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WATER RIGHTS
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TO:
Utah Division of Water Rights
Investigations Section
1636 West North Temple
Salt Lake City, UT 84116-3156

FROM:
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RE: Distribution of Water Within the Utah Lake Drainage Basin

RESPONSE: from the Provo River Canal Commission and the following canals:
Provo Bench Canal, Lake Bottom Canal, East River Bottom Water Company, North
Union Irrigation Company, Upper East Union Irrigation Company, Timpanogos
Canal Company, West Union Canal Company, West Smith Ditch Company, Fort
Field/Little Dry Creek Irrigation Company.

[The parties represented in this response are most of the canals which divert water from the lower Provo River, meaning that portion of the river below Deer Creek Dam being most of the Class "A" rights of the Provo River Decree or Morse Decree of 1921. (Notable Class "A" rights not represented by this Response are the Provo Reservoir Water Users Company and Provo City.) The Provo River Canals Commission is a board whose membership consists of the presidents of each of the canals listed above, with Mr. George Kelley, president of Lake Bottom Canal being the current president of the Commission. Hereafter, this group will simply be referred to as the "Canals."]

No one disputes the fact that water is an essential element to human life and enjoyment. And no one would contest the obvious fact that as population increases along the Wasatch Front, more demand will be placed upon existing water resources. Any proposal which suggests the wisest management of the limited water sources is laudable indeed. The Division of Water Resources is to be commended for its foresight in attempting to resolve future problems at the present.

The Canals suggest that any proposal for Distribution of Water Within the Utah Lake Drainage Basin consider the following:

Although purporting to be a comprehensive plan for distribution of water within the "Utah Lake Drainage Basin," the preliminary draft speaks only in terms of defining and managing the "diversion entitlements" in Utah Lake. The document never addresses the direct flow rights on the Provo River in relation to the rights in Utah Lake, except in paragraph 7. Paragraph 7 suggests, but does not adequately explain, that all direct flow rights into Utah Lake are somehow junior to, or subject to, the diversion entitlements on Utah Lake.

Paragraph 8 of the proposal suggests that all direct flow rights on the tributary streams to Utah Lake "shall be assigned priority dates" so the entire drainage basin can be managed as one system. The Canals suggest that such priority dates already exist and that the system is already effectively managed. A problem only arises when those who have rights on Utah Lake cannot obtain their "diversion entitlement." However, the water users out of Utah Lake have been attempting to solve the problem for almost a hundred years. Pumps have been installed, dredging of the channel out into Utah Lake has been undertaken, and even an entire segment of the Jordan River was dredged as a solution. Now it appears that the only solution left available is to have the Division of Water Rights impose some new management system on the upstream users which will guarantee, as the expense of the upstream users, the "diversion entitlements" out of Utah Lake.

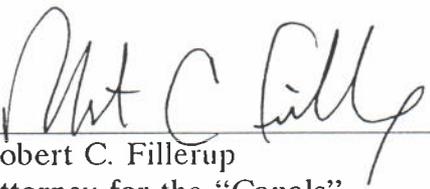
It appears to the Canals that the distribution proposal needs to set forth more clearly how such a system would directly impact the users on the Provo River (and Spanish Fork River, American Fork River, and all the other tributaries for that matter). This impact needs to be illustrated under a variety of scenarios. For example, how will the 30-year wet/dry cycle be taken into account? What happens in a severe drought (such as the mid-1930's)? If Utah Lake is significantly below compromise, yet Deer Creek spills, such as happened this spring, who is entitled to the excess flows in the Provo River?

While not wanting to seem negative simply to be negative, to the Canals it appears that the proposal appears in its present form as nothing more than an attempt to guarantee that the holders of rights in Utah Lake have priority over all other rights, including direct flow rights on the Provo River. While the oral presentation in Utah County suggested that the direct flow rights on the Provo River might be given a priority earlier than most, if not all the rights on Utah Lake, no such information is contained in the written proposal.

The Canals are aware that it is necessary for the CUWCD and the Bureau to establish priority of Utah Lake rights over direct flow rights in the Provo River. Without such priority, the change of rights currently owned in Utah to fill Jordanelle will not be feasible. The fallacy of the scheme has always been that you cannot create water on the upper Provo River by building a dam and then acquiring rights in Utah Lake. No new management plan will solve the fact that there is insufficient water to fill Jordanelle, unless the direct flow rights on the Provo River are seriously impacted.

The Canals would urge caution in proceeding with the implementation of any proposal. The rights and uses of the water in the Utah Lake Drainage Basin have evolved over more than one hundred years. Countless lawsuits, stipulations, and agreements have defined and refined the relative rights of water users over this time. Terms and phrases have been interpreted by both the courts and the legislature. The introduction of new terms such as "diversion entitlement" can only lead to a new round of seemingly endless litigation.

And finally, most, if not all of the concerns and issues raised in the proposal are already being addressed in the General Adjudication suit (Anderson, et. al.) pending in Third District Court in Salt Lake County. The Canals question the prudence or necessity of commencing an additional round of discussions, arguments, lawsuits, etc.


Robert C. Fillerup
Attorney for the "Canals"