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**WATER RIGHTS  
SALT LAKE**

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July 22, 1997

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**Re: Comments on the Formation of Water Users' Committees and  
Appointment of River Commissioners for Parley's, Mill  
Creek, Big Cottonwood and Little Cottonwood Canyons**

Dear Mr. Morgan:

This letter is in response to your request for comments regarding the formation of water users' committees and the appointment of a river commissioner (or commissioners) for Parley's, Mill Creek, Big Cottonwood and Little Cottonwood Canyons.

These are my observations, and although a few of our clients have exchange agreements with municipalities, these comments are not written specifically on behalf of any particular client. They are written mainly to ensure that the administration and distribution of water rights is fair and open and that more accurate diversion and water use information will be available for these Creeks.

**A. Representation on the water user's committee - one person, one vote.**

Many of the water rights in Parley's, Mill Creek, Big Cottonwood and Little Cottonwood Canyons are either owned by municipalities or are used by municipalities under exchange

LAW OFFICES OF  
**APPEL & WARLAUMONT, L.C.**

Robert L. Morgan,  
State Engineer  
July 22, 1997  
Page 2

**RECEIVED**

**JUL 25 1997**

**WATER RIGHTS  
SALT LAKE**

agreements with ditch companies who are the decreed owners of water rights in these Canyons. For purposes of representation on the water users' committee, the rule of one water user, one vote should be applied to prevent the municipalities from exercising undue influence on the committee. A municipality should not have more than one representative on a committee. This is so that one or two municipalities cannot overwhelm the voice of other water users, including ditch companies who have leased or exchanged their decreed canyon water with municipalities.

Various arrangements exist with respect to municipal ownership of water in the Canyons. In some instances, the municipality controls the water and obtains its right to representation through the exchange agreement. In other instances, the municipality has obtained a majority or controlling interest in a ditch company. Neither of these situations should entitle the municipality to additional representatives on the committee. In the past, the municipalities have been able to place "puppet" representatives on boards and committees with the end result being that they exert undue influence over decisions made for the Creeks and act contrary to the desires of the owners of the water rights. To this same end, representation on a committee should also be provided for those with independent and genuine ownership interests in decreed or other legally-recognized water rights. In other words, a titleholder to a decreed right on a Creek should be represented,

Robert L. Morgan,  
State Engineer  
July 22, 1997  
Page 3

**RECEIVED**

JUL 25 1997

**WATER RIGHTS  
SALT LAKE**

even though it may have granted a municipality the perpetual use of its decreed right. Such an approach will help ensure that the title-holder/ditch company's rights are adequately protected.

**B. River Commissioner's role**

The river commissioner should be independent and not an employee of any municipality. Conflicts of interest in the past have impaired the river commissioner's ability to administer the decrees and assist the court in the impartial and diligent administration and distribution of water. The State Engineer (and the water users' committees) should require that the river commissioner be the neutral and non-partisan administrator of the decrees, exchanges and other Creek rights. Foremost, the river commissioner should provide detailed reports of water distribution similar to those annual reports provided by river commissioners on other major streams in the state of Utah.

The duties of the river commissioner should include:

1. **Collecting diversion measurements on ditches and verifying the municipal diversion measurements and data logs.<sup>1</sup>**

In the past, the river commissioner has taken measurements of diversions from the Creeks into ditches and municipal treatment

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<sup>1</sup> The municipal diversions have venturis and automatic flow meters. Occasionally, these should be tested and calibrated and the data verified.

LAW OFFICES OF  
**APPEL & WARLAUMONT, L.C.**

Robert L. Morgan,  
State Engineer  
July 22, 1997  
Page 4

**RECEIVED**

JUL 25 1997

**WATER RIGHTS  
SALT LAKE**

plants. This practice should continue, but annual reports (mentioned above and below) should be provided to the water users' committee and to the State Engineer. Furthermore, because the water in these Canyons are involved to a large extent with exchange agreements among ditch companies and municipalities, the river commissioner's duties should include not only measurement of diversions of decreed rights from the Creeks into ditches and treatment plants, but of the diversions of the exchange water from the canals into the ditches as well. Due to the exchange agreements, the two sources of water (the Creeks and canals) cannot be separated. Under many of the exchange agreements, the municipalities are not only responsible for paying the river commissioner's salary, but are also responsible for supplying the diversion appliances necessary for the proper measurement and delivery of exchange water from the canals as well.

**2. Accounting for the water diverted under the decrees.**

Large diversions from the Creeks for municipal treatment purposes occur under a variety of rights in the Creek. These large diversions should be accounted for by reference to the originally-decreed rights, or any subsequently-developed rights, and differentiated. For example, a review of the previous river commissioner's records for Little Cottonwood Canyon indicates that only diversions from the stream were recorded. There were no records differentiating the decreed rights flowing into the Salt

LAW OFFICES OF  
**APPEL & WARLAUMONT, L.C.**

Robert L. Morgan,  
State Engineer  
July 22, 1997  
Page 5

**RECEIVED**

JUL 25 1997

**WATER RIGHTS  
SALT LAKE**

Lake Metropolitan Treatment Plant. Furthermore, once such water has been commingled with water from Deer Creek and discharged into the Creek, it becomes even more difficult to determine if and where the Little Cottonwood Creek rights are being used.

As discussed above, the ditch companies receive their water not only from the Creeks, but from canals as well. Reports of the river commissioner should not only identify decreed stream rights diverted into ditches, but also those diversions under the exchanges that the ditch company has with a municipality. For example, a ditch company may have multiple exchanges with multiple municipalities yet receive all of its exchange water from one canal. An accounting of the legal source of the water received by the ditch company from the municipality's canal water is essential for a determination of whether the municipality is fulfilling its duty to deliver water under the exchange agreement. In the example given, reports on the diversion should differentiate by exchange agreement, municipality and/or canal shares.

**3. Preparing and filing with the State Engineer an annual diversion report.**

The annual report should show the daily use of decreed and other water rights and summarize the information in 1. and 2. above. This has not been done in the past and will help assure that water users are complying with their rights and obligations and using the waters to which they are entitled.

Robert L. Morgan,  
State Engineer  
July 22, 1997  
Page 6

**RECEIVED**

JUL 25 1997

**WATER RIGHTS  
SALT LAKE**

**4. Recommending and requiring the repair or replacement of diversion works and measurement devices.**

The river commissioner should also make recommendations to the water users' committee, and in some instances require, that a diversion structure or measurement device be repaired or replaced. Sometimes, this will require making a written recommendation to the water users' committee. Other times, it will require a review of the exchange agreement and coordination and communication with the municipality and the ditch company.

**C. Number of Commissioners**

Responsibility for all four river systems, or even the combination of Big Cottonwood Canyon and Little Cottonwood Canyon, appears to be too large for one river commissioner working alone. Three commissioners, one for each of the Cottonwood Canyons and one for Parleys and Mill Creek combined, may be an alternative. Another alternative would be to have one commissioner with two or three deputies. Of course, there are other configurations that would work equally as well.

**D. Assessments for system-financing and river commissioner's salary**

The answer to this last issue depends in part on the decisions made by water user committees and the State Engineer on the issues discussed above. Be that as it may, the charges to the water users for the river commissioner's services should be based on equitable considerations and after taking into account the water user's

LAW OFFICES OF  
**APPEL & WARLAUMONT, L.C.**

Robert L. Morgan,  
State Engineer  
July 22, 1997  
Page 7

ability to pay, and not simply charged to the owners of decreed rights. Many of the exchange agreements require the municipalities to pay all costs of measuring and distributing all water covered by the exchange agreement--canyon and canal water. These expenses include not only the river commissioner's salary, but the provision of gates, weirs, and diversion appliances. The municipalities receive the benefit of the canyon water under the exchange agreements and must pay all the expenses of that use. It does not reason, however, that because of their use of water and payment of expenses that the municipalities should be allowed to dictate the administration and distribution of water on the Creeks. Many of the titleholders of decreed rights from the Canyons granted the municipalities the right to use the water only so long as they complied with the exchange agreements, and these people are entitled to the protection of their interests and an assurance that the exchange agreements are being followed.

Sincerely,

APPEL & WARLAUMONT, L.C.



Benjamin T. Wilson