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WATER RIGHTS  
SALT LAKE

LINDA SWAPP KOLLANDER  
438 SOUTH 410 EAST  
KANAB, UT 84741

June 6, 1995

Bureau of Land Management  
Verlin L. Smith  
Kanab Resource Area Office  
318 North 100 East  
Kanab, UT 84741

Dear Mr. Smith,

On a recent trip to Sink Valley I noticed you have the water disbursement system to the Heaton Brother and Carrolls in operation.

I was unable to find the meter that measures the amount of water going down the pipeline. I am sure that you are aware you are required by the State Engineer of Water Rights to have a meter on the water line.

The large number of cattle the Heaton Brothers have on their allotment using the water at this time (1000 + cows and calves) makes it very important that the meter be there to make sure the amount of water appropriated for this disbursement system not be exceeded.

As part of the Memorandum Decision Number 85-848 (a16395) the collection system and pipeline must be kept in proper operating order to ensure that there be no wasted water.

The movable tank the Heaton Brothers have at the end of their allotment is being used again this year and is overflowing as in past years. The valve will not shut the water off once the tank is filled.

The very last tank on the Carroll allotment is still not repaired and has been in this condition for several years. The tank appears to have the water shut off but there is enough water going into the tank to keep it full and over flowing.

Your prompt attention to these violations would be appreciated. I have enclosed a copy of the memorandum decision number 85-848 (a16395) for your convenience.

Respectfully,

A handwritten signature in cursive script that reads "Linda Kollander".

Linda Kollander

c.c.State of Utah  
Div. Water Rights

BEFORE THE STATE ENGINEER OF THE STATE OF UTAH

IN THE MATTER OF AMENDATORY CHANGE )

APPLICATION NUMBER 85-848 (a16395) )

MEMORANDUM DECISION

Amendatory Change Application Number 85-848 (a16395) was filed to amend Change Application Number 85-848 (a13833) which was filed by the USA Bureau of Land Management to permanently change the place of use of 0.015 cfs of water from Broad Hollow Spring. The proof of permanent change describes the place of use different from the locations set forth in Change Application Number a13833 and this amendatory change will correct the record.

Change Application Number a16395 was advertised in the Southern Utah News from October 15, 1991, to October 29, 1991, and a protest was filed by Alecia Swapp Dame as personal representative of the Preston Swapp Estate and by Sterling L. Johnson. A hearing was held in the Kane County Courthouse on February 20, 1992.

The Bureau of Land Management filed Change Application Number a13833 to add locations to several grazing allotments for better utilization of water in a normally dry area. When the proof of permanent change was filed, it was discovered that the places of use did not agree and the amendatory change was required to correct the record. The distribution system is set up so that only a certain amount of water is discharged into a pipeline that supplies several stock watering troughs. The balance of the water is allowed to flow back into the natural drainage.

The protestants are concerned that the development of this spring area will diminish the flow of water in the natural channel. They hold water rights on the Broad Hollow or Pole Hollow drainage and question the diligence claim upon which this change application is based. Their water rights include irrigation and stockwatering.

Further review of the files indicated that Water User's Claim 85-848 was filed by the Bureau of Land Management after the proposed determination on Kanab-Johnson Creeks had been issued. This claim, along with others that have been filed, will be included in the errata for this determination.

It is evident that a spring area has been developed and that water is conveyed from the collection box into other areas of use. The protestants also benefit from this development and receive water for livestock watering under their grazing permit with the Bureau of Land Management. The past five to six years of abnormally dry years have caused concern in Utah and it is recognized that many of the sources of water have been diminished by lack of precipitation and surface runoff. However, in an effort to maximize the use of the available water, projects of this nature are generally supported but not to the detriment of prior water rights. The protestants livestock claims are among those with the same priority as the Bureau of Land Management's but their irrigation claim is junior to those sources used for livestock.

The Broad Hollow or Pole Canyon drainage is a relatively short tributary to Sink Valley Wash and the normal flow in this stream is dependant upon snowmelt or storm runoff. The development of this spring area appears to be in the best interest of water users in this area, including the protestants. It is the

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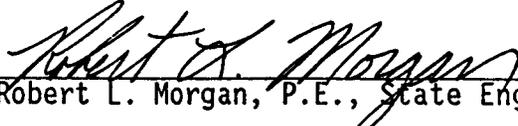
opinion of the State Engineer that the application should be corrected and that the water can be distributed in a manner to protect the protestant's water rights.

It is, therefore, **ORDERED** and Amendatory Change Application Number 85-848 (a16395) is hereby **APPROVED** subject to prior rights and the following conditions:

1. The water collection system and pipeline must be kept in proper operating order to ensure that there will be no wasting of water from this source.
2. The applicant will measure the flow of water through the orifice plate in the division box to ensure that only its portion of the available water is diverted and used in the areas described on this change application. Further, the total use by the Bureau of Land Management is limited to 4.73 acre-feet of water per annum.
3. The division box will also be operated to ensure the protestants that all available water will be by-passed into the natural channel for their use.

This Decision is subject to the provisions of Rule R655-6-17 (1992 Utah Administrative Code--formerly R625) 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 31st day of July, 1992.

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

RLM:GWS:jb

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Mailed a copy of the foregoing Memorandum Decision this 31st day of July, 1992,  
to:

USA Bureau of Land Management  
176 East DL Sargent Drive  
Cedar City, UT 84720

Alecia Swapp Dame  
323 Crestview Drive  
Nampa, ID 83651

Sterling L. Johnson  
238 West 100 North #9  
Kanab, UT 84741

  
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Judy Barbour, Secretary