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THIRD DISTRICT COURT
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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

**STATE ENGINEER'S MEMORANDUM
IN SUPPORT OF PETITIONERS'
MOTION FOR SUMMARY JUDGMENT
RE: OBJECTORS' LACK OF
STANDING**

Civil No. 360057298 (51-1-1)

Judge Kate A. Toomey

Kent L. Jones, by and through counsel, respectfully submits this State Engineer's Memorandum in Support of Petitioners' Motion for Summary Judgment re: Objectors' Lack of Standing.

DISCUSSION

As described in the Petitioners' Statement of Facts, the Strawberry Valley Project (SVP) recharge area is south of Utah Lake, as are the proposed points of diversion for the SVP exchange application, E3760. Kent Jones Affidavit, attached to Petitioners' Memorandum in Support as

Exhibit I. The South Farms water rights are groundwater rights from wells located in the southern part Salt Lake Valley west of the Jordan River, and the Magna wells are located in the northern part of Salt Lake Valley west of the Jordan River. *Id.* Both sets of wells are located up the hydrologic gradient from the Jordan River. *Id.* The South Farm and Magna wells are therefore situated similarly to diversions that are upstream on a separate tributary from the SVP recharge area.

In *Washington County Water Conservancy District v. Morgan*, 2003 UT 58, 820 P.3d 1125, the Utah Supreme Court addressed standing based on similar facts. The Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-day Saints (CPB) filed a change application on water rights within the Ash Creek drainage. The State Engineer approved the application, and the Washington County Water Conservancy District (WCWCD) sought de novo review of the State Engineer's decision in the district court. When CPB challenged WCWCD's standing to bring the de novo review action, WCWCD argued that its points of diversion were hydrologically connected to the proposed points of diversion for the CPB change application. CPB submitted evidence to the contrary, and the district court ruled that WCWCD did not have standing to pursue the de novo review. On appeal, the Utah Supreme Court upheld the district court decision, holding that WCWCD "failed to meet its burden of establishing particularized injury." *Id.* at ¶ 25. The evidence established that even though the WCWCD water rights were in the Ash Creek drainage, they were in a different area and were not hydrologically connected to the CPB water rights. Therefore, WCWCD could not demonstrate the particularized injury necessary for standing.

That result is consistent with the standard for objections in general adjudication proceedings. In the Weber River general adjudication, one of the parties argued that the adjudication statute

mandated that all parties to the general adjudication must be given notice of the hearing on the objections. The statute at that time stated,

If any contest or objection on the part of any claimant or claimants shall have been filed, as in this Act provided, the court shall give not less than fifteen days' notice to all claimants, stating when and where testimony will be taken, provided that such testimony shall be taken in the county in which said action is pending.

Plain City Irrigation Co. v. Hooper Irrigation Co., 51 P.2d 1069, 1072 (Utah 1935) (quoting Laws of Utah 1919, Chapter 67, § 34, presently codified at Utah Code Ann. § 73-4-13 (West 2004)) (emphasis omitted). The Supreme Court, however, held that notice of the objection need be given only to owners of water rights that would actually be affected by the objection:

Whenever one's rights are or may be affected or drawn into question, the owner or claimant of such right is entitled to notice and has the right to be heard before he may be bound by a judgment affecting his rights. Ordinarily, the law does not require the doing of a useless or futile thing. It would seem that a contest between A and B upon the headwaters of Chalk Creek, a tributary to the Weber river, as to the date of priority, quantity, or place of use, could not affect any right sought to be litigated between C and D who were users of water upon the sources of East Canyon creek, another tributary, or any other right above the confluence of either with the Weber river proper. Each of the tributaries drain different and unrelated watersheds in so far as the tributaries themselves are concerned. Should the contest between either A and B or C and D affect the flow or draw in question the relative priorities or other rights affecting appropriators or users of the Weber river system as a whole, then under the statute not less than fifteen days' notice must be given "*to all claimants*" whose rights might be affected. We think the intent of the statute is to require notice to all adverse claimants, or all claimants whose rights would be affected or drawn in question. It would also seem that if a claimant or claimants have objections or their rights could be affected adversely, such claimant or claimants are entitled to notice as required by the statute, otherwise such claimant or claimants would not be bound by the judgment. It may further be observed that such notice is required for the benefit and protection of adverse claimants.

Id. (emphasis in original).

In this passage, the Court discussed the situation where water rights are on different

tributaries and pointed out that such situations do not rise to the level of affected water rights for notice of objections. The standard for standing should not be broader or more permissive than the standard for general notice; a water right claimant must therefore at least show that its water rights would be affected in order to establish standing to pursue an objection. This has been the standard for objections for seventy-five years and is the same standard explained in *Washington County Water Conservancy District*.

It is also worthy of note that South Farm and Magna do not fall within the group of water right claimants entitled to direct notice of this proceeding. In this Court's Order dated October 17, 2008, the Court directed that direct notice should be sent by mail to the following:

- 1) surface water right claimants in the SVP use area and in the Utah Lake-Jordan River drainages;
- 2) groundwater right claimants within the Utah Lake groundwater basin;
- 3) surface water right claimants on the tributaries to Utah Lake and the Jordan River; and
- 4) groundwater claimants in basins outside the Utah Lake groundwater basin for which the State Engineer has determined there is a direct hydrological connection between surface water and groundwater.

Minute Entry dated October 12, 2007.

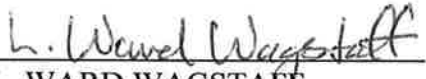
The Court's description does not include ground water diversions in Salt Lake Valley. Neither South Farm nor Magna were on the mailing list to receive direct notice of this proceeding. *See Order Approving and Adopting List of Names and Addresses and Approving the Notice and Statement of Interest forms, signed June 6, 2008; List of Names and Addresses, Exhibit 1 to the State Engineer's Affidavit and Certification of List of Names and Addresses, pp. 187, 272, attached as Exhibit 1.*

CONCLUSION

Because the South Farm and Magna wells are situated “upstream” on a different tributary than the SVP recharge area and the SVP exchange points of diversion, the South Farm and Magna water rights will not be affected by the SVP return flow. South Farm and Magna therefore do not have standing to pursue the objection.

DATED this 19th day of April, 2008

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CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the **State Engineer's Memorandum in Support of Petitioners' Motion for Summary Judgment re: Objectors' Lack of Standing**, first class postage prepaid, this 19th day of April, 2010, to the following:

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EXHIBIT 1

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Utah County Division
Spanish Fork Canyon Subdivision
Strawberry Water Users Association v. Bureau
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