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August 29, 2008

[REDACTED]

**Re: Illegal spring diversion on Skyline Mountain Resort Lot [REDACTED]**

Dear [REDACTED]

This law firm represents the Skyline Mountain Resort Special Service District ("SSD"). The SSD is responsible for water service and roads in the Skyline Mountain Resort ("Resort").

It has recently come to the attention of the SSD and the Board of Directors of the Skyline Mountain Resort that you are preparing, or have already begun, to illegally develop and divert water from the spring on Spring Creek, which runs through your lot [REDACTED] at Skyline Mountain Resort. A search of the records of the Utah Division of Water Rights indicates that you do not have a valid or approved water right to make such a diversion. Rather, the right to divert the spring water is owned and controlled by Spring Canyon Irrigation Co. and the SSD, which is a shareholder in the Spring Canyon Irrigation Co.

Utah law prohibits developing a water source, such as the spring, without approval from the Utah State Engineer: "No appropriation of water may be made and no rights to the use thereof initiated . . . shall be recognized except application for such appropriation first be made to the state engineer in the manner hereinafter provided, and not otherwise." See Utah Code Ann. § 73-3-1. Accordingly, your actions to divert water from this spring without a valid water right are in violation of Utah law. Additionally, your use of the spring water constitutes an interference with the vested water rights of others by diminishing the quantity and quality of water available to the SSD and Spring Canyon Irrigation Co. and is therefore prohibited. See, e.g., *Adams v. Portage Irrigation Reservoir & Power Co.*, 95 Utah 1, 72 P.2d 648, 653 (1937).

The diversion or alteration of springs or streams within the Resort is also prohibited by the Covenants, Conditions and Restrictions (CC&Rs) of the Skyline Mountain Resort, which provide as follows:

**CC&R 3.7 Drainage.** No owner shall do any act or construct any Improvement which would interfere with the natural or established drainage systems or patterns within the Project.

**CC&R 3.9 Water Use.** No owner of an Undivided Interest or user of a Assigned Area or Dwelling contiguous to a stream or body of water shall have any rights

over or above those of other Owners with respect to use of the water, the land thereunder or the water therein. No person shall acquire or be divested of title to any land adjacent to or beneath such water within the Project due to accretion, erosion or change in water levels. No Assigned Area shall be contoured or sloped, nor may drains be placed upon any Assigned Area into any body of water without the approval of the Board. All streams and other natural bodies of water within the Project are protected as watershed, and access thereto by persons and domestic animals is strictly prohibited.

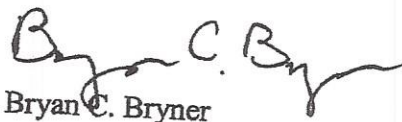
Also, it is stated in the Policy and Procedures Manual under the heading of Springs & Streams:

There are ten springs and three streams (Spring Creek, North Fork and South Fork Birch Creek) on the property of SMR. These springs and streams cannot be altered, or the water flow changed, in any way. All members have full access to all streams. No one may interfere with their natural flow or divert them for any reason.

You are advised to immediately cease and desist from diverting or altering the flow of Spring Creek and any spring water and restore the spring to its original condition. This restoration should include: removal of the concrete water box and all associated piping, returning the ground to its original contour, and replanting the area with pre-existing vegetation. Failure to do so may result in the use of any and all legal remedies available to the SSD, Resort, and/or State Engineer to ensure your compliance.

A copy of this letter is being provided to the Spring Canyon Irrigation Co. and to the Utah State Division of Water Rights, both of whom may have interests in this matter.

Respectfully,

  
Bryan C. Bryner

Cc: Scott Durrant, President,  
Spring Canyon Irrigation Co.

Jerry D. Olds, P.E.,  
State Engineer, Utah Division of Water Rights

Everett Taylor, President,  
Skyline Mountain Resort Board of Directors

Frank C. Fraser,  
Chair, Skyline Mountain Resort Special Service District

J. Craig Smith, Esq.