

1986

## S & G v. Morgan : Supplemental Submission

Utah Supreme Court

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David L. Wilkinson; attorney general; Dallin W. Jensen; Solicitor General; Michael M. Quealy; assistant attorney general; attorneys for defendant.

Ken Chamberlain; Olsen, McIlff and Chamberlain; attorneys for appellant.

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BRIEF

860555  
DOCKET NO. 860555  
x R. OLSEN  
CHAMBERLAIN  
KAY L. MCIFF  
RICHARD K. CHAMBERLAIN

OLSEN, McIFF & CHAMBERLAIN

ATTORNEYS AT LAW

225 NORTH 100 EAST

POST OFFICE BOX 100

RICHFIELD, UTAH 84701

TELEPHONE 896-4461  
AREA CODE 801

June 16, 1989

Mr. Geoffrey J. Butler  
Clerk of the Supreme Court  
332 State Capitol  
Salt Lake City, Utah 84114

Re: S&G Inc. vs. Dee C. Hansen,  
State Engineer of the State of Utah  
Case No. 860555

Dear Geoff:

The above-referenced matter was argued before the Court on Tuesday, June 13. During the argument Justice Zimmerman made inquiry regarding participation of our client at the administrative level.

We responded by pointing out first that our position was advanced by the applicant Intermountain Power Agency, and second, that the applicable Utah Statute (73-3-14) authorizes a "plenary review" in the District Court by any person "aggrieved" by a decision of the State Engineer and does not impose a requirement of prior participation in the administrative process.

We suggested to the Court that if prior participation is to be required it is a matter that would require legislative action. What we failed to do, and for which we apologize, was to advise the Court that the legislature did in fact change this statute in 1987. The amended statute has deleted the reference to a "plenary review" and requires compliance with Chapter 46b of Title 63, the Administrative Procedures Act.

We did not cite nor discuss the amended statute in our brief since it was not in force at the time the action was filed in the District Court. However, in light of the question raised by Justice Zimmerman we think it is prudent for the Court's attention to be drawn to the amendment.

It will be greatly appreciated if you will alert the Court of this information. We are sending a copy hereof to counsel for the State Engineer, whom we presume would want the Court fully apprised of this information.

Mr. Geoffrey J. Butler  
June 16, 1989  
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Sincerely,

OLSEN, McIFF & CHAMBERLAIN

By

A handwritten signature in black ink, appearing to read "Ken Chamberlain".

Ken Chamberlain

A handwritten signature in black ink, appearing to read "Kay L. McIff".

Kay L. McIff

KLM/sc  
cc: Michael M. Quealy