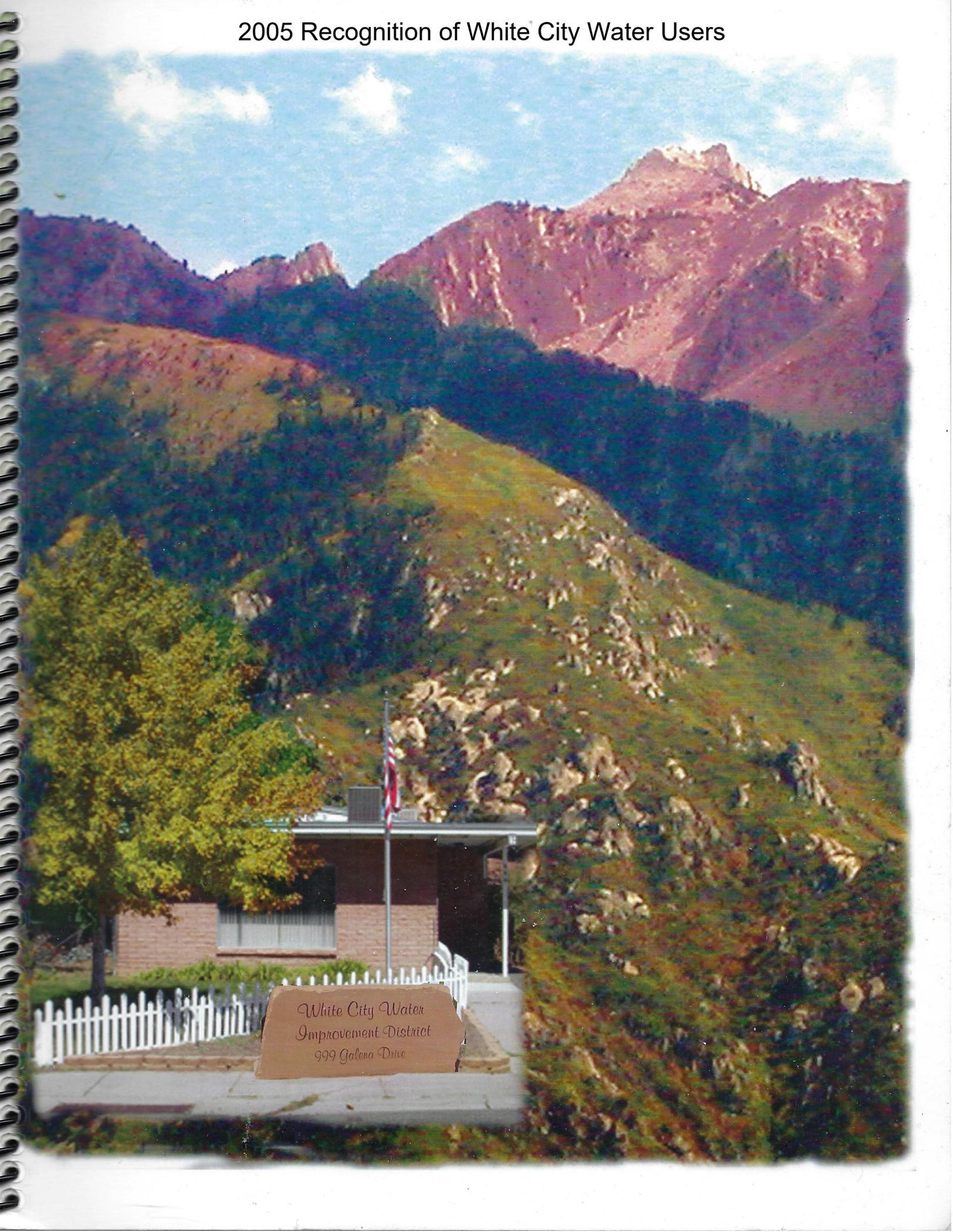


2005 Recognition of White City Water Users



*White City Water
Improvement District
999 Galena Drive*

White City Water Users Review

The White City Community Council held an emergency meeting of all the water users of the White City Water Company on July 10, 1991. At this public meeting we had the public service commission, attorneys for Sandy City, their public utilities representative, mayor, the water company owners, the press, and many others.

At this meeting it was established we should form the water user committee. We were also to hire an attorney to seek equal rates for all the users on the same system and to look into the possibility of purchasing the company ourselves.

The first water user committee consisted of Renee Christensen, chair, Dale Mitchell, vice chair, Craig Larsen, sec/treas. Members of the committee were Paulina Flint, Allen Hollyoke, Carol Kent, Cathy Larsen, Jim Gonzales, Max Osborn, Elaine Wade. It met to elect its officers on July 12, 1991.

July 13, 1991 the White city water users wrote a letter to the public service commission asking them to intervene on behalf of the water users.

July 17, 1991 Jeff Appel, who was now our legal council, wrote a letter to the public service commission to intervene on the water users' behalf.

July 22, 1991 was our first petition drive. These petitions were asking the question: If the opportunity arose would you support the purchase of the water system by the users? The second petition sought equal rates for all users on the same system.

Oct 1, 1991 was the Sandy City Council meeting over the sale of the company to Sandy City. Many users attended that meeting.

On October 2, 1991, Jeff Appel sent a letter to Commissioner Jim Bradley to seek an intervention by Salt Lake County at the PSC.

February 20, 1992 the Public Service Commission, held it would maintain jurisdiction even if Sandy purchased the company.

As a result of all these actions, we had to do many fund raiser in order to afford an attorney. Some of these consisted of: Flea markets, boutiques, carnivals, t-shirts, etc. We had to raise over \$42,000.

We had to lobby the legislature for PSC jurisdiction (oversight of the unincorporated users even after Sandy would have purchased the company) This was unheard of in Utah.

It took 4 years to get to where we finally purchased the company ourselves.

To this day the water users maintain their existence to insure that the rights of the users remain protected.

Memorable Quotes

“We don’t want your community. We just want your water.”
Mayor Larry Smith

**“Oh they are just a bunch of busy bodies, hens.
They are up in the night”**
Mayor Larry Smith

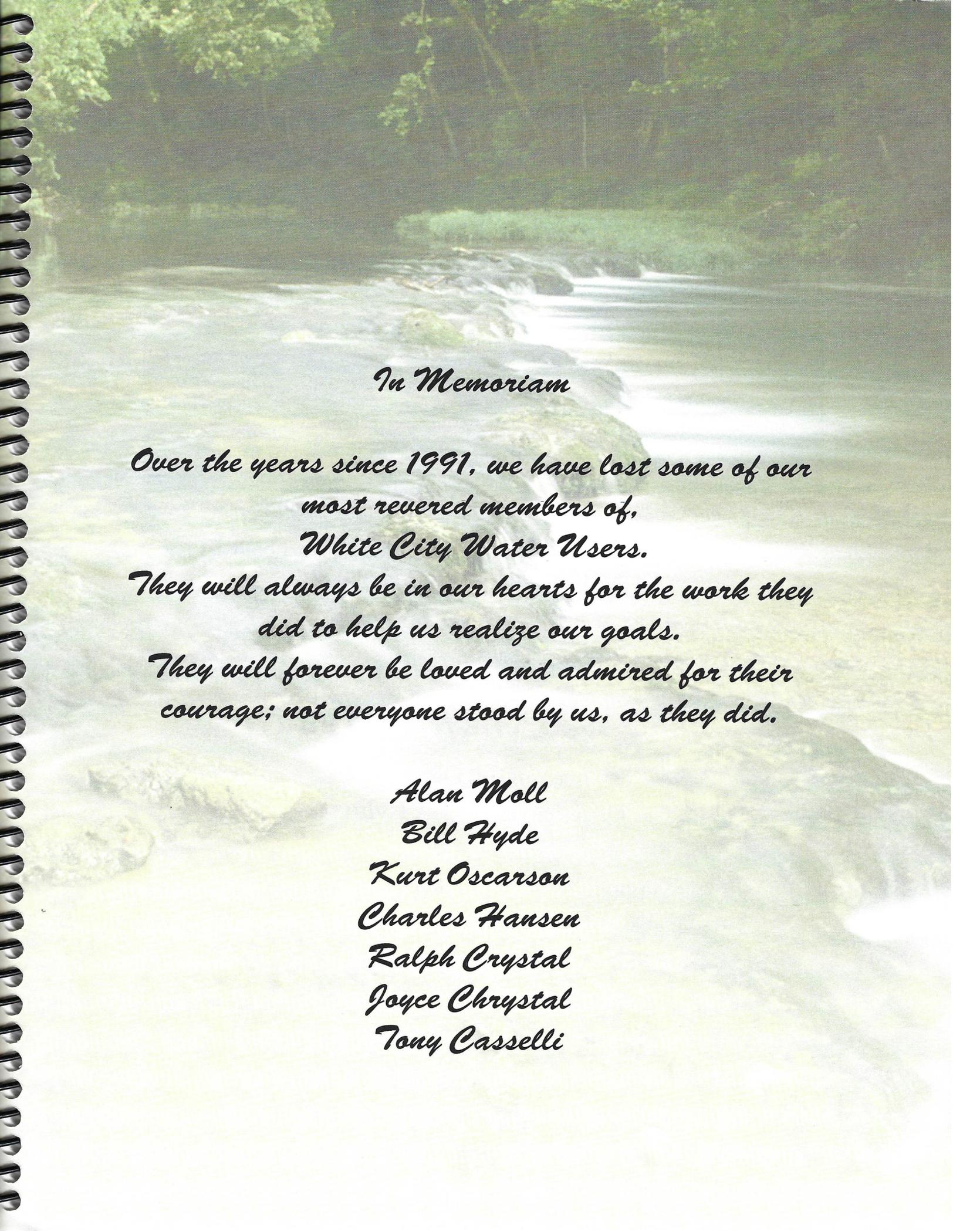
**“We should get the company, because
we have deeper pockets.”**
Mayor Larry Smith

“It’s a done deal!”
Mayor Larry Smith

“They’re everywhere!”
Judy Bell

“Right is might!”
Art Kimball

“Follow the money trail.”
Dale Mitchell



In Memoriam

*Over the years since 1991, we have lost some of our
most revered members of,
White City Water Users.*

*They will always be in our hearts for the work they
did to help us realize our goals.*

*They will forever be loved and admired for their
courage; not everyone stood by us, as they did.*

*Alan Moll
Bill Hyde
Kurt Oscarson
Charles Hansen
Ralph Crystal
Joyce Chrystal
Tony Casselli*



Left to right: Sherrie Swenson, Art Kimball, Dortha Robinson, Garry True, Jim Hadlock

First Elected Board being sworn in by the Salt Lake County Clerk.
Sandy Library, January 1995

White City Water User Chairs

Renee Christensen
July 1991 – August 1993

Phillip Miller
August 1993 – January 1994

Art Kimball
January 1994 – January 1995

Don Patocka
January 1995 – July 1998

Melody Shock
July 1998 - Present



May 20, 1995--Governor Cal Rampton with Ladell Harston at Ladell's retirement as manager of White City Water Improvement District.

History Made

White City Water Company was a private water company established in 1955. It was in the ownership of the White and Papanikolas families until the White City Water Users purchased it through the creation of The White City Water Improvement District. The District was created by Salt Lake County Commission, December 1993, as an Independent Improvement District. The White City Water Users petitioned the County Commission to create the district to enable them to purchase the company. The Water Users spent countless hours in meetings, having fund raisers, petition drives, lobbying on capital hill, and doing never ending research to gain the knowledge and opportunity to purchase White City Water Company. Their hard work and goal were finally realized February 13, 1995.

YOU WERE UP AGAINST THE BEST!

The White City Water Users at Play.



Left to right: Jim Hadlock, Don Patocka, Jim Leaver



Left to right: Renee Christensen, Dortha Robinson, Lamont Christensen



Left to right: Gene Robinson, Callie Robinson



Left to Right: Phillip Miller, Kathy Hadlock, Paulina Flint, Don Patocka



Left to right: Earlene Mitchell, Sheila Miller, Phillip Miller



Left to right: Lamaun Jensen, Debbie Jensen



Left to right: Paulina Flint, Art Kimball, Renee Christensen



Left to right: Sue Dean, James Alexander, Paulina Flint



Left to right: James Alexander, Paulina Flint, Art Kimball

The contract for the purchase of the White City Water Company was signed December of 1994. This was the best Christmas gift. It took the water users three and a half years to accomplish.

I remember Bill Hyde telling Pat Cory and I on Christmas Eve, "Ladies go Shopping!" I said, "We are. We're buying a water company!"

Without the hard work of the water users and our supporters this would not have been possible. Thank you for all you have done over the past 14 years.

Our gratitude goes out to everyone who fought the fight.

You are the Champions!



Left to right: James Alexander, Paulina Flint, Art Kimball, Renee Christensen, Dortha Robinson, Garry True



Left to right: John Crandall, Paul Ashton, Art Kimball



John Crandall on phone call to transfer funds for the close of the bond sale to purchase White City Water.



Paulina Flint signing closing documents.



Paulina Flint and Blaine Carlton signing closing documents.



Ken White



Lamaun Jensen, water user

Bond Closing

February 13, 1995, the White City Water District's first board of trustees purchased the historical White City Water company from the White and Papanikolas families. The pictures in this section are from the closing of the bonds, which were issued to purchase the company. It had taken one year and two months after the interim board was appointed by the Salt Lake County commission to bring the purchase to a close.



Dale Left to right: Renee Christensen, Don Patocka, Mitchell, Ken White Jr., Art Kimball.

None of our opponents knew we had actually sold the bonds on February 1, 1995. We did not inform the owners of the water company that the money was in the bank until a day after all the bonds were sold. We informed them that we were prepared to do a pre-close on the bonds on the 9th of February 1995. We scrambled to fulfill all the closing document requirements.

Blaine Carlton and staff, John Crandall, Chapman and Richards, Shaun Turner, Vern Fisher, Alden Robinson, and Paul Ashton helped us through all the legal requirements.



Pat Cory, Friend and ally of White City Water Users.

John Crandall said, "He had never been to a closing where people applauded and cried before."



Left to right: Paul Ashton, Mark Papanikolas, John Crandall.



Lamaun Jensen, Gary White, Mr. and Mrs. Ken White Jr., Mr. and Mrs. Halladay



Left to right: Renee Christensen, Don Patocka, Dale Mitchell, Paulina Flint.



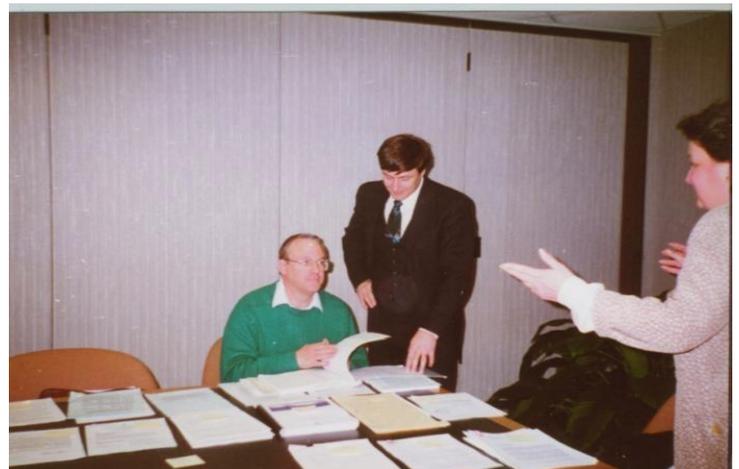
Left to right: Art Kimball and Ken White Jr.



Left to right: Dortha Robinson, Sue Dean, Jim Hadlock



John Crandall and Paulina Flint finishing the close of the sale to the Water District.



Left to right: Jim Hadlock and Garry True, Paulina Flint



White and Papanikolas family, former owners.



‘The Harston Tank’

New 3 million gallon tank built,
after a long and hard fought
court battle.



Water Issue Opens Faucet on White City-Sandy Feud

By David Clifton

THE SALT LAKE TRIBUNE

For nearly 20 years, White City has fought to maintain its identity amid countless annexation attempts by Sandy City.

The unincorporated Salt Lake County community — located between 9400 and 10600 South, and 700 and 1300 East — once boasted 10,000 residents and contained prime commercial property.

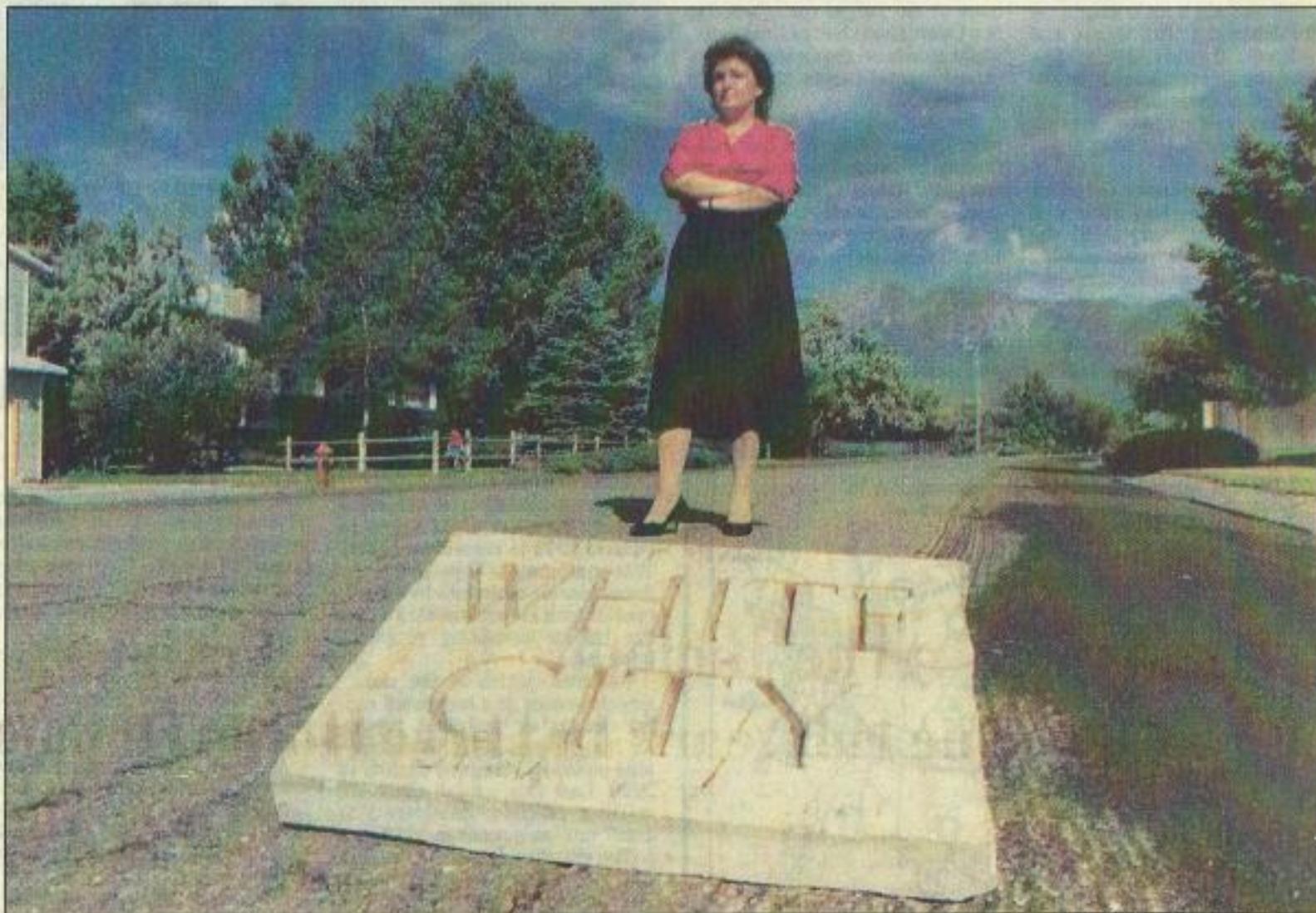
But in the last 15 years, nearly a third of the town has been annexed by Sandy. Now, most of White City's 7,800 citizens are worried Sandy's proposed purchase of a water company that services their homes means more land will be lost.

Sandy City Mayor Larry Smith said Sandy will buy the privately owned White City Water Co. for \$6 million, pending approval of the City Council and Public Service Commission. The city would then provide water to 2,400 White City homes now served by the company.

Mr. Smith told about 50 White City residents that buying the water company doesn't mean the community automatically becomes part of Sandy.

"We are not trying to force White City into Sandy. I can't say that we never will because I believe the Legislature will one day say it wants wall-to-wall cities in Salt Lake County. We will take a look at [annexation] when White City wants it," he said.

But Paulina Flint, White City Community Council chairwoman, wants the mayor to put his promises in writing. She says Sandy has said numerous times it



Lynn R. Johnson/The Salt Lake Tribune

Paulina Flint, White City Community Council chairwoman, wants written assurances from Sandy City mayor that

wouldn't annex any land, but did anyway.

"We're still not at ease with his promise. From experience, we've learned that unless something is

signed, sealed and delivered, we will never be OK," she said.

Ms. Flint wants Sandy to sign a resolution saying the city recognizes White City as a community

the purchase of their city's water company will not lead to annexation of the unincorporated community by Sandy.

and won't annex any part of area without residents' approval.

White City residents are also concerned their water rates will dramatically increase if Sandy

controls the water company. White City homeowners would pay \$295 a year for the same amount of water Sandy residents receive for \$187, she said.

Weekend Festival Raises Funds To Fight For White City Water System

by Lance Gurwell
The Green Sheet

June 4, 1992

WHITE CITY. Several hundred White City residents spent over \$3,400 at a day-long weekend festival to help fight a takeover of the community's water system by Sandy City.

"That just shows you how people feel about having Sandy dictate water rates," said Renee Christensen, a community activist and member of the White City Community Council.

The water company serves about 6,500 residents living in White City, an unincorporated city that sits in the middle of Sandy. It also serves about 5,000 people living inside Sandy's jurisdictional boundaries.

Sandy has been trying to buy the aging White City Water Company for several months for \$6 million.

The system would require millions in repairs, including a new water tank at \$1 million, and miles of new water lines, Sandy officials said. To pay for the repairs, Sandy would need to charge White City residents as much as 60% more for water than its own residents, Smith said.

But the sale bogged down when the Public Service Commission said it would be setting rates for White City residents served by Sandy, not Sandy itself.

The ruling angered Sandy Mayor Larry Smith, who claims the PSC has no jurisdiction in the matter. Smith petitioned the commission for a re-hearing. The PSC reconsidered the matter, but decided to stay with its original ruling.

Sandy has since appealed the ruling to the Utah Supreme Court, and the deal is now in bureaucratic limbo.

The city's contract to buy the system expires June 30. White City residents say they want to buy the system themselves, and are willing to form a special improvement district to pay for it.

Meanwhile, legal fees for the group calling itself the White City Water Users' Board have climbed to several thousand dollars.

"We were very encouraged by the amount of community participation at the carnival," Christensen said.

"We're still actively engaged in trying to be prepared to make another approach to the White City Water Company owners in getting them to realize we are a viable group committed to seeing our water supply is secure."

Water company officials said they could not discuss any sale issues with parties other than Sandy until Sandy officials decide whether or not to exercise their option to buy on June 30.

White City Community Council Chairman Paulina Flint, who along with Christensen is railroading the community efforts to buy the system, said Smith is "all wet when he says the system needs a major overhaul."

"The current system isn't in as bad shape as they'd like people to believe," Flint said. "It doesn't need any expansion if Sandy doesn't buy it."

Flint said she believes Sandy would like to use the higher rates to force

White City to annex into Sandy.

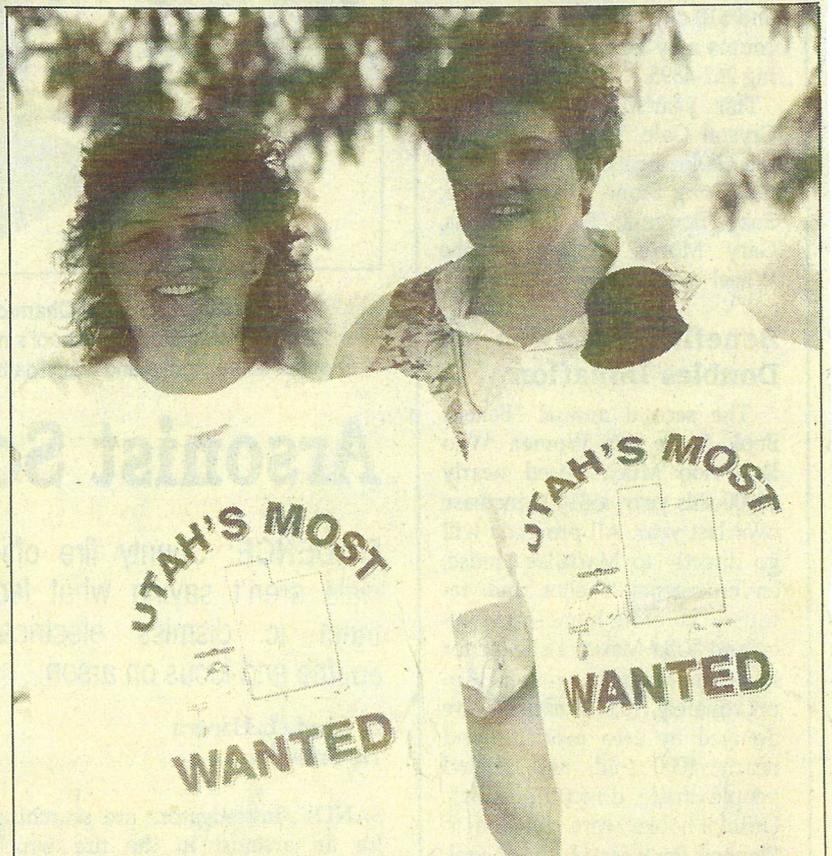
"From our standpoint, you charge higher rates and people will walk in and annex," White said. "They look at people who live across the street who have lower rates just because they live in Sandy."

Christensen said the White City Water Users' Board still owes several thousand dollars in legal fees. She encourages people to purchase T-shirts emblazoned with the groups cause printed on the front. For information about obtaining a shirt, call Christensen at 571-9597.

No matter what, Smith said, Sandy will pursue recourse to the PSC's ruling through the courts.

"We believe that is a basic legal issue we cannot leave on the books regardless of whether we back away from this sale or go forward with it," Smith said.

Smith said an appeal to the state Supreme Court would almost certainly be successful.



HOT ITEM . . . T-shirts were among items that sold well as White City residents opposed to Sandy plan to buy water company held a fair to raise money to fight the plan.

MINUTES
White City Community Council Sub-Committee
Friday, July 12, 1991

Present at the meeting were: Carol Kent, Cathy Larsen, Craig Larsen, Jim Gonzalez, Renee Christensen, John Cox, Max Osborn, Elaine Wade, and Paulina Flint

Paulina called the meeting to order and stated that as chair of the White City Community Council, she was calling the meeting to set up a sub-committee to deal with the issue of the sale of White City Water Company to Sandy City. A vote was taken by those present to approve hiring Jeff Appel to represent us as our legal counsel.

Nominations were open from the floor for officers to govern this sub-committee. Mr. Neff was nominated to chair the committee and was to be notified by Paulina of this choice. Renee Christensen was nominated to be co-Chair, and Craig Larsen was nominated to act as secretary/treasurer. It was determined at that time that meetings would be held on a regular basis at a location to be determined later.

Following nominations, the need to establish communication with the Public Service Commission was discussed. Renee was given the assignment of drafting a letter to the PSC requesting that our committee be notified of hearings pertinent to our case.

The committee discussed the need for public support and decided the best way to begin was to determine the level of support through a petition drive. It was decided to create 2 petitions: one to show opposition to the sale, and the other to show support for purchasing the company and forming a special district should the opportunity present itself to do so. Renee and Cathy were assigned to divide the water service area into smaller units for petition distribution. Paulina agreed to take care of any necessary printing. A meeting to get volunteers to take the petitions out was scheduled for Monday, July 22 at Bear Park.

Meeting was adjourned at 9:00 p.m.

July 13, 1991

Steven Hewlett
Secretary of the Public Service Commission
Public Service Commission
160 East 300 South
Salt Lake City, Utah 84111

Subject: Receiving Notice of Hearings.

Dear Mr. Hewlett,

In the near future there may be a request for the PSC to place on their meeting agenda an abandonment of service for the White City Water Company. When this occurs or if White City Water matters are to be discussed in any context at any meeting, please notify the following individuals:

Renee Christensen
White City Water Users Committee Chair
999 Violet Drive
Sandy, Utah 84090-6140

Jeff Appel
Attorney
Haley/Stolebarger
175 South Main 10th Floor
Salt Lake City, Utah 84111-1956

Pauline Flint
White City Community Council Chair
10467 Carnation Drive
Sandy, Utah 84094

White City Water Users have requested that I express their position and concerns about any proposed transactions dealing with the White City Water Company. Thank you for your cooperation.

Sincerely,


Renee Christensen
Chair White City Water Users Committee

RC/cak

cc: Jeff Apell
Pauline Flint



"By God, for a minute there it suddenly all made sense!"

NEWS RELEASE

WHITE CITY WATER USERS COMMITTEE

SANDY--On July 10, 1991, the White City Community Council called a public meeting because it was learned that Sandy City was to purchase the White City Water Company and incorporate the company and the people it serviced into the Sandy City water services. The White City Water Company services all of White City which is presently 1943 households and Sandy City residents of 1195 households. Invitations were issued to all users of the White City Water as the sale of the White City Water Company is a concern to all who are serviced by the water company.

Present at the meeting representing Sandy City were Mayor Larry Smith, Darrell Schow, Sandy City Director of Public Works with Bob Segal a consulting engineer, Gary White board member of the White City Water Company, Dan Bagness of the Public Service Commission and members of the White City Community Council. A large number of Sandy City and White City residents who are serviced by White City Water also turned out.

In the meeting, Mayor Smith stated the purchase of the White City Water Company was "almost a done deal". A deal, which at that time had not been nor has yet been presented to the Sandy City Council nor has there been any public meeting concerning the purchase. It was learned that Mayor Smith approached Bill Papanicholas, a member of the family who owns half interest in the White City Water Company, with a proposal of purchase by Sandy City after the White City Water Company had been rebuked by the Sandy City Government when asking for expansion. Bill Papanicholas also has interest in the Magna Investments Company which is trying to develop the area of Little Cottonwood Park in Sandy City, which could also be serviced by White City Water.

more

According to Mayor Smith, what has already been negotiated as the "done deal" is that the purchase of White City Water Company will be accomplished by Sandy City paying an \$800,000 down payment with the balance of the six million dollar price of the company being paid with revenue bonds held for a period of 15 years by the White and Papanicholas family members who are shareholders in the White City Water Company. Gary White, a board member of the White City Water Company stated, "We have around 20-25 shareholders. The White family owns about 50% and that is basically the heirs of Kenneth White which was the developer with the Papanicholas's with Magna Investment in the development of the White City area." Mayor Smith stated, "The bond payments would be paid by revenues generated by the Sandy City Water system. We anticipate most of those revenues to come, and will be an offset at least for what is paid on the bond, and that will come primarily from the White City (water) service area."

White City, itself, is unincorporated and their water rates are regulated by the Public Service Commission, which allows only a 12% profit margin by utilities, such as water companies. The Public Service Commission has no jurisdiction in incorporated areas such as Sandy City. When asked if water rates would go up for those residents in the White City Water service area if Sandy purchased White City Water, Mayor Smith stated, "I would just respond that it is inevitable the rates are going to go up". If the purchase of White City Water Company by Sandy City goes through as it stands, those residents of Sandy City who are serviced by White City Water Company will bear the brunt of paying off the revenue bonds. There exists the possibility that the 1195 Sandy City households using White City Water could experience a tremendous increase in water rates.

more

As a result of this meeting, a White City Water Users Committee was formed of Sandy City and White City residents who are jointly serviced by White City Water. They have quietly gone to work to learn more about the pending sale of the White City Water Company. The committee feels there are other and better alternatives than the planned purchase Mayor Smith has proposed. The committee is now passing out petitions among all White City Water users and have hired an attorney to help with legalities.

August 1, 1991, the Sandy City Government hired the firm of Parsons, Behle and Latimer. Sandy City Government has allotted one half a million dollars of Sandy City resident's tax money, of which \$4,593,12 has already been spent, for legal services related to the pending purchase of the White City Water Company. It is ironic that the Sandy City residents who are serviced now by the White City Water Company, along with all Sandy City residents, are having one half a million of their tax dollars spent by the Sandy City Government in pursuit of the purchase of the White City Water Company which is a service they already have and use.

This is not simply "just a change in management" as Darrell Schow and Mayor Smith would have Sandy City and White City residents believe. The proposed purchase involves a large down payment and the payoff of revenue bonds over a period of 15 years which could result in substantially higher water rates and possibly higher taxes for the purchase of a service for those residents who already use and have the service.

The White City Water Users Committee is asking for support from all residents, be they in Sandy or White City, no matter the water service they use, to raise money to cover legal fees in order to pursue a better alternative than the proposed plan of the purchase of White City Water by Sandy City as advocated by Mayor Smith.

The W.C.W.U.C. will be holding a fund raising Flea Market in the Winegars' parking lot on September 14, 1991 from 8:00 A.M. to 8:00 P.M. Those who wish to donate items to the Flea Market may do so on September 12 and 13. For information concerning the Flea Market, the following people may be contacted, Paulina Flint at 571-5257, Renee Christensen at 571-9597, Kathy Larson at 572-5247 and John Cox at 571-7816.

The White City Water Users Committee want the residents of Sandy and White City to be aware of the facts concerning the proposed purchase of the White City Water Company by Sandy City. Committee members will be available to answer questions concerning the issue and petitions will also be available for signing for all Sandy City and White City residents. All monetary contributions may be made to the White City Water Users Funds, Room W 4002, 2001 South State, Salt Lake City, Utah, 84190-0001.

#

All the quotes were taken from the actual taped and transcribed minutes of the public meeting of July 10, 1991 held at Eastmont Middle School auditorium.

LAW OFFICES OF
HALEY & STOLEBARGER

TENTH FLOOR WALKER CENTER
175 SOUTH MAIN STREET
SALT LAKE CITY, UTAH 84111-1956

TELEPHONE
(801) 531-1555
FACSIMILE
(801) 328-1419

GEORGE M. HALEY
ROBERT L. STOLEBARGER
JEFFREY W. APPEL
CAROLYN NICHOLS*
JO CAROL NESSET-SALE
GEOFFREY W. LEONARD, P.E.
RICHARD G. HACKWELL
MICHELE MATSSON
BLAINE J. BENARD

OF COUNSEL
FRANK E. MOSS**

*ALSO ADMITTED IN TEXAS
**ALSO ADMITTED IN WASHINGTON, D.C.

July 17, 1991

VIA HAND DELIVERY

White City Board of Directors
White City Water Company
999 East Galena Drive
Sandy, Utah 84094

RE: Request Concerning Status of White City Water Users

Dear Members of the Board:

This firm has been retained to review the ramifications of the proposed sale of the White City Water Company to Sandy City, Utah, and, if necessary, take whatever steps are necessary to protect the legal rights of the water users. In furtherance of the open communication to your water users and customers that was in evidence at the July 10, 1991, meeting at the Eastmont Middle School in Sandy, Utah, as well as your fiduciary duty to them, I would appreciate an answer to the questions set forth below and the provision of the documents requested therein. If for some reason you feel you should not or do not have to answer these questions or provide these documents, I would appreciate it if you would telephone me and articulate your reasons for that refusal. In view of the fact that the consummation of the sale of the water company appears to be moving forward with great speed, I would greatly appreciate a prompt response and if we may do anything to assist you in furtherance of that goal, please do not hesitate to let me know.

1. Please provide us with a copy of the most recent draft of the contract providing for the sale of the White City Water System to Sandy City, Utah.
2. Would you consider the sale of the White City Water System to the users and customers of the system rather than to Sandy City?
 - a. Will you allow for sufficient time to determine if that is a legitimate approach and to allow for the consummation of such a sale?

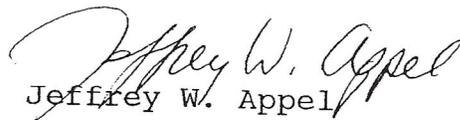
LAW OFFICES OF
HALEY & STOLEBARGER

White City Board of Directors
July 17, 1991
Page Two

3. Will you assure that the contract will protect the rates of your water users and not subject them to large rate increases?
4. Is it intended by Sandy City and your group that the sale be approved in an open meeting before the Sandy City Council?
 - a. Is that a condition of the sale?
5. Has this sale been approved by the Public Service Commission of the State of Utah?
 - a. Do you intend to undertake any filings with the PSC as a condition to the consummation of this sale?
6. Does the contract provide any assurances that the property of White City Water Users will not be annexed into Sandy City?

In view of the fact that time is of the essence, I would appreciate your prompt response. If you have any questions with respect to any of the above, or wish to speak with me concerning this matter, please contact me immediately at the above-referenced telephone number.

Very truly yours,


Jeffrey W. Appel

JWA/kdv

cc: Paulina Flint
Renee Christensen

LAW OFFICES OF
HALEY & STOLEBARGER

TENTH FLOOR WALKER CENTER
175 SOUTH MAIN STREET
SALT LAKE CITY, UTAH 84111-1956

TELEPHONE
(801) 531-1555
FACSIMILE
(801) 328-1416

GEORGE M. HALEY
ROBERT L. STOLEBARGER
JEFFREY W. APPEL
CAROLYN NICHOLS*
JO CAROL NESSET-SALE
GEOFFREY W. LEONARD, P.E.
RICHARD G. HACKWELL
MICHELE MATTSSON
BLAINE J. BENARD

OF COUNSEL
FRANK E. MOSS**

October 2, 1991

*ALSO ADMITTED IN TEXAS
**ALSO ADMITTED IN WASHINGTON, D.C.

Commissioner Jim Bradley
Salt Lake County Commissioners
2001 South State, Room N-2100
Salt Lake City, Utah 84190-1000

RE: Sandy City Acquisition of White City Water Company

Dear Commissioner Bradley:

I currently represent a large number of the customers of the White City Water Company. By way of background, the White City Water Company straddles the border between the incorporated limits of Sandy City and Salt Lake County. Last night, the Sandy City Council voted to continue the contractual process that, absent resistance, will likely result in a transfer of ownership of the water company to Sandy City. My understanding is that Sandy City will shortly make application to the Public Service Commission of the State of Utah and request an exemption from regulation of water service to County residents from that administrative body.

That situation creates a number of problems which I understand the County has encountered in the past. While the customers of the original water company who reside within Sandy City theoretically have the right to redress as members of the electorate, the County customers have no such right. Sandy City has taken the position that they are exempt from PSC regulation by virtue of their municipal status, even as to the service area within the County and outside its municipal boundaries. I believe that is incorrect and it is a point I intend to push at the PSC level for the following reason, among others.

To my knowledge, every person who receives water from some sort of water service entity has the right to challenge rates and to otherwise protect their rights. For instance, if it is a mutual water company, then they are a shareholder and have the right to vote to change the course of affairs. If it is a private company regulated by the PSC, then the right of redress lies with that administrative body. I have already mentioned the ability of the electorate to theoretically affect water rates and water service. No such protection is accorded to water users in the situation Sandy seeks to create and perpetuate. Thus, the County residents will have no protection as to rates and no right of redress to

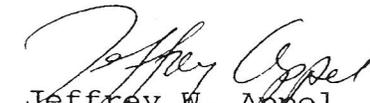
LAW OFFICES OF
HALEY & STOLEBARGER

Commissioner Jim Bradley
October 2, 1991
Page Two

change those rates or otherwise protest their rights should the situation prove inequitable. While not precisely on point, the situation is analogous to taxation without representation, which is abhorrent to democratic ideals.

I understand that this problem represents a dilemma that has faced the County for a number of years. In order to adequately represent my clients, I have no choice but to bring it to a head now and this may be a fairly desirable test case. On that basis, on behalf of my clients who reside within Salt Lake County, I hereby request that the County join this action to assist in the representation of their interests. Of course, I would be more than happy to meet with you and any of the other commissioners and the County attorneys should you so desire.

Very truly yours,


Jeffrey W. Appel

JWA/kdv

cc: Gerald Nielson, Esq.
Renee Christensen

-- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH --

In the Matter of the Application)	
of WHITE CITY WATER COMPANY for)	<u>DOCKET NO. 91-018-02</u>
Commission Approval of a Contract)	
Entered into on the 8th Day of)	
October, 1991, Under Which Contract)	<u>ORDER SEVERING PROCEEDING</u>
Sandy City and the Municipal Build-)	<u>AND</u>
ing Authority of Sandy City, Utah,)	<u>REPORT AND ORDER</u>
Will Purchase All of the Out-)	
standing Stock of WHITE CITY WATER)	
COMPANY.)	

ISSUED: February 20, 1992

SYNOPSIS

Applicant, a certificated water corporation, seeks approval of the sale of all its stock to a local governmental entity and the assumption of service to its present customers by a municipal corporation. Applicant further asks the Commission to declare it has no jurisdiction over the municipality's subsequent water service operations insofar as they relate to Applicant's customers residing outside the municipal boundaries. We deem the jurisdictional question of such importance that it should be resolved before inquiring whether the transfer is in the public interest. Accordingly, we sever the prayer for declaratory relief from the balance of the proceeding and declare the Commission has jurisdiction over a municipality to the extent it provides retail water service outside its boundaries as a general business.

Appearances:

Calvin L. Rampton James Burch	For	White City Water Company, Applicant
Val R. Antczak, Lee Kapoloski and T. Patrick Casey	"	Sandy City Corporation, Intervenor
Jeffrey W. Appel Michele Mattsson	"	White City Water Users, et al, Intervenor
Gerald E. Nielson, Deputy County Attorney, Salt Lake	"	Salt Lake County, Intervenor
Michael Ginsberg Laurie Noda Assistant Attorneys General	"	Division of Public Util- ities, Utah Department of Commerce, Intervenor

By the Commission:

PROCEDURAL HISTORY

The application in this matter was filed November 4, 1991. The Commission conducted a prehearing conference December 9, 1991, and asked the parties to brief the issues of the Commission's jurisdiction to approve the contract which is the subject of these proceedings and, should the contract be approved, the Commission's jurisdiction over Sandy City in connection with water customers residing outside the city. Oral arguments were heard by the Commission on February 18, 1992. Having been fully advised in the premises, the Commission enters the following Report and Order.

FINDINGS OF FACT

1. Applicant is a water corporation certificated by this Commission. In its Application, Applicant seeks approval of a transfer of all its outstanding stock to an instrumentality of Sandy City Corporation, (hereafter "Sandy") a Utah municipal corporation. Applicant further seeks declaratory relief in the form of a Commission declaration that "the integrated system constitutes a municipal water system under the laws of the State of Utah."
2. Under the proposed contract terms, the stock would be transferred to the Municipal Building Authority of Sandy City (hereafter "the Authority"). Applicant would retain its corporate existence for the lifetime of the bonds issued by the Authority to finance the purchase.
3. Applicant would cease operating the system and, for a nominal rental, would lease the system to the Authority, which in turn

would sublease to Sandy. Sandy would actually operate the system and, to the extent feasible, would integrate Applicant's present system with Sandy's municipal system. Payment to the bondholders would be made by the Authority out of rentals realized from the sublease to Sandy, which in turn proposes to pay the rental fees out of water charges to customers.

4. In its brief, Sandy states explicitly that customers residing outside the city limits will be charged more than those residing within. The stated rationale is that the customers outside the city limits should bear a greater proportion of the costs of the acquisition.
5. In the contract, the stock transfer is specifically conditioned upon this Commission's final Order declaring that the Commission does not have and will not assert any jurisdiction over Sandy, whether in regard to customers residing inside or outside the city limits.

CONCLUSIONS OF LAW

As we view it, Applicant seeks two separate and distinct forms of relief--approval, per se, of the contract, and declaratory relief in regard to the Commission's jurisdiction. We deem the declaratory branch of the proceeding so important that it should be severed from the approval branch.

The subject transaction differs from other transfers hitherto considered by the Commission in that the transfer is to an entity arguably outside Commission jurisdiction. It would leave a number of customers, who have had recourse to the Commission for grievances, effectively without recourse to any entity, public or private. Given

that stark fact, we refuse to take the "all or nothing" choice presented by Applicant. Instead, we propose to resolve the jurisdictional issue in this proceeding, with the docket number in the caption above, as a matter separate from the contract approval. In light of our action in this proceeding, Applicant may choose to proceed or not in the approval action.

We turn now to the merits of the jurisdictional issue.

We concede at the outset that we have no authority to regulate a municipality within its boundaries. However, we conclude that case law, statutory law, and public policy support our authority to regulate Sandy's water service outside its boundaries. In reaching this conclusion, we believe the salient considerations include disenfranchisement of the extra-territorial customers, Sandy's limited statutory powers, the structure of the transaction, our doubts that service outside the city boundaries would constitute exercise of a municipal function, and our skepticism that Sandy would indeed be selling surplus water as contemplated by the Utah statutes.

Disenfranchisement of the Customers

At present, all of Applicant's customers, inside and outside the city limits, have recourse to the Commission to ensure just and reasonable rates. Absent our involvement in Sandy's ratemaking outside its boundaries, the customers would have no means to prevent Sandy from charging excessive rates. In its initial brief, Sandy states that the customers are not "entirely" disenfranchised, since they can attend Sandy City public meetings. (Sandy, Initial Brief, at 9).

We deem the assertion less than ingenuous. One cannot be partially disenfranchised; either one can vote or not. Clearly the customers located outside Sandy's boundaries do not have a right to vote in Sandy City. The opportunity to attend meetings is a poor substitute for the right to reward or punish via the ballot.

The fact that Sandy proposes to charge a differential rate immediately upon approval of the transaction is a strong indication of how the "outside" customers would fare under the proposal. Indeed, we can predict with considerable confidence, that in case of conflict between the interests of franchised and disenfranchised customers, the interests of the former will receive priority--no matter how vociferous the protests raised in meetings.

Limitation of Sandy's Statutory Powers

Unquestionably, as Sandy asserts, the Commission is a creature of statute with all the limitations on power and jurisdiction that implies. However, Sandy itself stands in much the same position; its powers are circumscribed also. See State v. Hutchinson, 624 P.2d 1116, 1121 (Utah 1980).¹

We proceed first on the premise that if Sandy takes over the utility service of White City Water Company, the city must also take on the utility's obligations. According to our Supreme Court in North Salt Lake v. St. Joseph Water & Irrigation Co, 223 P.2d 577

¹The Hutchinson Court actually broadened a municipality's authority by holding that the powers delegated by the Legislature should be liberally construed. The Court's rationale was that local democratic institutions should be strengthened, thus empowering citizens in regard to the local affairs most immediately affecting them. Were we to adopt the Applicant's position, we would, of course, actually disempower the extra-territorial customers, running counter to the Hutchinson rationale.

(Utah 1950), when North Salt Lake condemned a water company, it took upon itself the obligations imposed upon the water company, including the effect of an Order issued by this Commission before the condemnation.²

Other jurisdictions have extended the principle explicitly to include rate regulation. For example, in City of Orangeburg v. Moss, 204 S.E.2d 377 (S.C. 1974), the court held that the South Carolina PSC had jurisdiction to regulate a municipality operating electrical facilities outside its boundaries. The court held that the constitutional grant of Power to municipalities by the State to operate electrical facilities was not a limitation on the power of the State to regulate those activities through the PSC or otherwise.

It is the position of the plaintiff in the current action that this constitutional grant of power to the municipalities of the State to operate electrical facilities is a limitation on the power of the State of South Carolina to regulate those activities through the Public Service Commission or otherwise. The writer does not agree. He feels that the section in question was no more than a constitutional provision to permit certain municipal activities previously held ultra vires and that

²At the time of that hearing the water company was a utility subject to the rules and regulations of the Public Service Commission and its findings and orders were binding on the company, its successors, those claiming through or under it, and those later dealing with it.

* * *

If limitations were imposed on the water company in the hearing before the Public Service Commission, then condemnation of the property by the town would not unblock the controls. The . . . town takes the franchise and property subject to all burdens of furnishing water that were imposed at the time of transfer.

Id. at 223 P.2d 577. If a previous Commission Order is binding on a town clearly exercising a municipal function, a fortiori the town is subject to Commission regulation when exercising a non-municipal function.

it is not to be construed as limiting the powers of the State to regulate such activities. (emphasis added.)

Id. at 378. It is true that South Carolina had in place legislation specifically empowering their PSC to regulate extra-territorial service. The issue, nevertheless, was the constitutionality of that legislation, and we believe there is scant difference in principle between that case and this.

It is not unreasonable to suppose that one of the obligations Sandy may be required to assume is that of state regulation of rates charged to customers residing outside the city limits.

As derogating from the foregoing analysis, we have been cited Article XI, Section 5, of the Utah Constitution which provides a municipality the authority to furnish public utility services "local in extent and use"; Utah Code Ann. § 17A-3-914(3); the Municipal Building Authority Act; the 1988 amended definition of "person" under Utah Code Ann. § 4-2-2; and Utah Code Ann. § 10-7-4 which gives a municipality authority to condemn a water system. We do not perceive any of these provisions as denying us authority to regulate rates charged by Sandy for water service outside its boundaries.

Article XI, Section 5, gives Sandy the power to furnish public utility services, but not necessarily the power to set extra-territorial rates, particularly in light of the "local in extent and use" provision, which has no obvious meaning other than as a reference to the City's boundaries.

Any prohibition by the Municipal Building Authority Act is irrelevant in this proceeding. As noted in the Findings of Fact above, the sole role of the Authority is to be a conduit. Obviously, Sandy could issue and service its own bonds. We strongly

suspect the Authority is involved in the transaction only in a "belt and suspenders" attempt to insulate the real principals, Applicant and Sandy, from our jurisdiction. We believe we are entitled to assess the substance, not the mere form, of the transaction. So assessing the transaction, it is obvious the Authority has no real role or participation in the arrangement, and its presence should be disregarded.

It is true that in 1988 the Legislature deleted "governmental entity" from the definition of "person." Utah Code Ann. § 54-2-2 (1988). Our perusal of the Legislative history of this change, however, does not indicate that the Legislature intended to foreclose our regulation of a city's extra-territorial retail water customers. (See transcript of the Legislative history on this amendment, Exhibit "A" to Reply Brief, White City Water Users).

Finally, Utah Code Ann. § 10-7-4 does give a municipality power to condemn a water system, but it does not necessarily give a municipality power to set utility rates for extra-territorial retail customers. In a condemnation proceeding, a city is limited by strict laws to protect the new owners of those systems and the citizens served thereby. Indeed, as noted earlier, the St. Joseph Water case, supra, suggests that water systems acquired by condemnation carry with them all their regulatory baggage.

Sandy does not have specific delegated authority to serve water outside its boundaries without state regulation. Where there are gaps in the coverage of applicable statutes, as in the instant case, we believe that legislative intent should be interpreted so as to

protect constitutional rights of citizens, which in this case are the extra-territorial retail customers.

The Nature of the Arrangement

As noted above, Sandy has made great efforts to avoid our jurisdiction in the way it has set up the proposed transfer. The elaborate nature of the arrangement between White City, the Authority, and Sandy, renders the arrangement suspect.

Sandy's initial brief claims that neither White City, the Authority, nor Sandy are subject to our regulation. (Sandy, Initial Brief, at 6-14). As noted above, the role of the Authority is explicable only as an attempt to avoid our jurisdiction. Given the expressed intent to charge extra-territorial customers differential rates, Sandy's good faith, in structuring the transaction as it has, must be questioned.

Sandy is Not Performing a Municipal Function

Should Sandy provide water service to White City's extra-territorial customers, it would, to that extent, not be exercising a municipal function. Sandy would be acting as a traditional utility (exercising a business function) and therefore would be subject to regulation.

Sandy claims that Utah Constitution Art. VI, Section 28, prohibits us from interfering with Sandy's municipal functions. (Sandy, Initial Brief, at 7). Obviously, we agree that we cannot interfere with Sandy's municipal functions, but we maintain that Sandy's proposed service to the extra-territorial customers is not a municipal function.

Recent Utah cases support our position. In Utah Associated Municipal Power Systems v. Public Service Commission, 789 P.2d 298 (Utah 1990), in which Art. VI, Section 28, was at issue, the Court discussed the alleged "municipal function" performed by Utah Associated Municipal Power Systems ("UAMPS") in attempting to construct a utility line and to provide utility service. UAMPS resisted the jurisdiction of the Commission on constitutional grounds, arguing that they were political subdivisions exercising municipal functions, even though part of their service area was located outside, or would have a substantial impact outside, the boundaries of the political subdivisions.

The UAMPS Court applied a balancing test first enunciated in City of West Jordan v. Utah State Retirement Board, 767 P.2d, 530 (Utah 1988). Under that test, no particular activity conducted by a municipality is ipso facto a municipal function for purposes of Art. VI, Section 28. Instead, a functional analysis is to be conducted, considering such factors as

the relative abilities of the state and municipal governments to perform the function, the degree to which the performance of the function affects the interests of those beyond the boundaries of the municipality, and the extent to which the legislation under attack will intrude upon the ability of the people within the municipality to control through their elected officials the substantive policies that affect them uniquely.³

³Id. at 534. The Court went on to say the balancing test would best serve the Constitutional purpose without "erecting mechanical conceptual categories that, without serving any substantial interest, may hobble the effective government which the state constitution as a whole was designed to permit." Ibid. In the instant case, of course, the only "substantial interest" our assuming jurisdiction would affect would be that of Sandy in "milking" the extra-territorial customers to the maximum extent possible.

Applying that test, the UAMPS Court had little difficulty in finding that the construction of the utility transmission line for the purpose of generating, buying and selling electricity across the state was outside the ambit of Art. VI, Section 28. Utah Associated Municipal Power Systems v. Public Service Commission, supra, 789 P. 2d at 302.

The present proposal is closely analogous to the UAMPS case. In particular, those residing outside Sandy stand to be severely impacted, while our assuming jurisdiction in regard to them would have minimal impact on Sandy's legitimate interests. By purposefully acquiring an existing public utility, and thereby taking over the obligation to serve 58% of the customers of an existing certificated public utility, Sandy is stepping outside the exercise of its municipal function and subjecting itself to state regulation of rates for those extra-territorial customers surplus.

Sandy attempts to bolster its position by referring to Utah Code Ann. § 10-8-14(1) concerning sale of surplus water by a municipality. A careful reading of this statute, however, weighs against Sandy's proposal and in favor of the extra-territorial customers.

According to the statute, a city "may sell and deliver the surplus product or service capacity of any such works, not required by the city or its inhabitants, to others beyond the limits of the city. . . ." In attempting to show that it would be serving "surplus" water in accordance with this statute, Sandy states that it "has more than ample capacity to serve the non-Sandy White City customers and will therefore in fact be selling 'surplus' water to

them upon acquisition of the White City system." (Sandy, Initial Brief, at 8). This interpretation is contrary to Utah case law on the subject and contrary to a common sense definition of "surplus."

In support of Sandy's interpretation of surplus, it cites County Water System v. Salt Lake City, 278 P 2d 285 (Utah 1954) and Salt Lake County v. Salt Lake City, 570 P 2d 119 (Utah 1977)

In County Water System, supra, the Utah Supreme Court stated that the authority of municipalities to sell utility services beyond its corporate boundaries was limited to the disposal of surplus water. Id. at 289.

In fact, after first delineating a municipality's powers of surplus water disposal in sweeping terms, Justice Crockett, writing for the Court, appears to have had immediate second thoughts. In his next paragraph, he hedged the municipality's authority:

But such permissive sale of surplus water . . . is clearly not calculated to permit the city to purchase water solely for resale, nor to construct, own or manage facilities and equipment for the distribution of water outside of its city limits as a general business.

Id. at 290.

The Court also made clear its concept of surplus water--a temporary glut occasioned by provision for prudent future expansion. This would, according to the court, foreclose a municipality's commitment to purchasers of surplus water for any long-term supply. Ibid. Under this concept, if Sandy is indeed to sell surplus water, the extra-territorial customers stand to be left literally high and dry in the near to medium term.

In this case, however, Sandy will not be disposing of surplus water it now possesses--it will be surplus only by virtue of Sandy's

calculated acquisition of a class of captive, disenfranchised customers--precisely the situation Justice Crockett inveighed against.

Sandy cites Salt Lake County, supra, for the proposition that "[A municipality's] business in furnishing water to its residents and activities reasonably incidental thereto is not subject to regulation by the Public Service Commission." Id. at 570 P.2d 121-122. Sandy, however, fails to quote the complete paragraph. The next, and more relevant sentence is: "But just however great an extent a city may engage in rendering a utility service outside its city limits without being subject to some public regulation is not so clearly determined." (emphasis added.) The second sentence is not mere dictum. The case involved the propriety of a summary judgment rendered by the district court, and the Supreme Court remanded for determination of precisely the issue of a municipality's amenability to regulation of extra-territorial service. We do not know the subsequent course of the litigation.

The Salt Lake County case evidences to us the Court's concern with precisely the potential for abuse presented by the instant proposal. We think it would be difficult to find a clearer instance of a city's stepping over the boundary of legitimate surplus water sales under the statute.

Our conclusion is strengthened by C.P. National Corporation v. Public Service Commission, 638 P.2d 519 (Utah 1981), According to the Court,

" . . . We believe that [Utah Code Ann. § 10-8-14] imposes a limitation on a city operating outside its borders. It negates the proposition that a city could purposely engage in the distribution of power to localities or persons

outside its limits except to dispose of surplus." [Citing County Water System, supra]. In the instant case, the municipalities intend to continue to serve a large area outside any of their limits. . . .

Section 10-8-14 does not contemplate nor authorize a city to so operate its electric light and power works. There is good justification for this limitation since municipally owned utilities are not subject to the jurisdiction and supervision of the Public Service Commission but are controlled solely by the administration of the city or town wherein they are located . . . customers who are non-residents of the municipalities would be left at the mercy of officials over whom they have no control at the ballot box and they could not turn to the Public Service Commission for relief. (emphasis added.) (citations omitted.)

Id. at 524.

We can only add that the situation is not one whit different when a municipality purposefully acquires an existing, regulated water system. While there may be no explicit statutory authority for us to assume jurisdiction, the obvious remedy for the abuse of extra-territorial customers is for us to continue to regulate their rates; otherwise, to meet the Court's concern, the instant proposal would have to be found ultra vires.⁴

If there is a common thread running through the history of economic regulation in the United States, it is the abhorrence of unchecked monopoly. We see no reason to suppose that a monopoly held by a municipality over powerless extra-territorial utility customers would be any more benevolent than a monopoly held privately. Sandy's expressed intent to impose higher rates immediately upon the extra-

⁴That is the course the Court took in the CP National case. The main issue was the constitutionality of the municipalities' acquiring an existing electrical utility by condemnation. The Court assumed without discussion that we would have no jurisdiction over rates charged the extra-territorial customers. One wonders if the same result would have been reached had the Court considered the jurisdictional issue and applied the City of West Jordan test.

territorial customers is ample demonstration of the reason we are unwilling to cede jurisdiction in these circumstances.

We conclude that in the event the proposal presented by Applicant were to be approved by the Commission, the Commission would retain jurisdiction to regulate rates charged the extra-territorial retail customers, at least to the extent of nullifying invidious discrimination. Accordingly, Applicant's prayer for a declaratory judgment to the contrary should be denied.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

- >> On the Commission's own motion, the prayer of WHITE CITY WATER COMPANY, for a declaration that, should the Commission approve a transfer of the stock of said company to the Sandy City Building Board, pursuant to the contract delineated in said Company's application, the Commission would have no jurisdiction thereafter to set rates for customers residing outside the boundaries of Sandy City, be, and the same hereby is, severed from the balance of the proceeding and given the Docket Number 91-018-02;
- >> Said prayer is denied;
- >> Any party aggrieved by this Order may, within 30 days of the issuance hereof, petition for review; failure so to do will forfeit the right to such review, as well as the right to appeal to the Utah Supreme Court.

DATED at Salt Lake City, Utah, this 20th day of February,
1992.

/s/ Brian T. Stewart, Chairman

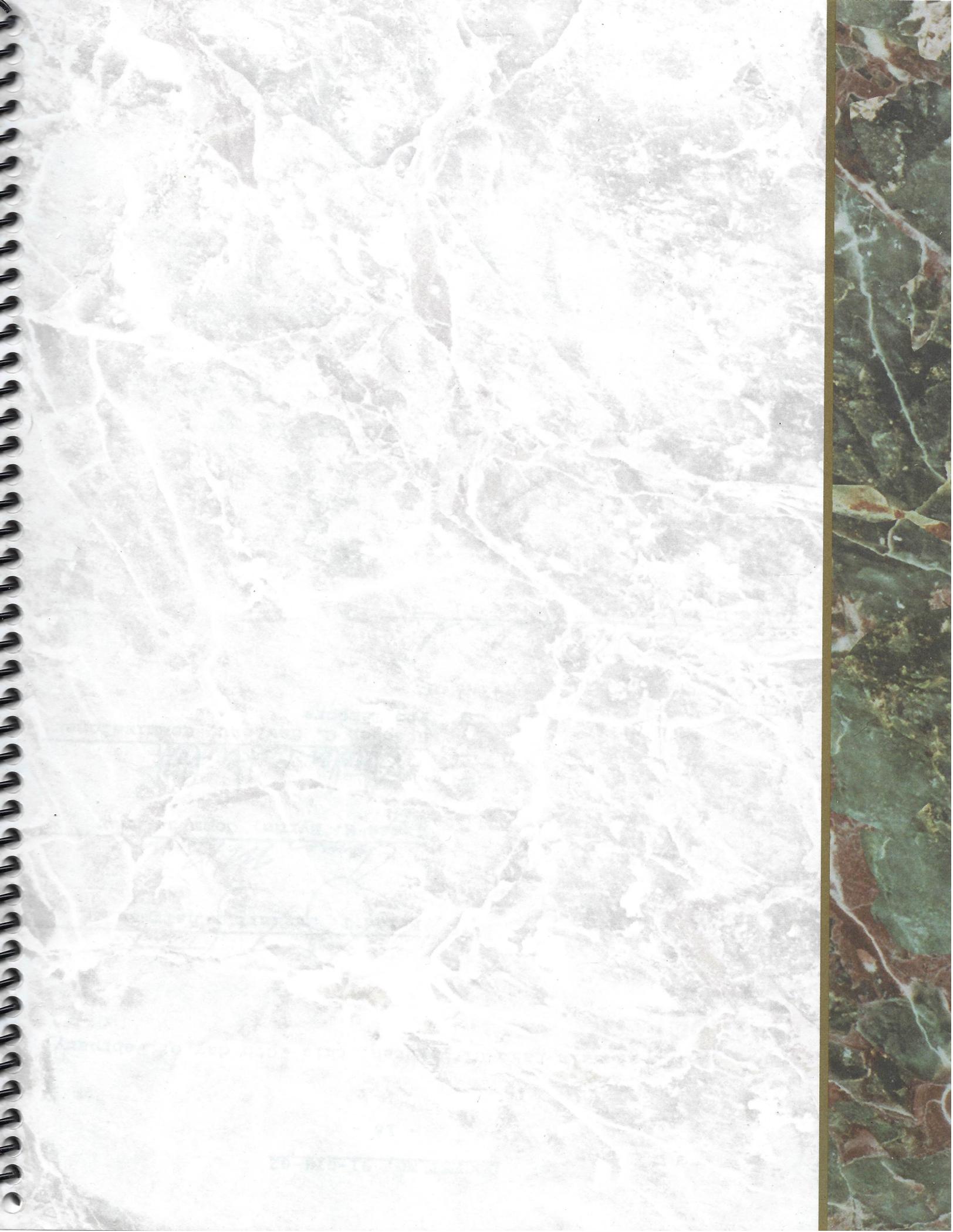
(SEAL)

/s/ James M. Byrne, Commissioner

/s/ Stephen C. Hewlett, Commissioner
Pro Tempore

ATTEST:

/s/ Julie Orchard
Commission Secretary



White City Water Improvement District

In the early 1950s, a developer by the name of Kenneth White told his peers that he was going out to the South East part of the Salt Lake Valley to build a new community. He was told it would never work because there was not water there. Mr. White responded that he would just have to go and find then. In 1955, Mr. White, together with his partner John Papanikolas, organized the White City Water Company (“Company”) and drilled a deep well in search of water. What they found was a massive aquifer with some of the best tasting water in the nation.

For the next 35 years, the Company provided water to the White City community. When the original founders of the Company died, the White and Papanikolas families decided they wanted to sell the Company. At first, Sandy City sought to purchase the Company, but problems developed. The White City Water Users then organized and petitioned Salt Lake County to create the White City Water Improvement District (“WCWID”), an independent political subdivision of the State, to purchase the Company. By doing so, the Water Users ensured that the Company, including its valuable water rights, would stay under the control of the community. In 1994, the Water Users voted in favor of issuing GO Bonds to purchase the Company. The bonds were funded in February 1995, and WCWID took over operations of the Company’s water system.

WCWID is governed by a five-member elected board of trustees and provides water service to the White City community and portions of Sandy City. As in the past, WCWID’s water is from wells drilled deep into the aquifer. Because of the pristine nature of the water, WCWID does not treat the water with any chemicals and does not place any additives, such as fluoride, into the water. Recently WCWID’s water won second place as the best tasting water in Utah. WCWID’s offices are located at 999 E. Galena Drive, Sandy, Utah 84094 and is open from 8:00 am to 5:00 p.m Monday through Friday, except holidays. During business hours, WCWID personnel may be contacted at 801-571-3991. After hours, in cases of emergency or water breaks, an on-call WCWID employee may be reached at 801-571-3992. More about WCWID, including its rules and regulations, may be found at its website: <http://www.wcwid.org>