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RANDALL A. COVINGTON  
UTAH COUNTY RECORDER  
2000 Feb 18 3:32 PM FEE 0.00 BY SS  
RECORDED FOR STATE OF UTAH

Attorneys for Plaintiff State of Utah

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,  
vs.  
UNITED STATES OF AMERICA;  
DEPARTMENT OF THE INTERIOR;  
BUREAU OF RECLAMATION; ELUID  
MARTINEZ, in his official capacity as  
Commissioner, BUREAU OF LAND  
MANAGEMENT; SALLY WISELY, in her  
official capacity as Utah State Director, BLM;  
RICHARD W. DAVIS; JOHN DOE and  
MARY DOE; *et al.*,

Defendants.

**STIPULATION FOR SETTLEMENT  
UTAH LAKE BOUNDARY BETWEEN  
THE STATE OF UTAH AND  
TAMARACK INC., A UTAH  
CORPORATION**

Civil No. 2:97CV 0927K

Magistrate Judge Alba

Plaintiff State of Utah (hereafter "STATE"), by and through its counsel Stephen G. Boyden, and Defendant Tamarack Inc., a Utah corporation, (hereafter "TAMARACK"), do hereby stipulate to the entry of judgment in the above-entitled matter as contained in the First Cause of Action of Plaintiff's First Amended Complaint, quieting title to the sovereign lands of

the STATE and the lands owned by TAMARACK, 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 of Utah under the Equal Footing Doctrine upon admission of Utah to the United States on January 4, 1896.
2. The State of Utah'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. TAMARACK 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 TAMARACK claims ownership of an interest in the lands adjacent and upward of said sovereign lands. The STATE's claim of ownership includes lands lying below the surveyed meander line.
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 TAMARACK acknowledge that the location of the ordinary high watermark as of the date of statehood is not now known to the STATE or to TAMARACK and is not now capable of determination or survey by reference to a known monument.

6. The STATE and TAMARACK acknowledge that the location of the ordinary high watermark 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 TAMARACK acknowledge that the location of the ordinary high watermark, 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. TAMARACK claims ownership of the lands adjoining Utah Lake identified as follows:

| <u>OWNER</u>                      | <u>PARCEL TAX ID NUMBERS</u>  |
|-----------------------------------|---|
| Tamarack Inc., a Utah corporation | 16-003-0006-133   |
| <u>INTEREST</u>                   | <u>SOURCE / DATE</u>  |
| Fee Simple                        | Various Deeds as Recorded in the Records of the Utah County Recorder's Office |

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

10. The location of the agreed boundary is depicted on maps contained in 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. TAMARACK 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 TAMARACK all of its title, ownership, claims, rights, chose in action, rights-of-way, easements, and all other rights appurtenant or separate, including rights acquired by the STATE from the Federal Government, to the above-numbered parcels of real property located above the agreed-upon boundary line as described in Exhibit A and depicted in Exhibit B hereto.

3. TAMARACK 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 located below the proposed boundary line as described in Exhibit A and depicted in Exhibit B hereto.

4. The STATE agrees to lease or permit to TAMARACK lands which may be exposed by lower lake levels which are located adjacent to TAMARACK's upland property for agricultural use in conjunction with historical upland uses. Leases/permits will be subject to public trust values. TAMARACK will submit lease or permit applications to the STATE by October 1st annually for use the following season. TAMARACK may elect to withdraw from said lease or permit by 1 April of the following year. Leases and permits will be for a term of one year unless otherwise specified. Any fences associated with leases or permits may only extend to the water's edge or reasonably beyond to restrain grazing livestock. Leases and permits will only be issued for land immediately adjacent to upland parcels. The lease/permit fee will be determined by the STATE in line with leases for similar land based upon acreage. The lease/permit fee will be determined by the STATE based upon acreage. Crops must be harvested from sovereign lands

prior to October 1st annually. The sovereign lands under lease/permit shall be open to the public for waterfowl hunting, upland game hunting, fishing and traditional public uses. TAMARACK will fence-in livestock on lands under lease/permit. Livestock will not enter the leased/permited sovereign land until a specified date, based upon prudent land management standards, and must be removed before the annual waterfowl season. No supplemental feeding will be allowed on sovereign land. Agricultural practices which adversely affect water quality will not be allowed and may be cause for termination of the lease/permit. State, federal and local laws, ordinances and regulations will be adhered to in association with all leases/permits for sovereign lands. Sovereign lands adjacent to upland TAMARACK property will not be leased or permitted to a third party for agricultural or grazing purposes without the consent of TAMARACK.

5. The lands released and compromised by TAMARACK 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 trust.

6. This Agreement is entered into in settlement of litigation to determine the location of the boundary between the sovereign lands and the adjoining lands. These parties reaffirm the facts as set forth in the recitals to this Stipulation. 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.

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 watermark 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 disputed parcels pertaining to the boundary of Utah Lake or otherwise.

8. This Stipulation shall be binding upon the heirs 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 TAMARACK.

**STATE OF UTAH**

Division of Forestry, Fire & State Lands

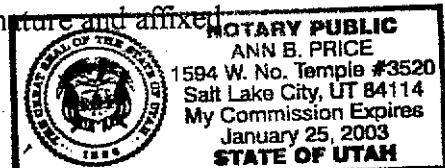
By: Arthur W. DuFault  
Arthur W. DuFault, Director

STATE OF UTAH )  
 )  
 )ss.

COUNTY OF SALT LAKE )

On this 17 day of February, <sup>2000</sup> 1999, personally appeared before me ARTHUR W. DUFault, 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 February, <sup>2000</sup> 1999.



My Commission Expires:

1-25-03

NOTARY PUBLIC, in and for the State of Utah,

County of Salt Lake

## TAMARACK ENTERPRISES CO. TRUST

By: Frank Branch  
Frank Branch, President

STATE OF UTAH )  
)  
COUNTY OF Davis )  
)ss.

On this 15<sup>th</sup> day of Feb., 2000 personally appeared before me

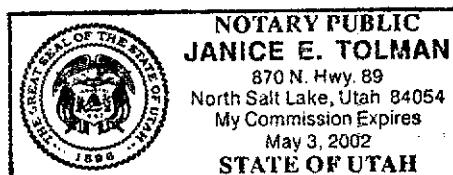
Frank Branch, known to me to be the person whose name is subscribed to the foregoing instrument and who has acknowledged to me that he is the President and duly authorized agent of Tamarack Inc., a Utah corporation, with authority to legally bind Tamarack Inc. to the terms of this stipulation, and that he executed the same on behalf of said corporation.

IN WITNESS WHEREOF, I have hereunto set my official signature and affixed my notarial seal this 15<sup>th</sup> day of Feb., 2000.

My Commission Expires:

Janice E. Tolman  
NOTARY PUBLIC, in and for the State of Utah,

County of Davis.



## TAMARACK PARCEL---MEANDER LINE—SECS. 19,20 T6S-R1E

Commencing at the point of intersection of the calculated Utah Lake Meander Line with the easterly extension of the south line of Lot 1 of Section 19, Township 6 South, Range 1 East, SLB&M, said south line also known as the southerly boundary of the Northeast Quarter of the Northeast Quarter of said Section 19, said point of intersection being more specifically described as being located South, 1314.25 feet and East, 2991.08 feet from the North Quarter Corner of Section 19, of the aforementioned township and range; thence the following along the calculated Meander Line:

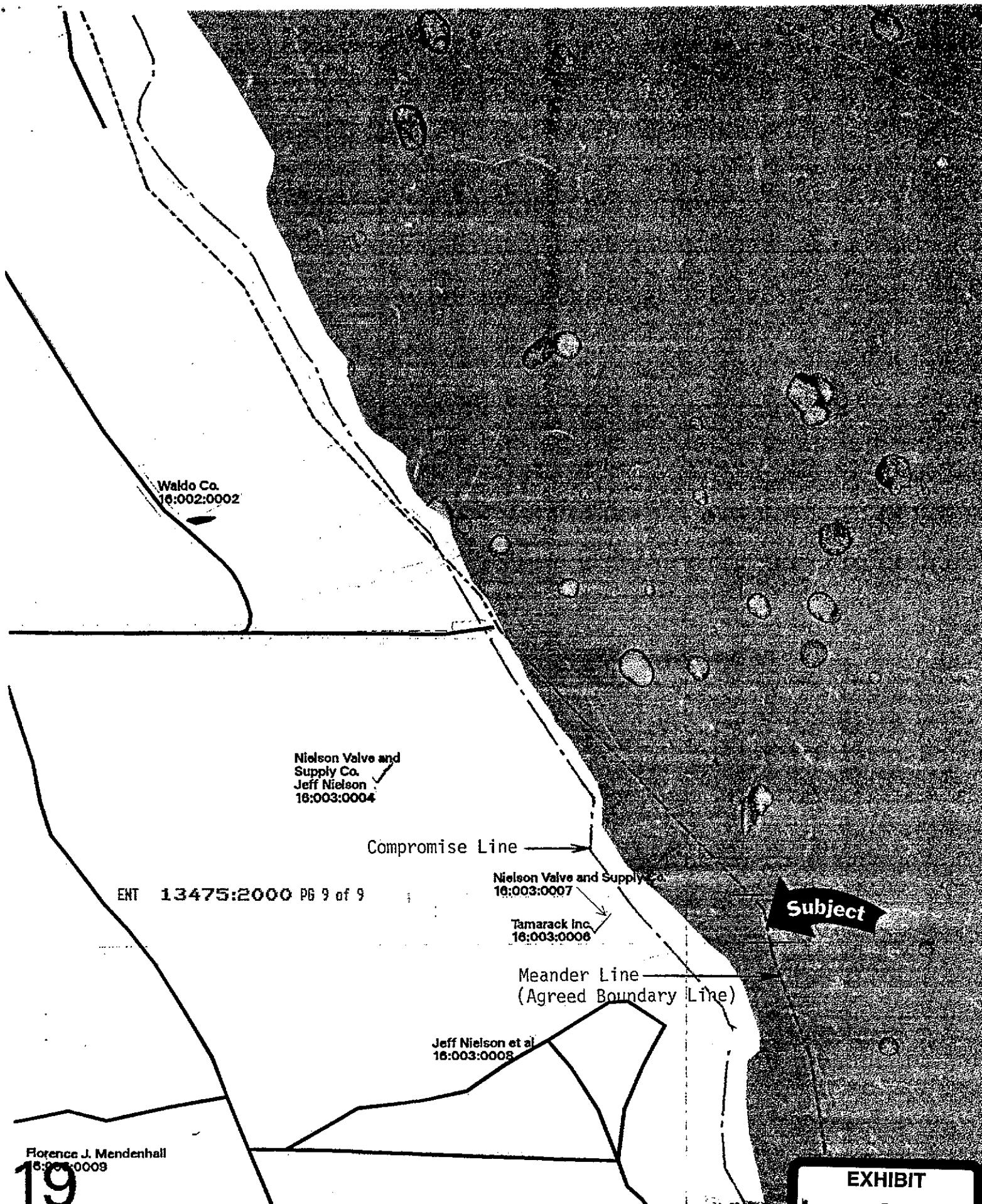
N 10-34-34 W, 172.78 feet;

N 43-31-09 W, 41.71 feet to the intersection with the easterly extension of the northerly boundary of the subject parcel, said subject parcel being described and recorded in the Utah County Recorder's Office under entry #10944-84.

Basis of bearing = Utah State Plane Coordinates—Nad '83 (HARN)  
Adjustment. Distances converted to feet.

EXHIBIT

A



19

EXHIBIT

B