State of Utah
Department of Commerce
Division of Public Utilities

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October 7, 2014

Millard County Planning Commission
71 South 200 West
P.O. Box 854
Delta, Utah

Commissioners,

The Utah Division of Public Utilities (DPU) respectfully submits these comments concerning the issue of shared wells that the Commission is currently considering. The DPU appreciates the opportunity to comment on this issue.

The objectives of the DPU can be found in U.C. 54-4a-6, and include (1) promoting the safe, healthy, economic, efficient, and reliable operation of all public utilities … and (2) provide for just, reasonable, and adequate rates and charges. The DPU is a separate agency independent of the Utah Public Service Commission (PSC) but serving as the investigative agency for the PSC. The DPU provides recommendations to the PSC on all matters related to public utility regulation and monitors utility operations to ensure compliance with Public Service Commission rules, regulations and orders. The PSC has jurisdiction to regulate all public utilities, including "… water corporations [and] sewerage corporations … where the service is performed for, or the commodity delivered to, the public generally..." *(U.C. 54-2-1 Definitions (19) (a)).* The PSC and the DPU do not regulate any water provided by a municipality or a Special Service District.

In the regulation of water companies, the PSC can issue one of two different designations. The first is a Certificate of Public Convenience and Necessity (CPCN). This is required for any public utility providing service to the public generally. The second designation is a Letter of Exemption (LOE). This is provided to non-profit companies serving its members only such as HOAs and mutually owned water companies. Companies that meet the criteria for this category are exempt from PSC regulation and are considered to be self-governing through their Boards of Directors.

The purpose of these comments is to request that the Millard County Planning Commission, in developing an ordinance for shared wells, require an applicant for a shared well to provide proof of PSC review, with either a CPCN or a LOE.

As part of the review for either of these designations, the DPU will conduct a review of the company to include the following:

1. A review of the system by the Division of Drinking Water. The PSC has adopted the standards of the Drinking Water Board for quality of water including all standards for designing, building and maintaining a system capable of delivering water of the required quality. If warranted, the PSC may require additional testing.

2. Proof of ownership of water rights through the Utah Division of Water Rights, in the name of the company to be regulated or exempted, sufficient to provide the water promised to each customer.

3. Financial statements, including a balance sheet and income statement of the entity governing the well and holding the water rights.

4. Statement detailing the financial obligations of each owner or member, such as the splitting of costs each year.

5. A certified copy of the Articles of Incorporation and By-laws.

The experience of the DPU over the last several years has been enlightening. When water companies are properly designed, funded and managed from inception, citizens can be well served for many years. Unfortunately, many times the PSC and DPU have not known about some water companies until infrastructure and funding problems generate financial instability, citizen complaints and potential health risks. The DPU believes that requiring PSC authorization prior to permitting these types of arrangements can help in preventing or mitigating future problems.

The DPU is willing to meet with the Commission and discuss the role that the DPU plays in water regulation throughout the State of Utah. Please contact William Duncan, wduncan@utah.gov or 801-530-6948 with questions or if further explanation is needed.