

BEFORE THE STATE ENGINEER OF THE STATE OF UTAH

IN THE MATTER OF CHANGE APPLICATION)
)
NUMBER 77-598 (a16250))

MEMORANDUM DECISION

Change Application Number 77-598 (a16250) was filed by Neola S. Brown to permanently change the point of diversion and place of use of 0.66 cfs of water from Indian Creek as evidenced by a portion of Award Number 123a (77-598 & 77-761), Beaver River Decree. The water has been diverted from Indian Creek at a point North 140 feet and East 1700 feet from the SW Corner of Section 25, T27S, R7W, SLB&M, and used for irrigation purposes of 57.4 acres of land within portions of Section 29, T28S, R7W, SLB&M. This change application describes the same point of diversion but proposes to re-divert the water from Manderfield Ditch at a point North 100 feet and East 2900 feet from the SW Corner of Section 3, T28S, R7W, SLB&M, and the water would irrigate 40.0 acres but limited to the sole supply of 21.67 acres in the SW1/4 of Section 22, T28S, R7W, SLB&M, and used supplementally with other water rights including but not limited to Manderfield Reservoir and Irrigation Company and Beaver Dam Reservoir Company water.

The application was advertised in the Beaver Press from July 18, 1991, to August 1, 1991, and protests were received from the Manderfield Irrigation Company, Norman Bradshaw, and Keith A. and Judy I. Beaumont.

A hearing was held in the Beaver Community Center on February 21, 1992.

The applicant, represented by Bruce Brown, stated that they had difficulty in conveying the small amount of water from the diversion point in Section 25 to the place of use in Section 29, several miles away. The existing ditch soaks up the entire flow of water before it reaches the legal place of use. By diverting from the existing ditch they are able to put the water through a sprinkler system and make more beneficial use of the water.

The Manderfield Irrigation Company, represented by Ray and Norman Bradshaw, are concerned over the delivery of water to the applicant. The applicant would have to use their ditch and this would cut down the supply of water normally allocated to the irrigation company. Further, they believe that the transfer of the water from it's decreed place of use would be in violation of the court's order. Norman Bradshaw also is concerned that if the water is transferred upstream that it will dry up the present land being irrigated and cause an economic hardship on landowners.

Keith and Judy Beaumont object to the application because they use the same ditch for their 1/3 interest in the water from Indian Creek and by removing the larger portion of the allowed flow that it will be impossible to convey their water onto the legal place of use. They believe that their water rights and land will be diminished by this transfer.

The use of water under Award 123 a and b has been a point of contention for many years between the applicant and the protestants. Part "a" of this award allows 1.0 cfs of water to be diverted in Section 25, conveyed by several miles of ditch, and used to irrigate 65 acres of land. Part "b" is a supplemental right from spring flow in the area of the irrigated land to be used on the same 65 acres. The ownership of the water right is generally split in

MEMORANDUM DECISION
CHANGE APPLICATION NUMBER
77-598 (a16250)
PAGE -2-

one-third interests and the applicant has succeeded to two-thirds of the 1.0 cfs from Indian Creek. It is believed that the existing ditch that conveys the full 1.0 cfs has not been effectively used for some time and only when there is sufficient water to supplement the 1.0 cfs with additional flow to help carry the water through the earthen ditch. The applicant has a right to use the water under these rights and therefore has a right to change the place and nature of use as well as the point of diversion as provided under the Utah State law, especially under the existing conditions, and put the water to a more efficient beneficial use. Since the Beaumont's share of the water has not been used consistently over the years and they have been relying on the available spring flow for their supply it seems apparent that this change should not effect the existing delivery.

The Manderfield Irrigation Company has a legitimate concern and shouldn't have to convey the water to the Brown property to the determination of the company. If the applicant can negotiate an agreement with the company for use of their ditch or a right-of-way for a parallel ditch then it seems appropriate that this change application can be allowed.

It is, therefore, ORDERED and Change Application Number 77-598 (a16250) is hereby APPROVED subject to prior rights and the following conditions:

1. The waters of Indian Creek shall be distributed according to the priority dates found under the Beaver River Decree and the Determination of Water Rights.
2. The applicant shall install proper measuring devices to assure other water users that they are only diverting that amount of water that is due them under the priority schedule.
3. The land that has been irrigated heretofore under the subject flow and the supplemental spring flow must be abandoned and no further attempts to irrigate said land shall be attempted.
4. The applicant must obtain proper right-of-way from the Manderfield Irrigation Company or the land owners over which the existing or proposed ditch will be located prior to any diversion of water from Indian Creek under this subject water right.

This Decision is subject to the provisions of Rule R655-6-17 (1992 Utah Administrative Code--formerly R625) 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

Distribution Order.