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RECEIVED

OCT 05 1992

October 1, 1992

Mr. Lee H. Sim
Utah State Division of Water Rights
1636 West North Temple
Salt Lake City, Utah 84116

RE: Your Letter of September 29, 1992

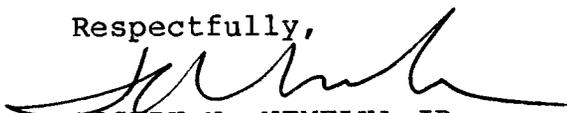
Dear Lee:

After reviewing your letter I did some additional checking about our problem with the Ambassador Duck Club. It appears I may have cited you to the wrong code section. If you check Utah Code Annotated §73-1-15, I think there is little doubt what the Ambassador has done falls within this code section and your office does in fact have jurisdiction.

At the present time we don't want them charged with a **criminal misdemeanor** as provided for in this section. All we want is for the water to go where it's supposed to. However, if push comes to shove I believe we are well within our rights to demand that the Attorney General's office prosecute. I am, therefore, by copy of this letter advising the Ambassador that unless the problem is corrected immediately, we will insist on your intervention.

Hopefully this will take care of the situation and neither you nor the Attorney General's office will not need to become involved. If not, I will let you know.

Respectfully,



JOSEPH N. NEMELKA JR.

Attorney at Law

JN:j

cc: Lakefront
Hugh Bronson/Ambassador

on a showing of reasonable use.

causes for nonuse include:

crisis;
 depression;
 of legal proceedings or other use; and
 of a water right without municipality, metropolitan water or public agency to meet the requirements of the pub-

ator or his successor in inter- an extension of time, or if the es the application for exten- appropriator's water right

appropriator's water right erts to the public and may s provided in this title.

ore the expiration of any ex- : state engineer shall notify istered mail of the date when d will expire.

of expiration, the applicant

ied statement with the state ; forth the date on which use s resumed, and whatever ad- tion is required by the state

t further extension of time in e use of the water according s and requirements of this 1953

a public use. beneficial purposes, as pro- eby declared to be a public 1953

in — Purposes.

a right of way across and d corporate lands, or other irection, maintenance, re- sary reservoirs, dams, water mes, tunnels, pipelines and ps and pumping machinery ing, storing, replacing and nestic, culinary, industrial or for any necessary public payment of just compensa- ght of way shall in all cases not unnecessarily to impair ther right of way, highway , or to injure any public or 1953

or joint use of ditch.

s to convey water for irriga- tional purpose and there is a ructed that can be used or equired quantity of water, he right to use or enlarge dy constructed, by compen- anal or ditch to be used or caused by such use or en- ; an equitable proportion of anal or ditch jointly used or such enlargement shall be of October and the 1st day e time that may be agreed ch canal or ditch. The addi-

total water turned in shall bear its proportion of loss by evaporation and seepage. 1953

73-1-8. Duties of owners of ditches — Safe condition — Bridges.

The owner of any ditch, canal, flume or other watercourse shall maintain the same in repair so as to prevent waste of water or damage to the property of others, and is required, by bridge or otherwise, to keep such ditch, canal, flume or other watercourse in good repair where the same crosses any public road or highway so as to prevent obstruction to travel or damage or overflow on such public road or highway, except where the public maintains or may hereafter elect to maintain devices for that purpose. 1953

73-1-9. Contribution between joint owners of ditch or reservoir.

When two or more persons are associated in the use of any dam, canal, reservoir, ditch, lateral, flume or other means for conserving or conveying water for the irrigation of land or for other purposes, each of them shall be liable to the other for the reasonable expenses of maintaining, operating and controlling the same, in proportion to the share in the use or ownership of the water to which he is entitled. 1953

73-1-10. Conveyance of water rights — Deed — Exceptions — Filing and recordation of deed.

Water rights, whether evidenced by decrees, by certificates of appropriation, by diligence claims to the use of surface or underground water or by water users' claims filed in general determination proceedings, shall be transferred by deed in substantially the same manner as real estate, except when they are represented by shares of stock in a corporation, in which case water shall not be deemed to be appurtenant to the land; and such deeds shall be recorded in books kept for that purpose in the office of the recorder of the county where the place of diversion of the water from its natural channel is situated and in the county where the water is applied. A certified copy of such deed, or other instrument, transferring such water rights shall be promptly transmitted by the county recorder to the state engineer for filing. Every deed of a water right so recorded shall, from the time of filing the same with the recorder for record, impart notice to all persons of the contents thereof, and subsequent purchasers, mortgagees and lien holders shall be deemed to purchase and take with notice thereof. 1959

73-1-11. Appurtenant waters — Use as passing under conveyance.

A right to the use of water appurtenant to land shall pass to the grantee of such land, and, in cases where such right has been exercised in irrigating different parcels of land at different times, such right shall pass to the grantee of any parcel of land on which such right was exercised next preceding the time of the execution of any conveyance thereof; subject, however, in all cases to payment by the grantee in any such conveyance of all amounts unpaid on any assessment then due upon any such right; provided, that any such right to the use of water, or any part thereof, may be reserved by the grantor in any such conveyance by making such reservation in express terms in such conveyance, or it may be separately conveyed. 1953

73-1-12. Failure to record — Effect.

Every deed of a water right which shall not be recorded as provided in this title shall be void as against any subsequent purchaser, in good faith and for a valuable consideration, of the same water right, or any portion thereof, where his own deed shall be first duly recorded. 1953

73-1-13. Corporations — One water company may own stock in another.

Any irrigation or reservoir company incorporated and existing under the laws of this state may purchase or subscribe for the capital stock of any other similar corporation which at the time of such purchase or subscription shall be or is about to be incorporated; provided, that such purchase or subscription shall be made only when permitted by the articles of incorporation, and such corporations are hereby permitted and authorized to amend their articles of incorporation so as to authorize such purchase or subscription. 1953

73-1-14. Interfering with waterworks or with apportioning official — Penalty and liability.

Any person, who in any way unlawfully interferes with, injures, destroys or removes any dam, head gate, weir, casing, valve, cap or other appliance for the diversion, apportionment, measurement or regulation of water, or who interferes with any person authorized to apportion water while in the discharging of his duties, is guilty of a misdemeanor, and is also liable in damages to any person injured by such unlawful act. 1953

73-1-15. Obstructing canals or other watercourses — Penalties.

Whenever any person, partnership, company or corporation has a right of way of any established type or title for any canal or other watercourse it shall be unlawful for any person, persons or governmental agencies to place or maintain in place any obstruction, or change of the water flow by fence or otherwise, along or across or in such canal or watercourse, except as where said watercourse inflicts damage to private property, without first receiving written permission for the change and providing gates sufficient for the passage of the owner or owners of such canal or watercourse. That the vested rights in the established canals and watercourse shall be protected against all encroachments. That indemnifying agreements may be entered as may be just and proper by governmental agencies. Any person, partnership, company or corporation violating the provisions of this section is guilty of a misdemeanor and is subject to damages and costs. 1965

73-1-16. Petition for hearing to determine validity — Notice — Service — Pleading — Costs — Review.

Where any water users' association, irrigation company, canal company, ditch company, reservoir company, or other corporation of like character or purpose, organized under the laws of this state has entered into or proposes to enter into a contract with the United States for the payment by such association or company of the construction and other charges of a federal reclamation project constructed, under construction, or to be constructed within this state, and where funds for the payment of such charges are to be obtained from assessments levied upon the stock of such association or company, or where a lien is created or will be created against any of the land, property, canals, water rights or other assets of such asso-