

RECEIVED

MAR 20 1998

WATER RIGHTS
CEDAR CITY

January 27, 1954

Kanab City Corporation
Kanab, Utah

Gentlemen:

RE: APPLICATION NO. 24354

This letter will advise the applicant and protestant under the above numbered application of the action taken by the State Engineer relative to its approval.

Application No. 24354 was filed in the name of Kanab City Corporation in the office of the State Engineer, November 15, 1952. The application proposes to appropriate 10.0 sec.-ft. of water for municipal purposes from a 16-inch well between 100 and 300 ft. deep at a point N. 168 ft. and E. 1887 ft. from W $\frac{1}{2}$ Cor. Sec. 19, T42S, R6W, S1B&M. The water is to be conveyed down Kanab Canyon a distance of two miles to the Kanab City Distribution System where it will be used from January 1 to December 31 for municipal purposes in Kanab City.

The application was published under Notice to Water Users in the Kane County Standard, Kanab, Utah, in five consecutive weekly issues beginning March 6 and ending April 3, 1953.

On April 28, 1953, Walter B. Hester submitted an affidavit of protest wherein protestant alleged that he is the owner of land situated in Secs. 19 and 30, T42S, R6W, S1B&M; that a portion of this land is meadow land, the grasses and shrubs of which are fed by flowing underground waters; that this land is located a few hundred feet southwesterly from the proposed well of applicant. It is further alleged that protestant and his predecessors in interest have used this meadow land throughout the year for grazing cattle and other livestock for more than 50 years lastpast. It is further alleged that the well from which applicant proposes to obtain its water will intercept the flowing underground waters heretofore used on protestant's meadow land before said waters reach protestant's land, and if applicant were permitted to appropriate water from its well that protestant would be deprived of his vested diligence water right for the watering of his meadow land.

On May 29, 1953, applicant submitted an affidavit in answer to protest wherein it is alleged that none of the waters proposed to be developed and appropriated contributes in any manner or fashion to the growth of plant life or any of protestant's property, and that it will not interfere with irrigation or stock watering in any way with protestant's existing rights. It is further alleged that the water sought to be appropriated percolates through rock and gravel structure approximately 50 ft. underground, and that it does not seep or diffuse to the surface in or near protestant's property.

Kanab City Corporation

January 27, 1954

On August 27, 1953, a representative from this office conducted a field examination relative to this application. The findings from the field examination show that the well under this application has been drilled at the very upper edge of the meadow land owned by applicant. The well was drilled to a depth of 260 feet, however, the water is being diverted from depths between 57 and 80 feet below the surface of the ground. The well is equipped with a pump and has developed a flow of approximately 300 gallons per minute. During the time when the well is not being pumped, the water level is two feet below the ground surface.

It appears that prolonged pumping of the well may interfere with the sub-irrigating of the meadow, however, it does not appear that such interference will be unreasonable.

In approving and rejecting applications to appropriate water, the State Engineer is directed by Section 73-3-8, Utah Code Annotated, 1953. In construing the above statute in the case of Little Cottonwood Water Company vs. Kimball 76 Utah 243, the Supreme Court made the following observations:

"Under the language of the statute it is not a prerequisite to the approval of an application that the State Engineer find affirmatively that there is unappropriated water in the proposed source. The proposition is stated in the negative, and it is only when there is no unappropriated water in the source that the application is to be rejected. Since the policy of the law is to prevent waste and to promote the largest beneficial use of water, new appropriations should be favored and not hindered. In a doubtful case, when the conclusion is not clear, it is more consistent with sound policy and with the general scheme of the law to approve the application and afford the new claimant the legal status and the opportunity to proceed in due order of law and have the disputed questions definitely and authoritatively determined rather than to shut off such determination by the denial of his application."

It appears that there is unappropriated water in the source and that the approval of this application will not impair existing rights. In view of the above, Application No. 24354, is approved as of this date, subject to all prior existing rights - particularly the rights of protestant, and the application, so endorsed, is returned to the applicant herewith.

Kanab City Corporation

January 27, 1954

Any person aggrieved by this decision may within 60 days bring a civil action in the District Court for a plenary review thereof, in accordance with Section 73-3-14, Utah Code Annotated, 1953.

Yours truly,

Joseph M. Tracy
STATE ENGINEER.

JM/ig

Enc: Application No. 24354

cc - Mr. Walter B. Hester
e/o LeRoy H. Cox, Attorney
St. George, Utah