



# United States Department of the Interior

## BUREAU OF RECLAMATION

Upper Colorado Region  
Provo Area Office  
302 East 1860 South  
Provo, Utah 84606-7317

IN REPLY REFER TO:

PRO-753  
WTR-4.10

MAR 11 2004

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WATER RIGHTS<sup>2</sup>  
SALT LAKE

Jerry D. Olds, P.E.  
State Engineer  
Utah Division of Water Rights  
P.O. Box 146300  
Salt Lake City, UT 84114-6300

Subject: Order of Distribution, Duchesne River

Dear Mr. Olds:

This letter is written in regards to the annual decree issued by the Eighth District Court regarding allocation of water rights on the Duchesne River. In the 2003 decree, paragraph 2 states the following:

The River Commissioner is allowed to use Starvation Reservoir as a regulating device in conjunction with the Distribution Schedule for those water users making appropriate arrangements with the Central Utah Water Conservancy District, so long as other water rights are not impaired, and so long as such water users have in place adequate measuring devices approved by the State Engineer.

As the owner of Starvation Reservoir and the Central Utah Project water rights, the Bureau of Reclamation has two primary concerns with this paragraph, both of which are closely related to each other.

As you may be aware, water can only be stored in Reclamation facilities under contracts pursuant to Reclamation Law. The Warren Act of February 21, 1911, provides authority for Reclamation to enter into contracts for the storage of non-project water in facilities of a Reclamation project. Therefore, any storage of non-project water in Starvation Reservoir as contemplated in the paragraph quoted above would require execution of a contract between the storing party and Reclamation prior to such storage. The party desiring the contract would be required to pay Reclamation's costs incurred in negotiating and executing such a contract. Appropriate compliance with the National Environmental Policy Act, as well as the Endangered Species Act, would also be required. The costs of such compliance would be borne by the entity desiring to store non-project water.

Our second concern is the provision in the paragraph quoted above requiring that other water rights not be impaired by storage in Starvation Reservoir. It is Reclamation's opinion that it is difficult to avoid such impairment. Direct flow rights not used during certain periods of the irrigation season (i.e., hay cuttings, etc.), if not stored, would be passed on to junior appropriators. The United States, as holder of the Central Utah Project water rights, is one of these junior appropriators. In the event that the senior appropriators do use this water, it would be used less efficiently during these periods, resulting in increased return flows which again should be passed on to the junior appropriators. Therefore, we believe storage of non-project water in Starvation Reservoir would impair junior water rights. Reclamation would need to be satisfied, prior to entering into contracts allowing such non-project storage, that by so doing, it would not impair its own water rights.

In summary, it is Reclamation's opinion that two of the conditions imposed in paragraph 2 for use of Starvation Reservoir for river regulation: (1) approval of the CUWCD, and therefore the United States, and (2) no impairment to other water rights, would be difficult to meet and the provisions therein would therefore be irrelevant. We respectfully request that you consider this in submitting language to the court for the 2004, and all future decrees, and particularly, that care be taken to not expand the parameters given in paragraph 2.

Sincerely,

A handwritten signature in black ink that reads "Bruce C. Barrett". The signature is fluid and cursive, with a long horizontal stroke at the end.

Bruce C. Barrett  
Area Manager

cc: Mr. Don A. Christiansen  
General Manager  
Central Utah Water Conservancy District  
355 West University Parkway  
Orem, UT 84058-7303

Honorable John R. Anderson  
District Judge  
Eighth Judicial District  
920 East Highway 40  
Vernal, UT 84078