



ENT 95763:2012 PG 1 of 11  
JEFFERY SMITH  
UTAH COUNTY RECORDER  
2012 Nov 02 8:39 am FEE 0.00 BY SW  
RECORDED FOR STATE OF UTAH FORESTRY FI

Michael S. Johnson (#6903)  
Assistant Attorneys General  
Mark L. Shurtleff (#4666)  
Attorney General  
Attorneys For Plaintiff  
1594 West North Temple, #300  
Salt Lake City, Utah 84116  
Telephone: (801) 538-7227  
Facsimile: (801) 538-7440

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

STATE OF UTAH, by and through its  
DIVISION OF FORESTRY, FIRE & STATE  
LANDS,

Plaintiff,

NATIONAL AUDUBON SOCIETY, et al.,

Intervenor-Plaintiffs,

vs.

UNITED STATES OF AMERICA;  
DEPARTMENT OF THE INTERIOR;  
BUREAU OF RECLAMATION; JOHN W.  
KEYS, III, in his official capacity as  
Commissioner of the Bureau of Reclamation;  
BUREAU OF LAND MANAGEMENT;  
SALLY WISELY, in her official capacity as  
Utah State Director of the Bureau of Land  
Management; LANDOWNER  
DEFENDANTS (as named herein); JOHN  
DOE and MARY DOE, et al.,

Defendants.

**STIPULATION FOR SETTLEMENT OF  
UTAH LAKE BOUNDARY BETWEEN  
THE STATE OF UTAH AND DIXIE  
FENN**

Civil No. 2:97CV 0927K

Plaintiff State of Utah, by and through its Division of Forestry, Fire & State Lands (hereinafter "STATE"), and defendant Dixie Fenn (hereinafter "FENN") do hereby stipulate to the entry of judgment in the above-entitled matter on the First Cause of Action of Plaintiff's First Amended Complaint, as against FENN, and on FENN's Counterclaim against the State, quieting title to the sovereign lands of the STATE and the lands owned by FENN, and establishing a fixed and permanent boundary between the respective lands of the parties on the following terms and conditions:

#### RECITALS

1. The United States Supreme Court held on June 8, 1987 that the title to the bed of Utah Lake passed to the STATE under the Equal Footing Doctrine upon admission of Utah to the United States on January 4, 1896.

2. The STATE's ownership and management of the bed of Utah Lake are subject to a duty to preserve and protect the public trust values reserved and established at common law and as established by Article XX of the Utah Constitution and the laws of Utah.

3. FENN acknowledges that the STATE claims ownership of the sovereign lands of Utah Lake, which are those lands lying below the ordinary high watermark as of the date of statehood and owned by the STATE by virtue of its sovereignty. The STATE acknowledges that FENN claims ownership of an interest in the lands adjacent to and upward of said sovereign lands.

4. The unique historical and physical characteristics of Utah Lake and the lands near the boundary between the sovereign lands and the adjoining lands subject to this Stipulation have limited the availability of evidence of any vegetative or erosion line which can now be clearly

identified by either party in order to determine the ordinary high watermark for these lands at the date of statehood.

5. The STATE and FENN acknowledge that the precise location of the statehood ordinary high watermark at or near the FENN upland property is not now capable of determination by reference to a known monument.

6. The STATE and FENN acknowledge that the location of the ordinary high watermark at statehood may be subject to determination by a proper adjudication of the relevant facts and issues. The parties to this Stipulation disagree about the facts and issues relevant to such a determination.

7. The STATE and FENN acknowledge that the location of the ordinary high watermark at statehood, as it may be located upon the lands which are subject to this Stipulation, has not been adjudicated or otherwise determined by any judicial authority with jurisdiction to determine such matters.

8. FENN claims ownership of the lands adjoining Utah Lake identified as follows:

OWNERS

LANDS CLAIMED

Dixie Fenn

Utah County Tax Parcel Nos. 130680007 and 130680005, together with any lands lying lakeward of said parcel

9. The agreed boundary between the lands claimed by the STATE and the lands claimed by FENN is described in Exhibit A, attached hereto and incorporated herein by reference.

10. The location of the agreed boundary is depicted on a map identified as Exhibit B, attached hereto and incorporated herein by reference.

NOW THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND RELEASES OF CLAIMS CONTAINED HEREIN, IT IS MUTUALLY AGREED AS FOLLOWS:

1. FENN hereby waives service of summons, enters its appearance in the above-entitled case, and acknowledges receipt of Plaintiff's First Amended Complaint.

2. The STATE releases and quit claims to FENN, all of its title, ownership, claims, rights, chose in action, rights-of-way, easements, and all other rights appurtenant or separate, to the real property referenced in paragraph 8, above, that are located above (or upland of) the agreed-upon boundary line as described in Exhibit A and depicted in Exhibit B hereto.

3. FENN releases and quit claims to the STATE all of its title, ownership, claims, rights, chose in action, rights-of-way, easements and all other rights appurtenant or separate to the real property referenced in paragraph 8, above, to the extent it is located below (or lakeward of) the proposed boundary line as described in Exhibit A and depicted in Exhibit B hereto.

4. The lands released and compromised by FENN to the STATE by the terms of this Agreement shall be sovereign lands subject to the rights of the public to access the lands and to use the lands in manners consistent with the public interest.

5. This Stipulation is entered into in settlement of litigation to determine the location of the boundary between the sovereign lands and the adjoining lands. This boundary is intended by the parties to reasonably approximate the boundary of the sovereign lands at the date of statehood based on the facts and arguments of the parties to this Stipulation. This Stipulation constitutes an agreement by the parties as to where the boundary between sovereign lakebed

lands and adjoining uplands has always been located, and therefore does not constitute a conveyance of sovereign lands by the STATE.

6. The boundary dispute between the parties having been resolved through this Stipulation, the STATE hereby moves this Court to enter an order dismissing with prejudice all claims in the First Amended Complaint against FENN other than the First Cause of Action which was reduced to judgment as noted in the introductory paragraph of this Stipulation, and FENN hereby moves the Court to enter an order dismissing with prejudice all claims against the STATE not already reduced to judgment as noted in the introductory paragraph of this Stipulation.

7. This Stipulation is only intended to resolve the dispute between these parties with regard to the boundary between the subject properties. The STATE reserves the right to dispute the location of the ordinary high water mark at other locations on the perimeter of Utah Lake. Any statements or agreements herein are for settlement purposes only and are not admissible as statements of fact or policy in any remaining boundary dispute pertaining to parcels around Utah Lake or otherwise.

8. This Stipulation shall be binding upon the heirs, successors-in-interest and assigns of the parties to this Stipulation; shall be recorded at the office of the Utah County Recorder; and is understood and intended to run with the land. This Stipulation shall be effective upon execution by the STATE and FENN.

STATE OF UTAH  
Division of Forestry, Fire & State Lands

By: Richard J. Buehler  
Richard J. Buehler, Director

STATE OF UTAH )  
 )ss.  
COUNTY OF SALT LAKE )

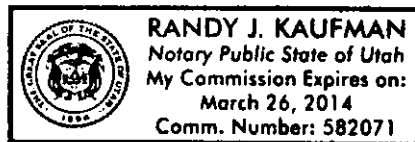
On this 17 day of SEPTEMBER, 2012, personally appeared before me Richard J. Buehler, Director of the Utah Division of Forestry, Fire & State Lands, known to me to be the person whose name is subscribed to the foregoing instrument and who has acknowledged to me that he executed the same on behalf of said Division.

IN WITNESS WHEREOF, I have hereunto set my official signature and affixed my notarial seal this 17 day of SEPTEMBER, 2012.

My Commission Expires:

MARCH 26, 2014

Randy J. Kaufman  
NOTARY PUBLIC, in and for the State of Utah,  
County of Salt Lake



Dixie Fenn  
Dixie Fenn

STATE OF UTAH        )  
                                  )ss.  
COUNTY OF UTAH    )

On this 12 day of Sept., 2012, personally appeared before me Dixie Fenn, known to me to be the person whose name is subscribed to the foregoing instrument and who has acknowledged to me that she executed the same.

IN WITNESS WHEREOF, I have hereunto set my official signature and affixed my notarial seal this 12 day of Sept, 2012.

My Commission Expires:  
9-17-14

Marla Fackrell  
NOTARY PUBLIC, in and for the State of  
Utah, County of ut.



EXHIBIT A  
(Boundary Legal Description)

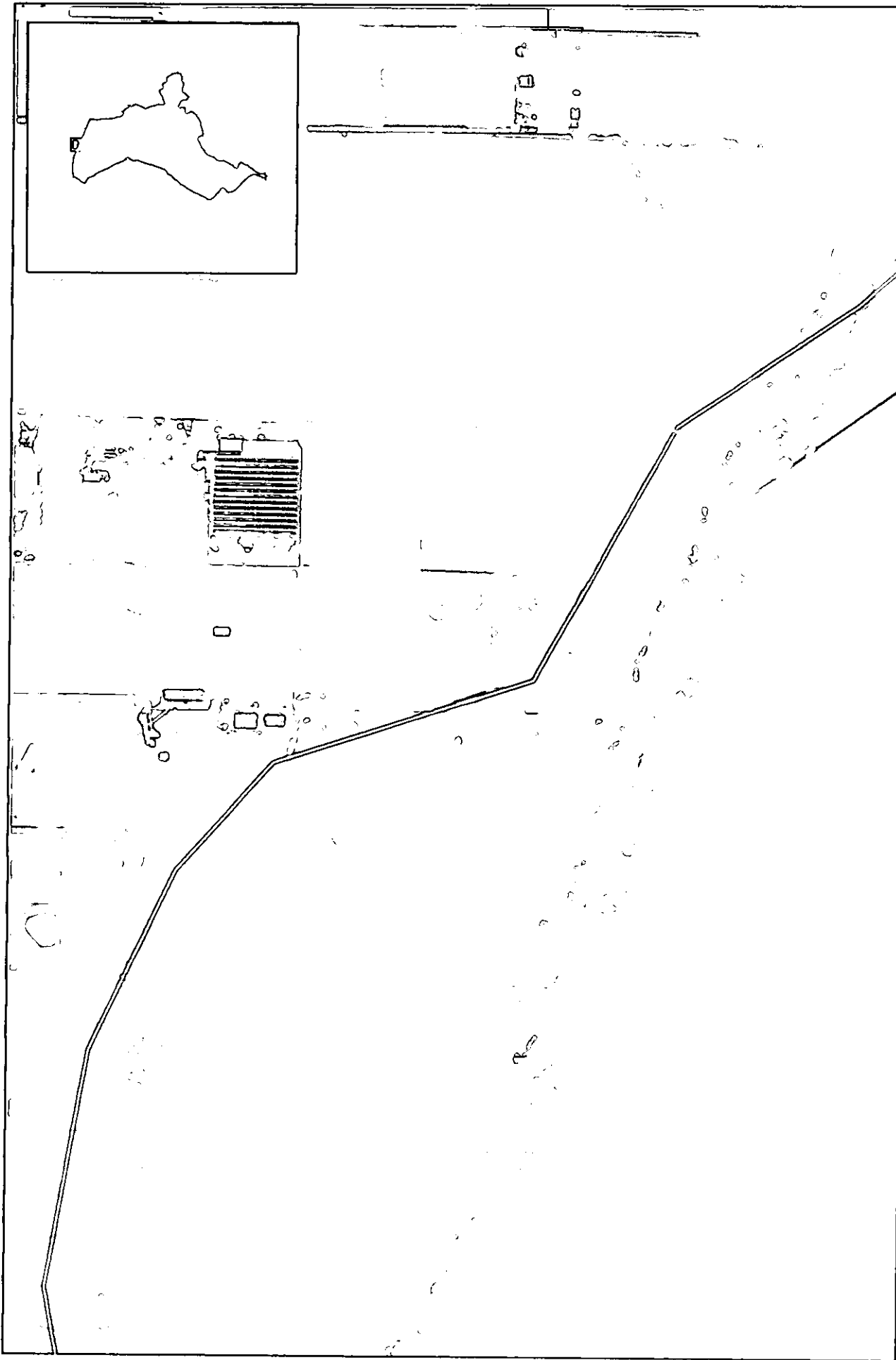


## AGREED BOUNDARY FENN PARCELS (Section 27 Township 5 South Range 1 East)

Commencing at the intersection of the calculated 1856 Utah Lake meander line with the westerly boundary of a parcel described and recorded under entry #17835-94, said point of intersection being more particularly described as being located South 884.71 feet and West 2279.93 feet from the North Quarter Corner of Section 27, Township 5 South, Range 1 East, SLB&M, thence South  $01^{\circ}10'00''$  West along said westerly boundary 2116.17 feet to the southwest corner of said parcel; thence along the southerly boundary of said parcel the following three courses: 1) South  $68^{\circ}52'00''$  East 500.00 feet; 2) South  $68^{\circ}10'00''$  East 468.50 feet; 3) South  $73^{\circ}21'00''$  East 465.50 feet to the southeast corner of said parcel; thence leaving said parcel South  $67^{\circ}19'16''$  East 1277.20 feet to the northwest corner of a parcel described and recorded under entry #34968-2007; thence East along the northerly boundary of said parcel 206.11 feet to the point of intersection with the extension of the easterly boundary of a parcel described and recorded under entry #17833-94; thence North  $01^{\circ}33'05''$  East along said easterly boundary and its extension 430.18 feet to the intersection with the calculated 1856 Utah Lake meander line.

**EXHIBIT B**

**(Boundary Map)**



February 2012  
 2011 NAIP Aerial Photograph  
 Utah Forestry, Fire, and State Lands

— Agreed-upon Boundary  
 ~ Meander Line  
 □ Parcels



**Fenn  
 Settlement Boundary**