GARY R. HERBERT
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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

REISSUED ORDER OF THE STATE ENGINEER

For Exchange Application Number 35-12848 (E5382)

Exchange Application Number 35-12848 (E5382), in the name of Summit Mountain Holding Group, LLC, was filed on April 8, 2014, to exchange 400.00 acre-feet (af) of water as evidenced by Water Right Numbers 35-7397 (A10989) and 35-827 (A27608) owned by the U.S. Bureau of Reclamation and a contract (Number 77601) for its use with Weber Basin Water Conservancy District. The 400.00 acre-feet of water is to be released from Pineview Reservoir and, in lieu thereof, 400.00 acre-feet of water will be diverted from: (1) Well - South 1195 feet and East 2035 feet from the NW Corner of Section 8, T7N, R2E, SLB&M (12-inch well, 500 – 1000 feet deep); (2) Well - South 4500 feet and West 1250 feet from the NE Corner of Section 1, T7N, R1E, SLB&M (existing 12-inch well, aka Cobabe Well); (3) Spring - South 1380 feet and East 2970 feet from the NW Corner of Section 7, T7N, R2E, SLB&M (Lefty Spring); (4) Spring - South 1400 feet and West 1750 feet from the NE Corner of Section 1, T7N, R1E, SLB&M (Pizzel Spring #2); (5) Well - North 1437 feet and East 1548 feet from the S¼ Corner of Section 6, T7N, R2E, SLB&M (existing 14-inch, 1600 feet deep, constructed in 2013, aka Hidden Lake Well); (6) Spring - South 4500 feet and West 1250 feet from the NE Corner of Section 1, T7N, R1E, SLB&M (Pizzel Spring #3); (7) Spring - South 400 feet and West 2550 feet from the NE Corner of Section 1, T7N, R1E, SLB&M (Pizzel Spring #1); (8) Well - North 1160 feet and East 575 feet from the SW Corner of Section 5, T7N, R2E, SLB&M (12-inch well, 1000 - 1600 feet deep); (9) Well - North 1487 feet and East 1548 feet from the S¼ Corner of Section 6, T7N, R2E, SLB&M (existing 12-inch well, 1800 - 2500 feet deep); (10) Well - South 1140 feet and East 2150 feet from the NW Corner of Section 1, T7N, R1E, SLB&M (12-inch well, 500 – 1000 feet deep); and (11) Well - North 400 feet and West 1350 feet from the SE Corner of Section 5, T7N, R2E, SLB&M (12-inch well, 2000 – 2500 feet deep). The water is to be used for year-round municipal purposes within the service area of Powder Mountain Water & Sewer District.

Notice of the exchange application was published in the Standard Examiner on April 24 and May 1, 2014, and protests were received from Cache County Corp, Dan Harris, Garden of Eden Ranch, Eden Water Works Company, Wellsville East Field Irrigation Company, South Cache Water Users, Wellsville Mendon Conservation District, Elkhorn LLC, Four Mile Ranch, Inc., Brent D. Parker, Barbara L. Hanson, Bar B Ranch Inc., Eden Water Works Company, Middle Fork Irrigation Company, Wolf Creek Irrigation Company (WCIC), Wolf Creek Water and Sewer Improvement District, Kirk S. Langford, PacifiCorp, Green Hills Water and Sewer District, Ann Whitehead, Pineview West Water Company, Ogden City Public Utilities, Debra Bingham/Kerry Fuller/Jason Fuller/Shanna Francis, and Tyler M. and Courtney Rasley, John F. Kimball Jr. (late protest), and Donald S. Winters (late protest). A hearing was held on July 8, 2014.

The State Engineer approved Exchange Application Number 35-12848 (E5382) by conditioned Order on July 31, 2015. It was brought to our attention by both the applicant and a representative of some of the protestants that the approval language may be somewhat ambiguous relating to when water could be diverted and to what extent mitigation was required. The State Engineer agreed and has reissued his decision to help clarify the Order.

The applicant asserts that this application is filed to replace Exchange Application E4715, which was approved on November 3, 2006. This new application was filed to correct, modify, and remove some points of diversion listed on E4715. The applicant asserts that no more water will be diverted under this application than was approved under E4715 and the impact on other water rights in the area will be the same as currently approved. The Hidden Lake Well was constructed in 2013 and it is desired to use that well under this application.

To summarize the protests to this application: (1) those in Cache County assert that wells located near the topographic surface divide will be drilled into geologic formations that extend north and will divert water that is tributary to Cache Valley sources; and (2) those in Ogden Valley assert that if water is diverted as proposed interference to their water rights will occur because water released from Pineview Reservoir as proposed to complete the exchange of water will not replace water diverted from sources up-gradient of the reservoir. Therefore, parties on both sides of the surface drainage divide believe their rights will be impaired.

Separate professionals hired by the applicant and protestants produced opposing hydrogeologic reports. These reports analyze the geologic setting and how it affects groundwater flow but arrive at differing conclusions. In December 2014, the Hidden Lake Well was pumped for fourteen days and various sources monitored in an effort to better understand the aquifer. At the conclusion of the pumping and monitoring, the professionals analyzed the data obtained and rendered opposing interpretations of the results of the test.

The State Engineer has consulted with the Utah Geological Survey (UGS) for help in understanding the hydrogeologic framework. Their analysis concludes that some water at the location of the Hidden Lake Well is tributary to the Bear River hydrologic system. The percentage of water diverted from the Hidden Lake Well tributary to the Bear River System is not able to be determined with precision. UGS estimates that, depending on the volume of water diverted, 24% to 37% of the volume of water diverted from the Hidden Lake Well may have otherwise flowed to Cache Valley sources. The State Engineer is of the opinion that at the anticipated flow rate 30% is a reasonable estimate of the water diverted that would naturally be tributary to the Cache Valley drainage. This value of 30% will be used for administration purposes until additional, scientifically derived, substantiated data is obtained or submitted to and approved by the State Engineer to alter this finding.

Practically, the State Engineer's finding that a diversion of water under this application has impact to both the Weber and Bear Rivers necessitates a condition of approval unforeseen when the application was filed. Utah Code Section 73-3-20(1), which governs "exchange applications" and under which E5382 was filed, provides:

> *Upon application in writing and approval of the State Engineer, any appropriated water may, for the purpose of preventing waste and facilitating distribution, be turned from the channel of any stream or any lake or other body of water, into the channel of any natural stream or natural body of water or into a reservoir constructed across the bed of any natural stream, and commingled with its waters, and a like quantity less the quantity lost by evaporation and seepage may be taken out, either above or below the point where emptied into the stream, body of water or reservoir.* ***In so doing, the original water in such stream, body of water, or reservoir must not be deteriorated in quality or diminished in quantity for the purpose used****, and the additional water turned in shall bear its share of the expense of maintenance of such reservoir and an equitable proportion of the cost of the reservoir site and its construction. (Emphasis supplied).*

Since replacement water is being proposed to be provided from storage in Pineview Reservoir, diversions under this exchange application may only occur if no replacement water is needed to satisfy existing rights above Pineview Reservoir within the Weber River drainage and on the Bear River above the Great Salt Lake. It is unlikely that there are and will be any significant periods of time where a diversion of water from the applicant's proposed source(s) will not interfere with an existing right on the Bear River before its termination at the Great Salt Lake. The Bear River tributaries and mainstem, which would be affected under this proposal, are regularly regulated and rights are curtailed due to a shortage of water to fulfill all rights. Accordingly, any diversion of water from the applicant's proposed underground points of diversion must include some compensating mechanism to the Cache Valley tributary drainage.

For the Hidden Lake Well, based on a determination that 30% of the water diverted from this well is water naturally tributary to the Bear River drainage, compensation could include releasing 30% of the water pumped from the Hidden Lake Well to the Cache Valley drainage or pumping at times when all rights on the Bear River and its tributaries downstream of the points of diversion are fully satisfied. As a practical matter, the applicant may need to secure the right(s) to use water within the Cache Valley hydrologic system (State Engineer's Area 25) and file an appropriate application(s) to utilize those rights to replace water to the Bear River for diversions under this application. If sufficient rights are obtained and change applications approved for use as mitigation or replacement water in the Bear River drainage, water may not have to be pumped and released from the Hidden Lake Well to compensate for impacts of that well.

Utah Code Section 73-3-20 (2)(a) states:

> *The State Engineer may require an owner of an approved exchange application to provide: (i) information about the diversion works constructed; (ii) information about the extent to which the development under the exchange has occurred; or (iii) other information the State Engineer considers necessary to: (A) ensure the exchange is taking place; (B) establish that the owner still has a legal interest in*

> *the underlying right used as a basis for the exchange; or (C) determine the quantity of water being exchanged.*

In total there are seven wells being proposed as possible points of diversion under this application. The Hidden Lake Well was drilled in 2013 and is ready to be used. Five wells are yet to be constructed / drilled. The Cobabe Well is proposed as a point of diversion under this application and is an existing well currently being used under other rights by Powder Mountain Water and Sewer Special Service District. The six wells (excluding the Hidden Lake Well which has been evaluated at a 30% impact to the Bear River drainage) proposed to be used under this application could impact prior rights in the Bear River basin to an as yet undetermined amount. The impact could be similar to those estimated for pumping the Hidden Lake Well. A separate, similar evaluation to that already conducted for the Hidden Lake Well to determine any necessary mitigation to be provided to Bear River water right holders must be completed by the applicant when each well is drilled. The mitigation amount and plan for each individual well must be approved by the State Engineer. Water from any of the other six wells can be diverted only after these amounts and plans are approved. The State Engineer will establish a required water replacement schedule for each well after receipt of the mitigation plan and a determination of its sufficiency by the State Engineer[1].

With regard to the interference concerns on the Ogden Valley side of the drainage, the State Engineer is of the opinion that there are times during each year when water can be diverted without interfering with senior water rights (primarily during the non-irrigation season and spring runoff period). Water diverted from wells can impact the hydrologic system in several ways - among them are reducing water discharging to springs and seeps and reducing underflows discharging from the system. Diverting water under exchange applications is allowed up-gradient of a reservoir when there is water available in the proposed source and senior water rights are not impaired. Hence, senior surface water rights must be satisfied prior to the applicant being able to divert water under this Exchange Application. An applicant may only divert water above a reservoir from which water is to be released to complete an exchange in a way such that no impairment of rights above the reservoir occurs. However, an applicant under an exchange can find ways to mitigate or replace the amount of water diverted that otherwise would be used by senior surface rights.

In the event that no mitigation/replacement water is supplied to down gradient senior surface water right owners above Pineview Reservoir within Weber County, the State Engineer has evaluated possible interference scenarios that could occur. The flow of Wolf Creek is made up of springs, seeps and small tributaries that are in close proximity to, or actually are, the sources being proposed to be used under this Exchange Application. The State Engineer believes if interference will occur with any of the Weber County protestants, it will manifest itself first in

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[1] Some of the proposed wells are the same or in close proximity to wells proposed under applicant's previous Exchange Application E4715. Please note that in the time since Exchange Application E4715 was filed and approved, it has become clear that there are times when the exchange cannot occur because of intervening rights between the proposed points of diversion and the point of exchange. Neither diversion under this Exchange Application or under E4715 can occur to the detriment of existing rights.

the flows of Wolf Creek. If interference does not occur on Wolf Creek, it is highly unlikely that other surface water rights will be impaired. Therefore, the State Engineer believes no diversion of water should be made under the subject exchange during times when WCIC water rights are not being fully satisfied.

WCIC owns Water Right Number 35-7188 which has a priority date of 1861. The Ogden River Decree provides a high flow rate of 20.0 cfs and a low flow rate of 9.85 cfs for this right. Flows of Wolf Creek enter an intake structure at a point North 2690 feet and East 855 feet from the S4 Corner, Section 15, T7N, R1E, SLB&M and can be measured at this point. No water shall be diverted under this exchange if the above identified flows are not available at that intake unless the applicant provides mitigation equal to its Ogden Valley tributary diversions under this application. The Ogden River Commissioner is responsible to determine the amount of water, based on the amount of water available to be diverted by WCIC and flows entering Pineview Reservoir, that may be diverted under this Exchange Application that can be replaced without causing impairment to senior rights.

It is the opinion of the State Engineer that this exchange application can be approved without adversely affecting existing rights if certain conditions are met. The applicant is put on notice that diligence must be shown in pursuing the development of this application, which can be demonstrated by the completion of the project as proposed in the exchange application.

It is, therefore, **ORDERED** and Exchange Application Number 35-12848 (E5382) is hereby **APPROVED** subject to prior rights and the following conditions:

1) The basis for this exchange right is a contract between the applicant and Weber Basin Water Conservancy District. This contract must be maintained for this exchange to remain valid. No water may be withdrawn under this application if a contract is not in effect.

2) Total diversion under this exchange application from all sources combined, whether for the municipal use proposed by the applicant or for water to be delivered as mitigation to the Bear River drainage, is limited to 400.00 acre-feet (af) of water per year.

3) The applicant(s) shall install and maintain measuring and totalizing recording devices to meter all water diverted from all sources pertaining to this application and shall annually report this data to the Division of Water Rights Water Use Program.

4) 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

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 exchange as well as all other Water Rights which may be approved to be diverted from those sources.

5) The water being exchanged shall be released from Pineview Reservoir into Ogden River as called for by the river commissioner. The applicant shall be responsible to pay all additional costs incurred by the river commissioner in administering this Exchange Application.

6) This approval grants diversion and use of water from the Hidden Lake Well after any compensating mechanism(s) to the Cache Valley tributary drainage have been approved by the State Engineer. For the Hidden Lake Well, this could include: releasing 30% of the pumped water to the Cache Valley drainage or pumping only at times when all rights on the Bear River and its tributaries downstream of the points of diversion are fully satisfied; or secure the right to use water pertinent to the Cache Valley hydrologic system (State Engineer's Area 25) and file an appropriate application to use that water to replace Bear River water diverted under this application. (There are other possible replacement mechanisms which may be available to the applicant.) The applicant's compensating mechanism(s) needs to be clearly identified and pertinent approvals obtained prior to diverting water from the Hidden Lake Well and/or any other wells developed under this application. The total amount of water pumped from wells under this Exchange Application, whether for replacement water or actual use, is limited to a total of 400.00 acre-feet.

7) Prior to diverting any water from the Cobabe Well or any of the other five unconstructed wells approved herein for use under this application, a plan acceptable to the State Engineer must be in place to determine the amount of water required to be released or obtained on the Cache Valley side to allow for the diversion of water from any of the approved wells. The applicant's compensating mechanism(s) needs to be clearly identified and pertinent approvals obtained prior to diverting water under this Exchange Application from any of the six wells.

8) After any administrative or judicial actions pertaining to the approval of this application are resolved, Exchange Application Number 35-11995 (E4715) will be considered **WITHDRAWN** because Exchange Application Number 35-12848 (E5382) has been filed to replace it.

9) The State Engineer believes if interference will occur with any of the Weber County protestants, it will manifest itself first in the flows of Wolf Creek. If interference is not encountered on Wolf Creek, it is highly unlikely that any other surface water rights will be impaired. Therefore, no diversion of water should occur under the subject exchange during times of the year when WCIC water rights are not being fully satisfied unless the applicant provides mitigation equal to its Ogden Valley tributary diversions under this application. If replacement water or other mechanisms are used to remedy impairment concerns related to WCIC's water rights, and other surface water right holders in the Ogden Valley can demonstrate impairment caused by diversion under this right; no diversion under this exchange will be allowed during those times of the year when the impaired rights are not being satisfied.

10) 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.

11) As noted, this approval is granted subject to prior rights and authorizes no impairment of existing intervening rights. The applicant may through agreement mitigate or provide compensation for any impairment at the discretion of the impaired party.

12) 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.

Inasmuch as this application proposes to divert water from a surface source, the applicant is required to contact the Stream Alteration Section of the Division of Water Rights at 801-538-7240 to obtain a Stream Alteration permit in addition to this Exchange Application.

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 **July 31, 2020**, or a request for extension of time must be acceptably filed; otherwise the application will be lapsed.

Under the authority of Section 73-3-20 of the Utah Code, the applicant is required to submit a proof of diversion and beneficial use of water upon 60 days notification by the State Engineer. The proof shall be in the same form and contain the same elements as required for appropriation or permanent change of water under Section 73-3-16 of the Utah Code Annotated.

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 exchange 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 Weber River/Western 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 19th day of August, 2015.

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

Mailed a copy of the foregoing Order this 19th day of August, 2015 to:

Summit Mountain Holding Group, LLC
3632 North Wolf Creek Drive
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Dan Harris
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Wellsville East Field Irrigation Company
c/o Scott Leishman
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Wellsville, UT 84339-9341

South Cache Water Users
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Wellsville Mendon Conservation District
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Holland & Hart
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c/o Peter Turner, President
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Ogden City Public Utilities
c/o Kenton Moffett, Public Utilities Manager
133 West 29th Street
Ogden, UT 84401

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Tyler M. and Courtney Rasley
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Cole Panter, River Commissioner
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Utah Division of Drinking Water
PO Box 144830
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Division of Water Rights
Distribution Section
c/o Ben Anderson
OGDEN RIVER

Division of Water Rights
Stream Alteration Section

BY: _____
Sonia R. Nava, Applications/Records Secretary