

BEFORE THE STATE ENGINEER OF THE STATE OF UTAH

IN THE MATTER OF CHANGE APPLICATION)
)
NUMBER 55-8061 (a14311))

MEMORANDUM DECISION

Change Application Number 55-8061 (a14311) was filed by Dee Meham on April 23, 1987, to change the place of use of 6.0 acre-feet of water as evidenced by ownership of one and one-half shares of stock in the Main Creek Irrigation Company. Heretofore, the water was used to irrigate one acre of land in the NE1/4SW1/4 and NW1/4SE1/4 of Section 28, T5S, R5E, SLB&M. Hereafter, the water will be used to irrigate one acre of land in the NE1/4SW1/4 of Section 18, T5S, R5E, SLB&M. There are a total of 13 points of diversion for the Main Creek Irrigation Company on Main Creek, Maple Creek, and Warm Spring.

The change application was advertised in the Wasatch Wave from May 28, 1987, to June 11, 1987. A protest was received from the Main Creek Irrigation Company contending that the applicant's proposed place of use is outside the boundaries of the Irrigation Company. Furthermore, the applicant has not participated in the new sprinkler system. An answer to the protest was received from the applicant stating that the protest was discrimination against a stockholder.

A hearing was held on April 7, 1988, at Heber City, Utah.

The applicant stated that he had been denied use of the water because the Irrigation Company had not provided an outlet on the sprinkler system. He must be allowed to put to use the water represented by his one and one-half shares of stock.

A representative for the protestant said that the one and one-half shares of stock had been "floating around" for over 40 years and water could not have been used on the land under the old flood irrigation system. The new sprinkler system was installed by individual groups of water users, not the Irrigation Company. Objection to the use of water outside the boundaries of the Irrigation Company's was reiterated. Also, the hereafter place of use already has irrigation water. The applicant responded that he did have a supply available from Hobbie Creek, but more water is needed during the period of peak irrigation demand.

The State Engineer believes that the past use of water under the subject one and one-half shares of stock is unclear; however, the applicant has submitted a copy of the stock certificate which evidences his right to receive a certain quantity of irrigation water. Furthermore, it is the opinion of the State Engineer that ownership of shares in an irrigation company entitles the stockholder to divert and use water; consequently, a stockholder meets the criteria of Section 73-3-3 Utah Code which allows "any person entitled to the use of water" to file a change application.

It is the opinion of the State Engineer that none of the issues raised in the protest preclude the change application from being approved. These are matters of administration and distribution within the Main Creek Irrigation Company and must be resolved between the applicant and the Company and cannot be considered in this decision.

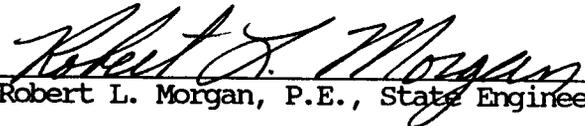
MEMORANDUM DECISION
CHANGE APPLICATION NUMBER
55-8061 (a14311)
PAGE - 2 -

It is, therefore, ORDERED and Change Application Number 55-8061 (a14311) is hereby APPROVED subject to all prior rights and the following conditions:

1. Approval of this change application shall not give the applicant any right to interfere with other vested rights on Main Creek, Maple Creek, and Warm Spring.
2. No more water shall be diverted annually under the change application than the applicant is entitled to through ownership of one and one-half shares of stock in the Main Creek Irrigation Company. Furthermore, the applicant shall maintain ownership of the one and one-half shares of stock, pay his assessment to the Main Creek Irrigation Company, and meet any other obligations he may incur as a shareholder in the Company.
3. The hereafter extent of uses cannot exceed the irrigation of one acre.
4. At the time of submittal of proof of permanent change, the applicant shall include a description of the land taken out of irrigation that was formerly irrigated by the applicant's one and one-half shares of water in the Main Creek Irrigation Company.

This decision is subject to the provisions of Section 73-3-14, Utah Code Annotated, 1953, which provides for plenary review by the filing of a civil action in the appropriate District Court within 60 days from the date hereof.

Dated this 11th day of May, 1990.


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

RLM:EDF:ap

Mailed a copy of the foregoing Memorandum Decision this 11th day of May, 1990, to:

Dee Mecham
315 South 100 East
Heber City, UT 84032

MEMORANDUM DECISION
CHANGE APPLICATION NUMBER
55-8061 (a14311)
PAGE - 3 -

Main Creek Irrigation Company
c/o Rulon Phillips
Box 86
Wallsburg, UT 84082

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

By:


Robin Campbell, Secretary