

M E M O R A N D U M

TO: Don Norseth
FROM: Dallin W. Jensen
RE: Pot Creek Agreement attached
DATE: March 20th

As I understand the problem on Pot Creek with the State of Colorado, it involves only one aspect of the respective water rights—period of use.

Utah has apparently adopted a more restrictive period of use than the State of Colorado is proposing, and I gather that if the period for irrigation use is expanded, it will encroach upon storage rights. Unless you have some reason to believe that the period of use as adopted in Utah is incorrect, it seems to me that you must have some justification from the State of Colorado as to why their users can use the water for a longer period than the Utah irrigators. It seems somewhat unlikely that this is possible but, perhaps based upon the elevation, frost free periods, etc., it may be possible to justify a different period of use in the two areas.

In any event, I think you have to make it clear to Colorado that this presents a serious problem in Utah, since the Utah rights are now governed by a Court decree. It seems to me the problem is primarily one of determining beneficial use and if we believe that the period of use which we have adopted is accurate and correct, we have some obligation to convince Colorado of it before doing anything further with respect to signing an agreement.

Consequently, I think you should spend 8-10 weeks going up and down the river espousing the Utah doctrine of beneficial use, but before you leave I have a few additional thoughts which I will convey to you if you will stop by.