



# State of Utah

DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF WATER RIGHTS

November 13, 1991

Norman H. Bangertter

Governor

Dee C. Hansen

Executive Director

Robert L. Morgan

State Engineer

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To the Pinto Creek Water Users:

The purpose of this letter is to respond to the comments received since the meeting held on May 23, 1991 and to present the State Engineer's position regarding distribution of water on Pinto Creek. While there are other issues involving the general adjudication, the purpose of the State Engineer's involvement at this time is limited to developing an equitable distribution of the waters of Pinto Creek.

Comments were received from Kendrick Hafen, attorney representing Pinto Irrigation Company, and Fred Finlinson, attorney representing Ivan Cannon, Rex Gubler, and Irvin Ence. Copies of the comment letters are enclosed.

Both comment letters maintain that the alternating week concept of the 1962 Stipulation should not be followed. They assert that Newcastle's Water User Claim No. 71-405 is invalid because it is based on an allegedly unsubstantiated transfer of water in 1917. However, this issue was not preserved in the general adjudication proceedings and it appears WUC 71-405 has been confirmed by the Court.

The August 27, 1970 Pre-Trial Order which governs the general adjudication proceedings for the five-volume set of the Revised Determination of Water Rights for the Escalante Valley Division, states on page 5,

"It is further ordered the Revised Determination of Water Rights for the Escalante Valley Division as amended is approved and the individual water rights contained in said Determination are hereby decreed to be valid existing water rights and are approved and confirmed as set forth in said Determination; those rights set forth in the 'Issues to be Tried' section of this Pre-Trial Order are excepted ..."

WUC 71-405 is not listed as one of the Issues to be Tried as described in the Pre-Trial Order. It seems, then, that WUC 71-405 is confirmed and is a valid water right no longer subject to challenge in the general adjudication proceedings.

The alternating week concept is one of the basic precepts of the stipulation, so it perhaps deserves further substantiation. There is some evidence that the 1917 transfer was accepted by the district court as fact and that the alternating week concept was practiced prior to the 1962 stipulation being written. In June of

1957 the district court held hearings regarding protests filed by Pinto Creek Water Users against the original Proposed Determination. The FINDINGS OF FACT AND CONCLUSIONS OF LAW, dated September 14, 1957 found:

5. That in the year 1917 some of the users of water at Pinto transferred to the Desert Reclamation Company the right to use one half of the flow of Pinto Creek from May 1 to September 30 of each year. That it was then agreed between Pinto users and said Desert Reclamation Company that, during said period, one-half of the flow of Pinto Creek should flow down for irrigation of lands in the vicinity of Newcastle. That the Newcastle Reservoir Company has succeeded to the rights of the Desert Reclamation Company.

. . . .

7. That since said transfer in 1917 to the Desert Reclamation Company, the water of Pinto Creek have been divided or rotated so as to allow one-half of the water to go to lower users during the period from May 1 to September 30 of each year.

8. That, despite such transfer to lower users, the protestants have continued to irrigate the same acreage of lands at Pinto and in Pinto Canyon as they had done prior to the transfer. That to accomplish this they have diverted more of the early and late flow of Pinto Creek than they had formerly done. That no applications were filed with the State Engineer for such earlier or later use.

A copy of the above document is enclosed.

A distribution system was established by the State Engineer in 1958 and records on Pinto Creek were kept beginning in 1959. Detailed records, showing weekly measurements of diversions, are available for 1959 through 1962. These records indicate that water was diverted to Pinto Irrigation Company on an alternating week basis in 1959 and 1960, which were fairly good water years. However, the alternating week concept was not followed in 1961, 1962 and presumably 1963 because of drought conditions in the area.

It is our opinion that in good water years the 1962 Stipulation is workable and since it has been ordered by the court it should be followed unless modifications are made through petition to the court as allowed by the terms of the last paragraph of the Pre-Trial Order. However, it also appears that in drought years the stipulation does not work very well and modifications need to be adopted to allow reasonable distribution of the water during times of poor water supply. We agree with Mr. Finlinson that the hydrology of the canyon is not understood as well as it should be to precisely define the distribution of water. Because of manpower

limitations the State Engineer is unable to allocate the resources necessary to complete such a study at this time. Perhaps an alternative would be a working meeting with the water users who have had substantial experience with Pinto Creek and who could help work out any necessary modifications to the stipulation. Any agreed upon modifications could be submitted to the court.

The water users need to understand that, whether the original stipulation or a modified stipulation is used, more time and effort will be required by the commissioner to distribute the water, so the cost to the Pinto Creek water users will increase.

Mr. Hafen and Mr. Finlinson further contend that WUC 71-405, if it was valid at one time, has now been lost through non-use because the water has not been distributed in this manner for about 30 years. Whether or not the right has been forfeited is a question the State Engineer has no authority to determine. For distribution purposes the State Engineer must look to the rights as confirmed by the court. As stated above, 71-405 has been confirmed by the court as valid in 1970. The question of forfeiture must be decided by a court in proper legal proceedings.

Mr. Finlinson also raises the issue of the acreage limitation placed on the Platt Ranch in the Revised Proposed Determination. This is one of the issues included by the court in paragraph 25 of the "Issues to be Tried" of the Pre-Trial Order, and resolution of it must be pursued through the court process. Please contact John Mabey of the Attorney General's Office if you would like to further pursue this matter.

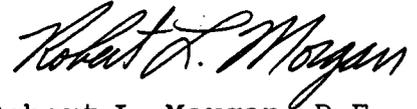
The other issue discussed at the May 23 meeting concerned the trans-mountain diversion through the Grass Valley - Pinto Creek Tunnel. In our opinion, adequate measuring devices must be installed to quantify the water and there must be agreement on the transportation losses, if any, that the water must bear between the tunnel portal and Newcastle Reservoir. The expense of installing and maintaining the measuring devices would be the responsibility of the Newcastle Reservoir Company. Several locations have been suggested where measuring devices are needed. The exact placement of them has yet to be decided.

A meeting will be held on December 9 at 10:00 a.m. to discuss these issues further and determine the next course of action. The meeting will be held at:

Natural Resources Office Building  
Conference Room  
585 North Main  
Cedar City, Utah

If you wish to discuss the issues related to this response, please contact Lee Sim of my office (538-7380) or John Mabey of the Attorney General's Office (538-7227).

Sincerely,

A handwritten signature in cursive script, appearing to read "Robert L. Morgan".

Robert L. Morgan, P.E.  
State Engineer

RLM:LS:st

cc: Lee Sim  
Gerald Stoker  
John Mabey