



State of Utah
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF WATER RIGHTS

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March 12, 1999

SALT LAKE CITY
JEFF NIERMEYER
1530 S WEST TEMPLE
SALT LAKE CITY UT 84115

Dear Jeff:

Over the past several months there has been quite a bit of discussion about how the assessment should be made for the water delivered under paragraph 34 of the Morse Decree dated June 16, 1910. The difficulty has been the difference in opinion among several of the water users over their various ownership interests and who owns legal title to the water right associated with paragraph 34.

Paragraph 34 refers to the Salt Lake County Water Company which is now a defunct organization. Last fall, this office requested information concerning who were the successors in interest to the Salt Lake County Water Company so that water could be properly distributed to the rightful water users. This effort was not an attempt to gather information for determining ownership of the water right. The State Engineer does not have the authority to adjudicate ownership of water rights when acting in his distribution responsibilities. Questions of that nature must be resolved among the parties or by resorting to the judicial system.

The information presented to this office as a result of our request appears to adequately document that Sandy Irrigation Company, Sandy City, and Midvale City are the successors-in-interest to the Salt Lake County Water Company in regards to who uses the water. Again, the State Engineer does not have the authority to determine what ownership interest Salt Lake County Water Company had in the water rights associated with paragraph 34 of the decree nor what ownership interest its successors-in-interest might have in the water right. Our sole purpose is to identify who the water should be distributed to and to make the necessary assessments to those water users.

At the most recent Little Cottonwood Creek committee meeting, Mr. Sim proposed that the water in paragraph 34 be assessed according to who used the water. This would be an exception from the general practice of assessing the owner of the water right. Without a court determination of the ownership of the right, it appeared there was no other option available. In an effort to note the exception and to prevent the misconception that the assessment in this case is an indication of ownership or non-ownership of the water right, it was proposed that the assessment calculation spreadsheet be clearly marked each year. The note would state that the assessment denotes the use of water; that the ownership of the water right is in question; and that the assessment is not an indication of either the ownership or non-ownership of the water right.

The request was made at the meeting that the decision to follow the proposed procedure be postponed until February 24th so that comments could be submitted by the water users involved. We received two comments. After reviewing the comments and reconsidering the situation, it is the decision of the State Engineer that the assessment plan proposed by Mr. Sim will be used in the case of the paragraph 34 water. It is evident that to follow any other procedure would require the State Engineer to take a position on the ownership of the water right. As discussed above, I do not have the authority to take such a position.

One of the comments asked what would happen to the water right and how would the water be distributed if the assessment were not paid each year? The payment or non-payment of a distribution assessment has no bearing on the status or ownership of a water right. Section 73-5-1 of the Utah Code states in part:

“Upon failure to do so (to pay the assessment) the State Engineer may:
create a lien upon the water right affected
forbid the use of water by any such delinquent, or any of the delinquent’s successors or assigns, while the default continues;
bring action in the district court for the unpaid expense and salary, and foreclose the lien, or the district court having jurisdiction of the person may issue upon any delinquent user an order to show cause why a judgement for such sum should not be entered.”

Since the ownership of the water right is in question, the State Engineer would not attempt to place a lien on the water right. In the event of a delinquency, the State Engineer would order that water not be delivered to the delinquent water user and instruct the commissioners to make the appropriate adjustments in their deliveries. The water not delivered would then be available to fill the other water rights on the creek. In the event the delinquency continued, the State Engineer would start legal proceedings to collect the amount due.

The enclosed assessment calculation spreadsheet will be sent to each water user with their 1999 assessment. If you have any questions concerning the calculations, please contact Lee Sim at (801)538-7380.

Sincerely,



Robert L. Morgan, P.E.
State Engineer

cc: Lee Sim
Jim Riley
Tim O’Hara
Marv Widerberg

LITTLE COTTONWOOD CREEK - 1999 Assessment Calculation based on Ave. Annual Yields

03/04/99

Water User	Listed in Decree	Average 1st Primary Yield	Average 2nd Primary Yield	Average 1st Surplus Yield	Average 2nd Surplus Yield	Average 3rd Surplus Yield	Total Yield used for Assessment (see notes) (acre feet)	Percent of Total Assessment	Assessment (see notes)
		(acre feet)							
Murray City Power								10.00%	\$1,300.00
Whitmore Oxygen								5.00%	\$650.00
Midvale City	Greenwood Ditch	725.8		29.7		187.1	841.6	1.75%	\$227.41
	Bissinger Ditch	58.1		10.1		62.9	97.1	0.20%	\$26.24
	Van Valkenburg Ditch	181.5		12.1		78.2	229.7	0.48%	\$62.06
	Paragraph 34 Water*		313.0				313.0	0.65%	\$84.57
Salt Lake City	Brady #1 Ditch	297.6		6.7		45.9	325.6	0.68%	\$87.97
	Brady #2 Ditch	72.6		4.6		30.6	91.4	0.19%	\$24.68
SLC Exchange Contract	Richards Ditch								
SLC Exchange Contract	Cahoon & Maxfield Ditch		3,005.7	58.9		374.1	3,236.9	6.73%	\$874.61
SLC Exchange Contract	South Despain Ditch	181.5		276.2		1,744.7	8,593.6	17.86%	\$2,321.98
SLC Exchange Contract	Walker Ditch		3,005.7	58.9		374.1	3,236.9	6.73%	\$874.61
SLC Exchange Contract	Tanner Ditch		6,011.3	98.6		615.6	6,393.1	13.29%	\$1,727.40
SLC Exchange Contract	Browns Ditch				68.4	622.4	362.5	0.75%	\$97.95
Sandy City	Union Jordan Ditch		7,514.1	147.9		935.3	8,092.7	16.82%	\$2,186.63
	Thompson Ditch				16.1	715.9	370.0	0.77%	\$99.98
	Last Chance Ditch				15.3	981.2	502.1	1.04%	\$135.66
	Lym Ditch				11.5	734.6	375.9	0.78%	\$101.57
	Paragraph 34 Water*		313.0				313.0	0.65%	\$84.57
Sandy I.C.	Sandy I.C.				276.4	3,118.8	1,766.7	3.67%	\$477.36
	Paragraph 34 Water*		2,379.6				2,379.6	4.95%	\$642.97
Union & East Jordan I.C.	Union & East Jordan I.C.				274.0	2,494.7	1,452.9	3.02%	\$392.56
Nickle Ditch	Nickle Ditch				84.8	1,845.1	986.2	2.05%	\$266.46
So. Despain Extension	So. Despain Extension				43.0	935.3	499.9	1.04%	\$135.07
No. Despain Extension	No. Despain Extension				2.9	139.4	71.9	0.15%	\$19.42
North Despain Ditch	North Despain Ditch	145.2		9.6		59.5	182.2	0.38%	\$49.22
NO USE (Higbee 1989)	Steingruber Ditch				4.2	182.0	0.0	0.00%	\$0.00
NO USE (Higbee 1989)	Hanson Ditch				0.7	62.9	0.0	0.00%	\$0.00
NO USE (Higbee 1989)	Johnson Ditch				11.5	408.1	0.0	0.00%	\$0.00
NO USE (Higbee 1989)	Erickson Ditch				1.1	95.2	0.0	0.00%	\$0.00
NO USE (Higbee 1989)	Baker Ditch				0.6	95.2	0.0	0.00%	\$0.00
NO USE (Higbee 1989)	Griffiths Ditch				1.4	62.9	0.0	0.00%	\$0.00
Summary		1,662.3	30,056.5	713.3	811.9	17,001.7	40,895.8	100.00%	\$13,000.00

Total Assessment \$13,000.00

Factors used to calculate assessments:
 1st Primary Yield 100%
 2nd Primary Yield 100%
 1st Surplus Yield 75%
 2nd Surplus Yield 75%
 3rd Surplus Yield 50%

Explanation of Assessment Calculation

10% assessed to Murray City & 5% to Whitmore Oxygen. The remaining 85% is divided proportionately according to the "Total Yield for Assessment" column.
 * Paragraph 34 Water refers to paragraph 34 of the 1910 Morse Decree. In this case the assessment denotes use of water. The ownership of the water right is in question. The State Engineer's assessment is not an indication of either the ownership or non-ownership of the water right.

Murray	\$1,300.00
Midvale	\$400.28
SLC	\$112.65
SLC Exch	\$5,945.60
Sandy	\$2,608.42
Sandy I.C.	\$1,120.33
	\$11,487.27