

MEMORANDUM

TO: Water District 36-A File

FROM: TIM LUKE

DATE: August 30, 1993

RE: Discussion with Watermaster Concerning Delivery of Water Rights from Curren Tunnel

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On August 26, 1993, Loren Holmes and I went to Hagerman and visited with the Water District 36-A watermaster, George Lemmon, in regard to a call for water on Weatherby and Three Springs made by Bill Jones of the Jones Fish Hatchery (see August 24, 1993 letter from attorney Pat Brown demanding delivery of water to Hatchery).

Prior to conducting a field inspection and taking measurements of the above springs, I talked with Mr. Lemmon about his response to my letter of August 10, 1993 concerning delivery of water rights from the Curren Tunnel. My letter of August 10 requested Mr. Lemmon to contact the water users and/or holders of water rights from the Curren Tunnel and advise them of measurements which I had made on August 6. The summary of measurements showed that water from Curren Tunnel was not being diverted in accordance with the decreed water rights and their priority dates. For example, there was an excess of more than 2.0 cfs diverted under the 1884 rights which otherwise could have been used to fill an 1892 right. My letter of August re-affirmed the Department's previous direction to the watermaster to distribute water rights from Curren Tunnel according to decreed priority unless the parties otherwise agreed to rotate water among themselves. My letter asked Mr. Lemmon to advise the Department in writing by August 12, 1993 regarding the water users intentions for the distribution of the available supply of Curren Tunnel water. A copy of my August 10 letter was carbon copied to Pat Brown, the attorney representing certain Curren Tunnel water users who had demanded that the Department deliver water according to priority rights.

On August 12, 1993, Mr. Lemmon contacted the Department via telephone and talked with David Shaw of this office. Mr. Shaw's memo to the file dated August 13 summarizes his conversation with Mr. Lemmon. Mr. Shaw's memo notes that Mr. Lemmon said that 'it was the choice of the water users to rotate the water supply from the tunnel'. Mr. Lemmon also stated that Butch Morris, who is the 1892 water right user, was getting the water that he needed at the time.

When I visited with Mr. Lemmon on August 26, I specifically asked him if he had in fact contacted the Curren Tunnel water users to ask whether they wanted the available water supply from the tunnel

delivered either strictly by decreed priority dates and amounts or through some rotation arrangement among themselves. Mr. Lemmon answered that he had physically contacted the users, including Mr. Morris, and that he was told that the users would continue with a rotation. Mr. Lemmon said that ~~he did~~ he did not contact Pat Brown and advise him of the water user's intentions.

I further asked Mr. Lemmon if he was aware that several Curren Tunnel water users had submitted affidavits to the Attorney General's Office stating that at no time since August 1, 1993, had any one from the Department, including the Water District 36-A watermaster, contacted the users asking them how they wanted the available water supply delivered. I also informed Mr. Lemmon that Mr. Morris and Mr. Musser's attorneys, Pat Brown and John Lezamiz, had stated in court a day earlier that the Department had made no efforts since August 1 to contact any of their clients who use water from Curren Tunnel and ask how they wanted their water rights delivered. I further advised Lemmon that these same attorney's had informed me, Norman Young and the State's attorney, Peter Anderson, a day earlier during a private meeting that Lemmon had not contacted any of the Curren Tunnel users and asked how they wanted the water rights and available supply delivered. In response to this information, Mr. Lemmon told me that the water user's affidavits and statements from the attorney's was not in agreement with the information he had previously given the Department, that he did contact the users between August 10 and 12, and had received a response from the user's regarding how the water was to be delivered.

Finally, I reminded Mr. Lemmon that he still had not provided the Department with a written response to our letter of August 10. I recommended to Mr. Lemmon that he submit the written response as soon as possible and that he fully document the nature and timing of his conversations with the water users regarding the subject of delivering the available supply of Curren Tunnel either by priority or rotation.

On August 27, 1993, I phoned Mr. Lemmon and advised him of the measurements which Loren Holmes and I had made at the Jones Hatchery on August 26. During our conversation, Mr. Lemmon advised me that he had contacted some of the Curren Tunnel users and Pat Brown concerning the discrepancy over whether or not Lemmon had contacted the water users in response to my August 10 letter. Mr. Lemmon told me that there was some mis-communication over this matter between the different parties and that the Department should soon expect a written response to the Department's August 10 correspondence.