

BEFORE THE STATE ENGINEER OF THE STATE OF UTAH

IN THE MATTER OF CHANGE)
)
APPLICATION NUMBER 55-4292 (a21033))

REISSUED
MEMORANDUM DECISION

Change Application Number 55-4292 (a21033) in the name of Pinecreek Water Company L.L.C. was filed on April 17, 1997, to change the point of diversion, place of use and nature of use of 4.0 cfs of water. Heretofore, the water has been diverted from Pine Creek at a point located North 373 feet and East 554 feet from the SW Corner of Section 15, T3S, R4E, SLB&M, and used for the irrigation of 9.90 acres from April 1 to October one in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 23, T3S, R4E, SLB&M.

Hereafter, it is proposed to divert 12.0 acre-feet of water from nineteen 10-inch wells 100 to 600 feet deep at points located (1) North 200 feet, (2) North 400 feet and West 300 feet, (3) North 1000 feet and West 600 feet, (4) North 1500 feet and West 500 feet, (5) North 2000 feet and West 2050 feet, (6) North 100 feet and West 2700 feet, (7) North 100 feet and West 3000 feet, (8) North 2000 feet and West 3200 feet, (9) North 1200 feet and West 2400 feet, (10) North 850 feet and West 3100 feet, (11) North 800 feet and West 3800 feet, (12) North 1200 feet and West 4600 feet, (13) North 1000 feet and West 2100 feet, all from the SE Corner of Section 32, (14) East 1650 feet, (15) North 3000 feet and East 600 feet, (16) North 1550 feet and East 1400 feet, all three from the SW Corner of Section 33, all in T2S, R4E, SLB&M, (17) South 500 feet and East 400 feet, (18) South 1900 feet and East 1500 feet, (19) South 380 feet and East 1710 feet, all three from the NW Corner of Section 4, T3S, R4E, SLB&M, and on a stream from a point located North 1500 feet and West 4000 feet to a point North 600 feet and West 2300 feet, both from the SE Corner of Section 32, T2S, R4E, SLB&M. It is proposed to use the water for the domestic purposes of 48 families in Sections 32 and 33 of T2S, R4E, SLB&M, and the N $\frac{1}{2}$ of Section 4 and the N $\frac{1}{2}$ of Section 5, T3S, R4E, SLB&M.

The application was advertised in The Wasatch Wave on May 7, 1997, and May 14, 1997, and was protested by Central Utah Water Conservancy District, Midway City, Midway Irrigation Company, Provo River Water Users Association, US Bureau of Reclamation, United Park City Mines Company, and the Utah Division of Parks and Recreation. In the written protests it is stated that the right should be limited to the applicants' ability to get water from the historic source, water should be administered properly and not allowed to be utilized by others in the area, the part-time use of 48 homes will at some point become full-time use and expand the right, the appropriate acreage must be retired, metering should be required, the water right upon which this change application is based is not valid, these rights were exchanged for shares of stock in the Midway Irrigation Company, any use from the historic source has been a permissive use only and did not establish a right to the use of the water, the rights are high-water rights only and do not extend beyond July 15 of each year, the proposed use would interfere with prior rights of the protestants, the applicants have forfeited the right by nonuse, and some of the proposed points of diversion would not be available to the applicants because of land ownership.

A hearing was held on July 29, 1997, at Jordanelle State Park. At the hearing the applicants explained the proposed project which requires the change application and an explanation of the underlying water right. The protestants reiterated their protests.

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The application was approved on February 27, 1998. The applicants have requested that the change application be reduced and amended to the full time year-round use of 26 families and the irrigation of 0.099 acre. Because the irrigation use was not included in the original change application and not advertised, it will not be considered in this decision.

The State Engineer has reviewed the application, the underlying diligence claim, the protests, and the historic place of use, point of diversion, and distribution facilities and has noted that the underlying water right is a diligence claim filed July 30, 1969, by the applicants. The diligence claim describes the historic use of water by the applicants or his predecessors. The historic diligence claim is part of Award 48(bn) of the Provo River Decree (55-11204) and is filed to further define the applicants' portion of the award. The historic water right did not supply water during the whole irrigation season for the 9.90 acres of land. Pine Creek is a high water source only and would usually dry up by July one to July 15, including the storage water. Midway Irrigation Company has indicated that shares of stock were traded to the applicants for this water right; however, no evidence has been produced to demonstrate that the underlying water right has been deeded to Midway Irrigation Company.

Based on information contained in the publication entitled "Consumptive Use of Irrigated Crops in Utah" by Dr. Robert W. Hill at Utah State University based on the Heber station, the crops in the Heber Valley would consume 1.11 acre-feet per acre from May one to July 15. The historic consumptive use of 9.90 acres would be 10.89 acre-feet annually (9.90 acres X 1.11 acre-feet per acre). The historic diversion of water during the same time period would be approximately 1.5 acre-feet per acre, which would yield 14.85 acre-feet (9.90 acres X 1.50 acre-feet per acre). The proposed domestic use of 26 families would require a diversion of 12 acre-feet (26 families X 0.45 acre-feet per family). Assuming that the proposed cabins are utilizing septic systems and not a total containment system, the cabins would consume approximately 20% of the water diverted and the balance or 80% would be returned to the hydrologic system. The proposed use would consume 2.40 acre-feet of water. Historic irrigated acreage must be taken out of production to allow for the new uses. It appears that the proposed use would not expand the water right. Should this usage system be changed to a system that would deplete more water than the historic depletion, additional water rights would have to be acquired, or the usage would have to be reduced to stay within those limits.

Obtaining any necessary rights-of-way or easements that may be required to gain access to any of the wellsites or surface diversion is solely the responsibility of the applicants. Approval of a water application does not authorize access or trespass through property. Also the applicants must meet all health department and public water supply permits and requirements.

It appears that this change application can be approved as reduced and amended. In evaluating the various elements 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.

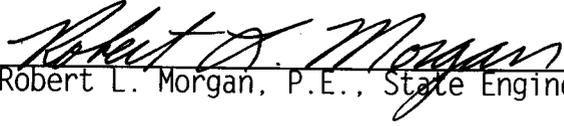
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It is, therefore, **ORDERED** and Change Application Number 55-4292 (a21033) is hereby **APPROVED** subject to prior rights and the following conditions:

1. The applicants shall install permanent totalizing meters on all wells and measuring devices on surface diversions and keep at least monthly records of all water diverted. The devices and records shall be available to the State Engineer or duly-appointed representative as may be required to regulate this change application. The applicants shall further submit to the Provo River Commissioner a record of all water diverted annually.
2. This application is limited to the diversion of 12.0 acre-feet of water annually for the full-time domestic use of 26 families utilizing septic systems.
3. Upon submittal of proof, the applicant shall provide evidence that the irrigated acreage has been taken out of production and that the new uses do not exceed the historic diversion and depletion allowances along with all other information required at the time of proof.

This Decision is subject to the provisions of Rule R655-6-17 (1992 Utah Administrative Code--formerly R625) 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 January, 1999.


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

RLM:JER:et

Mailed a copy of the foregoing Memorandum Decision this 19th day of January, 1999, to:

Pinecreek Water Company L.L.C.
c/o Ron Auth
P.O. Box 3796
Park City, UT 84060

Lee Sim
Assistant State Engineer
Distribution

Ron Auth
P O Box 1322
Park City, UT 84060

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Central Utah Water Conservancy District
355 West 1300 South
Orem, UT 84058

Midway City
c/o John S. Flitton
1850 Beneficial Life Tower
Salt Lake City, UT 84111

Midway Irrigation Company
c/o Steve Farrell
325 West 500 South
Midway, UT 84049

Provo River Water Users Association
1788 North State Street
Orem, UT 84057

Provo River Water Users Association
c/o Shawn Draney
10 Exchange Place 11th Floor
P. O. Box 45000
Salt Lake City, UT 84145-5000

US Department of the Interior
Bureau of Reclamation
302 East 1860 South
Provo, UT 84606-7317

United Park City Mines Company
c/o Rosemary J. Beless
215 So. State Street 12th Floor
P. O. Box 510210
Salt Lake City, UT 84151-0210

Utah Division of Parks and Recreation
c/o Dave Morrow, Deputy Director
1594 W. North Temple, Suite 116
Salt Lake City, UT 84114-6001

Stanley H. Roberts, Jr.
1675 South 350 East
Orem, UT 84058

Utah Division of Drinking Water
c/o Michael Georgeson
150 North 1950 West
Salt Lake City, UT

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Dr. Louis E. ATBE & Diane E. Soscia
3022 Dick Wilson Drive
Sarasota, FL 34240

Kevin W. Gold
5010 East Shea Blvd. Suite A 106
Scottsdale, AZ 85254

Douglas L. & Orlene R. Stoddard
4170 South 2200 West
Salt Lake City, UT 84119

James Gaddis Investment Co. LTD
675 East 2100 South
Salt Lake City, UT 84106

Linda Forsburg
P. O. Box 681592
Park City, UT 84068

BY: *Eileen Tooke*
Eileen Tooke, Secretary