

## **Review of *Big Ditch* Case**

State Water Development Commission  
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### **What the Case is About**

- The right of an owner of a water contract interest to file a change application on another person's water right.
- A 1905 exchange agreement where Big Ditch Water Company conveyed and transferred its water rights in Big Cottonwood Creek to Salt Lake City in exchange for the City's commitment to supply Big Ditch irrigation quality water from City water sources.
- The Court concluded that the City holds title to both the Big Ditch irrigation water rights in Big Cottonwood Creek, and the water rights from the different water sources used to supply Big Ditch the irrigation water.
- "Big Ditch received only a contractual right to receive irrigation water from the City."
- The Court ruled that Big Ditch, as a person with a water contract interest, is "a person entitled to the use of water" under the change application statute and may file a change application "regarding the water to which it is contractually entitled." No further guidance was provided by the Court on how such a change application is filed and administered.

### **Three Important Principles are Implicated**

- Protection of Private Property Rights of Water Right Owners
- Recognition of Sanctity of Contracts
- Promotion of Practical Water Right Administration

### **Recommendations to Consider**

A simple straight-forward fix was recommended by the Executive Water Task Force and included in last year's SB 211 sponsored by Sen. Dayton:

- Replace the phrase "a person entitled to the use of water" with "change applicant."
- Define a "change applicant" to be:
  - The holder of an approved but unperfected application to appropriate water;
  - The record owner of a perfected water right;
  - A person who has written authorization from the water right owner to file a change application on their behalf.
  - A shareholder in a water company who files a change application in accordance with Section 73-3-3.5.

If the term "a person entitled to the use of water" is not replaced, define that term with the same four provisions above.

At minimum, a contract interest holder should be required to obtain the consent and signature of the owner of the underlying water right sought to be changed.