

ATTACHMENT 1

*A declaration of the Court that it owns the gas line at issue in the locations covered under the now-expired 1956 License Agreement.

*A declaration that its position as the holder of the prior and dominant property estate in the SLA corridor is superior to that of Questar Gas Company's ("Questar") interest as a permittee of Salt Lake County, the servient land owner, and therefore, Questar cannot intrude on Metropolitan Water's real property rights.

*A declaration that any future Questar occupancy must be supported by such condition necessary to protect the SLA and the public which, under Utah statute, Metropolitan Water is free to apply.

*A declaration that, if Questar is found to still be the owner of the gas line, without the required conditioned approval for its occupancy in the SLA corridor, then Metropolitan Water's causes of action for trespass, interference with waterway, and public nuisance prevail as a matter of law.

In opposition, Questar argues Metropolitan Water's declaratory judgment action does not present a justiciable controversy because it is not ripe and is speculative in seeking an advisory ruling as to what conflict may exist, if any, in the future Metropolitan Water when it repairs or replaces the SLA. Moreover, contends Questar, at the present time there is no existing conflict between Questar and the SLA and there has never been a conflict during the sixty years both entities have been in the same easement, and, regardless, whenever Metropolitan Water wants to repair or replace the SLA, Questar can and will accommodate the work. Questar asserts, as a practical matter, Metropolitan Water could not repair or replace the SLA using the techniques discussed in its briefing, as such would cause tremendous interference and conflict with the private landowners.

Additionally, asserts Questar, Salt Lake County is the fee owner of Westview Drive and the other public roads at issue in this case and as a franchisee of Salt Lake County, Questar stands in the shoes of Salt Lake County and has an independent right to occupy Westview Drive

to provide a necessary public use. It is Questar's position that a fee owner and the easement holder have duties not to interfere unreasonably with each other and as a result, Metropolitan Water has no right to impose additional conditions on Questar.

Further, asserts Questar, as the holder of a non-exclusive easement which gives it no authority to exclude third parties (such as Questar) from the property, Metropolitan Water's claims for trespass, public nuisance, and interference with a waterway must fail.

Finally, Questar contends that Metropolitan Water's claim of ownership of Questar's pipelines ignores Questar's independent right to occupy Westview Drive, as well as the limiting language in Metropolitan Water's receipt of ownership through a Quitclaim Deed, which expressly subjected Metropolitan Water's ownership to any existing rights-of-use, such as Questar's franchise rights.

Questar requests a Rule 56(f) Continuance to conduct discovery to establish that there would be no conflict if Metropolitan Water repairs or replaces the SLA.

The Court determines as follows: turning initially to the issue of ripeness, pursuant to Utah Code Ann. §78B-6-408 and associated case law, ripeness for declaratory relief requires the "interests in a deed, or written contract" be at issue and in need of the Court's "declaration of rights, status, or other legal relations." Given the relief sought in this case, the fact that the 1956 License Agreement between the parties has now expired, and the parties' dispute with respect to the rights each party does or does not have, the matter is rightfully before the Court.

In the event of an irreconcilable conflict between the parties, Questar's rights are subservient to Metro Water, as Metro Water's easement is first in time. See Restatement Section 4.12. This position is further confirmed since Questar's rights via the County Franchise

Agreement, by its terms, requires that Questar not “unnecessarily interfere with water pipes or other pipes which may have been previously laid in said roads [].” Moreover, pursuant to 43 U.S.C.A. § 387, the County Franchise Agreement is limited by the 1890 Act easement which includes the right to operate, maintain, repair, and replace the SLA and the statutory right in the Secretary to define any competing rights in co-tenants to “adequately protect the interests of the United States and the [SLA].” The Utah Supreme Court in *Union Pacific RR v. Utah Department of Transportation*, 2013 UT 39, clarified that such statutory authority vests the holder with the power and jurisdiction to supervise and regulate. The question then becomes whether that jurisdiction is exercised by the holder with propriety. *Id* at ¶ 14.

In this regard, Utah law provides that “the owners of dominant and servient estates must exercise their rights so as not unreasonably to interfere with the other.” *U.S. v. Garfield County*, 122 F.Supp. 2d 1201 (D. Utah 2000) (*quoting Big Cottonwood Tanner Ditch Co. v. Moyle*, 174 P.2d 148, 158 (1956)). The Restatement (Third) of Property: Servitudes § 1.2, states that an “easement creates a nonpossessory right to enter and use land in the possession of another and obligates the possessor not to interfere with the uses authorized by the easement.” Moreover, Section 4.9 (Servient Owner's Right to Use Estate Burdened by a Servitude) provides:

Except as limited by the terms of the servitude determined under § 4.1, the holder of the servient estate is entitled to make any use of the servient estate that does not unreasonably interfere with enjoyment of the servitude.


Applied to the facts of this case, and considering all inference as appropriate on a motion for summary judgment, this Court cannot say as a matter of law that the Questar Gas Pipelines constitute an unreasonable interference on the SLA. The parties have had their respective

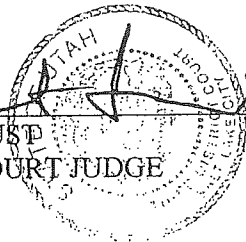
pipelines in the easement for more than sixty years without any problems or interference with each other and there is no issue of interference at this time, despite an assertion from Metro that there may be in twenty or thirty years in the future. Moreover, nothing contained in the statutes, nor Metropolitan Water's regulations, grant Metropolitan Water unilateral authority to modify or interfere with the County's right to grant a franchise to Questar, or to claim ownership of Questar's Pipelines, which Questar undisputedly continues to operate. Further, Metropolitan Water is the holder of a non-exclusive easement, and Questar Gas maintains its Pipelines pursuant to permits approved by Salt Lake County. In light of this, under the present state of the facts, the Court can also find no trespass, public nuisance, nor interference as a matter of law.

Based upon the forgoing, Plaintiff's Motion for Summary Judgment is, respectfully, denied. In light of this ruling, the Court does not reach Questar's Rule 56(f) Motion.

DATED this 28th day of August, 2013.

BY THE COURT:


ROBERT FAUST
DISTRICT COURT JUDGE



CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 120905379 by the method and on the date specified.

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08/28/2013

/s/ SHANA WALTERS

Date: _____

Deputy Court Clerk