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October 1, 2014

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RE: Piute Reservoir and Irrigation  
Company Water Credits

Dear Kent, Boyd, Jared and Sue:

I have reviewed Piute Reservoir and Irrigation Company's September 15, 2014 letter in reference to the above-titled action.

In reference to paragraphs 1 through 5, inclusive, which addresses, respectively, "The Cox Decree's Governing Provisions," "Waters Available for Storage or Use," "No Time-out Under the Decree," "The Impact of Full Reservoirs" and "Piute's "2012" Claim," it is DMADC's position that the arguments contained therein, together with the accompanying attachments, are largely irrelevant and contrary to the current state of the law.

Piute is misconstruing and incorrectly applying the 1945 Hoyt Decree. Piute has no right to store any waters in the Sevier Bridge Reservoir or to receive credit for water held in such reservoir unless it meets one of the three criteria outlined in the 1945 Hoyt Decree. (See Hoyt Decree p. 2). Piute failed to meet any of these criteria for the excess water in question for the 2012 water storage year.

The Utah Supreme Court affirmed the 1945 Hoyt Decree in full, a fact that Piute simply chooses not to accept.

As to paragraph 6, titled "Piute's Credit Claim Complies with the Hoyt Decree," Piute asserts that the excess water in the summer and fall of 2012 came from accretions arising below Piute Reservoir. This is incorrect. The water did not come from accretions arising below Piute Reservoir,

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the water came from excessive releases from Piute Reservoir. Accordingly, the first criteria of the Hoyt Decree is the applicable standard to determine whether Piute should receive a credit in the Sevier Bridge Reservoir. Piute cannot receive a credit in Sevier Bridge Reservoir for such excessive releases, unless Piute shows that the "excessive releases were due to miscalculation by the River Commissioner or Commissioners as the amount to which the owners of the Sevier Bridge Reservoir were entitled. ..." (See Hoyt Decree p. 2). However, the excess water came from water released from Piute Reservoir due to Piute inefficiently regulating its water, not from excessive releases due to miscalculation by the River Commissioner(s) as the amount to which the owners of the Sevier Bridge Reservoir were entitled.

Paragraph 7 is titled "Credit is Triggered by River Commissioner Mistake Not Water Owed." The water received by Sevier Bridge Reservoir was not the result of Commissioner error in the calculations in the amount of water Piute owed Sevier Bridge Reservoir. Piute does not get credit for its own inefficiencies. It was so determined in 1945 by Judge Hoyt and confirmed in 1946 by the Utah Supreme Court. To allow otherwise, would wrongly give Piute the right to store water in Sevier Bridge Reservoir at its own volition. Furthermore, Piute is not entitled to any credits for 2012, as your office rightfully determined based on the 1938 Agreement and 1945 Hoyt Decree.

Finally, as of this date, Piute still owes Sevier Bridge Reservoir several thousand acre feet of water. The State Engineer's Office has made an Order that all of the water Piute owes DMADC be delivered into Sevier Bridge Reservoir by October 1, 2014; Piute continues to ignore this Order. DMADC hereby requests that the Order be enforced and that such water be released immediately.

Sincerely Yours,

WADDINGHAM & ASSOCIATES P.C.



Richard Waddingham

RW

cc DMADC Presidents