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

IN THE MATTER OF THE GENERAL DETER-)	STATE ENGINEER'S RESPONSE
MINATION OF ALL THE RIGHTS TO THE)	TO OBJECTIONS TO TEMPOR-
USE OF WATER, BOTH SURFACE AND)	ARY DISTRIBUTION ORDER
UNDERGROUND, WITHIN THE DRAINAGE)	OF GUY L. TAYLOR, <u>et al.</u>
AREA OF THE UINTA BASIN IN UTAH.)	
)	Civil No. 3070
)	

The Utah State Engineer files this Response to the Objec-
tions of Guy L. Taylor, et al., to this Court's Temporary Dis-
tribution Order of May 2, 1988.

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.

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 1988 irrigation season. A motion requesting such action was filed with the Court on or about April 14, 1988. The proposed 1988 distribution schedule was virtually identical to that ordered by this Court in 1980, 1981, 1985 and 1987. The 1988 distribution schedule was also discussed and approved at a meeting of the water users of the Duchesne-Strawberry Distribution System held at Duchesne, Utah, on February 23, 1988.

On May 2, 1988 this Court signed the Order placing the System on an interim distribution schedule for 1988 as proposed by the State Engineer.

On May 14, 1988 certain individuals who divert water through the "Murray-White Canal" filed Objections to this Court's Order of Distribution. (Those individuals will hereafter be referred to as "Protestants".)

Argument

The Protestants apparently misunderstand the purpose of the interim distribution Order. They claim it mandates "common use" of water rights or the pro rata sharing of water shortages, rather than applying the priority system. That is not the case.

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, 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 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.

In sum, the distribution schedule is not to force water users to share shortages "in common" as Protestants allege. It is rather to ensure that water users do not divert more water than they can beneficially use in this dry year. Again, the distribution schedule was discussed and approved by a great majority of the water users on the System.

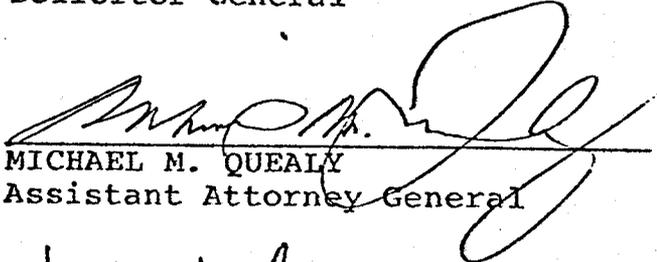
Conclusion

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

DATED this 31st day of May, 1988.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing STATE ENGINEER'S RESPONSE TO OBJECTIONS TO TEMPORARY DISTRIBUTION ORDER OF GUY L. TAYLOR, et al., was served by mailing the same, first class postage prepaid, this 31st day of May, 1988, to:

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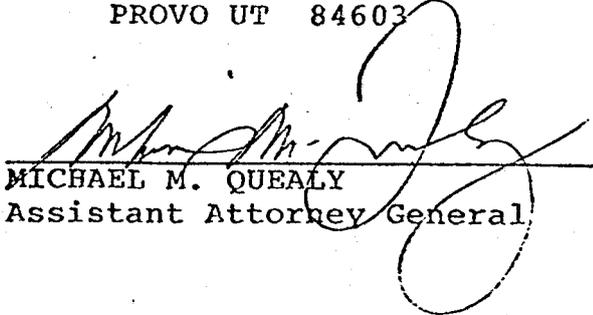
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