

BEFORE THE STATE ENGINEER OF THE STATE OF UTAH

IN THE MATTER OF APPLICATION)

NUMBER 95-4915 (A71019))

MEMORANDUM DECISION)

Application Number 95-4915 (A71019), in the name of Keith P. MacKay, was filed on July 2, 1997, to appropriate 0.67 cfs or 137.5 acre-feet of water from Fremont River, located South 500 feet and West 900 feet from the NE Corner of Section 14, T29S, R4E, SLB&M, to be used for stone cutting.

The application was advertised in The Richfield Reaper on July 16, 1997, and July 23, 1997, and was protested by Caineville Canal Company, A. C. Ekker, Hanksville Canal Company, and Allan and Thalia Smart. The protestants are concerned that there is insufficient water to meet their rights and this additional withdrawal would reduce the supply further. There is also concern about potential contamination of water by the stone-cutting operation. A hearing was held on October 3, 1997, in Loa, Utah.

Representatives of the applicant stated that water would be used eight to ten hours per day in conjunction with their well water and that water would be returned to the system.

John Jackson, representing Cainville Canal Company, stated that this water should not be delivered when water is being prorated between decreed water users on the Fremont River distribution system and that water measurements need to be made.

Review of the application, the protests, and the hydrologic data for the area indicates that there are periods when water may be available for this project which is to be nonconsumptive in nature. It appears this application can be made provided certain precautions are taken to protect existing rights.

It is, therefore, **ORDERED** and Application Number 95-4915 (A71019) is hereby **APPROVED** subject to all prior rights and the following conditions:

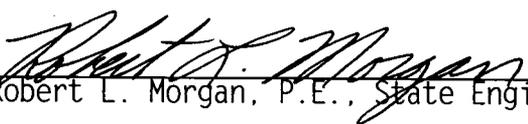
- 1) A totalizing water meter must be placed on the diversion from the canal to the stone cutting facility and a measuring device placed to measure water being returned to the Fremont River. These measuring devices must be available for inspection by representatives of the State Engineer at all times. The expense of installation and purchasing the measuring devices is to be borne by the applicant.
- 2) This right shall be brought under controlled distribution by the Fremont River Commissioner and the applicant is limited to divert water only at times when prior rights of the Fremont River are being supplied in full. Annual diversion is limited to a total of 137.5 acre-feet.
- 3) The applicant shall be responsible for obtaining all necessary permits for implementing the application. This includes meeting standards and requirements from the Division of Water Quality to divert water back to the Fremont River after the water has been used for the described uses.

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

MEMORANDUM DECISION
APPLICATION NUMBER
95-4915 (A71019)
PAGE -2-

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 25th day of September, 1998.


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

RLM:kf:et

Mailed a copy of the foregoing Memorandum Decision this 25th day of September, 1998, to:

Keith P. MacKay
4640 South 300 West
Murray, UT 84107

Caineville Canal Company
c/o John D. Jackson
H C 70 Box 150
Caineville, UT 84775

A. C. Ekker
(late protest) Box 129
Hanksville, UT 84734

Hanksville Canal Company
P. O. Box 61
Hanksville, UT 84734

Allan and Thalia Smart
1216 South Third
Bozeman, MT 59715

Jan Ellett
Lower Fremont River Commissioner
106 East 100 South
Loa, UT 84747

Lee Sim
Assistant State Engineer for Distribution

BY: 
Eileen Tooke, Secretary