



GARY R. HERBERT
Governor
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*

February 13, 2013

Dr. Kevin Tolton
585 Lofty Lane
North Salt Lake, UT 84054

RE: Informal Discussion at my office on February 6, 2013

Dr. Kevin Tolton,

Thank you for visiting our office last week to deliver your test well application. Your test well application has been given Application Number 1357002M00. I did fail to talk with you about the general approval process for non-production wells and want to make sure you are aware of R655-4-9.2.1. We talked about this test well proposal and I appreciate you taking the time to explain to me your reasoning for requesting this test well now (your concern of needing to remove gates when there is no snow versus access over the snow). You also explained that you are well aware that this is just for a test well and believe it will also help us and you in knowing the availability of water at your location and any potential for impairment. I did, however, mention to you that I am not comfortable with signing the request without input from Kent. Within the 14-day evaluation period, I should have time to discuss it with him. If you have any other questions relating to this request, please feel free to contact me.

In addition to your test well request, this is a follow-up letter documenting the discussion I had with you while you were in my office. As you are aware, change application a28548 is under review and there is a great deal of interest in it. As with any application under review with many adjudicative parties, the division is providing this letter about our discussion as a courtesy to all the parties involved. This letter is not a decision, order, or final agency action but it will be in the division's file for this application which is publicly available.

We discussed several items and to focus this summary, I have attached to this letter a copy of the 'Certification', dated February 6, 2013, for the certified copies you previously requested and picked up Wednesday. Our discussion covered elements from these documents, so I felt it may help to directly refer to them as I outline below the items we discussed.

- We reviewed the change application (#3 on the attached Certification) and the memorandum decision (#1 on the attached Certification). Both of these documents discussed Harold W. Bentley having a ¼-interest of 0.25 cfs. Both documents also indicate the applicant proposed to divert 2,000 gallons per day from October 1 to April 1 and 4,000 gallons per day from April 1 to October 1.

- We then estimated the following:
 - A flow of 2,000 gallons per day for 183 days yields a volume of roughly 1.12 acre-feet (2,000 gpd x 183 days / 325,900 gallons = 1.123 acre-feet).
 - A flow of 4,000 gallons per day for 182 days yields a volume of roughly 2.24 acre-feet (4,000 gpd x 182 days / 325,900 gallons = 2.234 acre-feet).
 - A $\frac{1}{4}$ -interest of (0.25 cfs) = 0.0625 cfs
 - A flow of 0.0625 cfs for 182 days yields a volume of roughly 22.557 acre-feet (0.0625 cfs x 1.983 acre-feet per cfs per day x 182 days = 22.557 acre-feet).
- These calculations prompted your question that you feel there is still additional South Despain water that would be part of the $\frac{1}{4}$ -interest of the 0.25 cfs original asserted by Harold W. Bentley and not part of change a4178. The answer to that question may be found in clarifying the right identified for change in the application and conditions of approval that may have excluded certain elements of the right offered for change since that change application is now perfected. My suggestion to you was that you could submit to me a request to review this issue with evidence that supports your assertion of additional ownership interest in Water Right Number 57-9001, including a complete Report of Water Right Conveyance.
- A *Report of Water Right Conveyance* form can be found on our website at: http://www.waterrights.utah.gov/forms/roc_portion.asp
- Looking at the copy of the 1910 decree on file 57-9001, we identified the 0.25 cfs South Despain primary award as Water Right Number 57-9001. We also identified the South Despain first surplus award as Water Right Number 57-9013. You'll notice 57-9013 is not yet entered into our database, but I can work on getting that completed if requested.
- Regarding your question of asserting your interest in the first surplus award, you would need to submit a *Report of Water Right Conveyance* to update title for that purpose.
- I asked you if you could clarify whether 2,000 gallons per day listed on the change application comes from two 1934 contracts – one for 7,500 gallons per day and one for 500 gallons per day. It would be helpful if you could answer that question for me as the successor in interest. I mentioned to you that I am also planning to ask Salt Lake City if they could clarify this from their perspective as well.
- We reviewed the certificate (#5 on the attached Certification) and a segregation summary from our database. We talked about the quantification of 5.42 acre-feet shown on the segregation summary and looked at how that would compare to the 3.357 acre-feet we estimated above based on the 2,000 and 4,000 gpd listed in the change application.

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- We looked at other approved change applications (ie: 57-10015 a16846) and you asked me why the previous applications were based on a 50% consumptive rate for irrigation and your change application is based on a 42.4%. You suggested this was inconsistent. Since about 1998, the division has been using the more precise data provided by Dr. Hill's study completed in 1994. Prior to that time, 50% was estimated.
- Here is the link I provided to our database where you can find the consumptive use tables from Research Report 145: <http://www.waterrights.utah.gov/wrinfo/policy/wateruse.asp>
- We discussed the depletion rate considered for domestic type uses in your change application. Typically we assume a home utilizing a septic tank with a drain field sewer system to return 80% to the local hydrologic system. For a typical mechanical treatment process 80% return is also assumed. In the case of Albion Basin, the estimate for either a vault type sewer system, or a connection to the public sewer system would be estimated to have 100% depletion because there would be no return flow to that local hydrologic basin.
- We also talked about well requirements. You will see under R655-4-1.2 Scope, that these rules regulate wells completed to depths greater than 30 feet. R655-4-1.3 Exclusions, includes wells constructed to a final depth of 30 feet or less. Constructing a well of 30 feet or less is excluded from the well drilling rules, but all diversion and beneficial use of water requires approval through the statutory appropriation procedures under Title 73, Chapter 3 (see R655-4-1.3.1). <http://www.rules.utah.gov/publicat/code/r655/r655-004.htm#T1>

I believe these were the main items we discussed, but would welcome any response from you to further clarify our dialog. I appreciate your time and patience with this process as we discussed these items related to your water rights and change application. If you have additional questions, please contact me. Please, however, keep in mind if questions are specific to your pending change application, we will need to provide notice to the other parties to the application.

Sincerely,



Teresa Wilhelmsen, P.E.
Utah Lake / Jordan River Regional Engineer
Division of Water Rights

cc: Kent Jones, P.E., State Engineer
Boyd Clayton, P.E., Deputy State Engineer
Norman Johnson, Division Chief, Attorney General's Office
Julie Valdes, Assistant Attorney General
Parties listed on the following page.

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ALTA SKI LIFTS COMPANY
C/O ONNO WIERINGA
PO BOX 8007
ALTA UT 84092

METROPOLITAN WATER DISTRICT OF SALT
LAKE & SANDY
C/O SCOTT H MARTIN
PO BOX 45000
SALT LAKE CITY UT 84145-5000

SANDY IRRIGATION COMPANY
C/O JOHN H MABEY JR
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SALT LAKE CITY, UT 84111

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SANDY CITY
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USA FOREST SERVICE
C/O JEANNE A EVENDEN
324 25TH STREET
OGDEN UT 84401

ALTA ENGERY LLC
C/O BILL LENNON
PO BOX 8101
ALTA UT 84092-8101

FRIENDS OF ALTA
C/O PATRICK A. SHEA
252 SOUTH 1300 EAST SUITE A
SALT LAKE CITY UT 84102

TOWN OF ALTA
C/O LEE KAPALOSKI
201 SOUTH MAIN STREET SUITE 1800
SALT LAKE CITY UT 84111

LITTLE COTTONWOOD CREEK
DISTRIBUTION COMMITTEE
C/O SAM MOORE
7973 WILLOW CIRCLE
SANDY UT 84093

SALT LAKE COUNTY SERVICE AREA #3
C/O DAVID J SMITH
36 SOUTH STATE STREET SUITE 1900
SALT LAKE CITY UT 84111

LITTLE COTTONWOOD CREEK
DISTRIBUTION COMMITTEE
C/O JEFF NIERMEYER
1530 SOUTH WEST TEMPLE
SALT LAKE CITY UT 84115

TIM O'HARA, CO-RIVER COMMISSIONER
1501 SOUTH 500 EAST
SALT LAKE CITY UT 84015

MAX REESE, CO-RIVER COMMISSIONER
TANNER DITCH
977 EAST 5600 SOUTH
SALT LAKE CITY UT 84121

DIVISION OF WATER RIGHTS
DISTRIBUTION SECTION
C/O MIKE SILVA
LITTLE COTTONWOOD CREEK

UTAH DIVISION OF DRINKING WATER
PO BOX 144830
SALT LAKE CITY UT 84114-4830

UTAH DIVISION OF WATER QUALITY
PO BOX 144870
SALT LAKE CITY UT 84114-4870

DIVISION OF WATER RIGHTS
WELL DRILLING PROGRAM
C/O JIM GODDARD, COORDINATOR



GARY R. HERBERT
Governor
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*

CERTIFICATION

I HEREBY CERTIFY that the attached documents are a true and correct copy from **Water Right File Number 57-7800** of the **Division of Water Rights**:

1. Memorandum Decision re Water Right No. 57-7800 (a-4178) dated May 27, 1963 (two pages – single sided)
2. Report of Well Driller re Water Right No. 57-7800 (a-4178) dated March 11, 1964 (one page – single sided)
3. Application for Permanent Change of Point of Diversion, Place and Nature of Use of Water re Water Right No. 57-7800 (a-4178) dated March 18, 1964 (three pages – single sided)
4. State Engineer's Endorsements re Water Right No. 57-7800 (a-4178) dated May 24, 1971 (one page – single sided)
5. Certificate of Permanent Change of Point of Diversion, Place, Purpose or Period of Use of Water re Water Right No. 57-7800 (a-4178) dated May 24, 1971 (one page – single sided)
6. Proof of Permanent Change of Point of Diversion, Place, Purpose, and Period of Use of Water re Water Right No. 57-7800 (a-4178) dated May 24, 1971.

SAID DOCUMENT is on file in the Division of Water Rights, located at 1594 West North Temple Street, Suite 220, Salt Lake City, UT 84114.

Dated this 6th day of February 2013.



Kent L. Jones, P.E.
State Engineer

Attachments