

NORMAN K. JOHNSON, No. 3816
L. WARD WAGSTAFF, No. 5554
MICHAEL M. QUEALY, No. 2667
Assistant Attorneys General
MARK L. SHURTLEFF, No. 4666
UTAH ATTORNEY GENERAL
ATTORNEYS FOR UTAH STATE ENGINEER
1594 West North Temple, Suite 300
SALT LAKE CITY, UTAH 84116
Telephone: (801) 538-7227

IN THE EIGHTH JUDICIAL DISTRICT COURT, DUCHESNE COUNTY

STATE OF UTAH

<p>IN THE MATTER OF THE GENERAL DETERMINATION OF ALL THE RIGHTS TO THE USE OF WATER, BOTH SURFACE AND UNDERGROUND, WITHIN THE DRAINAGE AREA OF THE UINTA BASIN IN UTAH</p>	<p>MEMORANDUM IN SUPPORT OF STATE ENGINEER'S MOTION FOR ORDER OF DISTRIBUTION</p> <p>Civil No. 56080056CV</p> <p>JUDGE JOHN R. ANDERSON</p>
--	--

I INTRODUCTION

During years when the water supply in the combined Duchesne and Strawberry River system has been insufficient to supply existing water rights, the water has been distributed pursuant to orders from this Court. These orders allow the interim distribution of water in this combined river system during the pendency of the Uinta Basin General Adjudication. They do not prejudice the claims of the parties in any subsequent proceedings in the general adjudication.

II ARGUMENT

A. UTE INDIAN TRIBE WATER RIGHTS AND THE GENERAL ADJUDICATION

In the general adjudication, a number of issues related to the water right claims of the Ute Indian Tribe remain unresolved. Years ago, the State of Utah and the Ute Indian Tribe undertook to negotiate a compact that would quantify the Tribe's water rights and resolve various outstanding issues. The State of Utah agreed not to join the United States or the Ute Indian Tribe in the Uinta Basin General Adjudication until the compact was ratified. In 1980, the Utah Legislature ratified a proposed compact. In approximately 1992, the State and the Tribe negotiated a revised compact. The United States Congress has ratified the revised compact by legislation. The Tribe, however, has not yet ratified the revised compact by referendum election. Pending the Tribe's ratification, the State and the Tribe are continuing to negotiate the final few unresolved issues. After ratification by the Ute Tribe, the Utah Legislature will consider the revised compact for re-ratification. Until the compact is ratified, the water rights on the Strawberry and Duchesne River systems will not be fully adjudicated in the general adjudication. This Distribution Order allows the State Engineer to administer and distribute the waters of the Strawberry and Duchesne Rivers while the general adjudication is pending in those river basins.

B. DISTRIBUTION SCHEDULE FOR DUCHESNE AND STRAWBERRY RIVERS

The flows in the drainage areas of the Duchesne and Strawberry Rivers in 1982, 1983, 1984, 1986, 1997, 1998, and 1999 were sufficient to satisfy water rights in the basin without a distribution schedule. In 1995, even though the Court issued a distribution order, there was enough late spring precipitation and cool weather to maintain river flows, and the River Commissioner did not impose

the delivery schedule. In 2005, 2006, 2007, and 2008, although it appeared there would be sufficient water, the water users requested that the State Engineer submit a distribution order to the Court so it would be in place in case it was needed. In 2007, the river commissioner distributed water according to the distribution order. This year, after reviewing the snow pack information and consulting with the Duchesne River Commissioner, the State Engineer has concluded that it may not be necessary to regulate the system under a distribution order during the 2009 irrigation season. Nevertheless, the State Engineer and the water users agree that the distribution order should be in place in case regulation becomes necessary.

Prior to 1989, all water users along the respective river systems received water according to a single, uniform distribution schedule that was prepared by the State Engineer and adopted by the Court. After 1989, the State Engineer modified the distribution schedule based on discussions with the water users and new technical information. In 2003, the State Engineer further modified the distribution schedule after discussions with the water users. Those modifications are explained in detail in the Distribution Schedule, Duchesne - Strawberry River (Distribution Schedule), attached as Exhibit A to the proposed Order. In 2009, the water users requested that the descriptions of Zones I and III be amended slightly to make them more accurate. The Distribution Schedule provides that the River Commissioner can make a determination, based on current climatic conditions and historical water needs, to administer Zone I under either Schedule A or Schedule B, and to administer Zone II under either Schedule B or Schedule C. Zone III will be administered under Schedule C as in previous years. The Distribution Schedule will allow the River Commissioner and the water users to begin regulated distribution of water either earlier or later,

depending on the seasonal weather outlook and the water needs within each zone.

C. IRRIGATION DUTY SHOULD BE FOUR ACRE-FEET PER ACRE

Based on the Court's ruling on the 1990 Interim Distribution Order and the State Engineer's technical analysis, the State Engineer has concluded that a four (4) acre-feet per acre irrigation duty is reasonable and proper in the area covered by the Distribution Schedule. The State Engineer therefore recommends that the Court adopt an irrigation duty of four (4) acre-feet per acre. This is the same irrigation duty the Court has adopted since at least 1980.

D. STORAGE RESERVOIRS MAY BE USED FOR REGULATION OF FLOWS

In 1990 and 1991, the State Engineer held discussions with representatives of the United States Bureau of Reclamation and the Central Utah Water Conservancy District (CUWCD) regarding the use of Starvation Reservoir as a regulating reservoir for direct-flow water rights from the rivers and streams. By agreement with the CUWCD, water users have been allowed to use Starvation Reservoir to regulate their water flows on a short-term basis (two weeks or less) during the time they harvest their crops. This arrangement allows the River Commissioner, at the request of the water users, to regulate the water flow by interrupting the delivery of the allotted water when the water users are harvesting crops and cannot use it and resuming delivery of water when the harvest is completed. The water users can thus use their water more efficiently, and they can use their full allotment of four acre-feet per acre per year.

For the 2009 irrigation season, the State Engineer requests that the Court allow, by order, this arrangement for short-term regulation through Starvation Reservoir, Red Creek Reservoir, and Midview Reservoir at any time during the irrigation season. The State Engineer will consult with

the water users to evaluate the effectiveness as the irrigation season progresses. The short-term regulation would be limited to two weeks or less, but could occur any time during the irrigation season. The conditions of such regulation are that the water users make appropriate arrangements with the owner of the respective reservoir (Starvation Reservoir, Red Creek Reservoir, or Midview Reservoir), that the River Commissioner administer such regulation and distribution, that other water rights are not impaired, and that the water users have adequate measuring devices as approved by the State Engineer.

E. CERTAIN PARTIES HAVE BEEN ELIMINATED FROM THE NOTICE LIST

For several years, copies of the Motion, Memorandum in Support, and proposed Order mailed to certain names and addresses on the mailing list have been returned as undeliverable. In 2008, the State Engineer tried unsuccessfully to update those addresses. Some of the names and addresses are for water users who filed claims in the early 1900s and are clearly out of date. The State Engineer will no longer include those names and addresses on the mailing list. Because the Order allows a water user to file an objection to the Distribution Schedule at any time during the 2009 irrigation season, the elimination of these names does not prejudice the rights of any active water users.

F. THE DISTRIBUTION ORDER DOES NOT PREJUDICE CLAIMS IN THE GENERAL ADJUDICATION

In the past, the Uintah Basin Irrigation Company has expressed concern that the continued entry of the interim distribution orders may be the basis for some form of estoppel to their claim for a higher duty of water, even though the orders state that they are without prejudice to such claims.

The State Engineer emphasizes that nothing in this or in past orders is intended to prejudice the eventual claims of any party in the general adjudication, including claims for a higher irrigation duty.

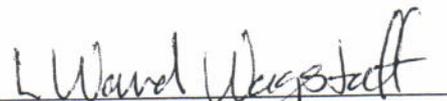
III CONCLUSION

The State Engineer therefore respectfully moves this Court for an Order of Distribution that adopts the attached Distribution Schedule to govern the distribution of water on the Duchesne River and Strawberry River systems for the 2009 irrigation season and directs the Duchesne River Commissioner to distribute water within those river systems according to the schedule.

The State Engineer will serve copies of this Motion on all interested parties to allow them to submit comments or objections prior to entry of the Order of Distribution.

Dated this 31st day of March, 2009.

MARK L. SHURTLEFF
UTAH ATTORNEY GENERAL


NORMAN K. JOHNSON
L. WARD WAGSTAFF
MICHAEL M. QUEALY
Assistant Attorneys General

ATTORNEYS FOR UTAH STATE ENGINEER
1594 West North Temple, #300
SALT LAKE CITY, UT 84116

CERTIFICATE OF SERVICE

I hereby certify that a copy of the STATE ENGINEER'S MOTION FOR ORDER OF DISTRIBUTION, the MEMORANDUM IN SUPPORT OF STATE ENGINEER'S MOTION FOR ORDER OF DISTRIBUTION, and the proposed ORDER OF DISTRIBUTION were served by mailing, first class postage prepaid, this 31st day of March, 2009, to the following:

John Swasey
Duchesne River Commissioner
HC 1 Box 145
DUCHESNE UT 84021

Todd Smith
Whiteing & Smith
1136 Pearl Street, Suite 203
BOULDER CO 80302

David Frandsen
U.S. Bureau of Reclamation
302 East 1860 South
PROVO UT 84606-7317

Shawn E. Draney
Snow, Christensen & Martineau
10 Exchange Place, 11th Floor
SALT LAKE CITY UT 84145

Steven E. Clyde
Clyde Snow Sessions & Swenson
One Utah Center
201 South Main, 13th Floor
SALT LAKE CITY UT 84111

Roland Uresk
47 North 200 East
ROOSEVELT UT 84066

Duchesne and Strawberry Rivers Water
Users Association
Art Taylor, Chairman
Box 123
DUCHESNE UT 84021

William R. McConkie
Office of the Solicitor
U.S. Department of the Interior
6201 Federal Building
125 South State Street
SALT LAKE CITY UT 84138

Gayle F. McKeachnie
McKeachnie Law Offices, P.C.
P.O. Box 340
2575 West Hwy 40
VERNAL UT 84078

Guy L. Taylor and Ben D. Mitchell
HC 2 Box 40
DUCHESNE UT 84021

Red Creek Irrigation Company
c/o Vern Roberts, President
P.O. Box 743270
FRUITLAND UT 84027

Noel James Carey
P.O. Box 1633
SEQUIM WA 98382

D. Brent and Colleen M. Carter
P.O. Box 270007
FRUITLAND UT 84027

R.W. and Nelda Young
FRUITLAND UT 84027

William P. Walsh, Jr.
Shirley A. Weathers
P.O. Box 270090
FRUITLAND UT 84027

Mervin and Ethna Reid
4225 Helaman Circle
SALT LAKE CITY UT 84124

Paul A. and Myrth Young
P.O. Box 742
FRUITLAND UT 84027

William R. Young
P.O. Box 466
DUCHESNE UT 84021

Parley Turnbow
Turnbow Ranching Company
10877 South Clear Creek Drive
SANDY UT 84070

Lynn Hansen
Irrigation Systems Manager
Uintah and Ouray Agency
U.S. Bureau of Indian Affairs
988 South 7500 East
P.O. Box 130
Ft Duchesne UT 84026

Daryl H. and Ivy R. Pearson
737 Mayfield Avenue
STANFORD CA 94305

Security Title
376 East 400 South
SALT LAKE CITY UT 84111

