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Governor
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Lieutenant Governor

State of Utah
DEPARTMENT OF NATURAL RESOURCES
Division of Water Rights

MICHAEL R. STYLER KENT L. JONES
Executive Director *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, 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.

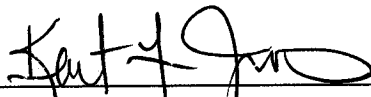
3. All aspects of the use of the return flow must be covered by an approved water right application. If the diversion, beneficial use, place of use, and other aspects of the use of the return flow are allowed by the underlying water rights, the SVP need not file a further water right application. If 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