

BEFORE THE STATE ENGINEER OF THE STATE OF UTAH

IN THE MATTER OF CHANGE APPLICATION )  
 )  
NUMBER 63-3204 (a17970) )

MEMORANDUM DECISION

Change Application Number 63-3204 (a17970), in the name of USA Forest Service, was filed on April 8, 1994, to change the point of diversion, place of use, and nature of use of 100.0 acre-feet of water. Heretofore, the water has been diverted from a tributary to Gooseberry Creek at Farnsworth Reservoir at the NW Corner of Section 35, T23S, R2E, SLB&M. The water was rediverted at a point South 100 feet and West 720 feet from the NE Corner of Section 36, T22S, R1E, SLB&M, and used for the irrigation of 116.80 acres in Section 8; Section 17; and Section 18, T22S, R2E, SLB&M.

Hereafter, it is proposed to divert 100.0 acre-feet of water from Gooseberry Creek and Hamilton Spring, located: (1) North 1149 feet and East 964 feet from the SW Corner of Section 23; (2) West 1225 feet from the NE Corner of Section 26; (3) East 2225 feet from the SW Corner of Section 27; (4) South 1050 feet and East 2350 feet from the NW Corner of Section 34; (5) the NW Corner of Section 35; all in T23S, R2E, SLB&M, to be used for fish culture purposes in the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 23; NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 26; NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 34; and W $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 35; all in T23S, R2E, SLB&M. The water is to be stored in Farnsworth, Abes, Hamilton, and Twin Ponds Reservoirs.

The application was advertised in The Richfield Reaper from April 27, 1994, to May 11, 1994, and was protested by Markay Johnson, Marian R. Von Taenel, E.A. Thorsen, Upper Sevier River Water Conservancy District, Circleville Irrigation Company, Fred Mortensen, Vernal J. Mortensen, Venna Johnson, Richard Cowley, Marion Paxton, Piute Reservoir and Irrigation Company, Phil H. Barney, Gooseberry Creek Irrigation Company, Verle P. Peterson, Burton Allred, Marlene Crame, DMADC, Orderville Irrigation Company, M'Recia Elfervig, and Gooseberry Irrigation Company. Late protests were filed by Mr. and Mrs. Robert S. Jensen, Peggy Mason, and Met Johnson. A hearing was held on July 28, 1994, in Richfield, Utah.

Ted Fitzgerald, representing the applicant, reviewed the intent of this change application and agreements made in 1987 between the Forest Service and Mr. Jorgensen regarding water in Hamilton Reservoir, Twin Ponds, Abes Reservoir and Cold Spring Reservoir. He stated that the waters from these reservoirs were historically used to irrigate private land located in the northeast portion of the Gooseberry drainage and that return flow from these lands did not benefit other Gooseberry Creek water users.

Dale Hepworth, with Utah Division of Wildlife Resources, stated that they support this project inasmuch as it can be accomplished under the legal process.

Richard Waddingham, representing the DMADC Companies and Piute Reservoir and Irrigation Company, stated that if the 100 acre-feet of this storage right is totally consumed, return flow to other lower users would be diminished and their vested and decreed rights would be adversely affected and impaired.

John Kirkham, representing Gooseberry Irrigation Company, stated that period of storage is of critical concern and that direct flow rights must be satisfied based on priority before any storage is made. He indicated that any change in reservoir capacity would require a new appropriation which the State Engineer would have to deny. Mr. Kirkham also expressed concern that these water rights have been lost from non-use.

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M'recia Elfervig stated that she is a water user in the Gooseberry Irrigation Company and that the Forest Service has and would hold water that should be the irrigation company's.

It is the opinion of the State Engineer that ownership of decreed Water Right Number 63-3204 entitles the applicants to divert and use water; consequently, the applicants 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. The applicants should be able to use the 100 acre-feet of water that was actually available for irrigation heretofore, and 100 acre-feet of water is the extent of water considered by the State Engineer under this application.

It appears that the applicants are proposing to divert the amount of water that would have been available at Farnsworth Reservoir described under ownership of Water Right Number 63-3204. This water was historically used for irrigation purposes. Under past flood irrigation practice, an estimated 50 percent of the water diverted (50 acre-feet) would have been consumptively used. In evaluating the proposed uses of the applicant, water that will be consumptively used will be water lost due to evaporation. Once the reservoirs are at capacity, it is estimated that 69.64 acre-feet will evaporate annually from their surfaces. Considering the increased surface areas and storage period and then subtracting the quantity of water that evaporated from the original reservoirs, it is estimated that the increased consumption from these reservoirs will be 50.71 acre-feet. Of this amount, 9.6 acre-feet will be accounted for under Right Number 63-35, leaving 41.11 acre-feet to be addressed under this right. To compute the evaporation loss, the following information was used:

Reservoir	Capacity (ac-ft) Present	Surface (acres) Present	Surface (acres) Past	Evap. Rate (Jan 1-Dec 31) Present	Evap. Rate (Irr. Storage)* Past
Farnsworth	232.5	25.27	19.87	22" (1.833')	6.62" (0.552')
Twin Ponds	30.1	4.20	2.82	22" (1.833')	11.91" (0.993')
Abes	29.2	5.20	5.20	22" (1.833')	11.91" (0.993')
Hamilton	16.9	3.32	n/a	22" (1.833')	n/a
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Total	308.7	37.99	27.89		

Reservoir	Present Evaporation (surface x rate = ac-ft)	Past Evaporation (surface x rate = ac-ft)
Farnsworth	25.27 x 1.833 = 46.32	19.87 x 0.552 = 10.97
Twin Ponds	4.20 x 1.833 = 7.70	2.82 x 0.993 = 2.80
Abes	5.20 x 1.833 = 9.53	5.20 x 0.993 = 5.16
Hamilton	3.32 x 1.833 = 6.09	n/a
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Total	69.64	18.93

\* Storage in Farnsworth was historically held from June 1st to August 1st. Storage in Twin Ponds and Abes was historically held from April 1st to August 1st. The reservoirs were empty by August 31st. The amount in the reservoirs during August was averaged. This would amount to 76.5 days of storage in Farnsworth and 137.5 days of storage in Twin Ponds and Abes. During the period April 1 to October 31 (214 days), the evaporation loss rate is 18.53 inches. This has been pro-rated to cover the lower storage periods for these reservoirs.

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Because the applicants will not increase the consumptive use of water over historic consumptive uses if certain conditions are imposed, it is the opinion of the State Engineer that this change application can be approved without impairing existing rights.

It is, therefore, **ORDERED** and Change Application Number 63-3204 (a17970) is hereby **APPROVED** subject to all prior rights and the following conditions:

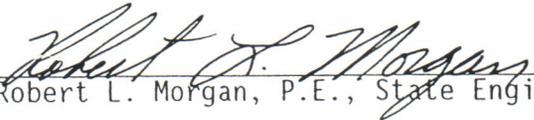
1. The applicant's period of accumulating storage water shall be limited to October 1 through July 1 and the quantity of water stored through this period is limited to 100 acre-feet. Until the reservoirs are full, 50 percent of the new water stored from October 1 through July 1 will be released to downstream users as directed by the State Engineer to compensate for historic return flow from this right. When the reservoirs reach flow-through status, the water will pass through the reservoir and go downstream to satisfy the rights of downstream users. The only losses to the system then would be from evaporation from the reservoirs' surfaces. These losses are covered by the applicants' right to deplete water from the system. During the nonstorage period, the accumulation of storage is not allowed, and all water entering the reservoirs must be released to downstream users. Adequate measuring devices must be installed to the satisfaction of the State Engineer to verify that water is not being stored.
2. The applicants shall install permanent staff gauges on Farnsworth Dam, Hamilton Dam, Abes Dam and Twin Pond Dam and shall provide the State Engineer an accurate area capacity curve for each reservoir. The applicants shall report to the State Engineer the elevation of the water surface in the reservoir as of April 1 and October 15 of each year and at other times as directed by the State Engineer as required for the distribution and regulation of water under this change application. This information shall be supplied to the State Engineer within 10 days of the indicated dates.
3. The applicants shall comply with the Dam Safety requirements of the State of Utah and submit design and supporting data. Approval must be obtained prior to the construction or repair of any of the structures.
4. Hamilton Dam was reconstructed in 1987 without the approval of the State Engineer and apparently without water rights. It is assumed that the storage that accumulated in the reservoir was at the expense of downstream users. Therefore 16.9 acre-feet shall be released from any one or combination of all reservoirs during the 1995 irrigation season to compensate downstream users. The releases shall be made under the direction of the State engineer or his representatives.

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

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Reconsideration is considered denied when no action is taken 20 days after the Request is filed.

Dated this 3rd day of March, 1995.

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

RLM:KF:mw

Mailed a copy of the foregoing Memorandum Decision this 3rd day of March, 1995,  
to:

USA Forest Service  
115 East 900 North  
Richfield, UT 84701

Division of Water Rights  
Dam Safety Section

Division of Water Rights  
Distribution Section

Division of Water Rights  
Richfield Office

Markay Johnson  
11562 South Hickory Valley Drive  
Sandy, UT 84092

Marian R. Von Taenel  
P. O. Box 120001  
Antimony, UT 84712

E.A. Thorsen  
360 South 100 West  
Salina, UT 84654

Upper Sevier River Water Conservancy District  
c/o Chris Fullmer  
P O Box 77  
Panguitch, UT 84759

Circleville Irrigation Company  
c/o Chris Fullmer  
Circleville, UT 84723

Fred Mortensen  
410 South 100 West  
Salina, UT 84654

Venna Johnson  
St. George, UT 84770

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Vernal J. Mortensen  
8410 S Etienne Way  
Sandy, UT 84093

Richard Cowley  
Willow Creek Irrigation Company  
Axtell, UT 84621

Marion Paxton  
2052 East 4500 South  
Salt Lake City, UT 84117

Piute Reservoir and Irrigation Company  
c/o Clark Wall  
P.O. Box 40  
Richfield, UT 84701

Phil H. Barney  
690 West 400 North  
Salina, UT 84654

Gooseberry Creek Irrigation Company  
c/o John S. Kirkham, Attorney  
201 South Main Street, Suite 1100  
Salt Lake City, UT 84111-4904

Verle P. Peterson  
Peterson Smart Shop  
Salina, UT 84654

Burton Allred  
181 South 2nd East  
Salina, UT 84654

Marlene Crame  
290 West 200 North  
Salina, UT 84654

DMADC  
c/o Richard Waddingham, Attorney  
P. O. Box 430  
362 West Main  
Delta, UT 84624

Orderville Irrigation Company  
c/o Earl Sorensen, President  
Box 141  
Orderville, UT 84758

M'Recia Elfervig  
2561 Barcelona Drive  
Sandy, UT 84093

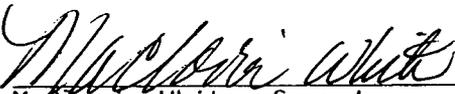
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Gooseberry Irrigation Company  
c/o William E. Crane, President  
P. O. Box 250  
Salina, UT 84654-0250

Mr. and Mrs. Robert S. Jensen  
296 South 200 East  
Salina, UT 84654

Peggy Mason  
705 West 400 North  
Salina, UT 84654

Met Johnson  
P. O. Box 560  
New Harmony, UT 84757

BY:   
MacTovia White, Secretary