

MEMORANDUM

March 17, 1998

TO: Norm Young

THROUGH: Dave Tuthill *DT*

FROM: Cindy Hodges *ch*

RE: *Call for Water under Partial Decree, Sinker Creek Water District*

The attached letter from Paul Nettleton represents a call for water from Sinker Creek under partial SRBA decrees awarded to Joyce Livestock Company. I am in need of some direction from the administration and/or the SRBA court as to the deliverability of the partial decrees for the upcoming irrigation season.

Also at significant issue within the Sinker Creek Water District is the administration of the new partial decrees with respect to the undefined "irrigation season", particularly the effect on natural flow vs. storage right seasons of use. Present protocol on Sinker Creek recognizes a decreed¹ storage season of November 1 through April 1; regulated delivery of natural flows begins on April 1 or when high flows diminish. All natural flows must be delivered through a large storage reservoir which is the most junior right on the drainage.

Paul Nettleton has indicated to me on many occasions that the historical irrigation season on Sinker Creek began much earlier than April 1. He has suggested that beneficial use for irrigation may be made in some years as early as late February. Mr. Nettleton further hints in his letter that there were already unresolved issues regarding season of use on Sinker Creek which began around the time of the storage decree and which were remanded to the SRBA. Rather than being solved by the SRBA, these issues appear to have been compounded. Do we now have an opportunity to resolve the season of use question independently of the court?

Closely tied to irrigation season concerns are the concerns of the water users who have developed valid rights to store flows for irrigation during the non-irrigation season. Although junior to the natural flow rights, these are the *only* rights (except stock water) which should be authorized to divert during the non-

¹ The Nahas v Hulet storage decree was awarded around 1981 and dealt only with the two storage facilities. It defined a storage season but no irrigation season. The irrigation season has been administered since 1988 per that decree as the non-storage season.

irrigation season. Unfortunately, as the irrigation season becomes undefined, the non-irrigation season becomes more or less nonexistent. Based on strict priority delivery under the "irrigation season" concept, junior storage rights would yield to a call for water from a senior irrigator at any time that beneficial use could be made, even during a time which has traditionally been considered a storage period. At what point are these storage rights no longer useful? I believe we must recognize the uniqueness of such rights developed *during the non-irrigation season* by identifying such a season for storage purposes.

Priority notwithstanding, I am also concerned that there may at some point be material damage to the Hulet storage right if Mr. Nettleton exercises a call for water before actual beneficial use can occur for irrigation. We have already passed the recommended irrigation season start date for this year. However, who will be responsible for making the determination that beneficial use could occur at the time of next year's call? If the call is too early, and no beneficial use (or insignificant use) is actually possible, then diversions would have taken place with flows which could have otherwise been stored. This seems to threaten a material injury to the storage right, irrespective of its junior priority.

My personal experience with this area leads me to believe that a reasonable first call for irrigation water under partial decree could come between March 1 and March 15 of each year, depending on weather conditions. Our recommended shutdown date of November 15 is a little late. Generally, by late September or October, flows in Sinker Creek have generally diminished to the point of futile call. I see no reason why the storage season could not begin on November 1 or even October 15. Perhaps this type of a compromise could help resolve the water delivery issues I expect to come on the heels of the partial decrees.

MEMORANDUM

December 9, 1996

TO: Water District 57D

FROM: Cindy Hodges *CH*

RE: End-of-Year Activity and Review of Watermaster Report

*I agree with Cindy's
analysis - this district needs
watermaster control - not
decision-making from afar
via the telephone*

*JL
Deputy
Resident
Mgrs*

In June of this year, I included in this file a memo which relayed information that Mr. Hulet and Mr. Nettleton appeared to be initiating Sinker Creek water deliveries on their own. Because I believed that the first Watermaster call was imminent, I requested the Watermaster be appointed so that she would be on hand without delay at the time she was formally called. Ms. Blackstock's appointment was issued June 27, 1996.

On July 7, Steve Lester received a phone call from Mr. Hulet requesting guidance on a delivery issue which should have been directed to the Watermaster.

On several occasion throughout the season, I received phone calls from Mary Blackstock, requesting technical assistance or procedural advice. This is typical for this drainage and not of concern. However, I also received a number of calls directly from Mr. Hulet and Mr. Nettleton. In most cases, the topic of these calls were disagreements over the division of flows at the head of Murphy Mutual Canal. Each time, I reminded the individuals that the Watermaster was the appropriate contact for delivery disputes.

On October 30, 1996, Jay Hulet phoned and requested permission to close Hulet Reservoir one day in advance of the standard storage season. I denied the request verbally and then in writing.

On November 6, Mr. Hulet phoned a second time, inquiring if he might open the reservoir headgate, because he still had some irrigation to do and he needed to do some repairs. He also wanted to know if Paul Nettleton still had the right to divert water from the canal after November 1. The only answer I provided was to reiterate that IDWR assumes no jurisdiction in Murphy Mutual Canal, and also that the irrigation season was over.

Towards the end of November, John Westra asked me to review the Watermaster Report submitted by Mary Blackstock. Unlike previous years' reports, this one shows 1996 deliveries and charges only to Mr. Hulet. Included with the report are several pages of notes made by Mary throughout the summer, which indicate that she was called to duty by Mr. Hulet around July 10, and documenting mostly phone conversations after that time with Mr. Hulet, Mr. Nettleton, and with me.

It appears that Sinker Creek Water District experienced a modified mode of operation this season which was evidently experimental, but which turned out to be a step backward from the progress we have made so far in the District. The Watermaster's role was primarily advisory, with verbal instructions given over the telephone. The gatehouse at Hulet Reservoir was not secured by the Watermaster at the beginning of the season, and controls were operated primarily by Mr. Hulet. On the few occasions that the Watermaster made field visits, these visits were charged to Mr. Hulet. It does not appear that field measurements were taken for other diversions.

This plan of operation was not sanctioned by IDWR. Early in the season it was tolerable. However, the presence of repeated late-season disputes clearly confirms my earlier prediction that Water District 57D will not continue to operate smoothly without Watermaster control. This District will never be without dispute, however, the number of delivery-related calls received by me from water users during this season was unacceptable. To decrease reliance on the Watermaster only results in an increased reliance on IDWR, and this entirely defeats the purpose of the Water District.

Neither the Watermaster or the water users should be reprimanded for their actions this past season. The Watermaster's report of deliveries should not be changed unless it is challenged during the upcoming Water District meeting. The lesson learned must be simply to not repeat this strategy for the 1997 season. The Watermaster on Sinker Creek must be willing and able to be on call (within 24 hours), on-site, and performing a full range of duties with each visit in order to properly document priority deliveries without significant waste of water. The gatehouse at Hulet Reservoir must be under Watermaster lock and control during the irrigation season (presently April 1 to November 1) each year, except when Hulet reservoir is spilling. Other special conditions (i.e. controlled releases) may require the gatehouse to be secured prior to irrigation season. This is the protocol which has been developed over the past five years, and further deviations from it will not be allowable without advance Department approval.