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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 DETER-) MINATION OF ALL THE RIGHTS TO THE) USE OF WATER, BOTH SURFACE AND UN-) DERGROUND, WITHIN THE DRAINAGE AREA) OF THE UINTA BASIN IN UTAH.)	STATE ENGINEER'S RESPONSE TO GUY L. TAYLOR'S OBJECTION TO 1994 DISTRIBUTION ORDER Civil No. 3070
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The Utah State Engineer files this response to the objection of Guy L. Taylor dated April 14, 1994. The Court has set a Hearing on said objection for May 12, 1994, in Duchesne at 9:30 a.m.

Rather than burden the Court with a repetition of past years' arguments, we simply submit as Exhibit "A" hereto a copy of our response to Mr. Taylor's and others' protests filed in 1989, which we believe adequately addresses the points heretofore made by Mr. Taylor. If new or different grounds for protest are to be raised, we respectfully reserve the right to respond accordingly.

In summary, it is the State Engineer's firm belief that the interim distribution order benefits all water users, including Mr. Taylor. Under today's river flows, Mr. Taylor will receive more

water through the year under the distribution order than if the distribution order was not in place and Mr. Taylor received water under his 1908 priority. Further, similar objections by Mr. Taylor have been repeatedly rejected by the Court, including those made last year.

We would, however, like to point out two additional considerations which have transpired since the 1989 distribution Order:

1. As the record indicates, in 1990 the State Engineer proposed raising the duty to 4.5 acre-feet per acre as an experimental data-gathering procedure. Several objections were received, and, after a Hearing before the Court, the Court felt that the duty should remain at four (4) acre-feet per acre and the 1990 distribution Order was amended accordingly. Based on the 1990 Hearing, the State Engineer has again gone back to the four (4) acre-feet per acre duty which has historically been used in distribution Orders. The State Engineer still believes that such a duty is reasonable.

2. In 1991 the State Engineer worked diligently with the Central Utah Water Conservancy District and the Bureau of Reclamation in order to provide some additional flexibility for waters users to allow them a more efficient use of their water. These measures include allowing water users to purchase additional storage water from the District and allowing the use of Starvation

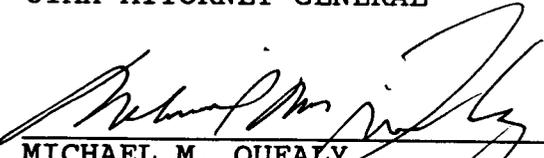
Reservoir as a regulating device for short periods of time. These measures satisfied the objection raised by Mr. Taylor in 1991. A copy of the Stipulation entered into between Mr. Taylor and the State Engineer is attached as Exhibit "B."

Finally, at the expense of being repetitive, it should again be pointed out that nothing in any of the interim distribution Orders is prejudicial to any claims any water user may wish to make when the duty issue is ultimately tried in the General Adjudication action.

WHEREFORE, the State Engineer respectfully requests that the protest of Mr. Guy L. Taylor be denied and the Order of distribution for the 1994 irrigation season be approved.

DATED this 9th day of May, 1994.

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CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of May, 1994, a true and correct copy of the foregoing STATE ENGINEER'S RESPONSE TO GUY TAYLOR'S OBJECTION TO 1994 DISTRIBUTION ORDER was served by mailing the same, first-class postage prepaid, addressed as follows:

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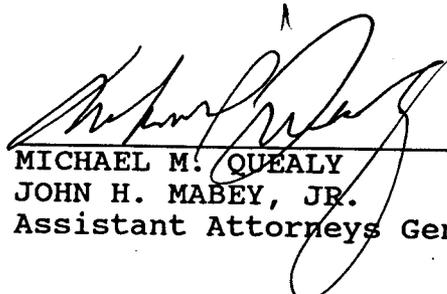

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EXHIBIT "A"

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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 SUR-) FACE AND UNDERGROUND, WITHIN) THE DRAINAGE AREA OF THE UINTA) BASIN IN UTAH.)) STATE ENGINEER'S RESPONSE TO) OBJECTIONS TO TEMPORARY DISTRI-) BUTION ORDER OF THE UINTAH BASIN) IRRIGATION CO. and GUY L. TAY-) LOR, NAOMI TAYLOR, BRAD N. TAY-) LOR, BEN MITCHELL AND ELDORA) MITCHELL))))
	Civil No. 3070

The Utah State Engineer files this Response to the Objec-
tions of the Uintah Basin Irrigation Company and Guy L. Taylor,
Naomi Taylor, Brad N. Taylor, Ben Mitchell and Eldora Mitchell
(hereinafter referred to as "Protestants"), dated March 24, 1989,
and April 13, 1989, respectively.

Statement of Facts

During the pendency of this general adjudication proceeding,
in those irrigation seasons when there is insufficient water to
satisfy existing rights, the waters of the Duchesne River System
have been distributed by the River Commissioner pursuant to

Orders from this Court. These Orders have been without prejudice to the claims of any parties and have been considered an interim distribution practice. The exact quantification of many of the water rights on the Duchesne River System may be in controversy, and can only ultimately be determined in the general adjudication process. In the meantime it is necessary, in dry years, to provide for a fair and equitable interim method of water distribution to prevent waste or excessive use until such time as all such matters can be fully adjudicated. Again, such interim distribution Orders are without prejudice to the ultimate claims of any water user.

It has not been necessary to place the System on a distribution schedule every year; however, based on snowpack, flow and other water supply data, the State Engineer concluded it was necessary to place the System on a distribution schedule for the 1989 irrigation season. A motion requesting such action was filed with the Court on or about March 22, 1989. The proposed 1989 distribution schedule is basically the same as those ordered by this Court in 1980, 1981, 1985, 1987, and 1988.¹ However, based on additional data and information, and pursuant to input received by the State Engineer at various public meetings with

1. Due to adequate water availability in 1982, 1983, 1984, and 1986, it was not necessary to place the System on a delivery schedule in those years.

the water users of the Duchesne-Strawberry River System, the State Engineer has slightly modified the proposed distribution schedule for the 1989 season. It is proposed to utilize this distribution schedule on a trial basis this year to determine if it will result in a more efficient distribution of water and resolve some of the general concerns raised by the water users at the public meetings. The specific modifications are set forth in the State Engineer's Motion and will not be repeated here, other than to point out that, as in past years, the proposed 1989 distribution schedule is based on a duty of four (4) acre-feet per irrigated acre over the irrigation season.

It is essential that a distribution schedule be ordered on the System before the runoff recedes and claimed demands exceed the supply available. The State Engineer believes that his proposed distribution schedule provides for a fair and equitable distribution of water on the System without undue waste, and will maximize the beneficial use of water in this dry year.

Argument

The specifics of Protestants' objections to the temporary distribution Order are not clear to the State Engineer. However, it appears that Protestants are objecting to the four acre-foot per acre duty of water set forth in the delivery schedule. While it is true Protestants' water rights are set forth in their cer-

tificates of appropriation or water user's claims, all water users are limited to the amount of water they can put to beneficial use.

In addition to the priority system, one of the cornerstones of water law in the arid West is that beneficial use of water is the basis, the measure and the limit of all rights to the use of water, and no one has a right (regardless of priority) to use more water than is necessary with reasonable efficiency to satisfy his requirements. McNaughton v. Eaton, 212 Utah 394, 242 P.2d 570 (1952); Rich County-Otter Creek Irrigation Co. v. Lamborn, 12 Ut.2d 1, 361 P.2d 407 (1961); In Re Water Rights of Escalante Valley Drainage Area, 10 Ut.2d 77, 348 P.2d 679 (1960); and Section 73-1-3, Utah Code Annotated 1953, as amended.

Thus, users are restricted to the amount of water they can beneficially use. Otherwise, water is wasted. This concept is not in conflict with the priority doctrine, but, rather, the two concepts compliment each other. In years of plentiful supply, it may not matter as much if an irrigator is a bit more "liberal" in his application of water if he is not wasteful and if the supply is sufficient to meet all existing rights. But in years of short supply in a fully-appropriated river system, it is important that water users divert no more water than is beneficially required. If there still is insufficient water to satisfy all rights--then users are shut off in order of their priority.

But no water user, no matter what his priority, may divert more water than he can beneficially use. The amount of water diverted is not the measure of the right; rather, it is the amount of water which can be beneficially used. As Section 73-1-3, Utah Code Annotated, clearly states: "Beneficial use shall be the basis, the measure and the limit of all rights to the use of water in this state."

The distribution schedule is intended, based on the best data available to the State Engineer, to deliver water users the full amount of water they can beneficially use with reasonable efficiency. This will hopefully result in the full satisfaction of all rights. However, if shortages still occur, water users will be shut off in order of priority.

Such interim distribution orders are not uncommon in general adjudication proceedings and have been approved by the Utah Supreme Court. In the case of In Re Water Rights of Escalante Valley Drainage Area, 10 Ut.2d 77, 348 P.2d 679 (1960), the Utah Supreme Court upheld an interlocutory distribution schedule in a general adjudication proceeding. In so doing, the Court stated:

It is the settled rule that beneficial use shall be the basis, the measure and the limit of all rights to the use of water in this State. No water should run to waste. In this arid country it becomes increasingly necessary, as the demand for water use increase, to pay careful attention to the manner of use so as to insure the greatest duty possible for the quantity of water available The duty to accomplish this desired

end falls upon all users regardless of the priority of appropriation.

(10 Ut.2d at 81; Emphasis added.)

Based on current information, the State Engineer believes that a duty of four (4) acre-feet per irrigated acre is a fair and reasonable duty of water on an interim basis for this year. This conclusion is more fully set forth in the Affidavit of Jerry D. Olds, submitted herewith.

Protestants allege that the proposed 1989 distribution schedule will change the "traditional" methods of distributing water, and will result in a 20% decrease in the amount of water delivered. It is difficult to understand these arguments in light of the fact that this Court has adopted the four (4) acre-foot duty in every interim distribution schedule since 1980, albeit without prejudice to any water user's ultimate claim in the full general adjudication.² Thus, the present schedule preserves the status quo. It is the Protestants who now want to change the method of distribution.

In sum, the distribution schedule does not deprive water users of any rights, and will ensure that water users do not divert more water than they can beneficially use in this dry

2. In 1978, the Court adopted a duty of 3.5 acre-feet per acre.

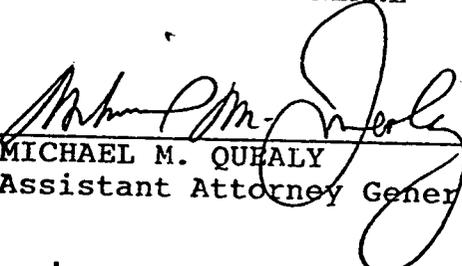
year. Further, the distribution schedule was adopted after input from a great majority of the water users on the System.

Conclusion

The Distribution Order will not impair or otherwise deprive the Protestants of their rights; and is without prejudice to any claims they may wish to make in the general adjudication action. Protestants' Objections should be denied and the Order of Distribution for the 1989 irrigation season should be approved.

DATED this 26th day of April, 1989.

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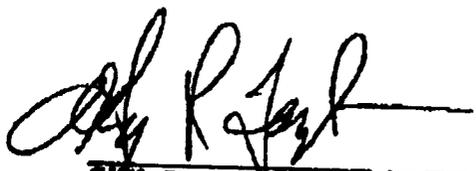
EXHIBIT "B"

continue to be without prejudice to the claims, assertions or defenses of any of the parties in subsequent proceedings in this action.

3. Under paragraph 2 of the 1991 Interim Distribution Order, Mr. Taylor shall have the same rights as any other water user to contract with the Central Utah Water Conservancy District for short-term regulatory storage of water in Starvation Reservoir but that the State Engineer has no control over such arrangements.

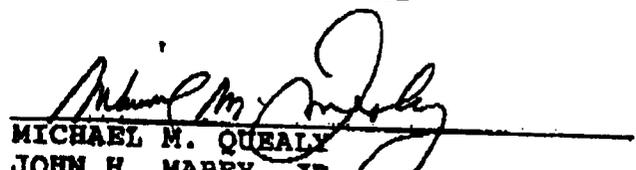
4. Based on the foregoing, the parties stipulate and agree that the Hearing set for May 3, 1991, on this matter may be vacated and that the Interim Distribution Order heretofore signed by the Court may be extended for the remainder of the 1991 irrigation season.

DATED this 2nd day of May, 1991.



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IN THE MATTER OF THE GENERAL DE-
TERMINATION OF ALL RIGHTS TO THE
USE OF WATER, BOTH SURFACE AND
UNDERGROUND, WITHIN THE DRAINAGE
AREA OF THE UINTA BASIN IN UTAH.

SUPPLEMENTAL ORDER

Civil No. 3070

Based on the Stipulation of Mr. Guy L. Taylor and the Utah State Engineer, and it appearing that all other protests to the 1991 Interim Distribution Order heretofore signed by the Court on April 16, 1991, have been otherwise resolved; it is hereby ORDERED that the Hearing on this matter heretofore set for May 3, 1991, is hereby vacated, and that the said Order shall remain in effect for the remainder of the 1991 irrigation season.

DATED this 6th day of May, 1991.

BY THE COURT:

FILED
8th District Court Duchesne
State of Utah

Dennis L. Draney
DENNIS L. DRANEY
District Judge

MAY 0 1991
ROBERT MARIET, CLERK
MBP

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