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COURTESY COPY

**IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR  
SALT LAKE COUNTY, STATE OF UTAH**

IN THE MATTER OF THE UNITED EFFORT  
PLAN TRUST Dated November 9, 1942,  
Amended April 10, 1946, and Amended and  
Restated on November 3, 1998; and its  
TRUSTEES, including known trustees  
TRUMAN BARLOW, WARREN JEFFS,  
LEROY JEFFS, WINSTON BLACKMORE,  
JAMES ZITTING and WILLIAM E. JESSOP  
a/k/a WILLIAM E. TIMPSON DOE  
TRUSTEES I THROUGH IX.

**EMERGENCY REPORT OF THE  
ARIZONA ATTORNEY GENERAL'S  
OFFICE**

**AND**

**RECOMMENDATION FOR EXPEDITED  
STATUS CONFERENCE**

Civil No. 053900848

Judge Denise P. Lindberg

The Office of the Arizona Attorney General ("Arizona AG") files the following report on incidents relating to administration of the United Effort Plan Trust (the "Trust") and recommends

that the Court set a status conference at its earliest convenience<sup>1</sup> to hear of events and conditions involving administration of the Trust that display growing tension among local residents in Colorado City and Hildale and either confusion about or outright disregard for the authority of this Court by local law enforcement officers. Local police personnel have now established a pattern of routinely refusing to intervene to stop uses or alteration of Trust property that was not authorized by the Special Fiduciary, sometimes in direct conflict with those who the Special Fiduciary has formally granted rights to use the property. In contrast to their disregard for the authority and pleas of the Special Fiduciary and those cooperating with him, local police recently forced Trust occupants who are pursuing civil rights remedies against the municipalities to allow the police to dig an enormous hole in the Trust property they occupy, in the name of pursuing an “investigation” of a theft of utilities claimed by an alleged irrigation company whose interest in controlling local irrigation water has been formally questioned in this action. Such ongoing attempts to challenge the Special Fiduciary’s actions and authority, and to burden those cooperating with the Special Fiduciary, are contributing to growing tensions in the communities over use of Trust property.

Though some important recent events are summarized below, an expedited status conference can allow the Court to receive additional details on the nature and scope of recent events and the local police responses to them.<sup>2</sup> The Court and parties can then be prepared to discuss the sources of the current disputes over use of Trust property, legal issues associated with them, and potential solutions to them, including additional orders or other proceedings, including contempt proceedings, that may be necessary to enforce the Court’s existing orders.

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<sup>1</sup> Counsel undersigned is unavailable to travel to Utah between July 15, 2010 and July 26, 2010, but is available to participate in a status conference at the Court’s convenience both before and after those dates.

<sup>2</sup> Rule 16(a, b), Utah Rules of Civil Procedure authorizes the Court on its own discretion to schedule conferences to help manage the cases before it. The Arizona AG believes that the facts disclosed here should be sufficient to motivate the Court to exercise its independent discretion to hold a status conference.

**I. The Court's Orders and Directives Regarding Management and Use of Trust Properties Are Being Ignored.**

**A. The Court Has Ordered That the Special Fiduciary Has the Exclusive Powers to Manage and Lease Trust Property as the Court's Delegate.**

This Court's May 27, 2005 Ex Parte Restraining Order suspended the prior trustees and appointed Mr. Bruce Wisan as Special Fiduciary. (Exhibit "1" hereto, at ¶¶'s 1,2).<sup>3</sup> The Court's order dated September 2, 2005, expanded the Special Fiduciary's powers to include authority to "manage, lease or rent the property of the Trust as such action is deemed reasonable, prudent, and/or necessary in the discretion of the Fiduciary." (Exhibit "2" hereto at 3, ¶ (b)). By Preliminary Injunction Order dated February 1, 2006, the Court ordered that:

Any and all persons who receive notice of the TRO or this Preliminary Injunction Order are hereby enjoined from detaching and/or removing any and all property attached or affixed to any real estate owned by the United Effort Plan Trust – including but not limited to improvements, buildings, fixtures, modular homes, heating systems, cooling systems, electrical systems, plumbing systems, water systems, sewer systems, irrigation systems, elevator systems, and any other affixed equipment – unless prior written consent for such detachment and/or removal is obtained from Bruce R. Wisan, the Court-appointed special fiduciary of the United Effort Plan Trust, or from this Court.

(Exhibit "3" hereto at 3, ¶ 1). That same order provided that it "shall remain in effect throughout the pendency of the above-captioned civil action, unless otherwise ordered by the Court." (*Id.* at ¶ 2). Thus, the order is still in effect. The Special Fiduciary had this preliminary injunction order domesticated in Arizona through the Superior Court of the State of Arizona, In and For the County of Mohave on February 3, 2006. (*See* Exhibit "4" hereto). Thus, the injunction order also remains pending as the order of an Arizona court.

The Court, by Order dated October 25, 2006, issued a final order that provided, among other things: 1) that the February 1, 2006 preliminary injunction order "enjoining persons from removing property from the Trust, remains in place;" 2) that the previously suspended trustees of the Trust were removed immediately; and 3) that "[u]ntil and unless the Court orders otherwise,

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<sup>3</sup> Copies of relevant orders are attached for the Court's convenience given its recent indications that the Court's file is not available.

the Special Fiduciary shall retain all authority previously extended to him by the Court.” (Exhibit “5” hereto at 4-5). Thus, the Special Fiduciary retains the exclusive authority on behalf of the Court and the Trust to manage, lease or rent the property of the Trust. Moreover, the February 1, 2006 injunction order remains binding.

During the hearing held in this action on July 29, 2009, Shane Stubbs, an individual who has leased property from the Trust raised difficulties he was having getting the local police in the Colorado City, Arizona area to honor lease rights he believed he had been granted by the Special Fiduciary. The following exchange occurred:

THE COURT: Okay. All right. With that, I thank you and - yes, Mr. Stubbs?

MR. STUBBS: I'm trying to cut little wheat on one of them pivots and the officers are stopping us -

THE COURT: *If you have a lease with the trust, it is this Court's order that that lease be respected and you need to be able to do that.*

MR. STUBBS: They claim that they need a court order from you to -

THE COURT: *There is not court order, no - the leases - anything that's been negotiated by Mr. Wisan, this Court stands behind, period.*

MR. JESSOP: Your Honor, the issue is, we've been using the land for the last 20 years. What process do we get from the fiduciary that suddenly he's giving a lease? That's the problem we had with the Hainlines. He gives two leases for the same piece of property and that's a problem.

THE COURT: Mr. Jessop, you can negotiate a lease too.

MR. JESSOP: I'd love to, never got the option.

THE COURT: Let me say this, there is an [sic] there has been in place since 2006 a process for asking for trust benefits. There has been in place a process for negotiating leases. I don't know where, you know, where the hangup is but that process cannot be subverted.

MR. JESSOP: We need to know the process. We have no process.

MR. (?) [PARKER]: I would suggest, Your Honor, that if the Fiduciary - if someone thinks they have a legal contract with the Fiduciary, that there's a legal

process for them to go through to deal with that issue and then have it dealt with in some courtroom setting where all of the evidence and all of the information can be put forward so that you aren't asked to make a spur of the moment decision without knowing what's going on.

THE COURT: And I'm not making a spur of the moment decision but what I am saying is

MR. (?) [PARKER]: That's what should happen.

THE COURT: *No*. What I am saying is that for the present, the fiduciary has been given authority by this Court to make certain, take certain actions and this Court stands behind those determinations. If there are legitimate legal challenges to those determinations then that can be pursued in the appropriate setting. I'm not going to second guess. I don't have the information right now. I'm just making a general statement about my position with respect to supporting the agreements that have been entered into in good faith on the reliance of the backing of this Court.

One more comment from Mr. Richards and then one more comment from Ms. Harker and then we're done.

MR. RICHARDS: Sorry, Your Honor. Your Honor, I think that what Mr. Parker was suggesting is potentially a process that the police seem to be relying on which is simply to say, look, there's a dispute over all of this property and therefore, that has to be resolved by a separate court order and we can't enforce anything.

My understanding is, your order has been opposite of that, that in fact there is a valid, there's a lease that's been issued, that lease comes with this Court's authority and I assume, we have counsel for the city here, I assume that will [be] communicated back to the city.

THE COURT: *That is my position.*

(Exhibit "6" hereto at p. 108, line 9 - 110, line 19 [emphasis added]). The Colorado City Town Manager, David Darger, was present in the court at this hearing, as was Colorado City's counsel. There was no confusion that the Court stood behind the enforceability of the leases issued by the Special Fiduciary and expected that everyone else, including the police whose non-cooperation Mr. Stubbs was complaining about, would respect the Court's authority as exercised by the Special Fiduciary.

## **II. The Local Colorado City Marshal's Office Is Aware of This Court's Orders.**

### **A. The Marshal's Office Received the Court's February 1, 2006 Injunction.**

In addition to Colorado City representatives getting the directive from the Court on July 29, 2009, the law enforcement officials for Colorado City were also aware much earlier of the Court's preliminary injunction order from February 1, 2006. As the Court is aware, in 2006 the Special Fiduciary's counsel attempted to depose officers of the Marshal's Office that serves both Colorado City, Arizona and Hildale, Utah related to the removal of property from Trust land. The Special Fiduciary was ultimately required to obtain an order compelling testimony from the Mohave County Superior Court. (*See* Exhibit "7" hereto). The records of those depositions prove that the Marshal's Office was given the Court's February 1, 2006 Preliminary Injunction Order. (*See* Exhibit "8" hereto at p. 136, lns. 7-11 [police chief admitting having seen the preliminary injunction]).

### **B. The Arizona Peace Officers Agency Informed the Marshal's Office of the Court's Orders.**

Moreover, the Arizona Peace Officer Standards and Training Board ("AZPOST"), the Arizona agency that regulates licensing of sworn peace officers, served the Marshal's Office with a letter dated March 21, 2006, in which AZPOST emphasized its expectation that officers in Colorado City would enforce the orders of this Court. (*See* Exhibit "9" hereto). The letter from AZPOST stated, in relevant part:

POST is familiar with the court order that places sole control of the United Effort Plan (UEP) Trust property in the hands of a special fiduciary. There is also a definitive court order that gives the special fiduciary sole authority and control over UEP property. It unequivocally orders that no person may remove property without authorization of the special fiduciary or a court order. Officers must take whatever steps are reasonably necessary, including impoundment of the property in question, to prevent the unauthorized removal of UEP property from trust lands. . . . *POST will not accept the claim that 'it is a civil matter' as justification for refusal to enforce the law as definitively, specifically and clearly set out by the court order.*

If there is any disagreement about whether property is legitimately UEP property, you are expected to prevent its removal and seek written authorization from the

special fiduciary or a court order authorizing its removal, or to require the persons attempting to remove the property to present such written authorization.

\* \* \*

Officers must not prevent persons who possess written authorization from the special fiduciary from entering land under UEP control.

(*Id.* at 1-2 [emphasis added]). Subsequently, AZPOST conducted an investigation “into the reports that officers from the Marshal’s Office may have violated AzPOST regulations in their alleged failures to protect UEP Trust property . . . .” (See Exhibit “10” hereto at 4, ¶ 13). That investigation resulted in formal decertification proceedings, including the following findings from an administrative law judge:

- 1) that when Colorado City Marshal Fred J. Barlow “refused to answer the deposition questions about possible violations of a valid court order by certain members of the Colorado City/Hildale community, he betrayed his oath;” and
- 2) that Marshal Barlow had a duty to uphold valid court orders that further required him to cooperate in the Special Fiduciary’s investigation, and that “Marshal Barlow’s refusal to answer” certain questions at a deposition a) “constitutes nonfeasance in office;” and b) “tended to disrupt, diminish, and jeopardize public trust in the law enforcement profession, because his answers made clear he was more concerned with protecting members of the FLDS than he was with enforcing a valid court order,” both of which provided grounds for AZPOST to revoke, suspend, cancel, or otherwise sanction his peace officer's certification.

(See *id.* at 66, ¶¶ 24-26). Thus, the Colorado City and Hildale police have been well aware for many years of the February 1, 2006 Preliminary Injunction Order and governmental expectations that they, as state-certified and regulated government law enforcement officials, would honor it.

**C. Representatives of the Special Fiduciary and Others Have Given Marshal’s Office Officers Notice of the Court’s Orders and Directives, But the Officers Claim They Cannot Stop Unauthorized Interference with Trust Leases or Trust Property Because the Disputes Are “Civil Matters.”**

The local police have been reminded of this Court’s directives by being shown or read copies of the Court’s statements from the July 29, 2009 hearing about standing behind the leases made by Mr. Wisan. (See Exhibit “11” hereto, File Chapter 1, at 0:07:44-0:10:37; File Chapter 3 at 0:50:32 - 0:51:05). Yet, there appear to be multiple examples since at least mid-2009 when the local police have refused when requested to stop alleged trespassing on or unauthorized use of

Trust land, claiming that because the incident involves a “civil dispute” a further court order is required.

**1. The Failure to Stop Use of Trust Grain Bins.**

A few examples of police inaction are caught on video footage submitted with this motion, and include local police responding to requests of representatives of the Trust regarding unauthorized use of certain grain bins. The Trust’s representative told the responding officer that Mr. Wisan wanted the property locked up and anyone breaking the locks to be charged with trespassing. The officer responded, in relevant part that “without papers here, this is a civil dispute,” “this is you versus them,” and that “[i]f these people are using it as tenants, I need a paper before I can cite as trespass it has to say, just like the law states, and Helaman said the other day that, that we need, being a civil dispute, it’s ‘no this is my land, no this is my land,’ or ‘no this is my, my dog, no this is my dog.’ I have to have a paper saying ‘this, this is thus.’” (Exhibit “11” hereto, File Chapter 1 at 0:03:45 – 0:3:52; at 0:04:30 – 0:5:10). The officer further explains his reluctance to intervene when having the Court’s July 29, 2009 statements read to him, saying “it’s a civil issue” and that “I, in order to arrest somebody I need proof of who actually is the lease [sic] . . .” (*Id.* at 0:7:44 – 0:10:37). He then adds:

Well and here’s, here’s the thing that I’m getting at is I can’t tread on somebody’s constitutional rights just because this judge says ‘yeah you go, can go tread on their rights,’ unless it’s a summons that has to be due process that says, “we told ‘em to get off, they wouldn’t get off, now you tell ‘em to get off, judge,’ and then the judge says, ‘get off or you will be arrested.’

(*See id.* at 0:10:37- 0:11:07).

**2. Multiple Failures to Stop Plowing of Fields and Notice to the Police of Violations of the Court’s Injunction Order.**

The enclosed video footage further includes local police failing to stop plowing activities in January, 2010 on farming land that Mr. Stubbs claims to have leased from the Special Fiduciary. (*See* Exhibit “11” hereto, File Chapter 2). During the incident, a local police officer tells the Trust’s representative that “[t]his property is still in dispute,” that “[n]othing’s ever been

ordered by a judge saying that, uh, Jessops don't have a right to be here," and that "[t]here is state law that a Utah judge cannot overrule Arizona state law." (See Exhibit "11" hereto, File Chapter 2 at 0:39:17-0:40:18). Eventually, a local police official told Mr. Stubbs and others that the town's attorney had advised him that "we do not have authority to tell either party to leave" the Trust property. (See *id.*, File Chapter 2 at 0:49:00 – 0:49:20). A local police officer was also called to an incident regarding removal of a water trough owned by Mr. Stubbs from Trust land and observed a location where well equipment on Trust property had been removed and the well cap welded shut, all without authority of the Special Fiduciary or the Court. (See *id.* at File Chapter 5).<sup>4</sup> A local police officer was also informed recently that someone had altered fencing and run off cattle being kept on land leased from the Trust by Mr. Stubbs. (See *id.* File Chapter 3 at 0:54:40-0:55:29; and at 1:00:30 – 1:00:50). All these actions appear to be direct violations of the Court's injunction order. The Arizona AG is not aware of what actions, if any, the local police have taken to address these violations of the Court's preliminary injunction order. If they have not taken appropriate steps to enforce the Court's order because the matter is, to their minds, a "civil dispute", they would be in direct violation of both this Court's prior injunction order and the directive they received from AZPOST back in 2006. (See Exhibit "9" hereto).

More recently, a police report forwarded to the Arizona AG by the attempted intervenors' counsel, Mr. Okazaki, indicates that the Colorado City Marshal's Office was called by someone named Terrill Johnson on or before May 24, 2010. According to the police report, Mr. Johnson "asked if anyone was going to be arrested if they went out and prepared and planted a Berry Knoll field," and "said he had reconnected the power to the wells . . . ." (See Exhibit "12" hereto at 7). The Arizona AG understands that the Mayor of Colorado City is named Terrill Johnson.

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<sup>4</sup> The Arizona AG does not know who was responsible for the conduct alleged in this video footage, including removal of a water trough, well and pipelines issues, and the Arizona AG neither makes assumptions about who is responsible nor adopts speculation conveyed by the participants in the video footage as accurate. However, the Arizona AG is interested in pursuing further discovery into who is responsible for these incidents, as reflected in its pending motion to allow discovery. Such discovery is critical to effective ongoing trust administration decisions.

The report begs the question of who had turned off the power to the wells in the first place. The police report confirms that an officer responded to Mr. Johnson that “following the directions of the city prosecutor the Marshals [sic] office was not going to arrest anyone” and that the “Marshals [sic] department was not going to decide who could use the property until a court of jurisdiction decided and issued a court order.” (*See id.*)

On or about May 24, 2010, farm equipment appeared at the Berry Knoll Farm and began plowing ground there that Shane Stubbs claims he has leased from the Special Fiduciary. (*See* Exhibit 11 hereto, at File Chapter 3; *see also* Exhibits “13” and “14” hereto). The video footage of the responding Marshal’s Office officer to the Stubbs’ demand that the plowing be stopped show the local police officer stating that the city attorney has told the police to treat such incidents as a property dispute, and that “basically the city attorney has instructed the police department to run it past him before we do anything. In the past I think he’s told the others guys to not tell them to quit.” (*See id.* at File Chapter 3 at 0:52:10 – 0:52:38; at 0:53:56 – 0:54:01).

The video further shows the responding officer stating that he had conferred with a superior and was told not to stop the plowing being done without the Special Fiduciary and lessee’s authorization. He states that the “city attorney’s told us not to decide one way or the other” and that “he told us not to say whether you could use it or they could use it.” (*See* Exhibit “11” hereto, File Chapter 3, at 0:57:35 – 0:58:15). The officer explains that “I think the reason that we’re, that the city attorney’s told us not to decide is because we went through this issue last spring and pretty much he decided then it was a civil dispute over who had the right to be here, and so,” and then that “[o]ur city attorney is the one that’s gonna tell us the way to do this and we’re handling it the way he’s told us.” (*See id.* at 0:58:35 – 0:58:57; and at 1:02:00 – 1:02:20).

Finally, the enclosed video footage also shows that someone had, apparently without the Special Fiduciary’s authority, recently placed sheep to graze on another field Mr. Stubbs claims to have leased from the Trust, and a police officer was told the sheep should be taken out of the field and put back where they belong. (*See* Exhibit “11” hereto at File Chapter 3 at 0:55:47 – 0:56:00; at File Chapter 4).

Mr. Okazaki, counsel to those claiming “stewardships” on the Berry Knoll Farm adverse to Mr. Stubbs’ lease from the Trust, has provided the Arizona AG with a tape recording made by a police officer of an encounter, apparently on the day the police were refusing to stop the plowing on the Berry Knoll Farm, between Shane Stubbs, Claude Seth Cooke (a member of the Trust’s Advisory Board), and a Marshal’s Office officer. A copy of the recording is enclosed with this filing as Exhibit “15”. The recording exhibits the type of tensions arising from the disputes over the enforceability of the Trust’s leases and this Court’s orders. After reviewing the recording, the Arizona AG adopted the position that Mr. Cooke should not continue on the Advisory Board. Since that time, Mr. Cooke has resigned his position on the Advisory Board.

**D. The Local Police Have Acted Differently When it Comes to Claims Against Those Cooperating with the Special Fiduciary.**

Yet, just a few days after the May 24, 2010 incidents at the Berry Knoll Farm, a Marshal’s Office officer arrived at a residence in Colorado City that the Trust had leased to Ron and Jinjer Cooke. Mr. Cooke is a former FLDS member, the brother of Claude Seth Cooke, and returned with his family to live in the Colorado City area after serious injuries in a construction accident left him disabled. (See Exhibit “16” hereto at ¶¶ 24-28). The local government’s refusal to honor Mr. Cooke’s request for utilities has resulted in findings by the Arizona Attorney General’s Civil Rights Division that local government has unlawfully discriminated against Mr. Cooke based on disability and religion, and a lawsuit filed on June 25, 2010, by the Arizona AG against various local entities for unlawful discrimination in violation of housing laws. (See *id.* at ¶ 71).

The officer who arrived at the Cooke residence, Helaman Barlow, was accompanied by a backhoe operated by someone identifying himself as Scott Jessop. Officer Barlow identified Mr. Jessop as the field manager of the local irrigation company who was accusing the residents of theft of utilities for having tapped into a water line allegedly belonging to the irrigation company. (See Exhibit “11” hereto, File Chapter 6 at 1:41:00 – 1:42:10). As the Court is aware, the Arizona AG has previously noted a significant dispute exists over whether the right to irrigation

water being stored and used in Colorado City actually belongs to the Trust, and over the mysterious creation of a new irrigation company and a quitclaim deed of an irrigation water right in 1998 from a supposed corporate entity that did not apparently exist at that time in either Utah or Arizona. (See Memorandum in Support of Motion for Partial Lift of Stay and for Order Authorizing and Directing Discovery and Recommendations [filed December 21, 2009] at 5-7).

During the officer's visit to the Cooke residence, Seth Cooke and a representative of the Trust, Jethro Barlow, specifically informed the officer that the Trust believed the irrigation water belonged to the Trust. (Exhibit "11" hereto at File Chapter 6 at 1:34:35 – 1:34:48; 1:45:50 – 1:46:08). Officer Barlow nevertheless demanded that he be allowed to immediately dig up the Cooke's yard to conduct an "investigation" into the theft of utilities allegation. Officer Barlow was told he was not authorized to do so and was asked to wait until someone from the Mohave County Sheriff's Office arrived. (*Id.* at 1:35:50 – 1:35:55).

Officer Barlow ignored the refusal to allow him to dig, and he handcuffed Seth Cooke and cited him for obstruction of justice for parking a car over the site where Officer Barlow demanded to dig. When Mr. Cooke eventually moved the car after the officer agreed he would only cite him and not also take him to jail if he moved the vehicle, Officer Barlow had Scott Jessop dig a very large hole in the Cooke's front yard. (*Id.* at 1:44:50 – 1:47:15). Unlike the incident where a Colorado City officer had refused to stop the plowing on the Berry Knoll Farm and instead demanded that the Stubbs provide their "paperwork," the officer here did not indicate that he had required similar proof from the irrigation company in the Cooke incident or that he had pre-confirmed that the irrigation company in fact had rights superior to the Trust over the irrigation water before he forced the Cookes to accept digging in their front yard without a warrant and without exigent circumstances.

Moreover, a few days after the Cooke's yard was dug up, they received an invoice charging them several hundred dollars for the excavation on letterhead from "South Side Irrigation Co., Inc." (See Exhibit "17"). A check of the current corporate records in both Arizona and Utah confirms that there is no such corporation registered in either state. (See Exhibit "18" hereto).

Thus, the evidence now indicates that officer Barlow may have commanded that Trust property be dug up to pursue criminal charges being sought by a non-existent company.

The Arizona AG understand that the incidents described above are just some of the incidents in the past year or so in which the local police have refused to stop encroachments on Trust property that were not authorized by the Special Fiduciary. These recent events indicate that, even if the local police conduct can be legally justified, the actions and inaction of the local police have only encouraged those who wish to flaunt the Court's orders and openly defy the authority of the Special Fiduciary to become more bold and less respectful of the authority and orders of this Court.

**E. Disparate Treatment of Police Records.**

The attitude of the local police is further exhibited by their treatment of their public police records. Since November 10, 2009, the Arizona AG has been attempting to obtain public records from Colorado City and Hildale related to trespassing allegations involving Trust property over a multi-year period. (See Exhibits "19" – "21" hereto.) As of this filing, some six months after the Arizona AG complied with the town's demand for a more detailed public records request on official town forms, the Arizona AG has received only documents for years 2006 and 2007, and none of the more current records, which are apparently still under review by counsel. (See Exhibits "21 -25" hereto). Yet, the purported FLDS members' attorney, Mr. Okazaki, was able to supply the Arizona AG with copies of both local Colorado City police report documents and the police tape of a conversation with Seth Cooke within days of the May 24, 2010 incident. (See Exhibit "12" hereto). Noting this disparity in practice, the Arizona AG promptly made a demand on counsel for Colorado City that they provide the Arizona AG copies of the police reports for the Berry Knoll Farm incidents on May 24, 2010 and the digging incident at the Cooke residence on June 2, 2010. (See Exhibits "22" and "23" hereto). After waiting almost two weeks for a response, the Arizona AG was informed that the towns yet again required that the Arizona AG submit a request for those specific documents on the town's forms, even though the records were covered by the six-month-old request that Colorado City has yet to fully comply

with. (See Exhibit "25" hereto.) Despite having sent the new request, with objections noted, the Arizona AG has not received the documents requested.

**III. The Claims About a Civil Dispute Appear Legally Questionable and Are Subject to This Court's Continuing Administrative Jurisdiction.**

The Colorado City police have indicated that their city attorney has advised them not to intervene in any disputes over Trust property because they are civil disputes and would require a further court order that someone had no interest in use of the property before the police could take actions against them. Their position that there exists a legitimate legal dispute over who has rights to utilize various properties appears legally suspect.

**A. The Claims by Attempted Intervenors and Others of Superior Rights to Use Trust Property in Arizona Appear to Fail to Meet Prerequisite Showing of Written Conveyance of Right.**

The Arizona AG is aware of no written agreements conferring tenancy or use rights on any of the persons now disputing, for example, the Special Fiduciary's lease of property at the Berry Knoll Farm site.<sup>5</sup> Nor could such persons likely prove a legally enforceable interest in exclusively occupying and using the property. After all, any such interest would need to comply with the Arizona Statute of Frauds, A.R.S. § 44-101(6), which prohibits enforcement of "an agreement for leasing for a longer period than one year, or for the sale of real property or an interest therein" unless 1) "the promise or agreement . . . is in writing and signed by the party to be charged;" and 2) if the promise were made by an agent of the Trust, "the authority of the agent is in writing, subscribed by the party sought to be charged." As the Trust has not issued those claiming a pre-existing "stewardship" over the Berry Knoll Farm property any written

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<sup>5</sup> Though some persons have apparently recorded in Mohave County, Arizona notices claiming an interest in, or a *lis pendens* impacting, the Berry Knoll Farm properties, such self-proclaimed interests do not create any legal rights. Instead, a notice of *lis pendens* under Arizona law serves only to provide prospective buyers with adequate notice of pending litigation that may impact the buyers' rights in the property. It does not create any substantive property rights in the person recording the notice. See *Kelly v. Perry*, 111 Ariz. 382, 385, 531 P.2d 139, 142 (1975). In fact, unless the party filing a *lis pendens* can establish an interest authorized by statute, judgment or other specific legal authority, the *lis pendens* is groundless and invalid. A.R.S. § 33-420(D).

authorization to use that property since the Court started this administrative proceeding some five years ago, the persons contesting the leases issued by the Special Fiduciary would have to produce an authentic written conveyance instrument meeting the statute of frauds requirements. The Arizona AG is not yet aware that any such conveyance instruments exist.

Moreover, if the persons claiming stewardship interests claim some sort of life estate they must also prove that their interest was "conveyed in writing subscribed and delivered by the party disposing of the estate of by his agent thereunto authorized by writing." A.R.S. §§ 33-202; 33-401(A). Again, the Arizona AG is aware of no such writings conferring an ongoing interest in the attempted intervenors or others not authorized by the Special Fiduciary.

Also, even assuming such persons could show the prerequisites to some form of an enforceable tenancy agreement predating the Court's administration of the Trust, the most they could claim thereafter is the status of a tenant at sufferance under Arizona law. A tenant at sufferance is one who, having lawfully entered upon the premises, holds over with the landowner's knowledge and acquiescence. *See Andreola v. Arizona Bank*, 26 Ariz. App. 556, 558, 550 P.2d 110, 112 (1976). There is substantial reason to question how the persons attempting to use the Berry Knoll Farm area could qualify as tenants at sufferance given the admission of their own counsel, Mr. Okazaki, in a recent letter that "this property has not been used for several years, and has been neglected." (Exhibit "12" hereto). Thus, they had abandoned any interest in the property. *See, e.g., In re Bryant Universal Roofing*, 218 B.R. 948, 950 (Bkrcty. D. Ariz. 1998). Moreover, such persons are undoubtedly aware that the Special Fiduciary has leased property they claim rights in to Shane Stubbs, which would have ended any tenancy at sufferance long ago in any event. *Cf. Irving Oil v. Maine Aviation*, 704 A.2d 872, 874 (Me. 1998) (holding that tenancy at will is terminated by a lease by the landlord to a different person); *see also* 120 A.L.R. 1006 (1939) (explaining that the general rule in American cases is that a tenancy at will, being personal and non-transferable, is, in the absence of a statute producing a different result, "ipso facto terminated by the landlord's conveyance or lease of the premises to a third person.") There are thus substantial legal reasons to question whether the

persons claiming adverse to the Special Fiduciary's lessee at the Berry Knoll Farm site have even a colorable argument.

**B. The Local Police Are Incorrect That a Forcible Detainer or Eviction Order is Needed or Appropriate.**

**1. Arizona Precedent Involving This Trust Confirms That Disputes Over a Continuing Right to Use Trust Property Are Not Proper Subjects of Eviction Proceedings.**

The advice the Colorado City Marshal's officers claim they received from counsel suggests they are required to await an eviction order from an Arizona court against the persons not authorized by the Special Fiduciary before the police can consider them trespassers. (See Exhibit "11", File Chapter 2 at 0:39:17 – 0:40:18). However, the Arizona Court of Appeals confirmed several years ago, in connection with this very trust, that the Arizona forcible detainer procedures were not appropriate for disputes between the Trust and those claiming a disputed legally enforceable continuing interest to use the Trust's properties. *United Effort Plan Trust v. Holm*, 209 Ariz. 347, 350-351, 101 P.3d 641, 644-45 (App. 2004) (Holding that Arizona forcible entry and detainer statutes "apply only when the parties have a landlord-tenant relationship," and that "[t]he purpose of a forcible-detainer action . . . is not a vehicle to decide whether the parties have a landlord-tenant relationship or were under a lease agreement.") Instead, disputes like those posed here over Arizona properties held in the Trust must be decided "in the context of a conventional civil action." *Id.* at 351, 101 P.3d at 645.

**2. The Utah Probate and Trust Statutes Grant the Court Jurisdiction to Decide the Claims to Enforceability of the Special Fiduciary's Leases Against Those Claiming Pre-existing Stewardships.**

The "conventional civil action" available here involves a decision by this Court concerning the disputes over rights to use Trust property. The Utah probate and trust statutes provide, in relevant part:

**Utah Code 75-1-302**

- (1) To the full extent permitted by the Constitution of Utah, the court has jurisdiction over all subject matter relating to:

\* \* \*

(c) trusts.

- (2) The court has full power to make orders, judgments, and decrees and take all other action necessary and proper to administer justice in the matters which come before it.

**Utah Code 75-7-201. Court -- Exclusive jurisdiction of trusts.**

- (1) (a) The court has exclusive jurisdiction of proceedings initiated by interested parties concerning the internal affairs of trusts.

(b) Proceedings which may be maintained under this section are those concerning:

- (i) the administration and distribution of trusts;
- (ii) the declaration of rights; and
- (iii) the determination of other matters involving trustees and beneficiaries of trusts

(c) These include, but are not limited to proceedings to:

\* \* \*

- (v) determine any question arising in the administration or distribution of any trust, including questions of construction of trust instruments;
- (vi) instruct trustees;
- (vii) determine the existence or nonexistence of any immunity, power, privilege, duty, or right; . . . .

**Utah Code § 75-7-203**

- (1) The district court has exclusive jurisdiction of proceedings in this state brought by a trustee or beneficiary concerning the administration of a trust.

- (2) The district court has concurrent jurisdiction with other courts of this state of other proceedings involving a trust.

\* \* \*

As priority disputes over use of trust properties are matters intimately related to administration of the Trust,<sup>6</sup> and to the interests of those claiming rights to use the Trust's property, the trust statutes grant the Court authority to resolve such disputes. *Cf. In re Rudell Estate*, 286 Mich.App. 391, 393, 780 N.W.2d 884, 886 n.1 (Mich. App. 2009) (holding that statutes conferring concurrent jurisdiction on court to determine property rights with respect to an estate, a protected individual, a ward, or a trust conferred jurisdiction on court to decide quiet-title dispute.); *In re Estate of Murphy*, 195 P.3d 1147, 1151 (Colo.App. 2008) (holding that statute providing the probate court "jurisdiction to determine every legal and equitable question arising in connection with decedents' ... estates, so far as the question concerns any person who is before the court by reason of any asserted right in any of the property of the estate...." to grant jurisdiction over all claims "logically relating to the estate" including competing claims to ownership of specific property claimed by the estate); *In re Estate of Hodgkins*, 807 A.2d 626, 630-31 (Me. 2002) (holding that contested claim of interference with life estate in property under will was sufficiently "relat[ed] to the settlement" of an estate to confer jurisdiction on probate court to decide tort claim); *Kasperbauer v. Fairfield*, 171 Cal.App.4th 229, 237 (Cal. App. 2 Dist. 2009) (holding that probate court has the power to settle all disputes relating to trust matters that come before it); *Schwartz v. Labow*, 164 Cal.App.4th 417, 427 (Cal. App. 2 Dist. 2008)

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<sup>6</sup> A trustee has an administrative duty to take reasonable steps to take and keep control of trust property. *See* Restatement (Second) of Trusts, § 175. Where those who refuse to cooperate with trust authorities threaten the trust's control over its property, proper administration requires that the trust take action against such persons. Thus, addressing disputes between the Trust and those who deny the enforceability of its leases and occupancy agreements is an integral part of the trust administration entrusted to this Court.

(holding that probate court has inherent power “to decide all incidental issues necessary to carry out its express powers to supervise the administration of the trust”).<sup>7</sup>

The fact that any property in dispute is located in Arizona does not divest this court of jurisdiction. *See, e.g., Jeffs v. Stubbs*, 970 P.2d 1234 (Utah 1998). It merely requires the Court to apply Arizona law to disputes involving Arizona properties. *Id.* at 1242-43 (applying Arizona law of equitable estoppel). Courts issuing orders like this Court’s injunction order may even bind non-parties for actions committed outside the normal territorial jurisdiction of the court. *See, e.g., 7 A.L.R. 4<sup>th</sup> 893* (1981, Supp. 2002); *S.E.C. v. Homa*, 514 F.3d 661, 674 (7<sup>th</sup> Cir. 2008) (“Jurisdiction over persons who knowingly violate a court’s injunctive order, even those without any other contact with the forum, is necessary and proper to the proper enforcement and supervision of a court’s injunctive authority and offends no precept of due process.”); *Waffenschmidt v. Mackay*, 763 F.2d 711, 714 (5<sup>th</sup> Cir. 1985) (“Nonparties who reside outside the territorial jurisdiction of a . . . court may be subject to that court’s jurisdiction if, with actual notice of the court’s order, they actively aid and abet a [defendant] in violating that order. This is so despite the absence of other contacts with the forum.”); *People v. McGlotten*, 134 P.3d 487, 490 (Colo. App. 2005) (“The court’s power to remedy contempt includes the ability to punish those who are not currently parties or officers of the court.”); *State v. Stewart*, 706 A.2d 171, 172

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<sup>7</sup> The older Utah authorities denying a probate court authority to resolve questions of title, *see In re Martin Estates*, 166 P.2d 197 (Utah 1946); *In re Rogers’ Estate*, 284 P. 992 (Utah 1930), are inapplicable. First, none of the questions raised here involve questions of title to the relevant properties, as title is held by the Trust. Moreover, those decisions predate the broad jurisdictional statements of the current Utah probate and trust statutes by decades. They are superseded by the current statutes which confer broad statutory jurisdiction upon this Court “over all subject matter relating to . . . trusts,” including the power to “make orders, judgments, and decrees and take all other action necessary and proper to administer justice in the matters which come before it.” Utah Code § 75-1-302 (1)(c), (2) (emphasis added). The statutes also confer on this Court “exclusive jurisdiction” to oversee proceedings regarding “the administration . . . of trusts” and regarding “the declaration of rights” in connection with Trusts. Utah Code § 75-7-201(1)(a), (b)(i, ii). They confer similar exclusive jurisdiction on this Court to “determine any question arising in the administration or distribution of any trust . . .”, to “instruct trustees”, and to “determine the existence or nonexistence of any . . . right” in connection with a Trust. Utah Code § 75-7-201(1)(a), (c)(v, vi, vii).

(N.H. 1998) (holding courts have jurisdiction to punish contemnor regardless of where contemptuous conduct took place); *Farmers' State Bank of Texhoma v. State*, 164 P. 132, 132 (Okla. Crim. App. 1917) (holding court issuing order enjoining sale of property has right to punish violation of its order "regardless of the location or the place, to which the contemnor may have gone to violate its order.")

Thus, to the extent there exist challenges to those leasing property with the Special Fiduciary's authority, or to the Court's power to administer Trust properties, the Court has jurisdiction to resolve those issues. The Court should consider all appropriate proceedings and relief needed to ensure that certainty is given to the local government officers claiming they need additional court guidance. Those having leases from the Special Fiduciary and those claiming interests adverse to them are equally owed an appropriate warning if their actions are in violation of court orders or the rights of others. Those leasing from the Trust deserve confirmation of whether their leases have the force of law behind them and are superior to competing claims of pre-existing stewardships, or whether they have no legal basis to expect uninterrupted rights to use of Trust properties despite having followed the processes approved by the Court. Finally, social disruption and dangers of escalating "self-help" involving the tearing up of pipelines, removal of well equipment, dismembering of fences, running off livestock, unauthorized use or occupation of buildings, unauthorized placement of livestock to damage crops, and the unauthorized plowing of lands formally leased to others are but some of the community ills that the Court has power to help avoid by clarifying statements and orders, including further injunctive orders.

### **3. The Court Retains Jurisdiction to Enforce its Prior Orders.**

Finally, even if there exist legitimate legal disputes over rights to use the Trust property, nothing would justify persons, including local government authorities, ignoring the Court's injunctive order prohibiting the removal of property affixed or attached to Trust land. The order is violated by those who fail to prevent or properly respond to the removal of locks and chains, gates, fencing, well equipment, powerlines, or similar attachments or fixtures where such

removal or alteration is not authorized by the Special Fiduciary. The Court retains jurisdiction under Utah law to enforce its prior orders. *See, e.g.*, Utah Code § 78B-6-301. Allowing such actions to continue unaddressed not only abets the existing violations, but encourages future violations. The Court will need to consider who has ignored the Court's orders, what justification is offered for ignoring the Court's orders, and what remedies, including contempt sanctions, are appropriate to enforce the Court's orders.

**IV. The Court Will Need to Consider Lifting of the Stay Order for Further Proceedings.**

The Court need not lift the pending stay order to conduct a status conference concerning administration of the Trust. The Court's stay order provides:

- e) Nothing this Court has done, and nothing in this Order, shall be construed as altering in any way this Court's prior rulings or this Court's continuing jurisdiction in this matter, nor shall anything the Court has done or anything in this Order be considered to remove the Special Fiduciary, Mr. Wisan, or in any way to limit or impair the authorities and responsibilities of the Special Fiduciary, Mr. Wisan, as detailed in the Court's prior rulings in this matter. Except as set forth herein, nothing in this Order shall limit or impair the Special Fiduciary's rights as the court appointed representative of the owner of the properties of the United Effort Plan Trust.

The stay order contemplated allowing the Special Fiduciary and the Court to continue ongoing administrative duties, and matters raised herein are questions directly related to the ongoing administration of the uses of Trust property, which are not stayed by the Court's order. No order lifting the stay is needed to convene a status conference and receive further reports from the parties.

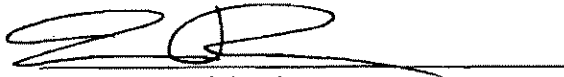
The Court may appropriately discuss at any status conference whether a lifting of the stay order, in whole or in part, is needed. The Arizona AG has no objection to lifting the stay order, provided that appropriate actions are taken to ensure the Trust is financially able to defend itself and take appropriate administrative steps.

V. Conclusion.

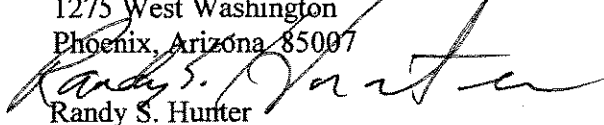
Given the matters reported herein, the Arizona AG respectfully recommends that the administration of the Trust and enforcement of the Court's authority and prior orders will be well served by convening, as quickly as possible on or after July 27, 2010, a status conference to take reports on issues and incidents affecting the peaceful and effective administration of the Trust.

Dated: July 8, 2010.

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## CERTIFICATE OF SERVICE

I hereby certify that on the 8<sup>th</sup> day of July, 2010, a courtesy copy of the EMERGENCY REPORT OF THE ARIZONA ATTORNEY GENERAL'S OFFICE AND RECOMMENDATION FOR EXPEDITED STATUS CONFERENCE with exhibits shall be hand-delivered to Judge Denise Lindberg's chambers.

I hereby certify that on the 8th day of July, 2010, I caused a copy of the EMERGENCY REPORT OF THE ARIZONA ATTORNEY GENERAL'S OFFICE AND RECOMMENDATION FOR EXPEDITED STATUS CONFERENCE with exhibits to be mailed via U.S. Mail to the following, and a copy of the EMERGENCY REPORT OF THE ARIZONA ATTORNEY GENERAL'S OFFICE AND RECOMMENDATION FOR EXPEDITED STATUS CONFERENCE with all exhibits except the electronic files at Exhibits "11" and "15" to be sent via electronic mail to:

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