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Mailed copy to:

Division of Water Rights
646 North Main St.
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Cedar City, UT 84721-0506

Re: Roberts Legacy, LLC comments on the draft Groundwater Management Plan for the Parowan Valley distributed at the 1/9/2023 public meeting

Division of Water Rights,

Roberts Legacy, LLC (“Roberts”) submits the following comments on the draft Parowan Valley Groundwater Management Plan (“GMP”) distributed at the 1/9/2023 public meeting, that supplement its prior written comments provided on 1/6/2023. Also, Roberts requests that the Division of Water Rights (“Division”) incorporate Dr. Ryan Smith’s remote sensing research presented at the 1/9/2023 meeting which suggests that the groundwater withdrawals are not exceeding safe yield in the Parowan Valley to the extent estimated in the plan.

The Division should adopt two GMPs, one for the north Parowan subarea and another for the south Parowan subarea, because it is consistent with the Division’s policy in treating the north subarea separately from the south subarea. If the Division instead proposes to adopt one GMP for whole the Parowan Valley drainage area, as the draft GMP describes, it should amend its current policy which prevents change applications from moving water between the two subareas, confirm that the State Engineer will accept forbearance agreements to manage withdrawals pursuant to Utah Code § 73-5-15(4)(c), or confirm that replacement water by an unexercised senior water right may offset a junior water right use that would otherwise be curtailed under the GMP. Additionally, the Division should make the Adaptive Management section self-executing such that additional phases of curtailment cease if the groundwater depletions do not exceed safe yield.

The Division should amend its Parowan Valley subarea change application policy.

The Division's groundwater policy in the Parowan Valley presently divides the basin "into two subareas . . . generally delineated by the southern boundary line of T32S" and prevents "change applications [from moving water] between subareas." See Area Policy <https://www.waterrights.utah.gov/wrinfo/policy/wrareas/area75.asp> If the draft GMP treats the entire Parowan Valley as one basin, the Division's groundwater policy on change applications should too. Doing so would allow Roberts to file a global change application to use its groundwater rights in either subbasin from its existing wells. Then Roberts could reduce depletions from its water right portfolio to achieve the priority curtailment under the GMP while having operational flexibility and predictability in using its most productive ground. Otherwise, the GMP imposes priority regulation on some of Roberts' junior rights in the north subarea while allowing continued pumping in the south subarea senior water rights. And, as described in Roberts' proposed GMP comments dated 1/6/2023, the groundwater levels in the south subarea have dropped much more than in the north subarea and the movement of groundwater from the north to the south subarea could take decades. However, amending the Division's Parowan Valley subarea change application policy is not the only method to address this concern.

The GMP should confirm that forbearance agreements are permissible voluntary arrangements.

Voluntary arrangements to manage water withdrawals are permissible for fewer than all the groundwater users in a basin and those agreements cannot affect the rights of users not party to the arrangement. See Utah Code § 73-5-15(4)(c). The draft GMP should confirm that forbearance agreements are permissible voluntary arrangements. For Roberts, this would provide operational flexibility and predictability, without having to amend the Division's area change application policy and seek a global change application, while complying with priority curtailment in a manner that does not affect the rights of other users.

For example, if the priority curtailment under a GMP would require reducing Roberts depletions by 1,000 ac-ft, absent a forbearance agreement, specific wells would be required to be curtailed based on their priority date. With a forbearance agreement, Roberts could administer its water portfolio such that the same 1,000 ac-ft depletion is achieved, and therefore not affecting the rights of other users, without being obligated to curtail specific wells based on the priority dates of those wells.

The GMP should confirm that replacement water applications approved by the State Engineer under Utah Code § 73-3-23 may offset water use.

If the State Engineer is unwilling to authorize forbearance agreements as a voluntary arrangement, the GMP should allow applications for replacement water to offset water use that would otherwise be curtailed. That would allow a junior water user, with permission and approval of the State Engineer, to cause a senior right and its use to be fallowed or forborne to offset the junior use, where the junior water user's use, absent the approved replacement application, would be curtailed.

A junior appropriator has the right to replace the water if its appropriation "may diminish the quantity or injuriously affect the quality of appropriated underground water in which the right to the use thereof has been established as provided by law." Utah Code

§ 73-3-23. The GMP is curtailing junior users to protect the senior users' rights, and in the terms of Utah Code § 73-3-23, the senior users' "quantity . . . of appropriated underground in which the right to the use thereof has been established as provided by law." Here, the junior appropriator would replace the water required to be curtailed with forbearing the right of use under a senior water right.

The adaptive management provision should be self-executing if safe yield is achieved.

Presently the draft GMP provides, "[i]f during any phase of the plan the State Engineer determines that groundwater depletions no longer exceed safe yield, future planned reductions in depletion as outlined in Table 1 will not be implemented." This provision should be self-executing by adding the following language. "If during any phase of the plan the State Engineer determines that groundwater depletions no longer exceed safe yield, future planned reductions in depletion as outlined in Table 1 will ~~not be implemented~~ cease until and unless the State Engineer amends the plan."

Conclusion

Roberts encourages the Division to (a) incorporate the groundwater research of Dr. Ryan Smith presented at the 1/9/2023 public meeting; and (b) adopt two GMPs, one for the north subbasin and one for the south subbasin. However, if the Division adopts one GMP for the entire drainage basin it should: (1) amend the Parowan Valley subarea change application policy to remove the north/south subbasin change application movement prohibition; (2) confirm that forbearance agreements are permissible voluntary arrangements; or (3) confirm that replacement water by an unexercised senior water right may offset a junior water right use that would otherwise be curtailed under a GMP. Additionally, if safe yield is achieved, the plan should be self-executing such that further reductions automatically cease unless and until the plan is amended.

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