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August 14, 2014

Jared Manning
Assistant Utah State Engineer
Utah Division of Water Rights
1594 North Temple, Suite 220
P.O. Box 146300
Salt Lake City, UT 84114-6300

RE: Piute Reservoir and Irrigation Company Water Credits

Dear Mr. Manning:

The Delta Canal Company, Melville Irrigation Company, Abraham Irrigation Company, Deseret Irrigation Company and Central Utah Water Company (DMADC), owners of Sevier Bridge Reservoir, have reviewed the July 11, 2014 letter that was written on behalf of Piute Reservoir and Irrigation Company ("Piute") and offers the following response with accompanying exhibits:

CURRENT STATE OF THE LAW

The 1936 Sevier River Decree ("Cox Decree") establishes water storage priorities between Sevier Bridge Reservoir and Piute Reservoir. Piute's right to receive "credits" for water stored in Sevier Bridge Reservoir is included in the October 18, 1938 Agreement (Exhibit A) between DMADC and Piute.¹

The 1938 Agreement was the subject of a District Court trial held on May 22, 1944, which resulted in the District Court issuing the 1945 Hoyt Decree ("Hoyt Decree") (Exhibit B). The Hoyt Decree determined and construed the 1938 Agreement. The District Court decision was then appealed to the Utah Supreme Court in a case titled "*Watson, State Engineer v. Deseret Irrigation Co. et al.*" 169 P.2d 793 (Utah 1946).

¹ The right of Piute to receive credits are set forth in paragraph 2 of the 1938 Agreement. The 1945 Hoyt Decree established the conditions under which Piute can claim such credits.

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WATER RIGHTS
SALT LAKE
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In *Watson*, the Court identified and discussed the issues regarding Piute's credit rights against Sevier Bridge Reservoir as construed by the Hoyt Decree.²

The Court framed the paramount issue in the case, as follows:

“Under the agreement of October 18, 1938, what are Piute’s rights as to “credits” against Sevier? That is the heart of this lawsuit, and involves the construction of Section 2 of the [1938] agreement.” Id. at 796.

Piute inexplicably avoids quoting the actual holding of the Utah Supreme Court, i.e. **“It is therefore ordered that the [Hoyt] decree be and the same hereby is affirmed”**. Id. at 799 (Emphasis added).

When the opinion is read in its entirety there is one important consensus among the justices; that neither the Cox Decree nor the 1938 Agreement gave Piute any right to store waters or receive credits in Sevier Bridge Reservoir with the exceptions contained in the 1938 Agreement as “determined and construed” by the Hoyt Decree.

The Hoyt Decree, as discussed hereafter, specifically sets forth the criteria for allowing Piute a credit for water reaching the Sevier Bridge Reservoir to which it may be entitled.

One of the main motives behind entering into the 1938 Agreement was to allow the early releases of water by the River Commissioner(s) under the direction of the State Engineer, in order to allow Piute to decrease or lessen losses in transmission of waters from Piute Reservoir to Sevier Bridge Reservoir and to facilitate the allocation of the waters between the reservoirs based on the parties’ respective priorities as contained in the Cox Decree. When water due Sevier Bridge Reservoir is released in the late spring, summer or early fall, Piute is paying reservoir losses in Piute Reservoir and is subject to higher transmission loses since any water Piute owes Sevier Bridge Reservoir must be delivered on a net basis into Sevier Bridge Reservoir.

The 1938 Agreement was determined and construed by the Hoyt Decree, which includes the following pertinent information:

First, that the 1938 Agreement “is hereby declared to have been ever since its execution and now is a valid and subsisting agreement.”

Second, “[t]hat said agreement, and particularly paragraph two thereof, is hereby determined and construed, and shall be hereafter construed to mean that the defendant Piute

² Piute’s consideration of this case does not address all the crucial issues before the Court and the subsequent analysis’ made by the Court.

Reservoir and Irrigation Company has no right to store any waters in the Sevier Bridge Reservoir or to receive credit for water held in such reservoir, except to the extent of –

- (1) Water received in the Sevier Bridge Reservoir on account of excessive releases due to miscalculation by the River Commissioner or Commissioners as to the amount to which the owners of the Sevier Bridge Reservoir were entitled under the 1936 General Adjudication Decree of the Sevier River...;
- (2) Water received in Sevier Bridge Reservoir from accretions to the river below the Piute Reservoir exceeding the amount for which allowance had been made in the calculations of the River Commissioners; and
- (3) Hold-over waters belonging to the Piute Reservoir and Irrigation Company by reason and to the extent of its being a stockholder in the Deseret Irrigation Company.”

Third, “[t]hat the defendant Piute Reservoir and Irrigation Company is not and shall not hereafter be entitled to claim any credit in a subsequent storage year for water which reaches the Sevier Bridge Reservoir, except to the extent hereinabove and in paragraph two hereof set forth, and that any credit to which it may be entitled must be taken in the storage year next following the storage year in which said waters flow into the Sevier Bridge Reservoir; and for the purpose of this decree and as the term is used in said agreement a storage year is hereby defined to be as commencing October 1st and concluding September 30th of the following year.”

Fourth, “[t]hat the plaintiff herein, Ed. H. Watson, State Engineer of the State of Utah, and his successors in office, shall hereafter distribute the waters of the Sevier River to which all of the defendants herein may be entitled under said general adjudication decree, as between themselves, as in said general adjudication decree provided and as amended and supplemented by said agreement of date October 18, 1938, and as construed and provided herein.” (Emphasis added) (See Hoyt Decree, pp. 2-3).

HOYT DECREE EFFECT ON CREDITS CLAIMED FOR 2012 AND 2013

Water Credits in General

Before discussing Piute’s claim to credits for the 2012 and 2013 water storage years, we would note that it is not as simple as Piute represents that when the reservoirs are full, Piute does not receive credits, but if the reservoirs fluctuate, Piute is always entitled to credits when water goes over Vermillion Dam. This is not correct. Piute is only entitled to receive credits

when it meets one or more of the criteria contained in the Hoyt Decree.³

2012 Water Year Credits

Piute cannot receive any credits for the 2012 water storage year.⁴ No water was due Sevier Bridge Reservoir from Piute during the 2012 water storage year because Piute Reservoir was full on April 1 and Piute received all of the water it was entitled to receive through April 1; no new storage was being made in the upper or lower zones after April; and Piute could not meet any of the three criteria set forth in the Hoyt Decree in which to establish a credit for water going over Vermillion Dam. The Lower River Commissioner notified both Piute and the Upper River Commissioner that Piute did not owe Sevier Bridge Reservoir any water during the 2012 water storage year.

To further explain DMADC's position, DMADC is submitting herewith tables titled "2012 Water Storage in Piute and Sevier Bridge Reservoirs By Storage Priorities on April 1, 2012" (Exhibit C) and "2012 Water Over Vermillion Dam" (Exhibit D) to show how storage water is divided and when Piute is entitled to credits in Sevier Bridge Reservoir for 2012.

If Piute was somehow entitled to receive any credits for the 2012 water storage year (which DMADC vehemently disputes), Piute could not now claim credit. The Hoyt Decree states that "...any credit to which it [Piute] may be entitled must be taken in the storage year next following the storage year in which said waters flow into the Sevier Bridge Reservoir.⁵..." i.e. September 30, 2013 (Emphasis added). (See first paragraph on p. 3 of the Hoyt Decree). Accordingly, Piute has waived its rights to any credits it may have had for the 2012 water storage year to which it now claims it is entitled. Nevertheless, as explained above, Piute was never entitled to any credits from the 2012 water storage year. See Exhibit D.

³ The Utah Supreme Court recognized that: "The parties are agreed that Piute has no general storage rights in Sevier Reservoir; that is, it cannot of its own volition run its waters down to Sevier Reservoir and store them there, and then at its pleasure in future years withhold from the flow of the river at Piute Reservoir water which should flow down to Sevier." *Watson*, at 796.

⁴ The water storage year for 2012 runs from October 1, 2011 through September 30, 2012. See definition of "storage year" on paragraph 3 of the Hoyt Decree.

⁵ Piute refers to this as a "two-year management plan." When Piute is entitled to credits, the Utah Supreme Court recognizes 'equalizing' on a two year basis," to remove difficulties resulting from the uncertainties in the make of the river each year. (See *Watson*, 169 P.2d at 798). This is based on a "storage year" as defined by the Hoyt Decree.

2013 Water Year Credits

Piute's right to receive water credit for the 2013 water storage year⁶ raises some questions. The Lower River Water Commissioner's records (Exhibit E) show that Sevier Bridge Reservoir received 1,069 acre feet (applying the 5% winter shrinkage) in September of 2013 after Piute had closed its gates and after it had finished delivering the water it owed Sevier Bridge for the 2013 water storage year. These same records show the amount of water Piute owed Sevier Bridge Reservoir for the 2013 storage water year.⁷ In addition thereto, DMADC is also submitting a table titled "2013 Water Over Vermillion Dam" (Exhibit F) addressing said 1,069 acre feet. This raises the possibility of Piute receiving a credit in Sevier Bridge Reservoir for this amount in the 2014 water storage year. However, there are a few issues that put that credit in doubt.

First, the Upper River Commissioner has told the Lower River Commissioner that he has a policy that if the A-L Primary Users⁸ called for a release out of Piute Reservoir and do not use the water, he deducts that amount out of the A-L Users' balance in Piute Reservoir. This raises the question as to whom the Upper River Commissioner allocates this water. The Upper River Commissioner has been very vague on this issue. Piute should not get credit for this water, if they are also receiving credit for any unused primary water which goes over Vermillion Dam. Accordingly, DMADC respectfully requests that the State Engineer's Office order the Upper River Commissioner to provide a written accounting of the amount of water which the A-L users ordered during the 2013 irrigation season but did not take, and to whom this water was allocated. This information is vital in determining the amount of credits, if any, that Piute should receive in Sevier Bridge Reservoir for the current water storage year that began on October 1, 2013. Another possible scenario is that the Upper River Commissioner might be charging the released water not used and giving Piute a credit for water going over Vermillion Dam. The point is, we do not know what the Upper River Commissioner is doing and as a result, the credit claimed by Piute remains in question.

Second, the A-L Primary Users have storage rights in Piute Reservoir from April 1 to September 30. All of the A-L primary water remaining in storage in Piute Reservoir on October 1 must be used by the A-L primary users by November 1 or the unused primary water on

⁶ The water storage year for 2013 runs from October 1, 2012 through September 30, 2013. See definition of "storage year" on paragraph 3 of the Hoyt Decree.

⁷ The Lower Commissioner's calculations show that on April 1, 2013, Piute owed Sevier Bridge 7,388 acre feet delivered into Sevier Bridge Reservoir (net). Piute's letter showed the amount owing Sevier Bridge Reservoir to be 7004 acre feet. However, Piute was using a "preliminary estimate" based on projected primary flows. The final accounting shows Piute owed Sevier Bridge Reservoir 7,388 acre feet.

⁸ The A-L Users are the users who are decreed primary rights in the Sevier Valley. See pp 2-3 of the Cox Decree.

November 1 then becomes part of the new storage water decreed and allocated to Sevier Bridge Reservoir and Piute Reservoir.⁹ The Upper River Commissioner has not provided the Lower River Commissioner any records detailing the amount of unused A-L primary water in Piute Reservoir on October 1 and November 1, 2013. This information is needed in order for the parties to know the amount of unused primary water left in Piute Reservoir so it can be properly accounted for as being part of the storage supply to be divided between Sevier Bridge Reservoir and Piute Reservoir. DMADC respectfully requests that the State Engineer's Office order the Upper River Commissioner to make this information available, in writing, and further order the Upper River Commissioner to provide these records for each and every year thereafter.

Third, this issue may extend to storage in Otter Creek Reservoir. The lack of information and documentation to determine the division of waters between Otter Creek Reservoir and Piute Reservoir can have a direct impact on the calculations and allocations of storage water belonging to Sevier Bridge Reservoir and Piute Reservoir. Accordingly, in order to have accountability for all the storage water in the upper zone, records need to be made available to the Lower River Commissioner. It is our understanding that he has asked for this information in the past but has not received it. DMADC respectfully requests that the State Engineer's Office order the Upper River Commissioner to provide to the Lower River Commissioner storage records in Otter Creek and Piute Reservoirs as of October 1, 2013, pertaining to Otter Creek's losses, credits and exchanges as it passes through Piute Reservoir, and provide information or policies, if any, that the Upper River Commissioner uses in managing Otter Creek Reservoir and Piute Reservoir waters.

ENFORCEMENT

DMADC does not agree with several other representations made by Piute as contained in its July 11, 2014 opinion letter. For instance, DMADC finds Piute's position somewhat baffling in regards to enforcement of the 1938 Agreement, that *"the greater the exactitude and rigidity in the Sevier Bridge position the greater the resistance by Piute users to orderly releases or releases at any time, which are close to the margin."*

As mentioned earlier, one of the purposes of the 1938 Agreement was to lessen or decrease transmission losses by releasing water earlier in the year. Piute Reservoir will accumulate higher losses when water due Sevier Bridge Reservoir is released later in the year. The parties should not ignore the fact that enforcement under the terms of the 1938 Agreement has worked extremely well through the decades that followed; nor should the parties ignore the fact that they have both relied on the 1938 Agreement through the years to their mutual benefit. Paragraph two of the 1938 agreement was interpreted by the Hoyt Decree and is rightfully relied on by the DMADC to determine under what conditions Piute is entitled to credits. This is far

⁹ See condition (e) at the bottom of p. 4 and the top of p. 5 of the Cox Decree.

from being excessively rigid under the terms of the 1938 Agreement. Piute's position that it would rather resist giving early releases, will simply result in a loss of water to the system at Piute's expense.

Also, it may be appropriate to discuss Piute's concern as to the River Commissioners' role and ability to manage the storage waters. First, DMADC disagrees with Piute's position as to the complexity in following the 1938 Agreement. In fact, the River Commissioners use a fairly simple set of calculations which have been used for decades to divide the storage water. On October 1, at the beginning of each water storage year, the River Commissioners determine the contents of the Piute and Sevier Bridge Reservoirs, taking into account the appropriate factors, such as winter shrinkage, holdover, unused primary, etc. On April 1 of each year, the River Commissioners also determine the contents of the Piute and Sevier Bridge Reservoirs, after taking into account the pertinent factors. With these measurements they calculate the amount of new storage water made between October 1 and April 1 of each water storage year. Between April 1 and September 30 of each year, the Commissioners determine whether any storage water is made. This process has been streamlined and simplified through modern technology. The River Commissioners can monitor the entire river system from their home or office.¹⁰

CONCLUSION

The manner and circumstances as to Piute's rights to credits against Sevier Bridge Reservoir are established by the 1938 Agreement, as determined and construed by the Hoyt Decree. The Utah State Engineers Office must enforce both. The procedures in the 1938 Agreement and the Hoyt Decree are not overly burdensome and have worked well, especially when the River Commissioners communicate and share information that enable them to properly determine the division of the storage waters that Piute Reservoir and Sevier Bridge Reservoir are entitled to receive. DMADC believes that providing the records and information requested herein will benefit everyone and will facilitate the division of the maximum amount of storage water available to allocate between the two reservoirs pursuant to the terms of the Cox Decree, as amended by the 1938 Agreement, as construed by the Hoyt Decree.

¹⁰ Piute discusses the flexibility of employing a "regulatory" stream. DMADC assumes that Piute is referring to the so-called "regulating" stream which was the subject of a proposed agreement in the early 1960s. The proposed regulating stream agreement was never formally adopted. With all of the automated canal systems and other improvements for regulating water in Sevier Valley, there is little need now for a regulating stream since the water users can manage their water much more effectively and efficiently than they could back in the early 1960's. As such, the regulating stream does not have any relevance to the present situation.

Jared Manning
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August 14, 2014

Sincerely yours,

WADDINGHAM & ASSOCIATES, P.C.

A handwritten signature in black ink, appearing to read "Richard Waddingham". The signature is fluid and cursive, with a large initial "R" and "W".

Richard Waddingham

RW/lh

A G R E E M E N T

THIS AGREEMENT, made as of the 16 day of October, 1938, by DELTA CANAL COMPANY, MELVILLE IRRIGATION COMPANY, DESERET IRRIGATION COMPANY, CENTRAL UTAH WATER COMPANY and ABRAHAM IRRIGATION COMPANY, hereinafter referred to as Sevier Bridge Reservoir Owners, as First Parties, and PIUTE RESERVOIR AND IRRIGATION COMPANY, hereinafter referred to as Piute Company, as Second Party:

W I T N E S S E T H :

That notwithstanding any provision to the contrary in the decree entered November 30, 1936, by Judge LeRoy H. Cox, in Case No. 845, entitled "Richlands Irrigation Company, a corporation, Plaintiff, vs. West View Irrigation Company, a corporation, et al, Defendants," in the Fifth Judicial District Court of the State of Utah, in and for Millard County, or in any contract heretofore made between the parties, the parties to this agreement desire to provide for the right on the part of any one or more, or all, of the First Parties to hold over year after year in Sevier Bridge Reservoir any waters, storage or primary, belonging to them, respectively, and to lessen or decrease losses in water in transmission from Piute Reservoir to Sevier-Bridge Reservoir, and to facilitate the allocation of waters of the Sevier River as between the Sevier Bridge Reservoir and the Piute Reservoir provided in said decree;

NOW THEREFORE, in consideration of the premises, and of the sum of One (\$1.00) Dollar by each of the parties to the other paid, receipt whereof is hereby acknowledged, and in consideration of the covenants and agreements of the respective parties hereto, it is hereby AGREED as follows:

- 1. The Sevier Bridge Reservoir Owners agree that each of them, severally, shall have the right to hold over in Sevier Bridge Reservoir, for use the following year, any waters, storage or primary, belonging to them, or any of them, respectively, which are held or stored in said reservoir on

EXHIBIT A

October 1st of any year; provided, that if in any one year the Sevier Bridge Reservoir shall be filled to its safe capacity, then and in such an event all holdover water belonging to First Parties shall become common storage water, and the rights of the First Parties to participate in said water shall be as now provided in the said decree of November 30, 1936.

2. In order further to decrease or lessen losses in transmission of waters between Piute Reservoir and Sevier Bridge Reservoir, and to facilitate the allocation of the waters between said reservoirs year after year, the Sevier Bridge Reservoir Owners agree with Piute Company as follows:

(a) The River Commissioner or Commissioners, under the direction of the State Engineer of the State of Utah, shall, on and after January 1st of each year, release from Piute Reservoir for transmission to Sevier Bridge Reservoir so much of the water accumulated or accumulating from the storage filings set out on page 185 of the decree of November 30, 1936, in Piute Reservoir, as may be released without jeopardizing the receipt and use by the Piute Company of the water allocated to it under said decree and under the provisions of this agreement, not exceeding, however, such an amount as in the judgment of said officials will, with anticipated accretions from below said reservoir, deliver into the Sevier Bridge Reservoir the water to which Sevier Bridge Reservoir shall be entitled under said decree.

(b) If in any year the Sevier Bridge Reservoir shall have received more than its proper proportion of the storage waters of the Sevier River allocated to it under said decree, whether from excessive release of water from Piute Reservoir, or from accretions to the river below Piute Reservoir exceeding the amount for which allowance had been made, or from any holdover water, belonging to the Piute Company by reason of its being a stockholder of Deseret Company, such excess water, whether held in Sevier Bridge Reservoir or used by the Sevier Bridge Reservoir Owners, shall be credited (less its proper proportion of loss as hereinafter provided) to Piute Company, and be accounted as a part and as satisfying to that extent the first priority of the Sevier Bridge Reservoir for the said following year, and the said Piute Company shall be, during said following year, entitled, by reason of such credit to withhold, store and use from waters accruing under said storage filings, an amount of water equal to the amount of water so received in the Sevier Bridge Reservoir, less said deduction, before the owners of the Sevier Bridge Reservoir shall be entitled to receive any waters accruing from said storage

filings to satisfy the balance of its first priority of 89,280 acre feet for said year.

3. Each of the parties hereto who may hold over any water in Sevier Bridge Reservoir, as herein provided, shall bear his or its proper proportion of the reservoir loss. The reservoir loss for the holdover period shall be properly computed by the River Commissioner or Commissioners under the supervision of the State Engineer, and shall be applied uniformly and proportionately against all water so stored.

4. Because of the special inducements and the advantages that will accrue to the parties under this agreement, the Sevier Bridge Reservoir Owners, as for themselves, agree to stipulate a decree, in the cause now pending in the Fifth Judicial District of the State of Utah in and for Millard County, involving an appeal from the decision of the State Engineer allowing, on condition, transfer of the waters owned by the Wellington Irrigation Company to the Piute Company's storage and distribution system, permitting such transfer as for 3750 acre feet (the difference between said 3750 acre feet and 4,000 acre feet being agreed upon between the parties hereto as a proper allowance covering return flow on the Wellington Right at its present place of use). And said Sevier Bridge Reservoir Owners, other than Deseret, consent to the exchange or transfer, by Deseret Company to Piute Company, of the water represented by Piute Company's 4,000 shares of stock in Deseret Company.

5. It is further agreed that upon the execution of this agreement the appeal now pending in the Supreme Court of the State of Utah involving an interpretation of the decree of Judge LaRoy H. Cox, determining water rights on the Sevier River in so far as the same relates to allocations of water between the Sevier Bridge Reservoir and the Piute Reservoir, shall be dismissed.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their proper officers, respectively, thereunto duly authorized by resolution of their respective Boards of Directors, this the day and

year above written.

DELTA CANAL COMPANY

By W. J. Oppenheim
Its President.

Attest:
D. O. Crompton
Secretary.

MELVILLE IRRIGATION COMPANY

By William J. Jeffery
Its President.

Attest:
Herman W. Stucki
Secretary.

DESKRET IRRIGATION COMPANY

By J. J. Peterson
Its President.

Attest:
J. J. Peterson
Secretary.

CENTRAL UTAH WATER COMPANY

By S. Clark Callister
Its President.

Attest:
S. Clark Callister
Secretary.

ABRAHAM IRRIGATION COMPANY

By C. T. Black
Its President

Attest:
Radcliffe Z. Cannon
Secretary.

FIRST PARTIES

PIUTE RESERVOIR AND IRRIGATION COMPANY

By Joseph T. Johnson
Its President.

Attest:
Rex
Secretary

SECOND PARTY

IN THE DISTRICT COURT OF MILLARD COUNTY, UTAH.

ED. H. WATSON, State Engineer of
the State of Utah,

Plaintiff,

-vs-

DESERET IRRIGATION COMPANY, a
corporation; DELTA CANAL COMPANY,
a corporation; ABRAHAM IRRIGATION
COMPANY, a corporation; MELVILLE
IRRIGATION COMPANY, a corporation;
CENTRAL UTAH WATER COMPANY, a
corporation; and PIUTE RESERVOIR
AND IRRIGATION COMPANY, a
corporation,

Defendants.

D E C R E E.

This cause came on regularly for trial before the Court sitting without a jury, Judge Will L. Hoyt, Presiding, on the 22nd day of May, 1944, Grover A. Giles and E. J. Skeen appearing for the plaintiff, and Cheney, Jensen, Marr and Wilkins appearing for the defendant Piute Reservoir and Irrigation Company, and Dudley Crafts and Elias Hanson appearing for the defendants Deseret Irrigation Company, Melville Irrigation Company, Delta Canal Company and Abraham Irrigation Company, and Elias Hanson and Cline Wilson and Cline appearing for the defendant Central Utah Water Company; and the Court having heard the testimony and having examined the proofs offered by the respective parties, and the Court being fully advised in the premises, and having filed herein its Findings of Fact and Conclusions of Law, and having directed that judgment be entered in accordance therewith;

NOW THEREFORE, by reason of the law, and pursuant to said Findings of Fact and Conclusions of Law aforesaid -

IT IS HEREBY ORDERED, ADJUDGED and DECREED:

1. That the agreement of date October 18th, 1938, marked Exhibit "A" and made a part of the complaint and set forth in full in the findings in this cause, and wherein the defendants Delta

EXHIBIT B

Canal Company, Melville Irrigation Company, Deseret Irrigation Company, Abraham Irrigation Company and Central Utah Water Company are parties of the first part; and the defendant Piute Reservoir and Irrigation Company is party of the second part, is hereby declared to have been ever since its execution and now is a valid and subsisting agreement.

2. That said agreement, and particularly paragraph two thereof, is hereby determined and construed, and shall be hereafter construed to mean that the defendant Piute Reservoir and Irrigation Company has no right to store any waters in the Sevier Bridge Reservoir or to receive credit for water held in such reservoir, except to the extent of -

(1). Water received in the Sevier Bridge Reservoir on account of excessive releases due to miscalculation by the River Commissioner or Commissioners as to the amount to which the owners of the Sevier Bridge Reservoir were entitled under the 1936 General Adjudication Decree of the Sevier River, and made and entered on November 30th, 1936, by Judge LeRoy H. Cox, in Case No. 843, entitled Richlands Irrigation Company, a corporation, plaintiff, vs West View Irrigation Company, a corporation et al., defendants, in the Fifth Judicial District Court of the State of Utah, in and for Millard County;

(2). Water received in Sevier Bridge Reservoir from accretions to the river below the Piute Reservoir exceeding the amount for which allowance had been made in the calculations of the River Commissioners; and

(3). Hold-over waters belonging to the Piute Reservoir and Irrigation Company by reason and to the extent of its being a stockholder in the Deseret Irrigation Company.

3. That the defendant Piute Reservoir and Irrigation Company is not and shall not hereafter be entitled to claim any credit in a subsequent storage year for water which reaches the Sevier Bridge Reservoir, except to the extent hereinabove and in

paragraph two hereof set forth, and that any credit to which it may be entitled must be taken in the storage year next following the storage year in which said waters flow into the Sevier Bridge Reservoir; and for the purpose of this decree and as the term is used in said agreement a storage year is hereby defined to be as commencing October 1st and concluding September 30th of the following year.

4. That the said 13,226 acre feet of water referred to in all of the pleadings herein and in controversy in this cause is the property of the owners of the Sevier Bridge Reservoir, to-wit, Deseret Irrigation Company, Delta Canal Company, Abraham Irrigation Company, Melville Irrigation Company and Central Utah Water Company, and that the defendant Piute Reservoir and Irrigation Company is not entitled to credit for said water or any part thereof in the year 1944 or any subsequent year.

5. That the second cross-complaint of the defendants Deseret Irrigation Company, Delta Canal Company, Abraham Irrigation Company and Melville Irrigation Company against the plaintiff and the defendant Central Utah Water Company, be and the same is hereby dismissed without prejudice.

6. That the defendants, Deseret Irrigation Company, Delta Canal Company, Abraham Irrigation Company, Melville Irrigation Company and Central Utah Water Company, are hereby awarded their costs herein incurred, and hereby taxed at \$ _____, against the defendant Piute Reservoir and Irrigation Company.

7. That the plaintiff herein, Ed. H. Watson, State Engineer of the State of Utah, and his successors in office, shall hereafter distribute the waters of the Sevier River to which all of the defendants herein may be entitled under said general adjudication decree, as between themselves, as in said general adjudication decree provided and as amended and supplemented by said agreement of date October 18th, 1938, and as construed and provided herein.

Dated this 23 day of April, 1945.
-3- W. F. Neigh Judge of the District Court.

2012 Water Storage in Piute and Sevier Bridge Reservoirs by Storage Priorities on April 1, 2012

Decreed Storage Priorities from the Cox Decree	Piute Reservoir (66785 AF Capacity)		Sevier Bridge Reservoir (236145 AF Capacity)	
	Amount	Total Amount	Amount	Total Amount
First Priority: SBR-89280 AF	0 AF	0 AF	89280 AF	89280 AF
Second Priority: Piute-40000 AF	40000 AF	40000 AF	0 AF	89280 AF
Third Priority: SBR-75% and Piute 25% of the next 32000 AF	8000 AF	48000 AF	24000 AF	113280 AF
Fourth Priority: SBR-13720 AF	0 AF	48000 AF	13720 AF	127000 AF
Fifth Priority: SBR-75% and Piute 25% of the next 75000 AF	18750 AF	66750 AF	56250 AF	183250 AF
Sixth Priority: SBR-85% and Piute 15% further Water	35 AF	66785 AF (FULL)	52895 AF	236145 AF (FULL)

Both reservoirs were full on April 1, 2012 and had received enough water to fill the reservoirs. Piute Reservoir was full through all of April and so could not hold any more storage during April. After April, even though Piute Reservoir was not full and had room to store more water, there was no new storage water made in either Zone A (above Vermillion Dam) or in Zone B (below Vermillion Dam). However, because of too much water being released from Piute Reservoir for use of the water users in Sevier Valley, some water did go over Vermillion Dam between May and September of 2012. This was not new storage water made above the decreed primary flows in either Zone A or Zone B; rather it came from releasing too much water from Piute Reservoir for the use of the water users in Sevier Valley. It was not a miscalculation on the part of the River Commissioners on the amount of water Sevier Bridge Reservoir was entitled to receive. Piute Reservoir did not owe Sevier Bridge Reservoir any water in 2012.

EXHIBIT C

**2012 Water Over Vermillion Dam
Piute Owed Zero (0) AF to Sevier Bridge Reservoir (SBR)**

Month	Amount of Water which went over Vermillion Dam (AF) Note that this is <u>not</u> the net amount at SBR	1945 Hoyt Decree Criteria for Piute Receiving a Credit for Water in SBR and for Storing Water in SBR.		
		Excessive release from Piute Reservoir due to a miscalculation on amount which SBR is entitled to receive?	Accretions below Piute Reservoir exceeding amount for which allowances made in calculations?	Piute's Holdover in Deseret Irrigation Company applies to storage in SBR, <u>not</u> to Piute credits in SBR.
April 2012	4011 AF	No Credit: Piute Reservoir was full and spilling.	No Credit: Piute Reservoir was full and spilling.	No Credit: Not applicable to water over Vermillion Dam.
May 2012	829 AF	No Credit: The excessive release this month was <u>not</u> due to a miscalculation on amount which SBR is entitled to receive. Piute owed SBR Zero (0) AF.	No Credit: No allowances for accretions were needed for this month's calculations since the amount Piute owed SBR was Zero (0) AF.	No Credit: Not applicable to water over Vermillion Dam.
June 2012	772 AF	No Credit: The excessive release this month was <u>not</u> due to a miscalculation on amount which SBR is entitled to receive. Piute owed SBR Zero (0) AF.	No Credit: No allowances for accretions were needed for this month's calculations since the amount Piute owed SBR was Zero (0) AF.	No Credit: Not applicable to water over Vermillion Dam.
July 2012	746 AF	No Credit: The excessive release this month was <u>not</u> due to a miscalculation on amount which SBR is entitled to receive. Piute owed SBR Zero (0) AF.	No Credit: No allowances for accretions were needed for this month's calculations since the amount Piute owed SBR was Zero (0) AF.	No Credit: Not applicable to water over Vermillion Dam.
August 2012	1061 AF	No Credit: The excessive release this month was <u>not</u> due to a miscalculation on amount which SBR is entitled to receive. Piute owed SBR Zero (0) AF.	No Credit: No allowances for accretions were needed for this month's calculations since the amount Piute owed SBR was Zero (0) AF.	No Credit: Not applicable to water over Vermillion Dam.
September 2012	1089 AF	No Credit: The excessive release this month was <u>not</u> due to a miscalculation on amount which SBR is entitled to receive. Piute owed SBR Zero (0) AF.	No Credit: No allowances for accretions were needed for this month's calculations since the amount Piute owed SBR was Zero (0) AF.	No Credit: Not applicable to water over Vermillion Dam.

EXHIBIT D

DIVISION OF STORAGE WATER 2013

G.H. of Sevier Bridge	* 10/01/12	61.81	99,867 A.F.
	Unused Pt 10/01/12		
	West View	-181 A.F.	
	Gunnison Fayette	-87 A.F.	
	Dover	198 A.F.	
	Lemington	0 A.F.	
	Vincent	183 A.F.	
	Terry	0 A.F.	
	Total	<u>113 A.F.</u>	113 A.F.
Releases of Storage Water After	10/01/12		744 A.F.
The exchange of credits in Sevier Bridge with the primary made below.	Use of Lemington, McIntyre, and Cropper		<u>0 A.F.</u>
Holdover	10/01/12		99,010 A.F.
Net Holdover (Holdover minus 5% Shrink)			<u>94,060 A.F.</u>

DIVISION OF STORAGE WATER APRIL 1, 2013

G.H. of Sevier Bridge	* 04/01/13	73.35	172,300 A.F.
	Stored March Primary		4,843 A.F.
	Net Holdover	04/01/13	94,060 A.F.
	Diversions before	04/01/13	<u>0 A.F.</u>
	Storage Made in Lower Zone	04/01/13	73,397 A.F.
Estimated Exchange Water in Lower Zone		Ave Primary	
		56.67%	50.97%
	Wellington	3,750 A.F.	
	Wells	133 A.F.	
	Dover Stock	2,411 A.F.	12.765 CFS @ 168 E
	Deseret Stock	2013 958 A.F.	
	Deseret Stock	2012 <u>1,244 A.F.</u>	
	TOTAL	8,495 A.F.	<u>8,495 A.F.</u>
Total Storage Made in Lower Zone	From 10/01/12	04/01/13	<u>81,892 A.F.</u>
Sevier Bridge 1st Priority		81,892 A.F.	
Sevier Bridge 3rd Priority		0 A.F.	
Sevier Bridge 4th Priority		0 A.F.	
Sevier Bridge 5th Priority		0 A.F.	

EXHIBIT E

Water Supply—Storage Rights
 Division of Storage Waters Between the Upper and Lower Zones
 2013

Total Storage in Reservoir	04/01/13	Sevier Bridge 81,892 a.f.
Zone B Storage		0 a.f.
Total Storage in Reservoir	04/01/13	81,892 a.f.
Water due Sevier Bridge	04/01/13	7,388 a.f.
1st Priority		89,280 a.f.

1st Priority

Due Sevier Bridge	04/01/13	7,388 a.f.
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Due S.B.	at Piute	9,855 a.f.
Due S.B.	over V.D.	8,376 a.f.
Due S.B.	RF&WB	8,209 a.f.
Due S.B.	04/01/09	7,388 a.f.

Total Storage in Reservoir	04/01/13	81,892 a.f.
Net over Vermillion Dam	April	
✓ 1,462 a.f. x.98x.90=		+ 1,289 a.f.
April Zone B Storage		0 a.f.
April Zone A Storage		0 a.f.

Total storage in reservoir 05/01/13 83,181 a.f.

1st Priority

Due Sevier Bridge	05/01/13	6,099 a.f.
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Due S.B.	at Piute	05/01/13	8,135 a.f.
Due S.B.	over V.D.	05/01/13	6,914 a.f.
Due S.B.	RF&WB	05/01/13	6,776 a.f.
Due S.B.	05/01/09		6,099 a.f.

Total Storage in Reservoir	05/01/13	83,181 a.f.
Net over Vermillion Dam	May	
✓ 2,126 a.f. x.98x.90=		+ 1,875 a.f.
May Zone B Storage		0 a.f.
May Zone A Storage		

Total storage in reservoir 06/01/13 85,057 a.f.

1st Priority

Due Sevier Bridge	06/01/13	4,223 a.f.
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Due S.B.	at Piute	06/01/13	5,633 a.f.
Due S.B.	over V.D.	06/01/13	4,788 a.f.
Due S.B.	RF&WB	06/01/13	4,693 a.f.
Due S.B.	06/01/09		4,223 a.f.

***** NEED UPPER RIVER NEW STORAGE MAKE FOR MAY*****

Total Storage in Reservoir	06/01/13	85,057 a.f.
Net over Vermillion Dam	June	
✓ 655 a.f. x.98x.90=		+ 578 a.f.
June Zone B Storage		0 a.f.
June Zone A Storage		

Total storage in reservoir 07/01/13 85,634 a.f.

1st Priority

Due Sevier Bridge	07/01/13	3,646 a.f.
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Due S.B.	at Piute	07/01/13	4,863 a.f.
Due S.B.	over V.D.	07/01/13	4,133 a.f.
Due S.B.	RF&WB	07/01/13	4,051 a.f.
Due S.B.	07/01/09		3,646 a.f.

Total Storage in Reservoir	07/01/13	85,634 a.f.
Net over Vermillion Dam	July	
✓ 1,333 a.f. x.98x..88		+ 1,150 a.f.
August Zone B Storage		0 a.f.
August Zone A Storage		

Total storage in reservoir 08/01/13 86,784 a.f.

1st Priority

Due Sevier Bridge	08/01/13	2,496 a.f.
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Due S.B.	at Piute	08/01/13	3,329 a.f.
Due S.B.	over V.D.	08/01/13	2,830 a.f.
Due S.B.	RF&WB	08/01/13	2,773 a.f.
Due S.B.	08/01/09		2,496 a.f.

Total Storage in Reservoir	08/01/13	86,784 a.f.
Net over Vermillion Dam	August	
✓ 916 a.f. x.98x..88		+ 790 a.f.
September Zone B Storage		0 a.f.
September Zone A Storage		

Total storage in reservoir 09/01/13 87,574 a.f.

1st Priority

Due Sevier Bridge	09/01/13	1,706 a.f.
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Due S.B.	at Piute	09/01/13	2,276 a.f.
Due S.B.	over V.D.	09/01/13	1,934 a.f.
Due S.B.	RF&WB	09/01/13	1,896 a.f.
Due S.B.	09/01/09		1,706 a.f.

Total Storage in Reservoir	09/01/13	87,574 a.f.
Net over Vermillion Dam	September	
✓ 3,283 a.f. x.98x..88		+ 2,831 a.f.

September Zone B Storage
September Zone A Storage

0 a.f.

***** Total storage in reservoir 10/01/13 90,405 a.f.

1st Priority
Duo Sevier Bridge 10/01/13 -1,125 a.f.

Piute's Storage Water in SB 1,125 a.f.

Piute's Net Storage Water 4/1/2014 1,089 a.f. (5% shrink)

**2013 Water Over Vermillion Dam
Piute Owed 7,388 AF net to Sevier Bridge Reservoir (SBR)**

Month	Amount of Water which went over Vermillion Dam (AF) Note that this is <u>not</u> the net amount at SBR	1945 Hoyt Decree Criteria for Piute Receiving a Credit for Water in SBR and for Storing Water in SBR.		
		Excessive release from Piute Reservoir due to a miscalculation on amount which SBR is entitled to receive?	Accretions below Piute Reservoir exceeding amount for which allowances made in calculations?	Piute's Holdover in Deseret Irrigation Company applies to storage in SBR, <u>not</u> to Piute credits in SBR.
April 2013	1462 AF	No Credit: Water Piute owed SBR which was being delivered.	No Credit: Water Piute owed SBR which was being delivered.	No Credit: Not applicable to water over Vermillion Dam.
May 2013	2126 AF	No Credit: Water Piute owed SBR which was being delivered.	No Credit: Water Piute owed SBR which was being delivered.	No Credit: Not applicable to water over Vermillion Dam.
June 2013	655 AF	No Credit: Water Piute owed SBR which was being delivered.	No Credit: Water Piute owed SBR which was being delivered.	No Credit: Not applicable to water over Vermillion Dam.
July 2013	1333 AF	No Credit: Water Piute owed SBR which was being delivered.	No Credit: Water Piute owed SBR which was being delivered.	No Credit: Not applicable to water over Vermillion Dam.
August 2013	916 AF	No Credit: Water Piute owed SBR which was being delivered.	No Credit: Water Piute owed SBR which was being delivered.	No Credit: Not applicable to water over Vermillion Dam.
September 2013	3283 AF Note that the main reason there was extra water which went over Vermillion Dam after September 17 was that the weather turned rainy and cool and the primary users in Sevier Valley quit taking all of their primary water. The primary water not taken in Sevier Valley was the water which went over Vermillion Dam after September 17.	<p>No Credit: Part of this was water Piute owed SBR which was being delivered. Delivery of the water Piute owed SBR was completed on September 17.</p> <p>Piute closed its gates and quit releasing water on September 15.</p> <p>SBR received an additional 1125 AF net at SBR (1069 AF net at SBR after 5% winter shrink) from water over Vermillion Dam after September 17.</p> <p>However, the additional water which SBR received was <u>not</u> due to excessive releases from Piute since Piute had closed its gates and did not even release any water after September 15.</p>	<p>Possible Credit: On September 1, Piute owed SBR 1706 AF net at SBR. Delivery of this water was completed on September 17.</p> <p>SBR received an additional 1125 AF net at SBR from water over Vermillion Dam after September 17. This is the only water that Piute could even possibly get a credit for this year.</p> <p>However, other info is first needed to be able to determine if Piute has already been given a credit for any primary water ordered but not taken, or for any unused A-L primary in Piute Reservoir on Nov. 1.</p> <p>Also, was this water an "accretion below Piute Reservoir"?</p>	No Credit: Not applicable to water over Vermillion Dam.

EXHIBIT F