



GARY R. HERBERT
Governor
SPENCER J. COX
Lieutenant Governor

State of Utah
DEPARTMENT OF NATURAL RESOURCES
Division of Water Rights

MICHAEL R. STYLER
Executive Director

KENT L. JONES
State Engineer/Division Director

JAN 09 2014

AMENDED ORDER OF THE STATE ENGINEER
For Permanent Change Application Number 57-7800 (a28548)

Permanent Change Application Number 57-7800 (a28548), in the name of Kevin Tolton, was filed on December 18, 2003, to change the points of diversion, place of use, and uses of 0.0104 cubic foot per second (cfs) or 0.9033 acre-foot (af) of water as evidenced by Water Right Number 57-7800. Heretofore, the water has been diverted from the following points located: (1) Surface - South 318 feet and West 408 feet from the E $\frac{1}{4}$ Corner of Section 12, T3S, R1E, SLB&M; and (2) Surface - South 836 feet and East 4518 feet from the W $\frac{1}{4}$ Corner of Section 7, T3S, R2E, SLB&M. The water has been used for the irrigation of 0.1217 acre from April 1 to October 31, the domestic use of 0.5 equivalent domestic units from January 1 to December 31, and the stockwatering requirements of 2.5 head of cattle or equivalent livestock (ELU) from January 1 to December 31.¹ The water was used in all or portion(s) of Section 12, T3S, R1E, SLB&M.

Hereafter, it is proposed to divert 0.0104 cfs or 0.9033 acre-foot of water to points of diversion changed to: (1) Well - South 1560 feet and West 1005 feet from the N $\frac{1}{4}$ Corner; (2) Spring - South 1605 feet and West 1030 feet from the N $\frac{1}{4}$ Corner; (3) Spring - South 2470 feet and West 925 feet from the N $\frac{1}{4}$ Corner; (4) Surface - South 1580 feet and West 1090 feet from the N $\frac{1}{4}$ Corner (Little Cottonwood Creek); (5) Surface - South 835 feet and East 430 feet from the W $\frac{1}{4}$ Corner (Little Cottonwood Creek); (6) Spring - South 1755 feet and West 1230 feet from the N $\frac{1}{4}$ Corner; (7) Surface - South 1635 feet and West 1100 feet from the N $\frac{1}{4}$ Corner (Little Cottonwood Creek); and (8) Surface - South 1560 feet and West 1130 feet from the N $\frac{1}{4}$ Corner (Little Cottonwood Creek). All locations are in Section 9, T3S, R3E, SLB&M. The water is to be used for the indoor domestic requirements of one equivalent domestic unit from January 1 to December 31, and for fire protection. The water is proposed to be stored year-round in a storage tank, mine tunnels and Cecret Lake. The place of use of the water is being changed to all or portion(s) of Section 9, T3S, R3E, SLB&M.

Notice of the application was published in the Deseret News on January 15 and 22, 2004, and protests were received from Alta Energy LLC, Alta Ski Lifts Company, Friends of Alta, Little Cottonwood Creek Distribution Committee, Metropolitan Water District of Salt Lake & Sandy, Salt Lake City Corporation, Salt Lake County Service Area #3, Sandy City, Sandy Irrigation Company, Town of Alta, and USA Forest Service. A hearing was held on July 13, 2011.

¹ As part of the reconsideration of this change application, a letter was sent requesting clarification as to the ownership interest in the uses under this right. The ownership interest was clarified by the current owners of the water rights and the owners agreed that it is intended a 1/6th interest was received by all six parties (Water Right Numbers 57-7800, 57-10315, 57-10316, 57-10317, 57-10318, and 57-10319). These amounts were corrected on the Division's records and each water right now reflects the following amounts: 0.0104 cfs or 0.9033 acre-feet to be used for the irrigation of 0.1217 acre, watering of 2.5 equivalent livestock units, and 0.5 equivalent domestic units.

AMENDED ORDER OF THE STATE ENGINEER

Permanent Change Application Number

57-7800 (a28548)

Page 2

This change application was approved on January 3, 2013. Several requests for reconsideration of the decision were filed. The State Engineer granted the reconsideration requests on January 24, 2013.

In the written protests, testimony presented at the hearing, and additional reconsideration comments received, the protestants expressed concern with the impact this change application would have on existing rights, the ownership interest to the underlying water right, and whether the application meets statutory criteria for approval. Specific concerns were expressed by each protestant as follows:

Cottonwood Hydro (asserts to be successor to Alta Energy LLC) operates a hydroelectric facility downstream from the use proposed under this application. It expresses concern with this change and the impairment this change would create if any reduction of the winter water flows were to occur as a result of this application.

Alta Ski Lifts (hereafter ASL) expresses concern that the applicant has not demonstrated sufficient title interest in the underlying water right and question the assertions made to update title on the Division of Water Rights records based on appurtenance and use of the water. ASL is also concerned that the application does not meet the statutory requirements for approval and must be rejected.

Friends of Alta (hereafter FOA) assert if the change application is granted, it would unreasonably affect public recreation and the natural stream environment and the application is filed for speculative purposes. FOA requests the entire eco-geographic area of Albion Basin be investigated to ensure no negative impact occurs.

Little Cottonwood Creek Distribution Committee (hereafter LCCDC) is concerned that there is no unappropriated water in the proposed sources. LCCDC also believes impairment of existing rights would occur because the change proposes the use of winter water and the proposed use of water could create a potential increase in the amount of water depleted.

Metropolitan Water District of Salt Lake and Sandy (hereafter METRO) explains it is a wholesale water supplier whose member cities include Salt Lake City and Sandy City. Metro treats water from Little Cottonwood Creek and states this surface water source is critical to conjunctively manage water sources in the Salt Lake Valley. Specific concern is expressed for the second primary right owned by Sandy Irrigation Company and the contract agreement with Sandy City that makes water available for treatment. Metro is concerned about the impacts this application will have on rights relying on this limited resource and supports the concerns expressed by Salt Lake City in its protest.

Salt Lake City Corporation (hereafter SLC) explains it has a majority ownership of the rights to divert the water of Little Cottonwood Creek and its prior contractual agreement with the South Despain Ditch users for water during the 'winter and non-irrigation' season. That agreement transfers the winter portion of the South Despain decree award to SLC, except for 7,500 gallons

AMENDED ORDER OF THE STATE ENGINEER

Permanent Change Application Number

57-7800 (a28548)

Page 3

per day to be delivered off the Murray Penstock through a 6-inch pipeline to the South Despain users. SLC believes this contract is binding on the State Engineer and must be considered under this change and that an enlargement of the underlying right would occur if the application is approved. SLC believes the application does not meet the statutory criteria that must be considered by the State Engineer to approve or deny a change application.

Salt Lake County Service Area #3 expresses concern with the change application and supports the position of Salt Lake City in its protest. The service area relies on a water supply agreement with the city for its water supply and use of water. Along with the issues raised by Salt Lake City, the service area is also concerned with any proposed diversion of water within the Town of Alta's drinking water source protection zone.

Sandy City explains it owns existing rights to the use of Little Cottonwood Creek water and expresses concern that its existing rights would be impaired by any enlargement of the underlying water right. Impairment would occur not only based on water quantity but also water quality as a result of the proposed use. Sandy City is also concerned that the person filing this application is not the person entitled to the use of water. Sandy City does not believe this application meets statutory criteria for approval and, therefore, must be denied.

Sandy Irrigation Company is the owner of water rights from Little Cottonwood Creek and is concerned that this change application would impair its existing rights by increased depletion associated with the proposed use. The company believes its rights will be directly impaired during the non-irrigation season by any diversion of water under the change application. The company is also concerned about the impacts the change application will have on water quality, public recreation and the natural stream environment. The company believes this change will interfere with the more beneficial use of water it provides for Sandy City.

Town of Alta (Alta) is concerned with the impacts this change application would have on existing rights held by SLC. Alta's right to use water is based on a water supply agreement with SLC. Alta explains the proposed place of use is included in annexations where restrictions on water use and related development were placed. Without the appropriate permits, any development in this area would create negative impacts to public recreation and natural stream environments.

US Forest Service protests the application and asserts ownership of the lands upon which the applicant proposes to develop a source of water. The Forest Service also notes that the applicants have no Special Use Permit(s) that would allow them to place improvements or infrastructure on public lands. Concern is also expressed as to impairment of its existing rights for the Albion Basin Campground.

AMENDED ORDER OF THE STATE ENGINEER

Permanent Change Application Number

57-7800 (a28548)

Page 4

The State Engineer has reviewed the change application, underlying water right, Little Cottonwood Decree information, written protests and testimony received during the hearing, and additional information received during reconsideration of the application. From these numerous documents and sources of information, the following paragraphs summarize the elements of the historical right and subsequent actions affecting the water claimed under this change application.

- A. The water right on which this change application is filed stems from a 0.25 cfs primary decree award to the South Despain Ditch with a priority date of 1848.² Historically, water in the South Despain ditch was diverted from Little Cottonwood Creek near the mouth of Little Cottonwood Canyon and used on lands located near the ditch. The decree did not specify names of the South Despain Ditch users, nor did it indicate exact lands upon which the water was used.
- B. A 1934 agreement was entered into between Salt Lake City and the South Despain Ditch users. The South Despain Ditch parties to the agreement included L.E. Despain and his wife Annie Bulter Despain; Alva J. Butler and his wife Anna Laura Butler; George F. Despain and his wife Prudence B. Despain; De Bart Despain and his wife Bertha K. Despain; and Clarence L. Giles and his wife Laura Sue Giles. Under the agreement, Salt Lake City was to provide a pipeline and deliver 7,500 gallons of water per day for culinary purposes from October 1st to April 1st of each year to the five listed South Despain Ditch users. The agreement covered only the 'winter or non-irrigation season'. The summer water would continue to be diverted as had historically occurred through the ditch. The ditch users for consideration granted, bargained, sold and conveyed to SLC the right to the use of the remaining portion of the decree award during the non-irrigation season.
- C. On September 25, 1962, Change Application Number a4178 was filed by Harold H. Bentley who asserted an ownership interest of one-fourth of the decree award to the South Despain Ditch. The change application has been identified on the State Engineer's records as Water Right Number 57-7800. This change application proposed moving the point of diversion for this one-fourth interest in the water right to a well. It was approved and a *Certificate of Permanent Change of Point of Diversion, Place, Purpose or Period of Use of Water* was issued by the State Engineer on May 24, 1971. The Certificate indicates water was diverted from a well drilled to a depth of 145 feet, and used for the domestic use of three families, 0.73 acre of irrigation, and the watering of six horses, six cattle and 100 chickens. Change Application a4178 and Water Right Number 57-7800 do not include any other portion of the other awards in the decree. Title updates or

² *Union & East Jordan Irr. Co. v. Richards Irr. Co., et al.*; slip op. at paragraph 28 (Third Judicial District Court Salt Lake County, June 16, 1910).

AMENDED ORDER OF THE STATE ENGINEER

Permanent Change Application Number

57-7800 (a28548)

Page 5

changes to any other award in the decree must be addressed under a separate action of the State Engineer.

- D. Title documents were submitted to the Division to update ownership of the certificated right (57-7800). Based on the submitted documents, ownership on the Division's records was updated to Lynn Christensen Biddulph.
- E. On May 8, 2000, Lynn Christensen Biddulph submitted Change Application Number a24463 on Water Right Number 57-7800. The application proposed changing the point of diversion from a well back to the historical source at the historical location of the South Despain Ditch and pipeline. The explanatory of the signed change application indicated the applicant was returning to the decreed point of diversion to reflect the actual use and historical use of the water. Change Application a24463 was approved August 4, 2000, and proof was last due for a24463 on August 31, 2012. The applicant submitted a request for an extension of time on a24463 on August 8, 2012. The extension of time was granted until August 31, 2014.
- F. Additional title documents were submitted to the Division in 2003 to update ownership of 57-7800 on the records of this office. Portions of the water right have been segregated to Water Right Numbers 57-10315, 10316, 10317, 10318, and 10319 leaving uses of 0.1217 acre of irrigation, 2.5 ELU, and 0.5 equivalent domestic units on the subject water right. Questions related to competing deeds and a lawsuit filed because those deeds each purported to convey title to this water right delayed action on this application. The Utah Supreme Court concluded in a 2011 ruling that the competing deed was not effective since it was recorded after the deed relied upon in the modification of the State Engineer's records. The State Engineer is not aware of other deeds or pending legal action that may potentially affect ownership of the water right sought for change.³
- G. The State Engineer recognized in granting reconsideration of the approval of this change application that there was a discrepancy between the deeds which created the segregated portions of this water right and amounts segregated to water right files 57-10315, 10316, 10317, 10318, and 10319. Correspondence with all of the water right owners followed. All of the owners responded and the ownership interest was clarified with the current owners of the water rights. The owners

³ The State Engineer is aware of the Report of Water Right Conveyance filed by Salt Lake City on Water Right Number 57-9001, filed October 19, 2005. Water Right 57-9001 represents the primary decree award to the South Despain Ditch. Water Right Number 57-7800 is a segregated portion of 57-9001. The State Engineer believes Water Right Number 57-7800 represents only the 1/4 -interest asserted by Harold Bentley, less any amounts of water contained in the 1934 agreement with Salt Lake City. Salt Lake City's entire interest to the South Despain Ditch award exists on Water Right 57-9001. Water Right 57-7800 asserts representation of the 1/4-interest in 7,500 gallons per day (1,875 gallons per day) during the non-irrigation season defined in the contract agreement. At the request of the current owners, Water Right 57-7800 has been segregated into six equal parts, thus the remaining interest during the non-irrigation season would be 312.5 gallons per day.

AMENDED ORDER OF THE STATE ENGINEER

Permanent Change Application Number

57-7800 (a28548)

Page 6

agree that it is intended a 1/6th interest was received by all six parties. This amount was corrected on the Division's records and each water right now reflects the following amounts: 0.0104 cfs or 0.9033 acre-feet to be used for the irrigation of 0.1217 acre, watering of 2.5 equivalent livestock units, and 0.5 equivalent domestic units.

Utah Code Ann. §73-3-3(2)(a), states that any person entitled to the use of water may, through the change application process, make a permanent change to an existing water right. Additionally, §73-3-3(5)(a) directs the State Engineer to follow the same procedures for a permanent change application as provided by statute for applications to appropriate water. The State Engineer must approve a change application if it meets the provisions of §73-3-3 and criteria listed in §73-3-8(1). A primary consideration for a change application to be approved is that it not impair a vested water right without just compensation. The State Engineer may not reject a change application for the sole reason that it would impair a vested water right. But, if the application is otherwise proper, he may approve it for part of the water involved or with the condition that the applicant acquire the conflicting rights.

The protestants' opposition to this application focuses primarily on impairment of existing rights and support of local policies restricting development in Little Cottonwood Canyon. The State Engineer supports efforts to maintain and improve watersheds and preserve the quality of the public waters. However, limiting access to water as a land planning tool would usually conflict with a fundamental public policy the State Engineer implements - making public waters available for beneficial use. Nothing in the State Engineer's statutory authority allows him to construe a private party's desire to secure a water supply for development of private property, such as the applicant here proposes, as detrimental to the public welfare. If the protestants believe as a matter of public policy it would be best to restrict further development in Little Cottonwood Canyon, they should work through other appropriate means to achieve that goal.

Utah Code Section 73-3-8(1)(a) directs the State Engineer to approve an application if "*there is unappropriated water in the proposed source, the proposed use will not impair existing rights or interfere with the more beneficial use of the water.*" This change application proposes to divert water from eight different points of diversion, which include two unnamed springs, a "group of unnamed springs," a well, Cecret Lake and three locations along Little Cottonwood Creek. All the proposed sources are located at the headwaters of Little Cottonwood Creek, a tributary to the Jordan River basin. All surface and groundwater in the Eastern Salt Lake Valley are considered fully appropriated. No additional water is available for appropriation. Any new development must be accomplished by change applications based on existing rights, which this application proposes to do. In the hereafter proposed area there is no water to appropriate from surface sources without impairing existing rights, specifically those related to power generation downstream or winter uses. The State Engineer is of the opinion all surface water and groundwater originating within the canyon is source-water supplying the decreed rights diverting water near the mouth of the canyon. The State Engineer presumes deep groundwater in this canyon area is directly tributary to surface supplies near the mouth of the canyon. However, that deep groundwater has not been shown to be directly connected to surface water in the hereafter

AMENDED ORDER OF THE STATE ENGINEER

Permanent Change Application Number

57-7800 (a28548)

Page 7

area of use. If conditions contained herein are followed, development of this application is not likely to have a direct affect on surface flows within Albion Basin. Given the conflict with other water users demonstrated by the protestants to this application, the potential for direct interference with surface water rights from some of the proposed points of diversion, the management complexity associated with regulating the multiple points of diversion identified in this change application, and the limited requirement to serve the inside domestic use of one family, the diversion of water under this application is limited to the well proposed to be located South 1560 feet and West 1005 feet from the N¼ Corner of Section 9, T3S, R3E, SLB&M. In addition, any diversions made must be limited to historical diversion amounts of the underlying right which, based on existing contracts, restricts the amount of water that can be diverted during the "winter or non-irrigation season."

It is the State Engineer's understanding septic and drain field disposal of waste is not allowed in the watershed where the domestic use is planned under this application because of water quality considerations designed to protect drinking water to Salt Lake City, Sandy and others. The applicant has provided no specific plan or information regarding treatment of domestic waste water. Therefore, the State Engineer believes it appropriate to consider the water proposed to be used for domestic purposes in Albion Basin under the application to be totally consumed or depleted from the hydrologic system locally.

As noted, the water right on which this change application is filed stems from a 0.25 cfs primary decree award to the South Despain Ditch with a priority date of 1848.⁴ The State Engineer believes the priority of a change application may affect the ability of a water right holder to divert water based on the change application if water is not available at the new diversion location without impairing existing rights. For localized interference, diversions under this change application could have a priority as late as December 18, 2003, which would make it junior to most established rights of the protestants.

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, the amount of water diversion considered necessary for year round domestic purposes is 0.45 acre-foot.

The State Engineer, in evaluating applications which historically diverted water for indoor domestic use, assumes an annual diversion of 0.45 acre-foot, or 400 gallons per day, and a depletion of approximately 20% if wastewater is treated by a septic system or other means short of total containment lagoons.⁵ Stockwatering is assumed to divert 0.028 acre-foot of water

⁴ *Union & East Jordan Irr. Co. v. Richards Irr. Co., et al.*; slip op. at paragraph 28 (Third Judicial District Court Salt Lake County, June 16, 1910).

⁵ The domestic use associated with the underlying water right was for a fraction of a home use that is assumed to be located in an area served by a public sewer system where nearly all the water is returned to the hydrologic system via the Jordan River minus those amounts lost in the treatment process (evaporation, etc). The Central Valley Water

AMENDED ORDER OF THE STATE ENGINEER

Permanent Change Application Number

57-7800 (a28548)

Page 8

annually for a cow or horse and is considered 100% consumptive. Irrigation in the Salt Lake Valley is evaluated at 5.0 acre-feet per acre diversion with a 42.4% depletion rate.⁶ Based on these values, this application historically could have diverted, from the well indicated on the Certificate, a maximum of 0.903 acre-foot annually with an associated depletion of 0.373 acre-foot. Based on this analysis, using the water for the proposed domestic needs of one family and assuming all domestic water diverted would no longer be available to the Little Cottonwood drainage, consuming 0.45 acre-foot for that purpose would enlarge the depletion associated with the uses certificated for this underlying water right. Utah Code Ann. §73-3-3(7)(b) allows, if proper, for an application to be approved for a part of the water involved. It is believed if the proposed domestic use is limited to a part-time domestic use and the conditions listed below are met, the change can be considered. According to the State Engineer's guidelines, a part-time domestic use is considered to divert up to 0.25 acre-foot of water per year. The diversion of water for domestic use in Albion Basin would be considered totally consumptive to that localized basin.

Utah Code Section 73-3-8(1)(a) directs the State Engineer to approve an application if "*the proposed plan is physically and economically feasible, would not prove detrimental to the public welfare, the applicant has the financial ability to complete the proposed works, and the application was filed in good faith and not for purposes of speculation or monopoly.*" Protestants have questioned whether the proposed project is physically feasible given local ordinances and permits required. The applicant has not represented that all necessary permits have been secured, but the State Engineer is aware many local approving entities require evidence of water supply before such permits are granted. The State Engineer routinely approves applications presuming other necessary permits will be subsequently secured. Acquiring all other permits and authorizations necessary for the proposed project is the sole responsibility of the applicant and must be obtained before the project proceeds.

The applicant has stated this application was filed to build a family cabin. On small applications proposing the domestic use of one family, the State Engineer typically does not ask for a specific statement or documentation of applicant's financial ability to complete the proposed works. It is the opinion of the State Engineer that there is sufficient reason to believe the applicant has the financial ability to construct the proposed works as limited by this decision.

Each change application submitted to the State Engineer is to be evaluated based on its own merits. This change application filed by Kevin Tolton appears to be filed for the purpose of building a cabin on a parcel of land he owns. Mr. Tolton has indicated his intent with this application is to build a family cabin. The State Engineer is aware that protestants have expressed that the applicant may not intend to build a cabin but may have speculative motives.

Reclamation Facility has a reuse program; however, it does not appear that this water right has ever been included in a wastewater reuse application or project consistent with the underlying right. As a result 20% consumption for the heretofore domestic use is assumed for this decision.

⁶Consumptive Use of Irrigated Crops in Utah," Research Report 145, Utah Agricultural Experiment Station, Utah State University, Logan, Utah, October 1994, Table 25" Salt Lake Ct NWSFO AP Station.

AMENDED ORDER OF THE STATE ENGINEER

Permanent Change Application Number

57-7800 (a28548)

Page 9

Documents submitted assert the land identified in this application has had a contract for water service with the Little Cottonwood Water Company and was previously planned for development. The land was subsequently annexed into the city of Alta. The commitments of Little Cottonwood Water Company proved insufficient and it was hoped additional water would be supplied by Alta. Over time, limitations on development due to watershed, water quantity, and water quality concerns, outweighed development commitments. Local entities seemed to make a decision that acquisition of the remaining private lands would be in the best interest of the public to protect a valuable source of water for residents of the Salt Lake Valley. Without water, the land is less valuable. It has been suggested the applicant does not intend to build a family cabin but to profit solely from increased valuation of the property after approval of this application. This application must be acted on based on the facts provided by protestants in written or verbal submissions and the merits of the application. The State Engineer has no reason to believe the applicant has acted in bad faith by filing the application. The framework set forth in statute requiring applicants to diligently pursue placing water to approved beneficial uses and the necessity to file change applications if a different project is desired should be satisfactory to alleviate the protesting parties' concerns related to speculation.

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.

It is, therefore, **ORDERED** and Permanent Change Application Number 57-7800 (a28548) is hereby **APPROVED** subject to **prior rights** with the following conditions:

1. This application is limited to a maximum annual diversion of 0.373 acre-foot of water which is typically sufficient, according to the State Engineer's guidelines, for the part-time indoor domestic use of one family (0.25 acre-feet) and incidental fire protection solely from the well source.
2. The only point of diversion approved to be developed under this application is the well to be located: **South 1560 feet and West 1005 feet from the N $\frac{1}{4}$ Corner of Section 9, T3S, R3E, SLB&M.** The well must be constructed to seal water from unconsolidated material from direct communication with the well bore and it must be completed and screened or perforated in bedrock. The driller is to provide samples of drill cuttings at five foot intervals to document that the water produced from the well is encountered in the bedrock. The applicant is also cautioned that other permits may be required for drilling a well in this area.
3. The applicant(s) shall install and maintain measuring and totalizing recording devices to meter all water diverted under this application.
4. The storage of water as applied for in the application is approved only for storage of the pumped well water to be contained, measured, and controlled in an on-site

AMENDED ORDER OF THE STATE ENGINEER

Permanent Change Application Number

57-7800 (a28548)

Page 10

tank, or mine tunnels the applicant owns. The proposed storage in Cecret Lake is not approved under this application.

5. As noted, this approval is granted subject to prior rights. The applicant must mitigate or provide compensation for any impairment of or interference with prior rights, including compensation for any losses in water for the generation of power, as such may be stipulated among the parties or decreed by a court of competent jurisdiction.
6. Whereas this change application has been filed to entirely replace and supercede prior approved Change Application Number 57-7800 (a24463), with this approval a24463 is considered to be **WITHDRAWN**.
7. The approval for prior Change Application a24463 was conditioned that the well drilled under change a4178 be permanently abandoned and sealed according to the requirements of R655-4-12 of The Administrative Rules for Water Well Drillers. This applicant and the owners of the other segregated interests shall coordinate the abandonment of that well and submit evidence of such prior to any certification of this change.
8. To accommodate the approval of this permanent change application, the use of 0.0104 cfs or 0.9033 acre-foot of water for the irrigation of 0.1217 acre, the domestic use of 0.5 equivalent domestic units, and the stockwatering requirements of 2.5 head of livestock (in cattle or horses or equivalent species) at the historic points of diversion and place of use must cease.

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 (Utah Code Ann. §73-1-4).

The applicant is strongly cautioned that other permits may be required before any development of this application can begin and it is the responsibility of the applicant 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 **January 31, 2020**, or a request for extension of time must be acceptably filed; otherwise the application will lapse. 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 applicant.

AMENDED ORDER OF THE STATE ENGINEER

Permanent Change Application Number

57-7800 (a28548)

Page 11

Proof of beneficial use is evidence to the State Engineer that the water has been fully placed to its intended beneficial use. By law, it must be prepared by a registered engineer or land surveyor, who will certify to the location, uses, and extent of your water right. Upon the submission of proof as required by Section 73-3-16, Utah Code, for this application, the applicant 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.

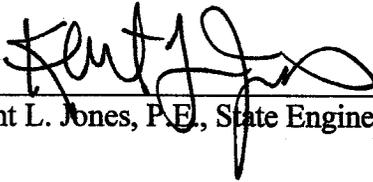
Failure on your part to comply with the requirements of the applicable statutes may result in the lapsing of this permanent change application.

It is the applicant's 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 9th day of January, 2014.


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

Mailed a copy of the foregoing Order this 9th day of January, 2014 to:

Kevin Tolton
622 Mountain View Circle
North Salt Lake, UT 84054

Sandy City
c/o Patrick R. Casaday
10000 Centennial Parkway
Sandy, UT 84070-4148

AMENDED ORDER OF THE STATE ENGINEER

Permanent Change Application Number

57-7800 (a28548)

Page 12

USA Forest Service
c/o Jeanne A. Evenden
324 25th Street
Ogden, UT 84401

Cottonwood Hydro, LLC
(Hydro Holdings, LLC)
c/o Susannah Williams
9950 South Power Plant Lane
Sandy, UT 84092

Friends of Alta
c/o Patrick A. Shea
252 South 1300 East, Suite A
Salt Lake City, UT 84102

Little Cottonwood Creek Distribution
Committee
c/o Rodney S. Sorensen, P.E.
10000 Centennial Parkway, Suite 241
Sandy, UT 84070

Salt Lake City Corporation
c/o Shawn E. Draney
PO Box 45000
Salt Lake City, UT 84145-5000

Metropolitan Water District of Salt Lake and
Sandy
c/o Scott H. Martin
PO Box 45000
Salt Lake City, UT 84145-5000

Alta Ski Lifts Company
c/o Onno Wieringa
PO Box 8007
Alta, UT 84092

Sandy Irrigation Company
c/o John H. Mabey, Jr.
175 South Main Street, Suite 1330
Salt Lake City, UT 84111

Town of Alta
c/o Lee Kapaloski
201 South Main Street, Suite 1800
Salt Lake City, UT 84111

Salt Lake County Service Area #3
c/o David J. Smith
36 South State Street, Suite 1900
Salt Lake City, UT 84111

Tim O'Hara, Co-River Commissioner
1501 South 500 East
Salt Lake City, UT 84105

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

Division of Water Rights
Stream Alteration Section

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

BY: _____

Sonia R. Nava, Applications/Records Secretary