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SUMMARY OF PUBLIC COMMENTS, WITH RESPONSES, CONCERNING A SEPTEMBER 19, 2023 PUBLIC MEETING REGARDING MODIFICATION OF THE DISTRIBUTION SYSTEM FOR BRUSH CREEK DRAINAGE

Simplot, Big Brush Creek Drainage – November 16, 2023

Comment: The same arguments from the Little Brush Creek drainage apply to Simplot's water rights on the Big Brush Creek Drainage. Services of a commissioner have never been provided or rendered to Simplot on Big Brush Creek. It is simply not necessary for a commissioner to distribute the waters from the springs there. The majority of our water comes from our deep water wells. Our water doesn't come via ditch, canal or by any means from the distribution company. We have master meters on all sources and self-report this to the State every year. A small portion of our water comes from Ratliff Springs, of which we take most of the water it provides. The water we don't take flows downstream into Red Fleet, at which point it is under to control of the commissioner and the distribution system. No services are performed, or benefits received by the users so the users shouldn't have to bear the costs of distribution because no services are rendered nor benefits conferred. To require Simplot to bear a portion of the annual assessments for maintaining a commissioner who does not render service to it and who in no way assists in distributing its water is not in keeping with the purposes of the statute and is not supported by previous case history.

Response: Statute provides that a commissioner may be appointed if deemed necessary by the State Engineer (73-5-1). The State Engineer believes distribution by priority through the commissioner is necessary on this system to regulate all water rights. Simplot uses exchange water from Big Brush Creek below Red Fleet Reservoir to deliver water from Brush Creek through storage at Red Fleet Reservoir. Exchanges may occur if they do not injure rights existing prior to the date of the exchange, and this is distributed and regulated by the commissioner according to priority. The commissioner may regulate spring flow tributary to Brush Creek; thus water rights owned by Simplot in Ratliff Springs can be regulated by the commissioner and this will be assessed by the Brush Creek Distribution System. The commissioner will normally not be regulating underground wells; thus this portion of Simplot's water assessment for the commissioner have been removed from the priority schedule and will not be assessed for these wells.

Simplot Phosphates, LLC, Barton Ranches, LLC, and Robert W. Nielson – November 16, 2023

Comment: The waters of Little Brush Creek do not flow back into the Brush Creek drainage, they come out of the ground and are used by the 3 landowners, and if then discharged, flow back in the ground. There is no chance for a commissioner to perform services in connection with the distribution of the waters described. There is



no necessity of a commissioner to distribute the waters used by the landlords and the policing of its method of distribution could not benefit other users. Services of a commissioner have never been provided or rendered to these three landowners/water right owners. Why introduce a level of governance that does not now exist in Little Brush Creek drainage? It is simply not necessary for a commissioner to distribute the waters from the springs there. No services are performed, or benefits received by the users so the users shouldn't have to bear the costs of distribution because no services are rendered nor benefits conferred. To require these landowners to bear a portion of the annual assessments for maintaining a commissioner who does not render service to it and who in no way assists in distributing its water is not in keeping with the purposes of the statute and is not supported by previous case history.

Response: Statute provides that a commissioner may be appointed if deemed necessary by the State Engineer (73-5-1). The State Engineer believes distribution by priority through the commissioner is necessary on this system to regulate all water rights. The water lost in the Little Brush Creek sinks has been shown to resurface in Big Brush Creek according to a dye test study by the Soil Conservation Service and the Bureau of Reclamation in a report from 1965¹. This study shows that the waters of Little Brush Creek are inter-connected to Brush Creek, which is utilized by water right holders on the Brush Creek system. It is the understanding of the State Engineer's office that the commissioner has performed inspections of Little Brush Creek under the Court administration for surface water rights associated with Little Brush Creek. Due to mutual cooperation of water use there by the current water users, the commissioner has not needed to spend a lot of time in Little Brush Creek. However, this may not be the case in the future. Should water rights need to be delivered by priority on any given year, the commissioner will be heavily involved to shepherd the water to senior water right holders on the entire Brush Creek system, including Little Brush Creek and the Green River. The commissioner will be monitoring water use from Little Brush Creek; thus, the water users need to be assessed by the Brush Creek Distribution System.

1. Bridges, Bob L. and Maxwell, James Dean, *Inter-Relationship of Surface and Groundwater in Ashley and Brush Creek Basins, Utah*, Soil Conservation Service, 1965.