

Jonathan P. Thomas (08531)
DAINES, THOMAS & SMITH, LLP
Attorneys for Plaintiffs
135 North Main, Suite 200
Telephone: (435) 752-1100
Fax: (435) 752-6500

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

CLASS I

ANTHONY WEGENER, BOYDEN DENNISTON,
JADENE DENNISTON, FRANK DICKSON,
VICKY DICKSON, STEPHEN ELIASON,
MARILYN ELIASON, DENNIS HASSAN,
WENDI HASSAN, WENDY HURD,
RICHARD MAJOR, POLLY RICHMAN,
DAVID C. SALMON, SUSAN S. SALMON,
DEBBIE SPENDLOVE, LOUISE R. THOMAS,
GLEN TROSTLE, PAT BOHM TROSTLE,
KATHIE WEGENER, JOANN WILSON,

CLASS II

MITCHEAL COOKSEY, KARINA COOKSEY,
CURTIS DYRESON RON FLESSNER,
KAREN FLESSNER, EARNEST W. KNOWLES,
XIAOMEI LI, JACK STAUB, FRANCES STAUB,
MARK THORNLEY, RICHARD WANG,

CLASS III

DAVID R. DAINES, RONNA DAINES
JAY CARLSON, DIANE CARLSON,
BRUCE CHILD, BARBRA CHILD
BETTY R. CONDIE, J. WILLIAM LINDAUER,
SHELLEY LINDAUER, JERRY K. MILES, JOAN M.
MILES, KRISTY PETERSON, JEFF PETERSON,
BRITTNEY PETERSON, LINDSEY PETERSON,

DECLARED COMPLAINT
(Tier 2)

Case No.:

Judge:

Anthony Wegener, et al v. Cache County Corporation, et al
Declared Complaint
Page 1 of 37

DAVID STEPHENS, SUSAN STEPHENS,

CLASS IV

JACK KELLER, SARA A. KELLER
BARTELL CARDON, KATHY CARDON,
RUTHANNE CHRISTENSEN, VAL GRANT,
CAROLYN FARRELL, ERIC JOFFS,
SHIRLEY JOFFS, CHRISTOPHER OKELBERRY,
MYRNA C. REDD, ARTHUR TAYOR,
GILBERTO E. URROZ, JAN URROZ,
SCOTT VOLDNESS, JANET VOLDNESS,
LUCY PETERSON WATKINS, DOUG WILKINS,
LIBBY WILKINS

Plaintiffs,

vs.

CACHE COUNTY CORPORATION,
a Utah municipal corporation, CITY OF LOGAN,
a Utah municipal corporation, J-U-B ENGINEERS, INC.,
a Utah Corporation, the LOGAN, HYDE PARK,
AND SMITHFIELD CANAL COMPANY, a Utah non-profit
Corporation, LOGAN & NORTHERN IRRIGATION CO,
A Utah non-profit corporation, CACH HIGHLINE WATER
ASSOCIATION, a Utah non-profit corporation,
WHITAKER CONSTRUCTION CO, INC.,
a Utah corporation, and John and Jane Does 1-50.

Defendants.

Plaintiffs demand trial by jury and complain of the Defendants and allege as follows:

Anthony Wegener, et al v. Cache County Corporation, et al
Declared Complaint
Page 2 of 37

JURISDICTION AND VENUE

1. All the claims herein arose within Cache County, State of Utah.

DESCRIPTION OF THE PARTIES

2. All Plaintiffs are residents and taxpayers of the Defendant City of Logan and/or Defendant Cache County. All Plaintiffs have standing to oppose the City and County's actions related to the Project, including, but not limited to, the misappropriation of over \$25,000,000.00 of public funds, destruction and denigration of dedicated public thoroughfares, trespass on and taking of private property, all as alleged hereafter.

3. All Plaintiffs who do not possess the special qualifications for Classes I through III are designated Class IV Plaintiffs.

4. Class I Plaintiffs are those persons or entities who are named as such in the Caption to this complaint, which is incorporated herein by this reference, including those who may be named in any amendment to the Caption.

5. Class I Plaintiffs are the owners of real property on or under or adjacent to the Logan, Hyde Park, Smithfield Canal (herein "Upper Canal") from where it enters the City of Logan northward to where owners own the bed and/or one or both sides of the Upper Canal and beyond, including the owners of the land on the East and/or West side of the Upper Canal, and extending to the 1500 North 1800 East part of the Project. *A summary of the acronyms utilized herein is attached hereto and incorporated by reference as Exhibit "A."*

6. Class I Plaintiffs property includes their land on which it has been declared that the Project is intended to commence the construction, in violation of the law and contracts governing the Project as hereinafter alleged.

7. Class II Plaintiffs are those persons or entities who are named as such in the Caption to this complaint who are incorporated herein by this reference including those who may be named in any amendment to the Caption.

8. Class II Plaintiffs include owners of land on which the Project is to be constructed but who do not qualify as Class I or Class III Plaintiffs, including those owners who own property on or under or adjacent to the Logan & Northern Irrigation Company Canal (herein "Lower Canal").

9. Class II Plaintiffs also include persons who own property within 300 feet of the 1500 North portion of the Project, between 1800 East and 900 East, in Logan.

10. Class III Plaintiffs are those persons or entities who are named as such in the Caption to this complaint who are incorporated herein by this reference including those who may be named in any amendment to the Caption.

11. Class III Plaintiffs have property and homes that are within 300 feet of the Project as it continues through and beyond the point where the Upper Canal enters the City to 1500 North 1800 East, Logan.

12. Class III Plaintiffs include Class I Plaintiffs.

13. These Plaintiffs were given notice of a hearing for a Design Review Permit before Defendant City of Logan's (herein "Logan City") Planning Commission (herein "Logan Planning").

14. Class IV Plaintiffs are those Plaintiffs who are named as Class IV Plaintiffs in the Caption to this Complaint, which is incorporated herein by this reference including those who may be named in any amendment to the Caption.

15. Class IV Plaintiffs include all classes and other classes of Plaintiffs and those who possess the qualifications for Class IV.

16. Defendant Cache County Corporation (herein "Cache County") is the Public Agency Sponsor of the Project, as described in Paragraphs 2 and 3 herein.

17. Defendant J-U-B Engineers, Inc. (herein "J-U-B") is a Utah corporation.

18. J-U-B is Cache County's agent/manager for the execution of the Project and otherwise related to the Project as hereafter alleged.

19. Defendant Whitaker Construction Company, Inc (herein "Contractor") is a Utah Corporation.

20. Contractor is the contractor for the construction of the Project.

21. The Defendant Cache Highline Water Association (herein "Cache Highline") is a Utah non-profit corporation.

22. Cache Highline is composed of the shareholders between Defendant Logan, Hyde Park, and Smithfield Canal Company (herein "Logan-Hyde Park") and Defendant Logan & Northern Irrigation Co (herein "Logan Northern").

23. Logan Northern is otherwise related to the Project as hereafter alleged.

24. All of the Defendants are contractually related to the Project.

25. Logan-Hyde Park has a prescriptive easement to convey its water through the Upper Canal which is diverted and flows at a considerably higher elevation than the Lower Canal and is otherwise related to the Project as hereinafter alleged.

GENERAL ALLEGATIONS

26. The expressed intent of the Project is to restore water to the breached Lower Canal for its reach beginning at 400 North 600 East, in the City of Logan, to its northern end by combining most of Logan Northern's water rights from its Logan River Point of Diversion (herein " Logan Northern's POD ") with the Logan-Hyde Park's Logan River Point of Diversion (herein "Logan-Hyde Park POD") water rights, and conveying the combined flows through a large pipe in place of the now open canal bed from the Logan-Hyde Park POD to 1500 North 1800 East, in Logan City, and thence West to a point where a pipe will be installed to convey Logan Northern's water back to the Lower Canal, and a pressurized pipeline will be provided to distribute some of the water up stream to the Lower Canal shareholders between 1500 North and 400 North Streets, in the City of Logan.

27. The remainder of Logan Northern's water will continue in an open canal from 1500 North to the end of the Lower Canal.

28. A few of Logan Northern's water shares will still be diverted at the Lower Canal's POD below First Dam on the Logan River to serve their water users along Canyon Road up to unstable Logan Bluff area where the 2009 slide that breached the Lower Canal occurred.

29. It was the canal bank of the Lower Canal that gave way and whose water supply restoration is the objective of the Project.

30. One of the purposes of Cache Highline is to facilitate the execution of the Project and is otherwise related to the Project as hereafter alleged.

31. On July 15, 2010, the President of Logan-Hyde Park executed a Notice of Prescriptive Easement (herein "Prescriptive Easement Notice").

32. This Prescriptive Easement Notice claims that Logan-Hyde Park has a "duly established prescriptive easement, by continuous, open and notorious and adverse use of its canal (Upper Canal), for the transportation and conveyance of irrigation and storm drainage waters for a period long exceeding the prescriptive period of 20 years.

33. Cache Highline recorded this Prescriptive Easement Notice with the Cache County Recorder's Office on August 16, 2010.

34. On August 22, 2010, the President of Logan-Hyde Park executed an Amended and Restated Notice of Prescriptive Easement (herein "Amended Prescriptive Easement Notice").

35. The Amended Prescriptive Easement Notice made identical claims as the Prescriptive Easement Notice, except that now Logan-Hyde Park claims "ownership, operation, maintenance, repair, improvement and replacement" the of the Upper Canal.

36. The legal description of the Amended Prescriptive Easement Notice made the assertion that the claimed prescriptive easement extended 9 feet West of the West bank of the Upper Canal.

37. Logan-Hyde Park recorded this Amended Prescriptive Easement Notice with the Cache County Recorder's Office on August 23, 2010

38. Logan-Hyde Park does not own the land where their claimed prescriptive easement is located.

39. On November 9, 2010, Josh Runhaar, of the Cache County Development Services Department, executed a Quit-Claim Deed (herein "False Deed #1"), purportedly transferring all interest he had in the tract of land where the Upper Canal is located.

40. On November 9, 2010, Josh Runhaar, of the Cache County Development Services Department, executed a Quit-Claim Deed (herein "False Deed #2"), purportedly transferring all interest he had in the tract of land where part of the Lower Canal is located.

41. On November 9, 2010, Josh Runhaar, of the Cache County Development Services Department, executed a Quit-Claim Deed (herein "False Deed #3"), purportedly transferring all interest he had in the tract of land where the Hyde Park Irrigation Company (herein Hyde Park Irrigation") Canal and part of the Lower Canal are located.

42. The legal description on False Deed #1, False Deed #2, and False Deed #3 (collectively herein "False Deeds") each stated that the described tract of land was "subject to 15 ft from each side of the centerline or to adjacent property, less all property with no canal gap."

43. Josh Runhaar, at the time of the execution of the False Deeds was an employee of Cache County.

44. Josh Runhaar did not have at the time he executed the False Deeds, and he has not subsequently acquired, legal title to any of the described tracts of land.

45. Cache County caused the False Deeds to be recorded with the Cache County Recorder's Office on November 22, 2010.

46. None of the Defendants, specifically Cache County, have legal title to any of the land where the Project is to be constructed.

47. On November 22, 2010, M. Lynn Lemon, the Cache County Executive, on behalf of Cache County, executed a Notice of Claim (herein "Cache County Claim"), claiming and asserting title to the real property fifteen (15) feet from the centerline of any "gap property" along the Hyde Park Irrigation an Logan North Field Canal, Logan & Northern Canal (Lower Canal), and Logan Hyde Park Smithfield Canal, and Highline Canal.

48. "Gap property" in Cache County's Notice of Claim was defined as all land on either side of the centerline of the above canals extending approximately fifteen (15) feet, more or less, on each side of the centerline of the canals up until the adjacent landowner's property or less if that adjacent landowner's property is legally and currently described in the Cache County Records Office as coming closer to the centerline by fifteen (15) feet.

49. This Notice of Claim incorporated all of the False Deeds.

50. Cache County caused the Cache County Claim to be recorded with the Cache County Recorder's Office on November 22, 2010.

51. On December 9, 2010, M. Lynn Lemon, the Cache County Executive, on behalf of Cache County, executed an Amended Notice of Claim (herein “Amended Cache County Claim”), making identical claims and assertions as Cache County Claim, except in regards to the Logan Bluff area where the 2009 slide breached the Lower Canal.

52. Specifically, the Cache County Claim added:

...this Amended Notice of Claim removes from the original Notice of Claim filed on 22 November, 2010, and removes from all three (3) Quit-Claim Deeds filed by Josh Runhaar, Cache County Development Services Director on 9 November 2010, the land involved in litigation where the hillside slid (Logan Bluff) until such time as it is deemed in the best interests of the County to claim that remaining gap portion.

53. Cache Highline, as the initial sponsor of the Project, submitted a feasibility application (“Application E 269”) to the Utah Board of Water Resources/Utah Division of Water Rights (herein “Water Board”).

54. This application requested approximately \$5,875,000 of the Water Board's construction funds.

55. Application E 269 was received by the Water Board on or about November 12, 2009, and approved December 10, 2009.

56. Application E 269 included the following section:

"SPONSOR'S RESPONSIBILITIES: If the board authorizes the proposed project, the sponsor must do the following before construction can begin:..

3. Pass a resolution by the appropriate (as defined in the company's Articles of Incorporation and Bylaws) majority of company stock authorizing its officers to do the following:

- a. Assign properties and easements required for the project to the Board of Water Resources.
- b. Enter into a contract with the Board of Water Resources for construction of the project and subsequent purchase from the board.
- 4. Have an attorney give the Board of Water Resources a written legal opinion that:
 - c. The association has obtained all permits required for the project.
 - d. The association owns all easements and rights-of-way for the project, as well as the land on which the project is located, and that title to these easements, rights-of-way, and the project itself can be legally transferred to the board.

57. One of these responsibilities (4.d) is directly related to the requirements provided in Utah Code §73-10-7, which states:

Title of all projects constructed with funds made available by Section 73-10-8 hereof under the terms of this act shall become vested in the State of Utah. The board is empowered to enter into contracts which are, in its opinion, necessary for the maintenance and continued operation of such projects.

58. This statutory requirement is incorporated in Sponsor's Application E 269 to the Water Board, which application was approved December 10, 2009.

59. Cache Highline, who acted as the initial Sponsor for the Project before the Water Board, was clearly told of their responsibility and they must:

- . "Have an attorney give the Board of Water Resources a written legal opinion that:
 - c. The association has obtained all permits required for the project...
 - d. The association owns all easements and rights-of-way for the project, as well as the land on which the project is located, and that title to these easements, rights-of-ways and the project itself can be legally transferred to the board."

60. Sometime prior to March 30, 2010, Cache County became the successor sponsor to the Project to fulfill an NCRS requirement that a government entity be the sponsor.

61. The applicable Cooperative Agreement entered into between the USDA-NRCS and Cache County regarding financial assistance for the Project was authorized on March 30, 2010 and signed April 2, 2010 (herein, "USDA-NRCS Financial Agreement").

62. The USDA-NRCS Financial Agreement provides:

(p 1) I. AUTHORITY...

As the project sponsor, the County is responsible for all aspects of the project...The County may enter into subagreements...as deemed appropriate, including but not limited to securing land rights and/or permits...

(p 4) VII. DELIVERABLES AND OBLIGATIONS A The County will...

(p.5) c. The County intends to enter into a subagreement or contract with the Cache Highline Association and/or their counterparts Logan Northern Canal Company and the Logan, Hyde Park and Smithfield Canal Company, to perform required tasks or functions described below as deemed appropriate, such as securing land rights and/or permits...The County may enter into subagreements...including but not limited to securing land rights and/or permits...The County may also assign responsibility and liability...for any additional costs of the project not covered by the contracts or NRCS or for any other potential task or liability associated with the project.

(p.6) 3. Pre-Construction a. Notification: Prior to beginning on-the-ground construction work, the County will contact the NCRS Project Manager to confirm that all requirements relative to the following items have been completed by the County and are acceptable to the NRCS:

...

(3) Federal, State, and local permits. All costs relative to obtaining required permits will be borne by the County. In accordance with EWP program regulations, NRCS cannot pay for these costs nor can they be counted as cost-share contributions by the County...

(5) Real property rights-Form NRCS-ADS-78 and attorney's opinion-NOTE: The ADS-78 and attorney's opinion must be submitted by the County and accepted by NRCS prior to start of construction. All costs relative to obtaining property rights will be borne by the County, in accordance with EWP program regulations, NRCS cannot pay for these costs nor can they be counted as a cost-share contribution by the County...

Anthony Wegener, et al v. Cache County Corporation, et al
Declared Complaint
Page 12 of 37

(p 9)...12. Perform all construction in compliance with: . . .

b. All required local, State, and Federal permits. The County is solely responsible for obtaining all permits.

13. Additional Costs- Accept all financial and other responsibility for excess costs resulting from the failure of the County to obtain, or delay in obtaining adequate land and water rights, permits, and licenses needed for the emergency watershed protection measures. The County anticipates the Cache Highline Association and/or their counterparts Logan Northern Canal Company and the Logan, Hyde Park and Smithfield Canal Company, or another entity under contract with them to cover excess costs resulting from the failure of the County to obtain, or delay in obtaining, adequate land and water rights, permits, and licenses needed for the emergency watershed protection measures.

(p 12) C. It is mutually agreed...

3. The County is responsible for 100 percent of the costs incurred in obtaining permits and property rights...The County anticipates the Cache Highline Association and/or their counterparts Logan Northern Canal Company and the Logan, Hyde Park and Smithfield Canal Company to secure the foregoing permits and property rights...

63. The applicable Cooperative Agreement entered into between the USDA-NRCS and Cache County regarding technical assistance for the Project authorized on March 30, 2010 and signed April 2, 2010 (herein, "USDA-NRCS Technical Agreement").

64. The USDA-NRCS Technical Agreement provides:

(p 1) I. AUTHORITY: . .

C...The County may enter into subagreements or contracts with...to securing land rights and/or permits...

(p 5) b. The County intends to enter into a subagreement or contract with the Cache Highline Association and/or their counterparts Logan Northern Canal Company and the Logan, Hyde Park and Smithfield Canal Company, to perform

the required tasks or functions as deemed appropriate, such as securing land rights and/or permits...subagreements...securing land rights and or permits.

(p 6) 3. Property Rights-Secure property rights. As soon as possible, and before commencement of any on-the-ground construction, the County will submit a completed ADS-78 form, Assurances Relating to Real Property Acquisition, to the NRCS Project Manager. An attorney's opinion must be attached to the form certifying an examination of the real property instruments and files was made and found to provide adequate land title, right, permission and authority for the purpose(s) of the project. All costs relative to obtaining property rights will be borne by the County. In accordance with EWP program regulations, NRCS cannot pay for these costs nor can they be counted as a cost-share contribution by the County. The County anticipates the Cache Highline Association and/or their counterparts Logan Northern Canal Company, Hyde Park Smithfield Canal Company, will secure the foregoing property rights...

4. Permits: -Ensure that all applicable Federal, State, and local permits are obtained...

(p 7) Responsibility for Additional Costs- ...

b. Additionally, the County agrees to accept all financial and other responsibility for additional costs resulting from the failure of the County to obtain, or delay in obtaining, adequate land and water rights, permits, and licenses needed for the project...

(p 12) VIII..E. The County is responsible for 100 percent of the costs incurred in obtaining permits and property rights, and for operation and maintenance of the completed project...

65. The USDA-NRCS Financial Agreement and the USDA-NRCS Technical Agreement (collectively "USDA-NRCS Agreements"), by the use of various terms, permitted Cache County to pass on to Cache Highline and/or their counterparts, Logan-Hyde Park and/or Logan Northern by sub-agreements the tasks and costs related to the acquisition of the land on which the Project is located.

66. Cache County never passed on to others the tasks, costs, or liabilities, and failed to perform those land acquisition tasks and incur those costs as it promised to do in the agreements.

67. The funding from NCRS was a result of the approved application to the Water Board.

68. The core financing of the Project is from the United States Department of Agriculture Natural Resources Conservation Service (herein "NCRS").

69. The application to the Water Board required that no construction on the Project was to commence until legal title to all land where the Project was to be constructed had been acquired by the applicant.

70. The application to the Water Board required that no construction on the Project was to commence until all permits for the Project had been issued.

71. The transfer of title of the land where the Project is to be constructed is to act as security for the repayment of a Utah Revolving Construction Loan.

72. This requirement is required by Utah Law, specifically Section 73-10-7 of the Utah Code Annotated.

73. The USDA-NRCS Agreements require Cache County, before any of the Project construction begins, to acquire actual legal title to all real property where the Project will be constructed.

74. The purpose of the USDA-NRCS Agreements is so that legal title to the whole Project, including the land where the Project is to be constructed, and then be transferred to the Water Board/State of Utah.

75. The USDA-NRCS Agreements and Utah Law require Cache County secure legal title to the whole Project, including the land where the Project is to be constructed, and all the permits required for the entire Project before construction begins.

76. Cache County did not secure all of the permits required for the entire Project before construction began.

77. Cache County has disregarded the property owner's property rights where the Project is to be located.

78. Cache County must acquire legal title to all of the land where the Project is to be constructed, either by gift, purchase, or condemnation, before construction of the Project is to begin.

79. Cache County has not acquired legal title to all of the land where the Project is to be constructed.

80. Cache County has made a series of misrepresentations regarding the ownership of the land where the Project was to be constructed.

81. Cache County made other legal and contractual misrepresentations as hereafter alleged.

82. Cache County, Logan City, Cache Highline, the City of North Logan, City of Hyde Park, and the City of Smithfield entered into a Cache Community Emergency Watershed Project-Cost Participation Agreement (herein “Cache Cost Participation Agreement”).

83. The Cache Cooperative Agreement provides that Cache County has entered into the USDA-NRCS Agreements.

84. Cache Cooperative Agreement provides that Cache County is responsible for the design, pre-construction, construction, and administration of the Project during construction, as set forth and in compliance with the USDA-NRCS Agreements.

85. Cache County has taken no legitimate action toward acquiring the legal title to the property where the Project is to be constructed.

86. Class I Plaintiffs, as to the Upper Canal repair and maintenance easement, and all persons and entities similarly situated together with the record owners of the beds of the Upper Canal are the true owners of the lands upon which the Project in the Upper Canal is to be constructed.

87. Class II Plaintiffs and all persons similarly situated who are owners of record of land on which the Project is to be constructed other than on the Upper Canal are the true owners of those lands.

88. Cache County falsely claimed they were pursuing the acquisition of the legal title to the land where the project was to be constructed.

89. Cache County, J-U-B, and the Contractor have begun and will likely have completed construction on the 1500 North Part of the Project by the time of filing of this

complaint and have declared their intent to enter and proceed with the construction on all other parts of the Project on or about October 1, 2012.

90. Logan City, without the required Design Review Permit or proof of ownership, illegally permitted Cache County, J-U-B, and/or Contractor to construct upon and trespass upon the 1500 North phase of the Project in violation of the applicable ordinance and without acquiring all legal title to the land upon which the Project is located as required by the contracts and law before construction is commenced.

91. Logan City has issued and it is believed will soon issue permits that are required by the law, and the Project contracts, before construction can begin.

92. In the alternative, Logan City allowed construction to begin on the Project without the proper permits required by law and without proper notice.

93. This Design Review Permit proceeding is null and void for the reasons herein alleged.

94. Logan City, without the required Design Review Permit or proof of ownership, extra-legally permitted J-U-B and Contractor to begin construction of the Project.

95. Class II Plaintiffs were required to have received notice of a Design Review Permit application proceeding but none was given. They constructed on and trespassed on that phase of the Project in violation of the applicable ordinance and without acquiring all the land upon which the Project is located as required by the contracts and law before construction is commenced.

96. The 1500 North Part of the Project is designed to transfer the water belonging to Logan Northern from the Upper Canal at 1500 North Street, West through 1500 North Street, and through some of Class II Plaintiffs property, through Utah State University property and into the Lower Canal at about 900 East Street through a large pressurized piping system described in more detail hereafter.

97. All other Defendants and Parties to any and all agreements regarding the Project have failed to take any action to compel Cache County to perform its covenants and agreements.

98. Cache County and its agent, J-U-B, have disregarded the law and its agreements that Project construction would not begin until Cache County had obtained all the permits required for the whole Project and all legal title to property that the Project was to be constructed upon.

99. The City of Logan allowed J-U-B's Contractor to proceed with construction of the 1500 North part of the Project without the Design Review Permit, which is required by the Logan City's ordinances and the Project contracts and agreements.

100. Logan City, acting in violation of its ordinances and regulations, initiated a Design Review Permit application proceeding without the required application on behalf of Cache County's manager JUB regarding the Upper Canal portion of the Project in which false claims were made to Logan-Hyde Park ownership of the Project property.

101. Cache County has breached and violated the Project documents, agreements, and laws by beginning construction of the Project without first acquiring the legal title to the land on which the Project is to be constructed and in failing to legally obtain the required permits.

102. Cache County has adopted various pretexts in an attempt to excuse and shirk its non-performance for the project under Utah Law and the various agreements.

103. These pretexts include the recording of the False Deeds, the issuance of an attorney's opinion letter to the Water Board, Cache County Claim, the Amended Cache County Claim, and stating to Contractor and others that they were in the process of acquiring the legal title to the real property where the Project was to be located.

104. Logan City, J-U-B, Logan-Hyde Park, Logan Northern, and Cache Highline knew that Cache County was neither performing the land acquisition tasks nor incurring those costs as Cache County had agreed to do.

105. All of the Defendants, except Cache County, failed to require Cache County to do as it agreed and is required by Utah law.

106. With disregard of the property rights of the true owners of the land on which the Project would be constructed and its said agreements, Cache County made false and fraudulent claims on the public record that the County owned the land on which the Project is located.

107. The first such false claim that Cache County made as to the ownership of the real property that the Project was to be constructed upon was the Cache County Claim filed by Cache County in the Cache County Records Office November 22, 2010, about 6 months after the execution of its agreements with NCRS.

108. The County repeats this false claim by filing the Amended Cache County Claim with the County Recorder about 18 days later on December 9, 2010.

109. In July 2012, Cache County, through its manager J-U-B, in violation of the law and NCRS Contract, began the acquisition of one among many required Permits from the City of Logan for the Upper Canal part of the Project.

110. Ownership of the land on which the Project was to be constructed was required for standing in making application for the Permit.

111. Neither Cache County nor J-U-B owned any of the land where the Project was to be constructed.

112. Cache County, through J-U-B, in its application for the Permit to the Logan City falsely claimed that Logan-Hyde Park was the owner of the land on which that part of the Project would be constructed.

113. A protest to the application was filed with the City of Logan on August 20, 2012, stating that the claims to property made by Cache County, Logan-Hyde Park, Cache Highline, and/or J-U-B of ownership of land where the Project was to be constructed were false and contradictory to Cache County's earlier false claims that the County owned the land where the Project was to be contrasted.

114. The County, J-U-B and Logan City, in response to the protest's exposure of the falsity of both Cache County's and Logan-Hyde Park's false claim to ownership of the Upper Canal, have declared that they do not even need the consent of the true owners of the Upper Canal on the pretext that they can enter and construct the Project with the consent of Logan-Hyde Park alone on the pretended authority of its canal repair and maintenance prescriptive easement in disregard of and in violation of its legal and contractual duty to have acquired title to

the land under the entire Project and acquired all the permits required for the whole Project before construction begins.

115. A copy of the Notice of the hearing was appended as “Ex. A” and the first page of the County’s Amended Notice of the Claim is “Ex. B”. T9C. The protest was E-Mailed that day to the President of Logan-Hyde Park.

116. Three days after the protest was filed to the application, August 23, 2012, Logan-Hyde Park filed the Amended Prescriptive Easement Notice.

117. The Amended Prescriptive Easement Notice now made the false claim as to ownership of the land of the Upper Canal.

118. The land on which the Project is located and the canal beds of the three canals Cache County claimed to own are not owned by any of the Defendants, including Cache County.

119. All of the land the Project is to be constructed upon and the canal beds of the three canals are owned by private persons and entities that appear as the last owners in the chain of title as established by the records of the Cache County Recorder.

120. Cache County’s assertions that there are no owners of record of the land where the Project is to be constructed or the three canals, is false.

121. On July 25, 2012 JUB, Cache County’s Project Manager, filed an application with the City of Logan for A Design Review permit for the Upper Canal part of the Project.

122. This application falsely claimed that Logan-Hyde Park was the legal title owner of the land where the Project was to be constructed.

123. In the notices that were published and sent, Logan City joined as a co-applicant and in the claim that Logan-Hyde Park was the legal title owner of the land that the Project was to be constructed upon.

124. The application and the subsequent proceedings were null and void because true ownership of the land on which the Project is to be constructed is required for standing and on other grounds as herein alleged.

125. On or about July 25, 2012, Logan City, Cache County through its manager/agent J-U-B and Logan-Hyde Park became parties to an illegal Design Review Permit application process in which they jointly made a false claim that the property owner of record upon whose land the Project would be constructed upon was Logan-Hyde Park, not Cache County, as the County had earlier falsely claimed.

126. Logan city, without complying with the ordinance that requires written application and documentation of ownership records, mailed notices for a public hearing on a Design Review Permit application for the Project to property owners within 300 feet of the Project.

127. The notices falsely stated that the person(s) submitting the application was J-U-B Engineers & Logan City.

128. The Notice falsely stated that: "The Logan City Planning Commission has received an application regarding property owned by the Logan-Hyde Park-Smithfield Canal."

129. The Notice falsely stated that: “J-U-B Engineers/Logan City is requesting piping of the Logan-Hyde Park-Smithfield canal through Logan as part of the Cache Water Restoration Project.”

130. As herein alleged, Class I Plaintiffs property is subject to a dedicated public thoroughfare for a trail and ancillary uses related to a public thoroughfare adjacent to and within the Upper Canal itself for recreational tubing, fishing, walking, biking, cross-country skiing, and other like non-consumptive public uses.

131. It is alleged on behalf of all Plaintiffs that there is a dedicated public thoroughfare along the West bank and through, in, under, and upon the Upper Canal for a trail, for tubing, fishing, walking, biking, cross-country skiing, and other like non-consumptive public uses in and on the Upper Canal, created by continuous public use for over the required ten year period that in fact extends to over fifty years.

132. It is further alleged that this dedicated public thoroughfare extends in, over, adjacent, and along the Upper Canal beginning at approximately 925 North 1800 East, also known as 1776 Country Club Drive, Logan, thence northerly downstream in, over, and along the Upper Canal to the 1500 North 1800 East bridge and beyond.

133. Logan City and Cache County, by proposing and promoting this Project, which would denigrate and destroy this dedicated public thoroughfare, have abandoned their duty of protecting, defending and maintaining dedicated public thoroughfares.

134. It is impossible for the Upper Canal, burdened with this dedicated public thoroughfare, to be used or be a legitimate part of the Project.

135. All Plaintiffs hereby exercise their right as members of the public to protect and defend this public thoroughfare against the actions of Cache County, Logan City, and all named and unnamed Defendants.

136. The actions of Cache County in this regard are particularly hypocritical.

137. Cache County has previously been aggressively engaged in legal proceedings to establish dedicated public thoroughfares where the evidence of public use and length of that use are far less than in this case.

138. Cache County cannot give the required unencumbered legal title to the State as security for the loan, because of the dedicated public thoroughfare and/or street dedication of the 1500 North portion of the Project now under construction.

139. In order to comply with the plain meaning of the statute and contract provisions, it would require that a dedicated street, to become a legitimate part of the project, would have to be abandoned.

140. If the street is abandoned, then the title would revert to the bordering property owners.

141. The portion of the Project below the Point of Diversion on the Logan River for both Logan-Hyde Park and Logan Northern, where the land is owned by the United States Government/Forest Service (herein "Forest Service"), cannot be transferred unencumbered to the State of Utah as security for repayment of the loan as required.

142. The permit issued by the Forest Service for the construction of that part of the Project was issued in reliance on the erroneous assumption and/or representation of any of the

Defendants that all that was needed is consent of the property owners where the Project was to be constructed, including only an easement.

143. In a like manner, Cache County is proceeding with construction on the lower part of the 1500 North Part of the Project on the erroneous assumption that the owner, Utah State University, need only give permission to the construction and not title to the land.

144. Utah State University has not transferred the real property to any of the Defendants where any of the Project is to be constructed.

145. Logan-Hyde Park and Logan Northern have claimed a right, independent of the Project, to construct and convey their water in the Project areas of the canal through a pipe.

146. Logan-Hyde Park and Logan Northern do not have a right independent of the Project to convey their water through a pipe in the canals in the Project areas because doing so would denigrate and destroy the dedicated public thoroughfares, the Project is unreasonable, and Project would place too great a burden on the adjacent property owners, including the legitimate interests related to the open canals.

FIRST CAUSE OF ACTION

Fraud

147. Plaintiffs reallege and incorporate by reference, as though wholly set forth herein, all facts and allegations contained in all previous paragraphs.

148. Cache County, Logan City, Logan-Hyde Park, Logan Northern, and Cache Highline have made representations regarding issues related to the Project as alleged herein.

149. Cache County, Logan City, J-U-B, Logan-Hyde Park, Logan Northern, and Cache Highline have made representations including that they owned, or would own before the Project was commenced, the land where the Project was to be located.

150. These representations, including those previously alleged, were false.

151. Cache County, Logan City, J-U-B, Logan-Hyde Park, Logan Northern, and Cache Highline knew their representations to be false.

152. Or in the alternative, Cache County, Logan City, J-U-B, Logan-Hyde Park, Logan Northern, and Cache Highline recklessly made representations that they knew that there was insufficient knowledge upon which to base such a representation.

153. The representations made were for the purpose of inducing other parties to act.

154. The other parties, acting reasonably and in ignorance of its falsity, relied upon the representations.

155. Other parties relied on the false representations.

156. Other parties were induced to act based upon the false representations.

157. Other parties were injured and damaged as a result of the false representations.

158. The false acts and representations include:

159. The filing of the E 269 Application.

160. The preparation, execution, and recording of the Prescriptive Easement Notice and the Amended Prescriptive Easement Notice.

161. The preparation, execution, and recording of the False Deeds.

162. The preparation, execution, and recording of the False Deeds of the Cache County Claim and the Amended Cache County Claim.

163. The applications to Logan City for various permits.

164. The Project Pre Proposal meeting held April 12, 2012, where the minute's state:

Item 4. Project Risks and Opportunities-Zan Murray...

Q- Is there encroachment on properties for the Project:

A- Easements are being defined & necessary property acquisitions are in process. The Project Team is working to minimize encroachments to maintain the project budget...

165. Plaintiff's reserve the right to allege additional fraud claims as they discovered through the progress of this action.

SECOND CAUSE OF ACTION

Trespass

166. Plaintiffs reallege and incorporate by reference, as though wholly set forth herein, all facts and allegations contained in all previous paragraphs.

167. Cache County, as Project Sponsor, by and through its manager/agent JUBB and Contractor have trespassed or threatened to trespass upon the property of Class I and Class II Plaintiffs.

168. Contractor, in the process of constructing the Project, has trespassed on the property of some Plaintiffs and threatens to trespass on the property of other Plaintiffs, and is otherwise related to the Project as herein alleged.

169. Also legally responsible for said trespasses are such other Defendants as are proved to have collaborated with other Defendants in the trespass or threatened trespass.

THIRD CAUSE OF ACTION
Quiet Title

170. Plaintiffs reallege and incorporate by reference, as though wholly set forth herein, all facts and allegations contained in all previous paragraphs.

171. Plaintiffs, whose ownership of the land in, under, upon, and adjacent to any of the canals where the Project is to be constructed, have been subjected to the erroneous claims by Cache County, Logan-Hyde Park, Logan Northern, Cache Highline, and any other Defendants as to the ownership of these Plaintiffs' said property.

172. These Plaintiffs should have title to their property as described quieted free from any claims by any of the Defendants and their successors, except for the previously described dedicated public thoroughfare and the historical limited prescriptive easement to run water in the various canals.

FOURTH CAUSE OF ACTION
Slander of Title

173. Plaintiffs reallege and incorporate by reference, as though wholly set forth herein, all facts and allegations contained in all previous paragraphs.

174. Cache County and Logan Hyde Park, Logan Northern, and Cache Highline by their said actions have slandered the title to the property of the Plaintiffs identified in those paragraphs and other persons and entities similarly situated.

175. Plaintiffs should have title to their property cleared from any claims by any of the Defendants and their successors and/or assigns.

FIFTH CAUSE OF ACTION
Dedicated Public Thoroughfare

176. Plaintiffs reallege and incorporate by reference, as though wholly set forth herein, all facts and allegations contained in all previous paragraphs.

177. Dedicated public thoroughfares have been established by continuous public use for over ten years and was created in, upon, and along the Upper Canal pursuant to Utah Code § 72-5-104 as follows:

178. The dedicated public thoroughfare was created by continuous public use for a period in excess of forty years.

179. The nature and character of the dedicated public thoroughfare is for a trail along the West bank and for recreational tubing, fishing, walking, biking, cross-country skiing, and other like non-consumptive public uses, as shall be established by the facts and circumstances.

180. This dedicated public thoroughfare extends in, over, adjacent, and along the Upper Canal beginning at approximately 925 North 1800 East, also known as 1776 Country

Club Drive, Logan, thence northerly downstream in, over, and along the Upper Canal to the 1500 North 1800 East, Logan, bridge and beyond.

181. Cache County has a duty to protect this dedicated public thoroughfare.

182. Logan City has a duty to protect this dedicated public thoroughfare.

183. Both Cache County and Logan City have breached their duty to protect this dedicated public thoroughfares.

SIXTH CAUSE OF ACTION

No Piping in the Canal

184. Plaintiffs reallege and incorporate by reference, as though wholly set forth herein, all facts and allegations contained in all previous paragraphs.

185. Logan-Hyde Park, Logan Northern, Cache Highline, and/or other Defendants have claimed that Logan-Hyde Park, Logan Northern, and/or Cache Highline, independent of the Project, have a right to pipe their water through the canals.

186. Logan-Hyde Park, Logan Northern, Cache Highline do not have a right to convey their water through a pipe in the canals because doing so would denigrate and destroy the dedicated public thoroughfare, the Project is unreasonable, and Project would place too great a burden on property owners where the Project is proposed to be constructed, including other legitimate interests related to the open canals.

SEVENTH CAUSE OF ACTION

State Due Process & Misappropriation

187. Plaintiffs reallege and incorporate by reference, as though wholly set forth herein, all facts and allegations contained in all previous paragraphs.

Anthony Wegener, et al v. Cache County Corporation, et al

Declared Complaint

Page 31 of 37

188. Cache County and Logan City by their aforesaid actions were and are engaged in a scheme in concert with Logan-Hyde Park, Logan Northern, and Cache Highline to deprive the Plaintiff property owners, other Plaintiffs, and the general public, of the land on which the Project is proposed to be constructed without due process of law in violation of the due process clause of the United States Constitution and Utah State Constitution.

189. The said scheme also has the purpose of misappropriation of public funds.

EIGHTH CAUSE OF ACTION
Declaratory Judgment

190. Plaintiffs reallege and incorporate by reference, as though wholly set forth herein, all facts and allegations contained in all previous paragraphs.

191. All Classes of Plaintiffs are entitled to a judgment declaring:

192. None of the Defendants, individually or combined, have legal title to all of the land where the Project is proposed to be constructed.

193. None of the Defendants have legally obtained any of the necessary permits for the construction of the Project.

194. No construction of the Project should be done without the Defendants first obtaining legal title to all of the land where the Project is proposed to be constructed.

195. No construction of the Project should be done without the Defendants legally obtaining all necessary permits for the construction of the Project.

196. None of the Defendants receive any funds for the Project until they acquire title to all land where the Project is to be constructed and have legally issued all necessary permits.

197. Plaintiff land owners where the Project is proposed to be constructed are the actual owners of said real property.

198. The existence of dedicated public thoroughfares in, upon, and along the Upper Canal, for the purposes described herein.

199. Cache County's Claim and Cache County's Amended Claim are null and void.

200. Logan-Hyde Park's and/or Cache Highline's, and any successors or assignees and other Defendants Prescriptive Easement Notice and Amended Prescriptive Easement Notice are null and void as to any claim or element that is beyond the historical of any of the canals described herein.

201. Cache County made false claims.

202. Logan City made false claims.

203. Logan-Hyde Park

204. Logan-Hyde Park made false claims.

205. Cache Highline made false claims.

206. J-U-B made false claims.

207. Cache County Slandered Plaintiffs' title to their property.

208. Logan-Hyde Park and/or Cache Highline have Slandered Plaintiffs' title to their property.

209. The False Deeds are null and void, quiet title in the respective Plaintiffs' property, and remove any such slander from the title of any and all of the Plaintiff's property so affected.

210. The Cache County Claim and the Amended Cache County Claim are null and void, quiet title in the respective Plaintiffs' property, and remove any such slander from the title of any and all of the Plaintiff's property so affected.

211. The Prescriptive Easement Notice and the Amended Prescriptive Easement Notice are null and void so far as they exceed the historical use and maintenance, quiet title in the respective Plaintiffs' property, and remove any such slander from the title of any and all of the Plaintiff's property so affected.

212. Logan City did not comply with its own city ordinance in either issuing permits for the Project or allowing construction of the Project to begin without issuing permits.

213. The Defendants have trespassed on Plaintiffs' property.

214. The piping cannot be installed in the Upper Canal because in doing so it would denigrate and destroy the dedicated public thoroughfare, would be unreasonable and place too great a burden on the other legitimate interests in the open canal:

215. That the City violated its own ordinances and the Project agreements by allowing the County's Contractor to construct the 1500 North Part of the Project without the required Design Review Permit, and the Project construction thereon is trespass.

216. Logan City cannot transfer title of 1500 North, from 1800 East West to 900 East, to the State of Utah.

217. The 1500 North part of the Project should be stopped and never be constructed because Logan City can not transfer title to this land to the State of Utah.

218. Logan City's proceedings related to a Project Design Review Permit for the Upper Canal part of the Project are null and void.

219. Any pipe that has been installed in the 1500 North part of the Project be removed and the land and street be restored to its condition prior to the Project.

NINTH CAUSE OF ACTION
Injunctive Relief

220. Plaintiffs reallege and incorporate by reference, as though wholly set forth herein, all facts and allegations contained in all previous paragraphs.

221. Injunctions should be issued consistent with and in furtherance of aforesaid alleged Declaratory Judgment.

222. The Plaintiffs are entitled to a permanent injunction against Cache County, Logan City, and all agents now and in the future in the following particulars:

223. That there shall be no construction on the Project until all the land the Project is to be located on has been acquired by Cache County.

224. That there shall be no construction on the Project until all the permits required for the whole Project have been legally procured by Cache County.

225. All Defendants be enjoined such that all construction on the Project cease, and the land where construction has begun be restored to its pre construction condition.

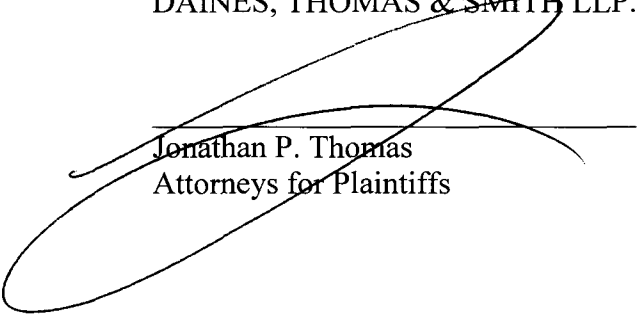
226. For other injunctions in furtherance of the allegations contained herein.

WHEREFORE, Plaintiffs pray for relief and demand judgment against Defendants as follows:

1. For judgment consistent with the Plaintiff's Declaratory Judgment Cause of Action.
2. For judgment consistent with the Plaintiffs' Injunctive Relief Cause of Action.
3. For judgment consistent with the Plaintiffs' Complaint.
4. For other judgment and relief that is just and equitable.

DATED this 2nd day of October, 2012.

DAINES, THOMAS & SMITH LLP.



Jonathan P. Thomas
Attorneys for Plaintiffs

Anthony Wegener, being duly sworn on oath, pursuant to §46-5-101 U.C.A., declare under criminal penalty of the State of Utah, that he has read the above Complaint and that the contents thereof are true and correct to the best of his knowledge, information, and belief.

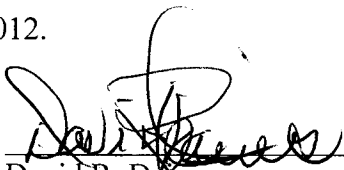
DATED this 2 day of October, 2012.



Anthony Wegener
Plaintiff

David R. Daines, being duly sworn on oath, pursuant to §46-5-101 U.C.A., declare under criminal penalty of the State of Utah, that he has read the above Complaint and that the contents thereof are true and correct to the best of his knowledge, information, and belief.

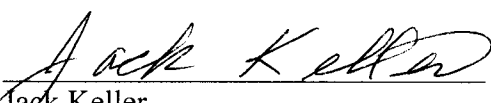
DATED this 2nd day of October, 2012.



David R. Daines
Plaintiff

Jack Keller, being duly sworn on oath, pursuant to §46-5-101 U.C.A., declare under criminal penalty of the State of Utah, that he has read the above Complaint and that the contents thereof are true and correct to the best of his knowledge, information, and belief.

DATED this 2 day of October, 2012.



Jack Keller
Plaintiff
Anthony Wegener, et al v. Cache County Corporation, et al
Declared Complaint
Page 37 of 37

EXHIBIT “A”

1. Cache Water Restoration Project: "Project"
2. Cache County Corporation: "Cache County"
3. City of Logan: "Logan City"
4. Logan, Hyde Park, Smithfield Canal Company: "Logan-Hyde Park"
5. Owners of the real property on or under or adjacent to the Logan, Hyde Park, Smithfield Canal: "Upper Canal"
6. Logan Northern Canal Company: "Logan Northern"
7. Owners who own property on or under or adjacent to the Logan Northern Canal: "Lower Canal"
8. Cache Highline Water Association: "Cache Highline"
9. Hyde Park Irrigation Company: "Hyde Park Irrigation"
10. United States Department of Agriculture Natural Resources Conservation Service: "NCRS"
11. Utah Board of Water Resources: "Water Board"
12. J-U-B Engineers, Inc.: "J-U-B"
13. Whitaker Construction Company: "Contractor"
14. Logan City Planning Commission: "Logan Planning"
15. United States Government/Forest Service: "Forest Service"
16. July 15, 2010, Notice of Prescriptive Easement, executed by the President of Logan-Hyde Park: Prescriptive Easement Notice"
17. August 22, 2010, Amended and Restated Notice of Prescriptive Easement, executed by the President of Logan-Hyde Park: "Amended Prescriptive Easement Notice"
18. November 9, 2010, three Quit-Claim Deeds executed by Josh Runhaar, of the Cache County Development Services Department: "False Deeds"
19. November 22, 2010, Notice of Claim executed by M. Lynn Lemon, the Cache County Executive, on behalf of Cache County: "Cache County Claim"

20. December 9, 2010, Amended Notice of Claim executed by M. Lynn Lemon, the Cache County Executive, on behalf of Cache County: "Amended Cache County Claim"
21. Logan-Hyde Park's Logan River Point of Diversion: "Logan-Hyde Park POD"
22. River Point of Diversion: "Logan Northern's POD"
23. Cache Community Emergency Watershed Project-Cost Participation Agreement: "Cache Cost Participation Agreement"
24. Cooperative Agreement between the USDA-NRCS and Cache County (herein USDA-NRCS Cooperative Agreement regarding financial assistance for the Project, "USDA-NRCS Financial Agreement"
25. USDA-NRCS Cooperative Agreement regarding technical assistance for the Project: "USDA-NRCS Technical Agreement"
26. USDA-NRCS Financial Agreement and the USDA-NRCS Technical Agreement: "USDA-NRCS Agreements"