

MEMORANDUM DECISION
TEMPORARY CHANGE APPLICATION
NUMBER t90-55-16
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Canyon would put a new demand for water on the Provo River system and diminish the quantity of water which the Provo River Water Users' Association could store in Deer Creek Reservoir.

The State Engineer has reviewed the subject water right and the submitted study by the Provo River Commissioner. He has noted the following:

- a. Water Right Number 55-77 (A4306a, Certificate Number 1310) has a priority date of October 11, 1911, and Certificate Number 1310 was issued on September 13, 1924. Furthermore, Court decisions on file attest to the validity of the right.
- b. The study done by the Provo River Commissioner for the years 1947 to 1975 shows that on the average there were 55.7 days per year when there was an available flow of 5.0 cfs for diversion under Certificate Number 1310. A flow of 5.0 cfs for 55.7 days delivers 551 acre-feet of water.

In view of the above, the State Engineer believes that if there was an average of 550 acre-feet of water available to divert at a rate of 5.0 cfs under Certificate Number 1310 over a 29-year period in the past, the same average quantity should be available in the future regardless of any change in pattern of diversion by other water users.

Thus, it is the opinion of the State Engineer that there are many times when there are excess flows in the Provo River which can be diverted under Certificate Number 1310. Whether or not there will be any excess flows available during the 1990 irrigation season, the State Engineer does not know at this time, but if excess flows are available, the applicant should be allowed to divert water under the temporary change application.

It is, therefore, ORDERED and Temporary Change Application Number t90-55-16 is hereby APPROVED subject to all prior rights and the following conditions:

1. Water shall be diverted under the temporary change application only when it has been determined by the State Engineer and the Provo River Commissioner that there are excess flows in the Provo River which can be diverted under Certificate Number 1310.
2. Should the Olmsted Power Plant resume operation and there are excess flows in the Provo River available for diversion under Certificate Number 1310, the applicant shall arrange with the power producer to pay any required compensation for loss of power generation.
3. The total quantity of water diverted under the change application shall be reported by the Provo River Commissioner in his annual report to the State Engineer.

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4. Any addition costs incurred by the Provo River Commissioner in the administration of the temporary change application shall be borne by the applicant. The amount of such costs shall be determined by the River Commissioner and/or the State Engineer.

This Decision is subject to the provisions of Rule R625-6-17 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 take 20 days after the Request is filed.

Dated this 31st day of May, 1990.


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

RIM:EDF:ap

Mailed a copy of the foregoing Memorandum Decision this 31st day of May, 1990 to:

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By:


Robin Campbell, Secretary