

March 2, 2020

Dear Ms. Wilhelmsen:

On December 3, 2019, the Division of Water Rights conducted a meeting to present information and concerns regarding water supply and distribution issues on the Lower Jordan River. Having been told definitively that a priority call can be made by Duck Clubs (and potentially other water users) within the lowest reaches of the Jordan River on upstream water users, it is somewhat perplexing as to what motivates this effort to create one huge distribution system that would extend from Great Salt Lake to the head waters of every tributary to the Jordan River and Utah Lake. I believe that no such call on rights above Utah Lake has ever been made by Lower Jordan water users. Functional distribution systems are in place and have been for many years that effectively manage the resources of the systems independently of the Lower Jordan system. The following comments are offered:

1) For several years Governor Herbert has been attempting to identify how Utah's water needs for an ever-increasing population in Utah are going to be met in the future. Bills have been put before the legislature to attempt to address the issue but no legislation can create additional water supply. For the Wasatch Front, the future water supply to serve the public is already represented by Reclamation reservoirs constructed on the Provo River under the Provo River and Central Utah Projects. These facilities have 20<sup>th</sup> century priorities and water is stored in them. It seems that will make them a likely target of efforts to provide additional water to duck clubs. Protecting these storage rights is of paramount importance to Reclamation and hopefully to the Division of Water Rights.

2) Jared Manning's presentation was very well done. One of the reasons stated in his presentation for undertaking this effort was that Reclamation has expressed "concerns that Utah Lake water be used efficiently" because of the relationship between Utah Lake rights and the ability to store water on the Provo River. While this is true, our concern reflects the reality that the actual number of acres irrigated by the various irrigation companies in Salt Lake Valley has reduced as Salt Lake County has urbanized. Yet the canals and facilities used by the companies have not been modernized or altered to take only the amount of water needed for the actual irrigation demand of their shareholders. When the amount of water diverted into these canals from Utah Lake exceeds a reasonable amount required to irrigate the actual number of acres served by the companies it should be held as an unreasonable and inefficient use of water from Utah Lake. How many acres of land continue to be irrigated from Utah Lake in an urbanized 21<sup>st</sup> century Salt Lake Valley by these irrigation companies? With the imagery readily available this is a question that should be able to be answered so that the diversion of water into these canals is more in line with their actual uses of water. If the Division believes that the canal companies should be able to divert their full water rights from Utah Lake to irrigate a fraction of the acres historically served, there should be no issue in terms of insufficient water for rights on the Lower Jordan River system since the excess water diverted by the companies will be returned directly to the Jordan River and likely exceeds the amount of water the Lower users would have received historically.

3) Also, in his presentation, Mr. Manning showed a table from the Division's website titled Upper Jordan and Tributary WR's. This table has a few water rights on it that are questionable. For example, the first one is **Gardner Mill Race** (Water Right 59-3504 et al) which would divert from the North Jordan Canal. This right appears to have not been used for many years, at least for its original purpose of milling grains, since the mill is now a restaurant at Gardner Village. Water used at the mill was almost surely non-consumptive. However, if this right was used for irrigation, there is presently no land in the vicinity of Gardner Village that is or can be irrigated. Likewise, the **Galena Canal** is not likely in service since this ditch diverts water from the Jordan River near the Bangerter Highway in southern Salt Lake County and conveys the water northward to at least Midvale. Has the Division of Water Rights confirmed that the Galena Canal remains in use? There is no reference to the Galena Canal in any report by the Utah Lake / Jordan River or Lower Jordan River Commissioner's reports. One of the users of water from this canal, Sharon Steel Corporation which had rights totaling 17 cfs, ceased operation in 1958 and none of that water can be put back to the use for which the rights were established. Does a river commissioner direct the diversions of water at canals from Southern Salt Lake County to about 21<sup>st</sup> South that might impact Lower Jordan users?

4) In an attempt to better understand historical practices on the Lower Jordan River, the 1934 Report of Distribution of Water Supply Lower Jordan River by the Water Commissioner, B. F. Lofgren, was reviewed. On page 7 of the report, Mr. Lofgren has a table of the Gun Clubs (presumably the duck clubs) and shows them in two categories: the West Side Gun Clubs of which there are ten (10) total and the Lower Jordan Clubs of which there are only two (2). The total amounts of water for the clubs shown by Mr. Lofgren is 46 cfs for the West Side and 85 cfs for the Lower Jordan. He indicates that the amounts of water for the clubs were found necessary to replenish lakes following the irrigation season. Additionally, Mr. Lofgren noted on page 10, paragraph 1, that rights predating 1903 asserted by users were not defined "either as to time, amount, points of diversion or use. A survey made of the total amount of water available for distribution and the area requiring a supply showed that claims were in excess of the amount available and often appeared to be in excess of what could be legitimately claimed." Mr. Lofgren also refers to a court decree by Judge Morse in 1913 on page 10, paragraph 6 directing the water available at the division between the Surplus Canal and the Jordan River, the Surplus Canal was to receive 35% and the main stem of the Jordan River 65%. From the recent flows of water at the USGS gages for the Surplus Canal and the Jordan River it does not appear that this proportion is currently being adhered to and far more than 35% of the total flow is being diverted into the Surplus Canal. An explanation of what the rights currently are in the Surplus Canal would be helpful.

5) In reviewing some of the water rights in the area of the duck clubs it appears that there are approved applications to appropriate water. If there is a shortage in supply and a priority call is considered needed, these appropriations should be regulated by priority before the state engineer authorizes any call on other water rights outside the Lower Jordan system.

6) Regarding the duck clubs, do they make diversions of water from the river using traditional headgates and control structures or have they simply manipulated the land to enable ponds and

wetlands to be created on the fringes of the Great Salt Lake as the water moves through the system? The limit of water rights for all water users basing their use of water on a “diligence claim” is limited to the uses established prior to 1903. Have the rights claimed by the duck clubs in the 21<sup>st</sup> Century been expanded beyond that in existence in 1903? Does, or can, the commissioner limit these users to a specific amount of water in the same way a traditional water right would be limited? If they are not subject to limitations how can they be a water right that can make calls on other upstream water rights? Within what the framers of Utah water laws drafted, the duck clubs may be water users by virtue of receiving water at the mouth of the Jordan River but they are not on equal footing with upstream water users that divert specific amounts of water for municipal, industrial, or traditional agriculture purposes and are regulated by commissioners. If duck club uses are considered to be irrigation they should be limited to the same duty of water applied to other irrigators and the balance of the water in the Jordan River should be conveyed to the Great Salt Lake.

7) Other changes in the use of canals may be impacting the Lower Jordan system. The North Jordan Canal diversion traditionally dry dammed the Jordan River and may be the dividing location for the Utah Lake and Lower Jordan systems. Presumably, the North Jordan Canal was originally created for irrigation purposes - primarily a seasonal use. It now delivers water to Kennecott year-round. Has changing the operation of the North Jordan Canal from serving irrigation to serving industrial uses impacted the Lower Jordan water users?

It is hoped that the Division of Water Rights will carefully review the water rights for users on the Lower Jordan System and in Salt Lake County generally before acting to create a new, single distribution system impacting the Provo River, Spanish Fork River, American Fork River, all streams in Salt Lake County, and all other tributaries to Utah Lake. Reclamation is concerned that this action may create significant effects on the water supply created to serve the public by detrimentally impacting its ability to store water in its reservoirs should this plan advance. Within the text of our concerns a variety of questions are raised as a means of asking that the issues related to them be examined by the Division of Water Rights. It is not expected the Division will respond directly to Reclamation about those questions.

Thank you for the opportunity to provide input into this issue. If you have questions about any of the concerns expressed please feel free to call John Mann at 801 379-1096.

Sincerely,

Kent Kofford, P.E.

Acting Manager of the Provo Area Office

United States Bureau of Reclamation