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DEPARTMENT OF PUBLIC UTILITIES
WATER SUPPLY AND WATERWORKS
WATER RECLAMATION AND STORMWATER

ROSS C. "ROCKY" ANDERSON
MAYOR

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RECEIVED

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WATER RIGHTS
SALT LAKE

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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

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

Dear Mr. Olds,

Per your recent published request Salt Lake City, through its Department of Public Utilities ("SLC"), 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 importance to SLC and presumably to many other municipalities statewide.

Utah municipalities enjoy a unique legal status among Utah water users. Cities have a fiduciary responsibility to the public to assess, plan for, secure and preserve the legal and physical ability 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 and unique obligation via protection of long-term water right holdings beyond 50 years. *See e.g.*, Utah Const. Article XI, Section 6; Utah Code §§ 73-3-12(2) and (3); 73-1-4(3)(b)(ii). These laws recognize that the needs of the public are paramount, and take precedence over other, possibly conflicting needs. It is the clear public policy of this State to grant cities much greater latitude than other water users in meeting the strict demands of beneficial use. Consistent with this public policy, it is our view that the State Engineer, when exercising any discretionary powers granted by statute, should exercise such discretion in a way that supports cities in their long-range planning efforts, is deferential to the good faith decisions of cities, as water purveyors, and keeps the needs of the public in strong focus.

Municipalities state-wide have long relied on the State Engineer's application these

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expansive statutory extension provisions for planning, protection and retention of long-term municipal water resources. Municipalities, including SLC, have paid particularly close attention to the current discussion of future statutory application. 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, Salt Lake City has met its fiduciary obligation to deliver secure and ample water resources to the inhabitants residing within the corporate limits of the City and a substantial service population residing in eastern Salt Lake County through sound forethought, long term planning and the acquisition of resources. One of the most important components of SLC's long-term planning to meet the public's future needs is a number of approved water right applications held by SLC, 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 SLC. These rights are critical to generations to come and to that end, they should not be exposed to increased risk of expiration.

Salt Lake City is the capital city of the State of Utah and is responsible to serve a growing water service area that includes residential, commercial, industrial, major institutional and governmental users, as well as high visitor populations. Currently there are approximately 17,200 acres of undeveloped land within SLC'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 occur rapidly through the maturation of the SLC service area. SLC has planned and continues to plan for such an increase in demand. The fact that such demand has not occurred should not impair SLC'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. SLC'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 SLC has included these approved applications as part of its future planning and modeling and has expended significant financial resources associated with exercising these rights. It is SLC's hopes to manage its current supply and only exercise these water rights in accordance with SLC 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.

Salt Lake City and Sandy City, through the Metropolitan Water District of Salt Lake and Sandy, are spending nearly a quarter of a billion dollars of public funds for the new Point of the Mountain Treatment Plant and the Point of the Mountain Aqueduct to meet some of the Salt

Lake Valley's current and future water needs. Bringing this unprecedented level of new infrastructure on-line together with increasing development and use of imported water sources (i.e. PRP and CUP) has forestalled SLC's need to exercise and develop certain approved water appropriations. By facilitating and advancing the use of local and imported surface waters, SLC has been able to delay exercising its ground water rights to the benefit of Valley-wide aquifer conditions. Efforts by cities to develop Colorado River sources and other available sources, to engage in creative conjunctive management practices and water conservation efforts, and to postpone the development of groundwater sources, should all be encouraged. The application of more stringent extension criteria would have just the opposite effect. In other words, SLC should not be a victim of its own efforts.

Department of Environmental Quality ("DEQ") regulation defines the reliability of a surface water supply in terms of a minimum firm yield based on the hydrologic 25-year recurrence interval. See Utah Admin. Code §R309-515-5(4)(a). This figure is a mechanism to measure the water supplier's ability to meet future public needs in the face of sustained droughts of similar recurrence. Failing to plan for such a 25-year recurrence interval has been shown to result in severe impacts in many areas. Evaluating surface sources based on a 25-year low flow interval makes the SLC approved filings all the more important to long-term supply and planning. Impeding the extension of time to submit proof of beneficial at a time when surface supplies are to be evaluated on a 25-year recurrence interval is of significant concern.

SLC, 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 SLC has several wells that have been impacted by plumes of organic contaminants. To date the contamination has been controlled by the installation of millions of dollars of treatment systems. However, if the levels continue to increase we will have no other choice but to abandon the wells and develop other sources. Likewise other contaminated sources may not have treatment options and replacement sources will have to be developed. Redundancy in sources and supply is of utmost importance. These SLC approved water filings are an integral part of SLC's ability to bring on-line new sources and supplies as others age or deteriorate. To stiffen the criteria for approval of extensions of time to submit proof on these filings would directly affect SLC'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 must meet maximum daily demand with the largest source unavailable for service. SLC, at a minimum, must be allowed to retain those approved filings necessary for supply redundancy.

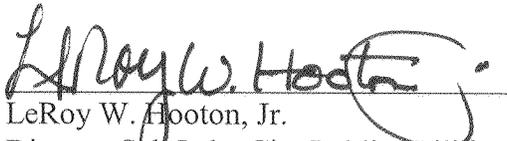
SLC water users have heeded calls to conserve water. In fact, average per capita water use has fallen dramatically over the last six years which has further delayed the eventual need to exercise these water rights beyond their current extension deadlines. A requirement to meet your suggestion of an "immediate need"-type standard for further extensions is seemingly incongruent

with conservation efforts. The two should not be mutually exclusive.

Finally, SLC understands the long-standing policy of the Legislature and the State Engineer to see that the public's water resources be developed and put to beneficial use. Also, SLC is sensitive to the need you express to fully exercise Utah's Colorado River allotment. However, addressing the regional competing needs for Colorado River water should not yield a policy approach which cripples the future sources of SLC and its related Salt Lake Valley wholesale and retail providers. Therefore, we suggest that the State Engineer continue to apply the "reasonable cause for delay," "reasonable future requirements of the public" and the "exercising reasonable and due diligence" standards of Utah Code § 73-3-12 with ample consideration given to the unique position municipal suppliers occupy as public fiduciaries, existing and future coordination between local providers, the security of future sources, conservation efforts and ever-expanding municipal population and associated demands. We understand your efforts to further development of Utah's Colorado River allotment, but simultaneously request your recognition that approved municipal water right filings should be protected for reasonably anticipated future public needs, and the availability of needed extensions beyond 50 years should not be compromised.

Thank you for your attention to this important matter.

Very truly yours,


LeRoy W. Hooton, Jr.
Director Salt Lake City Public Utilities

Cc: Jeff Niermeyer
Chris Bramhall