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GREG BELL  
Lieutenant Governor

**State of Utah**  
**DEPARTMENT OF NATURAL RESOURCES**  
**Division of Water Rights**

MICHAEL R. STYLER      KENT L. JONES  
*Executive Director*      *State Engineer/Division Director*

MAR 1 2010

**ORDER OF THE STATE ENGINEER**  
**For Permanent Change Application Number 53-1686 (a36127)**

Permanent Change Application Number 53-1686 (a36127) in the names of City of Saratoga Springs and L & V Properties L.L.C., was filed on December 10, 2009, to change the points of diversion, place of use, and nature of use of 450.0 acre-feet of water as evidenced by Water Right Number 53-1686. Heretofore, the water has been diverted from the following points located: (1) Well - South 3328 feet and West 2488 feet from the NE Corner of Section 32, T8S, R1W, SLB&M (existing 16-inch well, 700 feet deep); (2) Well - South 3198 feet and West 1173 feet from the NE Corner of Section 32, T8S, R1W, SLB&M (existing 16-inch well, 675 feet deep); (3) Well - North 1687 feet and West 3733 feet from the SE Corner of Section 5, T9S, R1W, SLB&M (existing 16-inch well, unknown depth); (4) Well - North 583 feet and West 1478 feet from the SE Corner of Section 5, T9S, R1W, SLB&M (existing 16-inch well, 823 feet deep). The water has been used for the irrigation of 112.5 acres from April 1 to October 31. The water was used in all or portion(s) of Section 32, T8S, R1W, SLB&M; and Section 5, T9S, R1W, SLB&M.

Hereafter, it is proposed to divert 450.0 acre-feet of water to points of diversion changed to: (1) Well - North 1600 feet and East 800 feet from the SW Corner of Section 11, T5S, R1W, SLB&M (existing 20-inch well, 620 feet deep); (2) Well - North 2109 feet and West 1642 feet from the SE Corner of Section 12, T6S, R1W, SLB&M (existing 29-inch well, 390 feet deep); (3) Well - North 693 feet and East 15 feet from the S $\frac{1}{4}$  Corner of Section 12, T5S, R1W, SLB&M (existing 18-inch well, 525 feet deep); (4) Well - South 1930 feet and East 1076 feet from the N $\frac{1}{4}$  Corner of Section 11, T5S, R1W, SLB&M (20-inch well, 100-500 feet deep); (5) Well - North 100 feet and East 100 feet from the SW Corner of Section 19, T5S, R1E, SLB&M (20-inch well, 100-500 feet deep); (6) Well - South 1150 feet and East 1500 feet from the NW Corner of Section 13, T5S, R1W, SLB&M (existing 10-inch well, 413 feet deep); (7) Well - North 296 feet and West 143 feet from the SE Corner of Section 13, T5S, R1W, SLB&M (existing 20-inch well, 100-500 feet deep); (8) Well - North 2935 feet and West 1234 feet from the SE Corner of Section 24, T5S, R1W, SLB&M (existing 12-inch well, 424 feet deep); (9) Well - North 1040 feet and East 883 feet from the SW Corner of Section 19, T5S, R1E, SLB&M (existing 24-inch well, 505 feet deep); (10) Well - North 626 feet and West 1186 feet from the SE Corner of Section 2, T6S, R1W, SLB&M (existing 36-inch well, 520 feet deep); (11) Well - North 1079 feet and West 589 feet from the SE Corner of Section 24, T5S, R1W, SLB&M (unknown depth). The nature of use of the water is being changed to municipal purposes within the service area of Saratoga Springs.

Notice of the application was published in The Daily Herald on December 24 and December 31, 2009, and protests were received from New State, Inc., the United States Bureau of Reclamation, Lehi City, Salt Lake City Corporation, and Todd Evans. A hearing was not held.

The protestants expressed the following concerns and observations in written correspondence:

- The approval of this application will impair return flows to Utah Lake and the Jordan River, upon which the existing rights of others depend.
- The approval of this application will deplete the underground source above what has historically been consumed under the underlying right.
- The applicants have a responsibility to compensate residents in proximity to the proposed points of diversion for the impairment of existing wells due to declining water-table levels. The protestant (Lehi City) requests the applicants provide the names and locations of well owners they have compensated in the past. It is also requested the applicants provide its policy for assisting well owners.
- The existing groundwater source and the hereafter groundwater source are not hydrologically connected.
- The State Engineer has recently approved applications to divert large quantities of water in the same area as this application. The protestant (Lehi City) requests no additional changes be approved for this area until the effects of these earlier applications are known.
- The protestant (Salt Lake City Corporation) requests the applicants provide water usage measurements from both the existing and proposes sources in order to ensure there is no enlargement of the underlying right. The protestant requests the potential return flow losses be accounted for under this change.
- The proposed points of diversion located near the Jordan River and outlet of Utah Lake may impact accretion flows to the river and impact existing rights.

The applicants responded in written correspondence to the concerns of the protestants by stating the following:

- This application is a change to an existing right, and not an application to appropriate additional water. Its approval will not impair the existing rights of others.
- The underlying right is more hydrologically connected to Utah Lake than earlier approved changes to existing rights, which are based on shares of stock in water companies located in Salt Lake County.
- The applicants are filing this change application to move existing rights into the area for municipal purposes, similar to recent changes the protestant (Lehi City) has filed. The amount of water to be diverted under approved applications in the

name of Lehi City has exceeded those of Saratoga Springs. Lehi City must share responsibility for potential water-table declines in the area.

- Saratoga Springs has not seen any historical reduction in ground water levels or pumping levels in the operation of its wells. Hydrology studies conducted by the United States Geological Survey indicate historical groundwater levels have been impacted less in the area around Saratoga Springs' culinary wells than in any other area in Northern Utah Valley.
- Although few residents in proximity to the proposed points of diversion have filed protests in regard to Saratoga Springs' most recently approved change applications, Saratoga Springs has and will continue to address legitimate claims that its wells are adversely impacting the neighborhood's wells.
- Because of the depth and location of the proposed wells, there is no possibility they will impact or impair accretion flows to the Jordan River.

The State Engineer has reviewed the change application, underlying water right, the current groundwater management plan and available technical data including Scientific Investigations Report 2008-5197 published by the United States Geological Survey.

The current groundwater management plan for this area indicates transfers of existing surface and groundwater rights will be considered on their own merits. Consideration will be given if the transfers comply with the safe-yield determined in the policy and if the application proposes delivery through a central water system and discharge to a sanitary sewer system. In reviewing this application it appears to fit within the safe-yield limits and proposes to use the water in a central system.

Scientific Investigations Report 2008-5197 published by the United States Geological Survey appears to confirm hydraulic connectivity between shallow and deeper aquifers with an upward movement of water from the deeper aquifer. An analysis of records of water level fluctuations indicates a decline in those levels consistent with precipitation trends. The report suggests a water level decline in the area where the proposed wells are to be located to be approximately ten feet. The groundwater flow path characterization indicated in the study also shows these wells are located within the Dry Creek flow path.

In evaluating applications that propose to change the nature of use of a water right, the State Engineer believes it is appropriate to examine the rates and amounts of hydrologic depletion associated with the historical water use as compared to the proposed use to assure that there is no enlargement of the underlying water right. In this case, it is believed that the historical water uses would have incurred the following rates and amounts of hydrologic depletion:

<u>Prior Beneficial Use</u>	<u>Allowed Diversion</u>	<u>Rate of Depletion</u>	<u>Amount of Depletion</u>
Irrigation: 112.5 acres	450.0 acre-feet	52.81% <sup>1</sup>	237.656 acre-feet

Based on the above analysis, if limited to a diversion of 450.0 acre-feet and a depletion of 237.656 acre-feet, it appears this application can be approved for municipal purposes without enlarging the underlying right and impairing the rights of others.

In regard to the issue of the applicant supplying specific return flows or return flow timing to satisfy downstream water rights, downstream users are entitled to divert water under their established water rights based on priority and the availability of the supply at their diversion. Questions by water users related to availability of water supply in the Jordan River to satisfy rights should be addressed to the Utah Lake and Jordan River Commissioner as a priority distribution issue. Inasmuch as the underlying water right is not enlarged by this change application, return flow issues should not create problems for other water users on the Jordan River.

The limit of the depletion of water for the municipal uses proposed is 237.656 acre-feet. The actual amount of water authorized to be diverted under this application will depend on the efficiency of the uses of water for municipal purposes. It is very likely that the diversion of water for municipal purposes by Saratoga Springs under this right will be limited by the depletion associated with the beneficial use made of the water.

In evaluating the various elements of the underlying rights, it is not the intention of the State Engineer to adjudicate the extent of these rights, but rather to provide sufficient definition of the rights to assure that other vested rights are not impaired by the change and/or no enlargement occurs. If, in a subsequent action, the court adjudicates that this right is entitled to either more or less water, the State Engineer will adjust the figures accordingly.

It is, therefore, **ORDERED** and Permanent Change Application Number 53-1686 (a36127) is hereby **APPROVED** subject to prior rights and the following conditions:

1. The total diversion of water under this application for municipal uses by Saratoga Springs is limited to the amount of water reasonably necessary to deplete 237.656 acre-feet up to a maximum of 450.0 acre-feet. The applicants must maintain records sufficient to demonstrate that the depletion from its uses under this application do not exceed 237.656 acre-feet.
2. To accommodate the approval of this permanent change application, the use of 450.0 acre-feet of water for the irrigation of 112.5 acres at the historical points of diversion and place of use must cease.

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<sup>1</sup> Consumptive Use of Irrigated Crops in Utah," Research Report 145, Utah Agricultural Experiment Station, Utah State University, Logan, Utah, October 1994, Table 25" Elberta Station.

3. Inasmuch as this application seeks to divert water from numerous points of diversion, it is necessary that detailed information be provided to the State Engineer to show which sources of supply are actually developed and used and the extent of their usage under this application. Upon the submission of proof as required by Section 73-3-16, Utah Code, for this application, the applicants must identify every source of water used under this application and the amount of water used from that source. The proof must also show the capacity of the sources of supply and demonstrate that each source can provide the water claimed to be diverted under this right as well as all other water rights which may be approved to be diverted from those sources.
4. The applicants shall install measuring and recording devices to meter all water diverted from all sources and shall annually report this data to the Division of Water Rights Water Use Data Program.
5. Approval of this application assumes municipal use by a qualifying municipal entity. This right must be solely in the name of Saratoga Springs on records of the State Engineer prior to the date proof is due as stated in this approval. Proof must be filed in the name of Saratoga Springs.
6. All wells used as public water supply wells are regulated by the Utah Division of Drinking Water. Plans for the construction of new wells must be reviewed and approved by the Division of Drinking Water prior to any drilling or construction activity being commenced. The approval of this water right application does not constitute approval of the well for use as a public water supply by the Division of Drinking Water. Applicants are advised to contact the Division of Drinking Water at (801) 536-4200 to review applicable standards and for information about approval of a source of supply for public use.

The State Engineer has statutory responsibility to create and maintain water right records based on an administrative process outlined in statute. The State Engineer is not authorized by statute to adjudicate water right title or the validity of established water rights. It is noted that failure to exercise a water right within the statutory period could render all or a portion of a water right invalid through forfeiture. Parties who wish to challenge the validity of a water right are advised that a declaration of forfeiture is a judicial action and the courts are available to pursue such suits. (UCA 73-1-4).

As noted, this approval is granted subject to prior rights. The applicants shall be liable to mitigate or provide compensation for any impairment of or interference with prior rights as such may be stipulated among parties or decreed by a court of competent jurisdiction.

The applicants are strongly cautioned that other permits may be required before any development of this application can begin and it is the responsibility of the applicants to determine the applicability of and acquisition of such permits. Once all other permits have been acquired, this

is your authority to develop the water under the above referenced application which under Sections 73-3-10 and 73-3-12, Utah Code Annotated, 1953, as amended, must be diligently prosecuted to completion. The water must be put to beneficial use and proof must be filed on or before **March 31, 2015**, or a request for extension of time must be acceptably filed; otherwise the application will be lapsed. This approval is limited to the rights to divert and beneficially use water and does not grant any rights of access to, or use of land or facilities not owned by the applicants.

Proof of beneficial use is evidence to the State Engineer that the water has been placed to its full intended beneficial use. By law, it must be prepared by a registered engineer or land surveyor, who will certify to the location and uses of the extent of your water right. Upon the submission of proof as required by Section 73-3-16, Utah Code, for this application, the applicants must identify every source of water used under this application and the amount of water used from that source. The proof must also show the capacity of the sources of supply and demonstrate that each source can provide the water claimed to be diverted under this right as well as all other water rights which may be approved to be diverted from those sources.

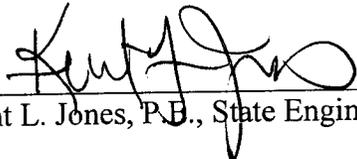
Failure on your part to comply with the requirements of the applicable statutes may result in the lapsing of this permanent change application.

**It is the applicants' responsibility to maintain a current address with this office and to update ownership of their water right. Please notify this office immediately of any change of address or for assistance in updating ownership.**

Your contact with this office, should you need it, is with the Utah Lake/Jordan River Regional Office. The telephone number is 801-538-7240.

This Order is subject to the provisions of Administrative Rule R655-6-17 of the Division of Water Rights and to Sections 63G-4-302, 63G-4-402, and 73-3-14 of the Utah Code which provide for filing either a Request for Reconsideration with the State Engineer or an appeal with the appropriate District Court. A Request for Reconsideration must be filed with the State Engineer within 20 days of the date of this Order. However, a Request for Reconsideration is not a prerequisite to filing a court appeal. A court appeal must be filed within 30 days after the date of this Order, or if a Request for Reconsideration has been filed, within 30 days after the date the Request for Reconsideration is denied. A Request for Reconsideration is considered denied when no action is taken 20 days after the Request is filed.

Dated this 1 day of March, 2010.

  
Kent L. Jones, P.E., State Engineer

ORDER OF THE STATE ENGINEER  
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Mailed a copy of the foregoing Order this 1 day of March, 2010 to:

City of Saratoga Springs  
c/o Richard Allen  
2975 West Executive Parkway #509  
Lehi, UT 8 4043

Salt Lake City Corporation  
c/o Thomas K. Ward  
1530 South West Temple  
Salt Lake City, UT 84115

L & V Properties L.L.C.  
P.O. Box 190  
Elberta, UT 84626

Todd Evans  
26 South 2300 West  
Lehi, UT 84043

New State, Inc.  
c/o Thomas D. Basmajian  
PO Box 58483  
Salt Lake City, UT 84158-8483

Utah Division of Drinking Water  
PO Box 144830  
Salt Lake City, UT 84114-4830

United States Bureau of Reclamation  
c/o Bruce C. Barrett  
302 East 1860 South  
Provo, UT 84606-7317

Utah Division of Water Quality  
PO Box 144870  
Salt Lake City, UT 84114-4870

Lehi City  
c/o Lorin Powell  
PO Box 255  
Lehi, UT 84043

Water Use Program  
Division of Water Rights

BY: Kelly K. Horne  
Kelly K. Horne, Applications/Records Secretary