

1996

William Turner, and John Does 1-120, a class  
composed of landowners located in the Hi-  
Country Estates Subdivision v. Salt Lake County  
Water Conservancy District, a Utah corporation  
and Special Service District : Brief of Appellee

Utah Court of Appeals

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Reid E. Lewis; Attorney for Appellee.

Wesley F. Sine; Attorney for Appellant.

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IN THE UTAH COURT OF APPEALS

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WILLIAM TURNER, and John Does  
1-120, a class composed of  
landowners located in the  
Hi-Country Estates  
Subdivision,

Plaintiff and Appellant,

vs.

SALT LAKE COUNTY WATER  
CONSERVANCY DISTRICT, a Utah  
corporation and Special  
Service District,

Defendant and Appellee.

:  
:  
:  
: Appellate Case No. 960566  
: Priority No. 15  
:  
:  
:

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BRIEF OF APPELLEE

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APPEAL FROM JUDGMENT ON THE PLEADINGS  
TAKEN FROM THE THIRD JUDICIAL DISTRICT COURT  
FOR SALT LAKE COUNTY, STATE OF UTAH  
Judge Leslie A. Lewis Presiding

---

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Attorney for  
Plaintiff-Appellant  
William Turner

IN THE UTAH COURT OF APPEALS

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1-120, a class composed of	:	
landowners located in the	:	
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vs.	:	Priority No. 15
SALT LAKE COUNTY WATER	:	
CONSERVANCY DISTRICT, a Utah	:	
corporation and Special	:	
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Conservancy District

PARTIES TO THE PROCEEDINGS IN THE  
DISTRICT COURT

The caption of the case on appeal contains the names of all parties to the proceedings in the district court.

## TABLE OF CONTENTS

	<u>Page</u>
JURISDICTION OF THE APPELLATE COURT . . . . .	1
STATEMENT OF THE ISSUES PRESENTED FOR REVIEW . . . . .	1
Standard of Review . . . . .	2
STATUTES AND RULES WHOSE INTERPRETATION IS OF CENTRAL IMPORTANCE TO THE APPEAL . . . . .	2
STATEMENT OF THE CASE . . . . .	3
Nature of the Case . . . . .	3
Course of Proceedings . . . . .	3
STATEMENT OF FACTS . . . . .	3
SUMMARY OF ARGUMENT . . . . .	5
ARGUMENT . . . . .	6
I.    A Water Conservancy District Is Immune From Punitive Damages By Virtue Of The Utah Governmental Immunity Act . . . . .	6
II.   The District Established Its Right to Judgment On The Pleadings . . . . .	7
Introduction . . . . .	7
A.    The District Has No Obligation To Extend Its Waterworks To The Subdivision . . . . .	8
1.    The Petition For Annexation Acknowledged The Limitation Of The District's Annexation . . . . .	8
2.    The Language In The Annexation Order, Upon Which Turner Bases This Suit, Is Merely The District Court's Finding As Required By Statute . . . . .	9
B.    Turner Is Not Entitled To A Refund Of Property Taxes Paid . . . . .	10
1.    Turner No Longer Seeks Reimbursement Of Taxes Paid . . . . .	10

## TABLE OF AUTHORITIES

### Page

#### CASES

Blaine Hudson Printing v. Tax Commission, 870 P.2d 291 (Ut. Ct. App. 1994) . . . . .	11
Mountain America Credit Union v. McClellan, 854 P.2d 590 (Ut. Ct. App. 1993) . . . . .	2
Patterick v. Carbon Water Conservancy District, 106 Utah 55, 145 P.2d 503 (1944) . . . . .	6
Timpanagos Planning and Water Management Agency v. Central Utah Water Conservancy District, 690 P.2d 562 (Utah 1984) . . . . .	6
Yergensen v. Ford, 16 Utah 2d 397, 402 P.2d 696 (1965) . . . . .	13

#### STATUTES

Utah Code Ann. § 17A-2-1401 <u>et seq.</u> (1953) . . . . .	5,6
Utah Code Ann. § 17A-2-1407(7)(b) (1953) . . . . .	2,6
Utah Code Ann. § 17A-2-1423(3) (Supp. 1996) . . . . .	2,11
Utah Code Ann. § 17A-2-1437(3)(o)(ii) (Supp. 1996) . . . . .	2,9
Utah Code Ann. § 17A-2-1438 (1953) . . . . .	2,12
Utah Code Ann. § 63-30-2(3) and (7) (Supp. 1996) . . . . .	3,7
Utah Code Ann. § 63-30-22(1)(a) (1953) . . . . .	3,7
Utah Code Ann. § 78-2a-3(j) (1996) . . . . .	1
Utah Code Ann. § 78-12-22(1) (1996) . . . . .	12

#### RULES

Rule 33, Utah Rules of Appellate Procedure . . . . .	13
--	----

2.	Turner Has No Standing In This Action To Seek Refund Of Taxes . . . . .	11
3.	Turner Could Have De-Annexed His Property From The District . . . . .	12
C.	Turner's Claims Are Barred By The Statute Of Limitations . . . . .	12
	CONCLUSION . . . . .	13
	REQUEST FOR COSTS AND FEES ON APPEAL . . . . .	14

ADDENDUM:

- A. § 17A-2-1407 (7) (b)
- B. § 17A-2-1423 (3)
- C. § 17A-2-1437 (3) (o) (ii)
- D. § 17A-2-1438
- E. § 63-30-2 (3) and (7)
- F. § 63-30-22 (1) (a)

IN THE UTAH COURT OF APPEALS

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	:	
SALT LAKE COUNTY WATER	:	
CONSERVANCY DISTRICT, a Utah	:	
corporation and Special	:	
Service District,	:	
	:	
Defendant and Appellee.	:	

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JURISDICTION OF THE APPELLATE COURT

The Court of Appeals has jurisdiction pursuant to Utah Code Ann. § 78-2a-3(j) (1996). The appeal was transferred to the Court of Appeals from the Utah Supreme Court.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

The issues presented for review are these:

1. Is the Salt Lake County Water Conservancy District immune from the imposition of punitive damages by virtue of the Utah Governmental Immunity Act?
2. Does the 1973 Annexation Order affirmatively require the Salt Lake County Water Conservancy District to do anything beyond the annexation into the District of land owned by William Turner?



3. Does William Turner have a cognizable legal claim against the Salt Lake County Water Conservancy District for a refund of taxes paid by him to Salt Lake County?

Standard of Review

In deciding this appeal from judgment on the pleadings, the Court of Appeals must accept the allegations of the District's answer as true and consider them, and all reasonable inferences drawn from them, in a light most favorable to Turner. Mountain America Credit Union v. McClellan, 854 P.2d 590, 591 (Ut. Ct. App. 1993). This Court has stated: "We affirm a judgment on the pleadings only if, as a matter of law, the nonmoving party . . . could not prevail under the facts alleged." Id. The trial court's decision is given no deference and is reviewed for correctness. Id. Additionally, even if the trial court has based its decision on specific grounds, this Court "may affirm the trial court's determination on any proper ground, notwithstanding the trial court's having based its ruling on another reason." Id. at 592.

STATUTES AND RULES WHOSE INTERPRETATION IS OF  
CENTRAL IMPORTANCE TO THE APPEAL

Application of the following statutes will assist in the determination of this appeal:

§ 17A-2-1407(7)(b)	. . . . .	See Addendum A
§ 17A-2-1423(3)	. . . . .	See Addendum B
§ 17A-2-1437(3)(o)(ii)	. . . . .	See Addendum C
§ 17A-2-1438	. . . . .	See Addendum D

§ 63-30-2(3) and (7) . . . . . See Addendum E

§ 63-30-22(1)(a) . . . . . See Addendum F

### STATEMENT OF THE CASE

#### Nature of the Case

This is an action by a landowner to compel a water conservancy district to construct a water delivery system or, in the alternative, to refund taxes paid by him to Salt Lake County.

#### Course of Proceedings

Turner filed his complaint on September 5, 1995. R.1. An answer was filed by the District on October 17, 1995. R.13-22.

The District filed a motion for judgment on the pleadings. R.30-31. A hearing was held by the district court, the Honorable Leslie A. Lewis presiding, on May 15, 1996. R.90. The court issued an order dismissing Turner's complaint on May 29, 1996. R.95-96.

Turner filed a notice of appeal on June 20, 1996. R.97. The case subsequently was poured-over to the Court of Appeals. R.107.

### STATEMENT OF FACTS

1. Plaintiff William Turner owns real property in a Salt Lake County subdivision known as Hi-Country Estates. The subdivision is located in the extreme southwest corner of the County. R.1.

2. In the Fall of 1972, the landowners within the subdivision petitioned defendant Salt Lake County Water Conservancy District to annex their lands into the boundaries of the District. R.21-22, 70, 76-79, 119.

3. The landowners' annexation petitions contained the following language:

[P]etitioners recognize and acknowledge that by annexing to the District, the District has made no commitment and under its present rules and regulations probably will not make any commitment to expend District funds to extend its pipeline system and appurtenant facilities from their present location as necessary to render water service to these petitioners.

Petitioners' land is some distance from the District's existing facilities and is at such an elevation that water from the District's facilities will not flow to petitioners' land by gravity. Petitioners acknowledge that they have been advised by the District that its policy requires subdividers to pay the capital cost of extending the District's system and that such capital cost generally is not reimbursable. The benefit that petitioners will receive from being annexed to the District is that there will be an adequate water supply which will serve the needs of the lands to be annexed, after the facilities for delivering the water have been installed, and it is the benefit of having the water supply, which the petitioners seek through annexation.

4. The annexation was completed in April 1973 before the Third Judicial District Court for Salt Lake County. The Court's Order approving the annexation contained the following language: "IT IS FURTHER ORDERED that all of said lands will be benefitted from inclusion in the District . . . . " R.2, 7-8.

5. Turner purchased his property in the subdivision after the completion of the annexation.

6. In the years following the annexation and in the orderly management of its operations, the District has enlarged its water transmission system, but no pipeline has reached the subdivision. R.20.

7. Turner filed this action in 1995 for himself and on behalf of a class of people who owned lots in the subdivision.

R.1. He seeks:

(a) An order compelling the District to construct waterworks facilities and extend them to the subdivision;

(b) Punitive damages from the District for not earlier extending water service to the subdivision; and,

(c) A refund of property taxes he paid to Salt Lake County for the benefit of the District.

8. Turner did not pay his property taxes under protest. He has not pursued any administrative remedies for a refund of his taxes. R.19.

9. The District is a water conservancy district organized and existing under the Utah Water Conservancy Act, codified at Utah Code Ann. §§ 17A-2-1401 et seq. (1953).

10. Turner concedes the District " . . . is a quasi governmental body, a creature of the legislature . . . . " R.2.

#### SUMMARY OF ARGUMENT

Turner seeks punitive damages. The District is a political subdivision of the State of Utah, however, and as such it is granted immunity from punitive damages by the Utah Governmental Immunity Act.

The 1973 Annexation Order does not obligate the District to extend its water delivery system to Turner's property. Turner has no standing to pursue a refund of property taxes, because he failed to exhaust administrative remedies, and in any event, his claim is

time-barred and brought against the wrong party. If truly dissatisfied, Turner could have requested the District to de-annex his property.

Turner's claims on appeal are utterly without merit, so much so that the Court should award the District its costs and fees spent in defending against the appeal.

#### ARGUMENT

##### I. A Water Conservancy District Is Immune From Punitive Damages By Virtue Of The Utah Governmental Immunity Act.

The District is a water conservancy district which was organized and operates under the Utah Water Conservancy Act (Utah Code Ann. §§ 17A-2-1401 et seq. (Supp. 1996)). As such, the District specifically is described by the Act as " . . . a political subdivision of the State of Utah and a body corporate with all the powers of a public or municipal corporation." See Utah Code Ann. § 17A-2-1407(7)(b)(1953). The Utah Supreme Court has reached the same conclusion. See Patterick v. Carbon Water Conservancy District, 106 Utah 55, 145 P.2d 503, 511, 512 (1944) ("The water district . . . is an agency of the state . . . . A water conservancy district is an arm of the government . . . ."); Timpanagos Planning and Water Management Agency v. Central Utah Water Conservancy District, 690 P.2d 562 (Utah 1984) (where, to resolve a separation of powers issue, the Court considered a water conservancy district to be part of the executive branch of Utah state government).

The Utah Governmental Immunity Act specifically provides that "No judgment may be rendered against the governmental entity for exemplary or punitive damages." See Utah Code Ann. § 63-30-22(1)(a) (1953). A "governmental entity" is equated by the Act to a "political subdivision," which in turn is defined as:

. . . any county, city, town, school district, public transit district, redevelopment agency, special improvement or taxing district, or other governmental subdivision or public corporation.

See Utah Code Ann. § 63-30-2(3) and (7) (Supp. 1996).

The District is a governmental entity. The Utah Governmental Immunity Act grants it immunity from punitive damages. Turner has no claim against it.

## II. The District Established Its Right To Judgment On The Pleadings.

### Introduction

More than twenty years ago, landowners in the Hi-Country Estates subdivision petitioned the Salt Lake County Water Conservancy District to annex their lands into the District. Their petition was granted. A portion of the 1973 Annexation Order reads: "IT IS FURTHER ORDERED that all of said lands will be benefitted from inclusion in the District." Turner's entire case rests on his allegation that, by virtue only of the language of the Order quoted above, the District became obligated to construct a water supply system, extend it to his property and deliver water to him, and failing that, to refund the property taxes he paid to Salt Lake County.

Turner completely ignores the more explicit terms of the petition for annexation and the fundamental nature of any annexation proceeding. Furthermore, he has waived his right to seek reimbursement of previously paid taxes, and he lacks standing to litigate any tax issues for failure to exhaust available administrative remedies.

A. The District Has No Obligation To Extend Its Waterworks To The Subdivision.

1. The Petition For Annexation Acknowledged The Limitation Of The District's Annexation.

Turner now knows the District was under no obligation to do what he alleges. In the District's answer to the complaint (R.21-22, Fifteenth Defense), the relevant language of the annexation petition for Hi-Country Estates is quoted:

[P]etitioners recognize and acknowledge that by annexing to the District, the District has made no commitment and under its present rules and regulations probably will not make any commitment to expend District funds to extend its pipeline system and appurtenant facilities from their present location as necessary to render water service to these petitioners.

Petitioners' land is some distance from the District's existing facilities and is at such an elevation that water from the District's facilities will not flow to petitioners' land by gravity. Petitioners acknowledge that they have been advised by the District that its policy requires subdividers to pay the capital cost of extending the District's system and that such capital cost generally is not reimbursable. The benefit that petitioners will receive from being annexed to the District is that there will be an adequate water supply which will serve the needs of the lands to be annexed, after the facilities for delivering the water have been installed, and it is the benefit of

having the water supply, which the petitioners seek through annexation.

The court order annexing the subdivision property into the District was premised on the language of the petition. It acknowledged that the District

. . . has made no commitment and under its present rules and regulations probably will not make any commitment to expend District funds to extend its pipeline system, . . . .

and it also acknowledged the landowners had been

. . . advised by the District that its policy requires subdividers to pay the capital cost of extending the District's system and that such capital cost generally is not reimbursable.

Turner's allegation more than 23 years later, that "the Defendant District has failed these many years to deliver water to the land owners in the subdivision as contemplated by the Court Order" (Complaint, ¶6, R.2.), is disingenuous.

2. The Language In The Annexation Order, Upon Which Turner Bases This Suit, Is Merely The District Court's Finding As Required By Statute.

There is no court order requiring the District to construct a water delivery system to Turner's property. The 1973 Annexation Order simply granted the landowners' petition for annexation into the District. In accordance with the provisions of the Utah Water Conservancy Act, the district court in approving the annexation was required to "find that the property described in the petition will, if included, be benefitted by the accomplishment of the purposes for which the original district was formed." Utah Code Ann. § 17A-2-1437(3)(o)(ii) (Supp. 1996). The district court



made the requisite finding: "said lands will be benefitted from inclusion in the District." If Turner's tortured interpretation were true, every annexation of property into the District would carry with it an affirmative obligation to construct a water delivery system to and through the newly annexed property, since in every instance the court must find "the property . . . will, if included, be benefitted." There simply is no way the 1973 Order can be read to require the District to construct a water system to Turner's property.

B. Turner Is Not Entitled To A Refund Of Property Taxes Paid.

1. Turner No Longer Seeks Reimbursement Of Taxes Paid.

Turner has abandoned his claim for reimbursement of taxes. During the hearing before the trial court on the District's motion for judgment on the pleadings, the following conversation took place between the trial judge and Turner's counsel:

THE COURT: Counsel, I'm concerned that this request for tax abatement or tax reimbursement, however you want to categorize it, is not properly before me . . . .

MR SINE: . . . What we really want -- We really don't want the funds back, Your Honor. What we want is a water system. We want them to come in and do the water system as they're supposed to have done, and as this court ordered them to do, to benefit the subdivision.

THE COURT: All right, I understand your position.

R.127-128.

2. Turner Has No Standing In This Action To Seek Refund of Taxes.

The portion of Turner's real property taxes paid for the benefit of the District are levied and collected by Salt Lake County. See Utah Code Ann. § 17A-2-1423(3) (Supp. 1996). Turner admits that Salt Lake County is the taxing authority. Brief of Appellant, p. 22.

This Court recently has held there are only two remedies available for challenging a tax imposed by the County, and both are initially administrative.

First, Utah Code Ann. §§ 59-2-1004, -1005 (1992) provide that the taxpayer can file an administrative appeal with the County Board of Equalization. Second, Utah Code Ann. § 59-1-301 (1992) authorizes the taxpayer to pay under protest and seek to recover the tax paid in an action brought in district court. In either case, the county is on notice that the assessment and tax are being challenged and, in both cases, the taxpayer has an explicit right to appeal an unfavorable decision. In the case of the Board of Equalization, an appeal lies with the Tax Commission, see Utah Code Ann. § 59-2-1006(1) (1992), with judicial review then available. See Utah Code Ann. § 78-2-2(3)(e)(ii) (Supp. 1993). As to refund actions brought in district court, an appeal may be filed in the Supreme Court. See id. § 78-2-2(3)(j).

Blaine Hudson Printing v. Tax Commission, 870 P.2d 291, 293 (Ut. Ct. App. 1994).

Turner neither appealed administratively to the Board of Equalization nor did he pay the taxes under protest and then bring an action to recover them. This Court's observation in Blaine Hudson Printing is directly applicable here:

Where, as in the present case, the taxpayer pays without fuss and later claims the tax was excessive and that a refund should be forthcoming, Utah law is not so accommodating.

Id. Turner's failure to exhaust his administrative remedies left him without standing to assert his challenge of the taxes he had paid, and it denied the district court of subject matter jurisdiction of the issue. Moreover, Turner utterly forgets that Salt Lake County is the taxing authority, not the District. He has no claim against the District and he failed to name Salt Lake County as a defendant. His claim for a tax refund is without foundation.

3. Turner Could Have De-Annexed His Property From The District.

If, as Turner claims, he truly was dissatisfied with the District over the past twenty years, he could have removed his property from the District boundaries. His remedy was to petition the District for exclusion. See Utah Code Ann. § 17A-2-1438 (1953). Had he done so, his obligation to pay taxes would have ceased. Turner elected to do nothing, however, and should not be heard now to complain.

C. Turner's Claims Are Barred By The Statute Of Limitations.

Turner waited more than 22 years to bring this action to seek enforcement of the 1973 Annexation Order. The statute of limitations for an action on "a judgment or decree of any court . . . of any state" must be brought within eight years of the judgment or decree. Utah Code Ann. § 78-12-22(1) (1996). Turner's

claims are barred by his failure to pursue enforcement of the trial court's order for more than two decades.

This is not a situation in which the statute of limitations was tolled until discovery. According to the allegations and legal argument consistently made by Turner in the trial court and in his appellate brief, the Order, when entered in 1973, clearly required the District to construct a water delivery system to his property. Thus, by his own argument, Turner knew at that time what was ordered of the District and he should have filed his claim within the eight-year limitation period.

Turner's argument that he knew of the District's obligation but gave the District a "reasonable time" to comply before bringing the action, is without merit. The circumstances alleged by Turner are no different than those in actions to collect on judgments. If the party in whose favor the judgment was entered fails to act either to collect on the judgment or to renew it within the eight-year limitations period, that party is precluded from acting on the judgment thereafter. See Yergensen v. Ford, 16 Utah 2d 397, 402 P.2d 696 (1965).

#### CONCLUSION

Turner's claim for punitive damages is barred by the Utah Governmental Immunity Act. The District was not obligated by the annexation proceeding to extend its water transmission system to his property. And, his claim for a tax refund is stale, not brought against the correct party, and is barred for his failure to pursue available administrative remedies.

Turner has no claim against the District. The trial court's order should be affirmed.

REQUEST FOR COSTS AND FEES ON APPEAL

The District is entitled to its costs and attorney's fees incurred on appeal. Rule 33 of the Utah Rules of Appellate Procedure allows the Court to award the District its costs and/or fees if the Court finds this appeal to be frivolous, i.e., "one that is not grounded in fact, not warranted by existing law, or not based on a good faith argument to extend, modify or reverse existing law." Rule 33(b). The District moves the Court to find Turner's appeal to be frivolous.


The appeal is not grounded in fact. The language of the annexation petition -- despite its having been quoted in the District's answer to the complaint (R.21-22), highlighted in the District's reply memorandum in support of its motion for judgment on the pleadings (R.70-71, 76-79), and mentioned in oral argument before the trial court (R.120-121) -- remains undisputed by Turner. The petition's unambiguous language makes it impossible for Turner, on appeal, to make a good faith argument that the 1973 Annexation Order assumes a requirement on the District's part to construct the water delivery system for Turner.

The appeal is not warranted by existing law. His claim for punitive damages is barred by the Utah Governmental Immunity Act. And, Turner has chosen the wrong forum. His claim for a refund of taxes paid to Salt Lake County first must be presented to the County and denied administratively before he has recourse to the

courts. Finally, his claims clearly are barred by the expiration of limitations.

The Court should award the District its attorney's fees and costs incurred in defending this appeal.

Dated: February 10, 1997

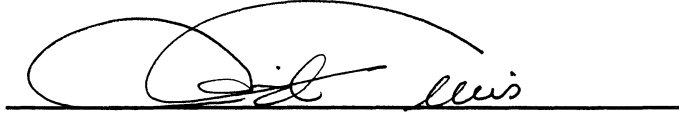
  
Reid E. Lewis

Attorney for Defendant-Appellee  
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Conservancy District

CERTIFICATE OF SERVICE

I certify that on February 10, 1997, two copies of the  
Brief of Appellee were mailed to the following:

Wesley F. Sine  
Beneficial Life Tower, 12th Floor  
36 South State Street  
Salt Lake City, UT 84111

A handwritten signature in cursive script, appearing to read "Wesley F. Sine", is written over a horizontal line.

**17A-2-1407. Protest petition — Objections — Hearing —  
Decree establishing district — Meetings — Dis-  
missal of petition or proceedings — Finality and  
conclusiveness of order — Appeal.**

(1) At any time after the filing of a petition for the organization of a conservancy district, and not less than 30 days prior to the time fixed by the order of the court for the hearing upon the petition, a petition protesting the creation of the district may be filed in the office of the clerk of the court where the proceeding for the creation of the district is pending. The petition must be



signed by not fewer than 20% of the owners of the lands in the proposed district outside the limits of any incorporated city or town, who have not signed the petition for creating the district. The aggregate taxable value of their lands, together with improvements, shall equal at least 20% of the total taxable value of land in the proposed district situated outside the limits of incorporated cities and towns. The protesting petition must also be signed by not fewer than 20% of owners of lands within the limits of each incorporated city and town situated in the proposed district who have not signed the petition for creating the district. The aggregate taxable value of their lands, together with improvements, shall equal at least 20% of the total taxable value of land within the limits of each incorporated city and town in the proposed district. The signers of the protesting petition shall state in the petition:

(a) a description of the land owned by each signer; and

(b) the land's value as shown by the last preceding assessment.

(2) If a proposed water conservancy district will consist of more than one county, the lands within a county shall be eliminated from the petition for organization of the district if a protesting petition is filed, signed by the percentage of owners of land specified in Subsection (1) of the requisite taxable value located in the protesting county.

(3) If a petitioner signs the petition as an owner of land situated both inside and outside a municipality, his name shall be counted only as an owner of land situated outside a municipality.

(4) After the protesting petition is filed, the clerk of the court shall make as many certified copies of the petition, including the signatures, as there are counties in which any part of the proposed district extends, and shall send a certified copy to the county treasurer of each of the counties. Prior to the hearing date each county treasurer shall determine from the tax rolls of his county, and certify to the district court under his official seal, the total valuation of the tracts of land listed in the protest, situated in the proposed district within his county. On the hearing date of the original petition, if it appears to the court from the certificate and evidence that the protesting petition is not signed by the requisite number of owners of land and of the requisite value as set forth in Subsection (1), the court shall:

(a) dismiss the protesting petition; and

(b) proceed with the original hearing as provided in this section.

(5) If the court finds that the protesting petition is signed by the requisite number of owners of lands, and of the requisite values, the court shall dismiss the original petition for the creation of the district. The finding and order of the court on the issues regarding total valuation, the genuineness of the signatures, and all matters of law and fact incident to the determination shall be final and conclusive on all parties in interest whether appearing or not, unless within 30 days from entry of the order of dismissal an appeal is taken to the Supreme Court as provided in this section.

(6) (a) If any owner of real property in the proposed district did not individually sign a petition for the organization of a conservancy district, and objects to the organization and incorporation of the district, he may file an objection to the organization and incorporation of the district on or before the date set for the hearing.

(b) The objection is limited to a denial of the statements in the petition and shall be heard by the court as an advanced case without unnecessary delay.

- (7) (a) The court shall, by order, adjudicate all questions of jurisdiction, declare the district organized, and give it a corporate name, if it appears at the hearing that:
- (i) a petition for the organization of a water conservancy district has been signed and presented pursuant to this part;
  - (ii) the allegations of the petition are true; and
  - (iii) no protesting petition has been filed, or if filed has been dismissed as provided in this section.
- (b) The district shall be a political subdivision of the state of Utah and a body corporate with all the powers of a public or municipal corporation.
- (8) (a) In the decree establishing the district, the court shall designate the place where the office or principal place of the district shall be located, which shall be within the corporate limits of the district, and may be changed by order of the court from time to time.
- (b) The official records and files of the district shall be kept in the district office.
- (c) The regular meetings of the board shall be held at the office or place of business, but may be held at another convenient place. If a change in meeting place is proposed and the time and place agreed upon by a majority of directors at a regular meeting of the board held at the district's office or principal place of business, no other public notice of the changed meeting is required. If, however, a change in the meeting place of the board is set at a place other than the district office or principal place of business, and the time and place are not fixed in a prior meeting of the board at its office or principal place of business during a regular meeting of the board, notice of the time and place of the meeting shall be given by:
- (i) posting notice at the district's office or principal place of business at least three days before the meeting; and
  - (ii) by publication of a notice of the time and place of the meeting in one issue of a newspaper with general circulation within the district at least three days before the meeting.
- (9) The court shall dismiss the proceedings and adjudge the costs against the signers of the petition proportionately and equitably if it finds that:
- (a) the petition has not been signed and presented pursuant to this part; or
  - (b) the material facts are not as set forth in the petition.
- (10) An appeal to the Supreme Court from the order of dismissal may be taken as provided in this section. Nothing in this part shall be construed to prevent the filing of a subsequent petition for similar improvements or water conservancy districts, and the right to renew the proceedings is expressly granted.
- (11) If an order is entered establishing the district, the order is final and shall conclusively establish the regular organization of the district against all persons, unless an appeal is taken to the Supreme Court as provided in this section or quo warranto proceedings attacking the order are instituted on behalf of the state by the attorney general within three months of the order. The organization of the district shall not be directly nor collaterally questioned in any suit, action, or proceeding except as expressly authorized in this part.
- (12) Any petitioner, protestant, or objector may appeal to the Supreme Court from the order of the district court entered pursuant to this section.

Those appeals shall be taken within 30 days from the entry of the order in accordance with the Utah Rules of Civil Procedure.

**17A-2-1423. Levy and collection of taxes under class A —  
Rate of levy.**

(1) To levy and collect taxes under class A as provided in this part, the board shall annually:

(a) determine the amount of money necessary to be raised by taxation, taking into consideration other sources of revenue of the district; and

(b) fix a rate of levy which when levied upon every dollar of taxable value of property within the district, and with other revenues, will raise the amount required by the district to supply funds for:

(i) expenses of organization;

(ii) surveys and plans;

(iii) the cost of construction; and

(iv) operating and maintaining the works of the district.

(2) The rate of levy shall not exceed .0001 per dollar of taxable value of taxable property within the district, prior to the commencement of construction of the works, and thereafter shall not exceed .0002 per dollar of taxable value of taxable property within the district except:

(a) in districts to be served by water apportioned by the Colorado River Compact to the Lower Basin, the levy after commencement of construction of the works may be increased to a maximum of .001 per dollar of taxable value of taxable property within the district;

(b) in districts to be served under a contract, a water appropriation, a water allotment, or otherwise by water apportioned by the Colorado River Compact to the Upper Basin, the levy after commencement of construction of the works may be increased to a maximum of .0004 per dollar of taxable value of taxable property within the district; and

(c) in the event of accruing defaults or deficiencies an additional levy may be made in any district as provided in Section 17A-2-1427.

(3) The board shall, before June 22 of each year, certify to the county legislative body of each county within the district or having a portion of its territory within the district, the rate fixed with directions that at the time and in the manner required by law for levying of taxes for county purposes, the county legislative body shall levy the tax upon the taxable value of all property within the district, in addition to any other taxes as may be levied by the county legislative body at the rate so fixed and determined.

**17A-2-1437. Change of boundaries — Petitions for inclusion within district — Hearing — Petition protesting inclusion — Hearing — Appeal — Annexation — Hearing — Objections — Order of inclusion — Findings and decrees — Appeal.**

(1) The boundaries of any district organized under this part may be changed as provided by this section, but the change of boundaries of the district shall not impair or affect:

- (a) its organization;
- (b) its rights in or to property;
- (c) any of its other rights or privileges; or
- (d) any contract, obligation, lien, or charge for or upon which it might be liable or chargeable had the change of boundaries not been made.

(2) (a) (i) The owners of lands which are either contiguous or noncontiguous to the district and to each other may file a written petition with the board requesting that their lands be included in the district. The petition shall contain:

(A) a description of the tracts or body of land sought to be included; and

(B) the signatures, acknowledged in the same form as conveyances of real estate, of the owners of the lands.

(ii) A petition filed in this form will be considered to give assent of the petitioners to the inclusion within the district of the lands described in the petition.

(b) The board shall, within 90 days after the filing of the petition, set and convene a hearing to consider the petition and all objections.

(c) The secretary of the board shall cause notice of the filing of the petition to be given and published in the county in which the lands are situated. This notice shall state:

(i) the names of petitioners;

(ii) a description of lands mentioned;

(iii) the request of the petitioners; and

(iv) that all persons interested must appear at the office of the board at the time named in the notice and state in writing why the petition should not be granted.

(d) The board shall at the appropriate time, proceed to hear the petition and review the written objections to the petition. The failure of any person to show cause, in writing, shall be considered to be his assent to the inclusion of these lands within the district.

(e) If any of the lands proposed for inclusion in the district are located within a municipality, the petitioners shall, before the date of the hearing set by the board, obtain from the municipality's governing body its written consent to the inclusion of the land located within the municipality.

(f) (i) If any of the lands proposed for inclusion in the district are located within a municipality's proposed municipal expansion area established by the municipality's annexation policy declaration adopted under Title 10, Chapter 2, Part 4, Extension of Corporate Limits — Local Boundary Commissions, the petitioners shall, before the date of the hearing set by the board, obtain from that municipality's governing body its written consent to the inclusion of the land located within the area proposed for municipal expansion.

(ii) Subsection (2)(f)(i) does not apply if the land proposed for inclusion in the district is located within the proposed municipal expansion area of more than one municipality in a county of the first class.

(g) If any of the lands proposed for inclusion in the district are located within a county not previously containing any part of the district, the petitioners shall, before the date of the hearing set by the board, obtain from the county's legislative body its written consent to the inclusion of the land located within that county.

(h) If any of the lands proposed for inclusion in the district are located within the unincorporated portion of a county, the petitioners shall, before the date of the hearing set by the board, obtain from the county's legislative body its written consent to the inclusion of that land.

(i) If the petition is granted, the board shall make an order to that effect and file the petition with the clerk of the court and upon order of the court the lands shall be included in the district.

(3) (a) In addition to the method provided in Subsection (2), additional areas may be included in a district by petition as described in this subsection. A written petition may be filed to include:

(i) irrigated lands;

(ii) nonirrigated lands;

(iii) land in towns and cities;

(iv) other lands; or

(v) any combination of lands under this subsection. These lands may be contiguous or noncontiguous to the district and to each other.

(b) The petition must:

(i) be filed in the district court of the county in which the petition for organization of the original district was filed;

(ii) include the signatures, acknowledged in the same form as conveyances of real estate, of not fewer than 20% or 500, whichever is the lesser, of the owners of irrigated lands in the area, but outside the corporate limits of a city or town;

(iii) include the signatures, acknowledged in the same form as conveyances of real estate, of not fewer than 5% or 100, whichever is the lesser, of the owners of nonirrigated lands and lands within the incorporated limits of a city or town, which are within the area specified in the petition;

(iv) list a description of each tract of land owned by the signer opposite the name of the signer, with an indication that each tract, together with its improvements, has a taxable value of not less than \$300; and

(v) set forth:

- (A) a general description of the territory in the area sought to be included in the district;
- (B) the name of the district in which it is sought to be included;
- (C) the terms and conditions upon which inclusion is sought;
- (D) a statement that the property sought to be included will be benefited by the accomplishment of the purposes for which the original district was formed; and
- (E) a request for inclusion of the area in the district.

(c) No petition with the requisite signatures shall be declared null and void because of alleged defects, but the court may permit the petition to be amended to conform to the facts by correcting any errors. However, similar petitions or duplicate copies of the petition for the inclusion of the same area may be filed and shall together be regarded as one petition. All petitions filed prior to the hearing on the first petition shall be considered by the court the same as though filed with the first petition. In determining whether the requisite number of landowners has signed the petition, the names as they appear upon the tax roll shall be prima facie evidence of their ownership.

(d) At the time of filing the petition or at any time before, and prior to the time of hearing on the petition, a bond shall be filed, with security approved by the court sufficient to pay all expenses connected with the proceedings in the case. If at any time during the proceeding the court determines that the first bond is insufficient, the court may require that an additional bond be obtained within ten days following the court's request. If the petitioner fails to obtain a bond, the petition shall be dismissed.

(e) Immediately after the filing of the petition, the district court of the county where the petition is filed shall fix a place and time between 60 and 90 days after the petition is filed for a hearing. The clerk of the court shall then publish notice of the pendency of the petition and of the time and place of hearing. The clerk of the court shall also mail a copy of the notice by registered mail to:

- (i) the board of directors of the district;
- (ii) the county legislative body of each of the counties with land within the area proposed to be included in the district; and
- (iii) the governing body of each of the cities or towns having territory within the area proposed to be included within the district.

(f) If any of the lands proposed for inclusion in the district are located within a municipality, the petitioners shall, before the date of the hearing set by the district court, obtain from the municipality's governing body its written consent to the inclusion of the land located within the municipality.

(g) (i) If any of the lands proposed for inclusion in the district are located within a municipality's proposed municipal expansion area established by the municipality's annexation policy declaration adopted under Title 10, Chapter 2, Part 4. Extension of Corporate Limits — Local Boundary Commissions, the petitioners shall, before the date of the hearing set by the board, obtain from that municipality's governing body its written consent to the inclusion of the land located within the area proposed for municipal expansion.

(ii) Subsection (3)(g)(i) does not apply if the land proposed for inclusion in the district is located within the proposed municipal expansion area of more than one municipality in a county of the first class.

(h) If any of the lands proposed for inclusion in the district are located within a county not previously containing any part of the district, the petitioners shall, before the date of the hearing set by the district court, obtain from the county's legislative body its written consent to the inclusion of the land located within that county.

(i) If any of the lands proposed for inclusion in the district are located within the unincorporated portion of a county, the petitioners shall, before the date of the hearing set by the district court, obtain from the county's legislative body its written consent to the inclusion of that land.

(j) After the filing of a petition for inclusion of an additional area and at least 30 days prior to the time fixed by the court for the hearing on the petition, a petition protesting the inclusion of the lands within the district may be filed in the clerk's office of the court where the proceeding for inclusion is pending. The protest petition must contain:

(i) the signatures, acknowledged in the same form as conveyances of real estate, of at least:

(A) 35% of the owners of irrigated lands in the area sought to be included, but not within the incorporated limits of a city or town; and

(B) 20% of the owners of nonirrigated lands and lands within the incorporated limits of a city or town within the area proposed to be included within the district; and

(ii) a description of each tract of land opposite the name of the signer, with an indication that each tract, together with its improvements, has an assessed value of at least \$300.

(k) A landowner may protest if he:

(i) did not sign the petition for inclusion; and

(ii) owns land, including improvements thereon, which had a taxable value of at least \$300 as shown by the last preceding assessment.

(l) If a petitioner signs the petition both as owner of irrigated and nonirrigated land, his name counts only as an owner of irrigated lands.

(m) On the day set for the hearing on the original petition, if it appears to the court that the protesting petition does not meet the requirements of Subsection (3)(j), the court shall dismiss the protesting petition and proceed with the original hearing as provided in this section. If the court finds from the evidence that the protesting petition does qualify, the court shall dismiss the original petition for inclusion. The finding of the court upon the question of valuation, the genuineness of the signatures, and all matters of law and fact incident to this determination shall be final and conclusive on all parties in interest whether appearing or not, unless within 30 days from entry of the order of dismissal an appeal is taken to the Supreme Court.

(n) (i) Any owner of real property in the proposed area who did not individually sign a petition for the inclusion, but who desires to object to the inclusion, may, on or before ten days prior to the date set for the cause to be heard, file an objection to the inclusion. This objection shall be heard by the court as an advanced case without unnecessary delay.

(ii) An owner of irrigated lands may file a petition asking to have his irrigated lands excluded from the inclusion pursuant to the requirements of Subsection (3)(n)(i). This petition shall be heard by the district court on the date set for the hearing of the petition for



inclusion of the area and the district court shall exclude these irrigated lands from the area proposed for inclusion within the district.

(o) If it appears at the hearing that a petition for the inclusion has been signed and presented as provided in Subsections (a) and (b), that each written consent required by Subsections (3)(f), (g), (h), and (i) has been obtained, that the allegations of the petition are true, and that no protesting petition has been filed, or if filed has been dismissed as provided in Subsection (3)(m), the court shall:

- (i) adjudicate all questions of jurisdiction;
- (ii) find that the property described in the petition will, if included, be benefited by the accomplishment of the purposes for which the original district was formed;
- (iii) declare the area included in the district;
- (iv) declare whether the area is annexed to an existing division, or constitutes a separate division; and
- (v) declare whether the area can be properly represented by existing directors or whether the number of directors shall be increased to provide for representation of the area annexed. However, prior to the entry of its decree including such area within the district, the court shall obtain the verified consent of the board of directors of the district to the inclusion of such area.

(p) If the court finds that the petition for inclusion has not been signed and presented pursuant to this section, that any written consent required by Subsections (3)(f), (g), (h), and (i) has not been obtained, or that the material facts are not as set forth in the petition filed, it shall dismiss the proceedings and adjudge the costs against the signers of the petition in such proportion as it considers just and equitable. An appeal to the Supreme Court shall lie from an order dismissing the proceeding. Nothing in this part shall be construed to prevent the filing of a subsequent petition or petitions for similar purposes, and the right to renew such proceeding is expressly granted.

(4) (a) If lands are annexed into a public corporation which corporation is already part of the district described in this part and these annexed lands are not located within the district's boundaries, the board may make a finding that these lands are not part of the district, and that these lands are or may be benefited from the service provided by the district. Upon making this finding, the board shall set a time and place for a public hearing to hear objections as to why these lands should not be annexed and included within the district. The secretary of the board shall cause notice of the time and place of the hearing to consider the inclusion of the lands within the district to be given and published in the county in which the lands are situated. The notice shall:

- (i) state a general description of the lands;
- (ii) state that the lands are being considered for inclusion within the district; and
- (iii) give notice to all interested persons to appear at the time and place named in the notice and show cause, in writing, as to why the lands should not be included within the district. The secretary shall mail a copy of the notice by registered mail to the governing body of the public corporation and to the landowners.

(b) Before the date set for the hearing, the board shall obtain the written consent of the public corporation's governing body to the inclusion of the lands into the district.

(c) The board shall, at the time and place named in the notice or at any time at which the hearing may be adjourned, proceed to hear all objections to the inclusion of the lands within the district. The failure of any interested person to appear or show cause, in writing, shall be taken as an assent on his part to the inclusion of the lands within the district. If, after hearing all objections to the inclusion of the land within the district, the board has obtained the consent of the public corporation's governing body as required in Subsection (4) (b) and determines that the lands will be benefited by inclusion within the district, the board shall make an order to that effect. Upon filing the order with the clerk of the court and upon order of the court, the lands shall be included in the district.

(d) A finding by the board that the lands will not be benefited by inclusion within the district shall not preclude the board at any subsequent date from finding that changed conditions or circumstances now benefit the lands. After making this finding the board may renew the proceedings for inclusion of these lands in whole or in part and find that the lands will be benefited by inclusion in the district and make an order to that effect. Upon filing the order with the clerk of the court and upon order of the court, the lands shall be included in the district.

(e) If the board finds that any portion of land to be annexed into the district is presently receiving water from another public water system, the board shall exclude that portion of land from the land to be annexed into the district.

(5) Upon the entry of the decree, the clerk of the court shall transmit to the Division of Corporations and Commercial Code and the county recorder in each of the counties having lands in the area, copies of the findings and decrees of the court. The findings and decrees shall be filed with the Division of Corporations and Commercial Code pursuant to the general laws concerning corporations. Copies shall also be filed in the office of the county recorder in each county in which the district is located where they will become permanent records. The recorder in each county shall receive the fee designated by the county legislative body for filing and preservation. The Office of the Lieutenant Governor shall receive fees as may be provided by law for like services in similar cases.

(6) If an order is entered establishing the inclusion of the area into the district, such order shall be final unless within 30 days an appeal is taken to the Supreme Court. The entry of a final order shall conclusively establish the inclusion of the area against all persons, except that the state may attack the order in an action in the nature of a writ of quo warranto, commenced by the attorney general within three months after the decree declaring the area included. The inclusion of the area shall not be directly or collaterally questioned in any suit, action, or proceeding, except as expressly authorized.

(7) Any area included in a district pursuant to this part shall be subject to taxes and assessments levied for the payment of indebtedness of the district which was outstanding at the time of the entry of the order for inclusion, and for the payment of indebtedness thereafter incurred as if the area were a part of the district as originally established.

(8) The boundaries of any subdistrict may be changed in the manner provided in this part for the change of the boundaries of districts.

**17A-2-1438. Procedures to petition a board to exclude land from a district.**

(1) The owner or owners in fee of any lands constituting a portion of the district may file with the board a petition requesting that all or a specified portion of their lands be excluded from the district.

(2) The governing body of any city, town, or county that has within its boundaries land located within the boundaries of a district may adopt a resolution to petition the board to exclude from the district all or a specified portion of the land within the city, town, or county. The petition shall be filed with the board only if:

(a) a written request to petition the board to exclude land from the district has been filed with the governing body of the city, town, or county, and the request has been signed by not less than 5% of the qualified electors residing within the boundaries of the land proposed for exclusion; or

(b) a referendum on the filing of the petition by the city, town, or county has been conducted at a general or special election among residents of the land proposed for exclusion and the referendum has been approved by a majority of the qualified electors voting at the election.

(3) (a) (i) Notice of an election pursuant to Subsection (2)(b) shall be given by publication at least once a week for three consecutive weeks in a newspaper of general circulation in the county in which the land proposed for exclusion is located. The final notice shall be published not less than five and not more than 15 days before the election.

(ii) The election notice shall state the purpose, date, and place of election and the hours during which the polls shall remain open.

(b) The election shall be conducted and the returns canvassed in the manner provided by law for the conduct of elections under the provisions of Chapter 14, Title 11, Utah Municipal Bond Act.

(c) For purposes of this election, the land proposed for exclusion may be treated as a single precinct or divided into precincts, and special polling places may be fixed within the boundaries of the land.

(d) If a majority of the qualified electors voting on the proposed petition vote in favor of the petition, the result shall be certified by the governing body of the city, town, or county to the board.

## **63-30-2. Definitions.**

As used in this chapter:

(1) "Claim" means any claim or cause of action for money or damages against a governmental entity or against an employee.

(2) (a) "Employee" includes a governmental entity's officers, employees, servants, trustees, commissioners, members of a governing body, members of a board, members of a commission, or members of an advisory body, officers and employees in accordance with Section 67-5b-104, student teachers certificated in accordance with Section 53A-6-101, educational aides, students engaged in providing services to members of the public in the course of an approved medical, nursing, or other professional health care clinical training program, volunteers, and tutors, but does not include an independent contractor.

(b) "Employee" includes all of the positions identified in Subsection (2)(a), whether or not the individual holding that position receives compensation.

(3) "Governmental entity" means the state and its political subdivisions as defined in this chapter.

(4) (a) "Governmental function" means any act, failure to act, operation, function, or undertaking of a governmental entity whether or not the act, failure to act, operation, function, or undertaking is characterized as governmental, proprietary, a core governmental function, unique to government, undertaken in a dual capacity, essential to or not essential to a government or governmental function, or could be performed by private enterprise or private persons.

(b) A "governmental function" may be performed by any department, agency, employee, agent, or officer of a governmental entity.

(5) "Injury" means death, injury to a person, damage to or loss of property, or any other injury that a person may suffer to his person, or estate, that would be actionable if indicted by a private person or his agent.

(6) "Personal injury" means an injury of any kind other than property damage.

(7) "Political subdivision" means any county, city, town, school district, public transit district, redevelopment agency, special improvement or taxing district, or other governmental subdivision or public corporation.

(8) "Property damage" means injury to, or loss of, any right, title, estate, or interest in real or personal property.

(9) "State" means the state of Utah, and includes any office, department, agency, authority, commission, board, institution, hospital, college, university, or other instrumentality of the state.

**63-30-22. Exemplary or punitive damages prohibited —  
Governmental entity exempt from execution, at-  
tachment, or garnishment.**

- (1) (a) No judgment may be rendered against the governmental entity for exemplary or punitive damages.  
    (b) The state shall pay any judgment or portion of any judgment entered against a state employee in the employee's personal capacity even if the judgment is for or includes exemplary or punitive damages if the state would be required to pay the judgment under Section 63-30-36 or 63-30-37.
- (2) Execution, attachment, or garnishment may not issue against a governmental entity.



# SALT LAKE COUNTY WATER CONSERVANCY DISTRICT

David G. Ovard, General Manager, Secretary-Treasurer  
Richard P. Bay, Asst. General Manager, Chief Engineer

April 1, 1997

**Board of Directors**  
Gerald K. Maloney, *Chair*  
Gary C. Swensen, *Vice Chair*  
Thomas W. Forsgren  
Royce A. Gibson  
Paul D. Henderson  
Theron B. Hutchings  
Margaret K. Peterson  
B. Jeff Rasmussen

**FILED**

**APR - 2 1997**

**COURT OF APPEALS**

Marilyn Branch, Clerk of Court  
Utah Court of Appeals  
230 South 500 East, Suite 400  
Salt Lake City, UT 84102

Re: Turner v. Salt Lake County Water Conservancy District  
Case No. 960566

Dear Ms. Branch:

This letter is filed with the Court on behalf of the Salt Lake County Water Conservancy District as a Citation of Supplemental Authorities under Rule 24(i) of the Utah Rules of Appellate Procedure. Please distribute the letter and the enclosed seven copies to the members of the Court.

On February 7, 1997, the Utah Supreme Court released its opinion in Debry v. Cascade Enterprises, 310 Utah Adv. Rep. 6 (Utah 1997). In that case, the Court articulated the criteria for identifying a frivolous appeal under Rule 33(b) of the Utah Rules of Civil Procedure. The Debry opinion supports the request for sanctions (i.e., costs and fees on appeal) made by the Salt Lake County Water Conservancy District in its brief (at 14-15).

A copy of this letter has been sent to Wesley F. Sine, legal counsel for Appellant William Turner. Thank you for your assistance.

Sincerely yours,



Reid E. Lewis  
Attorney

REL/cc

Enclosures

cc: Wesley F. Sine