

BEFORE THE STATE ENGINEER OF THE STATE OF UTAH

IN THE MATTER OF EXCHANGE

APPLICATION NUMBER 35-9821 (E3285)

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MEMORANDUM DECISION DENYING  
REQUEST FOR RECONSIDERATION

Exchange Application Number 35-9821 (E3285), in the name of Vaughn S. Milliron, was filed on June 1, 1994, to exchange 1.0 acre-foot of water as evidenced by contract (number 46035) with Weber Basin Water Conservancy District under 35-7398 (A10990) Ogden River Decree. The 1.0 acre-foot of water is to be released into the Ogden River and, in lieu thereof, 1.0 acre-foot of water will be diverted from a well and a spring, located: (1) South 150 feet and East 200 feet; (2) South 290 feet and East 10 feet, both from the N $\frac{1}{4}$  Corner of Section 30, T7N, R3E, SLB&M, and used for the irrigation of 0.18 acre and the domestic purposes of one family.

The application was advertised in The Ogden Standard-Examiner from September 29, 1994, to October 13, 1994, and was protested by Monty Nielsen. A hearing was not held.

On December 2, 1994, this application was approved by the State Engineer. For whatever reason a copy of the Memorandum Decision approving the application was not mailed to the protestant, Monty Nielsen, as required by Section 63-46b-5(1)(k). On April 19, 1995, a Reissued Memorandum Decision was signed by the State Engineer again approving this application subject to prior rights and certain conditions to provide such notice and to protect the protestant's rights to due process. In that decision, the parties to this application were given 20 days from that date to file a Request for Reconsideration. On March 3, 1995, a Request for Reconsideration was received from the protestant which referenced the State Engineer's decision dated December 2, 1994. Inasmuch as the Reissued Memorandum Decision dated April 19, 1995, superseded the original December 2, 1994, Memorandum Decision, the State Engineer now considers the protestant's Request for Reconsideration as having been filed after the Reissued Memorandum Decision.

In the request, item (1) states that the spring which is sought by the applicants are located on property owned by the protestant. As stated in condition (4) of the April 19, 1995, Reissued Memorandum Decision, "The applicants are cautioned that the State Engineer has no authority to grant any property rights involving rights of way or easements and if these are necessary to implement this project it is the responsibility of the applicants to obtain them." It is the opinion of the State Engineer that this is an issue between the property owners and should be resolved by them.

Items (2) and (3) in the Request for Reconsideration pertain to concerns about the contract between Weber Basin Water Conservancy District and the applicants. It has been confirmed to the Division by Weber Basin that the applicants have contract number 46035 which is valid.

It is the opinion of the State Engineer that the concerns of the protestant have been considered and that the approval of Exchange Application Number 35-9821 (E3285) should remain in force. The protestant has not demonstrated that any

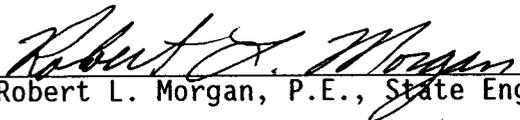
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water rights will be affected by this approval.

It is, therefore, **ORDERED** and the Request for Reconsideration filed on Exchange Application Number 35-9821 (E3285) by the protestant, Monty Nielsen, is hereby **DENIED**.

This Decision is subject to the provisions of Rule R655-6-18 of the Division of Water Rights and to Sections 63-46b-14 and 73-3-14 of the Utah Code which provide for the filing of an appeal with the appropriate District Court. A court appeal shall be filed within 30 days after the date of this Decision.

Dated this 27th day of April, 1995.

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

RLM:JRM:mw

Mailed a copy of the foregoing Memorandum Decision this 27th day of April, 1995, to:

Vaughn S. Milliron  
P. O. Box 2816  
Salt Lake City, UT 84110

Monty Nielsen  
130 Quincy  
Ogden, UT 84404

Weber Basin Water Conservancy District  
c/o Mr. Ivan Flint, General Manager  
2837 East Highway 193  
Layton, UT 84040

E. Blaine Johnson  
1615 E. Shadow Valley Drive  
Ogden, UT 84403

BY:   
MaClovia White, Secretary