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FOURTH JUDICIAL DISTRICT COURT
OF UTAH COUNTY STATE OF UTAH

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PREPARED JOINTLY
BY COUNSEL FOR ALL PARTIES

IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY
STATE OF UTAH

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UTAH LAKE LANDOWNER'S
ASSOCIATION, et al.,

Plaintiffs,

vs.

KENNECOTT CORPORATION,
et al.,

Defendants.

JUDGMENT

Civil No. 64770

Judge George E. Ballif

MAR 13 1985

ATTORNEY GENERAL
NATURAL RESOURCE AGENCIES

On September 15, 1983, plaintiffs initiated this action individually, as members of the Utah Lake Landowners' Association, and as a class action pursuant to Rule 23 of the Utah Rules of Civil Procedure. Plaintiffs sought damages and injunctive relief relating to flooding of lands adjacent to Utah Lake. Plaintiffs alleged a breach of contract based upon a "Compromise Agreement" entered into in 1885, and five causes of action sounding in tort, including claims based on strict liability, negligence, res ipsa loquitur, trespass and

nuisance. A seventh cause of action requested injunctive relief, compelling defendants to restore the level of Utah Lake to a specified elevation.

This action is but the latest installment in a century of controversy and litigation surrounding the level of Utah Lake and the effect of dams and obstructions erected and maintained in the Jordan River. See e.g., Salt Lake City, et al. v. Colladge, et al., 45 P. 891 (Utah 1896); Salt Lake City, et al. v. Utah Lake Farmers Association, et al., 286 P.2d 773 (Utah 1955). Many of the issues in this case were first addressed in the 1885 Compromise Agreement that initially granted rights to certain of the defendants in this action to store water in Utah Lake up to a specified elevation by means of the then existing "Old Dam" situated in the Jordan Narrows without liability for flooding occasioned thereby, and called for the dredging of the Jordan River and for the construction and maintenance of a "New Dam" in the Jordan River at a specified location for the purpose of storing water in Utah Lake up to the elevation specified therein for future use. In approximately 1902, the "New Dam" was replaced by control gates erected at the outlet of Utah Lake. In approximately 1914, the now existing "Turner Dam" comprising a diversion and regulating dam, was constructed in the Jordan Narrows and the "Old Dam" was removed. The Compromise Agreement also provided for the appointment of a

Board that was empowered to direct when and to what extent obstructions might be placed in the water way of the "New Dam."

The parties do not fully agree as to the effect, if any, of the 1885 Compromise Agreement. Nor is there agreement as to who may be bound by that agreement or what actions, if any, it requires. Nevertheless, the parties hereby agree and stipulate that flood waters in Utah Lake and in the Jordan River shall hereafter be managed solely pursuant to the Utah Lake and Jordan River Operating Procedures and Flood Management Document or the Modified Operating Procedures or the Alternate Operating Procedures, whichever applies as hereinafter set forth, rather than the 1885 Compromise Agreement or any other understanding or practice. The parties' adoption of the Utah Lake and Jordan River Operating Procedures and Flood Management Document is conditioned, however, upon the approval thereof by the Utah State Engineer and the appropriation of funds by the Legislature of the State of Utah for and the completion of the necessary construction to dredge and lower the Jordan River channel between the outlet of Utah Lake and Turner Dam; construct a new outlet structure and control gates at the outlet of Utah Lake to provide control for an increased outlet capacity; and construct new facilities or modify existing facilities along the Jordan River for the regulation, diversion and delivery of the quantities of water to which the respective water rights owners

are entitled. In the event that the Utah State Engineer does not approve said Document or in the event he approves the same and thereafter withdraws his approval, the parties hereby adopt the Modified Operating Procedures as hereinafter set forth. In the event that the Legislature of the State of Utah does not appropriate the funds and the works are not constructed as provided above, the parties hereby adopt the Alternate Operating Procedures as hereinafter set forth. In any event, the parties agree that in all other respects this Judgment shall become final and be of full force and effect immediately upon its entry.

Plaintiffs initiated this action on their own behalf and on behalf of a class of persons or entities who are similarly situated and who have allegedly suffered damages by reason of the flooding of Utah Lake. The Court finds that the persons and entities belonging to the class are so numerous that it is impracticable to join all of them in this action; that there are questions of law or fact common to the class; that the claims of the representative parties plaintiff are typical of the claims of the class; and that the named plaintiffs fairly insure adequate protection of the interests of all members of the class.

The Court further finds that the object of this action is an adjudication of claims which affect all real property and

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improvements thereon situated within, under and adjacent to Utah Lake, both above and below Compromise Level as hereinafter defined, resulting from the accumulation of water or the storage of water in Utah Lake and the releases and diversions of water therefrom and that the members of the class are the owners of such real property and improvements thereon or interests therein.

The Court further finds that the class action is superior to other available methods for the fair and efficient adjudication of this controversy; that this Judgment is a compromise settlement of all claims of the parties with no payment of money damages to plaintiffs and the Court finds that the compromise settlement is fair and reasonable and hereby approves the same.

The Court further finds that this Judgment and its immediate entry herein are for the best interests of the parties and all members of the class and for the best interests of the public and that notice to all members of the class should be given in the manner and for the purposes hereinafter set forth.

Based upon the foregoing as stipulated and agreed to by all of the parties hereto by and through their respective attorneys of record, it is hereby

ORDERED, ADJUDGED, AND DECREED:

1. Compromise Level, as originally provided for in the 1885 Compromise Agreement and as hereinafter provided for, be

and is hereby fixed as the mean sea level elevation of Utah Lake of 4489.045 feet, United States Coast and Geodetic Survey datum, adjusted 1929, measured at the outlet of Utah Lake during calm (no wind) conditions, without regard to any prior or existing monuments.

2. The complaint of plaintiffs against the defendants be and the same is hereby dismissed with prejudice and on the merits.

3. The Jordan River channel is and shall continue to be a natural channel after dredging and except for the responsibility of plaintiff Utah County and defendant Salt Lake County hereinafter provided for, neither the defendants nor the plaintiffs, either individually or collectively, have any duty or obligation to clean, maintain or repair the Jordan River channel either before or after dredging. Provided, that after dredging, plaintiff Utah County shall have the responsibility to clean, maintain and repair that segment of the Jordan River channel situated within Utah County and defendant Salt Lake County shall have the responsibility to clean, maintain and repair that segment of the Jordan River channel situated within Salt Lake County, so as to provide sufficient carrying capacity in the Jordan River channel through their respective counties to convey the waters in accordance with and as provided for in the Utah Lake and Jordan River Operating Procedures and Flood Management Document hereinafter set forth in paragraph 9.

4. The Turner Dam as presently existing in the Jordan River at the Jordan Narrows is not an obstruction to the free flow of water in the Jordan River and/or from Utah Lake and the regulation of the gates at Turner Dam has not and does not affect the storage of water in Utah Lake and has not and does not obstruct or impede the flow of water out of Utah Lake or in the Jordan River. In the event that the dredging of the Jordan River as provided for in paragraph 8 hereinafter shall cause the regulation of the gates at Turner Dam to affect the outflow of water from Utah Lake, defendants, excepting Salt Lake County, shall have the right to at all times cause the gates at Turner Dam to be operated so as to regulate, divert and deliver those quantities of water to which the respective defendants are entitled without regard to the effect thereof, if any, on the outflow of water from Utah Lake.

5. Defendants, excepting Salt Lake County, be and are hereby adjudged to be the owners of perpetual rights to at all times utilize and maintain Utah Lake as a permanent reservoir to impound and store water therein from any and all sources, both within and without the Utah Lake drainage, up to and including Compromise Level and to release, pump and discharge the waters so stored, as said defendants and each of them shall determine, for any and all uses and purposes, both present and future, in accordance with their respective water rights.

6. Defendants, excepting Salt Lake County, be and are hereby adjudged to be the owners of perpetual easements upon, in, over and across all lands, improvements and appurtenances embraced within or under Utah Lake situated at or below Compromise Level owned or claimed by plaintiffs, their successors and assigns and all members of the class, their successors and assigns, to impound and store waters in Utah Lake and to release, pump and discharge the waters so stored in accordance with and as provided for in the preceding Paragraph 5.

7. Defendants, excepting Salt Lake County, be and are hereby adjudged to be the owners of perpetual rights to in any manner affect, without liability, all remaining lands, improvements and appurtenances adjoining Compromise Level of Utah Lake owned or claimed by plaintiffs, their successors and assigns and all members of the class, their successors and assigns which might result from the exercise by said defendants of their rights as provided for in Paragraph 5 hereinabove.

8. The Utah Lake and Jordan River Operating Procedures and Flood Management Document as set forth verbatim in the following paragraph 9 and the responsibilities of the Utah State Engineer set forth therein shall not become effective or operative unless and until the Utah State Engineer approves the same and the Utah State Legislature appropriates sufficient funds for and the necessary construction is completed to

(a) dredge and lower the Jordan River channel from Utah Lake to the Turner Dam in the Jordan Narrows; and

(b) construct new outlet works at Utah Lake equipped with gates to control the discharge of water from Utah Lake into Jordan River; and

(c) construct new or modify existing water diversion facilities in the Jordan River for the regulation, diversion and delivery of the quantities of water to which the respective water rights owners are entitled all in substantial compliance with the Utah Lake Jordan River Flood Management Program, Phase I, as submitted by CH₂M Hill and/or as officially amended, a copy of which is filed herein. Provided however, that the approval by the Utah State Engineer hereinabove provided for may be conditional and the Utah State Engineer thereafter may withdraw his approval for non-compliance with the conditions of his approval. In all other respects this Judgment shall become final and be of full force and effect immediately upon its entry.

9. The Utah Lake and Jordan River Operating Procedures and Flood Management Document provided for in the next preceding paragraph 8, be and the same is hereby adopted and is incorporated into this Judgment as follows:

UTAH LAKE AND JORDAN RIVER OPERATING PROCEDURES
AND FLOOD MANAGEMENT DOCUMENT

Objective:

To decrease adverse impacts from flood waters in Utah Lake and in the Jordan River without interfering with existing water rights.

Definitions:

A. Compromise Level - the mean sea level elevation of Utah Lake of 4489.045 feet, United States Coast and Geodetic Survey datum, adjusted 1929, measured at the outlet of Utah Lake during calm (no wind) conditions.

B. State Engineer - the Utah State Engineer or his duly authorized representative.

C. Control Gates - gates at the outlet of Utah Lake to control the discharge of water from Utah Lake into Jordan River.

D. Turner Dam - existing diversion and regulating dam in Jordan River at Jordan Narrows equipped with diversion and regulating gates.

E. Flood Control Director - the Salt Lake County Flood Control Director or in his absence his duly authorized representative or as such officers hereafter may be designated by the Salt Lake County Commission.

F. Utah County Engineer - the duly elected Utah County Engineer or his deputy or in their absence a duly authorized representative or as such officers hereafter may be designated by the Utah County Commission.

Operating Procedures:

1. Whenever the level of Utah Lake is at or below Compromise Level the Control Gates shall be closed except as shall be necessary for the State Engineer to cause the waters and water rights of Utah

Lake and Jordan River to be administered so as to release, regulate, divert and deliver the quantities of water to which the respective water rights owners are entitled.

2. Whenever the level of Utah Lake is above Compromise Level, the Control Gates shall be fully opened except that the State Engineer shall cause the Control Gates to be regulated so as to limit the discharge of water from Utah Lake into Jordan River to those flows which, when augmented by downstream accretions, shall not exceed a combined flow of 3400 cubic feet per second (cfs) in the Jordan River at 2100 South in Salt Lake County, said location being immediately upstream from the Surplus Canal diversion structure.

3. The State Engineer shall cause the gates at Turner Dam to be regulated so that whenever the water surface elevation of Utah Lake is above Compromise Level, the water level in the Jordan River on the upstream side of Turner Dam does not exceed the level required to regulate, divert and deliver those quantities of water to which the respective water rights owners are entitled.

4. In the event that the Flood Control Director after consultation with the State Engineer and the Utah County Engineer or either of them if the other shall not be immediately available, shall determine that the anticipated accretions to the Jordan River will cause the combined flow of the Jordan River to exceed 3400 cfs at 2100 South in Salt Lake County, the State Engineer shall cause the Control Gates to be regulated so as to limit the releases of water from Utah Lake to those flows which, when combined with the anticipated accretions, will not exceed a combined flow of 3400 cfs at 2100 South in Salt Lake County until the Flood Control Director after consultation with the State Engineer and the Utah County Engineer or either of them if the other shall not be immediately available, determines otherwise. In the event that both the State Engineer and the Utah County Engineer shall not be immediately available for consultation as herein provided, the Flood Control Director shall have the temporary authority to regulate the Control Gates to accomplish such objective and such

temporary authority shall continue until such time as the State Engineer shall become available to cause the Control Gates to be regulated.

10. In the event that the Utah Lake and Jordan River Operating Procedures and Flood Management Document as set forth in paragraph 9 hereinabove shall not become effective and operative only by reason of the State Engineer not approving the same or having approved the same, the State Engineer thereafter withdraws his approval as provided for in paragraph 8 hereinabove, then and in that event the operation and management of the waters of Utah Lake shall be accomplished pursuant to and in accordance with the following Modified Operating Procedures with the Definitions set forth in the preceding paragraph 9 incorporated herein, to wit:

Modified Operating Procedures:

1. Whenever the level of Utah Lake is at or below Compromise Level the Control Gates shall be closed except as shall be necessary to cause the waters and water rights of Utah Lake and Jordan River to be administered so as to release, regulate, divert and deliver the quantities of water to which the respective water rights owners are entitled.

2. Whenever the level of Utah Lake is above Compromise Level, the Control Gates shall be fully opened except that the Flood Control Director shall cause the Control Gates to be regulated so as to limit the discharge of water from Utah Lake into Jordan River to those flows which, when augmented by downstream accretions, shall not exceed a combined flow of 3400 cubic feet per second (cfs) in the Jordan River at 2100 South in Salt Lake County, said location being immediately upstream from the Surplus Canal diversion structure.

3. The State Engineer shall cause the gates at Turner Dam to be regulated so that whenever the water surface elevation of Utah Lake is above Compromise Level, the water level in the Jordan River on the upstream side of Turner Dam does not exceed the level required to regulate, divert and deliver those quantities of water to which the respective water rights owners are entitled.

4. In the event that the Flood Control Director after consultation with the Utah County Engineer, shall determine that the anticipated accretions to the Jordan River will cause the combined flow of the Jordan River to exceed 3400 cfs at 2100 South in Salt Lake County, the Flood Control Director shall cause the Control Gates to be regulated so as to limit the releases of water from Utah Lake to those flows which, when combined with the anticipated accretions, will not exceed a combined flow of 3400 cfs at 2100 South in Salt Lake County until the Flood Control Director after consultation with the Utah County Engineer determines otherwise.

11. In the event that the Legislature of the State of Utah does not appropriate sufficient funds and the necessary construction is not completed as provided for in paragraph 8 hereinabove then and in that event the operation and management of the waters of Utah Lake shall be accomplished pursuant to and in accordance with the following Alternate Operating Procedures with the Definitions set forth in paragraph 9 hereinabove incorporated herein, to wit:

Alternate Operating Procedures:

1. Whenever the level of Utah Lake is at or below Compromise Level the Control Gates shall be closed except as shall be necessary to cause the waters and water rights of Utah Lake and Jordan River to be administered so as to release, regulate, divert and deliver the quantities of water to which the respective water rights owners are entitled.

2. Whenever the level of Utah Lake is above Compromise Level, the Control Gates shall be fully opened except when necessary to close the Control Gates to pump from Utah Lake into Jordan River those quantities of water to which the respective water rights owners are entitled or except that the Flood Control Director shall cause the Control Gates to be regulated so as to limit the discharge of water from Utah Lake into Jordan River to those flows which, when augmented by downstream accretions, shall not exceed the carrying capacity of the Jordan River Channel. In the event that the Flood Control Director after consultation with the Utah County Engineer, shall determine that the anticipated accretions to the Jordan River will cause the combined flow of the Jordan River to exceed the carrying capacity of the Jordan River channel, the Flood Control Director shall cause the Control Gates to be regulated so as to limit the releases of water from Utah Lake to those flows which, when combined with the anticipated accretions, will not exceed the carrying capacity of the Jordan River channel until the Flood Control Director after consultation with the Utah County Engineer determines otherwise.

3. In no event shall the Flood Control Director limit the releases of water from Utah Lake into Jordan River to less than those quantities of water to which the respective water rights owners are entitled.

12. The Utah Lake and Jordan River Operating Procedures and Flood Management Document as set forth in paragraph 9 hereinabove, upon becoming effective and operative as provided for in paragraph 8 hereinabove or the Modified Operating Procedures as set forth in paragraph 10 hereinabove or the Alternate Operating Procedures as set forth in paragraph 11 hereinabove, upon becoming operative as provided for therein, whichever occurs, shall supersede the 1885 Compromise Agreement and except for the granted rights, easements and servitudes as therein

provided, the said 1885 Compromise Agreement shall become null and void and of no further force or effect.

13. Notice of the entry of this Judgment shall be given to all members of the class by publication of notice of the substance thereof in a newspaper of general circulation in Utah County once each week for three successive weeks and fixing a time certain not less than forty-five (45) days after the first date of publication within which any member of the class may file a written petition with the clerk of the Court to be excluded from the class and setting forth the specific grounds therefor. The Court shall fix a time and place for the hearing of all petitions duly filed and the burden shall be on petitioners to show good cause why petitioners or any of them should not be bound by this Judgment. Upon the hearing thereof the Court shall make and enter its order accordingly. Any member of the class who shall not file a written petition within the time fixed shall be bound by this Judgment and thereafter shall be forever barred and estopped from contesting this Judgment or from asserting any claimed rights inconsistent therewith or contrary thereto.

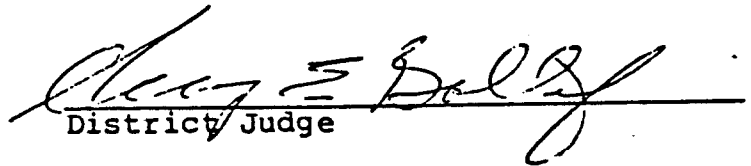
14. This Judgment shall be binding upon and enforceable by and against all parties to this action and all members of the class as specified in the preceding paragraph 13, and as against any other person or entity this Judgment shall not be

construed as conferring upon them any benefits by contract or otherwise or as a limitation or waiver of any defense of governmental immunity by any governmental entity herein relating to or growing out of its performance or implementation of the provisions of this Judgment.


15. Each party shall bear its own costs.

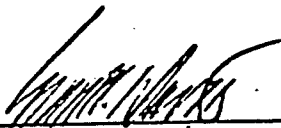
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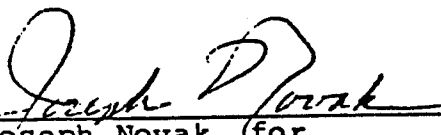
BY THE COURT


District Judge

The foregoing Judgment is hereby approved as to form and substance and for its immediate entry this 8th day of March, 1985.


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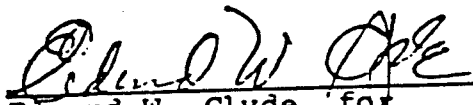
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