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State of Utah

DEPARTMENT OF NATURAL RESOURCES

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Division of Water Rights

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01 April 2013

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RE: RIGHTS TO THE USE OF "WINTER WATERS" OF RED CREEK

Landowner/Water User:

You are receiving this letter because public records have identified you as an owner of lands on which the historic channel of Red Creek northwest of the Town of Paragonah is located, and/or as a water user with rights associated with said channel.

This letter is given with the intent of assuring that the recipients are fully informed regarding the current position of the Division of Water Rights ("Division") as to the recognized rights to the surface waters arising, accruing and flowing in the lower reaches of the Red Creek channel, especially and specifically in the vicinity of Interstate Highway 15 ("I-15") and to the northwest where those flows intersect and commingle with waters known locally as the Belly Ache Springs or Slough Creek Drain.¹

¹ The area where these waters occur is also known locally as the "Chimney Meadows."



RED CREEK "WINTER WATERS"

01 April 2013

Page 2

On 04 March 2013, in a field investigation of this area, Division personnel drove the westerly frontage road along I-15 and observed several locations where the subject flows were passing in culverts beneath I-15 and then being diverted and spread into grass pasture areas on the west side of I-15. Some of these waters were observed to be originating from the Paragonah Canal Company's pressurized system where a valve, locked in an "open" setting, was discharging into a ditch. The ditch conveyed the water to some of the aforementioned pasture areas.

In researching the Division's records regarding rights to divert and beneficially use water in this area during the non-irrigation season (generally 15 October to 01 April), the following conclusions have been reached:

1. Although there are established rights to water livestock on the subject waters during the non-irrigation season, those rights are of the "on-source" type which do not allow for the diversion, impoundment or "spreading" of water. Livestock held or grazed on properties containing or crossed by those waters are permitted to drink from naturally occurring channels or sources, but the water must be allowed to naturally pass through those properties otherwise undiverted and undiminished.
2. The only rights identified as allowing diversion for irrigation use during the non-irrigation season are those arising in Application to Appropriate Water No. A14817 as described in Certificate of Appropriation No. 3635 issued 24 May 1950.² These rights are currently described in the Division's records under Water Rights Numbered 75-39, 75-1786 and 75-1914, all presently held in the name of H.A. Farms, Inc., of Parowan.
3. Based on the foregoing conclusions, it is determined that there are no rights for any persons, other than H.A. Farms, Inc., acting under authority of the referenced water rights, to divert or diminish in any manner the waters arising and/or flowing in the historic channel of Red Creek in the subject area during the non-irrigation season, other than as allowed under the on-source stockwatering rights as described above.
4. Regarding the waters of Red Creek discharged from the Paragonah Canal Company's pressurized system, it is recognized that there is a right for winter stockwatering associated with that system, and that a certain flow through the system must be maintained during the non-irrigation season to prevent freezing.

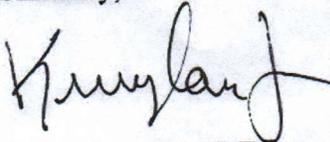
² Certificate of Appropriation No. 3635 allows for the diversion of up to 0.69 cfs from the "CHANNEL OF RED CREEK, COMMONLY CALLED SLOUGH CREEK DRAIN . . . FROM JANUARY 1 TO DECEMBER 31 INCLUSIVE OF EACH YEAR FOR IRRIGATION PURPOSES." The proof filed describes the water source as "Belly Ache Springs and other springs along the Slough Creek Drain." The waters thus diverted were ". . . used as a supplemental supply to irrigate 108.01 acres of land . . ." Division records indicate that this source provided a "sole supply" for 66.0 acres, the remainder of the supply coming from wells. The application of water during the non-irrigation season was evidently recognized as enabling the accumulation of soil-moisture storage benefitting early-season growth of pastures/crops.

However, it incumbent on the canal company to assure that water discharged from the system during the non-irrigation season is managed so as to assure the discharged water returns to the natural hydrologic regime (that is, to the historic Red Creek channel or its immediate tributaries) as efficiently as reasonably possible and for the benefit of those with rights to said waters.

It is not the purpose of this letter to allege that any specific person has or currently is knowingly diverting, impounding or beneficially using water without a valid water right. However, with this notice given and information provided, the Division will anticipate that the recipients will be aware that any activities to divert, impound or use water from the Red Creek channel or other sources in the subject area without the benefit of an established water right will likely be viewed as grounds for further investigation and possible commencement of an enforcement action, including the potential imposition of monetary fines and penalties.

If any recipient of this letter has or knows of information believed to have been overlooked or misinterpreted in the Division's conclusions above, we welcome that information. If such information is forthcoming and justifies an amendment to the conclusions herein, all recipients of this letter will be so informed.

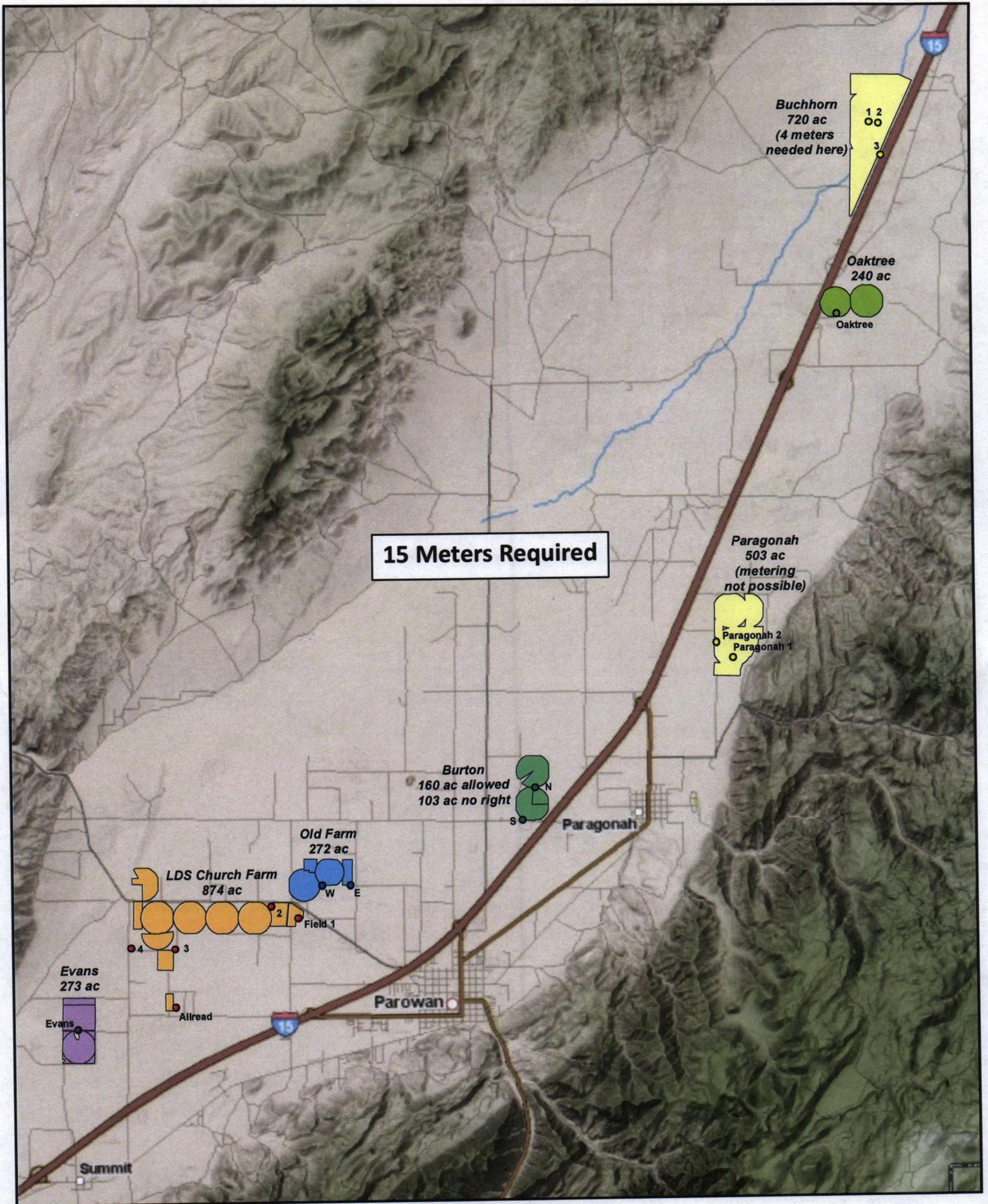
Sincerely,



Kerry Carpenter, P.E.
Enforcement Engineer

Encl: None

pc: G. Kurt Vest, P.E. / SW Region Engineer
Jared Manning, P.E. / Asst. State Engineer – Distribution / Enforcement
Division of Water Resources (for: Paragonah Canal Co., WR 75-7)
Shayne Scott, Distribution Commissioner
File / Chrono.



Parowan Valley - Don Roberts Well Metering