



STATE OF UTAH
NATURAL RESOURCES
Water Rights

Norman H. Bennet, Governor
Dee C. Hansen, Executive Director
Robert L. Morgan, State Engineer

1636 West North Temple • Suite 220 • Salt Lake City, UT 84116-3156 • 801-533-6071

November 8, 1985

Mrs. Kathleen S. Weight
65 East 200 North
Provo, Utah 84603

RE: Provo River Distribution System Accounts 53 and 59

Dear Mrs. Weight:

I am writing in response to your inquiries last dated September 30, 1985, concerning the Provo River Distribution System Accounts 53 and 59. Our office has researched the rights involved as well as the title transfer documents that you have submitted to our office and has made an evaluation pertaining to the associated rights.

Accounts 53 and 59 in the Provo River Distribution System are both based on a partial right of the Provo River Decree right "p" on page 20 of said decree for Spring Creek and Provo River water. The right "p" was also referred to by the previous commissioner, Mr. Wentz, as number 47. The right was in the name of Andrew Forsythe and was for 24.69 acres of irrigation.

According to section 73-1-11 of the Utah Code Annotated, 1953, water rights are appurtenant to the land and "shall pass to the grantee of such land". The statute further states that water rights "may be reserved by the grantor in any such conveyance by making such reservation in express terms in such conveyance, or it may be separately conveyed.". In reviewing your deeds and chain of title, the water rights have not been mentioned specifically in all of the deeds but have been reviewed as an appurtenance to the land. The Provo River Decree lists the water rights in terms of a flow rate and the uses, including the acreage of irrigated land. Since the decree did not specify the place of use of various awards, it is difficult to determine exactly what acreages were involved with each right on the Provo River System. According to the conveyance documents submitted by you, there appears to be a direct chain of title to you and others from Andrew B. Forsythe for 0.75 acres of irrigated land.

There was a mention of the two accounts concerned representing 3.25 irrigated acres in a 1965 letter from River Commissioner, Wallace R. Wayman. No evidence can be found, however, in the submitted documents to substantiate that acreage, and verification has only been made on 0.75 acres of irrigated land under those accounts.

A summary of how the right has been transferred to you is as follows:

William A. and Grace G. Nuttall received all (24.69 acres of irrigation) of the right from Andrew Forsythe.

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Later, William A. Nuttall transferred 20.0 acres to Grace G. Nuttall (the difference between the 24.69 acres and the 20.0 acres is likely tied to the Girl Scout Council and Margaret Clegg rights covered under other applications for water right exchanges).

Then Grace G. Nuttall transferred 2 acres to William. R. and Vera Nuttall and 7.5 acres to Albert C. and Betty Mae Nuttall.

From the 7.5 acres, Albert C. and Betty Mae Nuttall deeded 0.75 acre to Fannie Sowards.

We then received title transfer from Fannie Sowards to Willa S. Swenson, Gay S. Lewis and Kathleen S. Weight (each having a 1/3 interest in the 0.75 acres of irrigation).

Later, Willa S. Swenson transferred her 1/3 interest of the 0.75 acres of irrigation to Willard M. Swenson and Sylvia Swisher.

With other title information received, the owners of record for right "p", page 20 of the Provo River Decree are as follows:

<u>Acres of Irrigation</u>	<u>Owner</u>	<u>Comments</u>
4.69	William A. & Grace G. Nuttall	(Possibly transferred to the Girl Scouts and to Margaret Clegg)
0.60	H. Sherman & Veda Howard	Through William. R. and Vera Nuttall from Grace G. Nuttall
1.40	North Fork Special Service District	Through H. Sherman and Veda Howard
10.50	Grace G. Nuttall	Through William A. Nuttall
6.75	Albert C. and Betty Mae Nuttall	Through Grace G. Nuttall
0.75	Kathleen S. Weight (1/3) Gay S. Lewis (1/3) Willard M. Swenson and Sylvia Swisher (1/3)	Through Grace G. Nuttall to Albert C. and Betty Mae Nuttall to Fannie Sowards

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In 1951, we have on our records that Fannie Sowards (William L. Sowards) had her portion of the Provo River Decree water set up in two separate accounts. Why this relatively small water right was divided into two accounts and whether this was done for water transfer purposes or real estate transactions or not, is not clear at this time, but accounts were set up at the request of owners of the rights through the River Commissioner and assessments were made by the State Engineer. The owners of the rights designate who is to be responsible for paying the assessments and the assessments are sent to that individual. Assessments on the Provo system are based on the proportionate share of decreed flow a person owns compared to the total decreed flow. Water users in the Provo River Distribution System agreed that each account would receive at least a minimum billing each year to help cover the administrative costs. Because accounts 53 and 59 are small and their proportionate share of the total assessment would be less than the minimum agreed upon assessment, these two accounts have been annually billed the minimum amount.

Because these accounts represent such a small amount of flow and are based on the same decreed right, they could easily, at the owners written request, be consolidated into one account. This request could be sent to the River Commissioner, Stanley Roberts, Jr., or to the State Engineer directly.

In reviewing the title documents, we obtained a current plat from the Utah County Records office. This plat shows that the property covered under the Fannie Sowards right (i.e. Kathleen S. Weight, et.al.) is now in the name of a Robert L. Smith, et.ux. If the property was sold to Mr. Smith and the water rights were not restricted from the deed, the water right would legally transfer to Mr. Smith, according to 73-1-11 of the Utah Code Annotated, 1953, and the distribution system accounts should be transferred to him also by having him or his representative request in writing that the accounts be transferred.

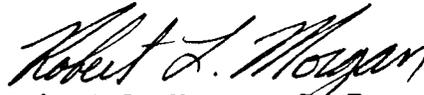
There has been a question brought up during a discussion with the River Commissioner about the actual usage of this water right. According to Section 73-1-4 of the Utah Code Annotated, 1953, it states, "When an appropriator or his successors in interest shall abandon or cease to use water for a period of five years, the right shall cease and there upon, such water shall revert to the public". The Commissioner has indicated that he is not aware of where the water is being diverted and used. He further indicated that much of the land that was irrigated under the Spring Creek-Provo River rights is no longer being irrigated. Documented evidence indicating points of diversion and places of use would be helpful in perpetuating your water rights.

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In summary, our review of accounts 53 and 59 of the Provo River Distribution System, under the Old Wentz Account Number 47, has revealed that Fannie Sowards was deeded 0.75 acres of land with an associated 0.75 acres of irrigation from the Provo River Decree. This right was distributed under two separate distribution system accounts (number 53 and 59) at the option of the owner of the right. Minimum assessments have been charged on both accounts. Title transfer documents were received by the State Engineer transferring the Fannie Sowards 0.75 acres of irrigation right to Kathleen S. Weight, Willa S. Swenson and Gay S. Lewis, each having an equal 1/3 of the right. Willa S. Swenson later transferred her 1/3 interest to Willard M. Swenson and Sylvia Swisher. Assessment for the distribution system accounts have been put in the name of and paid by Kathleen S. Weight. The property associated with the water right concerned is presently in the name of Robert L. Smith and the water right may have been transferred with the property if it was not restricted in the deeding of the property to Mr. Smith. Our office has no deeds transferring the property to Mr. Smith. There is also some concern if the water right has been perpetuated by use or if it has been lost through non-use under Section 73-1-4 of the Utah Code annotated, 1953.

Although there are some questions on the right as to current ownership and perpetuation of use, our records indicate that you and others associated with you have ownership of 0.75 acres of irrigated land under the Provo River Decree. Assessments have been made according to directions given to the River Commissioner and State Engineer and are in order. If you have questions concerning the enclosed information or the rights involved, please contact our office.

Sincerely,



Robert L. Morgan, B. E.
State Engineer

RLM:KLJ

cc: Ruth Ann Storey
Administrative Assistant