

STATE OF UTAH
OFFICE OF THE ATTORNEY GENERAL



JAN GRAHAM
ATTORNEY GENERAL

RECEIVED

DEC 06 1999

**WATER RIGHTS
SALT LAKE**

JAMES R. SOPER
Solicitor General

REED RICHARDS
Chief Deputy Attorney General

MEMORANDUM

TO: BOB MORGAN, State Engineer
KENT JONES, Assistant State Engineer
JIM RILEY, Regional Engineer - Utah Lake/Jordan River

FROM: *JM* JOHN H. MABEY, JR., Assistant Attorney General

DATE: December 6, 1999

RE: Sorenson v. State Engineer, Salt Lake County Civil No. 990911331 AA ;
approved change application number 57-7909 (a22720)

Enclosed is a copy of a Complaint served today on the State Engineer. Please review the Complaint. I will be contacting you to discuss this matter as the Answer is prepared.

JHM:js

Enclosure

cc: Mike Quealy

DONALD F. DALTON, Bar No. 4304
PLUMB & DALTON
Attorney for Plaintiffs
331 South Rio Grande Street, Suite E
Salt Lake City, Utah 84101
Telephone: (801) 531-8102

DATE 2.16.88 TIME 1:25
B/R _____
UPON _____
SINDT CONSTABLE _____ S.L. COUNTY, UTAH
DEPUTY _____

IN THE THIRD DISTRICT COURT, STATE OF UTAH
SALT LAKE COUNTY, SALT LAKE DEPARTMENT, DIVISION I

JERRY E. SORENSON, LEE T. :
SORENSON and MARY JANE :
SORENSON, : SUMMONS
Plaintiffs, :
vs. :
STATE OF UTAH DIVISION OF :
WATER RIGHTS and ROBERT L. : Civil No. 990911331 AA
MORGAN AS STATE ENGINEER, :
Defendants. : Judge Anne M. Stirba

THE STATE OF UTAH TO THE DEFENDANT ROBERT L. MORGAN AS STATE WATER ENGINEER:

You are hereby summoned and required to file an Answer in writing to the attached Complaint with the Clerk of the Court, 450 South State Street, Salt Lake City, Utah 84114, and to serve upon or mail to Donald F. Dalton, Plumb & Dalton, 331 South Rio Grande Street, Suite E, Salt Lake City, Utah 84101, Plaintiffs' attorney, a copy of the Answer, within twenty (20) days after service of this Summons upon you.

If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint, which has

been filed with the Clerk of the Court and a copy of which is hereto annexed and herewith served upon you.

DATED this 19th day of November, 1999.



DONALD F. DALTON
PLUMB & DALTON
Attorney for Plaintiffs
331 South Rio Grande Street
Suite E
Salt Lake City, Utah 84101

PLEASE SERVE DEFENDANT ROBERT L. MORGAN AS STATE WATER ENGINEER AT:

ROBERT L. MORGAN, STATE WATER ENGINEER
1594 WEST NORTH TEMPLE, SUITE 220
SALT LAKE CITY, UTAH 84114

3. Plaintiff Mary Jane Sorenson is an individual resident of Salt Lake County, Utah, whose address is 93 Lakeview, Stansbury Park, Utah 84074.

4. Defendant State of Utah Division of Water Rights (the "Division") is a governmental division of the State of Utah responsible for determining and administratively adjudicating water rights within the State of Utah. The address of the Division is 1594 West North Temple, Suite 220, P.O. Box 146300, Salt Lake City, Utah 84114-6300.

5. Defendant Robert L. Morgan as State Engineer is a public official and the State Engineer for Defendant State of Utah Division of Water Rights. The address of the State Engineer is 1594 West North Temple, Suite 220, P.O. Box 146300, Salt Lake City, Utah 84114-6300.

STATEMENT OF FACTS

6. Plaintiffs (hereinafter sometimes collectively referred to as the "Sorensens") are the owners of an approved water right in Salt Lake County, Utah, identified as Claim No. 57-7909, Certificate No. 10277 (the "Water Right"). The Water Right consists of a total quantity of water of 0.64 cfs or 463.2698 acre feet.

7. On or about November 23, 1998, the Sorensens filed with the Division an Application for Permanent Change of Water, Application No. a22720 (the "Change Application"). The purpose of the Change Application is to change the nature of the use from

industrial to irrigation and domestic use. A copy of the Change Application is attached hereto as Exhibit "A".

8. On or about September 1, 1999, Defendants issued a Memorandum Decision approving a portion of the Change Application permitting diversion of no more than 61.5 acre feet of water for the use of 34 families and irrigation of 9.24 acres of land. The grounds or bases of the Memorandum Decision was based on historic consumptive use and purported impairment of other vested rights.

9. On or about September 21, 1999, the Sorensens filed with the Defendants a Request for Reconsideration. No response to the Request for Reconsideration has been received from Defendants, and the Request for Reconsideration is therefore deemed denied under the provisions of Utah Code Ann., Section 63-46b-13(3)(b).

FIRST CLAIM FOR RELIEF

(Judicial Review)

10. For purposes of this First Claim for Relief, the Sorensens incorporate the averments of Paragraphs 1 through 9 above.

11. Pursuant to the provisions of Utah Code Ann., Section 63-46b-14, the Sorensens are entitled to judicial review of the Memorandum Decision and Request for Reconsideration regarding the Change Application.

12. The actions of Defendant in approving the Change Application for only 61.5 acre feet is arbitrary, capricious, unreasonable, illegal or otherwise contrary to law in that:

(a) The standard for determining whether to grant or deny a use or change application in the State of Utah is

beneficial use, and historical use is not a valid basis for limiting the Change Application;

(b) The proposed use of the water under the Change Application would not impair the vested rights of others; and

(c) Impairment alone is not a grounds for denial of the Change Application.

13. Plaintiffs are therefore entitled to review of Defendants' actions and approval of their Change Application for the full amount requested.

WHEREFORE, Plaintiffs pray for relief as follows:

1. For judicial review of the Change Application and for approval of the Change Application for the full amount requested.

2. For such other and further relief as is just in the premises.

DATED this 9th day of November, 1999.



DONALD F. DALTON
PLUMB & DALTON
Attorney for Plaintiffs

EXHIBIT "A"

(Change Application)

APPLICATION FOR PERMANENT CHANGE OF WATER

RECEIVED RECEIVED

Rec. by PM

Fee Rec. 125.00

Receipt # 98-02967

NOV 20 1998

NOV 23 1998

STATE OF UTAH

WATER RIGHTS
SALT LAKE

WATER RIGHTS
SALT LAKE

For the purpose of obtaining permission to make a permanent change of water in the State of Utah, application is hereby made to the State Engineer, based upon the following showing of facts, submitted in accordance with the requirements of Section 73-3-3 Utah Code Annotated, as amended.

*WATER RIGHT NO. 57 - 7909 *APPLICATION NO. a 22720

Changes are proposed in (check those applicable)
_____ point of diversion. _____ place of use. _____ nature of use. _____ period of use.

1. OWNER INFORMATION

Name(s): Jerry, Lee & Mary Sorenson *Interest: 100.00 %
Address: c/o Donald F Dalton 331 S. Rio Grande St Suite E
City: Salt Lake City State: Utah Zip Code: 84101

2. *PRIORITY OF CHANGE: _____ *FILING DATE: _____
*Is this change amendatory? (Yes/No): _____

3. RIGHT EVIDENCED BY: Certificate No. 10277 / Claim No. 57-7909

Prior Approved Change Applications for this right: _____

*****HERETOFORE*****

4. QUANTITY OF WATER: .64 cfs and/or 463,2698 ac-ft.

5. SOURCE: Underground Water, well

6. COUNTY: Salt Lake

7. POINT(S) OF DIVERSION: S. 179.75 ft. E. 347.09 ft. from the West 1/4 corner of Section 25, T2S, R1W, SLBM.

Description of Diverting Works: 10 inch diameter well, drilled to 680 ft cased to 634 feet

8. POINT(S) OF REDIVERSION
The water has been rediverted from _____ at a point: _____

Description of Diverting Works: _____

9. POINT(S) OF RETURN
The amount of water consumed is _____ cfs or _____ ac-ft.
The amount of water returned is _____ cfs or _____ ac-ft.
The water has been returned to the natural stream/source at a point(s): _____

* These items are to be completed by the Division of Water Rights

10. NATURE AND PERIOD OF USE

Irrigation: From _____ to _____
Stockwatering: From _____ to _____
Domestic: From _____ to _____
Municipal: From _____ to _____
Mining: From _____ to _____
Power: From _____ to _____
Other: From Jan 1 to Dec 31

11. PURPOSE AND EXTENT OF USE

Irrigation: _____ acres. Sole supply of _____ acres.
Stockwatering (number and kind): _____
Domestic: _____ Families and/or _____ Persons.
Municipal (name): _____
Mining: _____ Mining District in the _____ Mine.
Ores mined: _____
Power: Plant name: _____ Type: _____ Capacity: _____
Other (describe): _____

12. PLACE OF USE

Legal description of place of use by 40 acre tract(s): NW 1/4 SW 1/4 Section 25, T2S, R1W
SLBM

13. STORAGE

Reservoir Name: _____ Storage Period: from _____ to _____
Capacity: _____ ac-ft. Inundated Area: _____ acres.
Height of dam: _____ feet.
Legal description of inundated area by 40 acre tract(s): _____

*****THE FOLLOWING CHANGES ARE PROPOSED*****

14. QUANTITY OF WATER: .64 cfs and/or 463.2698 ac-ft.

15. SOURCE: Underground water, well
Balance of the water will be abandoned: _____, or will be used as heretofore: _____

16. COUNTY: Salt Lake

17. POINT(S) OF DIVERSION: Same

Description of Diverting Works: Same
*COMMON DESCRIPTION:

18. POINT(S) OF REDIVERSION

The water will be rediverted from _____ at a point: _____

Description of Diverting Works: _____

19. POINT(S) OF RETURN

The amount of water to be consumed is .64 cfs or 463.2698 ac-ft.
The amount of water to be returned is _____ cfs or _____ ac-ft.
The water will be returned to the natural stream/source at a point(s): _____

20. NATURE AND PERIOD OF USE

Irrigation: From April 1 to October 31
Stockwatering: From _____ to _____
Domestic: From Jan 1 to Dec 31
Municipal: From _____ to _____
Mining: From _____ to _____
Power: From _____ to _____
Other: From _____ to _____

21. PURPOSE AND EXTENT OF USE

Irrigation: 40 acres. Sole supply of 40 acres.
Stockwatering (number and kind): _____
Domestic: 557 585 Families and/or _____ Persons.
Municipal (name): _____
Mining: _____ Mining District at the _____ Mine.
Ores mined: _____
Power: Plant name: _____ Type: _____ Capacity: _____
Other (describe): _____

22. PLACE OF USE

Legal description of place of use by 40 acre tract(s): Same

23. STORAGE

Reservoir Name: _____ Storage Period: from _____ to _____
Capacity: _____ ac-ft. Inundated Area: _____ acres.
Height of dam: _____ feet.
Legal description of inundated area by 40 acre tract(s): _____

24. EXPLANATORY

The following is set forth to define more clearly the full purpose of this application. Include any supplemental water rights used for the same purpose. (Use additional pages of the same size if necessary): The purpose of this application is to make a more beneficial use of the water coming from this well. Application is submitted by attorney for owners.

The undersigned hereby acknowledges that even though he/she/they may have been assisted in the preparation of the above-numbered application through the courtesy of the employees of the Division of Water Rights, all responsibility for the accuracy of the information contained herein, at the time of filing, rests with the applicant(s).

Donald F. Dalton Attorney In Fact
Signature of Applicant

Signature of Applicant



State of Utah
 DEPARTMENT OF NATURAL RESOURCES
 DIVISION OF WATER RIGHTS

Michael O. Leavitt
 Governor
 Kathleen Clarke
 Executive Director
 Robert L. Morgan
 State Engineer

1594 West North Temple, Suite 220
 PO Box 146300
 Salt Lake City, Utah 84114-6300
 801-538-7240
 801-538-7467 (Fax)

DATE: November 23, 1998

RECEIPT No. 98-02967

>>>>>>OFFICIAL RECEIPT<<<<<<<<

RECEIVED FROM:
 Sorenson, Jerry E.
 7182 East Manor Drive
 Salt Lake City, UT 84121

NATURE OF SERVICE:		
Change Application	57-7909 (A42578)	FEE: 125.00
	TOTAL:	\$125.00

METHOD OF PAYMENT: CHECK 1828

RECEIVED BY: PM

EXHIBIT "B"

(Memorandum Decision)

BEFORE THE STATE ENGINEER OF THE STATE OF UTAH

IN THE MATTER OF CHANGE APPLICATION)
NUMBER 57-7909 (a22720))

MEMORANDUM DECISION

Change Application Number 57-7909 (a22720), in the names of Jerry E. Sorenson and Lee T. and Mary Jane Sorenson, was filed on November 23, 1998, to change the Nature of use of 0.64 cfs of water. Heretofore, the water has been diverted from a 10-inch diameter well, 680 feet deep, located South 180 feet and East 347 feet from the W $\frac{1}{4}$ Corner of Section 25, T2S, R1W, SLB&M. The water has been used for cooling purposes in connection with plastic pipe manufacturing in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 25, T2S, R1W, SLB&M.

Hereafter, it is proposed to divert 0.64 cfs or 463.269 acre-feet of water from the same well as heretofore and user the water for the irrigation of 40.00 acres from April 1 to October 31 and the domestic purposes of 585 families in the same 40 acre parcel as heretofore.

The application was advertised in the Deseret News on December 24, 1998, and December 31, 1998, and was not protested. A letter was received from Donald F. Dalton, legal counsel for the applicants, stating that the well had been utilized 24 hours per day, seven days per week, with only holidays when the production was shut down. The water was used to cool extruded plastic pipe and also for sanitary purposes for 10 to 15 employees. The industrial process consumed approximately five percent of the water diverted due to evaporation, condensation, etc. The unconsumed water was placed in the storm drain.

The State Engineer has reviewed the change application, the underlying water right, the hydrology of the area, and the policy of the State Engineer for the area and notes that the historic cooling process raised the temperature of the water, but consumed very little. The proof of appropriation states that the well is used for cooling plastic pipe during a 24-hour-per-day operation, but during shutdowns the well continues to pump the water back into the well itself. The water was then returned to the natural hydrologic regime through the sewer system or the storm drain system. The historic flow of this water returned to the Jordan River at a point well upstream of the Surplus Canal. It clearly makes up part of the flow of the river for other water rights downstream in the Jordan River. Water is diverted from the Jordan River and utilized numerous times before release to the Great Salt Lake. Any expansion of this right would impair the rights of others. This change application will have to be limited so that the proposed uses consume no more than the historic use. The historic right would have diverted 0.64 cfs for approximately 355 days per year (assuming 10 holidays per year) or 450 acre-feet of water (0.64 cfs X 1.98 acre-feet per day per cfs X 355 days). Sanitary uses would require approximately one acre-foot per

MEMORANDUM DECISION
CHANGE APPLICATION NUMBER
57-7909 (a22720)
PAGE 2-

year, and of the balance or 449 acre-feet, five percent would be consumed or 22.45 acre-feet. Approximately 20 percent of the sanitary use would be consumed allowing a total consumption of 22.65 acre-feet of water.

The change application proposes to irrigate 40 acres of land and use the water for the domestic needs of 585 families, all within the same 40-acre parcel as described on the heretofore of the application. The change application did not include a descriptive map. It does not appear feasible to irrigate 40 acres and have 585 families on the same 40 acres. Limiting this application to the historic consumptive use of 22.65 acre-feet allows for the domestic requirements of 34 families and the irrigation of 9.24 acres of land (34 families X 0.45 acre-feet per family X 100 percent consumption + 9.24 acres irrigation X 2.12 acre-feet per acre). The amount of water that will be required for the diversion is 61.50 acre-feet annually for these uses (34 families X 0.45 acre-feet per family + 9.24 acres X 5.0 acre-feet per acre). This limitation would insure that the water right is not expanded and that downstream rights are not impaired.

In evaluating the various elements of the underlying rights, it is not the intention of the State Engineer to adjudicate the extent of these rights, rather to provide sufficient definition of the rights to assure that other vested rights are not impaired by the change and 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.

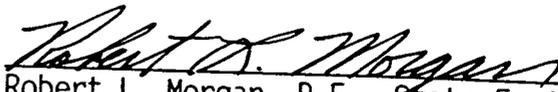
It is, therefore, ORDERED and Application Number 57-7909 (a22720) is hereby APPROVED subject to prior rights and the following conditions:

1. This change application is limited to the domestic needs of 34 families and the irrigation of 9.24 acres of land. The total amount of water that can be diverted is 61.5 acre-feet annually.
2. The well facilities must be controlled so that no more than 61.5 acre-feet annually is diverted from the well.
3. The applicants shall install a permanent totalizing meter on the well and shall keep at least monthly records of all water diverted from the well. The meter and the records shall be available to the State Engineer or his representative at all reasonable times to regulate this change application.
4. This project may require permitting from other agencies. Such authorizations are the responsibility of the applicant to obtain.

MEMORANDUM DECISION
CHANGE APPLICATION NUMBER
57-7909 (a22720)
PAGE 3-

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

Dated this 1st day of September, 1999.


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

RLM:JER:et

Mailed a copy of the foregoing Memorandum Decision this 1st day of September, 1999, to:

Jerry E. Sorenson
7182 East Manor Drive
Salt Lake City, UT 84121

Lee T. and Mary Jane Sorenson
c/o Jerry Sorenson
5562 Easton Street
Bennion, UT 84118

Jerry and Lee and Mary Sorenson
c/o Donald F. Dalton
331 South Rio Grande Street Suite E
Salt Lake City, UT 84101

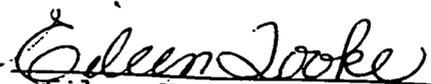
BY: 
Eileen Tooke, Secretary

EXHIBIT "C"

(Request for Reconsideration)

DONALD F. DALTON, Bar No. 4304
PLUMB & DALTON
Attorney for Applicants
331 South Rio Grande Street, Suite E
Salt Lake City, Utah 84101
Telephone: (801) 531-8102

RECEIVED

SEP 21 1999

**WATER RIGHTS
SALT LAKE**

BEFORE THE STATE WATER ENGINEER, STATE OF UTAH

IN THE MATTER OF
CHANGE APPLICATION

NO. 57-7909 (A22720)

:
:
: REQUEST FOR RECONSIDERATION
:
:
:

Jerry E. Sorenson and Lee T. and Mary Jane Sorenson, by and through their attorney, hereby request reconsideration of the Memorandum Decision dated September 1, 1999, on the above application.

This request is based on the following grounds and reasons:

1. The flow from the well source on the Applicants' property is 463.269 acre feet, but the change application was only approved for 61.5 acre feet annually based on historical use of this water in manufacturing which returned a large portion of the water to Jordan River through the storm drain system. However, historical use is not a valid basis for denying a change application. The standard under Utah law is beneficial use. So long as the Applicants propose to make a beneficial use of the water and the water is available, the change application must be approved. Any denial based on "historic" use is arbitrary, capricious and illegal.

2. A second reason given for the reduction was that expansion of the historic use would impair the rights of others in Jordan River water. However, even assuming that the entire amount of the 463.269 acre is used or consumed by the Applicants, very little impact would be made on downstream users of Jordan River water.

Specifically, the United States Geological Survey reports that in the last water year from October 1, 1997, to September 30, 1998, the total inflow from the Jordan River into the Great Salt Lake was 891,360 acre feet. The entire flow of Applicants' source well, 463.269 acre feet, if all of it were returned to the Jordan River (which would not be the case even under the historic use), would only amount to one-twentieth of one percent of the total outflow of the Jordan River during the last fiscal year.

Even in a dry year where the outflow from the Jordan River would be half that of the 1998 water year, the Applicants' entire flow would still only amount to one-tenth of one percent of Jordan River outflow.

Furthermore, the outflow of the Jordan River which goes into the Great Salt Lake is not the subject of any appropriated rights or consumptive use. More importantly, through evaporation, a substantial portion of the water in the Great Salt Lake itself is lost and never put to beneficial use in Utah. On the contrary, much of that water comes down as rain outside of Utah.

In summary, the Applicants are entitled to make a more beneficial use of their water than is now being made. The proposed

beneficial use would not significantly affect other users, and the Division should therefore approve the change application in full or for substantially more acre feet than approved by the Memorandum Decision of September 1, 1999.

DATED this 21st day of September, 1999.



DONALD F. DALTON
PLUMB & DALTON
Attorney for Applicants