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State of Utah

DEPARTMENT OF NATURAL RESOURCES

Division of Water Rights

MICHAEL R. STYLER
Executive Director

JERRY D. OLDS
State Engineer/Division Director

December 4, 2006

Stan Roberts, Water Commissioner
Provo River Water Distribution System
1675 South 350 East
Orem UT 84058

Dear Stan:

On June 7th this year we met with you and several members of the Provo River Distribution System Committee to discuss concerns about measurement and reporting on the Provo River. During that meeting you told me that you prepared a report every two weeks relating to the distribution of water on the river. In the first part of August, I requested that you start sending me that report every two weeks. We knew the data would not be ready to put into our database and may not even be a final report but we wanted to start receiving whatever you prepared every two weeks. A week or so later I received from you a print out of a spreadsheet dated July 06. I had expected to get a report for the most recent two weeks but I decided not to pursue that issue until I had received the next few reports. Three weeks later I had not received another report, so I called and re-confirmed with you that I wanted to receive the reports every two weeks as they were prepared. You agreed to do that. I have not received another report or spreadsheet printout since.

Stan, your understanding of the operation of the Provo River is undoubtedly second to none. You work very hard to see that water is delivered fairly and equitably to each water user on the Provo River Distribution System. You are a valuable resource to each water user. However, the situation that I described above is similar to my entire experience with you over the past 19 years in regards to record keeping and reporting on the Provo River. We have always been uneasy about this situation, but we are now becoming alarmed.

The Provo River is the most complicated river system in the State of Utah and competition for the use of water from the river is as intense as anywhere else in the state. The possibility of litigation regarding the use of Provo River water is a very real and constant concern to this office. It is critically important, it is imperative that there be a credible, official record of the distribution of water on the Provo River. At this time, there is no such record of current or even relatively current water distribution. We are extremely concerned about this situation. It would be disastrous if the Division were to be required to participate in a court action without a credible official record. A credible official record of water use is the only means whereby water

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users can protect their water rights from threats of forfeiture.

Litigation is not the only concern. I have had conversations with the major water users on the Provo River, each of whom relies on you for data that is fundamentally necessary for the effective operation of their water systems. Each of these water users has expressed their frustration that distribution data is not more readily available. It is a major impediment to the effective management of their water rights and at times results in errors in the allocation of their water resources.

We have no misconceptions about the size and extent of the responsibility involved in being the Provo River Water Commissioner. The complexity of the system requires substantial effort to properly operate the distribution system and regulate the delivery of natural flow and storage water. The amount of data generated by the system, that must be obtained, analyzed, compiled, recorded, and reported is already overwhelming and yet continues to grow. The following is a list that is probably incomplete of the different aspects of the system or agreements or management plans that affect the system and require the accumulation and analysis of data and that require that records be kept and reported:

- Distribution of Provo River natural flow
- Utah Lake Management Plan
- Wasatch County Water Efficiency Project – Provo River return flows
- June Sucker flows and other minimum required stream flows
- Deer Creek – Jordanelle Operating Agreement
- Power water allocations
- Deer Creek & Jordanelle Reservoirs
 - Reservoir inflows and releases
 - Storage balances for each water user
- Head of River Storage – releases, exchanges, and accounting
- Change applications
- Exchange applications
- Utah Lake – Deer Creek exchanges
- Trans-basin diversions
 - Duchesne River
 - Weber River
 - ▶ Echo storage water
 - ▶ Direct flow diversions
- Ontario Drain Tunnel water distribution

Even if it is incomplete, it is an impressive list and makes it all the more disconcerting that there currently is no credible official record being kept. It seems to us that it is absolutely necessary to implement technology and computer programming to the full extent possible in order to stay on top of this ever-growing mountain of data; and it seems to us that it is not possible for one person

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to do it alone.

Over the years we have made many attempts and have used a variety approaches to try to rectify this situation. All of these efforts have fallen very short of the desired result. Ultimately, although some progress was made as far as getting data from previous years into the database, no progress was made in improving the process and procedures. We have never come close to having a current record and in fact we are again falling further and further behind in the data that we do have of record regarding distribution on the Provo River.

We do not believe that another attempt similar to the ones made in the past will resolve the problem. We do not believe that this is simply a matter of how to transfer data into our database. We do believe there must be substantial and fundamental change in the entire approach to data gathering, analysis, record keeping and reporting relative to water distribution and water use on the Provo River. We are not certain of the exact nature and extent of the change needed, but we are confident that a sustained cooperative effort to review and revise the data gathering, analysis, recording, and reporting processes will yield great improvements. There are some changes or revisions we are certain about; the new process must include the following features:

- Technology must be implemented to the fullest extent possible including: real time gathering of data through remote sensing telemetry, use of computer modeling and algorithms as much as possible to assist decision making, electronic transfer of data and automatic data entry (eliminating hand entry of data – especially if that is done multiple times)
- An accounting period must be determined and strictly maintained. The period may be two weeks long or some other length of time that is determined to best accommodate the needs of the distribution system. The data gathered and the accounting done during an accounting period must be final within a few days of the end of the period. There must be no re-accounting of water delivery (no revising of how water was delivered that is different than the water delivery requests made by the water users) even if re-accounting for the use under a different water right would be beneficial to the water user without harming other water users.
- Once the new process is adopted, the ongoing work will require additional staff dedicated to data gathering, analysis, and record keeping. The size of the staff (it may only be one person, but it may require more than one person), the nature of the responsibilities involved, and the relationship of this staff to the water commissioner and to the State Engineer will be determined. Funding for this staff will be through assessments to the water users.
- The data gathering, analysis, record keeping and reporting process must be a cooperative and transparent process. It must be understood by and be a cooperative

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effort between the state, the water users, the water commissioner, and the record keeping staff. Additionally, all water users must have access to or the opportunity to understand the process.

- Data must be communicated to water users in an effective, understandable and timely manner (no later than a few days after the end of each accounting period). There must be good lines of communication regarding water distribution and water use data.
- The data gathered must to the extent possible (within the limits allowed by the physical system) accurately represent water use and water distribution on the Provo River.
- There must be an effective and timely method for resolving discrepancies in the data. The method must acknowledge and take into account that there are hydrologic variables on the Provo River that are not, and in fact cannot, be measured and that affect the data obtained.
- The data reported on the State Engineer's database and contained in the annual report to the water users must adequately and understandably describe the distribution of water and water use on the Provo River. It is not necessary that all data gathered be reported.
- Data must be entered into the State Engineers database as soon as possible after the end of each distribution accounting period. The time frame for completing the data entry will be determined. To the extent possible, the data should be transmitted and entered electronically.

We are fully aware of the magnitude of this project. It would not be in the best interests of the distribution system for you to shoulder this effort alone. The Division of Water Rights will take the lead on this project and will provide substantial resources to ensure its successful completion. We also believe there will be substantial cooperation and assistance from the water users. Everyone has a crucial stake in the successful completion of this effort. We do expect that you will participate fully and openly. This is to be a complete review and revision of the data gathering, analysis, record keeping and reporting processes. Your understanding of the river can play a vital role in moving the effort along as quickly and as successfully as possible; we expect this will be one of your top priorities, if not the top priority, in your work as Provo River Water Commissioner.

Stan, I want to re-emphasize that we appreciate the work you have done on the Provo River and we acknowledge the valuable resource that you are to the water users. However, I also want to re-emphasize how seriously we view the challenge that is presented by the lack of credible, official distribution data on the Provo River. Section 73-5-1(4) states "A commissioner may be removed by the state engineer for cause." We are loath to move in this direction;

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however, failure on your part to participate openly, cooperatively, and constructively to the successful completion of this project will force us to consider such an action.

We would like to meet with you prior to the annual distribution meeting to define the scope of the project and the resources that will be dedicated to it. The meeting will also involve water users. I will be in touch to set up the meeting. If you have any questions or comments prior to the 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
Field Services

cc: Jerry Olds, State Engineer
Boyd Clayton, Assistant State Engineer – Technical Services
John Mann, Regional Engineer
Ed Ure, Provo River Distribution Committee Chairman
Daryl Devey, Provo River Distribution Committee Vice Chairman