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IN THE DISTRICT COURT OF THE EIGHTH JUDICIAL DISTRICT
IN AND FOR DUCHESNE COUNTY, STATE OF UTAH

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	MOTION OF STATE ENGINEER FOR ORDER OF DISTRIBUTION Civil No. 56080056CV JUDGE JOHN R. ANDERSON
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2004

The State Engineer, by and through counsel, hereby submits this Motion of State Engineer for Order of Distribution for the Duchesne and Strawberry River system.

During years when the water in the 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.

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 began negotiating a compact that would quantify the Tribe's water rights and resolve the outstanding issues. 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 last few issues of concern to the Tribal members. After ratification by the Ute Tribe, the Utah Legislature will consider the revised compact for re-ratification.

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 need to impose the delivery schedule. This year, after reviewing the snow pack information and consulting with the Duchesne River Commissioner, the State Engineer has concluded that it probably will be necessary to regulate the system under a distribution order during the 2004 irrigation season.

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 order 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, attached as Exhibit A. 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. These modifications 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.

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. 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.

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 device for water users with 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 by on a short-term basis (two weeks or less) during the time when the water users harvested their crops. By this arrangement, the River Commissioner, at the request of the water users, could regulate the water flow to

interrupt the delivery of the allotted water when the water users could not use it, and to resume delivery of water when the harvest was completed and they could use the water. The water users could thus use their water more efficiently, and they could use their full allotment of four acre-feet per acre per year.

For the 2004 irrigation season, State Engineer requests that the Court allow, by order, this arrangement for short-term regulation through Starvation Reservoir and Red Creek Reservoir at any time during the irrigation season. The State Engineer requests that the regulation be allowed on a trial basis, with opportunity for the State Engineer to 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 or Red Creek 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.

In past meetings with the Uintah Basin Irrigation Company, members have 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.

The State Engineer respectfully moves this Court for an Order of Distribution adopting

the attached Distribution Schedule to govern distribution of water on the Duchesne River and Strawberry River systems for the 2004 irrigation season, and directing the Duchesne River Commissioner to distribute the waters of said system according to the schedule.

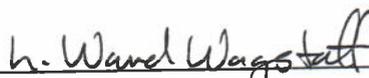
The State Engineer will serve copies of this Motion on all interested parties in order to allow them to submit comments or objections prior to entry of the Order of Distribution.

Dated this 26th day of March, 2004.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of foregoing MOTION OF STATE ENGINEER FOR ORDER OF DISTRIBUTION and the proposed ORDER OF DISTRIBUTION (prior to signature and entry) were served by mailing, first class postage prepaid, this 26th day of March, 2004, to the following:

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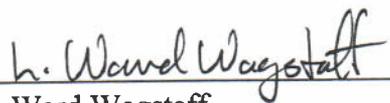
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