

BEFORE THE STATE ENGINEER OF THE STATE OF UTAH

IN THE MATTER OF FIXED-TIME )  
 )  
APPLICATION NUMBER 71-4489 (F70649) )                      MEMORANDUM DECISION

Fixed-Time Application Number 71-4489 (F70649), in the name of George R. Jefferson, was filed on February 10, 1997, to appropriate 5.0 cfs of water from Harrington Hickory Mine, located South 205 feet West 523 feet from the W¼ Corner of Section 9, T28S, R11W, SLB&M, to be used in North Star Mining District at the Harrington Hickory Mine for gold, silver, copper, lead, and zinc mining, hydro-power, and milling of mined ores. The application was advertised in The Beaver County Monitor on February 27 and March 5, 1997, and was not protested.

The proposed application appears to be within an area that may be considered open to fixed-time filings of this type. The proposed source of water is an existing mine and appears to originate in formations geologically isolated from the unconsolidated valley-fill aquifers upon which most existing rights in the area rely. In evaluating the subject application, it is the primary intent of the State Engineer to assure that the application complies with the statutes and policies which govern the administration of this area. Upon review of the limited hydrologic information available for the immediate area, it is the opinion of the State Engineer that there is water that can be appropriated under this fixed-time application. He also finds that the proposed mining, power and industrial uses are consistent with the statutes and policies governing the approval of fixed-time appropriations.

It is stated in the application that "Water in excess of that needed for the milling operation may be produced, but a beneficial use for that water has not been identified at the time of filing." Although not identified in the application, it is the opinion of the State Engineer that any additional beneficial use would likely have the quality of a permanent use and be in conflict with the portion of statute related to fixed-time applications which states, in part:

*". . . in no event may an application be granted for a period of time less than that ordinarily needed to satisfy the essential and primary purpose of the application. . . ." [73-3-8 (2) UCA]*

Further, this right will not be granted in perpetuity. The fixed-time nature of this application has been discussed with the applicant and he is believed to be aware of the conditions of such an approval.

It is, therefore, **ORDERED** and Fixed-Time Application Number 71-4489 (F70649) is hereby **APPROVED** subject to all prior rights and the following conditions:

- 1) This approval is for the proposed mining, power generation and industrial uses only. No additional uses or depletions of the water removed from the mine are authorized by this approval.
- 2) This application is approved subject to Section 73-3-8 (2), Utah Code Annotated, 1953, as revised, for a fixed-time, not to exceed five years, at which time this application will permanently lapse, except as noted in the cited statute.

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- 3) Any extensions of fixed-time requested under Section 73-3-8(2) shall be advertised in the manner required by statute for new applications and shall be subject to public protest and review under statutes and policies in effect at that time.
- 4) The proposed pump(s) shall be equipped with appropriate totalizing meter(s) which shall be properly installed and perpetually maintained in good working order by the applicants. A permanent record of diversions shall be kept by the applicants and shall be provided to the Division of Water Rights or the local Distribution Commissioner upon request, but at least on an annual basis. The meter shall be installed such that it is reasonably accessible to the Distribution Commissioner or other authorized personnel of the Division of Water Rights.
- 5) Diversions under this right shall be limited to an amount necessary to dewater the Harrington Hickory Mine and for the uses as set forth in the application.
- 6) The applicants shall have the responsibility of utilizing the water and for showing diligence to develop this right and for preparing and submitting proof of beneficial use of the water as required under Sections 73-3-12 and 73-3-16 of the Utah Code Annotated.
- 7) If water in excess of that needed for the consumptive mining and industrial uses is produced in the process of dewatering the mine, said excess water shall be carefully disposed of in a manner which shall return it to the natural hydrologic system as efficiently as possibly. This disposal shall be performed in manner such that neither the excess water nor the receiving water (aquifer or stream) shall be diminished in chemical nor bacteriological quality. A plan of disposal shall be submitted to the office of the State Engineer for review and approval prior to disposing of any excess water.
- 8) This approval is limited to the right to divert and use the water. The applicant shall bear full responsibility for obtaining any other permits, rights-of-way, or other approvals necessary to the development of the proposed project, which may include special use permits for public lands or approval to construct water storage facilities, State Department of Environmental Health approvals, etc.

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.

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Dated this 23rd day of July, 1997.

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

RLM:KEC:et

Mailed a copy of the foregoing Memorandum Decision this 23rd day of July, 1997,  
to:

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By:   
Eileen Tooke, Secretary