

Memorandum

Date: April 11, 2006

To: File 11-45, 11-46, 11-47, 11-48, 11-49, 11-50, 11-51, 11-52, 11-53, 11-54, and 11-55

From: Jeff Peppersack

Several ownership change notices were filed in 2003 for rights based on a 1902 decree in the name of C.H. Brown, et al vs. Joseph M. Wixom, et al. The decree findings included some limited parcel descriptions for the right owners that may be incomplete or inaccurate. Changes to owners and unrecorded transfers since the time of the decree have further complicated the water rights.

I have been working with (Judge) Lynn Brower, who is one of the water right owners. He has been helping many of the owners to attempt to update the water right records. Each notice includes maps, deeds and other documentation to support the notice. In addition, Mr. Brower has provided some history regarding development and use of water in the area that was helpful in determining where each right might be appurtenant.

This memo includes several attachments to help illustrate the review steps and conclusions regarding ownership of the rights referenced above. The first attachment entitled "East Liberty Irrigation Canal" provides an overview of the area. The source is North Creek and the East Liberty Irrigation Canal runs SE along the highway for about three miles. The irrigated land is limited to the area between the canal and North Creek or between the canal and another drain or ditch (shown as a dotted line beginning in section 9). All the rights have the same priority date of May 15, 1864.

I began review by attempting to plot the parcels listed in the decree for each right owner. It became evident that the parcel descriptions listed in the decree were not always very helpful because some of them contained errors and some of them did not coincide well with the actual water use that could have been developed. Deeds submitted with the notices provided additional detail regarding chain-of-title, but some pieces of the puzzle may still be missing.

In summary, the parcels listed in the decree may be erroneous or incomplete; but the additional chain-of-title documents and an understanding of the extent of irrigation help provide a starting point. I created a preliminary shape for each of the rights based on the information available. The preliminary shapes can be used as a basis for the current ownership changes with the understanding that additional information or a future adjudication may lead to clarifications and revisions. The additional attachments to this memo provide illustrations for each right.

The following notes apply to the information available for each right; refer to each illustration for reference:

11-45

The right was decreed for 150 inches to Charles H. Brown. The parcel listed in the decree for Charles H. Brown is a metes and bounds description that included some minor discrepancies that were resolved to properly close the parcel

The preliminary shape is based on a map provided by Wendell Brown (current landowner) indicating the present water use, and historic deeds showing ownership within the decreed parcel.

11-46

The right was decreed for 26 inches to D.M. King. The parcel listed in the decree for D.M. King is the NW1/4 of Section 4, excluding land sold to Morgan. This is probably an error because the decree owner homesteaded the SW1/4 of Section 4 and the decree includes a description for Morgan in the SW1/4 of Section 4. The intended location was likely the area in the SW1/4 of Section 4 not already covered by other decreed parcels. A transfer may be required to correct the discrepancy along with authority to file from the landowners for the decreed parcel.

11-47

The right was decreed for 52 inches to John Hymas. The parcel listed in the decree is four QQ's as shown in the illustration. The preliminary shape was based on early deeds for Hymas (submitted with owner change) within the decreed parcel.

11-48

The right was decreed for 26 inches to James McMurray. The parcel listed in the decree is four QQ's as shown in the illustration (minus 40 acres sold but not described).

The preliminary shape is based on early deeds for McMurray and the place-of-use currently irrigated (submitted with notice) within the decreed parcel.

11-49

The right was decreed for 32 inches to S. Mathews. The parcel listed in the decree is four QQ's as shown in the illustration. Note that the decreed parcel is unclear because it excepts 90 acres sold and includes 40 acres purchased from McMurray, but neither are described. The preliminary shape is based on early deeds for S. Mathews (submitted with notice) within the decreed parcel.

11-50

The right was decreed for 33 inches to Fred Alsop. The decree did not describe a place of use for Alsop. The preliminary shape is based on early deeds for Alsop (submitted with notice) below the ditch.

11-51

The right was decreed for 45 inches to S.W. Mathews. The parcel listed in the decree is four QQ's as shown in the illustration, which is mostly above the ditch. A transfer along with authority to file may be required to update the owners in a different place of use.

11-52

The right was decreed for 7 inches to A.H. Mathews, et al. The parcel listed in the decree is a metes and bounds description. The preliminary shape is based on the decreed parcel below the ditch.

11-53

The right was decreed for 7 inches to C.C. Sorenson. The parcel listed in the decree is a metes and bounds description which lies above the ditch. A transfer along with authority to file may be required to update the owners in a different place of use.

11-54

The right was decreed for 13 inches to Christian Olsen. The parcel listed in the decree is a metes and bounds description. The preliminary shape based on the decreed description. Note that the decreed parcel includes 10 unidentified acres.

11-55

The right was decreed for 59 inches to E.S. Morgan. The parcel listed in the decree is a metes and bounds description. The preliminary shape is based on the decreed description below the ditch.

see file 11-45 for
attachments