



October 10, 2014

Ms. Laynee

Thank you for inviting me to attend the upcoming Mountain Accord Land Preservation Meeting to be held next Monday at the County offices. I appreciate the effort you have made to get the issue of private land conservation onto the Mountain Accord agenda. I have some questions about this effort. I believe that these questions are critical to the success of conservation efforts in the canyons.

1 – Are all the parties involved in Mountain Accord serious about preservation issues? This may mean putting aside pending litigation in order to try to settle disputes amicably in a spirit of accord rather than conflict.

2 – Are all the parties involved willing to consider alternative forms of compensation such as land trades, clustering, as well as direct land purchases? Recent decisions on the part of some of the parties calls into question whether they are willing to consider these types of arrangements.

3 – Are all the parties willing to insist on perpetual easements or other forms of perpetual conservation protections? There seems to be an unwillingness by some parties to place easements on lands.

I ask these questions because my recent experience with some of the parties has been very different from these goals.

My History: As you know, I have some experience at working collaboratively with canyon landowners to promote some goals that I think are absolutely essential if we are going to successfully conserve the canyons. These goals are:

- **Eliminating Conflict:** Whatever conservation efforts are proposed need to be aimed at finding ways to defuse conflicts between landowners, the public, and government agencies. I have successfully negotiated several deals with this goal in mind. One example is the Cardiff Canyon Owners Association (CCOA) Special Use Permit. Cardiff Canyon is a highly used backcountry area in Big Cottonwood. Over the years, there was a tremendous amount of conflict between the private landowners, public users and the Forest Service as backcountry users had to trespass on private land to access public lands beyond. Some of the Cardiff landowners (Evan Johnson, Cyle Buxton and Wayne Crawford) communicated with the Forest Service (Cathy Kahlow, Steve Scheid) along with Salt Lake County (Mayor Corroon, Julie Peck Dabling), Wasatch Hiking Club (Will McCarville) and the State of Utah to find a better way. I was asked to mediate a solution that would reduce or eliminate this conflict while still respecting the rights of the land owners. The CCOA Special Use permit was put in place, which provides enhanced access for the landowners to their property and also allows the public to access public land by crossing private lands via existing roads and trails. The permit has been very successful. The number of complaints to the Forest Service have dropped tremendously and the public has enjoyed peaceful access that was



not previously available. All the parties involved in this permit recognized that it would reduce conflict and provide improved access both for the private landowners, and for the backcountry users. One party protested the permit. Unfortunately that party is Salt Lake City Public Utilities, one of the principles in Mountain Accord.

- **Eliminating Unnecessary Litigation:** One of the main causes of conflict in the canyon is continuing litigation which draws landowners into court, and soaks up resources that could be more profitably used to acquire land in the canyons. Two examples illustrate this problem:
 - **Salt Lake City vs Big Ditch.** The Big Ditch lawsuit involved shareholders of the Big Ditch Irrigation Company, some of which are landowners in the canyons. Salt Lake City obviously disagreed with the perceived rights of the Big Ditch shareholders and they believed litigation was the best tactic. I was authorized on numerous occasions by the irrigation company (Evan Johnson and others) to meet with Salt Lake City to resolve the dispute. The Big Ditch shareholders were very willing to settle the dispute although they believed they would prevail in the courts. Salt Lake City refused to settle the case and eventually lost at in the Utah Supreme Court 5-0. Although Salt Lake City lost 5-0, their legal counsel drafted a letter and presented it to Salt Lake City Council telling them that a 5-0 loss at the State Supreme Court was actually good for Salt Lake City. This needless litigation cost hundreds of thousands of dollars between the parties in attorney fees and continued to inflame hostile relationships, making an amicable settlement of other disputes more difficult.
 - **Great Western Disputed 69 acres.** The Great Western Mining Company understood that their holdings included 69 acres in the Lake Mary, Lake Martha and Lake Catherine area. Great Western paid taxes on this land for years and believed it was included in the land they purchased. Years later, Salt Lake City disagreed and a lawsuit commenced. After years of litigation, the case was headed to the State Supreme Court. The Great Western owners authorized me to meet with Salt Lake City to resolve the case before they filed an appeal. The first meeting with Salt Lake Public Utilities did not go well. I was threatened personally with litigation, and some of those present acted in a very unprofessional manner. After that meeting and much communication with the Great Western owners, we made the offer to Salt Lake City to not contest Salt Lake City's asserted ownership of the surface rights and in addition, GIVE Salt Lake City the 69 acres of undisputed sub-surface rights. Salt Lake City refused to accept the terms of the agreement and told opposing parties that they were



going to court right up until just a few hours before the deadline to settle. I was surprised by this because Salt Lake City did not seem to know how to accept peaceful resolution.

- **Promote development in the valley, and trade land in the canyon for developable lands in the valley:** If we are going to acquire land in the canyons, we have to respect the property rights of landowners. One of the tools available is land trades. This is one of the specific tools you mentioned on your agenda. Unfortunately, recent experience shows that some of the participants in Mountain Accord are unwilling to utilize this tool even when all the work is done for them, and even if not using this tool results in development in the canyon. The Patsy Marley Property is case in point:
 - **Patsy Marley.** The Patsy Marley property in Alta was litigated for several years and huge amounts of money were spent by both sides. At risk was the disturbance of the subject land which is located in the watershed. Well in advance of the trial date, we were asked by the Patsy Marley owners to propose to Salt Lake City some viable land trades out of the canyon. The intent by the landowners and estate was to prevent any development on Patsy Marley and to place a conservation easement over it. We identified some lands in the valley that are owned by the City and the Forest Service which we believe would have made the Estate whole. Our engineers and land planners provided concept plans consistent with the surrounding development and we presented them for resolution and trade. Salt Lake City refused the offer, and instead agreed to a development agreement over this sensitive property. The development agreement guarantees development of Patsy Marley, the disturbance of the watershed and no conservation easement.
 - **Limit the physical disruption of the watershed:** The stated purpose for limiting development in the Canyons is to protect the sensitive watershed, a goal we all want. Whatever decisions are made should keep this as the highest priority. But, while some on the Mountain Accord committee have been the first to criticize landowners when their legitimate efforts to improve their property have resulted in minor disturbance to the watershed, these same parties have been willing to force major disturbances such as the Patsy Marley Development Agreement which will result in a minimum disturbance of 9860 cubic yards of dirt being removed for the footing and foundation excavation for 10 new cabins. That is 14,800 tons, or 620 dump truck and pup loads of dirt.
 - **Facilitate Landowner Donation:** Over the years, I have worked with many landowners who were willing to donate all or part of their canyon lands to Salt



Lake City or other public ownership. If we are truly serious about conserving the canyons, we must be able to negotiate in good faith with someone who is willing to give us the land for free. Unfortunately, some of the participants in the Mountain Accord Committee have been unwilling to even talk to landowners about a donation. I do not understand why anyone who is serious about land conservation would refuse to even discuss a donation with a landowner or his agent, yet that is what has occurred. A few years ago, I was authorized by Evan Johnson to begin the process to donate his lands in Cardiff Canyon. I believe there were good faith intentions on the part of Mr. Johnson. In fact, I waited some time before I put the donation offer in writing, to make sure Mr. Johnson was serious. After waiting for some time, He authorized me to put his intent to donate in writing. The only response from Salt Lake City was that Mr. Johnson wanted too much in return for the donation. They made this declaration based on assumption. I believe that if Salt Lake City would have engaged in a civil and proactive manner, Evans 300 plus acres in Cardiff would now be owned by Salt Lake City and Evan would not own land in the canyons.

- **Strike while the Iron is Hot:** If we are truly serious about conserving the Canyons, we need to act in a consistent, thoughtful and transparent manner. I believe that the actions of some of the participants in Mountain Accord have resulted in land speculation and that they specifically chose not to buy land when the deal was presented to them at a reasonable price. A couple of examples illustrate this:
 - **1) Great Western Mining Company (Kevin Tolton and partners).** Salt Lake City has repeatedly argued that many of the private lands in the canyon have no value. Therefore, they have been unwilling to acquire land even though they are supposed to have money—extracted from ratepayer—specifically for that purpose. To prove their point, representatives of Salt Lake City state that they had the opportunity to purchase Great Western for \$175,000.00 to \$250,000.00, but that they passed on it. Hindsight is always 20/20. However, the value of that property has escalated dramatically. Great Western was recently appraised by Utah Open Lands, at the request of Salt Lake City, Salt Lake County, and several other interested parties, for \$1,700,000.00. The 1.7 million does not include the approximately 1,500 acres of subsurface rights. I am told a private party just put Great Western under contract for \$3,000,000.00. It is unfortunate that this property was not acquired earlier by Salt Lake Public Utilities when it was available for much less.



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- **2) 300 Acres in Cardiff Canyon:** It is my understanding that Evan Johnson would not be in the canyons at all if Salt Lake City had purchased those lands from Marv Melville when they came up for sale. The asking price was a little over \$3,000.00 per acre. Many of these lands are in the Cardiff Bowl and all of them are in the watershed.
- **3) Land Adjacent to Donut Falls:** Aaron Johnson is one of the most recent arrivals in Big Cottonwood/Cardiff. Aarons land is near Donut Falls and was purchased a couple years ago for approximately \$1,500.00 per acre. I was told prior to the transaction that the land had been offered to Salt Lake City, but they declined to purchase.

The More things change the more they stay the same: I do not want to belabor the point, I only want to point out that if we are serious about conservation, then I believe we all need to promote these goals. They are reasonable, and, as I have demonstrated, when applied they can help us to accomplish the conservation we all profess to want. I would like to believe that these problems I have recounted are all in the past, and that the Mountain Accord process has convinced all those participating to act reasonably and responsibly to facilitate conservation in the Canyons. Unfortunately I know differently. Even while the Mountain Accord conservation committee was up and working, we have seen some of the participants acting in exactly the same way as I described earlier. The Colonial Mining Company Lawsuit is illustrative. Wayne Crawford, who is the President of the Cardiff Canyon Owners Association (CCOA) who has worked tirelessly to enhance and ensure public access across his lands and others in Cardiff Canyon, paid the back taxes on a piece of property that was owned by a defunct mining company known as Colonia Mining. When Mr. Crawford and his partners tried to file a quiet title action on the property recently, one of the participants in the Mountain Accord process filed a lawsuit naming Mr. Crawford, his wife and his 80 year old mother. The financial threat to them would result in the loss of their home and possessions. All of this was done without even talking to Mr. Crawford to see if an amicable settlement could be reached. When I found out about the lawsuit, I immediately called Wayne. Wayne Crawford is a tough fellow, but he was obviously upset that the suit included his wife and mother. I asked Wayne if anyone from Salt Lake City had contacted him. He said no. Toward the end of our conversation, Wayne authorized me to contact Salt Lake City on his behalf and try to resolve this lawsuit. I called Salt Lake City and told them that I believed we could settle this quickly if the City would negotiate. The answer was that we cannot talk because this is pending litigation. I pointed out that we had communicated about



pending litigation in the past. A couple days later, the city emailed to say that they will not communicate further on this matter.

So, we are back to those three questions I asked at the beginning. If we cannot agree that we will work together, that we will talk rather than sue, that we will consider every possible tool to facilitate conservation, and that we will insist on perpetual land use restrictions, we cannot succeed. As stated, our goals should be to:

- Reduce or eliminate conflict
- Eliminate needless litigation and negotiate with willing landowners
- Use all available tools to conserve properties
- Minimize the physical disruption of the watershed
- Strike while the iron is hot

If we agree on these goals, then we can move forward together, if not, we will fail. I have been a willing participant in the process. I have been willing to help represent landowners who feel their motives and intentions have been distorted and misrepresented. Working with the landowners, we have consistently proposed and facilitated reasonable solutions that result in a significant win for conservation in the canyons. I want to see open space preserved for generations to come. I am just a simple citizen, a very minor participant, who has been willing to engage. I don't get paid by any group. I have dedicated hundreds and hundreds of hours to the canyon issues as well as tens of thousands of dollars out of my own pocket. I have made these investments because I care about the canyons, and I respect the property rights of all Utahns.

I have yet to decide if I will be attending the upcoming public hearing on private lands. In the meantime, please take my sincere critique as it is intended and that is; the entire Mountain Accord private land conservation process is in danger of being undermined by some of the participants who are unable to change their approach to allow for a more kind, cooperative and transparent process. I hope that change is possible, but I am not convinced that it is, thus my hesitation.

Sincerely,

Dave Robinson