



State of Utah
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF WATER RIGHTS

Michael O. Leavitt
Governor

Ted Stewart
Executive Director

Robert L. Morgan
State Engineer

1636 West North Temple, Suite 220
Salt Lake City, UT 84116-3156
801-538-7240
801-538-7467 (Fax)

MEMORANDUM

TO: KIRK FORBUSH, REGIONAL ENGINEER
LEE SIM, ASSISTANT STATE ENGINEER FOR DISTRIBUTION

FROM: MARGE TEMPEST, APPROPRIATIONS SPECIALIST *mt*

DATE: JUNE 7, 1994

RE: PLEASANT CREEK DISTRIBUTION (TRIBUTARY TO SANPITCH RIVER)

Mr. John Stewart visited the office Wednesday (June 6, 1994) to talk with the State Engineer. He wanted to investigate water right records and procedures concerning water distribution of Pleasant Creek in Sanpete County. It appears that a conflict is occurring between his family's stockwatering rights and Mt. Pleasant City's hydropower filings. Robert Morgan was unavailable, and Mr. Stewart spoke with me because FERC documents have been housed with my section.

Mr. Stewart's family property is located along the creek in Section 6, T15S, R5E, SLBM, and is served by shares in Pleasant Creek Irrigation Company for irrigation and stockwatering purposes. The irrigation water apparently is delivered by diversion into ditches from the creek at a point above the power diversion, but much of the stockwatering is directly on the stream channel. Lessees presently use the property and water shares.

Mt. Pleasant City filed Application Number 65-2336 (A61402) for 40 second-feet of water from the creek and Coal Fork, which was protested by the irrigation company and subsequently approved. The water is to be taken in Section 5, T15S, R5E, SLBM (above the Stewart property) and returned in Section 1, T15S, R4E, SLBM (below the Stewart property). The FERC application addressed possible problems with this as far as fisheries and riparian environment were concerned, and it appears that 1.0 second-foot of water was to remain in the stream. The State Engineer's memorandum decision approved the application subject to non-interference with existing downstream rights, especially those of the protestant irrigation company.

Mr. Stewart visited the family property this past week and found



that the stream was dry. He contacted the city about maintaining a flow in the channel, and they referred him to David Peterson, the watermaster for the irrigation company. Mr. Peterson indicated to Mr. Stewart that the city was not leaving sufficient water in the stream to reach Mr. Stewart's property. Mr. Stewart then visited this office to find out what the rights were, how the stream is monitored, and what his course of action should be.

In reviewing the office distribution records with Gertrudys Adkins for the upper San Pitch River, it appears that the commissioner does not regulate the power diversion. I talked with Carvel Wayland in our Richfield Office who had the understanding that the irrigation company and the power company had agreed to maintain a flow in the stream, but he would check their office records for any further information. Mr. Stewart says he contacted FERC in California, and they indicated that the 1.0 second-foot stream flow requirement had been revoked; in its place was language indicating that there would be monitoring of the power intake to assure that no damage was occurring to the stream. However, there was no mechanism of monitoring described. FERC indicated that they would forward a copy of the revocation document to him. I did not locate any information on this substitution in our file.

I told Mr. Stewart that I would notify you of the situation and that either or both of you would contact him about further courses of action. He is particularly interested to know if the power diversion can or will be monitored by the State Engineer's commissioner to accommodate the conditions of the memorandum decision and the FERC license. He indicated that there are one or two other adjoining propertyowners that are experiencing the same problem. His elderly mother is still on the Sanpete property, but he is handling the matter for his family. His mailing address and telephone number are below.

cc: John Stewart
P O Box 84
Irvine, CA 92650
714 932-5401