

STATE OF UTAH
OFFICE OF THE ATTORNEY GENERAL



MARK L. SHURTLEFF
ATTORNEY GENERAL

RAYMOND HINTZE
CHIEF DEPUTY

Protecting Utah • Protecting You

KIRK TORGENSEN
CHIEF DEPUTY

January 12, 2005

Denise Dragoo
Snell & Wilmer
15 West South Temple, Suite 1200
Salt Lake City, Utah 84101

J. Craig Smith
Smith Hartvigsen
215 South State Street, Suite 650
Salt Lake City, Utah 84111

Re: Proposed Distribution of Water in Cedar Creek Drainage

Dear Denise and Craig,

This letter is in response to correspondence regarding distribution of the water in Cedar Creek, most particularly the letter from Denise dated November 18, 2004, and the letter from Craig dated November 4, 2004.

First, we believe that section 73-4-11 requires the State Engineer to administer the water from the Cedar Creek drainage and the Miller Creek drainage in accordance with the respective proposed determinations. We realize that Judge Anderson has delayed a decision on ANR's motion to accept its objections pending the recent Utah Supreme Court decision in the case *Green River Canal Co. v. Olds*, 2004 UT 106. We do not believe, however, that the statute allows the State Engineer to administer water rights except in accordance with a proposed determination, even when the water rights are contested in a valid objection. If we must be involved in distribution of the water, we believe we must distribute in accordance with the respective proposed determinations.

Second, we recognize that there is a question about how much of the water currently coming from the Mohrland Tunnel is tributary to Cedar Creek and how much is tributary to Miller Creek. It appears to us that the water drains from the Mohrland portal because of the slope of the tunnel, not necessarily because it is naturally tributary to Cedar Creek.

Originally, water rights 91-316 and 91-251 were diverted from the King Mine portal in

Cedar Creek Distribution
January 12, 2005
Page 2

Hiawatha into the Miller Creek drainage. Those water rights allowed a diversion rate of 0.058 cfs and 0.942 cfs, respectively, as shown on page 987 of the Proposed Determination for the Price River, Area 91 Book No.4. Water rights 91-316 and 91-215 are further limited to 101.92 acre-feet per year. The water rights therefore allowed for the diversion of up to 101.92 acre-feet per year at a maximum flow rate of 1.0 cfs. The original flow from the King Mine, prior to connection with the Mohrland Mine, was therefore at least 1.0 cfs. The water in excess of 101.92 acre-feet was tributary to the Miller Creek drainage.

We intend to require ANR to install a flow meter on the pipeline from the Mohrland portal. Based on the water rights listed above, the flow in the pipeline should be at least 1.0 cfs. At this time, it is undecided how much of the Mohrland portal flow is tributary to Miller Creek and should be transported back to that drainage ANR should release any of the pipeline flow in excess of 101.42 acre-feet into the Miller Creek drainage to satisfy water rights in that drainage.

The water issuing from the Mohrland portal in excess of the pipeline flow becomes tributary to Cedar Creek as it comingles with the natural flow. Three water rights held by ANR, 93-970, 93-3524, and 93-1089, are also diverted at the Mohrland portal. Because the Huntington Cleveland Irrigation Company water right has the earliest priority in the Cedar Creek drainage, it must be satisfied before these other water rights may be diverted. The parties could, of course, agree to an equitable arrangement to share the Cedar Creek water as ANR has suggested.

We recognize that this does not answer all questions or settle the disputes regarding the water from the Mohrland tunnel. But we hope we can continue a constructive dialogue to resolve as many problems as possible before the irrigation season begins.

Yours very truly,



L. Ward Wagstaff
Assistant Attorney General

cc.: Lee Sim
Mark Page