Division of Water Rights
Attention: Mike Silva
1594 West North Temple St. Suite 220
PO Box 146300
Salt Lake City, Utah 84114-6300

Mr. Silva,

RE: SEAA 1110

Correspondence from your office dated 8/5/2014 under section II statement of facts, item number 6, states that, "**water rights associated with the Morris Levi Diversion had been transferred to other ditches.**"

It further states that you are **"formalizing the requirement to fully remove from service the Morris Levi Ditch Diversion."**

In response to this information, I am deeply troubled because I am not aware of any transfer of water rights associated with this point of diversion.

Furthermore, I am unaware of any understanding that the **"diversion would not be re-used"** after the 2006 flooding that washed out the measuring devise as implied in your letter.

Therefore, I see no rule of law in the execution of your present Order.

However, I am willing to submit to this order as expeditiously as possible upon being provided with the following documentation:

1) Who filed the water rights transfer application or change in point of diversion application that apparently voids my right to use the Morris Levi Diversion?
2) What was the date this application was filed with your office?
3) By what authority did they file this application?
4) Who approved the application?
5) What was the date the application was approved?
6) By what authority was it approved?
7) Where is this water being used now and where is it being diverted from?

Until this documentation is provided, it is not clear that there is a violation which would subject myself to violations and subsequent enforcement powers as outlined in UTAH CODE 63G-3. Furthermore, because the State Engineer is subject to authorizations designated in UTAH CODE 73-2-1.1 and 73-5 it is prudent that such documentation be in place prior to or at a minimum, at time of issuance of an Order.

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Additionally, it would likewise be helpful to the integrity of both my operations and your office if you could provide information regarding the source of your findings in regard to water right holders, point of diversions and so forth associated with the above requested information.

The basis for this request of information rests on previous conversations with your office indicating the extensive use of the **"Proposed Determination of Water Rights In Beaver River – Escalante Valley"** as the official document for which duties of your office are executed.

If this is the source by which the Distribution order was given, may I humbly submit for your consideration that under UTAH CODE 73-5-3(1) your authorizations are defined and the "state engineer or the state engineer's designee **shall carry into effect a judgment of a court** in relation to the division, distribution, or use of water under the provision of this title."

As such, any document designating water rights, distribution, diversion, and so forth other than the Cox Decree is null an of none effect and cannot be referenced as a judgment of the court or an authoritative documenting meeting the mandate referenced above in UTAH CODE 73-5-3(1).

As a friendly reminder, the "Proposed Determination of Water Rights In Beaver River –Escalante Valley" was submitted to the court but a judgment of the court was never issued.

Consequently, the document remains a proposal never accepted by the court and therefore cannot be used as an official document from which distribution orders can be based.

Thus, if in your letter under section II statement of facts, item number 10, the "investigation by staff of the State Engineer's office determined that all remaining water rights were moved to other ditches in the area" and that "there were no remaining water rights to associate with the subject diversion to allow diversion of any water at this point" was **not** based on the Cox Decree, then further investigation is warranted and necessary to protect the credibility of your office, the safeguarding of water rights, and the protection of the rule of law before an Order can be issued and enforced.

Therefore, please provide the requested information as soon as possible so that if necessary I may remain in compliance with the Order's date as set forth therein. That date is 8/15/2014.

Sincerely,

Floyd Yardley

Floyd Yardley

cc: Mike R. Styler Executive Director DNR
Kent L. Jones State Engineer/Division Director
Kurt Vest, Regional Engineer
Steven Gale, Beaver River Commissioner

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