



J. CRAIG SMITH
jcsmith@smithlawonline.com

JEFFRY R. GITTINS
jgittins@smithlawonline.com

December 31, 2013

Kent L. Jones, P.E.
State Engineer
UTAH DIVISION OF WATER RIGHTS
P.O. Box 146300
Salt Lake City, UT 84114-6300

Re: Administration of Little Cottonwood Creek Diversions

Dear Mr. Jones,

This firm represents Hydro Holdings, LLC, the owner of Water Right Nos. 57-56, 57-57, 57-66, 57-81, 57-82, 57-88, and 57-866. These water rights permit Hydro Holdings to divert water year-round from Little Cottonwood Creek for the production of hydroelectric power. The priority dates for the water rights range from 1913 to 1944.

In recent years, Hydro Holdings has noted a distinct drop in the amount of water available for diversion during certain parts of the year—most notably during the late fall and early winter. Hydro Holdings believes that this decrease in water flow in the Creek is due primarily to the increased diversion and use of water for municipal and snowmaking purposes in upper Little Cottonwood Canyon. Indeed, in recent years, Salt Lake City has filed change applications on water rights historically diverted below Hydro Holdings for irrigation use, in order to divert and use the water rights above Hydro Holdings during the non-irrigation season for snowmaking and municipal uses.¹ Although these change applications have been approved by the Division of Water Rights, they were approved subject to existing prior rights, including the Hydro Holdings water rights.

As you are aware, Utah law requires that water rights be administered according to priority. *See, e.g.*, Utah Code Ann. § 73-3-1(5)(a) (“Between appropriators, the one first in time is first in rights.”); *id.* § 73-3-21.1(2)(a) (“Appropriators shall have priority among themselves according to the dates of their respective appropriations, so that each appropriator is entitled to receive the appropriator's whole supply before any subsequent appropriator has any right.”). It is the duty of the State Engineer and his assistants and creek commissioners to ensure that water is being taken in priority. *See id.* § 73-5-3.

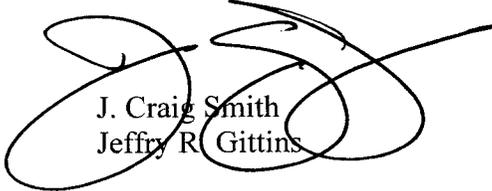
¹ These change applications include Change Application a16843, which was approved in 1994 and allows for the diversion of 2,000 acre-feet for municipal use by Salt Lake County Service Area No. 3 and snowmaking at Snowbird; Change Application a16844, which was approved in 1994 and allows for the diversion of 500 acre-feet for municipal use by the Town of Alta and snowmaking; and Change Application a26764, which was approved in 2009 and allows for the diversion of 133.8 acre-feet for domestic use and snowmaking at Alta Ski Lifts.

Salt Lake City's change applications are junior to Hydro Holdings' water rights. Nevertheless, Salt Lake City and the entities using Salt Lake City's water rights continue to divert the junior rights ahead of Hydro Holdings' senior rights. These out-of-priority diversions interfere with Hydro Holdings' water rights and cause damage and loss to Hydro Holdings, as each gallon of water diverted and used above Hydro Holdings' points of diversion is a gallon of water that Hydro Holdings cannot use to produce hydroelectric power.

Accordingly, Hydro Holdings hereby respectfully requests and demands that the diversions from Little Cottonwood Creek and its tributary sources be administered by priority in order to protect Hydro Holdings' senior rights. We note that there are two appointed Creek Commissioners who are empowered to assist you in administering the Creek based on priority. Because Hydro Holdings is being affected on a daily basis, your prompt attention to this matter is appreciated.

Please do not hesitate to contact us if you have any questions or would like to discuss these matters in more detail. Thank you for your attention to this matter of great importance to Hydro Holdings.

Sincerely yours,
SMITH HARTVIGSEN, PLLC



J. Craig Smith
Jeffrey R. Gittins

Cc: Hydro Holdings LLC, c/o Jim and Susannah Williams
Teresa Wilhelmsen, Regional Engineer, Utah Division of Water Rights
Jared Manning, Assistant State Engineer, Utah Division of Water Rights
Tim O'Hara, Little Cottonwood Creek Commissioner
Max Reese, Little Cottonwood Creek Commissioner
Salt Lake City Department of Public Utilities, c/o Russell Vetter, Deputy City Attorney
Salt Lake Service Area No. 3, c/o Keith Hanson, General Manager
Town of Alta, c/o Mayor Tom Pollard
Alta Ski Lifts Company, c/o Steve Clyde, Attorney
Snowbird Corporation, c/o Martin K. Banks, Attorney