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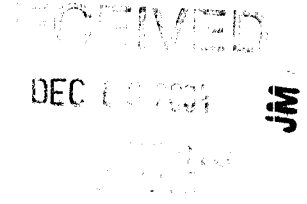
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December 6, 2004

Mr. Jerry D. Olds, P.E.
State Engineer
Utah Division of Water Rights
1594 W. North Temple, Suite 220
P.O. Box 146300
Salt Lake City, Utah 84114-6300



Re: November 2, 2004 Change in Policy Regarding Groundwater in Cedar Valley

Dear State Engineer Olds:

We are writing this letter on behalf of our client Glade W. Berry to express serious concerns regarding the new policy change on groundwater in Cedar Valley that was announced in your letter dated November 2, 2004 (the "new policy" or "policy change"). Mr Berry's family was among the earliest settlers in Cedar Valley. Mr. Berry owns and farms several large tracts of farm land in Cedar Valley and has several water rights, including Water Right Nos. 54-225, 54-354, 54-355, 54-546, 54-596, and 54-1072. He is also a shareholder in Cedar Fort Irrigation Company, which holds the earliest rights in the valley.

As you know, Cedar Valley was closed to new appropriations in 1995 pursuant to the November 15, 1995 Interim Cedar Valley Ground-Water Policy ("Interim Policy"). Although the Interim Policy addressed change applications, it did not expressly prohibit the transfer of water rights originating outside of Cedar Valley into Cedar Valley.

Your office has determined that the groundwater recharge rate in Cedar Valley is approximately 25,000 acre-feet annually, with 10,000 to 20,000 acre-feet being discharged annually to Utah Lake and presumably committed to Utah Lake and downstream water rights. That leaves 5,000 to 15,000 acre-feet of ground-water for diversion within Cedar Valley. Information was presented at the July 21, 2004 meeting stating that approved and perfected groundwater rights within Cedar Valley total 12,900 acre-feet with an additional 500 acre-feet in pending applications. You stated that, based on production records from the large wells upon which production records have been submitted (presumably municipal wells), the current ground-water production rate is 5,000 acre-feet annually. The November 2, 2004 letter sets that amount at 4,500 acre-feet annually. However, several of those in attendance at the July meeting stated that the actual figure would be closer to the 10,000 to 12,000 acre-foot range when all wells are included.

The change of policy announced in your November 2, 2004 letter allowing change applications to be filed on an additional 1,500 acre-feet is apparently based on the conclusion that only 13,500 (12,900 a.f. + 500 a.f.) of the available 15,000 acre-feet of safe yield has already been allocated. Based on the numbers set forth above 23,500 to 33,500 of the available 25,000 acre-feet has been allocated as discharged to Utah Lake or as appropriated in Cedar Valley.

The policy change also stated a "preference" would be given to public supply entities. Immediately upon the announcement of this policy change, a party with development interests filed a change application to transfer 825 acre-feet into this sub-basin.

A few additional facts are relevant to placing the foregoing background information in to proper perspective. Cedar Fort Irrigation Company has the senior rights to the first 80 cfs of flow out of the stated recharge area for Cedar Valley. With recent climatological and hydro-geological changes in the area, much of that 80 cfs is now flowing into the subsurface system and shareholders have not been able to get their full entitlement of irrigation water. Such water should not be included in the above calculations of available water. With the uncertainty concerning the discharge rate into Utah Lake, additional transfers simply should not be allowed.

In the event that water is available in Cedar Valley for transfers, which our client disputes, the proposed preference for public supply entities is not appropriate in this case because it will actually flow directly to developers rather than to the public supply entities and to the public which they represent. Cedar Valley has been until recent years almost exclusively agricultural and has had sufficient public water supply to meet its needs. However, with the development of Eagle Mountain and other developments between Lehi and Eagle Mountain, substantial development activity is underway and is anticipated in the future. The limiting fact for this development potential on extensive tracts of land planned for development is water. Thus, any preference given to public supply entities will pass directly through to the developers and their pocketbooks. Virtually all of the transfers listed below have been for the benefit of developers, not the public.

Finally, if water is available for transfer into Cedar Valley, our client should be given priority access to that water. Mr. Berry is entitled to such a preference because both he and his son had made arrangements last year to purchase needed water in Utah Valley at an appropriate price and to transfer that water into Cedar Valley for agricultural purposes. However, despite the fact that Cedar Valley had not been formally closed to such transfers under the Interim Policy or any amendments thereof, they were both told by your office that Cedar Valley was closed to such transfers. Therefore, they were not allowed to file a change application and have accordingly lost both the opportunity to acquire the intended water rights and the priority which they would have otherwise had in making the transfer. We have since discovered that while our clients were being told the valley was closed to transfers, change applications for over 2,000 acre-feet were being accepted from others and were being approved.

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A few of the recent change applications allowing large quantities of water to be transferred into Cedar Valley for development purposes, after the implementation of the Interim Policy include, but are not limited to, Change Application Nos.:

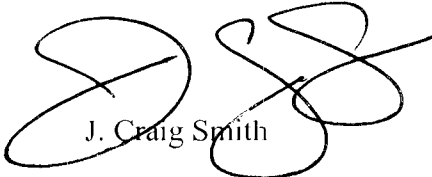
a22362 - transferring 253 a.f. from eastern Utah Valley; filed 1998, approved 1999
a22934 - transferring 190 a.f. from northern Utah Valley; filed 1999, approved 2000
a23146 - transferring 200 a.f. from northern Utah Valley; filed 1999, approved 2000
a23299 - transferring 160 a.f. from eastern Utah Valley; filed 1999, approved 1999
a23489 - transferring 116 a.f. from eastern Utah Valley; filed 1999, approved 1999
a23721 - transferring 345 a.f. from eastern Utah Valley; filed 1999, approved 2000
a26402 - transferring 496 a.f. from Salt Lake Valley; filed 2002, approved 2002
a28260 - transferring 127 a.f. from eastern Utah Valley; filed 2003, approved 2004
a28522 - transferring 496 a.f. from Salt Lake Valley; filed 2003, approved in 2004

The changes to the present policy, places our client in a unfair and disadvantaged position. On the one hand, he does not believe the evidence shows additional water is available for transfer into the valley. On the other hand, even though he attempted to take appropriate steps to protect his rights in the event water is available, the actions of your office have caused him to lose his position, as to both priority and preference, to move water into the valley to meet his present irrigation needs. Although the policy now allows such applications, he cannot simply turn in a change application on a moment's notice, as others have done, because he must now go out and find a new willing seller of transferrable rights at a fair price and then prepare and file a change application, which will be likely too late because of the larger filings that have already been made and will be made shortly. There is no guarantee that he can even find such a water right at this point, like the one that was previously available to him.

We therefore request that you reconsider the change of policy announced in your November 2, 2004 letter and close the valley again to transfers of water rights from areas outside of Cedar Valley. This is the more conservative and responsible, and least problematic, solution. In the alternative, we request that you reconsider the preference granted to developers via public supply entities and instead recognize a preference for Mr. Berry because of the Division's representations to Mr. Berry and his son that the valley was closed to transfers when in fact it was not.

Thank you for your consideration of this letter.

Yours Truly,
SMITH HARTVIGSEN



J. Craig Smith

cc: W. Glade Berry