

Groundwater Management Plan Committee Cedar Valley, Iron County
88 E. Fiddlers Canyon Rd. Ste. A
Cedar City, UT 84721
(435) 865-9901

Committee Members

Joe Melling - Chair	Brent Hunter	Spencer Jones	Paul Bittmenn
Paul Cozzens	Paul Nelson	Ramon Prestwich	Rob Dotson
Reed Erickson	Paul Monroe - Secretary		

June 20, 2017

Kent Jones P.E.
Utah State Engineer
P.O. Box 146300
Salt Lake City, UT 84114

RE: DRIED-UP EARLY PRIORITY SPRING/SURFACE RIGHTS

This letter is being submitted on behalf of the Groundwater Management Plan Committee with concern of the amount of dried-up surface springs, streams and spring water rights that are on the books which could be transferred to underground.

During the monthly GMP Committee meeting a motion was made to draft a letter to the State Engineer requesting that all decisions on change applications for surface/spring water rights to underground within the Cedar Valley aquifer basin and south to the County line between Iron and Washington County be postponed until the Groundwater Management Plan for Cedar Valley is adopted and complete.

Additionally, the GMP committee has the following questions and issues with moving surface and spring water to groundwater:

1. How many water rights are on the books that would be considered Dried-up early priority spring/surface rights?
2. Are these spring/surface rights currently counted among the Cedar Valley groundwater right listing of 50,907.41 AF of depletion?
3. By approving these water rights now will the State Engineer be setting a precedent that would allow all spring/surface rights to be moved to groundwater?
4. When these water rights went through the decree were they measured for flow?

5. Historically the State Engineer has over appropriated water rights so that when water was available it could be put to beneficial use. By changing surface/spring water to groundwater will the flows be tied to the current flow of the stream/spring?
6. Does the State Engineer consider all possible reasons for a surface/spring water right to be diminished (climate, watershed encroachment, groundwater pumping, upstream changes and others)?
7. Understanding U.C.A. §73-1-4 (2)(e)(iii) a water right is not subject to forfeiture during “those periods of time when a surface water or groundwater source fails to yield sufficient water to satisfy the water right.” Some of these springs have not run for five to six decades. Is there consideration where the water right holder has forfeited their water right due to non-use?
8. Should the burden of impairment rest on the water right holder whose spring was dried up by five to six decades ago? Or are they given a pass because they are senior?
9. Should the State Engineer consider a policy similar to that in Northern Utah Valley and Cedar Valley, Utah County?

These committee members and other entities are spending considerable time and resources reviewing and protesting change applications that are tied to water rights that we view as forfeited. In an adjacent basin with similar groundwater declines and history of springs being dry for decades; the State Engineer's made several points that we view as applicable to the Cedar Valley Basin. The Memorandum Decision of the State Engineer on the “Hay Springs” water right 71-2552 (a23697) and affirmed at District Court discussed the following:

The approval of spring water to groundwater would worsen an already unacceptable condition. Furthermore, to allow the resumption of use of the Hay Springs water under this change application and under these conditions would be unfair to those water users who have been continuously using water since the mid-century. P.5 ¶1

Allowing the resumption of the use of the water as proposed in the change application would not be reasonable nor wise management of the groundwater resources given the over-drafted conditions of the aquifer which could occur. P.5 ¶2

Although there is some dispute as to the extent to which Hay Springs may have flowed and been applied to beneficial use in the past, there is substantial evidence available to confirm that the springs have not flowed significantly for a period of at least 20 years and possibly as many as 40 years or more. There is also evidence that the loss of flows in the springs has resulted, entirely or in part, from groundwater withdrawals of later appropriators. However, reasonable groundwater withdrawals are allowed by law such that utilization of the groundwater resources are maximized.

The State Engineer recognizes that nonuse of water may result from conditions beyond the immediate control of the appropriation and that such conditions deserve proper administrative notice. It is not reasonable, however, that such nonuse can continue indefinitely without the consequences of statutory forfeiture or abandonment. P.5 ¶3

It is with these concerns among of these change applications that the Groundwater Management Plan Committee prays the State Engineer consider addressing this by: adopting a change in policy; or drafting a portion of the GMP; or postpone these decisions until the GMP is finalized. We request the State Engineer also include the area south of the Cedar Valley aquifer basin to the Iron/Washington County line.

A handwritten signature in cursive script, appearing to read "Paul Monroe", written in black ink.

Paul Monroe
Secretary GMP Committee