

2006

Western Water v. Jerry D. Olds : Brief of Appellee

Utah Supreme Court

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IN THE UTAH SUPREME COURT

WESTERN WATER, LLC., a Utah)
Limited Liability Company)
) Appellate Court Case No. 20060527
Plaintiff and Appellant,)
) District Ct. No. 040910869WA
)
vs.)
)
Jerry D. Olds, Utah State Engineer)
and Director of the Division of Water)
Rights, et. al.)
)
Defendants/Appellees.)

BRIEF OF GLENN R. MAUGHAN, PRO SE/OWNER/APPELLEE

ON APPEAL FROM A FINAL ORDER OF THE THIRD JUDICIAL
DISTRICT COURT FOR SALT LAKE COUNTY, STATE OF UTAH.
THE HONORABLE ROBERT K. HILDER, DISTRICT JUDGE, PRESIDING

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FILED
UTAH APPELLATE COURTS

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IN THE UTAH SUPREME COURT

**WESTERN WATER, LLC., a Utah
Limited Liability Company**

Appellate Court Case No. 20060527

Plaintiff and Appellant,

District Ct. No. 040910869WA

vs.

**Jerry D. Olds, Utah State Engineer and
Director of the Division of Water
Rights, Alpine City, American Fork
City, W. Glade and Bart Berry,
Cahoon & Maxfield Irrigation
Company, Cedar Fort Irrigation
Company, Central Utah Water
Conservancy District, City of West
Jordan, Morris Clark, Robert and
Sherri Cook, George Crawford, Rod
Dansie, East Jordan Irrigation
Company, Geneva Steel LLC, Larry
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Petroleum Inc. dba Ambassador Duck
Club, Jordan Valley Water
Conservancy District, Kennecott Utah
Copper Corporation, Lake Mountain
Mutual Water Company, Lehi City,
Magna Water Company, Glenn R.
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Audubon Society, New State Inc.,
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Cedar Fort, Trout Unlimited, United
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Foundation, Utah and Salt Lake Canal
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Company, Ron and Mindy Sager, Draper
Irrigation Company, Lower Jordan Water
Users Association, Sandy City Department
of Public Utilities, Marvin Shepherd, Utah
Division of Water Rights
DOES 1-50, ROE CORPORATIONS,
1-50, MOE MUNICIPALITIES,
AND/OR GOVERNMENTAL
ENTITIES 1-50.**

Defendants/Appellees

BRIEF OF APPELLEE, GLENN R. MAUGHAN, PRO SE/OWNER

On Appeal From a Final Order of the Third Judicial
District Court For Salt Lake County, State of Utah
The Honorable Robert K. Hilder, District Judge Presiding.

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III. ORAL ARGUMENT IS REQUESTED IF NECESSARY

GRM, PG is a Consultant Geologist. I appreciate the courts kind indulgence in this matter as I am more a scientist than an orator.

IV. STATEMENT OF THE FACTS & HISTORY

Introduction

Glenn R. Maughan, Pro Se, Appellee, (GRM), hereby concurs with the other Appellee Briefs which have been filed, only, as their briefs apply to Western Water, Appellant.

(GRM) does hereby concur with the Appellee Joint Brief of 22 Appellees by Snow, Christensen and Martineau and the Appellee Brief of Mark Johnson of the Office of the Utah Attorney General, only, as their briefs protect GRM rights and unique position. GRM's various Co-appellees are called Consortium in many places throughout this document.

Therefore, GRM is filing this brief because the other Appellee Briefs vaguely support GRM position, but do not emphasis GRM rights. The Consortium acted in tandem in total disregard of GRM 1989 filing by forming a series of commissions and distribution plans (1992 & etc.) after my filing, without the notification or participation of GRM. GRM filed on all waters **flowing/wasting** into the Great Salt Lake as of 1989, based on measurements taken at the time by GRM, the State Engineer and the U.S. Geological Survey. Great Salt Lake (GSL) flowing/wasting waters cannot be taken or impeded by the upstream maneuvers of the Consortium and/or others. **Example:** One of

many leap-frogs over the top of GRM rights occurred when the State Engineer granted to CUP later priority filings to store high flows that occur on the Provo River in addition to the exchange water stores by the CUP in Jordanelle or Deer Creek Reservoirs. (R2818)

The Jordan Valley Water Conservancy District state that they have 488,000 residents within their boundaries and are speculating by 2050 that they will have 1,142,000 residents that they serve, and also, the CUP supplies drinking water for the most populace area of the State of Utah. (R2861, R2851) However, these admissions and speculations regarding how many they serve do not supercede Utah Code which requires 1st in time 1st in right priority filing. Dee Hansen, an earlier State Engineer makes a statement under oath regarding good faith filing and has to be recognized in order of filing date. (R2813)

State Engineer, Jerry Olds makes a statement under oath regarding sequence order being based on filing date. (R2764) See V. Admittance Statements for additional admissions, which are quoted, from the consortium's affidavits or documents.

History

This unique water source was not easily apparent and was not recognized by the Consortium or its "experts" until well after GRM 1989 filing on the Great Salt Lake. GRM did an exhaustive geologic study of the Great Salt Lake and its tributaries during the 1960's. GRM contacted all possible agencies within the Consortium from 1964 to 1989 and asked them to participate with him regarding this great water find. They refused saying, "There is no drinking water in the Great Salt Lake area and we have no interest in it." Finally, in 1989, I decided to file and do it myself. The Consortium eventually found

out that they were wrong about no fresh water flowing/wasting into the Great Salt Lake. When I made the filing, the State Engineer told me, "The Great Salt Lake is a cesspool; you can have it. It is an embarrassment to Utah; there is no fresh water there." I agree the lake was a cesspool in 1989 and not the "drops of gold" the State of Utah now describes in its Appellee Brief. I filed for fresh drinking water, which meant the Consortium would be required to treat their effluents before they were dumped into the Great Salt Lake. The Corps of Engineers imposed drinking water standards on the Consortium as a direct result of GRM drinking water filing. The Consortium was denied the freedom to use the Great Salt Lake as a major dumping ground for raw untreated sewage and etc. This fact helped immensely toward reversing the lake from cesspool status, but this new policy, for the Consortium, was an expensive one because they had to put in treatment plants & etc. Since then, the Consortium has admittedly retained the run-off units and have been transferring them to Jordanelle and Deer Creek & etc. thereby altering the inflows which were freely wasting into the Great Salt lake at the time of the GRM filing. The GRM filing (R1888) included all inflows (Bear, Malad, Weber, Jordan and all other springs and flows) flowing/wasting into the Great Salt Lake plus a reservoir of 100 million acre feet which has put GRM waters to beneficial use since the date of filing. The reservoir includes a dike system (noted in filing) which created a fresh water area that has been desalinating the waters within since the 1960's. All lands below the 4215 feet elevation (noted in my filing) is the land boundary of the Great Salt Lake as was set forth as of Statehood. 200+ million dollars, in today's dollars, has been spent in

the early phase development (dike system) of this water project. The dike system goes from Syracuse to Antelope Island and was designed by GRM and privately built in 1964 without Davis County or the State of Utah having paid for it. The GRM Reservoir includes the Great Salt Lake in its entirety. (The road to Antelope Island was built upon a private dike road and the State of Utah and GRM have had a common use/key since the road upon the dike was improved and maintained by the State. GRM filed in 1989 on the Great Salt Lake as a Reservoir that included the dike. GRM gave them permission in 1989, at the State's request, to continue to use the road to Antelope Island that included them having to maintain the dike and improved road as had been established between GRM and the State since the 60's).

When the GRM Application to Appropriate water in 1989 was filed, it was THE FIRST DRINKING WATER FILING ON THE GREAT SALT LAKE. GRM has proven the existence of sufficient unappropriated waters that have been developing since the 60's when the placement of the dike (about 7 miles long) started the desalination process that continues to this day. (When the dike was completed in the 60's GRM closed off the causeway completely on Friday night and on the following Sunday (two days later) the water was spilling over the top of the causeway which means a raise in the entire bay of about three plus feet; this also included four steel (four foot) culverts running at full capacity with a 7 foot head above the culverts). This 1960's incident is one basis upon which GRM made the 1989 filing for drinking water. Furthermore, the following also substantiates the existence of sufficient drinking water:

1. Reports prepared after my filing by the State of Utah.
2. Reports prepared after my filing by the U.S. Geological Survey.
3. The very existence of persons whom the State Engineer awarded water rights and Distribution Plans such as Davis County 1993, (R2936) CUP & etc., and others, thereby, leap-frogging over the top of GRM's prudent 1989 filing on the Great Salt Lake and Reservoir.

**V. ADMITTANCE STATEMENTS BY THE
CO-APPELLEES OF GLENN R. MAUGHAN, PRO SE**

ADMITTANCES

Some co-appellee admissions in their Affidavits or documents are listed as follows:

1. ENVIRONMENTALISTS

My filing has set the standard for the protection of drinking water, air quality, animal habitats and wildlife and recreation since 1989. What these Environmentalists in 2006, want to protect and enjoy is an ecosystem which is a direct result of my drinking water filing in 1989, 17+ years ago. When I filed on the Great Salt Lake, the Lake was a putrid cesspool where the Consortium dumped its raw sewage and garbage in the form of major dumps in which all in the valley did participate. No one, before my filing, would step up to the plate to participate with me in this water project which I knew would be an environmentally friendly one. However, the area that I desalinized by the addition of the dike in the 60's, plus my filing on drinking water made it so the Consortium could not

pollute anymore. The new standards for the not-so-happy Consortium were as follows: Stop polluting, clean up and treat their sewage effluents and storm drains, clean up dumps and pollution sites and build treatment plants to handle their effluents. Example: American Smelting and Refining Company Mill, Vitro Chemical, a uranium mill, Jordan River Parkway and Kennecott Copper Corp. were required to be part of this clean up process because of the new drinking water standards. The beauty of which the Environmentalists have attested to in their signed affidavits state, "its so nice out there now that they don't want any thing to change it." I agree and I am very pleased that the Environmentalists have so overwhelmingly given their support and praise of my project. Remember that there is nothing cleaner than a drinking water project. I met with the Corps of Engineers and notified them of my filing. They told me I had created 1200 acres of new wetlands by filing on drinking water at the elevation of (4215) which was noted on my application and is the elevation of the Great Salt Lake as of statehood.

2. DAVIS COUNTY

An April 10, 2006 document admits (R2935, R2936, R2937) that water rights were awarded to Davis County by the State Engineer, thereby, leap-frogging over the top of GRM rights. This document also admits to wrongful diversion, wrongful storage of GSL waters from the GRM Reservoir, and wrongful use of water by fraud or mistake under the color of law. (R2936) GRM describes this Davis County document as follows: One part of the GSL water is diverted from Jordan River Water as it enters the Great Salt Lake (150,000 AF) and the rest (650,000 AF) is diverted from a part of the GRM 1989

Reservoir and all is ultimately stored (800,000 AF) in the fresh part of the GRM Reservoir which GRM named "Lake Maughan", but was wrongfully renamed "Lake Wasatch", and then wrongfully renamed "Lake Davis" in 1993 when Davis County made its 1993 filing (about 4 years) after the GRM 1989 filing, and is now wrongfully called, "Farmington Bay of the Great Salt Lake" according to the motion filed April 10, 2006. (R2935, R2936, R2937) Furthermore, this fresh water bay is the one that was created in the 1960's that GRM included in his drinking water filing in 1989 and is a part of the GRM Reservoir system. The information re: Davis County (R2936) is stated as follows: "The supplemental material consists of Davis County's Unapproved Application to Appropriate No.A66665, filed January 6, 1993. This Application seeks to divert and store 800,000 AF of water to be held in Farmington Bay of the Great Salt Lake and put to domestic, municipal and other uses in Davis County. 150,000 AF of this total 800,000 AF appropriation is made up of Jordan River water as it enters the Great Salt Lake. Given this Application predates Western Water's applications by some six years, it debunks any claim of Western Water that there is reason to believe that there is unappropriated water available in the Jordan River under either Western Water's theory of priority and/or the long-held and statutorily supported doctrine of prior appropriation. The Application was assigned water right number 31-5084." (R2936)

Yes, the Consortium's claim debunks any claim of Western Water, but the GRM 1989 claim debunks any claim of the CONSORTIUM, DAVIS COUNTY AND/OR OTHERS. The water right #31-5084 was awarded to Davis County by the State

Engineer out of turn; the Consortium should not be allowed to do to GRM rights what they said Western Water should not be allowed to do to their rights.

3. CENTRAL UTAH PROJECT AND BONNEVILLE UNIT (CUWCD) AND THE PROVO RIVER PROJECT (PRP)

The Bonneville Unit and the PRP sells water to the Consortium and admit in their Most Aggrieved Statement that they have taken/held/used waters that should be going into The Great Salt Lake. They very carefully and painstakingly describe this manipulative process with the excuse of this taking being justified because they serve the most populace area of Utah. (R2851) Tullis of the CUP in his statement, ends the water flow at Utah Lake and does not include the Great Salt Lake in his analysis, (R2852) but, Mr. Bay of Jordan Valley Conservancy District says, "11. Utah Lake, the Jordan River, the Great Salt Lake and a complex system of aqueducts, storage and treatment facilities, and canals belonging to the District and other public and private Defendants in this proceeding are operated as a single, complete, interrelated system to meet the needs of the citizens of Salt Lake and Utah Counties." (R2862) GRM agrees that the State Engineer cannot break this system into smaller units, thereby, removing water from the smaller units by stopping the water progression at the Utah Lake level in complete disregard of the very existence of the Great Salt Lake. A map was prepared by the State Engineer, and submitted as part of the Interim Water Distribution Plan for the Utah Lake Drainage Basin (misnomer) on November 1, 1992. (R2881)

A further statement by the state engineer is as follows: "In simple terms, we need to

begin to manage the water rights on the Provo River, Spanish Fork River, Utah Lake, Jordan River, and other sources in the basin as one system." GRM states, the Great Salt Lake is not a SOURCE that feeds any of this misnomer called Utah Lake System as defined by the state engineer and others; the drainage system is known as the Great Salt Lake Drainage System which does not end with those located upstream to it. The waters all drain into the GSL because the Great Salt Lake is the bottom of the Great Salt Lake Drainage Basin which is fed by all others. The Utah Lake drainage basin, Jordan drainage basin, Bear River Drainage Basin, and Weber drainage basin are all misnomers because they are all part of the Great Salt Lake drainage basin and not the other way around. These sources all feed the Great Salt Lake that was first filed on by GRM. This has become the "supreme little red hen story."

4. STATE ENGINEER

GRM Water rights have been granted to GRM because of the following fraud or mistake of the State Engineer: GRM has been much aggrieved by the appellant and co-appellees. The Appellant is attempting to acquire water I filed on with a priority date of 1989 and the GRM Co-appellees have wrongfully acquired and stored waters, which they have been misappropriating from 1989 to the present in total disregard of GRM filing. Utah law says that if someone wrongfully uses your water, the wrongful use preserves your right that the water was still put to beneficial use. (Case Law) GRM is the senior drinking water filer on the Great Salt Lake. The State Engineer accepted the GRM filing and has proceeded to wrongfully, award approved applications out of turn, thereby, leap-

frogging over GRM's priority date and rights. When the State Engineer approved rights to the Farmington Bay Bird Refuge, Davis County, Brigham City, CUP, the Utah Lake Distribution Plan on November 1, 1992 and many others out-of-turn, he thereby grants the prior applications water right status. The State Engineer has committed fraud or mistake because Utah is a first in time, first in right State. The Attorney General in his brief states, (Otherwise, the State Engineer would violate a fundamental tenet of Utah water law--*first in time, first in right*. "Utah is a prior appropriation state, where the appropriator first in time is first in right." *Salt Lake City v. Silver Fork Pipeline Corp.*, 2000 UT 3, 34, 5P.3d 1206, 1218; *see* Utah Code Ann. 73-3-1 and -21 (West 2004). Under the prior appropriation doctrine, the priority of a right is determined based on the date of filing. Utah Code Ann. 73-3-18 (West 2004); *McGarry vs. Thompson*, 201 P.2d 288,292 (Utah 1948); *see also dist. Court*, 238 P.2d at 1136. The priority of a water right is crucial because "[a] senior appropriator is guaranteed the full measure of his or her appropriation before any junior appropriator may be satisfied." *Silver Fork Pipeline Corp.*, 2000 UT 3, 34, 5P.3d at 1218. The priority date relates back to the filing date. *McGarry*, 201 P.2d at 292). The state engineer took discretionary action on Farmington Bay Bird Refuge, Davis County, CUP & etc., Brigham City and many others, leapfrogging over GRM's priority date. The state engineer disrupted the priority system, violating the first in time and first in right doctrine, and ignored the appropriation statute. The Consortium that includes the State Engineer, together in tandem, has committed fraud or mistake under the color of law. The state engineer should not have accepted or

approved any other applications in the Great Basin until the GRM filing was filled in its entirety. It was fully appropriated upon receipt of GRM filing; GRM claimed the whole bottom of the basin that includes all lands below 4215 feet in elevation that was established as the official elevation of the Great Salt Lake as of statehood. GRM filed on all wastewater flowing/wasting into the Great Salt Lake from all its sources. The state engineer allowed GRM waters to be wrongfully taken/held/used by those upstream. The state engineer knew that there were no protestors downstream because GRM held the position of senior drinking water filer on the Great Salt Lake that is a "dead sea" with no outlets. There was no one below GRM that could be affected; GRM filed on the entirety of the Great Salt Lake under the laws that were in effect as of the 1989 filing date.

The State of Utah in 1989, considered The Great Salt Lake a fouled and putrid body of water. The GSL was a hazard to humans due to E-Coli and contamination that had killed many thousands of birds, fish and animals and could affect human life through poisonous gases and botulism that were getting worse every year. The Great Salt Lake is a "dead sea" with no outlets; the Lake could not tolerate the State of Utah's open dumping policy that steadily increased due to the increasing population of Utah. The Consortium was not protecting the Great Salt Lake, its ecosystem, its waters or the public before my filing. I, GRM, excitedly approached this water project in 1989 based on the fact, "a cleaner environment with more water for a desert is a win/win situation for all."

VIII. CONCLUSION

The State Engineer, Jerry Olds, in his affidavit, states, "The Utah Lake-Jordan River

Drainage Basin covers portions of Carbon, Juab, Salt Lake, Sanpete, Summit, Utah and Wasatch Counties. The Great Salt Lake Drainage Basin extends from the western slope of the Uinta Mountains to the Great Salt Lake." (R2764) This includes the Bear, Malad and the Weber River where water coming from the western slope of the Uinta Mountains travels down through the rivers and streams to the Great Salt Lake. The Weber, the Bear and the Jordan Rivers all start within a short distance of each other and even though they take different courses, their waters all ultimately reach the Great Salt Lake. The State Engineer's affidavit states, "If the State Engineer determined unappropriated waters were available in the Basin, these applications would be considered in a sequence order based on their filing date." This is not what the State Engineer did when he leap frogged over the top of the GRM filing. (R2764) GRM made the filing on the entire Great Salt Lake and is #1 drinking water filer. Therefore, the case my Co-appellees have presented against Western Water is the same case I present against my various Co-appellees; The Consortium should not be allowed to do to GRM rights what they said Western Water should not be allowed to do to the Consortium's rights. However, the State Engineer on November 1, 1992, approved a Utah Lake Distribution Plan for the misnomer called Utah Lake Drainage Basin, as amended, to state, "the Bonneville Unit must operate within the confines of the Distribution Plan so as not to reduce the yield of Utah Lake or impair prior rights in Utah Lake, the Jordan River, and the Provo River." (R1625) This distribution plan shows a total disregard of GRM rights on the Great Salt Lake because their Distribution Plan ends the world at the Jordan River without acknowledging that the


water must go to the Great Salt Lake first. The Distribution plan reuses the water over and over again, before it reaches the Great Salt Lake, if it EVER reaches the Great Salt Lake, and does not observe the 1st in time 1st in right statute, thereby, consuming waters out-of-order that do not belong to them. **Example:** If I have three bathtubs and water is freely flowing through all three bathtubs and suddenly, water in the second bathtub is dammed and all the water consumed; the third bathtub would, then, receive no more water. This is what the Consortium that includes the State Engineer and others have done to GRM rights within the entire Great Salt Lake Basin; this principal applies to all water sources entering the Great Salt Lake. Also, the State Engineer whom has approved these distribution plans and etc., has caused the Great Salt Lake waters, if they do get to reach the GSL, to be more contaminated. Please note how Tullis of CUP admits to how he moves/manipulates GRM waters around so the waters do not reach the Great Salt Lake. The affidavit of Tullis, states, "As a result of my duties managing the operations of the Bonneville Unit, I have direct personal knowledge regarding the operations of Utah Lake, Strawberry Reservoir, the Jordan River, and the Provo River which are all part of an integrated hydrological system." (R1625) However, Mr. Bay of Jordanelle said the integrated hydrological system does include the Great Salt Lake. (R1625) Why doesn't Tullis's "personal knowledge and professional knowledge" as a Professional Engineer include the existence of the Great Salt Lake as part of this integrated hydrological system when the GSL has a priority date of 1989 and his distribution plan, which was wrongfully approved by the State Engineer, has a priority date of November 1, 1992? Tullis further

states, "14. The Distribution Plan defines Utah Lake water as System Storage. It provides for System storage to be stored in Jordanelle and Deer Creek reservoirs by the Bonneville Unit and the Provo River Project ("PRP") under their respective priorities. 15. System Storage in Jordanelle and Deer Creek reservoirs remains Utah Lake water and must be kept available for delivery to Utah Lake to satisfy the prior Utah Lake primary and secondary storage rights. 16. System Storage in Jordanelle and Deer Creek reservoirs remains Utah Lake water and cannot be used by the Bonneville Unit or PRP until it can be exchanged or converted under provisions of the Distribution Plan. 17. When System Storage is exchanged or converted, it becomes Bonneville Unit or PRP Priority Storage and becomes available to CUWCD and PRP for delivery to their contract holders. 18. Priority Storage is a significant component of both the Bonneville Unit and PRP water supplies and constitutes a significant portion of the water that supplies much of Utah and Salt Lake Counties. 19. System Storage is converted to Priority Storage when the volume of System Storage in Utah Lake is greater than the minimum monthly volumes prescribed under the Distribution Plan defined by the Conversion Line. These minimum volumes are intended to protect the prior Utah Lake water rights. Once the minimum volumes are met, meaning the Conversion Line is crossed, System Storage held in upstream reservoirs is converted to Bonneville Unit and PRP Priority Storage." GRM states, the admitted taking of water by the CUP and others from Utah Lake Tributaries and also, the admitted removal of water from the Weber and Bear has impaired GRM water rights on the Great Salt Lake by reducing the volume of water that reaches the

Great Salt Lake. The Consortium has acted in total disregard of GRM rights on the Great Salt Lake by not observing the century-old prior appropriation doctrine set forth in case law and statute, "1st in time, 1st in right, somehow becomes, last to file, 1st in line." The storage waters that have been moved to priority storage are waters that were admittedly blocked from the Great Salt Lake since about 1989. The consortium should not be allowed to do to GRM rights what the consortium said Western Water should not be allowed to do to their rights.

The Supreme Court cases hinge on the fact that the filer of the application has the right to develop and put the water to beneficial use. It is also pointed out in those cases that these rights have and must be defended by the State and its agencies against all the world and even the United States Government.

The appellant (Western Water) filed a Motion for Summary Judgment against Glenn R. Maughan and The Honorable Judge Hilder of the Salt Lake District Court denied the Motion for Summary Judgment against Glenn R. Maughan. Therefore, the CUP and others, have taken at the expense of GRM, water funds by fraud or mistake of which they must disgorge themselves due to unjust enrichment. I pray that the Summary Judgment be upheld and that my 1989 water right be upheld along with some measure of justice as I am even more aware that I am aggrieved after writing this brief.

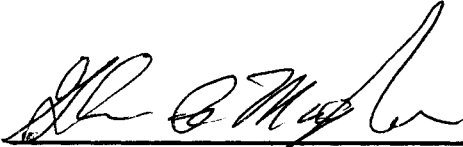


Jun 22, 2007

VII CERTIFICATE OF SERVICE

Certificate of Service

I hereby certify that on the 22nd day of January, 2007, two (2) true and correct copies of the foregoing BRIEF OF APPELLEE TO 22 JOINT APPELLEES, STATE ENTITIES AND CONSERVATION GROUPS were hand delivered or mailed to by first-class mail, postage prepaid to the following:



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