

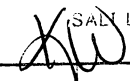
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FILED DISTRICT COURT
Third Judicial District

MAY 25 2012

By  Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT OF 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;

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.

**UNITED STATES' NOTICE OF
WITHDRAWAL OF OBJECTION
TO PROPOSED DETERMINATION**

Case No. 360057298 (51-1-1)

Spanish Fork Canyon No. 1

Judge Kate Toomey

The United States hereby withdraws its Protests and Objections to Proposed Determination, dated July 6, 2009 (the "Objection"), subject to the conditions discussed below. The Objection concerned 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, Utah County Division, Area No. 51, dated April 14, 2009 (the "Proposed Determination").

In the Objection, the United States objected to Paragraph 4 of the Proposed Determination "as potentially vague and ambiguous and in need of clarification." Paragraph 4 of the Proposed Determination provides: "Tributary water that is used in exchange for SVP return flow may be subject to priority calls in the Utah Lake-Jordan River drainage." The State Engineer subsequently clarified the meaning of this paragraph in a letter to counsel for the United States dated May 3, 2012, a copy of which is attached hereto. The clarification provided by that letter is sufficient to resolve the United States' objection, and the United States therefore withdraws the Objection subject to the representations made in that letter. This withdrawal is made on the further condition that the United States reserves the right to continue to participate in these proceedings and litigate any other objections or other issues that may be raised by other parties.

RESPECTFULLY SUBMITTED this 23rd day of May, 2012.

IGNACIA S. MORENO, Assistant Attorney General



THOMAS K. SNODGRASS, Senior Attorney
U.S. Department of Justice
Environment and Natural Resources Division

Attorneys for Defendant United States of America

OF COUNSEL:

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CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing **UNITED STATES' NOTICE OF WITHDRAWAL OF OBJECTION TO PROPOSED DETERMINATION** in Case No. 360057298 (51-1-1) by depositing a copy thereof in the U.S. mail, postage pre-paid to the following counsel of record on this 23rd day of May, 2012:

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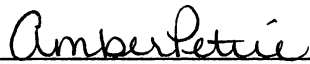
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DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER
Executive Director

Division of Water Rights

KENT L. JONES
State Engineer/Division Director

May 3, 2012

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Re: United States 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

Dear All:

This letter clarifies Paragraph 4 of the Proposed Determination in response to the United States Protests and Objections to Proposed Determination. The United States objected to the following sentence on grounds that it is a potentially vague and ambiguous and in need of clarification.

Tributary water that is used in exchange for SVP return flow may be subject to priority calls in the Utah Lake-Jordan River drainage.

This sentence is consistent with the requirements of Utah Code section 73-3-20 (exchange statute), which governs the exchange of appropriated water turned out of one body of water into another stream or body of water and a like quantity taken from the second stream or body of water above or below where the appropriated water was emptied into it. The original water of the second stream in such exchanges must not be diminished in quantity and the withdrawal must not interfere with the rights of others. Therefore, tributary water used in exchange for SVP return flow may, depending on the circumstances of the exchange, be subject to prior water rights on the tributary. In the case of the SVP return flow, those tributary priorities would be Utah Lake-Jordan River drainage priorities, even though the SVP return flow itself is not subject to priorities in the Utah Lake-Jordan River drainage.



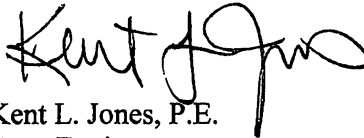
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May 3, 2012

Subject: Objection to the Proposed Determination and Recommendation

A copy of section 73-3-20, the exchange statute, is attached for your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "Kent L. Jones". The signature is fluid and cursive, with the first name "Kent" being the most prominent.

Kent L. Jones, P.E.

State Engineer

Utah Division of Water Rights

KLJ/WW/mtb

Enclosure

cc.: Norman K. Johnson
L. Ward Wagstaff
Michael M. Quealy
Boyd Clayton

Section 20 Right to divert appropriated waters into natural streams -- Requirements -- Storage in reservoir -- Information required by state engineer -- Lapse of application.

(1) Upon application in writing and approval of the state engineer, any appropriated water may, for the purpose of preventing waste and facilitating distribution, be turned from the channel of any stream or any lake or other body of water, into the channel of any natural stream or natural body of water or into a reservoir constructed across the bed of any natural stream, and commingled with its waters, and a like quantity less the quantity lost by evaporation and seepage may be taken out, either above or below the point where emptied into the stream, body of water or reservoir. In so doing, the original water in such stream, body of water, or reservoir must not be deteriorated in quality or diminished in quantity for the purpose used, and the additional water turned in shall bear its share of the expense of maintenance of such reservoir and an equitable proportion of the cost of the reservoir site and its construction. Any person having stored his appropriated water in a reservoir for a beneficial purpose shall be permitted to withdraw the water at the times and in the quantities as his necessities may require if the withdrawal does not interfere with the rights of others.

(2) The state engineer may require the owner of record of an approved exchange application to provide information concerning the diverting works constructed, the extent to which the development under the exchange has occurred, and other information the state engineer considers necessary to insure the exchange is taking place, to establish the owner of the exchange still has a legal interest in the underlying water right used as the basis for the exchange, or to arrive at the quantity of water being exchanged. This information shall be provided by the owner of record of an approved exchange within 60 days of notification by the state engineer.

(3) The state engineer may lapse an application made pursuant to this section under the following conditions:

- (a) the applicant has lost a legal interest in the underlying right used to facilitate the exchange;
- (b) the exchange can no longer be carried out as stated in the application;
- (c) the applicant has not complied with the conditions established in approving the exchange; or
- (d) the applicant fails to provide the information as outlined in Subsection 73-3-20(2).