

MEMORANDUM

To: File 29-200
File 29-4159
File 29-13145
Hardcastle split of 29-4157
Fr: Bryce Contor
Date: 1/31/2001
Re: Cutler Ditch

Hardcastles came in today in response to a request for a more complete chain of title for a Notice of Change of Ownership for a portion of 29-4157, and to file claims on 29-200 and 29-4159, which appear to be appurtenant to this land but have not previously been claimed in the Adjudication.

The deed specifically excludes "Cutler Ditch Water" from the sale. AJ query indicates that an entity called "Cutler Ditch" has several AJ claims, and the names in the files appear to be neighbors of Hardcastles. A search of "Cutler Ditch" on the Secretary of State website failed to produce a result, so apparently the Cutler Ditch is not a formally organized entity.

No! 29-200 is noted in the decree as delivered via the Cutler Ditch, but it is neither decreed to nor claimed by Cutler Ditch nor any of the identified owners of Cutler Ditch. At this point I interpret this to mean 29-200 was a private right originally conveyed via the Cutler Ditch but not owned by the Ditch association. On that assumption, I accepted AJ claim 29-200 with an accomplished change in POD to the heading of the current delivery ditch.

Can 1 Hardcastles have not owned this property long and are not certain exactly where the Cutler Ditch is, but the current users appear to be on the north side of the highway. The current delivery ditch for Hardcastles' land is on the south of the railroad.

The 1987 NAPP clearly indicates more acres of irrigation than the combination of 29-200, 29-4159, and Hardcastles' portion of 29-4157. At this point it is unclear whether this irrigation was from Cutler Ditch shares owned by Hardcastles' predecessors, and retained in the deed, or whether this is a beneficial use right.

I accepted claim 29-13145 as a beneficial use claim, with the intention that if evidence is not provided, it still may be possible to recommend some of it as an enlargement. I cautioned the claimants that the exclusion of the "Cutler Ditch" water in the deed (copy in Notice of Change of Ownership 29-4157) is problematic.

Harold Jones is familiar with some of the history of the Cutler Ditch, and indicated that watermaster Arlin Olsen says the Cutler Ditch had severe leakage and water seldom made it as far down the ditch as this general area. Jones says the Cutler Ditch claims were filed by Roger Johnson and there is not actually a Cutler Ditch association to his knowledge. Jones also relates that Ken Andrus and his brother have inquired about a transfer of the Cutler Ditch rights which they have purchased or intend to purchase, Jones told them to wait until the AJ determines what the rights may actually be.