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State of Utah

DEPARTMENT OF NATURAL RESOURCES

Division of Water Rights

MICHAEL R. STYLER
Executive Director

JERRY D. OLDS
State Engineer/Division Director

ORDER OF THE STATE ENGINEER

For Permanent Change Application Number 67-1570 (a31760)

Permanent Change Application Number 67-1570 (a31760) in the names of Shane and Bonnie Stewart was filed on July 25, 2006, to change the point of diversion and place of use of 0.222 cfs or 107.2 acre-feet of water as evidenced by Water Right Number 67-1570. Heretofore, the water has been diverted from a well, located South 1253 feet and East 1674 feet from the NW Corner of Section 22, T22S, R5W, SLB&M (existing 10-inch well, 611 feet deep). The water has been used for the irrigation of 26.8 acres from April 1 to October 31. The water was used in all or portion(s) of Section 20, T22S, R5W, SLB&M; Section 21, T22S, R5W, SLB&M; Section 10, T22S, R5W, SLB&M; Section 15, T22S, R5W, SLB&M; Section 16, T22S, R5W, SLB&M; and Section 17, T22S, R5W, SLB&M.

Hereafter, it is proposed to divert 0.222 cfs or 107.2 acre-feet of water from an existing well, located South 606 feet and West 473 feet from the NW Corner of Section 28, T22S, R5W, SLB&M (existing 16-inch well, 254 feet deep). The nature of use of the water will remain the same as heretofore. The place of use of the water is being changed to the E1/2SE1/4 of Section 21, T22S, R5W, SLB&M.

Notice of the application was published in the Millard County Chronicle on August 2 and August 9, 2006. No protests were received.

Review has been made of the proposed changes and the underlying right, 67-605. When this water right was segregated from 67-605, the acreage was calculated incorrectly. 67-605 was segregated from 67-46 for a sole supply of 159.17 acres. When 67-605 was certificated, the certificate did not show any other water right being supplemental to it. Therefore, 67-605 was certificated for 241.76 acres instead of its original 159.17 acres. 67-605 should have been certificated for 241.76 acres (sole supply of 159.17 acres) supplemental with Meadow Irrigation Company. To resolve this issue, the State Engineer believes it should be corrected.

Based on the flow restriction on 67-605's certificate, this water right would supply 70.528 acre-feet, or enough water for 17.632 acres at an irrigation duty of 4.00 acre-feet per acre. Therefore, this water right has a sole supply for 17.632 acres at a flow rate of 0.1662 cfs or 70.528 acre-feet diverted through the irrigation season. In quantifying this water right, the flow rate limits this water right to the acre-foot amount that can be pumped during the irrigation season

To further correct the above-mentioned acreage error, a sole supply total of 17.632 acres should be removed from production at the heretofore place of use.

In evaluating the various elements of the underlying right, it is not the intent 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 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.

It is, therefore, **ORDERED** and Permanent Change Application Number 67-1570 (a31760) is hereby **APPROVED** subject to prior rights and with the following conditions:

1. This application must be totally developed and placed to beneficial use on or before the noted proof due date, which is at least five years from the date of approval.
2. The amount of water diverted by the applicants from the wells shall be limited to 0.1662 cfs and only used from April 1 to October 31 for the irrigation of 17.632 acres. When proof is submitted a map of the 17.632 acres must be shown along with a description of method of distribution for irrigation from all sources.
3. To accommodate the use approved under this application and rectify the above-mentioned acreage error, the diversion of 0.1662 cfs of water from the historic well for the sole supply irrigation of 17.632 acres shall cease, leaving a maximum flow rate of 1.178 cfs in the heretofore well.
4. Before the applicants can activate this change application, they must demonstrate to the State Engineer that the heretofore well has been modified so that the flow rate cannot exceed the flow rate limitation remaining in said well.
5. The applicants shall install, at their expense, a permanent totalizing meter to measure the amount of water diverted and used from the well. The meters shall be available for inspection and regulation by the State Engineer or his representative.

This is your authority to develop the water under the above referenced Permanent Change Application, which under Sections 73-3-10 and 73-3-12, Utah Code Annotated, 1953, as amended, must be diligently prosecuted to completion. The water must be put to beneficial use and proof filed on or before **April 30, 2012**, or a request for extension of time must be acceptably filed; otherwise the application will be lapsed.

Proof of beneficial use is evidence to the State Engineer that the water has been placed to its full intended beneficial use. By law, it must be prepared by a registered engineer or land surveyor, who will certify to the location and uses of the extent of your water right. The applicants are advised that, under Utah law, to maintain a water right's validity, the water must be beneficially used. The filing of a change application or the holding of an approved change application does not excuse placing the water to beneficial use to protect the right from challenge of partial or total forfeiture, whether the period of nonuse may have occurred either before or after the filing of the change application.

Upon the submission of proof as required by Section 73-3-16, Utah Code, for this application, the applicants must identify every source of water used under this application and the amount of water used from that source. The proof must also show the capacity of the sources of supply and demonstrate that each source can provide the water claimed to be diverted under this right as well as all other water rights which may be approved to be diverted from those sources.

Failure on your part to comply with the requirements of the applicable statutes may result in forfeiture of this permanent change application.

It is the applicants' responsibility to maintain a current address with this office and to update ownership of their water right. Please notify this office immediately of any change of address or for assistance in updating ownership.

Your contact with this office, should you need it, is with the Sevier River/Southern Regional Office. The telephone number is 435-896-4429.

This Order is subject to the provisions of Administrative Rule R655-6-17 of the Division of Water Rights and to Sections 63-46b-13 and 73-3-14 of the Utah Code 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 Order. 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 Order, 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 8 day of May, 2007.



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

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Mailed a copy of the foregoing Order this 8 day of May, 2007 to:

Shane and Bonnie Stewart
P. O. Box 65
Meadow, UT 84644

Lee Sim, P.E.
Assistant State Engineer for Distribution
Division of Water Rights

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

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LEE SIM PE
ASSISTANT STATE ENGINEER FOR DISTRIBUTION
DIVISION OF WATER RIGHTS

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