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December 23, 2013

Kent L. Jones, P.E.
State Engineer
Division of Water Rights
1594 West North Temple, Suite 220
Salt Lake City, UT 84116-3154

Re: Weber River Water Right Operations for the Weber River and Provo River
Projects under the 1938 Power Contract

Dear Mr. Jones:

Weber Basin Water Conservancy District ("Weber Basin") has participated in many discussions with your staff over the past months regarding the operation of the Weber River under the 1938 Power Contract (the "Power Contract") and now appreciates the opportunity to comment on the *Historical Operation of the Weber River System in Relation to the 1938 Power Water Agreement (Draft 10/17/2013)* (the "Operations Document") distributed at the State Engineer's public meeting on the Power Contract held on October 29, 2013. Weber Basin has also provided comments to and had discussions with the Bureau of Reclamation, Provo Area Office, ("Reclamation") during this period. Because water rights on the Weber River were not changed by the parties to the Power Contract to reflect operation under the Power Contract, the Operations Document is important to outline the historic operations on which Weber Basin and many other water rights holders on the river rely.

Weber Basin is directly and immediately impacted by decisions of your office on water distribution and storage on the Weber River and by Reclamation's decisions implementing and interpreting the Power Contract. Weber Basin strongly believes that the State Engineer should work with Reclamation, Weber Basin and other water users to develop operating criteria and guidelines respecting and documenting historical river operations under the Power Contract. While developing operating criteria will take time, the detailed analysis under the Operations Document is a good first step.

Weber Basin, while a later priority project on the Weber River, serves approximately 600,000 citizens, businesses and governmental entities under thousands of contracts recognized by thousands of water rights. In June of 2013, Weber Basin entered into contracts with the

public water suppliers in the Snyderville Basin to supply wholesale water to them to meet their future water needs as the area continues to grow and expand. Weber Basin has been able to operate Reclamation facilities and develop new water sources, all within the Weber River Basin, based on the stable historical operations of the Weber River system. Any changes in operation resulting in less water diverted and stored under Weber Basin's account means, quite literally, water shortages for its existing customers, threats to its new customers in the Snyderville Basin and other locations, and slowing or cessation of economic growth in the northern counties of the Wasatch Front and the Wasatch Back. Weber Basin has only one major water source – the high flows of the Weber River.

The Operations Document identifies a key reason why Weber River operations under the Power Contract work: Paragraph 3.0 makes clear that the Power Contract was allowed to operate because it did not harm third party water rights. This “no harm” operation must be continued and protected because thousands rely on it. Paragraph 3.1.1 recognizes the 1896 priority Davis and Weber Counties Canal Company storage right in East Canyon Reservoir as a significant prior water right on the system during the Power Contract storage period on the river. This water right was not impacted by the Power Contract. To the extent that there are other winter water rights on the river with intervening priorities between 1903 (the power water right priority) and 1924 (Reclamation's Echo Reservoir, Provo River Project and Weber-Provo Canal water rights' priority), they should be protected and operated in the same manner as has historically been the case as well. For example, the Smith & Morehouse Reservoir Company 1919 priority water right has always stored and filled despite power water storage under the Power Contract. In addition, under the historical operation of the Weber River, Weber Basin has always been able to store water for its own account under its late priority Smith & Morehouse Reservoir water rights.

Weber Basin was not in existence at the time the Power Contract was signed, but its operations have developed since the 1950s and are consistent with Weber River operation under the Power Contract. It is just as important that Weber River operations not be changed now to harm third party rights as it was when the Power Contract was signed. Since Weber River operations are authorized and undertaken pursuant to the Power Contract and not pursuant to documented water rights approvals in the files of the State Engineer, it is imperative that the State Engineer take a strong stand to recognize and protect historic operations and third party rights. Because Weber Basin cannot rely on the standard protections granted by operation under established water rights approvals, the usual recourse for injury based on reliance on and interpretation of water rights is unavailable. As an example, since historic diversions of power water through the Weber-Provo Canal are not described in documented water rights, if the

diversions are increased, or if the Weber-Provo Canal is enlarged, Weber Basin cannot rely on water rights of record in the State Engineer's office to protect it.

Since regularly recognized remedies for impairment are not available, some third parties may turn to recourse through the courts if historic operations change and they are injured. Legal actions would not produce more water, and certainly would not increase cooperation, and they should be avoided. Unnecessarily injecting the courts into operation of the Weber River is a dangerous concept and the State Engineer, Reclamation and the Reclamation project operating agencies must take extra care to protect historic operation.

In the absence of approved water rights documenting historic operation on the Weber River, Reclamation's role of interpreting the Power Contract becomes even more important. Since operation under the Power Contract is not reflected in changes to water rights, storage and exchange of water must be accomplished under Water Right Nos. 35-8737, 35-8739 and 35-8740, each with a 1924 priority date, to avoid injury to third parties not signatory to the Power Contract. Reclamation cannot supplant the State Engineer's authority to determine water right priorities or advise the River Commissioner on diversion under water rights it does not own. However, Reclamation's decision to give preference to water storage in Echo under Water Right No. 35-8739 over delivery to Water Right Nos. 35-8737 and 35-8740 with same priorities and to divide power water once it has been stored under the Power Contract should be honored. This comports with historical operation and protects Weber Basin's third party rights.

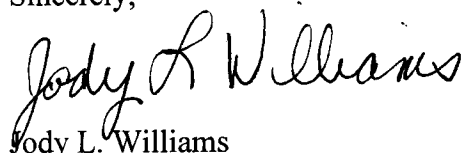
Paragraphs 3.1 and 3.1.3 describe the historic practice of storing Echo water (35-8739) in various Weber River reservoirs as high in the system as possible. When the storage period ends, the Weber River Commissioner accounts for the Echo water wherever it is stored. Storage high on the system maximizes operational flexibility. Since this historic practice does not injure any third party rights, it should be continued. In fact, this practice insures that the Weber River Project and the Weber Basin Project can both operate as anticipated without interfering with the water rights of others.

Paragraph 4.0 of the Operations Document states that the State Engineer is developing online tools to help interested parties understand the accounting of power water on a near real-time basis. Understanding and transparency is important to maintaining the trust that has enabled the Weber River parties to operate over the decades since the Power Contract was executed. Whenever possible, real time accounting for storage and diversion on the Weber River system should be undertaken.

Weber Basin appreciates the time the State Engineer's office has dedicated to understand the historical operations on the Weber River and prepare the Operations Document. However, there are many unresolved issues on operation under the Power Contract from both a water rights perspective and Reclamation's interpretations of historical operations. Weber Basin looks forward to continuing dialogue with both Reclamation and the State Engineer's office on the Power Contract and storage and diversion of water on the Weber River in the 2014 season and beyond and would like to participate in developing operating criteria as greater understanding is reached.

Thank you.

Sincerely,



Jody L. Williams
Partner
of Holland & Hart LLP

cc: Wayne Pullan, Bureau of Reclamation
Reed Cozens, Weber River Commissioner
Tage Flint
Mark Anderson
Scott Paxman