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Sent Via Email

Utah Division of Water Rights
c/o Teresa Wilhelmsen, State Engineer
1594 West North Temple, Suite 220
P.O. Box 146300
Salt Lake City, UT 84114-6300
waterrights@utah.gov

RE: Groundwater Management Policy for the Malad and Bear River Drainages in
Box Elder County (Area 29)

Dear State Engineer.

This comment is submitted on behalf of the Bear River Canal Company (“BRCC”) regarding the State Engineer’s proposed changes to the Groundwater Management Policy for Box Elder County (Area 29). As always, BRCC appreciates the opportunity to comment and participate in this important discussion.

I) Current Policy and Governor’s Great Salt Lake Proclamation

Briefly, the State Engineer’s existing Groundwater Management Policy for the Malad and Bear River Drainages in Box Elder County (Area 29) enacted in 2018 (“Current Policy”) allows for 10,000 Acre-Feet (“AF”) of new groundwater appropriations.¹ As this water is fully developed and used, the State Engineer is tasked with evaluating the effects of such development on the hydrologic system to determine if additional withdrawals can be allowed. Under the Current Policy, the State Engineer is tasked with continuing to monitor the groundwater withdrawals, water levels in selected wells, and streamflows.

On November 3, 2022, Governor Spencer Cox issued Proclamation 2022-01, “Suspending New Appropriations of Surplus and Unappropriated Waters in the Great Salt Lake Basin Pursuant to Utah Code § 73-6-1.” (“GSL Proclamation”). The GSL Proclamation generally closed all tributary areas to the Great Salt Lake, including Area 29. The GSL Proclamation made exceptions for “1) applications for non-consumptive uses; 2) applications that include a mitigation plan to offset depletion; and 3) applications

¹ [Groundwater Management Policy for the Malad and Bear River Drainages in Box Elder County \(Area 29\)](#) (2018).

for small amounts of water,” which constitute applications for one residence, .25 acres of irrigated land, and 10 Equivalent Stock Units. Utah Code Ann. § 73-3.5.6.

Conceivably, under the Current Policy and the GSL Proclamation, Applications to Appropriate water for single-family residents can continue to occur in Area 29. As noted in numerous BRCC protests to new applications to appropriate filed between December 2020 and November 2022, BRCC has concerns about the pace and extent of new groundwater development in Area 29, especially under numerous applications for small amounts of water.

II) Proposed Changes to Current Policy:

Presented on February 6, 2023, BRCC understands the State Engineer to be proposing modifying the Current Policy to close Area 29 “to new consumptive appropriations of any size (including small amounts of water...) that fail to include a mitigation plan that offsets depletions.”

BRCC wishes for any proposed policy change to strike the right balance of allowing for smart development of Box Elder County while not stressing water resources for existing senior users. BRCC finds the Current Policy’s continuing allowance of small water appropriations problematic and challenging to monitor, manage, and mitigate. Accordingly, BRCC supports closing the area to small amounts of water. BRCC also understands that Area 29 is experiencing growth and will need to develop additional water.

BRCC proposes that the State Engineer modify the existing Current Groundwater policy in the following ways:

- To better inform the scope of potential new groundwater development, the State Engineer should establish a publicly available accounting of how much of the 10,000 AF allowed for under the Current Policy is allocated to Certificated Water Rights, Approved Applications to Appropriate under development, and pending unapproved Applications to Appropriate.
- Any new policy should maintain the State Engineer’s obligation to monitor and report on the development of groundwater in Area 29. There are several large unapproved Applications to Appropriate and numerous approved yet undeveloped Applications to Appropriate that may impact groundwater availability and existing water rights. The State Engineer should propose a formal plan, schedule, and communications to the public regarding its monitoring responsibilities and how it will assess changes to groundwater resources from this new development. This plan should include how regularly and to what extent the State Engineer will evaluate and report on the state of groundwater development. If at any time it appears groundwater development is outpacing the ability of the local aquifer to supply a consistent source of water or such development is impairing senior uses, the State Engineer should have an obligation to make a public report of the finding and reevaluate any groundwater management plan in place.
- If the development of groundwater resources in Area 29 are proven to continue to have a safe yield and recent groundwater development has not impaired other water rights, allow for additional groundwater diversions. However, these diversions should be limited to public water suppliers who professionally manage, distribute, and account for the development. No small amounts of water or individual domestic uses should be allowed (new wells could be allowed for under a public water supplier water right and administered similarly to Weber Basin Water Conservancy District’s Replacement Water and Exchange Application program).

- No new appropriations should be allowed beyond the 10,000 AF established in the Current Policy. Area 29 should be closed to all new appropriations once that threshold is met or adjusted due to impacts from groundwater development.
- If after Area 29 is closed, the State Engineer continues to allow for new appropriations “that include[] a mitigation plan that offsets depletions,” the State Engineer should work with local stakeholders to better articulate what those mitigation plans must include and how the State Engineer is going to require applicants to monitor and enforce a plan so that any new appropriation does not impair existing users.

As this is an ongoing process, BRCC reserves the right to modify this comment as it continues discussions with other interested stakeholders and the State Engineer.

Thank you for the opportunity to participate. Please contact our Office with any questions.

Regards,



Emily E. Lewis

Attorney for Bear River Canal Company