

WATER RIGHTS SETTLEMENT AGREEMENT
FOR
LEAP, SOUTH ASH, WET SANDY, LEEDS AND QUAIL CREEKS
DIXIE NATIONAL FOREST, UTAH

This Settlement Agreement is entered between the State of Utah (State), the United States, and the Washington County Water Conservancy District (WCWCD) in order to resolve and settle certain claims for water rights asserted In the Matter of the General Determination of Rights to the Use of All the Water Both Surface and Underground, Within the Drainage Area of the Virgin River in Washington, Iron and Kane Counties in Utah, Civil Number 800507596 filed in the Fifth Judicial District in and for Washington County, State of Utah, the WCWCD Change Application Number a18455 (81-51), and the protest of the Change Application filed by the United States Department of Agriculture, Forest Service.

PREAMBLE

A. The State initiated Civil No. 800507596 in the Fifth Judicial District Court in and for Washington County, Utah for the statutory adjudication of the surface and underground water rights within the Virgin River drainage, which covers a portion of the Dixie National Forest and the watersheds of Leap, South Ash, Wet Sandy, Leeds and Quail creeks. The United States has claimed Federal reserved water rights for surface flows from these creeks for National Forest purposes, with a priority date of when the surrounding lands were included in the National Forest System. The parties cannot agree as to the nature and extent of all such claims.

B. In addition to existing diversions on National Forest System lands in the watersheds, the WCWCD has filed applications with the State Engineer including a change application to divert from three of these five streams within the National Forest boundary. The Forest Service is concerned that the diversion of water contemplated by this application, and other applications that may be filed, may impact water related resources on the Dixie National Forest. In order to remove present and future conflicts over the diversion and use of water from Leap, South Ash, Wet Sandy, Leeds and Quail creeks on the Dixie National Forest, the parties have conducted negotiations regarding the water rights and potential future water uses from these streams.

C. The headwaters of Leap, South Ash, Wet Sandy, Leeds and Quail creeks on the east side of Pine Valley Mountain, are located within the Dixie National Forest. The parties believe that these streams represent a valuable public resource, and seek to ensure the streams are not further dewatered above existing locations identified in Paragraph 4, below. In addition, these streams

are an important source of water for the surrounding communities. Leap, South Ash and Leeds Creeks also contain populations of Bonneville cutthroat trout and the Forest Service has entered into conservation agreements to protect these fisheries.

D. These negotiations among the parties have resulted in the settlement of issues concerning: (1) Forest Service reserved water rights claims, (2) existing and future diversions of water under state appropriative rights, and (3) protection for instream flows within the National Forest boundary for the above named five streams within the Dixie National Forest. The use and maintenance of existing water diversion and delivery systems on National Forest System lands can continue as provided for in current or future Special Use Permits or easement agreements.

AGREEMENT

NOW, THEREFORE, based on the mutual promises contained herein, the parties agree to the following:

1. All existing perfected or approved state appropriative water rights as of the date of this agreement which divert from Leap, South Ash, Wet Sandy, Leeds or Quail Creeks, or tributaries, and located within the boundaries of the Dixie National Forest, are hereby recognized as set forth and defined in the records of the State Engineer. All existing water users can continue their diversion and use of water in accordance with the terms and conditions of their individual water rights and the special use authorization or Ditch Bill easement associated with the water rights.

2. All the year-round natural streamflow in excess of the water rights recognized in Paragraph 1, above, and this Paragraph 2, shall remain unimpeded and undeveloped on the National Forest above the points described in Paragraph 4. The Federal reserved water right of the United States to divert up to 1.0 acre - foot per annum from the watersheds of Leap, South Ash, Wet Sandy, Leeds and Quail creeks for National Forest purposes and as set forth in Attachment 1, is recognized. The state appropriative water right of the United States to divert 5.0 acre - feet per annum from Oak Grove Spring to supply the domestic and recreational needs of the Oak Grove campground, as provided for under Water Right Number 81-140, is recognized. Together with the protection provided to the natural streamflows within the National Forest boundary against dewatering by future diversions secured by this Agreement, the water rights set forth in Attachment 1 satisfy all existing and future water requirements for the management, operation and protection of the Dixie National Forest within the watersheds of the five named streams. The water rights recognized in this paragraph cover all claimed uses on the National Forest

except stockwatering and wildlife purposes. The United States retains the right to establish state appropriative water rights for stockwatering and wildlife uses in accordance with applicable laws.

3. The United States accepts the Federal reserved water rights recognized herein, and other provisions of this Agreement, in settlement of its claims for Federal reserved water rights for National Forest purposes. In consideration for the terms and conditions of this Agreement, the United States does not assert any entitlement to Federal reserved water rights under existing Federal laws on the streams identified in paragraph 1, above, or their tributaries, except as provided for in paragraph 2.

4. In recognition of the provisions in paragraph 3 above the State Engineer agrees that in order to protect public recreation and the natural stream environment for the five streams covered by this Agreement, and also considering other criteria set forth under U.C.A. 73-3-8, he will not grant new water right applications on the National Forest upstream of the points described below. Therefore, the Parties agree that new water right applications which propose to divert water from Leap, Wet Sandy or Leeds creeks will be required to divert water at or downstream of the existing points of diversion described as:

- a) Leap Creek - North 2447 ft. and West 543 ft. from the Southeast Corner, Section 22, T39S, R13W;
- b) Wet Sandy - North 2464 ft. and West 2937 ft. from the Southeast Corner, Section 7, T40S, R13W;
- c) Leeds Creek - South 811 ft. and West 291 ft. from the East 1/4 Corner, Section 36, T40S, R14W, all in SLB&M.

New water right applications which propose to divert water from South Ash or Quail creeks, will be required to divert water at or downstream of the National Forest boundary. For Quail Creek this boundary is the South line of Section 10, T41S, R14W, SLB&M.

5. The State Engineer will include the water rights set forth in Attachment 1 in his Proposed Determination of Water Rights covering Leap, South Ash, Wet Sandy, Leeds and Quail creeks. The State Engineer shall act upon applications for new appropriations or change applications which propose to divert water within the National Forest boundary in the drainages of Leap, South Ash, Wet Sandy, Leeds or Quail creeks in accordance with the provisions of this Agreement. The United States shall bear responsibility for filing appropriate protests in any proceeding before the State Engineer if necessary to protect its interests.

6. The United States and the State agree that this Agreement shall be submitted to the Court for approval in the general water adjudication in lieu of Water User's Claims, to provide for the protection of streamflows on the National Forest within the drainages of Leap, South Ash, Wet Sandy, Leeds and Quail creeks.

7. Water diversions for existing perfected or approved state appropriative water rights from any of the five named streams within the Dixie National Forest are made pursuant to: (1) special use permits in place for water diversion and conveyance systems on Leeds Creek, located just within the National Forest boundary; and (2) pending applications for Ditch Bill easements on Leap, South Ash, and Wet Sandy creeks. There are no existing water diversions on National Forest System lands on Quail Creek. In considering authorizations for future water resource development purposes at or below existing diversions on Leap, Wet Sandy, and Leeds creeks identified in Paragraph 4 above, the United States shall take into account the terms, conditions, and objectives of the existing special use permits, Ditch Bill easements, and this Agreement. This Agreement shall be effective immediately upon issuance of easements in compliance with the Ditch Bill Act of 1986 on applications pending for Leap, South Ash, and Wet Sandy creeks.

8. The WCWCD will amend Change Application Number a18455 (81-51) to move the point of diversion on South Ash Creek downstream of the National Forest boundary. The United States will withdraw its protest of this application and will not protest future water right change applications filed on the streams covered by this Agreement, which are consistent with the terms and conditions set forth in this Agreement.

9. Because of the unique nature of this Agreement, nothing in this Agreement shall constitute an admission, waiver or precedent as to any party for any other Federal reserved water right claims on National Forest System lands in the State of Utah.

10. Nothing in this Agreement shall be construed or interpreted to:

a. in any way affect the water rights of the United States, its federal agencies or federal interests other than for the five streams covered by this Agreement;

b. establish any standard to be used for the quantification of Federal reserved water rights in any other judicial or administrative proceeding;

c. limit in any way the rights of the parties or any person to litigate any issue or question not resolved by this Agreement;

d. restrict the power of the United States to reserve water in the future outside the five watersheds described in this Agreement, or to acquire additional rights to the use of water under the laws of Utah; or

e. restrict the power of the State or the State Engineer in allocating, administering or distributing the waters of the State, except as provided for in paragraph 4 above.

11. Upon a proper showing of necessity and mutual consent, the parties to this Agreement may modify any provision herein by written amendment.

12. If any commitment of any one of the parties to this Agreement, or water rights recognized herein, are found to be unlawful and of no effect, the Agreement is voidable at the option of the United States or the State.

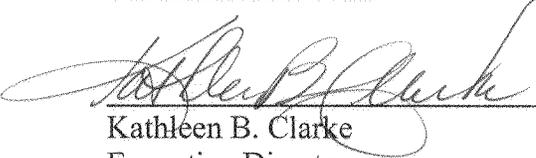
ATTACHMENT 1

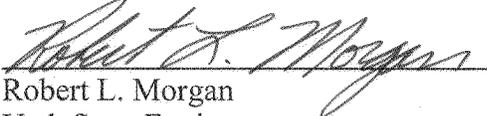
**ADMINISTRATIVE AND FEDERAL RESERVED WATER RIGHTS
LEAP, SOUTH ASH, WET SANDY, LEEDS, AND QUAIL CREEKS
PINE VALLEY RANGER DISTRICT, DIXIE NATIONAL FOREST**

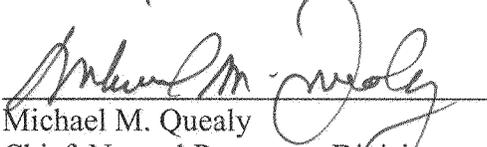
WATER RIGHT	WATER SOURCE	AMOUNT	PRIORITY DATE	LEGAL LOCATION (SLBM)	TYPE OF USE AND PERIOD OF USE	PLACE OF USE
81-140 A12477 Cert. 2310	Oak Grove Spring	0.016 cfs or 5 acre-feet	9/10/1937	N 691 ft., E 1077 ft. SW corner, Sec. 8, T40S, R14W	Recreation. domestic and camp- ground uses 3/1 - 12/31	SESW and SWSW Sec. 8; NWNW and NENW Sec. 17, T40S, R14W
Federal Reserved	Leap, South Ash, Wet Sandy, Quail, and Leeds creeks, and tributaries	1.0 acre- foot	9/25/1905	S 1353 ft., W 3300 ft., NE corner, Sec. 19, T39S, R13W for Browse Guard Station, and other points to be determined	Domestic, recreation, firefighting, and other uses. 1/1 - 12/31	SWNE, Sec. 19, T39S, R13W, and other locations to be determined.

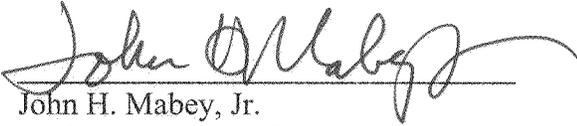
It being resolved and agreed to as delineated above, the undersigned parties express their mutual agreement hereto this 11th day of January, 1998⁹.

For the State of Utah:

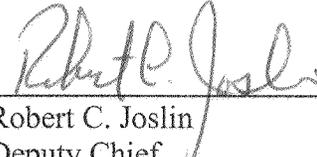

Kathleen B. Clarke
Executive Director
Utah Department of Natural Resources

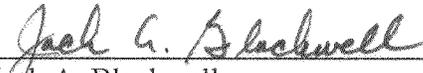

Robert L. Morgan
Utah State Engineer


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For the United States:


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USDA Forest Service


Jack A. Blackwell
Regional Forester


Hugh C. Thompson
Forest Supervisor
Dixie National Forest


Andrew F. Walch
U.S. Department of Justice

For the Washington County Water Conservancy District


Ronald W. Thompson
Manager