



MABEY WRIGHT & JAMES PLLC

ATTORNEYS AT LAW

175 SOUTH MAIN, SUITE 1330
SALT LAKE CITY, UTAH 84111

John H. Mabey, Jr.

jmabey@mwjlaw.com

TELEPHONE: (801) 359-3663

www.mwjlaw.com

FACSIMILE: (801) 359-3673

March 2, 2020

Utah Division of Water Rights
Attn: Jordan River Public Meeting
P.O. Box 146300
Salt Lake City, Utah 84114-6300

Re: Utah Lake Water Users Association Comments Regarding Initiation of a Jordan River Distribution Plan

Dear State Engineer,

The Utah Lake Water Users Association (Association) supports the effort to develop guidelines for distribution of waters associated with the Jordan River. In response to the public hearing held December 3, 2019, these comments and questions are submitted on behalf of the Association regarding the members' common interests in their Utah Lake storage rights and their distribution. These are comments the Association has to date. It reserves the right to provide future comments as this process evolves. Individual members of the Association¹ may submit separate comments.

Water Supply Provided by Utah Lake Storage Rights. Water users, both large and small, rely on the decreed primary and secondary storage rights in Utah Lake to provide critical water supplies for hundreds of thousands of water users in both Utah and Salt Lake Counties. The storage rights are a major source of the agricultural, secondary and urban irrigation water supplies for both Utah Valley and Salt Lake Valley. They supply critical industrial water to companies such as Kennecott, public schools, colleges, and the Church of Jesus Christ of Latter-day Saints. The storage rights also represent and support significant portions of the public drinking water supply for Utah and Salt Lake Counties through hundreds of water exchanges and change applications. The storage rights are indispensable to meet the water demands of hundreds of thousands of irrigators, industrial water users and municipal water customers.

¹ Members of the ULWUA are Salt Lake City Corporation, East Jordan Irrigation Company, North Jordan Irrigation Company, Utah and Salt Lake Canal Company, South Jordan Canal Company, Draper Irrigation Company, Kennecott Utah Copper LLC, Jordan Valley Water Conservancy District, and Metropolitan Water District of Salt Lake and Sandy

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The Decreed Storage Rights. Primary storage rights were awarded in the 1901 Morse Decree to Salt Lake City Corporation, the Utah and Salt Lake Canal Company, the East Jordan Irrigation Company, the South Jordan Canal Company and the North Jordan Irrigation Company. These were awarded “*the right, at all times, to shut off, impound and store the entire flow of the Jordan River, and hold and save the same for future use, to the extent which, in their judgment their interest may require, and, as between themselves, the said city [and four irrigation companies] shall have an equal right to the use of all such waters, to the extent of the capacity of their several canals . . .*” (Morse Decree, Section VII). These rights were later confirmed in the 1909 Booth Decree, where Secondary storage rights were first recognized: “[S]ubject to the [Primary Storage Rights] hereinbefore set forth, defendants are the owners of the right to draw and take from the waters of Utah Lake . . . for irrigation, culinary and domestic uses.” (Booth Decree, Paragraph 3). Owners of Secondary storage rights today include Draper Irrigation Company, Utah Lake Distributing Company whose interests are represented by Metropolitan Water District of Salt Lake & Sandy, Welby Jacob Water Users Company represented by Jordan Valley Water Conservancy District, and Central Utah Water Conservancy District.

Comments Regarding Initiated Jordan River Distribution Plan (“Plan”).

1. Basin-Wide Distribution. The issue was raised that after priorities are decreed for all rights in the Utah Lake/Jordan River general adjudication, whether and to what degree rights should be distributed according to those priorities on a more basin-wide regulation. The Association supports continued distribution as provided in decrees, historic distribution boundaries, and well-developed past distribution practices. For example, while the primary storage right owners initiated their water diversions on different dates and thereby have different priority dates which range between 1853 and 1879, they should continue to share equal priority as among themselves as provided in the Morse Decree. In general, it does not make sense to encourage a dialogue that brings into question longstanding distribution decrees and custom.
2. Jordan River Model. The model was briefly introduced, but more information and time is needed than what was afforded during the comment period to evaluate the data and explore what are the underlying assumptions. How exactly will it be used and under what situations? For example, the Association needs more understanding of specifically how the model will be used to distribute Jordan River water rights during the irrigation season.
3. What Impact will the Jordan River Distribution Plan have on Distribution of Water from Utah Lake and the Utah Lake Interim Distribution Plan? It appears the Jordan River Distribution Plan intends to regulate distribution of Utah Lake storage rights once they are released to the Jordan River. Will the measurement of storage releases and the proper accounting of what remains in storage under the

various categories of Utah Lake storage rights be accounted for under the Jordan River Distribution Plan or the existing Utah Lake Interim Distribution Plan (often referred to as the Management Plan)? Wherever the accounting and measurement of Utah Lake storage rights are administered, the Association requests that releases, including releases of stored import water credits, be properly monitored, measured and accounted for under the direction of the river commissioner. In developing the Plan it is important for the state engineer to accurately track those import releases and remaining storage credits in relation to the senior primary and secondary storage rights.

4. When Utah Lake is Approaching Flood Stage. The state engineer should take a greater role in monitoring and accounting for both the inflow and outflow waters of Utah Lake and assist with regulating those flows, especially to manage flows when Utah Lake is approaching flood conditions.

5. The 1985 Compromise Judgment or Agreement. Releases of Utah Lake water into the Jordan River are regulated to a large extent by the 1985 Judgment known as the Compromise Judgment or Agreement. The parties include adjacent Utah Lake landowners, Utah County, the storage water right owners and Salt Lake County. The Association urges strict compliance with the 1985 Compromise Agreement as it is a compromise of over 135 years of regulating storage and release of Utah Lake water.

6. Operation of Utah Lake Pump Station. The Utah Lake Pump Station is owned and operated by the Utah Lake Water Users Association. The members of the Association operate, maintain and pay all costs associated with the Pump Station. The Pump Station is necessary to pump the stored water when there is not sufficient water to gravity flow the Association's water over the outlet gates. When the lake is at pumping stage, only the water necessary to meet the Association's members' water rights and contracts may be pumped.

7. Information on the Water Company Pages. The state engineer indicated it plans to use information on the various irrigation company pages found on the Division's website in distributing water. The Association's position is that each affected irrigation company should have the opportunity to meet with the state engineer's office to review those pages to better understand the included information and address their individual issues prior to the adoption of any Plan.

8. Quantification of Conveyance Losses. It was proposed for the first time at the public hearing that rather than have the state engineer recommend in the adjudication the amount of water to be allowed for canal conveyance losses, that the state engineer is considering having each company file a water user's claim. The Association requests a meeting with the state engineer to further explore this proposal.

The Association appreciates the opportunity to comment and looks forward to working with the state engineer as the Plan moves forward.

Sincerely,

MABEY WRIGHT & JAMES, PLLC

Attorneys for Utah Lake Water Users Association

A handwritten signature in black ink, appearing to read "John H. Mabey, Jr.", with a long, sweeping flourish extending to the right.

John H. Mabey, Jr.

cc: Association Members