

BEFORE THE STATE ENGINEER OF THE STATE OF UTAH

IN THE MATTER OF CHANGE APPLICATION)

)

MEMORANDUM DECISION

NUMBER 59-3659 (a20607))

Change Application Number 59-3659 (a20607), in the name of Brighton and North Point Irrigation Company (water right held by State of Utah Board of Water Resources), was filed on December 5, 1996, to alter the point of diversion, place and nature of use of 50 cfs. of water. Formerly, the water was diverted from the Jordan River at these two sites: (1) South 1075 feet and East 580 feet from the W1/4 Corner; (2) North 920 feet and East 550 feet from the SW Corner; both in Section 1, T2S, R1W, SLB&M. It was used, April 1 to October 31, to irrigate 1600.44 acres and year-round to meet the stockwatering requirements of 390 equivalent livestock units. Place of use has been within the service area of the company.

Now it is proposed to add another point of diversion on the Jordan River (that of the Surplus Canal) which is North 275 feet and East 840 feet from the SW Corner of Section 14, T1S, R1W, SLB&M. Intended use is to remain the same, but with the inclusion of wetlands for wildlife (waterfowl) enhancement. This additional use would extend year-round.

Notice of the change application was published in the Deseret News on December 19 and 26, 1996. Seven protests were received which are summarized below:

1. Pacificorp (dba Utah Power and Light Company) alleges that the change application proposes a change of point of diversion from a site downstream to one upstream of the protestant's Gadsby Power Plant; this would impair its Water Right Number 59-704 on the Jordan River.
2. The Lower Jordan River Water Users Association cannot determine how the applicant will effect a reduction in irrigated acreage. Furthermore, the applicant's use of the North Point Canal is not feasible because at times this canal is filled nearly to capacity.
3. The Utah Division of Wildlife Resources states that it has water rights, one with an 1886 priority, which already are not always fully satisfied because of inadequate flows in the Jordan River. This proposal could increase the problem.
4. Implementation of the change application may adversely impact the plans of Salt Lake City Suburban Sanitary District No. 1 to reuse treated wastewater pursuant to Application Number 57-10097 (A68488).

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5. Central Valley Water Reclamation Facility's protest is essentially the same as that of Salt Lake City Suburban Sanitary District No. 1.
6. Central Utah Water Conservancy District avers that changing period of use to year-round represents an enlargement of a water right. This would impair protestant's right if its pending applications are approved.
7. Jordan Fur and Reclamation Company asserts that operation under the change application would disrupt the historical management of the Lower Jordan River. The customary division of the flow of the Jordan River at 2100 South Street between the natural channel and the Surplus Canal should be modified.

A hearing was conducted on July 15, 1997, at Salt Lake City, Utah. Counsel for the applicant stated that the change application was filed to add another point of diversion and to provide for wildfowl. Representatives for the protestants iterated their protests.

The State Engineer has reviewed the change application, protests, pertinent water rights, Lower Jordan River system and water requirement issues. He has noted:

- A. Points of diversion for Brighton North Point Canal and Surplus Canal are both upstream from Pacificorp's point of diversion on the Jordan River for its Gadsby Power Plant. Consequently, if the applicant's water is delivered through the Surplus Canal instead of the Brighton North Point Canal, there should be no additional diminution in the flow of the river at Pacificorp's diversion.
- B. Any issues regarding applicant's use of the North Point Consolidated Canal is a matter to be arranged between the North Point Consolidated Irrigation Company and the Brighton North Point Irrigation Company under the direction of the river commissioner.
- C. Farmington Bay Wildlife Management Area is miles downstream from the applicant historic point of diversion and that of the Surplus Canal. Thus, if the applicant's takes its water entitlement through one canal or the other, the supply available to Utah Division of Wildlife Resources should be the same.
- D. Application Number 57-10097 (A68488), filed by Salt Lake City Suburban Sanitary District No. 1, is still pending action by the State Engineer. Should the district's application be approved, there should be no

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impairment to the district because its facility is located near 3200 South Street and the Surplus Canal diversion is located downstream at 2100 South Street.

- E. Diversion allowances which the State Engineer has utilized for Salt Lake Valley (per annum) are 5.00 acre-feet per acre for irrigation and 0.028 acre-foot (25gpd) per animal for stockwatering. The historic diversion limitation for Water Right Number 59-3659 is 8013.12 acre feet annually ($5 \times 1600.44 + 0.028 \times 390 = 8013.12$).
- F. It is the opinion of the State Engineer that water use during the nonirrigation season, apart from stockwatering, cannot be allowed.
- G. Consumptive irrigation requirement for Salt Lake Valley is 25.46 inches (Hill, Robert W., Consumptive Use of Irrigated Crops in Utah, Utah Agricultural Experiment Station, Research Report 145). Depletion of water for duck clubs in northern Salt Lake County is 37 inches (Hughes, Trevor C., et al., Water Salvage Potentials in Utah, Volume I, Utah Water Research Laboratory PRWA22-1). Hence, one acre of wetlands depletes as much water as 1.45 acres of irrigation on a year round basis. If the time period is limited to the nonirrigation season, one acre of wetlands deplete as much water as 1.35 acres of irrigation.
- H. Division of the flow of the Jordan River at 2100 South Street between the natural channel and the Surplus Canal has always been determined by the Lower Jordan River Distribution Committee and regulated by the Lower Jordan River Commissioner.

In view of the foregoing, the State Engineer believes that the change application can be approved without impairment to other rights if certain conditions are imposed.

In evaluating the various element 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 59-3659 (a20607) is hereby **APPROVED** subject to prior rights and the following conditions:

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1. Total annual diversion shall never exceed 8013.12 acre-feet.
2. There shall be no diversion of water, except for livestock needs, during the non-irrigation season.
3. For each acre of wetland that is established for wildlife enhancement, the applicant shall evidence that 1.35 acres of land formerly irrigated from its system is no longer having water applied.
4. Division of the flow of the Jordan River at 2100 South Street between the natural channel and the Surplus Canal shall continue to be determined by the Lower Jordan River Distribution Committee and regulated by the Lower Jordan River Commissioner.
5. Approval of the change application does not grant the rights-of-way or easements for the applicant to utilize the North Point Consolidated Canal to convey its water entitlement. The applicant shall resolve this issue with the North Point Consolidated Irrigation Company.
6. In addition to the required documentation of beneficial use, the proof of diversion and use of water pursuant to the change application shall also include a map showing the areas formerly irrigated from the applicant's system to which water is no longer applied.

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 18th day of December, 1998.


Robert L. Morgan, P.E. State Engineer

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RLM:JER:EDF:ja

Mailed a copy of the foregoing Memorandum Decision this 18th day of December, 1998, to:

Brighton and North Point Irrigation Company
10 East South Temple Suite 400
Salt Lake City UT 84133

State of Utah Board of Water Resources
1594 West North Temple, Suite 310
Salt Lake City UT 84114-6201

Central Utah Water Conservancy District
c/o Clyde, Snow & Swenson
ATTN: Steve Clyde
201 South Main Street, Suite 1000
Salt Lake City UT 84111-2208

Central Valley Water Reclamation Facility
c/o Fred W. Finlinson
Gateway Tower East, Suite 900
Salt Lake City UT 84133

Jordan Fur and Reclamation
c/o Owen Ken Covey
P.O. Box 58483
Salt Lake City UT 84158-8483

Lower Jordan River Water Users Association
c/o Kruse, Landa & Maycock
ATTN: Jody L. Williams
50 West Broadway Suite 800
Salt Lake City UT 84101

PacifiCorp
c/o Carly B. Burton
1407 West Temple Suite 270
Salt Lake City UT 84140

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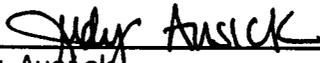
Salt Lake City Suburban Sanitary District
c/o Richard Allen
P.O. Box 254
Lehi UT 84043

State of Utah Division of Wildlife
1594 West North Temple
Salt Lake City UT 84114-6300

Lower Jordan River Commissioner
c/o Lynn Jensen
3286 North 2200 West
Salt Lake City UT 84116

Lee Sim, Assistant State Engineer

By:



Judy Ausick