

# SMITH HARTVIGSEN PLLC

ATTORNEYS AT LAW

215 South State Street  
Suite 650  
Salt Lake City, Utah 84111

T 801.413.1600  
F 801.413.1620  
www.smithhartvigsen.com

J. Craig Smith  
[jcsmith@smithlawonline.com](mailto:jcsmith@smithlawonline.com)

May 14, 2004

L. Ward Wagstaff, Esq.  
Assistant Attorney General  
1594 W. North Temple Suite 300  
Box 140855  
Salt Lake City, UT 84114

Dear Ward,

**Re: General Adjudication Lower Price and Green Rivers**

I am writing to follow up on our recent telephone conversations. As you know, Utah State University has agreed to independently study the Green River Canal Company System. I am in the process of gathering information to provide to Professor William Rohmeyer, who will supervise the study. The study will be conducted by a graduate student selected by the professor. The student will be under the supervision and review of a faculty committee comprised of Professor Rohmeyer and other members of the Engineering faculty at Utah State University.

Both the Canal Company and the University invite and welcome the participation and input from the Division of Water Rights in the design and conduct and review of this study. This is intended to be an independent study to answer the seminal question of how much water is needed to be diverted into the canal system so that the canal system can properly function and deliver water to the shareholders of the Company. As you are aware, the Canal Company has always believed that it must have a flow of 80 CFS through the Canal System for it to operate properly without silting up. Although the flows are quite high, water is continually returned to the river through five different sluice ditches.

As I informed you by telephone, the Canal Company despite its belief is willing to bind itself to the result of this study and take into the Canal the volume of water the study determines is necessary.

When I first became aware that the Proposed Determination issued in 1974 would reduce the flow from the 80 CFS in the diligence and water user claims to 60 CFS, I approached you and other counsel for the State Engineer and attempted to resolve this matter informally. The reason I approached the matter in this way, was that I understood that it was the long established practice of the State Engineer to consider meritorious objections whether or not they were filed within the 90 objection day period after the Proposed Determination was issued. This understanding was confirmed both from you

and others in your office and also by actions of the State Engineer in responding to "late" and objections in this and other General Adjudications.

Based on this understanding, I am a little puzzled to the apparent coolness of the State Engineer to the Canal Company's offer to put the entire issue into the hands of an independent third party and let it be decided on its merits. I realize that the State must always consider the precedent it creates by taking an action. However, it is impossible to predict how the Supreme Court may rule on the interlocutory appeal. I personally would not like to be in a position where I had to predict the outcome of the Supreme Court's ruling, particularly if that outcome would affect General Adjudications all over the State. I also realize policies can change, but I would respectfully suggest that a policy to properly allocate water according to historic use and need, is a much more policy appropriate and in harmony with the State Engineer's statutory role and duties. If the Canal Company's perceived need of 80 CFS is not meritorious as has been suggested to me several times without elaboration, then I am confident the study will so determine and the matter will be resolved.

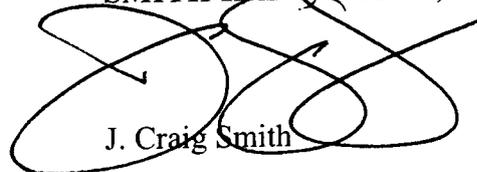
The Canal Company is not trying to set a legal precedent. It has only responded to a Motion to Dismiss its Objections and defend an appeal of the trial court's ruling in its favor to the Utah Supreme Court. It has taken each action out of necessity only in an attempt to defend the flow it believes it must have, to function.

Again, I want to make it very clear that the State Engineer is invited to fully participate in this study including the design, oversight and critique of the conclusions. Further, we invite the State Engineer to join with the Canal Company and allow the issue of the flow needed by the Canal Company to be decided by the study. We are willing to have irrigation practices considered in the study, even though we do not believe that the siltation problem can practically be addressed by anything except sluicing water

However, as we are trying to get this study underway this summer, we are moving forward with the design phase. Thus it is critical for the State Engineer to become involved now if he wants to take advantage of this study to resolve this matter.

Yours truly,

**SMITH HARTVIGSEN, PLLC.**



J. Craig Smith

cc: Board of Directors, Green River Canal Company  
Judy Ann Scott, Secretary  
Jack Barnett, P.E.