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December 5, 2018

VIA HAND DELIVERY AND E-MAIL (boydclayton@utah.gov)

Kent L. Jones, State Engineer
Utah Division of Water Rights
2594 W. North Temple, Suite 220
Salt Lake City, UT 84114-6300

**Re Addendum to Protest Regarding Permanent Change Applications
“a44045” (57-7796) and “a44046” (57-10711) submitted by Emigration
Improvement District / Proof of Congressional Authorization for
Operation of Boyer Well Nr. 1 Under Mount Olivet Cemetery Association
Water Right 57-8865**

Dear Mr. Jones:

On behalf of the Protestant Emigration Canyon Home Owners Association (“**The ECHO-Association**”), we hereby submit the following addendum to our protest of the above referenced change applications against water share 57-7796 currently owned by Emigration Improvement District (“**EID**” aka ECID).

Upon further and extensive review of documents posted on the website administered by the Utah Division of Water Rights as well as submitted to The ECHO-Association by concerned parties of interest, please note the following for the record:

- On August 11, 1923, the Judge P.G. Evans of the Utah State Third District Court determined that surface water flow of the Emigration Canyon Creek averaged **5.43 cfs** per year (*see* Civil Decree 25890 attached as **Exhibit A**);
- While the court’s decision addressed the rights of the formal parties of the civil action (Salt Lake City, James E. Hogle, Mount Olivet Cemetery Association *et. al.*) as to 2/3 flow of the Emigration Canyon Stream, the remaining 1/3 flow was assumed to belong to the Emigration Dam and Ditch Company (*see id.*) ;
- As such, 2/3 flow of **5.43 cfs** calculated at **3.822 cfs** was determined to belong to the formal parties of interest, while the remaining 1/3 flow of **5.43 cfs** calculated at the remaining **1.683 cfs** was undetermined by the court.
- Per warranty deed, assumed to be executed on August 21, 1954, the Emigration Dam and Ditch Company transferred “all of the water rights vested” to the Utah State Road Commission (*see* **Exhibit B**);

- The court's determination of the 1/3 interest of 1.683 cfs and the conveyance of water rights from the Emigration Dam and Ditch Company to the Utah State Road Commission was affirmed by your office in a letter dated July 5, 1961 (*see Exhibit C*);
- Although the volume of water remained unspecified in the aforementioned conveyance, as 2/3 flow of Emigration Canyon stream had been previously adjudicated in Civil Decree Nr. 25890 to be **3.822 cfs**, the remainder 1/3 interest of **1.683 cfs** was effectively transferred to the Utah State Road Commission from the Emigration Dam and Ditch Company *and no more*;
- In turn, on January 27, 1971, the Utah State Road Commission, via quit claim deed, conveyed "an interest in Diligence Claim Number 2023" (unknown reference) consisting of sufficient water from Emigration Creek to supply the irrigation of 100 acres of land, *not to exceed a flow of 10.00 cfs.* (emphasis added) to the Utah State Division of Parks and Recreation (*see Exhibit D*) thereby potentially exhausting its entire water claim of **1.683 cfs** previously acquired from the Emigration Dam and Ditch Company under the aforementioned August 21, 1954 warranty deed;
- Although it arguably possessed no remaining water rights, the Utah Road Commission deeded EID an "interest in Diligence Claim D2023" (unknown reference) via quit claim deed "consisting of sufficient water from Emigration Creek to supply the needs for 26 families, 75 horses, 200 cattle, 400 sheep and the irrigation of 150 acres of land, *not to exceed a flow of 2.00 cfs* (emphasis added) (*see Exhibit E*);
- Contrary to the 1923 Civil Decree Nr. 25890, during the adjudicative proceedings of your office commenced in 1983, and for unknown reasons, EID claimed **33.00 cfs** under diligence claim "a6538" (57-7796) as a 63.606 % interest in diligence claim "D2023" (unknown reference) (*see Exhibit F*) but then later withdrew "a6538" on March 14, 1997 for unknown reasons (*see Exhibit G*);
- In a letter dated September 6, 2013, your office reported that EID water right 57-7796 was "evidenced by" diligence claim "D2023" filed on June 30, 1968 by the Utah State Road Commission, stating that it was "based on 1/3 natural flow of Emigration Creek used by individuals of the Emigration Canyon Dam & Ditch Company" (*see Exhibit H*), which was expressly contrary to the Utah State Third District Court Civil Decree Nr. 25890 as noted above (*see Exhibit A*); and lastly,
- Regardless of proposed determination of your office commenced in 1983, on October 16, 2014 Mount Olivet Cemetery Association filed timely objection to the State Engineer's Proposed Determination of Water Rights under Civil No. 360057298 including EID water right 57-7796 (*see Exhibit I*).

Although EID had submitted permanent change applications “a44045” (57-7796) and “a44046” (57-10711), EID is currently operating the Brigham Fork and Upper Freeze Creek Wells under *approved* temporary change application “t43182” (underground point-of-diversions Nr. 9 and 10 respectively) while EID is operating Boyer Well Nr. 2 under approved permanent change application “a17521” (57-7796) (underground point-of-diversion Nr. 9) but continues to falsely represent that it owns “one of the most senior water rights in the canyon, thanks to the Utah Road Commission... who [sic], in 1976 deeded to the District *a large sum of water rights*” (emphasis added) (see **Exhibit J**).

Further, as Boyer Well Nr. 1 is currently being operated by EID under water share 57-8865 (underground point-of-diversion Nr. 11), formerly owned by the Mount Olivet Cemetery Association, and as per Congressional Act of 1909 such property must be used “forever as a cemetery for the dead: *Provided: that when such premises shall cease to be used for such purpose they shall revert to the United States [...]*” (emphasis added) (see <https://echo-association.com/wp-content/uploads/Mount-Olivet-Cemetery-Association.pdf>), we think it necessary for your office to demand that EID trustees provide proof of evidence of Congressional authorization for the indoor and outdoor water use for **188 private residences** (94.04 acre/ft) of the Emigration Oaks development as originally claimed by The Boyer Company LC under “a12710b” (57-8865) with your office.

As over forty (40) wells have reported quantity and quality impairment to date to include *total depletion of the Emigration Canyon Stream* less than two miles from Utah’s Hogle Zoo and to the determinant of the Mount Olivet Cemetery, we look forward to the hearing on December 19, 2018.

Should there be any other relevant documents in the State Engineer’s possession that the engineer intends to rely on that are not found on its web-site, please forward them to me.

Sincerely,

CHRISTENSEN & JENSEN P.C.



Scot A. Boyd

Letter to Kent L. Jones
December 5, 2018
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Enclosures: a/s

cc: Assistant US Attorney
ATTN: Sandra Steinvoot
District of Utah
111 S. Main, Suite 1800
Salt Lake City, Utah 84111

Fort Douglas Commanding Officer
- As Board Member of the -
Mount Olivet Cemetery Association
1965 de Trobriand St.
Salt Lake City, Utah 84113

EXHIBIT A

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

Mount Olivet Cemetery Association, and
WILLIAM P. GOSWELL, EUGENE L. TRACY,
MORRIS L. KIRKPATRICK, ROBERT L. GOSWELL,
GEORGE B. DAVIS, WILLIAM W. FLEETWOOD,
J. H. E. WILKINS, and
ELSON WICKERY KING, UNITED STATES ARMY,
Trustees of Mount Olivet Cemetery,

Plaintiffs

-VS-

SALT LAKE CITY, a Municipal Corporation,
GARDON COMPANY, a Corporation, E. D.
WICKES and JAMES A. ROGERS,

Defendants

FILED

CLERK OF DISTRICT COURT

COMMUNICATIONS

IN

FILE

RECORDED

The above entitled action was and is a suit to quiet the right and title of the parties thereto, to divert and use for beneficial purposes, two-thirds of the entire normal flow of Emigration Canyon Creek in Salt Lake County, State of Utah.

The action was commenced in this court by the plaintiffs on the 30th day of November, 1918 by the filing of their complaint herein against Salt Lake City, a municipal corporation, one of the defendants herein. Thereafter plaintiffs filed amendments to their said complaint for the purpose of making the Gardon Company, a corporation, E. D. WICKES and J. A. ROGERS, parties defendant herein; that summons was served on all the defendants herein except Salt Lake City, and as to it, service of summons was waived and each of the defendants herein appeared in the action and answered the complaint as amended and set forth the nature of their several adverse claims to divert and beneficially use the said waters of Emigration Canyon Creek; that thereafter on the first day of March, 1920, the said cause came regular-

ly on for trial on the pleadings of the plaintiffs herein and the answers and counter-claims of the several defendants herein, the plaintiffs being represented by Frank B. Stephens, Esq., and Honorable Morris L. Ritchie; the Defendant Salt Lake City being represented by Wm. H. Folland, Esq., and H. H. Smith, Esq., the defendants, Cardon Company, a corporation, E. B. Wicks and James A. Hogle, being represented by Franklin S. Richards and Frank S. Richards and the hearing of said cause was protracted and continued from time to time until the expiration of the term of the judge who presided at the trial of said cause whereupon it was stipulated by and between all the parties hereto that said judge, Honorable P. C. Evans might continue to act as judge pro tem for the trial and decision of the within cause, whereupon further hearings were had before said Honorable P. C. Evans, acting as judge pro tem and the case finally submitted to the court for its decision on October 1, 1922 and thereupon and thereafter on the 16th day of November, 1922, the court gave and rendered its decision concerning the rights of the several parties to this action to divert and use for beneficial purposes the waters of said Emigration Canyon Creek and directed that Findings of Fact, Conclusions of Law and a Decree be made and entered herein as follows:

FINDINGS OF FACT

The Court finds from the evidence:

I.

1. That the Plaintiffs, Wm. F. Colton, Russel L. Tracy, Morris L. Ritchie, Elmer I. Goshen, George H. Davies, William M. Fleetwood, J. H. H. Williams and Major Wesley King were at the time of the commencement of the action, and their successors

in office are the duly chosen and acting trustees of an express public trust in accordance with the acts of Congress and under the regulations of the Secretary of War of the United States of America to have the care, custody, control and management of Mount Olivet Cemetery charged with the duty of the protection thereof and of the rights, privileges, franchise and property of said cemetery conducting business under the title of Mount Olivet Cemetery Association; that the property of said cemetery is devoted to the purpose of the burial of the dead and is not used for any private purpose or interest; that on May 16, 1874, Congress set apart twenty acres of the Camp Douglas Military Reservation for said cemetery which tract was first used for such purpose about the year 1878. In January 1909 Congress made an additional grant of fifty acres, more or less, immediately adjacent to the original twenty acres and on the south side thereof and which is gradually being brought into use for burial purposes. Lots for burial purposes have been sold and the proceeds for such sales are used, first for the upkeep and maintenance of the cemetery, and any surplus, invested in bonds and securities and the income thereof used for the care and maintenance of said cemetery.

2. That the defendant Salt Lake City is a municipal corporation organized and existing under and pursuant to the laws of the State of Utah and is situated in Salt Lake County, State of Utah; that the Cardon Company is a corporation duly organized and acting as such under the laws of the State of Utah.

3. That Emigration Canyon Creek, sometimes called Emigration Creek is and from time immemorial has been a natural stream of water arising in the eastern part of Salt Lake County, Utah, and flowing thence southwesterly through Emigration Canyon across a portion of Salt Lake County and emptying into the Jordan River, excepting, however, such portions of the waters of said creek as

have been diverted, used and consumed for culinary, domestic, irrigation and other useful purposes. The flow of said creek varies considerably with the seasons and from year to year but averaging about 5.46 cubic feet per second.

4. That the irrigation season extends from the first day of April until the first day of October of each year and the non-irrigation season extends from the first day of October of each year until the first day of April following.

5. That prior to the commencement of this action an agreement was entered into between Salt Lake City and the Emigration Dam & Ditch Company wherein and whereby one-third of the waters of Emigration Canyon creek were recognized as belonging to the Emigration Dam & Ditch Company and two-thirds of the waters of said creek recognized as belonging to Salt Lake City. It is the two-thirds of said waters last mentioned that are in litigation in this action.

6. That all of the lands irrigated by the parties to this suit and described in the pleadings were originally arid lands and will not produce agricultural crops without irrigation but with irrigation said lands are productive; that the land owned and controlled by Mount Olivet Cemetery is used or held for burial lots and is improved by lawns, shrubs and trees.

7. That Salt Lake City has a population of approximately 118,110 which is gradually increasing from year to year and that said city owns and controls a water system by and through which culinary and domestic water is furnished to the inhabitants thereof and in addition thereto said city controls the irrigation waters flowing in ditches within its limits and leading from Emigration Canyon to said city limits.

8. That the following persons, corporations and association, or their predecessors at the times stated herein, appropriated and diverted of the unappropriated waters of Emigration Canyon

creek, the amount stated after their respective names and ever since have continuously, openly, notoriously, without interruption and under claim of right used said amount of water for culinary, domestic and irrigation purposes.

a. That the predecessors in interest of the defendant J. A. Hogle long prior to 1878 appropriated and used of the waters of Emigration Canyon Creek for the purpose of irrigating the tract of land known as the Hogle tract and described in the complaint herein 0.66 of a second foot for thirty-six hours each week commencing at 6 o'clock P. M. on Saturday and continuing until 6 o'clock A. M. of the Monday following during the irrigation season and in addition thereto appropriated and used for domestic, culinary and stock purposes a quantity of water taken directly from the open ditch which passes through said tract equivalent to one-fifteenth of a second foot of water flowing continuously. The court further finds that if the water of Emigration Canyon creek should in the future be carried in conduit or pipe instead of the open ditch that the equivalent amount of water to that mentioned above would be 4,000 gallons per day during the non-irrigation season and 6,500 gallons per day during the irrigation season delivered at the house located upon said tract.

b. That the predecessors in interest of the Carlson Company long prior to 1878 appropriated and used of the waters of Emigration Canyon creek for the purpose of irrigation of the tract of land known as the Carlson tract and described in the complaint herein 1.58 of a second foot of water for thirty-six hours each week, or the equivalent thereof, during the irrigation season, and in addition thereto appropriated and used for culinary and domestic purposes a stream of water flowing continuously in open ditch

equivalent to one-fifteenth of a second foot. The court further finds that if the waters of Emigration Canyon creek should, in the future, be carried in conduit or pipe that the equivalent amount of water for culinary and domestic purposes to that stated above would be 10,000 gallons per day during the non-irrigation season and 17,500 gallons during the irrigation season flowing constantly in pipe delivered at the house now upon said tract of land.

c. That the Mount Olivet Cemetery Association in about the year 1878 appropriated and used for the purposes of irrigation of its cemetery tract, fully described in the complaint herein, four miner's inches or one-tenth of a second foot, the waters of Emigration Canyon creek flowing continuously.

d. That the predecessors in interest of Salt Lake City, a municipal corporation, long prior to 1878 appropriated and used for irrigation and also domestic and culinary purposes for use upon the lands and in the homes of the inhabitants of Salt Lake City residing in the First, Second and Tenth Wards of said city, all of the remainder of two-thirds of the entire flow of Emigration Canyon creek.

9. The court finds that there has been no relinquishment or abandonment of water or water rights in Emigration Canyon creek by any of the appropriators thereof.

CONCLUSIONS OF LAW

As conclusions of law from the foregoing facts the court finds and hereby decides:

1. That the following named parties are entitled to a decree quieting and confirming their right to culinary, domestic and irrigation water from Emigration Canyon creek as follows:

a. J. A. Hogle, 0.06 of a second foot of water thirty-six hours each week commencing at 6 P. M. on Saturday and continuing until 6 A. M. the Monday following during the irrigation season for the irrigation of the Hogle tract of land and also a stream flowing continuously for culinary and domestic purposes of one-fifteenth of a second foot, and if the waters of Emigration Canyon creek are carried in conduit or pipe then said Hogle shall be entitled to have delivered in a pipe at the house upon the Hogle tract 4,000 gallons of water per day during the non-irrigation season and 6,500 gallons of water per day during the irrigation season.

b. The Cardon Company, 1.35 of a second foot of water thirty-six hours each week, or the equivalent thereof, during the irrigation season for the irrigation of the Cardon tract of land and also a stream flowing continuously for culinary and domestic purposes of one-fifteenth of a second foot, and if the waters of Emigration Canyon creek are carried in conduit or pipe then said Cardon Company shall be entitled to have delivered in a pipe at the house on the Cardon tract 10,000 gallons of water per day during the non-irrigation season and 17,500 gallons of water per day during the irrigation season.

c. That Mount Olivet Cemetery Association is entitled to divert and use for all purposes of its cemetery four ninths inches or one-tenth of a second foot of water of Emigration Canyon creek flowing continuously.

d. That Salt Lake City, a municipal corporation, is entitled to divert and use all of the remainder of two-thirds of the entire flow of Emigration Canyon creek after J. A. Hogle, Cardon Company and Mount Olivet Cemetery Association have had diverted to them the amounts of the water herein specified, flowing continuously during all seasons of the year for domestic, culinary,

irrigation and other purposes incident to its ownership and control of irrigation and domestic water systems for the use and bene fit of the inhabitants of said city.

Dated at Salt Lake City, this 11th day of August.

A. D., 1923.

P. B. Evans

Judge Pro Tem

J. H. Morgan

EXHIBIT B

WARRANTY DEED

EMIGRATION DAM AND DITCH COMPANY, a corporation duly organized under and existing by virtue of the laws of the State of Utah, Grantor, whose office and principal place of business is in Salt Lake City, Salt Lake County, State of Utah, for and in consideration of the sum of Fifteen Thousand One Hundred Eighty-One Dollars (\$15,181.00), hereby CONVEYS AND WARRANTS to the STATE ROAD COMMISSION OF THE STATE OF UTAH, Grantee, whose office is at Salt Lake City, State of Utah, the following described property in Salt Lake County, State of Utah, to-wit:

All of the water rights vested in Emigration Dam and Ditch Company, a corporation.

This conveyance was duly authorized by resolution of the board of directors of said corporation on August 9, 1954, whereby the sale of all water rights of the corporation to the grantees herein named was duly authorized.

Said sale of said water rights was duly approved, ratified and confirmed by the vote of more than two-thirds of the outstanding stock of the corporation at a special meeting of the stockholders held on August 21, 1954, at which meeting duly noticed and called the owners and holders of more than two thirds of the outstanding capital stock voted to approve, ratify and confirm said sale, and said sale was thereby approved, ratified and confirmed.

IN WITNESS WHEREOF, Emigration Dam and Ditch Company, a corporation, has caused this deed to be executed in its corporate name by the president and secretary thereunto duly authorized, and the corporate seal hereunto affixed, this 25th day of August, A. D. 1954, at Salt Lake City, Utah.

EMIGRATION DAM AND DITCH COMPANY,
A corporation of Utah,

By _____
President

By _____
Secretary

STATE OF UTAH)
 : ss.
County of Salt Lake)

On this 25th day of August, A. D. 1954, personally appeared before me Paul E. Reimann and Ansel H. Pratt, who being by me first duly sworn, each did say that Paul E. Reimann is the president and Ansel H. Pratt is secretary of Emigration Dam and Ditch Company, a corporation duly organized under and existing by virtue of the laws of the State of Utah, and that the foregoing deed was signed in behalf of said corporation by virtue of a resolution of the board of directors and by virtue of a resolution adopted by the stockholders at a special meeting; and said Paul E. Reimann as president and said Ansel H. Pratt as secretary each duly acknowledged to me that said Emigration Dam and Ditch Company executed the foregoing deed of conveyance and that the seal thereunto affixed is the corporate seal of said grantor corporation.

My commission expires _____

NOTARY PUBLIC
Residing at Salt lake City, Utah.

EXHIBIT C



THE STATE OF UTAH
OFFICE OF STATE ENGINEER
SALT LAKE CITY

WAYNE D. CRIDDLE
STATE ENGINEER

July 5, 1961

Emigration Canyon
Water Users

Ladies and Gentlemen:

Thank you for attending the meeting held on Monday, July 3, with the State Engineer of Utah and the Water Users of Emigration Canyon. I am sure that we accomplished a great deal by bringing the water interests together, reviewing their rights, and attempting to resolve differences over the distribution of the waters of Emigration Canyon.

Following, are the major points which we feel were covered at the meeting:

1. The meeting was held at 10 a.m., Monday, July 3, 1961, in the State Engineer's Office, 403 State Capitol Building.

2. Another meeting has been scheduled for 10 a.m., Tuesday, August 1, 1961, in the State Engineer's Office, to discuss any further distribution problems which may have arisen by that time.

3. Attending the July 3rd meeting were:

Calvin A. Behle	1003 Kearns Building	Mt. Olivet Cemetery (Atty)
Carl A. Taylor	1342 E. 500 South	Mt. Olivet Cemetery
Mrs. Paul Richardson	2458 Sunnyside Avenue	Self
P. K. Richardson	2458 Sunnyside Avenue	Self
Robert Gibson	612 Utah State Annex Building	State Road Commission (Attorney)
H. G. Talmage	2400 Sunnyside Avenue	Self
Barbara Shurtliff Gardner	2425 Michigan Avenue	D. Ray Shurtliff Estate
Wendell Shurtliff	2314 Sunnyside Avenue	D. Ray Shurtliff Estate
Aldin Hayward	19 West South Temple	Utah State Parks Director
Dwight Freeman	19 West South Temple	Utah State Parks
H. M. Christensen	19 West South Temple	Utah State Parks
Wayne D. Criddle	403 State Capitol	State Engineer of Utah
Clarence E. Erickson, Jr.	403 State Capitol	Distribution Division, Utah State Engineer's Office

4. The group asked that a 7-day rotation schedule using the full stream be worked out on the water, as decreed, and to allow the Talmage-Shurtliff-Richardson interests the privilege of irrigating on the weekends, since the other rights had more flexible hours for using.

Following, are the rights indicated as being valid at the meeting:

Civil #25890
District Court of
Salt Lake County

1/3 interest to Emigration Dam and Ditch Company,
now claimed by State Road Commission

2/3 interest to North Side Users: ^{/1}
Mt. Olivet Cemetery (6%)
James A. Hogle (13%)
Gordon Company (25%)

The Gordon Company interest has now become
the H. G. Talmage, D. Ray Shurtliff
Estate, and the Paul K. Richardson inter-
ests at approximately 1/3 each.

Since the 2/3 interests agreed that Hogle is not using any part of his right, there was an apparent agreement to split the flow of Emigration Canyon Creek, as follows, for the rest of the 1961 season:

State Road Commission	--168 water hours per wk.
Mt. Olivet Cemetery	--56 hours
Richardson-Shurtliff-Talmage	--68 hours
	--44 hours
	<hr/>
	168 hours

5. The suggested distribution schedule on a rotation basis is as follows:

Talmage:	6 p.m. Fri. until 8 a.m. Sat.	
Shurtliff:	8 a.m. Sat. until 10 p.m. Sat.	44 hours
Richardson:	10 p.m. Sat. until 2 p.m. Sun.	
State Road Commission:	2 p.m. Sun. until 10 p.m. Tues.	56 hours
Mt. Olivet Cemetery	10 p.m. Tues. until 6 p.m. Fri.	68 hours

^{/1} (Note: The percentage breakdown on the 2/3 interest came from a report made by W. D. Beers, September 8, 1930, concerning the users of the Mt. Olivet ditch. A thermofax copy of Beers' report is attached to this summary letter.)

In setting forth this rotation schedule, it was recognized that the weekends were to be given to the Talmage-Shurtliff-Richardson interests; that the Road Commission needed two working days to irrigate; and that the Cemetery could store its water in its storage pond during whatever hours would not be convenient to the other users.

It is also recognized that this schedule is not absolute or fixed. It should be flexible to allow the water users, by mutual agreement, to trade water turns if the need should arise.

6. We have not, as of this date, received the State Road Commission's Change Application to cover the change of place of use of the 1/3 right (Emigration Dam and Ditch Company) set out in Civil 25890. However, the Road Commission's Legal Department assured everyone that such a Change would be made as quickly as possible, and that agreements would be made to use ditches owned by the other water users.

7. The problem of ditch maintenance was discussed and each user expressed a desire to share in the maintenance of the present conveyance system, and to improve it whenever necessary.

8. A check is being made on the upper canyon water users and the wells being drilled in Emigration Canyon. However, definite policing of this area will be subject to the general adjudication of Water Rights for Emigration Canyon and the Jordan River Basin.

9. An attempt has been made to contact a Mr. Warburton and others reportedly diverting water from Emigration Canyon under a claim to a portion, or all, of the 1/3 interest of the Emigration Dam and Ditch Company, now shown to be owned by the State Road Commission and used by the Parks Commission for irrigation of some 5,000 trees in the Monument Park area. Mr. Warburton's water right has been contested by the other users.

As soon as contact can be made, Mr. Warburton, et al, will be requested to produce evidence of ownership of a right as has the State Road Commission.

Information was given by a Mrs. Gardner that L. B. Clemonson, 2199 Laird, was the person actually using the water from Emigration Canyon. This office called Mrs. Clemonson and she said that there had been no physical diversion from Emigration Canyon, and that only the water which appeared in their ditch from time to time was pumped. She spoke of verbal agreement with the party which purchased the old irrigation company rights. It

Emigration Canyon Water Users
July 5, 1961
Page 4

was her understanding that they could use the water if they kept the ditch clean; and only if there might happen to be some water in their ditch.....

Sincerely yours,

A handwritten signature in cursive script, reading "Clarence E. Erickson, Jr.", written over a horizontal line.

Clarence E. Erickson, Jr.
Distribution Engineer

CEE:ek

EXHIBIT D

Quit Claim Deed

The STATE ROAD COMMISSION OF UTAH, by its duly appointed Director of Highways, Grantor, of Salt Lake City, County of Salt Lake, State of Utah, hereby QUIT CLAIMS to Utah State Parks and Recreation, Grantee, of Salt Lake City, County of Salt Lake, State of Utah, for the sum of Ten Dollars, \$10.00, and other valuable consideration, the following described water right in Salt Lake County, State of Utah, to-wit:

An interest in Diligence Claim Number 2023 on file with the State Engineer consisting of sufficient water from Emigration Creek to supply the irrigation of 100 acres of land, not to exceed a flow of 10.00 cfs.

IN WITNESS WHEREOF, the said STATE ROAD COMMISSION OF UTAH has caused this instrument to be executed this 29th day of January, A.D. 1971, by its Director of Highways.

STATE ROAD COMMISSION OF UTAH

By [Signature]
Director of Highways

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

On the 29th day of January, A.D. 1971, personally appeared before me [Signature], who by me duly sworn did say that he is the Director of Highways, and he further acknowledged to me that said instrument was signed by him in behalf of said STATE ROAD COMMISSION OF UTAH by authority of a resolution of said STATE ROAD COMMISSION OF UTAH, duly passed on June 25, 1962.

[Signature]
Notary Public

My Commission expires:

June 18, 1973

RW Special

EXHIBIT E

RECEIVED

JUN 30 1976

NOTARY PUBLIC

Quit Claim Deed

The UTAH DEPARTMENT OF TRANSPORTATION, by its duly appointed
Director, Grantor, of Salt Lake City, County of Salt Lake,
State of Utah, hereby QUIT CLAIMS to EMIGRATION IMPROVE-
MENT DISTRICT, a political subdivision of the State of Utah
Grantee , of Salt Lake City County of Salt Lake
State of Utah, for the sum of \$10.00 dollars and
other valuable considera- Dollars, the following described
tions
Water Right in Salt Lake
County, State of Utah, to-wit:

An interest in Diligence Claim Number 2023 on file with
the State Engineer consisting of sufficient water from
Emigration Creek to supply the needs for 26 families, 75 horses,
200 cattle, 400 sheep and the irrigation of 150 acres of land,
not to exceed a flow of 2.00 cfs.

26 families	: 18.93 ac-ft.
75 horses	: 2.10
200 cattle	: 5.60
400 sheep	: 2.24
150 acres	: 600.00
	<u>628.87 ac-ft.</u>

IN WITNESS WHEREOF, the said UTAH DEPARTMENT OF TRANSPORTATION
has caused this instrument to be executed this 11 day of
November A.D., 1975, by its Director.

UTAH DEPARTMENT OF TRANSPORTATION

STATE OF UTAH)
COUNTY OF SALT LAKE) ss.

By [Signature]
Director

On the 11 day of November A.D. 1975, personally
appeared before me [Signature] who by me duly sworn did say
that he is the Director, and he further acknowl-
edged to me that said instrument was signed by him in behalf of said
UTAH DEPARTMENT OF TRANSPORTATION.

My Commission Expires Sept. 17, 1976

[Signature]
Notary Public

EXHIBIT F

WUC: 57-7588 NAME: State of Utah Division of Parks & Recreation INT: 100%* FLOW: 2.0 cfs
 TYPE OF RIGHT: Diligence, a11816* PRIORITY: 1872 SOURCE: Emigration Creek MAP: 54c
 POINT OF DIVERSION (SUR): (1) N 700 ft. E 465 ft. from W $\frac{1}{4}$ corner, Sec 11, T 1S, R 1E, SLBM

REMARKS:

*Water User's Claim 7588 represents 36.394% of Diligence Claim D2023. The Emigration Canyon Improvement District owns the remaining 63.606% represented by Water User's Claim 7796. The flowrate and diversion limitations shown here reflect this 36.394% interest.

CLAIMS USED FOR PURPOSE DESCRIBED: 7588,7796

###IRRIGATION		*---NORTH EAST QUARTER---				*---NORTH WEST QUARTER---				*---SOUTH WEST QUARTER---				*---SOUTH EAST QUARTER---				Section
		* NE	NW	SW	SE *	* NE	NW	SW	SE *	* NE	NW	SW	SE *	* NE	NW	SW	SE *	Totals
Sec 10 T	1S R 1E SLBM *																	130.00
Sec 15 T	1S R 1E SLBM *	15.00	15.00	15.00	15.00	15.00	15.00	15.00	15.00	15.00	15.00	15.00	15.00	15.00	15.00	15.00	25.00	120.00
or a Total of 250.00 acres.																		
PERIOD OF USE: 04/01 TO 10/31																		

Water User's Claim 7588 is limited to the irrigation requirements of 91.00 acres.

Diversion any, each, or all claims; total yearly diversion under all claims mentioned 1000.00 acre-feet.

###STOCKWATERING: 355 Equivalent Livestock Units PERIOD OF USE: 01/01 TO 12/31

Water User's Claim 7588 is limited to the stockwatering requirements of 226 Equivalent Livestock Units.

Diversion any, each, or all claims; total yearly diversion under all claims mentioned 3.61 acre-feet.

###DOMESTIC: 26 Families PERIOD OF USE: 01/01 TO 12/31

Water User's Claim 7588 is limited to the domestic requirements of 9 families.

Diversion any, each, or all claims; total yearly diversion under all claims mentioned 11.70 acre-feet.

WUC: 57-7796 NAME: Emigration Canyon Improvement District INT: 100%* FLOW: 33.0 cfs
 TYPE OF RIGHT: Diligence, a6538* PRIORITY: 1872 SOURCE: Emigration Creek MAP: 54c
 POINT OF DIVERSION (SUR): (1) N 700 ft. E 465 ft. from W $\frac{1}{4}$ corner, Sec 11, T 1S, R 1E, SLBM

REMARKS:

Water User's Claim 7796 represents 63.606% of Diligence Claim D2023. The State of Utah Division of Parks and Recreation owns the remaining 36.394% represented by Water User's Claim 7588. The flowrate and diversion limitations shown here reflect this 36.394% interest.

CLAIMS USED FOR PURPOSE DESCRIBED: 7588,7796

###IRRIGATION		*---NORTH EAST QUARTER---				*---NORTH WEST QUARTER---				*---SOUTH WEST QUARTER---				*---SOUTH EAST QUARTER---				Section
		* NE	NW	SW	SE *	* NE	NW	SW	SE *	* NE	NW	SW	SE *	* NE	NW	SW	SE *	Totals
Sec 10 T	1S R 1E SLBM *																	130.00
Sec 15 T	1S R 1E SLBM *	15.00	15.00	15.00	15.00	15.00	15.00	15.00	15.00	15.00	15.00	15.00	15.00	15.00	15.00	15.00	25.00	120.00
or a Total of 250.00 acres.																		
PERIOD OF USE: 04/01 TO 10/31																		

Water User's Claim 7796 is limited to the irrigation requirements of 159.00 acres.

Diversion any, each, or all claims; total yearly diversion under all claims mentioned 1000.00 acre-feet.

###STOCKWATERING: 355 Equivalent Livestock Units PERIOD OF USE: 01/01 TO 12/31

Water User's Claim 7796 is limited to the stockwatering requirements of 226 Equivalent Livestock Units.

Diversion any, each, or all claims; total yearly diversion under all claims mentioned 9.95 acre-feet.

###DOMESTIC: 26 Families PERIOD OF USE: 01/01 TO 12/31

Water User's Claim 7796 is limited to the domestic requirements of 17 families.

EXHIBIT G

BEFORE THE STATE ENGINEER OF THE STATE OF UTAH

IN THE MATTER OF CHANGE APPLICATION)

NUMBER 57-7796 (a6538))

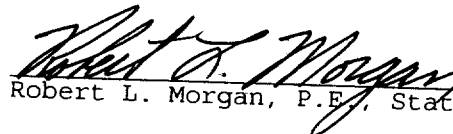
MEMORANDUM DECISION

Change Application Number 57-7796 (a6538), in the name of Emigration Improvement District, was filed on April 27, 1971. The owner of record submitted a letter to the Division of Water Rights on March 14, 1997, withdrawing the change application and requesting that the State Engineer cancel the filing.

It is, therefore, **ORDERED** and Change Application Number 57-7796 (a6538) is hereby **CANCELED** and **WITHDRAWN** pursuant to that request.

This Decision is subject to the provisions of Rule R655-6-17 of the Division of Water Rights and to Sections 63-46b-13 and 73-3-14 of the Utah Code Annotated, 1953, which provide for filing either a Request for Reconsideration with the State Engineer or an appeal with the appropriate District Court. A Request for Reconsideration must be filed with the State Engineer within 20 days of the date of this Decision. However, a Request for Reconsideration is not a prerequisite to filing a court appeal. A court appeal must be filed within 30 days after the date of this Decision, or if a Request for Reconsideration has been filed, within 30 days after the date the Request for Reconsideration is denied. A Request for Reconsideration is considered denied when no action is taken 20 days after the Request is filed.

Dated this 14th day of March, 1997.


Robert L. Morgan, P.E., State Engineer

RLM:mbg

Mailed a copy of the foregoing Memorandum Decision this 14th day of March, 1997, to:

Emigration Improvement District
P. O. Box 58945
Salt Lake City, UT 84158

Emigration Improvement District
c/o Barnett Intermountain Water Consulting
106 West 500 South Suite 101
Bountiful, UT 84010

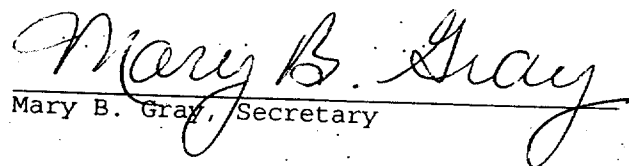
BY: 
Mary B. Gray, Secretary

EXHIBIT H



GARY R. HERBERT
Governor
GREG BELL
Lieutenant Governor

State of Utah
DEPARTMENT OF NATURAL RESOURCES
Division of Water Rights

MICHAEL R. STYLER
Executive Director

KENT L. JONES
State Engineer/Division Director

September 6, 2013

Mount Olivet Cemetery Association
c/o Daniel Valdez
1342 East 500 South
Salt Lake City, Utah 84102
Water Right Number 57-69

Lee M. and Sally N. Smith
2400 Sunnyside Avenue
Salt Lake City, UT 84108
Water Right Number 57-7488

State of Utah Division of Parks & Recreation
c/o Property Manager
1594 West North Temple, Suite 116
Salt Lake City, UT 84114-6001
Water Right Number 57-7588

Barbara S. Gardner
2425 Michigan Avenue
Salt Lake City, UT 84102
Water Right Number 57-7487

Salt Lake City Corporation
c/o Jeff Niermeyer
1530 South West Temple
Salt Lake City, Utah 84115
Water Right Numbers 57-8496 and 57-8497

RE: Diversion of Water from Emigration Creek, Salt Lake City, Utah
Diversion @ North 700 feet East 465 feet from W4 Cor. Sec. 11, T1S, R1E, SLB&M.

Dear Water Right Holders:

I am writing in response to inquiries received this year regarding water being diverted from a head gate on Emigration Creek at the above-described location. The head gate is currently proposed to be relocated approximately 65 feet to the East of its current location. This letter's scope is limited to diversions at this location from Emigration Creek, including Change Application Number a19984 (filed on Water Right 57-7588).

The three objectives of this letter are: (1) to outline our perspective of the water rights described above, which are authorized to divert at this location on Emigration Creek, including their definition and limits; (2) to notify all parties that within 30-days of the date of this letter they must submit a plan detailing how they will comply with the requirements of Utah Code § 73-5-4(1) (Controlling works and measuring devices); and, (3) request that each party report

September 6, 2013

Subject: Diversion of Water from Emigration Creek, Salt Lake City, Utah

annually to this Division's Water Use Program the amount of water diverted from each source under the water rights addressed in this letter.

The summary below outlines the basic elements of each water right, which are addressed in this letter. All six water rights allow for the diversion of water from Emigration Creek; the change application includes diversions from three spring areas and a well. A brief description of each water right is listed below by ownership:

STATE OF UTAH, DIVISION OF PARKS AND RECREATION

Water Right Number 57-7588 (D2023)¹

Priority Date: 1872

Source: Emigration Creek

Diversion limit: 2.0 cfs

Use and Period of Use: Sole Supply:

91.0 acres of irrigation from April 1 to October 31

129 Equivalent Livestock Units² from Jan 1 to Dec 31

9 families from January 1 to December 31

Change Application Number a19984 (57-7588)³

Priority Date: May 8, 1996

Source: Emigration Creek, Wagner Springs (3) and an Underground Water Well

Diversion limit: 218.0 acre-feet⁴

Use and Period of Use: 40.0 acres irrigation from April 1 to October 31

Use from January 1 to December 31 includes:

Stockwatering of 50 Equivalent Livestock Units

Domestic Use of 3,000 Persons

Recreation uses at 'This is the Place' State Park

¹ This water right is evidenced by a diligence claim filed June 30, 1968. The claim, filed by the Utah State Road Commission, states it is based on 1/3 of the natural flow of Emigration Creek used by individuals of the Emigration Dam & Ditch Company. The claim was later deeded to Utah State Parks & Recreation (57-7588 – 36.394%) and Emigration Improvement District (57-7796 – 63.606%). The subject of this letter is only the referenced point of diversion for Water Right Number 57-7588. The Emigration Improvement District right has an approved change for diversions and uses up the canyon; thus, its points of diversion are upstream from the location at issue. Emigration Improvement District is currently monitoring and reporting its diversions.

Water right 57-7588 was published in the Proposed Determination Code No. (Area) 57 Book No. 1, Salt Lake County East Division, Emigration Creek Subdivision. The book describes the right as a 2.0 cfs diversion for 36.394% of the historical uses shown on the diligence claim. No objections were filed to this right as described in the Proposed Determination. On November 14, 1988, the Pretrial Order confirmed this right.

² The PD Book lists 226 ELUs; however, the claim includes the statement that the right reflects 36.394% (355 ELUs x 36.394% = 129.0 ELUs) of D2023.

³ The change application is filed on Water Right Numbers 57-7588 (D2023), 57-8252 (D5462) and 57-8898 (D3332).

⁴ The change application was quantified based on the historical irrigation of 43.6 acres (43.6 acres x 5.0 acre-feet per acre = 218.0 acre-feet).

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Subject: Diversion of Water from Emigration Creek, Salt Lake City, Utah

SALT LAKE CITY CORPORATION

Water Right Number 57-8496⁵

Priority Date: 1890

Source: Emigration Creek

Diversion limit: 102.386 cfs

Use and Period of Use: Municipal: Salt Lake City
January 1 to December 31

Water Right Number 57-8497⁶

Priority Date: 1890

Source: Emigration Creek

Diversion limit: 0.208 cfs

Use and Period of Use: Hogle Zoo within the corporate limits of Salt Lake City.
January 1 to December 31

LEE M. AND SALLY N. SMITH

Water Right Number 57-7488⁷

Priority Date: 1890

Source: Emigration Creek

Diversion limit: 0.1695 cfs⁸

Use and Period of Use: 0.47 acre of irrigation from April 1 to October 31
Domestic use of one family from Jan 1 to Dec 1

⁵ This water right was published in the Proposed Determination *Code No. (Area) 57 Book No. 1, Salt Lake County East Division, Emigration Creek Subdivision*. In the published book, the *Type of Right* is indicated as *Decree* with a note that states: "Right Decreed by civil case #25890." No objection was filed on this right as described in the Proposed Determination. On November 14, 1988 the Pretrial Order confirmed this right.

⁶ This water right was published in the proposed determination book *Code No. (Area) 57 Book No. 1, Salt Lake County East Division, Emigration Creek Subdivision*. In the published book, the *Type of Right* is indicated as *Decree* with a note that states: "Right Decreed by civil case #25890." No objection was filed on this right as described in the Proposed Determination. On November 14, 1988, the Pretrial Order confirmed this right.

⁷ This water right was published in the proposed determination book *Code No. (Area) 57 Book No. 1, Salt Lake County East Division, Emigration Creek Subdivision*. In the published book, the *Type of Right* is indicated as *Decree*. No objection was filed on this right as described in the Proposed Determination. On November 14, 1998, the Pretrial Order confirmed this right.

⁸ Diversions of water are limited by not only the beneficial use and flow rate indicated, but also by the diversion volume. This right is limited to the annual diversion volume of 2.33 acre-feet (0.47 acre x 4.0 acre-feet per acre + 0.45 acre-feet x one domestic = 2.33 acre-feet).

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Subject: Diversion of Water from Emigration Creek, Salt Lake City, Utah

MOUNT OLIVET CEMETERY ASSOCIATION

Water Right Number 57-69 (A9207)⁹

Priority Date: December 11, 1922¹⁰

Source: Emigration Creek

Diversion limit: 0.6938 cfs or 195.12 acre-feet¹¹

Use and Period of Use: 48.78 acres¹² of irrigation from April 1 to October 31

BARBARA S. GARDNER

Water Right Number 57-7487¹³

Priority Date: 1925

Source: Emigration Canyon Creek

Diversion limit: 0.203 cfs¹⁴

Use and Period of Use: 1.10 acres irrigation from April 1 to October 31
Domestic use of one family from Jan 1 to Dec 31

⁹ This water right is evidenced by an *Application to Appropriate Water for Irrigation* and was published in the Proposed Determination *Code No. (Area) 57 Book No. 1, Salt Lake County East Division, Emigration Creek Subdivision*. In the published book, the *Type of Right* is indicated as "A9207, Cert. 2220, a12710." An objection to this right was filed, but later dismissed because the objection was to a change application filed after the Proposed Determination book's publication; therefore, the issue raised in the objection was outside the scope of the General Determination. On November 14, 1988 a Pretrial Order dismissed the objection and confirmed this right. An unauthorized use of water from Emigration Creek for the irrigation of the Mount Olivet Cemetery grounds is described in a 1925 Utah Supreme Court Case (Civil No. 25890); however, this case clearly is not a general stream adjudication and indicates the use began without right in 1909. *See Mt. Olivet Cemetery Ass'n v. Salt Lake City*, 65 Utah 193(1925). It appears that the intent of the application, being filed at the time of court actions, was to substantiate a use that began without a right.

¹⁰ The certificate for this appropriation and the published Proposed Determination book clearly list a priority date of December 11, 1922. This is the date the application was filed. Documents on the water right file allude to an earlier priority date. However, the certificate was issued with a priority date consistent with statute. The right was published in the Proposed Determination book without objections as to the listed priority date. Furthermore, the Utah Supreme Court Case specifically states that the use of Emigration Creek to supplement the irrigation of the cemetery grounds began in 1909. If that is the case, the use of water was without right. Persons proposing to use water were statutorily required to file an application with the State Engineer.

¹¹ This application originally allowed for the diversion of 1.17 cfs for the supplemental irrigation of 82.29 acres. Portions of the right have been sold and segregated into other rights. This right was quantified at the time of the segregations; the flow and volume listed above represent the remainder of the right that is still owned by Mount Olivet Cemetery for supplemental irrigation under this right.

¹² This application originally allowed for the supplemental irrigation of 82.29 acres. Portions of the right have been sold and segregated into Water Right Numbers 57-8855 (Salt Lake City Corporation) and 57-8865 (Emigration Improvement District), the supplemental acreage remaining under this right is 48.78 acres. The volume of water for all rights used for the supplemental irrigation, together are limited by the duty required to serve the land.

¹³ This water right was published in the proposed determination book *Code No. (Area) 57 Book No. 1, Salt Lake County East Division, Emigration Creek Subdivision*. In the published book, the *Type of Right* is indicated as *Decree* with a note that states: "This flow represents ½ the Cardon right as set forth by Decree in civil case #25890." No objection was filed on this right as described in the Proposed Determination. On November 14, 1988 the Pretrial Order confirmed this right.

¹⁴ Diversions of water are limited by not only the beneficial use and flow rate indicated, but also by the diversion volume. This right is limited to the annual diversion volume of 4.85 acre-feet (1.10 acres x 4.0 acre-feet per acre + 0.45 acre-feet x one domestic = 4.85 acre-feet).

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Subject: Diversion of Water from Emigration Creek, Salt Lake City, Utah

As you are aware, in Utah, water rights on a shared source are to be diverted on a priority basis with the older priority right (the senior right) diverting its full entitlement before any junior rights receive any water. In some cases the physical delivery system and needs of the senior right may limit the amount and times when water can be reasonably put to beneficial use. Making full use of the water may require coordination and flexibility where other later priority users (the junior rights) divert within an agreed schedule with the senior right to ensure full use of the water within the system. In the case of this diversion point on Emigration Creek, Division of Parks and Recreation has the senior right; however, its physical delivery system and approved water right limitations effect conditions under which water is diverted and used. As a result, coordination between the senior right holder and the junior right holders is necessary to avoid impairment while allowing full use of the water¹⁵.

Utah Code § 73-5-4(1) mandates that all persons using water in this State shall install and maintain controlling works and measuring devices at each location where water is diverted from the source. The stated purpose of this statute is to assist, "in the regulation, distribution, and measurement of water." To ensure compliance with this section and aid in the orderly distribution of water diverted from Emigration Creek, it is requested that each of you submit within 30-days (from the date of this letter) a written plan for the installation and maintenance of sufficient measuring devices at each location where water is diverted from each source. For the Division of Parks and Recreation your plan must address all diversions allowed under approved change application a19984 (the spring areas, well, and creek).

Your plans must include: (1) a description of the controlling works and measuring devices; (2) a description of your system for retaining and maintaining the rate and volume of water diverted; and, (3) a plan to ensure the orderly distribution between the junior and senior rights on Emigration Creek. Please report the annual amount of water diverted to this Division's Water Use Program. A copy of this letter is being forwarded to that program for inclusion in the 2014 annual reporting mailing.

In addition, the head gate for this diversion is being moved. The head gate will move 65 feet to the East; making it is necessary for all water right owners (that propose a change in their point of diversion) to file an appropriate change application. Please be aware that before any diversions of water from the new location can be made, a change application will need to be filed and approved by our office.

If a timely response to this letter is not received as requested, additional orders will follow, violation of which could lead to an enforcement action. It is our hope this request can be

¹⁵ A letter from the Office of the State Engineer, dated July 5, 1961, indicates that the diversions of water from Emigration Creek have been cooperatively utilized in the past. All parties, or predecessors, of this communication (except Salt Lake City Corporation) appear to have participated in the historic process described in the 1961 letter. Hopefully, the parties can continue to cooperatively work together to allow full use of the water.

Page 6

September 6, 2013

Subject: Diversion of Water from Emigration Creek, Salt Lake City, Utah

achieved cooperatively. Conversations held with the affected parties indicate an understanding of the necessity for action, we are hopeful that there will be a favorable response.

If you have any questions regarding this letter, please feel free to contact me directly. My phone number is 801-537-3119.

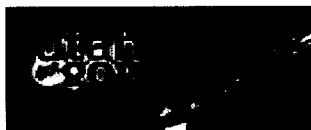
Sincerely,



Teresa Wilhelmsen, P.E.
Utah Lake / Jordan River Regional Engineer
Division of Water Rights

cc: Kent Jones, P.E., State Engineer
Ben Jensen, Assistant Attorney General
Heather Shilton, Assistant Attorney General
Rosemary J. Beless, Fabian & Clendenin
Douglas Payne, Fabian & Clendenin
Hoogle Zoo, c/o Doug Lund
Water Use Program, Division of Water Rights
Sue Oderkirk, P.E., Division of Water Rights
Jim Riley, P.E., Representative of Mount Olivet Cemetery Association
Don Barnett, P.E., Representative of Division of Parks and Recreation

SCANNED



Teresa Wilhelmsen <teresawilhelmsen@utah.gov>

Temporary Arrangement

Susan Odekirk <susanodekirk@utah.gov>

Fri, Aug 9, 2013 at 4:02 PM

To: Susan Zarekarizi <susanzarekarizi@utah.gov>, shirschi@thisistheplace.org, pamelasvaldez@hotmail.com, jriley@utahwater.com, rbeless@fabianlaw.com, dbarnett@barnettwater.com

Cc: "Wilhelmsen, Teresa" <teresawilhelmsen@utah.gov>, Jared Manning <jaredmanning@utah.gov>

Regarding Emigration Creek water rights, the State Engineer's Office needs 2- 3 weeks to carefully review the pertinent documents and the submissions from each party. Then the State Engineer will be prepared to fully define these rights and clarify how the Creek should be divided among them.

If Mount Olivet and This is the Place will divert only within the time blocks diagrammed below, irrigation can continue on both properties during that 2-3 week period.

Temporary Arrangement Beginning Sunday 11, 2013

Mount Olivet Cemetery

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
AM							
12 Noon							
PM							

- This is the Place State Park staff need to move their own gate (at the point they divert from the ditch). Park staff will be directed to close the gate by Wednesday at noon however, in the event the gate is not in place or is not closed, Mount Olivet Staff should not replace or close the gate. Instead call Steve to have the gate adjusted: Office (801) 924-7520 , Cell (801) 750-6300.
- For liability reasons, This is the Place State Park will plan to close the head gate at the zoo by noon Wednesday.

Orderly distribution of Emigration Creek water in accordance with the water rights is important to all of us. To that end, everyone's continued patience and willingness to cooperate is very much appreciated.

Regards,

SCANNED

Sue Odekirk P.E.

Utah Division of Water Rights

(801) 538-7431

EXHIBIT I

Rosemary J. Beless, #0272
Douglas J. Payne, #4113
Rachel S. Anderson, #12431
FABIAN & CLENDENIN, P.C.
215 South State Street, Suite 1200
Salt Lake City, Utah 84111-2323
Telephone: 801-531-8900
Facsimile: 801-532-3370
rbeless@fabianlaw.com
dpayne@fabianlaw.com
randerson@fabianlaw.com

Attorneys for Claimant Mount Olivet Cemetery Association

RECEIVED ^{GK}
OCT 15 2014
WATER RIGHTS
SALT LAKE

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

IN THE MATTER OF THE GENERAL
DETERMINATION OF RIGHTS TO THE
USE OF ALL 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 IN UTAH

SALT LAKE COUNTY EAST DIVISION,
EMIGRATION CREEK SUBDIVISION
(57-1)

**MOUNT OLIVET CEMETERY
ASSOCIATION'S VERIFIED
OBJECTION TO THE STATE
ENGINEER'S PROPOSED
DETERMINATION OF WATER RIGHTS
IN UTAH LAKE AND JORDAN RIVER
DRAINAGE AREA, SALT LAKE
COUNTY EAST DIVISION,
EMIGRATION CREEK SUBDIVISION,
CODE NO. 57, BOOK NO. 1**

Civil No. 360057298
(57-1)

Judge Paul B. Parker

Claimant Mount Olivet Cemetery Association ("Mount Olivet") hereby files its
Objection to the above-referenced Proposed Determination (Area 57, Book 1) (the "Proposed
Determination") pursuant to that letter dated July 21, 2014, from Kent L. Jones, P.E., Utah State
Engineer (the "State Engineer"), Utah Division of Water Rights (the "Division"), to Mount

Olivet (a copy of which letter is attached hereto as Exhibit A and referenced as the “State Engineer’s Letter of July 21, 2014”), by which letter Mount Olivet was served with a copy of the Proposed Determination and notified of its right to file an Objection to the Proposed Determination with the clerk of the Third District Court within 90 days from the date of that letter.

Mount Olivet is the owner of Water Right No. 57-69 (“Mount Olivet’s Water Right”) in Emigration Creek, in Salt Lake City, Utah. Mount Olivet submits that: (1) it has the right to file this Objection pursuant to the State Engineer’s Letter of July 21, 2014; (2) the Proposed Determination provides for the incorrect priority date and incorrect duty of water for Mount Olivet’s Water Right; (3) the Proposed Determination provides for the incorrect priority date and incorrect flow for Water Right Nos. 57-8496 and 57-8497 (“Salt Lake City’s Water Rights”); and (4) the Proposed Determination provides for the incorrect priority date and incorrect flow for Water Right No. 57-7588 (“State Parks’ Water Right”). The following is Mount Olivet’s summary of the facts and law supporting its claims.

I. MOUNT OLIVET HAS THE RIGHT TO FILE ITS OBJECTION PURSUANT TO THE STATE ENGINEER’S LETTER OF JULY 21, 2014.

Mount Olivet was not served with a copy of the Proposed Determination and given notice of its right to file an objection to the Proposed Determination until its receipt of the State Engineer’s Letter of July 21, 2014 (Exhibit A).

In January 2014, the State Engineer produced from the files of the Division a Receipt and Waiver for the Proposed Determination of Mount Olivet’s Water Right dated March 21, 1983 or 1984 (the date is unclear), and signed by Gene Bertagnole, a stranger to Mount Olivet, and sent

to an address which was not, and never has been, the address of Mount Olivet. The State Engineer requested that Mount Olivet search its records to discover if a person named "Gene Bertagnole" held a position with Mount Olivet during the years 1983-1984 under which Mr. Bertagnole had authority to sign a Receipt and Waiver on behalf of Mount Olivet and whether the address of "675 East 500 South" was ever the correct address for Mount Olivet for the years 1983-1984.

In response to the State Engineer's requests, Pamela S. ValDez, the office manager for Mount Olivet and custodian of all of the books and records for Mount Olivet, searched the By-Laws of Mount Olivet, the tax returns for the years 1983-1985 for Mount Olivet, the payroll sheets and W-2's for Mount Olivet employees for the years 1983-1985, and documents confirming the correct address of Mount Olivet for the years 1983-1985. Her research showed that "Gene Bertagnole" was never in a position of authority to sign any document on behalf of Mount Olivet during the years 1983-1984 or at any time thereafter. Ms. ValDez's research further showed that the address of Mount Olivet and the Mount Olivet Cemetery Office has always been located at 1342 East 500 South, Salt Lake City, Utah 84102, and that there is no record of the address of Mount Olivet or the Mount Olivet Cemetery Office ever being located at "675 East 500 South." A copy of Ms. ValDez's Affidavit, the original of which was filed with the State Engineer, is attached hereto as Exhibit B.

Consequently, the Receipt and Waiver for Mount Olivet was sent to the wrong address and was signed by a person who was a stranger to Mount Olivet and had no authority to sign on behalf of Mount Olivet. As a result of these mistakes by the Division, Mount Olivet was never

served with the Proposed Determination and notice of its right to file an objection until the State Engineer's Letter of July 21, 2014.

The importance of statutory notice to claimants in a general adjudication of water rights is fundamental:

Notice is important to the operation of Utah's water law because proper notice triggers the running of statutory time periods for filing objections or other responses to proposed determinations of the State Engineer.

In re General Determination of Rights to Use of Water in the Price River and Green River Drainage, Penta Creeks, et al. v. Olds, 2008 UT 25, ¶3, 182 P.3d 362, 364 (“*Penta Creeks*”).

Mount Olivet's address is, and always has been, listed on the State Engineer's records as “1342 East 500 South.” The cemetery has never had the address or been listed in the State Engineer's records at “675 East 500 South.” In mailing the Waiver and Receipt for the Proposed Determination for Mount Olivet's Water Right to the wrong address, the State Engineer did not conform to the statutory requirements of notice as set forth in the statutes in existence in 1983 (Utah Code Ann. §73-4-3 and §73-4-11) and in the current statute (Utah Code Ann. §73-4-11(2)(b)). In a similar case, the Utah Supreme Court has held that the State Engineer did not give proper statutory notice to a claimant when the Division mailed an amendment to a proposed determination to the wrong address for the claimant. *Penta Creeks*, 2008 UT 25, ¶3.

Proper statutory notice of claimants is so essential to the adjudication process that the State Engineer is allowed to provide proper statutory notice to a claimant whenever such notice becomes possible throughout the adjudication process. *See* Utah Code Ann. §73-4-11 (as existing in 1983 and current version). Such notice triggers the 90-day objection period whenever the proper statutory notice is served upon the claimant. The State Engineer followed §73-4-11 when

he served Mount Olivet by the State Engineer's Letter of July 21, 2014, and gave Mount Olivet notice of its right to file an objection within 90 days.

Even without the State Engineer's Letter of July 21, 2014, the district court may also extend, "upon due cause shown," Mount Olivet's time for filing an objection to the Proposed Determination. Utah Code Ann. §73-4-10. Such extension may be provided at any time before a final judgment is entered in the general adjudication. *In re General Determination of Rights to the Use of Water in the Price River and Green River Drainages, Green River Canal Company v. Olds*, 2004 UT 106, ¶39, 110 P.3d 666 ("*Green River*").

The Utah Supreme Court has held that the requisite "due cause" for extension occurs "when special circumstances essentially beyond a party's control excuse the late filing and justify suspending a strict application of a filing deadline." *Green River*, 2004 UT 106, ¶43; also cited at *Penta Creeks*, 2008 UT 25, ¶35. In the instant case, a "strict application of [the] filing deadline" could, arguably, be 90 days after the State Engineer sent notice to Mount Olivet at the wrong address—in 1983 or 1984. The fact that Mount Olivet did not receive this notice because it was sent to the wrong address is the "special circumstance essentially beyond" Mount Olivet's control. See *Green River*, 2004 UT at ¶39. Thus, this special circumstance justifies an extension for Mount Olivet's filing its Objection in 2014—as opposed to 90 days after the State Engineer sent the notice letter to the wrong address in 1983 or 1984.

Although the State Engineer's Letter of July 21, 2014 provides Mount Olivet with its statutory 90 days to object to the Proposed Determination, the letter also queries whether Mount Olivet may have had "actual" notice of the Proposed Determination and some vague 90-day objection period when Mount Olivet's counsel made a single appearance at an August 10, 1988

hearing (the “1988 Hearing”) for the sole purpose of addressing objections filed in 1984 by C.J.H. Brest van Kempen and five other water users (the “Brest van Kempen Objection”) against many various water users. A copy of the Brest van Kempen Objection is attached hereto as Exhibit C (handwritten notes were added by the Division). The Brest van Kempen Objection incidentally alleges that “a large water share . . . has been acquired from Mt. Olivet Cemetery by Bertagnole Investment Corp. for the purpose of a large-scale residential development in the canyon.” Brest van Kempen Objection at ¶3. This allegation, even if it were true, has no relevance to the Proposed Determination.

Mount Olivet was not represented by counsel regarding this allegation in 1984 when the Brest van Kempen Objection was filed and did not receive a copy of the Brest van Kempen Objection in 1984. Mount Olivet did not file a response to the Brest van Kempen Objection, but Mount Olivet did request that legal counsel represent it at the 1988 Hearing for the sole purpose of denying that Mount Olivet had ever sold any of its water rights to Bertagnole Investment Corp. This allegation of the sale of water rights and Mount Olivet’s denial of this allegation have nothing to do with the Proposed Determination.

In any event, actual notice of the Proposed Determination does not relieve the State Engineer of complying with the strict statutory notice requirements of Utah Code Ann. §73-4-11. Utah Courts have routinely declined to adopt an actual notice exception when applicable statutes have set forth specific notice requirements. *See, e.g., State ex rel. Div. of Forestry, Fire & State Lands v. Six Mile Ranch Co.*, 2006 UT App 104, ¶45, 132 P.3d 687, 700 (declining to adopt an actual notice exception to the specific notice requirements found in the Highway Code); *Greene v. Utah Transit Auth.*, 2001 UT 109, ¶15, 37 P.3d 1156, 1159 (declining to excuse strict compliance

with notice requirements of the Governmental Immunity Act). As the Utah Supreme Court has explained:

[T]he legislature has explicitly declared how, what, when, and to whom a party must direct and deliver a Notice . . . Compliance with the statute is the determining issue, not actual notice. In the absence of some ambiguity, we will not disturb explicit legislative requirements and read into the statute an actual notice exception.

Greene, 2001 UT 109, ¶15.

The rule is no different in the water law context. *Longley v. Leucadia Fin. Corp.*, 2000 UT 69, ¶22, 9 P.3d 762, 767. (“We perceive no reason to treat the statutory notice requirement any less strictly in the water rights context. . . .”). Thus, any argument made by the State Engineer that Mount Olivet received actual notice of the Proposed Determination is irrelevant. The 1988 Hearing did not provide Mount Olivet with a copy of the Proposed Determination or notice of its right to file an objection to the Proposed Determination with the clerk of the Third District Court within 90 days from some nebulous date. Therefore, the fact that Mount Olivet requested its legal counsel to deny the Brest van Kempen allegation at the 1988 Hearing regarding the Brest van Kempen Objection, does not satisfy the State Engineer’s duty to provide Mount Olivet with the proper statutory notice required under the general adjudication laws.¹

Also, in regard to any request for an extension to file an objection, the Utah Supreme Court has held that the district court should give no regard to events occurring after the original 90-day period for the claimant to file its objection. *Green River*, 2004 UT 106, ¶¶42, 43. In the

¹ Of course, notice is the very heart of due process and procedural fairness under both the Fourteenth Amendment of the United States Constitution and Article I, Section 7 of the Utah Constitution. *Mullane v. Central Hanover Trust Co.*, 339 U.S. 306, 314 (1950) (citing *Milliken v. Meyer*, 311 U.S. 457 (1940)); *Plumb v. State*, 809 P.2d 734, 743 (Utah 1990). As the Utah Supreme Court explained: “[W]here notice is ambiguous or inadequate to inform a party of the nature of the proceedings against him [or her] or not given sufficiently in advance of the proceeding to permit preparation, a party is deprived of due process.” *Cornish Town v. Koller*, 798 P.2d 753, 756 (Utah 1990).

instant case, the 1988 Hearing occurred many years after the State Engineer mailed the notice letter in 1983 or 1984 to Mount Olivet at the wrong address triggering the 90-day objection period. Thus, the 1988 Hearing has no relevance to Mount Olivet's right to file its Objection at this time and cannot be considered by this court.

In two separate statements, the Utah Supreme Court explains that subsequent events are entirely irrelevant to the district court's analysis of "due cause" under Section 73-4-10:

[A] district court only explores a party's failure to file a timely notice of appeal, giving no regard to events occurring after the date the appeal was required to be filed, with attendant circumstances guiding the court when determining what degree of scrutiny to apply to the request.

* * *

[A] reviewing court should confine its review to evidence explaining why the claimant failed to file an objection within the ninety-day objection period. Evidence of events occurring after the conclusion of the ninety-day objection period is irrelevant to a section 73-4-10 due cause analysis.

Green River, 2004 UT 106, ¶¶42, 43 (emphasis added).

The notice sent to Mount Olivet at the wrong address in 1983 or 1984 by the State Engineer was not proper statutory notice under the general adjudication laws. The State Engineer's Letter of July 21, 2014 corrects this error and provides Mount Olivet with a copy of the Proposed Determination and notice of its right to file an objection to the Proposed Determination with the clerk of the Third District Court within 90 days.

The 1988 Hearing is irrelevant to the issue of Mount Olivet's proper statutory notice of the Proposed Determination. Statutory notice must include the Proposed Determination and a written statement of the time certain for the inception of the 90-day objection period. Utah Code Ann.

§73-4-11. The 1988 Hearing included none of these requirements. There is no statutory exception for “actual notice” to these notice requirements.

Mount Olivet requests that this court confirm that the 1988 Hearing was not proper statutory notice for Mount Olivet and that Mount Olivet was only properly served pursuant to Utah Code Ann. §73-4-11 by the State Engineer’s Letter of July 21, 2014.

II. MOUNT OLIVET’S WATER RIGHT HAS AN ANNUAL DUTY OF 5 ACRE-FEET PER ACRE AND FIRST PRIORITY ON ITS PORTION OF 2/3rds FLOW OF EMIGRATION CREEK

The Proposed Determination lists an incorrect duty of water and incorrect priority date for Mount Olivet’s Water Right. As explained more fully below, the duty of this water right should be 5 acre feet per acre per calendar year, rather than the 4 acre feet per acre per calendar year listed in the Proposed Determination. Also, the priority for this water right is not December 11, 1922, but first priority on Mount Olivet’s portion of 2/3rds flow from Emigration Creek. The following is Mount Olivet’s summary of the facts and law supporting these corrections to be made in the Proposed Determination.

A. Mount Olivet’s Water Right Has an Annual Duty of 5 Acre-Feet Per Acre.

The Proposed Determination states that the annual duty of water for irrigation of land within Emigration Canyon is 4 acre-feet per acre. Preface to Proposed Determination ¶8. The duty of water for irrigation of land located in the Salt Lake Valley is 5 acre-feet per acre. Mount Olivet Cemetery is located in the Salt Lake Valley—not in Emigration Canyon—and, therefore, the annual duty of water is 5 acre-feet per acre for irrigation of the Mount Olivet Cemetery land, rather than the 4 acre-feet per acre irrigation duty in Emigration Canyon. It appears that the scrivener who prepared the Proposed Determination was either unaware of the location of Mount

Olivet Cemetery or unaware of the distinction in the irrigation duty of water between Emigration Canyon and the Salt Lake Valley.

The Order of the State Engineer, dated May 2, 2014, approving Permanent Change Application No. a39380 for Mount Olivet's Water Right confirms that the irrigation duty of water for Mount Olivet's Water Right is 5.0 acre-feet per acre—not 4.0 acre-feet per acre listed in the Proposed Determination.²

Consequently, the total irrigated acres of 82.29 acres should be multiplied by 5 for an annual total of 411.45 acre-feet (instead of incorrectly multiplying by 4 for the total of 329.16 acre-feet), and the listing for Mount Olivet's Water Right should be corrected to read: "Annual water allowed 411.45 acre-feet."³

B. Mount Olivet Has a First Priority Right on Its Proportional Share of Emigration Creek.

A first priority determination for Mount Olivet's Water Right in Emigration Creek was decreed in the Utah Supreme Court case of *Mt. Olivet Cemetery Ass'n et al. v. Salt Lake City et al.*, 235 P. 876 (Utah, April 13, 1925) (the "Utah Supreme Court Case") and its implementing Findings of Fact and Conclusions of Law and Decree of *Mt. Olivet Cemetery Assn., et al. v. Salt*

² Order of the State Engineer, dated May 20, 2014, states: "Currently, the State Engineer recognizes an irrigation duty for the Salt Lake Valley as 5.0 acre-feet per acre. The Emigration Canyon Proposed Determination Book indicates a duty of 4.0 acre-feet per acre for irrigation within the canyon areas. The irrigation use under this right [Mount Olivet's Water Right] is within the valley area and would be assumed to have a duty value of 5.0 acre-feet per acre." Order at p. 2.

³ At the time the Proposed Determination was prepared by the Division, Mount Olivet's Water Right included water necessary for the irrigation of 82.29 acres within the Salt Lake Valley. Subsequent to the preparation of the Proposed Determination, a portion of Mount Olivet's Water Right has been sold, but the water right still includes 48.78 acres of irrigation. See Order of the State Engineer, May 20, 2014 at p. 2. Thus, Mount Olivet's Water Right currently includes 243.9 acre-feet (48.78 acres x 5.0 acre-feet per acre). However, the Proposed Determination should include the facts as they existed when the Proposed Determination was prepared, so the original 82.29 acres should be included in the Proposed Determination with the duty of 5 acre-feet per acre for the cemetery land located in the Salt Lake Valley for an annual total of 411.45 acre-feet.

Lake City, et al., Third District Court, Salt Lake County, Utah (June 30, 1925) (collectively referenced as “the Decree,” a copy of which is attached hereto as Exhibit D), and the State Engineer’s specific language incorporating this decreed priority into Mount Olivet’s Certificate of Appropriation (a copy of which is attached hereto as Exhibit E). This decreed first priority has never been overturned by the courts, and Mount Olivet’s first priority in Emigration Creek has been reflected in the course of conduct of the water users in Emigration Creek for the past 100 years.

The incorrect listing of the priority date as “12/11/1922” (also hereafter referenced as “1922”) in the Proposed Determination for Mount Olivet’s Water Right reveals that the Division has, whether intentionally, or through a clerical error, purported to change the priority of Mount Olivet’s Water Right so that it will receive no water whatsoever. Other water users in Emigration Creek will be allowed to take the entire flow before Mount Olivet can take any water. The individual who prepared the listing of Mount Olivet’s Water Right in the Proposed Determination, either through a careless mistake (failure to read the State Engineer’s inclusory language in the Certificate of Appropriation) or through an intentional “decision,” has attempted to negate the State Engineer’s specific language in Mount Olivet’s Certificate of Appropriation and to overturn the holding in the Utah Supreme Court Case and its implementing Decree.⁴

If this was a careless error, Mount Olivet requests that this court correct this error. If this purported change of priority was an intentional decision by the Division to overturn the holding

⁴ Mount Olivet’s priority in the Decree has been subtly overturned by the clerical functionary who fixed the priority of Mount Olivet’s Water Right as “1922,” without reference to the language in the Certificate incorporating the priority in the Decree and without reference to the Decree.

in the Utah Supreme Court Case and its implementing Decree, we request that the Division's "decision" be reviewed and reversed by this court.

The following is a summary of the facts and law supporting Mount Olivet's request:

1. The Priority for Mount Olivet's Water Right Is That Provided in the Utah Supreme Court Case and Its Implementing Decree.

The Utah Supreme Court Case and its implementing Decree firmly establish the priority of Mount Olivet's Water Right in Emigration Creek. The Utah Supreme Court Case and the Decree establish the priority of Mount Olivet as ahead of Salt Lake City to the 2/3rds flow from Emigration Creek and establish Mount Olivet to have an equal priority to the owners of 1/3rd of the flow from Emigration Creek (Emigration Dam & Ditch Company and its successors in interest, including the State of Utah Division of Parks & Recreation ("State Parks")). *Mount Olivet*, 235 P. at 880 and 876; Decree at 2; and Findings of Fact and Conclusions of Law at 4. In the implementing Decree, the Third District Court further decreed that Salt Lake City was "perpetually restrained and enjoined from interfering in any way with the right of the plaintiff [Mount Olivet] to the use of said water aforesaid." Decree at 2. The Court also decreed that Salt Lake City was the owner of and awarded the "right to the use of the remainder of the 2/3rds flow of Emigration Canyon Creek and its title thereto is hereby quieted and confirmed." Decree at 2-3. Finally, the Court decreed that Cardon Company and James A. Hogle were the owners of the water decreed to them in the former decree of the court made and entered on August 13, 1923. Decree at 7.

The Court did not set specific priority dates for each of the water users.⁵ Instead, the Court divided the flow, with equal priority, between the users of the 1/3rd flow (now State Parks and other successors in interest to Emigration Dam & Ditch Company) and the 2/3rds flow (Mount Olivet, Salt Lake City, Cardon Company, and James A. Hogle). Out of the 2/3rds flow of Emigration Creek, Mount Olivet was awarded the first priority as follows:

[O]ne cubic foot per second of time flowing continuously during all seasons of the water of Emigration Canyon Creek, the same to be measured at the point of use, for use upon the lands of the plaintiff [Mount Olivet] described in plaintiff's [Mount Olivet's] complaint and the Findings of Fact herein and if the plaintiff [Mount Olivet] use said water from six o'clock A.M. Monday morning until the following Saturday at six o'clock P.M. of each week, then the plaintiff [Mount Olivet] shall be entitled to use 1.27 cubic feet per second of time of said water during said period of each week.

Decree at 2.

Mount Olivet has adhered to this distribution schedule, and to subsequent distribution schedules which have revised the dates and times, from the date of the Decree to the present.⁶ *See* Affidavits of Daniel ValDez and Clayton Reese. (Copies of Mr. ValDez's Affidavit and Mr. Reese's Affidavit, the originals of which were filed with the Division on August 28, 2013, are attached hereto as Exhibits F and G.) This has been the course of conduct of the water users for over 100 years. There was no dispute as to this distribution schedule until July 18, 2013, when the State Parks' concession manager threatened Mount Olivet's manager with arrest should Mount Olivet's manager turn the gates so that Mount Olivet could take its water.

⁵ Although the Court confirms Mount Olivet's use of Emigration Creek water beginning in 1874 (235 P. at 876) and determined that Mount Olivet's beneficial use of water predated Salt Lake City's, the Utah Supreme Court Case and the implementing Decree do not provide specific priority dates for the water users.

⁶ Mount Olivet's use of Emigration Creek water was temporarily interrupted after the Chevron oil spill because of the oil contamination in Mount Olivet's ditches and reservoir.

The Utah Supreme Court acknowledges both Mount Olivet's and Salt Lake City's failure to previously comply with the "formalities of the statute relating to appropriations," but confirms both water rights, holding that Mount Olivet's prior use is the determining factor in regard to Mount Olivet's priority over Salt Lake City when neither claimant had filed an application to appropriate:

Upon plain principles of reason and justice, we conclude that as between the parties to this appeal, the city may not object to the claim of the cemetery association for failure to comply with the statute when it is in precisely the same predicament with reference to its own claim. The claims of the parties must therefore be determined by the rule that as between appropriators the first in time shall be first in right. The claim of the cemetery association is clearly prior in point of time and therefore superior and prior in right to the claim of the city, and the decree should have been entered accordingly.

235 P. at 880 (emphasis added).

2. The Certificate Incorporates Mount Olivet's First Priority Under the Decree.

Probably the most important fact in this case is the language specifically inserted by State Engineer T. H. Humpherys in Mount Olivet's Certificate of Appropriation of Water No. 2220 (the "Certificate") which incorporates Mount Olivet's first priority under the Decree into the Certificate:

The rights of applicant granted under this Certificate are as against "the world," subject however to the terms of a decree entered June 30, 1925, in the Third Judicial District Court in and for Salt Lake County, State of Utah, in the case of Mt. Olivet Cemetery Association, Plaintiff, v. Salt Lake City, a municipal corporation, et al, Defendants.

Paragraph 3 of Certificate (emphasis added).

The holding or basic "term" in the Decree is Mount Olivet's first priority to its portion of the 2/3rds flow in Emigration Creek as set forth in the distribution schedule of the Decree. This first priority of Mount Olivet was the essence of the decision in the Utah Supreme Court Case

and the focus of the Decree. State Engineer T. H. Humpherys personally inserted this clarifying language in the Certificate in 1936 in order to address the issue of priority: whether it should be the date of the Application to Appropriate (December 11, 1922) or the priority provided to Mount Olivet in the Decree (First Priority). The State Engineer stated that it should be the priority in the Decree.

The Certificate was filed at the recommendation of State Engineer T. H. Humpherys in order to give notice of the Mount Olivet Water Right to all of “the world.” Until 1949 when the diligence claim was created by statute, there was no document, other than the certificate of appropriation, which could be filed in the State Engineer’s system to give notice to all of “the world.” Therefore, the Certificate was filed—even though there was no water to appropriate when the application was filed, since Mount Olivet began beneficially using this water in 1874. 235 P. at 876.

State Engineer T. H. Humpherys was aware that the Certificate might cause confusion as to the priority of Mount Olivet’s Water Right. Therefore, State Engineer T. H. Humpherys recommended that Mount Olivet file the Certificate, for purposes of notice, but with his clarifying language, so that Mount Olivet would retain its first priority under the Decree:

If there is a point involved in the decision of the Supreme Court with respect to non-compliance with the statute as to the appropriation of this water, this Certificate will remedy it and with the qualifying clause as I propose, and above quoted, will no wise, in my opinion, nullify or detract from the award subsequently made by the District Court under the orders of the Supreme Court.

Letter, dated July 31, 1936, from T. H. Humpherys, State Engineer, to attorney for Mount Olivet (emphasis added) (a copy of this letter is attached hereto as Exhibit H).⁷

It is not wrong to recite that Mount Olivet's Application to Appropriate was dated December 11, 1922, but it is wrong to state that Mount Olivet's Water Right has a priority of December 11, 1922, when the Certificate specifically incorporates Mount Olivet's first priority under the Decree.

3. The Division's Error Should Be Corrected by This Court.

It may be that the Division did not intentionally attempt to overturn the holding in the Utah Supreme Court Case and the Decree with respect to Mount Olivet's priority, when the Division employee inserted the specific date of "1922" in the Proposed Determination, rather than a reference to the "Decree in Civil Case #25890." A clerical employee could have simply

⁷ Because it is central to the understanding of this case, the entire letter of T. H. Humpherys, State Engineer, is quoted as follows:

After careful consideration, following my conference with you and Judge Morse, I have reached the conclusion that the interests of all concerned, with respect to Application No. 9207 by the Mt. Olivet Cemetery Association, will best be served by issuing a Certificate with the following clause: "The rights of applicant granted under this Certificate are against "the world", subject however to the terms of a decree entered June 30, 1925, in the Third Judicial District Court in and for Salt Lake County, State of Utah, in the case of Mt. Olivet Cemetery Association, Plaintiff, v. Salt Lake City, a municipal corporation, et al., Defendants." In passing upon this matter, the Supreme Court had the following to say: "We thus have the situation of two rival claimants to the use of the same water, one of which is clearly prior to the other in time of diversion and use, and neither of whom has complied with the formalities of the statute relating to appropriation...." (The underscoring is not copied from the opinion rendered, but is done by me to indicate my point.)

If there is a point involved in the decision of the Supreme Court with respect to non-compliance with the statute as to the appropriation of this water, this Certificate will remedy it and with the qualifying clause as I propose, and as above quoted, it will no wise, in my opinion, nullify or detract from the award subsequently made by the District Court under the orders of the Supreme Court. On the other hand, if it does no good, it certainly will do no harm. I am therefore enclosing Certificate No. 2220 herewith and if in your opinion it is of worth you may record the same, as provided by law.

failed to read the State Engineer T. H. Humpherys' language incorporating the Decree's priority into Mount Olivet's Certificate. If the clerical worker simply copied the date of "1922" from the date line in the Certificate onto the priority line in the Proposed Determination, this drastic change in Mount Olivet's priority was merely the product of a clerical or typographical error—without intention or thought. However, this priority is not a simple matter of grabbing a date on the Certificate and transferring it to the priority line on a form.

For other water rights (57-7487, 57-7488, 57-8496, and 57-8497) in the Proposed Determination, the reference to "Decree in Civil Case #25890" is carried over into the Proposed Determination. However, for Mount Olivet's Water Right, the reference to the Decree is dropped and the incorrect priority of "1922" is inserted—probably because the priority of Mount Olivet's Water Right is an exceptional situation which requires some thought and understanding. It is easier for a clerk to attach a date of the Application on the Certificate than to read and comprehend State Engineer T. H. Humpherys' specific language in the Certificate.

If this is the case, the drastic purported change in Mount Olivet's priority in the Proposed Determination was merely the function of a clerical or typographical error. The Pre-Trial Order and Confirmation of Water Rights for Emigration Creek, Civil No. 57298, dated November 14, 1988, provides for the correction of such errors:

By this Order, the Court or the State Engineer may, without further judicial proceedings, correct typographical errors found in the Proposed Determination, and the water rights are approved and confirmed subject to such changes.

Consequently, if this court deems this to be a clerical or typographical error, we request that this court correct the priority date for Mount Olivet's Water Right in the Proposed Determination from "1922" to "See Decree in Civil Case #25890," in order to conform the

priority to the language in the Certificate, the Utah Supreme Court Case, the Decree, the other listings in the Proposed Determination, and the facts of this case. *See Garrison v. Davis*, 54 P.2d 439 (Utah 1936).⁸

Such correction would not change the course of conduct of the water users on Emigration Creek, since they have adhered to the distribution schedule under the Decree, with certain amendments in subsequent distribution schedules, for nearly 100 years and did not change their course of conduct because of this error in the Proposed Determination.

However, if this court decides that State Engineer T. H. Humpherys made the wrong decision by advising Mount Olivet to file the Certificate with the State Engineer's amendatory language and that Mount Olivet should have relied solely upon the first priority decreed by the Utah Supreme Court Case and the Decree, Mount Olivet should not be penalized for following State Engineer Humpherys' advice in 1936. As a matter of equity and due process, Mount Olivet was entitled to rely upon the advice of State Engineer Humpherys. *See In re General Determination of Water Rights in the Escalante Valley Drainage, Goodwin v. Tracy*, 304 P.2d 964, 966 (Utah 1956) ("*Goodwin*") ("[S]imple principles of equity demand that he [the water user] be relieved of the error of the one person [the State Engineer] to whom he naturally and not unreasonably looked for counsel"). In *Goodwin*, the water user was relieved of the consequences of a mistake in judgment by the State Engineer. *Id.* at 966. In the instant case, State Engineer Humpherys inserted language in the Certificate which he believed incorporated the priority

⁸ In the *Garrison* case, where priority dates were arbitrarily entered in a decree, the Court applied the following doctrine in correcting the dates: "It is always proper . . . to consider what the judgment should have been, since it will be 'presumed that the court intended to adjudge correctly in law upon the facts of the case,' and of two possible interpretations of the language of the judgment, that one will be adopted which makes it correct and valid, in preference to one which would make it erroneous." 54 P.2d at 443-44 (quoting 1 Freeman on Judgments (5th Ed.) p. 133).

decreed by the Utah Supreme Court Case and Decree into the Certificate. Mount Olivet relied upon State Engineer Humpherys' expertise and counsel, and if his counsel was in error, Mount Olivet should be relieved of any negative consequences stemming from his advice. *Id.*

4. An Intentional Attempt by the Division to Overturn the Decree Must Be Addressed by This Court.

If the Proposed Determination's listing of "1922" for the priority of Mount Olivet's Water Right was not the clerical or typographical error of a clerk, but the Division's intentional attempt to overturn the Decree, then the Division's action must be addressed by this court.

A general adjudication does not interfere with water rights vested under an existing decree. *Eden Irr. Co. v. District Court of Weber County*, 211 P. 957, 960 (Utah 1922). Utah Code Ann. §73-4-11(4)(b) (2013) and §73-4-11 (1953) expressly provide that where the rights to the use of water from a stream or body of water have been previously adjudicated, such water shall be distributed "in accordance with the decree until the decree is reversed, modified, vacated, or otherwise legally set aside."

In *Eden*, the Utah Supreme Court held that a general adjudication does not interfere with rights under an existing decree unless there is a subsequent change of circumstances in the use of the water right:

[The statute] provides that where the rights to the use of water from a stream or body of water have been adjudicated, "said water shall be distributed in accordance with such decree until the same be reversed, modified, vacated or otherwise legally set aside." There is, therefore, not even a semblance of a right given to the engineer to interfere with adjudicated or so-called vested rights. . . . [N]o one is required to again litigate or defend rights which have been fixed by a decree of court, so long as he merely uses water in accordance with the terms of such decree and the quantity awarded to him thereby.

211 P. at 960.

The *Eden* court stated that a decreed water right may be changed in a subsequent general adjudication only if the reason for the proposed change has been fully litigated and the reversal, modification or vacation of the prior decree is judicially established in the general adjudication. 211 P. at 960-961. For example, the court explained that if a water user began wasting water after the issuance of the prior decree, then the facts of such waste could be fully adjudicated in a general adjudication and judicially established, but without such facts and thorough adjudication of the issue, a decreed water right cannot be disturbed in a subsequent general adjudication. *Id.*

The use and priority of Mount Olivet's Water Right have not been changed since the issuance of the Decree and the inclusion of the decreed priority in the Certificate, so the priority of Mount Olivet's Water Right in the Decree cannot be changed, without judicial determination of the underlying facts and reversal, modification, or vacation of the Decree, in the general adjudication.

The Utah Supreme Court's decision in *Orderville Irrigation Co. v. Glendale Irrigation Co.*, 409 P.2d 616 (Utah 1965) is also instructive in the instant case. In *Orderville*, the first adjudication gave each water user an equal right to whatever water was available on a proportional basis—there were no specific priority dates listed in the decree. In the subsequent general adjudication, specific priority dates were listed for the water users. However, the evidence showed that from time immemorial, the water users had used the water on a basis proportional to their respective shares and this continued after the subsequent general adjudication, regardless of the listed priority dates. The specific priority dates listed in the subsequent adjudication were never specifically litigated or judicially established, so there remained uncertainties as to the basis for the specific priority dates. The Utah Supreme Court

held that the court had continuing jurisdiction, even after many years⁹, to address this uncertainty in the subsequent general adjudication which had given rise to a genuine dispute as to the rights of the parties. Neither the rule of res judicata nor the statute of limitations prevented resort to the courts to settle such a controversy. *Orderville*, 409 P.2d at 619.

The *Orderville* court therefore held that the subsequent general adjudication had not overturned the initial decree and that the water rights could be distributed on a proportional basis rather than the specific priority dates listed in the subsequent general adjudication. *Id.* at 620.

The court gave great deference to the course of conduct of the water users over many years:

[I]t was proper for the trial court to look to the background circumstances and to consider extraneous evidence in determining what was intended by the adjudication of water rights in the Cox Decree. It is generally held that the interpretation and application the parties adopt and abide by is some evidence of their intent. This is especially so if it is acquiesced in for a long period of time, and it should not be changed by the parties or by the courts except for cogent and persuasive reasons.

409 P.2d at 619-620.

In the Proposed Determination, the Division inserted the specific date of “1922,” for Mount Olivet’s priority, without any specific basis or reasoning. The issue of changing the priority of Mount Olivet’s Water Right was never addressed, litigated or adjudicated by the Court, and the Decree was never mentioned, much less reversed, modified or vacated by the Court. Mount Olivet and the other water users had adhered to the proportional distribution priorities in the Decree for many years and had continued to follow the proportional priorities up until July 2013 when State Parks attempted to preclude Mount Olivet’s use of its water right.

⁹ The first adjudication resulted in the McCarty Decree in 1900, which gave each water user a right to use water on a proportional basis. The subsequent general adjudication resulted in an initial decree, the Burton Decree, in 1925 and a final decree, the Cox Decree, in 1931, both of which listed erroneous priority dates that contradicted the McCarty Decree. It was 1965 when the Utah Supreme Court held, in *Orderville*, that it had continuing jurisdiction.

Furthermore, Mount Olivet is not even required to have protested the State Engineer's purported change of Mount Olivet's priority in the Proposed Determination in order to have it reviewed and corrected now. *See Orderville*, 409 P.2d at 619 (Final decree in General Adjudication issued in 1931 without protest as to priority and corrected by court 34 years later in 1965); *Garrison*, 54 P.2d at 443-444 (Decree was entered in 1927 without protest as to priorities and corrected by the court in 1936). Mount Olivet is not required to again litigate or defend its rights which have been fixed in the Decree and incorporated into its Certificate. *See Eden*, 211 P. at 960.

The Division, on behalf of the State Engineer, cannot change the priority of Mount Olivet's Water Right from its First Priority in the Decree to "1922" by inserting this date in the Proposed Determination, without any specific adjudication of this change and without any judicial reversal, modification or vacation of the Decree.¹⁰

For the reasons set forth above, Mount Olivet requests that this court correct the priority date on Mount Olivet's Water Right in the Proposed Determination from "December 11, 1922" to "See Decree in Civil Case #25890."

Pursuant to the Decree, Mount Olivet has first priority to take Mount Olivet's Water Right from the 2/3rds portion of Emigration Creek at the mouth of Emigration Canyon. In practice, if the flow of Emigration Creek is not split 1/3-2/3 at the mouth of the canyon, this

¹⁰ The State Engineer "is an executive, not a judicial officer," and "does not have authority to adjudicate the rights of water users." *Green River Canal Co. v. Thayne*, 2003 UT 50, ¶30, 84 P.3d 1134, 1145. Therefore, the State Engineer cannot overturn the Decree by changing the priority in the Proposed Determination when this change has never been addressed or litigated. The State Engineer is now using this insertion in the Proposed Determination as the basis to deny Mount Olivet any actual use of Emigration Creek water.

proportional split can be accomplished by a time split, or temporal distribution system, as has been implemented by the water users for over 100 years.

III. THE PRIORITY AND FLOW OF WATER RIGHT NOS. 57-8496 AND 57-8497 ARE DETERMINED BY THE DECREE.

The priority and flow for Water Right Nos. 57-8496 and 57-8497 (“Salt Lake City’s Water Rights”) are listed in the Proposed Determination with incorrect priority dates and incorrect flow rates. The priority and flow for Salt Lake City’s Water Rights have been determined in the Utah Supreme Court Case and the Decree, for which there has been no judicial reversal, modification or vacation. Furthermore, each of Salt Lake City’s Water Rights is defined in the Proposed Determination as “Right Decreed by Civil Case No. 25890.” Therefore, Salt Lake City’s Water Rights are defined by the Decree.

The Utah Supreme Court Case and the Decree establish the priority of Mount Olivet as ahead of Salt Lake City to the 2/3rds flow from Emigration Creek. 235 P. at 880; Decree at 2. The Decree perpetually restrains and enjoins Salt Lake City from interfering in any way with the right of Mount Olivet to use its water right, but the court also decrees that Salt Lake City is the owner of and awarded the “right to the use of the remainder of the 2/3rds flow of Emigration Canyon Creek and its title thereto is hereby quieted and confirmed.” Decree at 2-3.

Pursuant to the Decree, Salt Lake City’s Water Rights have a priority that is subsequent to Mount Olivet’s Water Right in 2/3rds of the flow from Emigration Creek, and the quantity of water diverted by Salt Lake City’s Water Rights is limited to the remainder of the 2/3rds flow from Emigration Creek after Mount Olivet’s Water Right has been diverted from the creek.

At the Utah Supreme Court, Salt Lake City argued that its title to the Emigration Creek water rights stemmed from the early use of individual citizens, its use of an exchange in the Salt Lake and Jordan Canal, and its power to control the distribution of water to its citizens. 235 P. at 877. Salt Lake City did not claim to have ever used the Emigration Creek water rights previous to the year 1917 for any corporate or municipal purpose. *Id.* The Utah Supreme Court held that Salt Lake City could not tack on to the beneficial use of early citizens who may have used the water, but abandoned the water rights or were adversely possessed by the cemetery. *Id.* at 878. The court also held that Salt Lake City's claim of water rights by virtue of the exchange conducted from the Salt Lake and Jordan Canal was untenable (235 P. at 878), and that Salt Lake City's police power to distribute water to its citizens was not a proprietary power and did not invest Salt Lake City with the right to the use of such waters. *Id.* at 878-879. The court held that the right to control and regulate water is not the right to own or use water. *Id.* at 879.

Therefore, the priority date of "1890" listed in the Proposed Determination is incorrect and is specifically invalidated in the Utah Supreme Court Case. Likewise, the flow of Salt Lake City's Water Rights is limited in the Utah Supreme Court Case and the Decree to an amount not exceeding 2/3rds of the flow from Emigration Creek after Mount Olivet's Water Right has been diverted from the 2/3rds flow. 235 P. at 880; Decree at 2-3.

For the reasons set forth above, Mount Olivet requests that this court correct the priority dates and flow rates on Salt Lake City's Water Rights in the Proposed Determination from "1890" and "102.386 cfs" and "0.208 cfs," respectively, to "See Decree in Civil Case No. 25890."

Pursuant to the Decree, Salt Lake City has second priority, after Mount Olivet, for the 2/3rds portion of Emigration Creek at the mouth of Emigration Canyon. In practice, if the flow of Emigration Creek is not split 1/3-2/3 at the mouth of the canyon, this proportional split can be accomplished by a time split, or temporal distribution system, as has been implemented by the water users for over 100 years.

IV. THE PRIORITY AND FLOW OF WATER RIGHT NO. 57-7588 ARE LIMITED BY THE DECREE.

The priority and flow of Water Right No. 57-7588 ("State Parks' Water Right") are limited by the Decree. The lawsuit to quiet title to water rights in Emigration Creek, which resulted in the Utah Supreme Court Case and the Decree, was commenced by Mount Olivet and the United States Army, with others, against Salt Lake City and other water users, on November 30, 1918. The source of the dispute arose because of an Agreement, dated February 19, 1917, between Salt Lake City and the Emigration Dam & Ditch Company in which the parties had agreed that the flow of Emigration Creek would be divided as to 1/3rd and 2/3rds of the flow and that Emigration Dam & Ditch Company would perpetually own 1/3rd of the flow and Salt Lake City would perpetually own 2/3rds of the flow of Emigration Creek. Both parties agreed that they would have equal priority to their share of the flow, and that the flows were not quantified because the flow of the creek varied greatly from one season to another and from year to year. A copy of this Agreement is attached hereto as Exhibit I. It is from this Agreement that Emigration Dam & Ditch Company and its successors in interest, the Utah State Road Commission, State Parks, and Emigration Improvement District, trace their title to the 1/3rd flow from Emigration Creek.

State Parks' claim stems from a portion of that 1/3rd right conveyed in the February 17, 1917 Agreement between Salt Lake City and Emigration Dam & Ditch Company (Exhibit A), as shown in its Statement of Water User's Claim No. 2023 to a portion of "1/3 of Natural Flow of Emigration Creek," supported by "Agreement 1917 Emigration Dam & Ditch Co. and Salt Lake City, labeled Exhibit A."

As discussed in Sections II and III above, the Utah Supreme Court Case and the Decree did not set specific priority dates for each of the water users in Emigration Creek. Instead, the Court divided the flow, with equal priority, between the users of 1/3rd flow (now State Parks and other successors in interest to Emigration Dam & Ditch Company) and 2/3rds flow (Mount Olivet, Salt Lake City, Cardon Company, and James A. Hogle). 235 P. at 876; Findings of Fact and Conclusions of Law at 4. Because Emigration Dam & Ditch Company held the 1/3rd flow, there were no rivalries for priority on the 1/3rd flow, and Emigration Dam & Ditch Company was not made a party to the lawsuit. The lawsuit addressed the priorities to the claimants to the 2/3rds flow (Mount Olivet, Salt Lake City, and others). *Id.*

However, the Utah Supreme Court Case and the Decree do limit the flow and priority of State Parks' Water Right because 2/3rds of the flow of Emigration Creek is adjudicated in the Utah Supreme Court Case and the Decree, so that only 1/3rd of the flow remains for Emigration Dam & Ditch Company and its successors, including State Parks. Likewise, when water is distributed on a proportional basis, each water user has an equal right to whatever water is available on a proportional basis. *Orderville Irrigation Co. v. Glendale Irrigation Co.*, 409 P.2d 616 (Utah 1965). Because the Emigration Creek flow was divided on a proportional basis (2/3-1/3), Mount Olivet and State Parks have equal priority on their water rights in Emigration

Creek. There can be no argument for junior or senior status. *See Orderville*, 409 P.2d at 618-620.

Consequently, State Parks' Water Right has a priority in its share of 1/3rd of the flow from Emigration Creek which is equal to Mount Olivet's Water Right's priority in 2/3rds flow from Emigration Creek. Likewise, State Parks' Water Right has a flow rate which is limited to its share of 1/3rd of the flow from Emigration Creek.

For the reasons set forth above, Mount Olivet requests that this court correct the priority date and flow rate on State Parks' Water Right in the Proposed Determination from "1872" and "2.0 cfs" to "Limited by Decree in Civil Case No. 25890."

Pursuant to the Decree, State Parks has a priority in its share of 1/3 of the flow of Emigration Creek equal to Mount Olivet's priority in its share of 2/3rds of the flow of Emigration Creek as measured at the mouth of Emigration Canyon. In practice, if the flow of Emigration Creek is not split 1/3-2/3 at the mouth of the canyon, this proportional split can be accomplished by a time split or temporal distribution system as has been implemented by the water users for over 100 years.

V. CONCLUSION

Pursuant to the analysis set forth herein, Mount Olivet requests that this court: (1) confirm that Mount Olivet was only properly served pursuant to Utah Code Ann. §73-4-1 by the State Engineer's Letter of July 21, 2014; (2) correct the priority date and duty of water for Mount Olivet's Water Right (Water Right No. 57-69); (3) correct the priority dates and flow

rates for Salt Lake City's Water Rights (Water Right Nos. 57-8496 and 57-8497); and (4) correct the priority date and flow rate for State Parks' Water Right (Water Right No. 57-7588).

DATED this 16th day of October, 2014

/s/ Rosemary J. Beless

Rosemary J. Beless

Douglas J. Payne

Rachel S. Anderson

FABIAN & CLENDENIN,

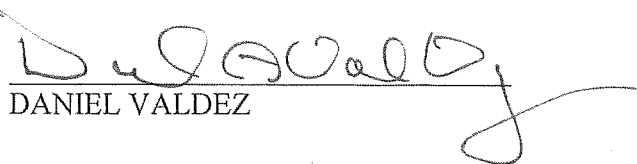
A Professional Corporation

*Attorneys for Claimant Mount Olivet Cemetery
Association*

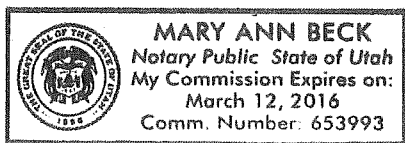
VERIFICATION


STATE OF UTAH)
 : ss
COUNTY OF SALT LAKE)

I, Daniel ValDez, being first duly sworn upon oath, depose and state that I am the Manager of Mount Olivet Cemetery Association, the Claimant in the above Objection, and verify that the foregoing facts are to the best of my knowledge and belief true and correct in all respects.


DANIEL VALDEZ

SUBSCRIBED AND SWORN before me on this 16th day of October, 2014.




Notary Public
Residing at: Salt Lake City, Utah

My Commission Expires:
3-12-2016

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of October, 2014, I caused a true and correct copy of the foregoing Mount Olivet Cemetery Association's Verified Objection to the State Engineer's Proposed Determination of Water Rights in Utah Lake and Jordan River Drainage Area, Salt Lake County East Division, Emigration Creek Subdivision, Code No. 57, Book No. 1, to be hand-delivered to the following:

Kent L. Jones, P.E., State Engineer
Utah Division of Water Rights
1594 West North Temple, Suite 220
P.O. Box 146300
Salt Lake City, UT 84114-6300

I hereby certify that on the 16th day of October, 2014, I caused a true and correct copy of the foregoing Mount Olivet Cemetery Association's Verified Objection to the State Engineer's Proposed Determination of Water Rights in Utah Lake and Jordan River Drainage Area, Salt Lake County East Division, Emigration Creek Subdivision, Code No. 57, Book No. 1, to be mailed, via First Class U.S. Mail, postage prepaid, to the following:

Cindi Mansell
Salt Lake City Recorder
Salt Lake City Corporation
451 South State Street, Room 415
Salt Lake City, UT 84111

Shelley Exeter
Administrative Assistant
All Departments and Divisions for the State of Utah
350 North State Street, Suite 230
Salt Lake City, UT 84114

/s/ Rosemary J. Beless

INDEX OF EXHIBITS

- Exhibit A: State Engineer's Letter of July 21, 2014
- Exhibit B: Affidavit of Pamela S. ValDez, Office Manager and Custodian of Books and Records of Mount Olivet Cemetery Association
- Exhibit C: The Brest van Kempen Objection
- Exhibit D: Findings of Fact and Conclusions of Law and Decree, *Mt. Olivet Cemetery Assn., et al. v. Salt Lake City, et al.*, Third District Court, Salt Lake County, Utah (June 30, 1925)
- Exhibit E: Mount Olivet Cemetery Association's Certificate of Appropriation of Water, No. 2220
- Exhibit F: Affidavit of Daniel ValDez
- Exhibit G: Affidavit of Clayton Reese
- Exhibit H: Letter, dated July 31, 1936, from T. H. Humpherys, State Engineer, to Attorney for Mount Olivet Cemetery Association
- Exhibit I: Agreement, dated February 19, 1917, between Salt Lake City and the Emigration Dam & Ditch Company

Exhibit A

State Engineer's Letter of July 21, 2014



GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

State of Utah

DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER
Executive Director

Division of Water Rights

KENT L. JONES
State Engineer/Division Director

July 21, 2014

Mount Olivet Cemetery Association
c/o Rosemary Beless
215 South State Street Suite 1200
Salt Lake City, UT 84111-2323

Mount Olivet Cemetery Association
1342 East 5th South
Salt Lake City, UT 84102

**Re: Emigration Creek Subdivision Proposed Determination (Area 57, Book 1)
Civil No. 360057298**

Dear Water User:

It has come to our attention that Mount Olivet Cemetery Association may have not been properly served with a copy of the Salt Lake County East Division, Emigration Creek Subdivision Proposed Determination (Area 57, Book 1), and given notice of its right to file an objection. We are providing you with a copy of the Proposed Determination without admitting, denying, or waiving any defense that you were not previously served and given notice.

We reserve all defenses and claims related to the timeliness and/or validity of any potential objections: including, that Mount Olivet Cemetery Association had actual notice of the Proposed Determination as evidenced by their appearance in the Pre-Trial proceedings on the matter, dated August 10, 1988 (which is described in a Pre-Trial Order dated November 14, 1988).

Subject to the foregoing, you are hereby served with a copy of the Salt Lake County East Division, Emigration Creek Subdivision Proposed Determination (Area 57, Book 1). Pursuant to Utah Code Ann. § 73-4-11 you are further notified of your right to file an objection to the report and Proposed Determination with the clerk of the Third District Court within 90 days.

Sincerely,

Kent L. Jones, P.E.
Utah State Engineer

Enclosure: Emigration Creek Subdivision Proposed Determination
cc: File, Utah Division of Parks and Recreation, Emigration Improvement District, Salt Lake City Corporation



Exhibit B

Affidavit of Pamela S. ValDez,
Office Manager and Custodian of
Books and Records of
Mount Olivet Cemetery Association

Rosemary J. Beless
Douglas J. Payne
FABIAN & CLENDENIN,
A Professional Corporation
Attorneys for Mount Olivet Cemetery Association
215 South State Street, Suite 1200
Salt Lake City, Utah 84111-2323

RECEIVED

FEB 07 2014

WATER RIGHTS
SALT LAKE

BEFORE THE STATE ENGINEER, DIVISION OF WATER RIGHTS

UTAH DEPARTMENT OF NATURAL RESOURCES

IN THE MATTER OF MOUNT OLIVET.)	
CEMETERY ASSOCIATION,	)	AFFIDAVIT OF PAMELA S. VALDEZ
WATER RIGHT NO. 57-69,)	
IN EMIGRATION CREEK,)	
SALT LAKE CITY, UTAH)	

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

PAMELA S. VALDEZ, being duly sworn, deposes and states:

1. I, Pamela S. ValDez, am the office manager for Mount Olivet Cemetery ("Mount Olivet"). I was first hired as office manager for Mount Olivet in 1986, and I have continued in that position since 1986.

2. As office manager for Mount Olivet, I am custodian of all of the books and records of Mount Olivet.

3. Utah State Engineer Kent Jones has requested that Mount Olivet search its records to discover if a person named "Gene Bertagnole" held a position with Mount Olivet Cemetery, during the years 1983-1984, under which Mr. Bertagnole had authority to sign a Receipt and Waiver on behalf of Mount Olivet Cemetery for: (1) receipt of a copy of Emigration Creek

Subdivision Book 1 of the Proposed Determination of Water Rights for Utah Lake and Jordan River Drainage, in regard to Mount Olivet Cemetery's Water Right No. 57-69 in Emigration Creek; (2) waiver of Mount Olivet's rights to further service in connection therewith; and (3) consent to entry of a final decree in this cause.

4. Utah State Engineer Kent Jones has also requested that Mount Olivet search its records to discover if the address of "675 East 500 South" was the correct address for Mount Olivet for the years 1983-1984.

5. In response to these requests, I have searched the By-Laws of Mount Olivet, the tax returns for the years 1983-1985 for Mount Olivet, the payroll sheets and W-2's for Mount Olivet employees for the years 1983-1985, and documents confirming the correct address of Mount Olivet for the years 1983-1985.

6. A true and correct copy of the By-Laws of Mount Olivet is attached hereto as Exhibit A.

7. Section 1, Article II of the By-Laws provides that the Board of Trustees, composed of one pastor and one layman from each of five religious denominations, is responsible for the management and control of Mount Olivet, as a non-profit, public cemetery.

8. Section 1, Article VII of the By-Laws provides that the Board of Trustees shall appoint a Superintendent to manage the day-to-day operations of Mount Olivet.

9. Sections 1 and 2, Article VI of the By-Laws provide that only the President of Mount Olivet, or in the President's absence, the Vice President of Mount Olivet, has authority to sign documents conveying or otherwise affecting the property rights or assets of Mount Olivet.

10. True and correct copies, from the files of Mount Olivet, of the tax returns for Mount Olivet for the years 1983, 1984, and 1985, are attached hereto as Exhibit B. Confidential information regarding the tax ID numbers and the financial matters of Mount Olivet have been redacted from the attached copies of the tax returns.

11. Part VI of Form 990 for Mount Olivet's tax return requires a listing of all officers, directors, and trustees for Mount Olivet. Therefore, a schedule listing all officers, directors, and trustees for Mount Olivet for the applicable year is attached to each of the tax returns for the years 1983, 1984, and 1985.

12. The name "Gene Bertagnole" is not listed as an officer, director or trustee of Mount Olivet on any of the schedules for any of Mount Olivet's tax returns for the years 1983, 1984, or 1985.

13. I have reviewed the payroll sheets and W-2's for employees of Mount Olivet during the years 1983, 1984, and 1985. No one by the name of "Gene Bertagnole" is listed as an employee of Mount Olivet during that period of time. Furthermore, under the By-Laws of Mount Olivet, an employee of Mount Olivet would not have authority to sign a legal document on behalf of Mount Olivet, since only the President, or the Vice President, of Mount Olivet could sign on behalf of Mount Olivet.

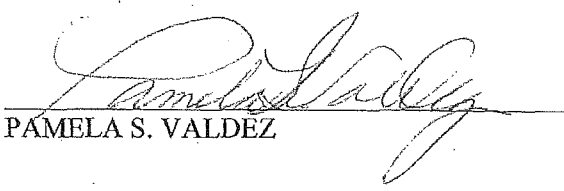
14. Consequently, I have searched the By-Laws for Mount Olivet, the tax returns for Mount Olivet for the years 1983-1985, and the employment records of Mount Olivet for the period of 1983-1985, and my research shows that a "Gene Bertagnole" was never in a position of authority to sign a legal document on behalf of Mount Olivet during the years 1983-1984 or at any time thereafter.

15. Furthermore, the books and records of Mount Olivet show that the address of Mount Olivet Cemetery and the Mount Olivet Cemetery Office has always been located at 1342 East 500 South, Salt Lake City, Utah 84102.

16. There is no record of the address of Mount Olivet Cemetery or the Mount Olivet Cemetery Office ever being located at "675 East 500 South."

17. While Mount Olivet tax returns were prepared by Louis C. Burke, a trustee of Mount Olivet, with a business address at Tracy-Collins Bank and Trust Company, 107 South Main, Salt Lake City, Utah 84111, according to Mount Olivet's books and records during the years 1983-1985, neither Mr. Burke nor any other trustee, officer, or director of Mount Olivet had a mailing address of "675 East 500 South."

DATED this 5 day of Feb, 2014.


PAMELA S. VALDEZ

SUBSCRIBED AND SWORN TO before me this 5 day of FEBRUARY, 2014.


Notary Public

Residing at: SALT LAKE

My Commission Expires:

NOV 5, 2016

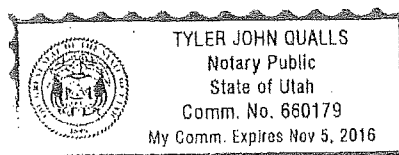


EXHIBIT A

BY-LAWS
OF
MOUNT OLIVET CEMETERY

ARTICLE I

Name

The name of this Cemetery shall be Mount Olivet Cemetery.

ARTICLE II

Control and Management

Section 1. The control and management of this Cemetery, which is incorporated as a not-for-profit entity under the laws of the State of Utah, is committed to a Board of Trustees, to be composed of the pastor or acting pastor and one layman from each of the following religious denominations: The Episcopal Church, The United Methodist Church, The First Congregational Church, The Presbyterian Church (U.S.A.), and the American Baptist Church.

Section 2. Mount Olivet Cemetery is to be used as a public cemetery under such rules and regulations as are herein established for the protection, care and management of such cemetery, with land to be laid off and platted in convenient and suitable lots which shall forever be devoted for the purpose of burial of the dead.

ARTICLE III

Time of Meeting

Section 1. The Regular Meetings of the Board shall be on the last Friday of each quarter.

Section 2. Special Meetings of the Board may be called by the President, or in case of his absence or inability, by the Vice-President; and it shall be the duty of the President or Vice-President to call special meetings at the request of any two members of the Board.

Section 3. The Secretary shall give due notice of every meeting to all members in writing, not less than five days before the date of the meeting, delivered personally or by mail. If mailed, notice shall be deemed to be delivered when deposited in the United States Mail so addressed, with postage thereon prepaid. If notice is given by telegram, such notice shall be deemed to be delivered when the telegram is delivered to the telegraph company. Any trustee may waive notice of any meeting. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Trustees need be specified in the notice or waiver of notice of such meeting.

ARTICLE IV
Officers and Elections

Section 1. The Officers shall consist of a President, Vice-President, Secretary and Treasurer, who shall be elected annually, by the Board of Trustees, at the regular meeting in March, to hold office one year, or until their successors are elected.

Section 2. If for any reason these officers should not be elected at the specified time, an election may be held at any subsequent special or regular meeting of the Board of Trustees, due notice of which shall be given to each member.

ARTICLE V
Quorum

Four members of the Board shall constitute a quorum for the transaction of business.

ARTICLE VI
Duties of Officers

Section 1. The President shall be the Chief Executive Officer of the Corporation and, subject to the control of the Board of Trustees, shall in general supervise and control all of the business and affairs of the corporation. He shall preside at all meetings when present: sign certificates conveying lots, property, or properties: sign checks for the payment of all expenditures: call special meetings, and perform the usual duties of this office.

Section 2. The Vice-President is to act as President in the absence or disability of the President, and when so acting, shall have all the powers of, and be subject to all the restrictions of the President.

Section 3. The Secretary shall keep a record of all meetings of the Board of Trustees: conduct the correspondence and have the custody of all the papers pertaining to the organization, and to the title of the property.

Section 4. The Treasurer shall receive all monies arising from the sale of lots or otherwise: deposit the same in such bank as may be designated by the Board of Trustees, and to their credit, to be drawn against by checks, each signed by the President and Treasurer. He shall at the Annual Meeting of the Board in March, also at the regular meetings in June and September, and whenever, by a vote of the Board, he may be requested to do so, make out and render a full account of all receipts and disbursements, with vouchers therefor: and such reports shall be carefully examined by an auditing committee appointed by the Board. He shall sign, with the President, all checks for payment of expenditures, and shall give to his successor all books, vouchers, papers and property that he may have as such Treasurer.

Section 5. The Treasurer shall furnish the Association with a satisfactory indemnifying bond for the faithful performance of his duties.

ARTICLE VII Superintendent and his Duties

Section 1. The Board shall appoint a Superintendent to serve at the pleasure of the Board, and who must not be a member of the Board. He shall keep a complete record in the books provided for that purpose, of all interments, sales, ownership of lots, permits, collections, water taxes, ect. He shall have, under direction of the Board or Executive Committee, general supervision of the cemetery and all improvements therein, and with the approval of the Executive Committee, employ all workmen, make all contracts for labor and improvements and render such assistance to the Secretary and Treasurer and other officers and committees as they may require. He shall issue all permits for graves and for this purpose shall have an office, which shall be open from 9:00 a.m. until 5:00 p.m. on weekdays and 9:00 a.m. until 1:00 p.m. on Saturdays. The office shall be closed on Sundays and holidays, except Memorial Day.

Section 2. The Superintendent shall receive such compensation as he and the Board may agree upon.

Section 3. The Superintendent shall appoint, subject to the approval of the Board, a deputy, who shall act in his stead in case of sickness or absence. The Superintendent shall be held responsible for the acts of said deputy.

ARTICLE VIII Sale of Lots

No sale of any lot or lots shall be made for the purpose of investment or speculation, and no certificate shall be issued for ownership of lots until the price thereof shall have been paid.

ARTICLE IX Rule Respecting Lots

Lots for which certificates shall be given to the purchaser thereof shall be held subject to such rules and regulations, in regard to the adornment and improvement of the same, as the Board of Trustees have or may hereafter establish. Lots are to be sold at a price to include perpetual care, but such lots as were heretofore sold at a lower price not including such perpetual care shall be subject to a yearly tax for water and care.

ARTICLE X
Rule Relating to Debts

Neither the Board of Trustees, nor any officer created by this Board, shall have any power to create any debt, liability or obligation for the payment of money, beyond their present means of defraying.

ARTICLE XI
Services

The Services of the Board of Trustees shall be without compensation or salary.

ARTICLE XII
Investments

Section 1. The Board shall adopt and maintain an Investment Policy to govern the management and investment of all investment assets of the Association.

Section 2. The Board of Directors shall not cause the amount of money invested in accordance with the Investment Policy to be less than \$600,000.00 plus an amount equal to 50 percent of the sales proceeds from the sale of burial sites after January 1, 1997.

ARTICLE XIII
Standing Committees

Section 1. The Board shall elect an Auditing Committee, whose duty it shall be to audit all financial reports presented to the Board.

Section 2. The Board shall appoint an Executive Committee, who shall act for the Board during the intervals of its regular meetings.

Section 3. The Board may at any time appoint such other standing committees as the best interest of the cemetery may require.

ARTICLE XIV
Change of By-Laws

These By-Laws may be changed or amended at any time by a two-thirds vote of all the members of the Board of Trustees, due notice having been given of such proposed change at a previous meeting.

EXHIBIT B

Form 990

Department of the Treasury
Internal Revenue Service**TAXPAYER'S COPY**
Return of Organization Exempt from Income TaxUnder section 501(c) (except black lung benefit trust or private foundation),
of the Internal Revenue Code or section 4947(a)(1) trust.

OMB No. 1545-0047

1983

For the calendar year 1983, or fiscal year beginning

1983, and ending

, 19

Use IRS label. Otherwise, please print or type.	Name of organization KA 87-0155790 990 12 3 00 13 MOUNT OLIVET CEMETERY ASSOCIATION	A Employer identification number (see instruction L)
	Ad TRACY-COLLINS BANK AND TRUST COMPANY	B State registration number (see instruction D)
	Cit SALT LAKE CITY UT 84111	C If address changed, check here

D Check applicable box—Exempt under section ☒ 501(c) (3) (insert number), OR ☐ section 4947(a)(1) trustE Accounting method: ☐ Cash ☒ Accrual ☐ Other (specify) ☐F Section 4947(a)(1) trusts filing this form in lieu of Form 1041, check here ☐ (see instruction C10).

G Is this a group return (see instruction J) filed for affiliates?

☐ Yes ☒ No

If "Yes" to either, give four-digit group exemption number

Is this a separate return filed by a group affiliate?

☐ Yes ☒ No

(GEN)

Note: You may be required to use a copy of this return to satisfy State reporting requirements. See instruction D.☐ Check here if gross receipts are normally not more than \$25,000. (See instruction B11.) You are not required to complete and file this return with IRS but may have to file it with one or more States.☐ Check here if gross receipts are normally more than \$25,000 and line 12 is \$25,000 or less. Complete Parts I (except lines 13-15), III, IV, VI, and VII and only the indicated items in Parts II and V (see instruction I). If line 12 is more than \$25,000, complete the entire return.

501(c)(3) organizations and 4947(a)(1) trusts must also complete and attach Schedule A (Form 990). (See instructions.)

These columns are optional—
see instructions**PART I.—Statement of Support, Revenue, and Expenses
and Changes in Fund Balances**

	(A) Total	(B) Unrestricted/ Expendable	(C) Restricted/ Nonexpendable
Support and Revenue			
1 Contributions, gifts, grants, and similar amounts received:			
(a) Direct public support			
(b) Indirect public support			
(c) Government grants			
(d) Total (add lines 1(a) through 1(c)) (attach schedule—see instructions)			
2 Program service revenue (from Part IV, line (f))			
3 Membership dues and assessments			
4 Interest on savings and temporary cash investments			
5 Dividends and interest from securities			
6 (a) Gross rents			
(b) Minus: Rental expenses			
(c) Net rental income (loss)			
7 Other investment income (Describe <input type="checkbox"/> Securities <input type="checkbox"/> Other)			
8 (a) Gross amount from sale of assets other than inventory			
(b) Minus: cost or other basis and sales expenses			
(c) Gain (loss) (attach schedule)			
9 Special fundraising events and activities (attach schedule—see instructions):			
(a) Gross revenue (not including \$ of contributions reported on line 1(a))			
(b) Minus: direct expenses			
(c) Net income (line 9(a) minus line 9(b))			
10 (a) Gross sales minus returns and allowances			
(b) Minus: Cost of goods sold (attach schedule)			
(c) Gross profit (loss)			
11 Other revenue (from Part IV, line (g))			
12 Total revenue (add lines 1(d), 2, 3, 4, 5, 6(c), 7, 8(c), 9(c), 10(c), and 11)			
Expenses			
13 Program services (from line 44(B)) (see instructions)			
14 Management and general (from line 44(C)) (see instructions)			
15 Fundraising (from line 44(D)) (see instructions)			
16 Payments to affiliates (attach schedule—see instructions)			
17 Total expenses (add lines 16 and 44(A))			
Fund Balances			
18 Excess (deficit) for the year (subtract line 17 from line 12)			
19 Fund balances or net worth at beginning of year (from line 74(A))			
20 Other changes in fund balances or net worth (attach explanation)			
21 Fund balances or net worth at end of year (add lines 18, 19, and 20)			

For Paperwork Reduction Act Notice, see page 1 of the instructions.

Form 990 (1983)

MOUNT OLIVET CEMETERY ASSOCIATION
SALT LAKE CITY, UTAH
I.D. # [REDACTED]
1983

OTHER EXPENSE

Truck Operation and Repairs

Light, Heat, Telephone and Water

Gas

Tree Removal

Greenhouse Supplies and Shrubs

Contracted Lawn Mowing

Insurance and Bonds

Sundry Expense

TOTAL OTHER EXPENSE

\$ [REDACTED]
\$ [REDACTED]

BOARD OF DIRECTORS

<u>Name and Address</u>	<u>Title and Time Devoted to Position</u>	<u>Compensation</u>
Ray L. Arnold 1948 Claremont Way Salt Lake City, Utah 84108	President - 5%	None
Rev. Albert J. Colton c/o Fabian and Clendenin 8th Floor, Continental Bank Bldg. Salt Lake City, Utah 84101	Vice President - 5%	None
Rev. George Nye 777 South 13th East Salt Lake City, Utah 84102	Treasurer - 5%	None
Louis C. Burke 1800 Blaine Avenue Salt Lake City, Utah 84102	Secretary - 5%	\$3,227.00
Rev. Don Baird #12 C Street Salt Lake City, Utah 84103	Director - 5%	None
James J.D. Dennis 1192 W. Norwalk Road Murray, Utah 84107	Director - 5%	None
Robert Cook 820 East Capitol Salt Lake City, Utah 84103	Director - 5%	None
Art Knudsen 1353 South 19th East Salt Lake City, Utah 84108	Director - 5%	None
Willard G. Odegaard U. S. Army Support Detachment Ft. Douglas, Utah 84113	Director - 5%	None
William McCreary 2344 East 17th South Salt Lake City, Utah 84108	Director - 5%	None
Mary Dawn Coleman 427 "M" Street Salt Lake City, Utah 84103	Director - 5%	None
Dr. Peter Brenner 2150 Foothill Drive Salt Lake City, Utah 84109	Director - 5%	None
Col. Ronald B. Stevens Fort Douglas Salt Lake City, Utah 84113	Director - 5%	None

SALT LAKE CITY, UTAH

2.9

4

HWM 103

INVESTMENT STOCKS

100

1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 26

INVESTMENT NON GOVERNMENTAL BONDS

[REDACTED]

Days of Rain (X)	Days of Sunshine (Y)
0	10
1	9
2	8
3	7
4	6
5	5
6	4
7	3
8	2
9	1
10	0

INVESTMENT GOVERNMENT SECURITIES

6

[illegible]



PART IV.—Program Service Revenue and Other Revenue (State Nature)

	Program service revenue	Other revenue
(a) Fees from government agencies		
(b) Sale of Single Graves		
(c) Sale of Reserved Graves		
(d) Sale of Foundations		
(e) Sale of Lots		
(f) Total program service revenue (enter here and on line 2)		
(g) Total other revenue (enter here and on line 11)		

PART V.—Balance Sheets

If line 12, Part I, and line 59 are \$25,000 or less, you should complete only lines 59, 66, and 74 and, if you do not use fund accounting, line 73. If line 12 or line 59 is more than \$25,000, complete the entire balance sheet. See instructions.

Note: Columns (C) and (D) are optional. Columns (A) and (B) must be completed to the extent applicable. Where required, attached schedules should be for end-of-year amounts only.

	(A) Beginning of year	End of year		
		(B) Total	(C) Unrestricted/Expendable	(D) Restricted/Nonexpendable
Assets				
45 Cash—non-interest bearing				
46 Savings and temporary cash investments				
47 Accounts receivable ▶				
minus allowance for doubtful accounts ▶				
48 Pledges receivable ▶				
minus allowance for doubtful accounts ▶				
49 Grants receivable				
50 Receivables due from officers, directors, trustees and key employees (attach schedule)				
51 Other notes and loans receivable ▶				
minus allowance for doubtful accounts ▶				
52 Inventories for sale or use				
53 Prepaid expenses and deferred charges				
54 Investments—securities (attach schedule)				
55 Investments—land, buildings and equipment: basis ▶				
minus accumulated depreciation ▶ (attach schedule)				
56 Investments—other (attach schedule)				
57 Land, buildings and equipment: basis ▶				
minus accumulated depreciation ▶ (attach schedule)				
58 Other assets: <u>Prepaid Insurance</u>				
59 Total assets (add lines 45 through 58)				
Liabilities				
60 Accounts payable and accrued expenses				
61 Grants payable				
62 Support and revenue designated for future periods (attach schedule)				
63 Loans from officers, directors, trustees and key employees (attach schedule)				
64 Mortgages and other notes payable (attach schedule)				
65 Other liabilities: <u>Payroll Taxes</u>				
66 Total liabilities (add lines 60 through 65)				
Fund Balances or Net Worth				
Organizations that use fund accounting, check here <input type="checkbox"/> and complete lines 67 through 70 and lines 74 and 75.				
67 Current funds				
68 Land, buildings and equipment fund				
69 Endowment fund				
70 Other funds (Describe ▶)				
Organizations that do not use fund accounting, check here <input type="checkbox"/> and complete lines 71 through 75.				
71 Capital stock or trust principal				
72 Paid-in or capital surplus				
73 Retained earnings or accumulated income				
74 Total fund balances or net worth (see instructions)				
75 Total liabilities and fund balances/net worth (see instructions)				

PART VI.—List of Officers, Directors, and Trustees (List each officer, director, and trustee whether compensated or not.) (See instructions)

(A) Name and address.	(B) Title and average hours per week devoted to position	(C) Compensation (If any)	(D) Contributions to employee benefit plans	(E) Expense account and other allowances
SCHEDULE ATTACHED				

PART VII.—Other Information

	Yes	No
76 Has the organization engaged in any activities not previously reported to the Internal Revenue Service? If "Yes," attach a detailed description of the activities.		X
77 Have any changes been made in the organizing or governing documents, but not reported to IRS? If "Yes," attach a conformed copy of the changes.		X
78 (a) Did the organization have unrelated business gross income of \$1,000 or more during the year covered by this return? (b) If "Yes," have you filed a tax return on Form 990-T, Exempt Organization Business Income Tax Return, for this year? (c) If the organization has gross sales or receipts from business activities not reported on Form 990-T, attach a statement explaining your reason for not reporting them on Form 990-T.		X
79 Was there a liquidation, dissolution, termination, or substantial contraction during the year (see instructions)? If "Yes," attach a statement as described in the instructions.		X
80 Is the organization related (other than by association with a statewide or nationwide organization) through common membership, governing bodies, trustees, officers, etc., to any other exempt or nonexempt organization (see instructions)? If "Yes," enter the name of organization ▶		X
and check whether it is <input type="checkbox"/> exempt OR <input type="checkbox"/> nonexempt.		
81 (a) Enter amount of political expenditures, direct or indirect, as described in the instructions (b) Did you file Form 1120-POL, U.S. Income Tax Return for Certain Political Organizations, for this year?		X
82 Did your organization receive donated services or the use of materials, equipment or facilities at no charge or at substantially less than fair rental value? If "Yes," you may indicate the value of these items here. Do not include this amount as support in Part I or as an expense in Part II. See instructions for reporting in Part III ▶		X
83 Section 501(c)(5) or (6) organizations.—Did the organization spend any amounts in attempts to influence public opinion about legislative matters or referendums (see instructions and Regulations section 1.162-20(c))? If "Yes," enter the total amount spent for this purpose		
84 Section 501(c)(7) organizations.—Enter amount of: (a) Initiation fees and capital contributions included on line 12 (b) Gross receipts, included in line 12, for public use of club facilities (see instructions) (c) Does the club's governing instrument or any written policy statement provide for discrimination against any person because of race, color, or religion (see instructions)?		
85 Section 501(c)(12) organizations.—Enter amount of: (a) Gross income received from members or shareholders (b) Gross income received from other sources (do not net amounts due or paid to other sources against amounts due or received from them)		
86 Public interest law firms.—Attach information described in instructions.		
87 List the States with which a copy of this return is filed ▶		
88 During this tax year did you maintain any part of your accounting/tax records on a computerized system?		
89 The books are in care of ▶ Tracy Collins Bank & Trust Telephone No. ▶ (801) 328-3737 Located at ▶ 107 South Main, Salt Lake City, Utah 84111		

Please Sign Here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Signature of officer *R. L. Arnold* *s/s*Date *3-30-84*Title *President*

Paid Preparer's Use Only

Preparer's signature

Date *3-21-84*Check if self-employed ☐

Firm's name (or yours, if self-employed) and address

Suniville, Griffin & Smith, C.P.A.s
*68 S. Main, #612, Salt Lake City, Utah*ZIP code *84101*

Form **990**Department of the Treasury
Internal Revenue Service**TAXPAYER'S COPY****Return of Organization Exempt from Income Tax**Under section 501(c) (except black lung benefit trust or private foundation),
of the Internal Revenue Code or section 4947(a)(1) trust

Note: You may be required to use a copy of this return to satisfy State reporting requirements. See instruction D.

OMB No. 1545-0047

1984

For the calendar year 1984, or fiscal year beginning

, 1984, and ending

, 19

Use IRS label. Otherwise, please print or type.	Name of organization Mount Olivet Cemetery Association	A Employer identification number (see instruction L) [REDACTED]
	Address (number and street) Tracy Collins Bank & Trust, 107 So. Main	B State registration number (see instruction D) [REDACTED]
	City or town, State, and ZIP code Salt Lake City, Utah 84111	C If address changed, check here <input type="checkbox"/>

D Check applicable box—Exempt under section ☒ 501(c) (**3**) (insert number), OR ☐ section 4947(a)(1) trust ☐ Check here if application exemption is pending

E Accounting method: ☐ Cash ☐ Accrual ☐ Other (specify) ☐

F Section 4947(a)(1) trusts filing this form in lieu of Form 1041, check here ☐ (see instruction C10).

G Is this a group return (see instruction J) filed for affiliates? ☐ Yes ☒ No If "Yes" to either, give four-digit group exemption number
Is this a separate return filed by a group affiliate? ☐ Yes ☒ No (GEN) ☐

☐ Check here if your gross receipts are normally not more than \$25,000 (see instruction B11). You do not have to file a completed return with IRS but should file a return without financial data if you were mailed a Form 990 Package (see instruction A). Some States may require a completed return.

☐ Check here if gross receipts are normally more than \$25,000 and line 12 is \$25,000 or less. Complete Parts I (except lines 13-15), III, IV, VI, and VII and only the indicated items in Parts II and V (see instruction I). If line 12 is more than \$25,000, complete the entire return.

501(c)(3) organizations and 4947(a)(1) trusts must also complete and attach Schedule A (Form 990). (See instructions.)

Part I Statement of Support, Revenue, and Expenses and Changes in Fund Balances		(A) Total	These columns are optional—see instructions	
			(B) Unrestricted/Expendable	(C) Restricted/Nonexpendable
Support and Revenue	1 Contributions, gifts, grants, and similar amounts received:			
	(a) Direct public support			
	(b) Indirect public support			
	(c) Government grants			
	(d) Total (add lines 1(a) through 1(c)) (attach schedule—see instructions)			
	2 Program service revenue (from Part IV, line (f))			
	3 Membership dues and assessments			
	4 Interest on savings and temporary cash investments			
	5 Dividends and interest from securities			
	6 (a) Gross rents			
	(b) Minus: Rental expenses			
	(c) Net rental income (loss)			
7 Other investment income (Describe <input type="checkbox"/> Securities <input type="checkbox"/> Other <input 4"="" type="checkbox/>)</td> <td></td> <td></td> <td></td> </tr> <tr> <td>8 (a) Gross amount from sale of assets other than inventory</td> <td></td> <td></td> <td></td> </tr> <tr> <td>(b) Minus: cost or other basis and sales expenses</td> <td></td> <td></td> <td></td> </tr> <tr> <td>(c) Gain (loss) (attach schedule)</td> <td></td> <td></td> <td></td> </tr> <tr> <td>9 Special fundraising events and activities (attach schedule—see instructions):</td> <td></td> <td></td> <td></td> </tr> <tr> <td>(a) Gross revenue (not including \$ of contributions reported on line 1(a))</td> <td></td> <td></td> <td></td> </tr> <tr> <td>(b) Minus: direct expenses</td> <td></td> <td></td> <td></td> </tr> <tr> <td>(c) Net income (line 9(a) minus line 9(b))</td> <td></td> <td></td> <td></td> </tr> <tr> <td>10 (a) Gross sales minus returns and allowances</td> <td></td> <td></td> <td></td> </tr> <tr> <td>(b) Minus: Cost of goods sold (attach schedule)</td> <td></td> <td></td> <td></td> </tr> <tr> <td>(c) Gross profit (loss)</td> <td></td> <td></td> <td></td> </tr> <tr> <td>11 Other revenue (from Part IV, line (g))</td> <td></td> <td></td> <td></td> </tr> <tr> <td>12 Total revenue (add lines 1(d), 2, 3, 4, 5, 6(c), 7, 8(c), 9(c), 10(c), and 11)</td> <td></td> <td></td> <td></td> </tr> <tr> <td rowspan="/> Expenses	13 Program services (from line 44(B)) (see instructions)			
14 Management and general (from line 44(C)) (see instructions)				
15 Fundraising (from line 44(D)) (see instructions)				
16 Payments to affiliates (attach schedule—see instructions)				
17 Total expenses (add lines 16 and 44(A))				
Fund Balances	18 Excess (deficit) for the year (subtract line 17 from line 12)			
	19 Fund balances or net worth at beginning of year (from line 74(A))			
	20 Other changes in fund balances or net worth (attach explanation)			
	21 Fund balances or net worth at end of year (add lines 18, 19, and 20)			

For Paperwork Reduction Act Notice, see page 1 of the instructions.

Form **990** (1984)

Part II Statement of Functional Expenses

All organizations must complete column (A). Columns (B), (C), and (D) are required for most section 501(c)(3) and (c)(4) organizations and 4947(a)(1) trusts but optional for others. (See instructions.)

Do not include amounts reported on lines 6(b), 8(b), 9(b), 10(b), or 16 of Part I.		(A) Total	(B) Program Services	(C) Management and general	(D) Fundraising
Expenses	22 Grants and allocations (attach schedule)				
	23 Specific assistance to individuals				
	24 Benefits paid to or for members				
	25 Compensation of officers, directors, etc.				
	26 Other salaries and wages				
	27 Pension plan contributions				
	28 Other employee benefits				
	29 Payroll taxes				
	30 Professional fundraising fees				
	31 Accounting fees				
	32 Legal fees				
	33 Supplies				
	34 Telephone				
	35 Postage and shipping				
	36 Occupancy				
	37 Equipment rental and maintenance				
	38 Printing and publications				
	39 Travel				
	40 Conferences, conventions and meetings				
	41 Interest				
	42 Depreciation, depletion, etc. (attach schedule)				
	43 Other expenses (itemize): (a)				
	(b) Management Service Fee				
	(c) Office Supplies				
(d) Sundry Schedule Attached					
(e)					
(f)					
44 Total functional expenses (add lines 22 through 43)					

Part III Statement of Program Services Rendered

List each program service title on lines (a) through (d); for each, identify the service output(s) or product(s) and report the quantity provided. Enter the total expenses attributable to each program service and the amount of grants and allocations included in that total. (See instructions for Part III.)

Expenses
(Optional for some organizations—see instructions)

(a)		
	(Grants and allocations \$)	
(b)		
	(Grants and allocations \$)	
(c)		
	(Grants and allocations \$)	
(d)		
	(Grants and allocations \$)	
(e) Other program service activities (attach schedule)	(Grants and allocations \$)	
(f) Total (add lines (a) through (e)) (should equal line 44(B))		

BOARD OF DIRECTORS

<u>Name and Address</u>	<u>Title and Time Devoted to Position</u>	<u>Compensation</u>
Ray L. Arnold 1948 Claremont Way Salt Lake City, Utah 84108	President - 5%	None
Rev. Albert J. Colton c/o Fabian and Clendenin 8th Floor, Continental Bank Bldg. Salt Lake City, Utah 84101	Vice President - 5%	None
Rev. George Nye 777 South 13th East Salt Lake City, Utah 84102	Treasurer - 5%	None
Louis C. Burke 1800 Blaine Avenue Salt Lake City, Utah 84102	Secretary - 5%	\$4,016.70
James J.D. Dennis 1192 W. Norwalk Road Murray, Utah 84107	Director - 5%	None
Robert Cook 820 East Capitol Salt Lake City, Utah 84103	Director - 5%	None
Art Knudsen 1353 South 19th East Salt Lake City, Utah 84108	Director - 5%	None
William McCreary 2344 East 17th South Salt Lake City, Utah 84108	Director - 5%	None
Mary Dawn Coleman 427 "M" Street Salt Lake City, Utah 84103	Director - 5%	None
Dr. Peter Brenner 2150 Foothill Drive Salt Lake City, Utah 84109	Director - 5%	None
Paster Harry P. Sweitzer 1392 So. Wasatch Drive Salt Lake City, Utah 84108	Director - 5%	None
Col. James W. Sawey Cmdr. U.S. Army Support Detachment Fort Douglas, Utah 84113	Director - 5%	None
Sherrill Johnson Fort Douglas, Utah 84113	Director - 5%	None

MOUNT OLIVET CEMETERY ASSOCIATION
SALT LAKE CEM, UTAH

1984

		1	2	3	4	5	6
FORM 990 LINE 8 (a & b) GAIN ON SALE OF SECURITIES					SALES PRICE	COST	GAIN (LOSS)
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11	TOTALS						
12							
13							
14							
15							
16							
17							
18							
19							
20	FORM 990 PART II, LINE 4300						
21	Sundry Expense						
22							
23							
24							
25							
26							
27							
28							
29							
30	TOTAL OTHER EXPENSE						
31							
32	FORM 990 PART V LINE 65						
33	OTHER LIABILITIES						
34	PAYROLL TAXES						
35							
36							
37	TOTAL OTHER LIABILITIES						
38							
39							
40							

DECEMBER
31, 1983

DECEMBER
31, 1984

Part IV Program Service Revenue and Other Revenue (State Nature)(a) ~~Revenue from government agencies~~ Miscellaneous

(b) Sale of Single Graves

(c) Sale of Reserved Graves

(d) Sale of Foundations

(e) Sale of Lots

(f) Total program service revenue (enter here and on line 2)

(g) Total other revenue (enter here and on line 11)

Program
service revenueOther
revenue**Part V** Balance Sheets

If line 12, Part I, and line 59 are \$25,000 or less, you should complete only lines 59, 66, and 74 and, if you do not use fund accounting, line 73. If line 12 or line 59 is more than \$25,000, complete the entire balance sheet. See instructions.

Note: Columns (C) and (D) are optional. Columns (A) and (B) must be completed to the extent applicable. Where required, attached schedules should be for end-of-year amounts only.

	(A) Beginning of year	(B) Total	(C) Unrestricted/ Expendable	(D) Restricted/ Nonexpendable
Assets				
45 Cash—non-interest bearing				
46 Savings and temporary cash investments				
47 Accounts receivable ▶ minus allowance for doubtful accounts ▶				
48 Pledges receivable ▶ minus allowance for doubtful accounts ▶				
49 Grants receivable				
50 Receivables due from officers, directors, trustees and key employees (attach schedule)				
51 Other notes and loans receivable ▶ minus allowance for doubtful accounts ▶				
52 Inventories for sale or use				
53 Prepaid expenses and deferred charges				
54 Investments—securities (attach schedule)				
55 Investments—land, buildings and equipment: basis ▶ minus accumulated depreciation ▶ (attach schedule)				
56 Investments—other (attach schedule)				
57 Land, buildings and equipment: basis ▶ minus accumulated depreciation ▶ (attach schedule)				
58 Other assets ▶ Prepaid Insurance				
59 Total assets (add lines 45 through 58)				
Liabilities				
60 Accounts payable and accrued expenses				
61 Grants payable				
62 Support and revenue designated for future periods (attach schedule)				
63 Loans from officers, directors, trustees and key employees (attach schedule)				
64 Mortgages and other notes payable (attach schedule)				
65 Other liabilities ▶ Schedule Attached				
66 Total liabilities (add lines 60 through 65)				
Fund Balances or Net Worth				
Organizations that use fund accounting, check here <input type="checkbox"/> and complete lines 67 through 70 and lines 74 and 75.				
67 a. Current unrestricted fund				
b. Current restricted fund				
68 Land, buildings and equipment fund				
69 Endowment fund				
70 Other funds (Describe ▶)				
Organizations that do not use fund accounting, check here <input type="checkbox"/> and complete lines 71 through 75.				
71 Capital stock or trust principal				
72 Paid-in or capital surplus				
73 Retained earnings or accumulated income				
74 Total fund balances or net worth (see instructions)				
75 Total liabilities and fund balances/net worth (see instructions)				

Part VI List of Officers, Directors, and Trustees (List each officer, director, and trustee whether compensated or not.) (See instructions)

(A) Name and address	(B) Title and average hours per week devoted to position	(C) Compensation (if any)	(D) Contributions to employee benefit plans	(E) Expense account and other allowances
SCHEDULE ATTACHED				

Part VII Other Information

	Yes	No
76 Has the organization engaged in any activities not previously reported to the Internal Revenue Service? If "Yes," attach a detailed description of the activities.		X
77 Have any changes been made in the organizing or governing documents, but not reported to IRS? If "Yes," attach a conformed copy of the changes.		X
78 (a) Did the organization have unrelated business gross income of \$1,000 or more during the year covered by this return? (b) If "Yes," have you filed a tax return on Form 990-T, Exempt Organization Business Income Tax Return, for this year? (c) If the organization has gross sales or receipts from business activities not reported on Form 990-T, attach a statement explaining your reason for not reporting them on Form 990-T.		X
79 Was there a liquidation, dissolution, termination, or substantial contraction during the year (see instructions)? If "Yes," attach a statement as described in the instructions.		X
80 Is the organization related (other than by association with a statewide or nationwide organization) through common membership, governing bodies, trustees, officers, etc., to any other exempt or nonexempt organization (see instructions)? If "Yes," enter the name of organization		X
81 (a) Enter amount of political expenditures, direct or indirect, as described in the instructions (b) Did you file Form 1120-POL, U.S. Income Tax Return for Certain Political Organizations, for this year?		X
82 Did your organization receive donated services or the use of materials, equipment or facilities at no charge or at substantially less than fair rental value? If "Yes," you may indicate the value of these items here. Do not include this amount as support in Part I or as an expense in Part II. See instructions for reporting in Part III		X
83 Section 501(c)(5) or (6) organizations.—Did the organization spend any amounts in attempts to influence public opinion about legislative matters or referendums (see instructions and Regulations section 1.162-20(c))? If "Yes," enter the total amount spent for this purpose		
84 Section 501(c)(7) organizations.—Enter amount of: (a) Initiation fees and capital contributions included on line 12 (b) Gross receipts, included in line 12, for public use of club facilities (see instructions) (c) Does the club's governing instrument or any written policy statement provide for discrimination against any person because of race, color, or religion (see instructions)?		
85 Section 501(c)(12) organizations.—Enter amount of: (a) Gross income received from members or shareholders (b) Gross income received from other sources (do not net amounts due or paid to other sources against amounts due or received from them)		
86 Public interest law firms.—Attach information described in instructions.		
87 List the States with which a copy of this return is filed		
88 During this tax year did you maintain any part of your accounting/tax records on a computerized system?		X
89 The books are in care of Tracy Collins Bank & Trust Telephone No. (801) 328-3737 Located at 107 South Main, Salt Lake City, Utah 84111		

Please Sign Here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Signature of officer

Date

Title

Paid Preparer's Use Only

Preparer's signature

Date

Check if self-employed

Firm's name (or yours, if self-employed) and address

Suniville, Griffin and Smith, CPAs
68 S. Main, #612, Salt Lake City, Utah

ZIP code 84101

Form **990**Department of the Treasury
Internal Revenue Service (R)

TAXPAYER'S COPY

Return of Organization Exempt from Income Tax

Under section 501(c) (except black lung benefit trust or private foundation)
of the Internal Revenue Code or section 4947(a)(1) trust

OMB No. 1545-0047

1985

Note: You may be required to use a copy of this return to satisfy State reporting requirements. See instruction D.

For the calendar year 1985, or fiscal year beginning

1985, and ending

19

Use IRS label. Otherwise, please print or type.	Name of organization Mount Olivet Cemetery Association	A Employer identification number (see instruction L) [REDACTED]
	Address (number and street) Tracy Collins Bank & Trust, 107 South Main	B State registration number (see instruction D) [REDACTED]
	City or town, state, and ZIP code Salt Lake City, Utah 84111	C If address changed, check here <input type="checkbox"/>

D Check type of organization—Exempt under section ☒ 501(c) (**3**) (insert number), OR ☐ section 4947(a)(1) trust Check here if application for exemption is pending ☐

E Accounting method: ☐ Cash ☐ Accrual ☐ Other (specify) ☐

F Section 4947(a)(1) trusts filing this form in lieu of Form 1041, check here ☐ (see instruction C10).

G Is this a group return (see instruction J) filed for affiliates? ☐ Yes ☒ No If "Yes" to either, give four-digit group exemption number (GEN) ☐

Is this a separate return filed by a group affiliate? ☐ Yes ☒ No

- ☐ Check here if your gross receipts are normally not more than \$25,000 (see instruction B11). You do not have to file a completed return with IRS but should file a return without financial data if you were mailed a Form 990 Package (see instruction A). Some States may require a completed return.
- ☐ Check here if gross receipts are normally more than \$25,000 and line 12 is \$25,000 or less. Complete Parts I (except lines 13-15), III, IV, VI, and VII and only the indicated items in Parts II and V (see instruction I). If line 12 is more than \$25,000, complete the entire return.

501(c)(3) organizations and 4947(a)(1) trusts must also complete and attach Schedule A (Form 990). (See instructions.)

These columns are optional—
see instructions

Part I Statement of Support, Revenue, and Expenses and Changes in Fund Balances		(A) Total	(B) Unrestricted/ Expendable	(C) Restricted/ Nonexpendable
Support and Revenue	1 Contributions, gifts, grants, and similar amounts received:			
	a Direct public support			
	b Indirect public support			
	c Government grants			
	d Total (add lines 1a through 1c) (attach schedule—see instructions)			
	2 Program service revenue (from Part IV, line f)			
	3 Membership dues and assessments			
	4 Interest on savings and temporary cash investments			
	5 Dividends and interest from securities			
	6a Gross rents			
	b Minus: rental expenses			
	c Net rental income (loss)			
7 Other investment income (Describe <input type="checkbox"/> Securities <input type="checkbox"/> Other)				
Expenses	8a Gross amount from sale of assets other than inventory			
	b Minus: cost or other basis and sales expenses			
	c Gain (loss) (attach schedule)			
	9 Special fundraising events and activities (attach schedule—see instructions):			
	a Gross revenue (not including \$ of contributions reported on line 1a)			
	b Minus: direct expenses			
	c Net income (line 9a minus line 9b)			
	10a Gross sales minus returns and allowances			
	b Minus: cost of goods sold (attach schedule)			
	c Gross profit (loss)			
	11 Other revenue (from Part IV, line g)			
	12 Total revenue (add lines 1d, 2, 3, 4, 5, 6c, 7, 8c, 9c, 10c, and 11)			
Fund Balances	13 Program services (from line 44, column (B)) (see instructions)			
	14 Management and general (from line 44, column (C)) (see instructions)			
	15 Fundraising (from line 44, column (D)) (see instructions)			
	16 Payments to affiliates (attach schedule—see instructions)			
	17 Total expenses (add lines 16 and 44, column (A))			
Fund Balances	18 Excess (deficit) for the year (subtract line 17 from line 12)			
	19 Fund balances or net worth at beginning of year (from line 74, column (A))			
	20 Other changes in fund balances or net worth (attach explanation)			
	21 Fund balances or net worth at end of year (add lines 18, 19, and 20)			

For Paperwork Reduction Act Notice, see page 1 of the instructions.

Form 990 (1985)

Part II**Statement of Functional Expenses**

All organizations must complete column (A). Columns (B), (C), and (D) are required for most section 501(c)(3) and (c)(4) organizations and 4947(a)(1) trusts but optional for others. (See instructions.)

Do not include amounts reported on lines 6b, 8b, 9b, 10b, or 16 of Part I.		(A) Total	(B) Program services	(C) Management and general	(D) Fundraising
Expenses	22 Grants and allocations (attach schedule)				
	23 Specific assistance to individuals				
	24 Benefits paid to or for members				
	25 Compensation of officers, directors, etc.				
	26 Other salaries and wages				
	27 Pension plan contributions				
	28 Other employee benefits				
	29 Payroll taxes				
	30 Professional fundraising fees				
	31 Accounting fees				
	32 Legal fees				
	33 Supplies				
	34 Telephone				
	35 Postage and shipping				
	36 Occupancy				
	37 Equipment rental and maintenance				
	38 Printing and publications				
	39 Travel				
	40 Conferences, conventions and meetings				
	41 Interest				
42 Depreciation, depletion, etc. (attach schedule)					
43 Other expenses (itemize):					
a Management Service Fee					
b Office Supplies					
c Sundry Schedule Attached					
d					
e					
f					
44 Total functional expenses (add lines 22 through 43)					

Part III**Statement of Program Services Rendered**

List each program service title on lines a through d; for each, identify the service output(s) or product(s) and report the quantity provided. Enter the total expenses attributable to each program service and the amount of grants and allocations included in that total. (See instructions for Part III.)

Expenses
(Optional for some organizations—see instructions)

a	N/A	
	(Grants and allocations \$)	
b	N/A	
	(Grants and allocations \$)	
c	N/A	
	(Grants and allocations \$)	
d	N/A	
	(Grants and allocations \$)	
e	Other program service activities (attach schedule)	(Grants and allocations \$)
f	Total (add lines a through e) (should equal line 44, column (B))	

MOUNT OLIVET CEMETERY ASSOCIATION
SALT LAKE CITY, UTAH

1985

FORM 990 LINE 8(c)

GAIN ON SALE OF SECURITIES

SHARES SALES PRICE COST GAIN (LOSS)

[REDACTED]

[REDACTED]

TOTAL

[REDACTED]

[REDACTED]

[REDACTED]

FORM 990 PART II, LINE 43(d)

SUBORDINATE EXPENSE

[REDACTED]

[REDACTED]

TOTAL OTHER EXPENSE

FORM 990 PART II LINE 45

OTHER LIABILITIES

DECEMBER 31, 1984 DECEMBER 31, 1985

[REDACTED]

[REDACTED]

TOTAL OTHER LIABILITIES

[REDACTED]

FORM 990 PART V LINE 54

1985

DECEMBER

DECEMBER

31, 1984

31, 1985

BOARD OF DIRECTORS

<u>Name and Address</u>	<u>Title and Time Devoted to Position</u>	<u>Compensation</u>
Ray L. Arnold 1948 Claremont Way Salt Lake City, Utah 84108	President - 5%	None
Rev. Albert J. Colton c/o Fabian and Clendenin 8th Floor, Continental Bank Bldg. Salt Lake City, Utah 84101	Vice President - 5%	None
Rev. George Nye 777 South 13th East Salt Lake City, Utah 84102	Treasurer - 5%	None
Louis C. Burke 1800 Blaine Avenue Salt Lake City, Utah 84102	Secretary - 5%	\$7,007.50
James J.D. Dennis 1192 W. Norwalk Road Murray, Utah 84107	Director - 5%	None
Robert Cook 820 East Capitol Salt Lake City, Utah 84103	Director - 5%	None
Art Knudsen 1353 South 19th East Salt Lake City, Utah 84108	Director - 5%	None
William McCreary 2344 East 17th South Salt Lake City, Utah 84108	Director - 5%	None
Mary Dawn Coleman 427 "M" Street Salt Lake City, Utah 84103	Director - 5%	None
Dr. Peter Brenner 2150 Foothill Drive Salt Lake City, Utah 84109	Director - 5%	None
Paster Harry P. Sweitzer 1392 So. Wasatch Drive Salt Lake City, Utah 84108	Director - 5%	None
Col. James W. Sawey Cmdr. U.S. Army Support Detachment Fort Douglas, Utah 84113	Director - 5%	None
Sherrill Johnson Fort Douglas, Utah 84113	Director - 5%	None

Part IV Program Service Revenue and Other Revenue (State Nature)

	Program service revenue	Other revenue
a Fees from government agencies Miscellaneous		
b Sale of Single Graves		
c Sale of Reserved Graves		
d Sale of Foundations		
e Sale of Lots		
f Total program service revenue (enter here and on line 2)		
g Total other revenue (enter here and on line 11)		

Part V Balance Sheets If line 12 or line 59 is more than \$25,000, complete the entire balance sheet. If line 12, Part I, and line 59 are \$25,000 or less, you may complete only lines 59, 66, 74 and 75. See instructions.

Note: Columns (C) and (D) are optional. Columns (A) and (B) must be completed to the extent applicable. Where required, attached schedules should be for end-of-year amounts only.

	(A) Beginning of year	(B) Total	End of year	
			(C) Unrestricted/Expendable	(D) Restricted/Nonexpendable
Assets				
45 Cash—non-interest bearing				
46 Savings and temporary cash investments				
47 Accounts receivable ▶				
minus allowance for doubtful accounts ▶				
48 Pledges receivable ▶				
minus allowance for doubtful accounts ▶				
49 Grants receivable				
50 Receivables due from officers, directors, trustees, and key employees (attach schedule)				
51 Other notes and loans receivable ▶				
minus allowance for doubtful accounts ▶				
52 Inventories for sale or use				
53 Prepaid expenses and deferred charges				
54 Investments—securities (attach schedule)				
55 Investments—land, buildings and equipment: basis ▶				
minus accumulated depreciation ▶ (attach schedule)				
56 Investments—other (attach schedule)				
57 Land, buildings and equipment: basis ▶				
minus accumulated depreciation ▶ (attach schedule)				
58 Other assets ▶ <u>Prepaid Insurance</u>				
59 Total assets (add lines 45 through 58)				
Liabilities				
60 Accounts payable and accrued expenses				
61 Grants payable				
62 Support and revenue designated for future periods (attach schedule)				
63 Loans from officers, directors, trustees and key employees (attach schedule)				
64 Mortgages and other notes payable (attach schedule)				
65 Other liabilities ▶ <u>Schedule Attached</u>				
66 Total liabilities (add lines 60 through 65)				
Fund Balances or Net Worth				
Organizations that use fund accounting, check here <input type="checkbox"/> and complete lines 67 through 70 and lines 74 and 75.				
67 a Current unrestricted fund				
b Current restricted fund				
68 Land, buildings and equipment fund				
69 Endowment fund				
70 Other funds (Describe ▶)				
Organizations that do not use fund accounting, check here <input type="checkbox"/> and complete lines 71 through 75.				
71 Capital stock or trust principal				
72 Paid-in or capital surplus				
73 Retained earnings or accumulated income				
74 Total fund balances or net worth (see instructions)				
75 Total liabilities and fund balances/net worth (see instructions)				

Part VI List of Officers, Directors, and Trustees (List each officer, director, and trustee whether compensated or not.) (See instructions)

(A) Name and address	(B) Title and average hours per week devoted to position	(C) Compensation (if any)	(D) Contributions to employee benefit plans	(E) Expense account and other allowances
Schedule Attached				

Part VII Other Information

	Yes	No
75 Has the organization engaged in any activities not previously reported to the Internal Revenue Service? If "Yes," attach a detailed description of the activities.		X
77 Have any changes been made in the organizing or governing documents, but not reported to IRS? If "Yes," attach a conformed copy of the changes.		X
78 a Did the organization have unrelated business gross income of \$1,000 or more during the year covered by this return? b If "Yes," have you filed a tax return on Form 990-T, Exempt Organization Business Income Tax Return, for this year? c If the organization has gross sales or receipts from business activities not reported on Form 990-T, attach a statement explaining your reason for not reporting them on Form 990-T.		X
79 Was there a liquidation, dissolution, termination, or substantial contraction during the year (see instructions)? If "Yes," attach a statement as described in the instructions.		X
80 Is the organization related (other than by association with a statewide or nationwide organization) through common membership, governing bodies, trustees, officers, etc., to any other exempt or nonexempt organization (see instructions)? If "Yes," enter the name of the organization ▶ and check whether it is <input type="checkbox"/> exempt OR <input type="checkbox"/> nonexempt.		X
81 a Enter amount of political expenditures, direct or indirect, as described in the instructions b Did you file Form 1120-POL, U.S. Income Tax Return for Certain Political Organizations, for this year?		X
82 Did your organization receive donated services or the use of materials, equipment or facilities at no charge or at substantially less than fair rental value? If "Yes," you may indicate the value of these items here. Do not include this amount as support in Part I or as an expense in Part II. See instructions for reporting in Part III. ▶		X
83 Section 501(c)(5) or (6) organizations.—Did the organization spend any amounts in attempts to influence public opinion about legislative matters or referendums (see instructions and Regulations section 1.162-20(c))? If "Yes," enter the total amount spent for this purpose		
84 Section 501(c)(7) organizations.—Enter amount of: a Initiation fees and capital contributions included on line 12 b Gross receipts, included in line 12, for public use of club facilities (see instructions) c Does the club's governing instrument or any written policy statement provide for discrimination against any person because of race, color, or religion (see instructions)?		
85 Section 501(c)(12) organizations.—Enter amount of: a Gross income received from members or shareholders b Gross income received from other sources (do not net amounts due or paid to other sources against amounts due or received from them)		
86 Public interest law firms.—Attach information described in the instructions.		
87 List the States with which a copy of this return is filed ▶		
88 During this tax year did you maintain any part of your accounting/tax records on a computerized system?		X
89 The books are in care of ▶ Tracy-Collins Bank & Trust Telephone No. ▶ (801) 328-3737 Located at ▶ 107 South Main, Salt Lake City, Utah 84111		

Please
Sign
Here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete. Declaration of preparer (other than officer) is based on all information of which preparer has any knowledge.

Signature of officer

Date

Title

Paid
Preparer's
Use OnlyPreparer's
signatureFirm's name (or
yours, if self-employed)
and address

Date

Check if
self-
employed ☐

ZIP code

Suniville, Griffin & Smith
68 S. Main, #612, Salt Lake City, UT

84101

Exhibit C

The Brest van Kempen Objection

RECEIVED

JUN 12 1984

WATER RIGHTS

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

IN THE MATTER OF THE GENERAL)	OBJECTION TO PROPOSED
DETERMINATION OF RIGHTS TO THE	)	DETERMINATION OF WATER RIGHTS
USE OF WATER, BOTH SURFACE AND	)	IN THE UTAH LAKE AND JORDAN
UNDERGROUND, WITHIN THE DRAINAGE	)	RIVER DRAINAGE AREA, SALT
AREA OF UTAH LAKE AND JORDAN	)	LAKE COUNTY EAST DIVISION,
RIVER IN UTAH, SALT LAKE, DAVIS,	)	EMIGRATION CREEK SUBDIVISION,
SUMMIT, WASATCH, SANPETE AND	)	AS PREPARED BY THE STATE
JUAB COUNTIES.	)	ENGINEER'S OFFICE.
	)	(Code No. 57, Book 1)

Gentlemen:

The undersigned have been owners and users of water rights in the Emigration Creek Subdivision since 1959.

The undersigned hereby wish to register five areas of concern which are directly pertinent to the subject of this memorandum. Two of these areas of concern (identified below as item nos. 1 and 4) are given for the court's information only. The remaining three areas of concern formulate specific objections and remedial action is hereby requested.

Said areas of concern are the following:

1. The undersigned have serious concerns that sizeable withdrawal of groundwater at the headwaters of Freeze Creek will impair their vested water rights. During the dry summer of 1961 a number of wells in the Emigration District ran dry, even at the low level of development then existing. Mr. Jack Barnett, in his 1966 Master's Thesis (which provides a specific study of Emigration Canyon water) repeatedly states that:

Future development of large-diameter wells to produce supplies of water much greater than is required for the domestic needs of one family could significantly influence already established surface and ground water rights. Reduction in stream flow by surface diversions high in the canyon could have an influence on both surface and ground water rights and might also influence the quality of both the surface water and the ground water.

His point is that ground water resources in Emigration Canyon are very limited, and that the aquifers are not able to yield water readily to the wells.

Because of concern about infringement on their water rights, one of the undersigned has maintained a notarized historical record of the water level in the well, beginning from the time the well was first put in service, others of the undersigned are now taking steps to maintain the same records.

- OK
2. One of the undersigned is listed in referenced Book 1 as: "Van Kempen, Woodie Ann Brest" (Page 58, WUC: 57-3030) This is in error, the undersigned's proper name is: "Brest van Kempen, Woodie Ann" (i.e.: "Brest van Kempen" is the surname).
 3. It is our understanding that a large water share (WUC 57-69) has been acquired from Mt. Olivet Cemetery by Bertagnole Investment Corp. for the purpose of large-scale residential development in the canyon. The water acquired would be sufficient to serve 658 families. We further understand that Bertagnole have filed for changing points of diversion from the mouth of Emigration Canyon to higher up in the canyon, with the freedom to divert most of this water from the Freeze Creek source. Since this is also our immediate water source we have serious concern about the way this may impact our lives. We feel certain that if 70% to 80% of 330 AF is diverted from the head waters of Freeze Creek, the creek itself will dry up, removing the water supply from thousands of trees along the banks, and that the water level of the wells in that area will drop drastically, possibly drying up the wells (See item 4 for additional grounds for this belief). We ask that:
 - a) Steps be taken to limit the quantity of water which can be drawn from each section (SLBM) to 5% (since the drainage district involves approximately 20 sections) of the total quantity to be diverted. This would act to limit the destructive potential to the environment caused by removing most of the water from one point. Total water which could then be drawn by this diversion from the Freeze Creek drainage would still be 15% of the total (or 50 AF, which would serve 110 homes) since Freeze Creek involves three sections. This is still a considerable flow from one area.
 - b) The legal requirement be enforced that when diversion points are changed to the extent contemplated here, the priority date of the water right be changed to the date that beneficial use of the new diversion is proved. Enforcing this legal requirement would help protect our rights as senior users.
 4. As further illustration of the factual basis for our concern the undersigned should like to quote from The Central Utah Water Conservancy District newsletter (Spring 1984):

...According to a study of the ground-water yield of Salt Lake County by the U.S. Geological Survey, an increase in pumping of 100,000 acre-feet would cause an average decline in water levels of 20 feet throughout the valley, and would decline as much as 60 feet in the Cottonwood and Magna areas and 80 feet in the East Bench area. Such declines would induce migration of poor quality water into the heavily pumped areas, and the additional pumping lift would greatly increase the cost of this source... A withdrawal rate increase of 100,000 AF for Salt Lake Valley is an average of approximately 200 AF per square mile. If 30% of 330 AF is withdrawn from the Freeze Creek drainage (approximately 1.13 square miles crest to crest) the average increased withdrawal rate is 233 AF per square mile, actually higher than the rate for Salt Lake valley which was used by the CUWCD as a strong argument why further ground water development should be avoided.

5. Code No. 57, Book 1 lists a number of stock watering right entries which have not been used for more than twenty years. According to our understanding of the law these rights become invalid if not beneficially used for five years. Such entries should therefore not be listed in Book 1 with the implication that they are perhaps valid. Examples of these are claim numbers: 57-3904, 57-7465 through 57-7486, 57-7637, 57-7693 through 57-7696, 57-8066, 57-8138, 57-8168.

We trust that the Court will agree that our concerns about infringement on our senior rights are realistic and that the steps we request in item 3 will be implemented to help safeguard those rights. We also trust that the discrepancies raised in item nos. 2 and 5 be corrected.
We appreciate the opportunity to be heard.

Very truly yours,

C.J.H. Brest van Kempen

M.A. Brest van Kempen

J.W. Jenkins

J.T. Jenkins

T. Burton

Claim No.

57-3030

57-1961

57-3329

Signatures continued on following page.

E.C. Smay

J. Smay

G.W. Smith

M. Lehtinen

E. C. Smay)
J. Smay)
G. W. Smith)
M. Lehtinen)

Claim No.

57-2943

57-3275

The foregoing, being duly sworn on oath, depose and state that they have read and know the contents of the foregoing instrument, and that the same are true to the best of their knowledge, information and belief.

Subscribed and sworn to before me this 31-5 day of May, 1934.

Patricia J. Ehrman
Notary Public
Residing at: Salt Lake City

My Commission Expires:

01-25-88

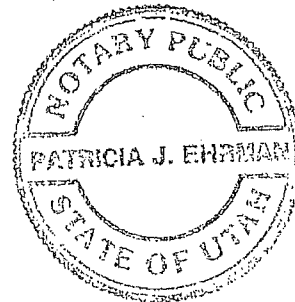


Exhibit D

Findings of Fact and Conclusions of Law and Decree

*Mt. Olivet Cemetery Assn., et al. v.
Salt Lake City, et al.,
Third District Court,
Salt Lake County, Utah
(June 30, 1925)*

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF

UTAH.

MT. OLIVET CEMETERY ASSN., ELMER L. COLTON, RUSSELL E. TRACY, MORRIS C. FITCHER, ELMER T. COHEN, GEORGE A. DAVIES, WILLIAM T. PLETTWOOD, J. H. N. WILLIAMS, WESLEY KING, Trustees of Mt. Olivet Cemetery Assn.,

Plaintiffs,

FINDINGS OF FACT

and

CONCLUSIONS OF LAW.

vs.

SALT LAKE CITY, a municipal corporation, CARLON & COMPANY, a corporation, JAMES A. HOLM and E. C. WICKS,

Defendants.

STEPHENS, BRAYTON & EAGLEY
SALT LAKE CITY, UTAH

The Court having duly made and entered its Findings of Fact and Conclusions of Law and Decree herein on the 10th day of August, 1933, and the plaintiffs having appealed in due time to the Supreme Court of the State of Utah from that part of said decree which provides as follows:

"Therefore by reason of the premises and of the Findings of Fact and Conclusions of Law aforesaid it is now hereby ordered, adjudged and decreed as follows:

a) That each of the parties whose title to the water is by this decree quieted and confirmed has beneficial use for the same.

b) That the right and title of the parties hereinbefore set out is hereby quieted and confirmed to the amount of water from Hamblin Canyon Creek specified for irrigation and for domestic and ordinary purposes as indicated.

c) To Mt. Olivet Cemetery Assn. a Street (water) continuously of four inches inches or over (with a second foot of water during all seasons.

d) That Salt Lake City, a municipal corporation, may have all the water over of its rights of the entire flow of Hamblin Canyon Creek (with a second foot of water during all seasons) as aforesaid, Carlon Company and Mt. Olivet Cemetery Assn. may have the water to their use and the water hereinbefore specified flowing continuously during all seasons of the year for domestic, ordinary, and irrigation purposes."

And the Supreme Court having reversed said Decree and remanded the case to the District Court of Salt Lake County with directions to recast the Findings of Fact and Conclusions of Law heretofore made and entered to conform to the decision of said Supreme Court of Utah and to enter a Decree in favor of the plaintiffs adjudging them to be the owners of the right to the use of one cubic foot per second of time of the waters of Emigration Canyon Creek and the judgment from the Supreme Court of Utah having been duly filed in the office of the Clerk of this Court. Now therefore pursuant to the premises aforesaid the Court now makes and enters the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT.

1) That at the time of commencement of this action William E. Colton, Russell L. Tracy, Morris L. Ritchie, Elmer L. Goshen, George N. Davies, William W. Fleetwood, J. H. N. Williams and Wesley Alog were and their successors in office now are Trustees of an express public trust hereinafter described, duly chosen and acting as such Trustees in accordance with the acts of Congress making provision therefore and under the regulations made by the Secretary of War of the United States of America pursuant to said acts to have the care, custody, control and management of Mt. Olivet Cemetery and charged with the duty of the protection thereof and of the rights, privileges and franchises and property of said cemetery.

2) That the trust imposed upon these plaintiffs as successors to the original Trustees was created more than forty-five years ago exclusively by the laws of the United States of America and not under any law or by any authority derived from the Territory or the State of Utah and designated for a public purpose and not for any purpose of private interest or profit. That the purpose of said trust as set forth in said acts of Congress is that the lands set apart by said acts be used as a public cemetery under such rules and regulations as the Secretary of War

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shall establish for the care, protection and management of said cemetery which shall be forever devoted for the purpose of the burial of the dead. That by the rules and regulations prescribed by the Secretary of War it is provided that after disbursements for the necessary expense to be incurred in the care and management of said cemetery ~~all~~ money arising from the sale of lots or otherwise or raised or donated by any person for the purpose of said cemetery shall be scrupulously kept for the purpose of said cemetery and no part thereof shall be diverted or devoted to any other use or purpose whatsoever and that the Trustees appointed to manage the affairs of said cemetery shall render their services in said capacity without compensation or salary. That said cemetery is managed, conducted and controlled by the plaintiffs under the name of Mt. Olivet Cemetery Assn.

C) That the lands set apart by the Acts of Congress aforesaid and held by the plaintiffs for the use of Mt. Olivet Cemetery are described as follows: A tract of twenty acres designated as the Mt. Olivet Cemetery grant as surveyed by order of the Secretary of War and bounded as follows:

Beginning at a point where the Western boundary of the the Military Reservation of Camp Douglas, Utah, as declared by the President September 3, 1867.

Is intersected by the Eastward prolongation of the South side of 5th South Street, Salt Lake City; thence East 20 rods; thence South 40 rods; thence West 50 rods; thence North along the Western boundary of said Military Reservation 40 rods to the point of beginning.

Also the following described tract to-wit:

Commencing at the Southwest corner of the Ft. Douglas Military Reservation thence East along and upon the South line of said Ft. Douglas Military Reservation 80 rods; thence North parallel with the West boundary line of said Military Reservation to the Southeast corner of the Mt. Olivet Cemetery grant thence West along the South boundary line of said Mt. Olivet Cemetery grant 80 rods to the intersection of said line with the West line of said Military Reservation; thence South along and upon said West line of said Military Reservation to the place of beginning containing 50 acres, more

or less. All of said lands being situated in Salt Lake County, State of Utah.

4) That the defendant Salt Lake City is a municipal corporation organized under the laws of the State of Utah and acting as such and situated in Salt Lake County in said State.

5) That Emigration Canyon Creek also called Emigration Creek is and from time immemorial has been a natural stream of water arising in the Eastern part of Salt Lake County and flowing thence Southwesterly through Emigration Canyon across a portion of Salt Lake City and emptying into the Jordan River excepting, however, such portions of the water thereof as has been appropriated and used for culinary, domestic, irrigation and other useful purposes.

6) That near the mouth of Emigration Canyon is a weir which divides the water of Emigration Canyon Creek into two parts about one-third thereof being diverted through a channel in a Southwesterly direction and used by parties not involved in this action and the remaining two-thirds thereof being diverted through the channel which runs in a westerly direction across the land hereinabove described and within corporate limits of Salt Lake City. That the water involved in this case is the two-thirds flow of Emigration Canyon Creek next above set forth.

7) That the amount of water flowing in Emigration Canyon Creek varies considerably with the seasons but the average flow thereof is about 5.46 cubic feet per second.

8) That the lands of the plaintiffs hereinabove described are arid in character and unproductive without irrigation but with irrigation said lands will produce agricultural crops, forage, trees and shrubbery. That the amount of water necessary to properly irrigate said lands is one cubic foot per second flowing continuously during all seasons.

9) That in about the year 1878 the plaintiffs and their predecessors in trust appropriated from the unappropriated water of Emigration Canyon Creek one-tenth of a second foot there-

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of and used the same for a beneficial purpose upon the lands herein above described for the purpose of irrigating the crops, lawns, trees and shrubbery growing thereon and ever since said last mentioned date the plaintiffs and their predecessors in trust have used said water as aforesaid continuously, openly, uninterruptedly and under claim of right.

10) That the remainder of the two-thirds flow of the waters of Emigration Canyon Creek was prior to the year 1873 appropriated by persons residing in the neighborhood of the land hereinabove described and was used by said persons for a beneficial purpose to-wit for irrigation of their farm lands and garden tracts.

11) That prior to the year 1909 the persons next above referred to with the exception of three or four in number abandoned their rights to the use of the waters of Emigration Canyon Creek and ceased to use the same for a beneficial purpose or any other purpose.

12) That in the year 1909 the plaintiffs and their predecessors in trust appropriated from the unappropriated water of Emigration Canyon Creek nine tenths of a cubic foot per second thereof in addition to the one-tenth of a cubic foot per second above mentioned and used the same upon the lands hereinabove described for a beneficial purpose to-wit for the irrigation of the agricultural crops, lawns, trees and shrubbery growing thereon and ever since said last mentioned date the plaintiffs and their predecessors in trust have used said water for said beneficial purposes continuously, openly, uninterruptedly and under claim of right and have paid all taxes assessed against said water. That ever since the year 1909 up to and including the time of commencement of this action plaintiffs and their predecessors in trust have been in the actual, open and exclusive possession of one cubic foot per second of the waters of Emigration Canyon Creek and during all of said time have used said water for a beneficial purpose to-wit for the purpose of irrigating the agricultural crops, lawns, trees and shrubbery growing upon the land herein above described.

13) That said defendant Salt Lake City claims some right to the use of the waters of Emigration Canyon Creek so

appropriated by the plaintiffs as aforesaid and in the month of June, 1918, interfered with the plaintiff's right to the use of said water and attempted to lease and deliver said water to persons not parties to this action, but the right of said defendant, Salt Lake City, to the use of the water of Emigration Canyon Creek is subsequent in time and inferior to the right of the plaintiffs to the use of one cubic foot per second of time thereof.

14) That in the year 1917 the defendant, Salt Lake City, appropriated and applied to a beneficial use all the water of Emigration Canyon Creek with the exception of water heretofore decreed to the above named defendant Cardon & Company and James A. Hogle, as more specifically set forth in the Findings of Fact and Conclusions of Law and Decree made and entered herein on the 13th day of August, 1923, and the one cubic foot per second appropriated and applied to a beneficial use by the plaintiffs as hereinbefore set forth.

15) The Court adopts and makes a part of these Findings of Fact herein that portion of said Findings of Fact of August 13, 1923, with reference to the water of Emigration Canyon Creek appropriated by and belonging to the defendant Cardon & Company and James A. Hogle.

From the foregoing Findings of Fact the Court makes the following Conclusions of Law:

CONCLUSIONS OF LAW.

1) That the plaintiffs are the owners of the right to the use of one cubic foot per second of time of the waters of Emigration Canyon Creek for the purpose of irrigating the lands described in the Findings of Fact herein. Said amount of water to be measured at the point of use and are entitled to a Decree of this Court awarding to said plaintiffs the right to the use of said water as aforesaid.

2) That the defendant Salt Lake City, a municipal corporation, is the owner of the remainder of the waters of Emigration Canyon Creek and is entitled to a Decree of this

Court awarding to said defendant said amount of water.

3) That the defendants Cardon & Company and James A. Hogle are the owners of the right to the use of the waters of Emigration Canyon Creek as set forth in the former Conclusions of Law made and entered herein on August 13, 1923.

Let judgment be entered accordingly.

Dated this 10 day of June, 1925.

By the Court:

ATTEST
CLARENCE COWAN,

JUDGE.

[Signature]
County Clerk

Receipt & copy of foregoing findings and conclusions
acknowledged this 26 day of June 1925

[Signature]
att'y for Salt Lake City

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
HOLDING FOR SALT LAKE COUNTY, STATE OF
UTAH.

MT. OLIVET CEMETERY ASSN., WILLIAM F.
COLTON, RUSSELL L. TRACY, MORRIS L.
RITCHIE, BILLY F. GOSHEN, GEORGE H.
DANIELS, WILLIAM A. REED, COO, J. H. N.
WILLIAMS, RESELY KING, Trustees of
Mt. Olivet Cemetery Assn.,

Plaintiffs,

D E C R E E

vs

SALT LAKE CITY, a municipal corporation,
CARSON & COMPANY, a corporation,
JAMES A. HODGE and S. F. TUCKER,

Defendants.

The court having duly read and entered its
findings of fact and conclusions of law and Decree herein on the
15th day of August, 1922, and the plaintiff having appealed in
due time to the Supreme Court of the State of Utah from that part
of said Decree which provides as follows:

"Wherefore by reason of the premises and
of the findings of fact and conclusions of law above
said it is now hereby ordered, adjudged and decreed
as follows:

a) That each of the parties whose title
to the water is by this Decree quieted and confirmed
has beneficial use for the same.

b) That the right and title of the
parties hereinbefore set out as hereby quieted and con-
firmed to the amount of water from Emigration Canyon
Creek specified for irrigation and for domestic and
culinary purposes as indicated.

c) That Mt. Olivet Cemetery Assn. of
ground flowing continuously of four minor inches or
one-tenth of a second foot of water during all seasons.

d) That Salt Lake City, a municipal
corporation, may have all the remainder of two-thirds
of the entire flow of Emigration Canyon Creek after
said Hodge, Carson Company and Mt. Olivet Cemetery Assn.
have had diverted to them the amounts of water herein-
above specified flowing continuously during all seasons
of the year for domestic, culinary and irrigation pur-
poses."

And the said Supreme Court having reversed said decree and remanded said case to the District Court of Salt Lake County, with directions to recast the findings of fact and conclusions of law above mentioned to conform to the decision of the said Supreme Court and to enter a decree in favor of the plaintiffs adjudging them to be the owners of the right to the use of one cubic foot per second of the waters of Emigration Canyon Creek flowing continuously during all seasons and the Court having duly made and entered its findings of fact and conclusions of law in accordance with the decision and mandate of the said Supreme Court of the State of Utah.

NOW THEREFORE pursuant to the premises aforesaid it is hereby

ORDERED, ADJUDGED and DECREED that the plaintiffs are the owners of and they are hereby awarded the right to the use of one cubic foot per second of the waters of Emigration Canyon Creek, the same to be measured at the point of use, for use upon the lands of the plaintiffs described in plaintiff's complaint and the findings of fact herein and if the plaintiffs use said water from six o'clock A. M. Monday morning until the following Saturday at six o'clock P. M. of each week then the plaintiffs shall be entitled to use 1.27 cubic feet per second of the waters of said creek during said period of each week. It is further

ORDERED, ADJUDGED and DECREED that the title of the plaintiffs to said water is hereby declared and confirmed and the defendant Salt Lake City, a municipal corporation, and its officers, agents and employees, and all persons claiming by, through, or under them are hereby perpetually restrained and enjoined from interfering in any way with the right of the plaintiffs to the use of said water as aforesaid. It is further

ORDERED, ADJUDGED and DECREED that the defendant Salt Lake City, a municipal corporation, is the owner of and it is hereby awarded the right to the use of the remainder of the two-thirds flow of Emigration Canyon Creek and its title thereto is

hereby quieted and confirmed against the claims of the plaintiffs and their successors in office and all persons claiming by, through or under them or either of them. It is further

ORDERED, ADJUDGED and DECREED that defendants Gordon & Company and James A. Hogle are the owners of and are hereby awarded the water decreed to them respectively in the former decree of this Court made and entered herein on the 13th day of August, 1923, which said Findings of Fact and Conclusions of Law and Decree in so far as the same affected the said Gordon & Company and James A. Hogle are hereby adopted and made a part hereof. It is further

ORDERED, ADJUDGED and DECREED that the plaintiffs have and recovered from the defendant Salt Lake City, a municipal corporation, their costs incurred herein taxed in the sum of \$477.80.

Done in open Court this 20 day of June, 1925.

BY THE COURT:

ATTEST
CLARENCE COWAN,
CLERK

[Signature]
CLERK

[Signature]

JUDGE.

*Receipt copy of foregoing decree acknowledged
this 26 day of June 1925*

*Follansbee James Follansbee
atty gen of Salt Lake City*

STEPHENS, BRAYTON & BAGLEY
SALT LAKE CITY, UTAH

Exhibit E

Mount Olivet Cemetery Association's Certificate of Appropriation of Water No. 2220

CERTIFICATE OF APPROPRIATION OF WATER

APPLICATION NO. 9207 STATE OF UTAH WATER DIVISION CERTIFICATE NO. 2220

T0:1801523370

Whereas, it has been made to appear to the satisfaction of the undersigned, State Engineer of the State of Utah, that the appropriation of water from EMIGRATION CREEK in SALT LAKE County, made by MOUNT OLIVET CEMETERY ASSOCIATION (Assignee) has been perfected in accordance with the application therefor, received in the office of the State Engineer on the 11th day of December 19 22, and recorded on page 270 in book I-28 of the record of applications to appropriate water; Therefore, be it known that I, T. H. Humphreys, State Engineer of the State of Utah, under and by authority and direction of the Law of Utah, as of the date of filing of the above numbered application, do hereby certify that the said MOUNT OLIVET CEMETERY ASSOCIATION of SALT LAKE CITY in SALT LAKE County, State of UTAH; is entitled to the use of 1.17 sec. ft. of water, subject to prior rights and to the following restrictions, to-wit:

Said water is diverted from March 1 to November 30 inclusive of each year at a point which bears S. 4° 56' E. 1938 ft. from the NW cor. of Sec. 11, T. 1 S., R. 1 E., S. 1 E., 31.3 A. M. and conveyed thence in what is known as the Emigration Creek Canal for a distance of 11880 ft., and used to irrigate 82.29 acres of land in the Mount Olivet Cemetery embraced in the S² S² Sec. 4, NW¹ Sec. 9, T. 1 S., R. 1 E., as aforesaid, base and meridian; more specifically described as follows: Beg. at a point 100 ft. N. of a point which bears S. 6° 29' E. 1606.7 ft. from the NW cor. of said Sec. 9, thence N. 2026.5 ft., N. 53.3 ft., E. 660 ft., S. 1365.3 ft., S. 861 ft., S. 43° 57' N. 13.5 ft., S. 2018.2 ft., E. 1326 ft. to place of bog. containing 82.29 acres.

This certificate does not entitle the holder to use to exceed 3 acre feet of water per acre of land irrigated per annum.

The rights of applicant granted under this Certificate are as against "the world", subject however to the terms of a decree entered June 30, 1925 in the Third Judicial District Court in and for Salt Lake County, State of Utah, in the case of Mt. Olivet Cemetery Association, Plaintiff, v. Salt Lake City, a municipal corporation, et al, Defendants.

* Application No. 9207, pursuant to which this certificate is issued, was filed in the State Engineer's office December 11, 1922 by Arthur B. Battrell and assigned to the Mount Olivet Cemetery Association by instrument dated June 1, 1925 and filed in the State Engineer's office August 13, 1927.

The date of priority of this right is December 11th, 19 22.

In witness whereof, I have hereunto set my hand and affixed the seal of my office this THIRTY-FIRST day of JULY, A. D. 19 24.


T. H. Humphreys
STATE ENGINEER

Exhibit F

Affidavit of Daniel ValDez

Rosemary J. Beless
Douglas J. Payne
FABIAN & CLENDENIN,
A Professional Corporation
Attorneys for Mount Olivet Cemetery Association
215 South State Street, Suite 1200
Salt Lake City, Utah 84111-2323

BEFORE THE STATE ENGINEER, DIVISION OF WATER RIGHTS

UTAH DEPARTMENT OF NATURAL RESOURCES

IN THE MATTER OF MOUNT OLIVET)	
CEMETERY ASSOCIATION,	)	AFFIDAVIT OF DANIEL VALDEZ
WATER RIGHT NO. 57-69,)	
IN EMIGRATION CREEK,)	
SALT LAKE CITY, UTAH)	

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

DANIEL VALDEZ, being duly sworn, deposes and states:

1. I, Daniel ValDez, am the Sexton and Superintendent of Mount Olivet Cemetery. I have worked at Mount Olivet Cemetery for 28 years. For 27 of those years, I have been the Sexton and Superintendent of Mount Olivet Cemetery.

2. For 15 years prior to my tenure as Sexton and Superintendent of Mount Olivet Cemetery, I worked for my father, who was the prior Sexton of Mount Olivet Cemetery.

3. I have personal knowledge of the diversion of Water Right No. 57-69 from Emigration Creek for the irrigation of Mount Olivet Cemetery grounds because I have been in

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charge of that diversion for the last 27 years and prior to that, I helped my father with the diversion of water from Emigration Creek for the irrigation of the grounds of Mount Olivet Cemetery.

4. For the last 43 years, Mount Olivet Cemetery's right of diversion for Water Right No. 57-69 has begun on Tuesday evening and has run through Friday evening. Therefore, I would open Mount Olivet Cemetery's gate on Tuesday evening and check the flow during the time between Tuesday evening and Friday evening.

5. If I saw that the water flow in Mount Olivet Cemetery's ditch through This Is The Place State Park was good, then I knew that the gate at Hogle Zoo remained open.

6. In 1986 when I became the Sexton of Mount Olivet Cemetery, I would go to the Hogle Zoo office to get the code to access the zoo's entry gate, so that I could open the water gate in order to divert Mount Olivet Cemetery's water flow.

7. Sometimes the Hogle Zoo's access code for its entry gate would change and sometimes the access code would not work to open Hogle Zoo's entry gate.

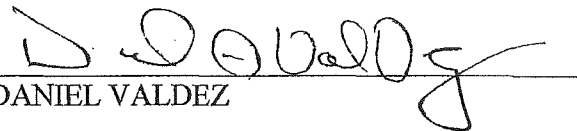
8. It was often easier for me to simply wait for someone else to open the Hogle Zoo's entry gate and then I could go in and turn the water gate for Mount Olivet Cemetery. In recent years, I generally went into the zoo with another service vehicle rather than trying to use the zoo's entry code.

9. Dale Randall assisted me in performing water diversion duties until 2003.

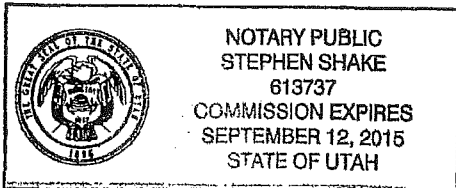
10. Since 2003, Clayton Reese has assisted me in diverting the water into Mount Olivet Cemetery's ditch.

11. With the assistance of Dale Randall until 2003 and subsequently with the assistance of Clayton Reese, I have been diverting the Emigration Creek water for the irrigation of Mount Olivet Cemetery grounds during the irrigation period of each year for approximately the last 40 years.

DATED this 27 day of Aug., 2013.


DANIEL VALDEZ

SUBSCRIBED AND SWORN TO before me this 27 day of Aug, 2013.



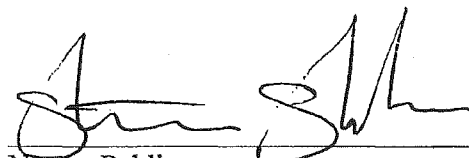

Notary Public

Exhibit G

Affidavit of Clayton Reese

Rosemary J. Beless
Douglas J. Payne
FABIAN & CLENDENIN,
A Professional Corporation
Attorneys for Mount Olivet Cemetery Association
215 South State Street, Suite 1200
Salt Lake City, Utah 84111-2323

BEFORE THE STATE ENGINEER, DIVISION OF WATER RIGHTS

UTAH DEPARTMENT OF NATURAL RESOURCES

IN THE MATTER OF MOUNT OLIVET)	
CEMETERY ASSOCIATION,	)	AFFIDAVIT OF CLAYTON REESE
WATER RIGHT NO. 57-69,)	
IN EMIGRATION CREEK,)	
SALT LAKE CITY, UTAH)	

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

CLAYTON REESE, being duly sworn, deposes and states:

1. I, Clayton Reese, am an employee of Mount Olivet Cemetery, and I have been employed by Mount Olivet Cemetery since 1989.
2. In 1989, I started out as a trimmer and laborer with Mount Olivet Cemetery.
3. I was taken to This Is The Place State Park to trim brush and clear limbs in Mount Olivet Cemetery's ditch that carried Mount Olivet Cemetery's water through This Is The Place State Park to the point where it joined the ditch carrying water from Red Butte Creek.

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WATER RIGHTS
SALT LAKE

4. When I became a fulltime employee of Mount Olivet Cemetery in 2003, I began learning the water system for the irrigation of the Mount Olivet Cemetery grounds.

5. As part of my training on the water system for irrigation of the cemetery, I was shown how to turn on the gate at Hogle Zoo for Emigration Creek water for irrigation of Mount Olivet Cemetery grounds, and then I learned to go to This Is The Place State Park to put a board in the ditch to keep Mount Olivet Cemetery's water from being diverted by other water users.

6. When I would go to Hogle Zoo to turn the water gate so that water would flow to Mount Olivet Cemetery's ditch, I would sometimes go in the entry gate to the zoo if someone else was coming out or I would use the callbox at the entry gate in order to request entry into the zoo.

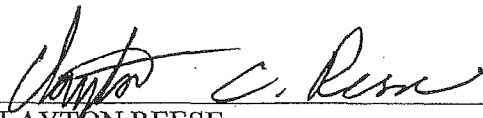
7. When I used the callbox at the entry gate to the zoo, I would tell zoo personnel that I was Clayton Reese with Mount Olivet Cemetery and that I needed entrance to the water gates in order to divert water to Mount Olivet Cemetery. The zoo personnel would then open the entry gate and allow me to access the water gate for Mount Olivet Cemetery.

8. The only time that Mount Olivet Cemetery was not able to use Emigration Creek and Red Butte Creek water for irrigation of the cemetery grounds was for part of one irrigation season when Chevron had spilled oil in Red Butte Creek, and Chevron provided Mount Olivet Cemetery with water from a different source because of the oil contamination in the ditches.

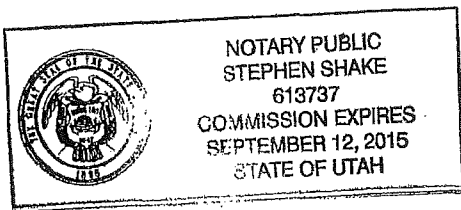
9. Since 2003, I have been assisting Dan ValDez in opening the gates at Hogle Zoo and This Is The Place State Park in order to allow Mount Olivet Cemetery's water to irrigate the cemetery grounds, and since 1989 I have been working to keep the Mount Olivet cemetery

ditches, carrying Emigration Creek water and Red Butte Creek water, clear of brush and tree limbs in order that the water might flow unimpeded to the Mount Olivet Cemetery reservoir for irrigation of the cemetery grounds.

DATED this 27 day of Aug., 2013.


CLAYTON REESE

SUBSCRIBED AND SWORN TO before me this 27 day of Aug., 2013.





Notary Public

Exhibit H

Letter, dated July 31, 1936, from
T. H. Humpherys, State Engineer,
to
Attorney for
Mount Olivet Cemetery Association

July 31, 1936

Mr. Frank B. Stephens,
Stephens, Brayton & Lowe,
Walker Bank Bldg.,
City.

Dear Mr. Stephens:

REL: APPLICATION NO. 9207

After careful consideration, following my conference with you and Judge Morse, I have reached the conclusion that the interests of all concerned, with respect to Application No. 9207 by the Mt. Olivet Cemetery Association, will best be served by issuing a Certificate with the following clause: "The rights of applicant granted under this Certificate are as against 'the world', subject however to the terms of a decree entered June 30, 1925 in the Third Judicial Court in and for Salt Lake County, State of Utah, in the case of Mt. Olivet Cemetery Association, Plaintiff, v. Salt Lake City, a municipal corporation, et al., Defendants". In passing upon this matter the Supreme Court had the following to say: "We thus have the situation of two rival claimants to the use of the same water, one of which is clearly prior to the other in time of diversion and use, and neither of whom has complied with the formalities of the statute relating appropriation". (The underlining is not copied from the opinion rendered, but is done by me to indicate my point).

If there is a point involved in the decision of the Supreme Court with respect to non-compliance with the statute as to the appropriation of this water, this Certificate will remedy it and with the qualifying clause as I propose, and as above quoted, it will in no wise, in my opinion, nullify or detract from the award subsequently made by the District Court under the orders of the Supreme Court. On the other hand, if it does no good it certainly will do no harm. I am therefore enclosing Certificate No. 2220 herewith and if in your opinion it is of worth you may record same, as provided by law. If not, your failure to do so will nullify it. Thus you are left to choose your course of action.

Trusting that my action in this matter will be agreeable to you,

I am

Yours very truly,

T. H. Humphreys
STATE ENGINEER

1/5
Encl.

Exhibit I

Agreement, dated February 19, 1917,
between Salt Lake City and the
Emigration Dam & Ditch Company

EXHIBIT "A"

C O P Y

THIS AGREEMENT, made and entered into in duplicate at Salt Lake City, Utah, this 19th day of February, 1917, by and between Salt Lake City, a municipal corporation of the State of Utah, and the Emigration Dam & Ditch Company, a corporation of Utah, WITNESSETH:

WHEREAS, the parties to this agreement, are by ancient rights, entitled to the use of the waters of that certain stream or creek known as Emigration Creek, together with its tributaries and springs, which said stream flows through Emigration Canyon in Salt Lake County, and emerges from the west slope of the Wasatch Mountains through said Emigration Canyon at a point about four miles easterly from Salt Lake City; and

WHEREAS, said Salt Lake City has heretofore constructed a sump in said canyon, immediately adjacent to said stream, and has driven one or more tunnels for the purpose of developing additional water, which said water is carried by means of pipeline from said sump by said city to a point beyond the location of the weir hereinafter mentioned; and

WHEREAS, differences have heretofore arisen between the parties to this agreement, regarding their respective rights of and to the waters of said stream, and also as to the right of said city to the use of the waters so taken by means of said tunnels, sump and pipe-line; and

WHEREAS, by reason of said differences two certain actions have heretofore been commenced in the Third Judicial District Court in and for the County of Salt Lake, State of Utah, as follows: One action being No. 7021 of said court, and entitled Emigration Dam & Ditch Company a corporation, vs. Salt Lake City, a municipal corporation, Den D. Luce, Land & Water Commissioner and Frank L. Hines, Superintendent of Waterworks of Salt Lake City, and which said action is now pending in said court; and another action being No. 7966 and entitled Salt Lake City, a municipal corporation, vs. Emigration Dam & Ditch Company, a corporation, which last mentioned action has heretofore been dismissed; and

WHEREAS, such differences have not been settled or determined; and

WHEREAS, the parties hereto are desirous of having their respective rights in and to the waters of said stream finally determined as between themselves.

NOW THEREFORE, THIS AGREEMENT WITNESSETH:

That the parties hereto, in consideration of the premises and for the purpose of determining and adjusting any and all differences and demands existing between them concerning the waters of said stream and its tributaries and springs and all claims of either of said parties as set out in the pleadings filed in the said two actions, have stipulated and agreed and by these presents do stipulate and agree as follows:

First: That said City is and shall be entitled to any and all waters developed and taken by means of said tunnels, sump and pipeline.

Second: That the waters of said Emigration Creek, including its tributaries and springs; but excluding such waters as may be developed and taken by said city by means of said tunnels, sumps and pipeline, are to be divided and shall be perpetually divided between the parties hereto in the proportion of two-thirds thereof to said city and one-third thereof to said Emigration Dam & Ditch Company, such division to be made and said waters to be divided in said proportions to the parties hereto at that certain concrete weir heretofore constructed and now maintained by said city on said creek near the mouth thereof.

IT IS FURTHER UNDERSTOOD AND AGREED, by and between the parties hereto, that in the event said city shall sell or lease waters from its proportion of the waters of said creek to other parties, and said waters so sold or leased shall be diverted from said stream at any point on said ~~stream at any point on said stream~~ above said weir or above the point on said stream where the division of the waters to the parties hereto is made, the said city shall at all times see to it that any such sale or disposal of any of its said proportion of any of the waters of said stream shall not interfere with the right of the said Emigration Dam & Ditch Company to the use of its said ~~proportion of any of the waters of said stream shall not interfere with the right of the said Emigration Dam & Ditch Company to the use of its said proportion~~ of the waters of said stream, to be determined at said weir.

IT IS FURTHER AGREED, upon the signing of this instrument, that either party hereto may have dismissed, without cost to any of the parties whereof, the said action No. 7021, now pending in said court.

IN WITNESS WHEREOF, the parties hereto have signed their names the day and year first above written, said Salt Lake City by its Mayor and its Recorder, duly authorized to do so by resolution of the City Commission of said city, and the said Emigration Dam & Ditch Company by its President and Secretary, duly authorized to do so by a resolution of said corporation.

SALT LAKE CITY,

By W. MONT FERRY, Mayor

ATTEST:

GORDON SNOW,
City Recorder.

(SEAL)

EMIGRATION DAM & DITCH COMPANY

By JAMES DEVINE, President.

ATTEST:

H. E. DEWEY,
Secretary.

(SEAL)

STATE OF UTAH }
County of Salt Lake. } SS.

I, Gordon Snow, City Recorder of Salt Lake City, Utah, do hereby certify that the above and foregoing is a full, true and correct copy of an agreement on file in my office and dated February 19th, 1917, by and between the City of Salt Lake and the Emigration Dam & Ditch Company, relative to waters of Emigration Canyon

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of said City this 9th day of January A.D. 1918.

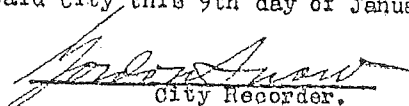

City Recorder.

EXHIBIT J

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ecid.org

Thursday, November 29, 2018


Priority Date – Boyer Well #2 Operated by EID | Emigration Canyon Home Owners A...57-7796 WRPrint - Utah Division of Water Rights

Water Rights

For specific information regarding property water rights, water right priorities, or enforcement of water right issues, contact the State Engineer's office, Division of Water Rights. The Emigration Improvement District holds one of the most senior water rights in the canyon, thanks to the Utah Road Commission (Now Department of Transportation) who, in 1976, deeded to the District a large sum of water rights. As canyon residents join to the community water system, the homeowners, can choose to purchase the District's water right or exchange their water right for the District's senior water right. In most cases, .75 ac/ft of water right is needed for both culinary and irrigation use as established by the Utah Engineer's office. There are situations where this amount may differ, pending on usage and lot size being irrigated etc... The current value for use of .75 ac/ft of District's senior water right is \$6000.00 (\$8000 per ac/ft). The District does not sale water rights and they are used for those who are connected to the community water system. There is on an occaison, where the District (upon approval of the Board of Trustees) will lease a portion of water right for properties not located within the community water system, however, if the community water system is available to them in the future, the agreement is to connect to the community system at that point in time.

For more information regarding water rights click on the Utah Division of Water Rights or contact the District Manager.

Utah Division of Water Rights



Connection Costs

When connecting to the community water system, there are four main areas regarding costs to consider. First, as mentioned above, is the water right. Do you have a water right to exchange in for the District's water right, or do you need to purchase the water right? Second, what standby fees and/or water base fees have been paid and are they current? A person who has paid the standby fees and water base fees are contributing to their overall impact fee. The current impact fee for connection is \$13,750. This impact fee has been broken down into two portions. The first portion (\$7500) is wrapped into the \$25 per/mo impact fee billed out quaterly by the District. The second portion is an application fee of \$750 (paid at connection) and \$5500 which can be paid up front or financed by the District over a 14 year term. The interest rate is variable and is based upon the Utah Public Treasury Investment fund. The current rate is .005% and has been for the past few years. The Third expense is the cost of the meter and installation. A 3/4" meter installed is \$750 and a 1" meter is \$900. Any other sizes are priced out on an individual basis. The fourth area of costs is one the property or homeowner will have to consider and that is the cost to run the water line from the meter box to the home and make the necessary connections. For more information contact the District Manager who will be able to walk you through the process and provide detailed costs for specific properties.

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