

1989

Larry Little v. Greene & Weed Investments, Leon S.
Lippincott, Caroline Lippincott, and Dee C.
Hansen, state engineer of the state of Utah : Reply
Brief

Utah Court of Appeals

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**UTAH COURT OF APPEALS
BRIEF**

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SUPREME COURT OF UTAH

STATE OF UTAH

SALT LAKE CITY, UTAH

LARRY LITTLE,)
)
Plaintiff and Appellant,)
)
v.)
)
GREENE & WEED INVESTMENTS,)
)
LEON S. LIPPINCOTT, CAROLINE)
)
LIPPINCOTT, and DEE C. HANSEN,)
)
State Engineer of the State)
)
of Utah,)
)
Defendants and Respondents.)

89-0177-CA

REPLY BRIEF

No. 860607

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SUPREME COURT OF UTAH

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)	
Defendants and Respondents.)	

Plaintiff/Appellant Larry Little hereby responds to Defendants/
Respondents Brief as follows:

STATEMENT OF THE CASE

In reviewing the brief of Defendants Greene & Weed Investments (Greene & Weed) and Leon S. and Caroline Lippincott (Lippincotts), it is clear that they are trying to hide behind the conclusions drawn by the trial court without addressing, or even attempting to address, its analysis. Defendants do this because there is no theory of title upon which to justify the trial court's findings and conclusions. It is also clear that Defendants do not want to

clearly articulate their claims of title. They choose not to do so for the simple reason that their claims differ from the trial court's analysis and would simply magnify the inconsistencies in their case.

Here, it should be explicitly noted that in order to succeed in an action to quiet title to a water right, a party must prevail on the strength of his/her claim. Church v. Meadow Springs Ranch Corp., Inc., 659 P.2d 1045 (Utah 1983). Therefore, it is incumbent upon Defendants to clearly articulate their chain of title - which they have not done and which they cannot do. When they try to set forth their chain of title (Defendants' Brief, pages 25-27), critical dates are omitted, intervening conveyances are not referenced, and fractional ownership interests are not established. (Defendants simply do not want to set forth their position.)

If this Court looks at the trial court's reasoning, it will clearly see that the Honorable Don V. Tibbs had no basis upon which to ground his ruling and that his ruling differed from Defendants' theory of the case. The most glaring examples include the following:

1. At trial, Defendants' chain of title was short and simple. Defendants' root title was comprised of two quit claim deeds, one was undated and the other bore the date of November 17, 1969. By virtue of these two deeds, Defendants claimed their immediate predecessors in interest, Lorna Little Cottam and Clara Bess Grams, obtained 100% of the subject water right from their father Lester F.

Little. Thereafter, Defendants Greene & Weed contended they received their title from Lorna Little Cottam and Clara Bess Grams when by assignment dated September 1, 1972, the two sisters conveyed 100% of the water right to them. (Pretrial Order IV (2); Transcript (Tr.) 192).

Contrary to Defendants' theory of title, the trial court expressly found that Greene & Weed obtained their title by virtue of deeds (not assignment) from Lorna Little Cottam and Clara Bess Grams and by quit claim deed from East Canyon Irrigation Company. (Finding of Fact 20). Apparently, the trial judge was relying on the deeds dated December 18, 1975 whereby Lorna Little Cottam and Clara Bess Grams, by separate deeds, expressly conveyed a 5/8ths interest in the disputed water right (Defendants' Exhibits 15 and 15a) and on a quit claim deed dated December 18, 1974 from East Canyon Irrigation Company (Plaintiff's Exhibit 14; Defendants' Exhibit D-7). Since this finding is obviously inconsistent with Defendants' theory of title, Defendants have now apparently changed their theory to accommodate the court's findings - yet the theory still cannot be explained.

On pages 25 through 27 of their Brief, Defendants set forth their new and modified chain of title. Significantly, Defendants do not include all the conveyances made by the parties, the ownership interests being conveyed (fractional or whole) or, in some circumstances, the dates of conveyance. They do not do this because it would make their theory of title incomprehensible. For example, if Greene & Weed obtained 100% of the subject water right on

September 1, 1972 by assignment from Lorna Little Cottam and Clara Bess Grams, then why, three years later on December 18, 1975, are they claiming the very same grantors conveyed to them a fractional 5/8ths interest in the same water right (see Defendants' Brief, page 26, ¶'s 7 and 8)? Further, why, on December 18, 1974, did East Canyon Irrigation Company, which under Defendants' theory of the title never had an interest in the disputed right, convey an interest in the water right to Greene & Weed? Those conveyances are inexplicable and completely inconsistent with Defendants' theory of title.

Plaintiff's and Defendants' chains of title are mutually exclusive, at least through the first four conveyances.* As such, deeds of conveyance in Plaintiff Larry Little's chain cannot - as a matter of law - be found in Defendants' Greene & Weed and Lippincotts chain of title. Yet, Defendants are now arguing that some of the early deeds in Plaintiff's chain of title are now found in their chain - which, as a legal proposition, is impossible. They argue (Defendants' Brief, page 9) that East Canyon Irrigation Company conveyed its interest in the contested water right, Segregation 26838a (85-102), by quit claim deed dated December 18, 1974 to Greene & Weed. What Defendants and the trial court cannot do is explain how East Canyon Irrigation Company obtained its interest.

* Both chains of title have different starting points although there are common conveyances later in the chain. Because the first four or five conveyances establish different starting points and different percentage ownerships which are then carried through the entire chain, the ending points differ. Thus, both the starting points and ending points of the respective chains of title differ.

Under Defendants' chain of title and theory of the case East Canyon Irrigation Company could not have held an interest in the subject water right. Its interest simply cannot be explained under Defendants' chain. From the record, it is clear that East Canyon acquired its interest under plaintiff Larry Little's chain of title. The president of East Canyon Irrigation Company clearly indicated at trial that his chain is based on the same chain of title as that of Plaintiff Larry Little (Tr. 96, 97, 98).

2. Defendants place a great deal of reliance on two alleged factors: (1) that the State Engineer's title abstract reaches the same conclusions as those asserted by Defendants; and (2) that Defendants' documents of title, letters, etc. were filed with the State Engineer (Defendant's Brief, pages 10, 11, 12, 27).

Defendants fail to mention the following: (1) that the State Engineer's title abstract does not contain the title documents Defendants rely on to make their title and is, in fact, inconsistent with their theory of title; and (2) that the State Engineer did not consider Defendants' title documents as constituting any part of the disputed water right and, therefore, did not file them in the file maintained for the disputed right. The State Engineer filed them in the file to which they expressly relate - Application 23838 (85-33), a separate water right and one which is not the subject of this action.

The State Engineer's root title and the individual conveyances following the State Engineer's root title mirror Plaintiff Larry

Little's chain of title. The only discrepancy between the two is that the State Engineer did not have all the deeds in the chain and therefore did not reach the same conclusions as Plaintiff. However, having had the same starting point as Plaintiff Larry Little, it is clear that the State Engineer would have reached the same conclusion had all the deeds been available.

Neither Defendants' root title, nor the assignment by which Defendant Greene & Weed contend they received 100% interest in the subject water right, is found in the State Engineer's title abstract. Therefore, Defendants' contention (page 12 of Defendants' Brief) that their title documents, deeds, letters and agreements convinced the State Engineer that the parties owned the water right as set forth in the proposed determination of water rights is totally without basis. Nothing could be further from the truth. If the State Engineer relied on any of Defendants' documents, deeds, letters, etc., they would have been found in the State Engineer's title abstract or at least in the file maintained for the subject water right. But, they are not. The letters Defendants reference are contained in another file on another water right - as are their deeds. (See Pretrial Order V(2); Tr. 62.) Those documents are completely foreign to anything the State Engineer relied upon in formulating the fractional ownership interests. One only need look at the State Engineer's title abstract to determine that. (See Plaintiff's Exhibit 6.)

Because Defendants have mischaracterized the facts to reach their conclusions, and because they have also failed to address their theory of title or that relied upon by the trial court - which are not the same - Plaintiff will devote the major portion of this reply brief to clarifying those facts and addressing the parties' respective theories of title. Plaintiff Larry Little contends:

1. On November 30, 1967, Lester F. Little segregated a portion of one of his water rights into two parts. Under Utah law the segregated portion and original right thus became separate water rights and are treated in all respects separately. Utah Code Ann. §73-3-27 (1980). The segregated portion, Application 26838a (85-102) is the contested water right which is the subject of this action.

2. On December 19, 1967, Lester F. Little submitted proof of appropriation on Segregation Application 26838a (85-102). Proof is the last statutory step required of an appropriator to complete an appropriation and involves a sworn statement by the appropriator and an independent engineer that the diversion facilities have been constructed and that the water has actually been placed to beneficial use. Utah Code Ann. §73-3-16 U.C.A. (1980). In this case, it showed the water well had been drilled and outfitted and that the water had actually been placed to use.

3. On January 16, 1968, Lester F. Little and his wife Madge Little joined in conveying to their five children in undivided interests, by warranty deed, the land upon which the water under Segregation 26838a (85-102) was used. Several factors relating to

this conveyance should be specifically noted, all of which are undisputed:

(a) The warranty deed - on its face - is plain, clear and without ambiguity. The Defendants have not sought to reform the deed, nor have they claimed any ambiguity therein.

(b) The Court received no evidence whatsoever respecting grantors' intent either before or contemporaneous with the execution of the deed.

(c) The warranty deed included all improvements and appurtenances (see Exhibit A attached hereto; Plaintiff's Exhibit D-2).

(d) All parties to this action have by stipulation agreed that the water under Segregation 26838a (85-102) was actually placed to use on the land so conveyed during the two irrigation seasons immediately preceding the conveyance and was nowhere else used. (Order Amending Findings of Fact 1, Tr. 42, 43, Finding of Fact 11.)

(e) Proof of appropriation on Segregation 26838a (85-102) was submitted on December 19, 1967, approximately one month before the conveyance of the land upon which the water had been used.

4. Given the undisputed facts set forth in 3 above, it is Plaintiff Larry Little's position that the water - which was actually being placed to use on the land - passed with the land as an appurtenance thereof under authority of Utah Code Ann. §73-1-11 (1980). And, since Defendants did not seek reformation of the deed

or claim any ambiguity therein (see, Hartman v. Potter, 596 P.2d 653 (Utah 1979) if an instrument is not ambiguous, extrinsic evidence will not be admitted) the first question before this Court is whether water can pass as an appurtenance to land before a certificate of appropriation issues from the State Engineer.

Contrary to Defendants' assertions otherwise, water has routinely passed as an appurtenance to land in Utah before the State Engineer issues a certificate of appropriation. Three case scenarios are instructive:

A. In appropriating surface waters before 1903 and underground waters before 1935 (diligence rights), there was no statutory requirement that an application be filed with the State Engineer. All the water user had to do was physically construct the diversion facilities and actually place the water to beneficial use to complete the appropriation. No certificate of appropriation ever issued and none was required. Moreover, until 1943, there wasn't even a statute providing for the registration of these rights with the State Engineer, see Utah Code Ann. §73-5-13 (1980). Yet, diligence rights are some of the best water rights in this state, given their early priority dates and their long established pattern of usage.

Here, it should be noted that diligence rights are still being registered with the State Engineer's office and are considered good and valid water rights if the requisite factual foundation for establishing the right can be made, i.e. diversion and use before 1903 or 1935 respectively. Therefore, it is still possible for the

State Engineer to have no record of water rights which are fully developed and necessary for the continued use and development for the land upon which they are used. Nonetheless, these water rights are valid and are subject to transfer with the land as an appurtenance thereof.

No one - including Defendants in this action - would seriously contend that diligence rights do not pass as an appurtenance to land unless expressly reserved. If there is a problem in their passage, it is one of proving the water was used on the particular parcel being conveyed, not whether they can pass as a legal proposition. (See Plaintiff's Argument, pages 16 through 24 in first Brief.)

B. On water rights initiated after the State of Utah required an application to initiate the appropriation, the State Engineer has, for more than twenty five years, transferred title to such water based on its having passed as an appurtenance to land before the issuance of a certificate of appropriation. (Tr. 56.) Moreover, the State Engineer did it in this action, as the State Engineer's title abstract clearly shows. (See Plaintiff's Exhibit 6.) That is how, and why, the State Engineer and Plaintiff Larry Little start from the same root of title in this action.

C. In many areas of this State, there is ongoing a general determination of water rights. These are water lawsuits, usually initiated by the State Engineer under Utah Code Ann. §73-4-1 et. seq. (1980), to determine and settle all water rights within a particular drainage. Pursuant to this purpose, the State Engineer,

with public funds, does a hydrographic study identifying all water sources, all irrigated acreage, all points of diversion, etc. within the particular drainage. Unfortunately, because of the tremendous amount of work these adjudications entail, they sometimes take over forty years to complete. (See Plaintiff's Brief, page 23.) If a general adjudication is pending an appropriator following statutory procedure to appropriate water will never be issued a certificate of appropriation. **The** appropriator commonly files what is called an "Election", under authority of Utah Code Ann. §73-3-16 (1980) to have his/her claim determined in the general determination proceedings rather than submitting proof of appropriation and obtaining a certificate of appropriation from the State Engineer. Therefore, if this Court were to hold that water could not pass as an appurtenance to land until a certificate issues, it would result in certain water rights not being able to pass until the appropriate district court finally completes the adjudication. The State Engineer has, however, circumvented this problem by having water pass as an appurtenance to land before the certificate issues and before the court finally confirms title. (Tr. 56, 64.)

The State Engineer's long-established policy of transferring title to water before a certificate of appropriation issues makes sense. A few of the reasons include:

- (a) The relevant statute on appurtenancy does not require it. Utah Code Ann. §73-1-11 (1980) simply provides that "a right to the use of water appurtenant to land shall pass to the

grantee of such land" unless reserved in express terms. It does not say "certificated right" or "diligence right" or anything else. And, it is clear that a water user holding an approved application has a right to use the water. See, Utah Code Ann. §73-3-10 and §73-3-12 (1980). Moreover, the appropriator is under a duty to develop and use the water, or the appropriator will lose the right to do so all together.

(c) The purpose behind the appurtenancy statute, Utah Code Ann. §73-10-11 (1980), is to insure that water, most often indispensable to the use and enjoyment of the land, is conveyed with the land. And once it is conclusively shown, as here, that water has actually been placed to use thereon, then the underlying purpose of the section is met by having that water pass before the certificate actually issues. Here, the grantor, Lester F. Little, submitted proof of appropriation to the State Engineer on December 19, 1967. That is less than one month before he conveyed the land upon which the water was being used to his five children in undivided interests. The warranty deed by which he did this is dated January 16, 1968 and constitutes Plaintiff Larry Little's root title. (Plaintiff's Exhibit D-2). It is also the root title relied upon by the State Engineer. (See Plaintiff's Exhibit 6.)

(c) The function served by a certificate of appropriation is to confirm the existence of a water right - not create it. A water right exists by virtue of a diversion and use; this

has always been the state of the law in Utah. (See Plaintiff's Brief, pages 16 through 24.) The requirement of an application to appropriate water, and all the statutory procedures to complete the appropriation, simply codify existing law and provide an administrative framework with which to account for water usage. Accordingly, it is entirely appropriate that water pass as an appurtenance to land once it is determined that the water right has actually been perfected by diversion and usage.

(d) There is no underlying doubt as to which types of rights will pass if all waters, whether they be represented by diligence rights, or by applications, are allowed to pass as an appurtenance to land. That is, a diligence right, and all rights based on applications, whether they be in an area undergoing a general determination or not, would pass unless expressly reserved. This is a consistent, comprehensible rule. The alternative Defendants suggest is confusing and would require every conveyancer to be a water expert and to obtain a water title opinion to determine whether water actually passed as an appurtenance to the land. Moreover, under Defendants' theory even a title opinion wouldn't provide any degree of security. Where, as here, the deeds Defendants rely on to make their title are not recorded with the Kane County Recorder, nor on file with the State Engineer in the file maintained for the subject water right (Pretrial Order V(2)) there is absolutely

no way a title search would pick up the deeds. Defendants' deeds take a substantial amount of extrinsic evidence to even create a tie to the water right in issue, Segregation 26838a (85-102). On their face, there is no reference to Segregation 26838a (85-102) (see Exhibits L-1 and L-2; also attached to Plaintiff's Brief as Exhibits B and C).

(e) If water passes as an appurtenance to land when the diversion facilities are complete and water is actually placed to use, then all water users will be treated the same. They are not then dependent on the fortuitous circumstance of the State Engineer actually issuing a certificate of appropriation. Accordingly, in a situation such as this, where because of other pressing problems (Tr. 50, 51) the State Engineer did not issue the certificate until almost two years after proof of appropriation was submitted (proof was submitted on December 19, 1967 and the certificate was issued on October 21, 1969) the same rule of transfer would apply. That is, whether the State Engineer was able to immediately issue a certificate upon the filing of proof or whether the issuance was substantially delayed, the water right would nevertheless pass as an appurtenance to a conveyance of the land - thus fulfilling the purpose of the appurtenancy statute, Utah Code Ann. §73-1-11 (1980).

Here, reference should be made to Defendants' reliance on Duchesne County v. Humphreys, 106 Utah 332, 148 P.2d 338 (1944) for the proposition that pending uncertificated applications do not

constitute water rights which should be transferred to the grantee of the land described in the applications (Defendants' Brief, page 14). In so contending, Defendants misconstrue the holding of Humphreys and misapply its reasoning.

In Humphreys, the Utah Court correctly ruled as follows:

The filing of an application with the State Engineer does not give the applicant a vested right to the use of water sought to be appropriated, it merely gives a right to complete the appropriation and put the water to a beneficial use in compliance with the Act. Id. at 339. (Other citations omitted.)

Defendants failed to note that the Humphreys court specifically found that no claim was made that the diversion facilities had been constructed or that the water had ever been placed to use. The Humphreys court stated:

In the instant case there is no claim that the works to convey the water to the land had been built, nor is there any claim that the water had ever been put to beneficial use on the lands. No vested water rights were ever acquired and therefore could not have passed to the county as appurtenances to land which it obtained by its tax sale.

Id. at 339. Implicit in the court's reasoning is the proposition that water would have passed as an appurtenance to land if the diversion facilities had been constructed and the water had been placed to use - a conclusion exactly opposite of what Defendants are contending. In Humphreys, the appropriator had failed to do anything once approval was given to develop the water right. Ultimately, the appropriator even failed to request an extension of time within which to submit proof of appropriation. This was the critical

factor upon which the case turned; the Humphreys court expressly distinguished the case before it from a situation where the appropriator had completed the appropriation by actually building the diversion facilities and placing the water to use. Such reasoning is consistent with the whole appropriation process which requires an appropriator to build diversion facilities and place the water applied for to a beneficial use. Utah Code Ann. §73-3-10 and §73-3-12 (1980). Once a water user does this, and submits proof of appropriation, then the State Engineer must issue a certificate of appropriation. Utah Code Ann. §73-3-17 (1980) explicitly provides as much:

Upon it being made to appear to the satisfaction of this state engineer that an appropriation or a permanent change of point of diversion, place or nature of use has been perfected in accordance with the application therefor, and that the water appropriated or affected by the change has been put to a beneficial use, as required by section 73-3-16, he shall issue a certificate. . . . (emphasis added)

Defendants' reliance on Humphreys, supra, and the several other cases cited for the proposition that an application to appropriate water is but a preliminary step are, for our purposes, inapposite. We are not dealing with this preliminary step in the appropriation process. Here, the appropriation was complete - the diversion facilities had been constructed and the water had been placed to use. The appropriator was entitled to a certificate of appropriation. He had demonstrated that the water could be developed in accordance with his application and had actually spent

money to drill and outfit the well (diversion facilities), and had placed the water to actual and beneficial use. **These** requirements were completed two full irrigation seasons before the land upon which the water was used was transferred to the five children of Lester F. Little in undivided interests.

Defendants have not cited one case, nor can they, which holds that water is not appurtenant to land until proof of appropriation is filed and a certificate of appropriation issues. This is not the law and makes no sense (see Plaintiff's Brief, pages 16-24). Moreover, such a holding would confuse the concept of a valid water right or appropriation with the function served by the State Engineer in issuing a certificate of appropriation. In Utah, a water right exists by virtue of an appropriation, not because the State Engineer issues a certificate of appropriation. A certificate merely confirms the existence of the water right. (See Plaintiff's Brief, pages 17-21.)

5. Even if water, as a matter of law, cannot pass as an appurtenance to land before the State Engineer issues a certificate of appropriation, then the doctrine of after acquired title acts to vest title in Plaintiff Larry Little.

As noted above, the January 16, 1968 deed from Lester F. and Madge C. Little was a warranty deed which included all appurtenances and improvements. After the deed was delivered, and before Defendants' root title came into existence on November 17, 1969, the

State Engineer issued a certificate of appropriation on Segregation 26838a (85-102). The certificate issued on October 21, 1968 and, because of a descriptive error, was amended on November 25, 1969. (Pretrial Order 3(d), Finding of Fact 14). For the reasons set forth in Plaintiff Larry Little's Brief, pages 30 through 32, the doctrine of after acquired title would consequently act to vest title in Plaintiff Larry Little.

6. Even if the Court were to rule that water cannot pass as an appurtenance to land until a certificate of appropriation issues, and that the doctrine of after acquired title did not act to vest title in Plaintiff Larry Little, there is still the further question of whether title to the subject water right passed as an appurtenance to land when Lorna Little Cottam and Clara Bess Grams joined their brothers and sisters and divided, between themselves, the land upon which the subject water right was being used.

Under Defendants' theory of the case, it is clear that they are relying on two quit claim deeds to form their root title - only one of which is dated and bears the date November 17, 1969 (Plaintiff's Brief, page 7). By virtue of these deeds, they contend Lorna Little Cottam and Clara Bess Grams succeeded to 100% of Segregation 26838a (85-102). If that is so, it would be undisputed that Lorna Little Cottam and Clara Bess Grams held both the contested water right and the land upon which it was used as of December 30, 1969 - the land being held in undivided one-fifth interests with the other children

under the January 16, 1968 deed.* Then, when the five children of Lester F. and Madge C. Little, including Lorna Little Cottam and Clara Bess Grams, got together on December 30, 1969 and conveyed by warranty deeds, the land upon which the water was actually being used, the water under Segregation 26838a (85-102) would have passed as an appurtenance to the land because it was not expressly reserved. (See Plaintiff's Argument, pages 28 through 30, and Utah Code Ann. §73-1-11 (1980).)

Interestingly enough, Defendants' Brief completely fails to address these conveyances. By a series of three warranty deeds, dated either December 30 or 31, 1969, the five Little children conveyed the land upon which the water was actually being used. (Order Amending Finding of Fact 1). All deeds included all appurtenances and predate by almost one year the conveyance by which Greene & Weed contend they received title from Lorna Little Cottam and Clara Bess Grams. Moreover, they predate by up to five years one of the deeds by which the trial court found Greene & Weed obtained their title.**

* Under either Plaintiff's or Defendants' theory of title, the common grantors, in December of 1969 held 100% of the subject water right. Under Plaintiff Larry Little's theory of title, the five children held the water rights in undivided interests. Under Defendants' theory of title, Lorna Little Cottam and Clara Bess Grams held 100% of the water right by virtue of the quit claim deeds. All then joined in dividing the land upon which the water was used among themselves individually.

** Deed from East Canyon Irrigation Company to Greene & Weed dated December 18, 1974.

The warranty deeds by which the children divided the land are clear and without ambiguity. And, no one has sought reformation of those deeds or contended any ambiguity therein. As in Hartman v. Potter, supra, this Court should simply determine, as a matter of law, that the deeds actually passed whatever interests the grantors held in Segregation 26838a (85-102).

7. Finally, Defendants have no equitable claim to the water. From the trial record it is clear that Defendants Greene & Weed had before them direct and express knowledge that their grantors, Lorna Little Cottam and Clara Bess Grams, did not own 100% of the disputed water right on September 1, 1972. By that date, Norman H. Jackson, an attorney representing Lorna Little Cottam and Clara Bess Grams, had told Defendants so, the State Engineer's title abstract maintained in the file of the disputed right told them so, and the proposed determination of water rights also told them so. (See Defendants' Exhibit 38, Plaintiff's Exhibit 6, and Exhibit L-21 respectively, all attached as Exhibit A). Thereafter, and with Greene & Weed's full knowledge, Lorna Little Cottam and Clara Bess Grams entered a land trade with Plaintiff Larry Little to obtain an additional 10 acres of land with appurtenant water (Tr. 211). That trade is discussed in Plaintiff's Brief, pages 37 through 39, and resulted in Lorna and Clara Bess, under Plaintiff Larry Little's chain of title, succeeding to approximately 5/8ths of the subject water right - exactly what they expressly conveyed to Greene & Weed

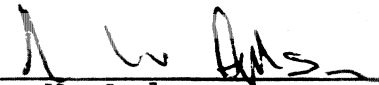
on December 18, 1974 - some three years after Defendants contend they received it all.

CONCLUSION

Defendants have no legal theory of title upon which they can prevail. The disputed water right either passed as an appurtenance to land on January 16, 1968 when their father and mother transferred land to their children in undivided one-fifth interests, and before the certificate of appropriation issued, or on December 30, 1969, and after the certificate had issued, when the five children divided the land amongst themselves. Since all deeds are plain, clear and without ambiguity, water passed as a matter of law.

Respectfully submitted this 6th day of April, 1988.

CLYDE, PRATT & SNOW



John W. Anderson
Attorney for Plaintiff/Appellant

CERTIFICATE OF SERVICE

I hereby certify that I caused to be hand delivered four copies of Plaintiff/Appellant's Reply Brief to each of the following at the addresses listed this 6th day of April, 1988:

E. J. Skeen
Van Cott, Bagley, Cornwall & McCarthy
50 South Main, #1600
Salt Lake City, Utah 84144
Attorney for Defendants/Respondents
Lippincott

Keith S. Christensen
250 South 500 East
Salt Lake City, Utah 14102
Attorney for Defendant/Respondent
Greene & Weed

Bonnie Savett

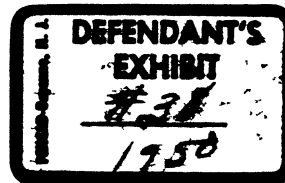
EXHIBIT A

CARVEL MATTSSON
NORMAN H. JACKSON
H. L. MCCLIFF

MATTSSON, JACKSON & MCCLIFF
ATTORNEYS AT LAW
151 NORTH MAIN STREET
RICHFIELD, UTAH 84701

TELEPHONE 896-544
AREA CODE 80

April 19, 1972



Mr. Daniel R. Weed
Greene and Weed Investments
1843 West Campbell Avenue
Phoenix, Arizona 85015

Dear Mr. Weed:

Re: Johnson Canyon Ranch

Pursuant to your telephone call, I have sifted through our files and gleaned the following information concerning water rights:

1. Application No. 26838a(85-102) having a priority right of April 12, 1955. The application was originally filed for 10 second feet of water to be used each year from March 1 to November 30, for irrigation purposes, from two wells, Well No. 1 to be located North 2465 feet and West 2640 feet from the Southeast corner of Section 25, Township 43 South, Range 5 West, SLM, and Well No. 2 to be located North 1665 feet and West 2640 feet from said corner.

On November 30, 1967, an application to segregate the above water was filed with the State Engineer. The water segregated from the application was .92 second feet to be used for irrigation of 83.3 acres of land in said Section 25, as follows: 3.2 acres Southeast quarter Northwest quarter; 40 acres Southwest quarter Northeast quarter; 1.3 acres Northwest quarter Northeast quarter; 8 acres Southeast quarter Northeast quarter; .7 acres Northeast quarter Southwest quarter; 21 acres Northwest quarter Southeast quarter; and 9.1 acres Northeast quarter Southeast quarter.

The segregated water right comes from the 16-inch well discussed on the telephone. Said well is 125 feet deep and located North 115.40 feet and West 2582 feet from the East quarter corner of said Section 25. Lorna Cottam and Clara Bess Grams own approximately forty acres of the land covered by this certificate, Larry Little owns approximately thirty acres, and Kenyon Little owns a 9.1-acre parcel.

4/19/72

2. Application No. 32632 (85-4th). This application was filed and approved for 5 cubic feet per second, to be diverted from three wells and used for the irrigation of 600 acres, stock watering, and domestic. A letter from the State Engineer dated June 17, 1970, indicates receipt of conveyances transferring the following amounts from Lester F. Little to his children: John K. Little - 1.5 c.f.s.; Lorna Little Cottam and Clara Bess Little Grams - 1.5 c.f.s.; and Caroline Lippincott - 2.0 c.f.s.

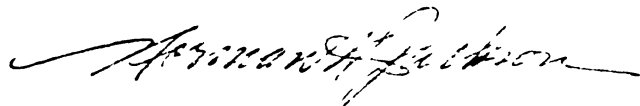
3. By deed December 11, 1967, Lester F. Little, et ux., conveyed to John Kenyon Little, Larry Lester Little, Lorna Little Cottam, Caroline Little Lippincott, and Clara Bess Little Grams, as tenants in common, to each an undivided one-fifth interest and title, in certain real property and also a one-sixth in the water of Johnson Creek and Flood Canyon." As far as my clients are concerned, it is my understanding that this includes a stock watering right and also an irrigation right in connection with the property which they own in Section 30.

In connection with the balance of Application 26838, action should be taken to prove up on the remaining 9.08 c.f.s. In connection with Application 32632, action should be taken to prove up on all of the waters covered thereby.

At a meeting March 22, 1972, the State Engineer indicated that these approved-pending applications must be perfected on or before November 30, 1973, or they will not maintain their priority. His office will entertain change applications on perfected rights, and they will be more liberal for domestic use, each application will be judged on its own merits, but no increase in irrigation acreages will be allowed.

I trust you will find the foregoing information useful. If I could be of further assistance, do not hesitate to contact me.

Very truly yours,



Norman H. Jackson

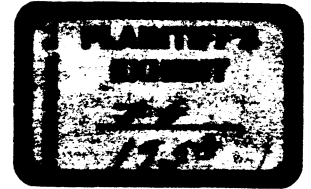
NHJ/a



STATE OF UTAH
NATURAL RESOURCES
Water Rights

Norman H. Bangerter, Governor
Dee C. Hansen, Executive Director
Robert L. Morgan, State Engineer

1636 West North Temple • Suite 220 • Salt Lake City, UT 84116-3156 • 801-533-6071



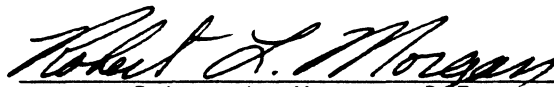
C E R T I F I C A T I O N

I HEREBY CERTIFY that the attached documents are true and correct copies
of:

Title Abstract (2 pages) No. A-26838-a (85-102); and the following
documents which are reflected on the Title Abstract:
Warranty Deed No. 15105, Lester L. Little & Madge C. Little;
Warranty Deed No. 16764, John K. Little, Larry L. Little,
Lorna Cottam, Clara Grams & Caroline Lippincott;
Quit Claim Deed, No. 18722, John K. Little & Anna May Little;
Warranty Deed, No. 28819, Lorna Little Cottam & Clara Bess
Little Grams;
Quit Claim Deed, No. 25256, East Canyon Irrigation Co.;
Warranty Deed, No. 27766, A. H. Greene, Jr. & Daniel R. Weed;
Warranty Deed, No. 32103, A. H. Greene, Jr. & Daniel R. Weed; and
Warranty Deed, No. 32952, Leon Lippincott & Caroline Lippincott.

Said Documents are on file in the office of the Utah Division of Water
Rights, located at 1636 West North Temple Street, Second Floor, Salt Lake
City, UT 84116.

DATED this 22nd day of October, 1985.


Robert L. Morgan, P.E.
State Engineer

/gm

Attachments

Little
in Right
Page No. 1 RE: A-26838-a (85-102)
P. 152 Det.

T I T L E A B S T R A C T

DATE	TITLE CHANGE INSTRUMENT	ASSIGNOR/CONVEYOR/OWNERSHIP NAME and ADDRESS	RETAINED AMOUNT	CONVEYED AMOUNT	ASSIGNEE/PURCHASER/NEW OWNERSHIP NAME and ADDRESS	WATER SOURCE	COUNTY
Instr't Execu'tn (by Orig'r) <u>1/16/68</u> Rec'd (by No.) <u>1/16/68</u> Rec'd (by us) <u>5/2/72</u> Action (by us) _____	Assignment <input type="checkbox"/> Deed: Warranty <input checked="" type="checkbox"/> Quit Claim <input type="checkbox"/> _____ <input type="checkbox"/>	Lester L. Little and Madge C. Little	0	(0.92 CFS) 422.83 AF	John Kenyon Little - 1/5 int. Larry Lester Little - 1/5 int. Lorna Little Cottam - 1/5 int. Clara Bess Little Grams - 1/5 int. Caroline Little Lippincott - 1/5 int.	UGW	Kane
Instr't Execu'tn (by Orig'r) <u>12/31/69</u> Rec'd (by No.) <u>1/2/70</u> Rec'd (by us) <u>5/2/72</u> Action (by us) _____	Assignment <input type="checkbox"/> Deed: Warranty <input checked="" type="checkbox"/> Quit Claim <input type="checkbox"/> _____ <input type="checkbox"/>	John Kenyon Little, Larry Lester Little, Lorna Little Cottam, Clara Bess Little Grams and Caroline Little Lippincott	(0.12374) cfs 56.87 AF	(0.79626 CFS) 365.96 AF	Lorna Little Cottam and Clara Bess Little Grams, Und. 1/2 int. each	see Proposed Deter nation	
Instr't Execu'tn (by Orig'r) <u>8/10/70</u> Rec'd (by No.) <u>8/11/70</u> Rec'd (by us) _____ Action (by us) _____	Assignment <input type="checkbox"/> Deed: Warranty <input type="checkbox"/> Quit Claim <input checked="" type="checkbox"/> <u>#18722</u> <input type="checkbox"/>	John K. Little & Anna May Little	0	(0.12374 CFS) 56.87 AF	East Canyon Irrigation Company	see Proposed Determination	
Instr't Execu'tn (by Orig'r) <u>9/1/72</u> Rec'd (by No.) <u>8/16/76</u> Rec'd (by us) <u>8/30/76</u> Action (by us) _____	Assignment <input type="checkbox"/> Deed: Warranty <input checked="" type="checkbox"/> Quit Claim <input type="checkbox"/> _____ <input type="checkbox"/>	Lorna Little Cottam and Clara Bess Little Grams	0	(0.79626 CFS) - 365.96 AF	A. H. Greene and Daniel R. Weed		

By date of deed execution

al in Right

T I T L E A B S T R A C T

Re No. 2 RE: A-26838-a (85-102)
P. 152 Determination

DATE	TITLE CHANGE INSTRUMENT	ASSIGNOR/CONVEYOR/OWNERSHIP NAME and ADDRESS	RETAINED AMOUNT	CONVEYED AMOUNT	ASSIGNEE/PURCHASER/NEW OWNERSHIP NAME and ADDRESS	WATER SOURCE	COUNTY
str't Execu'tn (by Orig'r) <u>12/18/74</u> or'd (by No.) <u>1/28/75</u> 'vd (by us) <u>5/16/83</u> ion (by us) _____	Assignment <input type="checkbox"/> Deed: Warranty <input type="checkbox"/> Quit Claim <input checked="" type="checkbox"/> #25256 <input type="checkbox"/>	East Canyon Irrigation Co.	0	(0.12374 CFS) 56.87 AF	A. H. Greene Jr. and Daniel R. Weed	Now own total right	
str't Execu'tn (by Orig'r) <u>12/23/75</u> or'd (by No.) <u>1/20/76</u> 'vd (by us) <u>5/30/78</u> ion (by us) _____	Assignment <input type="checkbox"/> Deed: Warranty <input checked="" type="checkbox"/> #27766 Quit Claim <input type="checkbox"/> _____ <input type="checkbox"/>	A. H. Greene Jr. and Daniel R. Weed	(0.345 CFS) 158.561 AF 3/8	(0.575 CFS) 264.269 AF 5/8	Leon S. Lippincott and Caroline Lippincott		
str't Execu'tn (by Orig'r) <u>12/15/78</u> or'd (by No.) <u>12/23/77</u> 'vd (by us) <u>12/28/77</u> ion (by us) _____	Assignment <input type="checkbox"/> Deed: Warranty <input checked="" type="checkbox"/> #32103 Quit Claim <input type="checkbox"/> _____ <input type="checkbox"/>	A. H. Greene Jr. and Daniel R. Weed	(0.115 CFS) 52.853 AF 3/4	(0.230 CFS) 105.708 AF 1/4	Leon S. Lippincott and Caroline Lippincott		
str't Execu'tn (by Orig'r) <u>5/16/78</u> or'd (by No.) <u>6/16/78</u> 'vd (by us) <u>1/19/79</u> ion (by us) _____	Assignment <input type="checkbox"/> Deed: Warranty <input checked="" type="checkbox"/> #32952 Quit Claim <input type="checkbox"/> _____ <input type="checkbox"/>	Leon Lippincott and Caroline Lippincott	(0.5175 CFS) 237.843 AF	(0.2875 CFS) 132.134 AF	Larry L. Little		

RECAP - 5/23/83
Lippincott
Larry Little
Green & Weed

(0.5175 CFS)	237.843 AF
(0.2875 CFS)	132.134 AF
(0.115 CFS)	52/853 AF
<u>0.92 CFS</u>	<u>422.83 AF</u>

• • • • •

IN THE COURT OF
COMMON PLEAS,
COUNTY OF

1. Identify the main idea of the passage.

Under 302, there is a handwritten note that says "not a record", and recorded been in 1964, 1965, 1966, 1967, 1968, 1969, 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 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, 264

together with CTR improvements and opportunities for reforming them.

Signed in the Presence of

On the _____ day of _____, A.D., 19__ / personally

The above is the entire disclosure, and is duly acknowledged to the Government, and certified the same.

History Public

<u>Ad. Commission number:</u>	_____	<u>PU-97</u>	<u>Ad. number:</u>	_____	<u>Kasch. nr.</u>	_____
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85-102
85-33



373

WARRANTY DEED

JOHN KENYON LITTLE & ANNA MAY LITTLE, his wife, of Kanab, Kane County, State of Utah
LARRY LESTER LITTLE & BEVERLEY S. LITTLE, his wife, of Costa Mesa, Orange County, State of California
LORNA LITTLE COTTAM, a married woman, of Salt Lake City, Salt Lake County, State of Utah
CAROLINE LITTLE LIPPINCOTT, a married woman, of Sacramento, Sacramento County, State of California
CLARA BESS LITTLE GRAMS, a married woman, of Kernville, Kern County, State of California

GRANTORS,

for and in consideration of the sum of Ten and NO/100 Dollars (\$10.00) and other good and valuable consideration, receipt of which is hereby acknowledged, hereby CONVEY AND WARRANT, to

LORNA LITTLE COTTAM of Salt Lake City, Salt Lake County, State of Utah, and CLARA BESS LITTLE GRAMS of Kernville, Kern County, State of California, the following described real property in Kane County, State of Utah, to wit:

- Parcel 1 The Southwest 1/4 of the Northwest 1/4 of Section 25, Township 43 South, Range 5 West, Salt Lake Base and Meridian.
- Parcel 2 The North 1/2 of the Southwest 1/4 of Section 25, Township 43 South, Range 5 West, Salt Lake Base and Meridian. LESS, that sold to the State Road Commission of Utah and LESS that part lying east of Highway U 136.
- Parcel 3 The Northeast 1/4 of the Southeast 1/4 of Section 26, Township 43 South, Range 5 West, Salt Lake Base and Meridian.
- Parcel 4 The West 1/2 of the Southwest 1/4 of Section 30, Township 43 South, Range 4 1/2 West, Salt Lake Base and Meridian.
- Parcel 5 The West 1/2 of the Northeast 1/4 of Section 25, Township 43 North, Range 5 West, Salt Lake Base and Meridian.

Together with all improvements and appurtenances appertaining thereto.

WITNESS THE hands of the GRANTORS, this 2nd day of May, 1969.

Lorna Little Cottam
Lorna Little Cottam

Caroline Little Lippincott
Caroline Little Lippincott

Clara Bess Little Grams
Clara Bess Little Grams

John Kenyon Little
John Kenyon Little

Anna May Little
Anna May Little

Larry Lester Little
Larry Lester Little

Beverley S. Little
Beverley S. Little

STATE OF UTAH)

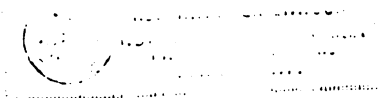
ss

County of Kane)

On the _____ day of _____, A.D. 1969, personally appeared before me John Kenyon Little and Anna May Little, his wife, signers of the foregoing instrument, who duly acknowledged to me that they executed the same.

My Commission Expires _____

ENTRY NO. 14,224 RECORDED AT REQUEST OF _____



QUIT CLAIM DEED--WATER

U2 97

JOHN K. LITTLE and ANNA MAY F. LITTLE, husband and wife, Grantors,
of Kanab, Kane County, State of Utah, hereby convey and quit claim
to East Canyon Irrigation Company, a Utah nonprofit Corporation,
Grantee, for the sum of Ten (10,000) Dollars and other adequate and
valuable considerations all our right and interest to the following
described water rights to wit:

Application Number 32632, also Seg. App. No 32632-A (35-701)

Application Number 35760 (85-58)

Certificate of Appropriation 447, WUC (85-102) Application No.
2-828-A: A-5300, to irrigate 11.20 acres of land and water 110
cubic feet per second.

One-sixth interest and right to the waters of Johnson Creek and
Flood Canyon.

John K. Little

John K. Little

Anna May F. Little

Anna May F. Little

STATE OF UTAH

1973

COUNTY OF KANE

On the 10th day of April A.D. 1973 personally appeared
before me John K. Little and Anna May F. Little, the signers of the
within and foregoing instrument, who duly acknowledged to me that
they executed the same.

NOTARY PUBLIC

Residing at Kanab, Utah

My Commission Expires June 1, 1973

FILED NO. 12, 112 RECORDED AT REQUEST OF

Send letter

RECEIVED
AUG 30 1976
WATER RIGHTS

Deed

LORNA L. COTTAM, also known as LORNA LITTLE COTTAM, a woman of Salt Lake City, Utah, and CLARA BESS LITTLE GRAMS, also known as CLARA BESS L. GRAMS, of Ridgecrest, California, GRANTORS, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good, adequate, and valuable consideration hereby CONVEY and WARRANT to A. H. GREENE and DANIEL R. WEED, both of 1843 West Campbell Avenue, Phoenix, Arizona, GRANTEES, the following described property located in Kane County, State of Utah:

- Parcel 1: The Southwest quarter of the Northwest quarter of Section 25, Township 43 South, Range 5 West, Salt Lake Meridian.
- Parcel 2: The North half of the Southwest quarter of Section 25, Township 43 South, Range 5 West, Salt Lake Base and Meridian. LESS, that sold to the State Road Commission of Utah and LESS that part lying East of Highway U-136.
- Parcel 3: The Northeast quarter of the Southeast quarter of Section 26, Township 43 South, Range 5 West, Salt Lake Meridian.
- Parcel 4: The Northwest quarter of the Southwest quarter, the North half of the Southwest quarter of the Southwest quarter, and the Southeast quarter of the Southwest quarter of the Southwest quarter of Section 30, Township 43, Range 4-1/2 West, Salt Lake Meridian.
- Parcel 5: The West half of the Northeast quarter of Section 25, Township 43 South, Range 5 West, Salt Lake Meridian.
- Parcel 6: The North half of the North half of the Northwest quarter of the Southeast quarter of Section 25, Township 43 South, Range 5 West, Salt Lake Meridian.

Together with any and all water rights and Bureau of Land Management grazing privileges and permits appurtenant thereto or in anywise appertaining thereto.

Together with all and singular the tenements, hereditaments and appurtenances thereunto appertaining or in anywise belonging thereto.

WITNESS, the hands of the Grantors this 1st day of September, A.D. 1972.

78910
427
2153
343
85-40 P. 127
85-48 P. 195 194
85-102 P. 152 86.55% (now 11)
85-70 P. 152
85-713 P. 127

161-867-191
KANE COUNTY RECORDS
RECEIVED
AUG 30 1976
WATER RIGHTS

Lorna L. Cottam
Clara Bess Little Grams

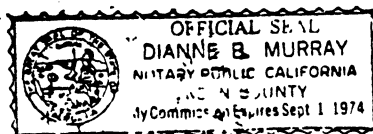
STATE OF UTAH)
COUNTY OF SALT LAKE) SS.

On this 20th day of August, A.D. 1972, personall
appeared before me LORNA L. COTTAM, also known as LORNA LITTLE COTTAM,
a woman, one of the signers of the foregoing WARRANTY DEED, who duly
acknowledged to me that she executed the same.

B. Stacy
NOTARY PUBLIC
Residing at:
My commission expires:.

STATE OF CALIFORNIA)
COUNTY OF Kern) SS.

On this 1st day of September, A.D. 1972, person-
ally appeared before me CLARA BESS LITTLE GRAMS, also known as CLARA
BESS L. GRAMS, a woman, one of the signers of the foregoing WARRANTY
DEED, who duly acknowledged to me that she executed the same.



P. O. Box 457 Ridgecrest, Calif 93555

Dianne B. Murray
NOTARY PUBLIC
Residing at: Ridgecrest Calif
My commission expires: 9-1-74

QUIT-CLAIM DEED

EAST CANYON IRRIGATION COMPANY, a Utah corporation
of Kanab, County of Kane, State of Utah, hereby
QUIT-CLAIM to A. H. GREENE, JR. and DANIEL R. WEED dba GREENE & WEED
INVESTMENTS

of Phoenix, Arizona, Maricopa County
TEN AND NO/100-----grantee
-----for the sum of
-----DOLLARS,

the following described water rights in Kane County,
State of Utah:

All our rights in Certificate of Appropriation No. 8497, Book W-2, Page 84, Kane County Records. (Water Users Claim No. 85-102, Application No. 26838-a, a-5989)

RECEIVED

May 11 1983

CEDAR CITY.

WITNESS the hand of said grantor , this 18th day of
December , A. D. one thousand nine hundred and seventy four.

Signed in the presence of

EAST CANYON IRRIGATION COMPANY

John K. Little, President

Anna May Little, Secretary

STATE OF UTAH,

COUNTY OF Kane

SS.

On the 18th day of December, A.D. 19 74
personally appeared before me

John K. Little and Anna May Little

the signers of the within instrument, who duly acknowledged to me that they executed the same.

Edward S. MacDonald
Notary Public.

My commission expires June 2, 1977 Residing in Kanab, Utah

WARRANTY DEED

A. H. GREENE, JR. and DANIEL R. WEED, dba GREENE & WEED INVESTMENTS, a partnership
consisting of A. H. Greene, Jr. and Daniel R. Weed
of Phoenix, County of Maricopa, State of Arizona, hereby

CONVEY and WARRANT to

LEON S. LIPPINCOTT and CAROLINE LIPPINCOTT, husband and wife, not as tenants
in common and not as community property estate, but as joint tenants with
right of survivorship grantees

of 2200 60th Street, Sacramento, County of , State of Califo

for the sum of *****Ten-----and $\frac{no}{100}$ DOLLARS,

and other good and valuable consideration, receipt of which is hereby acknowledged

the following described water rights in Kane County,

State of Utah, to wit:

5/8 interest in and to Water Users Claim 85-102, Application No. 26838-A,
A-5389 Certificate of Application No. 8497.

RECEIVED

MAY 30 1978

WATER RIGHTS

FILED
27766
RECORDED AT REQUEST OF
DATE 1-20-76 AT LCA M Wm Wickert ADJ LANE COUNTY RECORDS

WITNESS the hand of said grantors, this 13 day of Dec.

A. D. 1975

A. H. Greene, Jr.
Daniel R. Weed

STATE OF ARIZONA
COUNTY OF Maricopa

ss.

On the 23rd day of December, A.D. 1975,
personally appeared before me A. H. GREENE, JR. and DANIEL R. WEED, partners of
GREENE & WEED INVESTMENTS
the signer of the within instrument, who duly acknowledged to me that they executed the
same.

Sanna J. Wickert

Notary Public.

My commission expires Sept. 9, 1979 Residing in Phoenix, Arizona

STATE OF ARIZONA,

County of _____

I hereby certify that the within instrument was filed and recorded

Fee No.:

SS.

19

21

M

In Docket No. _____, Page _____, at the request of _____

Indexed:

When recorded mail to:

Witness my hand and official seal.

Compared:

Photostated:

County Recorder

Fee: \$

By

Deputy Recorder

I. R. S. : \$.

Warranty Breed

For the consideration of Ten Dollars, and other valuable considerations, I or we, **A. H. GREENE, JR.**
and **DANIEL R. WEED**, doing business as **GREENE & WEED INVESTMENTS**.

do hereby convey to LEON S. LIPPINCOTT and CAROLINE LIPPINCOTT, husband and wife as Joint Tenants with right of survivorship, of P. O. Box 924, Kanab, Utah, 84741.

the following described property situated in **Kane**

UTAH
County, ~~24556~~

One-Quarter (¼) Interest in and to Water Users' Claim 85-102,
Application No. 26032-A, A-5389 Certificate of Appropriation No. 8497.

And I or we do warrant the title against all persons whomsoever, subject to the matters above set forth.

Dated this 15th day of December, 19 77

STATE OF ARIZONA

County of MARICOPA

34

This instrument was acknowledged before me this 15th day
of December, 1977 by

A. H. Greene, Jr.,
and Daniel R. Weed

My commission will expire 6/30/50.

Notary Public

STATE OF

County of.

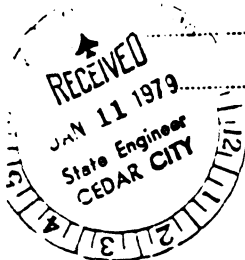
Si

This instrument was acknowledged before me this _____ day
of _____, 19____ by _____

My commission will expire

Notary Public

WATER PLOTS



Space Above for Recorder's Use

WARRANTY DEED

of _____, County of _____, State of Utah,
hereby CONVEY and WARRANT to _____

of _____, County of _____, State of Utah, _____, grantee
of _____, County of _____, State of Utah, _____, grantor

for the sum of \$ -- DOLLARS,
 and other good and valuable consideration, receipt of which is hereby
 acknowledged.

the following described tract of land in _____ County, State of Utah, to wit:

WATER RIGHTS IN _____ Range County, State of Utah, to wit:

1/16 interest in land to Water Users Claim No. 26838-1,
1-5/16 Certificate of Incorporation No. 1824.

WITNESS the hand of said grantor, this day of , 19

Signed in the presence of _____

STATE OF UTAH, } ss
County of _____ }

On the _____ day of _____, 19____,
personally appeared before me _____

the signer of the above instrument, who duly acknowledged to me that he executed the same.

Notary Public.

My commission expires _____ Residing in _____

APPROVED FORM — UTAH SECURITIES COMMISSION

BEFORE THE STATE ENGINEER OF THE STATE OF UTAH

IN THE MATTER OF CHANGE APPLI-)
)
CATION NUMBER a-12291 (85-925)) MEMORANDUM DECISION

Change Application Number a-12291 (85-925) was filed by Greene and Weed Investments to permanently change the point of diversion and nature of use of 26.427 acre-feet of water as evidenced by a portion of Certificate 8497 (85-102). The water has been used for irrigation and stockwatering purposes within Section 25, T43S, R5W, SLB&M and by this application it is proposed that a well be drilled near the N $\frac{1}{4}$ Corner of this same section and that the water be used for the irrigation of 5.1054 acres and domestic use for two families. The application was advertised in the Southern Utah News during August, 1982, and a protest was filed by Larry L. Little.

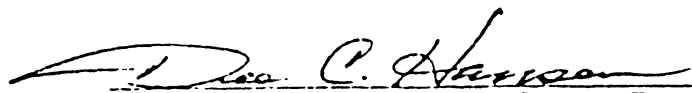
A hearing was held in the Kane County Courthouse on April 12, 1983. The applicant was represented by Barry Judd who stated that there was no enlargement intended and that the previous irrigation would be reduced to allow for the proposed uses. Mr. Little stated that the applicant does not have any right, title or interest in water user claim 85-102 and that they had not made any use of the water over the past five years. There were several other points discussed but were related to the ownership of the water right.

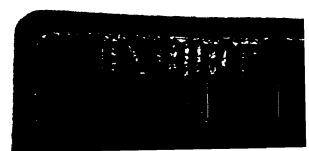
The Division of Water Rights has made a search of the title abstract concerning the Segregation Application No. 26838-a Certificate 8497 (85-102) and have concluded that Greene and Weed do have a vested interest in the water right and should be allowed to move that right on their own land for development as proposed under the subject change. The proposed development is subject to prior rights and must not impair or adverse existing water rights our sources of water. It is the opinion of the State Engineer that this application can be permitted with those conditions.

It is, therefore, ordered and Change Application No. a-12291 (85-925) is hereby APPROVED, subject to prior rights.

This decision is subject to the provisions of Section 73-3-14, Utah Code Annotated, 1953, which provides for plenary review by the filing of a civil action in the appropriate district court within sixty days from the date hereof.

Dated this 19th day of August, 1983.


Dee C. Hansen, P.E., State Engineer



MEMORANDUM DECISION
CHANGE APPLICATION
NUMBER a-12291 (85-925)
Page - 2 -

Mailed a copy of the foregoing Memorandum Decision this 19th day
of August, 1983, to:

Greene and Weed Investments
4245 North 19th Avenue
Phoenix, Arizona 84015

Larry L. Little
3601 Moore Avenue
Santa Ana, California 92704

By: 
Shawna L. Malcolm, Secretary

Application for Permanent Change of Point of Diversion

RECEIVED

MAY 17 1982

CEDAR CITY

Place and Nature of Use of Water

STATE OF UTAH

85-925

Please clearly and correctly complete the information requested below which defines the right or rights being changed. (Type or clearly print.)

For the purpose of obtaining permission to permanently change: the point of diversion ☒, place ☐, or nature of use ☐, of water rights acquired by Greene & Weed Investments, 26838-a (85-102)
(Give Number of Application, certificate of appropriation, title and date of Decree or other identification of right.)

If the right described has been amended by a previous approved change application, give the number of such change application. No.

1. The name of the applicant is Greene & Weed Investments
2. The post-office address of the applicant is 4245 North 19th Avenue, Phoenix, AZ 85015
3. The flow of water which has been or was to have been used in second-feet is
4. The quantity of water which has been or was to have been used in acre-feet is 26,427 (applicant's remaining int. in 396.403 AF remaining in 85-102)
5. The water has been or was to have been used for and during periods as follows:

<u>Irrigation</u>	from <u>March 1</u>	to <u>November 1</u>	incl.
(purpose)	(month) (day)	(month) (day)	
<u>Stockwater and Domestic</u>	from <u>January 1</u>	to <u>December 31</u>	incl.
(purpose)	(month) (day)	(month) (day)	
and stored each year (if stored).	from	to	incl.
	(month) (day)	(month) (day)	
6. The direct source of supply is a well in Kane County.
(well, spring, stream, drain, river; if other explain)
7. The point or points of diversion
N. 215 ft. and W. 2582 ft. from the E½ Cor. Sec. 25, T43S, R5W, SLB&M.

(Must be the same as that of right being changed unless a previous change has been filed and approved. Then use the point or points approved in the previous change.)

8. Diversion works:

If a well give diameter and depth. 16 inch well, 125 feet deep

If a dam and reservoir give height, capacity, and area inundated

If other give type of diversion facility
9. The water involved has been or was to have been used for the following purposes in the following described legal subdivisions: (If used for irrigation, state sole or supplemental supply, and describe other supplemental rights.)

Irrigation within the N½NE¼, S½NE¼, SE½NW¼, N½SE¼, & NE½SW¼ Sec. 25, T43S, R5W, SLB&M.

Total acres to be irrigated 78.0146 (390.073 AF)

Stockwatering (number and kind) 200 cattle (5.60 AF)

Domestic (number of families and/or persons, etc.) one family (0.73 AF)

Other
10. The point at which water has been or was to have been returned to the stream channel is situated as follows: (Please describe method of return.)

Note: Paragraph 10 is to be completed only when all or part of the water is returned to the natural stream or channel.

The Following Changes Are Proposed

11. The flow of water to be changed in cubic feet per second is
12. The quantity of water to be changed in acre-feet is 26,427 acre feet

.....
Irrigation from March 1 to November 30 incl.
(purpose) (month) (day) (month) (day)
Domestic from January 1 to December 31 incl.
(purpose) (month) (day) (month) (day)
and stored each year (if stored) from to incl.
(month) (day) (month) (day)

14. It is now proposed to divert the water from a well
(i.e., spring, spring area, stream, river, drain, well, etc.)

at a point(s) as follows:

S. 330 ft. and E. 2310 ft. from the W $\frac{1}{4}$ Cor. Sec. 25, T43S, R5W, SLB&M.

NOTE: The "point of diversion," or "point of return," must be located by course and distance or by rectangular distances with reference to some regularly established United States land corner or United States mineral monument if within a distance of six miles of either, or if a greater distance to some prominent and permanent natural object. A spring area must also be described by metes and bounds.

15. The proposed diverting and conveying works will consist of: (if a well, state diameter and depth thereof)
8 inch well, 100 to 400 feet deep

16. If water is to be stored, give capacity of reservoir in acre-feet height of dam
area inundated in acres legal subdivisions of area inundated

17. The water is to be used for the following purposes in the following described legal subdivisions: (if used for irrigation, state sole or supplemental supply, and describe other supplemental rights.)

Irrigation within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 25, T43S, R5W, SLB&M.

..... Total acres to be irrigated 5.1054

but limited to the sole irrigation supply of 5.1054 acres. (25.527 acre feet)

Stockwatering (number and kind)

Domestic (number of families and/or persons, etc.) two families (0.90 acre foot)

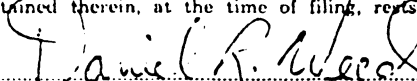
Other

18. If paragraphs 11 and 12 designate that only part of the right described in paragraphs 1 to 10 inclusive is to be changed, designate the status of the water so affected by this change as to its being abandoned or used as heretofore. remaining 369.976 acre feet will be used as described heretofore for the irrigation of 72.7292 acs (363.646 AF), Domestic for one family (0.73 AF) and stockwater for 200 cattle (5.60 AF).

EXPLANATORY

The following additional facts are set forth in order to define more clearly and completely the full purpose of the proposed change:

The undersigned hereby acknowledges that even though he may have been assisted in the preparation of the above-numbered application through the courtesy of the employees of the State Engineer's Office, all responsibility for the accuracy of the information contained therein, at the time of filing, rests with the applicant.


Signature of Applicant

For: GREENE & WEED INVESTMENTS

RECEIVED

MAY 10 1983

WATER RIGHTS

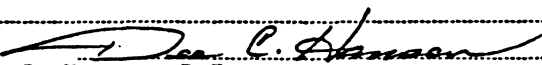
(This page not to be filled in by applicant)

STATE ENGINEER'S ENDORSEMENTS

1. 5-17-1982 Change Application received over counter in State Engineer's office by SGS
by mail
2. _____ Priority of right to make change brought down to, on account of _____
3. 5-17-1982 Fee for filing Application \$30.00, received by SGS, Receipt No. 13809
4. 10-3-82 Application microfilmed by J.A. Roll No. 987.3 and indexed by 5-21-82 J.A.
5. 10-26-83 Application plated by SGS
6. 5-17-1982 Application examined by SGS
7. _____ Application returned, with letter, to _____ for correction
8. _____ Corrected application resubmitted over counter to State Engineer's office
by mail
9. MAY 17, 1982 Application approved for advertisement by SGS
10. JUL 20 1982 Notice to water users prepared by J.L. V. 1982
11. AUG 5 1982 Publication began, was completed AUG 19 1982 NOTICE TO WATER USERS
12. _____ Proof slips checked by _____
13. 9/15/82 Change Application protested by WILLIAM D. LITTLE
14. 9/2/82 Publisher paid MEV No. 1001043
15. _____ Field Examined by _____
16. 5/27/83 Application designated for approval by SGS & GUS
rejection
17. 8/19/83 Change Application copied slm proofread by _____
18. 8/19/83 Change Application approved and returned to applicant
rejected

This application is approved on the following conditions:

1. Actual construction work necessitated by proposed change shall be diligently prosecuted to completion.
2. Proof of change shall be submitted to the State Engineer's office by 11/30/86
3. This change is subject to all conditions imposed on the approval of the original application or right
By Memorandum Decision dated August 19, 1983.


Dee C. Hansen, P.E., State Engineer

19. _____ Time for making proof of change extended to _____
20. _____ Proof of change submitted.
21. _____ Certificate of change No. _____, issued.

I hereby certify that the foregoing is a true copy of the Application by _____
to change the point of diversion, place and nature of use of water as shown, with endorsements thereon, on
the records of my office on the date given below.

Salt Lake City, Utah _____, 19 _____

State Engineer

Change Application No. 0-10091

is page 22 from the book
 Proposed Determination of Water Rights in Colorado River Drainage Area
 Kanab and Johnson Creek Divisions Code & RS, Book 1

152

I.C. BER	NAME AND ADDRESS INTEREST MAP NUMBER	TYPE OF RIGHT PRIORITY FLOW	SOURCE POINT OF DIVERSION	PURPOSE AND PLACE OF USE	PERIOD OF USE CLAIMS USED FOR PURPOSE DESCRIBED	ANNUAL WATER ALLOWED	REMARKS
10	Lorna L. Cottam 3051 Lake Circle Salt Lake City, Utah 84106 and Clara Bass Grams 420 N. Warner Street Bridgecrest, California 93555	Diligence 1864	Johnson Creek Stock water directly on stream from point where stream enters NW¼NE¼, Sec. 25, T43S, R5W, SLBM, to point where stream leaves NW¼NE¼, Sec. 25, T43S, R5W, SLBM.	Stockwatering: 27 cattle SEE CLAIMS USED FOR PURPOSE DESCRIBED	Jan. 1 to Dec. 31 710, 713	•	*Diversion from each or all claims. Total yearly diversion under all claims mentioned 0.76 ac.-ft.
22	Lorna L. Cottam & Clara B. Grams 86.55% interest East Canyon Irrigation Co. 13.45% interest c/o East Canyon Irrigation Co. P. O. Box 47 Kanab, Utah 84741 Map No. 38d	Application No. 26838a Certificate No. 8497 Amend. Change #5389 April 22, 1955 S5-162 0.92 cfs* <i>is currently used # 16764</i>	Underground water, well N 425 ft. and W. 2,582 ft. from the E¼ cor., Sec. 25, T43S, R5W, SLBM.	Irrigation: 1.30 acs NW¼NE¼, 8.00 acs SE¼NE¼, 40.00 acs SW¼NE¼, 3.20 acs. SE¼NW¼, 9.10 acs NE¼SE¼, 21.00 acs. NW¼SE¼, 0.70 acs NE¼SW¼, Sec. 25, T43S, R5W, SLBM, or a total of 83.30 acres. SEE CLAIMS USED FOR PURPOSE DESCRIBED	Mar. 1 to Nov. 30 102	416.60 ac.-ft.	
				Stockwatering: 200 cattle SEE CLAIMS USED FOR PURPOSE DESCRIBED	Jan. 1 to Dec. 31 102	5.60 ac.-ft.	*Flow for stockwatering is part of flow for irrigation.
				Domestic: One Family SEE CLAIMS USED FOR PURPOSE DESCRIBED	Jan. 1 to Dec. 31 102	0.73 ac.-ft.	*Flow for domestic is part of flow for irrigation.
	Lester Little Paros Circle Mesa, California 92626 Map No. 38d	Diligence 1864	Johnson Creek Stock water directly on stream from point where stream enters NE¼NE¼, Sec. 25, T43S, R5W, SLBM, to point where stream leaves NE¼SE¼, Sec. 25, T43S, R5W, SLBM.	Stockwatering: 27 cattle SEE CLAIMS USED FOR PURPOSE DESCRIBED	Jan. 1 to Dec. 31 712	0.76 ac.-ft.	