

BEFORE THE STATE ENGINEER OF THE STATE OF UTAH

**IN THE MATTER OF CHANGE APPLI-)
)
CATION NUMBER 55-11296 (a21874))**

MEMORANDUM DECISION

Change Application Number 55-11296 and 55-11378 (a21874) in the names of Sage Brush Irrigation Company and Central Utah Water Conservancy District was filed on February 2, 1998, to change the point of diversion of 14.167 cfs of water evidenced by Paragraph 59, Page 51 and Paragraph 64(bp), Page 53C Provo River Decree, Civil Number 2888. The water has been diverted from the Provo River for irrigation of 500.00 acres and for domestic and stockwatering needs.

Now it is proposed to divert the 14.167 cfs as heretofore and/or at Jordanelle Reservoir Dam located North 698 feet and East 439 feet from the S1/4 Corner of Section 31, T2S, R5E, SLB&M. Subsequently, the water will be rediverted from the Provo River into the Wasatch Canal at the following location: North 2300 feet and West 1020 feet from the S1/4 Corner of Section 7, T3S, R5E, SLB&M and used to continue irrigation of 500.00 acres and to provide for fish culture, stream enhancement and a safeguard against downstream impairment.

Notice of the change application was published in The Wasatch Wave on February 11 and 18, 1998. Letters were received from Midway Irrigation Company, North Field Irrigation Company, Provo Reservoir Water Users Company, Metropolitan Water District of Orem and Provo City. Concerns are expressed that if the change application is implemented, return flow patterns may not be adequately replicated through simulation, and flows of the Provo River will be sufficiently altered to cause the detriment of their water rights. Provo River Water Users Association filed a protest stating that operation pursuant to the change application should be under the direction and control of the Provo River Commissioner and that approval of the change application cannot grant any instream water right. A protest submitted by Provo River Canals Commission asserts that approval of the change application would be an infraction of the Provo River Decree, would violate the State Engineer's "Water Distribution Plan for the Utah Lake Drainage Basin", and would interfere with the protestant's decreed rights.

A hearing was conducted May 6, 1998, in the Visitor's Center at Jordanelle State Park. The applicant's consultant presented a management plan to demonstrate how other rights would not be impaired. Spokespersons for the protestants reiterated their concerns.

The State Engineer has reviewed the change application, protests, proposed project operation and other pertinent issues. He has noted that the change application essentially involves a change in point of diversion. Irrigation of the same acreage will persist; hence, there should be no additional depletion of water from the Provo River drainage. Since there is no change in place of use, the State Engineer does not believe the Provo River Decree, Civil Number 2888, would be violated (specifically, Paragraph 116, Page 72). More efficient irrigation practices should make flows available that can be managed to simulate historic conditions. Proper use of Jordanelle

**MEMORANDUM DECISION
CHANGE APPLICATION NUMBER
55-11296 (a21874)
PAGE 2**

Reservoir can generally ameliorate circumstances on the Provo River system. Details of operation pursuant to the change application cannot be precisely defined at this time; an interim trial operation is needed. All decisions regarding operation must be made by the State Engineer/Provo River Commissioner. Regarding instream flow, Section 73-3-3 of the Utah Code Annotated, 1953, prohibits these applicants from acquiring such a water right. Finally, the State Engineer has utilized an irrigation diversion allowance of 3.00 acre-feet per acre for the upper Provo River drainage which quantifies the original right to be 1500.00 acre-feet ($3.00 \times 500 = 1500.00$); however, the water rights for the Sagebrush Irrigation Company have late priorities (twelfth and seventeenth Class, as defined in the Provo River Decree) and water can be diverted by the company only when rights with earlier priorities have been fully satisfied.

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.

If it, therefore, ORDERED and Change Application Number 55-11296 (a21874) is hereby APPROVED subject to prior rights and the following conditions:

1. No instream flow right is granted.
2. Total annual diversion is limited to 1500.00 acre-feet and irrigated acreage shall not exceed 500.00; nevertheless, because of the late priorities of the rights, the quantity of water divertable in a particular season may be less, and the allowed amount shall be determined by the State Engineer and/or the Provo River Commissioner.
3. Diversion, use and other matters of water management pursuant to the change application shall be under the direction and control of the State Engineer and/or the Provo River Commissioner.
4. The applicants shall at their own expense install and/or construct any measuring devices, controlling works or other equipment deemed necessary by the State Engineer and/or the Provo River Commissioner for proper administration of this change application.
5. When requested by the State Engineer, the applicants shall provide information to demonstrate that the operation plan is in place and that downstream rights are not being impaired and return flow patterns are being satisfactorily replicated.
6. The applicant shall provide such data regarding the replication of return flows, as

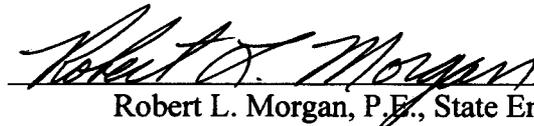
**MEMORANDUM DECISION
CHANGE APPLICATION NUMBER
55-11296 (a21874)
PAGE 3**

requested by the Provo River Commissioner.

7. Any additional costs incurred by the Provo River Commissioner in the administration of the change application shall be borne by the applicants. The amount of such costs shall be determined by the Commissioner and/or the State Engineer.

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 3rd day of September, 1998.


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

RLM/JER:mt

Mailed a copy of the foregoing Memorandum Decision this 3rd day of September, 1998, to:

Sage Brush Irrigation Company
165 West 200 South
Heber City, UT 84032

Central Utah Water Conservancy District
350 West University Park Way
Orem, UT 84058

Metropolitan Water District of Orem
c/o Glade Gillman
955 North 900 West
Orem, UT 84059

Midway Irrigation Company
c/o Steve Farrell

**MEMORANDUM DECISION
CHANGE APPLICATION NUMBER
55-11296 (a21874)
PAGE 4**

325 West 500 South
Midway, UT 84049

North Field Irrigation Company
c/o Mark Wilson
2595 North River Road
Midway, UT 84049

Provo City Water Resources
c/o Merrill L. Bingham, P.E.
1377 South 350 East
Provo, UT 84606

Provo Reservoir Water Users Company
c/o Harley M. Gillman
1156 South State
Orem, UT 84057

Provo River Canals Commission
c/o Robert C. Fillerup
1107 South Orem Blvd.
Orem, UT 84058

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

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

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

Lee Sim
Assistant State Engineer for Distribution

**MEMORANDUM DECISION
CHANGE APPLICATION NUMBER
55-11296 (a21874)
PAGE 5**

Ben Anderson
Central Utah Project Specialist

Stan Roberts
Provo River Commissioner
1675 South 350 East
Orem, UT 84058

BY: _____

Marge Tempest
Marge Tempest, Specialist