

**TRANSCRIPTION**  
**Special Meeting Castle Valley Town Council**  
**Thursday, March 2, 2006 7:00 PM**  
**at #2 Castle Valley Drive.**

**Council Members Present:** Damian Bollermann, Jim Lindheim, Ranna Bieschke, Bob Lippman, Jerry Bidinger.

**Absent:** none

**Division of Water Rights Personnel Present:** Jerry Olds, David Horseley, Rick Wilde, Teresa Wilhelmsen, Marc Stilson, and two un-introduced people.

**Others Present:** (List attached)

**Transcription by:** Rebecca Martin, Clerk/Recorder

[A digital audio recording of this meeting, and also a copy of the Power Point presentation, are available as part of the public record from the Castle Valley Town Clerk.]

[Dashes do not indicate a gap in the recording, but rather serve to show a half-sentence, a mid-sentence topic change, or a run-on area of speech. Word in parentheses were added, not taken from the recording.]

**Damian Bollermann (Bollermann)** – We formatted this meeting as a Town meeting because we'll have enough Council members here that we have to do that. So, what I have to do is **call this Special Meeting of the Castle Valley Town Council to order at 7:01 (PM).**

I'm going to turn it over to Division of Water Rights. There's a bunch of people here from Water Rights. They're going to give you a presentation starting with the State Water Engineer, Jerry Olds, here. And be nice to them!  
(general laughter)

**Jerry Olds (Olds)** – I'm glad you added that last part. There are a couple more chairs here for you that are standing.

We appreciate the opportunity of being here. We understand there's quite a bit of interest in water down here, and so that's what we're here to talk about. Let's just lay the ground rules and then I'd like to introduce some staff as well.

This is a meeting to provide you with some information. We're not saying this is the only meeting we will hold. There's a lot of stuff we're going to throw at you tonight, and I have to admit I'm a little concerned that we may try to give you too much. But we're going to try it and see how it goes. If we need to come back, we'll do that.

As we go through the discussions, feel free to ask questions to clarify things, but don't ask us questions about your specific situation or we'll get sidetracked and won't get through it. We will leave adequate time at the end for questions and answers. 'Kay?

By way of introduction, I'm Jerry Olds. I serve as the State Engineer. Let me introduce the staff that are here with me. Marc Stilson is the new Regional Engineer in the Southeast region. He took Mark Page's place who many of you have probably worked with throughout the many years. David Horsely is the new Assistant Regional Engineer in Price. Raise your hand there so they can see who you are. So, these two gentlemen are new to our office, but, uh, great additions. I think you'll enjoy working with them over the years. And then Rick Wilde is also in our Price office. Rick will be taking part on the, uh, program this evening. And then Teresa Wilhelmsen is our Adjudication Manager. She heads up the Adjudication Team within our Division. And she'll be making a presentation as well.

Let's see - are you able to see that - can we turn down part of the lights?

**Jim Lindheim** – And folks, there are some seats down front. There's some room over here rather than having people crowding the hallway.

**Olds** – 'K, here we have a real cool picture of Castle Valley. It shows the Valley. So that's what we're here to discuss is Water Right issues in Castle Valley.

(technical adjustment of Power Point)

'K, as far as the agenda, I'll lead off. As you can appreciate by this picture, Water Rights tends to be a little emotional, but let's try not get that kind of brotherly love here tonight. I've used this picture in a number of discussions throughout the years. The question always is which one of those is the State Engineer? It depends on the conference that you're at. If it's a bunch of attorneys, they say it's the one in the middle; the black one.

'K, I'm just going to discuss some basic background information. And then, after that, we'll have Rick Wilde talk about the Water Rights process. There's been a number of questions people have asked about that. And then we'll have Teresa talk about the adjudication process and what our plans are, and so forth.

To begin with, I'd like to just talk about some background information to make sure we're all talking from the same page. If you look at Utah water law, it is based on the doctrine of prior appropriation. Where did that come from? How did it originate? When the early pioneers came into Utah, as well as the settlers in California, one of the first things they realized

was that water was going to be the limiting factor in settling the West. They realized that right off. And as a result of that, they adopted the principle that "first in time was first in right". Now, at this same time in the mid-eighteen hundreds, the United States of America, uh, acquired the lands here in the West. They were struggling to take control of that. As you read your history, you have that when the Mormon pioneers came into the Salt Lake Valley it was actually part of Mexico, and eventually became part of the United States. But it was such a vast country the United States could not take control of it and manage it. As a result, the United States acquiesced to the local customs as well as the laws of the territories and the states in the Western United States when it came to administering water. And as a result of that, water rights in the west are administered under state government.

What are the major elements of the Appropriation doctrine? First of all, you have to take control of the water, divert it from its source, and place it to a beneficial use. The priority date associated with that water right is a very important. That date is generally the date that you first put the water to beneficial use, or now under the application process, the date you file the application. But it is very important when it comes, uh, uh, to times of shortage. When there is not adequate water in a source to satisfy all of the water rights, then the priority kicks in, and "first in time, first in right."

Also there are provisions under the appropriation doctrine where you can lose a water right. That is either by forfeiture or abandonment, and we'll talk about those a little bit more in detail.

'K, some basic definitions: What is a "water right"? Who owns the water within the State of Utah? The public actually owns the water. A water right, then, is just a right to the beneficial use of that water under certain terms and conditions that are laid out in the water right document itself.

"Beneficial use"; you hear that a lot with regards to water. In Utah water law it says the basis, the measure, and the limit to all rights to the use of water in this state are limited by the beneficial use. Also water is declared, er, beneficial use is declared to be a public use. What does that mean? Well, the water has to provide some benefit to the individual as well as the public. And beneficial uses, although they're not defined within Utah statutes, include such things as domestic, stock watering, irrigation, industrial, municipal, mining, and so forth.

'K, an "application"; an application is just a request to create a water right or to modify a water right.

Some other terms: "acre foot". Again, we throw that around a lot just so that everyone is acquainted with that term. It's a unit of measurement, ah, and under Utah statute it's how we determine the volume, or specify the volume. It's equal to 43,560 cubic feet, or 325,861 gallons. An acre foot is enough water to cover an acre of land one foot deep.

The other unit of measurement for water is "cubic feet per second". That is the flow rate. And, uh, cubic feet per second is, in essence, one cubic foot every second; at that flow rate. One cubic foot per second for 24 hours equals approximately 2 acre feet. So, as you convert between those units.

'K, "adjudication". That's a big \$64,000 word. But really what it is, is it's just a judicial process in which the State Engineer is a party to the action whereby water rights are determined, recommendations submitted to the court, and then the court decrees what the water rights are within that particular drainage Basin. It might be referred to as a quiet title of water - updating of water uses.

OK, "forfeiture". What is forfeiture? How is it defined? Forfeiture is a statutory term that is defined within our code. And it is set by statute as well. And that occurs whenever a water right has not been used for five consecutive years. Then it is subject to forfeiture. And so forfeiture is a specified time period. If you had a surface water right and like in this part of the country, you had wet years and dry years, and in the dry years there's not water available to even divert, that doesn't count against you for the five consecutive years. The water has to be available there. For groundwater, where the water is available each and every year, then it would be the five consecutive years.

'K, "abandonment". Abandonment is based upon the intent of the water user. It does not take a specified period of time. If you had a water right, and you decided "I do not want to use that anymore", and you walked away from it, it is considered to be abandoned at that time. It's based upon your intent. And so, in essence, it takes effect immediately.

'K, uh, Castle Valley is located within the Upper Colorado River Basin of Utah. And some of the discussion tonight centers around Utah's entitlement to use water in the Colorado River Basin. And so I'd want to just touch on that briefly. Ah, I think that this is some good information so that you understand some of the concerns that we have; some of the limitations that we're working under. Utah's right to use water from the Colorado River or its tributaries is controlled by interstate compacts: the Colorado River Compact of 1922, the Mexican Treaty between the United States and the country of Mexico, which was entered into in 1944, and then the Upper Colorado River Compact, which was entered into in 1948. In addition there are a number of court cases, operating agreements, and other things that make up the law of the river.

Utah's apportionment to the Colorado River is 23 percent of the water that is available to the Upper Basin states. That varies depending upon the period of time that you use to make the study, and other assumptions. But the State of Utah officially uses the number of 1,369,000 acre feet per year of depletion from the Upper Colorado River Basin as their entitlement.

Now, it's important that you understand the concept of depletion. That is water that is diverted and consumed; it's lost to the system. For example with irrigation, generally if it's flood irrigation, about half the water percolates down through the soil mantle and is either recharged to the groundwater system or is returned back to surface water springs. And so, again, arid use is based on depletion. 2005, we estimated the depletion to be 1,007,500. So if you do the math there, it says that you

have 361,000 acre feet of depletion within the Upper Colorado River Basin that we are not using as of 2005. Quite a bit of water. Remember that number. It's going to be an important one as we go through the discussion.

Now, as far as looking at the actual estimated depletions in 2005, ah, 591,000 acre feet – these are thousands of acre feet units, here – is used for agricultural purposes and stock watering. So, irrigation – those type of uses; by far the largest amount of water in any one group. Municipal and domestic purposes depletes just over 25,000 acre feet a year. Power production, power plants and industrial uses: just under 45,000 acre feet a year. Exports and imports into the Basin – exports would be the Central Utah Project, the Provo River Project, the, ah, Strawberry Project. There's a number of them in Carbon and Emery Counties, that take water out. There's one import into the Basin down from the Sevier River over into the Tropic area. But as we add and subtract all of those, ah, we are depleting just under, ah, 207,000 acre feet per year.

Then reservoir evaporation within the Basin accounts for just over 19,000 acre feet per year. And then as part of the Colorado River Storage Project, we are assessed 23% of the storage on Lake Powell, Flaming Gorge and the Blue Mesa systems in Colorado. Those total up to 120,000 acre feet per year. So that the total depletion, then, as I indicated earlier, ah, in 2005 within Utah, is the 1,007,000 acre feet per year. That's how we're actually using the water today.

Now, next I would like to discuss with you the approved, yet undeveloped, applications that we have out in the Basin. What we've done is list a number of the larger water rights that entities are holding. And then over here it shows the estimated depletion associated with those applications. San Juan County Water Conservancy District holds several water rights that are approved yet undeveloped. And we estimate the depletion from those would total about 30,000 acre feet a year. The Central Utah Water Conservancy District has a couple of application as well. They will total about 29,500 acre feet a year.

Then the Utah Board of Water Resources, ah, has an application for 158,000 acre feet of depletion. This is the old Flaming Gorge filing, and maybe some of you have heard about that. When, ah, the Bureau of Reclamation constructed Flaming Gorge Reservoir, there were two components to it. First of all, the reservoir and the power production - they have developed that and placed that water to use. Then there was what was referred to as the Ute Indian Unit, which proposed to take water out of Flaming Gorge Reservoir through a tunnel through the Uinta Mountains to the south, a slope of the Uinta Mountains, and use it within the Uinta Basin for various purposes. That application had a potential depletion of about 160,000 acre feet. When the United States acknowledged they would not build that project, they kept a little bit of water for Dutch John and their uses associated, ah, with the facilities at Flaming Gorge Dam. And then they conveyed the rest of that to the Board of Water Resources. And so that's where the 158,000 acre feet of depletion.

The Board of Water Resources has since apportioned out that water to a number of entities up and down the river, both private as well as public agencies. They are still holding some of the water, ah, the Lake Powell Pipeline, that you hear about, that will be supplied from water under this water right.

Then the Wayne County Water Conservancy District has an application which we estimate will have about 50,000 acre feet of depletion. Kane County Water Conservancy District, ah, has a couple of applications for about 30,000. And then Sanpete County - this is the narrows project on the headwaters of the Price River – has about 5,600. Uinta County has about a 5,000 acre foot application. And then we have a whole bunch of them that are less than 5,000, and they come to about 80,000 acre feet a year.

Then we have reached a tentative agreement with the Ute Indian Tribe as to their water right claims. And those will total about 105,000 acre feet of additional depletion within the system.

Notice the total: 493,000 acre feet. How much did we have left that we're not using?: 361,000. We've written a few more checks.

One thing that you need to notice from this list – what's very apparent – who holds the water rights, public agencies or private people? They're all public agencies, aren't they? And there's a reason for that. The law, as it's now written, basically allows a municipality or public water supply entity to hold a water right for the first 50 years - and basically hold it for future needs. They do not have to demonstrate due diligence and so forth in developing that water.

**Unidentified Speaker** – Why isn't Grand County listed up there?

**Olds** – They're less than 5,000. They'd be in the 80 (80,000) here. Grand County has a couple of applications. There's a bunch of 'em in this 80.

**Olds** – 'K, in addition, the Navajo Nation has water rights for their reservation. Those have not been quantified. We do not have an argument as to whether they have a water right; the question is "How much?" Is it 50,000 acre feet a year of depletion? 100,000? 200,000? We don't know. But the State of Utah has taken the position that the Navajo Nation is entitled to water rights from the Colorado River system or its tributaries. So, we need to work with them to define whatever that is. If we assume it's 100,000 acre feet, you've got to go back and add that on to the 491,000 that's already out there.

And so you can see that we've got some issues to deal with there. In addition, we have a number of water rights that were filed and have been sitting out there with no action on them. We refer to those as "unapproved applications". About a year ago, we took action trying to find out what people wanted to do with those. We sent letters out to about 1,400 different people or entities. We got 55% response back, which is actually pretty good. Of those 55% who responded, ¾ of them still were

interested in the applications and would hope at some future date, we might be able to consider their applications. 25% of 'em, said, "No we don't have any more interest. Go ahead and reject the application and get it off your records." And so we have been doing that to whittle those down. A lot of these applications were filed in the 60s – 1960s and 1970s. There are some that go back as early as 1922. So they've been on the books for a long time.

Then the other 45% who did not respond back, ah, wither the applicant – the company – is now defunct – their address wasn't any good – and so we've been working on those to deal with them.

If you look at our Colorado River, ah, account, it's somewhat like a checking account. There's 360,000 acre feet that's not used, but we've written the checks already. They're out there. They just haven't been cashed. The question is, "Will they ever be cashed?" I think there's some of those projects that I listed earlier that'll never be built. How long do we allow those checks to be outstanding? Again, the present law allows the public entities to hold it for the future use for the first fifty years. After that, then they have to demonstrate that they have an immediate need for the water. Some of those applications are approaching the fifty year time period.

Do we need to re-evaluate how we administer our account? One of the things that bothers me as State Engineer – I am charged to use Utah's water resources to the maximum extent possible, so that we realize the economic benefit and, ah, associated with that. Each year, we have 360,000 acre feet of depletion within the Basin that is not being used. Should we be looking at ways of realizing the benefits from that water? I have people call me on a regular basis- both public entities and private – who say "We've got a project. We need some water. Will you consider an application for us?" And again, the reason that we're not willing to do that is because of the – the checking account is overdrawn. We've got too many checks.

We held public meetings in the Basin, I believe it was last April – we came down to Moab and held one here – we held one over in Loa, Price, and then up in Vernal discussing this very issue. We did receive some comments, but most of 'em were from public entities, and, ah, my impression of the comments was "Don't mess with our water rights; leave 'em alone. We want 'em." So, anyway, it's a challenge for us that we've got to deal with.

Alright, if we look at the water rights here in Castle Valley, ah, there's four basic water rights that the Town acquired from the old McCormick ranch back in the '70s. The water right numbers that we show here – the area that we are in is the 05 hydrologic area - that we refer to it as – and then the dash, and then the water right number – file number – associated with it. So we have: 05-387, 05-411, 05-641, and 05-709, that, ah, were acquired by the Town, and then there's – it is indicated that those water rights were used and certificated for irrigation purposes, and that stopped in the mid- to late-1970s. These water rights have been used to, then, provide individual filings to each of the lots in Town. I think there's just over 40 lots that now have perfected water rights on them. And we listed the lot numbers here, and then the base water right number that they refer back to. You'll notice that most of 'em are based on 05-709. You can probably see your lot up there.

'K, within the Valley, we also have a number of lots, ah, without water rights. And you can see there's quite a few more lots them without water rights associated with them than those who have developed the water and perfected the rights associated with them.

**Unidentified Speaker** – Weren't there two other rights?

**Olds** – Yes, there were two others in the 900 series that, ah, were segregated off of these early on. Yes. But these are the four major ones that we are concerned about at this point in time.

**Olds** – In December, we sent out a letter to the Town of Castle Valley. It was a letter that was the result of discussions that we had. And people have asked, "Why did you send the letter out? What was the purpose of it?" Well, we are hopefully in the process of starting the general stream adjudication down in this area. And, ah, in doing so, then, we're asked to evaluate the water rights. And so the issues with regards to the validity – the status of those water rights – comes up. Our staff in Price and the people here in the Town of Castle Valley had discussions back and forth for quite some time, along with your legal council, trying to find some solutions there. But undoubtedly there's some questions regarding the water rights that are held by the Town, and the issue of non-use.

Under Utah Statute: 73-1-4, it deals with the issue of forfeiture for non-use. And, uh, non-use or forfeiture is determined through a judicial action. As State Engineer, I cannot go out and say, "Your water right has been forfeited", and un-adjudicate that. What I do is go out and evaluate it, make a recommendation as part of the adjudication process, and then the judge is the one who decrees that – "Has it been lost to forfeiture? Yes. No." And through that process - and Teresa'll talk about that a little bit later – there is due process, and you can participate in that.

But, as we've looked at the Water rights that are held by Castle Valley, there is definitely an issue with regards to forfeiture and non-use. So the letter was intended to, basically, outline where we're at, and then look at some possible options.

In dealing with this issue, I don't think we are here to tell you what to do. I think we are here to discuss where we're at and where we might go from here.

What uses are covered by a municipal water right? This is one of the issues that I think Castle Valley struggles with. Do you have water rights held by the municipality, or do you have individual water rights? What kind of uses are included

within “municipal”? Domestic, commercial, industrial, irrigation, stock watering. A municipality can have all kinds of uses. It can even waste water on a golf course if they want to. But those are all considered municipal uses.

Can municipal uses change over time? Can the configuration of the Town change? Do they have to file a change application when that happens? No. There’s some real flexibility given to municipalities. And that is by design. I think it’s, ah, the legislature has looked at the issue of municipalities providing water. They realize the challenges that they face in dealing with growth. And you as an individual -when you develop a water right and perfect it - then you’re required to show exactly how many acres you’re irrigating. Is it for one family? Two families? How many head of livestock are you watering? You have to define all of those beneficial uses. Whereas a municipality can say, “No, we’re using it for municipal purposes within their boundaries, and here’s the measurements or the meter that shows how much we use.” So, there’s a lot of flexibility with regards to holding a municipal water right.

I know there is some concern within the community as to how that should be done. Again, I don’t think we’re here to tell you that it should go one way or the other. The only point that I would like to make – and I’d come to this conclusion in the last few weeks as I’ve looked at the water rights that are out there and the, um, challenges that we’re facing right now – maybe we’re trying to put a square peg in a round hole. It doesn’t work real well. And so, maybe there’s some things that if we look to the future, that we can set down and discuss, and see something that works well for you, ah, as a community, and also for us as the administer (sic.) of the water rights in the area.

We can all be Monday morning quarterbacks and say, “we could’ve, should’ve”, but we’re not here to point fingers. If anything we’re here to take the blame and to move forward. Here’s a little saying by Albert Einstein, “Our problems cannot be solved with the same level of thinking that created them.” I think that’s very enlightening - that we are where we are; how do we then move forward and deal with the challenges that we all face together? I think that’s what we’re all here today to discuss.

And with that, I’m going to turn it over to Rick Wilde, and he’s going to talk about the water rights process. Any questions on the information that I presented?

**Jim Kress** – Yeah. Can you go back to those two slides that show what lots do and what lots don’t have water rights?

**Roxanne diSanto** - And if your lot’s not in there? What does that mean?

**Rick Wilde (Wilde)** – Well, some water rights have an agreement with the Town still.

**David Horsely (Horsely)** – These are the lots – this row here, here and here – lots with perfected water rights under these three applications –four applications.

**Jim Lindheim** – You didn’t define “perfected” before.

**Horsely** – OK, “perfected” is completed use – we’ve certificated it – went through the whole process – you’ve placed it to beneficial use.

**Pam Hackley** – Are you saying then that those Mother rights there are valid?

**Horsely** – I’m saying that these parent rights right here – these four – were the basis for the water rights associated with these lots, and that those water rights have been placed to use and are perfected.

**Roxanne diSanto** – They’re valid. They’re not in question.

**Olds** – Yes. Yes.

**Unidentified Person** – (very hard to hear) ...prove up from these four rights?

**Olds** – Well, and that’s something we’ll talk about as we go along.

**Bollermann** – So once these have been perfected, they can’t be lost at a future time? They’ve been through an adjudication and all that?

**Olds** – Again, as a holder of a water right, you have an obligation to continually use that water right. If you perfect it and then stop using it, say for ten consecutive years, yes, you are subject to forfeiture.

**Mark Simmons** – You mentioned five years before.

**Olds** – Well, I was just giving an example of ten years.

**Mark Simmons** – But if I have an application, it can be good for up to 50 years?

**Olds** – No, that’s for a municipality. Again, the limit on forfeiture – the statutory requirement – is five years. Does the State Engineer set up in his office and watch the clock, and when it reaches five years we’re down here to say, “Yeah, it’s lost to forfeiture”? No. That’s not what we’re about.

**Roxanne diSanto** – These lots – the Town gave these lots – these are legitimate rights given from the Town of Castle Valley?

**Olds** – Yes.

**Jack Campbell** – No actually not. A lot of those came from the original developer.

**Olds** – These four came from the developer.

**Unidentified speaker** - The Town doesn’t hold those water rights, we hold them individually.

**Unidentified speaker** – Some of them, the Town does though.

**Bollermann** – A lot of these were segregated out before the Town owned them.

**Olds** – But we have a mix. There’s some, the Town does hold the water right itself.

**David Smith** – But your chart doesn't tell us whether we have good rights or not.

**Olds** – No.

**David Smith** – Your office told me yesterday that under 05-387 I have nothing to worry about on my water rights, but I'm not on the chart.

**Olds** – 'K, what we're saying its - these lots that we've listed here - we have record of those having Put the water to use and perfected the change application to move it to these individual lots.

**Loretta Page** – Is that “proving up” – what we call proving up?

**Olds** – Yes. Yes.

**Jim Kress** - Go to the next chart

(many voices – talking amongst themselves)

**Horsely** – Your rights up there were 987, and rights are not up there from 985 and 987, and that might be your lot. The reason it's not up there is it didn't come from one of those four. It might of came from one of those original 985 or 987.

**David Smith** – The records I have in a letter from you folks about four years ago – about five years ago - is 05-387 – something else.

**Olds** – And you're not on this list?

**David Smith** – No.

**Olds** – OK, we'd have to check that. But we thought we had all of them.

**David Erley** – Well, you just said about the five years, and these people have used their water for five years – most of us have – but what we understand is it's all about in the back - before it became this subdivision – in those five years - so why do these people have proved up rights - and they're good, valid rights - if they're the same five years?.

**Olds** – And this gets to the heart of the issue. And I'm going to be very careful about the words that I use. In my position, I set as a quasi-judicial official. And basically, that's the judge or the referee. You don't go into the courtroom and talk to the judge and say “Well how're you going to rule on this case, Judge?” And then decide whether you want to take it to him. So, I've got to be very careful as I deal with this. But in essence, what we're saying is that, yes, there may be an issue with forfeiture. The approach that we're going to take, as we deal with the general stream adjudication, is we're going to come down and do field reviews. And let's say it's in May 2006. And if that water is being put to beneficial use, that's what we're going to write up and recommend to the court should be your claim for water.

**Unidentified Speaker** – Is there a difference between the big group and those eight below?

**Horsely** - No.

**David Erley** – And so the judge is going to be fair and equitable, right?

(general laughter)

**Olds** – Well, I think the recommendation is going to be: what is being used today will be recommended.

**Bob Lippman** – Including what's on that chart? There are a lot of water users on this chart.

**Jim Lindheim** – There are a lot of us on this chart that have papers to say that we filed for water rights with you all – they may not have been proven up - but we filed for them and we're using them.

**Olds** – If the water is being used, today - or May or whenever we come out – that's what we would write up and make a recommendation based on.

**Unidentified Speaker** - And will we know when you're going to come out?

**Olds** – Well, again, we have good intent. We hope it's within April, May, June.

**David Erley** – Will that recommendation be through our Town water right or through individual rights?

**Olds** – Well, again, I think that's one of the things we've got to work through, is – decide – is it in the name of the Town and you have a contract for it? Those are issues that, ah, we've got to work through.

(many voices – confusion about the chart)

**Olds** – Well, we've probably got to set down with you and see why.

**Jim Kress** – And I have copies of the documents from John Groo, who supposedly at one point, was the water commissioner out here.

**Olds** – Well, he was the mayor.

(many voices – assent that John served as both over time)

**Jim Kress** – And it says that we have water rights. But we're not on either chart.

**Olds** – I think what we're saying, here, is that these lots do not have water rights. There's probably some who have approved, yet unperfected, rights.

**Wilde** – Or they have an agreement with the Town, but we haven't been out to, ah, look.

**Joe Kingsley** – You may want to comment on the other two Mother rights.

**Olds** - The 900? 'K, (to Rick Wilde) Can you speak to those?

**Wilde** – I just know that there's been a lot that - those were the first ones split up - 985 and 987 – and those were pending water rights. They were segregated off of the perfected rights, and so they, ah, the developers split those off first. Those were basically perfected first. And I don't think there's any question on those that have done the proof on 985 and 987. There's a majority of the water rights done up here in the North end came from 985 and 987 – those that were settled first.

Olds – So, really, these two charts don't show everything.

(general talking amongst one another)

**Bollermann** – Everybody? Can you please put your hands up?

**Roxanne diSanto** – Then how do we find that out?

**Teresa Wilhelmsen** – We can do a web search to see – by your ownership - and find out what water rights you do have.

**Wilde** - I actually have the book, too – I did bring the book - but I'll be here tomorrow – Dave (Horsely) and I - and anybody that has any questions, after one o'clock, if they want to come in.

**Horsely** – We have appointments up until 1:00.

**Wilde** – After 1:00, if they'd like to just stop in and just look at the book we can – we have the history of where the original right, or where your right came from.

**Jake Burnett** – What about the 70 plus lots that were segregated out - that were withdrawn in 2001 - 2003? What's new on those?'

**Olds** – Withdrawn.

**Bollermann** – Mmm, this was something that the Town did. I don't think this was your office.

**Jim Lindheim** – This related to the change application.

**Wilde** - It was supposed to simplify things. Make it easier for the Town, - and so you still have a contract with the Town, and it's still one of those that if you're using the water right, they'll be out this spring of summer to look at that, and perfect that for you, under the agreement with the Town. But it was just withdrawn or cancelled at that time to make it. They were getting tons of extensions of time and proof due notices on each one, and they just thought it'd be easier to have 30 or 40 at once – and say, "These 30 or 40 lots are ready to prove up on it" – rather than all these individual ones coming in.

**Jake Burnett** – But they weren't forfeit?

**Wilde** - No. They're still in the Town's name and you still have an agreement with the Town, and they'll be out to look at 'em.

**Jake Burnett** – Oh, good!

(general laughter)

**Jeff Johnston** – So, has there been no change in the water rights of the Town?

**Olds** – No. I think the water rights of the Town, on the four water rights that we've put up there, there are some issues with regards to those. On that portion of 'em that is not being used today.

**Jim Lindheim** – So, what you're saying is, if it's being used today you'll come out and certify that's OK. But the unused portion of the Town's rights, those are the ones that you're not so certain will survive.

**Olds** – Yes.

**Jeff Johnston** – So, on lots that are not developed yet, with no wells, might lose their water rights – or the potential to get 'em.

**Olds** – Say that again?

**Jeff Johnston** – Lots that are not built might lose the potential to get water rights in the future?

**Olds** – Well, again, I think we're going to talk about some options. Again, the approach that has been attempted down here – again, whether it matches real good with our water rights system – the city holding the water right, and then individuals drilling a well, and proving up and so forth. It is quite a process. The overhead associated with it is enormous. Ah, and think of it from our point of view. We regulate water rights. But in the case of Castle Valley, it's almost like regulating individual water meters within a community. And we don't want to do that. That's too much work. But that's what we've almost got here. And so, we need to maybe back up and re-think what we are trying to do here. I think we empathized with ya, but again there's certain limits that we have to work with.

**Jim Tharp** – But do you have any enforcement? I mean, I'm on the list of I don't have any rights, but I had a start card so I have a well. Do I have to care about having a right?

**Olds** – Ah, yes.

**Jim Tharp** – Are you going to come cap my well? Do what?

(laughter)

**Olds** – Well, again, we're not setting up there just waiting for somebody to do something wrong and then go after 'em. But last year, through the legislative process, the State Engineer's enforcement powers were greatly enhanced. And so you do not want to get on the wrong side of the law, so to speak.

**Jim Tharp** – Well, I'm already on the wrong side.

**Bollermann** – No you're not.

**Olds** – We're going to help you get on the right side of it. And that's what we're all about, here. That's why we're down here.

**David Erley** – Well, with all due respect, maybe you need to know where we're coming from, and that is: back in '99 this community gave up a water right at the advice, from our knowledge, of your – the water rights department – to give up our municipal water right, which would solve all our problems today. And so we're feeling like we gave up a water right, and now all of a sudden all of the rights that were supposed to be good have been taken from us – or are in question.

**Olds** – Wasn't that the fixed time application?

**David Erley** – That was, sir. Yes.

**Bollermann** – David, I don't think that was a municipal right, though.

**David Erley** – 'K, well the fixed time application, then.

**Olds** – And that a fixed time application is for a certain duration at which time, basically, it terminates. The reason that we've done that, again, is because of the over-allocation in the Colorado River Basin. We haven't been approving additional water rights in perpetuity.

**David Erley** – But you see from our perspective, how we feel kind of like we've been hung out to dry?

**Olds** – Yeah, but again, I don't think we're here to point fingers - at you or us or anybody. We are where we are. Let's deal with it and go forward and find a solution.

With that, I'm going to turn it over to Rick, and let him do his presentation. And hopefully he'll clear up a lot of this.

**Rick Wilde** – Again, I'm Rick Wilde. I'm with the Price office. I just wanted to talk on these three points here: our current water rights policy for the Castle Valley area. And also the application process and where that goes once the application's filed. And then I'd also like to talk a little bit about "proof" versus "election". And maybe settle some questions there that you might have.

The water rights policy for the Castle Valley area is 6.73 acre feet. And where that kind of came from is studies have been done, and using the basin information and soil types to figure the amount that it would take to water an acre of irrigation. And this area, they figure, would be 6 acre feet per year. One home figures .45 acre feet per year. And then, just for example one head of – one cow or horse – they figure drinks 25 gallons per day, and that's .028, and so you times that by ten. And those figures all add up to the 6.73. And that's the largest filing that we can approve right now in this area.

Once an application's filed, with our office, the State Engineer reviews it. We review it first in the Price office. If the application we feel is complete, we'll send it to the advertisement. It's advertised for two consecutive weeks and at the end of that advertising period – and that's basically where most of the fee goes: is that cost of advertising – it's quite high. At the end of the advertising, there's a 20-day protest period and at the end of that time, the State Engineer reviews the application, and the application is either rejected or it's approved.

Generally, when it's approved, the application's approved for three to five years, which gives you the time to place the water to beneficial use. Basically, what that is is what you've applied for on the application. Now something I've – when I'm taking phone calls on applications, something that I've brought up to people is: you can apply for the maximum - the 6.73 – but it doesn't mean you have to put the full acre in to prove up on your water right. Most people start pumping and realize – either from the flow of the well, or whatever – that it's not feasible to, or they don't want to farm a full acre of ground. And so, as I get into the proof process, next - when they do the proof on it, they'll actually reduce the water right to what the actual uses are. Most of the time, it's somewhere between a quarter and a half acre. Sometimes there's three head of cattle – or none – and then of course the domestic use. But a water right, after the proof is submitted, is then considered perfected.

The last thing I wanted to talk about is this last part in the process: proof vs. election. Currently there are the two options when proving up a water right. A "proof" is a document attesting to the water permitted for use that had been applied to beneficial use, and is completed by either a registered land surveyor or an engineer. A lot of you know Tim Keogh in the Moab area. He does a lot of the proofs. I know he's done some here in the Castle Valley area. And then the next one is an election and, ah, it's a statement filed with the State Engineer's office in a select active adjudication area, in lieu of proof, and is done by, basically, the Price office. I've probably met with most of you when you've proved up a water right – and we've done this election.

Two things I'd want to mention, here: the process for proof or election is only done one time. It's not every five years; it's just a one time deal. And second, in either case - with a proof or an election – the well is surveyed in, the full measurement made, and domestic and stock watering uses verified, and then the irrigation measured. Bring one other thing to your attention, that I wrote down as a critical note, that once an adjudication is completed, the election order is lifted, and your only option at that point is to prove up a water right with a surveyor or a proof engineer.

And I guess with that, (to Jerry Olds) do you want me to take questions?

**Olds** – Yeah. Any questions for Rick?

**Ken Drogin** – Is the validity of each one the same? Is the election as good as a proof?

**Wilde** – They both, through the adjudication, end up with a water user claim. With the proof, you receive a certificate of appropriation from our office. And with an election, you receive a water user claim. After an adjudication's complete, both the certificate water right, and the other one – they both end up with the water user claim in the end, but, ah, they're both considered proved up on.

**Jim Kress** – What happens to all these documents that Mr. Groo was collecting over the years? How are they going to be used? And, ah, will they help you with your water right? I mean, when we bought the lot out in '97, and then we started building in '99 and applied for – I don't even remember what it was – but like, let's say it was five acre feet a year – I don't know what we're using 'cause we don't have a meter on the pump – but where do those applications go to?



**Wilde** – They went to our office, and that’s part of the process with John (Groo) at the time – it went through the Town – and then they filed a change application through our office, and then this process took place

**Jim Kress** – I didn’t see my particular lot, and I really don’t see my neighbor’s lot.

**Wilde** – Well, that’s what I said. Tomorrow we can meet. If you want to stop by, we can look at that.

**Jim Kress** – I would but I’ll be over in Grand Junction.

**Wilde** – Well give me a call.

**Bollermann** – Yeah, you could do that – you could check with them – because, just because they can get it on that chart.

**Wilde** – And I’ll make a copy of that. I’ll have Damian make you a copy. He’ll have it here at the office that people can stop by and check other than tomorrow.

**Jeff Whitney** – What if you’re already using more than 6.7 feet?

**Wilde** – Ah, some of the rights were larger than that. A lot of the rights that come off of 985 and 987 were from 9 to – in fact Joan Sangree had a water right agreement through the Town, that we stopped by and checked to see how much she’d need, and one of her rights is for 19 acre feet. So, a lot of the rights that were first split off of that right were for 9 acre feet. So it could be, Jeff, your right could be for more than just the 6.73.

**Loretta Page** – So after you prove it all up, and, what if you want to use another acre of your land? What do you have to go through to get more water rights?

**Olds** – The figures that Rick showed up there – the 6.73 – again, that is by policy. The Basin is over-appropriated on paper. So we’re not using it. So the decision was made – and I think it was in ’91 – somewhere around there – that the policy within the Colorado River Basin would be – we’ll approve applications for one family, up to one acre of irrigation, and a few head of stock. And so that’s where the number comes from.

**Loretta Page** – So that’s the limit, then?

**Olds** – Yes. That’s the limit that we deal with. If you’ve got a lot that is three acres or five acres, what we’re saying is the policy only allows for the one acre of irrigation, the one family, and the ten head of stock. If you want to do something other than that, then you’ll have to go out and acquire another water right, and transfer that.

**Loretta Page** – What about the people, you know, that are just buying lots now? Will they have the same thing?

**Olds** – ‘K, the policy at this time is to allow what Rick reviewed. So, if you just bought a lot today, yes, you could file an application for the one family, one acre, and ten head of stock.

**Loretta Page** – And of course when you sell it, you can just hand it down to the buyer, right?

**Olds** – Yes. But again, we’re not saying that policy’s going to be in place for ever. That’s what it is today.

**Unidentified Speaker** – What about people who have a lot, and they’re not going to build for another five or six years, but already have a well on there, and have turned their rights over to the Town?

**Olds** – ‘K, again, I think those are some of the problems we’ve got to work through. If the right has not been used – if it’s just setting there and there’s no use of it – then that’s when we get into the trouble.

And again, as State Engineer, when we do the adjudication, I just cannot ignore forfeiture. It’s in the law, and I raised my hand and said I would uphold the law.

**Unidentified Speaker** - They changed the laws though. You know, at the time you bought: duh dah – you know you have it.

**Olds** – No, and I don’t think this portion of the law has changed in substance. Yes, in 2002, they specifically went back and changed it so there was no question about partial forfeiture.

**Unidentified Speaker** - Yeah, but this was all done before. You know what I’m saying?

**Olds** – And again, I’m not here to say “we should of, could of”. We are where we are. Let’s go forward.

**Rebecca Martin** – For the record, I will be required to say who said what questions, so please just state your name for the record.

**Jim Tharp** – I’m just confused on the 6.75, because we all just read in the T.I. today that you’re processing an application for somebody for 30 acre feet, and then of course you mentioned Joan and her 19.

**Olds** – Those are based on existing water rights.

**Jim Tharp** – I assume they have no rights, otherwise they wouldn’t be processing an application.

(many voices talking amongst themselves)

**Jim Tharp** – Do they have existing water rights?

(many voices and also Division staff talking amongst themselves)

**Joan Sangree** – Don Bowthorp.

(many voices)

**Olds** - So that’s a fixed time application, is what they’re telling me.

**Jim Tharp** – Do they have water rights today, is my question?

**Olds** – Again, we will consider applications for fixed time above the one family, one acre, and ten head of stock.

**Jim Tharp** – So what’s fixed time?

**Olds** – Fixed time is approved for say ten years, twenty years, at which time then it terminates. I don’t think that’s what you want. And the reason that we’re willing to do it is we’ve got the 360,000 acre feet that is not being used, and so it allows that water to be used until those other water rights come on line and we resolve the issues associated with them.

**David Erley** – I've got a question to ask you – whether there's any difference when you go through the adjudication process between an election and a proof? It sounds like there's no difference going through it.

**Olds** – 'K, I think there's some people who would say there is probably some difference. I know there have been people in adjudication areas who have actually went through the proof process 'cause they want to get a certificate of beneficial use. They think it is more – has more weight, you might say.

#### **START of SECOND TAPE**

**Olds** - Again, that is up to you. From a legal standpoint, I don't think there's any difference. It's still a perfected water right that has evidence that the water has been placed to beneficial use. And in the adjudication process, you end up with a water user's claim, uh, to update that water right, ah, similar to what happens in an election to being with. And then the important thing is, that the judge then takes that data and information and bases the decree as to what the water rights should be.

But, again, we're not telling you you should do one or the other. You need to make a choice there. In some areas people have elected to do the proof process so they can get the certificate. So if – it's up to you.

**Bollermann** – There's somebody up front? Yeah?

**Roxanne diSanto** – So if someone has been using their water for 20 years, or 15 years, is there an adverse possession?

**Olds** – No. "Adverse Possession" was a provision under the law where say, on Castle Creek – you were using water on the lower end of the Valley and somebody went up above you and actually stole the water from you – did it openly and notoriously. And you didn't do anything about it, and they did it for a period of time. Then they could establish a right. However the legislature passed a law in 1939 that says that we don't want any more of that. It was chaos. And so adverse use is no longer a part of our statutes.

**Bollermann** – I think Jeff had his hand up.

**Roxanne diSanto** – So someone has been (to Damian: sorry) using their water for 20 years - and because of this five year forfeiture in the mid-'70s – and they've been using it, maybe, from 1980 to now (present time) – they have no right to use their water?

**Olds** – No. That's not what I'm saying. Her question was, if someone acquired a portion of one of these water rights that was not used for 5 years, and then they used it for 15 or 20 years, are they still subject to the forfeiture? If you look at the existing law, it says that if you did not use the water for 5 years, and then you started to use it again, and if you use it for 15 years, then in essence that's why you have it.

But that's not even what we're saying here. What we're saying is, in this particular case, if you've got a water right on your lot based on one of the four rights in question, we're coming down – hopefully this year – we're going to look at it – what you are using today is what we're going to write up.

Now, don't force me to say I'm going to ignore forfeiture, 'cause I'm not going to tell you that. I'm can't do that. I'm telling you that, as a Division, we're going to come down, look at the water use as it's occurring at this time, and we'll write the claim up. That's what I'm saying we're going to do.

And, again, I have to be careful what I say here.

**Bollermann** – I think Jeff was next.

**Jeff Whitney** – Yeah, I was just wondering if it would it be beneficial to apply for the 6.73 – request a fixed time if it's for 20 years or so – would that be a possibility. Or would we be better off, if we use more than the 6.7, to apply to the Town, and then have that adjudicated through them?

**Olds** – And those are all possibilities. Again, I don't want to come down here and tell you, "this is what you ought to do". Ah, I think we're here to explore possibilities, and you need to decide what is in your best interest. The options that you just listed are all very viable. Ah, but again you need to look at your own situation, and – does the city have something that could be transferred to you, and you put it to beneficial use in a reasonable period of time – those type things.

Ah, and if you remember the letter, we basically said, "OK, we're acknowledging the problem as of this date. Let's don't keep perpetuating the problem."

**Bollermann** – I think Ken's next.

**Ken Drogin** – Yeah, this is Ken Drogin. I'm in the nursery and landscaping business, and over the years have helped quite a few people in the Valley here prove up on their water rights on the basis of planting trees, with a drip irrigation system. And in the past, your policy has been for large-sized trees, like cottonwoods, to allow up to a sixty by sixty square foot space for even a small seedling cottonwood tree on a drip irrigation system. And at that rate, they come to prove up on an acre it comes out to only 20 or 21 trees per acre, which is not that difficult to do. I'm wondering, is that policy still in place?

**Olds** – 'K, um, Rick had a slide on that earlier, but he took it out.  
(laughter)

The last version I saw it was still in there, but they must have just - took it out. But they had the various trees, and the radius of those as far as the effective irrigation and so forth. Again, as we look at what is the irrigation under that water right – and we commend you for putting in drip irrigation and being efficient and so forth in doing that – you're doing a great service to yourself as well as the public in general – and so, as we go out and do it, if you've got a row of trees then - yeah, we've got some numbers that we say, "OK, for this particular tree, and maybe it's a small tree right now, but maybe it'll have

a radius of this.” We’ll figure up that - total those up – and that becomes your irrigation acreage. Is it – I think it’s a reasonable approach to it. You got something you don’t...

**Ken Drogin** – I agree, but I’m just - as far as the – the great disparity is say you have 6.73 acre feet to prove up on and you’re using a drip irrigation to water 21 trees, and you’re only using a fraction of that. I’m not complaining. I think it’s a great policy. I just want people to know that – just - they don’t have to, like, put in a sprinkler system to cover a whole acre. They can plant 41 trees with a drip system and still prove up on their irrigation rights.

**Wilde** – If they’re spaced far enough apart. That’s correct. We’ll treat ‘em as if they’re a mature orchard or tree.

**Olds** – And the slide that Rick showed you earlier said: 1 acre of irrigation, 6 acre feet per acre. That is the duty. Admittedly, that is very generous. And is for flood irrigation purposes. But again, what are we charged on in the Colorado River Basin? It’s how much you deplete, not how much you divert. So the remainder of it should get back to the system as return fall.

**Bollermann** – I think we have Dave, and then Bob and I’m not sure from there. Did somebody cover your question David?

**Dave Erley** – No, I was just curious why the Town – if it be possible for the Town to re-apply for a fixed use type like the one we lost. If there’s anything – why we couldn’t do that today, because it seems like all of us as individuals can re-apply for our rights under the system that’s being proposed – why couldn’t the Town get it’s rights back somehow?

**Olds** – And I think the city could do that. I struggle with approving fixed time applications for municipalities. I’m not sure that’s in the best interest – to build a community economy based on a fixed time, and then it paints you and the State Engineer in a corner when that time period runs out.

**David Erley** – Well we keep getting advice from different people that a municipality needs to hold water rights, so we’re very concerned about this system that basically will go along – we’ll all have individual rights, but our Town won’t hold any rights. I was trying to find a solution to get around that.

**Olds** – Well, and then the slide I talked about private rights vs. municipality. I at least want to start thinking about that, but there are definite advantages to holding municipal water rights as opposed to private individual rights. And you as a community needs to decide what’s in your best interest.

**Bollermann** – Bob?

**Bob Lippman** – OK, the Town has a concern that we don’t withdraw from the aquifer beyond our recharge rate, and that we don’t allow salts to infiltrate and contaminate the quality of our water. What, under this process can, or does your office do to insure that we remain sustainable with our aquifer? And what can the Town do, if it is not holding its own water right, to maintain that?

**Olds** – In this last legislative session there was a bill, HB228, a Groundwater Management Plan. And it passed. It was a issue that I took to the Legislature 3 years ago, and we have several groundwater basins where we’re over-draughting or mining groundwater today. And we felt it was an important enough issue, we needed some legislative direction – clarification on it.

The bill that was passed has basically four major components to it. First of all, in administering groundwater, it is done on the doctrine of prior appropriation; first in time, first in right. The second item is safe or sustainable yield. That it is the policy of the State of Utah, in managing its groundwater supplies, to do it on the long-term safe yield of that Basin. In addition, it gives the State Engineer authority to develop groundwater management plans in any Basin or aquifer system to regulate the use of that water – taking into account water quality, the physical integrity of the system, localized interference, and a number of other issues that we do take into account. That groundwater management plan can be done at the initiation of the State Engineer - if I get a request from one third of the water users in that area, then I’m obligated to go and do a groundwater management plan. Then the fourth item is, in those Basins where we’re already over-draughting, then it allows some flexibility in gradually bringing that system back into balance.

So, I think the legislature has taken a major step forward on the issue of groundwater management, in saying that we want to use our groundwater supplies based on a long-term, sustainable basis.

**David Erley** – Sir?

**Bollermann** – Jim? Wait. Are you following up? No, you are...?

**David Erley** – Point of clarification: it’s a third of the right-holders?

**Olds** - I’d have to get to the law to look at it, but it’s my interpretation it is a third of the users, and somebody may hold a 100 acre foot water right, and you hold a 1 – you still have one vote; he still has one vote.

**David Erley** – Thank you very much.

**Bollermann** – ‘K, Jim?

**Jim Kress** – is it 6.76 acre feet per acre?

**Olds** – 6.73. It’s the policy...

**Jim Kress** – Per acre?

**Olds** – No. That is the total you can pile on it. The duty per acre is 6.0.

**Jim Kress** – OK. You know why that the average lot in this Valley is – I guess I would say 5 acres, plus or minus 5/10ths? So actually, a person - like if Jeff is drawing more than - I don’t know, let’s say he’s drawing 12 or 15 acre feet per year. And he’s got a five acre lot. He’s still not even – would be using up his allotment.

**Olds** - And again, the duty that Rick eluded to – that is the maximum. We realize it's high. We're very conservative about that. And we encourage you to be more conservation-minded. But there may be situations - depending upon the situation – whether it's a long canal, sandy soils, flood irrigation practices – where that much water is needed to mature a crop. Rather than to go piece by piece and say, "OK, You get this much. You get this much." We set at least a maximum irrigation duty. And then you can go up to that. We don't like you to exceed that. But if you can do it with less than that, that's great.

The same with domestic. We say .45 acre foot per family. That's in-house use. My own house, we use a quarter of an acre foot a year, in-house. And so, yeah, you can get by with less than that. We're just telling you those are the maximum limits.

**Bollermann** – Jim Tharp?

**Jim Tharp** – On your prior... priority? What's that?

**Olds** – Prior Appropriations Doctrine?

**Jim Tharp** – Thank you. That one.

(laughter)

**Jim Tharp** – Does it mean that those of us with an 8:30 appointment tomorrow are better off than the 10:30 appointment?

(laughter)

**Olds** – I think by 10:30, Rick's going to be wore out.

(laughter)

**Jim Tharp** – But seriously, you're saying right now there's hundreds of rights – you say "You no longer have rights" - they were all based – they were listed in time and they may or may not come back based on you're coming and proving up in May, June, July – but hopefully this year. Will that be re-instated? Or are we all starting over? Should we all scramble to be first?

**Olds** – Ah, again, I think, ah, our system is the prior appropriation system. First in time; first in right. I can't change that. So, in times of shortage – if we had to start cutting people off – and I hope we never get to that point where we're cutting off domestic use – yes, we would have to cut by priority.

**Jim Tharp** – I'm asking how that priority is being re-established since you've wiped out our rights? Is it coming back tomorrow morning, or when?

**Olds** – It would be when you file it. But again, I'm not so sure that, um, those lots where you're using the water today, you're losing it. That's not what we're saying. If you're using the water today, and then using it...

**Jim Tharp** – We're back to my original invalid right.

**Bollermann** – I'd like to make just one point. I think that what Jim Tharp is getting at is that if he, for instance, sits on a Town right, and it is currently in use, and your office recommends it for approval, his priority date on that right will be the priority date that Town right originally had. Whereas, if he were to abandon that right...

**Olds** – Yes.

**Jim Tharp** – Versus, where we stack up with you tomorrow.

**Olds** – Yes. Yep.

Jim Tharp – That's what I was thinking. Thank you.

**Bollermann** – Who's next?

**Mary Beth Fitzberg** – If - you – this is Mary Beth – if you, um – you talked about it - you don't want to tell people what they should do, but that having the Town hold a municipal right is more beneficial than individual rights. Is that a viable option? Is that something that can actually happen – that the Town can hold municipal water rights?

**Olds** – Yes, the Town of Castle Valley would be considered a municipality or public water supply agency, and could realize the benefits that a municipality has under the water law. Now there's a lot of challenges to Castle Valley Town because of the nature of your geography here: your big lots, you're a long ways away, it's very costly, you run pipelines, on and on and on.

**Mary Beth Fitzberg** – I don't mean pipelines, I just mean the Town holding a water right without doing any – putting in any system.

**Olds** – 'K, and that's the square peg in a round hole. What you're asking me to do is to go into a community and, in essence, regulate each meter within that community. Tremendous workload for us, as well as you.

**Mary Beth Fitzberg** – Are there any towns that are currently doing that?

**Olds** – No. You're very unique.

(laughter)

**Bollermann** – Loretta?

**Loretta Page** – Um, I know you don't want to go back to the McCormick issue, but what I want to ask is, if we prove up our water now, could you come back and say, "Oh, in 1920 there was this problem and now we've got to re-do this again." Is that a possibility?

**Olds** – Again, the State Engineer sets as kind of the referee. And so I have look at it from a neutral standpoint. So, what I told you is we're going to come down, and if you're using it, we're going to recommend to the court – remember "recommend" – to the court that that water right be granted. Could somebody else come in and challenge that? Yes. And it is

subject to challenge by someone else. And at that point you'd both put on your case - the guy in the black robe would make a decision - that'd be it.

**Loretta Page** - Oh, so it's never really secure.

(laughter)

**Olds** - Once the judge rules on it, though, in the adjudication, it wipes that issue away. We then move forward. Then, after it is decreed, someone could not go back and say, "In 1975, you quit using this water, and they did not start using it until 1989. Therefore it's forfeited." Once the judge issues that decree, the slate is wiped clean.

**Bollermann** - Jeff has his hand up, I know.

**Jeff Johnston** - So it sounds like the Town would hold municipal water rights if they had a municipal system, but a town cannot hold acre feet in trust for us lot holders - is that what you're telling us?

**Olds** - I didn't say that. I'm just saying, there's not a community in the state that has done that. It is very, very difficult for us to administer. And I'm not sure I want to go down that road. But I'm at least willing to discuss options - alternatives - with you to see if we can find a solution. Something that doesn't work us to death and provides the protection - the flexibility - that the city - the security of the city - the town - is looking for.

**Bollermann** - I think we had Dave.

**David Erley** - So, I went and filed for my water right again. But am I being told now, that I gave up my right to go through the adjudication and hold onto my old water right because I filed a new one? Or can I go through the adjudication, and if my right survives - my old one - I get to keep it, and I give up my new one?

**Olds** - Well, what's your situation with your old one?

**Dave Erley** - Well, you told me that it's no good under the old, uh...

**Olds** - Are you using it today?

**Dave Erley** - Oh, hell yeah!

**Unidentified Speaker** - who told you that?

**Dave Erley** - Well I'm not saying he told me that, but we've been told down here in the Valley, basically, that we should run up and get our water rights because we're all going to have to go for private water rights - first in right; first in time - you want to be up there - so I went and filed.

**Bollermann** - I think there's been some confusion, Dave. But just to - I think what he's talking about is: Can he keep his new right as a backup filing?

**Dave Erley** - Or my old right. I'd much rather keep my first in right; first in time. It was a lot earlier.

**Olds** - But what - in his particular case - we do not want to double up water rights on the same lot. Again, this policy that we're talking about: one family, one acre, and head of stock - that is from Dagget County to Kane County. It applies for the entire Basin. And if I start allowing in Castle Valley two water rights per lot, I'm in trouble. Because people will use the system to get around it and so on. So, one water right per lot, whether it's something you've acquired from the city that you've developed and so forth, or whether you've filed, we'd like to maintain it at one.

**Dave Erley** - So, for clarification, I've given up my old water right by filing a new one.

**Rick Wilde** - No, it goes through the adjudication, and like he says, if it becomes decreed you can withdraw your application that you filed in the office and maintain your original.

**Bollermann** - And that gives you a kind of a backup insurance, if you want to say, in case there is any problem.

**Dave Erley** - Well, I think we all ought to have that, personally.

**Bollermann** - I think Ken was next.

**Ken Drogin** - Yeah, I'm the President of the Castle Valley Irrigation company - the ditch system we have here in the lower part of the Valley. We have a senior water right, of a substantial amount, I believe it's 5.73 cubic feet per second. And we have issues. We're looking at the mountains now - looking at probably a low water year. We have issues with upstream users, and - what is your - can your office offer us any help in getting our - using our water rights?

**Olds** - 'K, when you say "using your water right," is it basically regulating the users on it so that, in essence, you get your fair share?

**Ken Drogin** - Right.

**Olds** - 'k. Ah, under the law there's a system where we can do that. Basically, what we do is go in and set up a distribution system. And then we appoint a water commissioner who then goes out and regulates the headgates based on priority. The cost of that water commissioner is assessed to the water users. And you're required to pay that money to our office. We account for it with a local committee that oversees it and so forth. And then we pay out to the water commissioner his salary - his expenses - to do that. But yes, it is doable.

**Ken Drogin** - If we need to do that, what's the process for starting that?

**Olds** - You have to submit a, ah, request to our office. And then we would look at that.

**Ken Drogin** - And that request would be a request for a water commissioner?

**Olds** - Well, a water distribution system. And I'm not saying we would necessarily do it. Depending upon what this year turns out to be. We may be spread pretty thin. Particularly in the Southern half of the State. It's extremely dry. As you know.

**Bollermann** - Alright, who's next? Bob? Yeah?

**Olds** – Now, we’ve still got one more presentation on adjudication, so...

(general talking)

**Rick Wilde** – A lot of the questions will be answered with Teresa’s presentation.

**Olds** – OK, so let’s have Teresa go through her’s.

**Teresa Wilhelmsen** – I’m Teresa. And basically, I ‘m going to manage the adjudication that’s going to be occurring here in the next few months. So, mainly tonight, what I wanted to do is, first of all, to introduce myself. Because you may see me or you may see some other people I send down here, actually doing the investigations and collecting the data. Um, and a couple of thing that I just wanted to try and address is – first of all, I’ll try to cover with you the adjudication process. And I can’t remember what Jerry called it earlier, but it can be very confusing. Um, and a lot of times it gets very confused with our appropriation process, which is what Rick kind of talked about: the 6.73. Um, and we do interrelate a little bit so there could be some confusion.

I was going to explain to you how the adjudication specifically relates to this area – give you the history of where it came from. And, um, how it may affect you. And hopefully that will answer some of your questions.

Um, as Jerry previously explained, an adjudication is a judicial process where by water rights are determined – the determination is made - and then they’re decreed by a court. Chapter 73-4 of the Utah code, actually gives the authority and direction to the State Engineer for conducting a determination of the water rights, or a water source, or a system. District courts – and you should be aware of this – the District Courts have ordered adjudications throughout the entire State. There’s only two areas that do not have active orders, and that’s the Sevier River and the Weber River.

Once an adjudication commences in an area, all the water rights within that area are determined and investigated. As part of the investigation, we do go in and look at the extent of use under those existing water rights – and, um, they’re located – and then we define that extent of use. And as Jerry has talked about quite a bit, we do look at issues of non-use, and we make determinations – recommendations – to the courts on the use and potential non-use of the a water right. Part – all wrapped into this adjudication – what we’ll actually do is we create hydrographic survey maps that outline the extent of those uses, locate points of diversion like wells, creeks, streams – and then we actually prepare what we call a “water users claim,” which is the water user’s claim to the use of water. And then we will ask that entity or individual to sign on the water user’s claim. Then we submit those documents to the judge.

For tonight – the area that you are included in – it’s called the Colorado River Drainage area. And you can kind of see from this map – we’ve titled this the Castle Creek Subdivision. And it’s Area 05, which is the hydrologic area – and all the water rights in this area are numbered “05-something”. And it’s called “Book 1”, so it’s kind of the first book that’s in this area. And you’ll see from that map, it basically extends from the Colorado River, over to the Colorado State Monument, um, from Porcupine Ridge – and it goes all the way up to the top above Westwater. So we’re dealing with this entire area, and you’ll see Castle Valley – you guys’re kind of this portion down here. But we are taking water users’ claims for anything within - in this area - any water use in that area.

So how did this adjudication begin? Um, this adjudication actually began, by a petition by the State Engineer in 1957. Um, and it was an issue that – his petition was prompted - five others received from users on a few of the creeks within the Colorado River Basin. Um, it was actually four creeks that some users filed letters to the State Engineer asking for some help – that there were some problems. So he petitioned the courts in 1957, actually before an adjudication order. Um, the court ordered the adjudication in 1961, and it included all of the Colorado River Basin, excluding the Green River. And then in 1988, because a lot of work had been done in the entire Basin to the North and West of the River, and very little had been done to the South and East of the Colorado River, in 1988, the State Engineer asked that those two areas be severed from the original adjudication - which they did.

Then we began – started taking claims in the early ‘90s – in the areas that were South and East of the Colorado River. Um, in this particular Book 1, which you are in, there are approximately - when we did a search list of our database – we come up with about 450 water rights that’re in this area. And when you look at 450 – and the Towns in question - there’s 4 in question out of 450, so there’s only a handful that we still have left to be completed. And I know Jerry mentioned earlier that we’re starting – we’re actually finishing. We’re about ready to wrap it up. Um, let’s see.

So as we look at, kind of, the areas, um – the area that we’re dealing with here – and the last remaining handful of water rights that we need to answer – we kind of find that there’s maybe three situations that lot owners in the Town of Castle Valley may fall into. The first situation is if you have a contract with the Town of Castle Valley, and if development is completed - like Jerry said, when I come out this spring or summer, if I see a use, I’m going to write a claim for that use. Um, so if you have a contract with the Town

under those four water rights, and your development is completed, notify the Town. And then – what the group of lots that do – have notified them that development is completed – we will do – it says OSEG on there – what that is is an ownership segregation – we’ll pull those lots into a separate water right number, and then the Town can chose to either file a proof of beneficial use, or an election. And then we process a water user’s claim based on that information, and include it in the adjudication.

Um, the second situation is if you have a contract with the Town of Castle Valley and you're development is partially completed, and you want to finish your development, you probably should have done it yesterday. Or at least have it done when we get here. Um, but then also notify the Town when your development is done.

The third situation that we kind of see here is that there is no development on a lot, and there's no devel – no plans to develop in the near future - then what can people do? And at this time you can file a new application to appropriate the 6.73 that Rick explained, or you could acquire an existing water right within the Basin and file a change application to move it. And I don't think we've really talked much about that. (A few words very hard to hear.)

Um, and there's our website. If you want any additional information, or want to see what water right you have, you can log onto our website, do a name search, and see what rights you got – or I guess Rick had said he will be here tomorrow.

And then I just kind of wanted to summarize the adjudication process. Um, so what's going to happen is: this spring and early summer we're actually going to come out, take a look at what the uses are, sort out who's using what, where, do some hydrographic survey maps, write up some water users claims, um, to prepare them for what we call a proposed determination book. I would also stress that you might want to just check and make that sure you have current title on your water right, with the Division, and that your address is correct, because we'll mail notices to the last address of record.

Um, but we will pick all of those claims, we'll put them into a Proposed Determination Book, and we'll publish that, and mail copies – distribute copies – to all of the affected users within the area. That is what's also filed with the courts, and becomes the State's recommendation to the court as to what to recognize in this area. Once we publish that book, there is a 90-day objection period where someone can file an objection to what his recommendation is. Um, if they say the water rights have been subject to loss to non-use, then they go to the judge and ask the judge to send it back. So there is that 90-day objection period once the Proposed Determination Book is published. We'll also publish a second summons, because there may be a water user that we're just completely unaware of – we didn't see – we had no record of them. And that will advise them what they need to do to become a party to this action, um, in the court. If we receive objections, or there are typographical errors, we'll produce an addendum to that Book, which will address any new issues that were raised – possibly during the 90-day objection period – and give another recommendation to the court. We don't always do addendums, but lately we have.

Then what we'll do is we'll actually ask the courts to give an interlocutory decree, once that process is completed, and that is kind of a temporary decree that decrees those water rights within that Book boundary until a final decree on the entire Basin is issued. Once that final decree is issued, it decrees all rights within that Basin. But remember, you're in a Basin that's the entire Southeast corner from Colorado. So the final decree may be quite a few years. Maybe not even in my career.

Essentially that is just a brief overview of the adjudication process. Um, and I know it can be very confusing, so if you have any questions, feel free to ask me.

And then Jerry's going to do a little conclusion.

**Olds** – Any questions for Teresa?

**Bollermann** – Looks like we have a number of them. Jerry?

**Jerry Bidinger** – A couple of questions. In your experience, from the time that the Division of Water Rights completes its review of the area, how long's it take before you publish the determination book?

**Wilhelmsen** – (to Jerry Olds: Do you want me to get that?) We actually – as you can see we started taking water users claims in this area in 1990. Um, we have a few books that have taken 5, 10, 15 years to publish. About a year and a half ago, Jerry (Olds) formed what was called an “adjudication team”, where we go into a particular area with a group of people, and that is what we are focused on.

**Jerry Bidinger** – Well let's take this case, if you finish by June - all of Castle Valley – do you have any estimate – any general estimate of how, then, long it would take before you publish?

**Wilhelmsen** – Fall?

**Jerry Bidinger** – And what do you consider “publication”? Is it filing with the court, or is it something else?

**Wilhelmsen** – We actually will file a copy with the courts. We'll notify the courts.

**Jerry Bidinger** – Will that be the publication date?

**Wilhelmsen** – Um, yes, when we mail it to all of the users. Or we may potentially come out and actually hand distribute it – and we'll set up a date when we'll hand you those.

**Jerry Bidinger** – You'll specify a date. And finally: after the interlocutory decree is issued, and prior to the final, is the interlocutory decree subject to any kind of challenge that the final decree is not?

**Olds** – Only the rights that were protested would be subject to...

**Jerry Bidinger** – Otherwise, it is - for us - it is like a final decree. If someone doesn't appeal it, within the appropriate period – the specified period of time – there's not going to be a change.

**Jim Tharp** – Course you're not – in Situation 3 – you're not going to give up developing and then after the five years – you're supposed to run out and make an application anyway, or wait 'til the future to do something?

**Wilhelmsen** – And I think you need to kind of decide that. But what will happen is if you apply for an application to appropriate now, you're given three to five years to develop it, and then you need to go prove beneficial use, so...

**Jim Tharp** – Why not just wait – I mean - ten years you apply - just roll of the dice? What?

**Wilhelmsen** – Yeah, or you know you can always acquire an existing water right within the Basin and file a change. It does go through a process to see if it can be approved. But that's the other option that we hadn't talked much about.

**Bollermann** – Joan?

**Joan Sangree** – If someone challenges, in that 90-day period, what options does the person who was challenged have?

**Wilhelmsen** – Um, you could – there does provide evidence to the court against that challenge.

**Joan Sangree** – So, for instance, if somebody is using – you know, they've put it to beneficial use, that's been checked by you folks, and it's been published, etcetera. And then somebody decides to challenge that. What's a valid challenge, or, I mean, you know: the person's already proved by you're coming out and looking at it – it's a beneficial use – it's still a beneficial use – but somebody's got an ax to grind or something. What options are there for the person whose water rights are being challenged?

**Wilhelmsen** – I think it comes, just with what Jerry's had explained. That becomes an issue where the two parties then ask the guy in the black coat to issue an order – a court order.

**Olds** – If it's frivolous, he'll probably throw it out.

**Bollermann** – And I have a question. Did you say that if there had been a non-use, but there had been a subsequent period of use for 15 years, that it would...

**Olds** – It erases it. That's in the Statute. They call it the Lazarus provision.  
(laughter)

**Olds** – The reason for it was: municipalities and others were fearful that they were going to acquire water rights in good faith, use those water rights, and then somebody would come back and say, "No that was lost to non-use X number of years ago." And so as they looked at it, that was the compromise they came to, was: "Well, maybe, if you put it back to use for 15 years, then we ought to just move forward with it, and forget about going back in time."

**David Erley** – This is Dave Erley. Why hasn't Castle Valley been deemed to be using our water for 15 years? That was back in the '70s – we've been using it since.

**Olds** – And I think that, in essence, that's what we're saying with those that are using it today.

**Roxanne diSanto** – So you still have to prove up, even if you've been using for that 15 year period?

**Olds** – "Prove up" from the sense that it may be a change application or something that's moved it to that – yes, you have to finalize that process.

**Bollermann** – Ken?

**Ken Drogin** – For people that already have a water users claim, is there any further check that's going to be done, or anything that we need to do?

**Wilhelmsen** – No, we did do some preliminary mapping with some of those water users claims previously, and they're not quite fitting on some of the lots. We might just do a double check and see what happened there. Um, but no we won't – we won't go back and re-do - we'll just move forward.

**Bollermann** – Oh, Jim Lindheim.

**Jim Lindheim** – Yeah, Jim Lindheim. I think Rick is very aware that there's a bunch of people in this room who were under the change application process that was set up in 2000. Is there anything different that's going to happen with regard to their situation – and they're in use – it's a contract with the Town - is there anything different about those people, vs. people that were segregated in the early part of the '90s?

**Wilde** – The only difference that's to be worked out with the Town is whether that's in the Town's name or the (person's) name. But currently it would be in the name of the Town, but it would be depending on the same right.

**Jim Lindheim** – Right. And the whole principle that Jerry articulated – if it's in use – it still applies to those people.

**Wilde** – It's - you're proving priority date.

**Jim Lindheim** – The priority goes by the date that you made the agreement with the Town?

**Wilde** – No. The filing date of the original water right.

**Bollermann** – Filing date of the right. 'K, Rebecca?

**Rebecca Martin** – 'K, that brings me to my question. At the point in the adjudication where the address has to be correct, and the person has to be notified, if it is unclear whether the Town is to receive the notice or the person is to receive the notice – which I think is part of the problem with, the – what he was just talking about – who is supposed to expect this notice. Can the property owner rest assured that they will? Or will the Town receive the notice, and Town will then have to distribute those?

**Wilhelmsen** – If the right is in the name of the Town in our records, that's who will receive a copy for that water right. If you have a water right that's in your individual name, um, then you will receive a copy as an individual, because you hold a water right individually. Like the 980... (to Rick Wilde) what were those two numbers?

**Wilde** – 985 and 987.

**Wilhelmsen** – Most of those were held in individual names.

**Wilde** – All of them.

**Wilhelmsen** – All of them are holding - so those people will be individually served a copy of the Book. Um, or the four that had the change applications – I think most of them are in the name of the Town, and so the Town would receive the copy.



**Wilde** – The ones Jerry showed as perfected - the majority of those from that 709 were individual names. There are some, though, in the name of the Town.

**Wilhelmsen** – So, whatever our records show for that, you know, water right is who will get a copy.

**Jim Lindheim** – But that would mean, sorry, David, that the Town has to get – has to distribute to those people.

**Wilhelmsen** – But keep in mind, the Town will get one Book. Um, you're not going to get a Book for every water right in Town listed in that book.

**Jim Lindheim** – No, but just if people want to know, definitely, if they're in there.

**Wilhelmsen** – And then make a copy of the Book. So...

**Bollermann** – Great. Dave Erley?

**Dave Erley** – (to Rebecca) Dave Erley again. We have a lot of part time owners who have water rights. How do – can you explain how do we go through the adjudication process, and ah, how those people will be able to know that they need to be involved? What level do they need to be involved? Do they actually need to be here to prove up? When you're here – what kinds of things will go on?

**Wilhelmsen** – Um, typically we don't require the property owner to be present. But if we do have questions, once we get here, we'll contact the property owner.

**Dave Erley** – Can you provide an email address ahead of time so that you can be communicated with?

**Wilhelmsen** – Sure.

**Olds** – I have a mother in-law in Holland with the Alzheimer's disease. You know, and part of the year, I have to be there, so...

**Wilde** – Maybe the way to do that's when you let Damian know that that lot wants to be perfected or have an election done on it, you can put "please contact".

**Dave Erley** – Great.

**Wilhelmsen** – Yeah, you can do that. We'll try the best that we can. Sometimes, you know, communication – or, coordinating that is a little bit difficult. But, yeah. If you let them know, then we'll make sure to contact you.

**Bollermann** – Ken?

**Ken Johnson** – I'm one of the lots in limbo – I filed an explanation but they haven't - it hasn't been processed. I filed it with the Town. It's one of the Town files.

**Bollermann** – But, you already have a well. He already has a well.

**Ken Johnson** – I've already got a well. Been using water since '83.

**Wilhelmsen** – Then we'd come out and take a water use claim again, unless the use...

**Ken Johnson** – They've already done that once.

**Wilhelmsen** – OK, if you've already...

**Ken Johnson** – Mapped everything on my lot.

**Wilde** – If it's already been done, then they won't. This is for folks that don't have an election or a proof on it yet. But, they'll get with the Town.

**Ken Johnson** – But I don't have any certificate saying I have water.

**Wilde** – If the amount that – you didn't get a water user claim? Or no, it would be in the name of the Town. I'll leave those documents with the Town tomorrow that'll show those rights that are perfected under the Town's name.

**Ken Johnson** – OK, because, it hasn't been processed yet. I submitted it to the Town. That's why I say I'm kind of in limbo.

**Bollermann** – Jack?

**Jack Campbell** – Just a very general question, to check and see whether I heard something you said correctly – um, first of all, we'd been under the impression that the Castle Valley watershed basin had a special restriction in it. But listening to you tonight, it sounds like the 6.73 restriction applies to that whole Colorado River Basin. When you have possibly been talking about "Basin," you're talking about the over-allocation of that larger Basin. Do you have any special restrictions on the Castle Valley Basin in itself, in contrast to that larger Basin?

**Olds** – N... not as we've discussed here tonight. No. It's ...

**Jack Campbell** – Just, sometimes in the complexity of the communication, we've gotten an impression that there are special restrictions in this Basin, but it's the overall thing that's is...

**Olds** – And again, ah, there's other issues within the Basin, such as surface water – filings we'd treat a little different than ground water because of problems and the rights structure there. But ah...

**Jack Campbell** – So, there's basically no special restrictions for the Castle Valley water shed.

**Wilde** – I've had people call me up whining and say, "what's your policy?" – and they say "Oh, I have a twenty acre lot, instead of a five." And the same policy applies. The 6.73.

**Olds** – And again, it's - we don't have a 6.73 policy throughout the Basin. It's one family, one acre, ten head of stock. The amount of water you need for irrigation depends on your climate. You go over by Manilla – up by Flaming Gorge – it may only be 3 acre feet is what they need. So, it's based on that as well.

**Jack Campbell** – Is there – for the property owners that, um, are not going to develop their lots within the useful timeframe that you've been talking about, is there anything that you can say to them? I mean, they'll have very reasonable concerns

about whether this policy will be continued ten years from now, or something. And, you may not be able to answer, but it is a very valid, important question.

**Olds** – And I don't think that we can give 'em assurances that, ah – the question was asked, ah – “No don't file. Wait until you get ready to develop.” Will the policy be the same? I don't know. It's hard to predict the future. Ah, but again, hopefully we'll develop their entitlement within the Colorado River Basin – some of those water rights are the checks we've already written – won't be cashed – that water'll come back into the system – we'll be able to deal with it. I don't know what the future holds.

**Jack Campbell** – Are you basically going to continue your policy of extensions – where someone does some amount of due diligence, and then it's continued on? Again, this is a question that people who are vacillating about developing their lots have asked me.

**Olds** – One of the things that we do not want to promote is someone filing an application, and just sitting on it. We expect you to - once you file the application - to pursue it to completion. We want to seek due diligence in that regard, such as drilling a well or - developing that right.

**Jack Campbell** – Right. That used to be the case. If someone filed the application and invested the money in a well or something like that, then that would be grounds for an extension.

**Olds** – And it may be. Yes. We would look at that and - if it's reasonable diligence in pursuing it – yeah, we'd probably give 'em another extension. Again, with a small project like this, how long do we let those go on? Is 5 years – 10 years – 15 years. And, uh, probably if you get beyond that, then you're probably really pushing the envelope.

**Jack Campbell** – Right. But right now, the cost of drilling a well is a significant amount of diligence.

**Bollermann** – Jim Lindheim?

**Jim Lindheim** – I want to just follow up with that, but - in my own lot that I know I am not going to develop now, I probably should not assume that I can get more than 6.7 acre feet for that lot. I probably can't have a strawberry farm.

**Olds** – That's probably a good assumption. Again, all I can tell you with any surety is the policy today is this.

**Jim Lindheim** – Yes, I understand that, but I'm saying: it would be sort of unrealistic for me to think that I could develop a water slide park.

(general laughter)

**Olds** – Unless we have a climate change – call in the rain and everything else. Yeah.

**David Erley** – Well, Jack alluded to it, but we sit on a Property Owners Association Board of Directors. And the way it's worked out is the Town kind of represents the community that's here, and the people out of town who own land who aren't here, look at the Property Owners Association as someone that's looking after their interests in the community. So, that's one of the reasons why – all of these people bought property out here – most of 'em – under this guise that the Town had water rights – and they had water rights. So they paid a price for land based on those water rights. So Jack and I, and some other people on the Board of Directors, are based on the POA – have to face up to those people and explain to them what's going on. And we actually have to give kind of – maybe not advice – but at least some ideas.

And so this puts us in a difficult spot, to say the least. And it sure seems like, at the end of the day, if we could come up with an equitable and fair solution that would could include the Town of Castle Valley holding enough water rights that it could take care of its future citizens – the lots that are here – not the lots that are out there that haven't been subdivided or ever developed or anything – because those people did buy the ranch with the assumption – or, with, actually it was more than an assumption when they bought their land that they had water rights.

And so, you know, I'm at a loss right now as to what I would even tell those people, in a letter or whatever. And it's just as when you have to worry about liability and what you say – we also do. But you started this by talking about equitable and fair solution, and I guess at the end of the day, to most of us here in this Town, is having some mechanism to provide those people with water. Maybe not 6.73 or whatever, but enough water that they can develop their property and put a house out here. Is there any way that we can go about doing that?

**Olds** – Well, again, ah, I think that's very difficult, with the current situation we've got, for Castle Valley Town to actually reserve some water and hold it. The only way you can hold the water, and not put it to use – the 50 years that I talked about – is under an approved application to appropriate. If it's a perfected water right, then a municipality gets subject to forfeiture just like anybody else. And the legislature knew that when they passed the law – it was their decision that, no, forfeiture had to be part of that for everybody.

But they did allow a municipality to be – a leeway – when they got an approved application to appropriate - to basically hold it for the reasonable future needs of that community for a 50-year period. But the problem is, Castle Valley Town doesn't have that approved application to appropriate.

**David Erley** – You've just said that you don't want people coming to file rights who aren't going to use them and that they might get an extension, but I'm sitting here seeing that there's nothing else that I can say to those people, who look to the Board of Directors of the POA to give them some direction. Is: go out and drill a well, or at least make a claim for a right.

**Olds** – And they can do that. But, again, I think we're going to say, “OK, You need to then, develop the water and put it to use. If you just hold onto it, you're going to lose it.”

**Bollermann** – Jerry?

**Jeff Johnston** – You can make a claim even though you haven't drilled a well? And then you would have 3 to 5 years to put the well in.

**Olds** – "Make a claim"? Make an application?

**Jeff Johnston** – Make an application – yes.

**Olds** – Oh, OK. Yes, you then need to make the application, and then again we grant it for a period of time – 5 years – we would expect something to be done during that period of time.

**Jeff Johnston** – Like a well drilled?

**Bollermann** – Jerry?

**Jerry Bidinger** – In the experience of the Division of Water Rights, how does the Town go about making an approved application - or to get an approved Application to Appropriate? For example: we went to Spanish Valley, and let's say we bought a water right from them. That would probably be a perfected right. Which would, I guess, put us back at the problem.

**Olds** – No, those are approved.

**Jerry Bidinger** – Oh, so, something like that would work.

**Olds** – Uh huh.

**Jerry Bidinger** - That's an option that we in the Town should think about.

**Olds** – I think your town has even explored the idea of getting some Flaming Gorge water?

**Jerry Bidinger** – Well, and I've been involved with that, and that's... Well, thank you.

**Bollermann** – Yes. One sec., Paulette. Jim?

**Jim Lindheim** – Yeah, sorry. This is probably a related question. Do you have any understanding of what Grand County Conservancy, which is holding a certain amount of water rights - what their official obligation is to us as citizens of Grand County?

**Olds** – I don't know what that is. Ah, do you pay taxes to this Conservancy District?

**Jim Lindheim** – Yes.

**Olds** – then I think there is some obligation to help you in this

**Jim Lindheim** – But they are an entity that's holding such rights.

**Olds** – Yes.

**Bollermann** – Right. Paulette?

**Paulette Grace** – I'm Paulette Grace. This is a question that might be related, but I'm just getting a little confused. We have a five-acre minimum for one family here. A lot of people own more than five acres – and I do – and I was just always thinking that, you know, as an option for someone else in my family – or maybe to sell it for some other reason - but as I'm one family, I've got one well – I've got, you know - working towards proving rights for myself on – where my well is on my five acre lot. If I sold the other two, I mean, would there be a chance to get water?

**Olds** – I think what we have said here tonight is: we are dealing with lots, as they exist today. And so it would be the one family, one acre, ten head of stock per lot.

**Paulette Grace** – But you also said "one family". I'm one family with three lots. So, I can't get three wells.

**Unidentified Speaker** – If you sold them, they would be three separate ones.

**Olds** – Yeah, if you sold 'em then that would be three separate lots and we would consider.

**Paulette Grace** – OK, then it would be considered for a new application. It's not like a cut off date for Castle Valley?

**Olds** – The thing we don't want to do is then see you divide the lot – the five acre lot – into five additional ones, and then file four more application.

**Paulette Grace** – No, we can't do that. We're five acre minimum, but...OK.

**Olds** – And so that's why it's based on lots. Ok, let's finish up here.

(general laughter)

In conclusion, determine which situation you are in - remember the three situations Teresa put up there? - and then get busy. Sometime in 2006, we hope to get out and finish up this, uh, Book 1, is it? Of area O5. And so when that is done then it would be our intent to also withdraw the election order. So if you want to prove up on a water right after that, then you're looking at hiring a proof engineer.

Water rights staff will be available tomorrow, by appointment. It sounds like they're booked through lunch. Ah, but after that...

**Unidentified Speaker** – Could I have something real early? I have to be to work.

**Olds** – That's up to him.

(general laughter)

**David Horsely** – Yeah, would 5:00 AM be OK?

**Unidentified Speaker** – Uh, I don't care.

**David Horsely** – Ah, maybe they need you at the diner.

**Olds** - Ah, we'll try and work with you. The other thing you could do is, ah, perhaps, to do some of it over the telephone.

**Unidentified Speaker** - Well, I talked to Rick – I talked to you already on the phone.

**Bollermann** – And I think Sharon is on your list for proof to the Town.

**Olds** – ‘K, then we hope to have some staff out here this summer, as Teresa indicated, to finish up. So as you see people in a water rights trucks, Natural Resources – don’, uh  
(general laughter – slide of a kitten taking aim at Division truck tires)  
...shoot at us or anything. OK?

Now, again, holding this meeting, we knew we’d come down here and take some abuse. That’s fine. But again, we are where we are. Let’s move forward. We’re willing to work with you. Yes we do have some limitations as to how far we can go. But I think we’ve discussed some reasonable approaches and alternative here tonight. If there’s additional questions or concerns, maybe communicate those to your Mayor and your Town Council. If we need to come back another time we will. We realize we’ve thrown a lot of stuff at you tonight. And there’s things we haven’t even discussed because we don’t want to confuse you even more. But if you still have issues – concerns – yes, we can come back and talk here.

Here’s the address of the Price office. Give ‘em a call. Stop by, as you go through Price. Talk to ‘em. And, ah, between Rick and Teresa, I think they can work through your problems.

With that, we’ll, ah, be happy to respond to any questions. We appreciate your time and attendance.  
(General “Thank You s” and applause.)

**Rebecca Martin** – Anyone who didn’t sign the form saying that you were here, please do so because I am supposed to attest to who is here, and there’s no way for me to do it without you just writing your name on that form.

**Bollermann** - Yeah, it’s in the hall on the way out.

**Rebecca Martin** – If the Front side is full, just fill in the back.  
(break)

**Bollermann** – I have to adjourn this meeting, so – a motion?

**Jim Lindheim** – **I move to adjourn this meeting.**

**Ranna Bieschke** – **I second.**

**Bollermann** – All in favor?

**Damian, Jim and Ranna voted yes.**

**Meeting adjourned at 9:47 PM.**

**ATTEST:**

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**Rebecca Martin, Clerk/Recorder**

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**Date**