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**WATER RIGHTS
SALT LAKE**

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August 25, 2003

Ronald Johnston, Program Director
CUP Completion Act
Department of the Interior
302 East, 1860 South
Provo, UT. 84606-7317

Re: Section 203 (a) Project

Dear Ron:

I wanted to advise you of some issues that have arisen on the Lake Fork River system and concerns those issues present with respect to the Section 203(a) Project. As you may recall, during the development of the Environmental Assessment for the Section 203(a) Project and the negotiation of its Operating Agreement, a principal concern of the Tribe was the lack of proper administration on the Lake Fork River system and the need for a sufficient number of real-time monitoring devices that would provide all water users with accurate up-to-date information regarding the flow in the River, the amounts legally in storage, the amounts actually being released from storage and the amounts being diverted by the various canals on the system. The Tribe also was strongly supportive of the discontinuance of utilizing the high mountain lakes on both the Lake Fork and Yellowstone Rivers for storage.

As you also may recall, the Bureau of Indian Affairs, by voluntary agreement, diverts water on the Lake Fork system in accordance with a duty schedule which allocates the amount of water diverted into BIA canals over the irrigation season. Under the 1923 Federal Court Decree, the BIA is legally entitled to divert at a maximum rate of 1 cfs / per 70 acres any time it is available, with a maximum annual allocation of 3.0 acre-feet per acre. In early August, the duty schedule provided for 1 cfs for every 110 acres of land with a tribal water right. The Water Commissioner ordered the BIA canals to reduce below duty to 1 cfs for every 137 acres of land based upon calculations he asserted showed that the natural flow in the River was insufficient to meet duty and that the majority of flow in the River was being supplied by water released from storage in Moon Lake Reservoir or high mountain lakes. Of course, neither the BIA nor the Tribe has any way to confirm the accuracy of the numbers utilized by the Water Commissioner and produced by the Moon Lake Water Users Association. However, it was the firm belief of BIA ditch rider on the U.S. Lake Fork Canal, that

the River system was producing more natural flow than the calculations showed and that the BIA canals were being shorted water because natural flow was being identified as water released from storage. Lynn Hansen and I met with the Water Commissioner and reviewed the calculations which are, in fact, produced by the Moon Lake Water Users Association. We could not determine how the calculations were made and they did not appear to identify the natural flow in the River system. We were unable to tell whether water stored in Moon Lake or in the high mountain lakes was stored legally or what amounts were being released from storage. Finally, the information we received suggested that the five monitoring devices called for under the Section 203(a) Operation Agreement might not be sufficient to provide complete monitoring and measurement throughout the system.

In light of our inability to determine whether the flows in the River are being properly calculated, and whether the tribal water rights are being shorted, the Tribe requested that the BIA open their headgates to allow for the diversion of what was called for under the duty schedule. The BIA has not yet done so because, we believe, of concerns about physical constraints that could negatively impact some of the BIA's canals on the system. The Tribe also is proceeding to hire technical consultants to assist in determining the actual flows in the system and the accuracy or inaccuracy of the calculations relied upon by the Water Commissioner.

The Tribe holds the senior water right on the Lake Fork River system and does not have any storage facilities. The protection of its senior rights requires that daily accounting and administration accurately calculate the natural flow in the system. The Tribe cannot, even over the course of the next five years while the Section 203(a) Project is being constructed, continue to incur reductions to its legal right based upon information it cannot confirm. In our opinion, in all but the very, very driest years, such as the 2002 irrigation season, the Lake Fork River system yields sufficient flows to assure that those lands with tribal water rights (1861 priority rights) receive their full legal allocation of 3.0 acre-feet per acre in accordance with the terms of the Federal Court Decree.

In light of these issues and the resulting concerns, I thought I should advise you of possible actions that may be taken by the Tribe to protect its interests.

1. As I noted, the Tribe will be conducting a technical review of the administrative practices on the Lake Fork River system to determine whether those practices have detrimentally impacted the Tribe's water rights and the delivery of tribal water to its lands. As part of that technical review, I anticipate that the Tribe's technical experts will want to review the historical data collected on the Lake Fork River system as part of the Upaclo Unit and the Section 203(a) studies.

2. The Tribe will, as part of its technical review, determine whether there is any value to the BIA continuing to voluntarily implement and follow the duty schedule. If that review indicates that there is no value, the Tribe will request that the BIA cease to implement a duty schedule and, instead, call for water as it determines is necessary subject only to the Federal Court Decree's limitations of 1 cfs per 70 acres and an annual maximum of 3.0 acre feet per acre.

3. Depending upon the results of our technical review, the Tribe may request that the BIA cease participation in the voluntary system of administration on the River system and cease paying any portion of the Water Commissioner's salary or benefits.

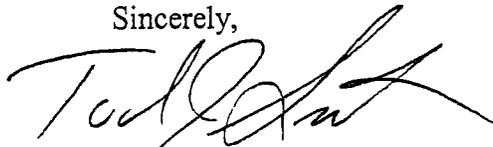
4. As part of its technical review, the Tribe will determine whether the five real time monitoring sites required under the Operating Agreement are sufficient. If not, the Tribe will demand that additional real-time monitoring installed under the auspices of the Section 203(a) Project to assure protection of the Tribe's senior water right.

5. Depending upon the results of our technical review, the Tribe may seek to enjoin further construction of Section 203(a) Project facilities until such time as the CUPCA and those constructing the Project can provide sufficient assurances that those lands with a tribal water right will receive all water to which those lands are legally entitled which, in all but the very, very driest years is 3.0 acre feet per acre.

Finally, to facilitate more accurate River administration, the Tribe *again* requests that the installation of the real-time monitoring devices required under the Operating Agreement be funded and implemented at the very earliest possible time, and not be left as the last step in the construction process. It would seem that installation of those devices to assist in the accurate measurement of inflows into Moon Lake and inflows into the C Canal could be undertaken immediately and, as other portions of the Project are completed, installation of the real-time monitoring device should occur at the time of completion and not at some later point.

I am anxious to discuss these matters with you in more detail at your very earliest convenience, and am hopeful that all the parties can reach a consensus on how the system can be administered so as to assure that the Tribe's senior water rights are kept whole.

Sincerely,



Tod J. Smith

cc: Members, Tribal Business Committee
Wayne Pullen
William McConkie
Chester Mills, Superintendent
Lynn Hansen, Project Supervisor
Harold Sersland, CUP
Gene Shawcroft, CUP
Shawn Draney
Randy Crozier, DCWCD

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Bill Christensen, Water Commissioner
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