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AREA CODE 801



November 12, 1964

Mr. Wayne D. Criddle  
Utah State Engineer  
State Capitol Building  
Salt Lake City, Utah

Re: Price River-Diligence Claims No. 438442 Incl.

Dear Mr. Criddle:

Mr S. V. Litizzette, attorney at law, Helper, Utah, and the undersigned have been retained by Wellington Canal Company, Pioneer Ditch Company No. 1, Pioneer Water Company No. 2, Price Water Company and Allred Ditch Company, being the respective claimants under the above numbered Diligence Claims, to assist them in obtaining the winter water from the Price River to which they are entitled and which they and their stockholders have continuously and historically used dating back to their original appropriations until last year when the Price River Water Commissioner refused to permit such waters to be diverted into their canals. We are advised that such refusal was based upon the instructions given to the Commissioner by your office.

It is our view that the above named Companies have vested rights to the use of such winter waters with priorities dating back to their original appropriations as set forth in the above numbered Diligence Claims. Such winter rights were not the subject matter of the adjudication culminating in the Morse Decree dated December 18, 1902, as amended, nor the Supplemental Morse Decree dated May 6, 1910, as amended by the Keller Decree dated July 14, 1961. The foregoing Decrees adjudicated only the irrigation rights of the parties during the period from March 1 to November 30 inclusive of each year. No issue was raised therein as to the rights of the parties to the use of the winter water and, therefore, there has been no adjudication of their winter rights. In view thereof, the above numbered Diligence Claims were filed with your office pursuant to and in accordance with Section 73-5-13, Utah Code Annotated 1953, and by reason thereof,

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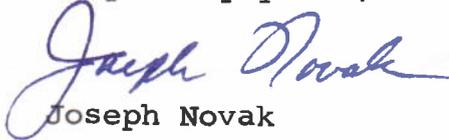
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are prima facie evidence of the rights of those claimants. The prima facie effect thereof is further supported and is conclusively established by the fact that such winter waters have been continuously and historically used by those claimants until last year when they and their stockholders were wrongfully deprived of the use thereof.

In view of the foregoing, request is hereby made in behalf of Wellington Canal Company, Pioneer Ditch Company No. 1, Pioneer Water Company No. 2, Price Water Company and Allred Ditch Company that you instruct and direct the Price River Water Commissioner to deliver into the Price Canal the winter waters to which they are entitled under the above numbered Diligence Claims under the priorities therein stated commencing on December 1, 1964 and continuing to March 1, 1965, being the beginning of the next irrigation season, at which time we assume that the waters will be distributed in accordance with the above designated Decrees. We further request that the same distribution of the winter water be made in the ensuing years. Since it is imperative that a decision on this request be made before December 1, 1964, we respectfully request that if you propose to call a hearing thereon, that such hearing be held at a sufficiently early date in order that your decision can be made prior to December 1, 1964.

Very truly yours,

  
Joseph Novak

JN:CM

c.c. Mr. S. V. Litizzette  
Attorney at Law  
178 South Main  
Helper, Utah

Price-Wellington Control Board  
c/o Carlyle Pace, Secretary  
44 East Second North  
Price, Utah