

BEFORE THE STATE ENGINEER OF THE STATE OF UTAH

IN THE MATTER OF CHANGE APPLICATION )  
 )  
NUMBER 59-5673 (a24719) )

MEMORANDUM DECISION

Change Application Number 59-5673 (a24719), in the name of Kennecott Utah Copper Corporation, was filed on July 12, 2000, to change the point of diversion, place of use, and nature of use of 7500.0 acre-feet of water. Heretofore, the water has been diverted from the Jordan River at two locations (1) South 100 feet and West 80 feet from the N¼ Corner of Section 11, T3S, R1W, SLB&M, and (2) North 180 feet and East 1880 feet from the W¼ Corner of Section 26, T4S, R1W, SLB&M. The water has been used for industrial purposes for milling and refining copper ore.

Hereafter, it is proposed to divert 7,500.0 acre-feet of water from the Jordan River at the same points as heretofore and use the water for municipal purposes in South Jordan City.

The application was advertised in the Deseret News on July 27, 2000, and August 3, 2000, and was protested by Provo River Water User's Association. In the written protest concern is expressed that the proposed use should not consume more water than has historically been depleted through the industrial operation.

The State Engineer has reviewed the change application, the underlying water right, and the protest. It is noted that the historic water right is for industrial use which could be considerably consumptive. The proposed municipal use usually will return a substantial portion of water to the hydrologic system through irrigation return flow and sewage treatment effluent. It is noted that the priority of the underlying water right, Number 59-23, is 1912. If successive years of severe drought conditions were to occur, this right may have to be cut by priority in order to satisfy earlier rights from the river.

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, rather to provide sufficient definition of the rights to assure that other vested rights are not impaired by the change and no enlargement occurs. If, in a subsequent action, the court adjudicates that this right is entitled to either more or less water, the State Engineer will adjust the figures accordingly.

It is, therefore, **ORDERED** and Change Application Number 59-5673 (a24719) is hereby **APPROVED** subject to prior rights and the following conditions:

1. Municipal use is authorized only under the administration of South Jordan City. Should the city not participate, this change application shall be void.

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2. The proposed use cannot exceed the historic depletion rate.
3. This right will be part of the distribution system for the river and subject to the administration of the State Engineer and the river commissioner.

This Decision is subject to the provisions of Rule R655-6-17 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 29<sup>th</sup> day of September, 2000.

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

RLM:JER:et

Mailed a copy of the foregoing Memorandum Decision this 29<sup>th</sup> day of September, 2000, to:

Kennecott Utah Copper Corporation  
8315 West 3595 South PO Box 6001  
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South Jordan City  
11175 South Redwood Road  
South Jordan, UT 84095

Provo River Water User's Association  
1788 North State Street  
Orem, UT 84057

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BY:

  
Eileen Tooke, Secretary