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IN THE FOURTH JUDICIAL DISTRICT COURT
IN AND FOR WASATCH COUNTY, STATE OF UTAH

UTAH STREAM ACCESS COALITION, a
Utah non-profit corporation,

plaintiff,

vs.

ATC REALTY SIXTEEN, INC., a California
corporation; *et al.*,

Defendants.

**UTAH STREAM ACCESS COALITION'S
MOTION FOR SUMMARY JUDGMENT**

ORAL ARGUMENT REQUESTED

Civil No. 100500558

Hon. Derek Pullan

Plaintiff Utah Stream Access Coalition, by and through its counsel of record and pursuant to Rules 7 and 56, Utah Rules of Civil Procedure, hereby moves the Court for summary judgment declaring that:

1. the waters flowing in or impounded on Utah's rivers, streams and other natural water courses, including such water courses if and to the extent realigned or channelized, are and have always been owned by the public and, as such, are 'public waters';

2. the public has an easement to use these public waters that includes a right to engage in all recreational activities that utilize the water;

3. this easement includes the right to touch the privately owned beds of public waters in ways incidental to such uses, including the right to touch the privately owned beds of public waters in ways incidental to all such recreational activities;

4. the aforementioned rights are protected by the Constitution of Utah, to wit: Article I, sect. 25; Article XVII, sect. 1; and Article XX, sect. 1;

5. the aforementioned rights are protected by the Public Trust Doctrine;

6. Utah Code Ann. §§ 73-1-1(2), 73-1-1(3), 73-29-201(3) and 73-29-202 abrogate the public's right to use its public waters for all recreational activities that use the water and to touch the privately-owned beds of such waters in ways incidental to all such recreational activities and, in so doing, violate the aforementioned constitutional provisions and the Public Trust Doctrine, as well as Article I, sect. 23 and Article V, sect. 1 of the Constitution of Utah; and

7. Utah Code Ann. §§ 73-1-1(2), 73-1-1(3), 73-29-201(3) and 73-29-202 are, accordingly, void and unenforceable.

The Coalition further requests a permanent injunction prohibiting the defendants and its/their successors-in-interest and their agents from engaging in any conduct that interferes with the right of Coalition members or the public to lawfully access, use and enjoy the public waters of the Provo River for lawful recreational purposes and to reasonably touch and use the bed of the River when doing so.

Finally, the Coalition requests that the Court's disposition of this motion be certified as a final judgment as to all parties to and all issues in this matter pursuant to Rule 54(b), Utah Rules of Civil Procedure.

DATED this _____ day of September, 2011.

RICHARDS BRANDT MILLER NELSON

Craig C. Coburn
Kallie A. Smith
Attorneys for Utah Stream Access Coalition

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 2nd day of September, 2011, I served the foregoing *Utah Stream Access Coalition's Motion for Summary Judgment* on all parties to this action as indicated below:

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