

BEFORE THE STATE ENGINEER OF THE STATE OF UTAH

IN THE MATTER OF APPLICATION )

) MEMORANDUM DECISION

NUMBER 77-191 (a15424) )

Application Number 77-191 (a15424) was filed by Beaver City Corporation to permanently change the point of diversion and place of use of 16.2 cfs of water (for the irrigation of 384.16 acres under water user claims 77-4,37,177,191,196, & 407) as evidenced by Water User Claim 77-191 and 77-196 (Award 11a, Civil 625). The water has been diverted from the Beaver River at a point South 1780 feet and West 2050 feet from the NE Corner of Section 23, T29S, R7W, SLB&M, and at the power plant tailrace located South 1520 feet from the corner of said Section 23. Hereafter, the water will be used for the same purposes as heretofore with some modifications in the place of use.

Published notice of the application began on January 25, 1990 and ended February 8, 1990, in the Beaver Press and allowed protests to be filed to and including March 10, 1990. Objections to the proposed change have been received from Gilbert Yardley, Sam Kerksiek and a large number of water users, most of which are represented by attorney Thorpe Waddingham; all contending that implementation of the proposed city project associated with this change will impair their existing water rights by diminishing return flows and/or decreasing the recharge to underground sources feeding certain springs. Other concerns were raised by those present regarding financial burdens on residents of the community and also the potential impact on natural vegetation.

A hearing was held in the Beaver County Courthouse on April 4, 1990. Beaver City Corporation was represented by Joseph Novak and Mark Wangsgard. The protestants were represented by Thorpe Waddingham or were present to represent themselves. The parties involved in this matter have been able to discuss the proposed change application and the future operation of the Beaver River System and have reached a tentative understanding between the parties involved. However, the understanding had not been completed at hearing time and was not made a part of the hearing proceedings. While the State Engineer encourages the various parties to solve their concerns through negotiation, the action on this particular change should not be interpreted as binding the State Engineer to any particular course of action regarding further applications which may be filed as a result of such discussions. At the hearing, the interests of the attendees were heard, the protestants restated their concerns and the application was taken under advisement by the State Engineer.

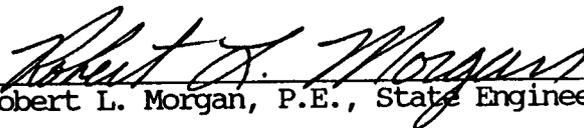
In review of the application, the protests, and information taken at the hearing, the State Engineer is of the opinion that the change application can be approved, subject to prior rights and proper distribution of water in the Beaver River System without impairing the rights of others. It appears that there will be no impact to native vegetation associated with this change. A popular vote indicated that the residents of the city were in favor of the project even though they, as individuals, were affected economically. The State Engineer is further of the opinion that the applicant as well as the protestants, should keep accurate records of amounts of water diverted under their existing rights and collect data that will either support the claimed interference, define the degree of interference, or show that no water rights will be impaired through implementation of this proposed change.

It is, therefore, ORDERED, and Application for Permanent Change 77-191 (a15424) is hereby APPROVED, subject to prior rights and the distribution schedule on the Beaver River System.

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This decision is subject to the provisions of Rule R625-6-17 of the Division of Water Rights and to Sections 63-46b-13 and 73-3-14 of the Utah Code Annotated, 1953, 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 Decision. 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 Decision, 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 7th day of May, 1990.

  
Robert L. Morgan, P.E., State Engineer

RLM:GWS:KLJ:rc

Mailed a copy of the foregoing Memorandum Decision this 7th day of May, 1990 to:

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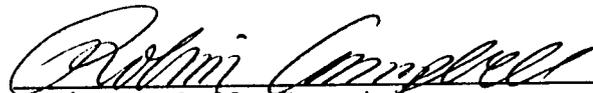
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By:   
Robin Campbell, Secretary