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May 14, 1987

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WATER RIGHTS  
SALT LAKE

**MEMORANDUM**

TO: Kent L. Jones, Distribution Engineer

FROM: Gerald W. Stoker, Area Engineer 

SUBJECT: Kesler/Limb v. Carter, Beaver County

A field examination was made on the distribution problem in the Beaver Valley area concerning the County Road Drain and other sources west of Beaver city. I met with John Kesler, Clark Carter, James Carter, and Keith \_\_\_\_\_. We identified the described points of diversion on a copy of the Beaver Valley map sheets (19d & 20c). Apparently, some of the misunderstanding is based on the location of legal distribution points out of the "County Road Drain". This ditch carries water from other sources and at times may have 6 to 7 different sources flowing in it.

Clark Carter placed a diesel powered pump in the ditch (within the W2W2NE4NE4 Sec. 24, T29S, R8W) and the headgate placed to control the water to said pump caused a restriction in the ditch. When the several sources of water are flowing in the ditch, the water backs up from the headgate for considerable distance and eventually overflows either into Carter's laterals or into low spots on the ditch. Kesler & Limb object to this practice because it cuts the flow of water that is due them. They filed a complaint in 1986 and there is an order from the Justice of the Peace that restrains Carter from interfering with the delivery of water.

Carter and I will get together to resolve the question on the points of diversion. As a "stop-gap" solution I was able to get both parties to agree that they will cooperate on the distribution of water from this ditch. First, Carter will remove whatever number of boards from the headgate to allow Kesler's and Limb's water to pass through. When Kesler feels he is being shorted on water he will check the measurements in the ditch and discuss the matter with Carter, and vice versus. Kesler and Limb will not attempt to make any adjustments on Carter's headgate since it involves the pump and there could be some liability if it caused the pump to fail or burn out. There is a totalizing meter on the pump and I will instruct the parties on how to read this meter.

When I have completed the research on this matter, including all of the points of diversion for Carter I intend to sent them each a letter confirming our discussion on May 13th and the agreement that was reached. A copy of the letters will be sent to Lee Strong and to the JP, Rowland Yardley.

I have attached a copy of the various JP documents to this memo for your review. If you have any questions concerning this matter or the agreement, or if you have any suggestions on how to roll this one up, please advise.





John O. Christiansen  
Beaver County Attorney  
Attorney for Plaintiff  
P. O. Box 471  
Beaver, Utah, 84713  
Telephone 438-2351

IN THE JUSTICE'S COURT, BEAVER PRECINCT, BEAVER COUNTY, STATE OF UTAH

STATE OF UTAH,  
Plaintiff,  
  
vs.  
  
CLARK CARTER,  
Defendant.

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INFORMATION

No. \_\_\_\_\_

The undersigned under oath states on information and belief that Clark Carter, the above-named Defendant, committed the following criminal offenses within a single criminal episode:

COUNT 1

UNLAWFUL TAKING OF WATER, a class B misdemeanor, in violation of Section 76-10-202, Utah Code Annotated, 1953, in that, commencing on or about the 15th day of August, 1986, and continuing to on or about the 18th day of August, 1986, within Beaver County, State of Utah, he wilfully, unlawfully and without right diverted water from the County Road Drain to which one John Kesler and Max Limb were entitled.

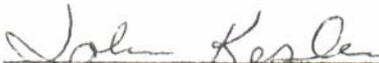
COUNT 2

UNLAWFUL TAKING OF WATER, a class B misdemeanor, in violation of Section 76-10-202, Utah Code Annotated, 1953, in that, on or about the 19th day of August, 1986, within Beaver County, State of Utah, he wilfully, unlawfully and without right diverted water from the County Road Drain to which one Pat Yardley, assigned to John Kesler, and Max Limb were entitled.

COUNT 3

UNLAWFUL TAKING OF WATER, a class B misdemeanor, in violation of Section 76-10-202, Utah Code Annotated, 1953, in that, on or about the 20th day of August, 1986, within Beaver County, State of Utah, the said Defendant wilfully, unlawfully and without right diverted water from the County Road Drain to which Max Limb was entitled.

This Information is based on evidence obtained from John Kesler and Max Limb.

  
\_\_\_\_\_  
John Kesler,  
Complainant

  
\_\_\_\_\_  
Max Limb,  
Complainant

Authorized for presentment  
and filing

Subscribed and sworn to before me  
this 20th day of August, 1986.

  
\_\_\_\_\_  
John O. Christiansen,  
Beaver County Attorney

\_\_\_\_\_  
Rowland B. Yardley,  
Justice of the Peace

John O. Christiansen  
Beaver County Attorney  
Attorney for Plaintiff  
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IN THE JUSTICE'S COURT, BEAVER PRECINCT, BEAVER COUNTY, STATE OF UTAH

STATE OF UTAH,	)	
Plaintiff,	)	JUDGMENT AND ORDER
	)	
vs.	)	
	)	No. <u>086-210</u>
CLARK CARTER,	)	
Defendant.	)	

An Information having been filed herein charging the Defendant, Clark Carter, with three counts of Taking Water out of Turn, and said Defendant having appeared before the court in response to a summons served on him and, after being advised of his legal rights, he having entered a plea of not guilty to each of said counts;

And the matter having come on for nonjury trial on the 21st day of August, 1986, the State being represented by the Beaver County Attorney, John O. Christiansen, and said Defendant having waived legal counsel and having appeared without legal counsel, and both the State and the Defendant having presented evidence and argument and the court having duly considered the same, and the court having found from the evidence that said Defendant is guilty of Count "1" of said Information and not guilty of Counts "2" and "3" of said Information, and no cause appearing against judgment, and said Defendant having made a statement in mitigation, and good cause appearing:

JUDGMENT IS HEREBY ENTERED that said Defendant is guilty of the commission of the criminal offense of TAKING WATER OUT OF TURN, a class B misdemeanor, in violation of Section 76-10-202, Utah Code Annotated, 1953, as alleged in Count "1" of said Information, and imposition of sentence is hereby stayed subject to the further order of the court.

JUDGMENT IS HEREBY FURTHER ENTERED that said Defendant is not guilty of the charges alleged in Counts "2" and "3" of said Information and said Counts "2" and "3" are hereby dismissed with prejudice.

IT IS HEREBY ORDERED that, as restitution for irrigation water illegally taken by said Defendant, he shall refrain from running the diesel powered pump which he has installed in the County Road Drain channel for a period of 48 hours commencing at 10:00 o'clock P.M. on the \_\_\_\_\_ day of August, 1986, so that the water which would otherwise be pumped on to Defendant's land will flow to the lower users who have been theretofore deprived of their rightful water.

IT IS HEREBY FURTHER ORDERED that this matter is set for review for the 18<sup>th</sup> day of November, 1986, at the hour of 1:30 o'clock P.M., for the purpose of determining the progress that shall have been made in the installation of water diversion and measuring devices in the County Road Drain in accordance with the provisions of the Adjudication Decree of the Waters of the Beaver River entered by the District Court for Beaver County, Utah, such installation to be made as a cooperative effort by the parties involved in this dispute.

Dated August 21, 1986.

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Rowland B. Yardley,  
Justice of the Peace