

Teresa Wilhelmsen, State Engineer
Blake Bingham

23 February 2003

Re: Governor's Water Declaration and Planning Initiative

To whom it may concern:

My perception of the meeting held on the February 22nd in Cache Valley is that there are some very important things we need to do.

First, the Division needs to accept and actively implement an "Over-site" role which complements the existing Management Plan with specific goals. In my mind it goes something like this.

- A. The Regional Office needs to understand exactly where we stand with regards to the 25,000 acre feet in order to guide the decision making process. In my mind this requires someone to start at 1 September 1999 and create a data base of every application which has been approved, accounting for not only the amount of aquifer water allowed to be drawn, but also how much return flow each application will create.
- B. Then the Division needs the cooperation of every municipal water system regarding their 50 year management plan at a level of detail which discloses how much of their current plan (and then future plans) is dependent upon converting water shares in irrigation companies to aquifer water.
- C. Then upper level management decisions on when to begin limiting applications to appropriate can be made using the amount of aquifer water still available as compared to future conversion needs to satisfy existing and future population growth projections throughout the valley.
- D. And then the irrigation companies may need to consider becoming suppliers of municipal water to municipalities instead of allowing the municipalities the power to draw irrigation company water from municipal wells in order to maintain irrigation company relevance into the future.
- E. And the Division needs to develop standing requirements in order to avoid the inappropriate Protest practices which have been going on for years. The listing below is an example of this type of waste where the protestant, in my opinion, lacks standing to Protest because the Protestant's water rights have no relationship to any of the 25,000 acre feet available under the Management Plan from which the appropriations would have been obtained. (See also **Haik v. Jones 2018 UT 89 @ 4**: "Despite having no direct connection to the change application, Haik challenged it." And, **Id., @ 1**: "The Change application did not directly impact Haik's property or his water rights. Haik sought judicial review of the State Engineer's approval. The district court concluded that Haik lacked standing to

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mount that challenge. The district court also rebuffed Haik's efforts to amend his petition and dismissed. Haik appeals. We affirm."

Recent Unnecessary Protests

<u>WR Number</u>	<u>Date</u>	<u>Change Request</u>	<u>Current Status</u>
25-11699 a46967	03/16/2021	Newton Slough - UGW	Protested/Approved
<p>"[Protestant] requests the State Engineer meet with senior water users in the area to discuss whether and how the Cache Valley Plan, as currently articulated continues to work to protect senior water rights."</p>			
25-11711 A82498	03/26/2021	New - UGW	Protested/Approved
25-11712 A82501	03/28/2021	New - UGW	Protested/Approved
25-11713 A82502	03/26/2021	New - UGW	Protested/Approved
25-11718 a47023	04/06/2021	Little Bear River - UGW	Protested/Approved
25-11720 A82539	04/09/2021	New - UGW	Protested/Approved
25-11722 A82582	04/20/2021	New - UGW	Protested/Approved
25-11725 A82586	04/23/2021	New-UGW	Protested/Approved
25-11730 A82603	05/04/2021	New - UGW	Protested/Approved
25-11731 A82604	05/04/2021	New - UGW	Protested/Approved
25-11732 A82605	05/04/2021	New - UGW	Protested/Approved
25-11733 A82627	05/17/2021	New - UGW	Protested/Approved
25-11734 A82633	05/18/2021	New - UGW	Protested/Approved
25-11736 A82656	05/21/2021	New - UGW	Protested/Approved
25-11740 A82668	05/28/2021	New - UGW	Protested/Approved
25-11746 A82738	07/01/2021	New - UGW	Protested/ Approved
25-11749 A82761	07/13/2021	New - UGW	Protested/Pending
25-11756 A82819	08/02/2021	New - UGW	Protested/Withdrawn
25-11757 A82837	08/10/2021	New - UGW	Protested/Approved
25-11759 A82847	08/13/2021	New - UGW	Protested/Approved
25-11762 A82866	08/20/2021	New - UGW	Protested/Approved
25-11763 A82876	08/27/2021	New - UGW	Protested/Approved
25-11764 A82877	08/27/2021	New - UGW	Protested/Approved
25-11769 A82935	09/28/2021	New - UGW	Protested/Rejected
25-11774 A82951	10/15/2021	New - UGW	Protested/Approved
25-11778 A82977	10/29/2021	New - UGW	Protested/Approved
25-11781 A8305	11/23/2021	New - UGW	Protested/Approved
25-11782 A83007	11/24/2021	New - UGW	Protested/Approved

"As a senior water right holder in the Bear River, [Protestant] has increasing concerns about the cumulative effect new well filings on local surface waters. For example, since the beginning of 2021, there have been 40 appropriations totaling 92.75 AF of new groundwater diversions. The Cache Valley Plan was approved 20 years ago. Since that time, the population has increased, climatic conditions have changed, and technology has advanced. We encourage the State Engineer to take a critical look at the efficacy of the Cache Valley Plan to meet contemporary conditions. Engaging is stakeholder discussions about groundwater policy in Cache Valley and its relationships to broader Bear River management may be constructive. ..."

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Twenty-seven Protests with the administrative hassle and inconvenience to all. The affected Applicants have no part of this Quarrel, for they were only following existing procedures in general and were being Compliant with the Management Plan. Conduct by the Protestants which the Utah Supreme Court is concerned about (See **Haik**).

And personally, as you are well aware, my wife and I have been subjected to similar improper Protests. And just recently, after three years and numerous Protests against our Water Right/Change Application combinations, and now the filing of a lawsuit, my antagonists filed a Notice with the Division "Withdrawing" Protests against no less than 25 Water Right/Change Application combinations, **some of which were not even against Change Applications that were filed by my wife and I.**

Three years of wasted Division Resources on tracking, communications with 25 involved combinations, and even a full day Hearing. The Division needs to figure out how to avoid such wasteful activities so that more Division time can be devoted to tracking water usage in Cache Valley so that informed decisions can be made. Division resources are too valuable to continue such a wastage of time and effort when they, like Haik, would appear to have no standing because Protestants have no "Particularized Injury" (See also **Washington County Conservancy District v. Morgan 2003 UT 58**).

- F. As I stated in the meeting, it is my opinion that only about 7,500 acre feet of the 25,000 acre feet has actually been approved for withdrawal and use in the 23+ years the Management Plan has been in operation, but the Regional Engineer or Division needs to develop a data base which can be used to track the amount of aquifer water which has been authorized to divert and the amount of return flows therefrom along with projected future Water Share conversion plans in order to assist in the decision process which lies ahead.
- G. It is my recommendation is that the existing Management Plan remain in effect until the necessary information is developed by the Regional Engineer, and the projected future conversion of irrigation shares to aquifer water by the municipalities is collected - and only then should there be any changes made in the Plan.
- H. Further, since all my water rights are now before the Division awaiting decisions, and since I am retired, I would be happy to assist the Division in developing the necessary information to guide the subsequent decision process.

Sincerely Yours,


Duane Morley Cox

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