

BEFORE THE STATE ENGINEER OF THE STATE OF UTAH

IN THE MATTER OF CHANGE APPLICATION)
)
NUMBER 51-2259 (a21462))

MEMORANDUM DECISION

Change Application Number 51-2259 (a21462), in the name of Strawberry Water Users Association, was filed on August 21, 1997, to change the point of diversion and nature of use of 7.0 cfs of water. Heretofore, the water has been diverted from water collected in the Strawberry Tunnel, located North 400 feet and West 3500 feet from the SE Corner of Section 34, T7S, R6E, SLB&M. The water is rediverted at a point located South 320 feet and West 790 feet from the NE Corner of Section 11, T9S, R3E, SLB&M, and used for the irrigation of 53,522.24 acres from March 1 to November 30, the watering of 4,500 cattle or equivalent from December 1 to February 28, the domestic purposes of 5,000 persons from December 1 to February 28, and hydro power generation at the Strawberry Upper and Lower power plants from December 1 to February 28 within the service area of the Strawberry Water Users Association.

Hereafter, it is proposed to divert 7.0 cfs of water from the same points as heretofore, but adding the following points of rediversion: (1) South 800 feet and West 1550 feet from the NE Corner of Section 22, T8S, R2E, SLB&M.; (2) South 2600 feet and East 800 feet; (3) South 2200 feet and West 2400 feet both from the NW Corner of Section 34; (4) North 250 feet and East 130 feet from the SW Corner of Section 35, T8S, R3E, SLB&M.; (5) North 650 feet and West 1650 feet from the SE Corner of Section 27; (6) South 1800 feet and East 1950 feet from the NE Corner of Section 31, T8S, R5E, SLB&M.; and (7) South 183 feet and West 381 feet from the SE Corner of Section 2, T9S, R3E, SLB&M. The water is to be used as a supplemental supply for the irrigation of 53,522.24 acres from March 1 to November 30, the watering of 26,200 cattle or equivalent, the domestic purposes of 30,000 persons, and for hydro-power generation at Strawberry Upper and Lower power plants.

The application was advertised in The Daily Herald and The Spanish Fork Press on September 25, and October 2, 1997, and was protested by Central Utah Water Conservancy District, Provo River Water Users Association, US Department of the Interior, and the Utah Rivers Council. The protests expressed concern that the Strawberry Tunnel was drilled under a federal project with federal funds and as such any water and associated rights gained by this activity would be held by the federal government. Some of the points of rediversion appear to be in the Strawberry drainage.

The State Engineer has reviewed the change application, the underlying water rights, and the protests. The Underground Water Claim upon which this change application is filed, Number 51-2259 (U11730), was filed March 23, 1936, by

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Strawberry Water Users Association. It appears that the applicant has the right to the use of water, and this change application can be approved with conditions explained below. Concerning the proposed points of rediversion in the Strawberry drainage, information has been submitted indicating that most of the water intercepted by the Strawberry Tunnel comes from the Strawberry drainage. As such, if some of the points are in the Strawberry drainage, no impairment should occur. This right historically has been utilized as a supplemental supply for the purposes described and has fully utilized the 7.0 cfs of water. This change application contemplates that there will be additional stockwatering and domestic use of water. Measurements of the water will be required to ensure that only up to 7.0 cfs is diverted for those purposes. This water has historically been used since the project began operation in 1913. The water was encountered in 1906 when drilling of the tunnel began.

In evaluating the various elements of the underlying rights, it is not the purpose of the State Engineer to adjudicate the extent of these rights, but rather to provide sufficient definition of the rights to assure that other vested rights are not impaired by the change and/or that no enlargement of the rights occurs. If, in a subsequent action, the court adjudicates that the rights are entitled to either more or less water, the State Engineer will adjust the figures accordingly.

It is, therefore, **ORDERED** and Change Application Number 51-2259 (a21462) is hereby **APPROVED**, subject to prior rights and the following conditions:

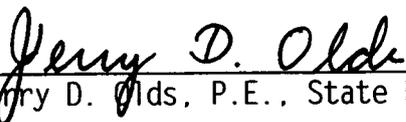
1. This change application is limited to the diversion of 7.0 cfs for the proposed uses; at no time may more than 7.0 cfs be diverted under this approval.
2. The applicant shall install and maintain permanent measuring devices to measure all water diverted for these purposes. Records shall be kept of all water diverted. The measuring devices and the records shall be made available to the State Engineer at all reasonable times as may be required to regulate this change application.

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

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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 9th day of October, 2002.



Jerry D. Olds, P.E., State Engineer

JDO:JER:kkh

Mailed a copy of the foregoing Memorandum Decision this 9th day of October, 2002,
to:

Strawberry Water Users Association
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Payson, UT 84651

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c/o Steven E. Clyde
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201 South Main Street
Salt Lake City, UT 84111-2208

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

US Department of the Interior
Bureau of Reclamation
125 South State Street, Room 6107
Salt Lake City, UT 84138-1102

US Department of the Interior
Office of the Secretary
302 East 1860 South
Provo, UT 84606-7317

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Utah Rivers Council
c/o Zachary Frankel
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Salt Lake City, UT 84105

John Mendenhall
River Commissioner
2138 Power House Rd.
Spanish Fork, UT 84660

Lee Sim, Assistant State Engineer

Charles Williamson

Water User Program

BY: Kelly K. Horne
Kelly K. Horne, Secretary