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RECEIVED

MAR - 1 2004

WATER RIGHTS
SALT LAKE

March 1, 2004

Mr. Jerry Olds, P.E.
State Engineer
1594 West North Temple, Suite 220
P.O. Box 146300
Salt Lake City, Utah 84114-6300

HAND DELIVERED

Re: Annual Water Meeting with Milford Valley Water Users

Dear Mr. Olds:

I am writing to you on behalf of the Milford Valley groundwater users who are in the process of incorporating into the Milford Valley Pumpers Association. As a group, they have probably done more to self-police their water use than any other area of the state. They have voluntarily asked for increased administrative oversight from the Division of Water Rights, and for the past 13 years have worked with your office to try and bring all water users into compliance. They have even agreed to assess themselves to cover the costs of this increased regulation. Many of them have voluntarily fallowed ground during these past dry years and many have participated in federally funded conservation efforts to reduce water use during this prolonged drought. Most of the groundwater users in the Milford Flat are operating well within the limits of their water rights, and many are not using all of the water they are entitled to divert in an effort to help preserve the aquifer.

Still, there are a few specific water users who have used water in excess of their water rights for many years. These out-of-compliance water users have long since been identified by your office as a result of the increased administrative review. However, with rare exception, very little effort has been made by the Division of Water Rights to force these individuals into compliance.

The Milford Valley groundwater users are very upset about the threatened priority administration of the groundwater rights in this valley when there are still people who are using water in excess of their water rights, and who are not being curtailed from doing so. It seems unnecessarily punitive to the area as a whole to cut off water rights on priority, risking the financial security of these many farmers, while known violators are allowed to continue their excessive use with nothing more than a hand-slap from your office. There simply has to be a better way to address this issue than cutting off the water rights of half the farmers in the valley.

WHO?

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Additionally, the Milford area water users feel it is very unfair to single them out for heavy enforcement when water use in the east side of Beaver County is totally unregulated. While recent studies have shown there is not a significant expansion of irrigated acreage in the Beaver Valley, there has been a significant conversion to sprinklers. This conversion to more efficient use has significantly reduced return flows below the Patterson Dam to the detriment of those holding storage rights in Minersville Reservoir. As you know, the water rights for the reservoir are largely satisfied by return flows from upstream irrigation. Rocky Ford Irrigation and Minersville Irrigation Companies have had essentially no water in storage for the past five seasons as a result of the drought, upstream conversion to sprinklers, and what they perceive to be out-of-priority storage upstream. Since most of the shareholders of these two companies still flood irrigate, there has been a serious loss of recharge to the shallow aquifer in the Milford Flat, which has aggravated the apparent overdraft of the shallow aquifer in some parts of this valley.

NO PROVISION IN THE LAW TO REGULATE THIS

Further, the irrigation companies were forced to empty the reservoir for dam safety reasons, but the water was dumped by order of your predecessor to an area that provided no recharge whatsoever to the Milford shallow aquifer. That event, followed by five years of severe drought, has contributed to the declining water supply in the shallow aquifer system. The State Engineer's office should accept some of the responsibility for the declining water table.

It is also generally believed that upstream storage in Kents Lake and Three Creeks Reservoirs is occurring out of priority and in quantities of water that exceed the water rights of the Kents Lake Irrigation Company, all of which has serious impacts on the quantity of water available for use downstream. Until upstream storage is regulated by your office and the groundwater production in the Beaver Valley is monitored to make certain that the well owners are not diverting more water than they have a right to and/or beneficially need to irrigate their lands, it is both arbitrary and unnecessarily harsh to put the Milford Flat area under priority administration. Arguably, no water rights should be curtailed by the State Engineer until the State Engineer can assure the water users that your office has taken all steps legally available to it to bring all water users in the Milford Flat and in the Beaver River Drainage as a whole into compliance with their water rights. Only then should the State Engineer look at the more extreme measure of cutting off groundwater rights on priority.

THERE WILL BE INSTRUCT IOLS TO COMMISSIONER THIS YEAR.

The economic consequences of your even having threatened to do so in the foreseeable future has chilled the real estate market in Milford. Banks are very nervous and are unwilling to make new loans. Land values are in decline, and if you were to go through with your threat of priority administration, many banks would call their notes causing widespread foreclosures and bankruptcy in this very productive farming community. Surely this is not in the State's best interest.

The Milford area water users are willing to continue working with the State provided the State works with them to pursue more constructive approaches to solving the overdraft concerns in this area. Funding conservation projects, much as the federal government has done, would go a long way to restoring the aquifer. For example, over the past two years some 1160 acres have been fallowed under the federal program. This effort could surely be increased if the farmers had some financial support to

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help them through this time period. They realize this is something the Legislature must address, but the Legislature needs some push from you in addition to a push from the water users themselves.

Additionally, it seems that water in the deeper aquifer in the Milford Valley has not declined to any appreciable degree over the last several years, even though there has been a significant decline in the shallower aquifer. My clients reasonably believe that a significant quantity of deep ground water could yet be developed and used to recharge the shallow aquifer, either through reinjection (recharge and recovery effort) or by diversion to areas and spread on land that is very porous where the water would quickly provide recharge to the shallow zones. These water users request the assistance of your office in looking at this as a possibly way to help deal with conservation and loss of return flows caused by increases in upstream efficiencies that have cost them the historic return flows they rely on.

The Milford Valley groundwater users are also quite willing to do additional voluntary conservation efforts. There are many things they could do with the State's cooperation, such as reducing the irrigation season by a week or two on each end of the season to conserve water. They could limit the hours of the day they pump and install meters on pumps to curb excess diversions. They are willing to make additional assessments to pay for this increased regulation provided that in making these voluntary conservation moves that are not going to be threatened with partial forfeiture of the water rights or priority administration of the rights.

My clients appreciate the practical problems you face in terms of budget constraints and manpower, and they also appreciate the limited tools you have available under current law. However, they need your constructive assistance and not punitive enforcement. The water users in the Milford area will continue to work within their organization. However, they are not willing to do that if the State Engineer is not willing to address regulation throughout the Beaver River Drainage. Further, they cannot afford to sit idly by and allow the State Engineer to cut off their water rights and drive them out of business. They hope to address these and other related issues at the water meeting on March 4th.

Very truly yours,

Clyde Snow Sessions & Swenson, P.C.



Steven E. Clyde

CC: ✓ Mr. Lee Sim, P.E.
Milford Valley Pumpers Association

WE WILL
BE MEETING
W/ THE
TASK FORCE
A POSSIBILITY

TASK FORCE
ISSUES.

PARTICIPATE
IN TASK
FORCE.