

March 16, 1992

Mr. Joseph Novak
Snow, Christensen, & Martineau
10 Exchange Place, Eleventh Floor
PO Box 45000
Salt Lake City, UT 84145-5000

Dear Mr. Novak:

We appreciate your well thought out and thought provoking comments regarding the challenging topic of distribution of water in the Utah Lake Drainage Basin. Where possible we have responded to each of your comments in the same order they were presented. Our response is as follows:

GENERAL COMMENTS

1) We note your concern that the plan falls short of its objectives. We concur there are areas where better solutions would be helpful, but frankly we don't have all the answers. This proposal was an attempt to stimulate thought, and provide a framework for future distribution in the basin, noting that while water use has changed drastically, distribution methods have remained relatively static. We believe that in implementing the proposal, while not trouble free, will resolve many of these current problems.

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2) Our assumption is that the Utah Lake primary and secondary storage users are entitled to the use of water from Utah Lake as shown on table 1 of the proposal. Lacking the mechanisms to predict exactly when, and how much water will flow to Utah Lake each year and therefore how much will evaporate each year prior to use, we are proposing an accounting system for storage rights which are clearly junior to the Utah Lake storage rights. Under the accounting system, storage is allowed to occur upstream, but water in storage is not used until it is clear it will not interfere with the rights of the senior users. We think this plan promotes the efficient use of the waters, is fair, and consistent with previous court decisions (specifically Civil No. 269). We agree the 125,000 acre-foot primary pool proposed in Utah Lake is without precedent, and may pose some legal questions which have not been fully investigated.

We definitely would not concur with your assumption that Utah Lake storage users have no right to carry over water in the lake from season to season. While the decrees, excepting Civil No. 269, may be silent regarding this issue, history is replete with evidence clearly showing that water has been carried over from year to year. In our opinion, this allows the Utah Lake users their water during successive years of drought.

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SPECIFIC COMMENTS

1.0 Introduction

1) Perhaps the wording of page 2, line 35 of the proposal is a little too broad. You will note page 14, lines 18-29 deal specifically with imported water. Together with the statement on lines 36-38 of page 2 of the proposal we feel imported water issues have been appropriately addressed. If you are aware of a specific instance where administration in accordance with individual rights is unworkable we would appreciate your input. We agree imports and exports of water are a big percentage of the overall water supply, and we attempted to convey that message to the users during the public meetings. However, we believe issues concerning water rights which import water are clearer, and are primarily accounting issues.

3.1 Background

1) We appreciate you pointing out the error and mis-statement of facts regarding the Booth Decree contained on page 6 of the proposal. We will correct this in future drafts.

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2) We understand your position regarding the North Jordan Irrigation Company rights, and others as noted on page 3 of your comments. We don't disagree with your contentions about the historical source of water used to satisfy these rights. We simply do not believe they are precluded from using direct storage from Utah Lake if needed. In fact, from our review of the Booth Decree, we believe this issue is clearly addressed.

We concur it may be appropriate to refine the model to reflect historical conditions a little more accurately, which presumably will reduce the demand on Utah Lake and may lessen system storage criteria slightly. We will investigate this issue further, but we remain resolute in our position these rights may call on water from Utah Lake if necessary.

3) Your concern about the tabulation of the Utah Lake storage rights is noted. For your information, the Proposed Determination book (PD Book) contains an error on Water Right Number 59-3517. The PD Book indicates that Water Right Number 59-3517 is limited to 2,560 acre-feet, when in fact it should be 2,560 acres. Kennecott has filed a protest to the PD Book concerning this matter. In our opinion, the quantity should be as noted in the table. The remainder of your comment really hinges around whether the quantities set forth in the Booth Decree which appear to be based on a 3.0 acre-feet per

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acre duty should be used or the quantities from the PD Book as modified by the Jacob-Welby memorandum decisions. As you realize, there are numerous issues that must be considered concerning this matter. We believe that the approach set forth in the proposed plan is fair, workable and appears to be acceptable to the majority of the water users. If there is opposition to this approach, under existing statutes the State Engineer is required to distribute the water in accordance with the existing Decree. If this were to happen it would create several problems and most likely result in lengthy and unproductive litigation. We are not saying your points are without merit, rather we believe many of the issues need to be resolved by the judge in the general adjudication. This proposed distribution plan is not intended to resolve all the water right issues in the basin.

2) We note the omission of 55-7060 and 55-7061 from the discussions of storage rights for Deer Creek Reservoir in the report and regret any problems this may have caused. Since these rights originate from Provo River direct flow rights, and were reduced during the change application process to represent only water which could be consumptively used, we feel the rights are clearly defined and could be treated in the same manner as any of the Provo River Decreed direct flow rights. We agree with your argument that this water should be

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counted as "priority storage", not "system storage" when it is stored in Deer Creek Reservoir.

3) We disagree with your contention that 59-7624, 59-14, 59-15, and 59-20 should also be deducted from "system storage" in Deer Creek Reservoir for a number of reasons among which are the following:

1) No application has ever been placed before the State Engineer by the owners of this water requesting to use these rights for the purposes you are suggesting.

2) These rights are for use of water out of Utah Lake and or the Jordan River, not the Provo River.

If the District decides to use these applications in the manner you have described, it appears they will fit quite easily into the proposed plan since they are essentially satisfied by "system storage". We do not agree that these water rights can be transferred to the Provo River and thus should be recognized as Provo River "priority storage". They will be administered in the same manner as the remaining Utah Lake storage rights.

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4) In the development of the proposed plan we chose not to account for accretionary flows in table 2. Our position remains that the rights are entitled to Utah Lake storage water on an equal basis with the other primary storage rights.

4.0 Relationship of Storage Rights in Utah Lake...

1) We agree in theory with your suggestion about separating primary and secondary storage rights in Utah Lake since there are intervening priority storage rights on tributaries, particularly the head of the river storage on the Provo River. This issue was considered when the proposed plan was developed initially. We convinced ourselves the separation was not necessary, primarily due to the lack of historical evidence of need. From a management standpoint, the system becomes more complex if we separate primary and secondary storage, and therefore we prefer not to separate them at present. However, we will investigate this issue further.

6.0 Other Distribution Issues

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1) The sentence contained on lines 25, 26 and 27 on page 13 is a general statement and is not meant to imply anything regarding 55-7060 and 55-7061.

We would not go as far as interpreting paragraph 121 of the Provo River Decree as giving **priority** to the Wasatch Division rights over the Provo Division rights. Rather we interpret these provisions of the decree to establish independence for the Wasatch Division presumably for the reasons stated at the public meeting (return flow considerations).

2) The Provo River Commissioner reports the new water level measurement system at Deer Creek Reservoir provides much better data than he was previously receiving. At present we would not go so far as to say this new system will completely solve the natural flow computation precision problems. More than likely it will not. But, it will certainly help, and should reduce the magnitude of the problem.

3) PRWUA's concern regarding the exchanges provisions set forth under Water Right Numbers 35-8756 and 55-262 are unfounded since these rights are based on applications to appropriate, not **exchange** applications. The priority date, quantities, and uses of water under these applications are spelled out in the applications and we are aware of no pending

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distribution problems relating to them. Water stored in Deer Creek Reservoir under the conditions of these applications will be accounted for as "priority storage" and will be available for immediate use by the association.

The exchange explained in the last paragraph of page 6, is a little more difficult to respond to, since as far as we can tell it is not covered by any water right application as required by law (the exchange statute pre-dates a late 1940's use alluded to in your letter). Based upon the information presented, if this activity was based upon an exchange application, there would be little problem satisfying all of the criteria we have forth for management of exchanges in the proposal. Credits are given in Deer Creek Reservoir in exchange for water used upstream from "Head of the river storage". The exchange is in like quantity and timing in that credits in Deer Creek are given as the water is withdrawn from head of the river reservoirs. There does need to be a formal record of these transactions and authority under which they are occurring to facilitate record keeping by the commissioner and we would encourage the association to pursue an application for that purpose at your earliest convenience.

3) As explained above, the exchange requirements of the proposal do not apply to Water Right Numbers 55-262 and

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35-8756 since they are applications to appropriate not **applications for exchange**. We agree the exchange requirements set forth in the proposal could seriously influence the operation of the Deer Creek-Strawberry Exchange. The provisions of the proposed plan are intended to resolve what we believe are abuses of the exchange statute.

7.0 Adjudication Issues

1) We agree with your assessment regarding the establishment of priority dates for Provo River decreed rights. Certainly this issue is far from being resolved, and will only be resolved as a result of a new decree on the system. We have no plans to distribute water based upon our suggested priority dates. We offered the dates only for informational purposes of the users, so that the issue of priority dates could be resolved during the adjudication procedure.

Additional Comments

We understand your apprehension towards this proposal. We are sure it will not solve all problems, but we are confident it makes more sense to begin trying to formulate solutions now,

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rather than wait for what will probably be a very lengthy litigation process to conclude. If nothing else, this entire process has alerted the Division to several situations which must be considered as part of the proposed determination. It has helped us identify the major problems and issues, and we are hopeful that it will result in a better proposed determination which will be more meaningful and useful to all the water users on the system.

The success of the proposed plan will ultimately be determined by the users, since it relies on cooperation and participation. We appreciate your frank and insightful thoughts and hope you will continue to participate in the process.

Sincerely,

Robert L. Morgan, P.E.
State Engineer

RLM/wk

FILENAME: PRWUA2.UTL