



State of Utah
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF WATER RIGHTS

Michael O. Leavitt
Governor
Ted Stewart
Executive Director
Robert L. Morgan
State Engineer

1636 West North Temple, Suite 220
Salt Lake City, UT 84116-3156
801-538-7240
801-538-7467 (Fax)

April 23, 1996

Bobby Edwards, Commissioner
Lower Fremont River Distribution System
PO 233
Loa, Ut 84747

Dear Bobby:

At the annual meeting on January 18, there was quite a bit of discussion about how the water is regulated on the lower Fremont River. Of particular concern was the practice of continuing to deliver "B" water at the head of the system when the users at the lower end were not getting all their "A" water.

Kirk and I have spent some time discussing this issue. There is a concept in water law known as the futile call doctrine. It basically means that if water will not reach a lower user in sufficient quantity to be used beneficially then the water may be kept by the upper water users even if the lower user has an earlier priority date. As you can imagine we have to be very judicious in using this procedure in any area of the state. There has to be fairly good evidence that the water will not benefit the lower users. Where such a practice is instituted and it is challenged by the lower users, there probably needs to be some demonstration of the futility of their call on the water.

Because the practice is being questioned by the lower users, we feel it important to give you the following instruction for regulating the water this year. Based on the snow pack reports so far this year, it does not appear that there will be an average runoff on the Fremont River. You should deliver all the rights possible during the runoff; making sure that "A" rights are all being met. As the runoff drops off, you should deliver "B" water only as long as all the "A" water rights are still full. Once the "A" rights drop below a full supply anywhere on the system, you should completely shut off all the "B" rights.

If after the system has stabilized, it appears there could be "B" water delivered in the upper part of the system without affecting the delivery of the "A" rights to the lower users, it may be possible to do so. However, you must discuss this with Kirk Forbush and get his approval before making the attempt.

It is very important to keep accurate records before and after implementing a futile call procedure, to be able to show that the lower users are not being affected in the beneficial use of their rights.

If you have any questions concerning this instruction, please contact me at 538-7380 or Kirk Forbush at 896-4429.

Sincerely,

Lee H. Sim, P.E.
Assistant State Engineer
for Adjudication and Distribution

cc: Kirk Forbush
John Mabey

