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April 24, 1991

RECEIVED

APR 25 1991

WATER RIGHTS  
SECTION

Mr. Robert L. Morgan  
Utah State Engineer  
1636 West North Temple  
Salt Lake City, UT 84116

RE: Grass Valley - Pinto Creek Diversion Tunnel

Dear Mr. Morgan:

This letter is written at the specific request of the officers of the New Castle Irrigation Company.

Reference is made to a letter that you received from the president of the Santa Clara Irrigation Company dated May 7, 1990 and your reply to such letter dated May 9, 1990. Your response letter referred to instructions that were given to the Santa Clara River Water Association to close the gate on the trans-basin diversion tunnel owned and operated by New Castle Reservoir Company and to open the gate from an existing diversion dike also constructed by New Castle Irrigation Company so as to allow the available flow from Grass Valley to flow into the Santa Clara drainage. I call your attention to documents and records which I believe you are aware of and which have been the subject of discussion between you and your legal counsel; said documents being identified as follows:

A. That certain Decree made and entered by Judge Joshua Greenwood in the District Court of the Fifth Judicial District Court, State of Utah In and For the County of Washington, dated November 10, 1910 (the year 1910 is probably a typographical error and perhaps should read 1919), commonly known as and hereinafter referred to as the Greenwood Decree. I specifically call your attention to the paragraph numbered 5 and the last paragraph of said decree.

B. That certain decree made and entered by Judge H. Ericksen in the Fifth Judicial District Court in and for Washington County, State of Utah on November 6, 1922, (commonly known as the Santa Clara Decree). I specifically direct your attention to the last full paragraph of

the paragraph numbered IV on page 4 providing that the use of water from Grass Valley above New Castle Reservoir Company's dam shall be in accordance with the terms of the Greenwood Decree and that all of such rights were recognized and "hereby decreed as in said decree set forth..."

C. That certain supplemental decree to the Santa Clara Decree dated February 28, 1928. I call to your attention that the then Utah State Engineer George M. Bacon presented to the court, for its consideration, a report in writing urging the court to decree that water rights in Grass Valley be administered as being a tributary to the Santa Clara River drainage and administered in accordance with their respective priorities, etc. - again raising the same objectives that were made in the proceedings culminating in the Greenwood Decree and which had again been raised by individual Santa Clara water users by protests filed in the proceedings leading to the 1922 decree. I also call to your attention that the court notes in this supplemental decree that State Engineer Bacon also was sworn as a witness and was duly examined by each of the parties or as to the recommendations made in his report to the court and that, nevertheless, the court did not amend or otherwise alter the provisions of either the Greenwood Decree or the Santa Clara Decree and limited itself to ordering the periods of use applicable to the individual water rights.

D. That certain Certificate No. A-864 issued by then State Engineer Dee C. Hansen on May 29, 1975. (See 81-10 (a3031). The certificate issued included the water rights of New Castle Reservoir Company in and to the waters from Grass Valley conveyed through the diversion tunnel to New Castle Reservoir. The rights to the use of water as set forth in said certificate were approved as valid at the time they were conveyed to the Utah Board of Water Resources for the purpose of obtaining funds for construction of projects by New Castle Reservoir Company.

E. That certain "Recap Sheet" furnished to me by the Cedar City Office of the USGS on March 28, 1991, showing amounts discharged from the Grass Valley - Pinto intermountain diversion tunnel. You will note that the average annual discharge from said tunnel for the 29

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years of record that are available (1953 - 62, 1969 - 89) has been 2,700 acre feet per year. I call to your attention a sentence appearing in a June 18, 1990 letter from you to former Judge J. Harlin Burns responding to a letter from him dated May 22, 1990. The sentence reads, "It appears that the New Castle Reservoir Company has been the beneficiary of water flow in the past that should have been distributed to the Santa Clara River side." The additional information now available seems to indicate that the water New Castle Reservoir Company has been receiving through the diversion tunnel has been substantial and has been in accordance with applicable court decree instead of contrary thereto.

There are only a few days left during which water will be available from the Grass Valley drainage to flow through New Castle Reservoir Company's diversion tunnel. New Castle Reservoir Company requests that you promptly take whatever action is necessary to reverse the decision evidenced by your May 9, 1990 letter to the president of New Castle Reservoir Company.

Please advise.

Respectfully,

WADDINGHAM & PETERSON



Thorpe Waddingham

TW:cs

Enc.

VIRGIN RIVER BASIN

09408500 SANTA CLARA-PINTO DIVERSION NEAR PINTO, UT  
(Transmountain diversion)

LOCATION.--Lat 37°28'04", long 113°28'21", in SW¼SE¼NW¼ sec. 19, T. 38 S., R. 14 W., Washington County, Hydrologic Unit 15010008, on right bank 0.2 mi downstream from outlet of diversion tunnel and 6 mi southeast of Pinto.

PERIOD OF RECORD.--October 1953 to September 1962 (monthly discharge only, October 1953 to September 1960), October 1969 to current year.

GAGE.--Water-stage recorder. Altitude of gage is 6,820 ft from topographic map. Prior to September 1962, at site 600 ft upstream at different datum.

REMARKS.--Records good. Flow at this station is seasonal occurring during the snowmelt period and heavy storm periods. This is a transmountain diversion from a tributary of Santa Clara River in Colorado River Basin to Pinto Creek in Escalante Valley in the Great Basin.

AVERAGE DISCHARGE.--29 years (1953-62, 1969-89), 3.72 ft<sup>3</sup>/s, 2,700 acre-ft/yr.

EXTREMES FOR PERIOD OF RECORD.--Maximum discharge, 229 ft<sup>3</sup>/s May 24, 1983, gage height, 2.58 ft; no flow for part of each year.

EXTREMES FOR CURRENT YEAR.--Maximum discharge, 14 ft<sup>3</sup>/s Mar. 7, gage height, 1.34 ft; no flow for extended periods during year.

DISCHARGE, IN CUBIC FEET PER SECOND, WATER YEAR OCTOBER 1988 TO SEPTEMBER 1989  
MEAN VALUES

DAY	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP
1	.00	.00	.00	.00	.00	.50	.28	.06	.00	.00	.00	.00
2	.00	.00	.00	.00	.00	1.1	1.1	.00	.00	.00	.00	.00
3	.00	.00	.00	.00	.00	3.2	1.3	.00	.00	.00	.00	.00
4	.00	.00	.00	.00	.00	.69	1.1	.00	.00	.00	.00	.00
5	.00	.00	.00	.00	.00	.14	1.3	.00	.00	.00	.00	.00
6	.00	.00	.00	.00	.00	.26	1.6	.00	.00	.00	.00	.00
7	.00	.00	.00	.00	.00	3.9	2.0	.00	.00	.00	.00	.00
8	.00	.00	.00	.00	.00	5.6	2.6	.00	.00	.00	.00	.00
9	.00	.00	.00	.00	.00	3.5	2.9	.00	.00	.00	.00	.00
10	.00	.00	.00	.00	.00	2.5	2.6	.00	.00	.00	.00	.00
11	.00	.00	.00	.00	.00	2.3	2.5	.00	.00	.00	.00	.00
12	.00	.00	.00	.00	.00	2.6	2.1	.00	.00	.00	.00	.00
13	.00	.00	.00	.00	.00	3.8	1.8	.00	.00	.00	.00	.00
14	.00	.00	.00	.00	.00	3.0	2.0	.00	.00	.00	.00	.00
15	.00	.00	.00	.00	.00	2.3	1.9	.00	.00	.00	.00	.00
16	.00	.00	.00	.00	.00	1.9	1.9	.58	.00	.00	.00	.00
17	.00	.00	.00	.00	.00	1.6	1.8	.10	.00	.00	.00	.00
18	.00	.00	.00	.00	.00	1.6	1.3	.00	.00	.00	.00	.00
19	.00	.00	.00	.00	.00	1.4	1.5	.00	.00	.00	.00	.00
20	.00	.00	.00	.00	.00	1.4	1.5	.00	.00	.00	.00	.00
21	.00	.00	.00	.00	.00	1.5	1.2	.00	.00	.00	.00	.00
22	.00	.00	.00	.00	.00	1.6	1.1	.00	.00	.00	.00	.00
23	.00	.00	.00	.00	.00	1.6	.59	.00	.00	.00	.00	.00
24	.00	.00	.00	.00	.00	1.6	.53	.00	.00	.00	.00	.00
25	.00	.00	.00	.00	.00	1.7	.70	.00	.00	.00	.00	.00
26	.00	.00	.00	.00	.00	2.3	.61	.00	.00	.00	.00	.00
27	.00	.00	.00	.00	1.6	1.8	.69	.00	.00	.00	.00	.00
28	.00	.00	.00	.00	.56	.12	.54	.00	.00	.00	.00	.00
29	.00	.00	.00	.00	---	.00	.45	.00	.00	.00	.00	.00
30	.00	.00	.00	.00	---	.00	.32	.00	.00	.00	.00	.00
31	.00	---	.00	.00	---	.00	---	.00	---	.00	.00	---
TOTAL	0.00	0.00	0.00	0.00	2.16	55.59	41.81	0.74	0.00	0.00	0.00	0.00
MEAN	.00	.00	.00	.00	.077	1.79	1.39	.024	.00	.00	.00	.00
MAX	.00	.00	.00	.00	1.6	5.6	2.9	.58	.00	.00	.00	.00
MIN	.00	.00	.00	.00	.00	.00	.28	.00	.00	.00	.00	.00
AC-FT	.0	.0	.0	.0	4.3	110	83	1.5	.0	.0	.0	.0
CAL YR 1988	TOTAL	2512.06	MEAN	6.86	MAX	94	MIN	.00	AC-FT	4980		
WTR YR 1989	TOTAL	100.30	MEAN	.27	MAX	5.6	MIN	.00	AC-FT	199		