

MEMORANDUM: THE WEBER ASSOCIATION & DAVIS AND WEBER COUNTIES CANAL COMPANY

On August 25, 1924 at 8:30 a.m. see ("Attachment A"), Application number A-9568 was filed by the "Utah Water Storage Commission" in behalf of Weber River for water storage in a large proposed dam, "Echo Reservoir". This first filing, based upon numerical sequencing was an "Application to Appropriate Water for Irrigation, State of Utah" as a cooperative venture with The United States Bureau of Reclamation ("The Bureau") for the creation of the Echo Reservoir Project on the Weber River to irrigate "237,440" agriculture acres as a single purpose agriculture irrigation project. The direct source of supply is "Weber River".

On August 25, 1924 at 8:30 a.m. see ("Attachment B"), Application number A-9569 was filed by the "Utah Water Storage Commission" in behalf of the Provo River for water storage in a large proposed dam, "Deer Creek Reservoir", which was the second filing based upon numerical sequencing as an "Application to Appropriate Water for Irrigation, State of Utah" to be used for agriculture irrigation supplied to "73,000" acres of irrigable land. "The direct source of supply is Weber River, Beaver Creek and Provo River", all or part of these water sources are to be used to satisfy the "73,000" acres of land irrigation requirements and not the Weber River alone, as determined by the Weber and Provo River Commissioners.

On August 25, 1924 (the time is hard to read), see ("Attachment C"), Application number 9580 was filed by the "Utah Water Storage Commission" in behalf of the Provo River as a supplemental right; "Application to Appropriate Water for Irrigation, State of Utah" to be used for agriculture irrigation supplied to 30,000 acres of irrigable land.

Echo Reservoir received the first filing numerically and was the first constructed project ahead of Deer Creek Reservoir, by The Bureau.

A "CONTRACT BETWEEN THE UNITED STATES AND THE WEBER RIVER WATER USERS' ASSOCIATION PROVIDING FOR THE CONSTRUCTION OF THE ECHO RESERVOIR AND THE WEBER-PROVO DIVERSION CANAL" ("The Weber / Bureau Contract") was consummated on December 16, 1926 see ("Attachment D"). The Weber River Water Users' Association ("The Weber Association") and the Davis and Weber Counties Canal Company ("The DWCC Company") have highlighted, underlined and placed star marks at key places in all of the attachments and documents in an effort to clarify fiduciary responsibilities throughout. The Weber Association and DWCC Company have identified 3 major criteria listed as "quotes" throughout Attachment D: 1. Throughout this document there are numerous references about storage water for the Echo Project that is "actually available", "proportionate share", "surplus water from the natural flow" and "anticipated that due to drought, shortage of supply, seepage and evaporation and other causes, the water supply actually available in some years for use from said Echo Reservoir may be less than 74,000 acre feet." See pages 3, 4 & 5 of the contract. During years of water shortages, The Weber Association and DWCC Company believes that everyone must SHARE in water

shortages, as determined by the WEBER RIVER COMMISSIONER, who has the responsibility and delegated authority through the Office of the State Engineer to make determinations based upon valid data as to water availability. 2. Echo Reservoir must fill to 74,000 acre feet yearly, whether “on paper” or physically spilling before any “surplus water from the natural flow” can be diverted to the Provo River side, See “#13. (b)*”, middle of page 4. The key words for this process is in the last 4 lines on this page paragraph “(b)”; “after which; said Echo Reservoir shall be filled once each and every yearly period from November 1st to the following October 31st as against the right to divert through said Weber-Provo Diversion Canal”. This statement is also substantiated in the “December 20, 1938 Power Contract Provo River Project, Utah” see Attachment E #22, page 26 *”. “It is further understood and agreed that Weber River power water accruing to the Weber Association under provisions of this contract shall be used only to augment the storage supply of the Echo Reservoir to the extent of filling said reservoir once each year to its capacity of 74,000 acre feet and not otherwise.” A third verification for substantiating this first filling process of Echo Reservoir as a first priority comes from the minutes of the Board of Directors meeting for The Weber Association dated June 15, 1938, when they approved the draft for the “December 20, 1938 Power Contract” see Attachment F “#’s 4* and 6*”, page 2. The Weber River Commissioner determines when and if Echo Reservoir might fill, he then initiates the provisions for diversions in the contract as described in Attachment D, “13.(b)*”, page 4. In summary: ECHO FILLING COMES FIRST! THE WEBER RIVER COMMISSIONER WILL DETERMINE PROPER DIVERSIONS AND TIMING BASED UPON WATER RIGHTS, CONTRACTS, AVAILABILITY OF WATER, FORECASTS AND REVIEW OF APPROPRIATE MEASUREMENT RECORDS.

“POWER CONTRACT PROVO RIVER PROJECT, UTAH dated December 20, 1938”, see (“Attachment E”). The contract includes The United States, Provo River Water Users’ Association, Weber River Water Users’ Association, Utah Power & Light Company and Utah Light and Traction Company. The Weber Associations’ comments will include certain pages of the 37 page document. Terms for this document will reference The United States as (“The Bureau”), Provo River Water Users’ Association as (“The Provo Association”), Weber River Water Users’ Association as (“The Weber Association”), Utah Power & Light Company and Utah Light and Traction Company as (“The Company”). There may be reference to the Provo Reservoir Water Users’ Company who will be referred to as (“The Provo Reservoir Company”). This contract has reference to the 1903 water rights for The Companies and was designed to make best use of natural flows on the Weber River subject to priorities of water rights for power generation. Its purpose is to be non-consumptive, including return flows to the river, so as to protect the consumptive rights for down stream users. Although the State of Utah is not a signer to this contract, they have responsibility for administration of the water rights and do so, usually through the Weber River Commissioner and the Provo River Commissioner. It should be noted on page 2, Explanatory Recitals number 5, that any water for power generation at the “Riverdale Plant” would have to come through The DWCC Company canal system, which plant has been closed for operations since the early 1970’s. An additional purpose for using water for power generation was to “augment the storage supply of the Echo Reservoir to the extent of filling said reservoir once each year to its capacity of 74,000 acre feet and not otherwise”. The Weber Association would like to know what the real time power losses for

generation have been per year, since some power plants are no longer in service? The beneficial non-consumptive use for power water generation has decreased approximately 42.7 % or 23.3 Kilowatts since 1938, based upon two closed facilities, see page 6 *. The Weber Association believes that the statement at the bottom of page 6 protects Echo Reservoir and shifts responsibility to The Bureau and The Provo Association “to replace, as hereinafter provided, all power capacity losses and energy losses suffered by the Company incident to this diversion of power water in the Provo River and/or impounding of power water in the Echo Reservoir”. The Weber Association and DWCC Company believes that the Weber River Commissioner, as delegated by the Utah State Engineer will determine “natural flow designated ‘power water’”, page 7 first paragraph *.

Throughout the contract the power plant generating facilities are mentioned with an important limitation “as at present *” or “as now located *” see pages *8 and *10. The Weber Association believes this means that relocation or expansion of power generation in other locations cannot be conducted without approved change applications.

There is no requirement to release water from reservoirs beyond natural flow water rights available for power generation from Echo or Deer Creek Reservoirs. Power generation losses at the “Weber Plant” will be replaced by The Bureau or The Provo Association, including “replacements of power capacity losses and energy losses occurring at said plant”, see “15.(a)*”, page 15 and “19. line 7*”, page 20. The Companies will keep proper water measurement records used for power generation, see “15. (a)*”, page 15. The Bureau and The Provo Association are responsible for capacity and energy replacements for power losses at the “Weber plant”, “#19.*”, top of page 21. The Weber Association believes that Weber River Water must be credited to Deer Creek Reservoir first until, along with other water sources such as Beaver Creek, Provo River, and the Duchene River water, Deer Creek is declared full on paper as verified, recorded and reported by the Provo River Commissioner to the Weber River Commissioner. “The Company shall install, operate and maintain suitable devices for reliable recordation of stream flow available for diversion to its Riverdale, Weber, Murdock, and Olmsted power plantsfor reliable recordation of waters actually diverted”. “#21.(a)(b)*”, pages 22-23.

The Weber Association and The Provo Association agree “to an equal division of all Weber River power water stored in Echo Reservoir”. “The total amount of power water so divided shall be the sum of the net storage gain in the Echo Reservoir by reason of power water withheld therein”. “#22*”, pages 24-25.

Power water can be diverted to the Provo System or stored in Echo reservoir “when and to the extent the storage capacity of said reservoir (Echo) is not being used under the primary rights of The Weber Association or the secondary rights heretofore or hereafter granted to the stockholders of the Weber Association”. “#22.*”, bottom of page 24.

Disposition of power water if Echo Reservoir physically “spills”: “that when Echo Reservoir spills, such spills shall be charged first to Provo Association power water previously stored there in if any remains; and provided further, that in the event any power water of the Provo Association remains in Echo Reservoir on JULY 1st of any year, it shall become the property of the Weber Association.” This is clear, plain and simple. Further: “Weber River power water diverted in any winter to the Provo River by the United States or the Provo Association in excess of its share (i.e. 50% of the total amount of power water) shall not, without the consent of the Weber Association, exceed an amount equal to the pro-rata share of the storage water in Echo Reservoir belonging to the Weber Association’s stockholders on Provo River diverting below Deer Creek Dam; and all such excess diversions of power water shall be deemed to be Echo Reservoir storage water”. “#22.*” pages 24-25. The Weber Association believes that this part of the contract is a big determination for proper operations.

Final Analysis about the workings of the power water contract is clearly stated in “22.*” on page 26 of the contract. “It is further understood and agreed that Weber River power water accruing to the Weber Association under the provisions of this contract shall be used only to augment the storage supply of the Echo Reservoir to the extent of * filling said reservoir once each year to its capacity of 74,000 acre feet and not otherwise.” The Association holds firm to this statement in the administration and operations regarding the power contract, as well as the July 1st deadline for moving the water over. The Bureau letter dated December 24, 2013 states: “Because the 1938 Power Contract allows PRP to temporarily use Echo Reservoir until July 1st of each year, we recommend that the final accounting of Power Interference Water be made in July.” The Weber Association and DWCC Company believe that the Power Contract accounting should be accomplished by July 1st to prevent excess deliveries of water in the month of July. The accounting would be more appropriately accomplished in the latter part of June.

In Summary: There needs to be better measuring and reporting of water right diversions through the Weber-Provo Diversion Canal according to contracts, priority rights, water availability, beneficial uses as are now in existence and shared reductions due to water year shortages and / or conditions of drought. There needs to be more efficient measurement devices installed, including additional new locations. There needs to be more frequent and open communications between the Provo River Commissioner and the Weber River Commissioner, including at least annually with affected stakeholders, including discussions about real time measurement updates and forecast projections prior to rendering decisions affecting the disposition and prioritization of water right diversions, including contract requirements. The Weber Association believes that the discussion in this memorandum clarifies that Echo Reservoir is a seasonal (annual) reservoir that fills and drains once each year with some carryover if available. There has never been any water that belongs to Echo Reservoir stored in Smith and Moorehouse Reservoir, according to any records that are available. Some Echo Reservoir storage water by mutual consent with Weber Basin Water Conservancy District has been stored on a temporary basis (yearly) in Rockport Reservoir, but must be returned to Echo before the next water season.

Information by Ivan Ray, in behalf of The Weber Association and The DWCC Company