

BEAVER CREEK DISTRIBUTION SYSTEM MEETING MINUTES

June 5, 1987
McKinnon Schoolhouse, McKinnon, Wyoming

Present: Mike Ebsen, State of Wyoming
Velma O'Neil, Water User
Larry O'Neil, Water User
Gino Foianini, Water User
Howard Brinton, Water User
Jack Buckley, Water User
Darrel Eyre, Water User
Alma Evans, Water User
Steve Wilkinson, Commissioner
Kent Jones, State of Utah
Bob Leake, State of Utah
Jim Wells, State of Utah
Marge Tempest, State of Utah

Kent Jones, Directing Distribution Engineer for the Utah Division of Water Rights, conducted the meeting. He stated that at the regular annual meeting of water users of West Fork of Beaver Creek Distribution System (held February 10, 1987), questions arose concerning the duties of the commissioner and the method of assessment on Wyoming acreage. It appeared that originally the system had been organized to regulate the West Fork of Beaver Creek. However, since that time, the commissioner has been regulating the East and Middle Forks as well. Also, it appeared that users with acreage in Wyoming were being assessed property tax in Wyoming, part of which is allocated to pay the commissioner, and being assessed in Utah as well. Mr. Jones said that this second meeting had been called to address these questions, propose solutions, and discuss any additional matters.

The first item of business was the reading of the minutes of the February 10, 1987 meeting. A motion to accept the minutes was made by Velma O'Neil and seconded by Larry O'Neil. The motion carried.

Next, Mr. Jones discussed the commissioner's activities and the assessment practices. It appears that the commissioner has been involved in regulating not only the West Fork but also the East Fork and the Middle Fork in order to supply sufficient water to the Wyoming users on Beaver Creek. Kent Jones said that Utah statutes authorize the State Engineer to appoint a water commissioner when he believes there is need and/or when he is petitioned by water users on a system. Because of the history of past commissioners working on the Middle and East Forks and from the water users' comments at the February meeting, it appeared that a need existed, and Mike Ebsen representing Wyoming agreed.

In order to fairly allocate the costs of the system, it was recommended that the acreages being assessed in Wyoming via property taxes be removed from the Utah rolls and acreages in Utah on the Middle and East Forks be added. A handout sheet and a map explaining the proposal were distributed to those present. (See attached copies.) In response to a question from Darrel Eyre, Mr. Jones explained that Wyoming would still be paying 70% of the system costs and Utah 30%. Mike Ebsen said that the county commissioners had agreed to meet the budget for this upcoming year if costs were the same as indicated at the February meeting and if periodic visits and more detailed report of the commissioner were made as requested at the February meeting. When asked what penalties could occur on delinquent Utah assessments, Kent Jones said Utah statutes authorize the State Engineer to shut off delinquent water users' water, to file liens, and to foreclose and sell water rights to meet the liens. Mr. Eyre said that it appeared Wyoming users would pay more if taxes were raised due to the reduced Utah assessment. Mike Ebsen said that would not occur this year if the budget is kept the same. Also, he indicated that property taxes are raised based on a number of issues, including other Wyoming expenses and changing land values, and not strictly on the cost of the water distribution system. Corrections were made to the handout sheet indicating that Gino Foianini's water is from both East and Middle Forks and the Forest Service water is from Middle Fork.

Kent Jones asked for a motion officially changing the system to include Middle and East Fork and to omit Wyoming acreage on Utah's assessments. Jack Buckley made the motion to amend the system as summarized on the handout sheet. There was no second. Further discussion was requested. Mr. Jones indicated that the acreage cost in Utah would be increased about three cents per acre. He also explained that the commissioner has already been doing the work on Middle and East Fork for properties that have not been assessed. Mr. Eyre indicated that he didn't think the commissioner's efforts were needed on Middle and East Forks. There were discussions among individuals and small groups concerning the value of the commissioner's work on these forks. Velma and Larry O'Neil questioned the accuracy of the acreages on the handout sheet. There was then an explanation that the acreages on the sheet represented only the irrigation water rights originating in Utah and not the total size of the ranches involved. After some further discussion of problems concerning diversions on these forks, Darrel Eyre seconded the motion, and it carried.

Mr. Jones reviewed the budget proposed at the February meeting by line items: Commissioner's Salary at \$700.00, Travel at \$133.00, Bonds and Insurance Premiums at \$25.00, and Miscellaneous Expense at \$10.00, totaling \$868.00. The assessment would remain at \$900.00. He said that Wyoming had agreed to these amounts. Darrel Eyre made the motion to accept the budget and assessment the same as last year. Jack Buckley seconded the motion, and it carried.

Steve Wilkinson reported on some inequities on the system and requested the cooperation of all the users. Particular problems included Big Ditch, Gino's ditches from Middle to East Fork and from East Fork to Gregory Basin, the ditch shared between Alden Olsen and Alma Evans, and the Thompson Creek Ditch

at Hoop Lake. There have been times when Steve adjusted the diversions and other parties changed them after he left. Also Jack Buckley has not been able to get his late water although he has one of the earliest priority rights. It was requested that Mr. Buckley be allowed to clear West Fork to allow water to reach him.

Mr. Jones stated that by Utah law the commissioner has the authority to regulate diversions of water in the system and is thereby the responsible party for such diversions. He explained the procedure to shut off water users for tampering with diversions. Gino Foianini said that the commissioner should not only close diversions when water is low but should also be responsible to open gates when water is high. There followed discussions concerning various legal procedures on irrigation systems. Concerning the cleaning of ditches, Kent said that ditch owners usually have rights-of-way along the canals to allow for maintenance. Therefore, property owners cannot keep ditch owners out. However, ditch owners cannot create hazards or cause previously-accessible property to become impassable due to ditch work. If problems cannot be worked out between the parties, the legal recourse is to file court action. Concerning changing the point of diversion of a water right, even temporarily, Utah law requires the filing of a change application with the State Engineer. Approval of a change application does not authorize ingress to another owner's property. Such right of entry must be worked out separately with the property owner.

Concerning regulation, when headgates need to be moved, water users are to try to contact the commissioner so that he can make the adjustments or so that he is aware that changes are being made and can check them later or readjust as needed. In emergencies, discretion should be used. If water users make diversions that result in the damaging of other parties' structures, they can be held liable for such damage in court action. Concerning any diversion problems between users, the first step is to contact the commissioner. If users disagree with the commissioner, they should contact the Division of Water Rights in Vernal. However, the more that the Utah State Engineer becomes involved on a system, the more control he tends to exercise. Therefore, it is to the users' advantage to try to work out problems together and/or with the commissioner.

Mr. Jones that asked for the group's recommendation for candidates for commissioner. Jack Buckley made the motion that the State Engineer appoint the same commissioner as last year. Velma O'Neil seconded the motion, and it carried.

An inquiry was made that because some diversions have no operating works and thus cannot be measured and controlled, could water users with working systems remove them so that they are not unfairly regulated. In response, Mr. Jones stated that by Utah law, every diversion is required to have an operating, lockable diversion structure and an operating measuring device. Therefore, he stated that he was issuing a general order from the State Engineer that the water users of Beaver Creek system are all required to have lockable and controllable diversion works and measuring devices on all river diversions.

The deadline for installing the works or for showing evidence of diligence in getting such work done will be the beginning of the next irrigation system. Formal written notice will be sent out to each user.

Concerning the structure for the ditch to Gregory Basin, Mr. Jones said that he will contact the Burnt Fork users of the ditch to participate in the cost with Mr. Foianini. He also said that Bob Leake of the Vernal Office, Mike Ebsen, and Steve Wilkinson would arrange to meet with Gino Foianini to go over the site and work out the best type of structure to install. Howard Brinton requested a device at the bridge so that the flow could be measured there. Mike Ebsen and Kent Jones agreed to see if installation of such a device could be worked out. Darrel Eyre asked about measurement of the run-back flows below the bridge and the water from West Fork. Jack Buckley indicated that if he could get water from West Fork, he would be using it all. Mr. Jones said that these items would also be checked along with the need for cleaning West Fork channel. He said personnel from the State Engineer would try to get the system mapped to locate what is needed and would attempt to spend two days this summer going over the system.

Alma Evans asked about removing beaver dams. Kent Jones said that if a stream is to be altered or work done in the channel, Bob Leake in Vernal is to be contacted to work out the necessary processing.

Darrel Eyre made the motion that the meeting adjourn and that minutes be sent to all parties present. Velma O'Neil seconded the motion, and it carried.

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