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DEPARTMENT OF NATURAL RESOURCES

Division of Water Rights

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TO THE WATER USERS OF THE HUNTINGTON CREEK DISTRIBUTION SYSTEM

Kay Jensen has served as the water commissioner for the Huntington Creek Distribution System since the annual distribution system meeting in 2002. According to 73-5-1 of the Utah Code, water commissioners serve for a four-year term. Therefore, Mr. Jensen's term expires this year and the need exists for the water users to recommend to the State Engineer that either Mr. Jensen be re-appointed or that a new person be appointed as water commissioner. This issue was addressed at the recent annual meeting and a vote was held to make this recommendation to the State Engineer.

A complaint has been made since the meeting that there were irregularities in how the vote was conducted. We have looked into the issue and believe there is merit in the concerns that would invalidate the vote taken at the meeting and would require that a new vote be held concerning the recommendation of a water commissioner. In view of this situation, we assume that Kay Jensen will continue to serve as water commissioner until a clear recommendation can be determined as described below. The purpose of this letter is to explain to the best of our understanding how the irregularities developed and how they will be resolved in the new vote that will be held.

Section 73-5-1 states in part:

The state engineer shall consult with the water users before appointing a commissioner. The form of consultation and notice to be given shall be determined by the state engineer so as to best suit local conditions, while providing for full expression of majority opinion.

If a majority of the water users agree upon a qualified person to be appointed as water commissioner, the duties the person shall perform, and the compensation the person shall receive, and they make recommendations to the state engineer on the appointment, duties, and compensation, the state engineer shall act in accordance with their recommendations.

If a majority of water users do not agree on the appointment, duties, or compensation, the state engineer shall make a determination for them.

In consultation with the Attorney General's Office, the State Engineer has interpreted this statute to mean that he has the authority to direct how voting is to be conducted within a distribution system to "best suit local conditions", to provide "for full expression of majority opinion", and to ensure that any one interest within a distribution system does not control the outcome of the vote. It should also be noted that for the purposes of distribution, the State Engineer interprets "water user" to mean a person or an entity that owns a water right. It follows then that an irrigation company has one vote within a distribution system as does any one individual who owns a water right.

We realize, however, that the situation on Huntington Creek presents an unusual case; there is one large irrigation company and several individual water right owners. It would be just as unfair for a small group of individuals to control the vote on the distribution system as it would be for the irrigation company to control the voting. With this concern in mind, it was assumed at the annual meeting that allowing each committee member to cast one vote would resolve the problem.

The committee, as it has been constituted for several years, consisted of the following members:

- Lee McElprang - representing the Huntington Cleveland Irrigation Company
- Craig Johansen – representing the lower water users
- Vernell Rowley – representing the canyon water users
- Darce Guymon – representing Pacificorp

At the meeting, it was voted and approved by those at the meeting to re-appoint the committee for the coming year and to add another committee member to represent the municipalities within the distribution system. Accordingly the following committee member was added:

- Darrell Leamaster – representing the municipalities

It was assumed that these committee members represented significant blocks of water right owners that had somewhat differing interests so each group should be represented by a vote. It appears there was some misunderstanding concerning how the representative for each group was to be selected. Each group should have selected its own representative rather than having those at the meeting select or reinstate the committee members. It also was learned after the meeting that the canyon water users and the municipalities are all shareholders in the irrigation company with no individual water rights, so apparently the committee should have consisted of only three members rather than five.

In view of this situation, it appears there should be a re-vote to determine the water users recommendation for the water commissioner appointment. However, the experience at the meeting indicates there is a fair amount of controversy concerning who should be recommended. Therefore, it is hereby directed, by authority of the law stated above, that the re-vote will be conducted according to the following procedures. The purpose of these procedures is to ensure that the water users have a better knowledge concerning the possible candidates for the position and to ensure that the voting objectives stated above are met.

An advertisement for the position of water commissioner will be placed in the Emery County Progress and published on Tuesday March 28th. The advertisement will include a description of the duties of the water commissioner, the approximate amount of time that will be required, and the compensation that has been approved by the water users. Applications will be accepted at the Price Regional Office of the Division of Water Rights until Tuesday April 4th.

A meeting of the water users will be held on Thursday April 6th at 1:00pm in the Commissioner Chambers of the Emery County Administration Building, 75 East Main Street in Castledale. The applicants will be invited to the meeting and will be interviewed by the water users and the State Engineer's staff. At the conclusion of the interviews, the water users will vote concerning who should be recommended as the water commissioner.

To assure that one interest group does not control the outcome of the decision concerning the commissioner, the voters will be divided into two groups:

- Group 1 Huntington Cleveland Irrigation Company

- Group 2
- Craig Johansen *
 - Merrill Kirby
 - *Melvin or Joan Gilbert (for Lloyd Lott)
 - Maughn Guymon (for Ruth Guymon)
 - Wayne Nielsen (for Nielsen Limited)
 - ✓ Darce Guymon (for Pacificorp) →
 - * Dale or Vilate Terry

** Earl - proxy for these people; Fullness.*

Group 2 is made up of the individual water right owners that we have listed on the Division of Water Rights Distribution Assessment Database. The water users in Group 2 must be present at the meeting in order to vote, however, proxy votes will be allowed if written authorization of the proxy is presented at the meeting.

The vote will proceed as follows. Group 1 will make a decision concerning its recommendation for water commissioner (the spokesman for that group will be assumed to be the president of the irrigation company) and the recommendation will be presented to Group 2. Group 2 will vote to accept or reject the recommendation of Group 1. If Group 2 rejects the recommendation, the group will vote to select a candidate to recommend and that recommendation will be presented to Group 1. Group 1 will then decide whether to accept or reject the recommendation. This process will continue until there is an agreement between the two groups concerning the recommendation for water commissioner. If it becomes apparent that an agreement cannot be reached between the two groups, the State Engineer will make the decision and make the appointment without a recommendation from the water users. In this situation, the decision may not be made at the meeting but afterwards, after giving the issue due consideration.

If you have any questions concerning this letter prior to the April 6th meeting, please contact me by phone at 801-538-7380 or by e-mail at LeeSim@utah.gov.

Respectfully,

Lee H. Sim, P.E.
Assistant State Engineer

cc: Marc Stilson, Regional Engineer
Kay Jensen
Eugene Winder