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State of Utah
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF WATER RIGHTS

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~~12 August 1994~~
MARCH 5, 1994

Circle Four Realty
Attn: Ron Wunderlich
P.O. Box 100
MILFORD UT 84751

RE: STATUTORY LIMITATION OF IRRIGATION WATER RIGHTS

Mr. Wunderlich:

This letter is given to memorialize and confirm our telephone conversation this date regarding the administration of water rights in the Milford Valley. The recent vote by the water users to administer their distribution system via metering as opposed to monitoring acreage has evidently led to some confusion regarding the more general administration of water rights. Utah statutes state:

Beneficial use shall be the basis, the measure and the limit of all rights to the use of water in this state. [UCA 73-1-3]

For irrigation rights, "beneficial use" as defined in the statute is measured in acres of irrigation. The acre-foot diversion limit (also referred to as the "duty of water") is based on an earlier court order and on the Proposed Determination of Water Rights which states:

In the instance of irrigation, the field headgate requirement of the land is considered to be 4.0 acre-feet per acre per calendar year, regardless of the source of supply. [Preamble, Para. 7]

As evidenced by the language, this duty was established at a time when most irrigation was still by ditch and furrow technology. Of the 4.0 acre-feet per acre which was allowed under those rights when they were quantified, it was known that around 50% would actually be consumed by the irrigation use. The remainder, which can be described as "application losses" was considered to be what may have been called "carrier water". Presently available information indicates that this water is not really lost, but is returned in large part to the hydrologic system as "return flow", which often makes up the water relied upon by other appropriators in the same district. For the Milford area, it is currently estimated that approximately 1.5 acre-feet per acre is returned.

By converting from the older flood irrigation methods to more efficient sprinkler application, the net effect has been to greatly reduce the "application losses". However, although one may still claim a right to apply the full 4 acre-feet per acre to their lands, the increased efficiency does not give the right to expand the acreage being irrigated. Such an expansion of acreage will most definitely result in an increase in the consumptive use of the water and would thus constitute an illegal enlargement of the rights. Such enlargement will lead to an impairment of the rights of other water users, and anyone doing so would be subject to lawsuits and legal enforcement actions.

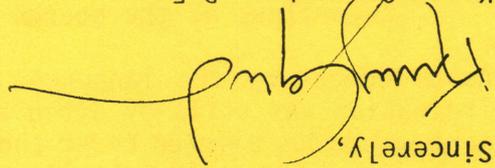


Wunderlich, Ron
March 5, 1996
Page 2

If in fact there are water users who have expanded their irrigated acreage beyond that legally recognized in their rights, those water users have subjected themselves to possible enforcement actions. Any past or planned financial investments in developing such expanded acreage is also at risk.

I believe this explanation should be sufficient to clarify the position of the Division of Water Rights and to put into proper perspective the recent vote to utilize meters to monitor the distribution of water. Although the minutes may not reflect such, I am certain that I made the statement at the distribution meeting on 7 February that a vote for meters would not change the statutes as regards the acreage limitation.

Sincerely,



Kerry Carpenter, P.E.
Regional Engineer

KEC:k
pc: Lee Sim, Asst. State Engineer, Adjudication & Distribution