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City Corporation

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BEFORE THE STATE ENGINEER OF THE  
STATE OF UTAH

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IN RE: SEGREGATION APPLICATION : AFFIDAVIT OF JEFFRY T.  
NO. 57-10148 (A70224a) AND CHANGE : NIERMEYER, P.E.  
APPLICATION NO. a20824 (57-10141) :  
FILED BY WAYNE GRANT CRAWFORD :

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SALT LAKE COUNTY )  
: ss.  
STATE OF UTAH )

Jeffry T. Niermeyer, P.E., being first duly sworn, deposes and states:

1. I am a professional engineer and a resident of Salt Lake County, and am over the age of eighteen years. I make the following averments based on personal knowledge unless stated otherwise.

2. I am currently employed as the Deputy Director of Salt Lake City's Department of Public Utilities, and have been in this position for four months. Prior to assuming that position, I had been employed by Salt Lake City, Department of Public Utilities, as a senior engineer and contracts administrator.

3. In my capacity as Deputy Director, I am generally in charge of the City's archived water department files.

4. I have searched the City's archived files and have located an aerial photograph dated 1937 of an area near Big Cottonwood Creek on the east side of Salt Lake Valley. The original photograph is available for inspection at the offices of the Department of Public Utilities.

5. The aerial photograph maps the lands irrigated as of 1937 by several irrigation companies and the Farr & Harper Ditch. I am informed and believe that this aerial map was prepared in the ordinary course of business as part of the City's preparation for the general Stream Adjudication action on the Utah Lake-Jordan River Drainage and their tributaries. I am informed and believe that employees of the City water department in the ordinary course of the City's business colored in the boundaries of the lands irrigated by each of the mutual water companies and the Farr & Harper Ditch.

6. Also in the Department's files is a 1970 aerial photograph of this same general area that shows condition of the land at that time. This aerial photograph is also a regularly maintained record of the City water department.

7. At my direction, and specifically for use in connection with this proceeding, the Department of Public Utilities' GIS Section has digitized this 1970 aerial photo and has then superimposed on this photo the irrigation company service area boundaries as depicted on the 1937 aerial map. The GIS section also superimposed the property boundaries for the original Harper Brothers property and the boundaries following the

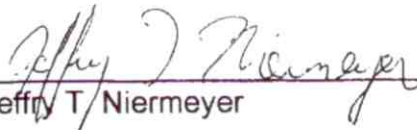
Nielsens' division of that property into separate lots. A copy of the map is attached as Exhibit 1.

8. The map shows the Nielsen-Ricciardi property as lying within the service area boundary of the Upper Canal and Dry Creek irrigation companies. The land irrigated by the Farr & Harper Ditch is generally to the south of the Nielsen properties.

9. Although a spur of the Farr & Harper Ditch is shown on the map as crossing the lower portion of the Nielsen properties, I am informed and believe, based on a report from the City's retained expert hydrologist, David E. Hansen, P.E., that there is only a small portion of the Nielsen property located topographically below the Farr & Harper Ditch that could have possibly received irrigation water from that ditch.

10. Records in the possession of the Department of Public Utilities indicate that in 1996 the City made available under contract a total of 1069.056 acre feet of surplus water for use in cabins and snow making in Big Cottonwood Canyon. These water sales generated \$27,359.09 in revenues. The City's cost of purchasing replacement water at \$85 per acre foot from the Metropolitan Water District of Salt Lake City to meet its culinary water demand requirements equivalent to the water sold was \$90,869.76. Additionally, the City paid the Salt Lake County Sheriff \$192,132.00 for deputies to patrol the canyon and protect the City's watershed.

DATED this 12 day of September, 1997.

  
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Jeffrey T. Niermeyer