

SEAA 1110

September 14, 2014

Mr. Mike Silva  
Distribution Engineer  
Utah Division of Water Rights  
1594 W. North Temple, Suite 220  
PO Box 146300  
Salt Lake City, UT 84114-6300

RE: MORRIS LEVI DITCH ASS'N WATER RIGHTS, "Removal from Service"

Dear Mr. Silva:

Floyd and Calvin Yardley met with Sunrise Engineering and gave us copies of the 2014 Utah Division of Water Rights correspondence concerning the Division request to have the Morris Levi Ditch officially "removed from service" and also in the letter, the determination of facts that a water right does not exist for the property concerned.

Yardley is anxious, of course, and wants to always be compliant; therefore, his request herein for additional information of the water rights is standard and a simple request. Yardley and others in the Beaver area are concerned that, seemingly, DWRI has taken the statewide political position of not helping to repair a water right and or reducing agricultural water rights if possible. We are pleased to see a more recent response to Mr. Yardley's August 2014 letter contrary to any reductions.

Since the validity of this matter of "none" or "no" water right is contrary to the valid water right in the Cox Decree Award, we request that additional DWRI help.

The greater concern for Yardley is that this "Order" made a determination of water right validity contrary to and against the historical Cox Decreed water right (Award page 37, paragraphs 85 "a" and 86 "a" and "b") that adjudicated the water right valid (the most recent case that has adjudicated these rights).

That current water rights for these specific adjudicated water rights with the above totals, quantifications, and with original ownership as historically indicated, have not been found is also

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unsettling. The same original owners have other water rights in the water right public files but not those five water rights. It seems DWRI have previously come to the same conclusion based on the facts in your letters.

To further back up the facts of the matter, no change applications for the specific water right values have been found, and also no change applications for the specific place of use of the original awards have been found. Likewise, in all of the recent correspondence, none of these water rights were referenced as having water right numbers, even though they are the original awards, which you did reference. There are possibly five separate and distinct water right awards with no water right numbers or files. We hope and believe this is a simple oversight. We hope the water right files exist; however, we feel that situation is not likely, as the matter has evolved over sometime now and much has been done and time expensed to find them.

**The water rights in question are specifically: Emma J. Yardley, for a total of 47 acres; Mrs. H. V. Scott 5.0 acres, Frank & Z.S. Morris 25.0 acres, J. H. Morris 1.0 acre, and Nettie Price 3.75 acres, for an additional total of 34.75 acres.**

We realize one of these rights has a different diversion than the Morrison Levi ditch. Either some or all of these water rights are currently owned by the Yardley's, and current research is taking place as title and other professionals are checking recorded deeds for the properties to see if the water rights were ever severed from the land.

Since the court awarded the water right to be valid, it seems to be an oversight by DWRI at the time to not have created a public water right or water right file for the specific awards like the others. Yardley's have continually searched. We have also searched the public water right files, water right inventories of the lands, water change applications for the properties, and the actual water rights representative of the Award, and none were found documented in the DWRI files. Therefore, the research shows that even though the rights do exist as adjudicated, the state did not create a water right or number for the award; and, therefore, we believe most of the confusion stemmed from that oversight. We hope you will promptly help correct the error.

Additionally, since DWRI requires that the current owner as listed above initiates/signs the transfer application of his water right to move to a new place of diversion and place of use with completion and approval of the State Engineer through the public change application process, and those records seemingly do not exist, we assume that the Award is still appurtenant to the original Awarded place of use.

If there is any additional completed adjudication case or approved change application that has moved the Decreed Award, the State Engineer surely has a copy of those signed adjudications, applications, and "approved" change documents. We officially request copies of that information as we cannot find it ourselves and believe they do not exist. We believe there was no adjudication, private action, or a DWRI action initiated by anyone to move this water.

From our perspective, if the water right had been moved to a ditch company with approval to a lower point of diversion in the Beaver River as has been offered by DWRi, that Ditch Company would have already received a larger flow than the original Award for that ditch (based on the addition). Our research shows that no additional flows have been documented to those companies nor has their place of use increased.

Last of all, a close look at the hydrologic mapping associated with the irrigated lands show that the lands are irrigated indicating that the historical irrigation has been proper.

We offer some simple solution recommendations:

1. Have DWRi personnel create water right numbers for the omitted Page 37 paragraphs 85 "a", 86 "a", and "b" of the Decree to enable those who own the rights to update title.
2. Once this DWRi action has been completed, please notify Yardley and myself.
3. Since there is an Awarded water right coupled with a proper diversion point that needs some repairs to function properly, Yardley will replace the existing weir and head gate into the existing ditch where the river commissioner can readily measure/monitor the water use.
4. Allocate the proper flows to the Morris and Levi Ditch Ass'n diversions as per the Decree through the river commissioner to irrigate the decreed acres in the NW and NE of the NE 1/4 of section 36 and the Emma Yardley right in the W 3/4 of SW 1/4 of section 30.
5. Yardley will work to update the title, and etc. to the new water right numbers.

Thank you for your consideration and help on behalf of the Yardley's.

Sincerely,

Ken Tuttle  
Water Consultant/Specialist  
Sunrise Engineering Inc.