

LOUIS F. RACINE, JR.  
WILLIAM D. OLSON  
W. MARCUS W. NYE  
GARY L. COOPER  
RANDALL C. BUDGE  
JOHN A. BAILEY, JR.  
JOHN R. GOODELL\*  
JOHN B. INGELSTROM  
DANIEL C. GREEN  
REED W. LARSEN  
BRENT O. ROCHE  
FRED J. LEWIS  
KIRK B. HADLEY  
MITCHELL W. BROWN  
ERIC S. HUNN  
DAVID E. ALEXANDER\*\*

\*ALSO MEMBER IL & WY BARS  
\*\*ALSO MEMBER MO BAR

LAW OFFICES OF  
RACINE, OLSON, NYE, COOPER & BUDGE  
CHARTERED  
CENTER PLAZA-CORNER FIRST & CENTER  
POST OFFICE BOX 1391  
POCATELLO, IDAHO 83204-1391

RECEIVED

SEP 21 1994

Department of Water Resources

TELEPHONE

AREA CODE 208

232-6109

FAX

208-232-6109

September 19, 1994

Carly B. Burton  
Hydrological Supervisor  
Utah Power & Light  
1407 W. North Temple  
Salt Lake City, Utah 84140

**Re: Last Chance Canal Company - Bear Lake Storage**

Dear Carly:

I am writing on behalf of the Board of Directors of Last Chance Canal Company to set forth their position and raise issues of concern regarding the delivery of Bear Lake storage water for the balance of the 1994 irrigation season and the anticipated curtailment of storage deliveries during the 1995 irrigation season given current drought conditions.

Your letter of August 15, 1994, providing an update concerning the Bear Lake storage is appreciated. Last Chance shares Utah Power's concern over crop land that is being irrigated solely for the purpose of improving soil moisture conditions after crops have been harvested. Be advised that Last Chance shareholders are not being provided any water from Bear Lake for use after crops are removed to improve soil moisture. Last Chance considers this practice to be extremely wasteful, not a beneficial use of water, contrary to the public interest, inefficient and a violation of the clear policy in Idaho (presumably Utah and Wyoming as well) to conserve water without wastage. Given the critical low Bear Lake levels and continuing drought conditions, this practice by other irrigators has the detrimental effect of continuing to lower Bear Lake levels which jeopardizes the supply of water available next year and, further alienates other Bear Lake users against the irrigators.

During this drought year and in previous drought years, Last Chance has been a leader in promoting water conservation and efficient irrigation practices. Last Chance is in the process of developing and implementing more formal conservation and efficiency policies and programs in an effort to further reduce consumption so the Bear Lake levels can be preserved and restored. Last Chance intends to actively participate in the newly-formed Bear River Water Users Association, Inc., and was instrumental in developing and securing the adoption of the Association's Mission Statement and Goals (copy enclosed), which you will note emphasizes the promotion of water conservation and efficient irrigation practices.

Carly B. Burton

Page 2

September 19, 1994

---

However, Last Chance as well as other canal companies and water users who are using their best efforts to conserve water in the drought conditions are very upset that some water users continue even to this date to use Bear Lake storage water to irrigate stubble after all crops are removed. While most water users do not follow this wasteful practice, the largest irrigator on the system, Bear River Canal Company, condones this practice by its shareholders which is continuing despite frequent demands by Utah Power and others that such use be permanently discontinued.

While Last Chance Canal has been drawing less than 50 cfs for several weeks now, Bear River Canal Company, continues to draw in excess of 700 cfs after all crops but alfalfa have been removed. Drawing nearly 80 percent of their full right appears far more than would be reasonable or necessary to irrigate remaining alfalfa crops and to permit any fall wheat to sprout. We note that your contract with Bear River Canal Company in paragraph IV.B. specifically provides that Bear River Canal Company "will not waste any of said 900 second feet, or said 150 second feet of water." We urge Utah Power to immediately curtail all deliveries to all water users supplied by contract from Bear Lake being used for the purpose of improving soil moisture conditions after all crops have been harvested given the critical level of Bear Lake and the water emergency that exists due to the persisting drought.

Last Chance further wishes to set forth its position concerning the anticipated curtailment and allocation of remaining Bear Lake storage for the 1995 irrigation season. During the most recent 1992 drought, Utah Power chose to allocate the water to the contract users based on a percentage of the average consumption by the users over the previous three years. We feel that this policy is totally unfair and inappropriate by creating an incentive and reward for excessive use and waste of water. In other words, the more water a user uses in wet and dry years, the more they will receive when a curtailment occurs as a result of drought conditions. Last Chance believes that the allocation during shortage should be just the opposite and reward users that conserve water and operate efficiently in order to provide an incentive for conservation rather than waste and excessive use.

While Last Chance had an allocation of 40,000 acre feet this year and could have used the entire amount, due to conservation and voluntary curtailment it is anticipated that the actual use this year will be about 29,000 acre feet. Last Chance chose not to use the full allocation available so that the water could remain in Bear Lake and be available for next season. Last Chance shareholders would effectively be punished if Utah Power again chose to allocate storage next year based on a percentage of the average use in previous years. Last Chance has reason to believe that the existing policy which encourages waste has in fact created an incentive for many water users to waste water and water stubble after crops are removed despite jeopardizing Bear Lake storage for next year in order to improve their allocation next year.

Carly B. Burton  
Page 3  
September 19, 1994

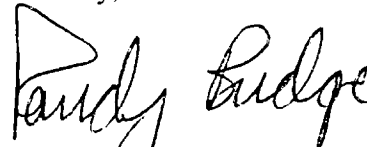
---

Accordingly, Last Chance would urge Utah Power to adopt and implement a policy for curtailment of storage water deliveries next year and in future drought years that creates the proper incentive by rewarding conservation and irrigation efficiency while punishing wasteful and inefficient practices. At a minimum, such allocations should be based on a percentage of the average water available to be used during the irrigation season, not the water actually used. Many other canal companies and water users on the Bear River support this position.

Last Chance would appreciate your consideration of the foregoing and would like to have the opportunity for further input on Utah Power's anticipated decision to curtail deliveries from Bear Lake storage next year.

Last Chance also supports Utah Power's efforts to dredge Bear Lake so that the remaining storage water down to elevation 5902 can be made available during next irrigation season and stands ready to support Utah Power in any manner that may be reasonable and necessary, acting either directly or through the newly-formed Bear River Water Users Association.

Sincerely,



RANDALL C. BUDGE

RCB:rr

Enclosure

cc: Last Chance Canal Board of Directors  
Bear River Canal Company  
West Cache Canal Company  
Cub River Canal Company  
Bear River Water Users Association  
R. Keith Higginson, Director, IDWR  
Ron Carlsen, Eastern Region, IDWR  
Pete Peterson, Bear River Water Master  
Jack Barnett, Bear River Compact Commission  
Bob Morgan, Utah State Engineer  
Bob Fotheringham, State Engineer-Logan