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IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

SALT LAKE DEPARTMENT, STATE OF UTAH

IN THE MATTER OF THE GENERAL DETERMINATION OF THE RIGHTS TO THE USE OF ALL THE WATER, BOTH SURFACE AND UNDERGROUND, WITHIN THE DRAINAGE AREA OF UTAH LAKE AND JORDAN RIVER IN UTAH, SALT LAKE, DAVIS, SUMMIT, WASATCH, SANPETE AND JUAB COUNTIES;

STRAWBERRY WATER USERS ASSOCIATION, a Utah nonprofit corporation; and STRAWBERRY HIGH LINE CANAL COMPANY, a Utah nonprofit corporation,

Petitioners,

vs.

UNITED STATES OF AMERICA; DEPARTMENT OF THE INTERIOR; BUREAU OF RECLAMATION;

Respondents.

PETITIONERS' MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT RE: OBJECTORS' LACK OF STANDING

[Oral Argument Requested]

Case No. 360057298 (51-1)

Spanish Fork Canyon No. 1

Judge Kate Toomey

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Pursuant to URCP Rules 56(c) and 7(c), Petitioners Strawberry Water Users Association ("Association") and Strawberry High Line Canal Company ("High Line") submit this Memorandum in Support of their Motion for Summary Judgment re: Objectors' Lack of Standing.

INTRODUCTION

This case concerns the Utah State Engineer's Proposed Determination allowing for the recapture and reuse of transbasin "import" (a/k/a "foreign") water present in Utah Lake due to the operation of the Strawberry Valley Project ("SVP").[1] The SVP is a federal reclamation project built in the early 1900s to divert, store, and transport water from tributaries of the Strawberry River to the Wasatch Front. Import or foreign water is that water which would not be present in a given hydrologic basin but for the acts of man.

The State Engineer administers the waters of the State. By approval of the State Engineer, the two other federal reclamation projects associated with Utah Lake, namely the Central Utah Project ("CUP") and the Provo River Project ("PRP"), recapture and reuse the foreign waters developed by those Projects by "exchanging" those waters for water diverted and stored upstream of the Lake. In 1997, the Association and High Line applied to do much the same thing on those waters developed by the SVP.[2] This exchange application is still pending before the Utah State Engineer.

[1] The full title is the "Proposed Determination and Recommendation of the Rights to the Use of Return Flow from Water Imported from the Uinta Basin to Utah Valley by the Strawberry Valley Project." A copy of the Proposed Determination is attached as Ex. A.

[2] See Exchange Application E3760, filed December 12, 1997. A copy of E3760 is attached Ex. B.

In the wake of the Utah Supreme Court's 2006 *SWUA v U.S.* decision,[3] the State Engineer issued his Proposed Determination supporting the recapture and reuse of SVP foreign water return flows. The Proposed Determination cites to the administrative precedent on the PRP and CUP, requires sound annual hydrological study and accounting of return flow availability and, above all, requires compliance with Utah water law and State Engineer administration.

After notice of the Proposed Determination was mailed to more than 10,000 water right holders and was repeatedly advertised in nearly all local newspapers, only six parties appeared and together filed one joint objection to the Proposed Determination (the "Objection").[4] Four of these six parties have since withdrawn from the Objection,[5] leaving just two – South Farm, LLC ("South Farm") and Magna Water District ("Magna Water"), (collectively, the "Objectors"). The Objectors forecast two things: first, a "potential" impairment of their water rights if the State Engineer somehow miscalculates the available SVP return flows allowing for a withdrawal of more water from the Utah Lake basin than the SVP introduced that year, and second, future unknown administration costs borne by local water users and the State Engineer on possible future water right applications.

Summary judgment is now appropriate because these two remaining Objectors lack standing to contest the Proposed Determination for a number of reasons. First, under "traditional standing" tests, they have no "direct" or "particularized" interest in the Proposed Determination,

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[3] *Strawberry Water Users Ass'n v. United States Bureau of Reclamation*, 2006 UT 19, 133 P.3d 410.
[4] The six objectors were Payson City, Salem City, Spanish Fork City, Lake Bottom Irrigation Company, South Farm LLC, and Magna Water District.
[5] Per Objectors' counsel, the Withdrawal of Payson City, Salem City, Spanish Fork City, and Lake Bottom Irrigation Company Objections will soon be filed with the Court.

and cannot show a "reasonable probability" of a "distinct and palpable" harm to their water rights. The Objectors' water rights are exclusively from ground water wells located in western Salt Lake County, more than ten miles north of Utah Lake. By their own admissions and the testimony of the State Engineer, these water rights (1) do not include rights to surface water of Utah Lake, (2) are not administered by the State Engineer based on the levels of Utah Lake, (3) have never been reduced due to the amount of water in Utah Lake, and (4) would not even be impaired by a miscalculation of SVP return flows. In other words, the prospect of impairment to the Objectors' water rights is speculative at best, exists only in theory, and has never been realized in over 100 years of practice in managing Utah Lake.

Second, the Objectors do not have standing because others, such as those with storage rights in Utah Lake and/or the local sponsors of the CUP and PRP[6] who depend on Utah Lake levels for their Project water exchanges, have a far "greater interest in the outcome." Further, the Objectors' concerns are already raised by other parties in the ongoing administrative process on the Association/High Line exchange application. Moreover, the Utah State Engineer will see to it that the reuse of SVP import water return flows complies with Utah law and is administered under the 1992 Utah Lake Management Plan (amended December 1993). Therefore, excess water withdrawals from Utah Lake are of greater concern to the true stakeholders in this matter, including the State Engineer who is armed with broad statutory enforcement power.

[6] These local sponsors are the Central Utah Water Conservancy District ("CUWCD") and the Provo River Water Users Association ("PRWUA"), respectively.

Third, the Objectors impairment and administration concerns are, in reality, tied to the Association/High Line exchange application - not the Proposed Determination. The Objectors had every opportunity to address the exchange application through the administrative process before the Utah State Engineer. They did not do so. However, the application is still pending. Therefore, the Objectors, as "interested parties," may still file a late protest voicing their concerns to the State Engineer for inclusion in the administrative record without the burden of demonstrating standing before this Court. In other words, the Objectors may still have a forum if summary judgment is granted.

Fourth, the Objectors cannot demonstrate standing based on their ownership of shares of stock in water companies with rights in Utah Lake. As a matter of law, impairment claims on company water rights belong to the water companies themselves, not individual shareholders. Absent a derivative action, the two Objectors have no right to advance the claims of the water companies.

Discovery on the issue of standing is complete. There are no disputed material facts. As a matter of law, the Objectors lack standing to contest the Proposed Determination. Utah R. Civ. P. 56(c).

UNDISPUTED MATERIAL FACTS

Exchange Application E3760

1. Based on their 64,400 acre feet of transbasin import water and careful study of the return flow water available in the Utah Lake basin from the SVP, the Association and High Line

filed their exchange application (E3760) on December 12, 1997 with the Utah Division of Water Rights. (E3760, attached as Ex. B.)

2. Under E3760, the Association and High Line seek to divert and beneficially use 15,600 acre feet of SVP import water return flow from underground and surface sources in Southeast Utah County. (Id.)

3. Stating a host of concerns, including the surface levels of the Utah Lake, the Provo River Water Users Association, the Central Utah Water Conservancy District, and the United States Department of Interior, Bureau of Reclamation timely filed protests with the Utah State Engineer's office on E3760. (E3760 Protests, attached as Exs. C-E, respectively.)

4. Neither Objector protested E3760. (Id.; State Engineer files and records re: E3760.)

5. E3760 is still pending. (E3760; State Engineer files and records re: same.)

CUP and PRP Reuse of Project Import Water Return Flows

6. The Provo River Project recaptures and reuses 17,410 acre-feet of import waters present in the Utah Lake drainage from transbasin diversions off the Duchesne River and Weber River systems under approved application A12144 (Water Right No. 55-262). (PRWUA Protest of E3760, attached as Ex. C.)

7. The Central Utah Project recaptures and reuses those transbasin import waters present in Utah Lake by exchange as well under approved exchange application E399 (Water Right No. 55-8507) covering 35,000 acre-feet. (CUWCD Protest of E3760, attached as Ex. D.)

The Utah Lake Management Plan

8. In an effort to clarify the rights in Utah Lake and better manage water distribution in the Utah Lake drainage basin, the Utah State Engineer issued the Interim Water Distribution Plan for the Utah Lake Drainage Basin, dated November 1, 1992, as amended December 1993 ("Utah Lake Management Plan"). (Utah Lake Management Plan, attached as Ex. F.).

9. As indicated in the Utah Lake Management Plan "there are a number of major transbasin diversions into the Utah Lake drainage which need to be better regulated. Diversions between the basins or subbasins presently total over 300,000 acre feet annually." (Utah Lake Management Plan at 1.)

10. The Utah Lake Management Plan provides:

> There have been a number of requests made of the State Engineer in recent years to make decisions on matters which significantly effect water distribution in the Utah Lake drainage basin. After reviewing this matter, it appears that some direction is needed to better clarify the relationship between water rights in the basis; particularly between storage rights in Utah Lake and storage rights on upstream tributaries. The State Engineer believes that in order for the river commissioners to properly administer the numerous diversions, the extent of the rights and their relationship, one with another, needs to be fully understood by everyone involved.

(Id.)

11. The Utah Lake Management Plan further provides:

> Transbasin diversions (imported water) into the Utah Lake drainage will be administered in accordance with their individual water rights.

(Id. at 2.)

12. The Utah Lake Management Plan details the storage rights in Utah Lake as defined in the two relevant water rights judicial decrees (the 1901 Morse Decree and 1909 Booth Decree) and the Welby Jacob change applications. (Id. at 6-9.)

13. The Utah Lake Management Plan details the relationship of the primary and secondary storage rights in Utah Lake and the upstream reservoir storage. (Id. at 9-10.) In this regard, the Utah Lake Management Plan states:

> The State Engineer has studied the historical practices and the water supply conditions in the basin. From these studies, it appears that adequate safeguards can be developed to allow upstream reservoirs to divert and store water during most periods of time without impairing prior water rights. However, these safeguards generally require that predictions of the total water supply be made early in the year. Predicting whether the rights in Utah lake will receive their full annual diversion requirement is difficult early in the year. As the year progresses, and the water supply conditions become more apparent, these predictions can be made with a higher degree of confidence. In order to allow later priority upstream rights to store water, criteria are needed to determine when the rights in Utah Lake will likely be satisfied. Until the prior storage rights in Utah Lake are satisfied, water stored upstream will be held as system storage, subject to call by water rights in Utah Lake. Also provisions to replace or exchange water to Utah Lake during drought periods to allow storage upstream will be considered.
>
> Applying the following guidelines will insure with a high degree to certainty that the rights in Utah Lake will be satisfied. These guidelines dictate when upstream reservoirs can convert their system storage to what is referred to as priority storage.

(Id.)

14. The Utah Lake Management Plan sets forth detailed distribution guidelines "in order to maximize the beneficial use of the water and still protect prior rights." (Id.)

15. The Utah Lake Management Plan further addresses the requirement of "improved record keeping of import water and enhancing the communication between the five river commissioners who are affected by this [Utah Lake Management] Plan." (Id. at 13.)

16. The Utah Lake Management Plan further reads with respect to the administration of exchange applications the following:

> The administration of exchange applications is another important distribution issue. The basic purpose of exchange applications is to facilitate distribution. Under such an application a water user is required to measure the quantity of water released to a stream and then a like quantity can be diverted at another location. In regulating exchange applications, the State Engineer attempts to have releases and subsequent diversions occur as concurrently as possible to ensure that other water rights are not adversely effected. Some exchange applications involve waters from more than one distribution system. In such cases, the State Engineer needs to establish lines of authority and/or coordination between the river commissioners.
>
> The State Engineer has reviewed the water rights covering the transbasin diversions into and out of the basin. Nearly all of these water rights are certificated and the rights are generally well defined. Thus, the major issue regarding transbasin diversions is to implement better accounting procedures.

(Id. at 13-14.)

17. Further, the Utah Lake Management Plan requires that:

> In regulating exchange applications, they will be administered as closely to a concurrent release and diversion basis as is feasible. Under no circumstances will deficits or credits be allowed to be carried over from year to year.

(Id. at 14.)

18. In December 1993, the Utah Lake Management Plan was amended such that:

> 1. Reporting on transbasin imports, reservoir releases, and return flow credits.
>
> Each water user must report to the commissioner the water rights under which the water is being imported, released, or spilled and its destination. If more than one right is involved the water user must report the quantity or proportion to each.

> Reports must be made prior to or concurrent with imports, releases, or spills. Any changes in quantities, water rights, or destination must be reported within one day of such occurrences.
>
> Water users desiring to claim return flow credits in Utah Lake must submit and annual report to the State Engineer prior to November 1 stating the amount of credit claimed, the water rights involved, and the basis for the amount of credit claimed.

(Utah Lake Management Plan, Amendment No. 1.)

The Proposed Determination

19. The State Engineer issued the Proposed Determination on April 14, 2009. (Proposed Determination at 2, attached as Ex. A.)

20. The Proposed Determination specifically requires the use of SVP return flows in accordance with Utah water law, including the requirement that beneficial use is the basis, measure, and limit of the right and the return flows are subject to the laws governing the appropriation of water in Utah and subject to the administration by the State Engineer. (Id.)

21. In accordance with the Utah Lake Management Plan, the State Engineer has required annual documentation and quantification of the claims to return flow from reclamation projects in Utah Lake on an annual basis. This "administrative practice" is specifically referenced in the Proposed Determination. (Id. at 1.)

22. Further, the Proposed Determination requires that applicants establish that return flow is attributable to the imported water, and account for the quantity of imported water return flow in the Utah Lake drainage. (Id. at 1-2.)

23. Further, rights to return flow of imported SVP water is subject to demonstration of quantity and location of that return flow using engineering and hydrologic analysis acceptable

to the State Engineer, including an accounting of the quantity of the return flow each year. (Id. at 2.)

Objection to the Proposed Determination

24. The Objectors filed their Objection on July 13, 2009. (Objection.)

25. In sum, the Objection asserts that:

> Ultimately, adoption of the Proposed Determination would harm objectors and the other typical water right holders in the Jordan River drainage by creating a significant risk of impairment through miscalculation of return flows, by increasing the costs of protecting against such impairment, and by imposing an imaginary barrier to the full beneficial use of Utah's precious water resources.

(Objection at 10.)

The Objectors' Water Rights

26. In the Objection, Magna Water lists its water rights as 59-1226, 59-1228, 59-1285, 59-1286, 59-1288, 59-1289, 59-1295, 59-1679, 59-1709, 59-1833, 59-2504, 59-2506, 59-2507, 59-2509, 59-2510, and 59-2512. (Objection at 2.)

27. South Farm lists its water rights as 59-1197 and 59-5392. (Objection at 3.)

28. In discovery, both South Farm and Magna Water concede that "all information relating to the current place of use, current points of diversion, quantity of diversion allowed, and priority dates is publicly available [. . .] and on file with the Utah Division of Water Rights ("Division"), which are also available on line via the Division's website at http://www.waterrights.utah.gov//." (South Farm and Magna Water's Responses to Strawberry Water Users Association's First Set of Interrogatories, First Set of Requests for Admissions, and

First Set of Requests for Production of Documents ("Discovery Responses") at 4, relevant pages attached as Ex. G.)

29. According to the Utah Division of Water Right records, Magna Water and South Farm's water rights are limited to groundwater wells located in the west quadrants of the Salt Lake Valley. (Declaration of Jim Riley, P.E. and maps ("Riley Dec."), attached as Ex. H; Affidavit of Kent L. Jones, P.E., Utah State Engineer and exhibits ("Jones Aff."), attached as Ex. I.)

30. Magna Water and South Farm's water rights do not include surface water diversions from either Utah Lake or the Jordan River. (Id.)

31. Magna Water and South Farm's ground water wells are located more than ten miles from Utah Lake and separated by Traverse Ridge. (Id.)

32. Magna Water and South Farm's ground water wells are recharged from the east slope of the Oquirrh Mountains. (Id.)

33. Magna Water and South Farm's ground water wells are up-gradient from the Jordan River; therefore, a deficit in Jordan River flow would not cause impairment of the wells. (Jones Aff. ¶¶ 17, 19.)

34. Neither South Farm nor Magna Water are "aware of any instance in which diversion of water under any of the foregoing water rights has been reduced by the Utah State Engineer based on the level of Utah Lake." (Discovery Responses, Answers to Interrogatory No. 2, relevant pages, attached as Ex. G.)

35. The South Farm and Magna Water rights "are not known to be administered based on the priority dates of surface water rights in Utah Lake." (Discovery Responses, Answers to Interrogatory No. 3.)

36. None of the South Farm and Magna Water rights "have a direct call on Utah Lake surface water, or a call on the surface waters of a tributary to Utah Lake or surface waters of the Jordan River." (Discovery Responses, Answers to Interrogatory No. 4.)

37. Both South Farm and Magna Water admit that none of their water rights have a direct call on surface water directly from Utah Lake, that none of the water rights have ever been administered based on the priority of Utah Lake surface water rights, and that none of their water rights have ever been reduced based on the level of surface water in Utah Lake. (Discovery Responses, Responses to Requests for Admission Nos. 1-3.)

SUMMARY JUDGMENT AND BURDEN OF PROOF STANDARDS

Summary judgment is appropriate when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Utah R. Civ. P. 56(c); *Cedar Mountain Envtl., Inc. v. Tooele County*, 2009 UT 48, ¶7, 214 P.3d 95 (citation omitted).

In *Brown v. Olds*, 2010 UT 14, ¶¶12, 15, -- P.3d. -- (March 9, 2010), the Utah Supreme Court took the "opportunity to clarify both (1) the interaction between challenges to standing and the differing burdens of proof applicable at different stages of litigation, and (2) the substantive requirements for standing in cases based on allegations of future injury." 2010 UT 14, ¶11. Quoting the United States Supreme Court, the Court in *Brown* held that, "[i]n response to a summary judgment motion . . . the plaintiff can no longer rest on such mere allegations, but must

set forth by affidavit or other evidence specific facts [establishing the elements of standing], which for purposes of the summary judgment motion will be taken as true." 2010 UT 14, ¶14 (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992)) (citations and internal quotation marks omitted). As discovery on the standing issue has closed[7] and the Association and High Line have referenced "the pleadings, [], answers to interrogatories, and admissions on file, together with the affidavits," the burden now shifts to the Objectors to point to facts sufficient to establish standing. *Orvis v. Johnson*, 2008 UT 2, ¶18, 177 P.3d 600, 604; *see also*, *Borghetti v. System & Computer Tech, Inc.*, 2008 UT 77, ¶14, 199 P.3d 907, 911-12, *quoting*, *Eagar v. Burrows*, 2008 UT 42, ¶15, 191 P.3d 9, 11 (additional cite omitted).[8]

ARGUMENT

POINT I. THE OBJECTORS LACK STANDING TO CHALLENGE THE PROPOSED DETERMINATION.

This case should be dismissed because the Objectors do not have standing. *See, e.g.*, *Brown*, 2010 UT 14, ¶¶12, 15 (standing is a jurisdictional requirement); *Washington County Water Cons. Dist. v. Morgan*, 2003 UT 58, n.2, 82 P.3d 1125, 1128 (same) (citations omitted).

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[7] See Court's Scheduling Order setting discovery relating to standing deadline for February 15, 2010. This date was extended by agreement of the parties to March 10, 2010.

[8] Typically, early in a case, a party is not required to establish harm to meet the requirement of standing. *Sierra Club v. Utah Air Quality Brd.*, 2006 UT 74, ¶28 n. 3, ¶32, 148 P.3d 960. Some cases require fact-finding. In *Washington County Water Cons. Dist. v. Morgan*, 2003 UT 58, ¶¶2, 19, 82 P.3d 1125, the court required the plaintiff to establish an adverse impact because the "plaintiff's interest in the dispute depended upon whether [its] water originated from the same source as the defendant's." *See Sierra Club*, 2006 UT 74, ¶28, n. 3 (discussing *Washington County*). Accordingly, the court required that plaintiff show a measurable connection to defendant's water source. In this sense, standing to raise the objection is unavoidably mixed with the merits of the objection, which center on what might happen should the State Engineer miscalculate return flow volume. Here, no *actual* injury is pled, and such injury is part of Objectors prima facie case at trial. *See, e.g., Campbell, Maack & Sessions v. DeBry*, 2001 UT App 397, 38 P.3d 984 (properly supported summary judgment motion shifted burden to plaintiff to establish damages).

Standing is a question of law. *See, e.g., Haymond v. Bonneville Billing & Collections, Inc.*, 2004 UT 27, ¶5, 89 P.3d 171, 173. Although not "plaintiffs" in the ordinary sense, Objectors are neverthess required to establish standing to raise their objection, which functions essentially as a claim for declaratory relief in the form of a rejected Proposed Determination. *See, e.g., Cedar Mountain*, 2009 UT 48, ¶13 (standing is required for declaratory relief); *Brown*, 2010 UT 14, ¶14. The Objectors have not met this requirement.

Standing requires (1) a reasonable probability of a "distinct and palpable" "particularized injury" that is fairly traceable to the Proposed Determination; or (2) that the case raises "an important public issue" and "no other entity has a greater interest in the outcome" and that the issues are unlikely to be raised at all unless the Objectors have standing; or (3) that this case raises an issue that is so unique and of such great importance that it should be decided in furtherance of the public interest. *Brown*, 2010 UT 14, ¶¶19-20; *Washington County*, 2003 UT 58, ¶¶17, 26 (citations omitted); *Orlob v. Wasatch Medical Mgmnt.*, 2005 UT App 430, ¶15, 124 P.3d 269, 273 (citations omitted). As detailed below, the Objectors fail on each point.

A. It is not "Reasonably Probable" that the Objectors Will Suffer a "Distinct and Palpable" "Particularized Injury" Traceable to the Proposed Determination.

The Objection is founded on speculative concerns about future "potential impairment" of Objectors' water rights if the State Engineer somehow makes an error in the calculation and administration of SVP annual return flows. (Objection at 8-9.) Objectors have not even claimed that it is "reasonably probable" that the State Engineer would make such an error, let alone that

such an error would actually give rise to a "distinct and palpable" "particularized injury" to the Objectors. (Objection.)

At the outset, the Objectors must first produce "empirical and measurable evidence of a direct connection between the sources from which the parties have rights to draw water, [. . .]" to advance a claim of prospective impairment. *Washington County*, 2003 UT 58, ¶25 (without a hydrologic connection to contested diversion, plaintiff has no standing) (emphasis added); *Adams v. Portage Irr. Reservoir & Power Co.*, 72 P.2d 648 (Utah 1937) (requiring a showing of diminished water quality or quantity to bring impairment action). The undisputed facts, informed by their own admissions, demonstrate that Objectors do not meet this burden.

The Objectors' water rights are for the diversion and use of ground water from wells in the southwest and northwest quadrants of the Salt Lake Valley. (Facts ¶ 29.) These wells are more than ten miles from Utah Lake and separated from the Lake by Traverse Ridge. (Facts ¶ 31.) While these wells may have some hydrologic connection to sub-surface Utah Lake water, they are recharged by the sub-surface flow from the east slope of the Oquirrh Mountains. (Facts ¶ 32.) More importantly, the Objectors' rights to pump water from the wells have no relationship to the surface levels of Utah Lake. (Facts ¶¶ 33-37.)

Specifically, by the Objectors' own admissions, their water rights have no "direct call on surface water directly from Utah Lake," "have never been administered based on the priority of Utah Lake surface water rights," "have never been reduced based on the level of surface water in Utah Lake." (Facts ¶ 37.) Further, as the State Engineer states, because the Objectors' wells sit

"a significant distance and up-gradient from the Jordan River," a change in Jordan River flows would not impair the South Farm or Magna wells. (Facts ¶ 33.)

Lastly, as a matter of law, the Objectors' water rights, like all other native rights in the Utah Lake and Jordan River systems, are not satisfied directly or indirectly by imported water that would not be present but for the acts of man. Therefore, there is no connection between the reuse of SVP return flows and Objectors' Salt Lake County ground water rights. (Id.) Moreover, a connection alone is insufficient. Objectors must still demonstrate a "reasonably probable" injury. *Brown*, 2010 UT 14, ¶19. A "a mere possibility" is not enough. (*Id.*) The Objectors claim the State Engineer may at some future point miscalculate SVP return flows and allow for excessive groundwater diversions in southeast Utah County leading to a "potential adverse impact in the Jordan River Drainage." (Objection at 9.) Beyond its basis in speculation, Objectors raise this concern apparently unaware that the State Engineer: 1) has never administered Salt Lake County groundwater rights in priority based on Jordan River flows, 2) has performed extensive hydrologic modeling of the return flows in Utah Lake, 3) requires annualized reporting and periodic adjustments for return flow availability and reuse for the PRP and CUP under the Utah Lake Management Plan and would require the same of SVP return flows under the Plan, the Proposed Determination, and as a condition of approval of E3760, and 4) has a statutory obligation to properly administer and protect the hydrological conditions in the Utah Lake basin and has the Utah Lake Management Plan and two century-old Court Decrees (1909 Booth and 1901 Morse Decrees) as guides. (Facts ¶¶ 8-18; Utah Lake Management Plan; Proposed Determination.)

The Division of Water Rights is not a novice. It has been administering the waters of the State, including Utah Lake, for nearly 150 years and is charged by statute not only to administer the waters of the State, but to enforce criminally and civilly water right interference and impairment. *See* Utah Code Ann. §§ 73-2-1 and 73-2-25 through 28. The prospect of State Engineer miscalculation and any resultant water right impairment is remote at best. Moreover, in the event either occurs, both are capable of annualized, if not daily, correction as required by the Utah Lake Management Plan and the Proposed Determination. (Facts ¶¶ 13, 15-18, 21-23.) By their own admissions, the fears the Objectors present have never been realized. Such speculative injury is insufficient to confer standing. *See Brown*, 2010 UT 14, ¶19.

B. Other Entities Hold an "Interest in the Outcome" Greater than the Objectors and Either Have Raised or Will Raise Similar Concerns.

Others, including the State Engineer, the local sponsors of the CUP and the PRP, and those canal companies with primary and secondary water storage rights in Utah Lake have direct interests in the surface levels of the Lake. These entities carefully watch the levels of Utah Lake as they are critical to their operations and responsibilities to their shareholders, petitioners, and the public.

A number of factors protect even the Objectors' speculative concerns. First, the State Engineer is responsible for the "measurement, appropriation, apportionment, and distribution" of Utah Lake waters. Utah Code Ann. § 73-2-1. The State Engineer drafted and implements the Utah Lake Management Plan. He monitors the levels of Utah Lake and has enforcement authority over it. He determines available return flows from federal reclamation project operations. He can impose conditions on his approval of exchange applications. *See* Utah Code

Ann. § 73-3-20(3)(c). It is also the State Engineer that addresses, enforces, and remedies impairment to other Utah Lake water right holders under a host of statutory commands and enforcement authority. *See* Utah Code Ann. §§ 73-2-1, and 73-2-25 through 28.

Second, the local sponsors of the CUP and the PRP operate these federal reclamation projects in part based on the levels of Utah Lake. (Facts ¶¶ 6-7, 9.) In general, Lake levels, as directed by the Utah Lake Management Plan and under the Projects' water rights applications, determine how much water from year to year the local sponsors can hold in upstream reservoir storage and how much must be released to Utah Lake. (Facts ¶¶ 9-18.) Upstream storage is critical to the operation of these Projects and to those irrigators and municipalities these Projects serve. (Facts ¶¶ 6-7; PRWUA and CUWCD Protests to E3760, attached as Exs. C and D.) As such, to the extent the Proposed Determination and the recapture and reuse of SVP imported water under E3760 affects Utah Lake levels, CUWCD and PRWUA advance these concerns. Both have filed protests with the State Engineer on exchange application E3760. (Facts ¶ 3.)

Third, there are a limited number of entities with early priority primary and secondary water storage rights in Utah Lake.[9] As such, these entities monitor Utah Lake levels. As most of these irrigation/canal companies' Utah Lake surface water is fully diverted at or before the Turner Dam (six miles downstream from the Lake), reduction in the levels of the Lake may present impairment concerns for these entities. (Utah Lake Management Plan at 6-11, 13.) Without a doubt, should concerns over State Engineer return flow calculations arise or should the

[9] The entities listed in the Utah Lake Management Plan are: Utah and Salt Lake Canal Company, South Jordan Canal Company, East Jordan Irrigation Company, North Jordan Irrigation Company, Kennecott Copper, Salt Lake City, Salt Lake County Water Conservancy Districts (now known as, Jordan Valley Water Conservancy District), CUWCD, Utah Lake Distributing Company, Draper Irrigation Company & Sandy Canal Company. See Utah Lake Management Plan, attached as Ex. F.

Lake levels become materially affected under the Proposed Determination, these entities, not the Objectors, may well experience the "direct" impairment of rights required by *Washington County* as a condition for standing. 2003 UT 58, ¶25

Therefore, not only do the Objectors not have a direct stake in the Proposed Determination, there are a host of other entities, including the State Engineer, with far greater interests in the outcome of this matter.

C. This Matter is not so Unique or of such Great Public Importance that the Objectors Should be Exempt from Ordinary Standing Requirements.

This matter concerns the operation of the SVP - one of three federal reclamation projects associated with Utah Lake. The other two projects – the PRP and the CUP - already reuse foreign water return flows by exchange from Utah Lake under their approved applications, under the Utah Lake Management Plan, and under the State Engineer's annual reporting and forecast requirements. (Facts ¶¶ 6-7, 13, 16-18.) The process anticipated under E3760 is not unique to the State Engineer or Utah Lake water right holders, and is supported by decades of administrative precedent. (Facts ¶¶ 9-10, 21.) This precedent is relied on in the Proposed Determination. (Facts ¶ 21.) While the reuse of foreign water return flows is critical to the operation of these reclamation projects and the irrigators and municipalities they serve, the impairment and accounting concerns raised by the Objectors are not. The Proposed Determination in conjunction with E3760 enables full use of the SVP water supply. Thus there is no special condition for conferring special standing on these Objectors.

Finally, Objectors raise vague and remote concerns with respect to potential additional costs for local water right administration. (Objection at 9-10.) Again, the Objectors are

seemingly unaware that under the Utah Lake Management Plan and the Proposed Determination all reporting and associated costs related to reuse of foreign water return flows will be borne by the Association and High Line. (See Utah Lake Management Plan, Amendment No. 1; Proposed Determination at 2.) The prospect of future additional public costs to all water users is a non-issue. As water use patterns change and SVP annual water yields vary, such issues will be handled just as they are with the PRP and CUP – namely, between the local project sponsor and the State Engineer's office. (Id.) Hence, those potential future public costs, if any, are remote, undefined, and negligible. They do not give rise to Objectors' standing. *See Jenkins v. Swan*, 675 P.2d 1145, 1148-1149 (Utah 1983) (generalized interest shared with public does not confer private standing to sue).

POINT II. THE OBJECTORS' CONCERNS SHOULD HAVE BEEN PURSUED BEFORE THE STATE ENGINEER IN THE ADMINISTRATIVE PROCESS.

The Objectors' stated concerns of impairment, miscalculation of return flows, and increased administrative costs are based on the Association and High Line's proposed recapture and reuse of SVP return flows in southeast Utah County. (Objection 8-11.) Approval of exchange application E3760, and not the Proposed Determination, would ultimately allow the Association and High Line to reuse SVP import water return flows. *See* Utah Code Ann. § 73-3-20. The Proposed Determination merely approves a broad and established principle favoring the recapture and reuse of return flows. (Proposed Determination.) It does not approve any specific effort to do so. (Id.)

As part of the administrative process associated with this (and most other) applications, the State Engineer advertised the application and received protests by a host of parties with interests in Utah Lake, including CUWCD, PRWUA, and the United States Bureau of Reclamation. (Facts ¶ 3.) These protestants raised several concerns surrounding E3760 – some of which overlap with those of the Objectors. (Id.) It was at that point in the administrative process that Objectors' concerns would have rightfully been asserted and heard. In fact, impairment of existing rights and public welfare concerns are express statutory criteria for State Engineer consideration. *See* Utah Code Ann. § 73-3-8. The Objectors did not protest. (Facts ¶ 4.) Instead, they now seek to advance issues properly reserved for protests to specific applications. (Objection.) Nevertheless, with E3760 still pending, the administrative process remains open to the Objectors. Although, a protest of E3760 would now be deemed "late," it would be made part of the administrative record for purposes of State Engineer decision making. *See Taylor-West Weber Water Imp. Dist. v. Olds*, 2009 UT 86, ¶7, 224 P.3d 709 (late protest may be filed and protestant may seek to participate in de novo review as a Rule 24 intervenor).

POINT III. IMPAIRMENT CLAIMS BASED ON SHARE OWNERSHIP IN WATER COMPANIES DOES NOT GIVE RISE TO STANDING BECAUSE THOSE CLAIMS BELONG TO THE COMPANIES THEMSELVES.

After admitting that their water rights include only Salt Lake County groundwater diversions that are not administered based on Utah Lake levels and have never been reduced based on the amount of surface water in the Lake (Facts ¶ 37), the Objectors tie their impairment claim to the shares of stock each owns in local irrigation companies. (Objectors' Discovery Responses, attached as Ex. G.) South Farm states it owns 65.5 shares in the East Jordan

Irrigation Company, 41.5 shares in the South Jordan Canal Company, 115 shares in the Utah Lake Distributing Company, and 949 shares in the Welby Jacob Water Users Company. (Id.) More remotely, South Farm states that its "affiliates" own shares in Taylorsville Ditch Company, North Jordan Irrigation Company, and Welby Jacob Water Users Company. (Id.) Magna Water District states its owns "approximately" 170 shares in the Utah and Salt Lake Canal Company. (Id.)

Under Utah law, these shares are not deemed appurtenances to land and and may be transferred under Title 70A, Chapter 8, UCC – Investment Securities. *See* Utah Code Ann. §§ 73-1-11(4) and 73-1-10(2). Further, the shares represent only a "right to receive a proportionate share of the water distributed by [the companies] out of their system in the same manner as all other shareholders." *East Jordan Irr. Co. v. Morgan*, 860 P.2d 310, 314 (Utah 1993). The company holds title to the water rights, and the shareholders receive their pro-rata amount based on water available under such rights. *Id.* at 310-311. As such, collective and orderly management of a company's affairs and water rights is crucial to corporate governance and protection of company assets. *Id.* at 315 ("We fear the havoc that would invariably ensue if every shareholder in the corporation were to attempt to govern the corporate affairs as they relate to the appropriation of waters."); *see also, SWUA v. U.S.*, 2006 UT 19, ¶36 (contractual arrangement between shareholder and company whereby company manages affairs in the interest of shareholders as a whole) (citing *East Jordan*).

Therefore, the Objectors' impairment claims based on the water rights of the companies in which they own shares must be brought by the companies themselves. *Id; see also* 12B

Fletcher Cyc. Corp. § 5911 ("If the wrong is primarily against the corporation, the redress for it must be sought by the corporation, except where a derivative action by a shareholder is allowable, and a shareholder cannot sue as an individual."); *Stocks v. United States Fidelity and Guaranty Co.*, 2000 UT App 139, ¶¶11-14, 3 P.3d 722, 724 (absent distinct injury separate and apart from status as shareholder, cause of action belongs to corporation and must be brought in its name); *Warner v. DMG Color, Inc.*, 2000 UT 102, ¶¶12-13, 20 P.3d 868, 872 (same).

As none of the companies in which Objectors own shares have filed objections to the Proposed Determination, and Objectors have not presented requisite Utah R. Civ. P. 23.1 evidence supporting a derivative claim of any sort, they lack standing to advance their "potential" impairment claims based on share ownership.

Lastly, it should be noted that the water companies in which the Objectors hold shares have primary and secondary storage rights in Utah Lake expressly referenced, described, and protected in the Utah Lake Management Plan.[10] These water storage rights are confirmed by judicial decree, are of very early priority dates (1870 and 1908),[11] and are entitled to all protections from impairment and, in nearly all circumstances, from drought. (Utah Lake Management Plan at 8-13.) Therefore, assuming that the Objectors could advance company objections, the prospect of impairment due to State Engineer "miscalculation" at no point becomes even "merely possible" – let alone rising to the "reasonable probability" threshold required in *Brown*. 2010 UT 14, ¶¶19-20.

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[10] See n.11, supra.

[11] Water right priority is a fundamental tenet of Utah water law. *See* Utah Code Ann. § 73-3-1 ("the one first in time shall be first in rights").

CONCLUSION

Based on the foregoing, the Association and High Line respectfully request the Court grant their Motion for Summary Judgment re: Objectors' Lack of Standing.

DATED this 31st day of March, 2010.

SNOW, CHRISTENSEN & MARTINEAU

By: _____

Shawn E. Draney
Keith A. Call
Scott H. Martin
D. Jason Hawkins
Attorneys for Petitioners Strawberry Water Users Association

MABEY, WRIGHT & JAMES

By: _____

John H. Mabey, Jr.
David C. Wright
Attorneys for Petitioners Strawberry High Line Canal Company

CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of March, 2010, I mailed, postage prepaid, a true and correct copy of the foregoing **PETITIONERS' MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT RE: OBJECTORS' STANDING** to the following:

Thomas K. Snodgrass
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and Natural Resources Division
1961 Stout Street, 8th Floor
Denver, CO 80294

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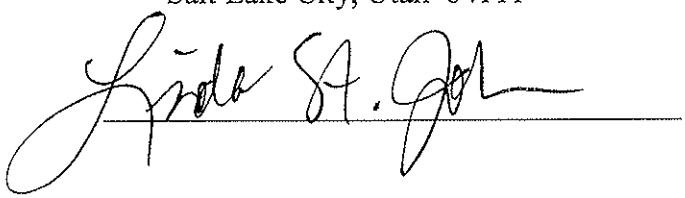

16038-1 1374790

EXHIBIT A

JON M. HUNTSMAN, JR.
Governor
GARY R. HERBERT
Lieutenant Governor

State of Utah
DEPARTMENT OF NATURAL RESOURCES
Division of Water Rights

MICHAEL R. STYLER
Executive Director

KENT L. JONES
State Engineer/Division Director

TO WATER USERS IN THE UTAH LAKE - JORDAN RIVER GENERAL ADJUDICATION AREA WHO HAVE FILED A STATEMENT OF INTEREST IN THE MATTER OF THE RIGHTS TO THE USE OF RETURN FLOW FROM WATER IMPORTED FROM THE UINTA BASIN TO UTAH VALLEY BY THE STRAWBERRY VALLEY PROJECT

In accordance with Chapter 73-4, Utah Code Annotated and the Order of the Third Judicial District Court dated October 16, 2007, the Utah State Engineer has prepared the State Engineer's Proposed Determination and Recommendation of the Rights to the Use of Return Flow from Water Imported from the Uinta Basin to Utah Valley by the Strawberry Valley Project.

In response to an earlier notice that was mailed to you and published in local newspapers, you filed a Statement of Interest form requesting further notice in this action. This Proposed Determination and Recommendation is delivered to you electronically or by mail pursuant to your Statement of Interest.

The Proposed Determination and Recommendation contains the State Engineer's recommendation to the court concerning the rights to the use of the return flow from the imported Strawberry Valley Project water. It also includes a Notice to Water Users that explains the requirements for filing an objection and gives directions for obtaining additional copies of the Proposed Determination and Recommendation. It is your responsibility to review the Proposed Determination and Recommendation. If you are dissatisfied with the Proposed Determination and Recommendation, you may file an objection in accordance with the instructions in the Notice to Water Users.

If you have questions regarding this Proposed Determination and Recommendation you may call Teresa Wilhelmsen of the Division of Water Rights at (801) 537-3119 or L. Ward Wagstaff of the Utah Attorney General's Office at (801) 538-7227.

Kent L. Jones

KENT L. JONES, P.E.
State Engineer
P.O. Box 146300
1594 West North Temple
Salt Lake city, Utah 84114-6300

IN THE THIRD JUDICIAL DISTRICT COURT,
SALT LAKE COUNTY, STATE OF UTAH

IN THE MATTER OF THE GENERAL DETERMINATION OF THE RIGHTS TO THE USE OF ALL THE WATER, BOTH SURFACE AND UNDERGROUND, WITHIN THE DRAINAGE AREA OF UTAH LAKE AND JORDAN RIVER IN UTAH, SALT LAKE, DAVIS, SUMMIT, WASATCH, SANPETE, AND JUAB COUNTIES IN UTAH

PROPOSED DETERMINATION AND RECOMMENDATION OF THE RIGHTS TO THE USE OF RETURN FLOW FROM WATER IMPORTED FROM THE UINTA BASIN TO UTAH VALLEY BY THE STRAWBERRY VALLEY PROJECT

UTAH COUNTY DIVISION
AREA NO. 51

IN THE THIRD JUDICIAL DISTRICT COURT, SALT LAKE COUNTY
STATE OF UTAH

IN THE MATTER OF THE GENERAL DETERMINATION OF THE RIGHTS TO THE USE OF ALL THE WATER, BOTH SURFACE AND UNDERGROUND, WITHIN THE DRAINAGE AREA OF UTAH LAKE AND JORDAN RIVER IN UTAH, SALT LAKE, DAVIS, SUMMIT, WASATCH, SANPETE, AND JUAB COUNTIES IN UTAH

UTAH COUNTY DIVISION (Area 51)

Salt Lake County Civil No. 360057298 (51-1-1)

NOTICE TO WATER USERS:

This is your copy of the State Engineer's Proposed Determination and Recommendation of the Rights to the Use of Return Flow from Water Imported from the Uinta Basin to Utah Valley by the Strawberry Valley Project. The Division of Water Rights has prepared this Proposed Determination and Recommendation as directed by the Third Judicial District Court in Salt Lake County, Utah. Additional copies are available on the Division of Water Rights web site at www.waterrights.utah.gov/strawberryreturnflow.

You are hereby notified that under section 73-4-11 of the Utah Code, any person who claims a water right that might be affected by the Strawberry Valley Project return flow who is dissatisfied with the Proposed Determination and Recommendation may file an objection. An objection must be in writing and duly verified on oath. The claimant must file the objection in the Third Judicial District Court in Salt Lake City, 450 South State Street, P.O. Box 1860, Salt Lake City, Utah, 84114, within ninety (90) days after being served with a copy of the Proposed Determination and Recommendation. Service is effective on the date the Proposed Determination and Recommendation is mailed, hand delivered, or delivered by electronic means to the address provided by the claimant. The claimant should also file a copy of the objection with the Division of Water Rights at the address below.

THE INITIAL HEARING ON THE PROPOSED DETERMINATION AND OBJECTIONS WILL BE HELD **AUGUST 21, 2009, 9:00 AM**, AT THE THIRD JUDICIAL DISTRICT COURT IN SALT LAKE CITY, UTAH.

Norman K. Johnson
L. Ward Wagstaff
Michael M. Quealy
Assistant Attorneys General
MARK L. SHURTLEFF
Utah Attorney General
Attorneys for the Utah State Engineer

Kent L. Jones, P.E.
Utah State Engineer
DIVISION OF WATER RIGHTS
1594 West North Temple, Suite 220
P.O. Box 146300
Salt Lake City, UT 84114-6300
www.waterrights.utah.gov

STATE ENGINEER'S PROPOSED DETERMINATION AND RECOMMENDATION OF THE RIGHTS TO THE USE OF RETURN FLOW FROM WATER IMPORTED FROM THE UINTA BASIN TO UTAH VALLEY BY THE STRAWBERRY VALLEY PROJECT

INTRODUCTION

The Strawberry Valley Project (SVP) is a U.S. Bureau of Reclamation project that collects and stores water from the Strawberry River and its tributaries in the Uinta Basin in Utah under Water Rights Nos. 43-3001, 43-3102, 43-1259, and 51-2259. Water Rights Nos. 43-3001, 43-3102, and 43-1259 are in the name of the United States in the amounts of 100,000 acre-feet, 60,000 acre-feet, and 6,779 acre-feet respectively. Underground Water Right No. 51-2259 is in the name of the Strawberry Water Users Association in the amount of 7.0 cubic feet per second. With the exception of Water Right 51-2259, water diverted under the SVP water rights is released from storage in the Uinta Basin and conveyed through tunnels, canals, and natural streams into Utah Valley in the Utah Lake - Jordan River drainage system, where it is used for SVP purposes. After such use, return flows from SVP diversions eventually commingle with water in Utah Lake.

Consistent with the Utah Supreme Court's instructions in *Strawberry Water Users Association v. Bureau of Reclamation*, 2006 UT 19, the Third Judicial District Court will address the following issue pursuant to Utah Code Ann. § 73-4-24 in this general adjudication of water rights: Whether the SVP is entitled to a credit under Utah law allowing subsequent use, either directly or by exchange, of the identifiable return flow from the additional water imported from the Uinta Basin under the SVP water rights after the return flows have commingled with the water naturally tributary to or occurring in Utah Lake. In an order dated October 16, 2007, the Third Judicial District Court directed the State Engineer to prepare a proposed determination and recommendation to the court as part of the Utah Lake and Jordan River General Adjudication. This is the State Engineer's Proposed Determination and Recommendation as to whether the SVP is entitled to use, directly or by exchange, the return flow from the imported SVP water. The underlying SVP water rights will be formally adjudicated as part of the regular general adjudication procedure at a later date.

UTAH LAW

Utah law defines the right to use return flow in general. It encourages the efficient use of water and discourages waste. An appropriator may recapture and use return flow from water applied to the appropriator's land if the return flow has not left the land or control of the appropriator and if the appropriator has an authorized beneficial use for the water. If the water leaves the approved place of use and commingles with naturally occurring waters, the appropriator loses the right of recapture.

Imported water is not naturally tributary to the import basin and the importer has the right at any time to cease importation. Except for the importation, neither the imported water nor its return flow would be present in the import basin. Utah law holds that non-tributary water and its return flow are distinct from tributary water and are not a source of water for appropriations of tributary water, even if the non-tributary water is commingled in natural streams with tributary water. State Engineer administrative practice has allowed an importer to claim return flow from imported water and to use the water by exchange where the return flow can be documented and quantified and where the exercise of that exchange does not impair other water rights. Water projects have been designed in reliance on the right to claim and exchange return flows from imported water.

An analogous situation to the recovery of imported water return flow is groundwater recharge and recovery, which is governed by Utah statutes. For example, among the statutory requirements for groundwater recharge and recovery are that the use of the recovered groundwater must be consistent with an approved water right application, the recharge and recovery water is accounted for separately from naturally occurring groundwater, a recovery permit may be issued only to the holder of the recharge permit or its assigns, and ongoing monitoring and accounting reports are required.

RETURN FLOW FROM SVP IMPORTED WATER

The imported SVP water is not naturally tributary to the Utah Lake - Jordan River drainage and would not be present therein but for its importation. The SVP is the appropriator and importer of the SVP water, and therefore retains the right to put that water to beneficial use, including the portion of the return flow that can be quantified as additional, non-tributary water in the Utah Lake - Jordan River drainage. While return flow from sources within the Utah Lake - Jordan River drainage returns to the stream system to which it is naturally tributary, the imported SVP water does not return to its tributary stream system in the Uinta Basin. If the SVP can account for the quantity and location of the return flow and obtain approval of the necessary water right applications, the SVP may be entitled to use the return flow water directly or by exchange in accordance with the following conditions:

1. The imported water is public water subject to Utah law, including the appropriation procedure and the requirement that beneficial use is the basis, measure, and limit of the right to the use of the water. Return flow from imported water is subject to the laws governing the appropriation of water in Utah and is subject to administration by the State Engineer.

2. The SVP bears the burden of (1) proving that the return flow is attributable to the imported water, and (2) accounting for the quantity of imported water return flow in the Utah Lake - Jordan River drainage. The SVP may assert its rights to the return flow of the imported SVP water only to the extent it can demonstrate the quantity and location of that return flow using engineering and hydrologic analysis acceptable to the State Engineer, including an accounting of the quantity of the return flow each year.

3. All aspects of the use of the return flow must be covered by an approved water right application. If the diversion, beneficial use, place of use, and other aspects of the use of the return flow are allowed by the underlying water rights, the SVP need not file a further water right application. If any of those aspects are not already covered by the underlying water rights, the SVP must obtain an approved water right application for the proposed use. An application to use the SVP water by exchange must fulfill the requirements of Utah law governing such applications.

4. The SVP return flow is a separate source within the Utah Lake - Jordan River drainage and has increased the supply of water in the import basin. The SVP's right to recover and use the return flow from the imported SVP water is superior to any rights acquired by water users who may have otherwise benefitted from the increased water supply. The imported water is subject to distribution and priority calls in the Uinta Basin, where it is diverted, but it is not subject to priority calls in the Utah Lake - Jordan River drainage, where it is used. Tributary water that is used in exchange for SVP return flow may be subject to priority calls in the Utah Lake - Jordan River drainage.

5. The underlying SVP water rights are subject to the requirements and limits of beneficial use under Utah law. As long as the SVP continues to import and use water based on its underlying water rights, it retains the right to use the SVP return flow directly or indirectly by exchange.

This Proposed Determination and Recommendation does not cover every circumstance or question that might arise in the administration of the SVP return flows. The fundamental legal principle is that the SVP, as appropriator and importer of the SVP water, retains the right to use the SVP return flow directly or by exchange, even after the return flow has commingled with water occurring naturally in the Utah Lake - Jordan River drainage. As other issues arise in the administration of the SVP water rights and return flow, they will be addressed in accordance with Utah law.

DATED this 14th day of April, 2009.

Kent L. Jones, P.E.
Utah State Engineer

EXHIBIT B

RECEIVED
DEC 12 1997
WATER RIGHTS
SALT LAKE

APPLICATION FOR EXCHANGE OF WATER

STATE OF UTAH

Rec. by LS
Fee Paid $ 500.00
Receipt # 97-03234
Microfilmed
Roll #

For the purpose of obtaining permission to make an exchange of water in the State of Utah, application is hereby made to the State Engineer, based upon the following showing of facts, submitted in accordance with the requirements of the Laws of Utah.(Sec. 73-3-20, Utah Code Annotated, 1953)

* EXCHANGE NO.: E 3760 ~~(43-1250)~~ 51-7177
* PRIORITY OF RIGHT: 12/12/1997 * FILING DATE: 12/12/1997

1. OWNER INFORMATION
Name(s): Strawberry Water Users Association & Strawberry/High Line Canal Company
Address: 745 North 500 East, P. O. Box 70, Payson, Utah 84651
Telephone Number:

**********CURRENT RIGHT**********

2. WATER RIGHT EVIDENCED BY: See attached sheet.
3. QUANTITY OF WATER: cfs and/or 64,400 ac-ft
SOURCE: See attached sheet. TRIBUTARY TO: Strawberry River
COUNTY: Wasatch

4. POINT(S) OF DIVERSION: See attached sheet.

Description of Diverting Works: See attached sheet.

5. NATURE AND PERIOD OF USE

Stockwatering:	From Jan. 1	to Dec. 31
Domestic:	From Jan. 1	to Dec. 31
Municipal:	From Jan. 1	to Dec. 31
Mining:	From	to
Power:	From Jan. 1	to Dec. 31
Other:	From	to
Irrigation:	From Apr. 1	to Oct. 31

6. PURPOSE AND EXTENT OF USE (Used w/other rights? Yes x No)
Stockwatering (number and kind): 20,000 cattle, 6,000 sheep, 5,000 horses
Domestic: Families and/or 360,000 Persons
Municipal (name): Springville, Mapleton, Spanish Fork, Salem, Payson, Genola, unincorporate
Mining: Mining District in the Mine
Ores mined:
Power: Plant name: Spanish Fork (1&2) Type: HYD Capacity: 4,500 kw
Other (describe):
Irrigation: 53,522.24 acres. Sole supply of acres

* These items are to be completed by Division of Water Rights

Exchange

14. **PURPOSE AND EXTENT OF USE** (Used w/other rights? Yes x No)
Stockwatering (number and kind): 20,000 cattle, 6,000 sheep, 5,000 horses
Domestic: _____ Families and/or _____ Persons
Municipal (name): See attached sheet.
Mining: _____ Mining District in the _____ Mine
Ores mined: _____
Power: Plant name: Spanish Fork (1&2) Type: HYD Capacity: 4,500 kw
Other (describe): See attached sheet.
Irrigation: 53,522.24 acres. Sole supply of _____ acres

15. **PLACE OF USE**
Legal description of areas of use by 40 acre tract: Same as #7

16. **STORAGE**
Reservoir Name: Utah Lake Storage Period: from Jan. 1 to Dec. 31
Capacity: _____ ac-ft. Inundated Area: _____ acres
Height of dam: _____ feet
Legal description of inundated area by 40 acre tract: Utah County

17. **EXPLANATORY**
The following is set forth to define more clearly the full purpose of this proposed exchange. (Use additional pages of same size if necessary): See attached sheet.

****

If applicant(s) is a corporation or other organization, signature must be the name of such corporation or organization by its proper officer, or in the name of the partnership by one of the partners, and the names of the other partners shall be listed. If there is more than one applicant, a power of attorney, authorizing one to act of all should accompany the application.

****

The undersigned hereby acknowledges that even though he/she/they may have been assisted in the preparation of the above-numbered application through the courtesy of the employees of the Division of Water Rights, all resposibility for the accuracy of the information contained herein, at the time of filing, rests with the applicant(s).

Clair O. Anderson
Signature of Applicant(s)
STRAWBERRY WATER USERS ASSOCIATION

C C Schramm
STRAWBERRY HIGH LINE CANAL COMPANY

Attached Sheets for Paragraph Nos. 2 through 17

2. WATER RIGHT EVIDENCED BY

Water Right No. 43-3001 (Appl. No. 79, Cert. No. 2115), Water Right No. 43-3102 (Appl. No. 3563, Cert. No. 2116), Water Right No. 43-1259 (Appl. No. 11573, Cert. No. 5893), all as amended by Change Application No. a21460. Water Right No. 51-2259 (Underground Claim No. 11730) as amended by Change Application No. a21462. These water rights total 166,779 acre-feet of storage in Strawberry Reservoir and 7.0 cfs of tunnel acretion flow in Strawberry Tunnel.

3. QUANTITY OF WATER

The 64,400 acre-feet is computed as 61,000 acre-feet from Strawberry Reservoir under the Strawberry Water Users Association's (SWUA) water right entitlement as provided under the 1991 Strawberry Reservoir Operating Agreement among the United States, Central Utah Water Conservancy District, and SWUA, plus 3,400 acre-feet from the tunnel acretion flows of Strawberry Tunnel.

Source: Strawberry River, Trail Hollow, Indian, Horse, Tutt, and Currant Creeks, and Strawberry Tunnel.

4. POINT(S) OF DIVERSION

Points of Diversion for Water Right Nos. 43-3001 and 43-3102: South 1238 ft. East 472 ft. from the NW Cor. of Sec. 16, T. 4 S., R. 10 W., USBM. Soldier Creek Dam.

Points of Diversion for Water Right No. 43-1259: North 1461 ft. West 912 ft. from SE Cor. Sec. 6, T. 2 S., R. 10 W., USBM. Currant Creek Dam.

Points of Diversion for Water Right No. 51-2259: Strawberry Tunnel West Portal (outlet) at N. 400 ft. W. 3500 ft. From SE Cor. Sec. 34, T. 7 S., R. 6 E. and points within Strawberry Tunnel between STA 105+00 and the East Portal along a bearing of N. 83° 41' E. from the tunnel West Portal (stationing beginning at West Portal).

7. PLACE OF USE

Legal description of place of use by 40 acre tract(s): SE¼ Sec. 25; NE¼ Sec. 32; SW¼ Sec. 35; E½, SW¼ Sec. 34; W½ Sec. 35; E½, S½SW¼ Sec. 36, T. 7 S., R. 2 E.; SE ¼ Sec. 28; S½ Secs. 29 and 30; Secs. 31, 32, 33 and 34; SW¼SW¼ Sec. 35, T. 7 S., R. 3 E.; E½, SW¼ Sec. 9; Sec. 10; SE¼, Sec. 12; Sec. 13; E½ Sec. 14; N½, SW¼ Sec. 16; Sec. 17; E½ Sec. 20; W½ Sec. 21; Sec. 23; S½ Sec. 25; N½, SE¼ Sec. 26; Secs. 29, 32, 35; W½, SE¼ Sec. 36, T. 8 S., R. 1 E.; Secs. 1 to 4 incl.; SE¼ Sec. 5; S½ Sec. 7; SW¼, E½ Sec. 8; Secs. 9 to 11 incl.; W½, SE¼ Sec. 12; Secs. 13 to 17 incl.; S½, NE¼ Sec. 18, Secs. 19 to 30 incl.; NE¼ Sec. 32; N½ Sec. 34; Secs. 35 and 36, T. 8 S., R. 2 E.; Secs. 2 to 5 incl.; N½, SE¼ Sec. 6; S½, NE¼ Sec. 7; E½, SW¼ Sec. 9; Secs. 10, 11, 14 to 17 incl.; N½ Sec. 18; Secs. 20 to 22 incl., NW¼, NW¼NE¼ Sec. 23; Secs. 27 to 34 incl., T. 8 S., R. 3 E.; Secs. 1 and 2; W½ Sec. 5; SE¼ Sec. 6; Sec. 7; W½ Sec. 8; N½, SW¼, Sec. 11; Secs. 12 to 14 incl.; SW¼ Sec. 16; Sec. 17; NE¼ Sec. 18; E½ Sec. 20; Sec. 21; SW¼ Sec. 22; E½, SW¼ Sec. 23; Sec. 24 to 29 incl.; Secs. 32 to 33; W½W½ Sec. 34; N½ Sec. 35; N½, SE¼ Sec. 36; T. 9 S., R. 1 E.; N½, SE¼ Sec. 1; NW¼ Sec. 3; Secs. 4 to 7 incl.; N½ Sec. 8; SE¼ Sec. 9; S½ Sec. 10; S½ Sec. 11; S½, NE¼ Sec. 12; N½ Sec. 13; Secs. 14 and 15; E½, SW¼ Sec. 16; S½ Sec. 17; Sec. 18; Secs. 19 & 20; NW¼ Sec. 21; N½ Sec. 22; Secs. 29 to 31 incl.; NW¼ Sec. 32, T. 9 S., R. 2 E.; Secs. 5 to 7 incl.; W½NW¼ Sec. 8; NW¼ Sec. 18; T. 9 S., R. 3 E.; N½ Sec. 4; Sec. 5, T. 10 S., R. 1 E., all in SLB&M.

Plus municipal service areas of Springville, Mapleton, Spanish Fork, Salem, Payson, Benjamin, Genola, and unincorporated portions of the present Strawberry Water Users Association (SWUA) Strawberry Valley Project (SVP) service area.

Plus areas presently irrigated through exchange and/or under stock ownership in SWUA including 350.09 acres in Hobble Creek Canyon described as 55 acres in NE¼SW¼ and SW¼NW¼ Sec. 2, 15 acres in NW¼SW¼ Sec. 2, 77 acres NE¼SE¼ and SE¼NE¼ Sec. 3, 13 acres SW¼SE¼ and SE¼SE¼ Sec. 3, 1.64 acres SE¼SE¼ Sec. 9, 1.54 acres SW¼SW¼ Sec. 10, 10.36 acres NE¼NE¼, 14.68 acres SE¼NE¼, 6.60 acres SE¼SW¼, 11.00 acres NW¼SE¼, 4.39 acres SW¼SE¼, Sec. 16, 1.00 acres NW¼SW¼, 15.90 acres SW¼SW¼, Sec.21, 5.30 acres NE¼NW¼, 3.07 acres SW¼NW¼, 9.09 acres NW¼SW¼, 11.59 acres SW¼SW¼, Sec. 29, 0.91 acres NE¼NW¼, 0.02 acres SE¼SE¼, Sec. 28, 2.32 acres SE¼NE¼, 15.86 acres SW¼SW¼, 2.50 acres NE¼SW¼, 16.61 acres SE¼SW¼, NE¼SW¼, 4.97 acres SE¼SE¼, Sec. 31, 4.24 acres NE¼SE¼, 22.86 acres SW¼SE¼, 8.05 acres SE¼SE¼, Sec. 32, 5.60 acres NW¼NW¼, 5.44 acres

SW¼NW¼, 2.38 acres SE¼NW¼, 0.33 acres NE¼SW¼, 7.38 acres NW¼SW¼, Sec. 33, all in T. 7 S., R. 4 E., SLB&M. 0.39 acres NE¼NW¼, 0.70 acres NW¼NW¼ Sec. 5, 7.52 acres NE¼NE¼, 0.85 acres NW¼NE¼, Sec. 6, T. 8 S., R. 4 E., SLB&M.;

Plus areas presently irrigated in Spanish Fork Canyon through exchange and/or under stock ownership in Strawberry Water Users Association described as E½NE¼, SW¼NE¼ Sec. 33 and W½NW¼ Sec. 34, all of T. 8 S., R. 3 E., S½SE¼, SE¼SW¼, NW¼SE¼ Sec. 12, N½NE¼ Sec. 13, all of T. 9 S., R. 3 E., SE¼SE¼ Sec. 9, N½SW¼, SE¼NW¼, SW¼NE¼ Sec. 10, SW¼NW¼ Sec. 16, SE¼NE¼, NE¼SE¼ Sec. 17, NW¼NW¼ Sec. 18, SW¼SE¼ Sec. 32, all in T. 9 S., R. 4 E., SE¼SW¼, SW¼SE¼ Sec. 30, T. 9 S., R. 5 E., W½SW¼ Sec. 12, W½SW¼, W½SE¼ Sec. 14, E½SW¼, S½NE¼, NW¼ NE¼, SE¼SE¼, NW¼SE¼ Sec. 22, W½SW¼, NW¼, N½NE¼, S½SE¼ Sec. 23, SW¼SW¼, NW¼NW¼ Sec. 24, W½NW¼ Sec. 25, SE¼SW¼, NW¼SW¼, NW¼, NE¼, W½SE¼ Sec. 26, NE¼NE¼, SW¼NE¼, NE¼SE¼, Sec. 27, SE¼NE¼, NE¼SE¼ Sec. 35, all of T. 10 S., R. 3 E., N½SE¼, SW¼SE¼ Sec. 5, NE¼NW¼ Sec. 8, all of T. 10 S., R. 4 E., E½SW¼ Sec. 2, NE¼ Sec. 11, S½NW¼, N½SW¼, NW¼SE¼ Sec. 12, all of T. 10 S., R. 5 E., all SLB&M.;

Plus areas above the High Line Canal described as 7.5 acres NW¼ Sec. 11, T. 9 S., R. 1 E., 7.73 acres NW¼, 27.46 acres NE¼ Sec. 13, 134.86 acres in NE¼, SE¼ Sec. 20 and NW¼, SW¼ Sec. 21, 34.98 acres in NW¼ Sec. 22, all T. 9 S., R. 2 E., all SLB&M.

8. STORAGE

Legal description of inundated area: In T. 3 S., R. 11 W., the SW 1/4 Sec. 9; SE 1/4 Sec. 8; SE 1/4 Sec. 18; Secs. 16 and 17; W ½ & SE 1/4 Sec. 15; E ½ & SW 1/4 Sec. 19; and Secs. 20-22, 27-29, 31-33. In T. 3 S., R. 10 W., the SE 1/4 Sec. 32; SW 1/4 Sec. 33; and W1/2 & NE 1/4 Sec. 34. In T. 4 S., R. 12 W., the NE 1/4 Sec. 1. In T. 4 S., R. 11 W. the N ½ & SE 1/4 Sec. 6; Secs. 4 and 5; W ½ & SE 1/4 Sec. 3; S ½ & NE 1/4 Sec. 2; and Sec. 1. In T. 4 S., R. 10 W., Sec. 6; the S ½ & NE 1/4 Sec. 5; W ½ Sec. 4; Secs. 7 and 8; W ½ Sec. 9; NW 1/4 Sec. 16; and Secs. 17 and 18. In T. 4 S., R. 11 W., the E ½ Sec. 8; Secs. 9-17; SE 1/4 Sec 18; NE 1/4 Sec. 19; N ½ Sec 20; Sec. 21; NW 1/4 Sec. 22; N ½ Sec. 23; and NW 1/4 Sec 24. All U.S.B. & M.

9. EXPLANATORY

The water rights involved in this exchange application are associated with the Strawberry Valley Project (SVP) constructed by the United States Bureau of Reclamation. They consist of rights for transbasin diversion of water tributary to the Strawberry River into Diamond Fork Creek and the Spanish Fork River for use in the Strawberry Water Users Association (SWUA) service area in South Utah County. The SWUA and Strawberry High Line Canal Company have the right to file this exchange application for SVP transbasin diversion water rights as outlined in Change Application No. a21460 and as outlined below. Other water rights used in connection with these water rights for SVP deliveries include direct delivery rights from the Spanish Fork River under Water Right No. 51-1004, Application No. 2259, Certificate No. 2117 and Water Right No. 51-1016, Application No. 5910, Certificate No. 2118, both as amended by Change Application No. a21461. However, these other water rights are not involved in this exchange application.

The water has been used primarily for irrigation, but is also used for stockwatering, hydropower generation, domestic use, and outdoor watering in Springville, Mapleton, Spanish Fork, Salem, and Payson. Change Application Nos. a21460, a21461, and a21462 will authorize municipal use as well.

Only transbasin diversion water rights are included and involved in this exchange application. This water is released from Strawberry Reservoir or Strawberry Tunnel into Diamond Fork Creek, a tributary of the Spanish Fork River, and rediverted at various points along the Spanish Fork River. After use in the upper SVP service area, some transbasin diversion water returns to the natural streams of the valley and is rediverted and used on other SVP lands in the lower portions of the project. The balance of the return flow waters eventually discharges into Utah Lake and to the Great Salt Lake.

The United States constructed the SVP between 1906 and 1922. In 1916, the United States contracted with the Strawberry High Line Canal Company (Company) to operate the SVP Strawberry High Line Unit. On May 3, 1921, the United States executed a second contract which conveyed to the Company as a successor to the United States the title to the waste, seepage, and return flow waters from the transbasin diversion water delivered in the High Line Unit. On November 9, 1922, the 4th District Court of the County of Utah of the State of Utah decreed that the rights to the return flow waters of the SVP in Spring Creek belonged to the Company. The Company has used these return flow waters to this day.

In 1926, the United States entered into a contract with the SWUA providing for SWUA operation, maintenance and management of the SVP and for repayment to the United States for its investment in the SVP. Under provisions of federal water right applications, the United States/SWUA 1926 and 1940 contracts, and Deeds of Conveyance signed by each water right holder in return for SWUA stock, the ownership and management of SVP return flows, except those of the High Line Canal Company, were transferred to the SWUA.

Exchange and use of SVP transbasin diversion return flow water currently reaching Utah Lake was not attempted by either the United States or the SWUA at the beginning of the project for three reasons: (1) the SVP had no storage reservoir within the Utah Lake drainage basin that could be used to exchange water with that reaching Utah Lake; (2) the technology for deep well turbines which could tap the Utah Valley groundwater reservoir was not available until the 1950's; and (3) prior to the 1991 Strawberry Reservoir Operating Agreement among the United States, the Central Utah Water Conservancy District and SWUA, the yearly return flows entering Utah Lake were too variable for economical recovery.

11. POINTS OF EXCHANGE

Return flows from transbasin diversion water used on SVP lands will be recovered at the following points:

1. A pump station and forebay pond (0.5 acre) located at South 900 feet, West 1900 feet of NE corner of Sec. 30, T8S, R2E, SLB&M.
2. A pump station and forebay pond (0.5 acre) located at South 1400 feet, East 700 feet of NW corner of Sec. 33, T8S, R2E, SLB&M.
3. A pump station and forebay pond (0.5 acre) located at North 2400 feet, West 700 feet of SE corner of Sec. 34, T8S, R2E, SLB&M.
4. A deep well (16 in. diameter, 1000 ft deep) located at North 2250 feet, East 1400 feet of SW corner of Sec. 34, T9S, R1E, SLB&M.
5. An existing deep well (16 in. diameter, 500 ft deep) located at South 574 feet, East 596 feet from N 1/4 corner of Sec. 35, T9S, R1E, SLB&M.
6. An existing deep well (16 in. diameter, 500 ft deep) located at South 656 feet, East 76 feet of NW corner of Sec. 36, T9S, R1E, SLB&M.
7. A deep well (16 in. diameter, 1000 ft deep) located at North 1400 feet, West 900 feet of SE corner of Sec. 13, T9S, R1E, SLB&M.

8. A deep well (16 in. diameter, 1000 ft deep) located at South 600 feet, East 2400 feet of NW corner of Sec. 12, T9S, R1E, SLB&M.
9. A deep well (16 in. diameter, 1000 ft deep) located at North 200 feet, East 1900 feet of SW corner of Sec. 140, T9S, R2E, SLB&M.
10. A deep well (16 in. diameter, 1000 ft deep) located at North 0 feet, East 0 feet of NW corner of Sec. 22, T9S, R2E, SLB&M.
11. A deep well (16 in. diameter, 1000 ft deep) located at East 1500 feet from N 1/4 corner of Sec. 23, T8S, R3E, SLB&M.
12. Existing wells, springs, and creeks of the cities of Springville, Mapleton, Spanish Fork, Salem, Payson, Santaquin, Genola, Benjamin, Elk Ridge, and Woodland Hills as identified by future agreements for which amended application will be submitted.
13. Additional further diversion works as M&I development occurs in the SWUA service area for which amended application will be submitted.

14. PURPOSE AND EXTENT OF USE

Municipal: Springville, Mapleton, Spanish Fork, Salem, Payson, Santaquin, Genola, Benjamin, Elk Ridge, and Woodland Hills.

17. EXPLANATORY

This exchange application provides for the full use and depletion of all SVP transbasin diversion water introduced into the Utah Lake drainage basin. It exchanges Strawberry River transbasin diversion return flow water currently reaching Utah Lake to wells and other recovery facilities for reuse as irrigation water on SVP lands currently with insufficient supply and as municipal/domestic supply in the SVP service area. Actual water available for diversion, reuse, depletion of SVP transbasin return flows under this exchange application will be based upon annual determinations of SVP return flows available in Utah Lake made at the beginning of each calendar year.

As indicated in Paragraph 9, with the exception of measures taken by High Line Canal Company, exchange and reuse of SVP transbasin diversion return flow water reaching Utah Lake was not attempted by the United States or the SWUA at the beginning of the project for three reasons: (1) the SVP had no storage reservoir within the Utah Lake drainage basin that could be used to exchange water with that reaching Utah Lake; (2) the technology for deep well turbines which could tap the Utah Valley groundwater reservoir

was not available until the 1950's; and (3) prior to the 1991 Strawberry Reservoir Operating Agreement between the United States, the Central Utah Water Conservancy District and SWUA, the yearly return flows entering Utah Lake were too variable for economical recovery. Now that the 1991 Operating Agreement is in place guaranteeing the SWUA a firm 61,000 acre-feet transbasin water delivery each year, the SWUA transbasin return flows reaching Utah Lake are sufficiently reliable for economical recovery.

About the time deep well turbines became available in the early 1950's, the United States began to plan the Central Utah Project (CUP). The United States requested that SWUA wait on any large improvements for the SVP so that possible economies could be realized with joint construction and improvements with the CUP. In the meantime, the SWUA employed all of its financial resources for repayment of original SVP construction costs and for operation and maintenance of the SVP system.

Now that SVP repayment is complete and the configuration of the CUP is sufficiently known, the SWUA is ready to move forward on further conservation and recovery of SVP water supplies. The CUP Spanish Fork-Nephi (SFN) Pipeline has been designed with insufficient capacity to meet the peak capacity needs of the SVP. In addition, the proposed Monks Hollow Dam and Reservoir will not be constructed. Thus, both additional storage and peak delivery capacity is needed in Utah Valley to supply peak demands for SVP lands. With this exchange application, the SWUA is moving forward in meeting its storage and peak capacity needs while providing additional water to those stockholders receiving less than the State Engineer irrigation duty for the area of four (4) acre-feet per acre. Currently, many of these stockholders receive only two (2) acre-feet per acre. Also, as urbanization progresses, SVP transbasin diversion water will be increasingly used for municipal and industrial purposes. It is anticipated that additional exchange applications will be filed in the future for recovery and exchange of new SVP return flows reaching Utah Lake as a result of this urbanization.

The SWUA transbasin diversion rights in the SVP yield 64,400 acre-feet per year (61,000 acre-feet from Strawberry Reservoir and 3,400 acre-feet per year from Strawberry Tunnel). Of this 64,400 acre-feet of transbasin diversion water, the SWUA stockholders currently consumptively use 48,800 acre-feet annually and 15,600 acre-feet annually discharges intoUtah Lake as SVP return flows.

In summary, the exchange under this application will recover an average of 15,600 acre-feet annually of SVP return flow water currently entering Utah Lake. This water will be exchanged into wells or other recovery facilities for reuse and depletion in the SVP service area. The actual amount of return flow water available for exchange and depletion in a given year under this application will be determined at the beginning of the calendar year.

GARY R. HERBERT
Governor
GREG BELL
Lieutenant Governor

State of Utah

DEPARTMENT OF NATURAL RESOURCES
Division of Water Rights

MICHAEL R. STYLER
Executive Director

KENT L. JONES
State Engineer/Division Director

CERTIFICATION

I HEREBY CERTIFY that the attached documents are printed from the **Water Rights website at www.waterrights.utah.gov** of the **Division of Water Rights:**

1. Water Distribution Plan for the Utah Lake Drainage Basin, 18 pages
2. December 16, 1993 Modification to Interim Utah Lake Management Plan, 3 pages

SAID DOCUMENTS are printed from the water rights website Distribution Plan Page located at http://waterrights.utah.gov/wrinfo/policy/distrib.asp.

I HEREBY CERTIFY that the attached document is a true and correct copy from **Water Right File Number 51-7177** of the **Division of Water Rights:**

3. Letter dated February 10, 1998 re Water Right Exchange Application from Provo River Water Users Association, 4 pages
4. Letter dated February 10, 1998 re Protest of Exchange Application from Clyde, Snow & Swenson, PC, 4 pages
5. Letter dated February 9, 1998 re Exchange application from Utah States Department of the Interior, 2 pages
6. Application for Exchange of Water 51-7177 (e3760), 11 pages

SAID DOCUMENT(s) are on file in the Division of Water Rights, located at 1594 West North Temple Street, Suite 220, Salt Lake City, UT 84116.

Dated this 31st day of March 2010.

Boyd Clayton, P.E.
Deputy State Engineer

Attachments

EXHIBIT C

PROVO RIVER WATER USERS ASSOCIATION
DEER CREEK PROJECT

1788 North State Street
Orem, Utah 84057

Tel (801) 222-0710
Fax (801) 222-0724

February 10, 1998

Robert L. Morgan, P.E., State Engineer
Utah Department of Natural Resources
Division of Water Rights
1594 West North Temple, Suite 220
Salt Lake City, Utah 84114-6300

Re: Water Right Exchange Application: E3760
Water Right Number: 51-7177
Applicant: Strawberry Water Users Association and High Line Canal

Dear Mr. Morgan:

Provo River Water Users Association (PRWUA), 1788 North State Street, Orem, Utah 84057, hereby protests the above referenced exchange application. This exchange application proposes to claim for the purpose of exchange some 15,600 acre-feet of return flows from water imported into the Utah Lake drainage from the Strawberry River drainage. PRWUA asserts that any valid claim to those waters has been lost through nonuse on the part of Strawberry Water Users Association (SWUA). Attached is a summary of some of the major water rights of PRWUA.

PRWUA has various rights to store and use waters of the Provo, Weber and Duchesne Rivers. PRWUA's Provo River water rights are in part dependent upon the level of Utah Lake. Approval of this exchange would be an enlargement of the original SWUA rights and would have significant impact to the rights of PRWUA.

PRWUA is not opposed to the right of an entity to claim return flows from water imported under that entity's rights from one basin into another (foreign waters). Further, PRWUA believes this right exists regardless of whether or not a formal filing has been made to such return flows. PRWUA supports and defends the right of an entity to claim and fully utilize its foreign diversions whether through direct diversion, storage or claims upon return flow.

However, PRWUA believes that with this right to claim return flows from foreign waters comes the responsibility of protecting the right and maintaining control over the foreign waters. Protection and control in this context does <u>not</u> mean physical control in that an entity must keep foreign water separate and distinct and not allow it to commingle in any way with natural waters of the basin to which it is imported. Rather, control refers

to the fact that an entity has taken measures to preserve the right and exercise the claim and the ability to use this water commingled or not.

PRWUA has exercised this responsibility to control its foreign waters by claiming, identifying and using Provo River Project (PRP) return flows since the PRP was constructed. PRP holds water right 55-262 (A12144). Proof of appropriation and use has been submitted to the State Engineer on this right. This right allows PRWUA to store 17,410 acre-feet of Provo River water in Deer Creek Reservoir annually by exchange during the following year for return flows of PRP foreign water stored in Utah Lake. For decades, PRWUA has diligently pursued its claim and exercised its control upon this water by putting this water to beneficial use within the PRP and under water right 55-262 (A12144). By so doing, PRWUA has preserved its control over its foreign water.

In contrast, SWUA, by its own admission, has never attempted to use foreign water return flows currently reaching Utah Lake. SWUA has allowed this water to run freely to Utah Lake. By doing so SWUA has lost control of this foreign water. In fact, this water has been commingled with the natural waters of the Utah Lake drainage and has been claimed and appropriated by, and allocated to, other users. If SWUA does in fact have a claim to the return flows accruing to Utah Lake from the imported water, it would have been necessary to maintain control, quantify and beneficially use the amount of water so claimed. SWUA has not done so.

The Utah Lake drainage is over appropriated and has been closed to all major appropriations for at least 25 years and to all other appropriations since 1995. Approving this application would be prejudicial against all prior rights in the Utah Lake Basin.

In 1992, the State Engineer developed the "Water Distribution Plan for the Utah Lake Basin" to facilitate the administration of the many complex water rights involved in Utah Lake. The stated purpose of this document is "...to establish a general framework within which the respective rights can be administered." At the time this Plan was developed and implemented, the waters being claimed under SWUA's exchange application were considered part of the system. The Plan and the operational procedures identified therein (including system storage) assume that this water is available and is part of the Utah Lake system. To approve this application would defeat the purpose of the Water Distribution Plan in that it would allow SWUA to bypass the Plan and "leapfrog" over all other prior rights.

PRWUA requests that this application be denied. PRWUA requests a hearing so that they may attend to provide comment and expand on this protest. PRWUA also requests a copy of any Memorandum Decisions. Thank you for your consideration of this matter.

Sincerely,
PROVO RIVER WATER USERS ASSOCIATION

ACTING FOR Jonathan M. Clegg

G. Keith Denos, P.E.
Superintendent

pc: Jonathan Jones, P.E., U. S. Bureau of Reclamation
Richard Tullis, P.E., Central Utah Water Conservancy District
Gary Aitken, Strawberry Water Users Association
Shawn Draney, Snow, Christensen & Martineau
Dee C. Hansen, P.E., PSOMAS and Associates

SUMMARY

PRWUA is a Utah nonprofit corporation organized in 1935 for the purpose of providing a supplemental water supply to its shareholders comprising six metropolitan water districts, one conservation district, seven mutual irrigation companies and two small farming companies. PRWUA contracted with the United States Bureau of Reclamation for the construction of the Deer Creek Division of the Provo River Project (PRP). The Project includes, among other things, the Deer Creek Dam and Reservoir, the enlarged Provo Reservoir Canal, the enlarged Weber-Provo Diversion Canal and the Duchesne Tunnel. PRWUA is entitled to use the storage capacity of Deer Creek Reservoir, together with the total yield of storage water therefrom and a permanent right to the exclusive use of the water made available by the Project under the water rights therefor standing in the name of Reclamation, which include, but are not limited to:

Water Right Nos. 55-7060 (a1902) and 55-7061 (a1903) covering the right to store 3,400 acre-feet ("AF") at a rate of 9.33 cubic feet per second ("cfs") annually of Provo River water in Deer Creek Reservoir during the irrigation season.

Water Right No. 55-295 (A16642) covering the right to store 100,000 AF annually of Provo River water in Deer Creek Reservoir during the entire year.

Water Right No. 55-262 (A12144) covering the right to store 17,410 AF of Provo River water in Deer Creek Reservoir annually by exchange during the following year for return flows of Project foreign water stored in Utah Lake.

Water Right No. 35-8737 (A9569) covering the right to divert 136,500 AF of water at a rate of 1,000 cfs annually from the Weber River for storage in Deer Creek Reservoir during the entire year.

Water Right No. 35-8756 (A12141) covering the right to divert 37,200 AF of Weber River water annually at a rate of 1,000 cfs for storage in Utah Lake and storage of like quantities of Provo River water in Deer Creek Reservoir by exchange during the following year.

Water Right Nos. 43-341 (A12230) and 43-343 (A12229) covering the collective diversions of 55,000 AF of Duchesne River waters at a combined rate of 600 cfs for storage in Deer Creek Reservoir during the entire year.

GARY R. HERBERT
Governor
GREG BELL
Lieutenant Governor

State of Utah

DEPARTMENT OF NATURAL RESOURCES
Division of Water Rights

MICHAEL R. STYLER
Executive Director

KENT L. JONES
State Engineer/Division Director

CERTIFICATION

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SAID DOCUMENT(s) are on file in the Division of Water Rights, located at 1594 West North Temple Street, Suite 220, Salt Lake City, UT 84116.

Dated this 31st day of March 2010.

Boyd Clayton, P.E.
Deputy State Engineer

Attachments

EXHIBIT D

RODNEY G. SNOW
STEVEN E. CLYDE
HAL N. SWENSON
WILLIAM VOGEL
EDWIN C. BARNES
GARY L. PAXTON
NEIL A. KAPLAN*
D. BRENT ROSE
STEPHEN B. DOXEY
ANNELI R. SMITH
REAGAN L. BRENNEMAN
WALTER A. ROMNEY, JR.
*ALSO ADMITTED IN WASHINGTON, D.C.

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EDWARD W. CLYDE
(1917-1991)

OF COUNSEL
ELLIOTT LEE PRATT

TELEPHONE
(801) 322-2516
FAX (801) 521-6280

February 10, 1998

Mr. Robert L. Morgan, P. E.
State Engineer
Division of Water Rights
1594 West North Temple, Suite 220
Salt Lake City, Utah 84114-6300

HAND DELIVERED

91-7177

Re: Protest of Exchange Application E3760 (43-1259), Filed by Strawberry Water Users Association

Dear Mr. Morgan:

The Central Utah Water Conservancy District ("CUWCD") hereby protests the above referenced exchange application filed by Strawberry Water Users Association ("SWUA"), **and requests a hearing on this application.**

1. CUWCD questions the authority of SWUA to file this exchange application. The water rights upon which the exchange application is based are vested, perfected water rights, with certificates of appropriation held by the United States through its Bureau of Reclamation. Record title to these water rights therefore appears to be in the United States and not in SWUA. The Utah Supreme Court in *East Jordan Irrigation Co. v. Morgan*, 860 P.2d 310 (Utah 1993), held that since:

> title to company water rights was judicially confirmed in East Jordan under the Morse and Booth Decrees, Payson's ownership of shares in East Jordan does not afford it a right conferred by the state to "the use of water" as contemplated by section 73-3-3(2). It necessarily follows that any change in point of diversion can be initiated only by East Jordan itself since it alone owns the right as an appropriator to the use of public waters. Therefore, Payson does not have standing before the state engineer to seek a change in the point of diversion.

Reclamation project water rights are appropriated under state law, and therefore, SWUA is bound by the rules of state law regarding those who have standing to file applications to modify water rights. Accordingly, it appears that SWUA is in a similar position to the shareholder Payson City in the *East Jordan* case. SWUA by virtue of its repayment contract of 1940 with the United States and its subsequent 1991 contract among the CUWCD, the United States and SWUA has a right to use water developed by the Strawberry Valley Project ("SVP"), just like Payson as a

shareholder in the East Jordan Irrigation Company has the right to use water evidenced by its shares in the company. Title, as evidenced by the Certificates of Appropriation issued to the United States, would appear to be in the United States and not in SWUA. Accordingly, under Utah State law, SWUA lacks the request standing before the state engineer to file this exchange application on water rights appropriated for the SVP and held in record ownership by the United States.

2. CUWCD does not question the authority of an appropriator who has imported foreign water into a river basin to recapture and reuse the return flows of that foreign water. However, since this water is held in record ownership by the United States, any right to the use of return flows water recaptured in Utah Lake or elsewhere, belongs to the United States for the benefit of the SVP, and not to SWUA. SWUA argues in the explanatory, and by reference incorporates the explanatory information attached to change applications a21460, a21461 and a21462, that SWUA is the actual owner of the SVP water rights, and therefore it is entitled to file the exchange application. The determination of this question of ownership is beyond the jurisdiction of the State Engineer. Accordingly, in the event the State Engineer does not summarily deny these change applications due to SWUA's lack of standing to file them in the first instance, the State Engineer should defer taking any action on this exchange application until such time as the issue of who holds title to these water rights and thus the right to file this exchange application has been adjudicated by a court of competent jurisdiction.

3. Regardless of who may have record title to the water rights upon which this exchange application is based, SWUA relinquished whatever rights it had to those water rights, including the right to capture and reuse return flows, by entering into the 1991 contract with the United States and CUWCD. That agreement, which was attached to the above referenced change applications as Exhibit 5., provides in paragraph 3. (b) as follows:

> In lieu of the association's existing contractual rights to the use of all of the storage water developed by the Strawberry Reservoir, the Association (SWUA) shall be entitled to an allocation of 61,000 acre feet of storage water each year in the Enlarged Strawberry reservoir, together with a one time allocation as of May 1, 1989 of 50,000 acre feet of storage water and a permanent right to 50,000 acre feet of storage capacity in the enlarged Strawberry Reservoir.

Arguably, SWUA has admitted that its interest in the SVP water rights was something less than record ownership. Instead the agreement speaks in terms of its "existing contractual rights to the use of" the former SVP water rights. Whatever interest SWUA held in these water rights, including the right to reuse return flows from the water imported into the Utah Lake Drainage Basin, was relinquished in this agreement in consideration of the promise, by CUWCD and the United States, of a guaranteed allocation of 61,000 acre feet of water each year, which allocation was to be given "preference to all Bonneville Unit Uses." The water rights of the SVP have been

merged into the Central Utah Project ("CUP") and are now being stored in the enlarged Strawberry Reservoir.

Instead of receiving the erratic supplies that were historically available to the SVP, SWUA obtained a guaranteed fixed quantity of water that was to be stored in Enlarged Strawberry Reservoir and delivered to SWUA through CUP project facilities, all without capital cost to SWUA. Therefore, notwithstanding the issue of record ownership, SWUA has relinquished its contractual rights to the SVP water rights, including the right to recapture return flows of imported water. It did so in exchange for its guaranteed 61,000 acre foot allocation of storage water annually, and 50,000 acre feet of storage capacity in the CUP reservoir. The SVP water rights are merged into the CUP and are now under the control of the United States and CUWCD, as the operator of the Enlarged Strawberry Reservoir.

4. In order for CUWCD to meet its 1991 contractual obligations to SWUA, it must utilize the old SVP water rights, backed by Bonneville Unit Project water rights, to ensure the water is available, year in and year out, for the benefit of SWUA and its shareholders. If SWUA is allowed to pursue this exchange, it may impair CUWCD's ability to meet its contractual obligations to SWUA. If SWUA now refutes that 1991 agreement by pursuing this exchange application, it may nullify the 1991 agreement and release both CUWCD and the United States from their obligations thereunder.

5. Regardless of whether SWUA owns the water and has the right to file the exchange application, and regardless of the effect of the 1991 Agreement on the SVP water rights, SWUA still has no storage rights in Utah Lake that it can use to hold the captured return flows from irrigation use of the imported SVP water. Without that storage right, the proposed exchange cannot be made.

6. Even assuming that SWUA can acquire storage rights in Utah Lake and that it has a right to file this exchange application, the return flows to Utah Lake of SVP imported water would need to be quantified to avoid SWUA taking water belonging to the CUP and/or others owning vested water rights in Utah Lake.

7. The yield of certain CUP water rights are dependant on the level of water in Utah Lake. With the recapture of return flows as proposed, and its subsequent delivery for municipal use in south Utah County, CUWCD is concerned with the potential impact that this proposed exchange may have to the CUP's water rights. CUP water rights at risk of interference here are as follows: 55-4494 (A40523), 55-4495 (A40524), 55-1875 (A37093), E398, E399, E3100 and E 3101.

8. SVP's water rights are for irrigation and stock watering purposes. Although change application a21460 is pending, it has not been approved and may never be. Therefore, any use of water under E3760 for municipal use must be deferred unless and until such time as the change application is approved thereby authorizing municipal use.

For the foregoing reasons, Exchange Application E 3760 should be denied.

Very truly yours,

CLYDE, SNOW & SWENSON, P. C.

Steven E. Clyde

CC: Don A. Christiansen

GARY R. HERBERT
Governor
GREG BELL
Lieutenant Governor

State of Utah

DEPARTMENT OF NATURAL RESOURCES
Division of Water Rights

MICHAEL R. STYLER
Executive Director

KENT L. JONES
State Engineer/Division Director

CERTIFICATION

I HEREBY CERTIFY that the attached documents are printed from the **Water Rights website at www.waterrights.utah.gov** of the **Division of Water Rights:**

1. Water Distribution Plan for the Utah Lake Drainage Basin, 18 pages
2. December 16, 1993 Modification to Interim Utah Lake Management Plan, 3 pages

SAID DOCUMENTS are printed from the water rights website Distribution Plan Page located at http://waterrights.utah.gov/wrinfo/policy/distrib.asp.

I HEREBY CERTIFY that the attached document is a true and correct copy from **Water Right File Number 51-7177** of the **Division of Water Rights:**

3. Letter dated February 10, 1998 re Water Right Exchange Application from Provo River Water Users Association, 4 pages
4. Letter dated February 10, 1998 re Protest of Exchange Application from Clyde, Snow & Swenson, PC, 4 pages
5. Letter dated February 9, 1998 re Exchange application from Utah States Department of the Interior, 2 pages
6. Application for Exchange of Water 51-7177 (e3760), 11 pages

SAID DOCUMENT(s) are on file in the Division of Water Rights, located at 1594 West North Temple Street, Suite 220, Salt Lake City, UT 84116.

Dated this 31st day of March 2010.

Boyd Clayton, P.E.
Deputy State Engineer

Attachments

EXHIBIT E

United States Department of the Interior

OFFICE OF THE SECRETARY
Program Director
CUP Completion Act Office
302 East 1860 South
Provo, Utah 84606-7317

IN REPLY REFER TO:
CA-1200
WTR-4.03

FEB 09 1998

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WATER RIGHTS
SALT LAKE

Robert L. Morgan, P.E.
State Engineer
Division of Water Rights
PO Box 146300
Salt Lake City UT 84114-6300

Subject: Exchange Application No. E3760 (51-7177), Strawberry Water Users Association, Section 201(a)(1), Central Utah Project Completion Act

Dear Mr. Morgan:

The subject exchange application has been filed by the Strawberry Water Users Association and High Line Canal. The purpose of this application is to exchange 15,600 acre-feet of water to be used for irrigation, stock watering, municipal, and power generation purposes. The water covered by the subject exchange application is the return flow from water obtained under Certificate of Appropriation Nos. 2115, 2116, 2117, 2118, and 5893 which are held in the name of the United States. Prior to the filing of this exchange application, the United States filed Application A71269 (55-9271) to appropriate the same return flows.

On October 22, 1997, we submitted a letter of protest against Change Application Nos. a21460 (43-1259), a12461 (51-1004), and a21462 (51-2259) which also addressed water obtained under Certificate of Appropriation Nos. 2115, 2116, 2117, 2118, and 5893. In regards to the subject application, we believe that the issues which prevent the granting of Strawberry's Exchange Application No. E3760 (51-7177) are identical to those which prevent the processing of Strawberry's Change Application Nos. a21460 (43-1259), a12461 (51-1004), and a21462 (51-2259). These issues are fully set-out in our prior protest letter which we enclose and incorporate herein. Specific points of concern include the following:

1. The constitution and laws of the state of Utah do not grant the State Engineer jurisdiction to adjudicate water rights.

2. The State Engineer is forbidden by statute to process a

water rights application for any party other than the owner of record.

3. Federal law vests exclusive jurisdiction for quiet title actions involving Federal property in the Federal district courts.

4. Title to the water rights in question are held in the name of the United States.

5. No "water right" as defined by state law is granted by the Secretary of the Interior to individual water users.

Accordingly, we request that this application be rejected without further administrative process. If a hearing or other meetings occur in regards to this issue, please notify us so that we can attend and participate.

Sincerely,

ACTING FOR Ronald Johnston
Program Director

Enclosure

GARY R. HERBERT
Governor
GREG BELL
Lieutenant Governor

State of Utah

DEPARTMENT OF NATURAL RESOURCES
Division of Water Rights

MICHAEL R. STYLER
Executive Director

KENT L. JONES
State Engineer/Division Director

CERTIFICATION

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Dated this 31st day of March 2010.

Boyd Clayton, P.E.
Deputy State Engineer

Attachments

EXHIBIT F

Norman H. Bangerter
Governor
Dee C. Hansen
Executive Director
Robert L. Morgan
State Engineer

State of Utah

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF WATER RIGHTS

1636 West North Temple, Suite 220
Salt Lake City, Utah 84116-3156
801-538-7240

October 22, 1992

Utah Lake Water Users

Re: Water Distribution Plan for the Utah Lake Drainage Basin

Dear Water Users:

At the public meeting held on September 29, 1992, I indicated that I would review the comments received on the April 30, 1992 final draft of the proposed distribution plan and let you know whether it is my intent to move ahead with implementing the plan this year or wait until next year. I realize the importance of this decision and have spent a great deal of time reviewing this matter.

I have carefully considered the comments and evaluated the current water supply situation in the basin. As you know, the present water supply conditions are at critical levels. At the public meeting, a number of water users expressed concern about implementing the plan under such extreme drought conditions. If we do not receive above normal precipitation during this winter, we will certainly experience significant water supply problems next summer. The major components of the plan come into effect during drought years. When the water supply is at or above normal conditions, we generally do not have significant distribution problems.

As State Engineer, it is my responsibility to ensure the fair and equitable distribution of water according to the priority dates of the water rights on file with my office. In my opinion, if I do not move ahead with the implementation of the distribution plan, I am not fulfilling my statutory duties. Therefore, it is my decision to direct the river commissioners to begin distributing water on November 1, 1992 under the criteria set forth in the plan. The plan will be implemented on a yearly interim basis. After each year's operation I will meet with the water users to evaluate the operation and will modify the interim plan as necessary. When we are comfortable with the plan, I will issue a final distribution order.

Two issues were raised in the comments which I believe need to be reviewed. The first issue concerns the inactive storage level set for Utah Lake, which was originally proposed at 9.2 feet below compromise. The other issue deals with the total quantity of

system storage required before converting system storage to priority storage which is set forth in Table 3 of the plan. From our experience this year, I believe that the elevation for the inactive storage level should be raised to 8.7 feet below compromise. At this elevation, the inactive storage capacity is 160,000 acre-feet. Increasing the inactive storage will mitigate some of the operational problems experienced at low lake levels. In reviewing the criteria by which system storage can be converted to priority storage, I realize that the numbers in Table 3 are very conservative. This is necessary in order to protect the prior storage rights in Utah Lake. Therefore, it is my decision that the approach used to calculate the values set forth in Table 3 is reasonable and should not be modified until additional data is collected. You will note that the values for the period from November through March have been changed. This change reflects the effects of changing the inactive storage level from 9.2 feet to 8.7 feet below compromise on the amount of system storage.

I believe that the distribution plan is an excellent approach to addressing the distribution issues within the basin. In my opinion it will promote the wise use of our limited water resources and ensure that vested water rights are protected. Enclosed is a copy of the interim distribution plan which I will be forwarding to the river commissioners with the direction to implement it beginning November 1. I appreciate your input in this process and look forward to working with you in implementing this plan.

Sincerely,

Robert L. Morgan

Robert L. Morgan, P.E.
State Engineer

RLM/wk

Enclosure

November 1, 1992

INTERIM WATER DISTRIBUTION PLAN FOR THE UTAH LAKE DRAINAGE BASIN

1.0 Introduction

Utah is experiencing significant growth in those counties located along the Wasatch Front. Associated with this growth we are seeing more demands being placed on out limited water resources, such as the conversion from irrigation to municipal water use.

With the projects currently under construction and those planned for the future, it would appear that Utah Lake and its major tributaries will be facing a number of changes in the manner in which these systems have historically been operated. This is not to imply that such changes will have a negative impact, rather with proper planning these changing water use practices can be handled and existing water rights protected. In addition, there are a number of major transbasin diversions into the Utah Lake drainage which need to be better regulated. Diversions between the basins or subbasins presently total over 300,000 acre-feet annually.

There have been a number of requests made of the State Engineer in recent years to make decisions on matters which significantly affect water distribution in the Utah Lake drainage basin. After reviewing this matter, it appears that some direction is needed to better clarify the relationship between water rights in the basin; particularly between storage rights in Utah Lake and storage rights on the upstream tributaries. The State Engineer believes that in order for the river commissioners to properly administer the numerous diversions, the extent of the rights and their relationship, one with another, needs to be fully understood by everyone involved. In simple terms, we need to begin to manage the water rights on the Provo River, Spanish Fork River, Utah Lake, Jordan River, and other sources in the basin as one system. The objective is not to remove local control or involvement in the management of the waters. Rather, the objective is to ensure the equitable distribution of water, according to the respective water rights, and to address problems from a more regional point of view.

The State Engineer prepares this interim distribution plan under authority of Sections 73-2-1, 73-5-1, -3, and -4, Utah Code Annotated 1953, to distribute the waters in the Utah Lake drainage basin. Some of the issues which are presented in this document are beyond the State Engineers' administrative authority in distribution matters, and it is not his intent to resolve such issues in implementing this plan. Such items will be addressed and ultimately resolved in the court adjudication process as set forth

under Chapter 4, Title 73, Utah Code Annotated. This interim distribution plan is **NOT** part of the adjudication process, nor will it prejudice anyone's claims during such action.

This document is intended to establish a general framework within which the respective rights can be administered. The distribution guidelines follow the priority doctrine of "first in time, first in right"; and where rights are equal in priority, each of those rights receives a proportionate share of the total water available to divert under that priority. The State Engineer realizes that flexibility will be required as the plan is implemented, and many problems that arise will need to be handled on a case-by-case basis. It is also noted that there are many agreements between water users, and such agreements will be taken into account, when appropriate. Transbasin diversions (imported water) into the Utah Lake drainage will be administered in accordance with their individual water rights.

The issues presented in this document have been divided into five subject areas:

- Water rights in Utah Lake
- Relationship between storage rights in Utah Lake and upstream reservoirs
- Direct flow water rights
- Other distribution issues
- Issues to be resolved through the general adjudication procedure

For each subject there is a background section and a distribution guidelines section. The background section is intended to give the reader some general information about the issue and some justification for the distribution guidelines.

2.0 DEFINITIONS OF TERMS USED IN PROPOSED DISTRIBUTION PLAN

Active Storage (Utah Lake): The storage capacity of Utah Lake between compromise elevation and 8.7 feet below compromise (the maximum active storage is 710,000 acre-feet).

Adjudication: The judicial process by which all water right claims in a given hydrologic area are evaluated, defined and then established by court decree pursuant to Chapter 4, Title 73, Utah Code Annotated.

Booth Decree: A 1909 court case: Salt Lake City Corp., Utah and Salt Lake Canal Co., East Jordan Irrigation Co., North Jordan Irrigation Co. and South Jordan Canal Co. (Plaintiffs) versus J. A. Gardner and A. J. Evans (Defendants). The Booth Decree covered water rights in Utah Lake and the Jordan River.

Compromise Elevation: The maximum legal storage elevation in Utah Lake. Compromise elevation was first established in 1885, and was recently modified in 1985 to be 4489.045 feet above mean sea level. When the lake is at this elevation, the total storage capacity is approximately 870,000 acre-feet, of which 710,000 acre-feet is active storage capacity and 160,000 acre-feet is inactive storage capacity. Whenever the level of Utah Lake is above the compromise level, the control gates are required to be fully opened. The exception to this rule occurs when fully opening the control gates causes the Jordan River to exceed a maximum flow rate that is specified in the 1985 Compromise Agreement (Civil No. 64770)

Delivery Schedule: A schedule listing the allowable diversion rate in cubic feet per second per acre, for specific time periods during the irrigation season.

Direct Flow Right: A water right that diverts water from a surface source according to its respective priority date.

Distribution Plan: Guidelines for the distribution of water within a drainage basin or hydrologic system.

Diversion Requirement: The amount of water needed to satisfy the beneficial uses set forth under a water right.

Inactive Storage (Utah Lake): The portion of Utah Lake that is not accessible to the pumps, and therefore, cannot be diverted. The inactive storage is currently estimated to be 160,000 acre-feet (8.7 feet below compromise)

Irrigation Duty: The annual quantity of water in acre-feet per acre considered to be reasonably necessary to meet the beneficial use requirements of irrigated land. The irrigation duty takes into consideration the consumptive use requirements of crops, irrigation efficiency and conveyance losses.

Morse Decree: A 1901 decree resulting from a series of court cases: Case No. 2861 - Salt Lake City Corp. (Plaintiffs) versus Salt Lake City Water and Electrical Power Co. (Defendant); Case No. 3449 - J. Geoghegan (Plaintiff) versus Salt Lake City Corp.(Defendant); and Case No. 3459- J. Geoghegan (Plaintiff) versus Utah and Salt Lake Canal Co. (Defendant). This decree defined the water rights on the Jordan River with respect to each other.

Priority Storage: Legal storage under a water right. Such water stored is not subject to call by other right(s) and can be diverted and used in accordance with the right.

Primary Storage (Utah Lake): The first 125,000 acre-feet of active storage in Utah Lake which is set aside to satisfy the diversion requirement of the primary rights in Utah Lake in years of successive drought. See figure 1.

Primary Storage Rights (Utah Lake): The water rights defined in the Morse decree to have storage rights in Utah Lake.

Proposed Determination Book: The State Engineer's report and recommendation to the district court in general adjudication proceedings of all the water rights within the adjudication drainage area.

Provo River Decree: A 1921 decree resulting out of the court case: Provo Reservoir Company vs. Provo City (Case No. 2888). The Provo River decree defined certain water rights in the Provo River drainage.

Secondary Storage Rights (Utah Lake): The storage rights in Utah Lake established by applications to appropriate water and as confirmed by the Booth Decree.

Storage Right: The legal right to store water in accordance with a water right's respective priority date.

Subbasin: Individual drainage system within a larger drainage basin. For example, the Provo River system can be considered to be a subbasin within the larger Utah Lake drainage basin.

System Storage: The total active storage water in Utah Lake, excluding the primary storage, plus water stored in upstream reservoirs under junior priority date water rights. The maximum value of system storage is 585,000 acre-feet and varies during the year as shown in Table 3. System storage, whether in Utah Lake or upstream reservoirs, is subject to call to satisfy the diversion requirements of primary and secondary Utah Lake storage rights.

Real-time gages: A measuring device that allows instantaneous access to data.

Transbasin diversions: Imports or exports of water from one drainage basin or distribution system to another.

Welby-Jacob Memorandum Decisions: Seven memorandum decisions issued in 1989 by the State Engineer regarding change applications which provided for the transfer of high quality Provo River water from the Welby and Jacob districts of the Provo River Project for use by the Salt Lake County Water Conservancy District (SLCWCD). The water supply for the Welby and Jacob districts was replaced under both primary and secondary storage rights acquired in Utah Lake.

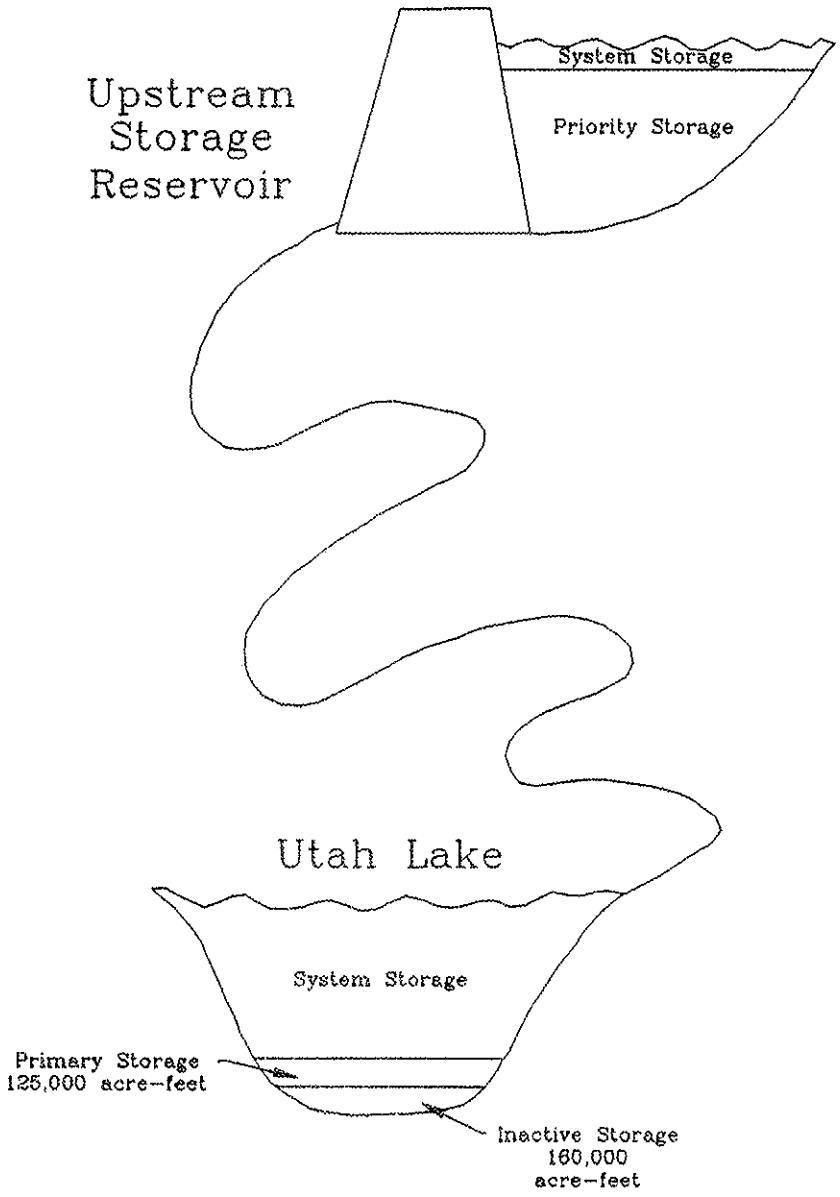

Figure 1 – Schematic drawing of various storage terms used in the Distribution Plan

3.0 Water Rights in Utah Lake

3.1 Background

There is not a clear understanding of how the uses of Utah Lake water relate to the quantity of storage in Utah Lake. The approach set forth in this document looks at the water rights served from Utah Lake in terms of beneficial use, which is referred to as the "annual diversion requirement." Water in Utah Lake is stored in order for the users to meet their diversion requirement. Thus, the storage capacity of Utah Lake does not define the water rights. Rather, it is the quantity of water necessary to satisfy the beneficial uses that is the limit and measure of the water rights.

The relationship of one water right to another is also not generally understood. The water rights in Utah Lake were set forth in both the Morse (1901) and Booth (1909) decrees. The Morse decree identified two groups of water rights: 1) Direct flow rights on the Jordan River; and 2) Water rights in Utah Lake. The Booth decree (1909) allowed for additional appropriations of water from Utah Lake and set a maximum limit on the diversions under the storage rights that were set forth in the Morse decree. This maximum limit was 185,000 acre-feet annually and in part is based upon a 3.0 acre-feet per acre duty. In this proposed distribution plan, we refer to the rights that were defined in the Morse decree as primary storage rights, and all subsequent rights established under applications to appropriate water as secondary storage rights.

In 1989, the State Engineer approved a number of change applications, in conjunction with the so-called Welby-Jacob exchange, to transfer the use of water under the primary and secondary storage rights in Utah Lake. In evaluating these change applications, the sole supply irrigated acreage for each water right was determined. For the purposes of this document, the same sole supply acreages as set forth in the respective memorandum decisions, are used to calculate the allowable annual diversion requirement. The acreage amounts used in this plan, and in the Welby-Jacob Exchange Project, are subject to adjudication by the court. This distribution plan does not purport to adjudicate these acreage amounts.

In the "Proposed Determination of Water Rights in Utah Lake and Jordan River Drainage Area, Salt Lake County, West Division" (Proposed Determination), the State Engineer has recommended an irrigation duty of 5.0 acre-feet per acre. This duty also appears reasonable for those lands located east of the Jordan River. The proposed determination book covering the west side of the Jordan River indicates that potential conveyance losses for canals over one mile in length are not included in the irrigation duty. Such losses are to be determined in a supplemental report to the court in conjunction with the general adjudication proceedings. Since

the potential conveyance losses have not been finalized, a diversion requirement of 5.0 acre-feet per acre is used to determine the total annual diversion requirement for the irrigation rights.

Before getting into the distribution guidelines, a review of some basic information on Utah Lake may be helpful. The total storage capacity of Utah Lake at compromise elevation (4489.045 feet) is approximately 870,000 acre-feet. Of this, approximately 160,000 acre-feet is inactive storage (verbal communication, Brad Gardner, Utah Lake-Jordan River Commissioner). The inactive storage elevation is 8.70 feet below compromise elevation. The active storage capacity of Utah Lake is 710,000 acre-feet. The average annual inflow (1951-90) to Utah Lake from all sources is about 726,000 acre-feet. Of this, 346,000 acre-feet is discharged to the Jordan River and about 380,000 acre-feet is lost to evaporation.

3.2 Distribution Guidelines

In distributing the waters of Utah Lake among the primary and secondary storage rights in the Lake, the following guidelines will be followed:

3.2.1 The annual diversion requirement for the primary and secondary storage rights in Utah Lake are as set forth in Table 1.

3.2.2 The water users of Utah Lake are responsible to maintain the pumps and channels in Utah Lake to allow water to be withdrawn from the lake down to 8.70 feet below compromise elevation.

3.2.3 In order to protect the primary storage rights during consecutive years of drought, the first 125,000 acre-feet of active storage capacity in Utah Lake shall be dedicated solely for the use of the primary storage rights when all other active storage has been used. This 125,000 acre-feet of storage is hereafter referred to as "primary storage".

3.2.4 The remaining 585,000 acre-feet of active storage in Utah Lake up to compromise level, which may be stored in Utah Lake or in upstream reservoirs (subject to call by Utah Lake water rights, as set forth under Section 4.2 of this document), shall be referred to as "system storage". System storage is to be used to supply the annual diversion requirements of both primary and secondary storage rights.

Table 1 - Annual diversion requirement for primary and secondary storage rights in Utah Lake. The quantities of water for the irrigation rights are based on the irrigated acreages (sole supply acreage) set forth in the Welby-Jacob memorandum decisions and an irrigation duty of 5.0 acre-feet per acre. For the municipal and industrial rights the allowable annual diversion as set forth under the water right(s) was used.

WR NUMBER	Primary Storage Rights (1870)	Irrigated Acreage	Acre-feet
59-3499	Utah and Salt Lake Canal Company	7,063.65	35,318
59-5269	SLCWCD[1] - Salt Lake County Water Conservancy District	2,071.01	10,355
59-3500	South Jordan Canal Company	4,850.05	24,250
59-5270	SLCWCD[1]	1,076.92	5,385
57-7637	East Jordan Irrigation Company	8,092.96	40,465
59-5268	SLCWCD[1]	1,587.04	7,935
59-3496	North Jordan Irrigation Company	1,069.99	5,350
57-5272	SLCWCD	2,099.72	10,499
5722	SLCWCD[1]		
57-7624	Salt Lake City	Municipal	11,000
57-7624	CUWCD	Municipal	25,000
59-3517	Kennecott Utah Copper Corporation	Ind	13,750
	Total for Primary Rights		189,307
	Secondary Storage Rights	Acreage	Acre-feet
59-13	Utah Lake Distributing Co. (1908)	7,945.37	39,727
59-5271	SLCWCD[1]	687.81	3,439
57-23	Draper Irr. Co. & Sandy Canal Co. (1908)	2,100	10,500
59-5273	SLCWCD	400	2,000
59-14, 15 & 20	Central Utah Water Conservancy Dist. (Kenn. Storage Rights 1912)[2]	Ind	57,073
	Total for Secondary Rights		112,739
	Overall Total		302,046

[1] Rights/shares held by respective irrigation companies in behalf of Salt Lake County Water Conservancy District by agreement dated September 19, 1988.
[2] Does not include any storage which may be claimed/allowed under 59-23

3.2.5 All water stored upstream which is subject to call under the priority of the Utah Lake rights (system storage) shall be delivered to Utah Lake, according to priority, when either the active storage in Utah Lake is at or below 125,000 acre-feet or the diversion requirements of earlier priority water rights in Utah Lake are not satisfied.

3.2.6 When all the system storage in Utah Lake and upstream reservoirs has been used, the secondary rights shall cease diversions. At such time, the active storage in Utah Lake shall be at or below 125,000 acre-feet.

3.2.7 After all of the system storage in Utah Lake and in upstream reservoirs has been used, and secondary rights have ceased diversions, the primary storage shall be allocated to the primary rights in the following percentages and will be available on demand within the constraints of the respective water rights:

Table 2 - The percentage of primary storage in Utah Lake allocated to each primary water right.

WATER RIGHT NUMBER(S)	OWNER	
59-3499	Utah and Salt Lake Canal Company	18.7%
59-3500	South Jordan Canal Company	12.8%
57-7637	East Jordan Irrigation Company	21.4%
59-3496	North Jordan Irrigation Company	2.8%
57-7624	Salt Lake City	5.8%
59-5268/5273, 5722	Salt Lake County Water Conservancy District	18.0%
57-7624	Central Utah Water Conservancy District	13.2%
59-3517	Kennecott Utah Copper Corporation	7.3%

4.0 Relationship of Storage Rights in Utah Lake and Upstream Reservoirs

4.1 Background

The relationship between upstream storage water rights and storage rights in Utah Lake must be clarified so all of the storage reservoirs within the Utah Lake drainage basin can be regulated in accordance with their respective priority dates. The upstream storage reservoirs have a unique relationship with Utah Lake storage rights. This section addresses only the storage rights. Direct flow rights are addressed independently in Section 5.

The upstream storage rights generally have later priority dates than the Utah Lake storage rights, with only a few exceptions. However, in analyzing the storage rights within the

basin, it appears that in most years, the existing storage reservoirs can divert and use water without impairing the prior rights in Utah Lake. Although during drought years, this has not always been the case.

The State Engineer has studied the historical practices and water supply conditions in the basin. From these studies, it appears that adequate safeguards can be developed to allow upstream reservoirs to divert and store water during most periods of time without impairing prior water rights. However, these safeguards generally require that predictions of the total water supply be made early in the year. Predicting whether the rights in Utah Lake will receive their full annual diversion requirement is difficult early in the year. As the year progresses, and the water supply conditions become more apparent, these predictions can be made with a higher degree of confidence. In order to allow later priority upstream rights to store water, criteria are needed to determine when the rights in Utah Lake will likely be satisfied. Until the prior storage rights in Utah Lake are satisfied, water stored upstream will be held as system storage, subject to call by water rights in Utah Lake. Also, provisions to replace or exchange water to Utah Lake during drought periods to allow storage upstream will be considered.

Applying the following guidelines will ensure with a high degree of certainty that the rights in Utah Lake will be satisfied. These guidelines dictate when the upstream reservoirs can convert their system storage to what is referred to as priority storage. After the water is converted to priority storage, it is no longer subject to call to Utah Lake and can then be released from the reservoir and used.

Under this proposal, storage waters will be accounted for based on a November through October period. The irrigation season in much of the Utah Lake drainage runs from about April through October, except in the higher elevations. During the non-irrigation season, the water demand is much lower than during the irrigation season and generally the storage season begins in November.

4.2 Distribution Guidelines

In order to maximize the beneficial use of the water and still protect prior rights, the State Engineer will use the following criteria to govern the distribution of water between storage rights in Utah Lake and reservoirs on upstream tributaries.

4.2.1 Upstream storage rights junior to Utah Lake water rights may store water under their respective priority dates relative to each other and subject to the conditions set forth in this section.

4.2.2 System storage is defined as the top 585,000 acre-feet of active storage capacity in Utah Lake and is used to satisfy the diversion requirement of both primary and secondary rights. Any

portion of this 585,000 acre-feet stored upstream which is subject to call by Utah Lake, as provided for under paragraph 4.2.5, shall also be accounted for as system storage.

4.2.3 Priority storage is defined to be the legal storage under a reservoirs' water right and is not subject to call by any other water right.

4.2.4 Any water stored by junior appropriators before the total system storage in or available to Utah Lake exceeds the quantities set forth in Table 3, is subject to call by the rights served from Utah Lake.

4.2.5 System storage held in upstream reservoirs shall not be diverted for use and must be held in storage and available for release to Utah Lake, until such storage is converted to priority storage according to the criteria in Table 3 or replacement water is provided.

4.2.6 Whenever the total system storage exceeds the values set forth in Table 3, any excess system storage shall be converted to priority storage. Water is converted from system to priority storage according to the priority dates of the respective rights, and in accordance with any other restrictions applicable to a particular water right.

4.2.7 Once water has been converted to priority storage or is designated as priority storage by the river commissioner at the time it is stored, it can be released from the reservoir and used as provided for under the respective water right.

4.2.8 Any time the storage capacity in Utah Lake drops below the primary storage capacity (the first 125,000 acre-feet of active storage capacity), upstream storage rights with later priority dates will not be allowed to divert water to storage.

4.2.9 Any time the active storage capacity in Utah Lake drops below the primary storage level (125,000 acre-feet), the Utah Lake rights may call on the system storage water which has been held upstream. The quantity subject to call is limited to the lesser of either the quantity of system storage held upstream or the amount needed to satisfy the diversion requirements and bring Utah Lake up to the primary storage level.

Table 3 - Quantity of total system storage required before upstream storage reservoirs can convert system storage to priority storage.

Date	System storage in Utah Lake and/or Upstream Reservoirs (units: ac-ft)
November 1	585,000
December 15	585,000
January 15	585,000
February 15	585,000
March 15	585,000
April 15	575,000
May 15	475,000
June 15	400,000
July 15	350,000
August 15	250,000
September 15	200,000
October 31	125,000

NOTE: Values can be interpolated from the table to determine system storage on any particular day.

4.2.10 System storage in upstream reservoirs can be replaced in Utah Lake with waters from other sources or other rights. Once such replacement is made, a like quantity of system storage can be converted to priority storage and used. Such replacement or exchange of water shall have prior approval of the State Engineer.

5.0 Direct Flow Rights

5.1 Background

One of the objectives of this proposed distribution plan is to administer the waters within the basin as one system. In so doing, we need to take into account what the effects of diversion and water use from a source may have on other rights in the basin. The distribution of water between all rights, except those rights specifically denoted in Sections 3.0 and 4.0 as among themselves, shall be done based upon priority. This approach distributes the water in accordance with the priority doctrine on a basin wide basis.

5.2 Distribution Guidelines

In distributing water among the water rights in the basin, except those rights addressed in Sections 3.0 and 4.0 as among themselves, the following guidelines will be used:

5.2.1 The direct flow water rights on all tributaries will be administered according to the respective priority dates. The affect that diversions from one source may have on diversions from another source will be taken into account.

5.2.2 The primary direct flow rights on the Jordan River as set forth in the Morse decree shall have a call on the water in Utah Lake if the accretionary flows to the Jordan River are insufficient to satisfy their rights.

6.0 Other Distribution Issues

6.1 Background

The State Engineer believes that there are several other issues that should be considered when examining better ways to manage and distribute water in the basin. Most of these issues are directly related to improving the record keeping of imported water and enhancing the communication between the five river commissioners who are affected by this plan.

One issue that deserves special discussion is a proposed 5,000 acre-feet regulation pool in Jordanelle Reservoir (Section 6.2.4) to be used by the Provo River commissioner in distributing water. Based upon past experiences, calculating the natural flow of the Provo River from reservoir stage readings at Deer Creek Reservoir has presented numerous problems for the commissioners. It is important that the river commissioner not waste his time dealing with such problems. Because the direct flow rights on the Provo River are senior to nearly all the storage rights it is necessary for the commissioner to compute natural flow in the river. The precision of reservoir content measurements on Deer Creek, and presumably on Jordanelle, are inadequate for daily calculation of natural flow based on changes in reservoir content. Just .10 foot error in measurement when Deer Creek Reservoir is nearly full represents about 300 acre-feet. Thus, when the wind is blowing it can substantially affect the natural flow calculation. The result is a wide fluctuation in the natural flow available to the class A rights on the Lower Provo River. With Jordanelle Reservoir now being built, the natural flow computation for both Heber Valley rights and the Lower Provo River will be even more complicated. If the commissioner had a regulation pool he could smooth out the natural flow bypasses as they should be.

The administration of exchange applications is another important distribution issue. The basic purpose of exchange applications is to facilitate distribution. Under such an application a water user is required to measure the quantity of water released to a stream and then a like quantity can be diverted at another location. In regulating exchange applications, the State Engineer attempts to have releases and subsequent diversions occur as concurrently as possible to insure that other water rights are not adversely effected. Some exchange applications involve

waters from more than one distribution system. In such cases, the State Engineer needs to establish lines of authority and/or coordination between the river commissioners.

The State Engineer has reviewed the water rights covering the transbasin diversion into and out of the basin. Nearly all of these water rights are certificated and the rights are generally well defined. Thus, the major issue regarding transbasin diversions is to implement better accounting procedures.

Although not addressed in the distribution guidelines, the future water quality of Utah Lake is another important issue that must be considered. Currently there are many unknowns over what the future operation of Utah Lake and upstream storage reservoirs will be. This makes it very difficult to predict the future salinity concentrations in the Lake. Under Utah water law, a water user is entitled to have his right protected as to both quantity and quality. We believe that the Central Utah Water Conservancy District and the Bureau of Reclamation could significantly affect the future salinity levels of Utah Lake by the decisions they will be making in the near future. It appears they are very aware of this problem and are looking at alternatives to control the salinity level of Utah Lake.

6.2 Distribution Guidelines

The State Engineer is proposing that the following recommendations be implemented to facilitate the distribution of water:

6.2.1 All exports of water from a river system shall be regulated by the duly appointed river commissioner for the system from which the export is made. Such diversions shall be regulated in accordance with the individual water right.

6.2.2. River commissioners shall report diversions on all systems on a water rights basis.

6.2.3 All transbasin diversions shall be equipped with real-time gages. Such data shall be accessible via a computer using a modem or other method as approved by the State Engineer.

6.2.4 The State Engineer is recommending that a 5,000 acre-foot regulation pool be established in Jordanelle Reservoir to be used by the commissioner for distribution system regulation. Such a regulation pool would be subject to space availability.

6.2.5 In regulating exchange applications, they will be administered as closely to a concurrent release and diversion basis as is feasible. Under no circumstances will deficits or credits be allowed to be carried over from year to year.

7.0 Adjudication Issues

7.1 Background

There are a number of issues that are beyond the scope of the distribution plan and will need to be addressed in the general adjudication. However, ultimately any actions taken in the adjudication will affect the distribution of water. Therefore, several adjudication issues are discussed in this document in order to apprise the water users of potential recommendations which may be made by the State Engineer to the court in the adjudication.

On the Provo River system there are no priority dates assigned to the class A rights on the Lower Provo River or class 1 through 17 on the Upper Provo River. The distribution of water has worked well under this system for over 70 years, and if conditions did not change we could continue to operate under the class system. However, we are beginning to see significant changes in the water use practices within the drainage basin, especially on the Provo River. To assess the potential impact as a result of a change in water use, and in order to properly administer the water rights on a basin-wide basis, it is imperative that the respective priority dates between the water rights be established. Therefore, as part of the general adjudication process, the State Engineer is proposing that priority dates for all water rights in the basin be determined.

Another issue that needs to be carefully analyzed and considered is the irrigation diversion requirement (duty) for irrigated lands in the basin. In conjunction with the proposed determination of water rights that the State Engineer must submit to the court for its consideration, an irrigation duty is recommended. In making this recommendation the State Engineer calculates the consumptive use requirements of the crops and considers the on-farm efficiency, canal losses and other related factors. The irrigation duty is expressed in terms of acre-feet per acre.

Related closely to the issue of duty is the issue of whether a delivery schedule should be implemented to specify an allowable diversion rate (Example - 1 cubic foot per second per 60 acres) during any period of the irrigation season. The total volume of water that can be diverted under the delivery schedule is the annual irrigation duty that is established.

7.2 Recommendations for the Adjudication

The State Engineer will consider making the following recommendations in his report to the court in the general adjudication:

7.2.1 All water rights within the basin shall have a priority date determined and assigned to it as part of the adjudication process.

7.2.2 An irrigation diversion requirement (duty) and delivery schedule shall be determined and submitted to the court for each subbasin or distribution system.

Utah Lake Management Plan Amendment

Dear Water User:

Re: modifications to Interim Utah Lake Management Plan

We have received several comments regarding the refinements to the plan which we re proposed at the October 28 public meeting. We have summarized the proposal and the comme nts received as follows:

1. **Reporting on Transbasin Imports, Reservoir Releases, and Return Flow Credi ts.**

Proposal

Each water user must report to the commissioner the rights under which the water is being imported, released, or spilled and its destination. If more than one right is involved the water user must report the quantity or proportion to each. Reports must be made prior to or concurrent with imports, releases or 'spills. Any changes in quantities, water rights, or destination must be reported within one day of such occurrences.

Water users desiring to claim return flow credits in Utah Lake must submit an annual report to the State Engineer prior to November 1 stating the amount of credit claimed, the water rights involved, and the basis for the amount of credit claimed.

Comments and Response

The comments received expressed support for the proposal, therefore it will be adopted as part of the 1994 interim management plan for Utah Lake.

2. **Modifications to the System Storage Conversion Curve.**

Proposal

The State Engineer will consider modifying the curve upon written request from a water user stating that water rights will not be exercised, the water rights involved, and the amount of water that **will not** be called for. Requests will be accepted only prior to April 1. Modifications to the curve will be based upon the amount of water to be left in Utah Lake. Leaving water in Utah Lake will not give the water user any other right in exchange for not calling for the water under the existing right.

Comments and Response

The comments received expressed support for the proposal, therefore it will be adopted as part of the 1994 interim management plan for Utah Lake.

3. **Evaporation Losses on Import Water Held in Utah Lake.**

Proposal

Two possible methods were presented at the meeting. One method would apportion evaporation losses based on the proportion of the import storage to the total contents of the lake. The other method would apportion the losses based on the incremental increase in surface area caused by the import water. Under either method evaporation losses will be calculated based on daily inflow, lake level, and climatological data. The modified Blaney Criddle method will be used with a coefficient of 1.35.

Evaporation losses will be accounted for monthly.

Upon submission of claims for return flow credits, the evaporation incurred by the return flows will be estimated for the period prior to November and deducted from the claimed amount. After November 1, return flow credits will be charged with evaporation losses in the same manner as import storage.

Comments and Response

The comments received support the method of apportioning the losses based on the incremental increase in surface area caused by the import water. The comments reasoned that the import water should not be charged with any more loss than the increase in evaporation it caused to the lake. This appears to be a reasonable argument. Therefore the incremental surface area method will be adopted as part of the 1994 interim management plan for Utah Lake.

4. **Transportation Losses on the Provo River**

Proposal

The 1921 Provo River Decree states that a four percent transmission loss will be charged on the river until there is a better understanding of actual transmission losses. The decree indicates this transmission loss is to be charged against storage water, Weber River water, and Ontario Drain Tunnel water. The historical practice has been to charge transmission losses against import and storage water originating above Heber Valley.

Comments and Response

The comments received request that transmission losses on Jordanelle Reservoir releases not be implemented until the State Engineer evaluates available and forthcoming data related to the loss/gain regime of the river. It is somewhat unclear what data is being referred to, however, at this time the State Engineer does not have the manpower available to do an independent study of the losses on the river.

We believe there is some foundation for the historical practice which has developed concerning transmission losses and we are hesitant to change that practice until the hydrology of the river in this area is better understood. Therefore, the four percent loss will be charged (including new releases) until such time as an acceptable study is performed that conclusively demonstrates that this figure should be modified.

5. **Evaporation on System Storage**

Comment

Another issue raised in the comments which was not discussed at the public meeting relates to evaporation losses on system storage which later is called for by Utah Lake. Currently, the management plan does not charge evaporation losses against system storage. The comments propose that evaporation be charged against system storage at the same rate as the other storage in the particular reservoir. When system storage is called for bv Utah Lake, only the net system storage would be subject to release.

Response

The interim management plan does not contemplate charging evaporation losses against system storage, nor does it contemplate requiring releases to make up transmission losses incurred in moving system storage from the reservoirs to the lake. System storage will be called for very infrequently. If the need arises, both factors will need to be taken into account in the transfer of system storage to Utah Lake.

This is an issue which needs further investigation and consideration, therefore, this suggestion will not be implemented at this time.

One other minor modification to the plan was discussed at the meeting. It was proposed that Section 4.2.8 at line 26 on page 11 be modified to read as follows:

"Any time during the irrigation season when the storage **[c a p a c i t y]** in Utah Lake drops below ... "

No comments were received concerning this modification, therefore it will be ado pted as part of the 1994 interim management plan for Utah Lake.

The modifications described in this response will be implemented as part of the Interim Utah Lake Management Plan as of November 1, 1993. If you have further questions conc erning these items please contact Lee Sim, Assistant State Engineer for Distribution.

Sincerely,

Robert L. Morgan, P.E.

RLM:LHS:bd

GARY R. HERBERT
Governor
GREG BELL
Lieutenant Governor

State of Utah
DEPARTMENT OF NATURAL RESOURCES
Division of Water Rights

MICHAEL R. STYLER
Executive Director

KENT L. JONES
State Engineer/Division Director

CERTIFICATION

I HEREBY CERTIFY that the attached documents are printed from the **Water Rights website at www.waterrights.utah.gov** of the **Division of Water Rights:**

1. Water Distribution Plan for the Utah Lake Drainage Basin, 18 pages
2. December 16, 1993 Modification to Interim Utah Lake Management Plan, 3 pages

SAID DOCUMENTS are printed from the water rights website Distribution Plan Page located at http://waterrights.utah.gov/wrinfo/policy/distrib.asp.

I HEREBY CERTIFY that the attached document is a true and correct copy from **Water Right File Number 51-7177** of the **Division of Water Rights:**

3. Letter dated February 10, 1998 re Water Right Exchange Application from Provo River Water Users Association, 4 pages
4. Letter dated February 10, 1998 re Protest of Exchange Application from Clyde, Snow & Swenson, PC, 4 pages
5. Letter dated February 9, 1998 re Exchange application from Utah States Department of the Interior, 2 pages
6. Application for Exchange of Water 51-7177 (e3760), 11 pages

SAID DOCUMENT(s) are on file in the Division of Water Rights, located at 1594 West North Temple Street, Suite 220, Salt Lake City, UT 84116.

Dated this 31st day of March 2010.

Boyd Clayton, P.E.
Deputy State Engineer

Attachments

EXHIBIT G

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Attorneys for South Farm, LLC

IN THE THIRD DISTRICT COURT, STATE OF UTAH
IN AND FOR SALT LAKE COUNTY

In the matter of the General Determination of the Rights to the Use of All the Water, both Surface and Groundwater, within the Drainage Area of Utah Lake and Jordan River in Utah, Salt Lake, Davis, Summit, Wasatch, Sanpete and Juab Counties Subcase: Strawberry Water Users Association and Strawberry High Line Canal Company, Petitioners, v. United States of America, Department of Interior, Bureau of Reclamation, Respondents.	**SOUTH FARM, LLC'S RESPONSE TO STRAWBERRY WATER USERS ASSOCIATION'S FIRST SET OF INTERROGATORIES, FIRST SET OF REQUESTS FOR ADMISSIONS, AND FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO SOUTH FARM, LLC** Civil No. 360057298 (51-1-1) Honorable Judge Kate Toomey

outweighs the likely benefit that response would provide, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation.

E. South Farm objects to the Interrogatories, Requests for Admissions, and Requests for Production of Documents generally and individually to the extent that they seek to require production or identification of information unknown to South Farm, or production or identification of documents South Farm does not control or possess.

F. Where the Interrogatories ask South Farm to "identify" a document or person, South Farm has not yet determined each and every person, document or exhibit it will use at trial in this matter, and therefore reserves the right to identify at a later time any such persons, documents or exhibits.

G. South Farm reserves the right to supplement and/or amend all responses should additional information become available.

INTERROGATORIES

Interrogatory No. 1: For water rights 59-1197 and 59-5392, please describe in detail the following:

(a) The current place of use;

(b) The current point(s) of diversion;

(c) The quantity of diversion allowed;

(d) The priority date;

(e) How, where, and in what quantity, water under each water right has been diverted and used, if at all, in the last seven years; and

(f) Describe in detail any and all photographic or documentary evidence supporting the information provided under subsection (e) immediately above.

Response: South Farm objects to Interrogatory No. 1(a)–(d) because it seeks information that is obtainable from some other publicly available source that is more convenient, less burdensome, or less expensive. All of the information relating to the current place of use, current point(s) of diversion, quantity of diversion allowed, and priority dates is publicly available in South Farm's water rights records on file with the Utah Division of Water Rights ("Division"), which are also available online via the Division's website at http://www.waterrights.utah.gov/. Furthermore, South Farm objects to Interrogatory No. 1(e)–(f) because it seeks information that is irrelevant and is not calculated to lead to the discovery of admissible evidence. Without waiving the foregoing, South Farm responds that it is diverting and using its water in accordance with its approved water rights of record and on file with the Division.

Interrogatory No. 2: With respect to water rights 59-1197 and 59-5392, has the diversion of water under any of these listed water rights ever been reduced by the Utah State Engineer based on the level of Utah Lake? If yes, describe in detail the circumstances surrounding such reduction, when such reduction occurred, the amount of water so reduced, and any documentary or photographic evidence indicating such reduction in diversion.

Response: South Farm is not aware of any instance in which diversion of water under any of the foregoing water rights has been reduced by the Utah State Engineer based on the level of Utah Lake. South Farm cannot say with certainty at this point, however, whether and to what extent its groundwater diversions have been affected by the level of water in Utah Lake, given that there is a known hydrological connection between Utah Lake and the shallow aquifer underlying the western Salt Lake Valley from which South Farm diverts water under the foregoing water rights.

Additionally, South Farm owns 65.5 shares in the East Jordan Irrigation Company, 41.5 shares in the South Jordan Canal Company, 115 Shares in the Utah Lake Distributing Company, and 949 shares in the Welby Jacob Water Users Company. Furthermore, affiliates of South Farm own 80 shares in the North Jordan Irrigation Company, 80 shares in Taylorsville Ditch Co., and 332 shares in the Welby Jacob Water Users Company. Each of the foregoing irrigation and canal companies (hereinafter the "Irrigation Companies") divert water from and have direct calls on the surface waters of Utah Lake and the Jordan River. Diversions of the Irrigation Companies' water, which water is the source of South Farm's water under its shares, are believed to have been reduced based on the water level of Utah Lake. Since 1920, Utah Lake has experienced three major drought periods: in the 1930s, 1960s, and 1990s. During the drought of the 1930s, culminating in 1935, and during the 1990s, culminating in 1992, Utah Lake dropped below the pumps at the Utah Lake Pumping Plant, leaving the Irrigation Companies without water.

Interrogatory No. 3: Are water rights 59-1197 and 59-5392 administered based on the priority dates of surface water rights in Utah Lake? If yes, which water rights of the above-listed are so administered, describe in detail the circumstances of such administration, and describe all documentary and photographic evidence supporting such administration.

Response: South Farm objects to Interrogatory No. 3 to the extent that it is vague and ambiguous as to what "administered" means, who administers, etc. Without waiving the foregoing, the foregoing water rights are not known to be administered based on the priority dates of surface water rights in Utah Lake. However, the water rights underlying the shares in the Irrigation Companies, and hence South Farm's water shares, are administered based on the priority dates of surface water rights in Utah Lake and the Jordan River. The 1992 Interim Water Distribution Plan for the Utah Lake Drainage Basin, as amended (the "1992 Utah Lake Plan"), provides that the South Jordan Canal Company, East Jordan Irrigation Company, and North Jordan Irrigation Company water rights (and hence their shares) have primary storage rights in Utah Lake based on their priority dates, while the Utah Lake Distributing Company has secondary storage rights. A copy of the 1992 Utah Lake Plan is publicly available at the Division and on its website at http://www.waterrights.utah.gov/wrinfo/policy/distrib.asp. The Welby Jacob Water Users Company water rights and shares are also administered based on their priority dates.

Interrogatory No. 4: With respect to water rights 59-1197 and 59-5392, do any of the listed water rights have a direct call on Utah Lake surface water? If yes, please indicate which of

the above-listed water rights have such a call, if such a call on surface water of Utah Lake is a direct call or from either a tributary to Utah Lake or from the Jordan River.

Response: South Farm objects to Interrogatory No. 4 because it is vague and ambiguous whether a "direct call on Utah Lake surface water" also includes a call on the surface water of a tributary to Utah Lake or the Jordan River. Without waiving the foregoing, South Farm responds that none of the listed water rights have a direct call on Utah Lake surface water, or a call on the surface waters of a tributary to Utah Lake or the surface waters of the Jordan River. However, as mentioned above, most of the Irrigation Companies' water rights, from which South Farm obtains water pursuant to its shares, have a direct call on the surface waters of Utah Lake and the Jordan River. The specific water rights of the Irrigation Companies that have such a direct call are as set forth in the Division's publicly available water rights records, which is more convenient, less burdensome, or less expensive than providing a detailed listing of such water rights here. *See also* response to Interrogatory No. 2 above.

Interrogatory No. 5: With respect to water rights 59-1197 and 59-5392, describe in detail the conditions or circumstances whereby any of the above-listed water rights would be subject to reduced diversions based on the surface water level of Utah Lake.

Response: South Farm objects to Interrogatory No. 5 because it is vague and ambiguous as to whether such reduction refers only to reductions by the State Engineer or to natural reductions. Without waiving the foregoing, there is a known hydrological connection between Utah Lake and the shallow aquifer underlying the western Salt Lake Valley from which South

Farm diverts water pursuant to the foregoing water rights, with water flowing from Utah Lake toward the aquifer. For example, it is documented that Salt Lake Valley groundwater is recharged by underflow from Utah Valley through the Jordan Narrows, seepage from major canals, and seepage from irrigated fields and lawns. *See, e.g.*, Utah Division of Water Resources, *Utah State Water Plan: Jordan River Basin*, 19-1 to 19-4 (Sep. 1997); Department of Natural Resources, *Ground-Water Conditions in Salt Lake Valley, Utah, 1969-83, and Predicted Effects of Increased Withdrawals from Wells*, Tech. Pub. No. 87, at 12 (1987). Although the extent of the hydrological connections is not known to South Farm in great detail, it is likely that the water level of the aquifer will drop in response to a drop in the surface water level of Utah Lake. South Farm may thus be affected by reduced diversions or increased pumping costs as a result of such aquifer depletion.

Furthermore, South Farm's shares in the Irrigation Companies may be subject to reduced diversions if the water level of Utah Lake drops to such a point that the Irrigation Companies' diversions are reduced. For example, after all of the system storage in Utah Lake and in upstream reservoirs has been used, and secondary rights (including Welby Jacob water shares) have ceased diversions, the remaining primary storage is then allocated to the Irrigation Companies in reduced quantities as set forth in the 1992 Utah Lake Plan. When that happens, South Farm must bear its proportionate share of the reduction. Additionally, because the extreme drought patterns and cycles have occurred every 30 years since the 1930's, Utah Lake and the Jordan River are likely to suffer another extreme drought in the near future. In such event it is possible that diversions of the Irrigation Companies' water rights, and thus South

Farm's water shares, may be subject to reduced diversions. *See also* response to Interrogatory No. 2 above.

Interrogatory No. 6: With respect to water rights 59-1197 and 59-5392, do any of these water rights have points of diversion within the service area of the Strawberry Valley Project? If yes, please list which water right(s) have points of diversion within the Strawberry Valley Project service area.

Response: South Farm objects to this Interrogatory No. 6 as vague and ambiguous because the Strawberry Valley Project service area has not been defined and no service area map has been provided to South Farm. Furthermore, information relating to the approved point of diversion of the foregoing water rights is publicly available in South Farm's water rights records on file with the Division, which are also available online via the Division's. Without waiving the foregoing, South Farm further responds that it diverts water pursuant to its water shares in the Irrigation Companies. The Irrigation Companies divert their surface waters from both Utah Lake and the Jordan River. Again, because South Farm does not know the boundaries of the SVP service area, it cannot answer whether its water rights, water shares, or their underlying water rights are diverted within the SVP service area.

Interrogatory No. 7: Have you (or your agents or delegees) conducted any study or prepared any report with respect to the amount of return flow water presented in Utah Lake from

the import waters of the Strawberry Valley Project? If so, when was such study done and report (if any) prepared, by whom, and what were the findings of said study or report?

Response: South Farm objects to Interrogatory No. 7 to the extent it seeks information that is protected by the attorney client privilege and/or attorney work-product doctrine. Without waiving the foregoing, South Farm responds that it has not conducted any such study.

Interrogatory No. 8: Please describe, in detail, how diversions under each of water rights 59-1197 and 59-5392, would be impaired by the adoption of the State Engineer's Proposed Determination at issue in this matter supporting the right of recapture and reuse of return flows from reclamation projects.

Response: South Farm objects to Interrogatory No. 8 as vague and ambiguous as to the meaning of "impaired." Without waiving the foregoing, South Farm responds as follows. The State Engineer's Proposed Determination answers the question "whether the SVP is entitled to use, directly or by exchange, the return flow from imported SVP water." First, adoption of the Proposed Determination would entitle either SWUA or the Bureau of Reclamation, or their assignees, to use SVP return flow directly or by exchange/credit, even after the return flow has commingled with water occurring naturally in the Utah Lake-Jordan River Drainage. Such a result is contrary to established Utah law and in effect removes a lawful benefit (uncontrolled or lost return flow) received by South Farm. Second, the Proposed Determination also provides that the return flow water "is superior" to any existing rights and that the imported return flow water "is not subject to priority calls in the Utah Lake-Jordan River drainage." Thus, adoption of

the Proposed Determination subordinates South Farm's priority water rights to any calculated or estimated SVP return flow in excess of the actual return flow, which by the Proposed Determination obtains a "super priority." Third, adoption of the Proposed Determination allows recapture of the calculated return flow, which recapture would interfere with South Farm's vested water rights and water shares to the extent that the actual return flow is less than the calculated return flow. For example, inflated upstream diversions taken as an exchange/credit based on miscalculation of imported return flow water may cause reduced flow in the Jordan River. Additionally, overestimation of actual return flow to Utah Lake would result in a depressed groundwater table in the shallow aquifer and result in increased seepage losses in the unlined portion of the canals. Fourth, the importer's right to direct recapture and super priority would also subject South Farm to future claims by the importer for interference with imported return flow water. Fifth, adoption of the Proposed Determination would result in reductions in the quantity of water available to South Farm in both its Irrigation Companies' shares and the shallow groundwater aquifer. *See* response to Interrogatory No. 5 above. Sixth, adoption of the Proposed Determination would in essence require South Farm (and other affected water users) to expend significant resources to defend and protect its water rights from inflated and incorrect return flow calculations by the importer of SVP water. South Farm does not have the funds or resources to engage in such a costly analysis. Under current Utah law, the quantity of return flow water can be easily calculated by taking accurate measurements because an importer must maintain physical control of the water in order to reuse the return flow. But the Proposed

Determination changes that by allowing return flow water to be used even after it has commingled with natural waters, thereby making accurate measurements practically impossible.

Interrogatory No. 9: Are you aware of other federal reclamation project(s) in the State of Utah which use and rely on return flows from project water rights? If so, please describe which federal reclamation project(s) so use and rely on project return flows.

Response: South Farm believes that the Central Utah Project, administered by the Central Utah Water Conservancy District, is a federal reclamation project which, to South Farm's information and knowledge, uses and relies on return flows from project water rights.

Interrogatory No. 10: List all persons providing information for or preparing responses to these Interrogatories, Requests for Admissions, and Requests for production of Documents.

Response: Donald E. Wallace, Vice President, South Farm, LLC.

REQUESTS FOR ADMISSIONS

Request for Admission No. 1: Admit that none of water rights 59-1197 and 59-5392 have a direct call on surface water directly from Utah Lake.

Response: South Farm objects to this Request for Admission No. 1 because it seeks information that is obtainable from some other publicly available source that is more convenient, less burdensome, or less expensive, *i.e.* South Farm's water rights records on file with the Division. South Farm further objects that this Request for Admission No. 1 is vague and

ambiguous as to whether a "direct call on surface water directly from Utah Lake" refers to direct calls on tributaries to Utah Lake or the Jordan River. Without waiving the foregoing, admit. South Farm further affirmatively states that the Irrigation Companies' water rights, which serve as the basis for South Farm's water shares, have a direct call on surface water directly from Utah Lake. *See* Response to Interrogatory No. 4 above.

Request for Admission No. 2: Admit that none of water rights 59-1197 and 59-5392 have ever been administered based on the priority of Utah Lake surface water rights.

Response: South Farm objects to this Request for Admission No. 2 because it is vague and ambiguous as to the meaning of "administered" or whether "Utah Lake surface water rights" also refers to surface water rights of tributaries to Utah Lake or Jordan River direct flow rights. Without waiving the foregoing, admit. South Farm further affirmatively states that the Irrigation Companies' water rights, which serve as the basis for South Farm's water shares, have been administered based on the priority of Utah Lake surface water rights. *See* Responses to Interrogatory Nos. 2 and 3 above.

Request for Admission No. 3: Admit that diversions under water rights 59-1197 and 59-5392 have never been reduced based on the level of surface water in Utah Lake.

Response: South Farm objects to this Request for Admission No. 3 because it is vague and ambiguous as to whether such reduction refers only to reductions by the State Engineer or to natural reductions, or whether "surface water in Utah Lake" also refers to surface water in

tributaries to Utah Lake or the Jordan River. Without waiving the foregoing, South Farm admits that the diversions under the foregoing water rights have never been reduced by the Utah State Engineer based on the level of surface water in Utah Lake. South Farm denies that diversions under the foregoing water rights have never been naturally reduced based on the level of surface water in Utah Lake or the flow of the Jordan River, given the known hydrological connection between Utah Lake and the groundwater aquifer from which South Farm diverts its groundwater rights. South Farm further affirmatively states that on various occasions the Irrigation Companies' diversions of water have been reduced based on the level of surface water in Utah Lake. *See also* responses to Interrogatory Nos. 2 and 5 above

Request for Admission No. 4: Admit that none of water rights 59-1197 and 59-5392 include points of diversion within the Strawberry Valley Project Service Area.

Response: South Farm objects to Request for Admission No. 4 as vague and ambiguous because the Strawberry Valley Project service area has not been defined and no service area map has been provided to South Farm. South Farm is unable to admit or deny this request because South Farm lacks information or knowledge as to the boundaries and scope of the Strawberry Valley Project Service Area. South Farm made reasonable inquiry by searching records of the State Engineer but the information known or readily obtainable to South Farm is insufficient to enable it to admit or deny. *See also* response to Interrogatory No. 6 above.

Request for Production No. 4: Produce all materials and reports described or referenced in Interrogatory No. 7.

Response: No discernable materials or reports exist. See Response to Interrogatory No. 7.

Respectfully submitted this 8th day of December, 2009

SMITH HARTVIGSEN, PLLC

J. Craig Smith
David B. Hartvigsen
Matthew E. Jensen
Bryan C. Bryner
Attorneys for South Farm, LLC

VERIFICATION

STATE OF UTAH)
:ss
COUNTY OF Salt Lake)

I, Donald E. Wallace, do certify and affirm that the foregoing answers to interrogatories are true and correct to the best of my knowledge, information, and belief.

SUBSCRIBED AND SWORN before me this 10th day of December, 2009.

NOTARY PUBLIC
TERI D. FORBES
2511 S. West Temple
Salt Lake City, Utah 84115
My Commission Expires
April 8, 2012
STATE OF UTAH

Notary Public

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Attorneys for Magna Water District

IN THE THIRD DISTRICT COURT, STATE OF UTAH
IN AND FOR SALT LAKE COUNTY

In the matter of the General Determination of the Rights to the Use of All the Water, both Surface and Groundwater, within the Drainage Area of Utah Lake and Jordan River in Utah, Salt Lake, Davis, Summit, Wasatch, Sanpete and Juab Counties Subcase: Strawberry Water Users Association and Strawberry High Line Canal Company, Petitioners, v. United States of America, Department of Interior, Bureau of Reclamation, Respondents.	**MAGNA WATER DISTRICT'S RESPONSE TO STRAWBERRY WATER USERS ASSOCIATION'S FIRST SET OF INTERROGATORIES, FIRST SET OF REQUESTS FOR ADMISSIONS, AND FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO MAGNA WATER DISTRICT** Civil No. 360057298 (51-1-1) Honorable Judge Kate Toomey

generally and individually to the extent that the burden or expense of responding outweighs the likely benefit that response would provide, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation.

E. Magna Water objects to the Interrogatories, Requests for Admissions, and Requests for Production of Documents generally and individually to the extent that they seek to require production or identification of information unknown to Magna Water, or production or identification of documents Magna Water does not control or possess.

F. Where the Interrogatories ask Magna Water to "identify" a document or person, Magna Water has not yet determined each and every person, document or exhibit it will use at trial in this matter, and therefore reserves the right to identify at a later time any such persons, documents or exhibits.

G. Magna Water reserves the right to supplement and/or amend all responses should additional information become available.

INTERROGATORIES

Interrogatory No. 1: For water rights 59-1226, 59-1228, 59-1285, 59-1286, 59-1288, 59-1289, 59-1295, 59-1679, 59-1709, 59-1833, 59-2504, 59-2506, 59-2507, 59-2509, 59-2510, 59-2512, please describe in detail the following:

(a) The current place of use;

(b) The current point(s) of diversion;

(c) The quantity of diversion allowed;

(d) The priority date;

(e) How, where, and in what quantity, water under each water right has been diverted and used, if at all, in the last seven years; and

(f) Describe in detail any and all photographic or documentary evidence supporting the information provided under subsection (e) immediately above.

Response: Magna Water objects to Interrogatory No. 1(a)–(d) because it is unduly burdensome or expensive; seeks information that is unreasonably cumulative or duplicative; and seeks information that is obtainable from some other publicly available source that is more convenient, less burdensome, or less expensive. All of the information relating to the current place of use, current point(s) of diversion, quantity of diversion allowed, and priority dates is publicly available in Magna Water's water rights records on file with the Utah Division of Water Rights ("Division"), which are also available online via the Division's website at http://www.waterrights.utah.gov/. Furthermore, Magna Water objects to Interrogatory No. 1(e)–(f) because it seeks information that is irrelevant and is not calculated to lead to the discovery of admissible evidence. Without waiving the foregoing, Magna Water responds that it is diverting and using all of its water in accordance with its approved water rights of record and on file with the Division.

Interrogatory No. 2: With respect to water rights 59-1226, 59-1228, 59-1285, 59-1286, 59-1288, 59-1289, 59-1295, 59-1679, 59-1709, 59-1833, 59-2504, 59-2506, 59-2507, 59-2509,

59-2510, 59-2512, has the diversion of water under any of these listed water rights ever been reduced by the Utah State Engineer based on the level of Utah Lake? If yes, describe in detail the circumstances surrounding such reduction, when such reduction occurred, the amount of water so reduced, and any documentary or photographic evidence indicating such reduction in diversion.

Response: Magna Water is not aware of any instance in which diversion of water under any of the foregoing water rights has been reduced by the Utah State Engineer based on the level of Utah Lake. Magna Water cannot say with certainty at this point, however, whether and to what extent its groundwater diversions have been affected by the level of water in Utah Lake, given that there is a known hydrological connection between Utah Lake and the shallow aquifer underlying the western Salt Lake Valley from which Magna Water diverts water under the foregoing water rights.

Additionally, Magna Water owns approximately 170 shares in the Utah and Salt Lake Canal Company (USLCC), which shares are believed to have been reduced based on the water level of Utah Lake. Most of USLCC's water rights, from which Magna Water obtains water pursuant to its shares, have a direct call on the surface waters of Utah Lake or the surface waters of the Jordan River. Since 1920, Utah Lake has experienced three major drought periods: in the 1930s, 1960s, and 1990s. During the drought of the 1930s, culminating in 1935, and during the 1990s, culminating in 1992, Utah Lake dropped below the pumps at the Utah Lake Pumping Plant, leaving the canal companies, including USLCC, without water. *See, e.g.*, LeRoy W.

Hooton, Jr., *Utah Lake & Jordan River – Water Rights and Management Plan*, available at http://www.slcgov.com/utilities/ud_source_protection.htm (last visited November 24, 2009).

Interrogatory No. 3: Are water rights 59-1226, 59-1228, 59-1285, 59-1286, 59-1288, 59-1289, 59-1295, 59-1679, 59-1709, 59-1833, 59-2504, 59-2506, 59-2507, 59-2509, 59-2510, 59-2512 administered based on the priority dates of surface water rights in Utah Lake? If yes, which water rights of the above-listed are so administered, describe in detail the circumstances of such administration, and describe all documentary and photographic evidence supporting such administration.

Response: Magna Water objects to Interrogatory No. 3 to the extent that it is vague and ambiguous as to what "administered" means, who administers, etc. Without waiving the foregoing, the foregoing water rights are not known to be administered based on the priority dates of surface water rights in Utah Lake. However, the water rights underlying the USLCC shares are administered based on the priority dates of surface water rights in Utah Lake. The 1992 Interim Water Distribution Plan for the Utah Lake Drainage Basin, as amended (the "1992 Utah Lake Plan"), provides that USLCC water rights (and hence all of its shares) are entitled to primary storage in Utah Lake based on their priority dates. A copy of the 1992 Utah Lake Plan is publicly available at the Division and on its website at http://www.waterrights.utah.gov/wrinfo/policy/distrib.asp.

Interrogatory No. 4: With respect to water rights 59-1226, 59-1228, 59-1285, 59-1286, 59-1288, 59-1289, 59-1295, 59-1679, 59-1709, 59-1833, 59-2504, 59-2506, 59-2507, 59-2509, 59-2510, 59-2512, do any of the listed water rights have a direct call on Utah Lake surface water? If yes, please indicate which of the above-listed water rights have such a call, if such a call on surface water of Utah Lake is a direct call or from either a tributary to Utah Lake or from the Jordan River.

Response: Magna Water objects to Interrogatory No. 4 because it is vague and ambiguous whether a "direct call on Utah Lake surface water" also includes a call on the surface water of a tributary to Utah Lake or the Jordan River. Magna Water further objects to Interrogatory No. 4 because it seeks information that is obtainable from some other publicly available source that is more convenient, less burdensome, or less expensive, e.g. the water rights records on file with the Division. Without waiving the foregoing, Magna Water responds that none of the listed water rights have a direct call on Utah Lake surface water, or a call on the surface waters of a tributary to Utah Lake or the surface waters of the Jordan River.

However, most of USLCC's water rights, from which Magna Water obtains water pursuant to its USLCC shares, have a direct call on the surface waters of Utah Lake or the surface waters of the Jordan River. The specific water rights of USLCC that have such a direct call are as set forth in the Division's publicly available water rights records, which is more convenient, less burdensome, or less expensive than providing a detailed listing of USLCC's water rights here. *See also* response to Interrogatory No. 2 above.

Interrogatory No. 5: With respect to water rights 59-1226, 59-1228, 59-1285, 59-1286, 59-1288, 59-1289, 59-1295, 59-1679, 59-1709, 59-1833, 59-2504, 59-2506, 59-2507, 59-2509, 59-2510, 59-2512, describe in detail the conditions or circumstances whereby any of the above-listed water rights would be subject to reduced diversions based on the surface water level of Utah Lake.

Response: Magna Water objects to Interrogatory No. 5 because it is vague and ambiguous as to whether such reduction refers only to reductions by the State Engineer or to natural reductions. Without waiving the foregoing, there is a known hydrological connection between Utah Lake and the shallow aquifer underlying the western Salt Lake Valley from which Magna Water diverts water pursuant to the foregoing water rights, with water flowing from Utah Lake toward the aquifer. For example, it is documented that Salt Lake Valley groundwater is recharged by underflow from Utah Valley through the Jordan Narrows, seepage from major canals, and seepage from irrigated fields and lawns. *See, e.g.*, Utah Division of Water Resources, *Utah State Water Plan: Jordan River Basin*, 19-1 to 19-4 (Sep. 1997); Department of Natural Resources, *Ground-Water Conditions in Salt Lake Valley, Utah, 1969-83, and Predicted Effects of Increased Withdrawals from Wells*, Tech. Pub. No. 87, at 12 (1987). Although the extent of the hydrological connections is not known to Magna Water in great detail, it is likely that the water level of the aquifer will drop in response to a drop in the surface water level of Utah Lake. Magna Water may thus be affected by reduced diversions or increased pumping costs as a result of such aquifer depletion.

Furthermore, Magna Water's USLCC shares may be subject to reduced diversions if the water level of Utah Lake drops to such a point that USLCC's diversions are reduced. For example, after all of the system storage in Utah Lake and in upstream reservoirs has been used, and secondary rights have ceased diversions, only 18.7% of the remaining primary storage is then allocated to USLCC. When that happens, Magna Water must bear its proportionate share of the reduction. Additionally, because the extreme drought patterns and cycles have occurred every 30 years since the 1930's, Utah Lake and the Jordan River are likely to suffer another extreme drought in the near future. In such event it is possible that diversions of USLCC water rights, and thus Magna Water's water shares, may be subject to reduced diversions. *See also* response to Interrogatory No. 2 above.

Interrogatory No. 6: With respect to water rights 59-1226, 59-1228, 59-1285, 59-1286, 59-1288, 59-1289, 59-1295, 59-1679, 59-1709, 59-1833, 59-2504, 59-2506, 59-2507, 59-2509, 59-2510, 59-2512, do any of these water rights have points of diversion within the service area of the Strawberry Valley Project? If yes, please list which water right(s) have points of diversion within the Strawberry Valley Project service area.

Response: Magna Water objects to this Interrogatory No. 6 as vague and ambiguous because the Strawberry Valley Project service area has not been defined and no service area map has been provided to Magna Water. Furthermore, information relating to the approved points of diversion of the foregoing water rights is publicly available in Magna Water's water rights records on file with the Division, which are also available online via the Division's website.

Without waiving the foregoing, Magna Water further responds that it diverts water pursuant to its USLCC water shares from the Utah and Salt Lake Canal. USLCC diverts its surface waters from both Utah Lake at the pumping plant and the Jordan River at Turner Dam. Again, because Magna Water does not know the boundaries of the SVP service area, it cannot answer whether its water rights, USLCC shares, or their underlying water rights are diverted within the SVP service area.

Interrogatory No. 7: Have you (or your agents or delegees) conducted any study or prepared any report with respect to the amount of return flow water presented in Utah Lake from the import waters of the Strawberry Valley Project? If so, when was such study done and report (if any) prepared, by whom, and what were the findings of said study or report?

Response: Magna Water objects to Interrogatory No. 7 to the extent it seeks information that is protected by the attorney client privilege and/or attorney work-product doctrine. Without waiving the foregoing, Magna Water responds that it has not conducted any such study.

Interrogatory No. 8: Please describe, in detail, how diversions under each of water rights 59-1226, 59-1228, 59-1285, 59-1286, 59-1288, 59-1289, 59-1295, 59-1679, 59-1709, 59-1833, 59-2504, 59-2506, 59-2507, 59-2509, 59-2510, 59-2512, would be impaired by the adoption of the State Engineer's Proposed Determination at issue in this matter supporting the right of recapture and reuse of return flows from reclamation projects.

Response: Magna Water objects to Interrogatory No. 8 as vague and ambiguous as to the meaning of "impaired." Without waiving the foregoing, Magna Water responds as follows. The State Engineer's Proposed Determination answers the question "whether the SVP is entitled to use, directly or by exchange, the return flow from imported SVP water." First, adoption of the Proposed Determination would entitle either SWUA or the Bureau of Reclamation, or their assignees, to use SVP return flow directly or by exchange/credit, even after the return flow has commingled with water occurring naturally in the Utah Lake-Jordan River Drainage. Such a result is contrary to established Utah law and in effect removes a lawful benefit (uncontrolled or lost return flow) received by Magna Water. Second, the Proposed Determination also provides that the return flow water "is superior" to any existing rights and that the imported return flow water "is not subject to priority calls in the Utah Lake-Jordan River drainage." Thus, adoption of the Proposed Determination subordinates Magna Water's priority water rights to any calculated or estimated SVP return flows in excess of the actual return flow, which by the Proposed Determination obtains a "super priority." Such is true of both Magna Water's groundwater rights as well as its USLCC shares. Third, adoption of the Proposed Determination allows recapture of the calculated return flow, which recapture would interfere with Magna Water's vested water rights and USLCC shares rights to the extent that the actual return flow is less than the calculated return flow. For example, inflated upstream diversions taken as an exchange/credit based on miscalculation of imported return flow water may cause reduced flow in the Jordan River. Additionally, overestimation of actual return flow to Utah Lake would result in a depressed groundwater table in the shallow aquifer and result in increased seepage

losses in the unlined portion of the canals. Fourth, the importer's right to direct recapture and super priority would also subject Magna Water to future claims by the importer for interference with imported return flow water. Fifth, adoption of the Proposed Determination would result in reductions in the quantity of water available to Magna Water in both USLCC's canal and the shallow groundwater aquifer. *See* response to Interrogatory No. 5 above. Sixth, adoption of the Proposed Determination would in essence require Magna Water (and other affected water users) to expend significant resources to defend and protect its water rights from inflated and incorrect return flow calculations by the importer of SVP water. Magna Water does not have the funds or resources to engage in such a costly analysis. Under current Utah law, the quantity of return flow water can be easily calculated by taking accurate measurements because an importer must maintain physical control of the water in order to reuse the return flow. But the Proposed Determination changes that by allowing return flow water to be used even after it has commingled with natural waters, thereby making accurate measurements practically impossible.

Interrogatory No. 9: Are you aware of other federal reclamation project(s) in the State of Utah which use and rely on return flows from project water rights? If so, please describe which federal reclamation project(s) so use and rely on project return flows.

Response: Magna Water believes that the Central Utah Project is a federal reclamation project which, to Magna Water's information and knowledge, uses and relies on return flows from project water rights.

Interrogatory No. 10: List all persons providing information for or preparing responses to these Interrogatories, Requests for Admissions, and Requests for production of Documents.

Response: Ed Hansen, General Manager, Magna Water District.

REQUESTS FOR ADMISSIONS

Request for Admission No. 1: Admit that none of water rights 59-1226, 59-1228, 59-1285, 59-1286, 59-1288, 59-1289, 59-1295, 59-1679, 59-1709, 59-1833, 59-2504, 59-2506, 59-2507, 59-2509, 59-2510, 59-2512 have a direct call on surface water directly from Utah Lake.

Response: Magna Water objects to this Request for Admission No. 1 because it is unduly burdensome; seeks information that is unreasonably cumulative or duplicative; and seeks information that is obtainable from some other publicly available source that is more convenient, less burdensome, or less expensive, *i.e.* Magna Water's water rights records on file with the Division. Magna Water further objects that this Request for Admission No. 1 is vague and ambiguous as to whether a "direct call on surface water directly from Utah Lake" refers to direct calls on tributaries to Utah Lake or the Jordan River. Without waiving the foregoing, admit. Magna Water further affirmatively states that USLCC's water rights, which serve as the basis for Magna Water's USLCC shares, have a direct call on surface water directly from Utah Lake. *See* Response to Interrogatory No. 4 above.

Request for Admission No. 2: Admit that none of water rights 59-1226, 59-1228, 59-1285, 59-1286, 59-1288, 59-1289, 59-1295, 59-1679, 59-1709, 59-1833, 59-2504, 59-2506, 59-

2507, 59-2509, 59-2510, 59-2512 have ever been administered based on the priority of Utah Lake surface water rights.

Response: Magna Water objects to this Request for Admission No. 2 because it is vague and ambiguous as to the meaning of "administered" or whether "Utah Lake surface water rights" also refers to surface water rights of tributaries to Utah Lake or Jordan River direct flow rights. Without waiving the foregoing, admit. Magna Water further affirmatively states that USLCC's water rights, which serve as the basis for Magna Water's USLCC shares, have been administered based on the priority of Utah Lake surface water rights. *See* response to Interrogatory Nos. 3 and 5 above.

Request for Admission No. 3: Admit that diversions under water rights 59-1226, 59-1228, 59-1285, 59-1286, 59-1288, 59-1289, 59-1295, 59-1679, 59-1709, 59-1833, 59-2504, 59-2506, 59-2507, 59-2509, 59-2510, 59-2512 have never been reduced based on the level of surface water in Utah Lake.

Response: Magna Water objects to this Request for Admission No. 3 because it is vague and ambiguous as to whether such reduction refers only to reductions by the State Engineer or also to natural reductions, or whether "surface water in Utah Lake" also refers to surface water in tributaries to Utah Lake or the Jordan River. Without waiving the foregoing, Magna Water admits that the diversions under the foregoing water rights have never been reduced by the Utah State Engineer based on the level of surface water in Utah Lake. Magna Water denies that diversions under the foregoing water rights have never been naturally reduced based on the level

of surface water in Utah Lake or the flow of the Jordan River, given the known hydrological connection between Utah Lake and the groundwater aquifer from which Magna Water diverts its groundwater rights. Magna Water further affirmatively states that on various occasions USLCC's water has been reduced based on the level of surface water in Utah Lake. *See also* responses to Interrogatory Nos. 2 and 5 above.

Request for Admission No. 4: Admit that none of water rights 59-1226, 59-1228, 59-1285, 59-1286, 59-1288, 59-1289, 59-1295, 59-1679, 59-1709, 59-1833, 59-2504, 59-2506, 59-2507, 59-2509, 59-2510, 59-2512 include points of diversion within the Strawberry Valley Project Service Area.

Response: Magna Water objects to Request for Admission No. 4 as vague and ambiguous because the Strawberry Valley Project service area has not been defined and no service area map has been provided to Magna Water. Without waiving the foregoing, Magna Water is unable to admit or deny this request because Magna Water lacks information or knowledge as to the boundaries and scope of the Strawberry Valley Project Service Area. Magna Water made reasonable inquiry by searching records of the State Engineer but the information known or readily obtainable to Magna Water is insufficient to enable it to admit or deny. *See also* response to Interrogatory No. 6 above.

Request for Admission No. 5: Admit that the only prospect of impairment to water rights 59-1226, 59-1228, 59-1285, 59-1286, 59-1288, 59-1289, 59-1295, 59-1679, 59-1709, 59-1833,

Request for Production No. 4: Produce all materials and reports described or referenced in Interrogatory No. 7.

Response: No discernable materials or reports exist. See Response to Interrogatory No. 7.

Respectfully submitted this 7th day of December, 2009

SMITH HARTVIGSEN, PLLC

J. Craig Smith
David B. Hartvigsen
Matthew E. Jensen
Bryan C. Bryner
Attorneys for Magna Water District

VERIFICATION

STATE OF UTAH)
:ss
COUNTY OF Salt Lake)

I, Edwin J. Hansen, do certify and affirm that the foregoing answers to interrogatories are true and correct to the best of my knowledge, information, and belief.

Edwin J. Hansen

SUBSCRIBED AND SWORN before me this 14th day of December, 2009.

David B. Hartvigsen
Notary Public

Notary Public
DAVID B HARTVIGSEN
Commission #580361
My Commission Expires
October 2, 2013
State of Utah

EXHIBIT H

SHAWN E. DRANEY (4026)
KEITH A. CALL (6708)
SCOTT H. MARTIN (7750)
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Attorneys for Petitioners

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

SALT LAKE DEPARTMENT, STATE OF UTAH

IN THE MATTER OF THE GENERAL DETERMINATION OF THE RIGHTS TO THE USE OF ALL THE WATER, BOTH SURFACE AND UNDERGROUND, WITHIN THE DRAINAGE AREA OF UTAH LAKE AND JORDAN RIVER IN UTAH, SALT LAKE, DAVIS, SUMMIT, WASATCH, SANPETE AND JUAB COUNTIES;	**DECLARATION OF JIM RILEY, P.E.**
	Case No. 360057298 (51-1)
STRAWBERRY WATER USERS ASSOCIATION, a Utah nonprofit corporation; and STRAWBERRY HIGH LINE CANAL COMPANY, a Utah nonprofit corporation,	Spanish Fork Canyon No. 1
Petitioners,	
vs.	Judge Kate Toomey
UNITED STATES OF AMERICA; DEPARTMENT OF THE INTERIOR; BUREAU OF RECLAMATION;	
Respondents.	

Jim Riley, P.E., states as follows:

1. I am the manager and owner of Jim Riley Engineering, which is a business that I started five years ago which specializes in water rights. Prior to the time that I started this business, I worked for the State of Utah, Division of Water Rights for 25 and ½ years, 15 of which were as Regional Engineer over the Utah Lake – Jordan River Regional Office, which oversees all of the activities of the State Engineer for Salt Lake, Utah, Wasatch, and the eastern half of Juab Counties. Please see my resume that is attached as Exhibit A.

2. I have reviewed and studied the State of Utah Division of Water Rights records and database regarding the water rights of South Farm LLC and Magna Water District, and those rights associated with the Strawberry Valley Project (SVP).

Water Rights of South Farm L.L.C.

3. Water Right Number 59-1197 is for an Underground Water Well located in Salt Lake County for 0.59 cfs of water for the supplemental irrigation of 142.4 acres of land. It appears that a sole supply of approximately 50 acres has been assigned to this water right.

4. Water Right Number 59-5392 is for an Underground Water Well located in Salt Lake County for 1.158 cfs of water for the irrigation of 25.35 acres of land.

5. Change Application Number a27594 has been approved and moved both of the rights for South Farm L.L.C. to three wells in Salt Lake County and to be used for the irrigation of 75 acres of land.

6. South Farm L.L.C. Summary – the source of the water for the South Farm L.L.C. is wells in Salt Lake County. I have included a map, attached as Exhibit B, showing the location

of the water rights of South Farm L.L.C., which also shows the location of Utah Lake and the Jordan River.

7. The South Farm wells in Salt Lake County would not be affected by return flow from the SVP or the use of the return flow water.

Water Rights of Magna Water District

8. Water Right Number 59-1226 is a water right for 0.038 cfs from a well in Salt Lake County for the irrigation of 3.41 acres of land, water for 3 head of livestock and for the domestic needs of one family.

9. Water Right Number 59-1228 is a right for 0.29 cfs of water from 9 wells in Salt Lake County for municipal use of water in Magna.

10. Water Right Number 59-1285 is a right for 1.0 cfs of water from 9 wells in Salt Lake County for municipal purposes in Magna.

11. Water Right Number 59-1286 is a right for 0.86 cfs of water from 9 wells in Salt Lake County for municipal purposes in Magna.

12. Water Right Number 59-1288 is a right for 0.822 cfs of water from 9 wells in Salt Lake County for municipal purposes in Magna.

13. Water Right Number 59-1289 is a right for 1.0 cfs of water from 4 wells in Salt Lake County for municipal purposes in Magna.

14. Water Right Number 59-1295 is a right for 1.0 cfs of water from 9 wells in Salt Lake County for municipal purposes in Magna and for the irrigation of 5.0 acres of land.

15. Water Right Number 59-1679 is a right for 1.87 cfs of water or 130 acre-feet of water from 111 shallow wells in Salt Lake County for municipal purposes in Magna and for industrial purposes at Kennecott. This water right was originally certificated for irrigation use from one well, 450 feet deep. A change application has been approved changing the nature of use from irrigation to municipal and changing the points of diversion to 111 shallow wells, which will be used in a secondary irrigation system.

16. Water Right Number 59-1709 is a right for 2.5 cfs of water from 4 wells for municipal purposes in Magna.

17. Water Right Number 59-1833 is a water right for 0.045 cfs of water from a well in Salt Lake County for the watering of 25 head of livestock.

18. Water Right Number 59-2504 is a right for 0.071 cfs of water from a well in Salt Lake County for municipal purposes in Magna.

19. Water Right Number 59-2506 is a right for 0.178 cfs of water from a well in Salt Lake County for municipal purposes in Magna.

20. Water Right Number 59-2507 is a right for 0.178 cfs of water from a well in Salt Lake County for municipal purposes in Magna.

21. Water Right Number 59-2509 is a right for 0.261 cfs of water from a well in Salt Lake County for municipal purposes in Magna.

22. Water Right Number 59-2510 is a right for 0.261 cfs of water from a well in Salt Lake County for municipal purposes in Magna.

23. Water Right Number 59-2512 is a right for 0.261 cfs of water from a well in Salt Lake County for municipal purposes in Magna.

24. Magna Water District Summary – the source of the water right of Magna Water District is wells in Salt Lake County. I have included a map, attached as Exhibit C, depicting the location of the wells of Magna Water District along with Utah Lake and the Jordan River.

25. The main area where water is diverted by Magna for municipal purposes is unique to the West side of Salt Lake County due to the quality of the water in that area.

26. It is my opinion that Magna would not be affected by any return flow from the SVP or the use of the return flow water.

Foreign Water

27. The water rights of the SVP consist of the following: Water Right Numbers 43-3001, 43-3012 and 43-1259 for water from the Duchesne drainage, Water Right Number 51-2259 for 7 cfs which is the amount of water that drains into the Strawberry Tunnel and most of which is produced in rock formations that would have been tributary to the Duchesne drainage, Water Right Numbers 51-10004 and 51-1016 for high flows in the Spanish Fork River, and seven water rights for nonconsumptive use of water for power generation on the Spanish Fork River.

28. The SVP water from the Duchesne drainage is foreign to the Utah Lake drainage.

29. It is diverted from the Strawberry or Duchesne River Drainages and is delivered to the SVP by means of a reservoir and tunnels that began in the early 1900's. This water is used for irrigation purposes and potentially returns water into the hydrologic system in Utah Valley.

This diversion and use of water has been accomplished by appropriate filings with the State Engineer since the early 1900's. This Duchesne River Basin water has always been treated and looked at by the State Engineer as foreign to the Utah Lake system.

30. Any return flows due to the transbasin diversion and the use of this SVP water would not have any requirement or call by any downstream user in the Utah Lake drainage, because it is not water that is naturally occurring in that drainage.

31. This same concept is utilized by the owners of the water rights of the Ontario Drain Tunnel. The Ontario Drain Tunnel, drains water from the Weber River or Park City side of the drainage into the Provo River drainage above the Jordanelle Reservoir. The water is foreign to the Provo River drainage and has been since the tunnel was driven and used as a drain. There are water rights that are established on the Ontario Drain Tunnel and all of those rights are on the Provo River side of the drainage. Even if the water is not used for numerous years, no water user on the Provo River system can have a call on this water or on any of the return flow from it. If the Ontario Drain Tunnel were to collapse, the water rights of the Provo River drainage will still be whole, the only impact would be to the water right owners of the Ontario Drain Tunnel. This same concept works here, now the SVP will be utilizing the water that is returned by their foreign water imports. No other water right holder has any call on any of the foreign water, no matter the priority, and would have no call on any return flow from the use of the foreign water.

Potentially Harmed or Impaired Water Rights

32. If the water was not diverted into the Utah Lake drainage, that amount of water would not have been there and would not be available for any other user to enjoy. If, and to what extent, the level of Utah Lake would be affected by the reuse of SVP return flow is best left to actual extensive hydrologic modeling studies or actual water use.

33. However, from a water rights standpoint, if there is any effect on Utah Lake levels, it would be experienced (if at all) by only those holders of Utah Lake storage rights (East Jordan Irrigation Company, South Jordan Irrigation Company, North Jordan Irrigation Company, Utah and SL Canal Company, Kennecott Utah Copper Company, Utah Lake Distributing Company, Draper Irrigation Company, and indirectly Welby Jacob Water Users Co.), those operators of the 3 large reclamation projects associated with Utah Lake (SVP, Provo River Project, and Central Utah Project), and those with direct flow downstream Jordan River surface rights. As indicated above, South Farm and Magna Water do not fall into any of these categories.

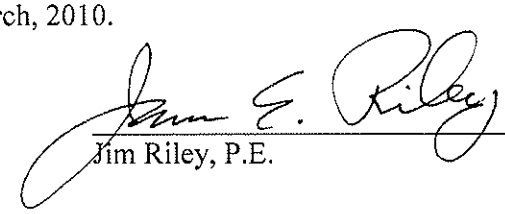
State Engineer Administrative Review Process

34. Any issue with respect to impairment to downstream users will be addressed by the change or exchange application process of the State Engineer. If he finds that the change or exchange application will potentially impair the rights of others anywhere on the system for any application that will be filed by the owner of the return flow from the SVP, the State Engineer will address this in the change or exchange application process. This is definitely one of the

issues that the State Engineer looks for when he is working on any change or exchange application and it is not his intent to allow any impairment of other water rights.

I declare under criminal penalty of the State of Utah that the foregoing is true and correct.

DATED this 30 day of March, 2010.



Jim Riley, P.E.

EXHIBIT A

James E. Riley
1872 East 1750 North
Layton, Utah 84040
801-698-9920 jriley@utahwater.com

Experience: Resolution of water right Conflicts. Wrote decisions for the State Engineer on complex water right issues. Managed the largest regional office for the Division of Water Rights. Established a very successful business specializing in water rights.

Jim Riley Engineering, LC
Manager **January 2005-Present**

- Own and manage specialty Engineering company focusing on researching water rights, processing of water rights, appropriation of water rights by the State Engineer, distribution of water rights, and adjudication of water rights
- Clients include:
  - Kennecott Land Company, Central Utah Water Conservancy District, Jordan Valley Water Conservancy District, Sandy City, Wasatch County, Midway Irrigation Company, Wolf Creek Irrigation Company, and Patterson Homes
- Projects include:
  - Resolution of water right conflicts including enforcement actions
  - Moving water rights to locations where the water is needed including moving over 49,760 acre-feet of water rights from Wayne County to the Green River area
  - Filing of diligence claims for water rights not currently of record in the Grand County area and in Utah and Juab Counties
  - Research of complex water rights
  - Testified in numerous court cases including the High Country Estates Homeowners v Foothill Water Company & Rodney Dansie and the Tooele Associates v Tooele City cases

State of Utah – Division of Water Rights
Utah Lake & Jordan River Regional Engineer **Jan. 1990-Jan. 2005**

- Oversaw all water right administration, distribution of water rights, adjudication of water rights, dam safety, and stream alterations in the Utah Lake / Jordan River drainage
- Hired, trained and managed a team of up to 4 engineers, geologists, and engineering technicians
- Wrote decisions for the State Engineer including decisions on Western Water, Rodney Dansie, and numerous decisions in Salt Lake, Utah, Juab, and Wasatch Counties
- Testified in numerous court cases including the Bushnell et.al. aka Broadhollow v Robert L. Morgan case
- Resolved water right conflicts

State of Utah – Division of Water Rights
Weber River Regional Engineer **Feb. 1987 – Jan. 1990**

- Oversaw all water right administration, distribution of water rights, adjudication of water rights, dam safety, and stream alterations in the Weber and Ogden River drainages and the Tooele and western half of Juab Counties
- Hired, trained and managed a team of up to 3 engineers engineering technicians
- Wrote decisions for the State Engineer on complex water right decisions including the Kamas Hills change application
- Testified in numerous court cases including the Kamas Hills v Robert L. Morgan case
- Resolved water right conflicts

State of Utah – Division of Water Rights
Computer System Manager **Aug. 1981 – Feb. 1987**

- Responsible for the computer system of the Division of Water Rights
- Hired, trained and managed 12 data entry people and one programmer
- On the team that designed the databases for the Division of Water Rights computer system to facilitate access to water right information
- Wrote programs to retrieve water right information

State of Utah – Division of Water Rights
Special Investigations Section **Dec. 1980 – Aug. 1981**

- Researched water right problem areas including water rights, hydrology and well interference
- Wrote computer simulation programs looking for return flow water

State of Utah – Division of Water Rights
Water Use Study **June 1979 – Dec. 1980**

- Worked with municipalities inventorying sources of water and gathering data on municipal water use

Education:

Bachelor of Science Civil Engineering, Utah State University, May 1979

License:

Professional Engineer, Number 166480-2202

EXHIBIT B

South Farm, LLC		
PREPARED BY: Jim Riley Engineering LC		
DATE	DATE OF SURVEY	SCALE 1"=10,000'
WATER RIGHT NUMBER	WATER RIGHT LOCATION T6S, R2E, SLBM	APPLICATION NO:

EXHIBIT C

Magna Water District		
PREPARED BY: Jim Riley Engineering LC		
DATE	DATE OF SURVEY	SCALE 1"=10,000'
WATER RIGHT NUMBER	WATER RIGHT LOCATION	APPLICATION NO:

EXHIBIT I

L. WARD WAGSTAFF, No. 5554
MICHAEL M. QUEALY, No. 2667
Assistant Attorneys General
MARK L. SHURTLEFF, No. 4666
UTAH ATTORNEY GENERAL
Attorneys for the State Engineer
1594 West North Temple, Suite 300
Salt Lake City, Utah 84116
Telephone: (801) 538-7227

IN THE THIRD JUDICIAL DISTRICT COURT,

SALT LAKE COUNTY, STATE OF UTAH

IN THE MATTER OF THE GENERAL DETERMINATION OF RIGHTS TO THE USE OF WATER, BOTH SURFACE AND UNDERGROUND, WITHIN THE DRAINAGE AREA OF THE UTAH LAKE AND JORDAN RIVER IN UTAH, SALT LAKE, DAVIS, SUMMIT, WASATCH, SANPETE, AND JUAB COUNTIES IN UTAH Utah County Division Spanish Fork Canyon Subdivision Strawberry Valley Project Return Flow	**AFFIDAVIT OF KENT L. JONES, P.E., UTAH STATE ENGINEER** Civil No. 360057298 (51-1-1) Judge Kate A. Toomey

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

Kent L. Jones, P.E., having been first duly sworn, deposes and says:

I am a Registered Professional Engineer, registered and licensed in the State of Utah.

1. I have personal knowledge of the facts stated here.

2. The opinions stated here are based upon facts personally known by me, or information provided to me that is the kind of information that an engineer working in my capacity would

ordinarily and reasonably rely upon in reaching such opinions, including the records and publications of the Division of Water Rights.

3. I have been employed by the State of Utah, Division of Water Rights since 1981.

4. Currently, I serve as the Utah State Engineer and Director of the Utah Division of Water Rights. I have served in this capacity for over a year.

5. Prior to my appointment as Utah State Engineer, I was the Assistant Utah State Engineer for Applications and Records from 1987 to 2008. My duties in this capacity included reviewing water right applications statewide, conducting water right hearings, establishing state water policy and guidelines, and preparing decisions for the Utah State Engineer.

6. My statutory duties as Utah State Engineer include administering water rights throughout the State of Utah. I am responsible for the general administrative supervision of the waters of the state and the measurement, appropriation, apportionment, and distribution of those waters.

7. Attachment 1 is a map showing the general area of service for the Strawberry Valley Project (SVP) water rights based on the records on file with the Division of Water Rights. The general area of service is in Utah Valley south of Utah Lake.

8. Attachment 2 shows the points of diversion for the water rights owned by South Farm L.L.C. (South Farm).

9. Attachment 3 shows the points of diversion for the water rights owned by Magna Water District (Magna) in Salt Lake County west of the Jordan River.

10. Attachment 4 shows the points of exchange for Exchange Application E3760, filed by Strawberry Water Users Association and Strawberry Highline Canal Company for use of the SVP

return flows. Attachment 4 shows that the points of exchange for Exchange Application 3760 are not in the vicinity of the points of diversion for the South Farm wells or the Magna wells.

11. It is my opinion that the points of diversion for the SVP Exchange application are sufficiently distant from the South Farm wells and the Magna wells that they would not cause direct interference with the South Farm wells or the Magna wells.

12. Any different points of diversion for the SVP Exchange application must be approved through the administrative process and would provide South Farm and Magna the opportunity to protect their interests.

13. Attachment 5 is Plate 1 from Technical Publication 31, Water Resources of Salt Lake County, 1971, on record at the Division of Water Rights. Technical Publication 31 was published by the United States Government in cooperation with the Utah Division of Water Rights. Plate 1 is a map showing the water-level contours for the principal aquifer in the Salt Lake Valley, including the areas where the South Farm wells and the Magna wells are located.

14. Attachment 6 is Figure 17 from Technical Publication 110 B, Numerical Simulation of Ground-Water Flow in Basin-Fill Material in Salt Lake Valley, Utah, 1995, on record at the Division of Water Rights. Technical Publication 110B was published by the United States Government in cooperation with the Utah Division of Water Rights. Figure 17 is a map showing the ground water level contours in the Salt Lake Valley, including the areas where the South Farm wells and the Magna wells are located.

15. Ground water flows in a direction perpendicular to the ground water level contours. The slope of the ground water potentiometric surface, as shown by the ground water level contours, is

known as the ground water gradient.

16. Attachments 5 and 6 show that the South Farm wells and the Magna wells are north of the Traverse Mountains, which form a partial barrier between Utah Valley and Salt Lake Valley.

17. Attachments 5 and 6 show that the ground water levels in the area of the South Farm wells and the Magna wells are up-gradient from the Jordan River.

18. No engineering analysis or estimate of the SVP return flow has yet been submitted to the Division of Water Rights for its consideration.

19. The South Farm and Magna wells are a significant distance and up-gradient from the Jordan River. A decrease in the Jordan River flow has not been shown to lower the water levels in the South Farm or Magna wells, and an increase in Jordan River flow has not been shown to raise the water levels in the South Farm or Magna wells. Therefore, a change in the flow of the Jordan River would not impair the South Farm or Magna wells.

DATED this 30th day of March, 2010

KENT L. JONES, P.E.
UTAH STATE ENGINEER

Subscribed and sworn to before me this 30th day of March, 2010.

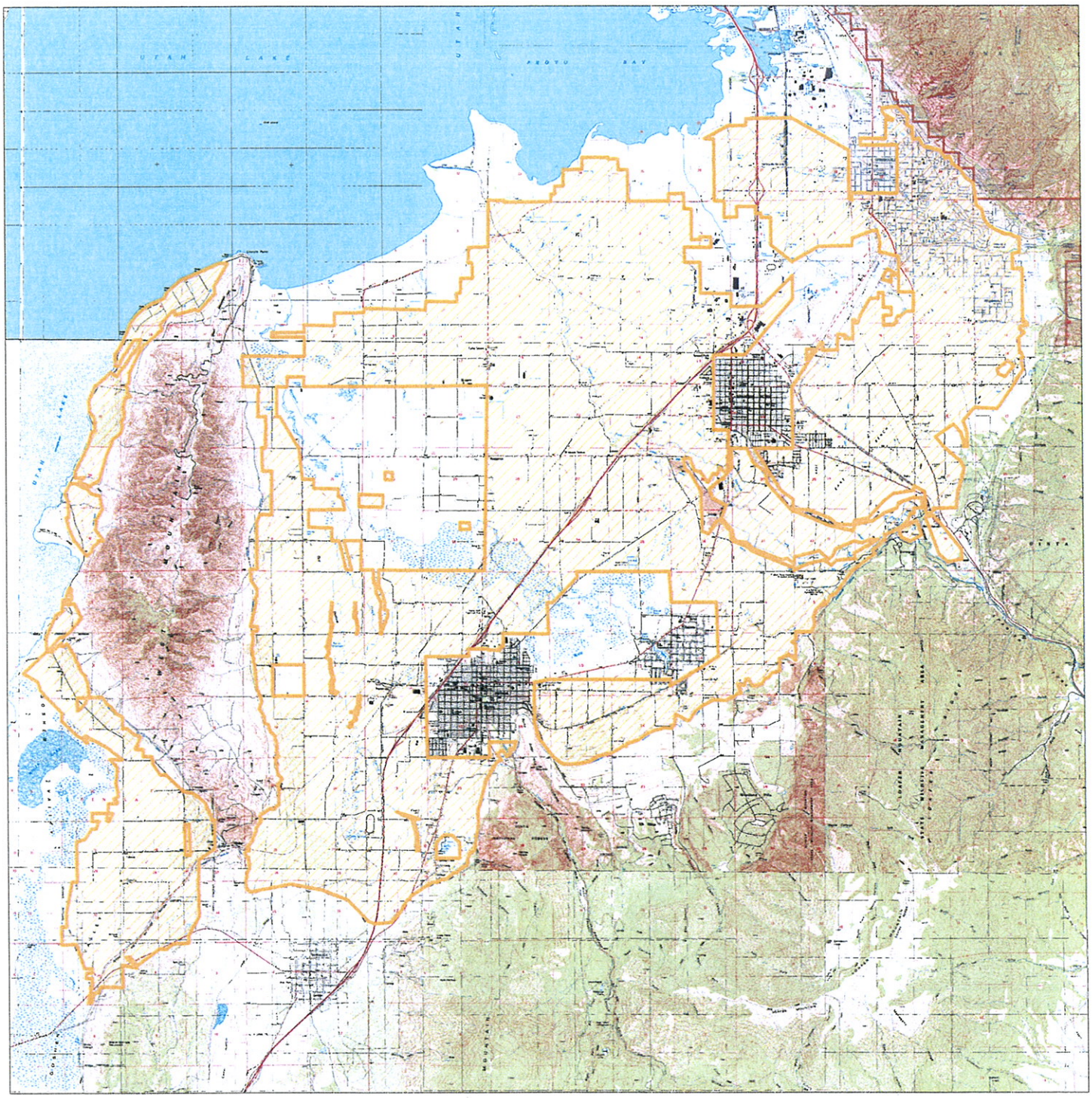
My commission expires: 4/30/2010

NOTARY PUBLIC

NOTARY PUBLIC
JUDY AUSICK
1594 W. No. Temple #220
Salt Lake City, Utah 84116
My Commission Expires
April 30, 2010
STATE OF UTAH

Residing at: 1594 W N. Temple # 220 SLC UT 84116

ATTACHMENT 1



Division of Water Rights
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Salt Lake City, Utah 84114-6300
801-538-7240

Utah Lake/Jordan River Regional Office
1594 W. North Temple
Suite 220
Salt Lake City, Utah 84114-6300
801-538-7400

Strawberry Water Users Association
Department of Natural Resources
Division of Water Rights

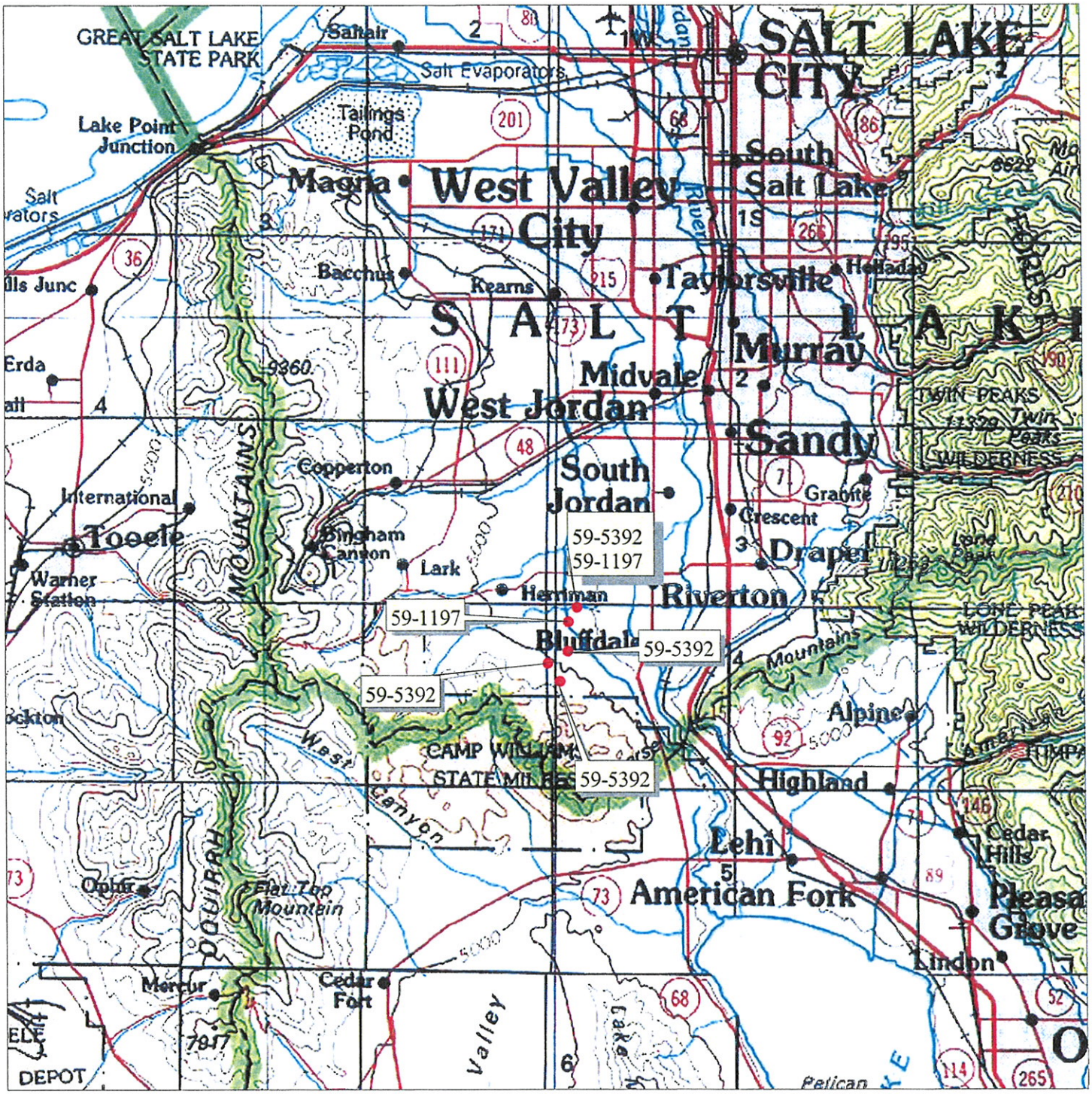
- Approximate Service Area

N

Scale 1 inch = 12,500 feet
RF 1 : 150,000

Digitized By: CB
Reviewed By: JG
Date Plotted: March 25, 2010

ATTACHMENT 2



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801-538-7240

Utah Lake/Jordan River Regional Office
1594 W. North Temple
Suite 220
Salt Lake City, Utah 84114-6300
801-538-7400

South Farm
59-1197 59-5392
a27594
Department of Natural Resources
Division of Water Rights
Section 5, 6, 7, 18, T4S, R1W, SLB&M

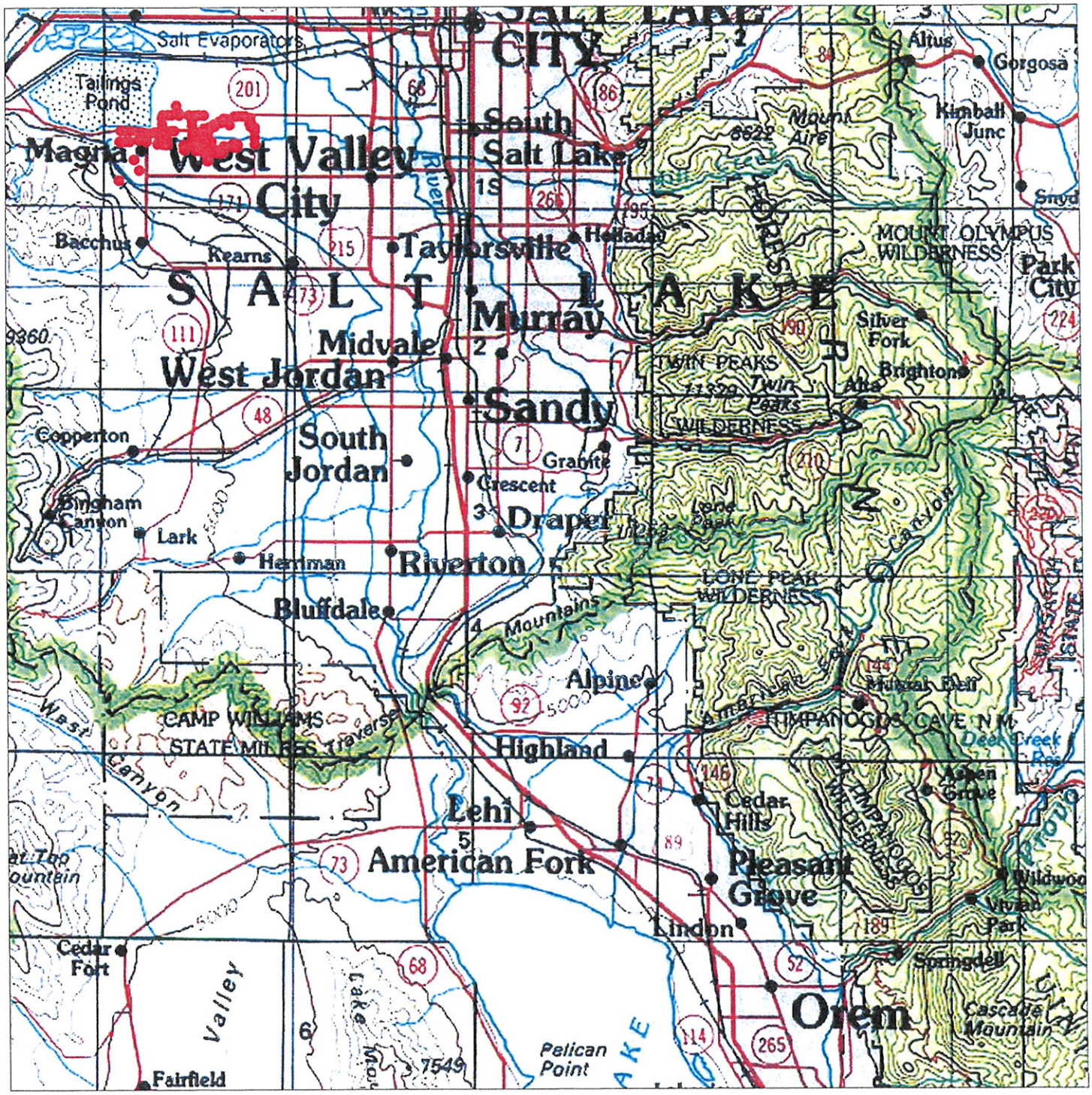
- Points of Diversion

N

Scale 1 inch = 25,000 feet
RF 1 : 300,000

Digitized By: CB
Reviewed By: JG
Date Plotted: March 24, 2010

ATTACHMENT 3



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801-538-7240

Utah Lake/Jordan River Regional Office
1594 W. North Temple
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Salt Lake City, Utah 84114-6300
801-538-7400

Magna Water District
59-1226 59-1228 59-1285
59-1286 59-1288 59-1289
59-1295 59-1679 59-1709
59-1833 59-2504 59-2506
59-2507 59-2509 59-2510
59-2512
Department of Natural Resources
Division of Water Rights

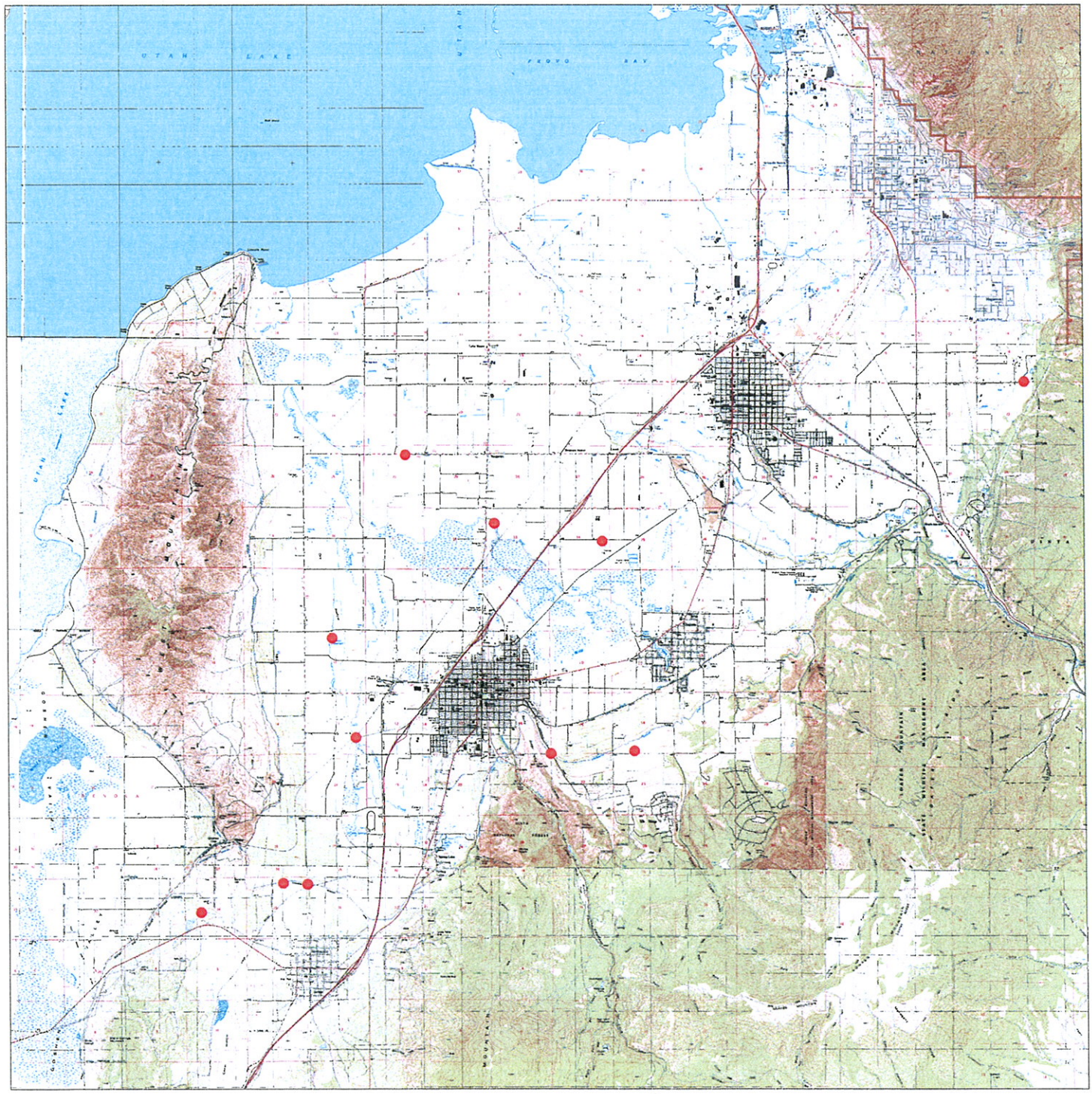
● - Points of Diversion

N

Scale 1 inch = 25,000 feet
RF 1 : 300,000

Digitized By: CB
Reviewed By: JG
Date Plotted: March 24, 2010

ATTACHMENT 4



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801-538-7240

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Salt Lake City, Utah 84114-6300
801-538-7400

E3760
Department of Natural Resources
Division of Water Rights

- Point of Diversion

N

Scale 1 inch = 12,500 feet
RF 1 : 150,000

Digitized By: CB
Reviewed By: JG
Date Plotted: March 25, 2010

ATTACHMENT 5

STATE OF UTAH
DEPARTMENT OF NATURAL RESOURCES

Technical Publication 31

WATER RESOURCES OF SALT LAKE COUNTY, UTAH

by
Allen G. Hely
R. W. Mower
and
C. Albert Harr

With a section on geologic setting

by
Ted Arnow

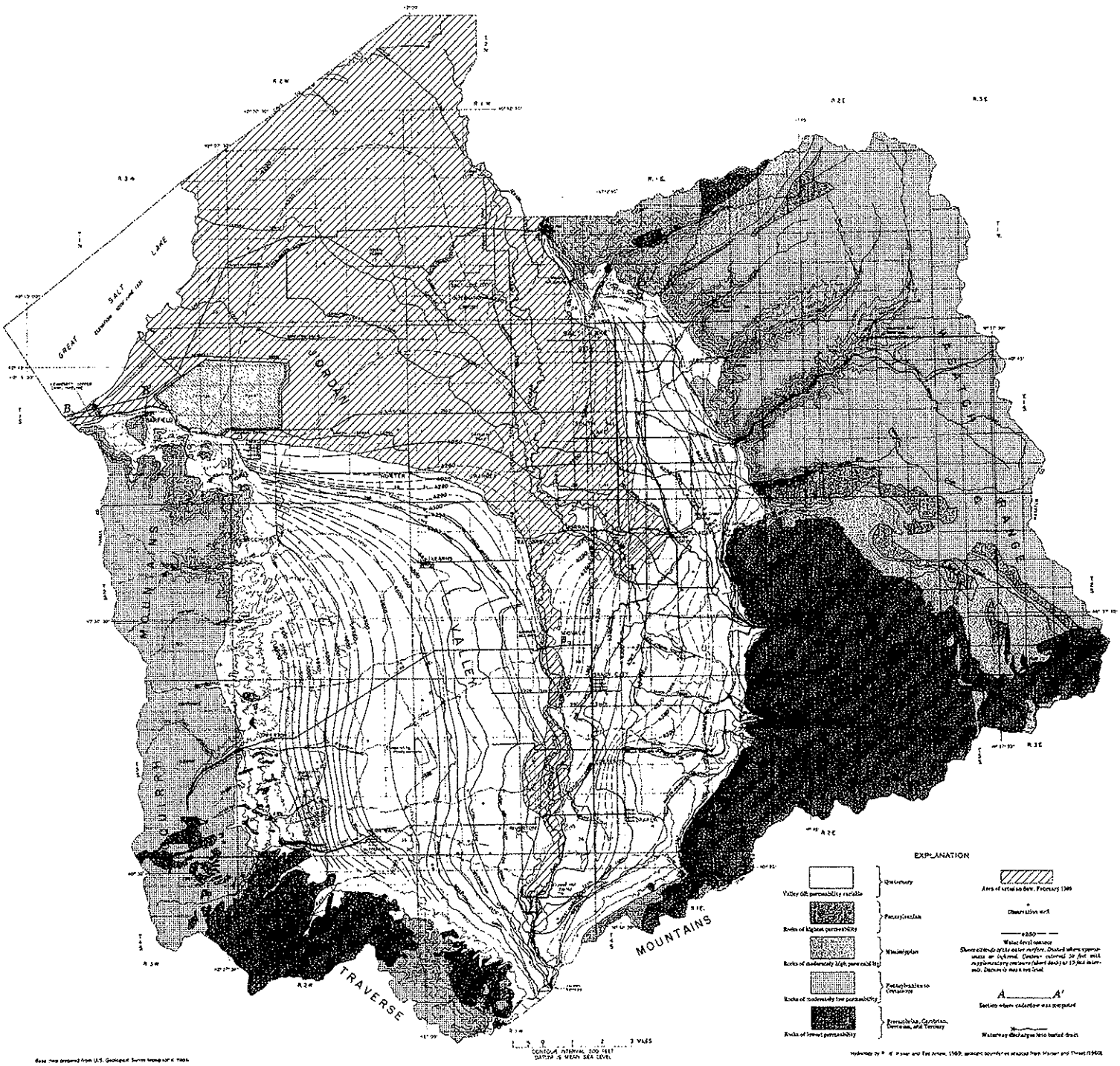
Prepared by the U. S. Geological Survey
In cooperation with
The Utah Department of Natural Resources
Division of Water Rights

1971

UNITED STATES DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY

STATE OF UTAH
DEPARTMENT OF NATURAL RESOURCES

TECHNICAL PUBLICATION NO. 31
PLATE I 1971



Base map prepared from U.S. Geological Survey topographic maps.

Hydrology by R. W. Mower and Ted Arnow, 1969; geologic boundaries adapted from Mower and Feltis (1968).

MAP SHOWING WATER-LEVEL CONTOURS FOR THE PRINCIPAL AQUIFER AND AREA OF ARTESIAN FLOW IN FEBRUARY 1969, WATER-DISTRIBUTION SYSTEM, AND GENERALIZED HYDROGEOLOGY OF SALT LAKE COUNTY, UTAH

ATTACHMENT 6

STATE OF UTAH
DEPARTMENT OF NATURAL RESOURCES

Technical Publication No. 110-B

NUMERICAL SIMULATION OF GROUND-WATER FLOW IN BASIN-FILL MATERIAL IN SALT LAKE VALLEY, UTAH

By P.M. Lambert
U.S. Geological Survey

Prepared by the
United States Geological Survey
in cooperation with the
Utah Department of Natural Resources,
Division of Water Rights, and
the Utah Department of Environmental Quality,
Division of Water Quality
1995

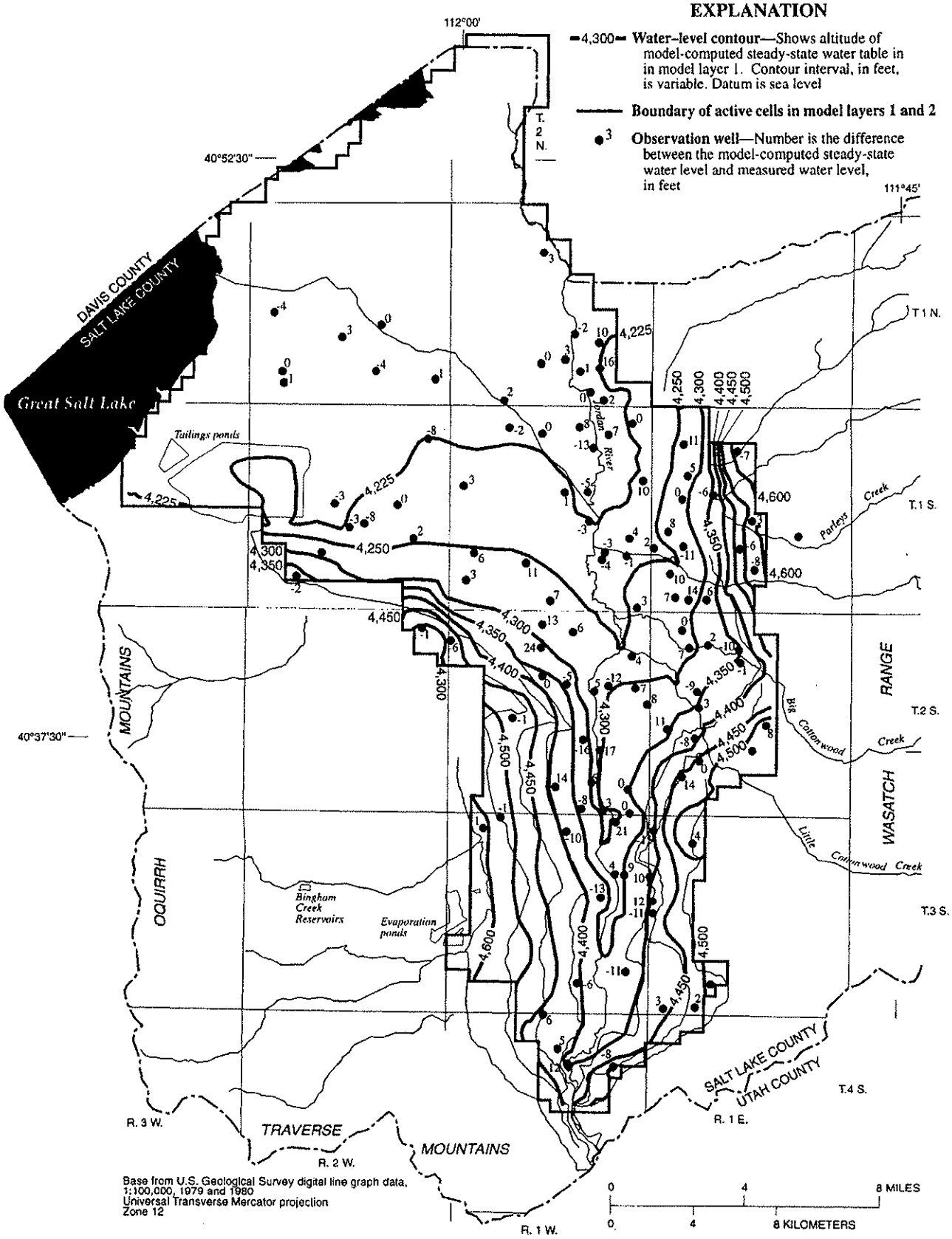


Figure 17. Model-computed steady-state water-table surface of model layer 1 and the difference between model-computed steady-state water levels and measured water levels in the shallow unconfined aquifer, Salt Lake Valley, Utah.