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State of Utah
DEPARTMENT OF NATURAL RESOURCES
Division of Water Rights

MICHAEL R. STYLER JERRY D. OLDS
Executive Director *State Engineer/Division Director*

Re: 2007 HENRYS FORK DISTRIBUTION SYSTEM ASSESSMENTS

TO: THE OWNERS OF UTAH WATER RIGHTS ON THE HENRYS FORK
DISTRIBUTION SYSTEM

The Purpose of this letter is to summarize the basis of the 2007 Henry's Fork Distribution System assessment of owners of Utah water rights. These assessments are shown in the attached spreadsheet.

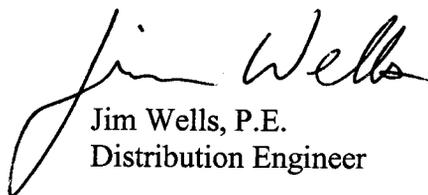
The change in assessments from prior years is due to the inclusion of lands irrigated by Utah water rights from the West portion of Henry's Fork and Poison Creek, and other lands irrigated in Wyoming by Utah water rights that were not previously assessed.

The assessment costs for the owners of Utah water rights for 2007 equal 30% of the total system expenditures documented by Wyoming for 2006. The costs are prorated based on the acres of irrigated land associated with all Utah water rights as described above. This change assures greater equity in allocating Utah's share of the distribution system's operating costs.

The attached spreadsheet contains the assessment for each Utah water rights owner. Ownership was updated based upon the records of the Uintah County (WY) and Sweetwater County's recorders offices.

If you have questions concerning the referenced assessment or this process, please contact Andrew Dutson at (435) 781-5327 or myself at (801) 538-7374.

Sincerely,



Jim Wells, P.E.
Distribution Engineer

cc: Bob Leake, Regional Engineer:
Todd Covolo, Henry's Fork Water Commissioner

Henry's Fork Distribution System - Utah Assessments

Total Expenses for 2006	\$18,536.11
Utah 2007 assessment (30% of expense, less carry over from 2006 of \$474.66)	\$5,086.17
Utah assessment per acre.	\$0.43

BEAVER CREEK

	Dist. Acct. #	Acres	Assessment
Buckley Family Trust	102861	165.79	\$72.03
Foianini, Gino	102864	1200.13	\$521.39
Hanks Family Partnership	103088	240.00	\$104.27
Hickey, Jack Trust	102860	1431.67	\$621.99
Lyman Grazing Assoc.	102849	1136.68	\$493.83
Wadsworth, Glen	102862	1034.57	\$449.47

BEAVER CREEK SUBTOTAL

5208.84

BURNT FORK BIRCH CREEK

	Dist. Acct. #	Acres	Assessment
Beck, Douglas	102866	156.94	\$68.18
Beck, Milton	102865	156.94	\$68.18
Beck, Milton	102867	106.68	\$46.35
Ellsworth, Florence	102850	71.24	\$30.95
Flying S Ranch	103090	50.81	\$22.07
Gamble, George	102851	541.20	\$235.12
Gamble, Robert	102853	223.05	\$96.90
Iorg, Julie A.	103091	38.29	\$16.64
Sadler CS Bar Ranch	102855	124.66	\$54.16
Stephens, Dan J.	103089	121.29	\$52.69
Wilde, Jon	102852	415.47	\$180.50
Wilde, Marcus Reed	102857	1173.04	\$509.62

BURNT FORK BIRCH CR SUBTOTAL

3179.61

POISON CREEK/WEST HENRY'S FORK

	Dist. Acct. #	Acres	Assessment
Hickey, Jack Trust	103092	527.82	\$229.31
Lyman Grazing Assoc.	103093	369.10	\$160.35

POISON CR. - W. HENRY'S FK SUBTOTAL

896.92

INTERSTATE CANAL CO.

(3239 af. STORAGE CAP / 3.0 af per acre)

	Dist. Acct. #	Acres	Assessment
	103094	1079.67	\$469.06

HOOP LAKE RESERVOIR CO.

(4026 af. STARAGE CAP / 3.0 af per acre)

	Dist. Acct. #	Acres	Assessment
	103095	1342.17	\$583.10

HENRY'S FORK EXPLANATION OF ASSESSMENT HISTORY

Prior to 1987, the tributaries of Beaver Creek (West, Middle and East Forks) and Burnt Fork / Birch Creek were separate distribution systems. At that time all Utah water rights were assessed for the cost of the water commissioner regardless of whether the lands served were in Utah or Wyoming. The Wyoming share of the commissioner's expenses for these two systems was derived from county property taxes on the lands irrigated on the two drainages. The Wyoming State Engineer paid Wyoming's portion of the commissioner's salary and expenses and the appropriate portion of the property taxes was forwarded to the Wyoming State Engineer's Office by each county to offset the cost of the water commissioner.

In 1987, it was decided that the Utah assessment should be based only on the lands irrigated in Utah because the Wyoming lands were being double assessed. Those water users who had Utah water rights used on land in Wyoming were paying both an assessment to Utah and a property tax to Wyoming for the work of the commissioner. For some reason this adjustment was only done on Beaver Creek, it was not done on Burnt Fork / Birch Creek.

A year or two later, the two systems were merged into an expanded inter-state distribution system called Henry's Fork Tributaries. About 1998, the state of Wyoming changed its method of hiring and paying water commissioners. For a number of years it had been difficult for the Wyoming State Engineer's Office to get its portion of the property taxes from the counties. A new statute was implemented making the water commissioners state employees paid from the state general funds appropriated to the state engineer. At this time Utah and the Utah water users agreed to use the water commissioner hired by Wyoming for distribution of Henry's Fork in Utah with the understanding that Utah and its water users would have a voice in the selection of the commissioner (he had to be appointed by the Utah State Engineer to work in Utah). It was agreed that Utah would pay (as dictated by the compact) 30% of the commissioner's salary and expenses. It was assumed at the time that the budget for the distribution system (salary etc.) would continue to be set by the water users at the annual meeting. After a year or two of setting a budget and then having the actual expenses be slightly different (we were always trying to balance the Utah assessment so that we did pay 30% of the actual expenses), it was agreed that, for administrative expediency, Utah's assessment each year would be based on the previous years actual expenses – i.e. in 2002, Utah would assess, collect and pay to Wyoming 30% of the expenses incurred by Wyoming during 2001.

Sometime after the annual meeting in 2005, Wyoming gave the water commissioner a substantial raise (from \$10.82 to \$14.96) so that his salary would be more in line with the other Wyoming water commissioners – he had been on the job for a couple of years. In July, Wyoming gave the commissioner a cost of living increase (along with the other Wyoming state employees) and in September a 10% market adjustment increase. At the end of the year, the commissioner's salary was \$17.34 per hour. A substantial increase without the approval of the Utah water users. When this came to light, Lee Sim (Utah) discussed the issue with Jade Henderson (Wyoming) and Jade agreed that it was not fair to Utah and proposed that Utah assess its water users in 2006 based on the original 2005 salary of \$10.82.

This chain of events created questions regarding the budget and assessment practices on Henry's Fork. What if the Utah water users did not agree to a salary increase that was given by the Wyoming legislature? Would Utah reduce the percentage it paid to Wyoming of the distribution system expenses or would it mean that Utah would find a separate person to act as commissioner for the Utah portion of the system. It appeared there was a conflict between two Utah statutes.

On one hand 73-5-1 states that the water users are to set the compensation for the water commissioner. On the other hand, the interstate river compact (which was ratified by the Utah legislature and is part of the statute) requires that distribution on Henry's Fork be done without regard to the state line and that the cost of distribution / regulation expenses be paid 30% by Utah and 70% by Wyoming. This implies one commissioner and a joint effort. In the current situation we could not comply with both statutes.

Lee Sim discussed this with Ward Wagstaff (Attorney General's Office) and was told that in situations of conflicting statutes, the more specific statute has precedent over the more general statute. In this case 73-5-1 is the more general statute and the compact is the more specific statute. Therefore the water users in this area are required to pay 30% of the expenses but they do not necessarily have the opportunity to set the annual budget.

This situation also brought into question the method for assessing the Utah water users on the Henry's Fork System. Upon review it appeared that the Utah assessment should be based on all Utah water rights regardless of where the irrigated land was located. It also became apparent that since all the water users lived in Wyoming (even those whose irrigated land was totally in Utah) that all the water users were helping to pay Wyoming's 70% through their state taxes (since the 70% is paid from the Wyoming General Fund) but that only Wyoming water users who had land in Utah were helping to pay the Utah 30% of the assessment. In reviewing the lands being assessed it was also realized that when the Henry's Fork Distribution System was organized it was also expanded to include the lands directly on Henry's Fork in Utah and also the lands in Utah on Poison Creek (a Henry's Fork tributary), however, these lands had never been included in the Utah assessment. It was also realized that the water rights for the storage reservoirs in Utah (and generally used in Wyoming) had never been assessed. The storage water is used on the same lands that the direct flow water rights are used on but it is a separate distribution effort for the commissioner to deliver storage water so it should also be assessed. On other distribution systems in Utah, the water released from storage is assessed at the same rate as direct flow water diverted from the stream. We decided it would be equitable to take the storage capacity of the reservoirs and divide that by the irrigation duty in this area (3AF/ac) to determine the number of acres that each reservoir company would be assessed for.

The current acreage basis for the Utah assessment is 4952.5 acres. By including the lands irrigated in Wyoming from Utah water rights (these are the rights on Beaver Creek, the Wyoming lands irrigated from Burnt Fork/ Birch Creek were never taken off the Utah assessment), the lands on Henry's Fork and Poison Creek, and the lands allocated to the reservoir companies, the acreage basis for the Utah assessment increases to 9814.22 acres. This is a rough tally based on a quick research of the water rights. The breakdown for this quick estimate of the acreage is as follows:

Land currently assessed	4952.50 ac	
Land irrigated in Wyoming	1108.89 ac	(Beaver Cr)
Land irrigated on Poison Cr	111.00 ac	
Land irrigated on Henry's Fork	1220.00	
Land allocated to Interstate Canal Co.	1079.67 ac	(3239.00 af storage cap. / 3 af per ac)
Land allocated to Hoop Lake Res. Co.	<u>1342.17 ac</u>	(4026.50 af storage cap./ 3 af per ac)
TOTAL	9814.22 ac	

It will not be possible to adopt the new assessment procedure this year because of the research that needs to be done to identify water right owners and to verify the actual acreage amounts involved. This work will be done by the Vernal Office and the Distribution Section during 2006. Wyoming agreed that for the 2006 assessment, Utah could base its assessment on the commissioner's salary level prior to the 2005 raises. This adjustment is outlined below:

	Actual 2005 Expenses	Expense basis for Utah's 2006 assessment
Vehicle Charge	\$ 854.00	\$ 854.00
Salary	\$11,897.61	\$ 8,203.72*
Employer paid benefits	<u>\$ 2,248.65</u>	<u>\$ 2,248.65</u>
TOTAL	\$15,306.37	\$11,306.37

* based on 758.2 hours @ \$10.82/hour

Utah's 2006 assessment will be 30% of \$11,306.37 = \$3,391.91.

Starting in 2007, the Utah assessment will be based on the actual 2006 expenses incurred by the Wyoming water commissioner and the assessment will be prorated to the Utah water users based on the acres of irrigated land associated with all Utah water rights as described above.