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IN THE UTAH SUPREME COURT

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| <p>THE FUNDAMENTALIST CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, an association of individuals, LYLE JEFFS, an individual, WILLIE JESSOP, an individual,</p> <p style="text-align: center;">Petitioners,</p> <p>v.</p> <p>JUDGE DENISE P. LINDBERG, District Court Judge,</p> <p style="text-align: center;">Respondent</p> | <p>THE UNITED EFFORT PLAN TRUST'S RESPONSE IN OPPOSITION TO PETITION FOR EMERGENCY RELIEF</p> <p>Appellate Case No. 20090859-SC</p> <p>Third District Court Case No. 053900848</p> |
|---|---|

Bruce R. Wisan, as the Court-appointed Special Fiduciary ("Fiduciary") of the United Effort Plan Trust (the "Trust"), through counsel, and pursuant to UTAH R. APP. P. 8A(d), submits his response¹ to the PETITION FOR EMERGENCY RELIEF ("Petition") filed on August 19, 2010 by

¹The majority of the facts alleged in the Petition are not (and could not be) supported by affidavit or the record below. Due to the shortness of time required for the Fiduciary's response under Rule 8A, the Fiduciary does not identify or discuss all of the factual or legal flaws in the Petition, but focuses on some of the more obvious problems warranting denial of the Petition. (For a citation of the relevant facts in this case, see Brief of Appellee Bruce R. Wisan, as the
(continued...)

“an unincorporated association representing the thousands of members of the Fundamentalist Church of Jesus Christ of latter Day Saints.”²

INTRODUCTION

There is no emergency warranting this Court’s intervention.

The tragic irony behind this emergency petition and the other contrived attacks against the District Court and its Fiduciary, is that there would be no Trust property for the Petitioner to accuse the District Court and Fiduciary of "mismanaging" and "wrongfully taking" had the District Court not acted to prevent Warren Jeffs from looting the Trust and abandoning what was left in default judgments to tort plaintiffs who threatened to expose his gross misconduct. Rather than cooperate with the District Court's proposal to distribute Trust property preserved by the Fiduciary to members of the beneficiary class (a process that would likely result in the transfer of large portions if not the vast majority of Trust assets to FLDS members), the FLDS elite adamantly oppose any distribution that would give their followers and others living on Trust property an opportunity to decide whether they want the security of owning their homes. While the District Court and the Fiduciary have repeatedly declared that such distribution would not prevent recipients of Trust property from transferring it to the FLDS Church or any other person or entity of their choosing, the FLDS elite are

¹(...continued)

Court-appointed Special Fiduciary of the United Effort Plan Trust, dated July 14, 2010, filed in Supreme Court Case No. 20090691, at pp. 5-26).

²The “unincorporated association” is not a party to the trial court proceedings and has never sought to intervene there (certain individuals purporting to be members and/or leaders of the FLDS church have sought to participate below). Because Petitioner is apparently seeking to confer independent standing on itself in a different forum without having exhausted its remedies in the trial court, the Petition should be summarily dismissed as not ripe.

simply unwilling to risk the possibility that some members might elect not to relinquish control of their homes to the man who ordered the homes abandoned so that his followers could be "scattered" and punished.

To regain their absolute control, the FLDS elite are attempting to re-write history by falsely accusing the District Court and the Fiduciary of "unconstitutional" acts that require the immediate return of all Trust property to the FLDS elite. That such elite (who personally benefit from Mr. Jeffs' total domination of Trust property at the expense of the rank and file) are willing to fabricate³ alleged "discriminatory abuses" and deceive in order to preserve their privileged status is no surprise. What is most disturbing, however, is that these slanderous, misleading attacks against the District Court and the Fiduciary are being asserted in this Court despite sworn testimony in this proceeding that directly contradicts these accusations. As explained below, the Petition should be denied.

I. THE PETITION IS AN ABUSE OF RULE 8A.

The present petition is the seventh petition for extraordinary or emergency relief filed in these proceedings.⁴ This Court's ruling in Snow, Christensen & Martineau v. Lindberg, 222 P.3d 1141,

³The is not the first emergency writ filed in this case that was grounded in falsehood. For example, on December 28, 2009, a Petition for Emergency Writ was filed in this Court in Case No. 20090859 complaining that the Fiduciary had sold certain cattle owned by a Trust-owned business. That Petition asserted that the cattle were unique and irreplaceable because they were a source of "wholesome milk" for the FLDS people, and because of FLDS religious breeding practices, had never suffered from venereal disease, and had never been bred using artificial insemination. The affidavit submitted by the farmer actually running the farm provide irrefutable evidence that (1) the cattle had never been a significant source of milk for the FLDS community; (2) the herd had suffered a serious outbreak of the venereal disease trichomoniasis when under FLDS management; and (3) all the cattle in question had been bred by artificial insemination. This Court denied that Petition for Emergency Writ.

⁴After Warren Jeffs reversed his "answer them nothing" position with respect to the trial
(continued...)

2009 UT 72, recognized that Rule 8A's "abbreviated response deadline has the effect of placing a substantial burden on respondents" and cautioned that:

[R]ule 8A should not be employed as a means for harassing or unjustifiably burdening respondent when ordinary procedural mechanisms would be adequate. This includes the circumstance where the "emergency" has arisen from petitioners' own unjustified delay in seeking relief.

Id. at ¶ 7 and n. 2.

The facts here compel the conclusion that Petitioner has violated this Court's admonition. Petitioner grossly mischaracterizes the District Court's statements at the July 22, 2010 hearing in order to fabricate a basis for emergency relief. Petitioner takes out of context a statement that beneficiaries of a charitable trust have "no preexisting property right" to accuse the District Court of wrongfully denying the FLDS members an opportunity to assert claims to Trust property.

When the entirety of the July 22, 2010 hearing is considered (and not the one-liner on which the entire Petition is grounded), it is clear that the District Court, consistent with her duties under the Trust Code, has solicited input on a process for resolution of disputed rights in Trust property. The issue was presented to the District Court by William A. Richards of the Arizona Attorney General's office:

⁴(...continued)

court proceedings and instead instructed his followers to "demand [] their rights", a Petition for Emergency Relief was filed on November 10, 2008 in Case No. 20080928. A Petition for Extraordinary Writ was filed on September 23, 2009 in Case No. 20090781. A Petition for Extraordinary Writ was filed October 20, 2009 in Case No. 20090859. A Petition for Emergency Relief was filed on November 25, 2009 in Case No. 20080928. A Petition for Extraordinary Writ was filed on December 3, 2009 in Case No. 20091006. A Petition for Emergency Relief was filed on December 29, 2009 in Case No. 20090859. The Petitions have consistently and repeatedly requested that the District Court proceedings be stayed. The request was repeated again at oral argument in this very case. See, Petition at Fact Statement 5. This Court's repeated denial of such requests should be persuasive, if not preclusive, with respect to the instant Petition.

The dispute that is alleged there is that members of the FLDS have a— some sort of a preexisting religious stewardship, not as we understand evidenced by any sort of actual conveyance. . . . But these folks have taken it upon themselves to simply go out and assume the property and to interfere with the use of that property by those who have been granted an occupancy agreement or a lease by the special fiduciary. We're also concerned that there has been issues involving removal of property...all of which would be a violation the Court's pending injunction order.

See, Transcript of July 22, 2010 hearing, attached hereto as Exhibit "A", at 8: 13 - 9:8 (the Transcript was conspicuously absent from the Petition). Mr. Richards then requested that the District Court clarify that it stands behind the leases from the Fiduciary, whereupon Counsel for Petitioner cautioned that the District Court should not "take away the existing property rights of somebody else, whether it's real property or personal property by fiat like that." Ex. "A" at 26:13 - 27: 12. The District Court responded that "There is no preexisting property rights of any alleged beneficiary to any land or to anything in the UEP," a statement consistent with established rule of law that in a charitable trust the beneficial rights to Trust property "are not given to individual beneficiaries but the property is devoted to the accomplishment of purposes beneficial to the community." Id. at 27:13-15; Jeffer v. Stubbs, 970 P.2d 1234, ¶ 41 (1998). Counsel for Petitioner countered that there may be persons with "unjust enrichment claims . . . in the real property; and . . . food and personal property down there that UEP does not own." Id. at 27: 18 - 23. The District Court expressly acknowledged that "if there are legitimate competing claims by anyone who believes that he or she has a claim to any particular property, that can certainly be addressed in court on a full trial on the merits." Id. at 29: 8 - 12. The hearing participants then discussed the proper methodology for resolution of such disputes, whereupon the District Court stated:

...I'm going to have to think through how to create a process so that those concerns and those counter positions and other documentation can be presented to the Court and adjudicated. And I'm going to need the assistance of counsel in – in fashioning

a proper process so that if there are challenges to [the Fiduciary's] agreements, then those can be properly documented and presented to the Court and addressed.

Id. at 37:20 - 3.⁵

Thus, contrary to the primary assertion of the Petition, the District Court has not “prejudged” any rights in Trust property, but has instead recognized that where individuals assert unjust enrichment claims with respect to Trust property, or that certain fixtures are not real property, but instead, removable personal property, their claims should be heard by the District Court.⁶ Not a single piece of property has been lost by Petitioner as a result of the District Court’s July 22, 2010 hearing.⁷

As is clear from its title, Rule 8A exists to provide emergency relief “when adherence to the regular [appellate] deadlines would effect a denial of justice.” Snow, Christensen & Martineau, 2009 UT 72 at ¶ 5. Where the District Court has not even ruled on any particular property dispute (or even announced the process by which such disputes are to be adjudicated), Petitioner is well ahead of any “regular deadline” for invoking this Court’s jurisdiction. An issue is not ripe for appeal if “there

⁵The District Court gave the hearing participants 45 days from the entry of her order to provide their input on the process. Ex. “A” at 62. However, because of various objections to the order, and a recently-filed Motion to Disqualify the District Court, the written order has yet to be entered.

⁶Petitioner appears to object to the jurisdiction of the District Court to entertain such disputes. However, the Trust Code makes clear such jurisdiction is proper. See, UTAH CODE ANN. § 75-7-201.

⁷It bears repeating here that despite the alleged anti-FLDS animus of the Fiduciary, not a single member of the FLDS church has been evicted from a home on Trust property by the Fiduciary in over five years of Trust administration. This is a very different record than that created by the former Trustees of the Trust. See, United Effort Plan Trust v. Holm, 101 P.3d 641 (Ariz. Ct. App. 2004) (Considering Trust’s attempt to evict FLDS parents from their home after they refused to consent to the marriage of their 15-year-old daughter to a 39-year old man).

exists no more than a difference of opinion regarding the hypothetical . . . situation in which the parties might, at some future time, find themselves.” Bodell Const. Co. v. Robbins, 215 P.3d 933, 2009 UT 52 at ¶ 29. Yet that is precisely what the Petitioner complains of, that the District Court has already prejudged unknown and hypothetical disputes she may hear in the future. Far from being a true emergency, the Petition does not even present a ripe controversy for this Court’s adjudication. The Petition should be dismissed as an abuse of Rule 8A and this Court’s emergency jurisdiction.

II. PETITIONER'S ALLEGATIONS OF RELIGIOUS DISCRIMINATION BY THE FIDUCIARY ARE CONTRIVED AND CONTRADICTED BY THEIR OWN SWORN ADMISSIONS.

Petitioner accuses the Fiduciary of terminating "without due process FLDS members pre-existing rights in and to farmland and grain silos that the FLDS Bishop has historically administered" by imposing "a superseding lease granting a competing incompatible use of the property by anti-FLDS persons." Petition at 10-11. Petitioner fails to tell the Court that before the Fiduciary entered into the alleged "superseding lease" he offered that opportunity to the FLDS members who previously farmed the land. That fact was known by Petitioner's counsel, who defended the depositions of the FLDS members who admitted that they refused the Fiduciary's offer for a lease to farm the Berry Knoll property after the Fiduciary received complaints about blowing dust coming from the Berry Knoll farm property – which property had been abandoned and had not been planted or irrigated for several years.

In response to such complaints, the Fiduciary asked his assistant, Isaac Wyler, to find someone who would be willing to farm the property. Mr. Wyler approached FLDS member, Mr. Merlin Jessop, who had farmed the property in prior years, and asked him if he would be willing to resume his farming operations on the Berry Knoll property. Mr. Jessop refused. He told Mr. Wyler

that he was not interested "in getting a lease or some type of a formal permission" from the Fiduciary. *See* Merlin Jessop Deposition at 36:14-38:9; Exhibit "B". Mr. Jessop testified that "the reason . . . he wouldn't be interested in farming the property is because it was under the control of Bruce Wisan." *Id.* at 42:8-43:1. As Mr. Wyler stated at the hearing before Judge Lindberg, he offered to "fill out paperwork and be the go-between with Merlin and Bruce so Merlin would not have to deal directly with the fiduciary. Merlin refused my offer and wouldn't communicate with the fiduciary, so I told [Bruce] he'd have to look elsewhere to find someone to farm the ground." Exhibit "C" at 55:1-7. *See also* Exhibit "B" at 63:13-64:25.

The Fiduciary instructed Mr. Wyler to look for others who might be interested in farming the ground but the few people who initially expressed interest "were scared off when they learned that the prior FLDS farmers had left an unpaid power bill of \$20,000 which needed to be paid before the power would be restored to the farm." *See* Isaac Wyler Statement to Judge Lindberg at 54:21-55:12; Exhibit "B". Finally, after FLDS members refused the Fiduciary's offer to lease the Berry Knoll land for farming, Mr. Wyler was successful in finding someone who would be willing to farm the property. On April 14, 2008, the Fiduciary entered into a written Lease Agreement with David and Shane Stubbs. *See* Exhibit "D". In the fall of 2008, Mr. Stubbs planted 200 acres of winter wheat. *See* Unsworn Statement of Shane Stubbs, Exhibit "E".

In December 2008, as a "goodwill gesture" toward the FLDS persons represented by Willie Jessop, the Fiduciary agreed to "terminate that portion of Mr. Stubbs' lease relating to property located north of State Highway 389" so that Willie Jessop could use that property. *See* Exhibit "F". Both Mr. Willie Jessop and Mr. Okazaki were told that the land south of the highway remained leased to Mr. Stubbs. In an email dated December 12, 2008, Ken Okazaki acknowledged the

Fiduciary's agreement that the "FLDS may commence plowing, planting and cultivation of the land *located to the north side of the highway.*" See Exhibit "G" (emphasis added). Despite the Fiduciary's prior showing of good faith and with the full knowledge that the property south of the highway was under lease to Mr. Stubbs, Clarence and Thomas Jessop entered the property without permission on March 2, 2009 and commenced to plow up and destroy Mr. Stubbs' crop of winter wheat. See Mohave County Sheriff Press Release at Exhibit "H". Mr. Stubbs estimated the damage to his crop to be in excess of \$10,000. *Id.*

Petitioner should be required to explain how they can accuse the Fiduciary of wrongfully "terminat[ing] without due process FLDS Church members' pre-existing rights in and to farmland . . . by impos[ing] a superseding lease" without disclosing to the Court that those members refused the Fiduciary's invitation to lease and farm that property. No matter what rights the Fiduciary offers to FLDS members for use of the property, they have been commanded not to communicate or cooperate with him in any way. How can Petitioner accuse the Fiduciary of religious discrimination when they know full well that FLDS members have been commanded not to accept any benefits or property rights from the Fiduciary? In fact, when Warren Jeffs learned that many of his followers "feel like [the Fiduciary] and this Judge will be kind and allow us our rights and protect us," he declared that anyone cooperating with the Fiduciary would be condemned for consorting with "the devil." R. 19595.

Similarly, Petitioner falsely alleges that "the Special Fiduciary has literally locked FLDS Church members out of such community properties as the FLDS Church park . . ." and seems content that such "Trust assets go to waste so long as they are not used by the FLDS." Petition at pp. 9-10. One of the attorneys making that allegation personally negotiated and affirmed in writing the

Fiduciary's agreement that "FLDS may resume management and maintenance of the Cottonwood Park forthwith." See December 17, 2008 email from Ken Okazaki, counsel for the Utah Attorney General and the Special Fiduciary, Exhibit "G". To this day, Petitioner controls the very park⁸ that it now falsely accuses the Fiduciary of "wasting."⁹

Petitioner makes these false allegations to the Court in the context of "emergency petitions" or at the end of oral argument where the Fiduciary has little or no time to respond to rebut the false attacks. After the conclusion of oral argument on February 17, 2010, counsel opposing the Fiduciary's motion to disqualify the Trust's former attorney¹⁰ made statements that he was forced to "clarify" and "withdraw" after being confronted with the facts. See March 24, 2010 letter from

⁸Ironically, prior to turning the park over to Mr. Okazaki's clients, the Fiduciary expended significant funds to maintain the park and keep it open to the public.

⁹Similar falsehoods undercut Petitioner's assertions regarding the Trust's school buildings. The Fiduciary has not "forced [a] well-maintained school building. . . to be abandoned and surrounded it with an unsightly chain-link fence..." Petition at 10. The fence in question was erected by the Colorado City Unified School District (which leased the building from the Trust) years ago, well before the appointment of the Fiduciary, and before Warren Jeffs commanded his followers to withdraw their children from the public school system. Today the members of the Petitioner's association have the use of twelve (12) school buildings on Trust land. The one school building that has been leased out by the Trust (known as the Darger building) is the oldest of the school buildings.

¹⁰The Order disqualifying Mr. Parker from representing the Trust is still pending before this Court. The Fiduciary notes that the argument asserted in the emergency petition – that the members of the beneficiary class have "pre-existing property rights" that prevail over the rights of the Charitable Trust – is precisely the argument that Mr. Parker was paid thousands of dollars by the Trust to defeat when he was retained by the Trust to restructure his Trust client into a charitable trust in order to defeat the pre-existing property rights that this Court recognized in *Jeffs v. Stubbs*. Mr. Parker is now advising other clients on how to circumvent and evade the very protections he devised for the Trust client he is now attacking. This is the equivalent of an attorney designing a business entity's corporate veil only to have him later seek to pierce that same veil, fully cognizant of every weakness in that veil because it was he who designed it.

Michael Zimmerman to Pat H. Bartholomew, Exhibit "I". The Fiduciary appreciates and respects Mr. Zimmerman's candor in withdrawing those misleading representations and looks forward to similar corrective action addressing the misleading statements and arguments in this petition.

III. PETITIONER'S TRUE MOTIVATIONS

Petitioner's actions, in filing yet another "emergency" petition with this Court based upon false accusations, reveal Petitioner's true motivation. Petitioner seeks to have this Court micro-manage the Trust while avoiding any adjudication on the merits by a trier-of-fact tasked with ascertaining the truthfulness of Petitioner's allegations or of discerning the credibility of Petitioner's witnesses. Furthermore, Petitioner has filed the present petition in an attempt to stop a number of pending legal matters – including a pending investigation into numerous allegations of misconduct by the members of Petitioner's association.

Petitioner seeks to short-circuit the ordinary appellate process – whereby an appeal is brought after an adjudication on the merits by a trial judge who has received evidence subject to cross-examination and who has been in a position to judge the credibility of the witnesses and the evidence. Petitioner's misuse of the petition process is improper. It places an unfair disadvantage and burden upon the respondents, who are obliged to respond in an extremely-short time period. It further allows Petitioner to present the Supreme Court with false and misleading accusations unsupported by the record. The Fiduciary is confident that the falsity of Petitioner's allegations would be quickly exposed if adjudicated by a trier-of-fact after hearing all of the evidence. Unfortunately, because of Petitioner's use of the emergency petition process, such adjudication has not taken place and Petitioner continues to spout the same false and outrageous accusations with apparent impunity.

Next, it appears that Petitioner's true motivation for the present petition is to stop a number of pending legal matters – which matters Petitioner has failed to disclose to this Court. Petitioner's stated purpose in seeking injunctive relief appears suspect. Petitioner asserts that it needs an injunction in order to stop the Fiduciary and the District Court from dispossessing FLDS occupants, from irreversibly altering the status quo, from dismantling and dissipating the Trust, and from totally destroying a religious community. In fact, such things are not happening, and there is no need for an injunction as to such matters. Notwithstanding Petitioner's outrageous accusations, neither the Fiduciary nor the District Court is seeking to destroy the Trust or the FLDS religion. There is nothing pending which would irreversibly alter the status quo or dispossess FLDS occupants from Trust land. The Fiduciary is merely doing his best to administer the trust in accordance with the law, as ordered by the District Court.

Contrary to Petitioner's accusation, the Fiduciary is not presently seeking to evict any person from Trust land. To date, the Fiduciary has honored the status quo as to residential property by allowing occupants to remain in possession.¹¹ When it becomes necessary and appropriate to seek the removal of any person from Trust property – whether because of a refusal to pay property taxes and occupancy fees or otherwise – the Fiduciary intends to do so in accordance with the rule of law

¹¹ As to non-residential property, which was previously abandoned and vacant, the Fiduciary has entered into certain lease agreements – with both FLDS and non-FLDS persons. The Fiduciary stands behind such lease agreements and has properly resisted attempts by late-comers to dispossess the rightful lessee through improper usurpation of control over the non-residential property.

after due process, notice, and opportunity for a hearing.¹² Thus, there is no present need for an injunction as to the matters alleged in the Petition – especially on an emergency basis.

Petitioner has failed to disclose pending legal matters which would be impacted by the broad relief requested in the petition. For example, the Arizona Attorney General is presently investigating a number of allegations of misconduct by members of Petitioner’s association – including police officers, government officials, and public utilities controlled by Petitioner. The allegations under investigation include police misconduct, religious discrimination by public officials, theft of water rights, and failures to abide by court orders. They include allegations of religious discrimination in refusing to allow a disabled veteran to receive desperately-needed power and water from the public utilities, in improperly arresting a mother in front of her children, and in refusing to enforce orders of the court. They further include diverting funds collected by a public utility to the FLDS bishop. (Additional details regarding the allegations being investigated by the Arizona Attorney General are set forth in the Emergency Report of the Arizona Attorney General’s Office, dated July 8, 2010).

The Arizona Attorney General is attempting to conduct depositions regarding such matters. After meeting resistance from the local governmental officials, the Arizona Attorney General was obliged to seek assistance from the District Court with the ultimate aim of compelling the witnesses

¹² Contrary to Petitioner’s accusations, the District Court has not purported to endow every action of the Fiduciary with the presumptive force of a court order. Rather, the District Court has merely acknowledged the authority of the Fiduciary over the administration of the Trust. Similarly, the District Court has not summarily wiped out all pre-existing property rights. Rather, the District Court merely held (correctly so) that membership in a beneficiary class of a charitable trust does not include any property rights as to the property of the charitable trust. As to alleged property rights independent of the charitable trust relationship – based upon unjust enrichment claims or otherwise – the District Court held that such claims can be resolved “on a full trial on the merits.” (See Exhibit “A” at 29:8-12).

to attend the depositions. Now, Petitioner seeks to stop such investigation through the extremely broad injunctive relief requested in the petition. Petitioner does so without informing this Court of such investigation, and without disclosing to the Court that the requested injunction would interfere with the investigation.

Next, it appears that Petitioner is similarly seeking to stop the District Court from enforcing its orders against Warren Jeffs and LeRoy Jeffs, former trustees, who have violated multiple court orders. Most recently, the former trustees have flagrantly violated a District Court Order, entered in March, 2010, to participate in the process of selecting a special master, and to produce documents to such master. Again, the broad relief requested by Petitioner in the present emergency petition would hinder the Fiduciary and the District Court from enforcing such orders.

Next, it appears that Petitioner is seeking to stop further adjudication of a dispute regarding the validity of a 2008 lease which the Trust granted to Shane Stubbs as to certain non-residential property of the Trust. In July, 2010, certain members of Petitioner's association obtained a temporary restraining order ("TRO") from the Fifth District Court of Washington County, Utah, enjoining Mr. Stubbs from using property which he had leased from the Trust. They did so on an ex parte basis – without giving Mr. Stubbs notice or an opportunity to be heard, and without disclosing relevant facts to the court. Based upon such TRO, Petitioner members, through self help, then removed Mr. Stubbs' grain from silos on the leased property and placed it on the side of the road. Later, after the Fiduciary intervened and the court heard facts which had not been disclosed by Petitioner, the court expressed regret at having entered the TRO. The court ordered that the TRO would be dissolved pending further adjudication of the dispute. The court further stated that it was appalled that the plaintiffs had placed Mr. Stubbs' grain on the side of the road and ordered that it

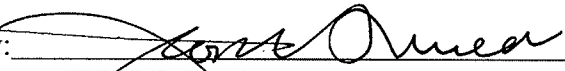
be safely moved back into the grain silos. (See Transcript of Hearing, dated July 27, 2010, at pp. 51-54 (attached hereto as Exhibit "J"). Now, it appears that, with the filing of the present petition, Petitioner is seeking to stop the Fiduciary from adjudicating the validity of the Stubbs lease.

CONCLUSION

For the above-stated reasons, the Fiduciary respectfully requests that the Petition be denied.

DATED this 24th day of August, 2010.

CALLISTER NEBEKER & McCULLOUGH

By: 
JEFFREY L. SHIELDS
*Attorneys for Bruce R. Wisan, Special
Fiduciary of the United Effort Plan Trust*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct that a true and correct copy of the foregoing **THE UNITED EFFORT PLAN TRUST'S RESPONSE IN OPPOSITION TO PETITION FOR EMERGENCY RELIEF** served by United States mail, first class postage prepaid, on this 24th day of August, 2010, on the following:

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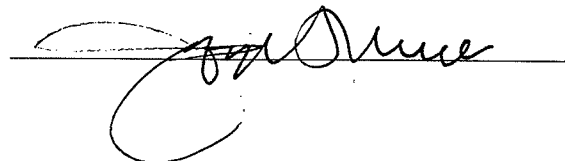


EXHIBIT A

July 22, 2010

THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY
STATE OF UTAH

IN THE MATTER OF THE UNITED)
EFFORT PLAN TRUST, (Dated) Status Conference
November 9, 1942, Amended)
April 10, 1946 and Amended)
and Restated on November 3,) Civil No. 053900848
1998); and its, TRUSTEES,)
including known trustees) Judge Lindberg
TRUMAN BARLOW, WARREN)
JEFFS, LEROY JEFFS, WINSTON)
BLACKMORE, JAMES ZITTING)
and WILLIAM E. JESSOP a/k/a)
WILLIAM E. TIMPSON and DOE)
TRUSTEES I THROUGH IX.)
)
)

JULY 22, 2010 * 2:42 p.m.

Transcript prepared from electronic recording

Reporter: Tamra J. Berry, CSR, RPR
Notary Public in and for the State of Utah

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1 need to be addressed in an evidentiary hearing. I
2 believe that that needs to be scheduled as an order
3 to show cause hearing with -- supported by affidavits
4 from the various individuals who are -- essentially
5 what you're alleging in your emergency report is that
6 the Court -- orders of the Court are consistently and
7 routinely being disregarded by a number of people,
8 including most notably the police department or the
9 marshal's office of Hilldale and Colorado City. But
10 that those individuals have had notice of the Court's
11 orders, and they're essentially ignoring them.

12 I am concerned that in the paperwork that
13 I received, there are references made to a city
14 prosecutor or other attorney who apparently is -- or
15 is allegedly advising the marshal's office. But I
16 see no name given for that individual. I don't know
17 if that individual has been identified, but we need
18 to identify that person.

19 MR. RICHARDS: Yes, your Honor, I can
20 identify him for you. In fact, I think if you
21 reviewed some of the videotapes -- I apologize,
22 Judge, this is Mr. Richards.

23 THE COURT: Okay.

24 MR. RICHARDS: If you view some of the
25 videotapes that we provided you, they identify him as

PROCEEDINGS

1
2
3 THE COURT: Good afternoon.
4 MR. RICHARDS: Good afternoon, your Honor.
5 THE COURT: Okay. We are on the record on
6 case number 053900848.
7 This is the matter of the United Effort
8 Plan Trust, and this is a telephonic status
9 conference requested by the Attorney General for
10 Arizona.
11 Do I have Mr. Richards?
12 MR. RICHARDS: You do, your Honor.
13 THE COURT: Okay. And I am told that I
14 have on the line everyone except Mr. Evans,
15 Mr. Bradshaw and Mr. Zimmerman.
16 And that everybody else, Mr. Shields, Mr.
17 Bodily, Mr. Okazaki, Mr. Hamilton, Mr. Parker,
18 Mr. Hoole, Mr. Sampson, Mr. Richards and Mr. Leavitt
19 are on. Is that all correct?
20 MR. OKAZAKI: Yes, your Honor. This is
21 Ken Okazaki, Your Honor.
22 THE COURT: Okay. All right.
23 Mr. Richards, I have reviewed your
24 emergency report, and I'm a little at a loss. I
25 think you raised a lot of significant issues that

1 Mr. Brendel. His name is Ken Brendel. I believe
2 that's B-r-e-n-d-e-l. He is a contract attorney out
3 of the Flagstaff firm of -- I believe it's Mangum,
4 Wall, Stoops.

5 THE COURT: Okay. And he is separate from
6 the -- because I understood that it was Mr. Stirba's
7 firm that represented the cities.

8 MR. HAMILTON: Civilly, yes, your Honor.
9 This is Blake Hamilton.

10 THE COURT: Okay. So what relationship,
11 if any, do you have with Mr. Brendel?

12 MR. HAMILTON: He is the prosecutor for
13 Colorado City. That's the relationship we have. We
14 don't have a relationship further than that.

15 THE COURT: Okay.

16 MR. HAMILTON: And the prosecutor for
17 Hilldale is Deputy Washington County Attorney
18 Zach Wyler. Probably he's involved in any of the
19 matters that are alleged in the report of Bill
20 Richards.

21 THE COURT: Okay.

22 MR. HAMILTON: I think it's all the
23 Colorado City bunch.

24 THE COURT: Right. Well, obviously,
25 Mr. Brendel is an important person that I'm going to

1 need to have brought to court as well by subpoena, if
2 necessary.

3 And I do apologize, I reviewed everything
4 that was submitted except until just about ten
5 minutes before this phone call I had been unable to
6 view the recordings that had been attached. Although
7 my clerk's computer had allowed her to do that, I
8 have not been able to review those.

9 And then I realized or I was informed by
10 our IT department that I was lacking the necessary
11 software. So they installed it, and so I now am
12 going to be able to review it. I just haven't been
13 able to do that up until now.

14 But it seems to me that what we need to do
15 is -- I'm going to treat this submission as basically
16 a request for an order to show cause hearing. But it
17 will need to be pursuant to the statute, will need to
18 be supported by affidavits. And so if there have
19 been -- you know, whether they're affidavits from
20 Mr. Stubbs or affidavits from Mr. Wyler or from
21 whoever else has had personal experience in dealing
22 with the allegations that are made here, I'm going to
23 need to have that.

24 And then the -- if necessary, we'll --
25 we'll need to have each officer involved, as well as

1 problems though that we have is the issues go
2 certainly far beyond just the local law enforcement,
3 local city officials. As we have pointed out, I
4 believe in the filing there have been issues
5 involving, for example, removal of well pump
6 equipment.

7 THE COURT: No. I didn't know.

8 MR. RICHARDS: Of the destruction of lots,
9 the removal of no trespassing signs, the running of
10 livestock off of property. It's a -- for example, at
11 the Berrymore Farm issue, the plowing under of those
12 farm properties and things.

13 The dispute that is alleged there is that
14 members of the FLDS have a -- some sort of a
15 preexisting religious stewardship, not as we
16 understand evidenced by any sort of actual
17 conveyance. In fact, their affidavits of their
18 bishops styled with you previously appeared to
19 indicate exactly to the contrary, that they don't
20 have and they do not make these stewardships by any
21 sort of a legal conveyance. But these folks have
22 taken it upon themselves to simply go out and assume
23 the property and to interfere with the use of that
24 property by those who have been granted an occupancy
25 agreement or a lease by the special fiduciary.

1 the center manager and the city prosecutor and
2 whatever brought to court. And we'll hold an
3 evidentiary hearing to address the concerns because I
4 do believe that you have raised serious concerns that
5 merit an evidentiary hearing.

6 The problem is that you've styled it as a
7 status conference and at least under our protocol,
8 status conferences, I'm not able to provide the
9 relief that you're seeking in a status conference.
10 It really does seem to be that you are asking for a
11 finding of contempt. And that would require an
12 evidentiary hearing with proper notice.

13 MR. RICHARDS: Your Honor, this is
14 Mr. Richards.

15 Is it appropriate at this point for me to
16 elaborate a little bit?

17 THE COURT: Absolutely.

18 MR. RICHARDS: Your Honor, I think what
19 you are suggesting is a valid and a valuable process.
20 One of the reasons that we styled this as a report
21 was to give the Court discretion to identify for the
22 parties those issues that the Court felt it was
23 appropriate to address going forward. I think you
24 hit the nail on the head with respect to some of
25 these contempt issues. Your Honor, one of the

1 We're also concerned, Judge, that there
2 has been these issues involving removal of property.
3 The same with removal of well cap, removal of well
4 equipment, the listing of property that Mr. Stubbs
5 had put on, the trust property with the fiduciary
6 authorization and removal of (inaudible) from that
7 property, all of which would also be a violation of
8 the Court's pending injunction order.

9 And we don't have all the evidence we need
10 on who precisely is responsible for that. There's
11 certainly allegations about who is responsible. And
12 I (inaudible) believe that given those allegations,
13 it may be appropriate for Mr. Okazaki or Mr. Parker
14 to address whether any of their clients have had any
15 involvement in any of those issues. But at this
16 point we are without sufficient information to bring
17 all that in the way we would like to to the Court.

18 THE COURT: Right.

19 MR. RICHARDS: That is one of the reasons
20 that we have filed with you last December our motion
21 that was fully briefed by I believe January asking to
22 partially lift the stay to allow us to conduct
23 discovery involving these sort of property disputes,
24 disputes over water rights, and all those sorts of
25 things which have been pending now and we believe

1 creating far greater tension in the community.
 2 My suggestion, your Honor, and it's only a
 3 suggestion, but it would be that the Court grant the
 4 order that we previously had submitted to you on that
 5 that had been filed for submission now for some time,
 6 allow us to initiate that discovery process with the
 7 order that at the end of -- I think we had a
 8 four-month period -- at the end of which we were
 9 asking you to order us to file a report with the
 10 Court on various issues.

11 But in the meantime also give us a shorter
 12 time period, and I'm going to give the suggestion of
 13 30 days from now, in which we would submit to the
 14 Court any appropriate requests for an order to show
 15 cause based upon the initial discovery we've been
 16 able to complete, plus the information that we
 17 already have to get that process going. But the
 18 issues involving the police, involving the immediate
 19 violation to the Court's order are part and parcel of
 20 the problem.

21 Your Honor, I would make one other
 22 suggestion, if I could. And that is that the police
 23 attitude -- and Mr. Stirba can (inaudible) me and
 24 Mr. Hamilton can certainly elaborate on this. In
 25 fact, I was informed by Mr. Hamilton himself, not Mr.

1 Brendel, last fall that they were training or
 2 retrained the police department to take -- simply
 3 take reports rather than citing individuals on site
 4 for trespassing.

5 And my understanding is that based upon
 6 watching the videotapes and seeing this, the police
 7 attitude is, well, they either -- the Court's orders
 8 are not clear enough, because you will see in some of
 9 those tapes that members of Mr. -- representatives of
 10 Mr. Wisan are actually showing the orders to the
 11 police officers. They are reading the transcripts
 12 that -- of your statements on enforcement of the
 13 leases from last July to the police officers. But
 14 the police officers are responding that, Well, we
 15 need another court order. We need another court
 16 order.

17 THE COURT: Right.

18 MR. RICHARDS: And basically indicating
 19 this isn't enough. Well, it's either not clear
 20 enough to them or they don't believe that you've
 21 actually issued an order on the enforceability of the
 22 leases issued by the occupancy agreement issued by
 23 the special fiduciary. Even in some cases there are
 24 comments made indicating that you do not have
 25 jurisdiction.

1 THE COURT: Right.

2 MR. RICHARDS: I guess the argument is --
 3 and again Mr. Hamilton can elaborate -- I guess the
 4 argument is that you don't have jurisdiction in
 5 Arizona, for example, to order anything. We would
 6 dispute that, Judge, on multiple grounds, some of
 7 which we've briefed for you.

8 THE COURT: Right.

9 MR. RICHARDS: We believe your
 10 jurisdiction extends over the entire realm of the
 11 trust, and we believe that your pro tem powers extend
 12 certainly to anybody in violation of your order
 13 whether they're in Arizona, Utah or elsewhere.

14 THE COURT: I agree.

15 MR. RICHARDS: And we also believe that --
 16 and know that the fiduciary has domesticated many of
 17 your orders, including the injunction order in
 18 Arizona --

19 THE COURT: Right.

20 MR. RICHARDS: -- in any event. But
 21 because of the attitude that has been displayed by
 22 the local police and local government officials, we
 23 think it would be helpful to maintaining the peace,
 24 to deescalating the disputes in the local community
 25 for the short term while the discovery process goes

1 forward and while the orders to show cause are
 2 developed for the Court to issue some interim order
 3 so that there is no continuing argument that you have
 4 not spoken clearly enough or that you have not
 5 addressed the issues or the special fiduciary's
 6 authority to lease property. And, your Honor, if I
 7 could, I can elaborate on what I think that other
 8 order would look like.

9 MR. OKAZAKI: Excuse me, this is
 10 Ken Okazaki speaking.

11 Your Honor, we didn't even know what this
 12 phone conference was about, and we are not prepared
 13 to argue anything. And I hear motions being made --

14 THE COURT: The motion was made in
 15 writing, and you have a copy of that.

16 MR. HAMILTON: We have had a copy, but
 17 your Honor -- this is Blake Hamilton, we've had a
 18 copy but we took that to mean a motion -- that
 19 Arizona Attorney General's office was making a motion
 20 with this report and we still have time to file a
 21 response, and we plan on filing a response.

22 THE COURT: Just a minute. Just a minute.
 23 Just a minute.

24 There then was then a -- the motion that
 25 Mr. Richards is addressing, as I understand it, is a

1 motion that -- for lifting the -- the partial lifting
 2 of the stay and allowing discovery to proceed, that
 3 has been fully briefed. That has been noticed. That
 4 has been pending. You have had plenty of opportunity
 5 to respond to that. So this is not a new motion.
 6 This is -- he's just reminding the Court that there
 7 has been a motion that apparently I have not
 8 addressed, although I am aware that it existed and I
 9 thought I had addressed it. But if we have not, I --
 10 I am prepared to do that. But that is not something
 11 you haven't had the opportunity to respond to.
 12 MR. OKAZAKI: But if this is the time --
 13 this is Ken Okazaki speaking, your Honor -- if this
 14 is the time set for oral argument, we (inaudible)
 15 because we're going to argue it right now. And
 16 second, we don't even know -- we didn't even know
 17 what this phone conference was about. There are
 18 emails circulating does anybody know what this phone
 19 conference is about. And --
 20 THE COURT: Well, and --
 21 MR. OKAZAKI: -- (inaudible) answers.
 22 THE COURT: Well, since you were served
 23 with copies of Mr. Richards's motion and requests for
 24 an expedited status conference and you've received
 25 notice -- you would have -- you know, I think it

1 would have been reasonable to say -- to understand
 2 that this is what we were addressing today.
 3 MR. OKAZAKI: I --
 4 THE COURT: In any event, I -- and I do
 5 dispute the question that I have to hold oral
 6 argument on everything. When briefing is as
 7 exhaustive as it is in this case by all sides, I
 8 don't have to have oral argument on every motion.
 9 And not every motion under our rules requires oral
 10 argument. And in fact, it is my practice in most
 11 cases not to schedule oral argument on most motions,
 12 unless they're required by Rule -- Rule 7.
 13 MR. PARKER: But, your Honor -- this is
 14 Rod Parker speaking -- the problem is that you're
 15 having -- as I see it, two problems. One is that
 16 you're having half of an oral argument. But more
 17 than that, there are a lot of representations that
 18 were made by Mr. Richards that are simply not true.
 19 They're very disputed. And so to the extent he's
 20 attempting to make a factual argument that he's then
 21 attempting to attach to a motion that was, say, six
 22 months ago and then make new factual allegations to
 23 bolster the motion, I think Mr. Okazaki is exactly
 24 right. And I think what the Court needs to recognize
 25 with regard to what Arizona is saying is this is --

1 there is another side to the story that --
 2 THE COURT: And that's what --
 3 MR. PARKER: -- you need to know about.
 4 They're about evictions without due process. You
 5 know, the fiduciary is taking the position, Arizona
 6 is taking the position that they are basically
 7 dictators down there and that people with property
 8 rights can simply be ignored --
 9 THE COURT: Well, just --
 10 MR. PARKER: -- and the --
 11 THE COURT: Excuse me --
 12 MR. PARKER: -- (inaudible).
 13 THE COURT: -- excuse me, excuse me, Mr.
 14 Parker. I'm not going to be hearing oral argument on
 15 this today. I -- while I disagree with some of your
 16 representations because -- well, I disagree with some
 17 of your characterizations. I will -- I am not
 18 prepared to hear argument today on this matter. What
 19 I am prepared to do is schedule an oral -- I mean to
 20 schedule an evidentiary hearing on those -- on that
 21 part of the -- I am persuaded that based on the
 22 representations that have been brought here, which is
 23 as it is in any other order to show cause, people
 24 have the opportunity to respond and they will -- they
 25 will be given the opportunity to respond and present

1 whatever testimony they wish to.
 2 The Court needs to make an initial
 3 determination of whether there is enough basis there
 4 to warrant further hearing. All I'm saying is there
 5 is enough shown here to warrant further hearing.
 6 MR. PARKER: There's no (inaudible), your
 7 Honor.
 8 THE COURT: Sir --
 9 MR. PARKER: At least that's my
 10 (inaudible).
 11 THE COURT: That's why I am saying that I
 12 am not prepared to act today. That's why I've told
 13 Mr. Richards that I'm going to need affidavits. To
 14 the extent that they can be documented, that's going
 15 to be the extent of what the order to show cause can
 16 address. And it will have to be supported, and it
 17 will have to be properly presented. That's not at
 18 all inconsistent with what I said at the beginning of
 19 this -- of this telephonic conference.
 20 Now, I -- I believed that I had addressed
 21 that the earlier motion that has been -- that is -- I
 22 am being told now had not been addressed. And -- but
 23 I am aware that that motion for allowing discovery to
 24 proceed had been fully briefed by everyone.
 25 MR. PARKER: Your Honor, this is Rod

1 Parker again.
 2 THE COURT: No.
 3 MR. PARKER: I would just say one more
 4 thing about -- just procedurally here. You also have
 5 still, I think, pending before you the motion to
 6 intervene that we filed. And it was not decided.
 7 And I --
 8 THE COURT: Can I -- can I --
 9 MR. PARKER: -- (inaudible).
 10 THE COURT: I'm sorry. I'm sorry.
 11 MR. PARKER: Go ahead.
 12 THE COURT: Can I ask you because I have
 13 time and again issued minute entries saying, Guys, I
 14 don't get the paperwork that you filed. It is --
 15 it's either missing from the file or the file is --
 16 frankly, the files have been taken physically from
 17 me.
 18 MR. PARKER: I thought we did put that on
 19 that motion. But if not, I apologize.
 20 THE COURT: I don't -- I'm looking at my
 21 clerk, and my clerk has some things.
 22 THE CLERK: I don't think I have one from
 23 Rod Parker.
 24 THE COURT: My clerk tells me that she
 25 does not recall seeing something from you.

1 MR. RICHARDS: We did submit to you the
 2 binder that you have requested with all of those
 3 papers in it I want to say about a month ago, maybe a
 4 little more.
 5 THE COURT: Okay.
 6 MR. RICHARDS: If you do not have that --
 7 THE COURT: No.
 8 MR. RICHARDS: -- we can duplicate that
 9 very easily.
 10 THE COURT: My clerk tells me that she
 11 does have that one.
 12 MR. RICHARDS: Okay.
 13 THE COURT: Okay.
 14 MR. PARKER: And, your Honor, Rod Parker
 15 again.
 16 THE COURT: Yes, Mr. Parker.
 17 MR. PARKER: The other thing I wanted to
 18 say was that is discovery issue, at least in some of
 19 its form, goes right to the heart of the issues that
 20 are pending before the Supreme Court on appeal. And
 21 I don't think that it's -- I understand the need to
 22 maintain status quo and those sorts of things that
 23 are --
 24 THE COURT: Well, it's more than
 25 maintaining status quo, Counsel. I have an ongoing

1 I said my memory was that we had addressed
 2 the motion for proceeding in discovery, but maybe
 3 not. Maybe I just read all the paperwork but
 4 didn't -- for some reason did not act on it.
 5 Those -- that was contemporaneously with the
 6 arguments before the Supreme Court, if I recall the
 7 timing correctly.
 8 MR. RICHARDS: Yeah. This is
 9 Mr. Richards. I may have a clarification for you.
 10 About the same time that we submitted our request,
 11 the special fiduciary had submitted a request. And
 12 to be honest, I can't remember the details of it.
 13 But it did involve some discovery-related issues as
 14 well. The Court did rule on that motion.
 15 THE COURT: So maybe I just didn't --
 16 MR. RICHARDS: Yes, the Court has not
 17 issued a ruling on our motion that we filed last
 18 December.
 19 THE COURT: Okay. In that case my
 20 apologies. We will have to dig this up and address
 21 it. And --
 22 MR. RICHARDS: And we did --
 23 THE COURT: -- Mr. Parker's --
 24 MR. RICHARDS: I'm sorry, Judge.
 25 THE COURT: Go ahead.

1 responsibility to administer the trust, and I have
 2 delegated that responsibility or appointed the
 3 fiduciary to address that. And if they're -- and
 4 that administration is ongoing. And in that sense it
 5 is not unlike a domestic matter that notwithstanding
 6 it being on appeal, there are continuing motions that
 7 are presented to the Court and that still need to be
 8 addressed for ongoing management purposes.
 9 MR. PARKER: Right. But this is sort of
 10 like race to -- it's almost like a race to the finish
 11 line. It's like trying to get to do things that are
 12 not necessary to the administration of the trust or
 13 of immediate importance but long term, like the
 14 subdivisions and stuff like that, that I think are
 15 fundamental changes that are not as (inaudible) in
 16 terms of the daily administration of the trust. And
 17 that's what I mean by things going to the heart of
 18 what's on appeal.
 19 MR. RICHARDS: Your Honor.
 20 MR. PARKER: That's a different category.
 21 MR. RICHARDS: Your Honor, this is Mr.
 22 Richards, and I can address that. I think I can
 23 address that fairly succinctly.
 24 Mr. Parker says that the issues raised in
 25 that motion have nothing to do with the ongoing

1 administration of the trust. Your Honor, a couple
2 weeks ago the police appeared at a residence that has
3 been rented to a couple, Ron and Ginger Cook, by the
4 special fiduciary with this Court's authorization.
5 The Cooks have pending now a lawsuit from our office
6 in a private lawsuit against government officials
7 there for a -- discrimination and violation of
8 housing laws.

9 THE COURT: Oh, this is the one where the
10 front yard was dug up?

11 MR. RICHARDS: Yes. Your Honor, now, in
12 contrast to a few days earlier when clients
13 apparently -- (inaudible) represented. I don't know
14 if they are Mr. Okazaki's and Mr. Parker's clients.
15 But (inaudible) represented while plowing up the
16 field that Mr. Stubbs had leased. And the police
17 were there, and the police refused to do anything.
18 The police showed up at the insistence of a gentleman
19 who claims he is from an irrigation company and that
20 the Cooks are stealing his irrigation company water.

21 Now the Court should be aware, from our
22 filing last December, that irrigation water and the
23 rights of that irrigation water are in serious
24 dispute. In fact, there is evidence that that water
25 right was quitclaimed in 1998 from the corporate

1 the Cooks for digging up their front yard.

2 THE COURT: Right. You provided that as
3 an exhibit.

4 MR. RICHARDS: Yes. And your Honor, that
5 is on the letterhead that (inaudible) a company again
6 from which we can't find any corporate existence.
7 This is the type of thing that's going on. This is
8 the type of thing that we believe requires the
9 Court's immediate involvement. And, your Honor, if I
10 could add a couple other points, Mr. Okazaki sits on
11 a (inaudible), and he enclosed in the accusations
12 about Mr. Cook and the (inaudible) police officer
13 there. And --

14 THE COURT: I do --

15 MR. RICHARDS: -- we file an objection
16 then, your Honor. We do. And that is a result of
17 Mr. Crook resigning from the evaluating board that
18 (inaudible) to.

19 THE COURT: Right. And I am aware of
20 that.

21 MR. RICHARDS: They point out allegations
22 about Mr. Stubbs that he has allegedly assaulted
23 children, he and his mother had assaulted children.
24 Mr. Parker has filed with the Washington County
25 Court, just -- I believe in the last week and a half,

1 entity that we can't find any corporate existence of
2 to an entity created by a group that includes a
3 gentleman named William Jessop. I don't know if
4 that's the William Jessop in this case or not, your
5 Honor. But that issue was raised and is one of the
6 issues in this dispute that needs to be addressed by
7 this Court.

8 Now, the police show up, and they are
9 informed -- and you will see it on the videotape we
10 provided you -- they are informed that that issue is
11 in dispute and that the trust in fact claims that
12 water as the trust's water rights. Nevertheless, the
13 police officer orders a backhoe onto the property and
14 leaves it dug up. (Inaudible) an enormous hole in
15 their front yard. Now, your Honor, I can't think of
16 anything that involves more of the ongoing,
17 day-to-day administration of the trust than that sort
18 of issue. When you have individuals who are being
19 molested in their right to use this property under a
20 written lease from this Court's authority, that are
21 told that they can't stop the police, that the police
22 can come on there and that it's their word against
23 the irrigation company.

24 Putting that (inaudible) Judge, shortly
25 thereafter, the irrigation company sent an invoice to

1 an ex-parte application for a temporary retraining
2 order to prevent Mr. Stubbs from executing on or
3 using the lease he was given for grain dens on UEP
4 property.

5 THE COURT: Right.

6 MR. RICHARDS: In that or with that
7 filing, I understand he submitted an affidavit
8 explaining the reason -- this is by -- from Mr.
9 Parker himself -- explaining that the reason for an
10 ex-parte order against Mr. Stubbs restraining him was
11 that Mr. Stubbs has been guilty of self-help
12 activities lately that made it dangerous somehow to
13 give him notice in advance.

14 Your Honor, I will tell you that we don't
15 agree with self-help activities by anybody. We don't
16 agree with people going onto the leased property that
17 Mr. Stubbs has leased and opening the gates, running
18 his cattle off or running his livestock off. We
19 don't agree with people shutting off the utilities to
20 the property because they don't think that the person
21 who's leased that property has a right to be there.
22 We don't feel that's self-help anywhere.

23 And we agree with Mr. Okazaki and with Mr.
24 Parker that this sort of thing has gotten out of hand
25 and has become unacceptable. One of the reasons we

1 believe this has gotten out of hand, your Honor, is
2 that the local police hide behind the argument that
3 this is just a civil dispute, running some cows off
4 the property, taking down fences, taking troughs out
5 of the property and moving them, capping wells, all
6 of these sort of things are mere sinless deeds that
7 they can't interfere with.

8 And they don't believe that you have
9 issued an order that is clear enough that they can
10 follow or for them to have to acknowledge the lease
11 rights that this Court has authorized Mr. Wisan and
12 his lease at this time to issue.

13 Your Honor, that is why we believe it is
14 appropriate for the Court to clarify its prior order.
15 I'm not asking, Judge, for -- in the interim for any
16 sort of new relief. I believe you've been extremely
17 clear.

18 THE COURT: Yeah, I don't know
19 (inaudible).

20 MR. RICHARDS: (Inaudible) behind the
21 fiduciary leases and that you expected them to be
22 honored by local law enforcement. But apparently,
23 your Honor -- and Mr. Hamilton can explain why you
24 haven't been clear enough -- but apparently you have
25 not. We would ask the Court to do whatever it needs

1 properties.

2 THE COURT: Well, the granary is not a
3 personal property.

4 MR. PARKER: What?

5 THE COURT: Granaries are not personal
6 property.

7 MR. PARKER: They are, your Honor. I --

8 THE COURT: Okay. They're affixed to the
9 land. They're not. They are -- they're part of the
10 realty.

11 But in any event, I don't know how to make
12 myself any clearer, but I will attempt again. Every
13 order that this Court has issued is to be enforced to
14 the letter by anyone in authority, and it is to be
15 obeyed by anyone with knowledge of the Court's
16 orders.

17 Number two, there is absolutely, without
18 equivocation, I stand behind the actions of the
19 fiduciary insofar as he has entered into leases with
20 individuals and individuals have relied on those
21 leases to -- those actions by the fiduciary under the
22 discretion given to him to administer the trust under
23 the Court's supervision, I stand behind those
24 actions.

25 If there is a problem with those actions,

1 to do in the interim, while we are exploring the
2 discovery, while we are preparing an order to show
3 cause that may be appropriate, to clarify that the
4 Court does in fact stand behind those leases, that
5 the person has those leases from the fiduciary as to
6 (inaudible) rights that anyone else who doesn't have
7 a preexisting written agreement or court order that
8 predates that lease.

9 MR. PARKER: Well, now, wait a minute.
10 That's -- now, you can't take away the existing
11 property rights of somebody else, whether it's real
12 property or personal property by fiat like that.

13 THE COURT: Just a moment. There is no
14 preexisting property rights of any alleged
15 beneficiary to any land or to anything in the UEP.
16 Okay. There is no preexisting right, period. There
17 is none.

18 MR. PARKER: But, your Honor, there is.
19 They're in two senses. One is the sense of the
20 unjust enrichment claims that these people may have
21 in the real property; and number two, there are food
22 and personal property down there that UEP does not
23 own.

24 THE COURT: Well --

25 MR. PARKER: The granary is one of those

1 then those can be brought to me, and we'll hold a
2 trial and we will result -- resolve once and for all
3 substantively what the issues are and where things
4 stand. But in the interim, the presumption is that
5 the -- and I wanted to make it very clear, I stand
6 behind the actions of the fiduciary in terms of his
7 administration of the trust, his -- the leases that
8 he has executed. And if there are legitimate,
9 competing claims by anyone who believes that he or
10 she has a claim to any particular property, that can
11 be certainly addressed in court on a full trial on
12 the merits.

13 That also indicates -- reinforces the
14 notion that discovery is in fact appropriate to be
15 done so that we can be -- clarify and everybody can
16 understand fully what the claims are and what the
17 documentation is being made, if it is behind the
18 various claims. And then as there are -- continue to
19 be disputed issues of fact, we'll try the matter.

20 MR. PARKER: Well, your Honor, are you
21 giving all of the residents of the property standing
22 to participate in those trials insofar as their
23 personal injuries are implicated? Because that seems
24 to be the import of what you're saying, that if
25 someone claims they own a piece of personal property,

1 they have standing in your court to dispute that.
2 THE COURT: I will need to think through
3 how that process can work given my prior rulings of
4 who does and doesn't have standing.

5 But to the extent that there have been
6 individuals who have been occupying UEP land, whether
7 they be tenants at sufferance or by, you know,
8 possession or whatever, I will have to figure out and
9 think through what -- how that evidence is best
10 presented so that those concerns can be presented to
11 the Court and evaluated. I'm not sure how to do that
12 right now, and I'll have to think about that.

13 MR. RICHARDS: Your Honor, this is Mr.
14 Richards.

15 One point of clarification, if you would.
16 And you've used the term "leases of the special
17 fiduciary" in your comment. I had seen, I believe,
18 some folks quibble over your language before using
19 the word "lease" and then claiming that a --
20 something entitled an occupancy agreement isn't
21 within your order and that's not a lease, that's not
22 a conveyance. I would assume when you're talking
23 about leases, you're talking about any sort of
24 written agreement by the fiduciary involving the
25 property of the trust.

1 detainer statute apply that they would -- that the
2 special fiduciary had to go through that process to
3 actually evict somebody?

4 MR. RICHARDS: Okay. Your Honor, this is
5 Mr. Richards. As a point of clarification for Mr.
6 Hamilton, I don't think that what the Court has been
7 alluding to or that you were asking about is that
8 you're granting the fiduciary the authority to go in
9 tomorrow and to find anyone who failed to get an
10 occupancy agreement from him, who is exclusive --
11 been in exclusive possession of that property since
12 before the Court's administration, since the Court's
13 administration instead of just kicking them out
14 without going through some sort of a process
15 whether -- you know, through this Court. What we're
16 talking about --

17 THE COURT: This Court or other
18 appropriate --

19 MR. PARKER: This Court doesn't even have
20 jurisdiction (inaudible).

21 THE COURT: Well, whichever court has
22 appropriate jurisdiction. I agree with Mr. Richards'
23 clarification.

24 MR. RICHARDS: Your Honor, what we were
25 talking about is the instance where someone had a

1 THE COURT: That is absolutely correct.
2 Any agreement, any written agreement entered into by
3 the special fiduciary, regardless of how denominated
4 at this point in the -- is the order of the Court and
5 it is to be enforced and it is to be protected. And
6 the people receiving the -- who have entered into
7 those agreements with a fiduciary, again, however
8 denominated, take superior right at this point over
9 any competing claim, pending a further determination
10 by the Court of competing claims when they're brought
11 in in due time and in proper fashion.

12 Now, again we'll have to address how --
13 what that is and how that will need to be done. But
14 it seems to me that this order has to be unequivocal
15 and --

16 MR. HAMILTON: Your Honor, if I may --
17 this is Blake Hamilton -- I'm just a little confused
18 about those people that are actually occupying
19 property. Are you saying that a person that's given
20 an occupancy agreement can come in and just self-help
21 evict somebody? Because that is not the law of this
22 case. That's not the law generally.

23 Bob, this case in the minute entry that
24 you denied our TRO back on July 21st, 2008, you said
25 there was not imminent harm. Does the unlawful

1 lease agreement and they show up and they tell the
2 police, Look, someone is on this property I have a
3 lease agreement for. They don't have a lease
4 agreement. They don't have anything that they claim
5 that they have a right to be here. I want you to
6 enforce my lease rights and uphold these. In fact,
7 those are official, certified, verified orders that
8 come with the appointor and the order of the Court.

9 MR. HAMILTON: (Inaudible) talking about
10 commercial property that's being currently used, the
11 granary for example. Regardless of whether the
12 granary is going to be considered personal or real
13 property, it's being used by somebody else. So if
14 the special fiduciary gives a lease to somebody, does
15 that person then -- are they allowed to come and
16 remove grain and remove property and self-evict
17 somebody?

18 MR. RICHARDS: (Inaudible).

19 MR. HAMILTON: (Inaudible).

20 MR. PARKER: (Inaudible) the fiduciary
21 decides to give a lease to somebody to buy a personal
22 vehicle, I don't think -- you know, that's what's
23 being discussed here.

24 THE COURT: I disagree.

25 MR. PARKER: That is presumptively valid.

1 THE COURT: I disagree because the UEP
 2 does not claim to own your personal vehicle.
 3 MR. PARKER: (Inaudible) and then if he
 4 comes presumptively valid under the scenario that Mr.
 5 Richards is putting forward. He simply says it and
 6 it becomes presumptively valid. Because I'm saying
 7 that the personal property that we're talking about
 8 is not owned by the trust or by the fiduciary. And
 9 broad ownership claim is being ignored.
 10 THE COURT: No, it's not.
 11 MR. PARKER: That's the objection that I
 12 have to what's happening.
 13 THE COURT: I disagree.
 14 MR. SHIELDS: (Inaudible) Shields. I
 15 haven't said anything today. But on behalf of the
 16 special fiduciary, we are not doing what Mr. Parker
 17 alleges we are doing. What we are doing is leasing
 18 UEP property or allowing people to use that property.
 19 We are not asserting control over property that is
 20 not UEP. And if we were, then that's when you bring
 21 that to your Honor to resolve that. So this -- I
 22 think Mr. Parker's concerns are unfounded both in
 23 fact and in process. There's a process that you can
 24 pursue. What's going on right now is the fiduciary
 25 has no chance to enforce its right because the police

1 address both disputed issues. I think we can do
 2 that.
 3 I expect that Mr. Okazaki and Mr. Parker
 4 will weigh in on that. I would encourage them to
 5 call me, call Mr. Bodily, and call anyone else and
 6 talk about the proper process for doing that so that
 7 there was (inaudible). And I would expect that
 8 irrespective of any intervention issues we'd probably
 9 submit some briefing to the Court, and the Court
 10 probably will review that. And that would be my
 11 recommendation on that. The only other question I
 12 have, Judge, and I'll shut up, is whether or not
 13 we're going to have a transcript of this proceeding
 14 or if the Court is going to have a folder, an order
 15 that issues this clarification in some other form.
 16 THE COURT: Mr. --
 17 MR. HAMILTON: Your Honor, if I may. This
 18 is Blake Hamilton.
 19 THE COURT: Yes, Mr. Hamilton.
 20 MR. HAMILTON: I'm speaking on behalf of
 21 the cities here. The police have been put in a very
 22 difficult situation. They are not siding with one
 23 faction or the other. They are -- they have been put
 24 in a difficult situation because the special
 25 fiduciary, for whatever reason, hasn't gone through

1 are siding with anybody who's contra-fiduciary.
 2 MR. PARKER: And that isn't true either.
 3 He says he had a conflict at the granary and they
 4 refused to side with anybody. It's a civil matter
 5 that goes (inaudible). That's what we encountered at
 6 the granary last Tuesday.
 7 MR. RICHARDS: Your Honor, this is Mr.
 8 Richards. I think with your clarification that
 9 you've now provided us, I think that the police, the
 10 local government officials and the individuals who
 11 were represented here and otherwise received notice
 12 of your order are fully advised of the Court's intent
 13 and the Court's order. And they'll act at their own
 14 risk and make their own decisions.
 15 THE COURT: Mr. Richards --
 16 MR. RICHARDS: I don't think the Court
 17 needs to go further on that. However, on these other
 18 issues, your Honor, with respect to disputes where
 19 people are claiming I have a prior interest or I have
 20 a personal interest, I think the Court is correct
 21 that there may need to be a process for addressing
 22 those separately. I would recommend that the Court
 23 do what it's done in the past and give us, say, 30
 24 days in which -- for the parties to submit briefs to
 25 you, outlining recommendations for a process to

1 the process, the legal process. And Mr. Richards
 2 keeps talking about that there needs to be a process
 3 put in. Well, there is a legal process already,
 4 unlawful detainer action, abandonment statutes so
 5 that they -- that the special fiduciary has to go
 6 through that legal process before extinguishing
 7 rights.
 8 THE COURT: Just a moment. Let me make
 9 sure that we are all talking about the same thing.
 10 What I'm talking about right now is that
 11 where the special fiduciary has entered into an
 12 agreement as to a particular field, property, that
 13 those written agreements are to be enforced. And the
 14 holder of those agreements and the beneficiary of
 15 those agreements has, at this point, documented
 16 superior right to anything.
 17 Now, if there are contests as to those
 18 rights and the right of the fiduciary to issue those
 19 agreements or to enter into those agreements, that's
 20 the -- you know, I'm going to have to think through
 21 how to create a process so that those concerns and
 22 those counter positions and other documentation can
 23 be presented to the Court and adjudicated. And I'm
 24 going to need the assistance of counsel in -- in
 25 fashioning a proper process so that if there are

1 challenges to those agreements, then those can be
2 properly documented and presented to the Court and
3 addressed.

4 So I -- I think we're at -- I think,
5 Mr. Hamilton, your argument misses the point a bit.
6 Because the -- you -- I agree with you that there are
7 proper processes for unlawful detainer or for other
8 processes when -- but what I am addressing here right
9 now is as between someone that has a written
10 agreement with a fiduciary and someone that does not

11 and cannot and has not produced documentary evidence
12 supporting their counter position where the special
13 fiduciary has entered into an agreement and has the
14 Court's authority to issue leases or agreements for
15 use, occupancy agreement however denominated.

16 MR. PARKER: Of property that the trust
17 owns.

18 THE COURT: The property that the trust
19 owns, that is correct.

20 MR. PARKER: And if it doesn't own the
21 property --

22 THE COURT: Well, if there's a challenge
23 to the property -- whether or not the -- the trust
24 owns the property, then that needs to go through a
25 process of discovery so that everybody can be

1 Arizona law from trust property. The Arizona Court
2 of Appeals held that in a case there where the
3 property occupants were saying they had some sort of
4 an equitable long-term interest in being on the
5 property, the long-term detainer -- or the unlawful
6 detainer in addition statute in Arizona was not
7 appropriate, that had to be decided in a separate
8 civil action.

9 MR. PARKER: Your Honor --

10 MR. RICHARDS: You have the jurisdiction
11 over the realms of this trust and have the
12 jurisdiction to decide those sorts of issues. I
13 think it's totally correct that the Court should put
14 in place some sort of a procedure. And again I would
15 propose a 30-day waiting schedule on that. That
16 would be my suggestion.

17 MR. PARKER: Okay. Now, let me just say
18 that you advised me to correct you if you were wrong.
19 And you are wrong because there was another component
20 of that decision, and that was that the trust could
21 not evict the person, could not act -- attempt to
22 usurp the rights of the occupants until it went
23 through that process. If that's -- that's what
24 you're advocating is to do away with the process --
25 and that's exactly what the Holms case is -- and be

1 properly informed about the basis for the various
2 claims, and there will have to be some kind of
3 process for adjudicating that. And as I said -- as
4 you indicated, I'm going to have to think through how
5 to do that in light of my prior rulings.

6 MR. PARKER: (Inaudible).

7 THE COURT: And so I'm going to have to do
8 that. I'm just not at a position right now to speak
9 off the cuff about that.

10 MR. PARKER: But as Mr. Hamilton pointed
11 out, there already is a process, your Honor.

12 THE COURT: Okay. Well --

13 MR. PARKER: I mean that process is
14 statutory.

15 THE COURT: If there are --

16 MR. RICHARDS: Your Honor, I'm sorry. I
17 apologize for interrupting, but I -- this is Mr.
18 Richards again.

19 Mr. Parker is well aware and he actually,
20 I think, helped create the precedent on this
21 particular issue. It's the Holm versus UEP case of
22 the Arizona Court of Appeals just a few years back
23 where I believe -- and Rod you can correct me if I'm
24 wrong on this -- I believe you were involved in
25 representing the trust, trying to evict people under

1 done.

2 MR. RICHARDS: Actually, Judge, I think
3 I'm advocating for a process here. But we're going
4 to have to brief you on that further.

5 THE COURT: Okay.

6 Mr. Richards, I would ask you to please
7 draft a proposed order that -- because I'm not sure,
8 as I said earlier, how to make my views any clearer
9 than I already have tried to say them, than the way
10 I've said them. So -- but if I could ask you to
11 reduce to writing and make and provide me a proposed
12 order that in your view would make it clear that this
13 Court fully backs the agreements negotiated by the
14 special fiduciary and that those orders -- and that
15 those agreements are based on this Court's
16 supervision of the trust and that it is this Court's
17 order that those agreements be given full recognition
18 and enforced. I would invite you to draft that
19 proposed order, and Mr. Parker and Mr. Okazaki and
20 Mr. -- I'm sorry, Mr. Hamilton or anyone else can
21 then file any objections or concerns that they may
22 have to the specific language that is proposed. I
23 think that that would be the most effective way of
24 addressing and clarifying this Court's position with
25 respect to the orders it has already issued and the

1 authority it has granted the special fiduciary.
 2 MR. RICHARDS: Your Honor, if I can have
 3 until about next Tuesday to submit that.
 4 THE COURT: That should be fine.
 5 Now, I heard you earlier addressing two
 6 separate issues in response to my introductory
 7 statements that I thought that this really needed to
 8 be addressed as an order to show cause hearing with
 9 proper support by way of affidavits, et cetera. You
 10 had identified specific individuals, most in your --
 11 in your -- in your report, most of those individuals
 12 tend to be in the police department. And I'm sure
 13 that those can be identified, readily identified and
 14 can -- and to the extent that there are specific
 15 examples, specific individuals whose actions are, you
 16 know, alleged and with support from affidavits --
 17 (Beep.)
 18 THE COURT: Whoops. Who do we have that
 19 dropped out? Have I lost somebody?
 20 MR. PARKER: If we lost him, we wouldn't
 21 know.
 22 THE COURT: Okay. Let me do -- let me do
 23 a roll call here. Who do I have on the line?
 24 MR. RICHARDS: Mr. Richards is here.
 25 MR. PARKER: (Inaudible).

1 MR. JEFF SHIELDS: Okay. We lost
 2 Roger Hoole, Zach and Mark is all.
 3 THE COURT: And is Jeff on? Jeff Shields?
 4 MR. JEFF SHIELDS: Jeff Shields is still
 5 on.
 6 THE COURT: Okay. So we've lost Mark
 7 Callister, Zach, and Mr. Hoole.
 8 Let's see, can one of you try to get them
 9 back on because we can't pick them up. Oh, no, we're
 10 not going to be able to do that.
 11 Hold on a second.
 12 THE CLERK: If they call for you --
 13 THE COURT: Uh-huh (affirmative).
 14 THE CLERK: -- they will be added. They
 15 will just automatically will be added in.
 16 THE COURT: Oh, if --
 17 THE CLERK: If Mr. Hoole --
 18 THE COURT: If one of these individuals
 19 then conferences in the other one, they will be
 20 automatically added.
 21 Okay. That's someone that knows more
 22 about this system than I do is telling me that if one
 23 of you will contact Mr. Zach Shields, Mr. Mark
 24 Callister and Mr. Roger Hoole, then they will be
 25 added to the conference. I just can't do it.

1 THE COURT: I'm sorry?
 2 MR. PARKER: Rod Parker is here.
 3 MR. JEFF SHIELDS: Rod Parker, after you,
 4 Jeff Shields.
 5 MR. OKAZAKI: Ken is here.
 6 THE COURT: Okay.
 7 MR. SAMPSON: Chad Sampson (inaudible).
 8 THE COURT: Okay.
 9 MR. LEAVITT: Mike Leavitt still here.
 10 THE COURT: Okay.
 11 MR. HAMILTON: Blake Hamilton still here.
 12 THE COURT: Okay.
 13 MR. BODILY: Ken Bodily still here.
 14 THE COURT: Okay.
 15 MR. PARKER: Is Bill still there?
 16 MR. RICHARDS: Yes.
 17 THE COURT: Is Mr. Leavitt on?
 18 MR. LEAVITT: Yes, I'm still here.
 19 THE COURT: Okay. Is Mr. Hoole?
 20 MR. PARKER: That's who's lost us.
 21 MR. HAMILTON: That's who's lost, Judge.
 22 MR. JEFF SHIELDS: How about Mark
 23 Callister? Are you still on, Mark?
 24 THE COURT: Is Mr. Callister on?
 25 Is Mr. Shields -- Zach Shields on?

1 MR. JEFF SHIELDS: This is Jeff Shields.
 2 I would do it, except I'm up in the mountains and
 3 I've got a -- I've got a phone that I had to go
 4 through to answer to get to this. There's no way I
 5 could join anybody on it.
 6 THE COURT: Okay. Mr. Bodily, can you do
 7 that?
 8 MR. BODILY: Yeah. I mean I've already
 9 got three people on.
 10 THE COURT: Oh, do you?
 11 Okay. Let's see, can anybody else that's
 12 on a separate call?
 13 MR. LEAVITT: I'm on a -- this is
 14 Mike Leavitt. I'm on a separate call. I can bring
 15 at least one other person in.
 16 MR. BODILY: I can try another. If you
 17 want to give me -- I can try. I just don't want to
 18 lose --
 19 THE COURT: Right. Well, I don't want to
 20 lose you either. How many do you have on your line,
 21 Mr. Bodily?
 22 MR. SAMPSON: Your Honor, this is
 23 Chad Sampson. I think I could try and bring in Zach
 24 and Mark.
 25 THE COURT: Okay.

1 MR. SAMPSON: Mr. Callister and Mr.
 2 Shields.
 3 Jeff, do you have their number directly?
 4 MR. JEFF SHIELDS: Yes. Zach is
 5 801-530-7356.
 6 MR. SAMPSON: Okay.
 7 MR. JEFF SHIELDS: I think they were in a
 8 conference in his office. So call him, and I think
 9 that will work.
 10 MR. SAMPSON: We'll go ahead and call
 11 them --
 12 THE COURT: And just a moment.
 13 Mr. Leavitt, could you try to bring in
 14 Mr. Hoole?
 15 MR. LEAVITT: Yes. Do you have his
 16 number, your Honor?
 17 THE COURT: 801-272-7556.
 18 MR. LEAVITT: 272-7556. Okay.
 19 THE COURT: 801. Okay.
 20 I guess I'll hold off until everybody is
 21 on.
 22 MR. SAMPSON: Your Honor, this is
 23 Mr. Sampson. I think they're putting us on hold to
 24 get the other people.
 25 THE COURT: Okay. All right. Thank you.

1 MR. JEFF SHIELDS: If you don't hear my
 2 chuckle, then that means I'm off.
 3 THE COURT: All right.
 4 Are we back on?
 5 UNIDENTIFIED SPEAKER: Apparently not.
 6 THE COURT: Apparently not, okay.
 7 MR. LEAVITT: Your Honor, this is Mike
 8 Leavitt. While we're waiting --
 9 THE COURT: Yes, sir.
 10 MR. LEAVITT: -- I just wanted to check
 11 since we did have some discussion about matters that
 12 have been submitted to the Court. I represent
 13 Commercial Service of Perry. We had two motions that
 14 we sent binders to the Court on about a month ago. I
 15 just wanted to make sure the Court has those.
 16 THE COURT: Yes, we do have those.
 17 MR. LEAVITT: Okay.
 18 THE COURT: Okay. The two that we have --
 19 I will say that my clerk is telling me that the ones
 20 that we have are the ones that Mr. Leavitt just
 21 alluded to, and we have Mr. Richards' other binder.
 22 But I don't recall seeing Mr. Parker's,
 23 and my clerk does not recall seeing Mr. Parker's.
 24 MR. PARKER: We'll check on that, your
 25 Honor.

1 MR. SAMPSON: This is Chad Sampson. Is --
 2 is Zach or Mark on the line?
 3 THE COURT: It doesn't sound like it.
 4 MR. SAMPSON: All right. I apologize,
 5 your Honor, we'll try this again.
 6 THE COURT: Okay. Thank you.
 7 MR. LEAVITT: And, your Honor --
 8 THE COURT: Yes.
 9 MR. LEAVITT: -- this is Mike Leavitt.
 10 Roger, are you there?
 11 MR. HOOLE: Yes. Your Honor, I apologize.
 12 I somehow got dropped and didn't know how to rejoin.
 13 THE COURT: Okay. Well, hopefully we've
 14 got you back on and will keep you on.
 15 MR. JEFF SHIELDS: Your Honor, this is
 16 Jeff Shields. If we cannot get Mark Callister and
 17 Zach Shields, I can continue to represent the
 18 fiduciary through the remainder of this call without
 19 them.
 20 THE COURT: Okay.
 21 MR. JEFF SHIELDS: As long as my phone
 22 holds out.
 23 THE COURT: Okay.
 24 MR. PARKER: Well, tell us if you get cut
 25 off then.

1 THE COURT: Okay.
 2 MR. SAMPSON: Your Honor, are you still
 3 there?
 4 THE COURT: I am.
 5 MR. SAMPSON: Okay. We're trying to work
 6 it out with this 1950s phone system we've got here in
 7 our office. If you'll bear with us for one more
 8 moment.
 9 THE COURT: Not a problem.
 10 MR. SAMPSON: Hello, your Honor.
 11 THE COURT: Yes.
 12 MR. SAMPSON: Are you there?
 13 THE COURT: I am. Well, obviously.
 14 Mr. Shields, Mr. Callister, are you there?
 15 MR. CALLISTER: Yes.
 16 MR. ZACH SHIELDS: Sorry, your Honor, we
 17 were dropped off and making -- leaving voicemails all
 18 over the place.
 19 MR. SAMPSON: I want serious recognition
 20 for getting that accomplished.
 21 THE COURT: You got it.
 22 Okay. Now, let me --
 23 UNIDENTIFIED SPEAKER: (Inaudible) do you
 24 want me to get the (inaudible)?
 25 THE COURT: Yes, please.

1 UNIDENTIFIED SPEAKER: I'm back. I'm
 2 here.
 3 MR. RICHARDS: Your Honor, this is
 4 Mr. Richards. I think you left off explaining that
 5 (inaudible) individuals whose actions are alleged who
 6 can be alleged now with affidavits to have violated
 7 the Court's orders, and I think that's where you
 8 left.
 9 THE COURT: Right. And that should be
 10 brought, you know, consistent with our contempt
 11 statute by order to show cause with supporting
 12 affidavits and then the parties will need to be
 13 served -- not the parties, but the individuals will
 14 need to be served because as you correctly stated,
 15 whether or not they are parties to the case or they
 16 do come within the jurisdiction of the Court to the
 17 extent that they have knowledge of the Court's
 18 orders. So that -- that will need to be done.
 19 The second set of -- the second group, as
 20 I understood you, were actions taken by individuals
 21 or groups of individuals who at this time cannot be
 22 directly identified for purposes of an order to show
 23 cause but that for whom you are requesting that
 24 discovery be provided, be engaged in so that there
 25 could be further determination whether or not those

1 you're -- excuse me, we filed that motion on April
 2 8th.
 3 THE COURT: Okay. That -- and that's the
 4 one that you say --
 5 MR. PARKER: The motion we asked the court
 6 to lift the stay for the purpose of deciding the --
 7 THE COURT: Okay.
 8 MR. PARKER: -- motion to intervene.
 9 THE COURT: I have not seen that.
 10 MR. PARKER: (Inaudible).
 11 THE COURT: Did you provide that as I have
 12 requested through a separate binder of courtesy
 13 copies that supported that?
 14 Because I'm sure that what happened is
 15 once it hit the bowels of this building, it got
 16 filed. The file, as you know, is voluminous. Many,
 17 many people have their hands on it, in it, through
 18 it. They, you know -- I don't have control of the
 19 file.
 20 MR. PARKER: I wish I knew the answer to
 21 that while I'm sitting here, your Honor. I will
 22 follow up when we get off the phone --
 23 THE COURT: Okay.
 24 MR. PARKER: -- and ask whether we did
 25 that or not. I thought we had. I remember at least

1 individuals need to be brought before the Court. If
 2 I -- is that correct? Is that --
 3 MR. RICHARDS: Yes, your Honor.
 4 THE COURT: -- how I understood you?
 5 And the -- what I'm just looking at here
 6 is I thought we had -- I'm looking at my order of
 7 March, I think it was -- oh, wait, I've changed.
 8 Okay. Hold on a second, of March 18.
 9 Mr. Parker, I need to address one
 10 question -- one issue. You had indicated that there
 11 was a motion to intervene that was still pending, and
 12 I think I had addressed that issue in my March 18
 13 ruling when I indicate -- when I said that there
 14 were -- that I would rule on the motion to intervene
 15 (inaudible) the stay of the corporation or the
 16 presiding -- or the president would seek relief from
 17 the stay order. I don't know if you have sought that
 18 or not. I have -- that has not come to my attention.
 19 So -- but I believe to the extent that
 20 that's pending, it may very well be because the
 21 estate and the corporation of the president have not
 22 acted to seek relief from the stay order as was
 23 directed, as they were directed to do under my March
 24 18 --
 25 MR. PARKER: The motion -- the motion

1 a conversation about it. But if we didn't, I
 2 apologize and will get it done.
 3 THE COURT: Okay.
 4 MR. PARKER: It sounds like we didn't or
 5 you'd have it. So --
 6 THE COURT: Well, I believe I would have
 7 had -- if it had been clearly marked as courtesy
 8 copies for the court to -- you know, to address a
 9 pending issue, I would have -- I believe I would have
 10 received that and my clerk would have received that.
 11 MR. PARKER: Yeah. Well, we'll follow up.
 12 THE COURT: Okay.
 13 MR. PARKER: And let you know one way or
 14 another.
 15 THE COURT: Okay. And again --
 16 MR. PARKER: What we'll do is we'll send
 17 another set over. It won't do any good to tell you
 18 if we did it before.
 19 THE COURT: Whatever it is, just --
 20 MR. PARKER: I did come over there one
 21 time not too long ago and found a bunch of stuff. It
 22 was a very big coincidence. I was looking for some
 23 information in one case, and they pulled it out and
 24 it was in a box and there was also a bunch of stuff
 25 from a totally different, unrelated case which was

1 also mine with it.
 2 THE COURT: Oh, my gosh.
 3 MR. PARKER: Which had been misfiled. So,
 4 you know, things happen.
 5 THE COURT: Yeah. Anyway, and I do
 6 apologize for that.
 7 This is -- I don't know that any of us
 8 have ever had a case that has over 57 volumes. I
 9 don't even know at this point how many volumes we
 10 actually have left.
 11 MR. PARKER: We're up for the world
 12 record.
 13 THE COURT: We believe you are. We're
 14 going to have to contact Guinness.
 15 But I'm just trying to quickly look
 16 through my -- that order with respect to the
 17 fiduciary. Because my recollection is that I had put
 18 something in there that also granted the Arizona AG's
 19 motion, but I'm -- I can't find it exactly right now.
 20 So if the Arizona AG is representing to me that they
 21 never got something that they viewed as a specific
 22 order, I will go back and double-check on that.
 23 MR. RICHARDS: Yeah, your Honor, this is
 24 Mr. Richards. We will proffer that we looked and we
 25 didn't find anything.

1 THE COURT: Okay.
 2 MR. RICHARDS: (Inaudible).
 3 THE COURT: Okay. I will -- there was
 4 something else that was referenced in Mr. Richards'
 5 report, and maybe Mr. Richards and Mr. Hamilton can
 6 address that for me.
 7 (Beep.)
 8 THE COURT: Oh, boy. We lost somebody
 9 again. Who did we lose now? Roll call.
 10 MR. PARKER: I assume we're missing the
 11 four, Callister --
 12 THE COURT: I'm sorry?
 13 MR. RICHARDS: Mr. Richards is still here.
 14 Chad, are you still there?
 15 MR. SAMPSON: Yes.
 16 MR. JEFF SHIELDS: Jeff Shields is still
 17 here.
 18 MR. HOOLE: Roger Hoole is still here.
 19 MR. LEAVITT: Mike Leavitt's still here.
 20 MR. ZACH SHIELDS: Zach Shields and Mark
 21 Callister are still here.
 22 THE COURT: Okay.
 23 MR. PARKER: Rod Parker is still here.
 24 Is Ken still there?
 25 MR. OKAZAKI: Yeah, I'm here.

1 MR. HAMILTON: Blake Hamilton is still
 2 here.
 3 THE COURT: Okay.
 4 MR. RICHARDS: I think we have everyone.
 5 THE COURT: I think we do have everybody.
 6 Okay. Don't scare me like that, guys.
 7 Back to -- I've lost my train of thought.
 8 Mr. Richards, there has been an indication
 9 that -- well, more than an indication. You had
 10 provided as an attachment to -- or as an exhibit to
 11 your report, submissions requests made to the cities,
 12 I guess it was, for -- or the police department, I'm
 13 not sure who it were, for GRAMA records, GRAMA
 14 protected records. And there have been apparently
 15 repeated requests and that had to be mirrored in the
 16 forms of the -- of the department. I guess it was
 17 the police department.
 18 What has been -- what is the status of
 19 that? Have you been provided those records?
 20 MR. RICHARDS: Your Honor, let me explain
 21 that, first of all, Mr. Hamilton's office has not
 22 been the ones responding to it. It's that other firm
 23 that the cities have obtained in Phoenix. So we're
 24 working with a different counsel on that.
 25 THE COURT: Oh, okay.

1 MR. RICHARDS: Your Honor, when I left
 2 town the end of last week, we were being promised
 3 reports regarding the (inaudible) house incident and
 4 regarding the May 24th incident at the Berrymore Farm
 5 by this week.
 6 I did note that I have some message in --
 7 I've been out of the office this week -- I got a
 8 message and it looks like we've been sent something
 9 from counsel, which I'm presuming is the records from
 10 those two incidents. As of the time I left on
 11 Friday, we had not received any requested reports for
 12 2008, 2009, or 2010. And I believe what's probably
 13 come over this week is the small segment of the most
 14 recent incidents, but I'd have to check that, your
 15 Honor.
 16 And Mr. Sampson, I don't know if you're
 17 aware of what we've received this week.
 18 MR. SAMPSON: No, Bill, I apologize.
 19 Nobody has talked to me about it.
 20 MR. HAMILTON: Your Honor, if I may, this
 21 is Blake Hamilton here.
 22 First of all, when I made my objection of
 23 the fact that we were going to file a response to Mr.
 24 Richards, we were going to address this exact issue.
 25 I have been in contact with the firm that he's

1 talking about. They have been retained as Colorado
2 City's city attorney, and they were responding to
3 this records request. And it is completely -- as
4 represented by Mr. Richards in his brief or his
5 request for this status conference -- it is
6 completely one-sided. They have properly responded
7 and they have actually -- they have actually
8 submitted a GRAMA request themselves, the city,
9 Colorado City in January that the State of Arizona
10 hasn't properly responded to.

11 Furthermore, the statute provides the
12 mechanism for following up on this. This is not the
13 proper court to do so.

14 THE COURT: I was merely inquiring because
15 that had been an issue that had been raised in this
16 motion. Whether that's properly an issue for me or
17 not, I haven't really stopped to think about it.

18 MR. RICHARDS: Your Honor, this is
19 Mr. Richards. I think that we could certainly
20 short-circuit things, if we're not getting all the
21 information. And again, I don't want to represent
22 that we haven't been given more than I think we have.
23 Like I said, I've been out of the office and I know
24 something has come in. But if it hasn't been
25 complete, certainly if you'll grant discovery, our

1 intent would be to subpoena for those records, which
2 would, you know, come with the Court's order that
3 they be produced. So I thought we could address it
4 that way as well.

5 THE COURT: Okay.

6 MR. HAMILTON: Your Honor, if I may just
7 really quickly there, you said this motion. If this
8 is a motion, then we still have the opportunity to
9 respond. And our time to respond would be next week.

10 THE COURT: No, I'm sorry. If said
11 motion, I misspoke.

12 What I have in front of me is an emergency
13 report from the Arizona AG's office and a request for
14 an expedited status conference. That's what this
15 telephonic conference is.

16 There was no motion made in that status
17 report about anything regarding those records. It
18 was -- he was merely informing me about what those --
19 from his perspective what had or had not been
20 produced and what had or had not occurred. Now --

21 MR. HAMILTON: Your Honor, we wanted to
22 respond.

23 THE COURT: And you still can.

24 You know, Mr. Richards requested a status
25 conference. It's not at all unusual, and it's

1 consistent with my practice that when, you know, a
2 party in this case, clearly the attorney general is,
3 makes a request for a status conference -- not just
4 in this case but in any case that I -- that is
5 assigned to me -- when a party requests a status
6 conference, it is my practice to schedule those.

7 MR. HAMILTON: And I appreciate that, your
8 Honor. But again, we did not know that this phone
9 conference is where we were going to address these.

10 MR. RICHARDS: Your Honor, this is
11 Mr. Richards. I don't think we need to address the
12 public (inaudible) here.

13 THE COURT: I am not addressing. I merely
14 was --

15 MR. RICHARDS: And let me make that clear
16 that we weren't asking the Court for a (inaudible) on
17 a public records request.

18 THE COURT: No. And I don't believe -- I
19 didn't believe you did. I couldn't see any request
20 of relief. In connection with that I merely saw it
21 as informational.

22 And if the city has a different position,
23 it certainly is welcome to supplement the record with
24 its position on that matter. But that is not an
25 issue that is presently -- it has not been brought

1 before me for any kind of relief.

2 MR. HAMILTON: Fair enough.

3 THE COURT: So where do we go from here?
4 Mr. Richards, you are going to --

5 MR. RICHARDS: With respect to -- and I'm
6 assuming you're going to rule on our discovery
7 request. And obviously that would potentially
8 address the issues regarding folks who have not --

9 THE COURT: Who were not --

10 MR. RICHARDS: -- we believe are in
11 violation with the Court's orders. But we really
12 don't know the specific identification. We can find
13 those through discovery.

14 The other things I think we talked about
15 were briefing the Court on a process for those
16 disputing, claiming to have a superior right to
17 somebody that the fiduciary had put into the
18 property, to bring that dispute before the Court, or
19 claiming some sort of an interest above and beyond
20 the trust interest or separate from the trust
21 interest in property, to bring those before the
22 Court.

23 I would suggest a 30-day briefing
24 schedule, your Honor, because I would like to keep
25 things moving. I think it's in everyone's interest

1 given the contention in the community to do that.
2 I think that beyond that in the order
3 you've already directed me to submit, I think that
4 covers everything we talked about.
5 THE COURT: Okay. And I think 30 days
6 should give everyone ample time to provide their
7 perspectives on this adjusted process for addressing
8 that. So I will accept that recommendation. And if
9 you could also build that into the order.
10 MR. RICHARDS: Will do, Judge.
11 THE COURT: And then -- and I really do
12 welcome and --
13 UNIDENTIFIED SPEAKER: Your Honor, I'm
14 sorry. We would like to comment on that but our
15 schedules are just horrible for August. We were
16 hoping maybe 45 days.
17 THE COURT: Okay. 45 days works. I know
18 that August is -- a lot people are -- also still have
19 vacation plans or whatever. I think, Mr. Richards, I
20 assume that you're not objecting, but 45 --
21 MR. RICHARDS: That's fine.
22 THE COURT: An extra two weeks does not
23 strike me as undue delay on that.
24 MR. RICHARDS: No. Sure.
25 THE COURT: So everyone will have -- so

1 parties. But obviously I think some of the factual
2 issues will overlap there and then with this briefing
3 schedule for 45 days, it may be wrapped up in that
4 too. So I don't know what your thought process is,
5 since it is an interim, quasi interim action, this
6 trust matter, that the property issue of the silos
7 that are attached to the real property should be
8 addressed by you.
9 Certainly somebody is going to have to
10 determine whether or not the FLDS (inaudible) grain
11 violated your previous injunctive orders.
12 THE COURT: Right. And that was one of
13 the things -- one of the issues that Judge Walton
14 raised to me. And that was -- and basically the
15 communication was that the matter had been set for a
16 hearing and that -- when was that hearing scheduled
17 for, Mr. Parker?
18 MR. PARKER: Tuesday at two o'clock.
19 THE COURT: Okay. But the sum and
20 substance of the communication from Judge Walton was
21 that his position was that this case -- that that
22 case really should be brought to this Court or
23 transferred to this Court, that issue should be
24 transferred to this Court for resolution.
25 And I -- I agree, you know, in principle.

1 there will be 45 days for any suggestive process to
2 be brought by any and all interested.
3 MR. BODILY: Your Honor, this is
4 Tim Bodily again. And I know this really -- you
5 can't address or at least rule on this right now.
6 But obviously there is the issue of the silos pending
7 in the Fifth Judicial District, Washington County.
8 THE COURT: I will tell you, I'm not sure
9 about the silo -- I will tell you I received a
10 conference call from the judge assigned the TRO. Is
11 this -- are we dealing with this same issue or the
12 different issue?
13 MR. BODILY: Judge Shumate?
14 THE COURT: Yes.
15 MR. BODILY: Judge Walton is --
16 THE COURT: Judge Walton is the assigned
17 judge. I received a call from Judge Walton. And I
18 was under the impression -- but I don't know if
19 that's dealing with the silos or with something else.
20 MR. BODILY: That's the silos.
21 THE COURT: Okay.
22 MR. BODILY: And obviously it would appear
23 to me that this order -- I don't know if you're going
24 to set a date for the order to show cause that will
25 be brought, I assume, by the fiduciary and other

1 I didn't know the specifics, and we did not go into
2 any of the specifics. He just informed me that that
3 was his -- his present position and that he would
4 address it I guess in the court or I guess just Judge
5 Shumate would raise that issue. So that's all I know
6 about that.
7 MR. PARKER: Well --
8 THE COURT: I don't know what other steps
9 may be taken by Judge Shumate and Judge Walton in the
10 interim. But that was -- and he just wanted to
11 consult with me whether I thought that that matter
12 should be transferred here or retained there. And
13 that was --
14 MR. PARKER: Sorry, your Honor, this is
15 Rod. I think that we -- I guess what we need to do
16 is move forward with Judge Walton so he -- then he
17 can address that issue.
18 THE COURT: Absolutely. I'm not -- I'm
19 not presuming to speak for Judge Walton.
20 I'm just giving, as a disclosure that we
21 did have a judge-to-judge communication on the
22 advisability of where a case should be based and
23 handled. That's all.
24 MR. PARKER: Yeah, that's fine. I -- and
25 we had a self-help situation going on down there and

1 did what we could to try and get it resolved. And
 2 we'll deal with -- we'll talk to Judge Walton and
 3 find out what he wants to do.
 4 THE COURT: Okay.
 5 MR. RICHARDS: And this --
 6 THE COURT: Go ahead.
 7 MR. RICHARDS: Your Honor, (inaudible)
 8 this time intervening in that case so I guess we can
 9 discuss that at the hearing.
 10 THE COURT: Correct. Yeah, I think that's
 11 the appropriate thing and you'll discuss it at that
 12 hearing. And then the judge down there will notify
 13 me if he's transferring the case to me or, you know,
 14 after hearing further from the various sides.
 15 MR. RICHARDS: Okay.
 16 THE COURT: In fact, I guess one question
 17 I have, and I think Mr. Bodily alluded to it, and
 18 that is the -- there are timing pressures because of
 19 what appear to be escalations and potential risk of
 20 things getting out of hand in the community. That
 21 has to be weighed against adequate time to conduct
 22 whatever necessary discovery may be needed to
 23 address, you know, those issues substantively.
 24 And I'm not going to at this point give
 25 you an order to show cause date because -- for

1 Would you summarize again what exactly
 2 you're expecting in this briefing in four to five
 3 days? I'm sorry. I've kind of lost track, we've
 4 talked about so many things.
 5 THE COURT: And we are. The briefing that
 6 Mr. Richards suggested was that the -- that all
 7 interested individuals and parties and -- be able to
 8 suggest a process for presenting conflicting claims
 9 or claims that purport to predate or to challenge
 10 ownership of the UEP's ownership of certain assets.
 11 And how that process -- how those claims should be
 12 presented and considered by the Court and how to do
 13 that in light of my prior rulings in terms of
 14 people's standing or lack thereof. I believe that
 15 that was the suggestion that Mr. Richards had made.
 16 That was what I thought it was asking for.
 17 Mr. Richards, you can clarify what you
 18 were suggesting?
 19 MR. RICHARDS: Your Honor, I think that
 20 captures it.
 21 THE COURT: Okay. So does that help, Mr.
 22 Parker?
 23 MR. PARKER: That's exactly what I needed.
 24 Thank you.
 25 THE COURT: Okay.

1 various reasons, not the least of which is that right
 2 now I don't have a formal motion for an order to show
 3 cause that is properly supported by affidavit. So
 4 that will have to be brought to me before I'm going
 5 to determine whether or not -- you know, about when
 6 and for how long to set the matter for a hearing.
 7 So in the interim, if you have specific
 8 suggestions, Mr. Bodily, about how matters ought to
 9 be sequenced, I would welcome that as well as I would
 10 welcome that -- those suggestions from anyone that is
 11 on this call. And you can include that as a part
 12 of -- as a separate section of the briefing that
 13 we -- that I -- that has been suggested and I've
 14 agreed to be done within 45 days.
 15 But it does strike me that there may need
 16 to be some portion -- some kind of discovery in order
 17 to determine what further actions may need to -- may
 18 need to be -- whether they're orders to show cause,
 19 whether substantive disputes result through some
 20 process where conflicting claims are resolved. But
 21 that will all be suggested.
 22 I will be looking for your suggestions in
 23 the briefing that is going to be submitted to me.
 24 MR. PARKER: Would -- Judge, it's Rod
 25 Parker.

1 MR. OKAZAKI: This is Ken Okazaki, just a
 2 question.
 3 THE COURT: Yes, Mr. Okazaki.
 4 MR. OKAZAKI: Mark Callister, you said
 5 that you're intervening. I got communications from
 6 people at Ray, Quinney that said they are
 7 intervening, so.
 8 MR. CALLISTER: Yeah, the trust is
 9 intervening, Ken. Ray, Quinney is going to appear in
 10 that case and file a motion to intervene and respond.
 11 MR. OKAZAKI: Okay. I just didn't know
 12 who was where.
 13 MR. CALLISTER: Yeah.
 14 MR. OKAZAKI: And let me get this
 15 straight, you're going to -- the trust is going to
 16 intervene in this case. It's a \$500-a-year lease; is
 17 that right?
 18 MR. CALLISTER: Yeah, that's right.
 19 Because Mr. Stubbs had his name removed from the
 20 silos and it's just out sitting in the road, from my
 21 understanding. And our opposition is that that was
 22 improper. He has a lease, and this is just an
 23 example of how the leases have not been respected
 24 down there. So we think it's worthy of getting
 25 resolved.

1 THE COURT: Yeah.
 2 MR. RICHARDS: Your Honor, if I could --
 3 this is Mr. Richards. If I could clarify one thing.
 4 I did go back and look over my notes for the
 5 direction you gave me on the order. And I think you
 6 mentioned in your clarification to Mr. Parker
 7 ownership disputes. I also have listed here from
 8 your earlier comments disputes over the right to use
 9 trust property.

10 THE COURT: Correct. Right. So there can
 11 be a determination, a substantive determination of
 12 who has rights to use, possess and act upon trust
 13 property. And I think that where there are claims
 14 that the fiduciary is attempting to -- you know, has
 15 leased or entered into agreements regarding property
 16 that is claimed not to be owned by the trust, there
 17 needs to be a process for adjudicating that.

18 MR. JEFF SHIELDS: This is Jeff Shields.
 19 I think the fiduciary would welcome this procedure,
 20 thank you.

21 THE COURT: Okay.

22 MR. OKAZAKI: May I -- this is
 23 Ken Okazaki.

24 Jeff, forgive me if I've missed this, but
 25 does a fiduciary have the inventory of each and

1 Parker and I represent get to do discovery, or is
 2 that just Mr. Richards and everybody else that gets
 3 to do discovery?

4 THE COURT: I believe that -- well, it's
 5 never clear to me exactly who you represent, with all
 6 due respect. Because on a number of -- as to a
 7 number of those individuals, I've already made some
 8 rulings about their -- you know, not being parties in
 9 this action and not having a right to intervene. As
 10 to others, that issue may very well be decided
 11 differently. And that is apparently pending
 12 determination. And as soon as I receive the
 13 materials from Mr. Parker, that pending matter will
 14 be addressed. But that's part of the process.
 15 That's part of what I think should be addressed in
 16 the suggested process is -- and clearly, it sounds to
 17 me that certain individuals who may not have
 18 standing, as this Court has defined it, may be
 19 asserting rights to property or ownership of property
 20 that the trust is also asserting. And so that, I
 21 think, needs to be addressed in terms of what
 22 opportunities and how that -- those rights, including
 23 discovery about, you know, whatever that substantive
 24 issue and dispute is, you know, what the scope of
 25 that should be and who should exercise that.

1 everything that he claims the trust owns?

2 MR. JEFF SHIELDS: By inventory, I don't
 3 know what you mean by that but --

4 MR. OKAZAKI: Well, like a schedule or
 5 something that says, okay, I own -- the trust owns
 6 this land, the trust owns this piece of equipment,
 7 the trust owns -- you know, because maybe we ought to
 8 start there with that because if there -- do you know
 9 if that exists? Let's start with that question.

10 MR. JEFF SHIELDS: I know the trust has
 11 got title reports showing title to real property, and
 12 I think they served the trust with (inaudible) a
 13 picture or building or improvement on there as UEP
 14 property.

15 MR. OKAZAKI: Okay. You think it does or
 16 that's what it does?

17 MR. JEFF SHIELDS: Well, I think it does
 18 and I think -- to my knowledge, it is what it is.

19 MR. OKAZAKI: Thanks. And then just a
 20 clarification. On this discovery issue that
 21 Mr. Richards has talked about, when will -- assuming
 22 that that's granted, when do we get to do discovery?
 23 I guess that's the question.

24 THE COURT: Sir?

25 MR. OKAZAKI: Do our clients that Rod

1 Part of that may go away once I've had the
 2 opportunity to rule on the outstanding motions to
 3 intervene because that will then clarify if there are
 4 additional parties that can conduct discovery. And
 5 so I don't want to get ahead of myself.

6 MR. JEFF SHIELDS: Your Honor, this is
 7 Jeff Shields again.

8 And it may be clarifying, Ken, your
 9 question about what is the non-trust property. Part
 10 of the problem the fiduciary has is that the former
 11 trustees have failed to give him any information
 12 whatsoever. So part of the discovery process may
 13 help answer your question, Ken, you know, what is and
 14 is not property.

15 THE COURT: That's correct.

16 MR. JEFF SHIELDS: (Inaudible)
 17 automatically helpful.

18 THE COURT: One of the outstanding orders
 19 of this Court from as early as 2005 or six was that
 20 the former trustees were to provide schedules,
 21 information, you know, all of that. And those were
 22 never provided. And so part of that discovery that
 23 needs to be done I think fairly falls within that.

24 MR. JEFF SHIELDS: My question was --

25 MR. PARKER: You did previously rule on

1 that.

2 THE COURT: Oh, yeah, that's been an
3 outstanding court order for --

4 MR. PARKER: You entered some -- you had
5 something to say about that in the March 18th order.

6 MR. OKAZAKI: But my question -- this is
7 Ken again, your Honor -- my question to Jeff was
8 if -- you know, if the fiduciary had a list of what
9 he claimed, you know, apart from certain parcels of
10 real estate.

11 MR. JEFF SHIELDS: I think I understand.

12 THE COURT: Well, I would -- I would
13 suggest -- I won't pretend to speak for nor do I
14 think it's appropriate for me to speak for Mr.
15 Shields or for the fiduciary at this point on that
16 issue. But I will say that it's part of a
17 chicken-and-egg issue. There have been problems with
18 shifting, you know -- and this is not specifically
19 appropriate -- but shifting people from one house to
20 another with doing various things that in some ways
21 have at least arguably defeated efforts by the
22 fiduciary to clarify what -- what property exists,
23 what is owned, what isn't owned. I think it's fair
24 to say that that information has not been readily
25 forthcoming from the community generally, from

1 THE COURT: Okay.

2 MR. RICHARDS: Your Honor, this is Mr.
3 Richards.

4 There's one other I guess sticky aspect of
5 all of that is -- what you're talking about now, and
6 that is that the Colorado City is currently
7 criminally prosecuting Mr. Wisan and others for
8 alleged trespass on trust property, obviously
9 creating a significant disincentive for him or
10 representatives of him to go and look at trust
11 property to see if it's being used, to see what's on
12 there, see if it's been abandoned and all those sorts
13 of things. I assume it may be helpful -- I'll leave
14 it up to Mr. Shields -- for the Court to simply
15 reemphasize what I always understood was its standing
16 order and that is as a person authorized by the court
17 to manage the trust property, Mr. Wisan and his
18 representatives do have authorization to take
19 reasonable steps to enter trust properties to see if
20 people are residing there, to check on the status of
21 the fixtures, et cetera, on those properties. So
22 that that they don't need to worry about the police
23 running out and saying they're going to cite them and
24 charge them again for criminal trespass if they're
25 simply trying to follow up on Mr. Okazaki's

1 members of the community generally or from anyone
2 else. And so absent the -- any disclosure or
3 compliance with my orders by the former trustees, who
4 presumably were in the best position to have
5 assembled that information and given the at least
6 allegations by the fiduciary of substantial lack of
7 cooperation in his efforts to ascertain those things,
8 one concern would be that if the fiduciary provides a
9 list of things that he's identified to date that --
10 unless it's clearly understood that further discovery
11 might reveal other assets -- there might be a
12 tendency to claim that is the sum and extent of all
13 the fiduciary can claim to oversee. And I'm not sure
14 at this point I'm willing to concede that point as
15 the ultimate administrator of the -- you know, the
16 court being the ultimate administrator of the trust.

17 So I don't know at this point all that I
18 am administering through this official fiduciary.

19 MR. JEFF SHIELDS: Your Honor, Jeff
20 Shields here. I think that's where discovery may be
21 helpful. I think that's a good thing to do, and I
22 think we appreciate the opportunity to have both the
23 discovery and the procedure to sort out any claims
24 that are conflicting in terms of the trust and
25 others.

1 questions.

2 MR. OKAZAKI: Well, wait a second. They
3 have to act under the -- are you asking that if they
4 violate the law that that's okay?

5 THE COURT: Well, I guess that question
6 whether they've violated the law is a matter to be
7 determined.

8 MR. RICHARDS: Right.

9 MR. OKAZAKI: There's been one conviction
10 already.

11 THE COURT: Well --

12 MR. RICHARDS: And, your Honor, that's not
13 my suggestion.

14 In fact what I would like and if I could
15 hear from the city, is if the police would actually
16 cooperate with the fiduciary to ensure the fiduciary
17 representatives are not doing something that they
18 consider to be illegal in any way but also help them
19 keep the peace if in fact the fiduciary
20 representatives are out there checking on property.

21 MR. PARKER: What are you asking for,
22 Bill? I mean this is an ongoing criminal prosecution
23 right now, and there's already been one conviction.
24 I don't -- I don't quite understand.

25 MR. JEFF SHIELDS: I think what he's

1 asking --
 2 UNIDENTIFIED SPEAKER: (Inaudible) would
 3 support this, your Honor. There is abandoned
 4 property where as you know people are moving in and
 5 out of property. There are occasions where
 6 properties have been left unattended for weeks and
 7 months at a time. What the fiduciary is trying to
 8 do, pursuant to his court order to preserve and
 9 protect property is to find out who's where. So far
 10 in spite of numerous requests, we still don't know
 11 who's living where. People are changing. And so
 12 part of the fiduciary duty is to find out where the
 13 property is leased, when he finds abandoned
 14 properties he tries to get control of it. He's been
 15 cited criminally for trying to do his duty as a
 16 fiduciary.

17 MR. PARKER: That's absolutely not true.
 18 Not true.

19 MR. RICHARDS: Yeah, Mr. Richards. If I
 20 may make a suggestion, let me just explain. I'm
 21 talking about going forward. Mr. Okazaki has pointed
 22 out that he believes there's a problem with not
 23 knowing what all is the property within the trust.
 24 And my suggestion is there --

25 MR. PARKER: Well --

1 I'm asking whether or not the city would
 2 cooperate in ensuring that it communicates fully with
 3 the fiduciary and understands what they're doing so
 4 that they don't have that sort of a breakdown in the
 5 future and the thing can proceed as expeditiously
 6 with as little -- you know, the least disruption to
 7 the local community as possible.

8 MR. OKAZAKI: Well, this is Ken.

9 Let me respond to that. Occupancy and
 10 ownership are two different things. People moving in
 11 and out, that doesn't have -- my question was if they
 12 had an inventory of the property they claimed the UEP
 13 owns, not who's occupying. People moving in and out,
 14 that doesn't -- that's an occupancy issue.

15 Presently it sounded like what you were
 16 asking for is the Court to order that these guys
 17 again have current (inaudible) to do whatever they
 18 want so that I don't even know. It seems like
 19 there's one condition, there's two trials pending.
 20 And the condition was based not on -- it was a trial.
 21 And so it was in a court of law that made that
 22 determination that a law was violated. And it wasn't
 23 appealed so that conviction stands.

24 So when you bring up these issues, I'm
 25 just confused as to what you want this Court to do.

1 MR. OKAZAKI: I --

2 THE COURT: Just a minute. Can we not
 3 interrupt each other? Mr. Richards, you've got the
 4 floor and then Mr. Okazaki or Mr. Parker can respond.

5 MR. RICHARDS: I'm sorry, Judge. And,
 6 Ken, if I misunderstood you, I apologize. My
 7 understanding was you were asking if the fiduciary
 8 had a list of all the property they considered to be
 9 property of the trust. Because of the fluid nature
 10 of property, that there are people moving in and out,
 11 that -- in fact in this case, and I have seen at
 12 least one police record from I think 2006 or so,
 13 2007, where someone had actually moved a building off
 14 of trust property. And that was investigated by the
 15 police.

16 Because of those situations in order to
 17 pin these things down, it seems to me reasonable that
 18 the court's representative would have to go out and
 19 look at the property sometimes. It seems to me an
 20 incredible and (inaudible) duty to do that work if
 21 what you're afraid of is to even show up and say, no,
 22 you're criminal trespassing. We're going to cite you
 23 for that. And my suggestion was if that's something
 24 the fiduciary feels they need to do, that the -- I
 25 guess I'm not asking for the Court to do anything.

1 Do you want this Court to --

2 THE COURT: Well, let me clarify what I
 3 think was being asked of me. I think what I've been
 4 asked to do is -- and again, this was Mr. Okazaki's
 5 suggestion or -- is, you know, can the special
 6 fiduciary identify property. And as we're -- as
 7 we've discussed here, there are disputes about
 8 whether even a building that's affixed to the ground
 9 or a silo that is affixed to the ground becomes a
 10 fixture. You know, whether that's a fixture that
 11 becomes part of the realty or remains personal. And
 12 that's obviously a legal issue that is for the Court
 13 to determine upon a presentation of the facts.

14 But there needs to be at some point an
 15 inventory, whether provided by the former trustees or
 16 developed by the special fiduciary. This is going to
 17 be a work in progress that will need to be compiled.
 18 And if the cities would instruct their police
 19 officers to make themselves available to
 20 facilitate -- to accompany and facilitate and ensure
 21 that a representative of the special fiduciary could
 22 at least enter a property to identify assets that the
 23 trust claims as its own -- as part of the trust res,
 24 then it makes -- seems to make some sense to me that
 25 police -- that that's a part of keeping the peace

1 function that police do on a regular basis. And that
2 doesn't strike me as an unreasonable request.

3 MR. HAMILTON: Your Honor, this is
4 Blake Hamilton. May I respond to this, please?

5 THE COURT: Please.

6 MR. HAMILTON: First of all, cities have
7 no desire to not obey court orders.

8 The police officers have no desire to not
9 obey court orders. Police officers have continued --
10 again, there's only been one cited historically.

11 There was a response being worked on at the very
12 moment to respond to his report. That has not been
13 filed yet. And now because of what the Court has
14 done, I'm not sure we will actually file a response
15 because the Court has ordered that there actually be
16 contempt or order to show cause actions brought.
17 However --

18 THE COURT: No, I didn't order anything.
19 I have said if there is documentation and a party is
20 prepared to proceed with -- or believes that an order
21 to show cause should be held, they can bring that
22 matter to the Court, and the Court will consider it
23 and will schedule, if necessary, a hearing and will
24 make a determination.

25 I haven't ordered anything other than that

1 don't know how they're going to be applied and I --

2 THE COURT: Well, but everything is
3 governed by a rule of reasonableness, counsel. And
4 there are reasonable times and places where a
5 property can be entered, especially when a police
6 officer is there to ensure that the peace is kept,
7 and for the limited purpose of making an inventory
8 and assessing the status of assets.

9 MR. RICHARDS: Your Honor, I think I can
10 set this down. This is Mr. Richards.

11 I think that probably (inaudible). And I
12 do want to clarify. I was simply seeking a response
13 from the city in trying to figure out what their
14 position is on this and whether or not there is a way
15 for them to cooperate with the special fiduciary. It
16 seems to me the appropriate approach is for the Court
17 to encourage the fiduciary and the police department
18 to sit down and talk to one another, to discuss what
19 the police department issues are and what they
20 consider to be an improper process, improper
21 inventory, improper (inaudible) or entering a
22 property.

23 And if there is an impasse there and the
24 two cannot work something out, then to bring that
25 back to the Court and get further direction from it.

1 that be -- that that request be brought through the
2 proper process. That's all I've done.

3 MR. HAMILTON: Okay, your Honor. But I'm
4 trying to understand what you are now saying. You,
5 from the sounds of it, you're asking the police
6 officers to come -- the police officers will keep the
7 peace. That's what they have been trying to do. But
8 are you asking the police officers to come out, allow
9 some -- allow a representative of the trust to pick a
10 lock, open a property to determine if it is occupied
11 or not?

12 THE COURT: I am asking that a police
13 officer or that the police department assist at a
14 reasonable time that -- that at reasonable times and
15 places property be opened for inspection.

16 Now, whether that's -- I'm not saying you
17 pick locks or whatever. But what I am saying is --
18 because I don't know whose locks they are, and I
19 don't know who's alleging what about actions that
20 have been taken.

21 MR. PARKER: Because, your Honor, this is
22 Rod.

23 And that's exactly the problem with all of
24 these requests for these sweeping sort of
25 authorizations and things like that is because you

1 I think that would make the most sense at this point,
2 rather than trying to argue out the details of all of
3 that right now.

4 THE COURT: Well, and I want to make sure
5 that it is understood, and I don't want words put in
6 my mouth. I don't want to have this -- my comments
7 about what I believe is -- at some point somebody is
8 going to have to inventory. And so a suggestion was
9 that if the city were prepared to assist in
10 facilitating and accompany an inventory process,
11 however that is structured. I'm not saying that that
12 should be put into place tomorrow. I'm not even
13 suggesting how it needs to be done.

14 It's -- there has been an indication
15 raised by Mr. Okazaki that an inventory is
16 appropriate and some kind of list developed if
17 those -- if that information is not reasonably or
18 readily available to the fiduciary because that
19 information that has not been provided by the former
20 trustees, at some point that's going to have to
21 happen. And when and how that should happen, I'm not
22 dictating at this point. I'm simply saying it is
23 appropriate to discuss it. It is appropriate to seek
24 the city's assistance in that. And that's as far as
25 I'm going with that today.

1 MR. HAMILTON: Your Honor, and again this
2 is Blake Hamilton, I just -- I will reiterate that
3 the city has no desire to not obey orders.

4 In fact, again there's only been one side
5 of the story told today.

6 THE COURT: Well, I have listened to at
7 least one portion of a -- of a statement by a police
8 officer saying Utah judges don't have authority to do
9 anything in Arizona. And -- and essentially not
10 recognizing the Court's authority to issue any orders
11 that would be binding.

12 MR. HAMILTON: Well, your Honor, we're
13 working on those issues.

14 But again, they have been put in a very
15 difficult situation. Most of the time, most issues
16 brought in Mr. Richards' report, the people have not
17 shown their leases or have not shown their occupancy
18 agreements and have not been willing to do so.

19 THE COURT: Well, I think that in fairness
20 that, unfortunately, cuts both ways. But it has not
21 been honored both ways, at least on the allegations
22 that have been brought to me.

23 We'll wait to see what the evidence shows.
24 But let's just say that when there are claims that
25 somebody -- well, I'll cease, I'll stop.

1 MR. RICHARDS: Thanks a lot, your Honor.
2 (Concluded at 4:30 p.m.)

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1 MR. HAMILTON: And your Honor, again, if I
2 may, there are processes for the special fiduciary to
3 follow. He can file abandonment actions. He can
4 file unlawful detainer actions if he wants to make it
5 to (inaudible), if a property has been abandoned or
6 evictions or has been left. So -- you know, but the
7 cities will cooperate.

8 MR. RICHARDS: That's great. I appreciate
9 that, Blake. Maybe you can have some input as we go
10 forward here.

11 MR. HAMILTON: Okay.

12 THE COURT: I -- Mr. Richards, this was
13 convened at your request. Have we covered the issues
14 that you felt needed to be addressed?

15 MR. RICHARDS: Yeah. There's nothing
16 else, Judge.

17 THE COURT: Okay. Does anybody else have
18 any other issues that need to be addressed at this
19 point?

20 MR. HAMILTON: No, your Honor.

21 THE COURT: Hearing none, we're done.

22 MR. RICHARDS: Thank you, thank you.

23 MR. JEFF SHIELDS: Thank you, your Honor.

24 THE COURT: Bye-bye.

25 MR. PARKER: Thank you, your Honor.

1 REPORTER'S CERTIFICATE

2
3 STATE OF UTAH)
4) ss.
5 COUNTY OF SALT LAKE)

6 I, Tamra J. Berry, Registered Professional
7 Reporter and Notary Public in and for the State of
8 Utah, do hereby certify:

9 That on July 26, 2010, I transcribed an
10 electronic recording at the request of Callister,
11 Nebeker & McCullough;

12 That the testimony of all speakers was
13 reported by me in stenotype and thereafter
14 transcribed, and that a full, true, and correct
15 transcription of said testimony is set forth in the
16 preceding pages, according to my ability to hear and
17 understand the tape provided;

18 That the original transcript was sealed
19 and delivered to Callister, Nebeker & McCullough for
20 safekeeping.

21 I further certify that I am not kin or
22 otherwise associated with any of the parties to said
23 cause of action and that I am not interested in the
24 outcome thereof.

25 WITNESS MY HAND AND OFFICIAL SEAL this
26th day of July, 2010.

Tamra J. Berry, CSR, RPR, CRR
Notary Public

EXHIBIT B

COPY OF TRANSCRIPT

IN THE THIRD JUDICIAL DISTRICT COURT

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 and
DOE TRUSTEES I THROUGH IX.

Civil No. 053900848
Judge Denise Posse Lindberg

DEPOSITION OF MERLIN JESSOP

TAKEN AT: Callister Nebeker & McCullough
Zions Bank Building, Suite 900
10 East South Temple
Salt Lake City, Utah 84133

DATE: September 23, 2008

TIME: 9:30 a.m.

REPORTED BY: Michelle Mallonee, RPR



50 West Broadway, Suite 900, Salt Lake City, Utah 84101
801-983-2180 Toll Free: 877-441-2180 Fax: 801-983-2181

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APPEARANCES

For Plaintiff Bruce Wisan, as the Court-Appointed
Special Fiduciary of the United Effort Plan Trust:
ZACHARY T. SHIELDS, ESQ.

CALLISTER NEBEKER & MCCULLOUGH
Zions Bank Building, Suite 900
10 East South Temple
Salt Lake City, Utah 84133

For the Movants:

RODNEY R. PARKER, ESQ.
SNOW, CHRISTENSEN & MARTINEAU
10 Exchange Place
Eleventh Floor
Salt Lake City, Utah 84145

JAMES C. BRADSHAW, ESQ.
BROWN, BRADSHAW & MOFFAT
10 West Broadway
Suite 210
Salt Lake City, Utah 84101



1 BY MR. SHIELDS:

2 Q. I would like to know what the trustees
3 of the trust said to you regarding your use of the
4 land--the Berry Knoll Farm.

5 A. They didn't say anything.

6 Q. Okay. You mentioned a meeting with
7 Isaac Wyler. When did you meet Isaac Wyler?

8 A. As in--I've known Isaac all my life--all
9 his life. I remember when he was born.

10 Q. Are you related?

11 A. No.

12 Q. No, okay.

13 A. I don't think so.

14 Q. You mentioned--let's say after 2004,
15 after you stopped farming the property, I think you
16 said you talked to Isaac Wyler?

17 A. Umm-hmm--yeah.

18 Q. It's hard, isn't it?

19 A. I didn't see the nod and talk.

20 Q. How many times did you talk to Isaac
21 Wyler after 2004?

22 A. I don't know.

23 Q. Was it more--

24 A. Two or three, or maybe four.

25 Q. And can you tell me about those



1 conversations and what happened?

2 A. He informed me he was--rented some
3 property, and--or the Berry Knoll Farm, some of it.
4 And he was planting it and running his horses.

5 Q. And was this--

6 A. And that's the first I knew about it.

7 Q. And you--I think you said you were on
8 your four wheeler checking out the farm, and you
9 saw Isaac. Is that what happened?

10 A. Yes.

11 Q. And do you remember what year this was?

12 A. '07, possibly '08. Along in there.

13 Q. The last year or two, then?

14 A. Yeah.

15 Q. Okay. And you saw Isaac, and he told
16 that you he was using the property. What else was
17 said in that conversation?

18 A. I don't remember. We just talked about
19 the use--him using it. And he asked me if I was,
20 and I told him no.

21 Q. Did Isaac ask you if you'd be interested
22 in using the property?

23 A. Yeah, I think so.

24 Q. And what did you tell him?

25 A. I wasn't.



1 Q. And why weren't you?

2 A. Somebody else had control of it and left
3 me with no way to know what I was getting.

4 Q. Did he ask you about getting a lease,
5 or some type of a formal permission, to use the
6 property?

7 A. Yeah, I think he did.

8 Q. And what did you tell him?

9 A. I wasn't interested.

10 Q. And why was that?

11 A. Because I can't tell where I'm going.

12 Q. What does that mean?

13 A. If I buy seed and plant it, and then
14 can't harvest it, what . . . ?

15 Q. But didn't he talk to you about getting
16 permission to use the property and harvest it--
17 getting a formal lease or an agreement?

18 A. Yeah. How could I--I'm trying to lease
19 my own land, huh-uh.

20 Q. Now, you call it your own land, but I
21 think you earlier testified it wasn't your own
22 land, that it was the Church's or the Trust land.

23 A. I belong to the Church, so it's partly
24 mine--if that clears that up.

25 Q. Okay. But wasn't this land owned by



1 the Trust and not the Church?

2 MR. PARKER: Object to the form. It
3 calls for a legal conclusion.

4 BY MR. SHIELDS:

5 Q. You can go ahead and answer.

6 A. It was owned by the Church and the
7 Trust. I mean, that's what it was all about.

8 Q. But do you know--was it the Church or
9 was it the Trust?

10 A. I don't know how to separate it.

11 Q. So you don't know if it was owned by
12 the Church or the Trust?

13 MR. PARKER: Same objection, and asked
14 and answered at this point. This isn't one of
15 those situations where someone doesn't speak
16 English. He's answered your question.

17 MR. SHIELDS: I don't think he has. He
18 says he doesn't know how to separate it.

19 MR. PARKER: It's an inappropriate
20 question, anyway. You're asking him to give an
21 opinion on ownership as a non-lawyer. He's given
22 you the best answer he can.

23 MR. SHIELDS: But he also says, It was
24 mine; and so I'm very entitled to probe as to his
25 understanding as to ownership.



1 MR. PARKER: You did. You haven't
2 asked him about his understanding.

3 MR. SHIELDS: That's what I'm asking
4 about right now.

5 MR. PARKER: Well, then that's a new
6 question. Ask it.

7 MR. SHIELDS: That was the very
8 foundation of this whole line of questions, Rod.

9 BY MR. SHIELDS:

10 Q. So who, according to your understanding,
11 who owned--who owns, today, the Berry Knoll Farm?

12 A. I don't know. It's a pretty mixed-up
13 situation.

14 Q. Who do you think owns it?

15 A. I don't know.

16 Q. Okay. So if you just take a minute,
17 then, and tell me, to the best of your ability,
18 why you were unwilling, when Isaac offered--asked
19 you if you'd be interested in getting permission to
20 farm the Berry Knoll property, that you were not
21 willing?

22 MR. PARKER: Asked and answered.

23 You can answer it again.

24 MR. SHIELDS: I just want to give him
25 every fact that went into that consideration.



1 MR. PARKER: Okay. But--so what you're
2 asking then is: Are there any other facts, other
3 than the ones he's already described--not asking
4 the same question over again.

5 MR. SHIELDS: Give him a chance to
6 answer every fact why that went in, because--yeah.

7 THE WITNESS: Restate--restate the
8 question.

9 BY MR. SHIELDS:

10 Q. Yes. Would you state every fact as to
11 why, when you were asked if you would be interested
12 in farming--getting permission and arrangements to
13 farm the Berry Knoll property--that you said you
14 were not interested in doing that.

15 MR. PARKER: And again, he's already
16 supplied some of those facts.

17 BY MR. SHIELDS:

18 Q. Okay. Is there anything else, other
19 than what you've already testified?

20 A. No.

21 Q. Okay. Now, my question is: If you had
22 a lease or an agreement that gave you permission to
23 farm the property, including permission to harvest
24 the crop from the property--you said that was one
25 of the reasons why you wouldn't do this agreement.



1 If you had that kind of a lease, would you have
2 any other objections as to why you would not be
3 willing to farm the property?

4 MR. PARKER: Object to the form.

5 THE WITNESS: That's speculation, and I
6 don't know how to do that.

7 BY MR. SHIELDS:

8 Q. Okay. Isn't it true that the reason
9 you wouldn't do it is because you absolutely
10 refused to make any type of a transaction with
11 Bruce Wisan?

12 A. Restate. I'm not understanding it.

13 Q. Isn't it true the reason you said you
14 wouldn't be interested in farming the property is
15 because it was under the control of Bruce Wisan?

16 A. I didn't say that.

17 Q. But I'm asking you: Is that true?

18 A. That's speculation again. I
19 don't . . .

20 Q. I just want to know: Is it true, or is
21 it untrue? You're free to deny it. But is it
22 true that the reason you would not--you told Isaac
23 you were not interested in farming the property is
24 because you are unwilling--is because it is owned
25 or controlled by Bruce Wisan?



1 A. I guess you could say that.

2 Q. Isn't it true that you are unwilling to
3 enter any transaction with Bruce Wisan?

4 A. That's speculation. I don't know what
5 I'd do under circumstances.

6 Q. Okay. But what is your--so you're
7 saying--so are you denying that, then?

8 MR. PARKER: No, he's answered your
9 question. It's asked and answered.

10 MR. SHIELDS: No, I asked is it true,
11 and he didn't answer if it was true or not.

12 MR. PARKER: Yes, he did. He answered
13 your question.

14 THE WITNESS: I answered.

15 BY MR. SHIELDS:

16 Q. I think you testified that you--that
17 other than happenstance meetings with Isaac Wyler,
18 you never had any communication--or you never--
19 yeah, you never had any communication with Bruce
20 Wisan or any of his agents. Is that correct?

21 A. Correct.

22 Q. Okay. Did you ever receive notices or
23 letters from Bruce Wisan?

24 A. I got one on this hundred dollar thing.

25 Q. The hundred dollar assessment? You're



1 (A break was taken from 10:55 a.m. to 11:13 a.m.)

2 BY MR. SHIELDS:

3 Q. Merlin, we talked about a meeting you
4 had with Isaac Wyler out at the Berry Knoll Farm.
5 Do you remember that?

6 A. Yes.

7 Q. During that meeting, did you tell Isaac
8 words to the effect that: I'll not put one more
9 seed in the ground in this valley?

10 A. I didn't say any such thing.

11 Q. You never said that?

12 A. No.

13 Q. Did Isaac tell you words to the effect
14 that: You are as welcome as anybody to apply to the
15 Trust to use the feed lot?

16 A. Yeah, I think so. I don't remember
17 exact words.

18 Q. So he let you know that there was a
19 process where you could apply for permission to use
20 the Trust property?

21 A. Yeah. Yep.

22 Q. Did Isaac tell you he would help you
23 fill out the application?

24 A. Yes.

25 Q. Did he tell you that he would

1 communicate with Bruce Wisan for you if you
2 couldn't communicate with Bruce?

3 A. Yeah.

4 Q. Did you ever tell him that you couldn't
5 communicate with Bruce?

6 A. I didn't tell him I couldn't; I told
7 him I didn't want to.

8 Q. Did he tell you that he would help you
9 work to make sure your application got approved?

10 A. I'll answer like this: I felt like the
11 chicken pleading its case before Colonel Sanders.

12 Q. Explain that.

13 A. Chicken pleading its cause before
14 Colonel Sanders?

15 Q. And who's the chicken?

16 A. I was.

17 Q. And did you ever plead a case to the
18 Fiduciary?

19 A. No. I felt like I would be.

20 Q. But Isaac told you, you had as much
21 right as any other beneficiary, did he not?

22 A. Yes.

23 Q. And he told you that he would help get
24 your application processed?

25 A. Yes.

EXHIBIT C

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

In the Matter of the :
:
TRUST OF UNITED EFFORT, : Case No. 053900848
:
:
:
: With Keyword Index

PROBATE HEARING JULY 29, 2009

BEFORE

THE HONORABLE DENISE P. LINDBERG

CAROLYN ERICKSON, CSR
CERTIFIED COURT TRANSCRIBER
1775 East Ellen Way
Sandy, Utah 84092
801-523-1186

COPY

1 And it's been a learning experience. I have a lot
2 of good friends in the situation. I know everybody out there
3 in that hallway personally, worked on many projects in that
4 town. They know my heart, where I come from, what I've done
5 for them in helping them every day of my life that I was
6 there including Sundays and Saturdays and late nights.

7 THE COURT: Mr. Pipkin.

8 MR. PIPKIN: I just want to let them know that we
9 do care. So thank you.

10 THE COURT: Thank you.

11 Shane Stubbs?

12 MR. STUBBS: My name is Shane Stubbs. I had a
13 couple of cousins tell me that these farms were in the dust
14 bowl and they needed to be done something with them and I
15 said okay and they said go talk to Bruce and get a lease on
16 them or do something with them and I said all right. So I
17 first went and talked to Warren Jessop and Joe Jessop who are
18 the guys that kind have run those farms through the years and
19 they both said they weren't going to do anything with them,
20 they were done with them.

21 So I went and talked to Bruce and said, Hey, why
22 don't you give me a lease on these pivots out here and I'll
23 go plant them and do something with them and he said, Yeah,
24 go ahead take two of them and get them planted and then we'll
25 talk about the rest of them. And so we did, we planted two

1 of them and he gave us the rest of them and we planted them
2 and since we've done that the FLDS have tore down the pivots
3 on one of them and put them half back together. They took
4 apart the other pivot. They shut the water off on another
5 pivot and cut the locks off the boxes and did something with
6 it so it won't work and basically completed destroyed the
7 crops there and I think that the Court, you know, it would be
8 nice if the Court would do something with this. I think it's
9 a great program you have going on because everybody is able
10 to come in and use some property or do something with it. I
11 don't know that -

12 Bruce, has anybody ever - has any FLDS people some
13 into you to get a lease and you turned it down?

14 MR. WISEN: No.

15 MR. STUBBS: No? So this program that you've set up
16 here, it's good for all of us, everybody that's involved
17 there. The FLDS can go in and get a lease or an occupancy
18 agreement on something just as easy as any of us can. Bruce
19 is not FLDS a, non-FLDS. He's a neutral person. He's good
20 with all of them. I think if anybody has not be courteous
21 and polite, like Earl was saying it's the FLDS people 'cause
22 they build high fences around their places and they don't
23 wave and they don't talk to you. A lot of them if you go
24 knock on their door, they don't even open it, stuff like
25 that. I think that (inaudible) good deeds, and they pay for

1 surveying and still have to get their deeds for the property
2 back into the people that deserve it so they're not afraid
3 that they're going to be kicked out if they don't do
4 something.

5 You know, a lot of these people out in the hallway,
6 they're probably here because if they didn't show up, they
7 might get kicked out of their house or get their family taken
8 away and given to somebody else or, you know, stuff like
9 that. I don't think it's right. I think the homes need to
10 be deeded back to the people and the property, the parks need
11 to be set up so that all the people can use them in the
12 community and they're selling this property to the very
13 people that are part of the community. We're all brothers
14 and sisters there and we've all part of it, just because some
15 of us don't believe the same way as some of the others and
16 some of them have more authority than others, then they start
17 kicking out and doing things that aren't right. It doesn't
18 mean that all of us aren't a part of it and so I think that
19 (inaudible) property, they're selling it to people that are
20 going to sell and divide up the property to people who are a
21 part of the community and so that's a good thing and the
22 (inaudible) and pay the debts and those that go all this
23 stuff and I think it's a good thing. Thank you.

24 THE COURT: Thank you.

25 Isaac Wyler?

1 After Mr. Wyler speaks we will take about a 15-
2 minute recess and then we'll reconvene.

3 MR. WYLER: My name is Isaac Wyler, Your Honor. I
4 have lived in Colorado City all of my life and are familiar
5 with the Berry Knoll Farm. In 2007 I received permission
6 from Bruce Wisan to work this farm and at that time the farm
7 was in very poor condition because it had not been planted or
8 irrigated in years. Bruce asked me if I could find anyone to
9 farm the property. I told him I would be willing to plant a
10 portion of the property and that I would look for others to
11 help with the other portions. I know (inaudible) several
12 hundred acres of dry land winter rye and grazed a few horses
13 on my section of the property. I did not attempt to water
14 the (inaudible) because it was common knowledge I'd lose
15 money. I know this because Merlin Jessop, the movant who
16 previously farmed the property told me back in 2001 that the
17 farm was not economically viable and without the bishop's
18 assistance there was no way he could stay in business. At
19 that time Merlin told me his previous month's power bill was
20 \$25,000. I figure I invested at least \$15,000 in planting
21 project with approximately \$4000 of that being out-of-pocket
22 cash for seed, fuel, and equipment and the rest and several
23 hundred hours of time in planting the crop. This crop came
24 up good with the rains but severe wind storms in April and
25 May 2008 destroyed the crop entirely.

1 As soon as I started the project I began to
2 experience weekly cases of severe vandalism, the worst of
3 which occurred when someone drove through a couple hundred
4 feet of fence with their truck and run down one of my main
5 breeding stallions I'd purchased in Kentucky. The stallion
6 had his back broke and so I had to put him down. The
7 Colorado City cops were never able to catch the culprits.
8 Because someone kept cutting the locks and opening the gates,
9 I finally had to remove my horses from the property
10 altogether. The Colorado City cops started ticketing me when
11 my horses got out and told me they didn't care whether it
12 was my fault or not and the fine was \$1500 for each offense.
13 I met with Merlin Jessop, one of the movants on two occasions
14 and asked him if he'd be interested in farming the property.
15 He told me, "I'll not put one more seed in the ground in this
16 valley." He stated that the land was cursed since the court
17 took over the management of the property. I told Merlin that
18 Bruce wanted him or someone to farm the property but Merlin
19 said he would have no communication or agreement with the
20 devil.

21 I was aware the leaders of the church had
22 instructed their people not to deal with the Special
23 Fiduciary. While posting tax notices on houses in the
24 community, I heard many FLDS people say words to this effect,
25 "We've been told to answer you nothing. We've been told not

1 to talk to you. We've been told not to accept this."
2 Consequently, I offered to fill out the paperwork and be the
3 go-between with Merlin and Bruce so Merlin would not have to
4 deal directly with the fiduciary. Merlin refused my offer
5 and wouldn't communicate with the fiduciary, so I told him
6 he'd have to look elsewhere to find someone to farm the
7 ground. I found a few people who were interested in farming
8 the property but they were scared off when they learned that
9 the prior FLDS Farmers had left an unpaid power bill of
10 \$20,000 which needed to be paid before the power would be
11 restored to the farm.

12 In 2008 I was able to find someone to lease the
13 property and Shane Stubbs already told his story. During the
14 time of my involvement with the property, we have had ongoing
15 problems to this day with Dan Johnson and Willie Jessop
16 grazing their sheep and cows on the property without
17 permission from the fiduciary. Bruce asked me to talk to Dan
18 about it and I even offered to fill out the paperwork and be
19 a go-between for him but Dan refused for the same reasons
20 that Merlin had. Dan and Willie do not have lease agreements
21 and have been specifically told not to place their animals on
22 the land, but that didn't stop them.

23 In September 2008 Dan and Willie simply took over
24 the property. Dan moved over 250 sheep onto the property and
25 Willie put a number of cows there. The trespassing animals

1 have interfered with the rights of the people who have
2 legitimate leases from the fiduciary. I asked the Colorado
3 City Police Department on multiple occasions to remove the
4 trespassing animals and write trespassing tickets against
5 both men. However, the police department refused to get
6 involved. They said this court's language is ambiguous in
7 its orders on who has the right to manage the property.

8 It's my opinion that the movants and the Colorado
9 City Police officers are just thumbing their noses at the
10 court and the rule of law. They are refusing to acknowledge
11 the authority of the judge as well as the Special Fiduciary.
12 It is interesting to note that while I experienced numerous
13 cases of vandalism during my time my animals were on the
14 property, I am not aware of one single instance where
15 vandalism occurred on the property during the time it has
16 been under the control of the trespassers, Willie and Dan. I
17 wasn't able to keep my animals in with chains and padlocks on
18 the gate, yet the movants are able to keep their animals in
19 with a piece of baling wire. It is sad that those with
20 legitimate leases are run off by vandalism while trespassers
21 are allowed to remain and law enforcement refuses to follow
22 the laws of the land.

23 THE COURT: Okay.

24 MR. WYLER: Finally, I'd like to respond to -

25 THE COURT: Time is up.

EXHIBIT D

CALLISTER NEBEKER & MCCULLOUGH

A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
ZIONS BANK BUILDING, SUITE 900
10 EAST SOUTH TEMPLE
SALT LAKE CITY, UTAH 84133
TELEPHONE 801-530-7300
FAX 801-364-9127

Jeffrey L. Shields

TO CONTACT WRITER DIRECTLY
Direct Dial Number 801-530-7374
jlshields@cnmlaw.com

May 26, 2010

VIA EMAIL

David N. Sonnenreich
Utah Assistant Attorney General
160 East 300 South, 6th Floor
P.O. Box 140856
Salt Lake City, UT 84114-0856

Re: United Effort Plan Trust
Third Judicial District Court, Case No. 053900848

United Effort Plan Trust Lease with David and Shane Stubbs

Dear Mr. Sonnenreich:

Pursuant to your request, attached is a copy of each of the following-described documents:

1. LEASE AGREEMENT dated April 14, 2008, between the United Effort Plan Trust and David and Shane Stubbs, including Addendums A, B and C ("Lease");
2. Two maps that will help you identify the property subject to the Lease;
3. Check No. 144 dated January 1, 2009, payable to U.E.P. in the amount of \$1,000.00 for the 2009 Lease payment;
4. Receipt No. 7609 dated October 23, 2009, (including a photo copy of five \$100 bills) evidencing the Lease Addendum C payment; and
5. Receipt No. 3956 dated February 1, 2010 and check No. 170 also dated February 1, 2010, payable to U.E.P. in the amount of \$1,000.00 from Shane Stubbs for the 2010 Lease payment.

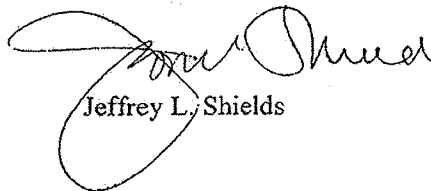
Please review the attached documents as you deem appropriate. I have spoken to both Bruce Wisan and Jethro Barlow about the history of the Lease and the three Addendums. I now understand the lease history. If you need any explanation regarding the addendums or the history of this Lease, please

communicate with me. My review of the attached documents indicates that Stubbs have been in rightful possession of the leased property since April 14, 2008. Parties who assert otherwise are either not aware of the facts or are just ignoring the facts to justify their own behavior. I would be happy to discuss my conclusions with you.

My understanding is that the lack of respect for the rule of law and the Fiduciary's authority is approaching the dangerous level in Colorado City. If lawyers are going to be involved, I suggest a prompt response and resolution of this matter. Please call me at your convenience. I will be out of the office next week. Thank you.

Sincerely,

CALLISTER NEBEKER & McCULLOUGH

A handwritten signature in black ink, appearing to read "Jeffrey L. Shields", written over a printed name.

Jeffrey L. Shields

njp

Attachments

cc: Bruce R. Wisan (w/attachments) (via email)

536809.1

LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Agreement" or "Lease") is made and entered into as of the 14 day of April, 2008, by and between the United Effort Plan Trust, by Bruce R. Wisan, in his capacity as the Court Appointed Special Fiduciary (the "Lessor"), and David Stubbs and Shane Stubbs, jointly and severally (the "Lessee").

1. Property. Lessor hereby leases to Lessee and Lessee hereby rents from Lessor approximately 260 acres of land located in Mohave County, State of Arizona and approximately 204 acres of land located in Washington County, State of Utah, more particularly described on Exhibit "A" attached hereto and by this reference made a part hereof (hereinafter the "Property").
2. Term. Subject to the terms and conditions set forth in this Lease, the anticipated term of this Lease shall be from the date of this Agreement through December 31, 2013; provided, however, that the Lessor may terminate this lease at any time prior thereto without cause in accordance with Paragraph 14, below.
3. Rent. Lessee shall pay to Lessor as rent for the Property an amount equal to one thousand dollars (\$1,000.00) per year for the years 2009 through 2013, payable on the first day of January of each year, commencing January 1, 2009. Lessee shall not be obligated to pay rent for use of the Property in 2008. Rent shall be refunded on a pro rata basis for any partial year's occupancy of the Property in the event of early termination of this Agreement under Paragraph 14, below.
4. Permitted Use. The Property shall be used by Lessee solely for farming and livestock grazing purposes in accordance with good husbandry and farming practices and for no other purpose without the prior written consent of Lessor, which Lessor may withhold in its sole discretion.
5. Prohibited Use. Lessee shall not use the Property or permit anything to be done in or about the Property which will in any way conflict with any law, statute, ordinance or governmental rule or regulation or requirement of duly constituted public authorities now in force or which may hereafter be enacted, promulgated or created. Lessee shall, at Lessee's sole cost and expense, promptly comply with all laws, statutes, ordinances and governmental rules, regulations or requirements now in force or which may hereafter be in force relating to or affecting the use or occupancy of the Property, including changes that relate to or affect the use or occupancy of the Property by Lessee.
6. Taxes. Lessee shall not be responsible for the payment of real estate taxes for the term of this Lease.
7. Maintenance. Lessee shall, at Lessee's expense, maintain and operate the Property (including, but not limited to) fences, ditches, and roads in a neat, clean, and sanitary condition, and shall return the Property at the end of the Lease in as good or better condition as it now exists, ordinary wear excepted.

8. Construction of Improvements. Lessee shall not construct on the Property any buildings, structures, or capital improvements with a value greater than \$5,000 without the prior written consent of Lessor, which consent can be granted or withheld by Lessor in Lessor's sole and absolute discretion. All buildings, structures, and capital improvements on the Property shall be the property of the Lessor upon the termination of this Agreement. In the event Lessor terminates this lease without cause prior to expiration of the anticipated term, in accordance with Paragraph 14, below, Lessor will reimburse Lessee for all unharvested crops and approved capital improvements on the Property.

9. Mechanic's Liens. Lessee shall promptly pay all contractors and materialmen providing goods and/or services with respect to the Property, or any part thereof, so as to eliminate the possibility of a lien attaching to the Property or any improvements constructed thereon, and should any such lien be made or filed by reason of any fault of Lessee, Lessee shall bond against or discharge the same within ten (10) days after written request by Lessor. Lessor shall have the right, but not the obligation, to pay and discharge any such lien that attaches to the Property and Lessee shall reimburse Lessor for any such sums paid together with interest at the rate of Eighteen percent (18%) within thirty (30) days after written demand by Lessor.

10. Sublease and Assignment. Lessee shall not sublease or assign any of the rights under this Lease without the prior written consent of Lessor, which consent can be withheld or granted by Lessor in Lessor's sole and absolute discretion.

11. Liability. Lessee shall indemnify and hold Lessor harmless from any and all claims of liability for any injury or damage to any person or property whatsoever occurring in, on or about the Property or any part hereof during the term of this Lease. Lessee shall further indemnify and hold Lessor harmless from and against any and all claims arising from any breach or default in the performance of any obligation on Lessee's part to be performed under the terms of this Lease, or arising from any act or negligence of Lessee, or any of Lessee's agents, contractors, employees, licensees or invitees and from and against all costs, attorney's fees, expenses, and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon.

12. Default. In the event Lessee defaults in the payment of rent or defaults in any of the other obligations under this Lease, and such default shall continue uncorrected for a period of ten (10) days after Lessor gives notice to Lessee of Lessee's default, Lessor shall have the option to terminate this Lease and the right to re-enter and take possession of the Property and exercise any other remedies under applicable laws. Nothing herein contained shall be construed to prevent Lessor from pursuing or taking other appropriate action to collect the rent when due or for suing for damages caused by Lessee's default, but it is the intention of the parties that Lessee shall not be dispossessed from the Property provided it cures its default within such ten (10) day period. Notwithstanding the foregoing, if Lessee's default involves an imminent threat to health or safety, Lessor may reduce the period in which to cure to such time as appropriate, determined by Lessor in its sole and absolute discretion.

13. Hazardous Substances.

(a) Covenants. Lessee covenants, promises and represents that Lessee shall not use, store, generate, treat, transport, or dispose of any Hazardous Substance, as defined herein, on the Property without first obtaining Lessor's written approval. Lessee shall promptly deliver to Lessor true and complete copies of any and all notices or correspondence or requests from any governmental authority or third parties relating to the presence, lease, use, storage, treatment, transportation, or disposal of Hazardous Substances in any way related to the Property. Lessee shall permit Lessor and Lessor's agents to enter into and upon the Property, without notice, at all reasonable times for the purpose of inspecting the Property and verifying Lessee's compliance with these covenants. Lessee shall promptly and completely respond to and cleanup any release or presence of any Hazardous Substances upon the Property in accordance with applicable laws and regulations. Lessee shall surrender the Property free of the presence of any hazardous Substances or contamination at the end of the Agreement.

(b) Indemnification and Hold Harmless. Lessee and its successors and assigns, shall indemnify, defend and hold harmless Lessor and its trustees, advisors, Special Fiduciary, and all other directors, officers, employees, agents, successors, and assigns from and against any and all liabilities, losses, claims (including without limitation, third party claims for personal injury, or real or personal property damage), demands, penalties, fines, settlements, damages (including consequential damages), lawsuits, response, remedial, or inspection costs, government enforcement actions, judgments, interest and losses, including consultant and attorneys' fees, laboratory costs and litigation expenses, together with all other costs and expenses, of whatever kind or nature, known or unknown, contingent or otherwise, whatsoever arising from or in any way related to (a) the presence of Hazardous Substances on the Property, (b) the violation of any federal, state or local laws or regulations by Lessee, or (c) any action or inaction by Lessee. Lessee's obligations herein shall survive beyond the expiration of the Agreement.

(c) Hazardous Substances. As used herein, "Hazardous Substances" means, without limit, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, the Hazardous Materials Transportation Act, as amended, the Resource Conservation and Recovery Act, as amended, including asbestos, "PCBs", petroleum, or other substances regulated by any other federal, state or local environmental laws or regulations.

14. Right to Terminate Lease Without Cause. Lessee specifically agrees and acknowledges that Lessor shall have the right to terminate this Lease with respect to all or any portion of the Property without cause upon at least thirty (30) days prior written notice to Lessee. Upon any termination of this Lease pursuant to the provisions of this Paragraph 14 (total or partial), Lessee shall promptly vacate and surrender to Lessor those portions of the Property with respect to which this Lease has been terminated.

15. Costs and Attorney Fees. In the event of default under the terms of this Agreement, the defaulting party agrees to pay to the other party all costs incurred by other party

in enforcing its rights under this Lease, including a reasonable attorneys' fee, whether or not the default is finally settled by the Court and irrespective as to whether litigation is actually filed.

16. Notices. Any notice required to be given under this Lease shall be given in writing and shall be delivered in person or by registered or certified mail, postage prepaid, and addressed as follows:

If to Lessor:
Bruce R. Wisan
132 West Pierpont Avenue
Salt Lake City, Utah 84101
(801) 328-2011

If to Lessee:
David Stubbs
Shane Stubbs
P.O. Box 2640
Colorado City, AZ 86021
(435) 212-0737

With a copy to:
Jeffrey L. Shields
Callister Nebeker & McCullough
Zions Bank Building
10 East South Temple
Salt Lake City, UT 84133
(801) 530-7374

Such notice shall be deemed delivered when personally delivered or upon deposit of the notice in the United States mail in the manner provided above. Either Lessor or Lessee may give notice in the manner specified in this Paragraph 16.

17. Governing Law; Counterparts. To the extent allowed, this Agreement shall be governed by and construed in accordance with the internal laws, and not the law of conflicts, of the State of Utah applicable to agreements made and to be performed in that State. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which taken together shall constitute but one and the same Agreement.

18. Severability of Invalid Provisions. With respect to this Agreement, any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction only, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Agreement, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

19. Entire Agreement; Amendment or Modification. This Agreement constitutes the full and complete agreement and understanding between the parties hereto and shall supersede any and all prior written and oral agreements concerning the subject matter contained herein. This Agreement may be modified or amended only by a written instrument executed by all of the parties hereto.

IN WITNESS WHEREOF, Lessor and Lessee have executed this Lease the day and year first above written.

LESSOR:

LESSEE:

By: Bruce R Wisan
Bruce R. Wisan, in his capacity as the Court
Appointed Special Fiduciary of The United
Effort Plan Trust

David Stubbs
David Stubbs

Shane Stubbs
Shane Stubbs

Exhibit A

Property Description:

- I. 260 acres of land in Mohave County, Arizona, as follows:
 - (a) Farming circle with pivot and water lines as-is on Mohave County parcel 404-27-032; and
 - (b) Farming circle with hay shed and water lines as-is on Mohave County parcels 404-27-036; 404-27-037; and 404-27-038

- II. 204 acres (more or less) of dry farm land in Washington County, Utah, as follows:
 - (a) Parcel No. 0-3-29-220 less eastern 40 acres; and
 - (b) Parcel No. 0-3-32-110 less eastern 40 acres.

Addendum A

Modification of lease effective November 1, 2008.

Property Description:

The lease shall be expanded to include the following property together with a stipulated crop sharing agreement of 10 percent of the yield from the farm to be contributed to the community as directed by the UEP Trust:

Farming circles and water lines as-is on
Mohave County parcels: 404-43-006
404-43-001
404-27-032 amended to also include 40 acre pivot.

IN WITNESS WHEREOF, Lessor and Lessee have memorialized this Addendum A on the
5th day of March 2009.

LESSOR:
UNITED EFFORT PLAN TRUST

LESSEE:

By: Bruce R. Wisan
Bruce R. Wisan, in his capacity as the Court
Appointed Special Fiduciary of The United
Effort Plan Trust

By: David Stubbs
David Stubbs

By: Shane Stubbs
Shane Stubbs

Addendum B

Modification of lease effective December 17, 2008.

The lease shall be expanded to include the following:

Grazing rights on Trust property in Skunk Canyon.

The following property will be deleted from the lease according to the notice given from the Trust:

Property Description:

204 acres (more or less) Dry farm rights on Washington County property:

0-3-29-220 less eastern 40 acres

0-3-32-110 less eastern 40 acres

IN WITNESS WHEREOF, Lessor and Lessee have memorialized this Addendum B on the 4th day of March, 2009.

LESSOR:
UNITED EFFORT PLAN TRUST

LESSEE:

By: Bruce R. Wisan
Bruce R. Wisan, in his capacity as the Court
Appointed Special Fiduciary of The United
Effort Plan Trust

By: David Stubbs
David Stubbs

By: Shane Stubbs
Shane Stubbs

Addendum C

Modification of lease effective August 11, 2009.

For the consideration of an additional annual payment to the UEP Trust of \$500.00 per year, the lease shall be expanded to include the following:

Lessee shall have the use of four grain storage silos in the grain storage facility in Hildale at the top of Memorial Street and the appurtenant elevators and cleaning equipment. (not to include the Cavern). Lessee agrees to make any unused grain storage space and the Cavern facility available to meet the needs of other UEP Trust Participants who may request the use of the granaries.

Lessee shall have the right to convert the electrical service on the granaries to Lessee's name and agrees to allow other users on the property access to necessary electrical usage with the appropriate reimbursement for the cost of electricity used.

The lease is amended to include the feed lots and corrals adjacent to and West of the farming circle and pivot on Mohave County parcel 404-27-032, (not to include the partially constructed building on the South East corner of the pivot, nor the residential properties on the North East corner of the pivot.)

IN WITNESS WHEREOF, Lessor and Lessee have memorialized this Addendum C on the 11 day of Aug 2009.

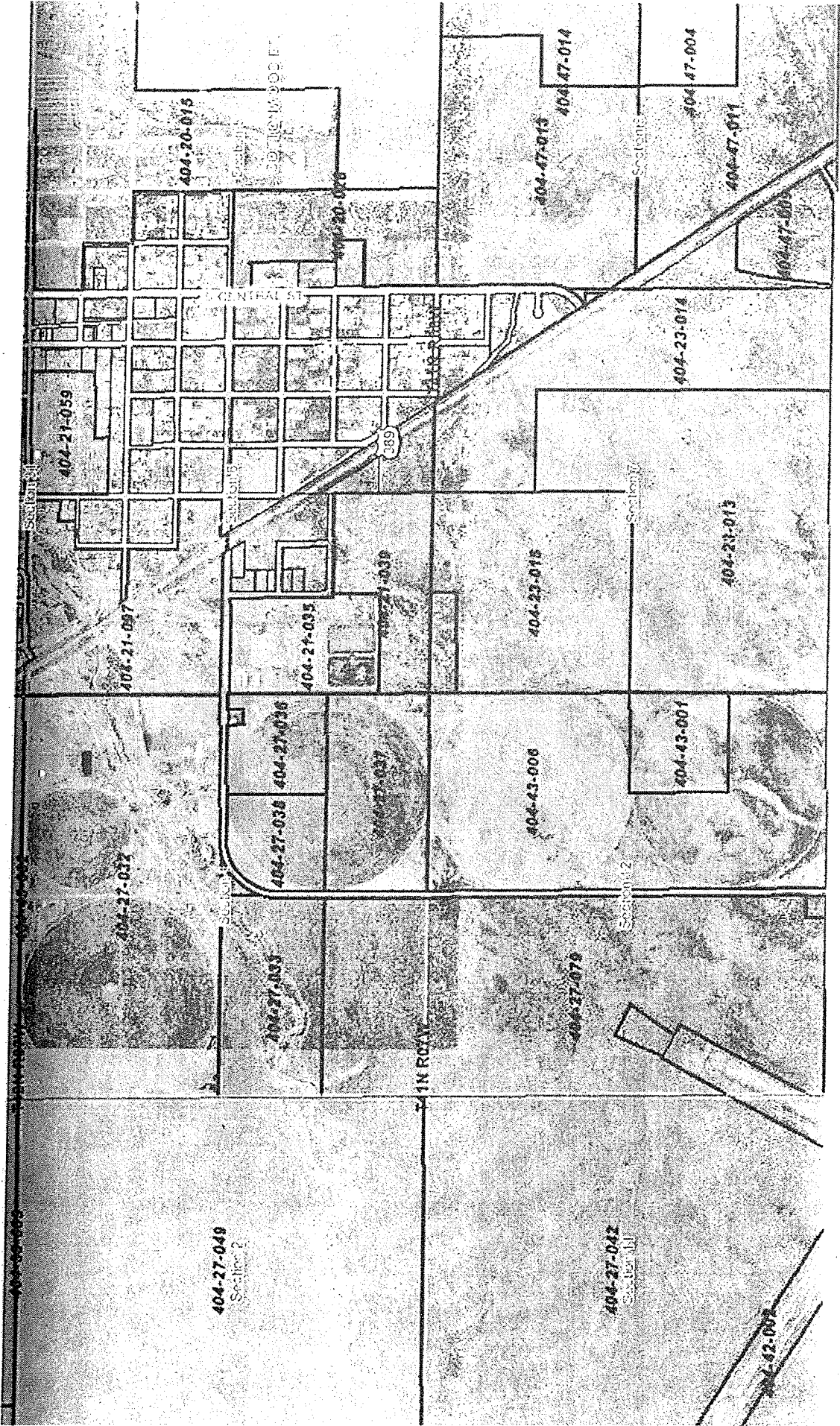
LESSOR:
UNITED EFFORT PLAN TRUST

LESSEE:

By: Bruce R Wisan 10/21/09
Bruce R. Wisan, in his capacity as the Court
Appointed Special Fiduciary of The United
Effort Plan Trust

By: David Stubbs
David Stubbs

By: Shane Stubbs
Shane Stubbs



404-27-049
Section 2

404-27-042
Section 1

404-27-059

404-20-015

404-47-013
404-47-014

404-47-004
404-47-011

404-23-014

404-21-007

404-24-035

404-23-015

404-23-013

404-27-036
404-27-035

404-27-037

404-43-006

404-43-001

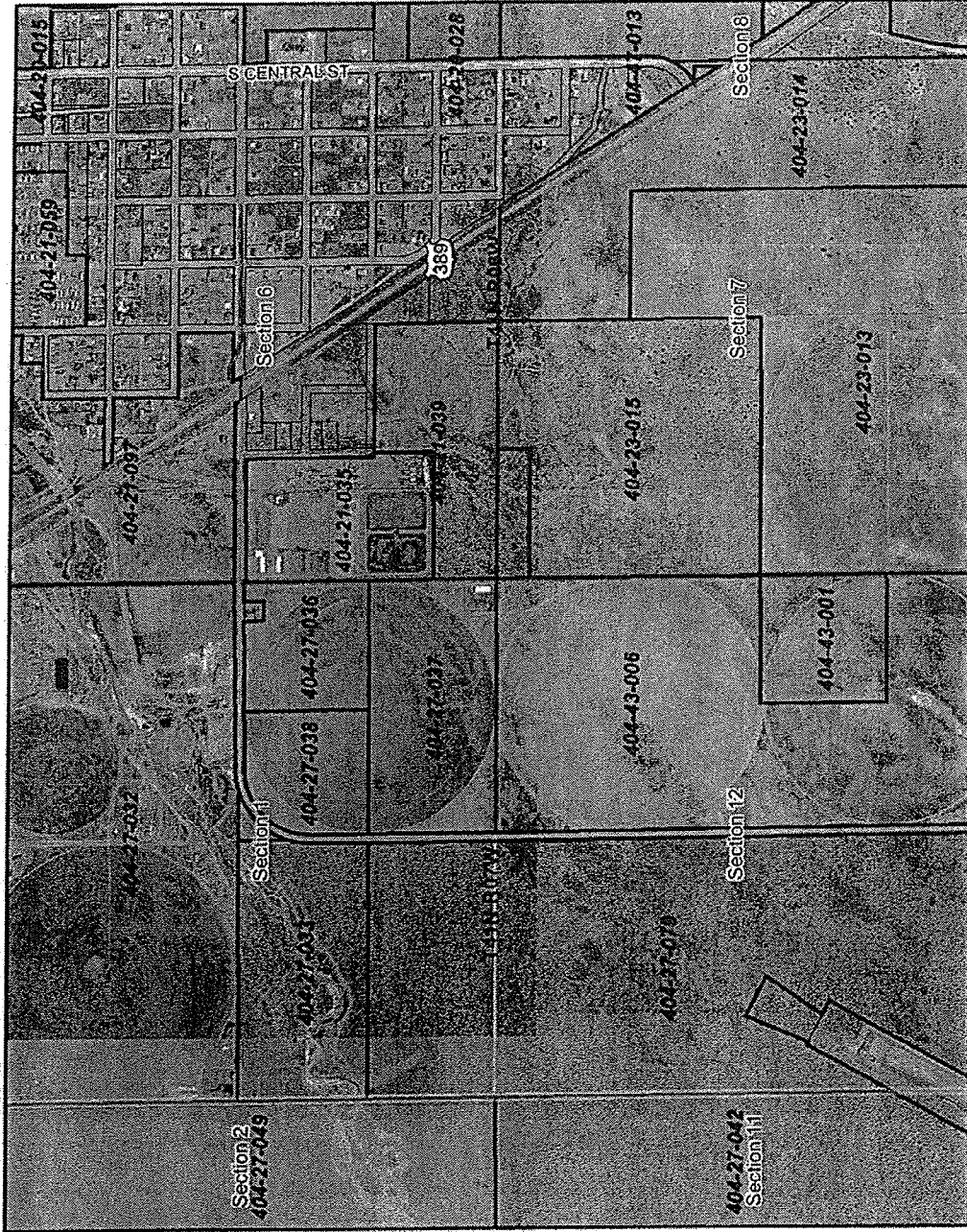
404-27-012

404-27-033

404-27-079

404-62-002

County of Mohave, Arizona Geographic Information Systems Mohave County Interactive Map Viewer



- Populated Places
- Incorporated Cities
- Centerline
- Railroads
- Tax Parcels
- 2
- 0
- Township/ Range
- Sections
- Federal Lands
- Indian Reservations BIA
- National Monument NPS/BLM
- National Park NPS
- National Recreation Area NPS
- Wilderness Area BLM
- Wilderness Study Area NPS
- Land Ownership
- Arizona Game and Fish
- AZ State Trust Land
- Bureau of Land Management
- Bureau of Reclamation
- National Wildlife Refuge
- Indian Allotments
- National Forest
- Military Reservation
- Parks and Recreation
- National Monument
- Waterbodies
- 2007 0.4-ft Mohave Channel
- 2007 0.4-ft Valle Vista
- 2005 1-ft (Lake Havasu City Area)
- 2005 0.25-ft (Lake Havasu City)

Scale: 1:20,000

Map center: 36° 58' 34" N, 112° 59' 35" W
 Map created on: May 25, 2010
 1700 3400 ft.

This map is a user generated static output from Mohave County Interactive Map Viewer and is for general informational purposes only. It is not intended to be used as a legal document for property descriptions or determination of legal title and should never be substituted for survey or deed information. The user agrees to comply with the Limitation of Use, and Assumption of Risk as stated in the full disclaimer at http://mohavegov.com/mohave/arizona/mohave/interact/moh_interact_launch.jsp

DAVID S. STUBBS
PO BOX 2640
COLORADO CITY, AZ 86021-2640

PAY TO THE ORDER OF U.E.P

one thousand no

DATE 1/1/09

\$100000

DOLLARS

FOR Lease on Pilots & Crewing Shane Stubbs

WELLS FARGO
Wells Fargo Bank, N.A.
Needs Wells Fargo.com

94-7074/3212 662
0033538968

144

⑆ 321270742⑆ 0033538968⑆ 00144

Shane Stubbs
payment for 2009 - Ag Lease



| | | | | |
|---------|---------------|--|------|---------------------|
| RECEIPT | DATE | <i>Oct 23, 2009</i> | No. | <i>76041</i> |
| | RECEIVED FROM | <i>David Stubbs</i> | | \$ <i>500.00</i> |
| | | <i>Five Hundred and 00/100</i> | | DOLLARS |
| | FOR RENT | <i>addendum to Ag lease re. rental</i> | | |
| | OR PAY | | | |
| ACCOUNT | | <input checked="" type="radio"/> CASH | FROM | TO |
| PAYMENT | | <input type="radio"/> MONEY ORDER | | |
| BAL DUE | | <input type="radio"/> CHECK | BY | <i>Julian Brown</i> |
| | | <input type="radio"/> CREDIT CARD | | |

RECEIPT

DATE 2-1-2010 No. 5956

RECEIVED FROM David & Sharr Stubbs \$ 1000.00

One thousand DOLLARS

FOR 2010 pmnt on 4-18-08 ag lease

ACCOUNT CASH

PAYMENT MONEY ORDER FROM #170 TO

BAL. DUE CHECK BY (Dillon Barber)

CREDIT CARD

DAVID S. STUBBS
 PO BOX 2640
 COLORADO CITY, AZ 86021-2640

170
 04-7074/2012 552
 003353860

PAY TO THE ORDER OF U.E.P DATE 2/1/10

one thousand & 00/100 \$ 1,000

WELLS FARGO Wells Fargo Bank, N.A. www.wellsfargo.com

FOR Jan 1 2010 Sharr Stubbs

⑆321270742⑆ 0033538968⑈ 00170

EXHIBIT E

Statement of Shane Stubbs

Early in the spring of 2008 I noticed that the UEP fields were fallow and turning into a dust bowl. Spring runoff water was not being contained or applied to the fields so being the farmer that I am, I inquired about who was farming the land. After more than six months of communications and meetings with everyone I knew that would be managing the farm, I signed a lease with the United Effort Plan Trust and started to repair the pivots, turn on the abandoned wells, and prepare the ground for winter wheat.

On August 16, 2008 I received a letter from Merlin Jessop which encouraged a thorough investigation into the ownership of the land before I continued to lease or improve the farm. I had done a lot of investigation and negotiation with Bruce Wisan, the Special Fiduciary who seemed encouraged to have someone willing to work the farm. I was not able to grow any summer crop for lack of water but I have planted 200 acres of winter wheat now and I am working on planting more.

On September 14, 2008 at about 3:00PM, Willie Jessop, Tom Holm, and Merlin Jessop came to my house in Colorado City. I invited them in the house but they said they just wanted to talk on the porch. They said that they had heard I had a lease on the farm ground and pivot out by Berry Knoll and that they didn't want me to get hurt or fight against me and that Bruce Wisan lied to the judge. They said that he had no right to lease the property and that the water definitely does not go with it. They said the water was never UEP water and that if anyone touches or turns it on they will go to jail.

They said that the next thing that could happen was they could go to town and come back to find someone else in their home. They said this should not happen and that they were not going to allow it. When they asked how I would like it if someone came in and took over my farm, I told them that I knew exactly how that feels since my Dad had land in Hildale and Maxwell Canyon and he turned it over to the UEP Trust. He was promised that he would be a beneficiary and even a trustee and then instead he was deleted from the beneficiary list and evicted. I told them that now the UEP has now lost the land to State. I said "sure, I know exactly how it feels."

I told Willie Jessop that I was glad to see him come out of the closet and that I was wondering who was in charge now since I had talked to Merlin Jessop earlier and he said he was not going to do anything with the farms. I also spoke with Joseph S Jessop and he said he didn't have any authority to do anything. When I talked with Scott Jessop he said he didn't know anything either. So, I was glad to see someone come forward and talk.

I said that Bruce was trying to figure things out and no one would talk until he moved someone else into the picture. I said "Does he have to move someone else into your house before you will step up and say "that's my house, I live there?"

Willie Jessop said "I just don't want to see you lose any more money than you have to since we know you have spent a lot of money on the power and we are not sure what else you have done." I said, "The

way this country is going we might all be out there holding hands and hoeing weeds together to try growing corn or wheat to feed our families." Tom Holm said he was glad to hear that.

I told them that there was nothing I would like better than to find out who has the right to manage the farm property but it did not make sense for me to walk away from my investment in the farm. Meanwhile let's work together to find out if Bruce has the right to lease the property and if he does I will continue on.

Willie said, "No one better mess with the water or they will go to jail." I told him that I already had. Then he said "Using someone else's water is stealing." I told him, "Lets figure it out."

Merlin S. Jessop
Jessop Farms
PO Box 10
Colorado City, AZ 86021

August 16, 2008

Shane Stubbs
PO Box 2640
Hildale, UT 84784

Dear Mr. Stubbs:

We have become aware that you are intending to farm the properties known as the Berry Knoll Farms and the Homestead Farms. It is highly recommended that before you proceed any further or incur any expense, that you conduct a thorough investigation as to ownership of property, water rights, pivots, wells pumps, piping and other facilities. All of these are in question, and what may seem a simple agreement for use can, and will be brought into question and possible litigation for illegal use of another's property.

Out of respect for you, we inform you that actions are being taken to maintain the use of these lands by Jessop Farms.

Sincerely,

Merlin S. Jessop



EXHIBIT F

FILE COPY

CALLISTER NEBEKER & McCULLOUGH

A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
ZIONS BANK BUILDING
10 EAST SOUTH TEMPLE, SUITE 900
SALT LAKE CITY, UTAH 84133
TELEPHONE 801-530-7300
FAX 801-364-9127

Mark L. Callister

TO CONTACT WRITER DIRECTLY
(801) 530-7425
mcallister@cnmlaw.com

December 17, 2008

**VIA CERTIFIED MAIL, RETURN
RECEIPT REQUESTED**

Certified Article Number

7160 3901 9845 8819 2375

SENDERS RECORD

David Stubbs
Shane Stubbs
P. O. Box 2640
Colorado City, Arizona 86021

Re: Lease Agreement with the Special Fiduciary

Dear David and Shane:

I represent Bruce Wisan, in his capacity as the Court-appointed Special Fiduciary of the United Effort Plan Trust. Pursuant to Paragraph 14 of the April 14, 2008 Lease Agreement, a copy of which is attached hereto, the Special Fiduciary hereby provides notice of termination for that portion of the lease relating to property located north of State Highway 389.

Please contact Mr. Wisan to discuss whether you would like to continue leasing that portion of the ground that is not affected by this termination. Depending on the outcome of that discussion, Mr. Wisan will provide you with a refund check for the portion of the lease that has been terminated.

Very truly yours,

CALLISTER NEBEKER & McCULLOUGH



Mark L. Callister

MLC:kas


Enclosure

cc: Bruce Wisan
515515.1

EXHIBIT G

Mark L. Callister

From: Ken Okazaki [KOkazaki@joneswaldo.com]
Sent: Friday, December 12, 2008 6:24 PM
To: jerroldjensen@utah.gov; Mark L. Callister; willie@flds.com; Jim Bradshaw; Stephen Clark
Subject: FW: Proposed Agreement
Attachments: logo_jw.gif

| | |
|---|--|
|  | Kenneth A. Okazaki <i>Attorney</i> |
| 170 S. Main St., #1500 Salt Lake City, UT 84101 Fax: 801.328.0537 www.joneswaldo.com | Direct: 801.534.7475 Bio |

CONFIDENTIALITY NOTICE: The content of this e-mail is confidential and proprietary and may be attorney-client privileged. If you are not the intended recipient, please destroy it and notify KOkazaki@joneswaldo.com.

From: Ken Okazaki
Sent: Friday, December 12, 2008 6:12 PM
To: 'jerroldjensen@utah.gov'; mlc@cnmlaw.com
Subject: Proposed Agreement

Jerry, Tim, Mark:

I understand that notwithstanding the letter to the AG, that accompanied the trust check from JW in the amount of \$64,200 (Check) that for this time only, we agree, subject to the approval of Mr. Wisan and Mr. Willie Jessop, as follows:

1. The AG may deposit the Check.
2. Mr. Jensen may disburse the Check to Mr. Wisan .
3. FLDS may resume management and maintenance of the Cottonwood Park forthwith.
4. FLDS may commence plowing, planting and cultivation of the land located on the north side of the highway, forthwith.
5. If the AG recommends that the "stand down" cease and the matter go back to Court, then the Mr. Wisan may petition the court to resume management of the Cottonwood Park. Management of the park, at this time, shall not include restrictions on access to the park. The parties will negotiate, in good faith, restrictions on the use of the park. Further, the parties will work with the AG in developing regulations or restrictions on the use of the park. .
6. Mr. Wisan will account for the use of the proceeds to the AG. The AG will then review the accounting for reasonableness and appropriateness of the use of proceeds.

Based on our conversation I understand that Mr. Wisan and the AG have agreed to these terms. As soon as Mr. Willie Jessop is available I will seek to obtain his consent and will forward his response to all parties.

EXHIBIT H

About yesterday's incident at Berry Knoll

Posted on March 4, 2009, 4:30 pm, by Brooke, under [FLDS](#), [Short Creek](#), [United Effort Plan \(UEP\)](#).

From a **Mohave County** press release:

Mohave County Sheriff's deputies arrested Richard Clarence Jessop, 37, and Thomas L. Jessop, 21, both of Colorado City, Tuesday afternoon.

Richard Jessop was arrested for criminal damage, felony, and criminal trespassing, misdemeanor. Thomas Jessop was arrested for criminal trespassing, misdemeanor.

Late Monday evening, at about 11:30 p.m., dispatch informed MCSO deputies of trespassing in progress at a farm off of Airport Road. MCSO deputies contacted the reporting party. The reporting party said that around 11:00 p.m., he observed people plowing and tilling his fields.

The reporting party further said that an officer from the Colorado City Marshal's Office responded and he told the subjects to stop using the tractors and to leave the area. The reporting party advised that the officer questioned him about who owned the property and he informed the officer that he leased the property.

The reporting party further advised that the officer appeared to be more concerned about the court order rather than the criminal act that was taking place. The victim stated that the Colorado City Marshal's officer failed to do their job and that's when he called **Mohave County** Sheriff's Office.

During a follow-up investigation, MCSO deputies responded to the farm Tuesday afternoon and contacted the reporting party. The reporting party estimated damage to his crops was well over \$10,000. While MCSO deputies were speaking with the reporting party, in the middle of a field, they observed two tractors enter the property and begin plowing.

MCSO deputies got into their patrol unit where they drove past the lead tractor and exited their vehicle. A MCSO deputy stood to the side of the oncoming tractor with his hand up in an attempt to stop the operator, but the operator refused to stop and continued traveling. The MCSO deputy got back into his patrol unit and drove past the tractor again. The tractor came to a stop approximately 20 feet in front of the MCSO deputy where he stood motioning the operator to stop.

MCSO deputies observed the second tractor as it stopped behind the lead tractor. MCSO deputies contacted the operator of the lead tractor. The operator was uncooperative and he would not identify himself or turn the engine off. The operator, later identified as Richard Jessop, continued to refuse to answer MCSO deputy's questions.

At about 2:05 p.m., Richard Jessop was taken into custody without incident. The second tractor operator was contacted and identified as Thomas Jessop. Thomas Jessop was cited and released at the scene. Richard Jessop was transported and booked into the **Mohave County** Jail. The tractors were moved from the property.

EXHIBIT I

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LLP
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Salt Lake City, UT 84101
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DENVER
LAS VEGAS
LOS ANGELES
LOS CABOS
ORANGE COUNTY
PHOENIX
SALT LAKE CITY
TUCSON

March 24, 2010

Pat H. Bartholomew
Clerk of Court
Utah Supreme Court
450 South State Street
Salt Lake City, Utah 84114

Privileged and Confidential
Attorney/Client Communication

Re: Snow, Christensen & Martineau v. Judge Denise Lindberg, No. 20091006

Dear Ms. Bartholomew:

I am writing to clarify a representation I made at oral argument on February 17, 2010. In response to a statement made by William Richards of the Arizona Attorney General's office after the conclusion of oral argument, I made the following representation to the court:

Snow, Christensen and Martineau represented Willie Jessop when he sued the trust - 2005. So somebody should have known that Snow, Christensen and Martineau was behaving adverse to the fiduciary at that point in time.
(Electronic recording of argument at 42:33-42:48).

I made this representation in response to Mr. Richards' statement after briefly consulting with my client in the courtroom. Since oral argument, my client and I have had time to discuss the representation more thoroughly and to review documents from that time period. Based upon this review, I make the following clarifications.

- Rather than Willie Jessop suing the Special Fiduciary in 2005, it appears that the Special Fiduciary sued a number of entities owned or controlled by Mr. Jessop in 2005 in a case fashioned Wisán v. Aspen Management Investments, LLC, et al., Dist. Ct. No. 050909669. Therefore, I withdraw the representation that "Willie Jessop sued the trust in 2005." The lawsuit was not initiated by Mr. Jessop, but rather by Mr. Wisán. Mr. Jessop was not named personally in the lawsuit.

EXHIBIT J

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APPEARANCES

FOR THE PLAINTIFF:

Rodney R. Parker
SNOW, CHRISTENSEN & MARTINEAU
10 Exchange Place, 11th Floor
P. O. Box 45000
Salt Lake City, Utah 84145

Kenneth A. Okazaki
JONES, WALDO, HOLBROOK & McDONOUGH
170 South Main Street, Suite 1500
Salt Lake City, Utah 84101

David Stubbs, Defendant, Pro Se

FOR BRUCE WISAN, AS THE COURT-APPOINTED SPECIAL
FIDUCIARY OF THE UNITED EFFORT PLAN TRUST:

Gregory S. Roberts
RAY, QUINNEY & NEBEKER
P. O. Box 45385
Salt Lake City, Utah 84145-0385



1 Timothy A. Bodily

2 UTAH ATTORNEY GENERAL'S OFFICE

3 160 East 300 South, 5th Floor

4 Salt Lake City, Utah 84114

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1 demand due process or evidentiary hearings or any
2 of those things out there, even though we do have a
3 right to be on the phone call.

4 THE COURT: Okay, counsel. I appreciate
5 that response. Mr. Roberts, first of all, I think
6 I've taken sufficient evidence to grant your motion
7 to intervene, and the Attorney General's Office is
8 also in the lawsuit now as well.

9 Now let's talk about due process. This
10 temporary restraining order was signed *ex parte*.
11 Mr. Stubbs, both Messrs. Stubbs were not given the
12 opportunity to respond before they had a Court
13 order laid on them. Looking back at it now, this
14 District Judge regrets having exceeded the power
15 that he should have exercised. Now I should have
16 required this matter come before the Court in the
17 form of an actual hearing so that everyone can come
18 forward and present their evidence and their
19 testimony and let Mr. Shane Stubbs take an oath and
20 tell me about the construction and what's down at
21 the bottom of the funnel on the bottom of these
22 silos, and how long it's been used and things like
23 that. The process that we have gotten to at
24 this stage has been disjointed, to say the least.
25



1 I don't appreciate the way that the parties have
2 not had an opportunity to be heard ahead of time
3 before the Court issues an order. So I'm going to
4 recall and strike the temporary restraining order
5 that is now in effect; however, that's not with
6 prejudice. It is withdrawn, and a motion for
7 temporary restraining order now is pending before
8 the Court so that all sides can be heard on the
9 issue.

10 I am not going to transfer venue of
11 this matter to Salt Lake County and dump it in
12 Judge Lindberg's lap because, frankly, it's an
13 inconvenience to the parties. They can come to St.
14 George a whole lot quicker and a whole lot easier
15 than they can go all the way to Salt Lake County,
16 and Mr. Jeffs and his representatives are closer
17 here. Messrs. Stubbs are closer here and they have
18 that opportunity.

19 As an advisory matter to keep the peace,
20 let me caution the parties.

21 As I see it now, there is an existing
22 lease that Judge Lindberg's appointed trustee has
23 entered into. Whether or not that lease can be
24 broken based upon the long-standing use and the
25 characterization of this property as represented by



1 order entering your appearance as a party to the
2 litigation. The Attorney General's Office is also
3 joined because of their interests and their moving
4 in this matter.

5 It will go back for a hearing on Judge
6 Walton's calendar on the issues that still need to
7 be adjudicated, and that is the nature of this
8 property and the claims made by Mr. Jeffs in his
9 capacity as bishop of the FLDS group so that Judge
10 Walton can make those decisions, but the TRO is
11 dissolved and we're all going to go very carefully
12 taking care of the property as good stewards.
13 Frankly, I am appalled that there is grain sitting
14 out by the road side. So that everyone
15 understands, it is the order of this Court,
16 specifically, that that be moved back in and safely
17 stored in a covered area on the subject property in
18 Exhibit Number 2. We will go to status quo ante
19 prior to the Court's order.

20 MR. PARKER: Your Honor, could I address
21 that last part?

22 THE COURT: Yes, counsel.

23 MR. PARKER: I don't think that grain
24 is sitting by the road side, and one of the things
25 that we would--

