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## Attorneys At Law

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July 10, 2007

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*RE: Nibley Blacksmith Fork Irrigation Company – Easement*

Dear \_\_\_\_\_:

This office represents the interests of the Nibley Blacksmith Fork Irrigation Company (“the Irrigation Company”). This letter is being sent to you because your home is located adjacent to an irrigation canal that is owned and maintained by the Irrigation Company. This letter is intended to provide you with information regarding how the Irrigation Company and its authorized users may access to the canal. This letter is also meant to educate you regarding your duty to maintain the Irrigation Company’s access to the canal.

### **Easement**

As you may be aware, generally, your property description describes your property boundaries to the center of the canal which runs next to your property. However, the description of the plat filed for the Shire Subdivision also states that:

“A continual 16’ easement from each bank of the canal exists for maintenance of said canal.”

By definition an *easement* is “the right to do something over the real property of another.” In this instance, plat description or your property description grants the Irrigation Company an easement or –right to access– a 16 foot strip adjacent to each bank of the canal. The easement is necessary for the proper functioning of the canal and the Irrigation Company.

### **Legal Standing of the Easement**

This type of easement for canal and irrigation companies (whether called out in legal descriptions or established by use) has a long history in Utah and has been upheld by numerous Utah appellate court decisions.<sup>1</sup>

Furthermore, Utah Code Annotated § 73-1-15(1) provides in pertinent part that:

Whenever any person has a right-of-way of any established type or title for any canal or other watercourse **it shall be unlawful for any person to place or maintain in place any obstruction, or change of the water flow by fence or otherwise, along or across or in such canal or watercourse,** except as where said watercourse inflicts damage to private property, without first receiving written permission for the change and providing gates sufficient for the passage of the owner or owners of such canal or watercourse. That the vested rights in the established canals and watercourse shall be protected against all encroachments.

A violation of § 73-1-15 can be punished, depending on the circumstances, as a Class B misdemeanor, a Class A misdemeanor, or a Third Degree Felony.

### **Usage of the Easement by the Irrigation Company**

As you have or will notice, the easement will be regularly used by the watermaster for the Irrigation Company as he inspects the canal and carries out his other duties. Shareholders of the Irrigation Company also make use of the right-of-way to gain access to the various gates and diversions necessary to control irrigation water flow.

Undoubtedly, you will see Irrigation Company employees carrying out maintenance activities in the Spring. Spring maintenance work includes burning grass and weeds in and along the canal bank to improve the performance of the canal. In the Summer, workers will use a tractor mounted mower to cut grass and weeds and otherwise maintain the access road within the right of way.

Every year or two, the Irrigation Company will bring in various equipment such as a back-hoe, track-hoe, and/or dump truck to do more heavy cleaning and maintenance of the canal system.

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<sup>1</sup>See e.g. *Big Cottonwood Tanner Ditch Co. v. Hyland Realty, Inc.* 8 Utah 2d 341, 334 P.2d 755 Utah 1959; *North Union Canal Co. v. Newell* 550 P.2d 178 Utah 1976; *Holm v. Davis* 41 Utah 200, 125 P. 403 Utah 1912.

**Permitted and non-permitted uses of the easement by property owners**

Because of the importance of the easement to the Irrigation Company, we wish to be clear as to what actions are permitted and not permitted in the easement right-of-way.

The Irrigation Company does not object to the planting of grass in the right-of-way. Likewise, the Irrigation Company does not object to the maintenance of other low-profile landscaping in easement that does not interfere with access to or use of the easement. If there are any questions regarding whether a particular type of landscaping would interfere with the Irrigation Company's use of the easement, please do not hesitate to send your question in writing to the address outlined below prior to beginning the landscape project.

Permanent structures such as dog kennels, sheds, outbuildings or other structures are not permitted within the easement. Placement and construction of such structures within the easement are considered to be a civil violation of the granted easement and a criminal violation of Utah Code Annotated § 73-1-15(1).

The Irrigation Company does encourage the construction of fences for safety purposes, especially where small children reside at or frequent the property. However, the fence must not interfere with the right-of-way. Any such fence must be positioned at the edge of the easement, must preserve the right-of-way, and must not interfere with the activities outlined above. Again, if you have any questions regarding the placement of a fence, please forward your question to the Irrigation Company in writing prior to beginning construction on the fence.

**Conclusion**

Thank you for your time and attention to the details outlined above. Your help and cooperation in these regards will avoid misunderstandings in the future. If you have any questions regarding any of this information or wish to clarify permitted uses within the right-of-way, please write:

Nibley Blacksmith Fork Irrigation Company  
P.O. Box #373  
Providence, Utah 84332

Yours truly,

BEARNSON & PECK

Brandon J. Baxter

BJB/ah  
Blacksmith Fork Irrigation