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June 19, 2008

VIA HAND DELIVERY

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

Re: Tooele Valley Change Application Policy

Dear Mr. Olds:

We represent Leucadia Financial Corporation, a water right holder in the Tooele Valley. This letter is in response to the public meeting held on April 24, 2008, in the Tooele City Council Chambers regarding the Division of Water Rights' (the "Division") proposed Tooele Valley Underground Change Application Policy (the "Policy"). Although the Division requested that public comments be provided by May 30, 2008, we feel that the importance of the proposed Policy requires that the Division consider all available information, and, therefore, we are providing the following comments for the Division's consideration.

First, the Policy relies on boundaries principally based on a 1999 USGS ground-water flow simulation. We understand that the 1999 simulation is soon to be supplanted by a new simulation. We also understand that the Policy as presented at the public meeting has not been correlated with the forthcoming simulation. Accordingly, we believe that it is premature to set any boundaries that are not based on the most current information. The Division should not make a decision regarding any boundaries in the Policy until it has an opportunity to analyze the new information and calibrate the Policy accordingly. Additionally, there may be other information available, e.g., private studies, which should be obtained and incorporated into the technical information and analysis before the Division implements such an important policy.

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We also question whether a mathematical numeric simulation provides an appropriate basis for establishing "hard and fast" boundaries affecting existing water rights. Numerical simulations are based on numerous underlying assumptions and, at best, present simply one model of a ground-water flow system. At any given point in the model there are uncertainties regarding the fit of the model to the actual flow. Any fit must be described by including a statement of the possible expected error. Such uncertainties do not support laying down a "hard and fast" boundary on top of uncertain ground-water flow lines. Determining a "hard and fast" boundary using uncertain data is arbitrary and capricious. Such boundaries need flexibility which allows an interpretation of the boundary based on the actual circumstances involved with an actual location.

For example, it stands to reason that the further downstream a proposed point of diversion is from the recharge source, the greater the uncertainty becomes in a ground-water simulation, particularly where, as in the case of the east-side of Tooele Valley, there are significant faults that affect the ground-water flow. Also, it is apparent that approving a point of diversion at the tail end of the flow system has less impact on the system (and users) than approving points of diversion further upstream. Accordingly, the Policy should take these factors (and possibly others) into account and not simply rely on questionable "hard and fast" boundaries. The boundary should be more of a "zone" rather than a "line." While "hard and fast" boundaries are administratively expedient, they may not necessarily result in the best administration of the water rights in the Tooele Valley.

Finally, we note that the water use volume figures presented at the public meeting do not coincide with the figures used at the November 28, 2001 public meeting held in Tooele regarding the proposed Tooele Valley Ground-Water Management Plan. The figures used at the April 24, 2008 meeting included all "permitted" uses (e.g., approved rights), whereas the figures used at the November 28, 2001 meeting involved actual use. Comparing the figures, it is apparent that the actual use is far below both the permitted use and the expected recharge volumes. We believe the figures used in the April meeting overstate the immediate problem and that there is less urgency to implement the Policy than reflected in the public notice provided for the April 24, 2008 meeting. Based on the actual use figures presented in 2001, there is ample time for the Division to consider all of the available information before it implements such an important water management policy.

Jerry D. Olds, State Engineer
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Thank you for your consideration of these matters.

Sincerely,

A handwritten signature in cursive script that reads "Thomas W. Clawson".

Thomas W. Clawson

TWC/dl

