

2015

Pacificorp, Plaintiff and Appellee, v. Paul F. Cardon, Defendant and Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

PACIFICORP

Plaintiff and Appellee,

v.

PAUL F. CARDON.

Defendant and Appellant.

Appeal No. 20141103-CA

Civ. No. 090100469

BRIEF OF THE APPELLANT

APPEAL FROM THE FIRST DISTRICT COURT, CACHE COUNTY,
STATE OF UTAH, JUDGE KEVIN K. ALLEN

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UTAH APPELLATE COURTS

MAR 17 2015

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TABLE OF CONTENTS

TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iii
I. JURISDICTIONAL STATEMENT	1
II. STATEMENT OF THE ISSUES RAISED ON APPEAL	1
III. CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES	1
IV. STATEMENT OF THE CASE	3
V. STATEMENT OF THE FACTS	6
VI. SUMMARY OF ARGUMENT	7
VII. ARGUMENT	8
A. The District Court erred in expanding the scope of a three-year old injunction obtained by default without requiring the filing of a new complaint, without holding a hearing and without any evidence to support expansion of PacifiCorp's injunction	8
VIII. CONCLUSION	15
IX. REQUEST FOR ORAL ARGUMENT	16
X. PROOF OF SERVICE	17
XI. CERTIFICATE OF COMPLIANCE WITH RULES 24(f)(1) AND 27(b)	18
XII. ADDENDA	19
Addendum A: Amended Complaint	
Addendum B: Final Default Judgment	
Addendum C: Declaration No. 2 of Paul F. Cardon	
Addendum D: Declaration of Eve F. Davies	
Addendum E: Memorandum Decision, Nov. 3, 2014	
Addendum F: Order Granting PacifiCorp's Motion to Enforce Judgment	

TABLE OF AUTHORITIES

Cases

<u>Goldberg v. Jay Timmons & Assocs.</u> , 896 P.2d 1241 (Utah Ct.App.1995)	1
<u>Holt v. Holt</u> , 672 P.2d 738 (Ut. 1983)	8, 9
<u>Hubble v. Cache Cnty. Drainage Dist. No. 3</u> , 123 Utah 405, 259 P.2d 893 (1953)	11
<u>Hunsaker v. Kersh</u> , 991 P.2d 67 (Utah 1999).....	13
<u>In re Marriage of Thompson</u> , 32 Wash. App. 179, 646 P.2d 163 (1982).....	9
<u>Johnson v. Hermes Associates , LTD</u> , 128 P.3d 1151 (Utah 2005).....	13
<u>Nyman v. Anchor Dev., LLC</u> , 2003 UT 27, ¶ 18, 73 P.3d 357.....	11
<u>Oliver v. United States</u> , 466 U.S. 170, 180, 104 S.Ct. 1735, 80 L.Ed.2d 214 (1984).....	8
<u>Richards v. Pines Ranch, Inc.</u> , 559 P.2d 948 (Utah 1977)	11
<u>Southern Arizona School for Boys, Inc. v. Chery</u> , 119 Ariz. 277, 580 P.2d 738 (Ariz. App. 1978)	9
<u>System Concepts, Inc. v. Dixon</u> , 669 P. 2d 421 (Ut. 1983)	12
<u>Thiele v. Anderson</u> , 975 P.2d 481, 1999 U.T. App 56 (Utah Ct. App. 1999).....	1

Statutes

Utah Code Ann. § 78A-4-103 (2012).....	1
--	---

Rules

Utah R. Civ. P. 54.....	2
Utah R. Civ. P. 55.....	2

Utah R. Civ. P. 59.....	2, 14
Utah R. Civ. P. 60.....	2, 15

I. JURISDICTIONAL STATEMENT

This Court has jurisdiction under Utah Code Annotated § 78A-4-103 (2012).

II. STATEMENT OF THE ISSUES RAISED ON APPEAL

APPELLANT'S ISSUE NO. 1: Whether the District Court erred in expanding the scope of a three-year old injunction obtained by default without requiring the filing of a new complaint, without holding a hearing and without any evidence to support expansion of PacifiCorp's injunction.

Standard of Review

Questions of legal error are reviewed for correctness. Thiele v. Anderson, 975 P.2d 481, 484-84, 1999 U.T. App 56 (Utah Ct. App. 1999); Goldberg v. Jay Timmons & Assocs., 896 P.2d 1241, 1242 (Utah Ct.App.1995).

Preservation of the Issue

The issue raised in the this brief is preserved by the appellant in his brief in opposition to Plaintiff's Motion to Enforce Judgment. Record at 378-380.

III. CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

The following provisions, statutes, and rules are determinative to this appeal:

Utah Rule of Civil Procedure, Rules 54(c). Judgments; costs.

(c) Demand for judgment.

(c)(1) **Generally.** Except as to a party against whom a judgment is entered by default, and except as provided in Rule 8(a), every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings. (emphasis added)

(c)(2) **Judgment by default.** A judgment by default shall not be different in kind from, or exceed in amount, that specifically prayed for in the demand for judgment.

Utah Rule of Civil Procedure, Rules 55. Default.

(b)(2) By the court. In all other cases the party entitled to a judgment by default shall apply to the court therefor. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper.

Utah Rule of Civil Procedure, Rules 59. New trials; amendments of judgment.

(e) **Motion to alter or amend a judgment.** A motion to alter or amend the judgment shall be served not later than 14 days after entry of the judgment.

Utah Rule of Civil Procedure, Rules 60. Relief from judgment or order.

(b) **Mistakes; inadvertence; excusable neglect; newly discovered evidence; fraud, etc.** On motion and upon such terms as are just, the court may in the furtherance of justice relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake,

inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time and for reasons (1), (2), or (3), not more than 90 days after the judgment, order, or proceeding was entered or taken. A motion under this Subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order or proceeding or to set aside a judgment for fraud upon the court. The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

IV. STATEMENT OF THE CASE

The default injunction entered in this case said nothing about allowing PacifiCorp to cross defendant's curtilage and pass through his barnyard. It was in violation of the rules and patently unfair for the trial court to expand the scope of the default injunction beyond what PacifiCorp had demanded in its complaint and beyond the scope of the default injunction that PacifiCorp drafted without requiring the filing of a new complaint, or without holding a hearing to determine whether such a serious expansion was warranted by the facts.

PacifiCorp is the owner of the reservoir created by the operation of Cutler Dam in Cache County, Utah. Record at 10. Defendant Cardon operates a farm adjacent to the reservoir. In 2009, PacifiCorp brought an action against defendant seeking, among other things, an injunction against defendant that would allow PacifiCorp to access Cutler Reservoir along the stretch of a former county road that crosses Mr. Cardon's farm ground. Record at 10. The action sought an injunction preventing Mr. Cardon from "interfering with the Cutler/Bear River watercourse and PacifiCorp's access to Cutler Reservoir over the Lane . . ." Record at 20, Addendum A, Amended Complaint at 11. Access to Cutler Reservoir is available along the entire length of that lane, a former county road as it passes through the Cardon farm long before it reaches Mr. Cardon's curtilage. Record at 387, Addendum C, Declaration No. 2 of Paul Cardon at 2.

Defendant, a poor farmer, tried to resist the PacifiCorp action on his own without a lawyer, but eventually defaulted. Record at 240. On March 29, 2011, the trial court entered default judgment against defendant. Id. The judgment included an injunctive order, drafted by PacifiCorp, against defendant enjoining him from:

Obstructing or preventing PacifiCorp access to Cutler Reservoir, including access along the former county road or lane that connects to Sam Fellow Road and that crosses through defendant's property.

Record at 241, Addendum B, Final Default Judgment at 2. There was nothing in the language of the default injunction that would have alerted defendant that he was ordered to allow Pacificorp to cross through his curtilage. Defendant did not appeal the default thus entered.

Three years later, PacifiCorp, under the guise of a “Motion to Enforce” sought to expand the injunction. Record at 309. If PacifiCorp had thought Mr. Cardon was in violation of the injunction, the proper procedure would have been to have a party held in contempt for violating the court’s order. However, PacifiCorp instead sought to have the trial court expand the injunction to include the language, “including the route beyond the termination of the former county road or lane on the Cardon property.” Record at 350. PacifiCorp offered no evidence that defendant had ever interfered with the ability of PacifiCorp to access Cutler reservoir at any point along the length of the former county road as enjoined by the default injunction. His only resistance was to not let PacifiCorp enter his barnyard or curtilage, something not enjoined in the default injunction.

Defendant objected that PacifiCorp’s “motion to enforce” was an improper procedure to be used for expansion of an injunction and requested an evidentiary hearing on PacifiCorp’s request. Record at 378-380. Rather than schedule such a hearing, the trial court instead granted PacifiCorp’s request and issued the appealed-from order expanding the scope of the injunction and allowing PacifiCorp not only to access the waters of Cutler reservoir along the length of the abandoned county road, but also giving PacifiCorp access through defendant’s barnyard and curtilage:

Cardon shall not obstruct or prevent PacifiCorp's access to Cutler Reservoir "including access along the former county road or lane that connects to Sam Fellow Road and that crosses through defendant's property. This includes the lane that passes through Cardon's property and connects with the route leading to PacifiCorp's property."

Record at 441-443, Addendum F, Order Granting PacifiCorp's Motion to Enforce Judgment at 2.

Such broad and burdensome usage, and specifically passage through Cardon's curtilage was never contemplated by the parties and there was no evidence before the trial court to support such an expansive injunction.

V. STATEMENT OF THE FACTS

In 2001, PacifiCorp sought permission from the defendant to fence off a portion of the shoreline of the reservoir to prevent defendant's cows from browsing near the reservoir and potentially causing erosion problems near the edge of the reservoir. PacifiCorp represented that it could and would haul the materials necessary for the fence in by boat from the reservoir side of the property. Record at 387.

An abandoned county road passes from Sam Fellow Road through the defendant's property and terminates at the driveway leading into defendant's barnyard and accessing defendant's house. Record at 387, Addendum C, Declaration No. 2 of Paul Cardon at 2.

That former county road runs parallel to the waters of Cutler reservoir and provides access to Cutler reservoir nearly its entire length. Id.

The default injunction entered in this case three years ago enjoined the defendant from “[o]bstructing or preventing PacifiCorp access to Cutler Reservoir, including access along the former county road or lane that connects to Sam Fellow Road and that crosses through defendant’s property. Record at 241; Exhibit B, Final Default Judgment at 2. There is nothing in the language of that default injunction that would allow PacifiCorp access beyond the termination of the county road.

In its so-called “Motion to Enforce,” PacifiCorp sought to have the court expand the default injunction to include the language “including the route beyond the termination of the former county road or lane on the Cardon property.” Record at 309. This language would allow PacifiCorp to pass through the Cardon curtilage.

VI. SUMMARY OF ARGUMENT

The trial court’s Order Granting PacifiCorp’s Motion to Enforce Judgment, dated December 4, 2014, (“2014 Order”) is improper because it expands the March 29, 2011 default judgment beyond the use of the county road as it passes through defendant’s farm ground and into his curtilage and barnyard. That extreme expansion in the injunction is well beyond the scope of the allegations and prayer for relief of the complaint, and beyond the language of the default injunction drafted by PacifiCorp. It was in violation

of the rules and improper for the court to impose such restrictions without a new complaint or at least an evidentiary hearing.

VII. ARGUMENT

A. The District Court erred in expanding the scope of a three-year old injunction obtained by default without requiring the filing of a new complaint, without holding a hearing and without any evidence to support expansion of PacifiCorp's injunction.

"A man's home is his castle." The law has long regarded as sacred that area surrounding a man's home as an area not to be lightly invaded by others. "[C]urtilage is the area to which extends the intimate activity associated with the 'sanctity of a man's home and the privacies of his life.'" Oliver v. United States, 466 U.S. 170, 180, 104 S.Ct. 1735, 80 L.Ed.2d 214 (1984) (citation omitted). There was no evidence before the trial court that would justify expanding the scope of PacifiCorp's easement beyond the end of the former county road and into and through defendant's curtilage.

The 2014 Order Expands the Three-Year Old Default Order

Judgment on default cannot exceed the scope of the allegations and prayer for relief of the complaint. Holt v. Holt, 672 P.2d 738 (Ut. 1983). The generally accepted rule with regard to the scope of relief granted in a default judgment has been pronounced thus:

[A] party to a lawsuit may voluntarily default and in so doing rely on the relief requested in the pleadings. A defaulting party should expect that the relief granted will not exceed or substantially differ from that sought in the complaint.

Holt, 672 P.2d at 741 (quoting In re Marriage of Thompson, 32 Wash. App. 179, 646 P.2d 163, 166 (1982)); See also Columbia Val. Credit Exchange, Inc. v. Lampson, 12 Wash. App. 952, 533 P.2d 152 (1975); Southern Arizona School for Boys, Inc. v. Chery, 119 Ariz. 277, 580 P.2d 738 (Ariz. App. 1978).

Further, "relief granted in a judgment by default must be not only within the fair scope of the allegations of the complaint, but also within the fair scope of the prayer thereof." Holt, 672 P.2d at 741 (quoting 47 Am.Jur.2d Judgments § 1176 (1969)).

Nowhere in the amended complaint of PacifiCorp is there any reference to PacifiCorp having a right to access Cutler Reservoir through the Cardon barnyard and curtilage and beyond the termination of the former county road on the Cardon property. By entering such an order, the trial court improperly expanded the scope of the default judgment beyond the scope of that sought by PacifiCorp in its amended complaint and beyond the terms of the default injunction that it drafted.

The former county road, along which the default injunction allows PacifiCorp to pass, gives PacifiCorp ample access to Cutler Reservoir long before reaching the Cardon barnyard and curtilage. When PacifiCorp drafted the default injunction, it did not attempt to obtain an expansion of the access sought by PacifiCorp in its Amended Complaint. However, such an expansion is exactly what PacifiCorp sought in the Proposed Order attached to its Motion to Enforce filed three years later:

Paul F. Cardon shall not obstruct or prevent PacifiCorp's access to Cutler Reservoir including access along the former county road or lane that connects to

Sam Fellow Road and that crosses through defendant's property, and including the route beyond the termination of the former county road or lane on the Cardon property.

Record at 350 ("Proposed Order") (emphasis added).

The underlined language substantially increases the injunction which PacifiCorp was granted in the default judgment, and creates an expanded easement stretching beyond the former county road into the Cardon barnyard and curtilage! This is well beyond the historical use that PacifiCorp agreed to when it was building the fence along the Cardon western boundary. At that time it agreed that access to the fence would "come from Cutler Reservoir," not across the Cardon property. Record at 387, Addendum C, Declaration No. 2 of Paul Cardon. The facts simply do not support the expansion sought by PacifiCorp and imposed by the trial court without requiring a new complaint or at least holding an evidentiary hearing. The trial court's actions impermissibly extend the injunction well beyond the scope of the original default judgment.

The Trial Court had before it no evidence that would support an expansion of the injunction granted to PacifiCorp in the original action

The record is bereft of facts that would create or expand a right of way through defendant's barnyard and curtilage. Although it does not use the term, PacifiCorp's claim amounts to a private prescriptive easement across the Cardon property. See Record at 19, Addendum A, Amended Complaint at 10 ("There exists a former county road or

lane that connects to Sam Fellow Road ("Lane"). For decades, PacifiCorp and its predecessors in interest have used the Lane for access to Cutler Reservoir for management and maintenance purposes.). A prescriptive easement is created when the party claiming the prescriptive easement can prove that use of another's land was open, continuous, and adverse under a claim of right for a period of twenty years. See generally Nyman v. Anchor Dev., LLC, 2003 UT 27, ¶ 18, 73 P.3d 357. Nothing in the record before the trial court demonstrates the elements necessary for the creation of such an easement beyond the termination of the former county road at the entrance of the Cardon barnyard and curtilage.

Likewise, any changes to a right of way may not increase the burden upon the servient estate. See Hubble v. Cache Cnty. Drainage Dist. No. 3, 123 Utah 405, 259 P.2d 893, 896 (1953) ("[I]t is clear that the needs of society and the concomitant policy of the law favor changes and improvements for the benefit of the dominant estate so long as the manifest intent of the parties does not disallow the changes and the burden to the servient tenement is not increased."). None of the scant "evidence" before the court supports an expansion or change to the right of way. Indeed, the trial court made no findings or consideration of the burdens upon defendant that the expanded injunction would cause. Richards v. Pines Ranch, Inc., 559 P.2d 948, 951 (Utah 1977) ("[O]nce the character of [a prescriptive] easement has been fixed no material change or enlargement of the right acquired can be made, if thereby a greater burden is placed on the servient estate."); RESTATEMENT (THIRD) OF PROPERTY: SERVITUDES § 4.8(3) (2000) ("[T]he

owner of the servient estate is entitled to make reasonable changes in the location or dimensions of an easement ... to permit normal use or development of the servient estate.").

The only evidence before the court was the Declaration of Eve Davies and the Declaration of Paul Cardon. The Declaration of Davies does nothing more than recite some history of the dealings between the parties with regard to PacifiCorp's attempts to cross Cardon's barnyard and curtilage to reach Culter Reservoir and recounts the very dispute at issue, *i.e.*, that Cardon does not believe the original order allows access across his barnyard and curtilage. None of these facts support the expansion sought by PacifiCorp and imposed by the trial court.

Further, neither PacifiCorp's Motion nor the trial court's order refer to any Utah statute or rule providing a basis for the relief requested.¹ The trial court entered default judgment, granting an injunction against the defendant. However, even if the procedure used by PacifiCorp in this case were proper, an evidentiary hearing should have been held so that the trial court could be properly informed before granting such extreme and expansive relief. An injunction, being an extraordinary remedy, should not be lightly granted. System Concepts, Inc. v. Dixon, 669 P. 2d 421 (Ut. 1983). The granting of an injunction contemplates the presentation of evidence. Injunctive relief must be based on

¹ Utah R. Civ. P. 7(b)(1) "A motion shall be in writing and state succinctly and with particularity the relief sought and the grounds for the relief sought."

a consideration of the evidence presented in light of relevant legal factors. Hunsaker v. Kersh, 991 P.2d 67, 69 (Utah 1999); Johnson v. Hermes Associates, LTD, 128 P.3d 1151, 1157 (Utah 2005). Because the lower Court failed to hold an evidentiary hearing on PacifiCorp's Motion to Enforce, it could not have possibly determined that PacifiCorp was entitled to an expansion of the original order granting injunctive relief. The declarations submitted only show that there is a dispute as to what actual access is needed by PacifiCorp. Both parties requested an evidentiary hearing, but the court refused.

The court held that it did not need an evidentiary hearing because the issues presented by PacifiCorp's Motion had "already been authoritatively decided." Record at 424, Addendum E, Memorandum Decision at 3. However, the court does not explain where or how the issues were "authoritatively decided." The only evidence before the court was the Declaration of Eve Davies and the Declaration of Paul Cardon. There is no evidence demonstrating PacifiCorp's need or entitlement to cross Cardon's barnyard and curtilage in order to properly access the reservoir. In fact Davies' Declaration states that the Cache County Sherriff's Deputy could not "definitively instruct" Cardon that the original order allows PacifiCorp to access Cardon's barnyard. Record at 344, Addendum D, Davies Declaration at ¶¶ 30-32.

Cardon's Declaration states that PacifiCorp has adequate access to Cutler Reservoir without crossing his barnyard, and that PacifiCorp built the fence it seeks to inspect without such access. Addendum C, Declaration No. 2 of Paul F. Cardon at ¶¶ 5-6. If that access was sufficient for building the fence, it should be sufficient for

inspecting the already built fence. Again, there was no evidence before the trial court that PacifiCorp did not have adequate access to complete its inspection without crossing through Cardon's barnyard and curtilage.

The Court's order violated the time limits in granting a new trial or in altering the judgment.

Our rules provide for a new trial or altering or amending a judgment under certain narrow circumstances, and within specified time limits. Rule 59 provides for alteration of a judgment by the trial court upon taking "additional testimony." There is nothing in the rule about amending the judgment without taking additional testimony and the alteration must be done within 14 days of entry of the judgment, not three years after it has been entered. Utah R. Civ. P. 59(e). Further, rule 59 requires the happening of some event to justify reopening of the record. No such event was even argued by PacifiCorp in the court below.

Similarly, Rule 60(b) provides grounds and procedures for relief from a judgment in certain narrow circumstances and again within a "reasonable time." Utah R. Civ. P. 60(b). No grounds for relief under Rule 60 were offered by PacifiCorp nor found by the trial judge. Nor can it be argued that three years is a reasonable time for the bringing of such a motion. The trial court's alteration and expansion of the 2011 injunction is much too late and not in harmony with the rules.

VIII. CONCLUSION

The trial court erred in expanding the scope of a default injunction to allow PacifiCorp to pass through defendant's barnyard and curtilage when it had no evidence to support such an extreme expansion.

Dated this 17th day of March, 2015

ATKIN LAW OFFICES, PC

/s/ Blake S. Atkin
Blake S. Atkin
Attorneys for Appellant

IX. REQUEST FOR ORAL ARGUMENT

Appellant believes that oral argument is important on the issues regarding the application of the Utah Rules of Civil Procedure presented by this case and therefore requests oral argument.

X. PROOF OF SERVICE

I hereby certify on this 17th day of March, 2015 I caused a true and correct copy of the foregoing BRIEF OF APPELLANT to be placed in the United States Mail, first class, postage prepaid or hand-delivered, as follows:

UTAH SUPREME COURT
450 S. STATE ST.
PO BOX 14 0210
SALT LAKE CITY, UT 84114-0120
Hand-delivered
[8 copies, one with original signatures]

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/s/ Randall T. Todd

**XI. CERTIFICATE OF COMPLIANCE
WITH RULES 24(f)(1) AND 27(b)**

I hereby certify that this brief complies with the type-volume limitation of Utah R. App. P.24(f)(1) because this brief contains 3,606 words, excluding the parts of the brief exempted by Utah R. App. P.24(f)(1)(B). Further, this brief complies with the typeface requirements of Utah R. App. P.27(b) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 13 pt. Times New Roman font.

Dated this 17th day of March, 2015

ATKIN LAW OFFICES, PC

/s/ Randall Todd
Randall T. Todd
Attorney for Appellant

XII. ADDENDA

Addendum A: Amended Complaint

Addendum B: Final Default Judgment

Addendum C: Declaration No. 2 of Paul F. Cardon

Addendum D: Declaration of Eve F. Davies

Addendum E: Memorandum Decision, Nov. 3, 2014

Addendum F: Order Granting PacifiCorp's Motion to Enforce Judgment

ADDENDUM A

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STATE OF UTAH
IN THE FIRST DISTRICT COURT OF CACHE COUNTY

Judge Thomas L. Willmore

Shadler
AD

2. Defendant, Paul Cardon, is an individual who on information and belief resides in Cache County, Utah.

3. Jurisdiction in this Court is proper pursuant to UTAH CODE ANN. §§ 78A-5-102(1).

4. Venue in Weber County is proper pursuant to UTAH CODE ANN. § 78B-3-301(1)(c).

GENERAL ALLEGATIONS

5. Pursuant to an Order Issuing New License, Project No. 2420-001, issued April 29, 1994 by the Federal Energy Regulatory Commission (FERC), in connection with PacifiCorp's Cutler Project, PacifiCorp is obligated to maintain a buffer strip, up to 200 feet wide, install and maintain fences, among other things, all designed to protect its property and the integrity of the Cutler Project.

6. PacifiCorp was further required to prepare and implement a Resource Management Plan, which it did in July, 1995.

7. An Order approving that plan was issued by FERC in November, 1995.

8. That Plan and Order require a permanent vegetative buffer around the reservoir on lands owned by PacifiCorp, erosion control and other features, most of which are designed to prevent farming and agricultural encroachment to protect the integrity of the reservoir banks and improve water quality.

9. By 2002, PacifiCorp installed fencing and other property line posts at Cutler Reservoir, totaling more than 40 miles and 1100 acres of shoreline buffer.

10. On information and belief, defendant owns certain real property located at 4409 West 4700 North, Smithfield, Utah 84335-9770 (the "Cardon Property").

11. The Cardon Property is adjacent to Cutler Reservoir and the Cutler Project.

12. The Cardon Property is also adjacent to a flooding easement owned by PacifiCorp that runs along the edge of Cutler Reservoir, between the reservoir and the Cardon Property. PacifiCorp is required to maintain and monitor the flooding easement as part of its FERC license and Cutler Reservoir obligations.

13. PacifiCorp is further required under its FERC licensing obligations to control the property adjacent to the Cutler Project, including areas along Cutler Reservoir and the Bear River and the slough area adjacent to the Cardon Property.

14. Defendant has installed an irrigation pivot, and in doing so removed or cut a portion of PacifiCorp's fence along the bank of Cutler Reservoir.

15. Defendant has installed the irrigation pivot across PacifiCorp's property.

16. As a result of defendant's actions, livestock now access the river/reservoir banks, degrading the banks

17. PacifiCorp has tried to repair the fence and control the gate, but the fence has been cut repeatedly to allow the pivot and Cardon's cattle onto PacifiCorp lands.

18. PacifiCorp has had previous property and boundary issues with Cardon. In 2001, PacifiCorp brought an action against Cardon in the Second District Court, styled *PacifiCorp v. Cardon*, Civil No. 010101240 (the "Action").

19. The purpose of the Action was to quiet title to certain property in which defendant claimed or may have claimed an interest. The Action also sought an injunction aimed at preventing defendant from interfering with PacifiCorp's efforts to install posts to identify its respective property boundaries.

20. On March 11, 2003, the court entered an interim order permitting PacifiCorp to install posts and fences in accordance with its survey. Defendant was restrained from interfering with PacifiCorp's installation.

21. On March 3, 2006, the court entered partial summary judgment in PacifiCorp's favor, quieting title to certain surveyed property. The Action was dismissed without prejudice on June 19, 2006.

22. On its property adjacent to defendant's property, PacifiCorp has removed a gate installed at the request of defendant and repaired its fence.

23. Since at least June, 2008, PacifiCorp's fence has been twice damaged/cut at the location of defendant's irrigation pivot.

24. Defendant has further permitted his livestock to trespass on to PacifiCorp's property.

25. Defendant does not own stockwater rights at the Cardon property.

FIRST CLAIM
(Public Nuisance and Nuisance per se)

26. Plaintiff incorporates by reference the preceding allegations.

27. Cardon's (1) destruction or removal of PacifiCorp's fence, (2) unauthorized use of PacifiCorp's property, (3) damage to PacifiCorp's property, (4) interference with PacifiCorp's above-described FERC obligations, (5) grazing/stockwatering on PacifiCorp property, (6) destroying or permitting the destruction of the vegetation within the FERC-required buffer zone, together or separately constitute a public nuisance inasmuch as this conduct is an unlawful interference with or obstruction of PacifiCorp's property rights and federal statutory and regulatory obligations.

28. Cardon is strictly liable for this public nuisance.

29. PacifiCorp has been injured by reason of this nuisance in a manner distinct from any general public injury.

30. PacifiCorp has sustained consequential damages by reason of Cardon's creation of this nuisance and requests a judgment in an amount to be determined at trial, plus available consequential damages.

SECOND CLAIM
(Private Nuisance)

31. Plaintiff incorporates by reference the preceding allegations.

32. Cardon's (1) destruction or removal of PacifiCorp's fence, (2) unauthorized use of PacifiCorp's property, (3) damage to PacifiCorp's property, (4) interference with PacifiCorp's above-described FERC obligations, (5) grazing/stockwatering on PacifiCorp property, (6) destroying or permitting the destruction of the vegetation within the FERC-required buffer zone,

together or separately constitutes a substantial, significant and unreasonable interference with the use and enjoyment of PacifiCorp's Cutler Project property:

33. Cardon's destruction of and encroachment and trespass on PacifiCorp's property has further interfered with and jeopardized PacifiCorp's FERC license obligations and approval.

34. PacifiCorp has been damaged by reason of this private nuisance in an amount to be established at trial.

35. Cardon's conduct is and has been willful and malicious, or manifests a knowing and reckless indifference toward, and a disregard of, the property rights of PacifiCorp within the meaning of Utah Code Ann. § 78-18-1(1)(a).

36. PacifiCorp is entitled to and requests a judgment against Cardon for private nuisance, including punitive damages and available consequential damages.

THIRD CLAIM
(Trespass)

37. Plaintiff incorporates by reference the preceding allegations.

38. PacifiCorp installed a fence on its property adjacent Cardon's property.

39. To secure the Cutler Project and Reservoir against trespass, disturbance and damage, PacifiCorp installed a fence along the reservoir as part of PacifiCorp's FERC license compliance obligations.

40. Since that time, Cardon installed an irrigation pivot, which included removing or cutting a portion of PacifiCorp's fence, and allowing that pivot to cross PacifiCorp's property.

41. As a result, livestock now access the river/reservoir banks, degrading the banks and impacting water quality. No stockwatering right exists for this use.

42. PacifiCorp has tried to repair the fence and control the gate, but it was repeatedly left open, contrary to agreement by defendant.

43. PacifiCorp has since removed the gate and repaired its fence.

44. Since at least June, 2008, PacifiCorp's fence near Cardon's irrigation pivot has been twice damaged again.

45. Cardon continues to allow his cattle to graze or otherwise come on to PacifiCorp property.

46. Cardon's conduct as described above constitutes unlawful trespass.

47. PacifiCorp has been damaged by reason of this trespass in an amount to be established at trial.

48. Cardon's conduct is and has been willful and malicious, or manifests a knowing and reckless indifference toward, and a disregard of, the property rights of PacifiCorp within the meaning of Utah Code Ann. § 78-18-1(1)(a).

49. PacifiCorp is entitled to and requests a judgment against Cardon for trespass, including punitive damages and available consequential damages.

FOURTH CLAIM
(Permanent Injunction)

50. Plaintiff incorporates the preceding allegations.

51. Cardon's (1) destruction or removal of PacifiCorp's fence, (2) unauthorized use of PacifiCorp's property, (3) damage to PacifiCorp's property, (4) interference with PacifiCorp's above-described FERC obligations, (5) grazing/stockwatering on PacifiCorp property, (6) destroying or permitting the destruction of the vegetation within the FERC-required buffer zone, together or separately constitutes a substantial, significant and unreasonable interference with the use and enjoyment of PacifiCorp's Cutler Project property and threatens irreparable injury due to its impact on PacifiCorp's FERC license for the Cutler Project.

52. The threatened injury to PacifiCorp outweighs whatever damage an order enjoining Cardon would cause inasmuch as Cardon does not have any protected property interest in the PacifiCorp property.

53. An injunction against Cardon would not be adverse to the public interest and would in fact further the public interest through the protection of the Cutler Project.

54. Because PacifiCorp enjoys undisputed property rights, there is a substantial likelihood that PacifiCorp will prevail on the merits of its claims.

55. PacifiCorp is entitled to and requests a preliminary injunction and a judgment permanently enjoining Cardon from further interference with and trespass and encroachment on PacifiCorp's property, including

a. a judgment ordering Cardon to remove all personal property stored on PacifiCorp's property;

b. a judgment enjoining further use of and trespass and encroachment, including farming and other agricultural operation and irrigation, on PacifiCorp's property;

c. a judgment enjoining further interference with, damage to and trespass and encroachment on, PacifiCorp's property.

FIFTH CLAIM
(Obstruction of Watercourse – UTAH CODE ANN. § 73-1-15 and Interference with Maintenance Access).

56. Plaintiff incorporates the preceding allegations.

57. Whenever any person has a right-of-way of any established type or title for any canal or other watercourse it shall be unlawful for any person to place or maintain in place any obstruction along such canal or watercourse without first receiving written permission for the change and providing gates sufficient for the passage of the owner or owners of such canal or watercourse.

58. The vested rights in established watercourses shall be protected against all encroachments.

59. PacifiCorp's Cutler Project, described above, is an integral part of PacifiCorp's decreed water rights and power generation operations.

60. As the owner of the Cutler Project, and based on PacifiCorp's FERC obligations, PacifiCorp is entitled to access Cutler Reservoir for maintenance and other purposes.

61. Cardon has, without consent, obstructed PacifiCorp's access to the Cutler Reservoir watercourse, thus preventing or obstructing PacifiCorp's passage to and from that watercourse for maintenance and other purposes.

62. Cardon's conduct constitutes a violation of Utah Code Ann. § 73-1-15.

63. PacifiCorp is therefore entitled to and requests judgment against Cardon (a) permanently enjoining such obstruction and (b) for damages of a character and in an amount to be determined at trial.

64. Cardon's conduct obstructing access to the reservoir within the meaning of Utah Code Ann. § 73-1-15, entitles PacifiCorp to recover its reasonable attorney fees pursuant to Utah Code Ann. § 73-2-28.

65. Cardon has further obstructed PacifiCorp's maintenance and operation access to portions of Cutler Reservoir.

66. Pursuant to the decree filed in 1922 in the case of *Utah Power & Light Company v. Richmond Irrigation Company, et al*, (Kimball Decree), PacifiCorp has the right to divert water at the Stewart Dam and to impound and store water in Bear Lake Reservoir all the waters of Bear River to the extent of 5500 cubic feet per second, together with the waters naturally flowing into or arising in Bear Lake.

67. PacifiCorp may pursuant to decree release water from Bear Lake into the natural channel of the Bear River, for use at various points of diversion now existing, or which may be established by PacifiCorp electric power generation.

68. This diversion right is by decree continuous throughout the year without limitation to time or season.

69. There exists a former county road or lane that connects to Sam Fellow Road ("Lane"). For decades, PacifiCorp and its predecessors in interest have used the Lane for access to Cutler Reservoir for management and maintenance purposes.

70 Cardon has interfered with PacifiCorp's maintenance and management of Cutler Reservoir.

71. PacifiCorp is entitled to and requests a judgment enjoining and prohibiting Cardon from further interfering with the Cutler/Bear River watercourse and PacifiCorp's access to Cutler Reservoir over the Lane and otherwise, along with an award of reasonable attorney fees incurred in prosecuting this action.

REQUEST FOR RELIEF

Based on these claims, plaintiff requests judgment as described above, and such other and further relief as the Court deems just, including costs and reasonable attorney fees.

May 19, 2009.

MABEY, WRIGHT & JAMES, PLLC


David C. Wright

Attorneys for Plaintiff

Plaintiff's Address:

201 S. Main, # 2300
Salt Lake City, Utah 84111

ADDENDUM B

David C. Wright - 5566
MABEY WRIGHT & JAMES, PLLC
175 South Main, #1330
Salt Lake City, Utah 84111
Telephone: (801) 359-3663
Fax: (801) 359-3673
Email: dwright@mwjlaw.com

Attorneys for Plaintiff

STATE OF UTAH
IN THE FIRST DISTRICT COURT OF CACHE COUNTY

PACIFICORP,

Plaintiff,

vs.

PAUL F. CARDON,

Defendant.

FINAL DEFAULT JUDGMENT

Civil No. 090100469

Judge Kevin K. Allen

Pursuant to the Court's Second Order for Discovery Sanctions, and for good cause appearing, the Court hereby enters the following Final Default Judgment:

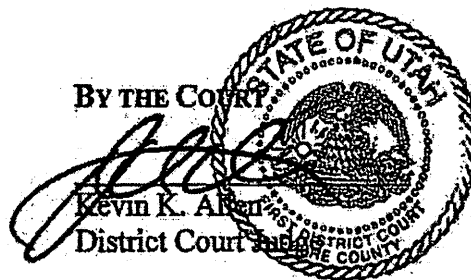
It is Ordered, Adjudged and Decreed as follows:

Defendant is hereby immediately, permanently enjoined from the following:

1. Destroying or removing PacifiCorp's fence along the boundary between PacifiCorp's property and defendant's property,

2. Unauthorized use of PacifiCorp property,
3. Trespassing on PacifiCorp property,
4. Irrigating, or farming on, PacifiCorp property,
5. Damaging PacifiCorp property,
6. Interfering with PacifiCorp operations at Cutler Reservoir,
7. Grazing/stockwatering on PacifiCorp property,
8. Destroying or permitting the destruction of the vegetation along the banks of the Bear River and/or Cutler Reservoir,
9. Obstructing or preventing PacifiCorp access to Cutler Reservoir, including access along the former county road or lane that connects to Sam Fellow Road and that crosses through defendant's property.

Dated March, 29 2011



Approved as to Form:

Paul F. Cardon

CERTIFICATE OF SERVICE

I certify that on February 25 2011, a copy of the foregoing Final Default Judgment was delivered to the following by:

☐ Hand Delivery

☐ Facsimile

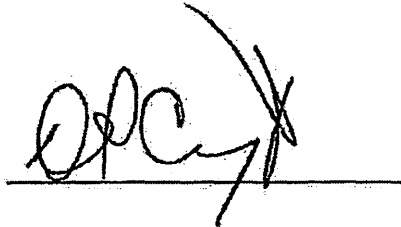
☒ U.S. Mail, postage prepaid

☐ Federal Express

☐ Certified Mail, Receipt No. ____, return receipt requested

☐ Email/Electronic Delivery

Paul F. Cardon
4407 West 4700 North
Benson, Utah 84335



ADDENDUM C

Blake S. Atkin #6903
ATKIN LAW OFFICES, P.C.
7579 North West Side Highway
Clifton, Idaho 83228
837 South 500 West, Suite 200
Bountiful, Utah 84010
Telephone: (801) 533-0300
Facsimile: (801) 533-0380
Email: batkin@atkinlawoffices.net

Attorneys for defendant Paul F. Cardon

**IN THE FIRST JUDICIAL DISTRICT COURT OF CACHE COUNTY, STATE OF
UTAH**

PACIFICORP,

Plaintiff,

v.

PAUL F. CARDON,

Defendants.

**DECLARATION NO. 2 OF PAUL F.
CARDON**

Civil No. 090100469

Judge: KEVIN K. ALLEN

Defendant Paul F. Cardon, pursuant to Utah Code Annotated section 78B-5-705 declares
as follows:

1. On March 29, 2011, this court entered default judgment against me.
2. That judgment had a provision I was enjoined from: "9. Obstructing or preventing PacificCorp access to Cutler Reservoir, including access along the former county road or lane that connects to Sam Fellow Road and that crosses through defendant's property."

3. The former county road referenced in the default judgment crosses my property for about a quarter mile and access to Cutler reservoir is available all along that former county road. The former county road ends before the lane that enters into my barn yard.
4. The tractors and other vehicles about which Pacificorp complains were all located within my barn yard and not on the county road.
5. Pacificorp has access to Cutler reservoir along the former county road long before reaching my barn yard and does not need to trespass on my ground, interrupting operations in the yard or digging ruts with their tires in irrigated land in order to access Cutler reservoir.
6. In fact, when installing fencing ^{on PFC} ~~adjacent~~ to the Cardon property, Pacificorp represented that access to the property for construction of the fence "would come from Cutler Reservoir." See, exhibit A attached hereto.
7. I declare under criminal penalty of the State of Utah, that the foregoing is true and correct.

Dated this 8 day of September, 2014

Paul F. Cardon
Paul F. Cardon

ADDENDUM D

Bret W. Reich (9542) (Bret.Reich@pacificorp.com)
Sam Meziani (9821) (Sam.Meziani@pacificorp.com)
PACIFICORP
1407 West North Temple, Suite 320
Salt Lake City, UT 84116
Telephone: (801) 220-4565

Attorneys for Plaintiff

STATE OF UTAH
IN THE FIRST DISTRICT COURT OF CACHE COUNTY

PACIFICORP,

Plaintiff,

vs.

PAUL F. CARDON,

Defendant.

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**DECLARATION OF
EVE F. DAVIES**

Civil No. 090100469

Honorable Kevin K. Allen

Eve Davies, under Utah Code Ann. §78B-5-705, states as follows:

1. I am employed by PacifiCorp as principal scientist for hydro resources. My duties and responsibilities include the management of Cutler Marsh and all environmental aspects of PacifiCorp's Federal Energy Regulatory Commission ("FERC") license and required Resource Management Plan for the Cutler hydroelectric project. I have personal knowledge of the matters stated in this declaration.

2. Pursuant to an Order Issuing New License for the Cutler Project, Project No. 2420-001, issued April 29, 1994 by FERC, PacifiCorp is obligated to maintain a buffer strip, up to 200 feet wide, install and maintain fences, among other things, all designed to protect its property and the integrity of the Cutler Project.
3. PacifiCorp was further required to prepare and implement a Resource Management Plan (RMP), which it did in July, 1995. An Order approving that plan was issued by FERC in November, 1995. In 2003, PacifiCorp submitted its first required Cutler Five-Year Monitoring Report, covering the period 1995-2002 and including the Cutler Monitoring Plan.
4. The RMP and the various FERC orders require a permanent vegetative buffer around the reservoir on lands owned by PacifiCorp, erosion control and other features, many of which are designed to prevent farming and agricultural encroachment to protect the integrity of the reservoir banks and improve water quality.
5. The various FERC orders require the development of the RMP and associated Cutler Five-Year Monitoring Report, which requires, at a minimum, an annual inspection of all Cutler buffer areas and fences, or more frequently where conditions warrant.
6. By 2002, PacifiCorp installed fencing and other property line posts at Cutler Reservoir, totaling more than 70 miles and 1100 acres of shoreline buffer.
7. I have also been involved for several years concerning PacifiCorp's long-standing property issues with Paul Cardon. Paul Cardon farms land adjacent to PacifiCorp

property and adjacent to the FERC-regulated buffer area. I have spoken to Cardon on many occasions.

8. In 2011, PacifiCorp obtained a Final Default Judgment which, among other things, prevents Paul Cardon from interfering with PacifiCorp's access to Cutler Reservoir and its property. An aerial photograph depicting the lane mentioned in Paragraph 9 of the Final Default Judgment is attached as Exhibit A.
9. On July 26, 2012, Bryan Westerberg, Scott Pratt (contractors for PacifiCorp) and I, accompanied by Cache County Deputy Sheriff Casey Sutherland, visited the Cardon property in order to complete an annual inspection. I requested Deputy Sutherland accompany us, per a requirement from my manager, after a confrontation with Paul on the property on June 6, 2012.
10. As we proceeded down the lane mentioned in Paragraph 9 of the 2011 Final Default Judgment, a large farm truck was parked at a narrow point, precluding access. A photograph of the farm truck is attached as Exhibit B.
11. Officer Sutherland approached Cardon's home and obtained permission from Cardon's wife to use an alternate route immediately north of the access lane.
12. While the alternate route was narrow and slightly obstructed, we determined that it was both dry enough and just wide enough to proceed.
13. After accessing the alternate lane route and driving to the end of the Cardon property along the lane we have historically used, Bryan and I walked to our property to do the monitoring; we completed the monitoring within 10 minutes and returned to the truck.

14. Upon our return to the lane, we encountered a spray of water where none had been earlier. We saw that an irrigation pipe had been turned on in the 20 or so minutes since we had passed. The ground in a small swale was very wet and muddy.
15. I estimate that in just a short while longer that area would have become impassable even with a 4WD vehicle. (The area is notorious for clay soils). I observed Officer Sutherland's patrol vehicle "fish tail" in the mud.
16. We made the sharp turn to the north to retrace our alternate path around the farm truck blocking the historic access lane, but had to stop immediately as a front-end loader had since been parked sideways in the alternate lane, completely blocking that path as well. A photograph of the front end loader is attached as Exhibit C.
17. We determined we could exit through another route to the north and left the Cardon property.
18. Although Cardon did not show up to speak with us, it is clear he was there as our initial path was obstructed, and our return path was hindered by water being turned on and a loader was used to block us in during the 20-30 minutes we were on his property, accessing PacifiCorp property. When we attempted to find him, his workers reported he had gone to town.
19. On July 17, 2013, Bryan Westerberg and Scott Pratt (contractors for PacifiCorp) and I, accompanied by Cache County Deputy Sheriffs David Pugmire and Blake Hansen, visited the PacifiCorp/Cardon property for an annual inspection.

20. As we approached the Cardon property, we saw a large piece of farm equipment blocking the right side of the access lane.
21. I then witnessed Paul Cardon move a second large tractor in the lane, blocking the left side access as well.
22. Attached as Exhibit D is a photograph taken at the time of our visit that depicts both pieces of farm equipment completely blocking access to our property.
23. Upon our vehicle approach, Cardon exited the tractor and disappeared quickly into the surrounding outbuildings.
24. The Sheriff Deputies were unable to locate Cardon or anyone at the house.
25. We left the property after declining to take an alternate route. We were unable to complete the annual inspection.
26. On April 30, 2014, Cardon was notified in writing that PacifiCorp would be conducting a site inspection.
27. On May 17, 2014, I called Mr. Wayne Cardon, Paul's father and our only contact with Paul, to let him know I would be conducting an inspection the following week. On May 20, 2014, Wayne called to tell me the water had been on for several days and I would not be able to complete my inspection.
28. On June 4, 2014, I returned to the Cardon property with a technician, and Cache County Deputy Sheriff Shane Zilles. Wayne Cardon, Paul Cardon's father, saw us arrive and followed us.

29. When I stopped to open a gate, Wayne approached me and stated there was "going to be trouble." When I asked him what he meant, he said that I would "find out," and that I should just go do whatever I felt I had to go do.

30. Wayne Cardon told Deputy Zilles the Cardons do not believe the Judgment gives PacifiCorp the right to cross through Paul Cardon's property past the point where the old county road ends. This is similar to Wayne Cardon's previous statements to me.

31. On several occasions, but most recently on May 17, 2014, Wayne Cardon told me the Judgment does not allow access beyond the point where the old county road ends.

32. I showed the Deputy Zilles the Judgment. Deputy Zilles stated that without a further Court order, he cannot definitively instruct Cardon as to the meaning of the Judgment, because Cardon believes the Judgment states something different.

I declare under criminal penalty of the State of Utah that the foregoing is true and correct.

August 4, 2014.


Eve F. Davies

CERTIFICATE OF SERVICE

I certify that on August 5, 2014, a copy of the foregoing Declaration of Eve F. Davies was delivered to the following by U.S. Mail, postage prepaid:

Paul F. Cardon
4407 West 4700 North
Benson, Utah 84335

/s/ Sam Meziani

ADDENDUM E

**IN THE FIRST JUDICIAL DISTRICT COURT
IN AND FOR THE COUNTY OF CACHE, STATE OF UTAH**

PACIFICORP, <div style="text-align: right;">Plaintiff,</div> vs. PAUL F. CARDON, <div style="text-align: right;">Defendant.</div>	MEMORANDUM DECISION Case No. 090100469 Judge: Kevin K. Allen
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THE ABOVE MATTER is before the Court pursuant to Plaintiff PacifiCorp's Motion to Enforce Judgment filed on August 4, 2014. The Court has reviewed the moving papers and examined applicable legal authorities. Having considered the foregoing, the Court issues the following Memorandum Decision.

SUMMARY

PacifiCorp, operating as Rocky Mountain Power, owns and maintains a piece of property surrounding a portion of Cutler Reservoir in Cache County, Utah. Pursuant to an order issued by the Federal Energy Regulatory Commission, PacifiCorp is required to maintain a 200 foot buffer strip of vegetation in order to prevent farming and agricultural encroachment, which will in turn "protect the integrity of the reservoir banks and improve water quality." Amended Complaint at 2. In order to comply with the regulation, PacifiCorp must periodically access the property to perform inspections. Defendant Paul Cardon is an adjacent property owner.

In February 2009, PacifiCorp filed a lawsuit against Cardon alleging nuisance and trespass. PacifiCorp also sought injunctive relief to prevent Cardon from inhibiting PacifiCorp's access to its land. In its Amended Complaint, PacifiCorp requested the following:

69. There exists a former county road or lane that connects to Sam Fellow Road ("Lane"). For decades, PacifiCorp and its predecessors in interest have used the Lane for access to Cutler Reservoir for management and maintenance purposes.

70. Cardon has interfered with PacifiCorp's maintenance and management of Cutler Reservoir.

71. PacifiCorp is entitled to and requests a judgment enjoining and prohibiting Cardon from further interfering with Cutler/Bear River watercourse and PacifiCorp's access to Cutler Reservoir over the Lane and otherwise. . .

On March 29, 2011, the Court entered a Final Default Judgment against Cardon. As part of that Judgment, Cardon was enjoined from "obstructing or preventing PacifiCorp's access to Cutler Reservoir, including access along the former county road or lane that connects to Sam Fellow Road and that crosses through Defendant's property." Final Default Judgment at 2, ¶ 9. PacifiCorp alleges Cardon has prevented it from accessing the property on at least three occasions by placing large pieces of farm equipment to block the lane or by flooding it with water. PacifiCorp contends Cardon's actions are in direct violation of the express language of the Judgment. It now moves to enforce the Judgment.

DISCUSSION/ANALYSIS

PacifiCorp seeks to enforce the Judgment by having the Court issue an order reiterating that Cardon shall not inhibit PacifiCorp's access to its property. It also requests the Court order the Cache County Sherriff's Office to escort PacifiCorp employees to the site if requested.

Cardon did not timely oppose the Motion. On September 2, 2014, PacifiCorp submitted its Motion for decision. Cardon subsequently hired counsel and filed a Motion to Strike Request to Submit and to Set Evidentiary Hearing. Cardon also filed a Motion to Enlarge Time to File a Response. A party has 14 days to file an opposition following service of a motion. UTAH R. CIV. P. 7(c)(1). Cardon states his response was untimely because he thought it was unnecessary

to file one since a hearing had been requested. Cardon relies on his pro se status at the time to justify his neglect. Courts are generally lenient with pro se litigants. *See generally Lundahl v. Quinn*, 2003 UT 11, 67 P.3d 10. The Court finds sufficient cause exists to excuse Cardon's neglect. Although Cardon is expected to follow procedural rules just as every other party, the Court's concern has been dispelled with the appearance of counsel on his behalf. Thus, the Motion to Enlarge Time is granted and the Court will consider the Opposition. However, the Court finds that it is not necessary to set the matter for a hearing because the issue has already been authoritatively decided. UTAH R. CIV. P. 7(e). The Motion to Strike Request to Submit and Set Evidentiary Hearing is therefore denied.

In opposition, Cardon maintains he is not violating the terms of the Judgment because the former country road ends before reaching his farmyard. In addition, Cardon contends PacifiCorp has access to Cutler Reservoir without having to drive through the middle of the property. The Court disagrees with Cardon's interpretation.

"A judgment must be enforced as written if the language is clear and unambiguous." *Bettinger v. Bettinger*, 793 P.2d 389, 391 (Utah Ct. App. 1990). Cardon attempts to create an ambiguity where none exists. He contends PacifiCorp has ample access to Cutler Reservoir long before reaching the Cardon farmyard. Simple access to Cutler Reservoir is not what PacifiCorp requested. The underlying purpose of the lawsuit was to prevent Cardon from interfering with PacifiCorp's legal obligation to maintain the buffer strip on its property. PacifiCorp cannot perform that obligation if it cannot access the property. Naturally, the Judgment does not give PacifiCorp unfettered access to go wherever it wants on Cardon's property. It does, however, provide limited access to the buffer strip "along the former country road or lane that connects to Sam Fellow Road and that crosses through Defendant's property." This includes the lane that passes through Cardon's farm yard and connects with the pathway leading to PacifiCorp's property.

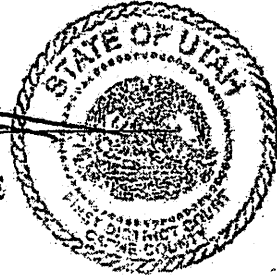
CONCLUSION

Accordingly, PacifiCorp's Motion to Enforce Judgment is granted. PacifiCorp shall prepare and submit a proposed order in conformity with this Memorandum Decision.

Dated this 3rd day of November, 2014.

BY THE COURT:


Kevin K. Allen
DISTRICT COURT JUDGE



CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 090100469 by the method and on the date specified.

EMAIL: BLAKE S ATKIN jenn@atkinlawoffices.net

EMAIL: SAM MEZIANI Sam.Meziani@pacificorp.com

EMAIL: DAVID C WRIGHT dwright@mwjlaw.com

Date: 11/03/2014

/s/ JANET REESE

Deputy Court Clerk

ADDENDUM F

/s/ Kevin K. Allen

District Court Judge

Attorneys for Plaintiff

[illegible]

1 of 4

3. Defendant's Motion to Enlarge Time to File a Response to Plaintiff's Motion to Enforce Judgment, filed September 22, 2014.

Based on the motions, supporting memoranda, Declaration of Eve F. Davies and exhibits, and Declarations of Paul F. Cardon, all exhibits submitted in support, the Final Default Judgment in this case dated March 29, 2011, and for Good Cause Appearing, the Court hereby orders as follows:

1. **Defendant's Motions.**

A. **Motion to Enlarge Time**

Defendant's Motion to Enlarge Time is GRANTED. The Court has therefore considered Defendant's Memorandum in Opposition to PacifiCorp's Motion to Enforce Judgment.

B. **Motion to Strike Request to Submit for Decision**

Defendant's Motion to Strike Request to Submit for Decision and to Set Evidentiary Hearing is DENIED.

2. **PacifiCorp's Motion to Enforce Judgment.**

PacifiCorp's Motion to Enforce Judgment is GRANTED.

1. As required by Paragraph 9 of the Final Default Judgment dated March 29, 2011, Paul F.

Cardon shall not obstruct or prevent PacifiCorp's access to Cutler Reservoir

"including access along the former county road or lane that connects to Sam Fellow

Road and that crosses through defendant's property." This includes the lane that

passes through Cardon's property and connects with the route leading to

PacifiCorp's

property.

2. If requested by PacifiCorp, the Cache County Sheriff's Office shall escort PacifiCorp employees onto the Cardon property in order to enforce this Order and to protect the safety of PacifiCorp employees.

IT IS SO ORDERED.

DATED: November____, 2014.

BY THE COURT:

Honorable Kevin K. Allen
District Court Judge

CERTIFICATE OF SERVICE

I certify that on November 17, 2014, a copy of the foregoing **Order Granting PacifiCorp's Motion to Enforce Judgment and Defendant's Motion to Enlarge Time and Denying Defendant's Motion to Strike** was delivered to the following by U.S. Mail, postage prepaid:

Blake S. Atkin
Atkin Law Offices, P.C.
7579 North West Side Highway
Clifton, Idaho 83228
837 South 500 West, Suite 200
Bountiful, Utah 84010

PACIFICORP

/s/ Sam Meziani

Bret W. Reich

Sam Meziani

Attorneys for Plaintiff