

**Teresa Wilhelmsen - WR 57-7800**

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**To:** John Mann <johnmann@utah.gov>, Teresa Wilhelmsen <teresawilhelmsen@utah.gov>, <kentljones@utah.gov>  
**Date:** 2/23/2012 5:35 PM  
**Subject:** WR 57-7800

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John,

As per our telephone conversation today, I am interested in getting a prompt decision from the State Engineer's Office on my pending change application.

The following is a brief chronological summary of the Tolton-owned Morse Decreed South Despain Ditch Little Cottonwood creek water right and change application:

1. Water right 57-7800 (Cert No. a702) unapproved change application a28548 (approved change appl. a4178, pending change application a24463) was decreed as the most senior priority water right (along with co-equal priority North Despain Ditch) by Judge C.W. Morse. My mother Judy Maack's water right was segregated from WR 57-7800 to become 57-10317.
2. The Tolton/South Despain Ditch water right flow is 0.0565 cfs or 0.92 acre feet. Similarly, the Maack water right is for 0.92 af.
3. The 0.92 af of South Despain Ditch water was purchased for approximately \$22,000.00 from Lynn Biddulph. (over \$130,000.00 was paid to Lynn Biddulph on October 23, 2003 to buy 0.0625 cfs, Quit Claim Deed 8869933 recorded October 28, 2003 for the six cabins worth of water by Haik, Melville, Maack, Hoge, Butler and Tolton, 6 co-owners each with an undivided one-sixth interest)
4. Tolton filed a change application with the Utah State Engineer's Office on December 18, 2003.
5. The State Engineer's Office deferred making a decision on the change application pending resolution of a legal dispute of title ownership brought by Salt Lake City and Sandy City.
6. The Quiet Title Action was decided in favor of Tolton and others in case # 050911311 Haik, et al, v. Sandy City on February 4, 2009 in Third District Court, Judge Sandra Peuler presiding.
7. The Utah Supreme Court ruled unanimously in favor of Tolton et al, in case no. 20090451 filed May 10, 2011 awarding title to the water in question to Tolton et al.
8. A hearing before the state Engineer was held on July 13, 2011 wherein approximately 15 attorneys tried to politicize the change application process attempting to turn it into a referendum on "watershed propaganda", Alta zoning ordinances and road access law. In a prior meeting, Teresa Wilhelmsen and you John, assured both myself and my mother Judy that, "the change application decision by the State Engineer's Office would not be political".
9. Since the hearing most recently, no action has been taken by the State Engineer's Office on the change application for 8 months. This change application has now been out there for over 9 years.
10. I have attempted to call multiple people at the State Engineer's Office in the past few weeks and months (i.e. Kent Jones, John Mann, Teresa Wilhelmsen) without success.

I would like to see this situation resolved. I do not believe I have been treated fairly, especially given the fact that SLC has been approved to move an enormous amount of water up to Alta and Snowbird in a series of similar change applications which have inferior priority dates to my water. Moreover, the Utah Supreme Court has already determined that the State Engineer cannot decrease the amount of my water right as SLC recommended they do as part of this change application process. Therefore, there is no other pending issue for the state Engineer to consider prior to making a decision on my pending change application.

What is even more ridiculous is the fact that my lot at Alta already qualifies for Town of Alta water under the "1976 Town of Alta SLC Water Supply Agreement" because my lot was already annexed into the Town boundaries in 1975 (prior to the 1976 Water supply Agreement being signed whose intended beneficiaries are all properties within the Town of Alta boundaries as those properties existed prior to 1976). My interest in buying the Biddulph/South Despain Ditch water was to avoid the litigation costs of forcing SLC and Alta to perform under the Alta Town water contract.

In addition, the fact that the State Engineer is working with SLC water lawyer Steve Clyde together with the Water Issues Task Force to undo the Jensen v. Jones case and the SLC v. Big Ditch case in the Utah Legislature (i.e. SB 187) does not bode well that the State Engineer is apolitical and beyond the influence of the SLC water department.

Thanks,

Kevin Tolton, M.D.