



July 5, 2005

Jerry Olds, State Engineer  
Utah Division of Water Rights  
1594 W. North Temple Suite 220  
P.O. Box 146300  
Salt Lake City, UT 84114-6300

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WATER RIGHTS  
SALT LAKE

**Re: *Commentary on Recent Discussion of Potential Criteria for Granting of Extensions of Time to Prove Beneficial Use After 50 Years***

Dear Mr. Olds:

This letter will replace the letter dated June 29, 2005 previously submitted to you.

Per your recent published request Brigham City submits the following comments regarding future State Engineer consideration of and action on extensions of time to submit proof of beneficial use on approved municipal water right applications beyond 50 years under Utah Code § 73-3-12(j). This is an issue of great concern to Brigham City and presumably to many other municipalities statewide.

Utah's municipal water suppliers are uniquely situated. They have a fiduciary responsibility to the public to assess, plan for, secure and preserve the legal and physical availability to deliver secure water resources for future needs. See e.g., Utah Admin. Code §R309-500-1 (requiring adequate quantities of safe drinking water for the public); §R309-105-4 (water suppliers responsible for source and quality).

The Utah Constitution and Title 73 of the Utah Code specifically provide municipalities and the State Engineer with the tools and abilities necessary to allow municipalities to meet this perpetual obligation via protection of long-term water right holdings beyond 50 years. See e.g., Article XI, Section 6; Utah Code §§ 73-3-12(2) and (3); 73-1-4(3)(b)(ii). Municipalities statewide have long relied on the State Engineer's application of these expansive statutory extension provisions for planning, protection and retention of long-term municipal water resources. As such, municipalities pay particularly close attention to this discussion of future statutory applications. Accordingly, we offer the following for your consideration as you address applications for extensions of time to submit proof of beneficial use on municipal water filings beyond 50 years.

For more than 100 years, Brigham City has met the fiduciary obligation to deliver secure and ample water resources to the public through sound forethought, long term planning and the acquisition of resources. One of the most important components of Brigham City's long-term

planning to meet the public's future needs is a number of approved water right applications held by Brigham City which await proof of beneficial use. These approved applications include surface rights and local groundwater rights. The protection and preservation of these water rights is of the highest priority to Brigham City. These rights are critical to generations to come and to that end they should not be exposed to increased risk of expiration.

Brigham City is responsible to serve a growing water service area that includes residential, commercial, industrial as well as major institutional, governmental and visitor facilities. Currently there is a number of acres of undeveloped land within Brigham City's service area. Without doubt, this acreage will be developed in some form or another. Additionally, complete build out as well as infill and densification of existing land uses continues to rapidly occur through the maturation of the Brigham City's service area. Brigham City has planned and continues to plan for such an increase in demand. The fact that such demand has not occurred should not impair Brigham City's ability to serve these certain needs when they arrive. Your indication that "[p]erhaps a clear showing that there is an immediate need by the public for the water and the agency has a viable project is a reasonable expectation" for approval of extension beyond 50 years is of particular concern. Brigham City's "need" for the supply contemplated under these approved applications, while perhaps not "immediate" most certainly will come to exist, perhaps sooner than later. To require an "immediate" need would seem short-sighted and could result in unforeseen and difficult consequences.

You write that "if a project is not started and developed in a reasonable period of time, perhaps others who have filed applications to appropriate water should be given an opportunity to develop." This is particularly concerning given that Brigham City has included these approved applications as part of its future planning and modeling and have expended significant financial resources associated with exercising these rights. It is Brigham City's hopes to manage its current supply and only exercise these water rights in accordance with Brigham City's development and future public needs and free from external pressures based on "others who have filed applications to appropriate" to accelerate development under these rights and incur the associated significant public expense.

Brigham City, like all municipal water suppliers, must consider and plan for potential temporary or permanent impediments to both the quality and quantity of water delivered from existing sources. Water sources are often influenced by hydrologic cycles and changes, competing diversions, use patterns, as well as possible contamination, landslide, wildfire, earthquake, other natural disaster, or even 9/11-style public safety threats, which may cause temporary or permanent disruption of the source. For example, in 1991 Brigham City received an appropriation for 8 cfs to develop 4 inner-city wells. To-date the full appropriation has not used due to funding constraints, however; future supplies must be developed to meet build out projections. These Brigham City approved water filings are an integral part of Brigham City's ability to bring on-line new sources and supplies. To stiffen the criteria for approval of extensions of time to submit proof on these filings would directly affect Brigham City's ability to

provide its water users with the necessary source redundancy and protection. In fact, many states actually mandate the physical availability of redundant sources to the degree that a minimum of two sources are required, and the water supplier be able to meet maximum daily demand with the largest source unavailable for service. Brigham City, at a minimum, must be allowed to retain those approved filings necessary for supply redundancy.

Brigham City water users have heeded calls to conserve water. In fact, average per capita water use has fallen dramatically over the last several years which have further delayed the eventual need to exercise these water rights beyond their current extension deadlines. A requirement to meet your suggestion of an "immediate need"-type standard for further extensions is seemingly incongruent with conservation efforts. The two should not be mutually exclusive.

Thank you for your attention to this important matter.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Lou Ann Christensen', with a long horizontal flourish extending to the right.

Lou Ann Christensen  
Mayor

Cc: City Council Members  
Bruce Leonard, Public Works Director  
Blair Blonquist, Water Superintendent