

MEMORANDUM

TO: WATER DISTRICT 11 FILE
FROM: NORM YOUNG *NY*
RE: TELEPHONE CALL FROM JIM SMITH OF PEGRAM
DATE: June 23, 1999

Mr. Smith called to inquire whether IDWR considered ownership by the Farmers Home Administration as a defense to forfeiture. He purchased a ranch near Pegram that has decreed rights from Bear River from FHA. He diverted water into his ditch, ran it for a day or two, and then found that the ditch had been dammed off in a Mr. Baxter's property. Tracy Baxter and Maynard Jensen told him that he had no rights because they were forfeited during a lengthy period of nonuse (ten years or more) while FHA litigated ownership of the ranch. They also told him that he would have to pay his share of the cost of a diversion structure put into Bear River to divert water into the ditch. He said that they would not tell him how much that would cost.

I told him that IDWR has taken a position in the SRBA that FHA ownership does not toll forfeiture. I then described various defenses to forfeiture and suggested that he should consult an attorney. He already has been talking to Randy Budge.

I told him that if he made a written call for water under recorded decreed rights, IDWR would instruct the watermaster to deliver unless prevented from doing so by third parties getting a court order. I based this on my understanding that decreed rights are of record and valid until found otherwise by the court; IDWR does not have authority to informally or formally determine a decreed right to be lost or invalid. The watermaster could lock and post the headgate to prevent tampering by the neighbors. Smith indicated this would not work, because the dam was down the ditch not at the headgate. I told him that I was not aware of any state agency that had administrative jurisdiction over right-of-way or easement problems. He indicated that he would talk to county officials or pursue as a civil matter if necessary.

I called Pete Peterson to advise him of the conversation. He indicated that he had been delivering water into the Lloyd Ditch (the ditch used by Jim Smith to get his Bear River water), the district treasurer has been billing, and FHA has been paying each year. Recently, Tracy Baxter has also been paying the assessment on the rights claimed by Smith. Pete did not think the rights had been forfeited and had told Smith he would deliver. However, the dam put in by the neighbors is not at the point of diversion so he considers this to be a right-of-way or other civil matter.

c. Paul Meyer, Tim Luke

Paul, I've sent

MEMORANDUM

TO: WATER DISTRICT 11 FILE
FROM: NORM YOUNG *NY*
RE: JAMES SMITH CALL FOR WATER
DATE: June 29, 1999

Pete Peterson called today to discuss how to respond to Mr. Smith's letter (attached). He confirmed that the ditch delivering the water (Lloyd Ditch) was dammed off preventing delivery from the headgate on the river to Mr. Smith's place of use. He also confirmed his observations that his records show delivery and billing for use on the Smith property and that he had observed irrigation of the land a few years ago.

We agreed that Pete would respond in writing that the rights requested for delivery were still in the Department's records as decreed rights and would be delivered unless advised differently by the court. He would also respond that the rights would be delivered in priority (there is more than enough flow to do so at this time) when the dam was removed from the ditch allowing water to be carried to the place of use.

c. Paul Meyer, Tim Luke

WD 11 File

MEMORANDUM

To: Brian Patton

From: Norm Young

Re: Loan request from waterusers in Water District 11 (Bear River)

Date: February 3, 1999

Pete Peterson, Watermaster for Water District 11, is asking all water users from Bear River to upgrade their measuring devices. The cost is significant for some of the smaller canals, particularly those in the basin upstream from Bear Lake. I suggested to the users at the annual meeting yesterday that the water district might be able to get a loan from the Water Board to cover the cost of the upgrade throughout the district and bill the users their part of the loan payment as a payment in addition to the annual district assessment for watermaster services.

Would you please call Pete Peterson at 208-852-1385 to discuss the possibilities of a loan with him? If my idea won't work, feel free to work out any other helpful approaches. Thanks.

c. Tim Luke