 1/4 Sec. 28, T35S, R3E, SLBGM, or total acreage of 42.0.	2, 21, 66, 1200	** Diversion any, each, or all claims. Total yearly diversion under all claims mentioned 126.0 ac. ft.	
**			SEE CLAIMS USED FOR PURPOSE DESCRIBED			
**			19. 10 acs. SE 1/4 NE 1/4 Sec. 28, T35S, R3E, SLBGM.	2, 21, 66, 1200	** Diversion any, each, or all claims. Total yearly diversion under all claims mentioned 57.30 ac. ft.	
**			SEE CLAIMS USED FOR PURPOSE DESCRIBED			
**			0. 40 ac. NW 1/4 SW 1/4, 16.80 acs. SE 1/4 SW 1/4, 7.50 acs. SW 1/4 SW 1/4 Sec. 27, T35S, R3E, SLBGM, 0.30 ac. NE 1/4 NW 1/4 Sec. 28, T35S, R3E, SLBGM, or total acreage of 25.0.	21, 66, 1180, 1200	** Diversion any, each, or all claims. Total yearly diversion under all claims mentioned 75.0 ac. ft.	
**			SEE CLAIMS USED FOR PURPOSE DESCRIBED			

PROPOSED DETERMINATION OF WATER RIGHTS IN THE COLORADO RIVER

ESCALANTE RIVER DIVISION

(Cont'd from former page)

W. U. CLAIM NO.	NAME & ADDRESS OF CLAIMANT	SOURCE & TYPE OF RIGHT	PRIORITY DATE	FLOW		POINT OF DIVERSION	PERIOD OF USE, Inclusive	
				cu ft	ac ft		FROM	TO
1200	New Escalante Irrigation Company Melvin Alvey, President Escalante, Utah	Escalante River, Hay's Decree Sec. A & C dated June 25, 1919 Change App. a-1894, Cert. a-225 Change App. a-5517 - Pending Map 62c	1875	40.0		N. 310 ft. E. 800 ft. from S $\frac{1}{4}$ cor. Sec. 10, T35S, R2E, SLBEM.	April 1	Oct. 31
1144	Liston, Stanley Escalante, Utah	Escalante River, Diligence Map 62d	1875	*		Stock water directly on stream from point where stream enters NE $\frac{1}{4}$ Sec. 11, T35S, R2E, SLBEM, to point where stream leaves property in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 12, T35S, R2E, SLBEM.	Jan. 1	Dec. 31
1250	United States of America Bureau of Land Management P. O. Box 777 Salt Lake City, Utah	Escalante River, Diligence Map 62d	1875			Stock water directly on stream from point where stream enters SW $\frac{1}{4}$ Sec. 11, T35S, R2E, SLBEM, to point where stream leaves NW $\frac{1}{4}$ Sec. 11, T35S, R2E, SLBEM.	June 16	Sept. 30
1259	Wilson, Leo L. P. O. Box 62 Escalante, Utah	Escalante River, Diligence Map 62c	1875			Stock water directly on stream from point where stream enters SE $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 11, T35S, R2E, SLBEM, to point where stream leaves SE $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 11, T35S, R2E, SLBEM.	Jan. 1	Dec. 31
1141	Liston, Grant C. P. O. Box 46 Escalante, Utah	Escalante River, Diligence Map 62d	1875			Stock water directly on stream from point where stream enters property in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 12, T35S, R2E, SLBEM, to point where stream leaves property in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 7, T35S, R3E, SLBEM.	Jan. 1	Dec. 31

PROPOSED DETERMINATION OF WATER RIGHTS IN THE COLORADO RIVER
ESCALANTE RIVER DIVISION

(Cont'd from former page)

ANNUAL WATER ALLOWED		Farm Headgates	Diversion from Source	PURPOSE, EXTENT & PLACE OF USE	CLAIMS USED FOR PURPOSE DESCRIBED	REMARKS	W. U. CLAIM NO.
ac. ft.	sq. ft.						
**				3.40 ac. NE 1/4 Sec. 10, 70 ac. NW 1/4 Sec. 16, 70 ac. SE 1/4 Sec. 29.20 ac. SW 1/4 Sec. 34, T35S, R3E, SLB6M, or total acreage of 60.0. SEE CLAIMS USED FOR PURPOSE DESCRIBED	3, 21, 66, 1200, 1272	** Diversion any, each, or all claims. Total yearly diversion under all claims mentioned 180.0 ac. ft.	1200
**				5.0 ac. SW 1/4 Sec. 8, T35S, R3E, SLB6M. SEE CLAIMS USED FOR PURPOSE DESCRIBED	21, 66, 1200, 1255	** Diversion any, each, or all claims. Total yearly diversion under all claims mentioned 15.0 ac. ft.	
**				1.0 ac. SW 1/4 Sec. 8, T35S, R3E, SLB6M. SEE CLAIMS USED FOR PURPOSE DESCRIBED	21, 66, 1200, 1254	** Diversion any, each, or all claims. Total yearly diversion under all claims mentioned 3.0 ac. ft.	
**				11.0 ac. SW 1/4 NE 1/4, 0.70 ac. NE 1/4 Sec. 2, 60 ac. NW 1/4 Sec. 28, T35S, R3E, SLB6M, or total acreage of 14.30. SEE CLAIMS USED FOR PURPOSE DESCRIBED	21, 66, 1200, 1261	** Diversion any, each, or all claims. Total yearly diversion under all claims mentioned 42.90 ac. ft.	
**				13.0 ac. NE 1/4 Sec. 28, T35S, R3E, SLB6M. SEE CLAIMS USED FOR PURPOSE DESCRIBED	21, 66, 1200, 1262	** Diversion any, each, or all claims. Total yearly diversion under all claims mentioned 39.0 ac. ft.	
60.0				STOCKWATERING: 2500 cattle SEE CLAIMS USED FOR PURPOSE DESCRIBED	1200	* Flow for this purpose is part of flow for irrigation.	1144
		*		STOCKWATERING: 225 cattle, 5 horses SEE CLAIMS USED FOR PURPOSE DESCRIBED	For Claims Used for Purpose Described see Water User's Claim 1149, Page 195.	* Diversion any, each, or all claims. Total yearly diversion under all claims mentioned 6.44 ac. ft.	
		*		STOCKWATERING: 40 cattle - Community Allotment 2B SEE CLAIMS USED FOR PURPOSE DESCRIBED	1290, 1291, 1326, 1327, 1293, 774, 1294, 1314, 1298, 1319, 1296, 1297	* Diversion any, each, or all claims. Total yearly diversion under all claims mentioned 1.12 ac. ft.	1250
		*		STOCKWATERING: 300 cattle, 10 horses SEE CLAIMS USED FOR PURPOSE DESCRIBED	1227, 1228, 1229, 1230, 1259	* Diversion any, each, or all claims. Total yearly diversion under all claims mentioned 8.68 ac. ft.	1259
		*		STOCKWATERING: 160 cattle, 11 horses SEE CLAIMS USED FOR PURPOSE DESCRIBED	1136, 1137, 1139, 1140, 1141, 1246, 1252, 1254, 1255	* Diversion any, each, or all claims. Total yearly diversion under all claims mentioned 4.79 ac. ft.	1141

EXHIBIT G



EXHIBIT G-1

Looking at ditch after first series of trenching.

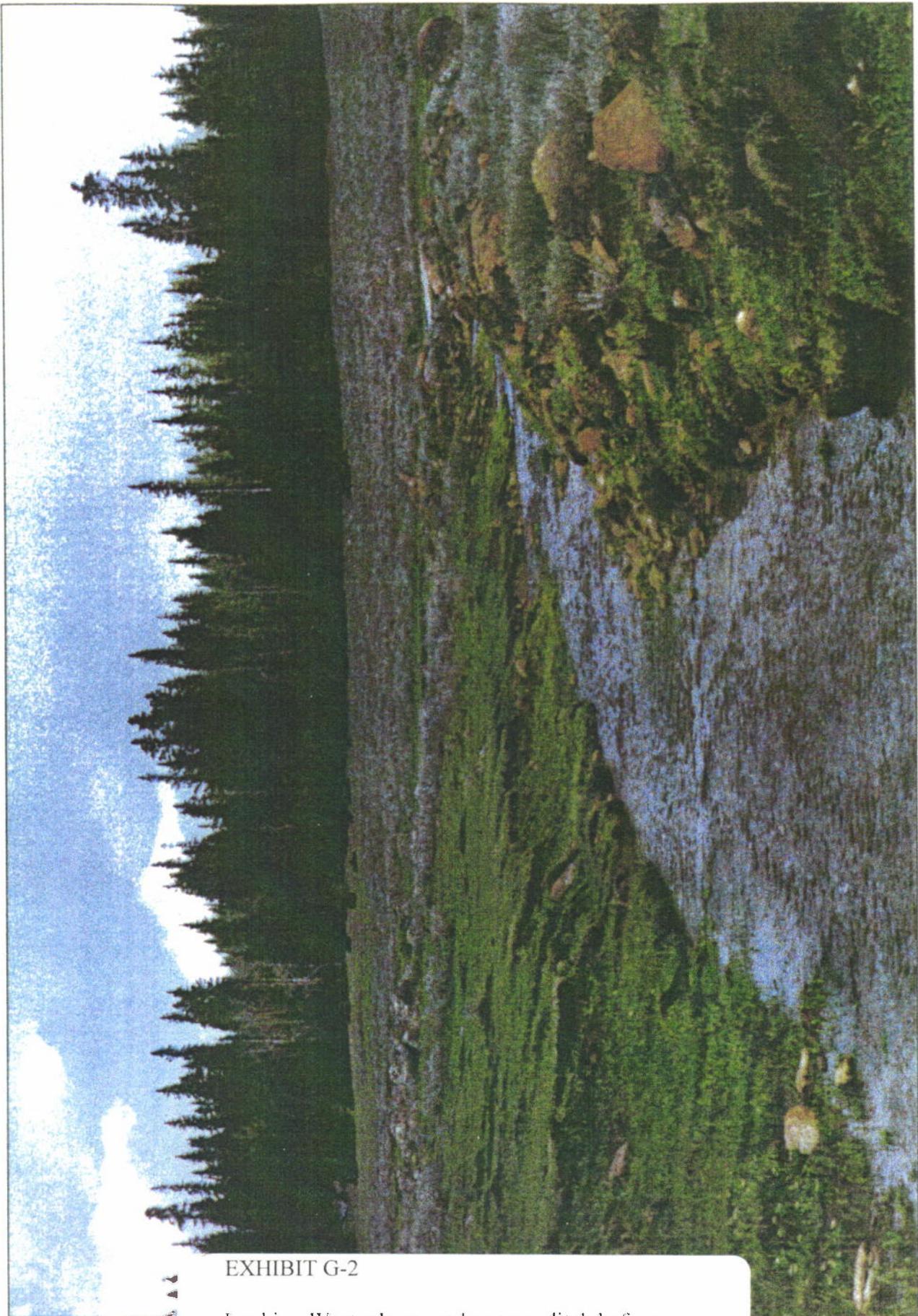


EXHIBIT G-2

Looking West where road crosses ditch before backhoe work.



EXHIBIT G-3

Looking South along trench after earlier re-
diversion activities, but before major improvements.



EXHIBIT G-4

Looking South Southeast from where diversion begins.



EXHIBIT G-5

Looking West toward Iron Spring. New backhoe work.



EXHIBIT G-6

Looking Southeast from where diversion begins, showing improvements on the ditch.

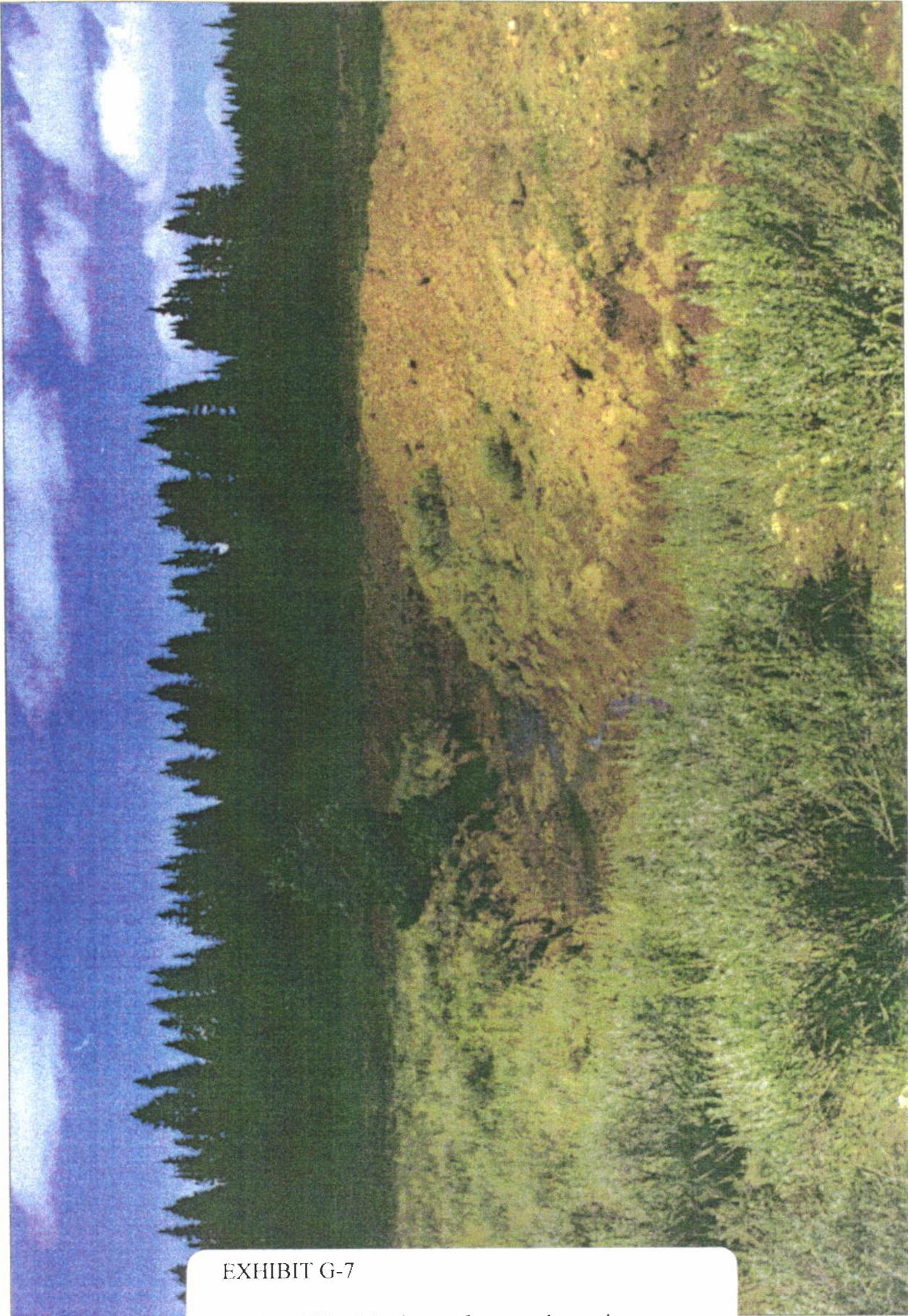


EXHIBIT G-7

Looking West Northwest from road crossing showing new bank as most recently appears.



EXHIBIT G-8

Looking East along ditch at road crossing (bank heightened.)



EXHIBIT G-9

Looking West from where old road crosses the ditch showing backhoe work.



EXHIBIT G-10

Looking at size of new work.



EXHIBIT G-11

Looking East along ditch showing size of bank.



EXHIBIT G-12

Reflects portion of most recent work.



EXHIBIT G-13

Illustrative of height of dam after fall 1999 expansion. [Ivan Cowley pictured.]

KEN CHAMBERLAIN [0608]
 CHAMBERLAIN ASSOCIATES
 225 NORTH 100 EAST
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 RICHFIELD, UTAH 84701
 TELEPHONE (435) 896-4461

IN THE SIXTH JUDICIAL DISTRICT COURT OF PIUTE COUNTY,
 STATE OF UTAH

OTTER CREEK RESERVOIR COMPANY,)
 a Utah corporation, RICHFIELD)
 IRRIGATION CANAL COMPANY, a Utah)
 corporation; SEVIER VALLEY CANAL)
 COMPANY, a Utah corporation;)
 MONROE SOUTH BEND CANAL COMPANY,)
 a Utah corporation; MONROE)
 IRRIGATION COMPANY, a Utah)
 corporation; ELSINORE CANAL COMPANY,)
 a Utah corporation; ANNABELLA)
 IRRIGATION COMPANY, a Utah)
 corporation; BROOKLYN CANAL COMPANY,)
 a Utah corporation; JOSEPH)
 IRRIGATION COMPANY, a Utah)
 corporation; WELLS IRRIGATION)
 COMPANY, a Utah corporation;)
 VERMILLION IRRIGATION COMPANY,)
 a Utah corporation; and)
 PIUTE RESERVOIR AND IRRIGATION)
 COMPANY, a Utah corporation;)

COMPLAINT

Civil No. _____

Judge _____

Plaintiffs,

-vs-

NEW ESCALANTE IRRIGATION
 COMPANY, a Utah corporation,

Defendant.

LAW OFFICES
 CHAMBERLAIN ASSOCIATES
 225 NORTH 100 EAST, P.O. BOX 100
 RICHFIELD, UTAH 84701

The Plaintiffs complain of the Defendant and for cause of action allege as follows:

Each and all of the Plaintiffs are corporations and irrigation companies, are organized under the Utah Non-profit Corporation and Co-operative Association Act (the "Act"), Title 16, Chapter 6a Utah Code Annotated 1953 as amended (the "Code") and each constituent or collective company (as is Plaintiff Otter Creek Reservoir "Otter Creek") is in good standing on the records of the Department of Commerce of the State of Utah and is therefore entitled to sue under the General and Non Profit Corporations Act (the "Act") of the State of Utah.

1. The Plaintiff Otter Creek Reservoir Company ("Otter Creek"), is a corporation and under the Act; the Plaintiffs it represents are all of the constituent stock holders of Plaintiff Otter Creek. Otter Creek is therefore given the right to sue to recover entitlements and to obtain and enforce the rights of all of the companies in this action represented by Otter Creek. Plaintiff Piute Reservoir and Irrigation Company ("Piute") is entitled to seek and obtain declaratory relief for its shareholders as decided in the case of Gunnison-Fayette Canal Company vs. Gunnison Irrigation Company, 22 Utah 2d. 45, 448 Pacific 2d. 707 (1967).

2. The Plaintiff Richfield Irrigation Canal Company is a corporation under the Act; Plaintiff Annabella Irrigation Canal Company is a corporation under the Act; Plaintiff Elsinore Canal Company is a corporation under the Act; Plaintiff Brooklyn Irrigation Company is a corporation under the Act; Plaintiff Joseph Irrigation Company is a corporation under the Act; Plaintiff Sevier

OTTER CREEK RESERVOIR COMPANY vs. NEW ESCALANTE IRRIGATION COMPANY
COMPLAINT

Page 3

Valley Canal Company is a corporation under the Act; Plaintiff Vermillion Irrigation Co. is a corporation under the Act; all of which of the foregoing irrigation companies individually named are constituent owners of the Otter Creek Reservoir Company and common users of the water stored therein.

3. Plaintiff Piute Reservoir and Irrigation Canal Company is also a non-profit irrigation corporation under the Act with significant storage and direct-flow rights and also is entitled to the remedies and its damages as are all the other Plaintiffs.

4. All of the Plaintiffs have a principal place of business in either Sevier County or Sanpete County, both counties being within the Sixth Judicial District of the State of Utah, and the holders of direct-flow or storage rights on the South and East Fork of the Sevier River as well as the entire basin and Sevier River as appears on pages 3, 4, 5, 12, 13, 30 and 31 (as constituent share holders in Otter Creek Reservoir Company) ("Otter Creek") and in the resources of Otter Creek which has the right to store 52,590 acre feet of water in Otter Creek Reservoir located in Section 28, Township 30 South, Range 2 West, Salt Lake Base and Meridian, Utah, all as set out in the Progress Printing Edition of the Sevier River Decree in the case of Richlands Irrigation Company vs. Westview Irrigation Company, et al., Case No. 843 in the Fifth Judicial District Court of the State of Utah, in and for Millard County entered on the 30th day of November, 1936, sometimes referred to as the "Cox" Decree and which will be referred to hereinafter as the "Sevier River Decree".

5. Plaintiff Piute Reservoir and Irrigation Company ("Piute") has both direct-flow and

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storage rights awarded at the applicable places in the Sevier River Decree.

6. The waters asserted to be the interests of the Plaintiffs to this action are continuously damaged by an unlawful interbasin diversion of water, hereinafter sometimes referred to as the "Trans-basin Diverted Waters" or the "Diverted Waters", which should be redirected into the Sevier River Basin and ultimately to the Plaintiffs in this action (please see Exhibits "A and B" which are maps illustrative and distinguishing of the natural from the unnatural flow of the Diverted Waters by reason of the wrongful acts of Defendant). Exhibits "A and B" are incorporated by reference in this Complaint.

7. The Otter Creek Reservoir is located in Piute County as is the Piute Reservoir and it is those reservoirs and the constituent owners and shareholders therein which suffer the first damages alleged in this Complaint and those damages occur and are realized and the causes of action occur in Piute County and the damages and losses of water and storage (as well as direct-flow rights) are all reflected and are first realized in Piute County which is the proper venue for this action.

8. Defendant New Escalante Irrigation Company ("New Escalante") is a corporation organized in Utah with its principal place of business in Escalante, Garfield County, State of Utah.

9. Iron Springs is a natural spring located in Section 1, Township 33 South, Range 1 West, Salt Lake Base and Meridian and well and entirely within the natural and hydrological basin of the Sevier River.

10. Under natural conditions the Diverted Waters that would naturally and

OTTER CREEK RESERVOIR COMPANY vs. NEW ESCALANTE IRRIGATION COMPANY
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topographically flow northerly to Iron Springs Draw, and which should but now do not follow unimpeded to Iron Springs Draw, to Coyote Hollow and then continue to Antimony Creek thereafter to Otter Creek Reservoir and thence on to the East Fork of and the entirety of the Sevier River; but, because of the unlawful Trans-basin Diverted Waters, now flow into the Escalante River region, and ultimately into the basin of the Colorado River.

11. As to the Diverted Waters all such waters are awarded in the Sevier River decree to Plaintiffs in this action as are all other waters unlawfully and unnaturally diverted by the Defendant.

12. At sometime in the past Defendant New Escalante and its agents or persons acting in the Defendant's behalf and under its direction and authority constructed a diversion of the natural flow of waters from Iron Spring or the Iron Springs Draw at a point at or near East 750 feet from the Southeast corner Section 1, Township 33 South, Range 1 West, Salt Lake Base and Meridian (please see Exhibit A and B) or South 1320 feet from the Northwest corner Section 7, Township 33 South, Range 1 East, Salt Lake Base and Meridian and in the Sevier River Basin (the same being the point of diversion stated in the Diligence Claim; Exhibit C) so that all those waters now flow into the diversions and places of use of Defendant New Escalante.

13. The elevation above sea level of the unlawful diversion works and all the areas draining into and diverted by this work is at between 10,040 and 10,080 feet according to the standard United States Geological Survey Map and to all other authoritative maps demonstrating stratigraphical topography.

14. The Trans-basin Diverted Waters cross a topographic divide at a point at which the elevation above sea level is higher than the entirety of Defendant's effective diversions.

15. The construction and diverting and direction-controlled excavations, berm, and bottom or lowest point above sea level (the "Defendant's Diverting Works") are below in elevation than the topographic "rim" or stratographic or topographic divide across and over which the Trans-basin Diverted Waters are now caused or stratagraphically controlled so as to run unnaturally into the Colorado River amphitheater, rather than, and away from the Sevier River Basin.

16. The acts of the Defendant have diverted and carried, and now divert and carry unlawfully and unnaturally, the waters of Iron Springs and other "Diverted Waters" into a ditch or canal higher in elevation across the natural (topographic) divide separating the Sevier River drainage from the Colorado River drainage to a point where the waters flow into North Creek and then into other water courses tributary to the Colorado River and from which they are diverted southerly in the tributary of Escalante River and with the unlawful diversion and diversion of users and uses and for the use of the Defendant New Escalante and contrary to the law and decrees of the State of Utah, the interests, and the shareholders and away from water awarded by the Sevier River Decree to the Plaintiffs. ¹

¹Each one of a number of which is described in the case of East Bench Irrigation et. al vs. Deseret Irrigation Company et. al 2 Ut 2d. 170, 271 Pacific 2d. 449 at 452 (1954).

17. That on November 22, 1991 the Department of Natural Resources, Division of Water Rights of the State of Utah wrote to the Defendant New Escalante Irrigation Company a letter, a copy of which is hereto annexed as Exhibit "D", stating that a spring diversion originating in Section 1, Township 33 South, Range 1 West, Salt Lake Base and Meridian is reversed to run into and within the Colorado River (rather than into the Sevier River) consisting of an earthen canal that intercepts Iron Spring or Spring(s) and other water sources that are tributary to the East Fork of the Sevier River which effects an unnatural (and unlawful) trans-basin diversion from the Sevier River Basin to the Escalante River drainage and ultimately into the Colorado River. These are the Trans-basin Waters described in paragraphs 4 through 6 hereof. That letter further declares (in words or substance or effect) that the canal conveys water [approximately] two miles to a point where it becomes a tributary of the North Creek and it has been determined that there is not and has never been a water right of record for this diversion and that the Defendant is in violation of §73-3-1, Utah Code Annotated 1953 and requests that "as soon as possible" the canal be backfilled and re-vegetated and the conveyance [or improper and unlawful re-diversion] of water be discontinued.

18. The Defendant failed or refused to comply with that letter and has not at any time observed the legality and correctness of nor brought itself into observance with that order (or letter); but rather on or about May 5, 1992, filed a Diligence Claim, (the "Diligence Claim") asserting a right to divert and use the Trans-basin Diverted Waters. A copy of the Diligence Claim is attached as Exhibit "B" and is incorporated by reference in this Complaint.

19. On or about July 1, 1969, Hubert C. Lambert as State Engineer of the State of Utah issued his "Proposed Determination of the Water Rights of the State Engineer in the Colorado River-Escalante River Division" (hereinafter referred to as the "Proposed Determination") as a part of a General Adjudication under Chapter 4, Title 73 Utah Code Annotated 1953 (the "General Adjudication".)

20. The Diligence Claim asserts a right to, and the status of which is represented to be, a part of the waters which the Escalante water users should or would have (or had or would have had) in the Escalante Basin ("Colorado River - Escalante River Division") were the Diligence Claim valid (or even if invalid or ineffective.)

21. A copy of New Escalante's total claims in the General Adjudication (Pre-trial Order of Judge Tibbs), and concomitantly a copy of the pertinent and material parts of the Order in that Adjudication of July 27, 1992, referred to hereinafter, is hereto annexed as Exhibit "E" and incorporated by reference the same as though fully set forth herein.

22. The purported Diligence Claim is without merit and has now been, if it ever existed, extinguished by adjudications of water rights in both the Sevier River Basin and the Colorado River Basin pursuant to Title 73, Chapter 4, Utah Code Annotated 1953, and prior enactments dating from the original "Appropriations Act" of the State of Utah. (Chaper 3, Title 73, Utah Code)

23. At pages 164 through 166 and 181 through 186 of the Proposed Determination (copies of which pages are annexed as Exhibit "F") there appear a number of substantial and

significant entries of water users' claims in that case by New Escalante Irrigation Company; and in response thereto, reciprocal awards are made.

24. There are no other claims appearing in the Proposed Determination of the General Adjudication that have ever been filed by Defendant New Escalante.

25. No other claims which have ever been filed in the General Adjudication proceedings by Defendant New Escalante appear in the Proposed Determination whether or not they appear on any of the pages attached as Exhibit "F".

26. Pursuant to §73-4-11 of the Code the Defendant New Escalante was notified that any claim not reflected in the Proposed Determination must be filed within ninety days of service of the Proposed Determination upon the Defendant, otherwise the same would be forever barred and under the provisions of §73-4-9 of the Code the Defendant is now debarred from asserting any waters described both hereinabove generally, and in the Diligence Claim.

27. Under §73-4-11 of the Code the Proposed Determination became final ninety days after the delivery to the Defendant of the Proposed Determination in the year 1969.

28. That on the 27th day of July, 1977, the Honorable Don V. Tibbs in Case No. 435 in the District Court of the Sixth Judicial District for the County of Wayne entered a decree, a copy of which is hereto annexed marked Exhibit "E" in which it is provided: -

CONFIRMATION OF RIGHTS NOT PROTESTED

The State Engineer has published the Proposed Determination of Water

Rights for the Escalante Subdivision of the Escalante River Division of the above-entitled general adjudication proceedings, and copies of said Proposed Determination have heretofore been served on those water users having water rights in said Subdivision and a copy filed with this Court pursuant to the provisions of Section 73-4-11, Utah Code Annotated 1953, as amended.

NOW, THEREFORE, IT IS ORDERED that the Proposed Determination for the Escalante Subdivision of the Escalante River Division as amended by this Pre-Trial Order is approved and the individual water rights contained in said Determination are hereby decreed to be valid existing water rights and are approved and confirmed as set forth in said Determination; those rights set forth in the "Issues to be Tried" Section of this Pre-Trial Order are excepted from the foregoing approval and confirmation to the extent that they are the subject matter of an individual protest; this Order is also subject to those changes in ownership and approved Change Applications on any rights in said Determination which have occurred since the Determination which have occurred since the Determination was published by the State Engineer; the Court further reserves the right to correct typographical errors which may have occurred in the preparation of said Determination. Provided, however, the claims which are included in said Proposed Determination for the United States of America or any agencies thereof are listed for information purposes only, since the United States has not been made a party to this action.

29. Pursuant to Section 73-4-11 of the Code, the State Engineer is required to distribute the waters pursuant to the Proposed Determination.

30. As provided in §§73-4-7, 73-4-12, 73-4-14, and 73-4-15 of the Code the Diligence Claim filed by Defendant May 5, 1992 is null and void and New Escalante Irrigation Company has no rights thereunder.

31. The Sevier River Decree is the General Adjudication of the waters of the Sevier River in Garfield, Piute, Sevier, Sanpete, and Millard Counties and its tributaries. New Escalante

has never filed, nor has any right to file a claim or receive any award, or establish a claim in that action and pursuant to statute is barred from now asserting any claim to the waters of the Sevier River; and particularly to the Diverted Waters.

32. The Defendant has continued to divert wrongfully the water described in the letter of November 22, 1991 and is in violation of Chapter 3, Title 73, U.C.A. 1953 and otherwise under the laws of the State of Utah relating to appropriation or water or water rights.

33. Plaintiff Otter Creek is entitled to divert, store and use the Trans-basin Diverted Water² and is damaged by the wrongful diversion thereof since 1991 in an amount to be determined by the Court as is Plaintiff Piute Reservoir and Irrigation Company (East Bench Irrigation Company v. Deseret Irrigation Company, 2 UT 2d 170; 271 P2d 449 [1954] Garfield County District Court [see esp. 271 P2d at 452, last paragraph left-hand column]; 2 UT 2d at p. 175 (175 at first paragraph left-hand column) These conditions advanced above and elsewhere have been the substance and subject of judicial knowledge and ratified in more than one decision of the Courts to invoke that virtually axiomatic ratification; which case(s) state "...the canyon walls and the valleys slope from the mountain ranges on each side toward the river and all the water which falls within the river's

²Illustrative copies of photographs of the unlawful diversions described in Exhibit "C" are attached as Exhibit "G". Exhibit "G" is a composite exhibit of photographs not intended to illustrate all, but is only a partial demonstration of the unnatural reversal of flows of water at times when accumulations of precipitation in the Sevier River Basin are reversed from the Sevier River Drainage to the Colorado River Drainage.

watershed and the waters which are applied on the lands on both sides quickly find their way back to the river, either by direct surface streams or underground seepage..."

DAMAGES

<u>Company</u>	<u>Primary Rights in c.f.s.</u>	<u>Percentage of Loss to Company in c.f.s.</u>
Richfield Irrigation Canal Company	85.90	22.1
Sevier Valley Canal Company	60.00	15.1%
Monroe South Bend Canal Company	41.50	10.7%
Monroe Irrigation Company	47.90	12.3%
Elsinore Canal Company	18.92	4.9%
Annabella Irrigation Company	30.40	7.8%
Brooklyn Canal Company	29.77	7.7%
Joseph Irrigation Company	25.90	6.7%
Wells Irrigation Company	10.90	2.8%
Vermillion Irrigation Company	<u>37.80</u>	<u>9.7%</u>
Total c.f.s.	388.99	100.90

34. The Plaintiff Piute Reservoir and Irrigation Company sustains additional losses of its decreed rights awarded as direct-flow and stored or impounded waters the magnitude of which will be proportionately determined in calculating the losses which have been and which are now being sustained by the unlawfully Diverted Waters.

35. In the first two weeks of April and the early portion (or days) of May 2001 an upper

Sevier River Commissioner, a representative of the Plaintiffs examined the area depicted in the photographs (Exhibit "G").

36. Using a standard and hydrologically accurate current meter, not only observed approximately but measured 11.1 cubic feet per second ("c.f.s.") of water passing through in the unlawful channel of the Trans-basin Diversion.

37. There is direct evidence of high-water marks that three or more times that amount (of 11.1 c.f.s.) had flowed through that channel in during the year in the earlier days of April and May 2001.

38. It has been determined that as much as in excess of 10,000 acre feet of water in one year have been observed by Sevier River agents and abstracted by the unlawful Trans-basin Diversion.

39. The illegal channel collects and drains highly significant amounts of water; (e.g. in the spring of the year 2001) an amount of water collected through 1,000 acres of drainage in which an official State-Federal gauging rod of Clayton Springs showed 23.9 inches of water throughout the south half of Section 1, the East half of Section 11 and the North Half of the North Half of Section 12 in Township 33 South, Range 1 West and the Southwest Quarter of the Southwest Quarter of Section 6 and the North one-half of Section 7 in Township 33 South, Range 1 East, Salt Lake Base and Meridian.

40. On the basis of the loss to the Sevier River Basin the Plaintiffs named in the foregoing paragraphs would have sustained high-water and direct-flow loss of the Sevier River waters little of which would be lost in transmission through seepage, transpiration, and shrinkage because underground or "under-flow" would not be lost in transmission through seepage, transpiration, and shrinkage and as such would have been a part of the under-flow of the tributaries of the Sevier River and as such would suffer lesser amounts of shrinkage and would have been a part of the waters in which Plaintiffs would all participate.

41. As appears on Exhibit "G" the surface of the land on which the works of the Defendant have been constructed or have been disturbed have wrongfully changed a natural pattern of the surface and subsurface of that land in the entire area where Defendant's agents have performed work or caused work to have been performed.

42. Exhibits G1 through G5 illustrate conditions after work was begun, but prior to extreme 1999 expansion; Exhibits G6 through G13 illustrate Defendant's works and conditions after extensive 1999 expansion. Exhibit G-13 exhibits height of dam after 1999 expansion (Ivan Cowley pictured.)

43. The Plaintiffs have the right to require that the land be restored to its natural condition essential to obliterate the excavations, creating the ditch and channel and building up of berm or works which cause the unlawful diversion of water so that it runs improperly into the Colorado River Basin rather than to the Sevier River Basin.

44. The waters thus diverted naturally should not run into, and the distorted features of the surface have been scarred and disturbed causing improper movement of and the course of the water to run into the channels where the Diverted Waters are now flowing.

45. The Plaintiffs have the entitlement to restore or to secure a complete restoration of and to the work necessary to achieve obliterating the man-made channels and ditches described in paragraphs 6 and 12 through 16 above so that nothing constructed by Defendant will impede the flow of water effecting or affected by the diverted waters created by those channels and ditches.

46. The courses and channels as they now exist through the unlawful works of the Defendant should be obliterated by the Defendant or by the Plaintiffs at the cost of Defendant.

47. Plaintiffs are entitled to such work, earth movement, and movement of berm and the result of other excavations made by Defendants so that a condition where natural - as opposed to unnatural - drainages occur.

48. Plaintiffs are entitled to restore or cause to be restored all of the disturbed land and area and to secure a re-vegetation of all the land surfaces affected by the wrongful excavations, channel-creating and surface disturbances which alter the natural course of the waters of the Sevier River Basin.

49. The Plaintiffs are entitled to a redirection of water now running into the Colorado River Basin; and to the completion of such works as will redirect the Diverted Waters into the Sevier River Basin so that the rights of the Plaintiffs will be restored to their natural condition and the

OTTER CREEK RESERVOIR COMPANY vs. NEW ESCALANTE IRRIGATION COMPANY
COMPLAINT

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condition in which they existed before the wrongful works of the Defendant so that the natural condition of the terrain and the sum of its totality as it existed prior to the wrongful acts of Defendant or those acting through or by authority of the Defendant with the entire costs to be paid for, charged and assessed to Defendant until those corrective renovations are fully complete.

WHEREFORE, Plaintiff prays judgment as follows:

A. For a Declaratory Judgment that the Defendant is entitled to none of the waters rising in Section 1, Township 33 South, Range 1 West, Salt Lake Base and Meridian or in any of the surrounding sections or any sections of the land which are tributary to the unlawful diversion described on Exhibits "A and B" and that the Defendant should be forever barred and restrained from continuing to divert water from the sources described in this Complaint and in the Exhibits.

B. That the Defendant be ordered to effect and pay the entire cost of restoring and re-vegetating all of the surface and eliminate the ditches and channels created by the Defendant or caused to have been created by the Defendant or in any manner directed and authorized by the Defendant. Plaintiffs are entitled to select competent contractors after inviting bids therefore, to complete the work of complete restoration of the surface in the areas disturbed by the Defendant or those acting by the direction or under authority of the Defendant. Should the Court direct, the Plaintiffs may submit to Defendant a contract price obtained after invitation and the opening of bids to the lowest fully and totally responsible contractor by Plaintiffs to do the work described above; or that the Defendant may obtain contractors entirely and completely to effect the same restoration

OTTER CREEK RESERVOIR COMPANY vs. NEW ESCALANTE IRRIGATION COMPANY

COMPLAINT

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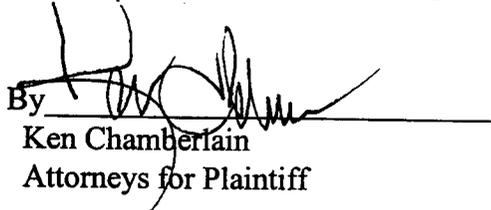
and conditions; and in any and all cases the Defendant be required to pay such contractor or contractors and all of the associated costs of restoration of the lands disturbed by the acts of the Defendant or its agents so that the Diverted Waters not only will be redirected to the Sevier River Basin but also that the natural conditions and vegetation on the disturbed lands will be restored and replaced to their natural and historic condition and in any event the Defendant be required to pay the costs of all of such restorative work.

C. For a permanent restraining and mandating injunction and order directing the Defendant to observe and comply with the rights of Plaintiffs and the orders of the Utah State Engineer (Exhibit "D") and otherwise cease to divert any waters from the Sevier River Basin into the Colorado River Basin.

D. For an award of damages sustained by Plaintiff for all losses and abstractions of water such as is proved at trial.

E. That the Plaintiffs be awarded their costs and, due to the *mens rea* of Defendant, attorneys fees, and such other relief as to the Court may appear proper.

CHAMBERLAIN ASSOCIATES

By 

Ken Chamberlain

Attorneys for Plaintiff

VERIFICATION OF RAY OWENS

STATE OF UTAH)
 : ss.
COUNTY OF SEVIER)

RAY OWENS, being duly sworn on oath deposes and says that he is the duly appointed qualified and acting River Commissioner of the upper section or division of the Sevier River.

Affiant states that he has personally visited the premises affected by the allegations in the foregoing Complaint and he swears upon oath that the allegations in paragraphs 35, 36, 37, 38 and 39 and 41 through 44 are true and the same are facts which he actually observed or in circumstances where measurements were taken he, the said Ray Owens, participated in the measurement of the water using traditional current measuring meters and calculating the flow of the water as it is described in photographs annexed to the Complaint to which this verification is applicable.

Affiant further states that he has visited the premises described in the Complaint and affected by this action and he knows of his own knowledge that the allegations respecting the conditions at those premises are true of his own personal knowledge.

Affiant states that the facts therein stated are true according to his own personal knowledge and are not based on statements or representations made to him by other persons and verily states that the facts in the foregoing Verification are true.

As River Commissioner he knows that the diversions of water and the construction of diverting works are contrary to the natural conditions and have the effect of transferring water described in the pertinent provisions of the Complaint and that the topographic representations at various places in the Complaint are accurate and have been observed by the Affiant and he makes this affidavit on personal knowledge of the facts in but not necessarily exclusively in paragraphs 11, 13, 14, 15, 16 and paragraph 33, as well as those enumerated above are true of his own knowledge and that the allegations in paragraph 38 are substantially if not precisely true and accurate.

The Affiant is not a licensed geologist or professional engineer but has more than twenty years experience in the behavior of water and diversions thereof and as to all matters alleged in the pertinent parts of the Complaint are true except as to the matters alleged upon information and as

LAW OFFICES
CHAMBERLAIN ASSOCIATES
225 NORTH 100 EAST, P.O. BOX 100
RICHHFIELD, UTAH 84701

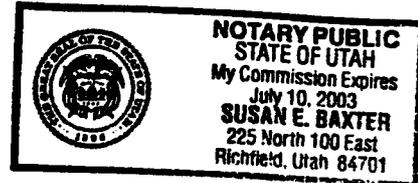
to those matters he believes them to be true.


Ray Owens

On the 29th day of June, 2001, personally appeared before me Ray Owens, who being first duly sworn upon oath deposes and says that the statements contained in the foregoing verification are true except as to the matters that are alleged upon information and believe and as to those allegations he believes them to be true.


Notary Public

Residing at: Richfield, Utah
My Commission Expires: 7/10/2003

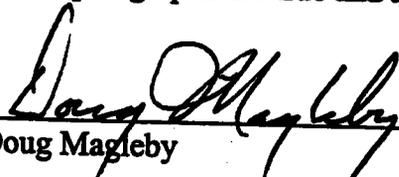


VERIFICATION OF DOUG MAGLEBY

STATE OF UTAH)
 : ss.
COUNTY OF SEVIER)

DOUG MAGLEBY, being first duly sworn upon oath deposes and says:

That he is a licensed and registered land surveyor with experience in the behavior of water; that he is familiar with the hydrological and topographic maps of the United States Geological Survey and other authoritative maps showing the contours and the heights above sea level of the territory described in the Complaint; he verily states that he has determined from examining those topographic maps and other maps of authority that the statements in paragraphs 12 and 39 are accurate, the Affiant having measured the same from mapping prepared and surveyed by the United States Geological Survey and the statements in those paragraphs are true and accurate.



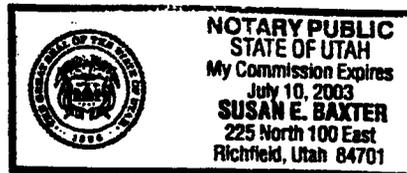
Doug Magleby

On the 27th day of June, 2001, personally appeared before me Doug Magleby, who being first duly sworn upon oath deposes and says that the statements contained in the foregoing verification are true except as to the matters that are alleged upon information and believe and as to those allegations he believes them to be true.



Notary Public

Residing at: Richfield, Utah
My Commission Expires: 7/10/2003



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