

STATE OF UTAH  
OFFICE OF THE ATTORNEY GENERAL



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April 2, 2004

Phillip E. Lowry  
Howard, Lewis & Peterson  
120 East 300 North  
P.O. Box 1248  
Provo, UT 84603

Dear Phil,

This letter is to clarify our telephone discussion of March 31, 2004, regarding water storage in the Upper Division of the Bear River. The Division of Water Rights understands that Bill Nielson may be storing water in small irrigation reservoirs on his property near Randolph, Utah.

Section 73-16-2 of the Utah Code is the Bear River Compact, which has been incorporated into the Utah statutes. Article VI of the Compact allows storage in Utah and Wyoming above Stewart Dam (near Bear Lake in southeastern Idaho) in addition to storage existing in 1955, as defined in Paragraph A. Subsection B of Article VI contains the following limitation: “[P]rovided, however, there shall be no diversion of water to storage above Stewart Dam under this Paragraph B when the water surface elevation of Bear Lake is below 5,911.00 feet, Utah Power and Light Company datum . . . .”

Currently, the water surface level of Bear Lake is below 5,904 feet UP&L datum. Under these conditions, there can be no water diverted to storage for reservoirs covered by Paragraph B of Article VI. The State Engineer is obligated by law to enforce the provisions of the Compact. The problem is more acute this year because of the long-term shortage of water in the Bear River basin and the probability of litigation to enforce water rights between the states of Utah, Idaho, and Wyoming under the Compact.

If Mr. Nielson is storing water in violation of the Bear River Compact, the State Engineer will have no option except to undertake enforcement of the Compact as part of the Utah statutes. We would, of course, prefer to avoid litigation if Mr. Nielson is willing to comply with the

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Compact. It is possible that Mr. Nielson is not aware that the limitations imposed by the Compact have been triggered this year. It is with the hope of avoiding litigation that we have initiated these discussions. Although we realize that water probably will be short supply this summer, and we sympathize with those affected by the continuing drought, we have no option but to enforce the terms of the Compact.

For your reference, I have attached a letter dated March 30, 1993, from Bob Morgan to Mr. Nielson. The letter also dealt with the subject of storage water.

Please feel free to call me or Bob Fotheringham in the Logan Regional Office of the Division of Water Rights if you have any questions or if further discussion would be helpful to clarify the legal and factual situation. Thank you very much for your cooperation in this matter.

Yours very truly,



L. Ward Wagstaff  
Assistant Attorney General

cc.: Lee Sim  
Bob Fotheringham  
Heather Shilton, Assistant Attorney General