

2015

**Jesse Rodney Dansie, an Individual v. Public Service Commission
of Utah and Hi-Country Estates Homeowners Association, a
Domestic Non-Profit Corporation : Brief of Appellee**

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

JESSE RODNEY DANSIE, an individual

Petitioner/Appellant,

v.

PUBLIC SERVICE COMMISSION OF
UTAH and HI-COUNTRY ESTATES
HOMEOWNERS ASSOCIATION, a
domestic non-profit corporation.

Respondents/Appellees.

APPELLATE CASE NO. 20140653-CA

(Commission Docket No. 13-2195-02)

BRIEF OF APPELLEE

Hi-Country Estates Homeowners Association

On appeal from the Utah Public Service Commission

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Identification of Parties per Rule 24(a)(1)

Petitioner/Appellant

Jesse Rodney Dansie, an individual

Respondents/Appellees

The Public Service Commission of Utah

The Utah Division of Public Utilities

Hi-Country Estates Homeowners Association, a Utah non-profit corporation

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I. STATEMENT OF JURISDICTION

Hi-Country Estates Homeowners Association (“**Hi-Country**”) agrees with Jesse Rodney Dansie’s (“**Mr. Dansie**”) Statement of Jurisdiction.

II. ISSUES PRESENTED / STANDARDS OF REVIEW

The issues presented on appeal are not adequately or accurately stated in Mr. Dansie’s statement of issues presented for review. Therefore, Hi-Country offers the following statement of the issues and standards of review:

Issue 1: Did the Utah Public Service Commission (the “**Commission**”) exceed its jurisdiction when it declared the Well Lease Agreement void and unenforceable as against the public interest?

Standard of Review: This Court should review the Commission’s determination of its jurisdiction for correctness. *Heber Light & Power Co. v. Utah Pub. Serv. Comm’n*, 2010 UT 27, ¶ 6, 231 P.3d 1203 (“The question of Commission jurisdiction turns on statutory interpretation and therefore presents a question of law that we review for correctness.”). “When reviewing an agency’s application of its own rules, we will not disturb its interpretation or application of its rules unless its determination exceeds the bounds of reasonableness and rationality.” *McBride v. Motor Vehicle Div. of Utah State Tax Comm’n*, 1999 UT 9, ¶ 12, 977 P.2d 467.

Issue 2: Did the Commission improperly issue its Order of May 5, 2014 without Mr. Dansie being personally present and subject to cross-examination at the Commission hearing on March 4, 2014 and March 11, 2014?

Standard of Review: To the extent Mr. Dansie contends he was denied due process by not personally attending the Commission hearing, that claim is a question of law and is to be reviewed under a correction of error standard. *See Kennon v. Air Quality Bd.*, 2009 UT 77, ¶ 14, 270 P.3d 417. Further, “[t]he appellate court shall grant relief only if, on the basis of the agency’s record, it determines that a person seeking judicial review has been *substantially prejudiced*” *In re Questar Gas Co.*, 2007 UT 79, ¶ 48, 175 P.3d 545: *accord* Utah Code Ann. § 63G-4-403(4) (LexisNexis 2014).

Issue 3: Did the Commission improperly decline Mr. Dansie’s request to expand Hi-Country’s service area to include land that Mr. Dansie owned but which had never been served by Hi-Country?

Standard of Review: “Under the Utah Administrative Procedures Act, the reviewing court shall provide relief if the person seeking judicial review has been substantially prejudiced by the agency’s basing its actions on a determination of fact that ‘is not supported by substantial evidence when viewed in light of the whole record before the Court.’” *Larson Limestone Co. v. Div. of Oil, Gas, & Mining*, 903 P.2d 429, 430 (Utah 1995) (citations omitted).

Issue 4: Does Mr. Dansie have standing as an individual, who is no longer the Trustee, to maintain the present appeal of the Commission’s action on the Well Lease on behalf of the Dansie Family Trust?

Standard of Review: A standing determination “is primarily a question of law, although there may be factual findings that bear on the issue.” *Angel Investors, LLC v. Garrity*, 2009 UT 40, ¶ 14, 216 P.3d 944. Therefore, appellate court’s review the legal

determinations for correctness, “affording deference for ‘factual determinations that bear upon the question of standing.’” *Cedar Mt. Envtl., Inc. v. Tooele County*, 2009 UT 48, ¶ 7, 214 P.3d 95.

III. DETERMINATIVE CONSTITUTIONAL PROVISIONS, STATUTES, RULES, OR REGULATIONS¹

Statutes

Utah Code Ann. § 54-2-1(16)(a)
Utah Code Ann. § 54-2-1(29)
Utah Code Ann. § 54-4-1
Utah Code Ann. § 54-4a-6
Utah Code Ann. § 54-7-12(3)(a)
Utah Code Ann. § 63-46b-16(4)(g)
Utah Code Ann. § 63G-4-403(4)
Utah Code Ann. § 75-7-809

Rules

Utah Admin. Code R746-100-1(c)
Utah R. App. P. 24(a)(5)
Utah R. App. P. 24(k)
Utah R. App. P. 33(a)
Utah R. App. P. 34(e)
Utah R. Civ. P. 12(h)(2)
Utah R. Civ. P. 17(a)

IV. STATEMENT OF THE CASE

A. *Nature of the Case*

The issues in this appeal stem, most recently, from a formal rate proceeding before the Commission in which Hi-Country sought approval by the Commission of various rates

¹ Full text of the provisions is included in the Addendum in accordance with Utah R. App. P. 24(a)(6).

and charges for water service provided by Hi-Country. Mr. Dansie intervened and asserted that, pursuant to a Well Lease and Water Line Extension Agreement dated April 7, 1977 (“1977 Lease”), that the Dansie Family Trust had a right to receive 12 million gallons of water per year from Hi-Country, including cost of delivery to Mr. Dansie’s property, at no cost.

Due to a fall, Mr. Dansie was hospitalized for several weeks and was unable to appear in person, but was represented by counsel throughout the proceedings and at all hearings. The Commission made every effort to accommodate Mr. Dansie, including continuing the hearing and allowing the parties to file post-hearing briefs and responses, while still meeting its 240-day statutory deadline. Mr. Dansie did not file a post-hearing brief.

The Commission issued its decision just two days before its deadline, and approved Hi-Country’s proposed water service rates, declared the Well Lease Agreement void and unenforceable, and declined to make modifications to Hi-Country’s existing water service area. Mr. Dansie’s requests for review and rehearing were denied by the Commission, and he subsequently appealed from the Orders issued by the Commission.

B. Course of Proceedings and Disposition Below

This case began as a formal proceeding before the Commission on July 10, 2013, when Hi-Country filed its Application to Approve Proposed Water Service Schedules and Rates (“**Application**”), which was designated as Commission Docket No. 13-2195-02. (R. 1-472.) Mr. Dansie requested intervention on August 5, 2013, and his request was granted on August 30, 2013. (R. 509-512; R. 536-541.)

During the course of the Commission proceedings, the parties engaged in discovery and submitted pre-filed written testimony. On behalf of Hi-Country, Krystal Fishlock-McCauley (R. 640-656), Justun Edwards (R. 657-669), and Randy Crane (R. 670-857) submitted pre-filed direct testimony on October 17, 2013. On January 30, 2014, Mr. Dansie submitted pre-filed direct testimony. (R. 858-934.) Also on January 30, 2014, Shauna Benvegna-Springer submitted pre-filed direct testimony on behalf of the Utah Division of Public Utilities (the “**Dvision**”). (R. 980-984.) On February 20, 2014, Randy Crane (R. 995-1017) and Shauna Benvegna-Springer (R. 1018-1032) submitted pre-filed rebuttal testimony. On February 27, 2014, Mr. Dansie submitted pre-filed sur-rebuttal testimony. (R. 1171-1176.)

Just before 5:00 p.m. on the eve of the March 4, 2014 evidentiary hearing, Mr. Dansie’s counsel filed a motion to continue the hearing on the grounds that Mr. Dansie had been hospitalized. (R. 1177-79.) The motion states, in part: “Intervenor suffered a fall and is currently in the hospital. Intervenor’s prognosis is uncertain, but it is clear that he will be unable to attend the hearing currently scheduled to begin on March 4, 2014.” (R. 1177.) Mr. Dansie’s counsel appeared at the hearing the following morning and renewed the request for a continuance. In response the Commission delayed the hearing until March 11, 2014, due to Mr. Dansie’s inability to attend in person. (Hr’g Tr. 7:14-15, Mar. 11, 2014.)

On March 11, 2014, Mr. Dansie’s counsel again appeared on his behalf and requested a second continuance. (Hr’g Tr. 7:17-18, Mar. 11, 2014) After discussing the request with the parties and considering the various options, the Commission denied the

motion, but offered the parties the opportunity to file post-hearing briefs and responses. (Hr'g Tr. 24: 15-17, Mar. 11, 2014.) Mr. Dansie's counsel did not object to this solution, (Hr'g Tr. 24:21, Mar. 11, 2014), and Mr. Dansie did not file a post-hearing brief. (R. 1359.)

The Commission subsequently issued an Order on May 5, 2014 approving Hi-Country's proposed water service rates, declaring the Well Lease Agreement void and unenforceable, and declining to expand Hi-Country's existing water service area. (R. 1256-282.) On June 4, 2014, Mr. Dansie, through counsel, requested review and rehearing. (R. 1285-301.) On June 25, 2014, the Commission denied Mr. Dansie's request for rehearing and reconsideration. (R. 1354-364.) In this appeal, Mr. Dansie appeals from the Orders issued by the Commission.

V. STATEMENT OF FACTS

1. Prior Proceedings.

Issues between Mr. Dansie and Hi-Country span multiple decades and have been addressed by Utah courts a number of times over the years. At the center of several of these disputes, and central to Mr. Dansie's arguments in this appeal, is a 1977 Lease. (R. 462-69.) The 1977 Lease is an eight page document which was entered into by Mr. Dansie's father, Jesse H. Dansie ("**Dansie Sr.**"), and Gerald H. Bagley ("**Bagley**"), a developer of the land now comprising the Hi-Country Estates Phase I subdivision. In 1985, Dansie Sr. and Bagley amended the 1977 Lease through a three page amendment entitled "Amendment to Well Lease and Water Line Extension Agreement," dated July 3, 1985 (the "**1985 Amendment**"), the 1977 Lease and the 1985 Amendment collectively are referred to as the "**Well Lease**"). (R. 470-472.) The Well Lease, according to Mr. Dansie's

interpretation, obligates Hi-Country to provide his family trust, as successor to Dansie Sr., with 12 million gallons of water annually at no cost, along with other benefits such as free hook ups for a specified number of properties. (R. 861-862.)

The Well Lease has previously been reviewed and examined by the Commission and courts on multiple occasions. In 1985, the then water provider for the Hi-Country estates subdivision, Foothills Water Company (“**Foothills**”), owned by Bagley, was required by the Commission to obtain a Certificate of Public Convenience and Necessity (“**CPCN**”) to operate as a public utility. (R. 726.) In 1986, Foothills sought approval of its water service rates. The Commission made a number of important findings regarding the Well Lease at that time. The Commission noted that Foothills had operated illegally without Commission authorization as a public utility from 1972 to 1985.² (R. 735.) The Commission also ruled that the Well Lease was “grossly unreasonable, requiring not only substantial monthly payments, but also showering virtually limitless benefits on . . . Dansie and the members of his immediate family.” (R. 736.) The Commission determined that it would be “unjust and unreasonable” to expect the customers of Foothills to bear the burden of the Well Lease and ruled that Foothills not recover any costs associated with providing water and benefits under the Well Lease. (R. 738.) Neither Mr. Dansie nor Dansie Sr. appealed, questioned, or challenged this decision.

² In its Report and Order in Docket 85-2010-01, date March 17, 1986, the Commission found that the owners of Foothills “knew from the beginning that . . . they would be subject to Commission jurisdiction.” (R. 1067.)

After a protracted legal battle with Foothills, Hi-Country was granted ownership of the water system in 1993. *See Hi-Country Estates Homeowners Ass'n v. Bagley & Co.*, 863 P.2d 1, 7 (Utah Ct. App 1993). In 1994, the new owner Hi-Country sought and was granted a CPCN from the Commission, allowing it to operate as a public utility subject to Commission jurisdiction. *See Hi-Country Ass'n v. Bagley & Co.*, 2008 UT App 105, ¶ 5, 182 P.3d 417, *cert. denied*, *Foothills Water v. Hi-Country*, 199 P.3d 970 (Utah 2008). Approximately two years later, Hi-Country was granted an exemption from Commission regulation, due to the fact that it was not providing water service to the public generally. *See id.* Through a series of court decisions, the question of the enforceability of the Well Lease eventually came before the Court of Appeals. In 2008, the Court of Appeals affirmed the trial court's ruling that the Well Lease was an enforceable contract to be enforced "according to its plain language" since the Commission no longer had jurisdiction over Hi-Country and the Commission's 1986 Order prohibiting recovery of any costs relating to the Well Lease was likewise no longer binding. *See Hi-Country Ass'n v. Bagley & Co.*, 2008 UT App 105, ¶ 12, n.2. The Court of Appeals later reaffirmed its decisions and explained that "... the effect of the Final Judgment, as affirmed and explained in our 2008 opinion ... is that the Dansies are, going forward, entitled to their contractual rights to free water and free hook-ups unless the PSC intervenes and determines otherwise." *Hi-Country Estates Homeowners Ass'n v. Bagely & Co.*, 2011 UT App 252 (memorandum decision), subsequently amended on July 29, 2011, *see id.* (amended memorandum decision). The Utah Supreme Court denied certiorari on November 28, 2011. *See Foothills v. Hi-Country*

Estates, No. 20110777, 268 P.3d 192, 2011 Utah LEXIS 194, at *1 (Utah Nov. 28, 2011) (unpublished decision).

Due to the fact that Hi-Country had begun providing water service to non-member customers and was thus serving the public generally, in a prior proceeding, Hi-Country sought and was granted reinstatement of its CPCN (and the Commission reasserted its jurisdiction over Hi-Country operating as a public utility) as it was now serving the public generally.³ At the CPCN proceeding, the Commission took evidence and heard testimony regarding whether Hi-Country was providing water service to the public generally. This included testimony of Stephen Olschewski, and signed declarations of Jonathan Beagley, Larry Beagley, Greg DeHaan, Daniel Olschewski, Helmut Olschewski, and Stephen Olschewski stating that each receives water service from Hi-Country but are not members of the Hi-Country Estates Homeowners Association, which owns and controls the water company, and each do not have any voting rights in the Association, which controls the rates Hi-Country charges for culinary water service. *See* Commission Report and Order in Docket 11-2195-01, dated July 12, 2012, page 6. Based on this and other evidence, the Commission ruled that Hi-Country was serving water to the public generally and was thus

³ *See In the Matter of Hi-Country Estates Homeowners Association's Request for Reassessment of the Commission's Jurisdiction*, Docket No. 11-2195-01, available at: <http://www.psc.state.ut.us/utilities/water/waterindx/11219501indx.html>. Hi-Country requests that the Court take judicial notice of this proceeding. *See Moore v. Utah Technical Coll.*, 727 P.2d 634, 639 (Utah 1986) (“We may take judicial notice of administrative rules and regulations as well as published accounts of administrative proceedings and actions.”).

a public utility subject to Commission jurisdiction and oversight. The CPCN was reinstated for the same service area as was established in 1994 in Hi-Country's initial CPCN. (R. 1275.) The reinstated service area is the same as the service area established in 1986 for Foothills. (R. 1360.) Although Mr. Dansie intervened in the CPCN proceeding and presented evidence and argument opposing the reestablishment of Commission jurisdiction over Hi-Country, the Commission ruled otherwise. Mr. Dansie did not appeal the Commission's decision to issue a CPCN and assert jurisdiction due to the change in circumstance by Hi-Country, that of serving the public generally.⁴

2. Current Appeal.

The issues in this appeal stem, most recently, from a formal proceeding before the Commission initiated by Hi-Country on July 10, 2013, by filing its Application. (R. 1-472.) Following the Commission's ruling to re-assert jurisdiction over Hi-Country, over Mr. Dansie's opposition, the Application sought approval by the Commission of other rates and charges for water service provided by Hi-Country, along with various other tariff changes. (R. 2-8.) The Application also proposed a rate of \$3.85 per thousand gallons for water transported pursuant to the Well Lease. Mr. Dansie requested and was granted intervention in the Commission proceeding. (R. 509-512; 536-541.)

⁴ Because the Commission's decision in the CPCN proceeding that Hi-country was serving the public generally and thus subject to Commission jurisdiction was a final judgment on the merits, Mr. Dansie is now barred by claim preclusion to now relitigate the Commission's jurisdiction over Hi-Country. *Beaver County v. Qwest, Inc.*, 2001 UT 81, ¶ 20, 31 P.3d 1147.

On September 20, 2013, the Commission held a scheduling conference. (R. 625-30.) Mr. Dansie's counsel appeared on his behalf. (R. 632; 1258.) On September 24, 2013, the Commission issued a scheduling order, and notice that the evidentiary hearing was set for March 4, 2014, and the public witness hearing set for March 5, 2014. (R. 632-38.) The Commission's scheduling order included a discovery period, which gave all parties the opportunity to seek discovery and clarification of pre-filed testimony. (R. 633.) Mr. Dansie filed direct testimony on January 30, 2014 (R. 858-934), and sur-rebuttal testimony on February 27, 2014. (R. 1171-76.) The stated purpose of Mr. Dansie's pre-filed testimony was to address the Well Lease. (R. 861; 1174.) Specifically, Mr. Dansie asserted that the Well Lease could not be abrogated given the 2008 and 2011 court decisions. (R. 862-64.) Mr. Dansie also asserted that he has a right to receive 12 million gallons of water per year from Hi-Country, including cost of delivery to his property, at no cost, and that the proposed Tariff's well lease transportation fee of \$3.85 was prohibited under the Well Lease. (R. 861- 62; 1174-75.) During his participation in the Commission proceedings, Mr. Dansie testified that his interest in the Well Lease Agreement came through the Dansie Family Trust, which was the successor-in-interest of Dansie Sr. (R. 863.)

The night before the March 4, 2014 hearing was scheduled to convene, Mr. Dansie's counsel filed a motion for continuance. (R. 1177-79.) On March 4, 2014, the Administrative Law Judge for the Commission convened a hearing to discuss Mr. Dansie's Motion. (R. 1203.) Mr. Dansie's counsel appeared on "behalf of the intervenors, the Dansies," and represented that he did not know when Mr. Dansie would be available to

participate. (Hr'g Tr. 3:20-21; 8:1-3, Mar. 4, 2014.) Discussion at this hearing included the Commission's jurisdictional and statutory 240-day deadline, May 7, 2014, by which the Commission was required to issue a final order on the application, in the absence of which the application would be deemed granted as a matter of law. (Hr'g Tr. 9: 1 1-24; 10:1-5, Mar. 4, 2014.) Another intervenor in the docket objected to a continuance. (Hr'g Tr. 18:3-4, Mar. 4, 2014.) After a recess, Mr. Dansie's counsel announced that the parties had conferred and arrived at a proposed hearing date of March 11, 2014. (Hr'g Tr. 29:20-22, Mar. 4, 2014.) Mr. Dansie's counsel represented: "I think Mr. Dansie [will] be available on the 11th. And if not . . . then his brother Richard would . . . be willing to testify in his place." (Hr'g Tr. 30:4-7, Mar. 4, 2014.) He also acknowledged that he could call any other witnesses. (Hr'g Tr. 30:8-13, Mar. 4, 2014.) Further, he stated he would "waive any appeal rights" if Dansie's brother testified instead. (Hr' g Tr. 30: 15-19, Mar. 4, 2014.) Based on the proposal agreed to by the parties, the remainder of the hearing scheduled for March 4, 2014, was cancelled and rescheduled for March 11, 2014. (R. 1180.)

On March 11, 2014, the rate case hearing continued. Mr. Dansie's counsel appeared on Mr. Dansie's behalf and moved to continue the hearing until Mr. Dansie's release from the hospital (Hr'g Tr. 7: 14-15, Mar. 11, 2014; (Hr'g Tr. 7:17-18, Mar. 11, 2014) in six weeks or longer, (Hr'g Tr. 8: 10-11 ; 10:24-25, Mar. 11, 2014) acknowledging that "it puts us right at the [240-day deadline]." (Hr' g Tr. 8: 18-20, Mar. 11, 2014.) Addressing the Commission's May 7, 2014, deadline for issuing the rate case decision and the uncertainty of whether Mr. Dansie would even be available after a six-week delay, (Hr'g Tr. 10:1 3-

19, Mar. 11, 2014) Mr. Dansie's counsel acknowledged, ". . . I have no idea whether that's even . . . feasible or what." (Hr'g Tr. 10:21-25, Mar. 11, 2014.) After discussing the motion with the parties and considering the options proposed by each, the Commission denied the motion and offered the parties the opportunity to file post-hearing briefs and responses to any new issues raised in the hearing. (Hr'g Tr. 24: 15-17, Mar. 11, 2014.) Mr. Dansie's counsel did not object to this solution (Hr'g Tr. 24:21, Mar. 11, 2014), and at the end of the hearing stated, "I think we'll file a post hearing brief probably within the next week or so." (Hr'g Tr. 168:4-5, Mar. 11, 2014.) Mr. Dansie did not file a post-hearing brief. (R. 1359.)

The Commission subsequently issued an Order on May 5, 2014 approving Hi-Country's proposed water service rates, declaring the Well Lease Agreement void and unenforceable, and declining to expand Hi-Country's existing water service area. (R. 1256-282.) On June 4, 2014, Mr. Dansie, through counsel, requested review and rehearing. (R. 1285-301.) On June 25, 2014, the Commission denied Mr. Dansie's request for rehearing and reconsideration. (R. 1354-364.)

VI. SUMMARY OF ARGUMENT

Mr. Dansie lacks standing to appeal any issues relating to the Well Lease because he is no longer the trustee of the Dansie Family Trust, the successor-in-interest to the Well Lease, and is therefore not the real party in interest. Hi-Country requests that the Court strike Mr. Dansie's brief and award attorneys' fees to Hi-Country because Mr. Dansie's brief fails to meet the requirements of Rule 24 of the Utah Rules of Appellate Procedure.

Also, Mr. Dansie may not contest the assertion by the Commission of jurisdiction over Hi-country as this issue was decided in the CPCN proceeding before the Commission, in which Mr. Dansie participated but failed to appeal.

In addition to the standing and procedural issues, Mr. Dansie has failed to make a persuasive argument as to why the Commission's Order should be reversed. The Commission did not exceed its jurisdiction when it declared the Well Lease void and unenforceable as against the public interest. The Commission did not improperly issue its Order or violate Mr. Dansie's due process rights because he participated fully both by pre-filed testimony and by counsel throughout the proceedings, the Commission made every possible accommodation for Mr. Dansie, to personally appear at the evidentiary hearing, without running afoul of its 240-day statutory deadline, and Mr. Dansie did not avail himself of the post-filed pleadings opportunity provided by the Commission. The Commission did not improperly decline to expand Hi-Country's water service area because Mr. Dansie failed to provide any evidence that his 40-acre parcel should be included in the service area. Therefore, Mr. Dansie's brief should be stricken and his appeal denied.

VII. ARGUMENT

A. Mr. Dansie lacks standing to maintain his appeal on issues regarding the Well Lease.

Mr. Dansie only holds an interest in the Well Lease as a beneficiary of a family trust, of which he is not the trustee. Consequently, Mr. Dansie lacks standing to appeal issues regarding the Well Lease as he is not the real party in interest. "A 'real party in interest' is the one having legal title to a cause of action and is 'entitled under the

substantive law to enforce the right sued upon.” *Pierucci v. Pierucci*, 2014 UT App 163, ¶ 25, 331 P.3d 7 (citing Black’s Law Dictionary 1232 (9th ed. 2009)). Rule 17 of the Utah Rules of Civil Procedure requires “[e]very [legal] action [to] be prosecuted in the name of the real party in interest.” (Utah R. Civ. P. 17(a).) The “purpose of this rule is to allow defendants the right to have a cause of action prosecuted by the real party in interest in order for the judgment to preclude any action on the same demand by another.” *Green v. Louder*, 2001 UT 62, ¶ 43, 29 P.3d 638 (emphasis omitted).⁵

“[Utah] case law makes clear that when a party’s standing to appeal is challenged, that party carries the burden to show that he has standing to invoke the court’s jurisdiction.” *Kemp v. Wells Fargo Bank, NA*, 2013 UT App 88, ¶ 8, 301 P.3d 23. “[W]henver it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.” Utah R. Civ. P. 12(h)(2); *see also Brown v. Div. of Water Rights of the Dep’t of Natural Res. Of Utah*, 2010 UT 14, ¶ 13, 228 P.3d 747 (challenges to the subject matter jurisdiction of the court can be raised at any time, including for the first time on appeal), citing *Harris v. Springville City*, 712 P.2d 188, 190 (Utah 1986). The United States Supreme Court has explained, “courts should not adjudicate [a third party’s] rights unnecessarily,” as “it may be that in fact the holders of those rights . . . do not wish to assert them” and the “third parties themselves usually will be the best proponents of their own rights.” *Wilderness Soc. v. Kane Cnty.*, 632 F.3d 1162, 1171-72 (10th Cir. 2011) (quoting *Singleton v. Wulff*, 428 U.S. 106, 113 (1976)).

⁵ *See* Utah Admin. Code R746-100-1(c) (providing that the Utah Rules of Civil Procedure are applicable in Commission proceedings).

During his participation in the proceedings before the Commission, Mr. Dansie testified that his interest in the Well Lease Agreement came only through the Dansie Family Trust. Indeed, in his prefiled written testimony before the Commission, Mr. Dansie responded to the question “[p]lease state your relationship to Jesse H. Dansie along with your interest to the benefits of the Well Lease Agreement” by stating “[a]long with my siblings, we are the successors-in-interest to his interest in the Well Lease Agreement.” (R. 863, lines 8-13.)

While Mr. Dansie may be a beneficiary of the Dansie Family Trust, such status does not grant him authority to bring or maintain this appeal as “[g]enerally, it is the trustee’s sole duty to . . . enforce contracts on behalf of a trust for its beneficiaries.” *Hillcrest Inv. Co., LLC v. Utah DOT*, 2012 UT App 256, ¶ 22, 287 P.3d 427. While certain exceptions exist to this general rule, such as when a beneficiary’s interest is hostile to that of the trustee or when no trustee exists, *id.* at ¶ 23, no such exceptions are applicable here. The Dansie Family Trust has a trustee, and that trustee is also a beneficiary of the Dansie Family Trust with interests consistent with Mr. Dansie’s, as shown on the Affidavit of Successor Trustee attached hereto as **Exhibit A**.

As the current cause of action properly belongs to the Dansie Family Trust and not Mr. Dansie personally, the Dansie Family Trust is the real party in interest and, through its trustee(s), is the only party that may maintain this action. *See* Utah R. Civ. P. 17(a). Indeed, it is the statutory duty of a trustee to enforce claims belonging to a trust. *See* Utah Code Ann. § 75-7-809 (“A trustee shall take reasonable steps to enforce claims of the trust and to defend claims against the trust.”).

Further, given Mr. Dansie's resignation as trustee of the Dansie Family Trust on January 14, 2015, his continued prosecution of this appeal purportedly on behalf of the Dansie Family Trust is improper and should not continue. His brother Richard P. Dansie is now the trustee of the Dansie Family Trust, and the appeal, if any, of the Commission's Order must be prosecuted by Richard Dansie, as the authorized trustee. As such, this Court should dismiss the appeal filed by Mr. Dansie, or, in the alternative, require the substitution of Richard P. Dansie, as trustee of the Dansie Family Trust, as the real party in interest under Rule 38(c) of the Utah Rules of Appellate Procedure.

B. Mr. Dansie's brief is deficient and fails to meet the requirements of the Utah Rules of Appellate Procedure and should therefore be disregarded.

Mr. Dansie's brief fails to state the applicable standard of review for each issue raised as required by Rule 24 of the Utah Rules of Appellate Procedure and is therefore deficient and should be disregarded. Rule 24(a)(5) requires that every brief include "[a] statement of the issues presented for review, including for each issue: the standard of appellate review with supporting authority" Utah R. App. P. 24(a)(5). The Utah Supreme Court made it clear that this Court "... need not address briefs that fail to comply with Rule 24." *Carlton v. Brown*, 2014 UT 6, ¶ 18, 323 P.2d 571. Rule 24(k) allows that "[b]riefs which are not in compliance may be disregarded or stricken, on motion or *sua sponte* by the court, and the court may assess attorney fees against the offending lawyer." Utah R. App. P. 24(k). Mr. Dansie's brief fails to identify the proper standard of review for each issue presented as required by Rule 24(a)(5) and is thus in violation of Rule 24.

Hi-Country has incurred and continues to incur costs and fees based on Mr. Dansie's frivolous challenges to the Commission's jurisdiction and this appeal from the Commission's Orders, as well as Mr. Dansie's deficient brief. The Well Lease, which is the subject of nearly all of Mr. Dansie's involvement in this matter, has been reviewed by the Commission and the courts on multiple occasions; despite that fact, Mr. Dansie persists in arguing for its enforcement before the Commission. Hi-Country has incurred significant expenses in addressing Mr. Dansie's arguments, rescheduling the Commission hearing, responding to Mr. Dansie's request for rehearing filed with the Commission on June 4, 2014, and now preparing and submitting this brief. Mr. Dansie's frivolous claims have turned a routine Commission proceeding involving a small water company into a costly and drawn out matter that has continued now for nearly two years. As a public utility, these costs are inevitably borne by Hi-Country's customers, thereby increasing the amounts that customers must pay for water service. As such, Hi-Country respectfully requests an award of costs and attorneys' fees pursuant to Utah Rule of Appellate Procedure 33(a) and 34(e). Utah R. App. P. 33(a) and 34(e).

C. The Commission did not exceed its jurisdiction when it declared the Well Lease Agreement void and unenforceable as against the public interest.

The Commission has jurisdiction over Hi-Country and has the authority to void the Well Lease so that ratepayers are not required to bear the burden of a grossly unreasonable contract or lease. The Commission has twice thoroughly reviewed the Well Lease and its potential impact on Hi-Country and its customers before concluding that the Well Lease is void and unenforceable as against the public interest.

1. The Commission has jurisdiction to modify the Well Lease.

The Commission is “vested with power and jurisdiction to supervise and regulate every public utility in this state, and to supervise all of the business of every such public utility in this state, and to do all things, whether herein specifically designated or in addition thereto, which are necessary or convenient in the exercise of such power and jurisdiction.” Utah Code Ann. § 54-4-1. In interpreting this statute, the Utah Supreme Court has declared that the Commission has the statutory authority to exercise jurisdiction over contracts, including leases, affecting the rates to be paid by ratepayers. Indeed, “[t]here is no question that the [Commission] has the authority to investigate, interpret and even alter contracts. That question was settled in an early series of cases brought just after the enactment of Utah’s Public Utility Act.” *Garkane Power Assoc. v. PSC*, 681 P.2d 1196, 1207 (Utah 1984).

In fact, the very Well Lease under which Mr. Dansie claims he is owed benefits as a beneficiary of his family trust, explicitly contemplates the exercise of jurisdiction over the water company by the Commission. The 1977 Lease states that “Dansie [Sr.] further agrees that Bagley may apply to the Utah Public Service Commission for such permits or approvals as may be required and Dansie [Sr.] shall cooperate fully in all respects” (R. 467.) As any interest that Mr. Dansie has in the Well Lease came from Dansie Sr., clearly Mr. Dansie is bound by the terms of the Well Lease.⁶ However, Mr. Dansie has not “cooperate[ed] fully” with Hi-Country in obtaining approvals from the Commission. In

⁶ See *supra* Argument at 14-15.

fact Mr. Dansie intervened in the prior CPCN proceeding, Docket 11-2195-01, vigorously opposing Commission jurisdiction. This breach occurred well before the Commission's decision to declare the Well Lease to be unenforceable and void. Thus, Mr. Dansie comes before this Court as a party in breach seeking to enforce a contract that he breached first. "[U]nder the 'first breach' rule 'a party first guilty of a substantial or material breach of contract cannot complain if the other party thereafter refuses to perform.'" *CCD, L.C. v. Millsap*, 2005 UT 42, ¶ 29, 116 P.3d 366 (quoting *Jackson v. Rich*, 28 Utah 2d 134, 499 P.2d 279, 280 (1972)). To any extent the Well Lease is deemed enforceable, Mr. Dansie is in violation of its explicit terms while at the same time arguing that Hi-Country owes him various benefits under the Well Lease. This is one more reason this appeal is frivolous and Hi-Country respectfully requests an award of costs and attorney fees pursuant to Utah Rule of Appellate Procedure 33(a) and 34(e). Utah R. App. P. 33(a) and 34(e).

While this Court ultimately upheld the validity of the Well Lease, outside the context of Commission jurisdiction and oversight in the series of appeals, this Court expressly conditioned its holding upon the absence of any action or assertion of jurisdiction by the Commission. Indeed, the opinion declared that, "so long as the [Commission] does not exercise jurisdiction over the water system, the rights of the parties are as set forth by the plain language of the [Lease]." *Hi-Country Estates Homeowners Assoc. v. Bagley & Co.*, 2011 UT App 252, ¶ 10. Accordingly, "going forward, [the Dansies are] entitled to their contractual rights to free water and free hook-ups unless the [Commission] intervenes and determines otherwise." *Id.* at ¶ 14.

The Commission *did* intervene and assert jurisdiction over Hi-Country,⁷ and the Commission has now reaffirmed its prior determination regarding the unreasonableness of the Well Lease and held that it is unenforceable as against Hi-Country and its ratepayers. The extent and scope of the Commission's jurisdiction over culinary water providers was recently addressed by the Utah Supreme Court in *Bear Hollow Restoration, LLC v. PSC of Utah*, 2012 UT 18, 274 P.3d 956. Based on the statutory law,⁸ the Supreme Court stated that the question of the Commission's jurisdiction over a company "as a public utility

⁷ Indeed, the Commission took evidence and heard testimony regarding whether Hi-Country was providing water service to the public generally, and ultimately ruled that Hi-Country was serving water to the public generally and thus was a public utility subject to Commission jurisdiction and oversight. See Commission Report and Order in Docket 11-2195-01, dated July 12, 2012, page 6. Mr. Dansie intervened in the docket and presented evidence and argument, but did not appeal the Commission's decision. Because the Commission's decision was a final judgment on the merits, Mr. Dansie is now barred by claim preclusion to relitigate the Commission's jurisdiction over Hi-Country. *Beaver County*, 2001 UT 81, ¶ 20. Claim preclusion "precludes the relitigation of all issues that could have been litigated as well as those that were, in fact, litigated in the prior action." *Id.* at n.1, citing *Schaer v. State*, 657 P.2d 1337, 1340 (Utah 1983). Although claim preclusion, or *res judicata*, was "initially developed with respect to the judgments of courts, the same basic policies, including the need for finality in administrative decisions, support application of the doctrine of *res judicata* to administrative agency determinations." *Salt Lake Citizens Congress v. Mountain States Tel. & Tel. Co.*, 846 P.2d 1245, 1251 (Utah 1992), citing 4 Kenneth C. Davis, *Administrative Law Treatise* § 21:9, at 78 (2d ed. 1983). The "doctrine of *res judicata* has been applied to administrative agency decisions in Utah since at least 1950." *Id.*, citing *North Salt Lake v. St. Joseph Water & Irrigation Co.*, 118 Utah 600, 611-12, 223 P.2d 577, 582-83 (1950).

⁸ Utah Code Ann. § 54-4-1 grants the Commission "power and jurisdiction to supervise and regulate every public utility in this state, and to supervise all of the business of every such public utility in this state." Section 54-2-1 defines a public utility to "include [] every . . . water corporation . . . where the service is performed for, or the commodity delivered to, the public generally." Utah Code Ann. § 54-2-1(16)(a). This section defines water corporation to include "every corporation and person, their lessees, trustees, and receivers, owning, controlling, operating, or managing any water system for public service within this state." Utah Code Ann. § 54-2-1(29).

hinges upon whether [the company] provides service to or delivers its water to the public generally.” *Id.* at ¶ 18. At the CPCN proceeding to determine jurisdiction, Docket 11-2195-01, persuasive evidence was presented that Hi-Country delivers water to the public generally. The Commission took evidence and heard testimony regarding whether Hi-Country was providing water service to the public generally, including testimony of Stephen Olschewski and signed declarations of Jonathan Beagley, Larry Beagley, Greg DeHaan, Daniel Olschewski, Helmut Olschewski, and Stephen Olschewski stating that each receives water service from Hi-Country but are not members of the Hi-Country Estates Homeowners Association, which owns and controls the water company, and thus these customers do not have any voting rights in the Association, or any say in the rates Hi-Country charges. See Commission Report and Order in Docket 11-2195-01, dated July 12, 2012, page 6. Based on this and other evidence, the Commission ruled that Hi-Country was serving water to the public generally and thus was a public utility subject to Commission jurisdiction and oversight.

Such a conclusion by the Commission that the Well Lease is unenforceable and void as against the public interest did not necessitate that the Commission “overrule the court’s holding” in *Hi-Country Estates Homeowners Assoc.*, 2011 UT App 252, as claimed by Mr. Dansie. (R. 1293.) The current situation is markedly different from the time of the various court orders in that Hi-Country is now subject to Commission jurisdiction. Indeed, this Court explicitly contemplated the possibility that the Commission would assert jurisdiction and make its own ruling on the Well Lease in the context of Commission jurisdiction. See *Hi-Country*, 2011 UT App 252, ¶ 10. Regardless of the conclusions reached by the courts

as to the validity of the Well Lease when Hi-Country was not subject to Commission jurisdiction, the Commission now has jurisdiction and authority to alter or even void the Well Lease as it impacts Hi-Country, as a public utility, and inevitably, if valid, would affect the rates paid by ratepayers.

2. The Commission correctly concluded that the Well Lease is unenforceable and void as not in the public interest.

Enforcement of the Well Lease by the Dansie Trust is contrary to the public interest. As recognized by the Utah Supreme Court, the Commission “is to exercise supervisory control over certain aspects of the businesses of public utilities for the purpose of securing two essential objectives in the promotion of the public interest.” *Garkane*, 681 P.2d at 1207. “First, the Commission must deal with those subject to its jurisdiction in such a manner as to assure their continued ability to be able to serve the customers who rely upon them for essential services and products.” *Id.* “Second, the Commission performs the extremely delicate, and not uncontroversial but nonetheless essential, function of balancing the interest of having financially sound utilities that provide essential goods and services against the public interest of having goods and services made available without discrimination and on the basis of reasonable costs.” *Id.*

Enforcement of the Well Lease against Hi-Country would be contrary to the two essential objectives governing the Commission’s jurisdiction and supervision of public utilities. First, enforcement of the Well Lease against Hi-Country would jeopardize Hi-Country’s financial stability and continued ability to serve its customers when the Lease requires Hi-Country to convey its most valuable assets for free and imposes a restraint on

alienation. Second, enforcement of the Well Lease against Hi-Country would result in unreasonable rates that provide a preference to the Dansies at the expense of all of the remaining ratepayers.

3. The rates and finances of Hi-Country were fully and thoroughly reviewed by the Division of Public Utilities.

Mr. Dansie makes numerous objections to the rate of \$3.85 per thousand gallons proposed by Hi-Country as part of its initial Application for water delivered under the Well Lease. He also implies that the \$3.85 rate proposed by the Hi-Country somehow misled the Commission and thereby caused the Commission to invalidate the Well Lease. (R. 1286.) Mr. Dansie fails to recognize that the Commission does not rely blindly on the recommendations of the company when setting rates or making other decisions. Hi-Country's finances were thoroughly and independently reviewed by the Division. The Division is a statutory entity that acts to protect the public's interest in Commission proceedings. *See* Utah Code Ann. § 54-4a-6 (the Division "shall act in the public interest in order to provide the Public Service commission with objective and comprehensive information [to] provide for just, reasonable, and adequate rates, charges, classification, rules, regulations, practices, and services of public utilities.")). In the Commission proceeding, the Division took an active role and its review was the subject of a large portion of the pre-filed and in-person testimony provided by expert staff from the Division. Through that review and testimony, the Commission was provided with extensive information about Hi-Country, its finances, and its costs for delivering water, thereby

allowing the Commission to make its decisions based on the Division review and independently audited information.

The Commission did not err or exceed its jurisdiction when it declared the Well Lease void and unenforceable as against the public interest. The Commission clearly has jurisdiction over Hi-Country as a public utility and clearly has the authority to modify the Well Lease. The Commission examined the Well Lease and the potential impact on Hi-Country and its customers.

D. The Commission did not Deny Mr. Dansie due process despite Mr. Dansie not being personally present and subject to cross-examination at the Commission hearings on March 4, 2014 and March 11, 2014.

Due process, at a minimum, requires timely “notice and opportunity for hearing appropriate to the nature of the case.” *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313, 70 S. Ct. 652, 94 L. Ed. 865 (1950); *accord In re Worthen*, 926 P.2d 853, 877 (Utah 1996). “The application of due process requires a thorough analysis of the circumstances and facts particular to a case. The requirements of due process depend upon the specific context in which they are applied because unlike some legal rules, due process is not a technical conception with a fixed content unrelated to time, place, and circumstances.” *Kennon v. Air Quality Bd.*, 2009 UT 77, ¶ 29, 270 P.3d 417 (citations and internal quotation marks omitted). In the proceedings before the Commission, Mr. Dansie had notice and ample opportunity to be heard, despite not being physically present at the Commission hearings.

The originally-scheduled hearing in this matter was calendared during the Commission’s scheduling conference on September 20th, 2013, at which counsel for Mr.

Dansie was present and agreed. (R. 1258.) Mr. Dansie thereafter availed himself of the opportunity to submit written pre-filed direct and sur-rebuttal testimony prior to the Commission hearing. (R. 858-934, 1171-76.) The Commission considered Mr. Dansie's pre-filed testimony. (R. 1268-69.) As Mr. Dansie was unfortunately unable to participate in the scheduled hearing due to an unexpected hospitalization, the hearing was rescheduled for a later date. (R. 1260-61.) At the rescheduled hearing on March 11, 2014, Mr. Dansie was again absent. However, Mr. Dansie was represented by competent counsel familiar with the facts and the issues before the Commission throughout these proceedings and at both hearings. (Hr'g Tr. 3:20-21, Mar. 4, 2014; Hr'g Tr. 7:1-2, Mar. 5, 2014; Hr'g Tr. 2:19-23, Mar. 11, 2014; R. 1263.)

Counsel for Mr. Dansie availed himself of the opportunity to cross-examine various witnesses on behalf of his client. (Hr'g Tr. 43:10-13; 46:1-56:3; 94:11-99:20; 109:6-9; 116:4-8; 120:15-17; 137:8-147:3, Mar. 11, 2014.) As such, Mr. Dansie had the full benefit of participation in the hearings. Additionally, all parties were given the opportunity to file post-hearing briefs as each felt necessary to address any new issues brought up in the hearings that were not addressed in pre-filed testimony. (Hr'g Tr. 11:22-25, Mar. 11, 2014.) This ability to file pleadings after the hearing provided Mr. Dansie with ample opportunity to address any real or perceived disadvantage he may have suffered by having his attorney present at the hearings, without Mr. Dansie being physically present. Notably, Mr. Dansie did not take advantage of this opportunity and instead waited until the Commission issued its Report and Order of May 5, 2015, and then filed a request for review and rehearing with the Commission. (R. 1285-301.)

Hi-Country is the party who could claim a disadvantage due to Mr. Dansie's absence. Under the procedures of the Commission, Mr. Dansie was able to submit both direct and sur-rebuttal testimony in writing. The only aspect of Mr. Dansie's testimony that could not be conducted in writing was his live cross-examination by Hi-country and other parties due to Mr. Dansie's absence from the hearings. To accommodate Mr. Dansie and, hopefully, have him present for cross examination, Hi-Country willingly agreed to the Commission rescheduling the hearing, at significant expense and difficulty. At the rescheduled hearing, Mr. Dansie was again absent and his attorney stated that he would be unavailable for six weeks or more. (Hr'g Tr. 8:10-11; 10:24-25, Mar. 11, 2014.) As Mr. Dansie was absent from the rescheduled hearing as well, Hi-Country was conclusively denied the opportunity to cross examine him. Indeed, Mr. Dansie is the only witness in these proceedings that was not available to all parties for cross examination, despite the fact that Mr. Dansie provided lengthy pre-filed testimony that was allowed to remain a part of the record and considered by the Commission (Hr'g Tr. 24:4-9, Mar. 11, 2014.)

The Commission could not further delay the evidentiary hearing without running afoul of the 240-day time limit established by Utah Code Ann. § 54-7-12(3)(a). (Hr'g. Tr. 8:18-19, 24-25, Mar. 11, 2014.) As required by statute, in the absence of a Commission decision within the 240-day window, the rates proposed by Hi-Country would have automatically become effective, including the \$3.85 Well Lease Rate so strenuously opposed by Mr. Dansie. Utah Code Ann. § 54-7-12(3)(a). Indeed, delaying the hearing further would presumably have been viewed by Mr. Dansie as a great disadvantage as doing so would have obligated him to pay the well water rates as originally proposed \$3.85

per thousand gallon rate for transporting water under the Well Lease to which Mr. Dansie objected and which the Division eventually recommended that the Commission deny.⁹ (R. 963.)

As the Commission has protected Mr. Dansie's interests by holding the hearing in a timely manner, Mr. Dansie's appeal should not be entertained on the basis that he was not personally present at the Commission hearings. His pre-filed testimony and counsel representation afforded Mr. Dansie adequate and meaningful participation.

E. The Commission did not improperly decline to expand Hi-Country's water service area.

Mr. Dansie claims that the Commission improperly declined to expand Hi-Country's service area to include a 40-acre parcel owned by Mr. Dansie adjacent to Hi-Country's service area. The service area approved by the Commission as it relates to Mr. Dansie's property is identical to the service area approved by the Commission in 1986. (R. 1270.) The Order did not make any changes to the portion of Mr. Dansie's property included in Hi-Country's service area. In order to make a claim that the Commission improperly made the factual determination that Mr. Dansie's eastern 40-acre parcel should not be included in Hi-Country's service area, Mr. Dansie "must marshal[] all of the evidence supporting the findings and show that despite the supporting facts, and in light of the conflicting or contradictory evidence, the findings are not supported by substantial

⁹ In addressing the proposed \$3.85 rate for transporting water under the Well Lease, the Commission stated that "We find the Well Lease Agreement is void and unenforceable as against the public interest. Thus, the Company has no obligation to provide water to Mr. Dansie and, therefore, the Company's proposed fee of \$3.85 per 1,000 gallons to deliver water to Mr. Dansie is moot and disallowed from the tariff." (R. 1272.)

evidence.” *Grace Drilling Co. v. Board of Review of Indus. Comm’n*, 776 P.2d 63, 68 (Utah Ct. App. 1989).

Mr. Dansie has simply not provided any evidence that the particular parcel should be included in Hi-Country’s service area. Mr. Dansie claims repeatedly that the Well Lease obligates Hi-Country to supply water to this particular 40-acre parcel, which is and has always been outside of the Hi-Country service area. (R. 866, 1175.) Unfortunately, Mr. Dansie fails to identify any specific provision of the Well Lease that would obligate Hi-Country to do so. Indeed, the Well Lease contains no such provision.¹⁰ As the Commission noted, “Mr. Dansie has presented no basis in law or fact for altering this part of the order [addressing changes to the Hi-Country service area].” (R. 1360.)

Mr. Dansie had ample opportunity to address changes to Hi-Country’s service area through the filing of written pre-filed testimony, post-hearing briefs, and even in his Request for Rehearing and Reconsideration filed with the Commission. (R. 1285-301.). As Mr. Dansie did not present any meaningful evidence as to why his eastern 40-acre parcel should be added to the Hi-Country service area, the Commission made no error in declining to expand the service area.

¹⁰ The only reference in the Well Lease to any specific Dansie property is the reference to Lot 51 (R. 471), which is within Hi-Country’s service area. The Well Lease states only that “Dansie is the owner of property located in Sections 33, 34 and 35, Township 3 South, Range 2 West, Sale Lake Base and Meridian” (R. 461.) Nowhere in the Well Lease is it stated that Hi-Country (or its predecessors) is obligated to serve that particular parcel owned by Mr. Dansie.

VIII. CONCLUSION

Mr. Dansie lacks standing to appeal any issues relating to the Well Lease as he does not personally hold any interest in the Well Lease. Mr. Dansie's brief fails to meet the requirements of Rule 24 of the Utah Rules of Appellate Procedure. In addition to the standing and procedural issues, Mr. Dansie has failed to make a persuasive argument as to why the Commission's Order should be reversed. Accordingly, Mr. Dansie's brief should be stricken, his appeal denied, and attorney fees awarded to Hi-Country.

Dated this 15th day of June, 2015.

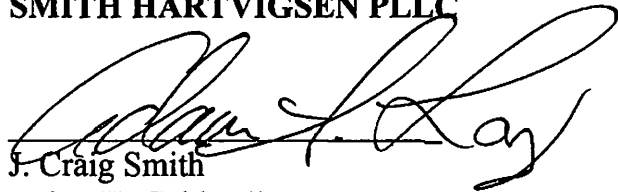
J. Craig Smith (4143)
Debra K. Caldwell (15075)
Adam S. Long (14701)
SMITH HARTVIGSEN, PLLC
175 South Main Street, Suite 300
Salt Lake City, Utah 84111
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Facsimile: (801) 413-1620
jcsmith@smithlawonline.com
dcaldwell@smithlawonline.com
along@smithlawonline.com
*Attorneys for Respondent/Appellee
Hi-Country Estates Homeowners
Assoc.*

CERTIFICATE OF COMPLIANCE

As required by Utah R. App. P. 24(f)(1)(C), I certify that this brief contains 8416 words, exclusive of the table of contents, table of authorities, addenda, and certificate of compliance. I relied on my word processor, Microsoft Word 2013, to obtain the word count. I certify to the best of my knowledge and belief that the information contained in this certification is true and correct.

DATED this 15th day of June, 2015.

SMITH HARTVIGSEN PLLC



J. Craig Smith

Debra K. Caldwell

Adam S. Long

Attorneys for Respondent/Appellee

Hi-Country Estates Homeowners Assoc.

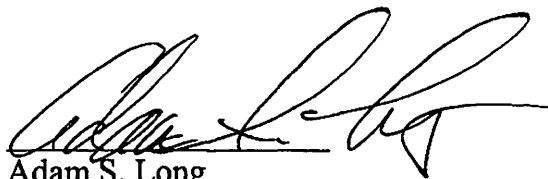
CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of June, 2015, I caused a true and correct copy of the foregoing **BRIEF OF APPELLEE**, as well as a courtesy electronic copy of the same on CD in searchable PDF format,¹¹ to be served via U.S. mail, postage prepaid, addressed as follows:

Melanie Reif (8489)
Utah Public Service Commission
Heber M. Wells Building
160 East 300 South, Fourth Floor
Salt Lake City, UT 84111
Telephone: (801)530-6716
*Attorney for Respondent/Appellee Utah
Public Service Commission*

John S. Flitton (7200)
Flitton PLLC
1840 Sun Peak Drive, Suite B102
Park City, UT 84098
Telephone: (435) 940-0842
Facsimile: (435) 940-0852
*Attorney for Petitioner/Appellant Jesse
Rodney Dansie*

Brent A. Burnett
Sean D. Reyes
Utah Attorney General's Office
160 East 300 South, Fifth Floor
Salt Lake City, UT 84111
*Attorneys for Respondent/Appellee Utah
Division of Public Utilities*



Adam S. Long
along@smithlawonline.com
SMITH HARTVIGSEN, PLLC
175 South Main Street, Suite 300
Salt Lake City, Utah 84111

¹¹ Per Utah Supreme Court Standing Order No. 8.

ADDENDA AND EXHIBITS

Addendum A: Constitutional provisions, statutes, rules, and regulations
Exhibit A: Affidavit of Successor Trustee

ADDENDUM

Statutes, rules, and regulations

Utah Code Ann. § 54-2-1. Definitions.

As used in this title:

...

(19) (a) "Public utility" includes every railroad corporation, gas corporation, electrical corporation, distribution electrical cooperative, wholesale electrical cooperative, telephone corporation, telegraph corporation, water corporation, sewerage corporation, heat corporation, and independent energy producer not described in Subsection (19)(d), where the service is performed for, or the commodity delivered to, the public generally, or in the case of a gas corporation or electrical corporation where the gas or electricity is sold or furnished to any member or consumers within the state for domestic, commercial, or industrial use. ...

(32) "Water corporation" includes every corporation and person, their lessees, trustees, and receivers, owning, controlling, operating, or managing any water system for public service within this state. It does not include private irrigation companies engaged in distributing water only to their stockholders, or towns, cities, counties, water conservancy districts, improvement districts, or other governmental units created or organized under any general or special law of this state.

...

Utah Code Ann. § 54-4-1. General jurisdiction.

The commission is hereby vested with power and jurisdiction to supervise and regulate every public utility in this state, and to supervise all of the business of every such public utility in this state, and to do all things, whether herein specifically designated or in addition thereto, which are necessary or convenient in the exercise of such power and jurisdiction; provided, however, that the Department of Transportation shall have jurisdiction over those safety functions transferred to it by the Department of Transportation Act.

Utah Code Ann. § 54-4a-6. Objectives.

In the performance of the duties, powers, and responsibilities committed to it by law, the Division of Public Utilities shall act in the public interest in order to provide the Public Service Commission with objective and comprehensive information, evidence, and recommendations consistent with the following objectives:

- (1) promote the safe, healthy, economic, efficient, and reliable operation of all public utilities and their services, instrumentalities, equipment, and facilities;
- (2) provide for just, reasonable, and adequate rates, charges, classifications, rules, regulations, practices, and services of public utilities;
- (3) make the regulatory process as simple and understandable as possible so that it is acceptable to the public; feasible, expeditious, and efficient to apply; and designed to minimize controversies over interpretation and application;
- (4) For purposes of guiding the activities of the Division of Public Utilities, the phrase "just, reasonable, and adequate" encompasses, but is not limited to the following criteria:
 - (a) maintain the financial integrity of public utilities by assuring a sufficient and fair rate of return;
 - (b) promote efficient management and operation of public utilities;
 - (c) protect the long-range interest of consumers in obtaining continued quality and adequate levels of service at the lowest cost consistent with the other provisions of Subsection (4).
 - (d) provide for fair apportionment of the total cost of service among customer categories and individual customers and prevent undue discrimination in rate relationships;

- (e) promote stability in rate levels for customers and revenue requirements for utilities from year to year; and
- (f) protect against wasteful use of public utility services.

Utah Code Ann. § 54-7-12. Rate increase or decrease – Procedure – Effective dates – Electrical or telephone cooperative.

...

- (3) (a) Within 240 days after a public utility submits a complete filing, the commission shall issue a final order to:
 - (i) grant the proposed general rate increase or decrease;
 - (ii) grant a different general rate increase or decrease; or
 - (iii) deny the proposed general rate increase or decrease.

...

Utah Code Ann. § 63G-4-403. Judicial review – Formal adjudicative proceedings.

...

- (4) The appellate court shall grant relief only if, on the basis of the agency's record, it determines that a person seeking judicial review has been substantially prejudiced by any of the following:
 - (a) the agency action, or the statute or rule on which the agency action is based, is unconstitutional on its face or as applied;
 - (b) the agency has acted beyond the jurisdiction conferred by any statute;
 - (c) the agency has not decided all of the issues requiring resolution;
 - (d) the agency has erroneously interpreted or applied the law;
 - (e) the agency has engaged in an unlawful procedure or decision-making process, or has failed to follow prescribed procedure;
 - (f) the persons taking the agency action were illegally constituted as a decision-making body or were subject to disqualification;
 - (g) the agency action is based upon a determination of fact, made or implied by the agency, that is not supported by substantial evidence when viewed in light of the whole record before the court;
 - (h) the agency action is:
 - (i) an abuse of the discretion delegated to the agency by statute;
 - (ii) contrary to a rule of the agency;
 - (iii) contrary to the agency's prior practice, unless the agency justifies the inconsistency by giving facts and reasons that demonstrate a fair and rational basis for the inconsistency; or
 - (iv) otherwise arbitrary or capricious.

...

Utah Code Ann. § 75-7-809. Enforcement and defense of claims.

A trustee shall take reasonable steps to enforce claims of the trust and to defend claims against the trust.

Utah Admin. Code R746-100-1. General Provisions and Authorizations.

...

C. No Provision in Rules -- In situations for which there is no provision in these rules, the Utah Rules of Civil Procedure shall govern, unless the Commission considers them to be unworkable or inappropriate.

...

Utah R. App. P. 24. Briefs.

...

(a)(5) A statement of the issues presented for review, including for each issue: the standard of appellate review with supporting authority; and

(a)(5)(A) citation to the record showing that the issue was preserved in the trial court; or

(a)(5)(B) a statement of grounds for seeking review of an issue not preserved in the trial court.

...

(k) Requirements and sanctions. All briefs under this rule must be concise, presented with accuracy, logically arranged with proper headings and free from burdensome, irrelevant, immaterial or scandalous matters. Briefs which are not in compliance may be disregarded or stricken, on motion or sua sponte by the court, and the court may assess attorney fees against the offending lawyer.

...

Utah R. App. P. 33. Damages for delay or frivolous appeal; recovery of attorney's fees.

(a) Damages for delay or frivolous appeal. Except in a first appeal of right in a criminal case, if the court determines that a motion made or appeal taken under these rules is either frivolous or for delay, it shall award just damages, which may include single or double costs, as defined in Rule 34, and/or reasonable attorney fees, to the prevailing party. The court may order that the damages be paid by the party or by the party's attorney.

...

Utah R. App. P. 34. Award of costs.

...

(e) Costs in other proceedings and agency appeals. In all other matters before the court, including appeals from an agency, costs may be allowed as in cases on appeal from a trial court. Within 15 days after the expiration of the time in which a petition for rehearing may be filed or within 15 days after an order denying such a petition, the party to whom costs have been awarded may file with the clerk of the appellate court and serve upon the adverse party an itemized and verified bill of costs. The adverse party may, within 5 days after the service of the bill of costs file a notice of objection and a motion to have the costs taxed by the clerk. If no objection to the cost bill is filed within the allotted time, the clerk shall thereupon tax the costs and enter judgment against the adverse party. If the adverse party timely objects to the cost bill, the clerk, upon reasonable notice and hearing, shall determine and settle the costs, tax the same, and a judgment shall be entered thereon against the adverse party. The determination by the clerk shall be reviewable by the court upon the request of either party made within 5 days of the entry of judgment; unless otherwise ordered, oral argument shall not be permitted. A judgment under this section may be filed with the clerk of any district court in the state, who shall docket a certified copy of the same in the manner and with the same force and effect as judgments of the district court.

Utah R. Civ. P. 12. Defense and objections.

...

(h) Waiver of defenses. A party waives all defenses and objections not presented either by motion or by answer or reply, except

- (1) that the defense of failure to state a claim upon which relief can be granted, the defense of failure to join an indispensable party, and the objection of failure to state a legal defense to a claim may also be made by a later pleading, if one is permitted, or by motion for judgment on the pleadings or at the trial on the merits, and except
- (2) that, whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action. The objection or defense, if made at the trial, shall be disposed of as provided in Rule 15(b) in the light of any evidence that may have been received.

...

Utah R. Civ. P. 17. Parties plaintiff and defendant.

(a) Real party in interest. Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in that person's name without joining the party for whose benefit the action is brought; and when a statute so provides, an action for the use or benefit of another shall be brought in the name of the state of Utah. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

...

EXHIBIT A

Affidavit of Successor Trustee

Tab A

11978959
01/20/2015 02:31 PM \$47.00
Book - 10289 Pg - 8518-8531
GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
RICHARD P. DANSIE
7070 HERRIMAN HWY
RIVERTON UTAH 84065
BY: LHP, DEPUTY - UI 14 p.

When recorded, please return to:
Richard P. Dansie
7070 Herriman Hwy
Riverton, UT 84065

AFFIDAVIT OF SUCCESSOR TRUSTEE

STATE OF UTAH)
 : SS
COUNTY OF SALT LAKE)

The undersigned, having been duly sworn, hereby depose and state as follows:

1. We are residents of Salt Lake County, State of Utah, over the age of twenty-one years and in all respects competent to testify to the facts stated below.
2. The undersigned, Joyce M. Taylor, Bonnie R. Parkin, Richard P. Dansie, Boyd W. Dansie and Jesse Rodney Dansie, hereby certify, acknowledge and confirm that Richard P. Dansie is the duly appointed and primary successor trustee, pursuant to the that certain Revocable Living Trust dated March 20, 1982, also known as the Jesse H. Dansie Trust (hereinafter referred to as the "Trust"), which consists as two trusts: No. One known as the "Home Trust" and No. Two known as the "Ranch Trust", as disclosed by a Declaration of Trust, recorded March 15, 1990, as Entry No. 4893091, in Book 6205 at page 696, of the official records (hereinafter referred to as the "Trust Agreement").
3. The original trustees of the Trust were Jesse H. Dansie, aka Jesse Homer Dansie and Ruth B. Dansie, aka Ruth Martha Dansie, who both have died.
4. Pursuant to the provisions of Article I, paragraph 5, of the Trust Agreement, Jesse Rodney Dansie was appointed to act as successor trustee of the Trust after both original trustees died.
5. Jesse Rodney Dansie resigned as trustee on or about January 14, 2015. Richard P. Dansie is the next successor trustee pursuant to the terms of the Trust Agreement and hereby accepts appointment as successor trustee.
6. The properties, claims, rights and interests, real and personal, held subject to the Trust, as located in Salt Lake County, State of Utah are, but not necessarily limited to, the following:

(See Exhibit 'A' attached hereto and by this reference, made a part hereof)

Ent 11978959 BK 10289 PG 8518

Jesse Rodney Dansie
7198 West 13090 South
Herriman UT 84065

January 8, 2015

To: The following beneficiaries of that certain Revocable Living Trust, dated March 20, 1982, also known as the Jesse H. Dansie Trust (consisting of two trusts—the Home Trust (87-610190) and the Ranch Trust (87-6190191), as disclosed by a Declaration of Trust, recorded March 15, 1990, Entry No. 4893091, Book 6205, page 696, Salt Lake County Recorder (the "Trust"):

Joyce M. Taylor
Bonnie R. Parkin
Richard P. Dansie
Boyd W. Dansie

I hereby resign as trustee of the Trust, effective immediately. Pursuant to Article I, §5 of the Trust, Richard P. Dansie shall become successor trustee.

Jesse Rodney Dansie
Jesse Rodney Dansie

Acknowledgment:

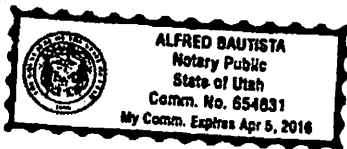
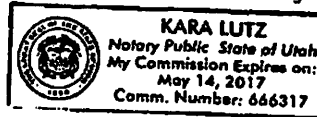
Richard P. Dansie
Richard P. Dansie

Jesse Rodney Dansie
SUBSCRIBED AND SWORN TO BEFORE ME
THIS 14 DAY OF January 2015

Kara Lutz
NOTARY PUBLIC

MY COMMISSION EXPIRES May 14, 2017

State of Utah
County of SLC
On this 15 day of January 2015, Richard P. Dansie
personally appeared before me,
I am a personally known to me,
I whose identity I verified on the basis of UT DRIVER LICENSE
I whose identity I verified on the basis of affidavit
a credible witness,
to be the signer of the foregoing document,
Alfred Bautista
Notary Public
My Commission Expires 04-05-2016



BK 10289 PG 8519

7. Pursuant to the provisions of Article 1, paragraph 5, of the Trust Agreement, Richard P. Dansie has the authority, as successor trustee, to convey, grant, transfer and assign the property, claims, rights and interests described above.

Joyce M. Taylor
Joyce M. Taylor

Bonnie R. Parkin
Bonnie R. Parkin

Richard P. Dansie
Richard P. Dansie

Boyd W. Dansie
Boyd W. Dansie

Jesse Rodney Dansie
Jesse Rodney Dansie

State of Utah, County of Salt Lake

On this 14 day of January, 2015, before me, a notary public, personally appeared, Joyce M. Taylor, Bonnie R. Parkin, Richard P. Dansie, Boyd W. Dansie and Jesse Rodney Dansie, proved on the basis of satisfactory evidence to be the persons whose names are subscribed to this instrument, and acknowledged they executed the same. Witness my hand and official seal.

NOTARY PUBLIC

STATE OF UTAH

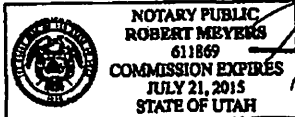
COUNTY OF SALT LAKE

SUBSCRIBED AND SWORN/AFFIRMED TO BEFORE ME THIS 16th DAY
OF Jan, 2015 BY Joyce M. Taylor + Richard P. Dansie

NOTARY PUBLIC



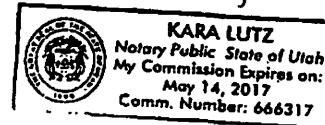
STATE OF UTAH
COUNTY OF SALT LAKE
ON THE 16 DAY OF JANUARY 2015
PERSONALLY APPEARED BEFORE ME
R. Parkin SIGNER(S) OF THE ABOVE
INSTRUMENT WHO DULY ACKNOWLEDGED TO ME THAT
HE/SHE/they EXECUTED THE SAME.



Jesse Rodney Dansie
SUBSCRIBED AND SWORN TO BEFORE ME
THIS 14 DAY OF January 2015

Kara Lutz
NOTARY PUBLIC

MY COMMISSION EXPIRES May 14, 2017



STATE OF UTAH

COUNTY OF SALT LAKE

SUBSCRIBED AND SWORN/AFFIRMED TO BEFORE ME THIS 16 DAY
OF January 2015 BY Boyd W. Dansie

NOTARY PUBLIC

MY COMMISSION EXPIRES



BK 10289 PG 8520

Exhibit "A"

Declaration of Trust

DT-31

This is a Revocable Living Trust

We are transferring the ownership of our property real and personal from ourselves, as ourselves as trustees. As trustees we reserve the rights the same as if we owned the property, to buy, sell, trade, use it all up, change the trust in whole or in part, to name new beneficiaries, change their amounts, borrow money using the trust assets as collateral, loan money, do business, or anything an individual can do.

When one of us is deceased, the remaining one is sole trustee, with the same powers as the two of us.

When we are both deceased, the ones we have appointed as successive trustees are to handle things as to the trust instructions.

The trust hereby created then becomes irrevocable. It can not be changed only as to the options explained in the trust.

Under this trust instrument we are declaring...

Two trusts - No. One known as HOME TRUST 87-610190

Federal SSN No. _____

No. Two known as RANCH TRUST 87-6190191

Other trust may be added as needed

WHEREAS, WE, JESSE H. DANSIE and RUTH B. DANSIE, of the
City/Town of Herriman, County of Salt Lake, State of Utah

which property is described more fully in the Deed conveying it from Alma H. and Aaron K. Dansie
to Jesse H. and Ruth B. Dansie, as "that certain piece or parcel of land with buildings thereon
standing, located in said Salt Lake County, including all fixtures
and furnishings included.

1. That Part of Lot 1, Block 20, Herriman, Lying East of the Center Line of Section 35, Township 3 South, Range 2 West, Salt Lake Meridian Together with 3 hours of Herriman City Irrigation Water and 2 hours of Rose Creek Irrigation Water.
2. Commencing 116.72 rods North and 11.93 rods East of the Southwest corner of Section 35, Township 3 South, Range 2 West, Salt Lake Base and Meridian, and running thence South 14 rods; thence East 23.87 rods; thence North 14 rods; thence West 23.87 rods, to the place of BEGINNING. A.28 44.
3. Commencing 116.72 rods north and 44.88 feet east from the Southwest corner of Section 35, Township 3 South, Range 2 west, Salt Lake Meridian; thence east 5 rods 12 feet; thence north 14.5 rods, more or less, to street; thence south 84 degrees west: 6.04 rods, more or less, to a point due north of point of beginning; thence south to point of BEGINNING.
4. Commencing at a Point 116.72 rods North and 27.203 rods East from the Southwest corner of Section 35, Township 3. South, Range 2 West, Salt Lake Meridian and running thence North 13.5 rods; thence South 84 degrees West 8.64 rods; thence South 12.7 rods; thence East 8.615 rods to the place of BEGINNING, less rights of way for public roads.
5. The Northeast quarter of the Southeast quarter of Section 33, Township 3 South Range 2 West, Salt Lake Base and Meridian.
6. The Northeast Quarter of the Southwest Quarter of Section 33, Township 3 South, Range 2 West, Salt Lake Base and Meridian, and the Northwest Quarter of the Southeast Quarter of Section 33, Township 3 South, Range 2 West, Salt Lake Base and Meridian.
together with four shares of water stock in the Herriman Irrigation Company. (Cont. below signatures on signature page)

Page 1 of our trust

Jesse H. Dansie Ruth B. Dansie

BK 10289 PG 8521

6620540696

26-35-401-003-0000

4893091

The following is a list of our valuable personal property, all automobiles, trucks, campers, trailers, boats, motor homes, tools and equipment, other farm equipment

Also, all collections: guns, stamps, coins, furs, jewelry, others _____

Insurances _____

Bank accounts FIRST INTERSTATE BANK 23-10140-5-1086; FIRST SECURITY BANK OF UTAH 10275-18-0217; DRAPER BANK AND TRUST 31486-2-0807
Savings accounts (including money market certificates) _____

See Exhibit "B" attached hereto

Credit unions Utah Prison Employees' Credit Union: #70 in name of Ruth B. Dansie; #1028 in name of Jesse H. Dansie, including matching funds in same insurance and death benefits.

Stocks Prudential Federal Savings, 100 shares #686-000456335; 10 shares in the name of Jesse H. Dansie and Jesse R. Dansie

~~Utah~~ Harriman Pipeline and Development Co., 14 shares of water stock No. 446 (4 shares); No. (10 shares)

~~Other:~~

Other: see Quick Claim Deed for property easements, waterlines, distribution facilities and system and rights to use of water system and use of water under a lease agreement with Dr. Harold H. Taylor, said agreement dated April 7, 1977.

A more complete list of our personal property and the bequests, and their distributions, will be found in the family registry on page 71 and 72.

Article I

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that we do hereby acknowledge and declare that we hold and will hold said real property and all right, title and interest in and to said property and all furniture, fixtures and personal property situated therein IN TRUST

1. For the use and benefit of the following Five persons, in equal shares, *SHD R.B.D.*

Jesse Rodney Dansie, Richard P. Dansie, Boyd W. Dansie, Joyce M. Taylor, Bonnie R. Parkin.

Upon the death of the survivor of us, unless all the beneficiaries shall predecease us or unless we shall die as a result of a common accident or disaster, our Successor Trustee is hereby directed forthwith to transfer said property and all rights, title, and interest in and to said property unto the beneficiaries absolutely and thereby terminate this trust; provided, however, that if any beneficiary hereunder shall then be a minor, the Successor Trustee shall hold the trust assets in continuing trust until such beneficiary attains the age of twenty-one years. During such period of continuing trust the Successor Trustee, in his absolute discretion, may retain the specific trust property herein described if he believes it in the best interest of the beneficiary so to do, or he may sell or otherwise dispose of such specific trust property, investing and reinvesting the proceeds as he may deem appropriate. If the specific trust property shall be productive of income or if it be sold or otherwise disposed of, the Successor Trustee may apply or expend any or all of the income or principal directly for the maintenance, education and support of the minor beneficiary without the intervention of any guardian and without application to any court. Such payments of income or principal may be made to the beneficiaries without the intervention of any guardian and without application to any court. Such payments of income or principal may be made to the parents of such minor or to the person whom the minor is living without any liability upon the Successor Trustee to see to the application thereof. If any such minor survives as trust dies before the age of twenty-one years, at his or her death the Successor Trustee shall deliver, pay over, transfer and distribute the trust property being held for such minor to said minor's personal representatives, absolutely.

Part 2 of Trust

Jesse H. Dansie

Ruth B. Dansie

BK 10289 PG 8522

BK 6205 PG 0697

IN WITNESS WHEREOF we have hereunto set our hands and seals this 20th day of March 19 82

(First co-owner sign here)

(Second co-owner sign here)

Witness (1)

Witness (2)

State of

UTAH

at

Herriman, Utah

County

Salt Lake

of

Jesse H. Damsie Ruth B. Damsie

On the 20th day of March sixteen hundred and 82, before me came and known to me to be the individual described in, and who executed the foregoing instrument, and they acknowledged that they executed the same, and in due form of law acknowledged the foregoing instrument to be their free act and deed and desired the same might be recorded as such.

(Notary Seal)

Aaron Jones

My commission expires June 6, 1984

1789 Severn Drive, Salt Lake City, Utah

Beginning on the North right of way line of Utah Highway 111, said point being South 1075.00 feet and West 1749.69 feet from the East Quarter Corner of Section 34, Township 3 South, Range 2 West, Salt Lake Base and Meridian, said point also being South 71 degrees 29' West 1845.21 feet and North 28.00 feet from a Salt Lake County Witness Monument located in said highway; and running thence 71 degrees 29' West 100.00 feet; thence North 459.41 feet; thence North 71 degrees 29' East 100.00 feet; thence South 459.41 feet to the point of beginning. SUBJECT TO an existing ditch right of way and easement on and across the property for cleaning and maintaining the ditch.

2. Commencing on the South line of Section 34, Township 3 South, Range 2 West, Salt Lake Base and Meridian, at a point which is South 89 degrees 51'11" East 1145.75 feet from the Southwest corner of said Section 34 and running thence South 89 degrees 51'11" East 300.00 feet; thence North 0 degrees 14'55" West 893.83 feet, more or less, to the centerline of a County Road; thence South 75 degrees 27' West along said centerline 309.59 feet; thence South 0 degrees 14'55" East 815.29 feet, more or less, to the point of BEGINNING.

9. See Exhibit "A" attached hereto.

10. Water stock shown on Water User's Claim No. 59-1200, Application No. 26451, Certificate No. 8212, Recorded as entry number 2263196, Book 2698, Page 504, Salt Lake County Public Records

11. Water stock shown on Water User's Claim No. 59-3879, Application No. 26451aa, Certificate No. 10152, Recorded as entry number 2939926, Book 4484, Page 34, Salt Lake County Public Records.

12. EASEMENT (described on the reverse side of this document)

Jesse H. Damsie Ruth B. Damsie

BK 10289 PG 8523

BK 6205 PG 0698

12. Beginning at the Northeast corner of the Southwest Quarter of the Southeast Quarter of Section 33, Township 3 South, Range 2 West, Salt Lake Base and Meridian, and thence South 398.0 feet to the center of Butterfield Canyon Road; thence following up the road North 30 degrees 01' West to a point due South of another point which is 25 feet West of the point of beginning; thence East 25 feet to the point of BEGINNING.

13. Lot purchased September 26, 1984 Described as

An undivided 1/2 interest in Lot 51, Hi-Country Estates, according to the plat thereof, as recorded in the office of the County Recorder of said County together with a right of way over and across the private roads located within said subdivision, Together with a Water Right Application No. 40075 (57-3826).

MX6205PC0699

BK 10289 PG 8524

2. We reserve unto ourselves the power and right (a) to place a mortgage or other lien upon the property, and (b) to collect any rental or other income which may accrue from the trust property and, in our sole discretion as Trustees, either to accumulate such income as an addition to the trust assets being held hereunder or pay such income to ourselves as individuals.

3. We reserve unto ourselves the power and right during our lifetime to amend or revoke in whole or in part the trust hereby created without the necessity of obtaining the consent of any beneficiary, and without giving notice to any beneficiary, but no such amendment or revocation shall be effective unless and until it is filed in the land records. The sale or other disposition by us of the whole or any part of the property shall constitute as to such whole or part a revocation of this trust.

4. The death during our lifetime, or in a common accident or disaster with us, of all of the beneficiaries. Should we for any reason fail to designate such new beneficiaries, this trust shall terminate upon the death of the survivor of us and the trust property shall revert to the estate of such survivor.

5. Upon the death or legal incapacity of one of us, the survivor shall continue as sole Trustee. Upon the death of the survivor of us, or if we both shall die in a common accident, we hereby nominate and appoint as Successor Trustee hereunder the beneficiary first above named, unless such beneficiary be a minor or legally incompetent, in which event we hereby nominate and appoint as Successor Trustee hereunder the beneficiary whose name appears second above. If such beneficiary named second above shall be a minor or legally incompetent, then we nominate and appoint as Successor Trustee hereunder

(Name) as referred to in Article I of Declaration of Trust Joseph Rodney Damsie,
Richard P. Damsie, Boyd W. Damsie, Joyce H. Taylor, Bonnie R. Parkin.
(Address)

Number Street City State

6. This Declaration of Trust shall extend to and be binding upon the heirs, executors, administrators and assigns of the undersigned and upon the Successors to the Trustee.

7. We as Trustees and our Successor Trustee shall serve without bond.

8. This Declaration of Trust shall be construed and enforced in accordance with the laws of the State of Utah.

Article II

Upon the death of the Trustor; if the Trustor's spouse survives the Trustor, the spouse shall divide the remaining trust property and any property added thereto under the Trustor's will into two trusts to be known thereafter respectively as the HOME TRUST "Marital Trust".

SS-4 Identification Number 87-615 190 and the RANCH TRUST "Non-Marital Trust".

SS-4 Identification Number 87-6190191

A. Marital Trust Property. The Marital Trust shall consist of:

1. Designated Property. Property received by the spouse from any source and specifically designated as property of the Marital Trust including property added to such trust under the Trustor's Will.

2. Fractional Share. A fractional share of the trust property determined as follows:

(a) The numerator of the fraction shall be an amount equal to the maximum marital deduction allowable for federal estate tax purposes in the Trustor's estate, less the value of all other property which passes or has passed to or in trust for the benefit of the Trustor's spouse other than under this provision of this agreement, which is included in the gross estate of the Trustor, and which qualifies in determining the marital deduction for federal estate tax purposes.

(b) The denominator shall be the total of the property in this trust which is included for federal estate tax purposes in the Trustor's gross estate and which qualifies for such marital deduction.

(c) Such fraction shall be applied to the total property in this trust included for federal estate tax purposes in the Trustor's gross estate and which qualifies for such marital deduction.

3. Insofar as possible, the nature, character and extent of property, its qualification for the marital deduction, the value of assets included in the Trustor's gross estate and any other fact required by the terms hereof to be determined shall be the same as finally determined for federal estate tax purposes in the Trustor's taxable estate. The Trustor may conclusively rely upon a written statement from the personal representative or legal counsel for such representative that the estate tax has been finally determined and as so finally determined the same. (Optional: In dividing the trust property the Trustor shall not take into account any deemed "increase" in the Trustor's gross estate resulting from the application of Section 2002 (c) (5) (A) of the Internal Revenue Code.)

B. Non Marital Trust. The Non Marital Trust shall consist of all other property held under this instrument. If the Trustor's spouse does not survive the Trustor, the Non Marital Trust shall consist of all property held under this instrument.

Page 1 of Trust

Joseph R. Damsie Ruth B. Damsie

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If either spouse, after the death of the other spouse, runs out of funds in the marital deduction trust, he (she) may dip into the non marital trust and use what ever is needed to sustain the standard of living as to what he (she) is accustomed to, or if it is needed for doctor, hospital, nursing, nursing home, medicine, clothing, etc. - even to the extent that it is all used up completely.

C. **Death Taxes.** It is the Trustor's intention that taxes payable by reason of the Trustor's death be apportioned according to law and that any taxes apportioned to the Trustee be paid from the Non Marital Trust.

Article III

After we are both deceased our successor Trustee or Trustees, are to sell all properties, collect all insurance, securities, and etc., all net amounts are to be deposited in our RANCH TRUST ACCOUNT

Trust SS# 87-6190171 Located at _____

The total amount is to be divided to our children equal shares per stirpes into their trust fund, if they have a trust fund account, if they have not trust fund account - they can draw out of the Trust Fund accounts up to 3 1/2 % per year of their proportionate amount.

Or - Optional

Our children can elect to have the trust continue to own the real estate property, and lease or rent the property out and the money to go into the trust fund and be divided as to the trust agreement.

Our Trustee or Trustees are to control the distribution of the trust fund with love and fairness and as to the trust instructions.

D. **In Default of Issue.** Any trust property not disposed of under the foregoing provisions shall vest in and be distributed to *** (Optional: the person or persons who would be the heirs of the Trustor if the Trustor had survived the termination of the trust and then died, determined as of the date of such termination and according to the laws of Utah then in force respecting interstate succession).

Optional Provision:

() **Termination of Trusts.** Unless terminated at an earlier date under the foregoing provisions, a trust hereunder shall terminate on the date which is twenty-one years after the date of the last to die of the beneficiaries in being at the time of death of the Trustor or those living on the date prior thereto when the trust becomes irrevocable as the election of the Trustor, if that event shall occur. Upon such termination, the trust property remaining shall be distributed to the person or persons then entitled to receive the income therefrom and in the proportions as specified in the foregoing provisions, otherwise in equal shares.

L. **Simultaneous Death.** If the Trustor and the Trustor's spouse or any primary and secondary beneficiary die simultaneously or under such conditions that it cannot be determined from credible evidence which of them was the first to die, the provisions made herein for the Trustor's spouse shall be construed as though the spouse survived the Trustor. Any secondary beneficiary shall be deemed to have predeceased the primary beneficiary.

F. **Spending Clause.** Except as herein otherwise expressly provided, all income or principal to be paid to any of the beneficiaries shall be paid by the Trustee direct and only to the beneficiaries, to the personal representative of any beneficiary or, where authorized, applied for the beneficiary. The Trustee shall not recognize any transfer, mortgage, pledge, hypothecation, order or assignment of any beneficiary by way of anticipation of income or principal. The income and principal of any trust hereunder shall not be subject to tax, by operation of law and shall be exempt from the claims of creditors or other claimants and from orders, decrees, levies, attachments, garnishments, executions and other legal or equitable process or proceedings to the fullest extent permissible by law.

In witness whereof, we subscribed our names to this trust instrument, consisting of 3 pages, this on the bottom of each of which we have placed our signatures for purposes of identification this 20th day of March A.D. 1982

We have chosen a qualified licensed attorney, a member of the bar in good standing - to give us legal advice concerning our estate planning, and to supervise the execution of the signing of this instrument and the swearing in of the witnesses. The attorney we have chosen is George M. Frandsen

Page 4 of 7

James H. Hansen Ruth B. Davis

BK 10289 PG 8526

BK 6205 PG 0701

IN WITNESS WHEREOF we have hereunto set our hands and seals this 20th day of March 1982

(First co-owner sign here) Jesse H. Darsie L.S.

(Second co-owner sign here) Ruth B. Darsie L.S.

Witness: (1) David P. [unclear]

Witness: (2) Jenna [unclear] (3) Elroy H. Darsie

State of UTAH at Heber, Utah

County Salt Lake of

On the 20th day of March, nineteen hundred and 82, before me came Jesse H. Darsie and Ruth B. Darsie known to me to be the individual described in, and who executed the foregoing instrument, and they acknowledged that they executed the same as their free act and deed, and desired the same might be recorded as such.

(Notary Seal)

Aaron Jones
Notary Public
1789 Severn Drive, Salt Lake City, Utah

My commission expires June 6, 1984

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BK 6205 pg 702
RECORDED 702

EXHIBIT "A"
LEGAL DESCRIPTION
U-1-13700

PARCEL 2:

The North half of the Northwest Quarter of Section 3, Township 4 South, Range 2 West, Salt Lake Base and Meridian.

PARCEL 3:

COMMENCING at the Southwest corner of Section 34, Township 3 South, Range 2 West, and running thence East 160 rods; thence North 80 rods; thence East 70 rods; thence North 16 rods; thence East 10 rods; thence North 144 rods; thence West 160 rods; thence South 80 rods; thence West 80 rods; thence South 160 rods to COMMENCEMENT.

excepting the following 7 parcels:

A. Parcel deeded to Doran Hunt by Warranty Deed recorded in Book 2861 at page 90, records of Salt Lake County, Utah.

B. Parcel deeded to Morrison Irrigation Company by Warranty Deed recorded in Book 2777 at page 341, records of Salt Lake County, Utah.

C. Parcel deeded to Don Davis by Warranty Deed recorded in Book 3197 at page 33, records of Salt Lake County, Utah.

~~D. Parcel deeded to Albert Yarric by Warranty Deed recorded in Book 3181 at page 413, records of Salt Lake County, Utah.~~

E. Commencing on the centerline of County Road No. U-111 at a point which is North 665.93 feet and East 578.11 feet from the Southwest corner of Section 34, Township 3 South, Range 2 West, Salt Lake Base and Meridian, and running thence along the centerline of an irrigation ditch, two courses, as follows: North 42°51' West 163.06 feet; thence North 33°11' West 311.35 feet; thence North 0°14'55" West 131.10 feet; thence North 85°32'20" East 546.60 feet; thence South 81°06'30" East 187.50 feet; thence South 0°14'55" East 407.94 feet to the centerline of said County Road; thence along said centerline South 75°27' West 465.00 feet to the point of Commencement.

F. Commencing on the South line of Section 34, Township 3 South, Range 2 West, Salt Lake Base and Meridian, at a point which is South 89°51'11" East 745.75 feet from the Southwest corner of said Section 34 and running thence North 0°14'55" West 710.56 feet, more or less, to the centerline of County Road No. U-111; thence North 75°27' East, along said centerline 12.78 feet; thence South 0°14'55" East 315.28 feet, more or less, to the above mentioned Section line; thence along said Section line, North 89°51'11" West 400.00 feet to the point of Beginning.

G. Commencing at the centerline of a County Road and the West line of Section 34, Township 3 South, Range 2 West, Salt Lake Base and Meridian, at a point which is North 0°14'55" West 520.31 feet from the Southwest corner of said Section 34 and running thence North 0°14'55" West 676.85 feet; thence South 86°12'15" East 302.10 feet; thence South 0°14'55" East 131.10 feet; thence South 33°11' East 311.35 feet; thence South 42°51' East 163.06 feet; more or less, to the center-

EXHIBIT "A"
LEGAL DESCRIPTION
U-1-13700
Page 2

line of the abovementioned County Road; thence along said centerline, South 73°27' West 360.00 feet; thence South 76°37' West 238.39 feet to the point of beginning.

H. Commencing on the South line of Section 34, Township 3 South, Range 2 West, Salt Lake Base and Meridian, at a point which is South 89°51'11" East 1145.75 feet from the Southwest corner of said Section 34 and running thence South 89°51'11" East 300.00 feet; thence North 0°14'55" West 893.83 feet, more or less, to the centerline of a County Road; thence South 73°27' West along said centerline 309.59 feet; thence South 0°14'55" East 815.29 feet, more or less, to the point of beginning.

BK 6205 fco 704

BK 10289 PG 8529

EXHIBIT "B"

INSURANCES (including matching funds and death benefits)

Jesse H. Dansie

Operating Engineers Local #3 Union
Death benefit only
Beneficiary: Ruth B. Dansie

Group Life Insurance, Utah State Retirement Board
GL-200
Beneficiary: Ruth B. Dansie

New York Life Insurance Co.
09-442-717
Beneficiary: Ruth B. Dansie

Utah State Retirement Office
Death benefit only
Beneficiary: Ruth B. Dansie

Surety Life Insurance Company
Beneficiary: Ruth B. Dansie

Ruth B. Dansie

Utah State Retirement Office
Death benefit only
Beneficiary: Jesse H. Dansie

Metropolitan Life Insurance Co.
540-486-589M; and 520-284-673M
Beneficiary: Jesse H. Dansie

Metropolitan Life Insurance Company
Beneficiary: Jesse H. Dansie

SAVINGS ACCOUNTS (Including money market certificates and Savings Cert.)

1. Prudential Federal Savings
Account No.
2. First Security Bank
Account No.

(Continued)

Jesse H. Dansie Ruth B. Dansie

BK 10289 PG 8530

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EXHIBIT "B" CONTINUED

3. First Federal Savings
Account No.
4. American Savings and Loan
Account No.
5. State Savings and Loan
Account No.

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KATIE L. DIXON
RECORDER, SALT LAKE COUNTY, UTAH
ROD DANSIE
7198 W 13090 S RIVERTON UT. 84045
REC BY: SHARON WEST , DEPUTY

Jesse H. Dansie

Ruth B. Dansie

BK 6205 PG 0706

BK 10289 PG 8531