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*Attorneys for Petitioner and Objector
Strawberry Water Users Association*

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

IN THE MATTER OF THE GENERAL :
DETERMINATION OF THE RIGHTS TO :
THE USE OF ALL THE WATER, BOTH : **JOINT OBJECTION TO PROPOSED**
SURFACE AND UNDERGROUND, WITHIN : **DETERMINATION**
THE DRAINAGE AREA OF UTAH LAKE :
AND JORDAN RIVER IN UTAH, SALT :
LAKE, DAVIS, SUMMIT, WASATCH, :
SANPETE AND JUAB COUNTIES; :
 :
UTAH COUNTY DIVISION (Area 51) :
Spanish Fork Canyon Subdivision :
 :
 :
 :

Case No. 360057298
(51-1-1)

Judge Kate A. Toomey

STRAWBERRY WATER USERS	:
ASSOCIATION; STRAWBERRY HIGH	:
LINE CANAL COMPANY,	:
	:
Petitioners,	:
v.	:
	:
UNITED STATES OF AMERICA, et al.,	:
	:
Respondents.	

The Strawberry High Line Canal Company (“High Line”) and Strawberry Water Users Association (“SWUA”) respond to and make a qualified general objection to 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 (“Proposed Determination”) as follows:

I. Declaration of Support

High Line and SWUA declare their general support of the Proposed Determination issued by the Utah State Engineer on April 14, 2009. SUWA is a Utah nonprofit corporation organized, among other purposes, to deliver Strawberry Valley Project (SVP) water, and Strawberry Tunnel water, to SVP water users, including SWUA shareholders. SWUA, in cooperation with the United States, the Central Utah Water Conservancy District and the Spanish Fork River Commissioner, delivers SVP water from storage to the head gates of 9 different canals. These canals include the Strawberry High Line Canal, which is operated and maintained by High Line and includes a number of laterals. High Line is a Utah nonprofit corporation organized, among

other purposes, to deliver water to its shareholders within the Strawberry High Line Division of the SVP. SVP water is used for the irrigation of more than 42,000 acres in south Utah County. High Line delivers approximately 4/7ths of the SVP water.

High Line and SWUA agree with and support the recognition and recommendation made by the State Engineer regarding Utah Law and imported return flow water. Particularly that:

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.

Proposed Determination, p. 1.

High Line and SWUA also agree qualifiedly with the general conclusion that:

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.

Proposed Determination, p. 2. Technically, we believe the “appropriators” are the individual water users that put SVP water to beneficial use. Beneficial use is the essential element of “appropriation.”

II. Qualified Objection

High Line and SWUA object to the Proposed Determination on a qualified basis to the extent that the State Engineer is recommending that the “Strawberry Valley Project” is an entity that retains the right to use the SVP return flow water. If the intent of the Proposed

Determination is to adjudicate who owns the imported return flow rights among the various entities with interests in the SVP water, then High Line and SWUA reserve by this objection the right to claim and adjudicate their respective ownership interests in the imported return flow waters, as well as the respective ownership interests of their respective shareholders and other SVP water users.

High Line and SWUA do not object if the intent of the Proposed Determination is to recommend general legal principles and questions of law and to recognize generally the rights to the use of return flow water imported by the SVP and the Strawberry Tunnel into Utah County. Any question of ownership can be left for another day.

III. High Line Owns All the Imported Return Flow Waters From the SVP Used on High Line Division Lands

Through a conveyance and an agreement dated May 23, 1921, (“1921 Contract”) the United States of America expressly conveyed to the Strawberry High Line Canal Company all rights to the High Line Division imported return flow waters. The United States found it:

necessary and advisable in order to properly operate and maintain said High Line Division and distribute said water and to protect the rights and interests of its stockholders in and to the water secured from the United States or available for their use that the Company should have full and complete control and use of all waste, seepage, and return waters rising and flowing from the land of the stockholders.

1921 Contract, ¶ 3. Accordingly, “the United States does hereby convey and assign to the Company all its right, title, and interest in and to said waste, seepage, and return waters.” 1921 Contract, ¶ 5.

Furthermore, High Line's ownership of the imported return flow waters was recognized in the Decree dated January 12, 1923, in the case of *Strawberry High Line Canal Company v. Payson City, et al.*, Fourth Judicial District Court of the State of Utah. There, High Line's ownership and right to the use of all the imported return flow waters in the Spring Creek drainage within the Strawberry High Line Division was confirmed by a State district court. Likewise, High Line owns the right to use directly all imported SVP return flow waters in other similar tributaries and the groundwater aquifer, and owns the right to use by exchange any imported return flow water in Utah Lake attributable to SVP water applied to lands within the High Line Division.

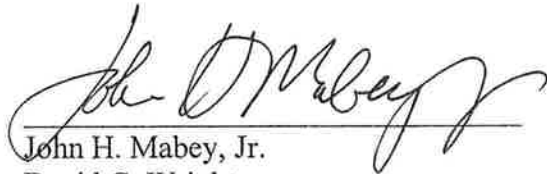
IV. SWUA Owns, for the Use and Benefit of SVP water users All the Imported Return Flow Waters From the SVP not Held By High Line, and The Return Flow from the Strawberry Tunnel Water

By contract dated October 9, 1940, the United States gave SWUA the right and obligation to care for, operate and maintain the SVP, other than the Strawberry High Line Canal and the Springville-Mapleton Lateral, including the right and obligation to "use proper physical and legal measures to retain such water for project use." Article 14(e).

In addition, the rights to use foreign waters from the Strawberry Tunnel, represented by Underground Water Claim No. 11730 (later designated as Water Right No. 51-2259), are held in the name of SWUA for the use and benefit of its shareholders and other SVP water users.

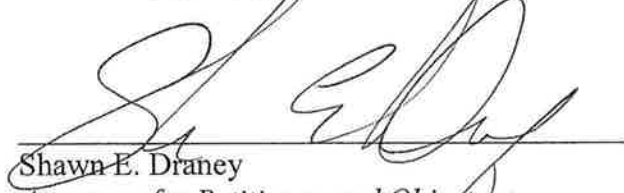
Dated this 13th day of July, 2009.

MABEY WRIGHT & JAMES, PLLC



John H. Mabey, Jr.
David C. Wright
*Attorneys for Petitioner and Objector
Strawberry High Line Canal Company*

SNOW, CHRISTENSEN & MARTINEAU



Shawn E. Draney
*Attorneys for Petitioner and Objector
Strawberry Water Users Association*

VERIFICATION

Pursuant to Utah Code Ann. § 73-4-11(2)

Daniel R. Ellsworth verifies that he is the President of the Strawberry High Line Canal Company which owns rights to the use of imported SVP return flow waters used on lands within the High Line Division of the SVP, and makes the foregoing Objection to Proposed Determination under oath.

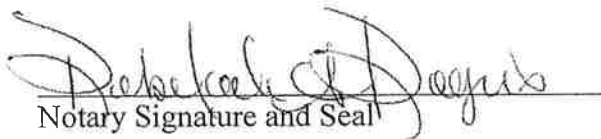


STRAWBERRY HIGH LINE CANAL COMPANY

Daniel R. Ellsworth, President

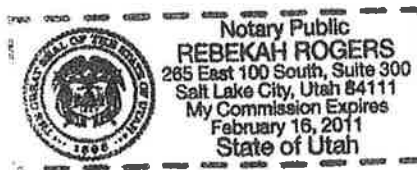
I certify that Daniel R. Ellsworth, whose identity is personally known to me or has been proven on the basis of satisfactory evidence, made in my presence a voluntary signature and taken an oath or affirmation vouching for the truthfulness of the foregoing Objection to Proposed Determination.

SUBSCRIBED AND SWORN to before me this 7th day of July, 2009, by Daniel R. Ellsworth.



Notary Signature and Seal


My Commission Expires: 2-16-11



VERIFICATION

Pursuant to Utah Code Ann. § 73-4-11(2)

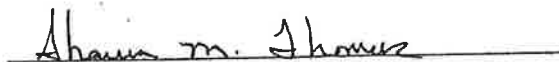
Gary Aitken verifies that he: 1) is the General Manager of the Strawberry Water Users Association which owns, for the use and benefit of its shareholders and other SVP water users, rights to the use of imported Strawberry Tunnel water, including return flows from the same, and also those rights to use SVP return flow waters not owned by High Line; and 2) makes the foregoing Objection to Proposed Determination under oath.



Gary Aitken, General Manager

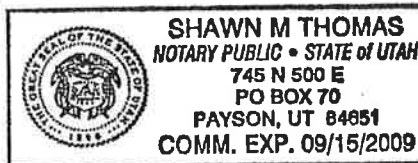
I certify that Gary Aitken, whose identity is personally known to me or has been proven on the basis of satisfactory evidence, made in my presence a voluntary signature and taken an oath or affirmation vouching for the truthfulness of the foregoing Objection to Proposed Determination.

SUBSCRIBED AND SWORN to before me this 13 day of July, 2009, by Gary Aitken.



Notary Signature and Seal

My Commission Expires: 9-15-2009



CERTIFICATE OF SERVICE

I certify that on July 13, 2009, a copy of the foregoing Objection to Proposed Determination was delivered to the following by:

Hand Delivery

Facsimile

U.S. Mail, postage prepaid

Federal Express

Certified Mail, Receipt No. _____, return receipt requested

Thomas K. Snodgrass
U.S. Dept. of Justice
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A handwritten signature in black ink, appearing to read "Heidi M. Meyer", written over a horizontal line.