

BEFORE THE STATE ENGINEER OF THE STATE OF UTAH

IN THE MATTER OF EXCHANGE)

APPLICATION NUMBER 35-9821 (E3285))

REISSUED MEMORANDUM DECISION

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). Therefore, this memorandum decision is reissued to provide such notice and to protect the protestant's rights to due process.

The concerns of the protestant were that the development of the spring which was filed for herein has already occurred and that the collection works are located on property owned by the protestant.

A review of the records of the State Engineer does not indicate that any claims to water rights for the spring area have been asserted by other water users. The main concern expressed in the protest was that of trespass. The State Engineer has no authority in regard to matters of access, easements or rights-of-way. These are issues to be resolved between the property owners or in the appropriate court.

It appears that this exchange can be made provided certain precautions are observed.

It is, therefore, **ORDERED** and Exchange Application Number 35-9821 (3285) is hereby **APPROVED** subject to prior rights and the following conditions:

- 1) The basis for this exchange right is a contract between the applicant and Weber Basin Water Conservancy District. This contract must be maintained for this exchange to remain valid. No water may be withdrawn from the well if a contract is not in effect.
- 2) Total diversion under this exchange application for all uses applied for is limited to 1.0 acre-foot of water per year. These uses are limited to the domestic needs

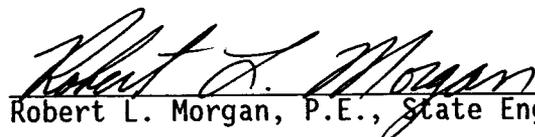
**MEMORANDUM DECISION
EXCHANGE APPLICATION NUMBER
E3285 (35-9821)
PAGE -2-**

of one family and irrigation of 0.18 acre. For the purpose of regulating this exchange, the applicant shall install a permanent totalizing meter to measure withdrawals from the well and spring, which meter shall be available for inspection by representatives of the Division of Water Rights at any reasonable time.

- 3) The water being exchanged shall be released from Causey Reservoir into the Ogden River as called for by the river commissioner.
- 4) The applicant is 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 applicant to obtain them.
- 5) Under the authority of Section 73-3-20 of the Utah Code, the applicant is required to submit a proof diversion and beneficial use of water upon 60 days notification by the State Engineer. The proof shall be in the same form and contain the same elements as required for appropriation or permanent change of water under Section 73-3-16 of the Utah Code Annotated.

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 19th day of April, 1995.


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

RLM:JRM:mw

Mailed a copy of the foregoing Memorandum Decision this 19th day of April, 1995, to:

Vaughn S. Milliron
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Salt Lake City, UT 84110

MEMORANDUM DECISION
EXCHANGE APPLICATION NUMBER
E3285 (35-9821)
PAGE -3-

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Ogden, UT 84404

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Layton, UT 84040

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

BY: MaClovia White
MaClovia White, Secretary