



GARY R. HERBERT
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Lieutenant Governor

State of Utah

DEPARTMENT OF NATURAL RESOURCES

Division of Water Rights

MICHAEL R. STYLER KENT L. JONES
Executive Director *State Engineer/Division Director*

February 28, 2013

Kevin Tolton (57-7800)
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Judith Maack (57-10317)
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The Butler Management Group (57-10315)
c/o Daniel A. Jensen
185 South State #800
Salt Lake City, UT 84111

Marvin A. Melville Trust (57-10318)
c/o Daniel A. Jensen
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Mark C. Haik (57-10316)
c/o Daniel A. Jensen
185 South State #800
Salt Lake City, UT 84111

William S. Hoge (57-10319)
c/o Daniel A. Jensen
185 South State #800
Salt Lake City, UT 84111

RE: Clarification of divided historic uses based on a "1/6th undivided ownership interest...as tenants in common" and asserted historic diversion limitation.
Water Right Numbers 57-7800, 57-10315, 57-10316, 57-10317, 57-10318, and 57-10319

Dear Interested Party:

This letter is being sent to confirm your understanding of the ownership interest of the above-listed water rights and the historic diversion limitation. Each of you is shown as the owner of record with our office for the respective water rights listed above.

As you are aware, the above-listed water right numbers stem from a 0.25 cfs primary decree award to the South Despain Ditch.¹ Recently a change application was approved on one of these water rights.² Subsequently, five requests for reconsideration were filed on the decision approving the change application. Reconsideration of the decision has been granted by the State Engineer.

¹ Union & East Jordan Irr. Co. v. Richards Irr. Co., et al.; slip op. at paragraph 28 (Third Judicial District Court Salt Lake County, June 16, 1910).

² Water Right Number 57-7800 (a28548) approved by Order of the State Engineer, dated January 3, 2013.

Clarification of divided historic uses based on a "1/6th undivided ownership interest...as tenants in common":

At this time, we are requesting confirmation of your understanding as to the division of historic uses for these water rights. Each of you received a "1/6 undivided interest...as tenants in common" in water right and change application number 57-7800 (a24463) by deed, dated October 29, 2003. The Division of Water Rights records were updated to reflect the change to the owner of record.

Following this ownership update, six new change applications were filed in December 2003 by each of you individually. To facilitate the new change applications, water right 57-7800 was segregated into five new water right numbers with the intent of representing the interest each of you owned. A printed *Statement of Perfected Water Right Ownership Segregation* was placed on each new water right file with its associated change application. A segregation summary sheet was also placed on the parent water right file 57-7800, with its associated new change application.

Table 1 below summarizes Water Right Number 57-7800 as listed on our database when the segregations were created.

Table 1:

Water Right Number 57-7800 (a portion of 57-9001)					
Certificated May 24, 1971 (a4178)					
Flow – Diversion		Depletion	Irrigation ³	Stockwatering ⁴	Domestic Use ⁵
0.0625 cfs	5.42 acre-feet	2.23 acre-feet	0.73 acre	15 ELUs	3 families

Table 2 below reflects the ownership segregations on the file documents that were created in 2003. At the time of the segregations, it was the practice of the Division of Water Rights to not split domestic or stockwatering uses into fractional amounts. Instead, uses were divided among new owners.

³ Irrigation in the Salt Lake Valley is evaluated at 5.0 acre-feet per acre diversion with a 42.4% depletion rate. The rate of depletion is calculated using the Consumptive Use of Irrigated Crops in Utah, "Research Report 145, Utah Agricultural Experiment Station, Utah State University, Logan, Utah, October 1994, Table 25" Salt Lake Ct NWSFO AP Station.

⁴ Stockwatering is assumed to divert 0.028 acre-foot of water annually for a cow or horse and is considered 100% consumptive.

⁵ The domestic uses associated with the underlying water right is for three homes that are assumed to be located in an area served by a public sewer system where nearly all the water is returned to the hydrologic system via the Jordan River minus those amounts lost in the treatment process (evaporation, etc). The Central Valley Water Reclamation Facility has a reuse program; however, it does not appear that this water right has ever been included in a wastewater reuse application or project consistent with the underlying right. As a result 20% consumption for the heretofore domestic use is assumed.

Table 2:

After "1/6th undivided tenants in common" segregations					
Flow – Diversion	Depletion	Irrigation ³	Stockwatering ⁴	Domestic Use ⁵	
Water Right Number 57-7800 (Kevin Tolton)					
0.0565 cfs ⁶	0.92 acre-foot	0.53 acre-foot	0.01 acre	15 ELUs	1 family
Water Right Number 57-10315 (The Butler Management Group)					
0.0012 cfs ⁶	0.90 acre-foot	0.28 acre-foot	0.09 acre		1 family
Water Right Number 57-10316 (Mark C. Haik)					
0.0012 cfs ⁶	0.90 acre-foot	0.28 acre-foot	0.09 acre		1 family
Water Right Number 57-10317 (Judith Maack)					
0.0012 cfs ⁶	0.90 acre-foot	0.38 acre-foot	0.18 acre		
Water Right Number 57-10318 (Marvin A. Melville Trust)					
0.0012 cfs ⁶	0.90 acre-foot	0.38 acre-foot	0.18 acre		
Water Right Number 57-10319 (William S. Hoge)					
0.0012 cfs ⁶	0.90 acre-foot	0.38 acre-foot	0.18 acre		

Since that time a policy has been adopted where all historic uses can be split into fractional amounts. It is also the practice of the Division to quantify uses based on current diversion estimates as is shown in Table 1 above.

One of the submitted reconsiderations raised an issue as to the equitable split of the historic uses and the evaluation made under change application a28548. As shown in Table 2 the depletion associated with the historic uses varies for each segregated right resulting in an unequal 1/6th interest because the domestic and stockwatering uses were not segregated into fractional amounts. Based on the depletion amounts indicated in the tables above and the determination made in the previous Order of State Engineer on change application a28548, there is not a sufficient amount of water under the six portions to allow for a year round domestic use as proposed by each of you in your change applications filed in 2003.

⁶ This value appears to be an error in the database and should be corrected to reflect a diversion rate of 0.0104 cfs.

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Water Right Numbers 57-7800, 57-10315, 57-10316, 57-10317, 57-10318, and 57-10319

Clarification of asserted historic diversion limitation:

Upon further review of the documents on file for this water right, it appears that when the original change application (a4178) filed by Harold W. Bentley in 1962 on his $\frac{1}{4}$ -interest in the South Despain Ditch award, the applicant included the statement that he proposed to divert from the well 2,000 gallons per day between October 1 and April 1 and 4,000 gallons per day between April 1 and October 1.⁷ This quantity of water is less than the 5.42 acre-feet quantified in the tables above.

Please provide a written response to this letter within 30 days explaining your understanding of your ownership interest and the historic diversion limitation under Water Right Number 57-7800. Once we have received a response from all parties addressed with this letter, we will re-evaluate our records and make adjustments as necessary.

If you have additional questions regarding this request, please contact Teresa Wilhelmsen, P.E., UL/JR Regional Engineer at 801-537-3119. Please also be aware that the pending change applications are currently under our review, any communications with our office that directly pertain to these proceedings should be shared equally with the other adjudicative parties.

Sincerely,



Kent L. Jones, P.E.
State Engineer

cc: To all parties on file with the State Engineer's Office

⁷ A flow of 2,000 gallons per day for 183 days yields a volume of roughly 1.12 acre-feet (2,000 gpd x 183 days / 325,900 gallons = 1.123 acre-feet). A flow of 4,000 gallons per day for 182 days yields a volume of roughly 2.24 acre-feet (4,000 gpd x 182 days / 325,900 gallons = 2.234 acre-feet).

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Little Cottonwood Creek Distribution Committee
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