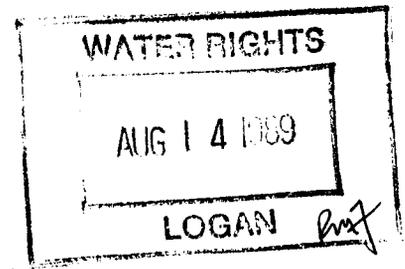


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WATER RIGHTS
SALT LAKE



DEAN H. CHRISTENSEN
2225 EAST 4800 SOUTH
SUITE 107
SALT LAKE CITY, UTAH 84117

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF WATER RIGHTS
55 EAST 100 NORTH
P. O. BOX 381
LOGAN, UTAH 84321

CERT. NO. P 998 909 847

ATTN: MR. ROBERT FOTHERINGHAM
NORTHERN DISTRICT ENGINEER

12 AUGUST 1989

RE: DILIGENCE CLAIM
PORTAGE CANYON

MR. FOTHERINGHAM:

I AM HERewith SUBMITTING ADDITIONAL INFORMATION AND STATEMENTS CONCERNING THE ACTUAL AND HISTORIC USE OF WATER ON OUR PORTAGE CANYON RANCH PROPERTY. THIS CHANGE IS PRECIPITATED BY THE ERROR ON THE ORIGINAL DOCUMENT SUBMITTED ON MAY 5, 1988, "6. POINT(S) OF RETURN". WE HAD ERRONEOUSLY SHOWN A .02 AND WE HAD MEANT TO SHOW A .20.

THE ATTACHED DOCUMENTS FULLY SUPPORT THIS POSITION AND SHOW THAT IN FACT A HISTORICAL USE CAN BE PROVEN, NOT ONLY THRU THE ORIGINAL WARRANTY DEED ISSUED BY THE FEDERAL GOVERNMENT IN 1899, BUT THRU STATEMENTS MADE EVEN BY THE PRESIDENT OF THE PORTAGE IRRIGATION COMPANY. THE DOCUMENTS ARE AS FOLLOWS:

1. LTR DTD AUG 30, 1988 FROM H. BYRON HALL, GRANDSON OF THE ORIGINAL LAND OWNERS. THE PERTINENT STATEMENTS FROM THAT LTR CLEARLY SHOW THAT A LIVESTOCK WATERING RIGHT IN FACT EXISTS.

"THE HALL FAMILY RAN HORSES AND CATTLE ON THAT PROPERTY FROM THE TIME IT WAS HOMESTEADED, WITH UNLIMITED ACCESS TO THE STREAM TO WATER THE STOCK. CATTLE WOULD BE TURNED ON THE LAND AFTER HARVEST AND EARLY IN THE SPRING BEFORE IT WAS PLOWED."

ADDITIONALLY THIS STATEMENT ALSO CLEARLY SHOWS THAT THE STREAM WAS BEING USED TO IRRIGATE CERTAIN FIELDS, AS NOT ONLY DOES THE WORD HARVEST RELATE TO CULTIVATED CROPS, BUT THE REASON FOR PLOWING IS ALSO SYNONYMOUS WITH CONVENTIONAL FARMING METHODS WHICH INCLUDES THE USE OF A WATER SOURCE WHEN PRESENT. WE ARE PHOTOGRAPHING SOME OF THE VESTIGIAL DIVERSIONS WHICH ARE STILL VISIBLE AS WELL AS THE DITCHES THAT WERE USED TO MOVE THE WATER ON THE PARTICULAR FIELDS.

I HAVE ALSO ATTACHED COPIES OF PARTIAL STATEMENTS MADE BY MR. WYNN JOHN, THE CURRENT PRESIDENT OF THE PORTAGE IRRIGATION COMPANY, DURING HIS DEPOSITION TAKEN ON JULY 14, 1988. CERTAIN OF HIS STATEMENTS UNDER OATH SPECIFICALLY

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RELATE TO THE HISTORICAL USES. THE STATEMENTS ARE AS
FOLLOWS:

PAGE 1. CERTIFICATE OF COPY (DEPOSITION OF WYNN JOHN)
PAGE 2. APPEARANCES (SHEET FROM DEPOSITION
SHOWING THOSE PRESENT AS WITNESSES TO THE STATEMENTS.
PAGE 3. (DOCUMENT PAGE 32 FROM DEPOSITION)
LINE 25: "NO, IT WASN'T BECAUSE I CUT GRAIN
OFF OF THIS FOR TEN YEARS." WHILE THE TIME PERIOD DOES
NOT QUALIFY FOR THE DILIGENCE USE PRIOR TO 1903, THIS
IN FACT SHOWS THAT CULTIVATION ACTUALLY TOOK PLACE FROM
THE DATE OF THE ORIGINAL HOMESTEAD UNTIL THE PRESENT.

PAGE 4. (DOCUMENT PAGE 34 FROM DEPOSITION)
LINE 4: "FROM 1900 UNTIL MAYBE THE LAST TEN
YEARS." THIS STATEMENT RELATES TO THE FACT THAT THE
IRRIGATION COMPANY WAS CLAIMING THAT THEY HAD KEPT THE
DITCH CLEAN, WHICH AGAIN CLEARLY DEMONSTRATES THAT THE
WATER WAS PRESENT ON THE RANCH PROPERTY AND BEING
UTILIZED.

PAGE 5. (DOCUMENT PAGE 44 FROM DEPOSITION)
LINES 7-13: "YES THE HALL BROTHERS DIVERTED
IT HERE, AND THEY DIVERTED HERE (REFERRING TO MAP).
AND THE WATER DID NOT GET BACK HERE FOR THE NEXT PEOPLE
TO USE. AND AS A RESULT THE BOARD OF DIRECTORS WERE
FACED WITH LAWSUITS. AND THEY FINALLY AGREED THAT IT
WOULD NOT BE DIVERTED ABOVE THIS POINT RATHER THAN HAVE
SUITS WITH THE PEOPLE DOWN HERE THAT WERE NOT GETTING
THE WATER BACK." THIS STATEMENT CLEARLY INDICATES
THAT THE WATER WAS BEING USED AT A VERY EARLY DATE ON
THE RANCH, EVEN THOUGH THERE WAS A DISPUTE AS TO WHERE
IT COULD BE USED, NOTHING IS IN THE RECORD WHERE
PORTAGE IRRIGATION HAD ANY MORE THAN A "BLUFF OR
INTIMIDATION" TYPE USE OF THE WATER COMMONLY REFERRED
TO AS A USE BY ADVERSE POSSESSION.

IN A FURTHER STATEMENT BY THE PORTAGE
IRRIGATION COMPANY PRESIDENT HE STATES THAT THIS BY-LAW
CHANGE TOOK PLACE IN 1902. WHETHER BY ACTUAL BY-LAW OR
PERCEIVED AGREEMENT, AGAIN THIS STATEMENT CLEARLY
DEMONSTRATES THAT THE WATER WAS BEING DIVERTED AND USED
ON THE PROPERTY NOW OWNED.

PAGE 6 (DOCUMENT PAGE 50 FROM DEPOSITION)
LINES 14-19: "Q". DO YOU RECALL HIM
(WENDALL HALL) SAYING ANYTHING ABOUT STOCK WATERING OUT
(OF) PORTAGE IRRIGATION DITCH?

"A". (WYNN JOHN, PRESIDENT OF IRRIGATION CO.) YES.
HE REFERRED TO IT. WHEN HE SAID ALL SUMMER LONG, HE WAS
REFERRING TO WHERE THEIR CATTLE RANGE IS IN THE SUMMER
BECAUSE THE GROUND MR. CHRISTENSEN HAS WAS IN CROPS,
AND IT WAS NOT PASTURED DURING THOSE---

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AGAIN, THE FACT REMAINS THAT THE ACREAGE IN THE CANYON WAS PLANTED IN CROPS. IT IS NEITHER BELIEVABLE NOR CONCEIVABLE THAT AVAILABLE WATER WAS NOT USED WHEN IT RAN FREELY THRU THE CROP AREA.

BOTH THE LETTERS FROM THE GRANDSON OF THE EARLIEST OWNERS CLEARLY CONFIRMS THAT WATER WAS UTILIZED ON THE PROPERTY, AND THE DEPOSITION OF THE CURRENT PRESIDENT OF THE IRRIGATION COMPANY CONFIRMS THE HISTORICAL USE.

MOST IMPORTANT, IS THE DEED ISSUED BY THE UNITED STATES OF AMERICAN TO THE ORIGINAL HOMESTEADERS. THE LANDS WERE HOMESTEADED AND SUBSEQUENTLY DEEDED IN STRICT ACCORDANCE WITH THE HOMESTEAD ACT OF MAY 20, 1862. THE HOMESTEAD CERTIFICATE IS PRIMA FACIA EVIDENCE OF FULL CONCURRENCE WITH THE PERTINENT LAW, AND IN FACT CLEARLY TRANSFERS ALL WATER RIGHTS APPURTENANT TO THE LANDS INVOLVED. THE DATE OF THAT HOMESTEAD CERTIFICATE BEING THE 30TH DAY OF SEPTEMBER, 1899. IT NEEDS TO BE POINTED OUT THAT UNDER THE HOMESTEAD ACT OF 1862, PART OF THE CRITERIA FOR ASSIGNMENT OF THE LANDS WAS THE DEVELOPMENT OF A WATER SOURCE AND THE PLANTING OF CROPS, ETC. THIS FACT CANNOT BE REFUTED, AND IS IMPORTANT BECAUSE IT DEMONSTRATES A CLEAR USAGE OF THE WATERS WITHIN THE CANYON. IT WAS THE WATER THAT MADE THE GROUNDS HABITABLE AND THE REASON THAT THE HOMESTEADERS WENT INTO THAT AREA IN THE FIRST PLACE.

CONCLUSION: NOT ONLY DOES CLEAR EVIDENCE EXIST THAT THE WATER WAS USED AS A BASIS FOR SECURING A HOMESTEAD CERTIFICATE OF OWNERSHIP, BUT THAT THIS WAS DONE PRIOR TO THE 1903 DATE, AFTER WHICH WATER WAS OBTAINED ONLY THROUGH APPLICATION TO THE STATE ENGINEER.

THE FAMILY MEMBERS RELATED TO THE ORIGINAL HOMESTEADERS CLEARLY STATE THAT THE WATER WAS USED FOR BOTH CROPS AND LIVESTOCK.

THE PRESIDENT OF THE HOSTILE IRRIGATION COMPANY ALSO CONFIRMS THROUGH HIS OWN MIS-GUIDED TESTIMONY THAT IN FACT THE WATER WAS UTILIZED ON THE PROPERTY.

YES, THIS WATER HAS BEEN THE CENTER OF MUCH CONTROVERSY OVER THE LAST 100 YEARS, BUT PERSONALITIES ASIDE, THE ACREAGE CURRENTLY OPERATED HAS A VALID CLAIM TO A CERTAIN PORTION OF THE WATERS WITHIN PORTAGE CANYON, REGARDLESS OF THE FEELINGS OF CERTAIN MEMBERS OF THE HOSTILE AND COMPLETING IRRIGATION COMPANY, RIGHTS THAT ARE JUST AS VALID AS THE HISTORIC USE THAT SOME OF THE SHAREHOLDERS OF THE PORTAGE IRRIGATION COMPANY CAN DEMONSTRATE.

ADDITIONAL DATA WILL BE PRESENTED IN THE NEAR FUTURE FURTHER SUPPORTING THE DILIGENCE CLAIM. SINCE ALL OF THE EVIDENCE AND DOCUMENTATION SUBMITTED TO DATE IS BASED UPON ACTUAL FACT, EVIDENCE, TESTIMONY, ETC., IT IS EXPECTED THAT ANY COMPETING DILIGENCE CLAIMS SUBMIT MORE THAN JUST STATEMENTS THAT "THE

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STATE ENGINEER GRANTED US ALL OF THE WATER IN PORTAGE CANYON."

IT IS EXPECTED AND DEMANDED THAT NOT ONLY OWNERSHIP OF CERTAIN LANDS BE PROVIDED, BUT ACTUAL PROOF OF CONTINUOUS USE, ETC., BE CLEARLY DEMONSTRATED AS WE HAVE BEEN FORCED TO SUPPLY. LANDS IN PROXIMITY CANNOT BE INCLUDED WHEN IT CAN BE CLEARLY DEMONSTRATED THAT WATERS FROM THE PORTAGE CANYON SOURCE HAVE NEVER WATERED SAID LANDS OR BEEN USED ON THOSE LANDS.

SINCE NO ONE DISPUTES THE FACT THAT THE "CREEK" WAS PRESENT WHEN THE FIRST SETTLERS ARRIVED, IT IS VERY CLEAR THAT THE GROUNDS IN THE PORTAGE CANYON HAVE BENEFITED GREATLY FROM WATERS PERCOLATING DOWN INTO THE SOIL AS THE SPRING WATER COURSES THRU THE PROPERTY IN QUESTION. A DILIGENCE CLAIM IS THEREFORE LEVIED AGAINST ALL SUCH WATERS PERCOLATING INTO THE SOILS ON THE RANCH.

THE DETERMINATION OF THESE WATERS CAN BE DETERMINED ONLY BY THE COMPLETE GATHERING OF ALL OF THE WATERS EMANATING WITHIN THE CANYON, AND ALL WATER FLOW ABOVE THE APPROXIMATE .68 CFS TO 1.0 CFS WOULD BE THE WATERS THAT HAD HERETOFORE "PERCOLATED" INTO THE SOIL. A CLAIM IS THEREFORE MADE FOR ANY VOLUME OF FLOW BEYOND THAT AMOUNT, AS WELL AS A PORTION OF THAT SAME .68 - 1.0 CFS THAT LEAVES THE PROPERTY, AS WE HAVE NOT BE ABLE TO FULLY UTILIZE THE HISTORIC USE DUE TO THE CONTINUAL LITIGATION AND THREATS MADE BY THE IRRIGATION COMPANY. IT IS ALSO BROUGHT TO THE ATTENTION OF THE STATE ENGINEER, THAT THIS APPLICANT OWNS ADDITIONAL SHARES IN THE PORTAGE IRRIGATION COMPANY, AND WOULD ALSO BE ENTITLED TO USE THAT PERCENTAGE OWNERSHIP WITHIN THE "IRRIGATION DISTRICT".

THE PREVIOUS PROBLEM OF FLOW AT THE NEXT HEADGATE IS A MANAGEMENT PROBLEM THAT CAN BE EASILY OVERCOME BY THE PRESENT MANAGEMENT OF THE IRRIGATION COMPANY, BUT INSTEAD REMAINS A PROBLEM THAT THEY HAVE REFUSED TO ADDRESS. IN THIS MODERN ERA OF COMPUTERS, ETC., IT WOULD BE A VERY EASY DETERMINATION TO MAKE CONCERNING THE HOURS OF USE TO INSURE THAT ALL WOULD RECEIVE THEIR FAIR SHARE OF THE FLOW OF THE AVAILABLE WATERS.

SINCERELY,



DEAN H. CHRISTENSEN

CC: DONALD M. WIEGAND