

WATER RIGHTS SETTLEMENT AGREEMENT
FOR
RED BUTTE CREEK
UINTA-WASATCH-CACHE NATIONAL FOREST, UTAH

RECORDED
NOV 22 2019
CITY RECORDER

This Settlement Agreement is entered among the Utah State Engineer (the “State Engineer”), the United States, on behalf of the United States Department of Agriculture Forest Service (“United States”), and Salt Lake City Corporation (the “City”) (individually, “Party” and collectively, the “Parties”) to resolve and settle certain claims for water rights asserted *In The Matter Of The General Determination Of All Rights To The Use Of Water, Both Surface and Underground, Within the Drainage Area of Utah Lake And Jordan River In Utah, Salt Lake, Davis, Summit, Wasatch, Sanpete, And Juab Counties, Utah*, Civil No. 360057298, within the Red Butte Creek Subdivision subcase, Civil No. 365729823, filed in the District Court Of The Third Judicial District In And For Salt Lake County, State of Utah (the “Utah Lake and Jordan River General Adjudication”).

RECITALS

A. The Utah Lake and Jordan River General Adjudication includes the watershed of Red Butte Creek and covers a portion of the Uinta-Wasatch-Cache National Forest¹ (“National Forest”).

B. The United States has claimed federal reserved water rights for surface flows from Red Butte Creek for National Forest System purposes, with a priority date of May 26, 1904 for the claim filed under the Organic Administration Act of 1897, and with a priority date of June 12, 1960 for the claim filed under the Multiple-Use Sustained-Yield Act of 1960. The claims are attached as Exhibits 1 and 2. The United States has also claimed a federal reserved water right for the use of water from all surface and underground water sources on National Forest System land (defined at 36 C.F.R. § 251.51) that includes lands within the Red Butte Creek Subdivision. Master of Statement of Claims, Paragraph 13, attached as Exhibit 3. The United States claims future uses including domestic uses at ranger and guard stations, firefighting, stockwater for United States Department of Agriculture Forest Service (“Forest Service”) animals, reforestation, erosion control, road construction and maintenance, and vehicle maintenance.

C. The United States also claimed water rights 57-7699, 57-7700, and 57-7701 for the United States Military Reservation of Fort Douglas which encompasses some of the watershed of Red Butte Creek. The claims are attached as Exhibit 4. The United States deeded lands encompassing the Red Butte Dam and Reservoir, together with these appurtenant water

¹ On March 14, 2008 the Uinta and Wasatch-Cache National Forests were consolidated.

rights, to Central Utah Water Conservancy District in 2004, who then deeded the water rights to the City in 2017. The Parties recognize that, as of the date of this Agreement, claims for state appropriative water rights and water rights related to the Fort Douglas Military Reservation, which claim the right to divert water from within the Red Butte Creek Subdivision, exist in the records of the State Engineer, including the City's water right numbers 57-7699, 57-7700, and 57-7701. These water rights are subject to evaluation and determination in the Utah Lake and Jordan River General Adjudication and are not addressed by this Agreement.² A map depicting the boundaries of the Red Butte Creek Subdivision is attached as Exhibit 5.

D. Red Butte Creek is located within the National Forest. The United States and the City believe that this stream represents a valuable public resource and seek to ensure the stream is not further dewatered above the National Forest boundary reference point identified in Paragraph 1. In addition, Red Butte Creek is an important source of water for (1) the Research Natural Area established in 1970 and administered and managed by the Forest Service, and (2) a portion of the public water supply of the City.

E. For the sake of resolving the Parties' dispute over the nature and extent of the United States' reserved water rights claims on behalf of the National Forest System in the Red Butte Creek Subdivision, the Parties entered into compromise negotiations, which have resulted in the settlement of issues concerning: (1) the United States' reserved water rights claims on behalf of the National Forest System in the Red Butte Creek Subdivision, (2) existing and future diversions of water under state appropriative rights, and (3) protection for instream flow within the National Forest boundary for Red Butte Creek.

AGREEMENT

NOW, THEREFORE, based on the mutual promises contained in this Agreement, the Parties agree to the following:

1. The United States has a federal reserved water right, as described below and summarized in Exhibit 6, to use water from any surface or groundwater sources on National Forest System land within the boundaries of the Red Butte Creek Subdivision of the Utah Lake and Jordan River General Adjudication ("the Federal Reserved Water Right"), which it can exercise as described in Paragraph 1(a) and (b), below. The Federal Reserved Water Right is Number 57-10698 in the State Engineer's records. The State Engineer will recommend that the

² In addition, on June 20, 2016, the United States filed a Statement of Water User's Claim, Civil No. 36005798 (57-3), for a federal reserved water right to the use of waters from Red Butte Creek for the purpose of maintaining twenty acres of the Mount Olivet Cemetery. Neither this federal reserved water right claim, nor any other claims pertaining to the Mount Olivet Cemetery, are addressed by or impacted in any way by this Agreement.

Third District Court decree Water Right Number 57-10698, as a federal reserved water right in the name of the United States of America, on behalf of the United States Department of Agriculture Forest Service. The Parties recognize that other water users may object to the recommendation of the Federal Reserved Water Right as described in this Agreement, and any such objections will be subject to resolution by the Court.

a. Elements of Water Right Number 57-10698

i. *Beneficial uses*

The United States may exercise the Federal Reserved Water Right for consumptive future uses including domestic uses at ranger and guard stations, firefighting, stockwater for Forest Service livestock, reforestation, erosion control, road construction and maintenance, and vehicle maintenance. In addition, the United States may divert such additional amounts of water as are necessary for emergency fire suppression within the Red Butte Creek Subdivision to protect National Forest System lands, and such diversions shall not be charged against the maximum annual diversions and depletions that the United States may make for administrative uses, as described in this Paragraph 1.

ii. *Quantity of water*

Other than for emergency fire suppression as provided in Paragraph 1(a)(i), the United States may not divert more than 1 acre-foot and may not deplete more than 1 acre-foot per year for all consumptive uses.

iii. *Priority date*

The priority date of the Federal Reserved Water Right will be the date of the reservation of the National Forest in the Red Butte Creek watershed, which is **May 26, 1904**.

iv. *Period of use*

The period of use for the Federal Reserved Water Right in the Red Butte Creek Subdivision extends from January 1 to December 31 of each year.

v. *Source and points of diversion*

The Federal Reserved Water Right may use any surface or groundwater source on National Forest System land within the

boundaries of the Red Butte Creek Subdivision and upstream of the National Forest boundary reference point described as the intersection of the existing National Forest boundary line and the flowline of Red Butte Creek (“Forest Boundary Reference Point”), the location of which is surveyed as:

South 89°58’19” West, a distance of 2263.68 feet from the southeast corner for Section 34, Township 1 North, Range 1 East, Salt Lake Base and Meridian. The Survey is attached at Exhibit 7.

b. Exercise of the Federal Reserved Water Right

i. *Challenges to future applications*

The United States may challenge future water right applications in the Red Butte Creek Subdivision. However, the United States shall not assert that its ownership of the Federal Reserved Water Right precludes the recognition or establishment of junior rights to use surface water or underground water sources at or downstream of the Forest Boundary Reference Point described in Paragraph 1(a)(v).

ii. *Notification of water use*

In the interest of comity and for the administrative convenience of the State Engineer, the United States shall file a notice with the State Engineer at least 60 days prior to developing surface or underground water within the boundaries of the Red Butte Creek Subdivision for Forest Service administrative uses other than emergency fire suppression. The State Engineer may elect to post this notice for the benefit of other water users. After receiving notification that the United States intends to develop groundwater, the State Engineer shall issue a “start card” or equivalent document for well drilling.

iii. *Proof of beneficial use*

Following the development of the use of water described in the notification, the United States shall submit to the State Engineer a verified statement which shall be signed by the responsible federal official, include a map certified by a licensed surveyor, and describe the following information:

- a) the owner;
- b) the source of water;
- c) the point or points of diversion;
- d) the nature, extent, and period of use;
- e) the quantity of water;

- f) the place of use;
- g) a description of the works;
- h) the method of applying the water to beneficial use; and
- i) the means of water measurement, if applicable.

2. The United States accepts the Federal Reserved Water Right and other provisions of this Agreement in settlement of its claims for federal reserved water rights for National Forest System purposes in the Red Butte Creek Subdivision. In consideration for the terms and conditions of this Agreement, the United States does not assert any entitlement to federal reserved water rights under existing Federal laws for National Forest System land in the Red Butte Creek Subdivision, except as provided for in Paragraph 1.

3. In consideration of the importance of Red Butte Creek to the United States and the City, and in recognition of the United States' acceptance and settlement of its claims, as provided in Paragraph 2, the State Engineer shall not approve applications to appropriate, change, or exchange water that would increase the depletion or diversion of water upstream of the Forest Boundary Reference Point unless:

- a. the application seeks to appropriate, change, or exchange only a "small amount of water," as defined in Utah Code § 73-3-5.6(1)(d) on the date of this Agreement;³ and
- b. the applicant is either the owner of the real property where the water is proposed to be diverted and beneficially used, or the applicant has obtained legal authorization for such diversion and beneficial use from the owner of the real property where the water is proposed to be diverted and beneficially used in writing.

Any new applications to appropriate, change, or exchange water that would increase the depletion or diversion of water upstream of the Forest Boundary Reference Point which meet these requirements will be considered by the State Engineer on their own merits and must follow and meet all procedures and requirements imposed by law. The Parties reserve all rights to protest such applications.

4. The State Engineer will include the Federal Reserved Water Right described in Paragraph 1 in the Proposed Determination of Water Rights for the Red Butte Creek

³ On the date of this Agreement, "small amount of water" as defined in Utah Code § 73-3-5.6(1)(d) "means the amount of water necessary to meet the requirements of: (i) one residence; (ii) 1/4 acre of irrigable land; and (iii) a livestock watering right for: (A) 10 cattle; or (B) the equivalent amount of water of Subsection (1)(d)(iii)(A) for livestock other than cattle."

Subdivision.

5. The United States, the City, and the State Engineer agree that this Agreement shall be submitted to the Court for approval in the Red Butte Creek Subdivision of the Utah Lake and Jordan River General Adjudication in lieu of amended Water User's Claims as part of the Proposed Determination for the Red Butte Creek Subdivision, which the State Engineer will issue within a reasonable time following the execution of this Agreement. The Parties will cooperate to obtain an interlocutory decree on the Proposed Determination with respect to the Federal Reserved Water Right of this Agreement, provided that this Agreement shall remain binding on the Parties if and when such interlocutory decree is entered and after the entry of the final decree, except to the extent that any of the provisions of the operative decrees conflict with the terms of this Agreement. Pending the issuance of interlocutory and/or final decrees in the Utah Lake and Jordan River General Adjudication adjudicating the Federal Reserved Water Right, the United States may develop and/or use water for administrative uses under the Federal Reserved Water Right in accordance with the diversion and depletion limits set forth in Paragraph 1.a., above.

6. Nothing in this Agreement shall constitute an admission, waiver, or precedent as to any Party for any other federal reserved water right claims in the State of Utah.

7. Nothing in this Agreement shall be construed or interpreted to:

- a. in any way affect the water rights of the United States, its federal agencies or federal interests other than for the Red Butte Creek Subdivision of the Utah Lake and Jordan River General Adjudication covered by this Agreement;
- b. establish any standard to be used for the quantification of federal reserved water rights in any judicial or administrative proceeding other than for the Red Butte Creek Subdivision of the Utah Lake and Jordan River General Adjudication;
- c. limit in any way the rights of the Parties or any person to litigate questions not resolved by this Agreement;
- d. restrict the power of the United States to appropriate water under the laws of Utah or establish federal reserved water rights by future reservation;
- e. restrict the power of the State or the State Engineer in allocating, administering, or distributing the waters of the State, except as expressly provided for in this Agreement;

- f. modify the individual water rights of water users, other than the United States' Federal Reserved Water Right for National Forest purposes in the Red Butte Creek Subdivision; or
- g. affect the use and maintenance of existing water diversion and delivery systems on National Forest System land, as provided for in current or future land use authorizations, including but not limited to special use authorizations and easements.

8. Upon a proper showing of necessity and consent of all Parties, the Parties may modify any provision in this Agreement, other than the Federal Reserved Water Right recognized herein, only by written amendment.

9. If any commitment of any one of the Parties or the Federal Reserved Water Right recognized in this Agreement is found to be unlawful and of no effect, the Agreement is voidable at the option of the United States or the State Engineer.

10. This Agreement is binding upon the Parties and their successors and assigns from the date of execution by the last Party.

SIGNATURES

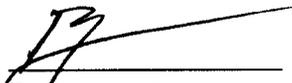
For the State of Utah



Kent L. Jones, P.E.
Utah State Engineer
Division of Water Rights

Date: 11-7-2019

Approval as to form:



Benjamin J. Jensen
Assistant Attorney General
Utah Attorney General's Office

Date: 11/7/2019

[signatures continue on next page]

For the United States,
USDA Forest Service

Date: _____

Nora Rasure
Regional Forester
USDA Forest Service
Intermountain Region

Date: _____

Thomas K. Snodgrass, Senior Attorney
Jean E. Williams, Deputy Assistant Attorney General
U.S. Department of Justice
Environment and Natural Resources Division

For Salt Lake City Corporation

Laura Briefer
Director, Department of Public Utilities

Date: 11/13/19

ATTEST

Deputy City Recorder

SALT LAKE CITY
APPROVAL AS TO FORM:

By: ERL
E. Russell Vetter,
Deputy City Attorney

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NOV 22 2019
CITY RECORDER



**For the United States,
USDA Forest Service**

Nora Rasure

Date: 11-18-19

**Nora Rasure
Regional Forester
USDA Forest Service
Intermountain Region**

Thomas K. Snodgrass

Date: 11/21/19

**Thomas K. Snodgrass, Senior Attorney
Jean E. Williams, Deputy Assistant Attorney General
U.S. Department of Justice
Environment and Natural Resources Division**

For Salt Lake City Corporation

**Laura Briefer
Director, Department of Public Utilities**

Date: _____

ATTEST

**SALT LAKE CITY
APPROVAL AS TO FORM:**

City Recorder

By: _____
**E. Russell Vetter,
Deputy City Attorney**

EXHIBITS:

Exhibit 1

Organic Act Claim

Exhibit 2

Multiple-Use Sustained-Yield Act Claim

Exhibit 3

Master Statement of Water User's Claims – Paragraph 13

Exhibit 4

“Statement of Claim of the United States of America” for rights to the use of water at Fort Douglas, Utah

Exhibit 5

Red Butte Creek Subdivision Boundary Map and National Forest Boundary Reference Point

Exhibit 6

Federal Reserved Water Right Number 57-10698 Description

Exhibit 7

Survey of National Forest Boundary Reference Point

Exhibit 1

FEDERAL RESERVED WATER RIGHT

United States of America - Forest Service
324 25th Street
Ogden, UT 84401
(801) 625-5360

1. National Forest: Wasatch-Cache National Forest
2. Stream: Red Butte Creek (tributary to Jordan River)
3. Authority: Organic Administration Act of 1897
4. Reservation Date: May 26, 1904
5. Purpose: Secure favorable conditions of water flow
6. Location of Quantification Point:
 - a. General: At Forest boundary.
 - b. Legal: SW1/4SE1/4 sec. 34, T. 1 N., R. 1 E., Salt Lake Base and Meridian.
7. Instream Flow Claim: a continuous instream flow equivalent to an average of 1.992 acre-feet per year defined and distributed as follows:
 - a. Minimum flow rates: the rate for Day 1 and for each and every succeeding day or period throughout the entire year as follows:

<u>Duration</u>	<u>Streamflow (cfs)</u>
Day 1 through Day 25	4.74
Day 26 through Day 32	6.08
Day 33 through Day 39	7.29
Day 40	8.51
Day 41	9.73
Day 42	10.95
Day 43 through Day 71	12.16
Day 72	8.53
Day 73	7.29
Day 74 through Day 102	6.08
Day 103	4.74
Day 104	9.73
Day 105	8.51
Day 106	7.29

Exhibit 1

Day 107	6.08
Day 108 through Dec. 31	1.36
January 1 to Day 1	1.36

b. Day 1: the day that flow attains a rate of 4.74 cfs and equals or exceeds that rate for 24 hours, but in no event earlier than April 1.

8. In the event that natural flows do not attain the rates decreed above, the United States shall be entitled to the natural flows actually occurring during the time periods described above.

9. Instream flows are necessary at all points along the streams within the boundaries of the national forests and the quantification herein may be extrapolated to other stream reaches in this or nearby similar watersheds based on watershed area, precipitation, watershed characteristics, or combinations thereof.

The undersigned, being duly sworn, deposes and says that he is the agent of the United States of America, that he makes this certification on behalf of the United States of America, that he has read the foregoing statement of claim and knows the contents thereof, and that he has signed on behalf of the United States of America said statement, that the answers set forth therein are true to his best knowledge and belief.

Randall P. Hall
(for) J. S. TIXIER, Regional Forester

Subscribed and sworn to before me this 17th day of November 1986.

Sandra A. Carlson
Notary Public

Exhibit 2

FEDERAL RESERVED WATER RIGHT

United States of America - Forest Service
324 25th Street
Ogden, UT 84401
(801) 625-5360

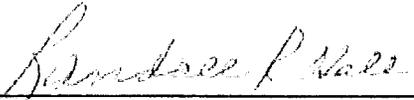
1. National Forest: Wasatch-Cache National Forest
2. Stream: Red Butte Creek (tributary to Jordan River)
3. Authority: Multiple-Use Sustained-Yield Act of 1960
4. Priority Date: June 12, 1960
5. Purpose: Fish and Wildlife Habitat
6. Location of Quantification Point:
 - a. General: At the National Forest boundary.
 - b. Legal: SW1/4SE1/4 sec. 34, T. 1 N., R. 1 E., Salt Lake Base and Meridian.
7. Instream Flow Claim: a continuous instream flow defined and distributed as follows:

<u>Duration</u>	<u>Streamflow (cfs)</u>
April 1 - September 30	2.8
October 1 - March 31	1.9

8. In the event that natural flows do not attain the rates decreed above, the United States shall be entitled to the natural flows actually occurring during the time periods described above.
9. Instream flows are necessary at all points along the streams within the boundaries of the national forests and the quantification herein may be extrapolated to other stream reaches in this or nearby similar watersheds based on watershed area, precipitation, watershed characteristics, or combinations thereof.

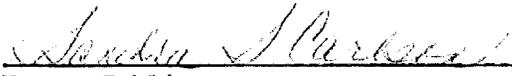
Exhibit 2

The undersigned, being duly sworn, deposes and says that he is the agent of the United States of America, that he makes this certification on behalf of the United States of America, that he has read the foregoing statement of claim and knows the contents thereof, and that he has signed on behalf of the United States of America said statement, that the answers set forth therein are true to his best knowledge and belief.



(for) J. S. TIXIER, Regional Forester

Subscribed and sworn to before me this 17th day of November 1986.



Notary Public

Exhibit 3

- d. Quantity, purpose, and use: As stated in item 3 and 8 of the individual Statements of Water User's Claims listed at Exhibit USFS-H.
- e. Point of diversion: As stated in item 5 of the individual Statements of Water User's Claims listed at Exhibit USFS-H.
- f. Source: As stated in item 5 of the individual Statements of Water User's Claims listed at Exhibit USFS-H.
- g. Limitation: This alternative claim applies only to those sources of water located on land reserved from the public domain.

12. In the alternative to the claims set forth in paragraph 11 above, the United States of America claims diligence rights to the use of water for National Forest purposes at administrative sites as set out in each of the Water User's Claims listed at Exhibit USFS-H, and attached thereto, and objects to the State Engineer's failure to include them in his Proposed Determination of water rights.

13. The United States of America claims reserved rights for future uses as follows:

- a. Priority dates claimed: The dates the respective portions of the Wasatch-Cache National Forest, the Uinta National Forest and the Manti-LaSal National Forest were reserved from the public domain as shown at Exhibit USFS-I.
- b. Authority: 16 USC 475 and Presidential Proclamations of the dates listed in paragraph 12.b above.
- c. Quantity, purpose, and use: That quantity required in the future for administrative and operational uses necessary and directly related to

Exhibit 3

maintenance of favorable conditions of water flow and timber production such as, but not necessarily limited to, domestic uses at ranger and guard stations, fire fighting, stockwater for Forest Service animals, reforestation, erosion control, road construction and maintenance, and vehicle maintenance. The estimated quantity required for future uses except fire fighting is nine (9) acre-feet per year for the Wasatch-Cache National Forest, three (3) acre-feet per year for the Uinta National Forest, and one (1) acre-foot per year for the Manti-LaSal National Forest. These estimates are provided to assist the State in planning only. The United States claims the quantity actually required to fulfill the reservation purpose at the specific time and place of need. It is not possible to estimate future needs or points of diversion for fire fighting.

d. Point of diversion: As required by the particular mission.

e. Source: Surface and underground, as required.

f. Limitation: This alternative claim applies only to those sources of water located on land reserved from the public domain.

14. The United States of America claims reserved rights for future uses as follows:

a. Priority date claimed: June 12, 1960.

b. Authority: Multiple-Use Sustained-Yield Act, approved June 12, 1960; 16 USC 528, et seq.

c. Quantity, purpose and use: That quantity required in the future for uses necessary and directly related to fulfilling the grazing, fish, wildlife, and outdoor recreation purposes of the Wasatch-Cache National

Exhibit 4

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY

STATE OF UTAH

RECEIVED

FEB 04 1988 *DA*

WATER RIGHTS
SALT LAKE

Civil No. 57298

IN THE MATTER OF THE GENERAL)
DETERMINATION OF RIGHTS TO THE)
USE OF WATER, BOTH SURFACE AND)
UNDERGROUND, WITHIN THE DRAINAGE)
AREA OF UTAH LAKE AND THE JORDAN)
RIVER IN UTAH, SALT LAKE, DAVIS,)
SUMMIT, WASATCH, SANPETE AND JUAB)
COUNTIES, UTAH.)

STATEMENT OF CLAIM OF THE UNITED STATES OF AMERICA

COMES NOW the United States of America and in accordance with 73-4-11, U.C.A., 1953, files its Statement of Claim for rights to the use of water at Fort Douglas, Utah, as set forth below:

Historical Basis of Claims

1. Fort Douglas was established on October 26, 1862, and garrisoned by volunteer troops under the command of Colonel Conner. These troops used the waters of Red Butte Creek for domestic and irrigation purposes. The Army constructed ditches and a reservoir to supply its domestic needs and irrigation of gardens and the grounds.
2. On September 3, 1867, President Andrew Johnson, by Executive Order, withdrew a tract of 4 square miles (including the present Fort Douglas) from the public domain for military purposes.
3. Between 1887 and about 1909, the United States, by various Acts of Congress, Executive Orders, and purchases, enlarged the

Exhibit 4

reservation to encompass more of the watershed of Red Butte Creek for the purpose of protecting the water supply of Fort Douglas.

4. On February 11, 1890, the District Court of the Third Judicial District, Territory of Utah, held that the United States ". . . is the owner of and entitled to the use for military, domestic and other purposes of all of the waters flowing and to flow in that certain stream of water known as Red Butte Canon Creek . . . and is entitled to the use of the same and the whole thereof, unimpaired in purity and quality," and enjoined certain defendants from polluting or depleting the waters.

5. In 1930, the Army completed construction of Red Butte Reservoir and moved its points of diversion on Red Butte Creek upstream to Red Butte Reservoir. Red Butte Reservoir has an active storage capacity of 385 acre feet. The Army has filled and refilled Red Butte Reservoir as necessary to supply the needs of Fort Douglas.

6. Since October 26, 1862, the Army has used whatever water was necessary to supply Fort Douglas from Red Butte Creek without regard to any other rights that may exist in Red Butte Creek.

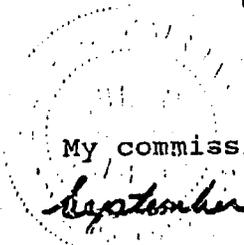
7. On November 30, 1954, the Utah Water and Power Board assigned all water rights evidenced by Application No. 18653 to the United States.

Exhibit 4

Claims

8. The United States claims first priority to use of the waters of Red Butte Creek to the extent of 821 acre feet by physical seizure and adverse user and possession prior to 1939 as set forth in Water User's Claim No. 57-7699, attached hereto and made a part hereof as though fully set forth at this point.
9. The United States claims diligence rights to 453 acre feet of the waters of Red Butte Creek with a priority of October 26, 1862, as set forth in Water User's Claim No. 57-7700, attached hereto and made a part hereof as though fully set forth at this point.
10. The United States claims reserved rights to 821 acre feet of the waters of Red Butte Creek and its alluvium with a priority of September 3, 1867, for culinary, municipal and irrigation uses, for the operation and maintenance of Fort Douglas as set forth in Water User's Claim No. 57-7701 as attached hereto and made a part hereof as though fully set forth at this point. This claim to 821 acre feet is to be reduced by the amounts decreed under the claims set forth in paragraphs 8 and 9 above. The United States claims the right to divert water under this priority through wells if such becomes necessary or desirable in the future to attain water of adequate quality for human consumption.
11. In making the foregoing claims, the United States intends to secure rights to a total of 821 acre-feet of the waters of Red Butte Creek with the earliest priorities to which it may be

Witness my hand and official seal,



My commission expires:

September 19, 1990

Heane K. Fairbanks

NOTARY PUBLIC

1961 Stout St, Rm 690

Denver, CO 80202

Exhibit 4

CERTIFICATE OF MAILING

I hereby certify that I have this 3rd day of February, 1988, mailed a true copy of the foregoing STATEMENT OF CLAIM OF THE UNITED STATES OF AMERICA via U.S. mail, postage prepaid, addressed as follows:

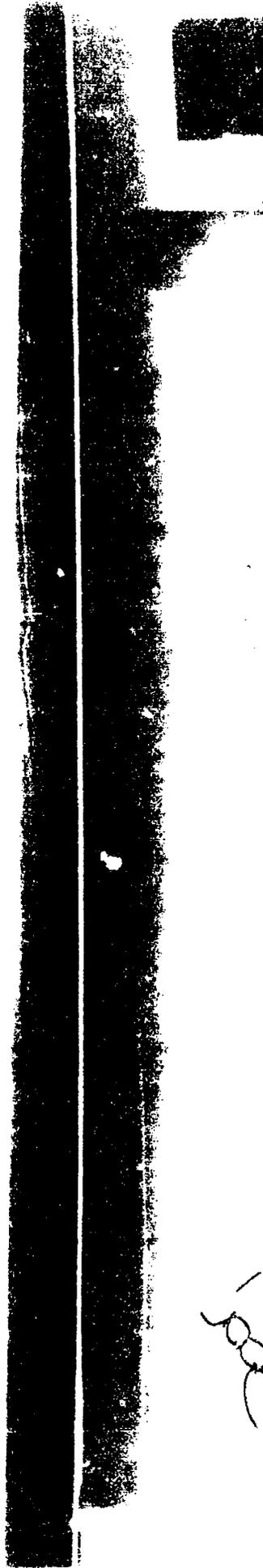
Robert L. Morgan, P.E.
Utah State Engineer
State of Utah - Natural Resources
1636 West North Temple, Suite 220
Salt Lake City, Utah 84116-3156

Dallin W. Jensen, Esq.
Solicitor General
State of Utah
1635 W. North Temple, Suite 300
Salt Lake City, Utah 84116

R. Douglas Credille, Esq.
Assistant Attorney General
State of Utah
1635 W. North Temple, Suite 300
Salt Lake City, Utah 84116

Deirdre Hills

Exhibit 4



1/20

RECEIVED

FEB 04 1988

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT RIGHTS
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH SALT LAKE

IN THE MATTER OF THE GENERAL DETERMINATION OF RIGHTS TO THE USE OF
WATER, BOTH SURFACE AND UNDERGROUND, WITHIN THE DRAINAGE AREA OF UTAH LAKE AND
JORDAN RIVER IN UTAH, SALT LAKE, DAVIS, SUMMIT, WASATCH, SANPETE AND JUAB COUNTIES,
UTAH.

NOTE: Use this form to assert your water rights in the pending judicial adjudication. The State Engineer has made a hydrographic survey of this area, which includes your water rights and uses. Your receipt of this form constitutes notice to you that the survey has been completed and that your Water User's Claim is due within 90 days after you receive this form. Under Utah law, unless you timely complete and file this form, your water rights cannot be recognized and you may not be able to assert them further. File this form with the Clerk of the District Court, at Salt Lake City, Utah; and a copy with the State Engineer, at 1636 West North Temple, Salt Lake City, Utah 84116.

STATEMENT OF WATER USER'S CLAIM

CODE and SERIAL NUMBER 57 7699

MAP: Fort Douglas Qua

1. **OWNER INFORMATION:** Name: United States of America
Address: c/o John R. Hill, Jr., Attorney, Dept. of Justice, Post Office Drawer 3607
City: Denver State: CO Zip Code: 80294
2. **PRIORITY OF RIGHT:** First or Paramount Interest Claimed: Full
3. **QUANTITY OF WATER:** _____ cfs and/or 821 acre feet
4. **RIGHT EVIDENCED BY:** Physical seizure, adverse possession and use.
5. **SOURCE:** Red Butte Creek **DRAINAGE:** Utah Lake and Jordan River
POINT(S) OF DIVERSION: _____ **COUNTY:** Salt Lake
(must be described with reference to U. S. Government Survey Corner)
Dam in the SW1/4 NW1/4, Sec. 35, T 1 N, R 1 E, of the SLB&M.
N. 2860 ft. and E. 883 ft. from SW Corner of Sec. 35.
Diverting Works (name): Red Butte Dam
6. **POINT(S) OF REDIVERSION:** The water is rediverted from _____
at a point _____
7. **STORAGE:** Water is to be stored in Red Butte Res. from Jan. 1
to Dec. 31 Capacity 385 ac. ft., Inundating 13.725 acres, Height
of Dam 90 feet. The area inundated by the reservoir includes all or
part of each of the following legal subdivisions: S1/2 of NW1/4, Sec. 35,
T 1 N, R 1 E, SLB&M.

WATER USER'S CLAIM

8. NATURE, PERIOD, PURPOSE AND EXTENT OF USE:

Claims used for purpose described:

STOCKWATERING: From _____ to _____ Animal Units _____
 DOMESTIC: From Jan. 1 to Dec. 31 No. Families 75 Persons 2500
 MUNICIPAL: From Jan. 1 to Dec. 31 Municipality Fort Douglas
 MINING: From _____ to _____ District _____
 Mine _____ Ores _____
 POWER: From _____ to _____ Rated Capacity _____
 Power Plant Name _____
 OTHER: From _____ to _____ Description of Use _____

IRRIGATION: From Apr. 1 to Oct. 31 Total Acres _____
 Sole Supply Acres 120 Area Irrigated in legal subdivisions of land by 40-acre tract. 120 acres, less improvements located in the W 1/2 of Section 3, T 1 N., R 1 E., S1B&M.

9. PLACE OF USE: If other than as described in area irrigated, in legal subdivisions of land by 40-acre tract: _____

10. POINT(S) OF RETURN: Amount of water consumed UNK Amount of water returned UNK The water will be returned to the natural stream at a point(s) described as follows: Water returns to the natural drainage through storm sewers and infiltration. Water also discharged into sanitary sewers.

11. EXPLANATORY OR OTHER FACTS: This claim is based upon the fact that the United States Army has used whatever water was required to supply Fort Douglas since October 26, 1862, without regard to any other rights.

12. The undersigned hereby enters his appearance in this water adjudication ~~and waives service of summons or other process~~

STATE OF ~~UTAH~~ COLORADO)
 CITY AND) SS.
 COUNTY OF DENVER)

The undersigned swears on oath that he makes and certifies this water user's claim either as the claimant himself or as the duly-authorized agent of the claimant, that he has read and knows the contents of the claim, that he signs the same, and that the information supplied therein is true to the best of his knowledge and belief.

Title: Attorney, Department of Justice
(Individual or Office)

[Signature]
Signature JOHN R. HILL, JR.

Subscribed and sworn to before me this 3rd day of February, 1988

Residing at: 12549 Quince St.
Northglenn CO 80234
Commission expires: September 19, 1990

[Signature]
Notary Public

FEB 01 1988 *DL*

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT WATER RIGHTS
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH SALT LAKE

IN THE MATTER OF THE GENERAL DETERMINATION OF RIGHTS TO THE USE OF WATER, BOTH SURFACE AND UNDERGROUND, WITHIN THE DRAINAGE AREA OF UTAH LAKE AND JORDAN RIVER IN UTAH, SALT LAKE, DAVIS, SUMMIT, WASATCH, SANPETE AND JUAB COUNTIES, UTAH.

NOTE: Use this form to assert your water rights in the pending judicial adjudication. The State Engineer has made a hydrographic survey of this area, which includes your water rights and uses. Your receipt of this form constitutes notice to you that the survey has been completed and that your Water User's Claim is due within 90 days after you receive this form. Under Utah law, unless you timely complete and file this form, your water rights cannot be recognized and you may not be able to assert them further. File this form with the Clerk of the District Court, at Salt Lake City, Utah; and a copy with the State Engineer, at 1636 West North Temple, Salt Lake City, Utah 84116.

STATEMENT OF WATER USER'S CLAIM

CODE and SERIAL NUMBER 57 7700

MAP: Fort Douglas Qua

1. **OWNER INFORMATION:** Name: United States of America
Address: c/o John R. Hill, Jr., Attorney, Dept. of Justice, Post Office Drawer 3607
City: Denver State: CO Zip Code: 80294
2. **PRIORITY OF RIGHT:** October 26, 1862 Interest Claimed: Full
3. **QUANTITY OF WATER:** _____ cfs and/or 453 acre feet
4. **RIGHT EVIDENCED BY:** Diligence
5. **SOURCE:** Red Butte Creek **DRAINAGE:** Utah Lake and Jordan River
POINT(S) OF DIVERSION: _____ **COUNTY:** Salt Lake
(must be described with reference to U. S. Government Survey Corner)
Dam in the SW1/4 NW1/4, Sec. 35, T 1 N, R 1 E, of the SLB&M.
N. 2860 ft. and E. 883 Ft. from SW Corner of Sec. 35.
Diverting Works (name): Red Butte Dam
6. **POINT(S) OF REDIVERSION:** The water is rediverted from _____
at a point _____
7. **STORAGE:** Water is to be stored in Red Butte Res. from Jan. 1
to Dec. 31 Capacity 385 ac. ft., Inundating 13.725 acres, Height
of Dam 90 feet. The area inundated by the reservoir includes all or
part of each of the following legal subdivisions: S1/2 of NW1/4, Sec. 35,
T 1 N, R 1 E, SLB&M.

8. **NATURE, PERIOD, PURPOSE AND EXTENT OF USE:**

Claims used for purpose described:

STOCKWATERING: From _____ to _____ Animal Units _____

DOMESTIC: From Jan. 1 to Dec. 31 No. Families 75 Persons 2500

MUNICIPAL: From Jan. 1 to Dec. 31 Municipality Fort Douglas

MINING: From _____ to _____ District _____

Mine _____ Ores _____

POWER: From _____ to _____ Rated Capacity _____

Power Plant Name _____

OTHER: From _____ to _____ Description of Use _____

IRRIGATION: From Apr. 1 to Oct. 31 Total Acres _____

Sole Supply Acres 120 Area Irrigated in legal subdivisions of land by 40-acre tract. 120 acres, less improvements located in the W 1/2 of Section 3, T 1 N., R 1 E., SLB&M.

9. **PLACE OF USE:** If other than as described in area irrigated, in legal subdivisions of land by 40-acre tract: _____

10. **POINT(S) OF RETURN:** Amount of water consumed UNK Amount of water returned UNK The water will be returned to the natural stream at a point(s) described as follows: Water returns to the natural drainage through storm sewers and infiltration. Water also discharged into sanitary sewers.

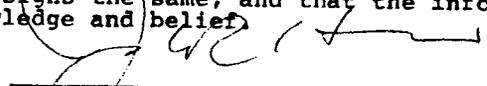
11. **EXPLANATORY OR OTHER FACTS:** _____

12. The undersigned hereby enters his appearance in this water adjudication and ~~waves service of summons or other process.~~

STATE OF ~~UTAH~~ COLORADO)
 CITY AND)
 COUNTY OF DENVER) SS.

The undersigned swears on oath that he makes and certifies this water user's claim either as the claimant himself or as the duly-authorized agent of the claimant, that he has read and knows the contents of the claim, that he signs the same, and that the information supplied therein is true to the best of his knowledge and belief.

Title: Attorney, Department of Justice
(Individual or Office)


 Signature JOHN R. HILL, JR.

Subscribed and sworn to before me this 3rd day of February, 19 88

Residing at: 10649 Quince St
Northglenn CO 80234
 Commission expires: September 19, 1990

Wesley K. LaBanks
 Notary Public

FEB 04 1938

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT, WATER RIGHTS
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH SALT LAKE

IN THE MATTER OF THE GENERAL DETERMINATION OF RIGHTS TO THE USE OF
WATER, BOTH SURFACE AND UNDERGROUND, WITHIN THE DRAINAGE AREA OF UTAH LAKE AND
JORDAN RIVER IN UTAH, SALT LAKE, DAVIS, SUMMIT, WASATCH, SANPETE AND JUAB COUNTIES,
UTAH.

NOTE: Use this form to assert your water rights in the pending judicial adjudication. The State Engineer has made a hydrographic survey of this area, which includes your water rights and uses. Your receipt of this form constitutes notice to you that the survey has been completed and that your Water User's Claim is due within 90 days after you receive this form. Under Utah law, unless you timely complete and file this form, your water rights cannot be recognized and you may not be able to assert them further. File this form with the Clerk of the District Court, at Salt Lake City, Utah; and a copy with the State Engineer, at 1636 West North Temple, Salt Lake City, Utah 84116.

STATEMENT OF WATER USER'S CLAIM

CODE and SERIAL NUMBER 57 7701

MAP: Fort Douglas Qu

1. **OWNER INFORMATION:** Name: United States of America
Address: c/o John R. Hill, Jr., Attorney, Dept. of Justice, Post Office Drawer 3607
City: Denver State: CO Zip Code: 80294
2. **PRIORITY OF RIGHT:** September 3, 1867 Interest Claimed: Full
3. **QUANTITY OF WATER:** _____ cfs and/or 821 acre feet
4. **RIGHT EVIDENCED BY:** Reservation from Public Domain
5. **SOURCE:** Red Butte Creek **DRAINAGE:** Utah Lake and Jordan River
POINT(S) OF DIVERSION: _____ **COUNTY:** Salt Lake
(must be described with reference to U. S. Government Survey Corner)
Dam in the SW1/4 NW1/4, Sec. 35, T 1 N., R. 1 E., of the SLB&M.
N. 2860 ft. and E. 883 ft. from SW Corner of Sec. 35.
Diverting Works (name): Red Butte Dam
6. **POINT(S) OF REDIVERSION:** The water is rediverted from _____
at a point _____
7. **STORAGE:** Water is to be stored in Red Butte Res. from Jan. 1
to Dec. 31 Capacity: 385 ac. ft., Inundating 13.725 acres, Height
of Dam 90 feet. The area inundated by the reservoir includes all or
part of each of the following legal subdivisions: S1/2 of NW1/4, Sec. 35,
T 1 N., R 1 E, SLB&M.

8. **NATURE, PERIOD, PURPOSE AND EXTENT OF USE:** Exhibit 4

Claims used for purpose described:

STOCKWATERING: From _____ to _____ Animal Units _____
 DOMESTIC: From Jan. 1 to Dec. 31 No. Families 75 Persons 2500
 MUNICIPAL: From Jan. 1 to Dec. 31 Municipality Fort Douglas
 MINING: From _____ to _____ District _____
 Mine _____ Ores _____
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 Power Plant Name _____
 OTHER: From _____ to _____ Description of Use _____

IRRIGATION: From Apr. 1 to Oct. 31 Total Acres _____
 Sole Supply Acres 120 Area Irrigated in legal
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 in the W 1/2 of Section 3, T 1 N., R 1 E., SLB&M.

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11. **EXPLANATORY OR OTHER FACTS:** _____

12. The undersigned hereby enters his appearance in this water adjudication. ~~and waives service of summons or other process~~

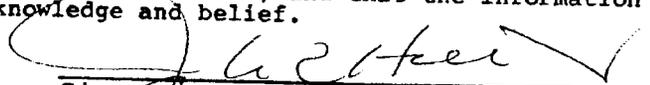
STATE OF ~~UTAH~~ COLORADO)

CITY AND)

COUNTY OF DENVER) SS.

The undersigned swears on oath that he makes and certifies this water user's claim either as the claimant himself or as the duly-authorized agent of the claimant, that he has read and knows the contents of the claim, that he signs the same, and that the information supplied therein is true to the best of his knowledge and belief.

Title: Attorney, Department of Justice
(Individual or Office)

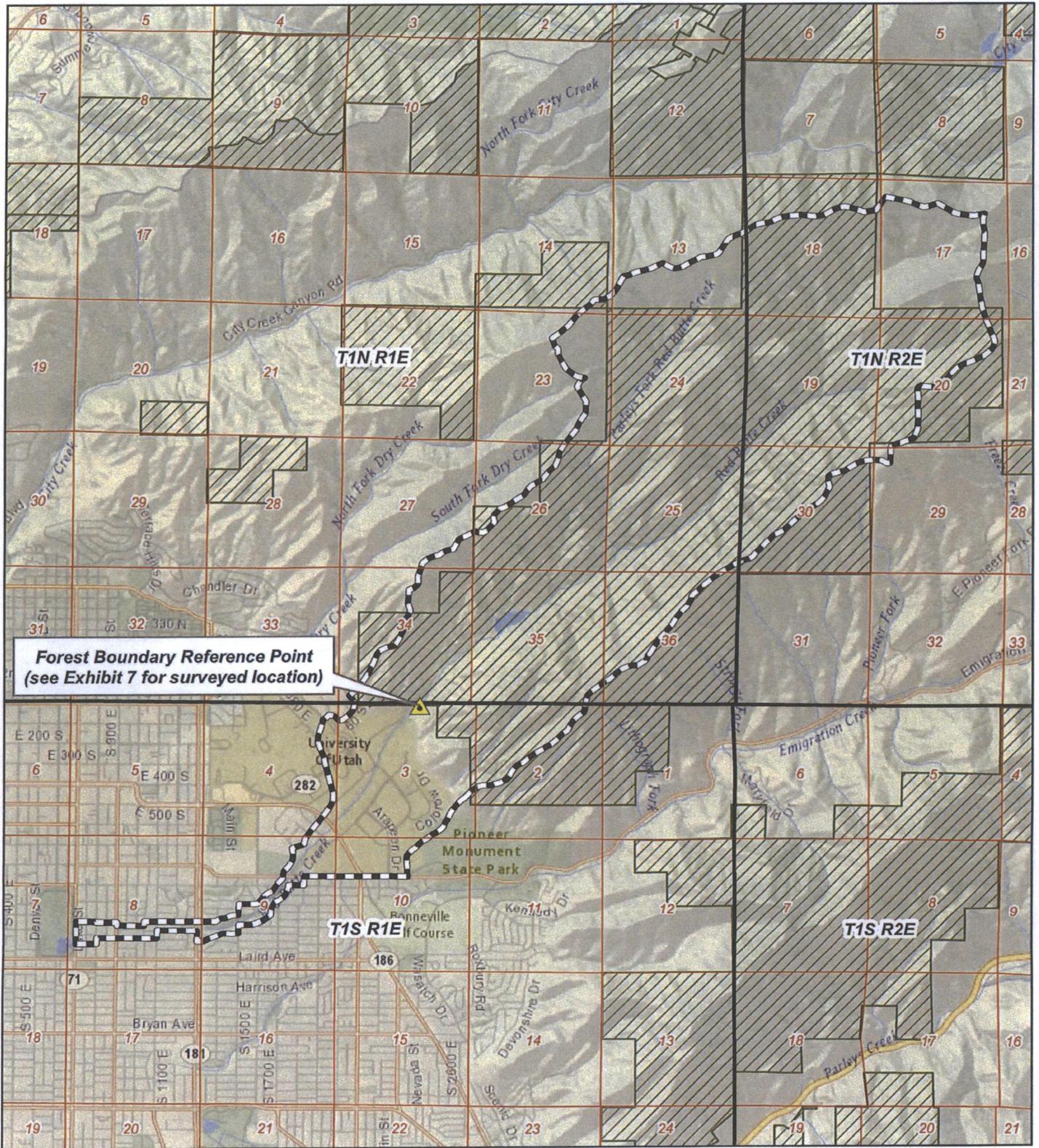

Signature JOHN R. HILL, JR.

Subscribed and sworn to before me this 3rd day of February, 1988

Residing at: 10649 Quivas St
Northglenn CO 80234

Commission expires: September 19, 1990

Walter K. Landbanks
Notary Public

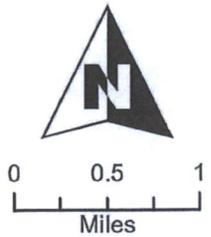


Forest Boundary Reference Point
(see Exhibit 7 for surveyed location)

Legend

-  Red Butte Creek Subdivision
-  USFS Lands
-  Forest Boundary Reference Point
-  Townships
-  Sections

Exhibit 5
Red Butte Creek
Subdivision Boundary
Area 57, Book 3



57-10698 NAME: USA Forest Service

TYPE OF RIGHT: Federal Reserved

PRIORITY: May 26, 1904

FLOW: 1.0 acre foot

SOURCE: Tributary Waters to Red Butte Creek

BENEFICIAL USE:

Water Use Group No. 724821.

OTHER: from Jan 01 to Dec 31 MISCELLANEOUS: Forest Service Uses.
Acre Feet allowed by this Right for this Use: 1.0 acre feet.

Domestic uses at ranger and guard stations, firefighting, stockwater for Forest Service animals, reforestation, erosion control, road construction and maintenance, and vehicle maintenance. In addition, the United States may divert such additional amounts of water as are necessary for emergency fire suppression within the Red Butte Creek Subdivision for forest lands.

OTHER COMMENTS:

Water Right Number 57-10698 is a Federal Reserved Water Right summarized under the specifications detailed above. However, the elements, limitations, and conditions of exercise for Water Right Number 57-10698 are officially defined and governed by the settlement agreement between the Utah State Engineer, the United States, and Salt Lake City Municipal Corporation of <DATE>.

EXHIBIT 7

RED BUTTE CREEK @ FOREST BOUNDARY LEGAL DESCRIPTION

The following describes the reference point where flowline of Red Butte Creek leaves the boundary of the Wasatch National Forest, said reference point lying on the south line of Section 34, Township 1 North, Range 1 East, Salt Lake Meridian, County of Salt Lake, State of Utah:

South 89°58'19" West, a distance of 2263.68 feet from the southeast corner for Section 34, Township 1 North, Range 1 East, Salt Lake Meridian.

Basis of Bearings: Central Zone of the Utah State Plane Coordinate System, North American Datum of 1983 (NAD83).

The southeast corner for Section 34, Township 1 North, Range 1 East is a U.S.D.A. Forest Service aluminum cap monument.

The record position for said southeast corner for Section 34, T. 1 N., R. 1 E., as shown of that B.L.M. Dependent Resurvey and Survey of Tracts 37, 38 and 39, approved February 4, 2003:

North 40°46'10.268" West 111°48'51.626"

Surveyor's Certificate

I hereby certify that the foregoing easement description was prepared by me and is accurate to the best of my knowledge and belief.

David F. Hanrion
Utah PLS 289581
For and on behalf of
USDA Forest Service



115 East 900 North
Richfield, Utah 84701

