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On January 27, 1992, a meeting was held in Rock Springs, Wyoming in reference to Beaver Creek, tributary of Henry's Fork and Burnt Fork, a tributary of Henry's Fork both of which originate in the State of Utah and are tributaries to Henry's Fork in the State of Wyoming. The purpose of the meeting was to discuss with the State of Utah additional matters in reference to the administration of water on both systems.

Those in attendance at this meeting were Mr. Bob Leake - the Regional Engineer for the Green River Drainage in Utah (his office is located in Vernal, Utah), Mr. Lee Sim - ^{AND DISTRICT} ~~Assistant State Engineer for~~ Adjudication for the State of Utah (his office is in the ^{DEPARTMENT} ~~state~~ ~~building downtown~~ Salt Lake City, Utah), Mr. John Teichert - Superintendent Water Division No. 4, Cokeville, Wyoming and Mr. Frank Carr - Administrator of the Wyoming State Board of Control, Cheyenne, Wyoming.

OF NATURAL RESOURCES

UTAH AGREED TO WORK WITH WYOMING TO SET UP A DELIVERY SYSTEM WHICH WOULD AID IN THE ADMINISTRATION OF WATER BETWEEN THE TWO STATES.

1. The first matter discussed was, "Under Utah law, what is the maximum amount of direct flow water that can be delivered for irrigation purposes?". In some cases it is necessary to refer to the Utah decrees or certificates that were issued at the time the water right was reviewed by the State of Utah. The latest document issued by the State rules. The problem is that the delivery rates are not always given. Under Utah law, the maximum amount of water that can be applied to any one (1) acre in the Burnt Fork & Beaver Creek Area is three (3.0) acre feet as measured at the farm field headgate. This is the ruling factor in water delivery. However, ~~Utah agreed to set up a water rights delivery system and identify the Utah rights at a set rate to aid in the administration.~~

"Does the maximum 3.0 acre-feet per acre include stored water or is this in addition to the direct flow?". Utah's answer was, sometimes it does and other times it does not. It will be necessary to examine each Utah decree to see how the water was appropriated.

THE ANSWER IS THAT ALL RESERVOIRS ARE TIED TO LANDS OR TO A PARTICULAR SERVICE AREA IN WHICH WATER MAY BE ROTATED.

"In Utah is all stored water tied to certain lands?" An example of this is the company may have 1700 acre-feet of reservoir water which they use to supplement the irrigation of their farm land. The company's service area encompasses a total of 2,500 acres and the company has a right to irrigate 2,000 acres within the service area during any given irrigation season. The reservoir water could be used to supplement the irrigation of any of the farm land in any amount as long as the total irrigation water applied from all sources does not exceed 3 acre-feet per acre as measured at the farm field headgate."

"How does surplus water enter into the administrative scheme under Utah water?" Under Utah law, once the right is filled, water goes downstream. They do not have a surplus water law on the books. However, there is no problem with Utah appropriators sharing extra water and diverting over their maximum delivery rate when water is available.

2. Measuring Devices and Control Structures. First discussed was, "Will Utah allow the water commissioner to assume the jurisdiction to order in these devices or will the district engineer need to be contacted by the Wyoming Superintendent?". The first choice is that the water commissioner request verbally that the appropriator or appropriators who own the ditch install a headgate and \or measuring device. If they refuse to do so, then the water commissioner is to write the ^{REGIONAL} district engineer in Vernal, Utah and ask that an order be issued by the Utah State Engineer that these devices be installed. Once requested, the Utah State Engineer will issue this order and give time ^(AT LEAST 30 DAYS) to install the device requested. If not installed, ~~they will be given a 30 day notice that if they are not installed~~ within this time limit, water will be denied at the headgate until such time as the order of the State Engineer is complied with.

3. Beaver Dams. "In Utah, who has the authority to remove or order removal of beaver dams when they are impeding the flow of water?". In Utah you must first contact the Division of Wildlife Resources if you intend to kill the beaver, ~~for the Utah State Engineer to obtain a stream alteration permit,~~ FROM THE UTAH STATE ENGINEER MAY ALSO BE NECESSARY.

Stream Alteration Permit. This is only required from the Utah State Engineer if you will be disturbing the creek channel while removing the beaver dams. However, it probably would be a good policy to check with the Utah State Engineer's Office in each situation to determine if a permit is needed or not. ~~to enter the property where the beaver dams are situated~~ If no access or permission can be obtained, then it will be necessary for those users who want the beaver dams removed, to file a civil suit and ask that the beaver dams be removed. It should be noted that in Utah, it is not necessary to obtain a 404 Permit from the Army Corp of Engineers because of the general 404 Permit issued to the State of Utah by the Corps.

IT IS NECESSARY FOR THE PERSON OR PERSONS WHO WANT TO REMOVE THE BEAVER DAMS TO GET PERMISSION

4. Irrigated lands. "What happens in Utah when lands are no longer irrigated?". In Utah, a perfected water right is considered abandoned if the water user submits a written statement to the fact that he has no further interest in the water or if he takes some action such as destroying his diverting works or filling in his ditch et. with the intent to stop using water. A perfected water right is considered to be forfeited if it is not used for a period of five (5) years (non-use during periods of time when the water is not physically available such as during a drought is not considered as forfeiture). Determination and enforcement of forfeiture can result from a court decree in a lawsuit between water users or during an adjudication proceeding when the state engineer disallows a water right on the basis of non-use and the proposed determination is then decreed by the court; or when an application for an extension of time within which to resume uses is denied by the State Engineer.

"Can the diversion be cut back if the lands are not being irrigated?". In Utah, the water cannot be denied at the headgate if the lands are not being irrigated or if a portion is not being irrigated without official action by the Utah State Engineer or through a stipulation from all of the parties involved.

5. Points of Diversion. "If water is being diverted somewhere other than its record point of diversion, how is this discrepancy corrected?" When this is noticed, the water commissioner is to contact the regional engineer and explain the situation. The ditch owner may also request a change application and if no change application is filed within a certain period of time, Utah can direct that the water right be shut off until such time that the discrepancy is corrected.

"If a change is granted, are there any special limitations?". Utah operates similar to Wyoming. A change cannot be made that would injure another appropriator either upstream or downstream. However, in Utah the priority can be subordinated.

"Can an appropriator have more than one (1) point of diversion for the same appropriation?". In Utah this can be done but it cannot be done without notification to the water commissioner and the delivery through the extra points of diversion cannot exceed the total appropriation available when all points of diversion are being used.

"What does Utah do about (illegal) unpermitted diversions?". In Utah they shut down a lock diversion just as Wyoming does and Utah will provide the water commissioner with tags, in case this situation does occur. It should also be noted that Utah uses a tag that spells out the penalty for tampering with a headgate once regulated.

→ IF MOVING UPSTREAM COULD BE INJURIOUS TO JUNIOR APPROPRIATORS BETWEEN THE OLD ~~AND THE~~ 3 POINT OF DIVERSION AND THE NEW POINT OF DIVERSION, THE PRIORITY IS ONLY SUBORDINATED FOR THESE INTERVENING POINTS OF DIVERSION AND IT IS NOT AFFECTED BY THOSE OTHER APPROPRIATORS SITUATED DOWNSTREAM.

IF THIS IS TO ALL WATER USERS, I WOULD NOT INCLUDE A DISCUSSION OF THESE SPECIFIC PROBLEMS (NEXT PAGE ALSO)

6. ~~Proposed Hydrographer/Water Commissioner Program. If funding is provided for the Wyoming proposed program, it will be necessary, perhaps for Utah to hold another meeting to reappoint a new water commissioner.~~ Under Utah statutes, Utah water commissioners are appointed for a one (1) year term effective April 1 through March 30. ~~Under the new proposal Wyoming's new State paid program will begin July 1, 1992. The Utah Attorney General's office will be contacted by the Utah officials to see if the water commissioner could be appointed for a term other than one year. They are also going to check and see how Wyoming's water law will interplay with Utah water law. Utah will continue to contribute their proportionate share of the administration. If Wyoming's new program is enacted, the costs will be made payable to the State Engineer instead of the commissioner. This of course, is all contingent on the 1992 budgetary session providing the 1.9 million dollars required to run the water commissioner program. If funding is not provided and the legislation that passed last year is withdrawn, then the system will stay status quo and the irrigation districts and the appropriators will continue to recommend water commissioners and they will be appointed in both Utah and Wyoming.~~

UTAH OFFICIALS WILL

UTAH'S SHARE WILL BE PAID TO THE WYOMING STATE ENGINEER INSTEAD OF TO THE COMMISSIONER. UTAH'S

7. Line of Command. It was established that if and when a Utah appropriator felt that water has been delivered wrong and he has been aggrieved by the water commissioner's methods of administration, he is to immediately contact the Utah Regional Engineer in Vernal, Utah, who will in turn contact John Teichert, the Wyoming Division Superintendent. At this point, John Teichert will contact the person that he wants to review this complaint. A report of the findings is to be given to all parties and States involved.

In Wyoming any complaints that are registered about administration will go to Hydrographer/Commissioner John Yarbrough in the Evanston office and he and Superintendent John Teichert, will examine the situation and make the necessary corrections.

One of the things that should be noted about Utah water rights is that lands can receive water from different sources and they do not always designate which source is the primary source of supply in some cases a "shot call" will have to be made as to how this water is to be administered. It should also be noted that one of the problems that we experienced last year was the lack of a diversion structure with a control and a measuring device on the Gregory Basin Ditch which diverts in Utah. A letter has been written by the Utah State Engineer to Mr. Gino Fionini that these devices need to be installed. The Utah State Engineer's office is going to follow this up and make sure Mr. Gino Fionini complies with Utah's request.

It should also be noted that the areas of beaver dams on the West Fork of the Beaver Creek are situated on the Lyman Grazing Associates property and the State of Utah is going to write letters

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~~to them and advise them that if they intend to irrigate naturally because of the placement of the beaver dams, then they will not be allowed any turnouts. They will need to remove any plastic diversions or artificial diversions in the system that cause some of the lands to be irrigated.~~