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**RECEIVED**  
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WATER RIGHTS  
SALT LAKE

IN THE OFFICE OF THE STATE ENGINEER OF UTAH

IN THE MATTER OF EXCHANGE APPLICA )  
TION NO. E2919 (57-AREA) FILED BY )  
SALT LAKE CITY CORPORATION TO EX- )  
CHANGE 29.5 CFS WITH LITTLE COTTON- )  
WOOD TANNER DITCH COMPANY )  
 )  
 )

PROTEST OF  
LITTLE COTTONWOOD  
TANNER DITCH COMPANY

LITTLE COTTONWOOD-TANNER DITCH COMPANY protests the  
above-numbered Application for "Exchange of Water" upon the  
following grounds:

1. Salt Lake City, herein referred to as the "City", does not own the water right described in paragraph No. 2 of the Application. Such water right is owned by the protestant, as provided by the Morse Decree, dated June 16, 1910, No. 4802.

2. The above-described application was filed pursuant to Section 73-3-20, UCA, which permits any appropriated water to be turned from one stream into another stream or reservoir -- "for the purpose of preventing waste and facilitating distribution", and said section of the law does not apply to the above-numbered application which attempts to legalize the exchange of water rights.

3. Such application should have been a change application, filed under Section 73-3-3, UCA.

4. The points of diversion, Nos. 2, 3, and 4, described in paragraph 4 of the application, are on the Jordan River and Utah Lake and are not involved in the Morse Decree No.

4802, which relates only to Little Cottonwood Creek water.

5. There is a confused statement in the application because under "Explanatory" on page one it refers only to one "Decree", and in paragraph 2 there are two decrees mentioned.

6. The period of use stated in paragraph 5 is "January 1 to December 31" for the irrigation water right of 29.5 cfs awarded by Morse Decree. This is not correct.

7. There is total confusion in the description of the point of exchange in paragraph No. 7 involving Little Cottonwood Creek, Jordan River, and Utah Lake.

8. The "Explanatory", on pages 2 and 3 of the Exchange Application, is a clumsy effort to support Salt Lake City's 1992 announcement that in 1921 and 1931 the City obtained, not an agreement for exchange of water, but title to the decreed water rights awarded to the protestant in the Morse Decree. The statement in the first paragraph on page 3 of the Exchange Application that the "...Morse Decree, #2861, dated July 15, 1901, (paragraph 'twelfth' of the Findings of Fact attached hereto)" confirmed the exchange of water from Cottonwood Creek, is incorrect. Insofar as pertinent, paragraph "twelfth" provides:

"That in 1879, Salt Lake City commenced the construction of a canal, diverting water from the Jordan river, at a point where the water of the South Jordan Canal Company is diverted, and completed such canal to the city of Salt Lake, a distance of about twenty-nine miles, in 1882, and has ever since used it for conveying water to said city, for use by its inhabitants, for irrigation and municipal pur-

poses. The capacity of this canal is 150 cu.ft. of water per sec. of time. In 1888, a portion of the water conveyed thru said canal was exchanged by the city for Parley's Canyon Creek water, which was and is purer and better for domestic and culinary purposes, and, ever since, said water has been used, thru the waterworks system of Salt Lake City, for the domestic use of its inhabitants, for fire hydrants, sprinkling lawns and streets and other municipal purposes, and the remainder of water flowing thru said canal has been used by the city and its inhabitants for irrigation, sprinkling streets, flushing sewers and other municipal purposes, and all of said waters are necessary for said purposes.

"That the water taken from the river by the city into its canal is taken at an elevation of 50 ft. lower than the point at which the East Jordan Irrigation Company takes its water, and if the city's water was taken from the river at a point where the East Jordan Irrigation Company diverts its water, it could be delivered in the city at an elevation 80 ft. above where it is delivered at present thru the city's canal. The city has had in contemplation the changing of the point of diversion of the water taken by it from the river thru its canal, to this higher level, in order to enable the city to exchange the same for waters from the Cottonwood creeks, and other mountain streams, which is purer and better for culinary and domestic purposes, and the city has already begun proceedings in the proper court to condemn a right of way for such purpose thru the East Jordan canal."

Paragraph II of the Findings of Fact and Conclusions of Law in the Booth Decree likewise fails to confirm the exchange of water. It states:

"That as against the persons and parties owning lands bordering upon Utah Lake, plaintiffs are jointly the owners of the right to raise the waters of said lake to the elevation known as "Compromise Point," and as against the defendants in this action and the Timpanogas Irrigation Company, Plaintiffs are jointly the owners of one hundred eighty-five thousand (185,000) acre feet of water, to be taken and drawn

from Utah Lake for irrigation, municipal, culinary and domestic purposes, during the irrigation season of each and every year, to be taken and drawn through the Jordan River in such varying quantities at different times in each year as the necessities of the varying irrigation seasons require, the same being equivalent to a flow of approximately five hundred fifteen (515) cubic feet of water per second, continuously for 180 days; and the plaintiffs, other than Salt Lake City, are the owners of the right to the use of a continuous flow during the non-irrigation season of forty (40) cubic feet of water per second for domestic and culinary purposes."

9. The last paragraph in "Explanatory" is to the effect that this exchange application supersedes change application number all174. If it supersedes the change application, it should have been signed, "Little Cottonwood-Tanner Ditch Company, by Salt Lake City, Agent", as did Change Application No. a-1174.

10. The exchange application presents legal issues of ownership of water rights which cannot be decided by the State Engineer, whose authority is administrative only.

11. This exchange application is not on the standard form prepared by the State Engineer as was the form attached to Salt Lake City's Motion to Dismiss in the case of Cahoon and Maxfield Irrigation Company, et al, v. Salt Lake City, Civil No. 920900820, pending in the Third Judicial District Court of Salt Lake County.

LITTLE COTTONWOOD-TANNER DITCH COMPANY

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