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Larry Little v. Greene and Weed Investments, Leon
S. Lippincott, Caroline Lippincott, and Dee C.
Hansen, State Engineer of the State of Utah : Brief
of Appellant

Utah Court of Appeals

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89-173 CA

IN THE SUPREME COURT OF THE STATE OF 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.

Case No. 860607

(Category No. 13(b))

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IN THE SUPREME COURT OF THE STATE OF UTAH

LARRY LITTLE,)	
)	
Plaintiff and Appellant,)	
)	
v.)	Case No. 860607
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GREENE & WEED INVESTMENTS,)	
LEON S. LIPPINCOTT, CAROLINE)	
LIPPINCOTT, and DEE C. HANSEN,)	(Category No. 13(b)
State Engineer of the State)	
of Utah,)	
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STATEMENT OF JURISDICTION AND
DESCRIPTION OF PROCEEDINGS BELOW

This is an appeal from an Interlocutory Decree which has been certified as a final judgment pursuant to Rule 54(b) of the Utah Rules of Civil Procedure by the Honorable Don V. Tibbs of the Sixth Judicial District Court.

The action below is in two counts; Count I being an appeal of a decision of the Utah State Engineer, and Count II being an action to quiet title to a water right. Because ownership of the water right will likely determine the outcome of the State Engineer appeal, the issues below were bifurcated, with the quiet title action being tried first. This action is an appeal from that decision.

STATEMENT OF THE ISSUES

The issues before the Court on appeal are:

1. Can a water right initiated under statutory authority of §73-3-1 et. seq. U.C.A. 1953 pass as an appurtenance to land under §73-1-11 U.C.A. 1953 before the Utah State Engineer issues a certificate of appropriation?

2. Did water pass as an appurtenance to land under authority of §73-1-11 U.C.A. 1953?

3. In the absence of any ambiguity in the deed, can parol evidence be used to contradict or vary its terms?

4. Did water pass as an appurtenance to land under authority of §73-1-11 after the Utah State Engineer issued the certificate of appropriation?

5. Was the evidence sufficient to support the trial court's judgment?

DETERMINATIVE STATUTES

Section 73-1-10 U.C.A. 1953 provides:

Water rights, whether evidenced by decrees, by certificates of appropriation, by diligence claims to the use of surface or underground water or by water users' claims filed in general determination proceedings, shall be transferred by deed in substantially the same manner as real estate. . .and such deeds shall be recorded in books kept for that purpose in the office of the recorder of the county where the place of diversion of the water from its natural channel is situated and in the county where the water is applied. A certified copy of such deed, or other instrument, transferring such water right shall be promptly transmitted by the county recorder to the state engineer for filing. Every deed of a water right so recorded shall, from the time of filing the same with the recorder for record, impart notice to all persons of the contents thereof, and subsequent purchasers, mortgagees and lien holders shall be deemed to purchase and take with notice thereof.

Section 73-1-11 U.C.A. 1953 provides:

A right to the use of water appurtenant to land shall pass to the grantee of such land. . .provided, that any such right to the use of water, or any part thereof, may be reserved by the grantor in any such conveyance by making such reservation in express terms in such conveyance, or it may be separately conveyed.

STATEMENT OF THE CASE

1. Nature of the Case.

This is an action to quiet title to a water right, Application to Segregate Water No. 26838a, Certificate 8497, Water User Claim No. 85-102 (hereinafter Segregation 26838a (85-102)). The focus of the action is the root titles by which the parties claim their respective interests.

Plaintiff Larry Little claims title by virtue of a deed dated January 16, 1968 whereby his mother and father made a conveyance of land to himself and his brother and sisters in undivided interests without expressly reserving the water being used thereon. (Plaintiff's root title is marked as plaintiff's Exhibit 9 and plaintiff's Exhibit D-2, a copy of which is attached as Exhibit A). Under authority of §73-1-11 U.C.A. 1953 a conveyance of land passes an appurtenant water right unless the same is expressly reserved. Cortella v. Salt Lake City, 93 Utah 236, 72 P.2d 630 (Utah 1937).

Defendants Greene & Weed Investments (Greene & Weed), and Leon S. and Caroline Lippincott (Lippincotts) claim their title through the same grantors by virtue of two quit claim deeds, one of which is dated November 17, 1969. (Defendants' root titles are marked as Exhibits L-1 and L-2; copies are attached as Exhibit B). They contend the subject water right was expressly conveyed to them through these quit claim deeds.

Since defendants' chain of title starts approximately two years after plaintiff claims water passed as an appurtenance to land, defendants, of necessity, have claimed water did not pass as an appurtenance to land on January 16, 1968. Thereafter, defendants contend that water again did not pass as an appurtenance to land in late December 1969 when plaintiff and plaintiff's brother and sisters joined in dividing between themselves, by warranty deed without reservation, the same lands upon which the water was being placed to use. (Plaintiff's Exhibits D-3, D-4 and D-5; copies are

attached as Exhibit C.) Here, they ask the court to look to evidence extrinsic to the deeds themselves which allegedly reflect the grantors' intent contemporaneous with the execution of the deeds.

As a result of the above, the respective chains of title of plaintiff and defendants are entirely different, including their root titles. It is plaintiff's position that since his deed of January 16, 1968 (Exhibit A hereto) is, on its face, plain, clear and without ambiguity, that this Court should find, as a matter of law, that it was sufficient to pass an appurtenant water right. Moreover, since the deeds of December 1969 (Exhibit C hereto) also failed to expressly reserve the water and are similarly without ambiguity, the Court can again find, as a matter of law, that they too passed an appurtenant water right. Accordingly, the subject water right would fall within plaintiff's chain of title and outside that of defendants'.

2. Course of Proceedings in the District Court.

After trial, the District Court, the Honorable Don V. Tibbs presiding, entered judgment in favor of defendants Greene and Weed and Lippincotts, thereby approving their chain of title and rejecting that of plaintiff Larry Little. Judgment was entered on October 23, 1986.

Thereafter and pursuant to Rule 52(b) of the Utah Rules of Civil Procedure, plaintiff moved the Court to amend the Findings of Fact and Conclusions of Law, basing his motion on the failure of the

Court to include certain specific findings of fact and conclusions of law which the Court expressly made at the close of trial, but which were not included in the Findings of Fact and Conclusions of Law subsequently entered by the Court. After hearing, a portion of those specific Findings of Fact and Conclusions of Law were included in the Court's Order, but others were rejected. Larry Little filed an Amended Notice of Appeal on February 13, 1987.

3. Statement of Relevant Facts.

This case evolves from the actions of Lester F. and Madge C. Little, husband and wife. All parties to this action claim their respective interests in the subject water right through these common grantors, albeit through different chains of title. Lester F. and Madge C. Little are the parents of five children, two of which, plaintiff Larry Little and defendant Caroline Lippincott, are involved in this action.

On April 12, 1955, Lester F. Little filed Application to Appropriate Water No. 26838 (85-33) with the Utah State Engineer's Office. That application was for 10 cubic feet per second (cfs) of water out of two wells for use on 160 acres. It is not, however, the subject of this action (Finding of Fact 8 (hereafter FF __)). Rather, it is the original filing (mother application) from which the subject water right was later segregated. On or about October 15, 1958, the State Engineer approved this original application, thereby authorizing Mr. Little to proceed with the construction of the necessary works to perfect the proposed appropriation. §73-3-2 U.C.A. 1953.

Thereafter, on November 30, 1967, Lester F. Little filed an application to segregate a portion of Application 26838 (85-33) - which under authority of §73-3-27 U.C.A. 1953 had the effect of making the original application and the segregated portion separate water rights. Once a segregation application is approved, the State Engineer assigns it a separate file number and file jacket, and treats it in all respects separately (Transcript Pages 84, 85, (hereafter Tr. __)). In this case, the segregated application was assigned Application No. 26838a, the lower case "a" denoting its status as a segregated right and File No. (85-102) denoting the State Engineer designated area and number. (Plaintiff's Exhibit 2). Through the segregation, Lester F. Little segregated .92 cfs out of the 10 cfs involved in the mother right, for use on 83.3 acres (FF 9), Pre-Trial Order III(b) (hereafter PTO __)).

Less than one month later, on December 19, 1967, Lester F. Little submitted Proof of Appropriation on Segregation No. 26838a (85-102) (FF 11, plaintiff's Exhibit 41). "Proof" is a sworn statement by the appropriator and his or her proof engineer that the appropriation is complete - the diversion facilities having been constructed and the water actually having been placed to beneficial use. §73-3-16 U.C.A. 1953. It includes maps, profiles and drawings prepared by the proof engineer locating the completed works, place of use, etc. and is the last statutory step required of an applicant. Thereafter, the State Engineer simply issues a

certificate of appropriation, if it is made to appear that the appropriation has been completed in accordance with the application. §73-3-17 U.C.A. 1953. In this particular case, the State Engineer because of other pressing problems (Tr. 50, 51) did not actually issue the certificate until October 21, 1969, and because of a descriptive error, the certificate was amended on November 25, 1969 (PTO III(d), FF 14).

The Certificate of Appropriation, among other things, specifically describes the lands where the water is actually placed to use. In this particular case it lists the place of use as being the same 83.3 acres described by Lester F. Little in his submission of proof filed December 19, 1967. (Plaintiff's Exhibit 4 and Exhibits E-a and E-b). Further, all parties to this action have by stipulation agreed that water under Segregation 26838a (85-102) was actually placed to use on said 83.3 acres during the irrigation seasons 1967 through 1969 and the trial court so found. (Order Amending Findings of Fact 1 (hereafter Order Amending FF __)), Tr. 42, 43, FF 11). Moreover, the State Engineer's records reflect that no change application on the subject water right was filed between October 21, 1969 and April of 1978 (PTO III(f)), which under authority of §73-3-3 U.C.A. 1953, would have been necessary to change the water's place of use.

The point of demarcation between Larry Little's chain of title and that of defendants occurred January 16, 1968, less than one month after Lester F. Little submitted Proof of Appropriation on

Segregation 26838a (85-102). It was then that Lester F. and Madge C. Little conveyed 80.1 acres of the 83.3 acres covered by Segregation No. 26838a (85-102) to their children in undivided one-fifth interests. (Exhibit A attached hereto; plaintiff's Exhibit D-2). (The other 3.2 acres were previously transferred by Lester and Madge Little to John K. Little, another son (PTO IV(d-1))). The deed of January 16, 1968 did not expressly reserve the water and it is through this conveyance that plaintiff Larry Little claims his root title. It is also the root title found in the abstract of title maintained by the Utah State Engineer for the subject water right and is filed of record with the Kane County Recorder. (Plaintiff's Exhibit 6. A copy of the State Engineer's Abstract is attached as Exhibit D).

Defendants' root title came into being almost two years later, on November 17, 1969, when Lester F. and Madge C. Little quit-claimed their interest in the mother right, Application No. 26838 (85-33) to two of their daughters, Clara Bess Grams and Lorna Little Cottam (PTO V(2), Exhibit B attached, Exhibits L-1 and L-2). However, in addition to expressly describing the mother application by number, the quit claim deed described a Well No. 1 as being located North 2465 feet and West 2640 feet from the Southeast Corner of Section 25, Township 43 South, R5W, SLM, Utah. Later, in an undated deed without notarization, the same grantors quit-claimed the same water mother application to the same grantees, the difference being that Well No. 1 was described as being located

North 425 feet and West 2582 feet from the East one quarter corner of Section 25, T43S, R5W, SLM, Utah - in close proximity to that described as the point of diversion for Segregation No. 26838a (85-102). (See Exhibit E-a and E-b). Neither quit claim deed was recorded with the Kane County Recorder or placed in the file maintained by the Utah State Engineer for Segregation 26838a (85-102). Both deeds are found in the State Engineer file maintained for Application 26838 (85-33), which is not at issue in this proceeding (PTO V(2)).

Shortly thereafter, Lorna Little Cottam and Clara Bess Grams joined their two brothers and one sister in dividing amongst themselves the property their mother and father had conveyed to them by deed dated January 16, 1968 (plaintiff's root title, Exhibit A hereto). By separate deeds the five children joined in conveying to themselves the following:

(a) By Deed dated December 30, 1969, 8.0 acres of the subject 83.3 acres was conveyed to John K. Little. (Exhibit D-3 and attached as Exhibit C).

(b) By Deed dated December 30, 1969, 30.1 acres of the subject 83.3 acres was conveyed to Larry L. Little. (Exhibit D-4 and attached as Exhibit C).

(c) By Deed dated December 31, 1969, 41.3 acres of the subject 83.3 acres was conveyed to Lorna Little Cottam and Clara Bess Little Grams. (Exhibit D-5 and attached as Exhibit C).

(FF 16). None of the deeds expressly reserved water and it is undisputed that water had been used on the subject 80.1 acres during the irrigation season immediately preceding the conveyance (Order Amending FF 1, Tr. 42, 43). Moreover, the Amended Certificate of Appropriation on Segregation 26838a (85-102) had issued on November 25, 1969, one month prior to the conveyances, thereby conclusively establishing water use on the acreage involved in the conveyances. This series of conveyances constitutes the 2nd, 3rd and 4th instruments of conveyance in Larry Little's chain of title. They are not found in defendants' chain of title (PTO III, IV, and V). Defendants' second instrument of conveyance is an Assignment dated September 1, 1972 (PTO IV and V).

Although there were numerous documents and instruments of the conveyance taken into evidence with respect to each of the parties' chains of title, this action will turn on the above referenced conveyances. If water passed as an appurtenance to land on January 16, 1968 then the Court under authority of §73-1-11 should validate Larry Little's chain of title. If it did not, the Court still must determine whether Greene & Weed and Lippincotts' chain of title is sufficient to vest title to the water rights in them. A summary chart of the parties' respective chains of title is attached as Exhibit "E". Copies of the actual instruments of conveyance are attached as Exhibits A, B and C. They are found in the record as Exhibits D-2, D-3, D-4, D-5 and L-1 and L-2.

SUMMARY OF ARGUMENTS

I

UNDER §73-1-11 U.C.A. 1953 A CONVEYANCE OF LAND
PASSES AN APPURTENANT WATER RIGHT UNLESS THE SAME
IS EXPRESSLY RESERVED

It is well established Utah law that a deed to land in statutory form conveys whatever right the grantor has to the water appurtenant to land, unless the water is expressly reserved. Cortella v. Salt Lake City, 93 Utah 236, 72 P.2d 630 (Utah 1937); Anderson v. Hamson, 5 Utah 151, 167 P. 254 (Utah 1917). The applicable statute, §73-1-11 U.C.A. 1953, could not be more clear. It provides, "A right to the use of water appurtenant to land shall pass to the grantee of such land" unless expressly reserved.

In the instant action, water passed as an appurtenance to land, and under plaintiff's chain of title, on January 16, 1968. The deed (Exhibit A hereto) on its face is plain, clear and without ambiguity. Moreover, there is absolutely no extrinsic evidence in the record that would illuminate the grantors' intent contemporaneous with the execution of the deed. We have only the deed itself which included "all improvements and appurtenances appertaining thereto". It did not expressly reserve the water. Therefore, when the same grantors, two years later and in two quit claim deeds filled with ambiguity and needing extrinsic evidence to even demonstrate a tie with Segregation No. 26838a (85-102),

conveyed their interest, if any, in the mother application, the water under Segregation No. 26838a (85-102) had already passed to the grantors' five children as an appurtenance to land.

Surprisingly, whether water passed as an appurtenance to land under plaintiff's chain of title and by deed dated January 16, 1968 or by defendants' chain of title and by the quit claim deeds of November 17, 1969, the subject water right ultimately came into the possession of Lorna Little Cottam and Clara Bess Grams. In December of 1969 Ms. Cottam and Ms. Grams either held an undivided one-fifth interest in the water right under plaintiff's chain of title and by virtue of the deed of January 16, 1968 or they owned it all under the quit claim deeds of November 17, 1969 which constitute defendants' root title. (See Exhibit E Title Summary Chart attached hereto). In either event, it is undisputed that thereafter, in late December 1969, Lorna Little Cottam and Clara Bess Grams joined their brothers and sisters and by three separate warranty deeds conveyed the land upon which the water had been used to themselves individually. John Kenyon Little received 8 acres, plaintiff Larry Little received 30.1 acres, and Lorna Little Cottam and Clara Bess Little Grams received 41.3 acres. (See Exhibit C and E hereto). These deeds included all "appurtenances". They did not expressly reserve the water. Accordingly, water under Segregation 26838a (85-102) would have again passed as an appurtenance to land under authority of §73-1-11 U.C.A. 1953.

II

WATER BECOMES APPURTENANT TO LAND
ONCE THE APPROPRIATION IS COMPLETE

Water rights, whether evidenced by decrees, by certificates of appropriation, by diligence claims or by statements of water user's claims in general determination proceedings are established through the physical acts of diverting water from its natural source and applying it to a beneficial use. The appropriation is complete once those physical acts have been accomplished. A decree, certificate of appropriation, diligence claim or a statement of water user's claim merely confirms that the work has been done; they serve only as evidence of that which has already been accomplished. Therefore, it makes no sense to hold that water cannot pass as an appurtenance to land under authority of §73-1-11 U.C.A. 1953, until a certificate of appropriation issues.

The issuance of a certificate merely confirms that which all the parties to this action have admitted as fact - that the grantor had completed his appropriation and had actually placed the water to use on the parcel being conveyed. Under these circumstances, where proof of appropriation is undisputed, but the certificate has not issued, water should pass as an appurtenance to land, unless expressly reserved.

Under §73-3-17 U.C.A. 1953, the issuance of a certificate is only prima facie evidence of a water right. It merely creates a rebuttable presumption of the right claimed - no more, no less.

And, if the water right is subject to challenge after the issuance of a certificate, it should certainly be subject to proof before the issuance of a certificate.

III

IT IS WELL ESTABLISHED UTAH LAW THAT THE INTENT
OF THE MAKER OF AN INSTRUMENT MUST BE ASCERTAINED
FIRST FROM THE FOUR CORNERS OF THE INSTRUMENT ITSELF

Plaintiff's root title came into existence on January 16, 1968 when his mother and father conveyed, without reservation, 80.1 acres of land upon which water was being placed to use under Segregation 26838a (85-102) to plaintiff and his brother and sisters in undivided one-fifth interests. Thereafter, the children divided said acreage between themselves, again without reserving the water, by a series of three warranty deeds.

The language contained in each of the above referenced deeds is plain, clear and without ambiguity. Nowhere is it contended otherwise - the defendants did not so contend and the trial court did not so find. Nevertheless, the trial court erroneously chose to ignore the plain and clear language of those deeds and address the issue anew - basing its ruling on assumptions and inference rather than on the plain meaning of the deeds by which the grantors made their conveyances.

If defendants had attempted to introduce extrinsic evidence to demonstrate intent, it clearly would not have been inadmissible. Hartman v. Potter, 596 P.2d 653, 656 (Utah 1979); Williams v. First

Colony Life Insurance Co., 593 P.2d 534, 536 (Utah 1979). But, because it was introduced to establish their own title, it became admissible for that purpose. However, just because the extrinsic evidence may have been admissible for purposes of demonstrating defendant's chain of title, it nevertheless cannot be used to establish the grantor's intent. That must be ascertained first from the four corners of the instrument itself. Continental Bank and Trust Co. v. Bybee, 6 Utah 2d 98, 306 P.2d 773, 775 (1957). See also Williams v. First Colony Life Insurance Co., 593 P.2d 534, 536 (Utah 1979); Big Butte Ranch, Inc. v. Holm, 570 P.2d 690, 691 (Utah 1977). And, whether an instrument is ambiguous is a matter of law, Morris v. Mountain States Telephone and Telegraph Co., 658 P.2d 1199, 1200 (Utah 1983). Where the terms are clear and complete, the interpretation of the instrument is also a matter of law. Id. at 1201.

IV

THE TRIAL COURT'S RULING IS NOT CONSISTENT WITH EITHER PLAINTIFF'S OR DEFENDANTS' THEORY OF TITLE

Plaintiff and defendant's chains of title are mutually exclusive. The trial court nevertheless made findings of fact supporting plaintiff's chain of title while ruling for defendant. Such action cannot be reconciled and is sufficient justification in itself to reverse the trial court.

ARGUMENT

I

THE TRIAL COURT ERRED IN DETERMINING THAT
A WATER RIGHT INITIATED UNDER AUTHORITY OF
§73-3-1 U.C.A. 1953 CANNOT PASS AS AN APPURTENANCE
TO LAND UNDER §73-1-11 U.C.A. 1953 UNTIL THE UTAH
STATE ENGINEER ISSUES A CERTIFICATE OF APPROPRIATION

It is well settled in this jurisdiction that a deed in statutory form, without reservation of water, conveys whatever water rights the grantor has to the water appurtenant to land. §73-1-11 U.C.A. 1953; Thompson, et al v. McKinney, et al, 63 P.2d 1056 (Utah 1937); Roberts v. Roberts, 584 P.2d 378 (Utah 1978). The relevant statute, §73-1-11 U.C.A. 1953, does not specify a "certificated right" or a "diligence right", it simply provides: "a right to the use of water appurtenant to land shall pass to the grantee of such land" unless reserved in express terms. And, under Utah law, it is clear that a water user holding an approved application is entitled to use the water (Tr. 51) - moreover, he or she is under an obligation to complete the construction and place the water to beneficial use within the time fixed by the State Engineer or risk having the application lapsed. §73-3-10 and §73-3-12 U.C.A. 1953. Placing the water to beneficial use is necessary to complete the appropriation and is a pre-condition to the issuance of a certificate of appropriation under §73-3-17 U.C.A. 1953.

In the instant action, the grantors held more than an approved application to appropriate water; they had completed the appropriation and had actually placed the water to beneficial use

(plaintiff's Exhibit 4). Less than one month before conveying the land upon which the water was being used to his children, Lester F. Little submitted Proof of Appropriation to the State Engineer. In addition, the parties to this action have by stipulation agreed that the water under the subject water right had actually been placed to beneficial use on said 80.1 acres both before and after the time of the execution of the conveyance (Tr. 40, 42, 43), and the trial court specifically so found (Order Amending FF 1). Therefore, when Lester F. and Madge C. Little conveyed the 80.1 acres of land to their children it is undisputed that water under the subject water right, Segregation 26838a (85-102), was being beneficially used thereon and was necessary for the continued enjoyment of the land. Then, when the deeds from Lester F. and Madge C. Little contained no reservation of water but rather included "all improvements and appurtenances appertaining thereto," it is clear that water under Segregation 26838a (85-102) passed as an appurtenance to land under authority of §73-1-11 U.C.A. 1953.

In determining that water did not pass as an appurtenance to land because the certificate of appropriation had not issued (Order Amending FF2), the trial judge confused 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.

In this State, an appropriation of water is made through the physical acts of diverting water from its natural source and applying it to a beneficial use. Gunnison Irrigation Company v.

Gunnison Highland Canal Company, 52 Utah 347, 174 P. 852 (1918); Yardley v. Swapp, 12 Utah 2d 146, 364 P.2d 4. This has always been the basis for establishing a right to use the waters in Utah, Wrathall v. Johnson, 84 Utah 50, 40 P.2d 755 (1935); Wellsville East Field Irrigation Company v. Lindsay Land & Livestock, 104 Utah 448, 137 P.2d 634 (1943) and continues to be so today, §73-3-1 U.C.A. 1953, et. seq.

Before Utah adopted its exclusive statutory procedure for appropriating water, diversion of water and its application to a beneficial use was all that was required to establish a valid appropriation. Wrathall v. Johnson, supra. Even the statutory requirement to post notice of the appropriation at the point of diversion and at the nearest post office was not fatal if, as a matter of fact, the water was beneficially used. Salt Lake City Water and Electrical Power Company v. Salt Lake City and Ann Cannon, 25 Utah 441, 71 P. 1067 (1903). Today, these early "diligence rights" are protected by law and if filed of record with the Utah State Engineer in accordance with §73-5-13 U.C.A. 1953, are considered prima facie evidence of the right claimed. No certificate of appropriation issues, no State Engineer review is performed, and other than the filing itself, no public notice is given. The presumption of validity is only rebutted by actual proof that the diversion was not made or that the water was not placed to beneficial use prior to the time Utah adopted its statutory procedure for appropriating water.

Not until 1903 on surface waters and 1935 on underground waters, were applications for permits required to secure an appropriation. Even then, the essential elements of the appropriation remained the same - the water user still had to physically construct the diversion facilities and place the water to beneficial use. §73-3-10 U.C.A. 1953. Adams v. Portage, 95 Utah 1, 72 P.2d 648 (1937). But, once done, the appropriation is complete, Deseret v. Hoopiana, 66 Utah 25, 239 P. 479 (1925), and the water user is entitled to a certificate of appropriation, §73-3-17 U.C.A. 1953.

The issuance of a certificate of appropriation by the State Engineer no more establishes the existence of a water right than did the statutory requirement to post notice of the appropriation in Patterson v. Ryan, 37 Utah 410, 108 P. 1118 (1910) - where the failure to post notice was not fatal to the existence of the water right. A certificate of appropriation only constitutes prima facie evidence that the appropriation is complete. The right itself is established through the physical acts of diverting the water from its natural source and placing it to beneficial use.

The issuance of the certificate of appropriation is merely a non-discretionary function served by the State Engineer that confirms a pre-existing right. Such is the clear language of §73-3-17 U.C.A. 1953:

Upon it being made to appear to the satisfaction of the State Engineer that an appropriation. . .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. . . .

Moreover, a certificate so issued is entitled to no greater status than is a "diligence right" filed under authority of §73-5-13 U.C.A. 1953. It, too, only constitutes "prima facie evidence of the owner's right to use the water in the quantity, for the purpose, at the place, and during the time specified therein, subject to prior rights" §73-3-17 U.C.A. 1953. It is not an adjudication of anything. The right is still subject to challenge, with the challenge being met by actual proof of a diversion of water and its application to a beneficial use.

Even an adjudication by a court merely recognizes a pre-existing right. In a leading Colorado case, Cresson Company v. Whitten, 139 Colo. 273, 338 P.2d 278 (1959), the Colorado Supreme Court confirmed the notion that a water right exists by virtue of an appropriation, rather than by a judicial declaration of appropriation. Therein, the court declared:

A decree in a water adjudication is only confirmatory of pre-existing rights; the decree does not create or grant any right; it serves as evidence of rights previously acquired. 139 Colo. at 283.

* * *

[4] Here Cresson and UGM had no decrees, and yet all the facts entitling them to decrees might well have existed and such facts should have been admitted. The right to the use of water accrues by virtue of acts in putting the water to a beneficial use or in providing and developing non-tributary water. An adjudication only confirms that which has already been accomplished. 139 Colo. at 284. Accord, Saunders v. Spina, 140 Colo. 317, 325, 344 P.2d 469 (1959).

Similarly, in Cline v. Whitten, 144 Colo. 126, 355 P.2d 306 (1960), the court stated:

Defendant's contention that only adjudicated water rights can be protected from interference is without merit. Adjudication only confirms pre-existing rights. 144 Colo. at 129 (citing Cresson Company v. Whitten).

There are even more compelling reasons why water should pass as an appurtenance to land before the State Engineer actually issues the certificate of appropriation. Administratively, the State Engineer has for more than twenty years transferred title to water based on its having passed as an appurtenance to land before issuance of a certificate of appropriation (Tr. 56) and, in fact, did it in this action. (The State Engineer's root title for this water right is the same root title as that claimed by Larry Little. (See plaintiff's Exhibit 6.)) Moreover, Mr. Gerald Stoker, an area engineer for the Utah State Engineer since 1966 (Tr. 44), testified that during his entire tenure the State Engineer's policy has been to transfer title to water as an appurtenance to land, unless expressly reserved, before the certificate of appropriation issues (Tr. 56 and 64). Accordingly, a holding by this Court that a water right cannot pass as an appurtenance to land before the State Engineer issues a certificate of appropriation would disrupt untold numbers of water titles throughout the State and would place the State Engineer and the courts in a terribly inconsistent position. Whether water then passed as an appurtenance to land would turn not on whether it had actually been "placed to use" thereon as required

by §73-1-11 U.C.A. 1953, but rather on the type of water right involved in the conveyance. A "diligence right", as well as a water right developed under statute but involved in a general determination proceeding under authority of §73-4-1 et. seq. U.C.A. 1953, would presumably be conveyed with the land as an appurtenance thereof, while a water right requiring proof of appropriation and the issuance of a certificate would not - at least until the certificate issued. This makes no sense and would be contrary to the express language of §73-1-11 U.C.A. 1953, wherein the legislature has simply provided that the "right to the use of water shall pass to the grantee of such land." The only showing required is that "such right was exercised next preceding the time of the execution of the conveyance thereof. . . ." §73-1-11 U.C.A. 1953. Use of water on the land is the controlling factor and it should matter not the type of water right involved, or whether that water right will be confirmed by the State Engineer issuing a certificate of appropriation or by the court issuing its decree.

There are now ongoing throughout the state a series of general determination proceedings under authority of §73-4-1 et. seq. U.C.A. 1953, to determine all rights to the use of waters within specified drainage areas. In those areas where an adjudication is now pending water users completing their appropriations are not required to submit proof of appropriation, and will never receive a certificate of appropriation, §73-3-16 U.C.A. 1953. Pursuant to §73-3-16 U.C.A. 1953, such water users simply file "a verified statement to the

effect that he has completed his appropriation or change and elects to file a statement of water users claim in such proposed determination of water rights or any supplement thereto in accordance with and pursuant to Chapter 4 of Title 73, in lieu of proof of appropriation or proof of change". Under these circumstances, the water users rights will not be confirmed until the court enters its final decree - which can take over forty or more years. For example, the Utah Lake and Jordan River Adjudication was initiated September 1, 1944 and is still pending, No. 57298, filed in the Third Judicial District Court in and for Salt Lake County; as is the Price River Adjudication, filed May 20, 1956, as Civil No. 8598, in the Seventh Judicial District Court in and For Carbon County.

Arguably, the trial court's ruling with respect to water not passing as an appurtenance to land before administrative certification should also apply to judicial confirmation. In truth, there is nothing to distinguish a water user who completes his or her appropriation in an area undergoing a general determination proceeding under §73-4-1 et. seq. U.C.A. 1953 from one completing it under §73-3-1 et. seq. U.C.A. 1953. Both are subject to the same statutory requirements in developing their water rights. Both file sworn statements that the appropriation is complete, with the water having been applied to a beneficial use. The only difference is that one is confirmed by judicial decree while the other is confirmed by administrative certification - neither of which are

within the control of the appropriator or within the common knowledge of the purchaser of land upon which water has been placed to use.

Significantly, the trial court's reasoning could also apply to appropriations completed before Utah adopted its statutory method for appropriating water. In those instances, there is no proof of appropriation, no certificate, and unless by chance the water right is included in some type of water lawsuit, no decree. There is no statutory requirement that these so-called "diligence rights" ever be confirmed. The appropriation is complete once there is a diversion of water and its application to a beneficial use. Under these circumstances the right may never be confirmed either by way of certification or by judicial decree. There are untold numbers of these water rights in existence in the State of Utah and it would be ridiculous to suggest that they have not passed as an appurtenance to land since their establishment.

To insure consistent application of the law, water rights should be held to be appurtenant to land upon a showing that the grantor has a right to use the water on the land being conveyed and has actually placed the water to use thereon. Only then will all water rights receive consistent treatment under §73-1-11 U.C.A. 1953. Only then will the court avoid disrupting what has been the administrative policy of the State Engineer for twenty or more years (Tr. 56).

II

WHETHER WATER PASSED AS AN APPURTENANCE TO
LAND IS A QUESTION OF LAW, TO BE DETERMINED
FROM THE LANGUAGE OF THE DEED

As stated by the Honorable Bruce S. Jenkins of the Utah District of the United States District Court in Anschutz v. Union Pacific Railroad Co., Civil No. C-77-0390J (July 1984), it is well established Utah law that the intent of the maker of an instrument must "be ascertained first from the four corners of the instrument itself." Continental Bank and Trust Co. v. Bybee, 6 Utah 2d 98, 306 P.2d 773, 775 (1957). See also, Williams v. First Colony Life Insurance Co., 593 P.2d 534, 536 (Utah 1979); Big Butte Ranch, Inc. v. Holm, 570 P.2d 690, 691 (Utah 1977). If an instrument is not ambiguous, extrinsic evidence will not be admitted. Hartman v. Potter, 596 P.2d 653, 656 (Utah 1979); Williams, 593 P.2d at 536. Whether an instrument is ambiguous is a matter of law, Morris v. Mountain States Telephone and Telegraph Co., 658 P.2d 1199, 1200 (Utah 1983). Where the terms of the document are clear and complete, the interpretation of the instrument is also a matter of law. Id. at 1201.

In Hartman, supra, this Court addressed a problem factually similar to that presented here. There, plaintiffs did not seek reformation of the deed nor did they claim breach of warranty of title. Neither did they assert ambiguity in the deed. They simply urged the trial court to look to the intent of the parties and construe the deed as a matter of law. In so doing, they invited the

Court to look to factual matters and to assume certain facts pertaining to the intent of the grantor.

In reaching its decision the Court stated:

This Court has long recognized the cardinal rule of deed construction that the intention of the parties as drawn from the whole deed must govern.

In the absence of ambiguity, the construction of deeds is a question of law for the court, and the main object in construing a deed is to ascertain the intention of the parties, especially that of the grantor, from the language used. The description of the property in a deed is prima facie an expression of the intention of the grantor and the term "intention" as applied to the construction of a deed, is to be distinguished from its usual connotation. When so applied, it is a term of art and signifies a meaning of the writing.

Deeds are to be construed like other written instruments, and where a deed is plain and unambiguous, parol evidence is not admissible to vary its terms. It is the court's duty to construe a deed as it is written, and in the final analysis, each instrument must be construed in the light of its own language and peculiar facts. It is also well known that the intention of the parties to a conveyance is open to interpretation only when the words used are ambiguous.

Where the issue involved is solely one of law, as in the instant case, this Court is capable of determining the question as was the trial court and we are not bound by its conclusions. (citations omitted, emphasis in original) Id. at 656.

In the instant action, defendants have not sought reformation of the Warranty Deed of January 16, 1968, nor have they asserted any ambiguity therein. They, as in Hartman, simply urged the trial court to look to the intent of the parties and construe the deed as a matter of law. Significantly, and even though it would have been inadmissible, defendants presented no evidence whatsoever on the

grantor's intent, either before or contemporaneous with the execution of the Deed of January 16, 1968. The record is absolutely void of any such expressions. The only expression of intent the trial court had before it was the deed itself. And, it was nowhere contended at trial that that instrument was or is ambiguous.

As in Hartman, the trial court should have been precluded from making assumptions regarding the grantor's intent. Id. at 657. The undisputed fact is that Lester F. and Madge C. Little, husband and wife, made a conveyance to their children on January 16, 1968, without expressly reserving the water appurtenant to the land. That deed is marked as plaintiff's Exhibit D-2 in the record and attached hereto as Exhibit A. They, and all their children, are chargeable with knowledge of that instrument - as is defendant Greene & Weed (Tr. 186) - by virtue of their own actions and also by the recording of the deed with the Kane County Recorder's office and with the Utah State Engineer. And, according to the clear, unambiguous language of the deed dated January 16, 1968, the land upon which water under Segregation 26838a (85-102) had been placed to use was conveyed in undivided one-fifth interests to the five children (FF 16). That deed did not expressly reserve the water and thus pursuant to §73-1-11 U.C.A. 1953, that water right should have, and did, pass as an appurtenance to land. Therefore, the water right would subsequently have passed according to plaintiff's chain of title, it being undisputed that the land was so transferred (Tr. 245).

III

THE TRIAL COURT ERRED IN DETERMINING THAT THE
SUBJECT WATER RIGHT DID NOT PASS AS AN APPURTENANCE
TO LAND AFTER THE STATE ENGINEER ISSUED THE
CERTIFICATE OF APPROPRIATION

Even if we assume, for the sake of argument, that the subject water right did not pass as an appurtenance to land before the State Engineer issued his Certificate of Appropriation on Segregation 26838a (85-102), and even if we assume further that the water right then passed under defendants' root title to Lorna Little Cottam and Clara Bess Little Grams on November 17, 1969, we are still faced with the question of why the water thereafter did not pass as an appurtenance to land when Lorna Little Cottam and her sister Clara Bess Little Grams joined their brothers and sister in dividing the land upon which the water was being used amongst themselves.

Under our facts, the Amended Certificate of Appropriation, No. 8497, on Segregation No. 26838a (85-102) issued on November 25, 1969, just eight days after the quit-claim deeds by which defendants claim their title issued. This meant that under defendants' theory of appurtenance, that the grantees of that conveyance, Lorna Little Cottam and Clara Bess Little Grams, then held a fully perfected 100% interest in Segregation 26838a (85-102) - sufficient so that water could pass as an appurtenance to land - and an undivided one-fifth interest in the land upon which the water was being placed to use (by conveyance dated January 16, 1968). Therefore, when they thereafter joined their sister Caroline Lippincott and their

brothers Larry Little and John K. Little in late December 1969 and divided between themselves the land which had been conveyed to them by their parents on January 16, 1968 - without reserving the water - the water would have passed as an appurtenance to land under authority of §73-1-11 U.C.A. 1953.

It is undisputed that water under Segregation 26838a (85-102) was still in use on the subject property at the time of the December conveyances (Tr. 42; Order Amending FF 1; and the certificate issued November 25, 1969). Accordingly, water would have passed as an appurtenance to land under this series of conveyances because it was not expressly reserved. §73-1-11 U.C.A. 1953. Furthermore, it is clear from the record below that at least four of the grantees to this conveyance thought that it did.⁽¹⁾

As with the deed dated January 16, 1968, defendants did not seek reformation of the deeds made in December of 1969, nor did they assert any ambiguities therein or breach of warranty. Again, they simply urged the trial court to look to the intent of the parties and construe the deeds accordingly. They urged the court to ascertain the intent of the parties - not from the language of the deeds - but rather from parol evidence. Accordingly, the principles

(1) Interestingly enough, Lorna Little Cottam and her sister Clara Bess Little Grams trace their entitlement to the subject water right to the December conveyances, (Tr. 127, 136) not the quit claim deeds dated November 17, 1969 which constitute defendants' root title. In addition, John K. Little (Tr. 97, 100) and Larry Lester Little (Tr. 161), trace their individual titles through this series of conveyances.

announced in Hartman v. Potter, 596 P.2d 653 (Utah 1979) are controlling and dispositive on this issue:

It is the court's duty to construe a deed as it is written, and in the final analysis, each instrument must be construed in the light of its own language and peculiar facts. It is also well known that the intention of the parties to a conveyance is open to interpretation only when the words used are ambiguous. Id. at 656.

No ambiguity exists in the series of deeds made in December of 1969. The parties have not so contended, and the trial court did not so find. The trial court simply jumped to extrinsic parol evidence without addressing the express terms of conveyance found in the deeds. The trial court's actions in doing so were in error and should be overturned.

As noted in Hartman, this Court is as capable of determining the question of ambiguity as was the trial court and is not bound by its conclusions. Id. at 656. Accordingly, this Court should find that water passed as an appurtenance to land under §73-1-11 U.C.A. 1953, there being unity of land and water titles in the grantors - under either party's chain of title - when the conveyances were made in December of 1969.

IV

THE DOCTRINE OF AFTER ACQUIRED TITLE ACTS TO VEST TITLE IN PLAINTIFF'S CHAIN OF TITLE

Although it is here contended that the doctrine of after acquired title does not apply to these proceedings because water can and does pass as an appurtenance to land before a certificate of appropriation issues, the following argument is set forth simply

because it would have application should the Court accept defendants' erroneous assertion that water cannot so pass. In that event, the doctrine would work to vest title to Segregation 26838a (85-102) in plaintiff's chain of title.

Under §57-1-12 U.C.A. 1953 a warranty deed in statutory form conveys fee simple title "together with all the appurtenances, rights and privileges thereunto belonging." In the instant action the grantors of the January 16, 1968 warranty deed did this expressly. They included in their grant "all improvements and appurtenances appertaining thereto" (Exhibit D-2 in the record and Exhibit A attached). Therefore, if, as defendants suggest, the legal title to the water did not pass at the time of conveyance simply because the certificate of appropriation had not issued, then such title should have passed by operation of law once the certificate did issue to said grantor. That occurred October 21, 1969 when the State Engineer issued certificate of Appropriation No. 8497 on Segregation 26838a (85-102) to Lester F. Little (Exhibit E-a and E-b, PTO III(d)).

Under authority of §57-1-10 U.C.A. 1953 any conveyance made by a person who at the time of conveyance does not hold the legal estate but who thereafter acquires it will act to immediately pass title to the grantee. And, in Cox v. Ney, 580 P.2d 1085 (Utah 1978) this has been interpreted to apply to "any interest in the property conveyed by warranty deed which was outstanding at the time of delivery of the deed". Id. at 1087. See also Olsen v. Jones, 412

P.2d 169 (Okla. 1966). Accordingly, title to Segregation 26838a (85-102) would have passed to the grantees of the January 16, 1968 warranty deed on October 21, 1969 when the certificate of appropriation issued to their grantor.

V

THE PAROL EVIDENCE ACCEPTED BY THE TRIAL COURT FAILS TO SUPPORT THE JUDGMENT RENDERED

The inconsistencies in defendants' case and in the trial court's findings of fact and conclusions of law are glaring. The evidence simply does not support either position.

1. Defendants' Root Title.

Defendants' root title consists of two quit claim deeds (PTO V(1), FF 20, Exhibit L-1 and L-2, Exhibit B attached). By virtue of these two deeds, defendants contend Lorna Little Cottam and Clara Bess Little Grams received 100% of Segregation 26838a (85-102) and the trial court so found (FF 20). The weaknesses and inconsistencies with respect to plaintiff's claims and the trial court's findings include:

(a) The grantees of the conveyance, Lorna Little Cottam and Clara Bess Little Grams did not, and do not, rely on these deeds for their interests in the subject water right. According to the only testimony of the grantees, Lorna Little Cottam,⁽¹⁾ they thought the deed of December 31, 1969 gave them title to the subject water right (Tr. 127, 136). Such deed is

(1) Lorna Little Cottam testified by way of deposition, which, by stipulation of the parties, was accepted by the Court (Tr. 120).

in plaintiff's chain of title, not in defendants' and reflects a belief that water passed as an appurtenance to land.

(b) The quit claim deeds, on their face, do not convey the subject water right. Defendants rely on two quit claim deeds for their root title and both have numerous deficiencies. The first quit claim deed (Exhibit L-1) dated November 17, 1969, involves a conveyance from Lester F. and Madge Little to Lorna Little Cottam and Clara Bess Little Grams. Significantly, there is no reference whatsoever therein to the water right involved in this action. The conveyance expressly references the mother application not the segregated portion involved in this action. It also describes a Well No. 1 by a metes and bounds description. The other quit claim deed, neither dated nor notarized (Exhibit L-2), contains the only possible tie to the water right involved in this action. That tie is that Well No. 1 is described by metes and bounds as being located in close proximity to the well location for Segregation 26838a (85-102). It required consideration of extrinsic and parol evidence to discern this link and even then the link is to a point of rather than to the water right as a whole. Nowhere, however, is Segregation 26838a (85-102) mentioned in the deed or is there any land conveyed to which the subject water right could have been appurtenant. Nevertheless, the defendants claim the water passed by express

conveyance because the Well No. 1 description and the Well described in the Certificate of Appropriation for Segregation 26838a (85-102) are close.

Plaintiff contended below and continues to contend that it is defendants' deeds which are ambiguous, not those in plaintiff's chain of title. And since defendants' deeds expressly reference the mother application, No. 26838 (85-33) which is not involved in this action, the deeds have little, if any, bearing on the issue at hand.

(c) The two quit claim deeds relied upon by defendants were not filed with the Kane County Recorder, nor are they found in the file maintained by the State Engineer for Segregation 26838a (85-102). Both were filed in the State Engineer's office under Application 26838 (85-33), the file maintained for the water right specifically referenced in the deeds.

(d) Neither quit claim deed is found anywhere in the State Engineer's Abstract of Title for Segregation 26838a (85-102). The State Engineer's root title on the subject water right is the same as that claimed by plaintiff - the Warranty Deed dated January 16, 1968 (Tr. 52; plaintiff's Exhibit 6). The State Engineer's records for Segregation 26838a (85-102) make no reference whatsoever to the two quit claim deeds relied upon by defendants.

2. Conveyance #2 is Defendants' Chain of Title.

Defendants' chain of title is short and simple. They contend Lorna Little Cottam and Clara Bess Grams obtained 100% of the subject water right by virtue of two quit claim deeds, one dated November 17, 1969 and the other undated. Thereafter, on September 1, 1972, Lorna Little Cottam and Clara Bess Grams, by assignment conveyed their 100% interest to Greene & Weed (PTO IV(2); Tr. 192). The contradiction and inconsistencies with respect to this chain are numerous.

(a) Standing in direct contradiction to defendants' claims is the court's finding that Greene & Weed obtained title by virtue of deeds from Lorna Little Cottam and Clara Bess Grams and by "quit claim deed from East Canyon Irrigation Company. . . ." (FF 20). Unaccountably, the interest of East Canyon Irrigation Company in such water right is nowhere found in defendants' chain of title (PTO V). It is inexplicable how under defendants' theory of title East Canyon Irrigation Company, which does appear in plaintiff's chain of title, could have an interest in the subject water right. The two chains of title are mutually exclusive. The trial court's finding, therefore, is inconsistent with its ruling. Under defendants' chain of title East Canyon Irrigation Company could not have had an interest in the water right. If Lorna Little Cottam and Clara Bess Grams obtained 100% of the right on November 17, 1969 and then conveyed 100% to Greene & Weed on September 1,

1972, there would be no other interest to be conveyed because Greene & Weed would have had it all. Nevertheless, the facts developed at trial clearly show that John K. Little, through East Canyon Irrigation Company, owned a portion of the water right which was conveyed to Greene & Weed. John K. Little conveyed that portion to Greene & Weed approximately two years after Greene & Weed contended they received 100% of the water right from Lorna Little Cottam and Clara Bess Grams (plaintiff's Exhibits 18, 19 and D-10, D-11 and D-12).

(b) The Assignment dated September 1, 1972 states only that it assigns all of assignor's right, title and interest in Segregation 26838a (85-102), and defendant Greene & Weed was never told or led to believe that Lorna Little Cottam and Clara Bess Little Grams owned the entire right. To the contrary, Greene & Weed were led to believe Lorna and Clara Bess only owned five-eighths. And, it is clear that that is all they thought they were receiving (Tr. 147). On April 19, 1972, Norman H. Jackson, an attorney representing Lorna Little Cottam and Clara Bess Grams prepared a title opinion on the subject water right for Greene & Weed which is entirely consistent with plaintiff's chain of title and entirely inconsistent with defendants' chain (defendants Exhibit 38). Therein, Mr. Jackson established ownership of the water right as follows:

Lorna Cottam and Clara Bess Grams own approximately 40 acres of land covered by this Certificate, Larry Little owns approximately 30 acres, and Kenyon Little owns a 9.1 acre parcel.

Thereafter, Lorna Little Cottam and Clara Bess Grams pursuant to a contract of sale, and by means of separate warranty deeds dated December 18, 1975 and December 24, 1975 expressly conveyed a five-eighths interest in Segregation 26838a (85-102) (Exhibits D-15 and D-15a) to Greene & Weed. That is how they testified title passed to Greene & Weed (Tr. 131) - not by virtue of the assignment document.

Interestingly enough, Daniel Weed, a principal in Greene & Weed, also testified that Greene & Weed received title by virtue of the same five-eighths conveyances of the subject water right from Lorna Little Cottam and Clara Bess Grams (Tr. 219). The remainder, or one quarter, was claimed to have been received from the same grantors when the transaction was paid off. However, Mr. Weed was unable to produce such a deed or point to it anywhere in the record (Tr. 219 through 221). Not until primed by counsel (Tr. 221) did he change his contention and claim by virtue of the assignment document dated September 21, 1972.

3. The Trial Court's Finding of Fact No. 19 is Totally Without Support in the Record.

Finding of Fact No. 19, as amended by Order Amending Findings of Fact No. 3 provides:

On June 27, 1972 there was a land trade between plaintiff and Lorna Cottam and Clara B. Grams, wherein plaintiff conveyed 10 acres of land contained in the 83.3 acres. At the time of the conveyance, the sisters thought they had all the water rights here involved, except for the water rights of John Kenyon Little, which they acknowledged at that time.

The only testimony on this issue could not be more clear. Lorna Little Cottam and Clara Bess Grams did not think they had all the water rights here involved, except for those of John Kenyon Little, at the time of the trade. Their attorney told them so, the State Engineer told them so, and family members told them so. In her deposition which was read into the court record (Tr. 123-157), Lorna Little Cottam testified as follows:

After discussions with several people at the Water Resources Division and consultation with our attorney, Norman Jackson, I became convinced that the water was probably transferred with the land.

We traded 10 acres of land to Larry Little and acquired 10 more acres of land covered by the Certificate of Appropriation of Water. Thus, we owned 51.3 acres of the 83.3 acres. We felt we could transfer five-eighths of the water right to Greene & Weed. (Tr. 130)

And later, under further examination:

"Question: So did you enter into an agreement with Larry to make a trade?

Answer: Of 10 acres only.

Question: Was that to get some water rights from 85-102 water application?

Answer: I assume it was.

* * *

Question: You did follow through with a trade [with] Larry for 10 acres?

Answer: Yes.

Question: Did you think you received water with those 10 acres?

Answer: Yes.

Question: So at the time the trade was made for the 10 acres, you felt you received not only the 10 acres of land but you received the water that went with that piece of land, is that correct?

Answer: Yes, that's correct.

Question: So at that point in time you thought you had a greater proportion of the particular water right 85-102; is that correct?

Answer: I thought we owned 51.3 of the 83.3 acres.

Question: Once you received the 10 acres?

Answer: Yes.

Question: So those 10 acres you made the swap on June 27, 1972; is that correct?

Answer: That's correct."

Before the land trade with Larry, the sisters knew he owned thirty acres. (They conveyed it to him November 30, 1969, Exhibit D-4). Therefore, when Larry traded only 10 acres the sisters knew he still held twenty acres, and the water that went with it. Moreover, their attorney Norman Jackson told them as much by his letter of April 19, 1972 (defendant's Exhibit 38).

Given the inconsistencies in the trial court's, findings of fact and conclusions of law and the manner in which defendants claim their title, there is insufficient evidence to support the court's ruling. Defendants have not shown a clear entitlement to the

subject water right. The court apparently became confused because defendants simply do not have a chain of title that makes sense. Ambiguities and confusion surround defendants' chain of title and it is one of the great ironies of this case that defendants were able to use the confusion in their chain of title to reflect negatively on plaintiff's chain of title which is clear and unambiguous.

CONCLUSION

The basic material facts are not in dispute:

1. Lester F. Little and Madge C. Little had a right to use water on the said 83.3 acres as of January 16, 1968 (Tr. 51).

2. Lester F. Little and Madge C. Little were using water on the said 83.3 acres as of January 16, 1968 and had submitted proof of the same to the State Engineer (Tr. 42 and 43, Order Amending FF 1).

3. The Warranty Deed of January 16, 1968 from Lester Little and Madge C. Little conveyed 80.1 acres of said 83.3 acres without expressly reserving the water (Exhibit A hereto).

4. Defendants did not seek reformation of this deed or claim any ambiguity with respect thereto.

5. The land passed according to plaintiff's chain of title (FF 16).


Under these circumstances, this Court should hold that water will pass as an appurtenance to land unless expressly reserved. Only then will §73-1-11 U.C.A. 1953 be consistently applied to all types of water rights and only then will this Court avoid disrupting years

of administrative practice whereby the State Engineer has so transferred water titles. This can be accomplished by simply reviewing the deed of January 16, 1968 (Exhibit A hereto) and deciding, as a matter of law, that it is clear and unambiguous. And, since it is undisputed that the grantors had both the right to use the water on the land being conveyed and had exercised that right immediately preceding the time of conveyance, the water would have passed as an appurtenance thereof because it was not expressly reserved. Moreover, if water so passed, it is undisputed it would have passed according to plaintiff's chain of title.

This Court should further exercise its authority to review as a matter of law the deeds whereby the five Little children divided the 80.1 acres of the said 83.3 acres between themselves (Exhibit C hereto). These conveyances were also plain, clear and without ambiguity. They were also without reservation of the water. This would simply confirm plaintiff's chain of title and would effectively negate defendants' chain. Then, when defendants received a five-eighths interest in the subject water right by warranty deeds (D-15 and D-15a) they would have received exactly what their grantors had a right to convey and exactly what they bargained to receive.

Respectfully submitted this 1st day of October, 1987.

CLYDE, PRATT & SNOW



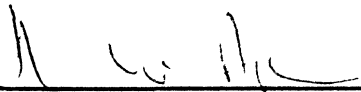
John W. Anderson
Attorney for Plaintiff/Appellant

CERTIFICATE OF SERVICE

I hereby certify that I caused four (4) copies of the foregoing Brief of Plaintiff/Appellant Larry Little to be hand delivered to the following named individuals this 1st day of October, 1987:

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

Keith S. Christensen
230 South 500 East, Suite 160
Salt Lake City, Utah 84102
Attorney for Defendants Greene & Weed Investments



Deed

Recorded at Request of _____

at _____ M² Fee Paid _____

By _____ Dep _____

WARRANTY DEED

E. C. LITTLE, husband and wife

Kane

CONVEY and V _____ ch of the Following named persons,

JOHN KENYON LITTLE, an undivided 1/5 Interest; LARRY LESTER LITTLE, undivided 1/5 Interest; LORNA LITTLE COTTAM, an undivided 1/5 Interest; CAROLINE LITTLE LIPPINCOTT, an undivided 1/5 Interest; and CLARA BERT RAMS, an undivided 1/5 Interest, AS TENANTS IN COMMON

of Kanab, County of Kane, State of Utah

Ten (\$10 the following

considerations

for the sum of DOLLARS, County,

Ship 43 South

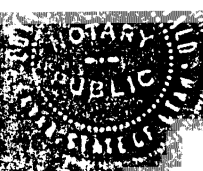
Range 5 West, Salt Lake Meridian, Utah. Contain

5.23 acres. LESS 27 acres sold to State Road Commission and Recorded Book N5 Page 73 Records of Kane Co. Record

5.23 acres sold to State Road Commission of Utah, Recorded Book N6 Page 297 Records of Kane Co. Record

with all improvements and appurtenances appertain

Madge C.



appeared before me, _____ husband and wife

the signers of the within instrument to me that they executed the

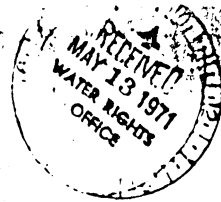
Madge C.

My Commission Expires _____ My residence is _____ Kanab, Utah

SO. UTAH TITLE CO., 83 E. 100 N., ST. GEORGE, UTAH

EXHIBIT

A



QUIT CLAIM DEED---WATER

LESTER F. LITTLE & MADGE LITTLE, husband and wife, GRANTORS, of Kanab Kane County, State of Utah, hereby QUIT-CLAIMING TO LORNA COTTAM and CLARA BESS LITTLE GRAMS, both married women, GRANTEEES, as Tenants In Common for the sum of Ten (\$10.00) Dollars and other adequate and valuable consideration, the following described WATER RIGHTS, to-wit:

APPLICATION NO. 32632

Well No. 3

Described as Being; North 1310 feet and East 1310 feet from the Southwest Corner of Section 30, Township 43 South Range 4 West, Salt Lake Meridian Utah.

ALSO

APPLICATION NO. 26838 - File No. 85-37

Well No. 1

Described as being; North 2465 feet and East 2540 feet from the Southeast Corner of Section 25 Township 43 South Range 5 West, Salt Lake Meridian Utah.

Lester F. Little
Lester F. Little

Madge Little
Madge Little

STATE OF UTAH)

COUNTY OF KANE)

On the 17th day of November A. D. 1969 personally appeared before me Lester F. Little and Madge Little, husband and wife, the signers of the within and foregoing instrument, who did acknowledge to me that they executed the same.

Lester F. Little
Lester F. Little

My Commission expires June 1, 1971

EXHIBIT

B

EXHIBIT

corrected 10/10

QUIT CLAIM DEED-----WATER

LESTER F. LITTLE & MADGE LITTLE, husband and wife, GRANTORS,
of Kanab Kane County, State of Utah, hereby QUIT-CLAIMS to LORNA
COTTAM and CLARA BESS LITTLE GRAMS, both married women,
GRANTEES, as Tenants in Common, for the sum of Ten(\$10.00) Dollars
and other adequate and valuable consideration, the following described
WATER RIGHTS, to-wit;

APPLICATION NO. 32632

WELL No. 3

Described as Being; North 1310 feet and East 1310 feet from the southwest
Corner of Section 30, Township 43 South, Range 4 1/2 West, Salt Lake Meridian
Utah.

ALSO

APPLICATION NO. 26838 - File No. 85-33

Well No. 1

Described as being; North 425 feet and West 2582 feet from the East 1/4
Corner of Section 25, Township 43 South, Range 5 West, Salt Lake Meridian
Utah.

Lester F. Little
Madge C. Little

STATE OF UTAH)

: ss

COUNTY OF KANE

On the ____ day of November A.D. 1969 personally appeared before me
Lester F. Little and Madge Little, Husband and wife, the signers of the
within and foregoing instrument, who duly acknowledge to me that they
executed the same.

Notary Public,
Residing at Kanab, Utah

My Commission expires _____

2-2



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

JOHN KENYON LITTLE of Kanab, Kane County, State of Utah, the following described real property in Kane County, State of Utah, to wit:

Parcel 1 The East 1/2 of the Northeast 1/4 of Section 25, Township 43 South, Range 5 West, Salt Lake Base and Meridian.

Parcel 2 The Southwest 1/4 of the Northwest 1/4 of Section 30, Township 43 South, Range 4 West, Salt Lake Base and Meridian.

Parcel 3 Beginning at the Northwest Corner of the Southwest 1/4 of the Southwest 1/4 of Section 19, Township 43 South, Range 4 West, Salt Lake Base and Meridian and running thence East 11 3/7 rods; thence North 28 rods; thence West 11 3/7 rods; thence South 28 rods to the point of beginning. Containing 2 acres, more or less.

Parcel 4 Beginning at the Southeast Corner of the Northeast 1/4 of the Southeast 1/4 of Section 24, Township 43 South, Range 5 West, Salt Lake Base and Meridian, and running thence North 28 rods; thence West 102 6/7 rods; thence South 28 rods; thence West 9 1/7 rods; thence South 15°13' East 1,367.96 feet more or less to the South line of said Section 24; thence East 11 rods more or less to the Southeast Corner of the Southwest 1/4 of the Southeast 1/4 of Section 24; thence North 80 rods; thence East 80 rods to the point of beginning. Containing 28.75 acres more or less.

Together with a 1/6 interest in the waters of Johnson Creek and Flood Canyon. Together with all improvements and appurtenances thereunto belonging.

WITNESS the hands of the GRANTORS, this _____ day of _____ A.D., 19__

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 ORANGE

County of Kane

On the
appeared before me
of the fo
same.

My C

County of Ora

On the 30th day of
appeared before me Larry Leste
of the foregoing insti

Notary Public

Residing at



1969, personally
his wife,

acknowledged to me that they

[Signature]

Notary Public
Residing at ORANGE, CALIFORNIA



County of Salt Lake

On the
appeared before
foregoing instru

5th day of December

a married woman, signer of the
ged to me that she executed the same



[Signature]
Notary Public
Residing at San Francisco

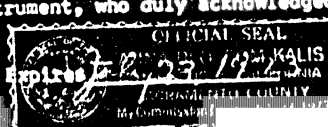
County of Sacramento

On the
appeared before me

1969, personally

foregoing instrument, who duly acknowledged to me that she ex

My Commission Expires

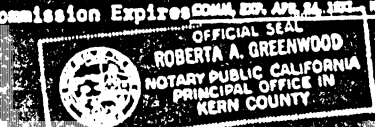


[Signature]
Notary Public
Residing at

County of Kern

On the 25th day of December, A.D., 1969, personally
appeared before me Clara Bess Little Grams, a married woman, signer of the
foregoing instrument, who duly acknowledged to me that she executed the same

My Commission Expires



[Signature]
Notary Public
Residing at

#3

355

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

LARRY LESTER LITTLE, GRANTEE, of Costa Mesa, Orange County, State of California the following described real property in Kane County, State of Utah, to wit:

The Southeast 1/4 of Section 25, Township 43 South, Range 5 West, Salt Lake Base and Meridian, Utah. Also beginning at the South 1/4 corner of Section 25 aforesaid running thence West to Utah Highway 136, thence North 80 rods, thence East to the North South center line; thence South to the point of beginning.

Together with all wells located thereon and also together with all improvements and appurtenances thereunto belonging.
 WITNESS the hands of the GRANTORS, this _____ day of _____, 1969.

Lorna Little Cottam
 Lorna Little Cottam

John Kenyon Little
 John Kenyon Little

Caroline Little Lippincott
 Caroline Little Lippincott

Anna May Little
 Anna May Little

Clara Bess Little Grams
 Clara Bess Little Grams

Larry Lester Little
 Larry Lester Little

Beverley S. Little
 Beverley S. Little

STATE OF UTAH)

County of Kane)

On the 14 day of December 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 9-27-73

Carl P. Little
 Notary Public
 Residing at Kanab

STATE OF CALIFORNIA)

County of Orange)

On the 30TH day of DECEMBER A.D., 1969, personally appeared before me Larry Lester Little and Beverley S. Little, his wife, signers of the foregoing instrument, who duly acknowledged to me that they executed the same.

My Commission Expires 8-8-73

Mary J. Jacobs
 Notary Public
 Residing at ORANGE



10

356

STATE OF
County of Salt Lake)

On the 16th day of June, 1969, personally
appeared before me Lois, signor of the
foregoing instrument, who duly acknowledged to me that she executed the same.

Commission Expires July 23, 1973

Lois Palmer
Notary Public
Residing at North Lake City, Utah

of Sacramento)

On the 22 day of June, A.D. 1969, personally
appeared before me Caroline Little Lippincott,
instrument, who duly acknowledged to me that she executed the same.

Commission Expires July 23, 1973
OFFICIAL SEAL
ANNA BLOSSOM
NOTARY PUBLIC, CALIFORNIA
SACRAMENTO COUNTY
My Commission Expires July 23, 1973

STATE OF CALIFORNIA)

County of Kern)

On the 22nd day of June, 1969, personally
appeared before me Clara Bess Little Greenwood,
foregoing instrument, who duly acknowledged to me that she executed the same.

My Commission Expires APR. 24, 1971 - KERN CO.

OFFICIAL SEAL
ROBERTA A. GREENWOOD
NOTARY PUBLIC, CALIFORNIA
PRINCIPAL OFFICE IN
KERN

Robert A. Greenwood
Public
Residing at Arvinville, Calif.

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 31st day of December, 1969.

Lorna Little Cottam
 Lorna Little Cottam

John Kenyon Little
 John Kenyon Little

Caroline Little Lippincott
 Caroline Little Lippincott

Anna May Little
 Anna May Little

Clara Bess Little Grams
 Clara Bess Little Grams

Larry Lester Little
 Larry Lester Little

Beverly S. Little
 Beverly S. Little

STATE OF UTAH)

County of Kane)

On the 31st day of December, A.D. 1969, personally appeared before me, Paul P. Patton, the undersigned, John Kenyon Little and Anna May Little, his wife, signers of the foregoing instrument, who acknowledged to me that they executed the same.

My Commission Expires

Paul P. Patton
 Notary Public
 State of Utah

FILED
 LANE COUNTY RECORDER
 DATE 1-2-70 AT 11:00 AM
 PAGE 322

red before
the foregoing
me.

tle and Beverley S. Little, his
duly acknowledged to me that they

Public,
at ORANGE, CALIFORNIA

OFFICIAL SEAL
MARY J. JACOBS
NOTARY PUBLIC, CALIFORNIA
ORANGE COUNTY
My Commission Expires Aug. 8, 1973

the 16 day of December A.D., 1969, personally
appeared before me Caroline Little Cottan, a married woman, signer of the
foregoing instrument, who duly acknowledged to me that she executed the same.

NOTA
PUBLIC

3/2/71

Public
at San Jose City, Utah

County of Sacramento)

On the 25 day of April A.D.,
appeared before me Caroline Little, a married woman, signer of the
foregoing instrument, who duly acknowledged to me that she executed the same.

OFFICIAL SEAL
ANNA BLOSSOM KALIS
NOTARY PUBLIC, CALIFORNIA
SACRAMENTO COUNTY
My Commission Expires July 23, 1973

Anna Blossom Kalis
Public
at Sacramento, Calif

County of Kern)

On the 23rd day of November
appeared before me Clara Beas Little Green
foregoing instrument, who duly acknowledged to me that she executed the same.

Commission Expires APR 24 1971



OFFICIAL SEAL
ROBERTA A. GREENWOOD
NOTARY PUBLIC, CALIF.
PRINCIPAL OFFICE
KERN COUNTY

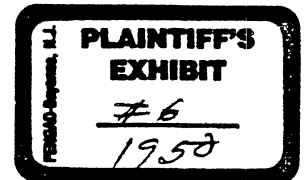
Notary Public
Residing at Arvin, Calif



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



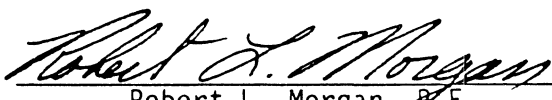
C E R T I F I C A T I O N

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, B.E.
State Engineer

/gm

Attachments



TITLE ABSTRACT

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 Exec'd (by Orig'r) 1/16/68	Assignment Deed	Lester L. Little and Madge C. Little		(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
Record (by No) 1/16/68	Deed					
Instr't (by us) 5/2/72	Deed					
Instr't Exec'd (by us)	Assignment Deed	John Kenyon Little, Larry Lester Little, Lorna Little Cottam, Clara Bess Little and Caroline Little	(0.12374 CFS) 365.96 AF	(0.79626 CFS) 365.96 AF	Lorna Little Cottam and Clara Bess Little Grams, und int part	see Proposed Determination
Instr't Exec'd (by No) 1/2/70	Deed					
Record (by us) 5/2/72	Deed					
Instr't Exec'd (by us)	Assignment Deed	John K. Little and Anna May Little		(0.12374 CFS) 56.87 AF	Earl anyone I mention Company	see Proposed Determination
Record (by No) 8/11/70	Deed					
Instr't (by us)	Assignment Deed					
Instr't Exec'd (by Orig'r) 9/1/72	Assignment Deed	Lorna Little Cottam and Clara Bess Little Grams		(0.79626 CFS) 365.96 AF	A. H. Greene and Daniel R. Weed	
Record (by No) 8/16/76	Deed					
Instr't (by us) 8/30/76	Deed					

By date of deed execution

al in Right

Page No. 2

RE: A-26838-a (85-102)
P. 152 Determination

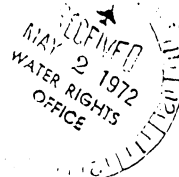
T I T L E A B S T R A C T

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>12/18/74</u> Recor'd (by No.) <u>1/28/75</u> Rec'vd (by us) <u>5/16/83</u> Action (by us) _____	Assingment <input type="checkbox"/> Deed: <input type="checkbox"/> 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	
Instr't Execu'tn (by Orig'r) <u>12/23/75</u> Recor'd (by No.) <u>1/20/76</u> Rec'vd (by us) <u>5/30/78</u> Action (by us) _____	Assignment <input type="checkbox"/> Deed: <input type="checkbox"/> Warranty <input checked="" type="checkbox"/> #27766 <input type="checkbox"/> Quit Claim <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		
Instr't Execu'tn (by Orig'r) <u>12/15/78</u> Recor'd (by No.) <u>12/23/77</u> Rec'vd (by us) <u>12/28/77</u> Action (by us) _____	Assignment <input type="checkbox"/> Deed: <input type="checkbox"/> Warranty <input checked="" type="checkbox"/> #32103 <input type="checkbox"/> Quit Claim <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		
Instr't Execu'tn (by Orig'r) <u>5/16/78</u> Recor'd (by No.) <u>6/16/78</u> Rec'vd (by us) <u>1/19/79</u> Action (by us) _____	Assignment <input type="checkbox"/> Deed: <input type="checkbox"/> Warranty <input checked="" type="checkbox"/> #32952 <input type="checkbox"/> Quit Claim <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
0.92 CFS 422.83 AF

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 December, 1969

Lorna Little Cottam
 Lorna Little Cottam

John Kenyon Little
 John Kenyon Little

Caroline Little Lippincott
 Caroline Little Lippincott

Anna May Little
 Anna May Little

Clara Bess Little Grams
 Clara Bess Little Grams

Larry Lester Little
 Larry Lester Little

Beverley S. Little
 Beverley S. Little

STATE OF UTAH)

County of Kane)

On the 2nd day of December, 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 _____

 Notary Public

ENTRY NO. 167222 RECORDED AT REQUEST OF



State of California,

County of Orange

On this 1st day of May, 1972, personally appeared before me, _____, a Justice of the Peace, _____, the undersigned, signor of the foregoing instrument, and she, acknowledged to me that she executed the same.

My Commission Expires _____

State of California

County of Santa Ana

On this 1st day of May, 1972, personally appeared before me, _____, a Justice of the Peace, _____, the undersigned, signor of the foregoing instrument, and she, acknowledged to me that she executed the same.

My Commission Expires _____

State of California

County of Sacramento

On this 1st day of May, 1972, personally appeared before me, _____, a Justice of the Peace, _____, the undersigned, signor of the foregoing instrument, and she, acknowledged to me that she executed the same.

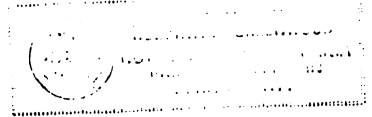
My Commission Expires _____

State of California

County of Kern

On this 1st day of May, 1972, personally appeared before me, _____, a Justice of the Peace, _____, the undersigned, signor of the foregoing instrument, and she, acknowledged to me that she executed the same.

My Commission Expires _____



Notary Public
Residing at _____

QUIT CLAIM DEED***WATER

U2 97

JOHN K. LITTLE and ANNA EAY F. L. 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 15769 (85-48)

Certificate of Appropriation 4477, WIC (85-102) Application No.
2-628-A: A-5100, 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 Eay F. Little

Anna Eay F. Little

STATE OF UTAH

COUNTY OF KANE

On the 10th day of August A.D. 1970 personally appeared
before me John K. Little and Anna Eay 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

ENTRY NO. 12712 RECORDED AT REQUEST OF

WATER RIGHTS

Deed

October, A.D. 1972.

85-40 P. 127
 85-48 P. 195
 85-102 P. 152
 85-710 P. 152
 85-713 P. 127

MATTSSON, JACKSON & McIFF
ATTORNEYS AT LAW

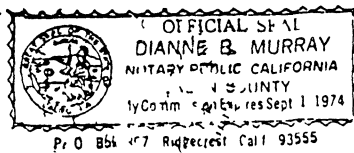
STATE OF UTAH)
COUNTY OF SALT LAKE) ss.

Notary Public
On this 20th day of August, A.D. 1972, personal
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.

R. 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.



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

"THIS IS A LEGALLY BINDING CONTRACT IF NOT UNDERSTOOD SEEK COMPETENT ADVICE "

QUIT-CLAIM DEED

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

grantee

of Phoenix, Arizona, Maricopa County for the sum of

TEN AND NO/100-----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 M. 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.

Edw. B. 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 California

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

ENTRY NO 27766 RECORDED AT REQUEST OF
AT 11:14 AM 11/1/78
KANE COUNTY RECORDS

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

A. D. 1975

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

Sandra J. Wickert
Notary Public.

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

STATE OF ARIZONA, ss. _____, 19____, at _____ M.	I hereby certify that the within instrument was filed and recorded	Fee No.:
County of _____		
In Docket No. _____, Page _____, at the request of _____		Indexed:
When recorded mail to:	Witness my hand and official seal.	Compared:
	County Recorder	Photostated:
	By _____ Deputy Recorder	Fee: \$ _____
		I. R. S.: \$ _____

Warranty Deed

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** County, **UTAH**

One-Quarter (1/4) interest in and to Water Users' Claim 85-102, Application No. 26838-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 ss.

This instrument was acknowledged before me this 15th day of December, 19 77 by
A. H. Greene, Jr.
and **Daniel R. Weed**

My commission will expire April 15, 1981

[Signature]
Notary Public

STATE OF _____
County of _____ ss.

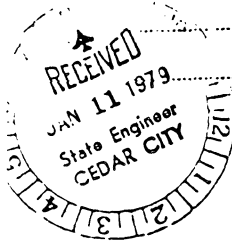
This instrument was acknowledged before me this _____ day of _____, 19____, by

My commission will expire _____

Notary Public

WHEN RECORDED, MAIL TO:

RECEIVED
JAN 19 1979



Space Above for Recorder's Use WATER RIGHTS

WARRANTY DEED

DEED OF GRANT, made this 11th day of January, 1979, by and between
_____, of _____ County of _____, State of Utah,
hereby CONVEY and WARRANT to _____

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

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 _____ County, State of Utah, to wit:

1/16 interest in and to Water Users Claim No. 26838-1,
12532 Certificate of Appropriation No. 26838-1.

WITNESS the hand of said grantor, this _____ day of _____, 1978

Signed in the presence of

Leon S. Lippincott

Caroline Lippincott

STATE OF UTAH,

County of _____

ss.

On the _____ day of _____, 1978,
personally appeared before me

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

My commission expires _____

Residing in _____

Notary Public.

APPROVED FORM — UTAH SECURITIES COMMISSION

FORM 100, WARRANTY DEED — KELLY CO., 88 W. NINTH SO., S.L.C. 84108

EXHIBIT E

PLAINTIFF'S CHAIN OF TITLE

- 1) Warranty Deed - January 16, 1968:

Lester F. Little - John Kenyon Little
Madge C. Little Larry Lester Little
(Grantors) Lorna Little Cottam
Clara Bess Little Grams
Caroline Little
Lippincott
(Grantees)

in undivided 1/5 interests.

- 2) Warranty Deed - December 30, 1969:

5 children - John Kenyon Little
(Grantors) (Grantee)
8.0 acres

- 3) Warranty Deed - December 30, 1969:

5 children - Larry Lester Little
(Grantors) (Grantee)
30.0 acres

- 4) Warranty Deed - December 31, 1969:

5 children - Lorna Little Cottam
 Clara Bess Little Grams
 (Grantors) (Grantees)
 41.3 acres

DEFENDANTS' CHAIN OF TITLE

- 1) Quit claim deeds - Nov. 17, 1969:

Lester F. Little - Lorna Little Cottam
Madge Little Clara Bess Little
(Grantors) Grams
(Grantees)

Application ~~26838~~ (85-33)

Conveyance of
land upon which
water is being used.

- 2) Assignment - September 1, 1972:

Lorna Little Cottam - Greene & Weed
Clara Bess Little Grams (Grantees)
(Grantors)

Their interest in
Segregation 26838a (85-102)

PLAINTIFF'S CHAIN OF TITLE

1. On December 31, 1962, Lester F. and Madge C. Little, by Warranty Deed, conveyed land to John K. Little. The conveyance contained 3.2 acres (SE $\frac{1}{4}$ NW $\frac{1}{4}$ and N $\frac{1}{2}$ NW $\frac{1}{4}$) of the subject 83.3 acres.

2. On January 16, 1968, Lester F. Little and Madge C. Little, by Warranty Deed and without reservation of water, conveyed an undivided 1/5th interest to land containing appurtenant water described therein to each of their children as follows:

- a. John Kenyon Little
- b. Larry Lester Little
- c. Lorna Little Cottam
- d. Caroline Little Lippincott
- e. Clara Bess Little Grams

(This conveyance would include all the lands described in application No. 26838a (85-102) excepting 3.2 acres lying in the SE $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$, which were theretofore conveyed to John K. Little by 1 above. The lands are described as follows:

- 1.3 acres NW $\frac{1}{4}$ NE $\frac{1}{4}$
- 40.0 acres SW $\frac{1}{4}$ NE $\frac{1}{4}$
- 8.0 acres SE $\frac{1}{4}$ NE $\frac{1}{4}$
- 9.1 acres NE $\frac{1}{4}$ SE $\frac{1}{4}$
- 21.0 acres NW $\frac{1}{4}$ SE $\frac{1}{4}$
- 7.0 acres NE $\frac{1}{4}$ SW $\frac{1}{4}$
- 80.1 acres

3. On December 30, 1969, the five children referenced above, by Warranty Deed, conveyed to John Kenyon Little approximately 160 acres of land which included the following described portion of the subject 83.3 acres, together with all improvements and appurtenances (no reservation of water):

8.0 acres SE $\frac{1}{4}$ NE $\frac{1}{4}$

4. On December 30, 1969, the five children referenced above, by Warranty Deed, conveyed to Larry L. Little approximately 160 acres of land which included the following described portions of the subject 83.3 acres, together with all improvements and appurtenances (no reservation of water):

21.0 acres NW $\frac{1}{4}$ SE $\frac{1}{4}$

9.1 acres NE $\frac{1}{4}$ SE $\frac{1}{4}$

30.1 acres

5. On December 31, 1969, the five children referenced above, by Warranty Deed, conveyed to Lorna Little Cottam and Clara Bess Little Grams approximately 320 acres of land which included the following described portions of the subject 83.3 acres, together with all improvements and appurtenances (no reservation of water):

40.0 acres SW $\frac{1}{4}$ NE $\frac{1}{4}$

1.3 acres NW $\frac{1}{4}$ NE $\frac{1}{4}$

41.3 acres

(The N $\frac{1}{2}$ SW $\frac{1}{4}$ is also part of the land conveyed by this deed to Lorna Cottam and Clara Bess Grams, ..." Less that sold to The

State Road Commission of Utah and less that part lying East of Highway U 136." This later portion is comprised of .7 acres of land specified in the water proof and remains in all five children.)

6. On March 16, ¹⁹⁷⁰ John Kenyon Little and Anna Mae F. Little, by Warranty Deed, conveyed the following described portions of the subject 83.3 acres, together with all improvements and appurtenances, to themselves as joint tenants (no reservation of water):

8.0 acres SE $\frac{1}{4}$ NE $\frac{1}{4}$

3.2 acres SE $\frac{1}{4}$ NW $\frac{1}{4}$

11.2 acres

7. On August 10, 1970, John Kenyon Little and Anna Mae F. Little, by Quit-Claim Deed, conveyed to East Canyon Irrigation Company all of their interest in the subject water rights.

8. On June 27, 1972, Larry L. Little and Beverly S. Little, by Warranty Deed, conveyed to Lorna Little Cottam and Clara Bess Little Grams the following described portions of the subject 83.3 acres, together with all appurtenances (no reservation of water):

10.0 acres N $\frac{1}{2}$ N $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$

9. On September 1, 1972, Lorna L. Cottam and Clara Bess Little Grams placed in escrow a deed which conveyed and warranted to A.H. Green and Daniel R. Weed the following described portions of the subject 83.3 acres, together with all appurtenances:

1.3 acres NW $\frac{1}{4}$ NE $\frac{1}{4}$

40.0 acres SW $\frac{1}{4}$ NE $\frac{1}{4}$

10.0 acres N $\frac{1}{2}$ N $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$

51.3 acres

10. On December 18, 1974, John K. and Anna Mae F. Little, by Warranty Deed, conveyed land to Green & Weed Investments as follows:

That part of East half of the Northwest quarter of Section 25, Township 43 South, Range 5 West, Salt Lake Base and Meridian, which is situated East of Utah Highway 136, also known as the Alton Road; together with all improvements and appurtenances thereunto belonging except for the water rights and mineral rights which are expressly reserved unless otherwise conveyed.

11. On December 18, 1974, John K. Little and Anna Mae Little, by Quit Claim Deed, conveyed all their interest in the subject water to A.H. Green and Daniel R. Weed, dba Green & Weed Investments.

12. On December 18, 1974, East Canyon Irrigation Company, by Quit Claim Deed, expressly conveyed all its interest in the subject water to A.H. Green and Daniel R. Weed, dba Green & Weed Investments.

13. On December 18, 1975, Clara Bess Little Grams conveyed to Green & Weed Investments lands that were included in the escrowed deed referenced in Deed 9 above.

14. On December 18, 1975, Lorna L. Cottam, by Warranty Deed, conveyed lands that were included in the escrowed deed referenced in 9 above.

15. On December 18, 1975, Clara Bess Little Grams, and on December 24, 1975, Lorna Little Cottam, by separate Warranty Deeds, conveyed a 5/8ths interest to the subject water right to A.H. Green, Jr., and Daniel R. Weed, dba Green & Weed Investments.

16. On December 18, 1975 (recorded after the above), A.H. Green and Daniel R. Weed, dba Green & Weed Investments, by Warranty Deed, conveyed the following described portions of the subject 83.3 acres to Larry L. Little, together with all improvements and appurtenances:

25.0 acres S 5/8 of the SE $\frac{1}{4}$ NE $\frac{1}{4}$

10.0 acres N $\frac{1}{2}$ N $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$

1.75 acres 5/8 of the SE $\frac{1}{4}$ NW $\frac{1}{4}$ (part of 3.2 acres)

36.73 acres

17. On December 18, 1975 (recorded December 23, 1975), A.H. Green, Jr., and Daniel R. Weed, dba Green & Weed Investments, by Warranty Deed, conveyed the following described portions of the subject 83.3 acres to Leon S. Lippincott and Caroline Lippincott, together with all improvements and appurtenances:

1.3 acres NW $\frac{1}{4}$ NE $\frac{1}{4}$

15.0 acres SW $\frac{1}{4}$ NE $\frac{1}{4}$

1.47 acres N 3/8 SE $\frac{1}{4}$ NW $\frac{1}{4}$

17.77 acres

18. On December 23, 1975, A.H. Green, Jr., and Daniel R. Weed, dba Green & Weed Investments, by Warranty Deed, expressly conveyed a 5/8ths interest in and to the subject water to Leon S. and Caroline Lippincott.

19. On January 11, 1976, Beverly Little, by Quit Claim Deed, conveyed the same property as described in 16 above to Larry L. Little.

20. On August 16, 1976, the escrowed deed described in 9 above was released from escrow and recorded.

21. On May 3, 1977, John Kenyon Little and Anna Ford Little, by Warranty Deed, conveyed 8.0 acres of land described in Deed 6 to Larry Lester Little.

22. On December 15, 1977, A.H. Green, Jr., and Daniel R. Weed, dba Green & Weed Investments, by Warranty Deed, expressly conveyed a 1/4th interest in and to the subject water right to Leon S. Lippincott and Caroline Lippincott.

23. On May 16, 1978, Leon S. Lippincott and Caroline Lippincott, by Warranty Deed, expressly conveyed a 5/16ths interest in and to the subject water to Larry L. Little.

PLAINTIFF'S TITLE SUMMARY

Larry Lester Little

(a)	By Deed No. 4	30.1 acres
(b)	Less Deed No. 8	<u>-10.0</u> acres
	Subtotal	20.1 acres
(c)	By Deed No. 23 (5/16 of 83.3)	<u>26.03125</u> acres

Total	46.13125 acres or 55.38%
-------	-----------------------------

John Kenyon Little

(a)	By Deed No. 1	3.2 acres
(b)	By Deed No. 3	<u>8.0</u> acres
	Subtotal	11.2 acres

(c) By Deed No. 6
A reconveyance of
same 11.2 to
themselves

(d)	Less Deed No. 7 to East Canyon Irrigation	<u>-11.2</u> acres
-----	---	--------------------

(e) By Deed No. 10
Conveyed land which previously
had appurtenant water

(f) By Deed No. 11
Quit-claimed water

Total	-0-
-------	-----

East Canyon Irrigation Company

(a)	By Deed No. 7	11.2 acres
(b)	Less Deed No. 12 to A. H. Green and Daniel R. Weed dba Green & Weed Investments	<u>-11.2</u> acres

Total	-0-
-------	-----

Lorna Little Cottam and Clara Bess Grams

(a) By Deed No. 4 41.3 acres
 (b) By Deed No. 7
 from Larry 10.0 acres

Subtotal
 (c) Less Deeds 13, 14 51.3 acres
 and 15 to -51.3 acres
 Green & Weed--
 5/8's or

(d) By Deed No. 9 -
 Release from escrow

Total

-0-

Green & Weed Investment Company

(a) By Deed No. 9 51.3 acres (5/8's)
 (b) By Deed No. 12 11.2 acres

Subtotal 62.5 or 75.03%
 (c) Less Deeds 16, 17
 and 18 less 5/8's -52.0625 62.5%

Subtotal 10.4375 12.53%
 (d) Less Deed No. 22
 less 25% of right 20.825 25%

Total Shortfall

(10.3875) (12.47%)

Caroline Little Lippincott

(a) By Deed Nos. 17 and
 18 5/8's 52.0625 acres
 (b) By Deed No. 22 1/4
 but Green & Weed
 are short 12.42%
 so conveyed only 10.4375 acres

Total

36.46875 or 43.78%

CONCLUSION

1. Larry Little	46.13125 acres or 55.38%
2. Caroline Lippincott	36.46875 acres or 43.78%
3. Still shown in the five Little children	<u>.7 acre or .84%</u>
TOTAL	83.3 or 100%

DEFENDANTS' CHAIN OF TITLE

1. On November 17, 1969, Lester F. Little and Madge Little, quit-claimed to Lorna Cottam and Clara Bess Little Grams Application No. 26838 (85-33), Well No. 1 - in State Engineer's file No. (85-33) - described as being: N 2465 feet and W 2640 feet from the SE corner of Section 25, T43S, R5W, SLM, Utah. Said deed was re-executed with Well No. 1 being described as N 425 feet and W 2582 feet from the E 1/4 corner of Section 25, T43S, R5W, SLM, Utah. (The second deed was not dated or notarized. Neither deed was filed with the Kane County Recorder's office, but both deeds were filed in the State Engineer's office in the file on Application 26838 (85-33)).

2. Bill of Sale dated April 19, 1971, from Lester F. Little to Lorna Little Cottam and Clara Bess Little Grams, transferring sprinkling system.

3. Letter to Lorna L. Cottam, dated May 10, 1971, from Donald C. Norseth, State Division of Water Rights, and a response from Lorna Cottam to Mr. Norseth, dated May 11, 1971. Letter is contained in State Engineer's file No. (85-33).

4. Larry Little statement dated March 19, 1971. Letter is contained in State Engineer's file No. (85-33).

5. On August 2, 1972, Green & Weed Investments entered into a Contract of Sale with Lorna Little Cottam and Clara Bess Little

Grams, to purchase land and their interest in the subject water right. Application 26838-a (85-102), Certificate 8497.

6. On September 1, 1972, Lorna Little Cottam and Clara Bess Little Grams assigned all their right, title, and interest in the subject water right, Application 26838-a (85-102), Certificate 8497, to Green & Weed Investments.

7. Larry Little letter dated November 1, 1975.

8. On December 23, 1975, A. H. Green, Jr., and Daniel R. Weed, dba Green & Weed Investments, by Warranty Deed, expressly conveyed a 5/8 interest in and to the subject water to Leon S. and Caroline Lippincott.

9. On December 15, 1977, A. H. Green, Jr., and Daniel R. Weed, dba Green & Weed Investments, by Warranty Deed, expressly conveyed a 1/4 interest in and to the subject water right to Leon S. Lippincott and Caroline Lippincott.

10. Page 152 of the State Engineer's Proposed Determination of Water Rights in Colorado River Drainage Area-Kanab and Johnson Creek Division, Code 85, Book No. 1.