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Via Email & U.S. Mail

Boyd Clayton, Interim State Engineer
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Dear State Engineer,

Central Utah Water Conservancy District (“CUWCD”) submits the following comments in anticipation of a forthcoming Lower Jordan River Distribution Plan.

The overriding concern of CUWCD is that the State Engineer recognize the importance of the Utah Lake Distribution Plan and Amendments (“ULDP”). The ULDP is integral to CUWCD’s Bonneville Unit operations. Literally billions of dollars of infrastructure and investment rely on having the ULDP in place and functioning. Disruption to the ULDP will have significant negative impacts for CUWCD and the hundreds of thousands of people who depend on CUWCD water. In preparing a Lower Jordan River Distribution Plan, CUWCD strongly urges the State Engineer to fully incorporate the provisions of the ULDP and take no action that might otherwise undermine the ability of the ULDP to function as currently articulated.

Central has the following comments:

- **Utah Lake Distribution Plan**

The importance of the ULDP cannot be overstated. It is a seminal piece of the “Law of the River” for the Utah Lake/Jordan River Drainage and Utah water law as a whole. In drafting a Lower Jordan River Distribution Plan, all parties must work collaboratively to understand the function and import of the ULDP.

Briefly, the ULDP came into being to address very real changes to Utah water supply and distribution. It is the centerpiece policy that allows for 19th century water rights to be optimized and distributed through 20th

century infrastructure. The ULDP has worked successfully for decades and provides needed stability in an increasingly uncertain and changing world. It is imperative that the agreements and structure of the ULDP remain in place into the future.

The ULDP plays three key roles that must not be disrupted in the creation of a new Lower Jordan River Distribution Plan:

- Water Right Governance:

The ULDP effectively governs and manages water rights in Utah Lake and the Jordan River. The ULDP expressly incorporates a wide breadth of pre-existing law and guidance including the 1901 Morse Decree, 1909 Boothe Decree, 1921 Provo River Decree, 1985 “compromise” Agreement, key agreements with the Welby-Jacob Irrigation Company, and various water right exchanges. The ULDP is a comprehensive plan for managing and coordinating these disparate and potentially conflicting rights and interests.

As a party to the Utah Lake Jordan River General Adjudication, CUWCD has repeatedly stressed the importance of the ULDP for understanding how water rights in the area operate “on the ground.” The State Engineer has indicated that while important, the ULDP is generally outside the limited scope of the general adjudication. The State Engineer may note the existence of the ULDP in Proposed Determinations Preambles, but will excluded its provisions as they do not directly related to independent water right claims, assessments, and recommendations.

Accordingly, the Lower Jordan River Distribution Plan will be the bridge between the State Engineer’s discreet adjudication efforts and the wider guidance given under the ULDP. To be an effective distribution tool, the Lower Jordan River Distribution Plan must account for the entire corpus of agreements and policies encapsulated in the ULDP.

- Priority Distribution/Conversion Line:

The ULDP protects senior Utah Lake and Jordan River water rights while allowing for creative distribution of upstream water rights needed along the Wasatch Front.

The ULDP sets a “conversion line” that delineates the lake level needed to satisfy all senior primary and secondary water rights in Utah Lake and the Jordan River. If lake levels are below the conversion line, Utah Lake water is first used to satisfy these senior rights. Upstream Utah Lake system storage may remain stored in upstream reservoirs and is subject to the call of Utah Lake. If lake levels are above the conversion line and senior rights can be satisfied, Utah Lake is determined to have available “system” storage. Under these conditions, the ULDP allows water users to “convert” Utah Lake system storage to “priority” storage. In this scenario, CUWCD can use it upstream reservoir water rights in priority.

The ability to convert system storage to priority storage is a critical water management tool. It is imperative that any Lower Jordan River Distribution Plan include and account for the conversion line. This includes accounting for any existing inefficiencies in Utah Lake management that may

affect lake levels. For example, many canal companies' water rights are still allowed the full diversion of their water rights, even though water has been moved out of the canals for homes and development. Inaccuracies like this may affect whether the current conversion line is appropriate to meet senior water rights. Moving forward, the State Engineer should continue to engage those water users that rely on the conversion line. To protect such users' water rights, efforts should be made to ensure both the Lower Jordan River Distribution Plan and the ULDP contain coordinating and accurate information.

- Trans-Basin Diversions and Exchanges:

Utah Lake is a key feature of the State's "plumbing." It is essentially the lynchpin between needed storage and end users along the populous Wasatch Front. Some upstream reservoirs store water that is not native to the Utah Lake/Jordan River watershed. By allowing for replacement and exchange water from these reservoirs, the ULDP provides a means to both regulate Utah Lake and trans-basin diversions into the watershed. A Lower Jordan River Distribution Plan will need to account for any non-native water allowed under the ULDP.

The ULDP is a critically important to the State of Utah. In developing a Lower Jordan River Distribution Plan, the State Engineer should start with and then continually revisit the terms of the ULDP to ensure the two documents support and work in concert with each other.

- Application of Snow Decree, Civil No. 168559:

CUWCD is concerned about and seeks clarification on the role and binding nature of the Snow Decree.¹

Based on the State Engineers comments,² CUWCD understands the State Engineer to consider the Snow Decree as setting binding parameters applicable to all Jordan River water users. The Snow Decree is a Stipulated Decree settling a dispute over whether the State Engineer's approval of Change Application a4907 (59-3517) properly accounted for return flows to downstream users.³ Importantly, the Snow Decree sets an "impairment" threshold where if flows in the Jordan River are lower than 325 CFS at 2100 South, Lower Jordan River users are considered to be impaired and Kennecott is required to release 9.6 CFS of water as mitigation for lost return flows (25% of 38.4 CFS approved under Change Application a4907).

The Snow Decree is a Stipulated Decree that only binds those parties to the matter and is based on discreet facts. CUWCD is concerned that the impairment threshold set in the Snow Decree will be binding on all other water users and set a precedent for all Change Applications impacting flows in the Jordan. This is inappropriate because Change Application a4907 rests on factors not generally applicable or appropriate to extend to other situations. Primarily, a4907 modifies an early priority direct flow right

¹ North Point Consolidated Irrigation Company et al v. North Jordan Irrigation Company, Kennecott Copper Corporation, Huber C. Lambert, Civil No. 168559 (1967).

² Comments made by the State Engineer at the December 3, 2019 - "Public Meeting Concerning the Initiation of a Distribution Plan For The Jordan River In Utah And Salt Lake Counties."

³ a4907 requested to move 38.4 CFS of water out of irrigation and instead use it for copper leaching purposes and Kennecott mining/industrial purposes.

in the Jordan River. Underlying Water Right No. 59-3517 and Change Application a4907 have no storage component. The resulting stipulation is limited to maintaining natural accretion flows in the Lower Jordan River so that downstream water users are whole. Change Application a4907 was also approved prior to the completion of the Central Utah Project and the advent of storing additional “project” water in Utah Lake under the ULDP. Accordingly, the Snow Decree’s impairment threshold should be limited to the “natural” conditions of the river as they were in 1967.

CUWCD is concerned that the Snow Decree’s impairment threshold will be applied in light of today’s conditions. Since 1967, many water rights in the Jordan River have been moved or changed in ways that lessens return flows to downstream water users. It is imperative that the State Engineer mitigate for impairment to these return flows in a manner that does not call on releasing stored project water to meet the 325 CFS Snow Decree impairment threshold. This would be an impermissible expansion of the Snow Decree and severely prejudice CUWCD and its hundreds of thousands of contract holders dependent on stored project water.

- Conveyance Losses

In its comments, the State Engineer addressed a 1985 USGS study that defined conveyance losses as a loss that completely leaves the system via evaporation or seepage and does not account for the water that returns to the river. Climatically, the Salt Lake Valley has the same or close to the same ET rates for crops that are irrigated in Utah Valley. However, under the relevant Proposed Determinations, the Salt Lake Valley receives an additional acre foot per acre duty to account for conveyance losses from the extended canal system in Salt Lake County.

CUWCD seeks clarification on whether water right holders can file a Water Users’ Claim for additional water to account for the conveyance losses associated with these canals. The irrigation companies’ inefficiencies should not be laid on the shoulders of other water users and have already been accounted for when determining the duty value for the Salt Lake County Canals.

CUWCD appreciates the opportunity to provide these initial comments. We look forward to continued dialogue on the development of the Lower Jordan River Distribution Plan.

Regards,

CLYDE SNOW & SESSIONS



Emily E. Lewis