



State of Utah  
DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF WATER RIGHTS

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August 2, 2000

Dale Barney, Mayor  
Richard Heap, City Engineer  
Spanish Fork City  
40 South Main  
Spanish Fork, Utah 84660

Re: Regulation of Spanish Fork City Municipal Water Supplies

Dear Sirs:

As you are aware, John Mendenhall, the Spanish Fork River Commissioner, regulates several of the sources of municipal water used by Spanish Fork City, specifically Cold Spring, Malcolm Spring, Crab Creek Spring, the Mill Race Canal, and the water sources for the golf course. Yesterday, John reported to us that by the end of July Spanish Fork City's diversions from these sources had exceeded its water rights by 91 acre feet. During July, based on approved applications, the city had a right to divert on the average 18.4 acre feet per day from these sources, however, the city's use from these sources averaged 26.7 acre feet per day.

This is a very dry year and water users throughout the state are being regulated very strictly by our commissioners to ensure an equitable distribution of water based on the water rights of record in this office. Unfortunately, that means that many water users, based on the priority date of their water rights, are being required to reduce or stop their use of water as the amount of water available grows smaller. This includes municipalities. Section 73-3-21 of the Utah Code Annotated states:

Appropriators shall have priority among themselves according to the dates of their respective appropriations, so that each appropriator shall be entitled to receive his whole supply before any subsequent appropriator shall have any right; **provided, in times of scarcity, while priority of appropriation shall give the better right as between those using water for the same purpose, the use for domestic purposes, without unnecessary waste, shall have preference over use for all other purposes,** and use for agricultural purposes shall have preference over use for any other purpose except domestic use. (bold added)

The only preference the State Engineer can allow is that when water rights have the same priority date those used for domestic use take precedence over any other type of use. Outside of this exception, the State Engineer is required by statute to administer and regulate the use of water based on priority, taking no other considerations into account.

**Spanish Fork City must not continue to divert water in excess of its water rights from the sources listed above. We cannot over emphasize the seriousness of this situation.**

We realize that Spanish Fork City has other water rights which have been approved from underground sources, however, these water rights cannot be used from the sources listed above without the approval of the proper change applications. Section 73-3-3 of the Utah Code Annotated states in part:

Any person who changes or who attempts to change a point of diversion, place of use, or purpose of use, either permanently or temporarily, without first applying to the state engineer in the manner provided in this section: obtains no right; and is guilty of a class B misdemeanor, each day of the unlawful change constituting a separate offense, separately punishable.

John indicated he discussed this information with you yesterday morning and that you discussed several possibilities for resolving this problem, such as leasing adequate water from Central Utah Water Conservancy District to make up the current deficit and filing the necessary temporary change applications with the state engineer to avoid future deficits. We strongly encourage you to follow through with any plans that will eliminate the over-use of water.

It does not appear there will be much relief from the weather over the next two months and the State Engineer cannot allow this illegal use of water to continue. Based on the plans being made to remedy the situation, I will not issue an order at this time to requiring Spanish Fork City to reduce or curtail its diversions from the sources listed above. **However, if immediate action to resolve this problem is not taken, I will have no choice but to issue an order to reduce or curtail the use of water and then to follow through with any necessary legal proceedings.**

I sincerely hope a means can be found to take care of this issue. If you have any questions concerning this letter please contact me.

Sincerely,



Robert L. Morgan, P.E.  
State Engineer

cc: Micheal Quealy, Assistant Attorney General  
Lee Sim, Assistant State Engineer  
Jim Riley, Regional Engineer  
John Mendenhall, River Commissioner