

**From:** Kerry Carpenter  
**To:** "JPMecowrit@aol.com".MAIL.MNET  
**Date:** 2/28/02 3:43PM  
**Subject:** Re: Ash Creek

Jim:

In response to your message, below>>

Per our records, Ken Anderson sold a part of his Ash Creek right (81-38 / totaling 0.75 cfs) to Bob Lichfield's "Family Limited Partnership." Robert B. Lichfield, et.ux., already owned a smaller interest. All combined, our records indicate that Lichfield now owns approximately 7.7 acres of irrigation and 28% of the flow under that right. Anderson has retained about 7.8 acres of irrigation and 29% of the flow. By two temporary change applications recently approved (by yours truly), all of Anderson's interest and the Lichfield Family Limited Partnership interest (about 6 acres and 22% of the flow) has been moved to Lichfield's upper point of diversion for irrigation on Lichfield's property. Those applications have been approved for a one-year period beginning 03/01/2002. I am not certain what Ken Anderson's incentives were for participating in these changes in title and water use. You'd have to ask him. If you want to see the Memorandum Decisions under which these changes were approved, they should be available as scanned documents on our website, or copies are available on our local file.

Your questions regarding the maintenance of flows in tributaries such as Ash Creek and LaVerkin Creek do not lend themselves to easy answers. From a purely "natural" perspective, a hot and dry summer will unavoidably result in greatly diminished flows in these streams. Even setting aside the legal rights to water that may exist, there may be times when it is simply not possible to guarantee that "there's water in places like this."

Tossing the "legal rights" variable into the equation, there is language in the "Virgin River Decree" that has been interpreted to require that the rights on the tributaries are to be distributed by priority vis a vis the rights on the main stem of the river. Taken to its logical extreme, this principle would run up Ash Creek, LaVerkin Creek, North Creek, the North Fork, Clear Creek, Meadow Creek, the East Fork and every other water course hydrologically connected.

As a rule, the "big" rights on the main stem of the river carry earlier priorities than many of those on the tributaries and would appear to have the right to "make a call" on the tributary waters. However, our "distribution system" on the Virgin has never been extended to the tributaries. John Wadsworth has recently resigned as Distribution Commissioner and the board members are looking to replace him. This issue will certainly be a part of that discussion and process. Anyone with an interest in the job should probably contact Ralph Staheli or Ron Thompson.

Enforcing priorities top-to-bottom on the river would be an extreme departure from past practices and would entail a labor- and time-intensive commitment from this office and our legal counsel in the AG's office. I doubt that all the logistical difficulties could be overcome in a single season. If the State Engineer is persuaded that such a transition is legally mandated, it will likely have to be implemented over a period of several years. Litigation may extend that time.

So, I haven't actually answered any of your questions, have I? I understand that the Conservancy District also has a strong interest in this issue and will likely be leading the charge to start expanding the distribution system. However, I am not optimistic that a great deal can be accomplished in the coming irrigation season.

Kerry

>>> <JPMecowrit@aol.com> 02/27/02 07:30AM >>>

Kerry,

Ken Anderson sold his 1912 water right in Ash Creek to Bob Lichfield. Since the Virgin River Program is interested in protecting native fish and since Ash and LaVerkin Creeks are high priority areas, I am wondering how one can determine how much water ought to be in the lowest reaches of each of these during a hot, dry summer.

I know there is no easy answer. Presumably the Washington Fields water users have an early water right that at some point supersedes older rights. That should benefit the Program and the fish, though no one seems to actually implement this prioritization, as I understand.

Ash Creek has dried up the past two summers and when we sampled it for fish last week we found no natives, or only a few. Somehow we have to figure out a way to make sure there's water in places like this and it seems like the laws are already in place that work on our behalf.

But, on the other hand, there appears to be no practical means of confirming or enforcing this. Do you have any ideas how we might go about preventing a dry down of these streams this coming summer, which looks right now like a very dry one?

thanks,

Jim

CC: Barbara Hjelle; Reed Harris; Steven Meisner