



M A B E Y W R I G H T & J A M E S P L L C

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August 8, 2013

Utah Division of Water Rights
Teresa Wilhelmsen
1594 W. North Temple, Suite 220
P.O. Box 146300
Salt Lake City, UT 84114

Re: Comments by Highland City regarding Draft Cedar Valley and Northern Utah Valley Groundwater Management Plan dated July 9, 2013

Dear Ms. Wilhelmsen:

Highland City was happy to host the public meeting held July 9, 2013, and sincerely appreciates the efforts of the Division of Water Rights to manage the groundwater resources and water rights of northern Utah County. Like many cities located in this area, Highland City relies on groundwater as a critical municipal water supply. While groundwater management is at times challenging, effective management is needed to assist groundwater users in protecting a community resource and in planning for future water development and management at the local level.

At the public meeting held July 9, 2013, concerning the Draft Cedar Valley and Northern Utah Valley Groundwater Management Plan ("Draft Plan") the water users were invited to submit comments to the Draft Plan. Highland City submits the following comments not so much with regards to the specific policies of the Draft Plan, but asking that the Plan address how the groundwater management plan will be implemented once groundwater withdrawals in northern Utah Valley exceed safe yield.

The Draft Plan states at page 9 that "the safe yield for the portion of Area 55 discussed in this plan is estimated to be 145,000 acre-feet. . . . It is vital for the protection of the groundwater resource to ensure the safe yield is not exceeded. Inasmuch as potential withdrawals exceed safe yield . . . further measures will be implemented as necessary to assure safe yield is maintained." The Draft Plan states the actual withdrawals and discharges are 7,400 acre-feet less than the 145,000 acre-feet of estimated safe yield. The safe yield limit could be quickly approaching and "further measures" may soon become necessary. Highland City respectfully requests that the

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final Plan provide some guidance to water users on what those further measures will be so they can better manage their water rights and know which groundwater rights they should acquire in the future to best protect themselves from any water rights regulation cutbacks.

First, unlike the 1995 Utah/Goshen Valley Ground-Water Management Plan, the Draft Plan proposes no withdrawal limitations. The 1995 Plan provides:

- a. Northern Utah Valley - Annual withdrawals from wells are limited to an average of 160,000 acre-feet per year, using a 5-year moving average. Maximum withdrawals in any one year shall not exceed 200,000 acre-feet.

Does the state engineer anticipate there will be further measures which will set withdrawal limitations similar to the 1995 Plan?

Second, guidance is needed with respect to Section 73-5-15(4)(a)(iii) which provides:

If the state engineer determines that groundwater withdrawals in a groundwater basin exceed the safe yield, the state engineer shall regulate groundwater rights in that groundwater basin based on the priority date of the water rights under the groundwater management plan, unless a voluntary arrangement exists under Sections (4)(c) that requires a different distribution.

Which priority dates will be used to regulate the groundwater rights if the state engineer were to determine that groundwater withdrawals exceed the safe yield? It is assumed that water rights originally filed as groundwater rights in northern Utah Valley carry the priority date of the original appropriation. But many groundwater rights were not originally filed as groundwater rights in northern Utah Valley. These rights have both an original priority date for the underlying water right and a change application priority date for when the change application was filed to transfer the water rights to the northern Utah Valley aquifer.

For example, one of the first northern Utah Valley water rights listed in the Priority Schedule of Water Rights for Northern Utah Valley, which can be found at <http://www.waterrights.utah.gov/researchDB/NUVWRPriorityDDview.asp>, lists Water Right No. 55-7670. This right is for a well based on the underlying water right of American Fork Irrigation Company with an original priority date of 1851, but the date of

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the change application to groundwater is 1988. Would this water right be regulated under the groundwater management plan by the 1851 or 1988 priority date?

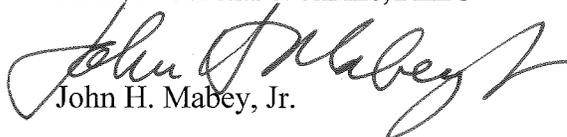
Similarly, there are thousands of acre-feet of other water rights moved by change application based on Utah Lake storage rights. Would the priorities of these groundwater rights based on Utah Lake storage water be regulated under the Plan using the priority date of the Utah Lake storage right or the date of the change application? The answers to these questions may depend on whether the groundwater rights under the plan are being regulated and managed conjunctively with surface sources, such as in response to a call by Utah Lake, or separately as only groundwater rights. Guidance is sought with respect to both scenarios.

Third, Section 73-3-15(3)(a)(iii) allows the state engineer in developing groundwater management plans to consider “the relationship between surface water and groundwater, including whether the groundwater should be managed in conjunction with hydrologically connected surface waters.” The existing Utah/Goshen Valley Groundwater Management Plan contains an entire section on the relationship between surface and groundwater, and includes as essential elements that the plan will “jointly manage the surface and ground water” and that “[t]he plan needs to allow for conjunctive use of surface and ground-water supplies.” The July 2013 Draft Plan recognizes that the groundwater systems contribute to surface sources such as drains, springs, Utah Lake and the Jordan River, but there is no statement whether the groundwater rights under the Draft Plan will be managed in conjunction with hydrologically connected surface waters, similar to what the existing plan now provides.

Clarification is sought whether water rights regulation under the Draft Plan will be in conjunction with surface rights or will be only the regulation of groundwater rights, and how the groundwater rights priorities will be determined and regulated in either case.

Thank you for consideration of these comments. Any written guidance in the final Plan to the questions raised in these comments will be of great assistance to groundwater users as they manage their water rights and plan for the future.

Sincerely,
MABEY WRIGHT & JAMES, PLLC



John H. Mabey, Jr.

cc: Highland City
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