



**LEO G. KANELL**  
*Attorney at Law*

October 25, 2018

Kent Jones, P.E.  
Utah State Engineer  
State of Utah  
Department of Natural Resources  
Division of Water Rights  
1594 West North Temple, Suite 220  
P.O. Box 146300  
Salt Lake City, UT 84114-6300

**Public Safety Facility**  
**2270 South 525 West**  
**P.O. Box 471**  
**Beaver, UT 84713**  
**Tele: (435)438-6441**  
**Fax: (435) 438-5348**

Dear Kent:

I am writing, on behalf of my client Elk Meadows Special Service District (“EMSSD”), to respond to your letter dated September 25, 2018. It is an attempt to address your questions regarding EMSSD’s water rights, water sources, water usage, and snowmaking.

**EMSSD Water Rights**

EMSSD was formed in 1995 to provide a water system, eventually a sewer system, drainage, flood control, transportation, recreation, street lighting and snow removal for what is now known as the Eagle Point Ski Resort Area. In 1997, fire protection was added to the services to be provided.

Prior to 1995, Mount Holly Homeowners Association was the entity that operated a water system providing water to the various county approved subdivisions around the Ski Resort. On January 20, 2000, Mount Holly Homeowners Association deeded their water rights and water infrastructure to EMSSD (**copy attached**). On June 13, 2000, a correction water right deed was recorded (**copy attached**).

In the period of time since EMSSD took over the water system and water rights, EMSSD has acquired the following water shares and water rights:

**Shares owned by EMSSD in Kents Lake Reservoir Company as follows:**

Certificate Number 783 ..... 69.55 Shares  
Certificate Number 816 ..... 30.00 Shares  
Certificate Number 988 ..... 33.99 Shares

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WATER RIGHTS  
SALT LAKE

TOTAL ..... 133.54 Shares

**Shares owned by EMSSD in Mammoth Canal Irrigation Company as follows:**

Certificate Number A178 ..... 17.26 Shares

**Water Rights Owned or Leased by EMSSD:**

Water Right Number	Number of Acre Feet	Number of acre feet in Banking agreement	Underlying Certificate or Shares Represented	Exchange Number or Order if applicable
77-1813 formerly 77-1727	21.1573		A178	E389
77-1814 formerly 77-1727	13.3627		A178	E389
77-1815 formerly 77-1732	15.66		783	a25114
77-1816 formerly 77-1732	29.6548		783	a25114
77-1817 formerly 77-1732	20.6331		783	a25114
77-1732	30.00		816	E2597
77-1728	33.99		988	
77-1792	17.273	17.273		A25450
77-2003 formerly 77-503	59	55		A23758c
77-1928	3	3		
77-1788	3			
77-1768 Leased from SITLA	36.18			A42410
<b>Total acre feet</b>	<b>282.9109</b>	<b>75.273</b>		
<b>Acre feet converted to Gallons*</b>		<b>92,186,799.68</b>		

\*325,851 gallons equal one acre foot

**EMSSD Water Sources**

The above water rights have the following approved points of diversion. However, EMSSD is planning on filing a change application that will reduce the number of sources to only those that are presently viewed as being its key long-term sources. All of these key sources will have measuring devices in place to facilitate accurate reporting to the Division of Water Rights of its annual water diversions and its water diversions by season.

Unnamed Proposed Well	S 656 ft E 2525 ft from NW cor, Sec 06, T29S, R 4W, SLBM
Unnamed Proposed Well	S 1052 ft E 2528 ft from NW Cor, Sec 6, T29S, R4W, SLBM
Marchant Creek Well	S 200 ft E 400 ft from NW cor, Sec 02, T29S, R 5W, SLBM
Puffer Lake Well	S 656 ft E 2525 ft from NW cor, Sec 06, T29S, R4W, SLBM
Marchant Creek	S 200 ft E 450 ft from NW cor, Sec 02, T29S, R5W, SLBM
Upper Elk Meadows Spring	N 1900 ft E 1000 ft from SW cor, Sec 30, T28S, R4W, SLBM
Puffer Lake Spring Area*	N 2091 ft E 723 ft from SW Cor, Sec 31, T28S, R4W, SLBM
Forest Service Spring*	N 1700 ft E 200 ft from SW Cor, Sec 30, T28S, R4W, SLBM
Triple Chair Springs*	N 2900 ft E 3100 ft from SW cor, Sec 36, T28S, R5W, SLBM
Ford Spring	N 2091 ft E 723 ft from SW Cor, Sec 31, T28S, R4W, SLBM

\* Key EMSSD Sources

### EMSSD Water Usage

Regarding the use of the water rights, EMSSD is currently serving 188 connections that include 141 Condominiums. Additionally, there are 54 subdivision lots that are paying a standby rate for water and 16 lots that pay a Water System Obligation fee. Therefore, EMSSD is serving a total of 258 connections.

Looking at the Public Water Supplier website data for EMSSD (**copy attached**), EMSSD has provided information for the two springs that are currently in use. The Forest Service Spring delivers the water to the tanks due to gravity while Puffer Lake Spring Area, which is actually capable of providing a much greater volume of water, requires pumping and associated pumping costs. As such, the Forest Service Spring has been used for the last few years as the main source for water, with assistance from the Puffer Lake Spring Area when needed.

In 2017, the Forest Service Spring delivered 69.2 acre-feet of water and the Puffer Lake Spring Area delivered 5.9 acre-feet of water, for a total of 75.10 acre-feet out of the 282.9109 acre-feet available for use. Therefore, while the Ski Resort and surrounding areas have plans for expansion and growth in the years to come that will require the use of all water rights, EMSSD is currently only using 26.5% of its available water rights. In addition, the attached report indicates a large number of gallons of water immediately returned to the mountain through overflow of the springs and septic systems. These septic systems return far more water than the historic irrigation uses did. Furthermore, a certain persistent amount of system leaked water also returned to the mountain, despite constant searching to repair said leaks.

(Remember, EMSSD inherited a water system from Mount Holly Homeowners Association with

many problems. Of note, EMSSD has constructed several improvements to the water system and has assessed users in several Special Improvement Districts or zones for those costs.)

**EMSSD Snowmaking**

Next, we need to discuss the impact of winter snowmaking. EMSSD has entered into a water use and delivery agreement with the Ski Resort operator, Eagle Point Operations, LLC. (“**Eagle Point**”). Eagle Point has indicated they intend to use about 12 acre-feet of the 72.2732 acre feet credit, based on water rights currently banked by Eagle Point with EMSSD for snowmaking, beginning with the upcoming ski season. As you may know, lack of snow fall last winter delayed the opening of the Ski Resort until February which created great hardship for all associated with or who use the Ski Resort. Accordingly, a very modest, 12 af, snow making system has been constructed. Under this system, the following impacts are expected during a typical year:

<b>Eagle Point/EMSSD Water Replacement Plan</b>	
12.00 af	Water placed into storage during *Summer
<b>0.00 af</b>	<b>Water placed into storage during **Winter (deceases Winter flows)</b>
12.00 af	Water used for Snowmaking (Winter)
9.8%	Snowmaking evaporation percentage (source: NM St. Eng. Tech. Rpt. #45)
1.18 af	Winter depletion from Snowmaking
10.82 af	Remaining Snowmaking water (total water available for Snowmelt)
33.0%	Winter Snowmelt Percentage (source: Est. from Merchant Valley Snotel)
3.57 af	Water released by snowmelt during Winter Season
<u>0.00</u> af	Water released from storage during Winter Season
<b>3.57</b>	<b>Total replacement water released during Winter Season</b>
<b>-3.57 af</b>	<b>Amount of Winter Season impacts not offset</b>
	*4/1 to 10/31 = Summer
	**11/1 to 3/31 = Winter

The negative number at the bottom of this table represents the increased winter releases to the stream system by the snowmaking activity. Eagle Point’s newly constructed

Kent Jones, Utah State Engineer

October 25, 2018

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pond, to store the ski making water, will in the future be filled with water during the summer season. However, it wasn't completed in time this year to be filled during the summer season. As such, this year will not be representative of a typical year because the pond would normally be filled well before November 1. Given these circumstances, this year EMSSD will pump the water over from Puffer Lake Spring Area for Eagle Point to use in snowmaking. Of course, the snow fall in any given year will determine whether or not Eagle Point makes snow leading up to and during the ski season.

Please let me know if you need any additional information at this time. Please consider this response as part of a work in progress. EMSSD hopes to work with you and your staff to formalize a mutually agreeable long term water use plan, I also would like to discuss and clarify with you the various requirements to release water in prior change applications approvals. In addition, EMSSD would like to meet with the Division of Water Rights to develop a mutually acceptable approach to restructuring these water rights as part of EMSSD's anticipated upcoming change application. I will be in touch to schedule a meeting to begin this important dialogue.

Sincerely,



Leo G. Kanell  
EMSSD Attorney

Enclosures

cc: Nathan Moses, P.E. DWRI  
EMSSD Administrative Control Board

When Recorded, Mail to:  
Jeffrey N. Walker  
HOLMAN WALKER & HUTCHINGS  
9537 South 700 East  
Sandy, Utah 84070

MAIL TAX NOTICES TO:  
Grantee Herein

# QUIT CLAIM DEED

MOUNT HOLLY HOMEOWNERS ASSOCIATION, a Utah corporation, MEADOWS OPERATIONS, INC., d.b.a. ELK MEADOWS SKI AND SUMMER RESORT, a Utah corporation and ELK MEADOWS ASSOCIATES, L.C., a Utah limited liability company, all of the County of Beaver, State of Utah and collectively referred to as the Grantors, hereby QUIT CLAIMS to:

ELK MEADOWS SPECIAL SERVICE DISTRICT <sup>W.C.</sup> of the County of Beaver, State of Utah, Grantee, for the sum of TEN DOLLARS and other good and valuable consideration, the following described wells, water rights, water infrastructure, supplies, materials and all appurtenances thereto located in Beaver County, State of Utah:

SEE EXHIBIT "A" ATTACHED HERETO AND INCORPORATED HEREIN BY THIS REFERENCE.

RESERVING UNTO GRANTOR, MOUNT HOLLY HOMEOWNERS ASSOCIATION, to have and to hold forever, all right, title and interest in said Water Rights as to the remaining 16.90 acre feet not conveyed herein, and in any and all diverting works appurtenant thereto.

IN WITNESS WHEREOF, the Grantors have caused their names to be hereunto affixed this 15 day of ~~October 1999~~ <sup>January</sup> 2000.

*W.C.*  
*JRP*

GRANTORS:

MOUNT HOLLY HOMEOWNERS ASSOCIATION, a Utah corporation

By *Wayne A. Love*  
Its *President*

E 205555 B 324 P 103  
Date 20-JAN-2000 12:01pm  
Fee: No Fee Check  
R BRUCE BROWN, Recorder  
Filed By CP  
For BEAVER COUNTY  
BEAVER COUNTY CORPORATION

MEADOWS OPERATIONS, INC., d.b.a. ELK MEADOWS SKI AND SUMMER RESORT, a Utah corporation

By John A. Rupp  
Its Chairman

ELK MEADOWS ASSOCIATES, L.C., a Utah limited liability company

Wayne A. Case, Member  
By John A. Rupp, member  
Its

BY SIGNING BELOW, Grantee accepts the rights and interests conveyed hereby on the terms and conditions specified.

GRANTEE: ELK MEADOWS SPECIAL SERVICE DISTRICT #6

By David W. Jensen  
Its Chairman

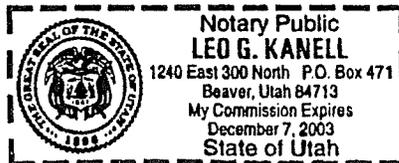
STATE OF UTAH )

: ss.

COUNTY OF BEAVER )

On the 15 day of ~~October~~ <sup>January 2001</sup> 1999, personally appeared before me, a Notary Public, Wayne A. Case, who being by me duly sworn, did say, for herself/himself, that she/he, the said Wayne A. Case, is the President of MOUNT HOLLY HOMEOWNERS ASSOCIATION, a Utah corporation, and that the within and foregoing Instrument was signed in behalf of said company by Wayne A. Case, who duly acknowledged to me that said company executed the same.

[Signature]  
NOTARY PUBLIC in and for said County and State





## EXHIBIT "A"

1. **Water Rights (the "Water"), including the following:**
  - a. **Water Right Nos.**
    - 77-1732
    - 77-1727
    - 77-1728
  - b. **Certificates in the Kents Lake Ditch Company:**
    - Certificate No. 475 - 50.00 acre feet
    - Certificate No. 476 - 19.55 acre feet
    - Certificate No. 477 - 10.56 acre feet
    - Certificate No. 478 - 13.43 acre feet
    - Certificate No. 479 - 7.86 acre feet
    - Certificate No. 480 - 2.14 acre feet
    - Less an undivided 16.90 acre feet from the above-noted Certificates
  - c. **Certificate No. 208 in the Mammoth Canal Company - 17.26 acre feet**
2. **All Infrastructure for the use of the Water (the "Infrastructure"), including, but not limited to the following structural components, as more fully described on that certain map entitled "Mt. Holly Water System - Existing Water System, Sheet Nos. 2 and 3, as prepared by Jones & DeMille Engineering dated April 12, 1999 and attached hereto and incorporated herein by this reference:**
  - a. **Three Water Storage Tanks (75,000 gallon, 50,000 gallon and 70,000 gallon tanks)**
  - b. **Fire Hydrants**
  - c. **Water Valves**
  - d. **1½" Waterlines**
  - e. **2" Waterlines (approximately 5,666 feet)**
  - f. **3" Waterlines (approximately 5,117 feet)**
  - g. **4" Waterlines (approximately 6,681 feet)**
  - h. **6" Waterlines (approximately 7,388 feet)**
  - i. **8" Waterlines**
  - j. **Three Pump Stations and all appurtenances thereto**
  - ii. **Treatment Plant and all appurtenances thereto**
  - i. **Two Springs**
  - j. **Well**
3. **Non-exclusive general Easements and/or Right-of-Ways on which the Infrastructure is located for purposes of access to maintain, repair and replace the Infrastructure.**
4. **GRANTORS AND GRANTEE AGREE THAT GRANTEE IS RECEIVING THE WATER, INFRASTRUCTURE, EASEMENTS AND/OR RIGHT-OF-WAYS "AS IS," AND "WHERE IS," THAT IS, IN ITS CONDITION AND LOCATION AS OF THE DATE OF THE EXECUTION OF THIS QUIT CLAIM DEED, AND THAT GRANTORS MAKE NO WARRANTIES OR REPRESENTATIONS CONCERNING THE CONDITION OF SAID PROPERTY.**

Recorded at Request of:  
at .M. Fee paid \$  
by  
Mail tax notice to:

Dep. Book Page Ref.:  
Address

# CORRECTION WATER RIGHT DEED

Mount Holly Homeowners Association, a Utah Corporation, grantor, of Beaver County, State of Utah, hereby QUIT-CLAIMS to:

Elk Meadows Special Service District, of Beaver County, State of Utah, grantee, for the sum of Ten Dollars and other good and valuable consideration, the following described Water Rights:

- Water Right # 77-1727, Exchange Application E389 for 34.52 Acre-feet
- Water Right # 77-1728, Exchange Application E390 for 35.00 Acre-feet
- 70% of Water Right # 77-1732, Exchange Application E2597 for 49.99 Acre-feet, or 34.99 acre-feet
- Water Right # 77-1731, Exchange Application E2088 (unapproved)

17.26 shares of Mammoth Canal & Irrigation Company, represented by Share Certificate # A178

103.54 shares of Kents Lake Reservoir Company Share, represented by:

- Certificate # 475 for 50.00 shares
- Certificate # 476 for 19.55 shares
- Certificate # 477 for 10.56 shares
- Certificate # 478 for 13.43 shares
- Certificate # 479 for 7.86 shares
- Certificate # 480 for 2.14 shares

E 206837 B 327 P 225  
Date 13-JUN-2000 10:57am  
Fee: No Fee Check  
R BRUCE BROWN, Recorder  
Filed By RBB  
For ELK MEADOWS SPEC SERVICE DIST  
BEAVER COUNTY CORPORATION

Note: This Correction Quit Claim is given to correct the share, acre-foot, and reservation information in that certain Quit Claim Deed dated January 15, 2000, and recorded January 20, 2000 as Entry No. 205555 in Book 324 at Pages 103-108 of Official Records.

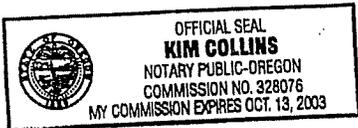
WITNESS the hand of said grantor, this 7<sup>th</sup> day of June, 2000.

*Wayne A. Case*  
Wayne A. Case, President  
Mount Holly Homeowners Association

STATE OF Oregon )  
: SS.

County of Multnomah

On the 7<sup>th</sup> day of June A.D. 2000, personally appeared before me Wayne A. Case, who being by me duly sworn, did say for himself that he, Wayne A. Case, is the President of Mount Holly Homeowners Association, a Utah Corporation, and that the foregoing instrument was signed in behalf of said company by Wayne A. Case, who duly acknowledged to me that said company executed the same.



*Kim Collins*  
Notary Public.

My commission expires 10/13/2003 Residing In: Oregon

**TABULATION OF INFORMATION RELATED TO WATER RIGHTS  
77-1727, 77-1728 & 77-1732 AND  
RELATED "EXCHANGE" APPLICATIONS**

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Water Right	Exchange Number	Underlying Stock Certificates and Shares Represented	Maximum Diversion Allowed
77-1727	E389	Mammoth Canal Cert. No. A178 / 17.26 shares	34.52 AF
77-1728	E390 <sup>1</sup>	Kents Lake Reservoir Co. Cert. No. 272 / 10.557 shares Kents Lake Reservoir Co. Cert. No. 275 / 13.429 shares Kents Lake Reservoir Co. Cert. No. 338 / 1.143 shares Kents Lake Reservoir Co. Cert. No. 339 / 7.857 shares Kents Lake Reservoir Co. Cert. No. 430 / 2.143 shares	35.00 AF
77-1732	E2597 <sup>2</sup>	Kents Lake Reservoir Co. Cert. No. 475 / 50.000 shares <sup>3</sup> Kents Lake Reservoir Co. Cert. No. 476 / 19.550 shares Kents Lake Reservoir Co. Cert. No. 487 / 20.000 shares Kents Lake Reservoir Co. Cert. No. 488 / 10.000 shares	49.99 AF

$\Sigma = 119.51 \text{ AF}$

Prepared 17 March 2000 / h:\wp\doc\77-1727etc.tbl.wpd  
Kerry Carpenter, P.E.  
Regional Engineer

*The information contained herein is subject to change as amending documentation may be discovered and evaluated.*

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<sup>1</sup>All share amounts shown in decimal format are probably reflected on the certificates themselves as fractions with denominators of "70" or "7" (e.g.: "10 39/70 shares" or "13.3/7 shares").

<sup>2</sup>This application amended and replaced an earlier Exchange Application under 77-1731 (E2088) which was withdrawn.

<sup>3</sup>Share Certificates No. 475 and No. 476 were also listed in Exchange Application 77-1729 (E410) which was filed but never approved by the State Engineer. Whereas these Certificates have now been used in support of a later application (E2597), Application E410 is now considered to be void.

BEFORE THE STATE ENGINEER OF THE STATE OF UTAH

IN THE MATTER OF EXCHANGE )  
 )  
APPLICATION NOS. 389 and 390 )

MEMORANDUM DECISION

The above numbered exchange applications were filed to exchange a total of 69.52 ac.-ft. of water as evidenced by shares of stock in the Kents Lake Reservoir Company and the Mammoth Canal and Irrigation Company. The water diverted under these shares could be stored in Three Creeks Reservoir and/or Kent's Lake and has been used to irrigate acreage adjacent to the Beaver River flood plain near the city of Beaver, Utah. The exchange applications proposed that this water could now be pumped from a well or wells and springs in Section 2, T29S, R5W, SLBM, and in lieu of the water diverted from wells or springs a like amount could be released from said reservoirs to satisfy lower users. The exchange applications were received December 14, 1970, by this office and were advertised in the Beaver Press during January and February, 1971. Protests were received by the State Engineer beginning February 16, 1971, and a hearing concerning this matter was held in the Beaver County Courthouse on April 27, 1971.

In summary, the protest issues are:

1. The lower companies and water user's claim that the water would not be available to the applicant and are concerned that some of the lower water rights would be impaired.
2. That the diversion of this water above the company's described points of diversion would cause a problem over the internal distribution of the water and undue expense concerning the revision and change of diversion and proportional dividers. Reducing the allowable stream by this amount would increase the loss of water by evaporation and seepage.
3. They claim that the applicant cannot change a right that was normally used for irrigation purposes between April 1 and October 31 to a year around (January 1 to December 31) use for the purposes described.
4. The U. S. Forest Service claims that by using the springs or by developing wells in this upper drainage that it would affect the Riparian vegetation around these sources and that wastes and untreated water from this development would contaminate culinary water supplies used within various campgrounds and the city of Beaver below.

Memorandum Decision

Exchange Application Nos. 389 and 390

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5. Wildlife groups expressed the danger of polluting the environment and streams because of the proposed development on the head waters of the Beaver River.

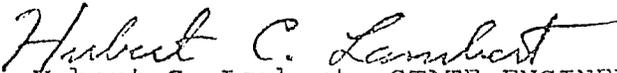
It is the opinion of the State Engineer that the exchanges can be accomplished with the necessary operational requirements and a stipulation. Reference is made to Section 73-3-20, Utah Code Annotated, 1953, "... Any person having stored his appropriated water in a reservoir for a beneficial purpose shall be permitted to withdraw the same at such times and in such quantities as his necessities may require; provided, such withdrawal does not interfere with the rights of others."

It is, therefore, ordered and Exchange Application Nos. 389 and 390 are hereby APPROVED, subject to the following conditions:

1. The water must be available to the applicant through the shares in Kent's Lake Reservoir Company and Mammoth Canal and Irrigation Company before any water can be diverted from the springs or wells.
2. The water diverted into the applicants system must be metered and recorded with said facilities available to the Beaver River Water Commissioner at all times.
3. The water to be released to the lower users in exchange for the water used by the applicant shall be released by the companies under the direction of the Beaver River Commissioner.
4. The applicant is encouraged to cooperate with the irrigation companies in making these exchanges and also to correct any distribution weirs or controls within the companies systems.
5. The applicant is instructed to comply with all the regulations and conditions placed upon his project by the Utah State Department of Health, Division of Environmental Control, concerning waste disposal, water supply, and other sanitary measures; and to make the development with the least possible impact on the environment of the area.

This decision is subject to the provisions of Section 73-3-14, Utah Code Annotated, 1953, which provides for plenary review by the filing of a civil action in the appropriate district court within sixty days from the date hereof.

Dated this Sixth day of July, 1971.

  
Hubert C. Lambert, STATE ENGINEER

BEFORE THE STATE ENGINEER OF THE STATE OF UTAH

IN THE MATTER OF EXCHANGE APPLICATION )  
 )  
NUMBER 77-AREA (E2597) ) MEMORANDUM DECISION

Exchange Application Number 77-AREA (E2597) was filed by Conrad Koning (30%) and Mt. Holly Homeowner's Association, Inc. (70%) to exchange 49.99 acre feet of water as evidenced by 99.55 shares of stock in the Kent's Lake Reservoir Company. The water is to be used for recreation purposes in the Mt. Holly area, Beaver County. The water is presently stored in Three Creeks Reservoir and is released during the irrigation season for use in Beaver Valley. This exchange amends previously approved Exchange Application Number 2088 by changing a point of diversion and adding another in order to meet the needs of 1655 people on a seasonal basis with other recreation uses associated with the winter sports and summer cabin development. It is proposed that the 49.99 acre feet of water will be developed and diverted from any, each or all eight points of diversion listed on the application.

The application was advertised in the Beaver Press from May 26, 1988, to June 16, 1988, and there were no protests filed. A letter of concern has been received by Conrad Koning from the USA Forest Service and has been considered by the applicant's counsel, D. Brent Rose.

The same points that were raised in an earlier hearing were considered in evaluating this exchange application. There is a major concern over the distribution of the water and that responsibility will be regulated by the Division of Water Rights through the Beaver River Water Commissioner. Proper records on storage and releases will be maintained by the commissioner. The applicant will keep accurate records of water diverted. These records will be available for inspection by representatives of the State Engineer or the River Commissioner on this public water supply system. The State Engineer is of the opinion that if certain conditions are imposed, this exchange can be accomplished without impairing the water rights of others.

It is, therefore, ORDERED, and Exchange Application Number 71-AREA (E2597) is hereby APPROVED, subject to prior water rights and the following conditions:

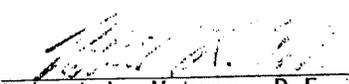
1. The water must be available in storage in Three Creek Reservoir through shares in the Kent's Lake Reservoir Company before any water can be diverted from any of the existing or proposed sources of water. The shares of stock must be kept valid for this exchange to be in effect.
2. All water releases made by Kent's Lake Reservoir Company shall be under the direction and approval of the Beaver River Water Commissioner, or in the commissioner's absence, the approval of the State Engineer or his authorized representative. The releases are to be made on an "as-needed" basis for the benefit of downstream water users. The flow generated by 49.99 acre feet should not impact the environment, wildlife or fisheries on this drainage.

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3. The water diverted into the applicant's system must be measured through permanent totalizing water meters and to measure all water obtained. These measurements shall be supplied to the water commissioner. The metering facilities must be available for inspection by the Beaver River Water Commissioner or a representative of the State Engineer at all reasonable times.
4. The applicant is instructed to cooperate with the Kent's Lake Reservoir Company and other irrigation companies affected by this exchange in correcting any distribution weirs, dividers, or controls.
5. The applicant is further instructed to comply with all the rules and regulations and conditions placed upon this project by the Utah State Department of Health and other applicable agencies. Control, concerning waste disposal, water supply, and other sanitary measures; and to make the development with the least possible impact on the environment of the area.
6. Exchange Application Number 2088 is withdrawn as per the applicant's request upon approval of this exchange.

This decision is subject to the provisions of the Rule R625-6-17 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 14th day of October, 1988.

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

RLM:GWS:rc

Mailed a copy of the foregoing Memorandum Decision this 14th day of October, 1988 to:

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MEMORANDUM DECISION  
APPLICATION NUMBER  
77-AREA (E2597)  
PAGE -3-

Conrad Koning  
11 Princeville Lane  
Las Vegas, NV 89113

Mt. Holly Homeowners Assn., Inc.  
Post Office  
Beaver, UT 84713

Lee Strong  
Box 820  
85 North 400 East  
Beaver, UT 84713

D. Brent Rose, Attorney  
Clyde, Pratt, Gibbs & Cahoon  
200 American Savings Plaza  
77 West 2nd South  
Salt Lake City, UT 84101

*V. ...*  
*(1) ...*

By:

*[Signature]*  
\_\_\_\_\_  
Robin Campbell, Secretary

*1-17-5805*  
*o/o Gary ...*

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SCANNED

BEFORE THE STATE ENGINEER OF THE STATE OF UTAH

IN THE MATTER OF CHANGE APPLICATION )  
 )  
NUMBER 77-1815 (a25114) )

MEMORANDUM DECISION

Change Application Number 77-1815 (a25114), in the names of Elk Meadows Special Service District (stockholder), Kents Lake Reservoir and Irrigation Co.(owner, subject to contract with Board of Water Resources), and the State of Utah Board of Water Resources (current owner of record), was filed on November 29, 2000, to change the point of diversion, place and nature of use of 69.99 acre-feet of water evidenced by Water Rights Numbered 77-1815 (3.9159 acres / 15.6638 acre-feet), 77-1816 (7.4137 acres / 29.6548 acre-feet), 77-1817 (5.1583 acres / 20.6331 acre-feet) and 77-1818 (1.0096 acre / 4.0384 acre-feet). Heretofore, the water has been diverted from the Beaver River and its tributaries at points located: (1) North 930 feet and West 1220 feet from the SE Corner of Section 9, T29S, R5W, SLB&M, (Three Creeks Reservoir); (2) North 770 feet and West 80 feet from the S $\frac{1}{4}$  Corner of Section 18, T29S, R6W, SLB&M, (Beaver River); (3) South 62 feet and West 3060 feet from the NE Corner of Section 6, T30S, R5W, SLB&M, (South Fork of Beaver River, Middle Kents Lake); and (4) South 946 feet and West 193 feet from the NE Corner of Section 6, T30S, R5W, SLB&M, (South Fork of Beaver River, Upper Kents Lake). The water has been used for the irrigation of 17.4975 acres from April 1 to October 31 in the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 18, T29S, R6W, SLB&M; the S $\frac{1}{2}$  of Section 3; the SE $\frac{1}{4}$  of Section 9; the N $\frac{1}{2}$ , SW $\frac{1}{4}$ , S $\frac{1}{2}$ SE $\frac{1}{4}$  and NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 10; the W $\frac{1}{2}$ , SW $\frac{1}{4}$ NE $\frac{1}{4}$  and W $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 11; the S $\frac{1}{2}$ SW $\frac{1}{4}$  and SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 13; the SW $\frac{1}{4}$ NE $\frac{1}{4}$ , N $\frac{1}{2}$ NW $\frac{1}{4}$ , SW $\frac{1}{4}$ NW $\frac{1}{4}$ , SW $\frac{1}{4}$  and W $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 14; all of Section 15; the E $\frac{1}{2}$ , NE $\frac{1}{4}$ NW $\frac{1}{4}$  and E $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 16; the NE $\frac{1}{4}$ , E $\frac{1}{2}$ NW $\frac{1}{4}$  and N $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 21; the N $\frac{1}{2}$ NE $\frac{1}{4}$ , SW $\frac{1}{4}$ NE $\frac{1}{4}$ , NW $\frac{1}{4}$  and N $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 22; the N $\frac{1}{2}$ , NE $\frac{1}{4}$ SW $\frac{1}{4}$ , SW $\frac{1}{4}$ SW $\frac{1}{4}$  and NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 23; the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 24; the W $\frac{1}{2}$ NW $\frac{1}{4}$  and SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 26; the S $\frac{1}{2}$ NE $\frac{1}{4}$ , NE $\frac{1}{4}$ NE $\frac{1}{4}$ , S $\frac{1}{2}$ NW $\frac{1}{4}$ , N $\frac{1}{2}$ SW $\frac{1}{4}$  and SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 28; the N $\frac{1}{2}$ NE $\frac{1}{4}$ , SW $\frac{1}{4}$ NE $\frac{1}{4}$ , S $\frac{1}{2}$ NW $\frac{1}{4}$ , NW $\frac{1}{4}$ SW $\frac{1}{4}$ , SE $\frac{1}{4}$ SW $\frac{1}{4}$ , N $\frac{1}{2}$ SE $\frac{1}{4}$  and SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 32; the N $\frac{1}{2}$ NE $\frac{1}{4}$ , SE $\frac{1}{4}$ NE $\frac{1}{4}$  and N $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 33; the N $\frac{1}{2}$ , NE $\frac{1}{4}$ SW $\frac{1}{4}$  and NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 34; the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 35, all within T29S, R7W, SLB&M.

Hereafter, it is proposed to divert 69.99 acre-feet of water from one well located South 656 feet and East 2525 feet from the NW Corner of Section 6, T29S, R4W, SLB&M, and from three springs located: (1) North 1900 feet and East 1000 feet from the SW Corner of Section 30, T28S, R4W, SLB&M, (Upper Elk Meadows Spring); (2) North 2091 feet and East 723 feet from the SW Corner of Section 31, T28S, R4W, SLB&M, (Puffer Spring Area); and (3) North 2900 feet and East 3100 feet from the SW Corner of Section 36, T28S, R5W, SLB&M, (Triple Chair Spring), to be used for municipal purposes within the service area of the Elk Meadows Special Service District.

The application was advertised in The Beaver Press on December 21 and 28, 2000, and was protested by PacifiCorp and by Rocky Ford Irrigation Company ("Rocky Ford"). A letter was also filed by Evan Patterson, purportedly representing the

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elected officers and board of the Kents Lake Reservoir and Irrigation Company, "protesting the exchange application 77-1815a". Whereas Mr. Patterson is one of the signatories to the application on behalf of the Kents Lake Reservoir and Irrigation Company, the intent, legal standing and effect of his letter of protest is uncertain [*Badger v. Brooklyn, et al.*, 1998]. A hearing was not held.

This application raises a number of issues of concern to the State Engineer and to other water users dependent on the Beaver River and tributaries. The subject water rights represent the stock holdings of the Elk Meadows Special Service District in the Kents Lake Reservoir and Irrigation Company. The underlying water rights originate in Awards No. 2 and No. 3 of the Beaver River Decree dated November 13, 1931, with priority dates of 1890 (77-1815, 77-1817 and 77-1818), and in an Application to Appropriate with a priority of March 8, 1940 (77-1816). The water was historically diverted from the Beaver River and used for irrigation in the vicinity of Beaver City. In evaluating the various elements of the underlying rights, it is not the intention of the State Engineer to adjudicate the extent of the rights, but rather to provide sufficient definition of the right as described in the defining decree and other documents to assure that other vested rights are not impaired by the change without compensation, that no enlargement occurs, and that the application satisfies the requirements of statute.

The protests filed by PacifiCorp and Rocky Ford on this application raise issues consistent with those surrounding several earlier applications of this same type. Those same issues are pertinent and become more cogent as the demand for water on the Beaver Mountain increases. However, the State Engineer finds it reasonable to believe that this application can be approved without enlargement of the underlying rights or undue impairment to the prior rights of others if certain consequences of the change are properly addressed:

First, the proposed change in the nature of use will result in an alteration to the pattern of depletion of water. Historically, the rights were used for irrigation of 17.4975 acres with a maximum diversion allowance of 69.99 acre-feet per year. Of the amount diverted, approximately 50% was consumed by the crop or evaporative losses and the remaining 50% remained in the hydrologic system as return flow or "tailwater". Thus, the estimated depletion to the hydrologic system would have been approximately 35 acre-feet. To prevent enlargement, the proposed municipal uses under this change cannot exceed either the historic diversion amount of 69.99 acre-feet nor the historic depletion amount of approximately 35 acre-feet. Under the current usage and wastewater disposal practices at the proposed place of use, it is estimated that less than 50% of the water diverted would be depleted. However, those practices are subject to change

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as development continues. Adjustments to the diversion amount will have to be made in response to future wastewater disposal technologies or practices which have the effect of increasing the rate of depletion.

Second, 17.4975 acres of land historically irrigated must be permanently removed from irrigation and the water which has heretofore been diverted and used on that historically irrigated acreage must remain within the existing distribution system for the benefit of other users. Whereas the rights represented in this application have previously been the subject of certain Exchange Applications (E390 and E2597), it is presumed that the appropriate acreage has been properly abandoned prior to the filing of this application.

Third, some water will now be diverted and depleted outside the normal irrigation season. To compensate those holding rights to the "winter water", a mechanism will be necessary to deliver some amount of water during the non-irrigation season. At present, it may be held that this area is only minimally accessible during the non-irrigation season and that water use during that period will be insignificant. However, under the municipal use proposed, this right could potentially be diverted and used in facilities that are operated year-around, including ski resort facilities that operate almost exclusively during the non-irrigation season. The winter depletion is estimated to be approximately 41.67% (5/12) of the total depletion of 35 acre-feet, or 14.58 acre-feet. Representatives of the Elk Meadows Special Service District, in seeking approval of a similar change application under 77-1768 (a20271), have proposed a plan whereby this water, rather than being diverted into the municipal system, will be placed in a designated storage structure (typically during the months of September and October) and then released into the Beaver River during the period preceding the next irrigation season (typically November through March). This mechanism would minimize evaporation losses and minimize competition with other storage rights on the headwaters of the river. This proposal, as far as it has been detailed, appears satisfactory to the State Engineer. However, it shall be the responsibility of the applicant or successors to implement the proposal.

Fourth, water users under this application must be required to share water shortages on the system proportionately with others of equal or earlier priority. Enforcement of this condition will be difficult but should be achievable by assessing shortages to the water users under this right during the year following the shortage. When the annual report of the Distribution Commissioner for a given year shows that less than 100% of the 1890 and 1940-priority rights were deliverable during that year, the rights under this application for the following year shall be limited to the percent deliverable the preceding year. This requirement may be waived if the water user under this application can document

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that water use during a particular year was less than or equal to that percentage delivered to other users with equal priority. The water user will be responsible to provide such documentation in the form of meter readings independently verified by the Distribution Commissioner.

Fifth, this application proposes to change the point of diversion for these rights from a point which is below PacifiCorp's and Beaver City's diversions on the Beaver River for power generation to a point which is tributary to the river above those diversions. Although the quantity of water is relatively small in comparison to the annual flow of the Beaver River, this application represents one of a number of similar filings which may have a cumulative effect of significant magnitude. While statute bars the State Engineer from rejecting a change application solely on the basis of possible impairment, it is also provided that impaired parties must be protected or compensated in some manner.

Sixth, this application proposes a "municipal" beneficial use but is currently vested in entities who do not appear to qualify to claim such use. The advantages and benefits of municipal use are reserved to political or quasi-political entities able to levy taxes or special assessments to provide and maintain services. Qualifying entities will generally have powers of eminent domain (condemnation), will have a defined service area, and must have a system (including any new wells, springs, or distribution works) designed, constructed and operated in compliance with the standards established by the Department of Environmental Quality, Division of Drinking Water, for a "public" water supply. Prior to terminating service, qualifying entities must comply with certain legal requirements. Such entities are also subject to the jurisdiction of the Public Service Commission in establishing fee schedules for services.

In consideration of the foregoing issues, the State Engineer finds it reasonable to believe that this application can be approved provided that certain conditions are established for the use of the water. In most cases involving rights of the relatively late priority here involved, the State Engineer may be inclined to determine that the proposed change would be infeasible because of the relative unreliability of these rights as a municipal water supply. However, whereas the end-user has acquired or may acquire other rights of the most senior priority, and whereas these rights have been previously approved for use in the proposed area and manner, the State Engineer finds it is reasonable to grant the approval of this application.

It is, therefore, **ORDERED** and Change Application Number 77-1815 (a25114) is hereby **APPROVED** subject to prior rights and the following conditions:

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- 1) The applicant is limited to the diversion of a maximum of 69.99 acre-feet and the depletion of 35 acre-feet under this application.
- 2) An area of 17.4975 acres of the historically irrigated land shall be permanently removed from irrigation to accommodate the new uses of water proposed under this application.
- 3) All water diverted under this application shall be metered using suitable equipment, properly installed and perpetually maintained. A permanent record of diversions shall be maintained and reported to the State Engineer or the Distribution Commissioner annually or more frequently upon request. The location(s) of the metering equipment shall be subject to the approval of the State Engineer and shall be reasonably accessible to the State Engineer's representatives.
- 4) The municipal use approved herein may be exercised only by the qualifying stockholder, Elk Meadows Special Service District, and does not accrue to the benefit of the irrigation company nor to other non-qualified stockholders.
- 5) The system to develop and divert the proposed spring sources shall be designed such that flows in excess of the rights available for diversion shall be returned to the natural drainage as closely as practical to the historic point of discharge from the sources and with no degradation in quality.
- 6) Depletions to the Beaver River system shall be limited to those historically incurred as described herein, including adjustments for shared shortages. Water diverted for storage and release to offset winter depletion shall be included in the total diversion allowance of 69.99 acre-feet.
- 7) The applicants or successors shall be responsible for all work, design and costs associated with the reconstruction of or adjustments to any existing structures for the diversion and distribution of water which may be made necessary by this change. The Distribution Commissioner, in conjunction with other personnel of the Division of Water Rights, shall determine the adjustments or construction required.
- 8) All storage and releases of stored water under this application, as set forth herein, shall be coordinated with or under the supervision of the Distribution Commissioner or other designated personnel of the Division of Water Rights.

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- 9) The applicants or successors shall be responsible for obtaining any and all other permits, legal rights or clearances which are required, which may include but are not necessarily limited to a stream alteration permit per Section 404 of the federal Clean Water Act, permits related to the construction of a dam for water storage facilities, and permits related to wastewater disposal, source protection, and the design, construction and operation of a public water supply system.
- 10) These applicants or successors shall be liable to provide compensation to other water users whose prior rights are impaired by this change as may be agreed by the parties or decreed by a court of competent jurisdiction.
- 11) Water users under this application are to share shortages with others of equal priority as set forth herein.
- 12) The proof documents to be filed on this application shall include a verification and certification of compliance with each of the foregoing conditions of approval.
- 13) If any of the conditions of approval set forth herein are found to be unlawful, infeasible or unacceptable to the applicants, it shall be the responsibility of the applicants or successors to propose an alternative condition in writing which satisfies the same requirements in a manner acceptable to and approved in writing by the State Engineer prior to instituting the alternative.
- 14) With this approval, prior approved Exchange Application E390 (77-1728) in the amount of 35.0 acre-feet, and the pertinent portion of Exchange Application E2597 (77-1732) in the amount of 34.99 acre-feet, are hereby considered **WITHDRAWN** and shall be administratively removed from the active files of the State Engineer.

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.

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Dated this 16<sup>th</sup> day of March, 2001.

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

RLM:KEC:et

Mailed a copy of the foregoing Memorandum Decision this 16<sup>th</sup> day of March, 2001,  
to:

Elk Meadows Special Service District  
P.O. Box 511  
Beaver, UT 84713

Kents Lake Reservoir and Irrigation Co.  
P.O. Box 50  
Beaver, UT 84713

State of Utah Board of Water Resources  
For: Kents Lake Reservoir and Irrigation Company  
1594 West North Temple, Suite 310  
Salt Lake City, UT 84114-6201

PacifiCorp  
c/o Jody L. Williams  
50 West Broadway, 8th Floor  
Salt Lake City, UT 84101-2034

Rocky Ford Irrigation Co.  
c/o Dan Goff and Larry Maycock  
P. O. Box 98  
Minersville, UT 84752

Ronald Roberts  
Distribution Commissioner  
110 North 500 East  
P. O. Box 605  
Beaver, Utah 84713

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Kevin Brown, Director  
Division of Drinking Water  
Department of Environmental Quality  
PO Box 144830  
Salt Lake City, UT 84144-4830

Wayne Thomas, P.E.  
District Engineer  
Department of Environmental Quality  
285 West Tabernacle, Suite 208  
St. George, UT 84770

BY: Eileen Tooke  
Eileen Tooke, Secretary

SCANNED

BEFORE THE STATE ENGINEER OF THE STATE OF UTAH

IN THE MATTER OF CHANGE APPLICATION )  
 )  
NUMBER 77-1792 (a22275) )

MEMORANDUM DECISION

Change Application Number 77-1792 (a22275), in the names of Joseph D. and Gaytha L. Benson, was filed on June 5, 1998, to change the point of diversion, place and nature of use of 17.273 acre-feet of water. Heretofore, the water has been diverted from the Beaver River at a point located North 3560 feet and West 2070 feet from the SE Corner of Section 23, T29S, R7W, SLB&M, and used for the irrigation of 4.31 acres from April 1 to October 31 in the W $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 22, T29S, R7W, SLB&M.

Hereafter, it is proposed to divert 17.273 acre-feet of water from an unnamed spring, located North 1900 feet and East 1000 feet from the SW Corner of Section 30, T28S, R4W, SLB&M, to be used for municipal purposes within Beaver County Special Service District No. 6.

The application was advertised in The Beaver Press on June 18 and 25, 1998, and was protested by the US Forest Service. The protest was later withdrawn. This application raises a number of issues of concern to the State Engineer and to other water users dependent on the Beaver River and tributaries. The subject water right originates in Awards 16(a) and 16(c) of the Beaver River Decree dated November 13, 1931, with a priority date of 1870. The right was historically diverted from the Beaver River and used for irrigation in the vicinity of Beaver City.

In evaluating the various elements of the underlying right, it is not the intention of the State Engineer to adjudicate the extent of this right, but rather to provide sufficient definition of the right as described in the defining decree to assure that other vested rights are not impaired by the change without compensation, and that no enlargement occurs. Although the protest filed on this application was withdrawn and no other protests were filed, issues raised in objections to other applications proposing similar changes are pertinent and become increasingly cogent as the demand for water on the Beaver Mountain increases. However, it is the opinion of the State Engineer that this application can be approved without enlargement or undue impairment of prior rights if certain consequences of the change are properly addressed:

First, the proposed change in the nature of use will result in an alteration to the pattern of depletion of water. Historically, the rights were used for irrigation of 4.3183 acres with a maximum diversion allowance of 17.273 acre-feet per year. Of the amount diverted, approximately 50% was consumed by the crop or evaporative losses and the remaining 50% remained in the hydrologic system as return flow or "tailwater". Thus, the estimated depletion to the hydrologic system would have been approximately 8.6365 acre-feet. To prevent enlargement, the proposed municipal uses under this change cannot exceed either the historic diversion amount of 17.273 acre-feet nor the historic depletion amount of approximately 8.6365 acre-feet. Under the current usage and wastewater disposal practices, it is estimated that less than 50% of the water diverted would be depleted. However, these practices are subject to change as development continues. Adjustments to the diversion amount will have to be made in response to future wastewater disposal technologies or practices which have the effect of increasing the rate of depletion.

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Second, the acreage which was historically irrigated under the changed right will have to be permanently retired. The water which has heretofore been diverted and used on that acreage shall remain within the existing distribution system for the benefit of other users.

Third, some water will now be diverted and depleted outside the normal irrigation season. To compensate those holding rights to the "winter water", a mechanism will be necessary to deliver some amount of water during the non-irrigation season. At present, it may be that this area is only minimally accessible during the non-irrigation season and water use during that period will be insignificant. However, under the municipal use proposed, this right could potentially be diverted and used in facilities that are operated year-around, including ski resort facilities that operate exclusively during the non-irrigation season. The winter depletion is estimated to be approximately 41.67% (5/12) of the total depletion of 8.6365 acre-feet, or 3.60 acre-feet. Representatives of the Beaver County Special Service District No. 6, in seeking approval of a similar change application under 77-1768 (a20271), have proposed a plan whereby this amount of water, rather than being diverted into the municipal system, will be placed in a designated storage structure (typically during the months of September and October) and then released into the Beaver River during the period preceding the next irrigation season (typically November through March). This mechanism would minimize evaporation losses and minimize competition with other storage rights on the headwaters of the river.

Fourth, water users under this right will be required to share water shortages on the system proportionately with others of equal or earlier priority. Enforcement of this condition will be difficult but should be achievable by assessing shortages to the water users under this right during the year following the shortage. When the annual report of the Distribution Commissioner for a given year shows that less than 100% of the 1870-priority rights were deliverable during that year, the rights under this application for the following year shall be limited to the percent deliverable the preceding year.

Fifth, this application and the prior change on which it relies appear to change the point of diversion for this right from a point which is below PacifiCorp's primary diversion dam at Merchant Valley to a point which is tributary to the river above PacifiCorp's diversion. Although the quantity of water is relatively small, this application represents one of a number of similar filings which may have a cumulative effect of significant magnitude. State statutes provide that impaired parties must be protected or compensated in some manner.

Sixth, this application proposes a "municipal" beneficial use but remains vested in individuals who do not appear to qualify to claim such use. The advantages and benefits of municipal use are reserved to political or quasi-political entities able to levy taxes or special assessments to provide and maintain services. Qualifying entities will generally have powers of eminent domain (condemnation), will have a defined service area, and must have a system in compliance with the standards established by the Department of Environmental Quality, Division of Drinking Water, for a "public" water supply. Prior to terminating service, qualifying entities must comply with certain legal requirements. Such entities are also subject to the jurisdiction of the Public Service Commission in establishing fee schedules for services.

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**CHANGE APPLICATION NUMBER**  
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It is, therefore, **ORDERED** and Application Number 77-1792 (a22275) is hereby **APPROVED** subject to the following conditions:

- 1) All water diverted under this application shall be metered using suitable equipment, properly installed and perpetually maintained. A permanent record of diversions shall be maintained and reported to the State Engineer or the Distribution Commissioner annually or more frequently upon request. The location(s) of the metering equipment shall be subject to the approval of the State Engineer and shall be reasonably accessible to the State Engineer's representatives.
- 2) The system to develop and divert the proposed spring source shall be designed such that flows in excess of the rights available for diversion shall be returned to the natural drainage as closely as practical to the historic point of discharge from the source and with minimal degradation in quality.
- 3) Depletions to the Beaver River system shall be limited to those historically incurred as described herein, including adjustments for shared shortages. Water diverted for storage and release to offset winter depletion shall be included in the total diversion allowance of 17.273 acre-feet.
- 4) The applicants or successors shall be responsible for all work, design and costs associated with the reconstruction of or adjustments to any existing structures for the diversion and distribution of water which may be made necessary by this change. The Distribution Commissioner, in conjunction with other personnel of the Division of Water Rights and affected water users shall determine the adjustments or construction required.
- 5) All storage and releases of stored water under this application shall be coordinated with or under the supervision of the Distribution Commissioner or other designated personnel of the Division of Water Rights.
- 6) The applicants or successors shall be responsible for obtaining any and all other permits, legal rights or clearances which are required, which may include but are not necessarily limited to a stream alteration permit per Section 404 of the federal Clean Water Act, permits related to the construction of a dam for water storage facilities, and permits related to wastewater disposal, source protection, and the construction and operation of a public water supply system.
- 7) These applicants or successors shall be liable to provide compensation to other water users whose prior rights are impaired by this change as may be stipulated or decreed by a court of competent jurisdiction.
- 8) The proposed municipal use shall be authorized only upon the conveyance of this water right to a qualifying entity or upon provision of evidence that such entity has entered into an agreement with the applicants or successors such that the qualifying entity shall acquire full authority to utilize the water right in a manner consistent with its political or

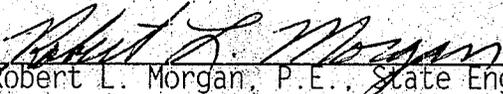
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quasi-political charter and under the supervision of the appointed or elected officials of that entity.

- 9) If any of the specific conditions of approval set forth herein are found to be unattainable to the applicants, it shall be the responsibility of the applicants or successors to propose an alternative condition which satisfies the same requirements in a manner acceptable to and approved in advance by the State Engineer.

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 31st day of March, 1999.

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

RLM:KEC:et

Mailed a copy of the foregoing Memorandum Decision this 31st day of March, 1999, to:

Joseph D. and Gaytha L. Benson  
P.O. Box 878  
Beaver, UT 84713

Ronald Roberts  
Beaver River Distribution Commissioner  
110 North 500 East  
P. O. Box 605  
Beaver, Utah 84713

US Department of Agriculture  
Forest Service Intermountain Region  
324 25th Street  
Ogden, UT 84401-2310

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Scott Hacking, P.E.  
District Engineer  
Department of Environmental Quality  
88 E Fiddlers Canyon Rd.  
Cedar City, UT 84720

Beaver County Special Service District #6  
Chad W. Johnson, Commissioner  
105 E Center Street  
Beaver, UT 84713

BY: *Eileen Tooke*  
Eileen Tooke, Secretary



JON M. HUNTSMAN, JR.  
*Governor*  
GARY R. HERBERT  
*Lieutenant Governor*

**State of Utah**  
**DEPARTMENT OF NATURAL RESOURCES**  
**Division of Water Rights**

MICHAEL R. STYLER  
*Executive Director*

JERRY D. OLDS  
*State Engineer/Division Director*

JUN 28 2007

**ORDER OF THE STATE ENGINEER**

**For Permanent Change Application Number 77-1792 (a25450)**

Permanent Change Application Number 77-1792 (a25450) in the name of Elk Meadows Special Service District was filed on April 27, 2001, to add an additional point of diversion of 17.2732 acre-feet of water as evidenced by Water Right Number 77-1792, as previously amended under Change Application a22275. Heretofore, the water has been diverted from a surface source located North 1900 feet and East 1000 feet from the SW Corner of Section 30, T28S, R4W, SLB&M (Upper Meadows Spring [formerly: 'Unnamed Spring']). The water was used within the municipal boundaries of Elk Meadows Special Service District. The water was used in all or portion(s) of Section 36, T28S, R5W, SLB&M.

Hereafter, it is proposed to divert 17.2732 acre-feet of water from the same point as heretofore and from additional points located: (1) Well - South 200 feet and East 400 feet from the NW Corner of Section 2, T29S, R5W, SLB&M (12-inch, 300-500 feet deep, Merchant Creek well); (2) Well - South 656 feet and East 2525 feet from the NW Corner of Section 6, T29S, R4W, SLB&M (14-inch, 200-600 feet deep, Puffer Lake well); (3) Surface - North 2091 feet and East 723 feet from the SW Corner of Section 31, T28S, R4W, SLB&M (Puffer Lake Spring Area); (4) Surface - South 200 feet and East 450 feet from the NW Corner of Section 2, T29S, R5W, SLB&M (Merchant Creek)<sup>1</sup>; (5) Surface - North 2900 feet and East 3100 feet from the SW Corner of Section 36, T28S, R5W, SLB&M (Triple Chair Spring). The nature of use of the water will remain the same as heretofore. The place of use of the water will remain the same as heretofore.

Notice of the application was published in the Beaver Press on May 10 and May 17, 2001, and protests were received from PacifiCorp. A hearing was not held.

As noted, underlying Water Right Number 77-1792 was the subject of prior Change Application Number a22275 which was approved by the State Engineer by a Memorandum Decision dated March 31, 1999. That decision detailed the several concerns of the State Engineer in evaluating a change of this nature, including the necessity that the applicant establish a mechanism to provide replacement water to downstream users affected by the proposed winter water uses, the requirement that any water user impaired by the change in point of diversion to a higher portion of the watershed be properly compensated or the impairment mitigated, and the limitations on the changed right necessary to assure that there is no enlargement of the underlying water right.

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<sup>1</sup>As of the date of this application, neither of the two proposed wells had been drilled, although the so-called "Puffer Lake Well" was previously authorized under a prior application. Only the "Merchant Creek Well" is to be authorized for construction under this application.

In evaluating the various elements of the underlying right, it is the primary intention of the State Engineer to provide sufficient definition of the right to assure that other vested rights are not impaired by the change without compensation, that no enlargement of the underlying right occurs, and that the application satisfies the current requirements of applicable statute and policy. In order to assure that there is no enlargement of the underlying water rights, the quantity of water diverted under this change application shall be limited to the quantity of water available at the historic source. Should the historic source be unable to supply the 17.273 acre-feet it has provided to the underlying water right for the historic uses, the uses and diversion of water under this change application shall be reduced accordingly.

It is the opinion of the State Engineer that this change application can be approved without adversely affecting existing rights provided certain conditions are imposed. The applicant is put on notice that diligence must be shown in pursuing the development of this application which can be demonstrated by the completion of the project as set forth in this Order of the State Engineer.

It is, therefore, **ORDERED** and Permanent Change Application Number 77-1792 (a25450) is hereby **APPROVED** subject to prior rights and the following conditions:

1. This approval is limited to the rights to divert and beneficially use water and does not grant any rights of access to nor use of land or facilities not owned by the applicant(s).
2. As noted, this approval is granted subject to prior rights. The applicants shall be liable to mitigate or provide compensation for any impairment of or interference with prior rights as such may be stipulated among the parties or decreed by a court of competent jurisdiction.
3. Water use under this approval shall be limited to the annual diversion of 17.2732 acre-feet provided that quantity of water is available at the historic source. If it is not, this change application shall be reduced accordingly.
4. For any water diverted during the non-irrigation season, the applicant shall be responsible to divert and store that amount of water during the irrigation season which may be depleted from the hydrologic system by that winter use under their water right and release the amount of water depleted during the non-irrigation season to compensate those down stream users who may be affected.
5. All water diverted under this application shall be metered using suitable equipment, properly installed and perpetually maintained. A permanent record of diversions shall be maintained and reported to the State Engineer or the Distribution Commissioner annually or more frequently upon request. The location of the metering equipment shall be subject to the approval of the State Engineer and shall be reasonably accessible to the State Engineer's

Upon the submission of proof as required by Section 73-3-16, Utah Code, for this application, the applicant 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.

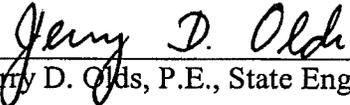
**It is the applicant's responsibility to maintain a current address with this office and to update ownership of their water right. Please notify this office immediately of any change of address or for assistance in updating ownership.**

The applicant is advised to contact the Stream Alteration Section of the Division of Water Rights to ascertain if a Stream Alteration permit is required for this Permanent Change Application.

Your contact with this office, should you need it, is with the Southwestern Regional Office. The telephone number is 435-586-4231.

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 28 day of June, 2007.

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

representatives.

6. Depletions to the Beaver River system shall be limited to those historically incurred as described herein, including adjustments for shared shortages. Water diverted for storage and release to offset winter depletion shall be included in the total diversion allowance of 17.2732 acre-feet.
7. The applicants or successors shall be responsible for all work, design and cost associated with the reconstruction of or adjustments to any existing structures for the diversion and distribution of water which may be made necessary by this change. The proposed plan for distributing water as required with this approval shall be approved by the Distribution Commissioner and the Division of Water Rights, prior to construction of the project and use of the water.
8. All storage and release of stored water under this application, as set forth herein, shall be coordinated with or under the supervision of the Distribution Commissioner or other designated personnel of the Division of Water Rights.
9. Water users under this application are to share shortages proportionately with others of equal priority as set forth herein.
10. The proof documents to be filed on this application shall include a verification and certification of compliance with each of the foregoing conditions of approval.
11. This approval does not grant any rights nor permits related to the design, construction or operation of a regulated water system or related wastewater disposal facilities. Such permits or authorities as may be necessary for the proposed development are to be acquired separately from this approval.

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 **March 31, 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 applicant is 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.

ORDER OF THE STATE ENGINEER  
Permanent Change Application Number  
77-1792 (a25450)  
Page 5

Mailed a copy of the foregoing Order this 28 day of June, 2007 to:

Elk Meadows Special Service District  
P.O. Box 1796  
Beaver, UT 84713

PacifiCorp  
c/o Jody L. Williams  
50 West Broadway, 8th Floor  
Salt Lake City, UT 84101

PacifiCorp  
c/o Claudia Conder, Water Rights Administrator  
1407 West North Temple, Suite 110  
Salt Lake City, UT 84140

Stream Alteration Section  
Division of Water Rights

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

BEFORE THE STATE ENGINEER OF THE STATE OF UTAH

IN THE MATTER OF CHANGE APPLICATION )  
 )  
NUMBER 77-503 (a23758) )

MEMORANDUM DECISION

Change Application Number 77-503 (a23758), in the names of Boyd and Norma Yardley, was filed on September 27, 1999, to change the point of diversion, place and nature of use of 1.593 cfs or 246.0 acre-feet of water. Heretofore, the water has been diverted from the Beaver River into the "Mammoth Canal" at a point located South 610 feet and West 460 feet from the E $\frac{1}{4}$  Corner of Section 22, T29S, R7W, SLB&M, and then re-diverted into the "Greenwood Ditch" at a point located North 650 feet and West 3010 feet from the SE Corner of Section 22, T29S, R7W, SLB&M, and used for the supplemental irrigation of 111.2 acres (sole supply for 61.5 acres) from April 1 to October 31 in the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 21; the S $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 22; the W $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 27; and the N $\frac{1}{2}$ NE $\frac{1}{4}$  and SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 28, all in T29S, R7W, SLB&M.

Hereafter, it is proposed to divert 246.0 acre-feet of water from Ford Spring, located North 2091 feet and East 723 feet from the SW Corner of Section 31, T28S, R4W, SLB&M, and from a well, located South 1052 feet and East 2528 feet from the NW Corner of Section 6, T29S, R4W, SLB&M, to be used for municipal purposes within the Elk Meadows Special Service District.

The application was advertised in The Beaver Press on January 20 and 27, 2000, and was protested by Beaver City Corporation, Jeffrey M. Joseph, Minersville Reservoir and Irrigation Company, PacifiCorp, Rocky Ford Irrigation Company, Floyd Yardley, Calvin Yardley, Dale Yardley, and Ray Yardley. A hearing was held on April 5, 2000, in Beaver, Utah, in which information was gathered relative to both this application and Change Application Number 77-1800 (a23736). Applicant Boyd Yardley was present and was also represented by Hugh Blackburn. Others offering testimony or information in support of the application included Tony Fuller of Sunrise Engineering, consulting engineers for the Elk Meadows Special Service District, Brian Harris representing Beaver County, and John Ford, a member of the governing board of the special service district and potential water user within the district.

Protestants Jeffrey M. Joseph, Ray Yardley, Floyd Yardley, Calvin Yardley and Dale Yardley were all present. PacifiCorp was represented by Jodi L. Williams; Rocky Ford Irrigation Company was represented by Dan Goff and Larry Maycock, president and board member, respectively, and by J. Bryan Jackson, attorney; Beaver City was represented by Steve Atkin, City Manager; Dan Goff also represented the Minersville Reservoir and Irrigation Company.

Mr. Joseph asked that his written protests relative to Change Application Number 77-194 (a24115) be incorporated into the record of this hearing. Mr. Joseph also expressed his concern that the cumulative effects of transfers of water rights from the Beaver Valley to the area served by the service district will unavoidably have detrimental impacts on the farming and family economies in Beaver Valley. He noted his own dependence for support of his family on water originating in the headwater areas of the Beaver River and submitted documents related to historic flows in the river to support his contention that the river typically fails to fully supply even the earliest priority rights. He is of the opinion that the development to be supported by this and similar applications will cause or worsen water quality problems in the river. In his written protests, Mr. Joseph offered additional information and ideas related to the ongoing development within the service area of the special service district.

Mr. Jackson, speaking on behalf of Rocky Ford Irrigation Company, emphasized the concerns that hydrologic depletion occurring during the winter should be properly addressed in the State Engineer's decision as it has been in prior decisions (e.g., 77-1792, a22275), and asked for affirmative requirements that: 1) the historic acreage be properly abandoned or reduced; 2) both streamflow quantity and quality be undiminished by the change; and that 3) any drilling activities be conducted to assure protection of water quality.

Ms. Williams, on behalf of PacifiCorp, said that her client is not opposed to the proposed developments, but asserted that the proposed change in point of diversion from a point below the present hydro-power diversions to a point above those diversions will have the effects of impairing her client's rights. She asked that the applicant (or successors) be prepared to enter into a compensation agreement for the economic losses that will be suffered. She asked that the State Engineer set a hydrologic depletion limitation on the changed right if the application is approved.

Mr. Atkin, acting for Beaver City, stated that the city was also supportive of development on the Beaver Mountain, but was obligated to protect its water rights. He noted that recent instream flow requirements have already reduced the available water supply, that Beaver City would request compensation for lost power generation, and emphasized that Beaver City had no intention to provide water to the historic irrigated acreage if future development is planned for that site.

Mr. Goff, speaking for Minersville Irrigation Company, stated that this company had the same concerns as had been expressed in behalf of the Rocky Ford Irrigation Company.

**MEMORANDUM DECISION**  
**CHANGE APPLICATION NUMBER**  
**77-503 (a23758)**  
**PAGE 3-**

Several protestants, including Ray, Calvin, Floyd and Dale Yardley, and Mr. Joseph, expressed their opinion that the re-setting or rebuilding of any structures used in the distribution of water in the Beaver Valley should be accomplished at the expense of those initiating change applications of this type. Mr. Joseph noted that those present at the annual Beaver River Water Users' Distribution Meeting in February had adopted a resolution to that effect.

Calvin Yardley, speaking in behalf of himself, Dale and Floyd Yardley, stated that applications of this type are affecting return flow patterns in the Beaver Valley and reducing water supplies to those whose rights rely upon the slough and spring flows in the lower portions of the valley. He noted that, although there have been precedents for approving this type of application, as conditions change, precedents must be reconsidered. Floyd Yardley noted that in relation to previously approved applications, conditions of approval (specifically those related to metering of diversions) have not been complied with nor enforced.

In support of the application, Boyd Yardley and Hugh Blackburn stated that there has been ample precedent established for approving applications of this nature and that Mr. Yardley is fully capable of properly terminating or reducing the irrigation of the historic acreage to avoid an enlargement of the right. Mr. Yardley asserted that the reduction of return flows in the lower valley was more due to the change from flood to sprinkler irrigation practices in the upper areas than to applications of this type.

Mr. Fuller, Mr. Ford and Mr. Harris, purported to be representing the Beaver County Commission and the special service district, all spoke in support of the application, stating that the acquisition of this early-priority right for use on the Beaver Mountain would be a significant benefit to the county and the district.

This application raises a number of issues of concern to the State Engineer and to other water users dependent on the Beaver River and tributaries. The subject water right originates in Award 32(a) of the Beaver River Decree dated November 13, 1931, with a priority date of 1870, and was historically diverted from the Beaver River and used for irrigation in the vicinity of Beaver City. In evaluating the various elements of the underlying right, it is not the intention of the State Engineer to adjudicate the extent of the right, but rather to provide sufficient definition of the right as described in the defining decree to assure that other vested rights are not impaired by the change without compensation, that no enlargement occurs, and that the application satisfies the requirements of statute.

The protests filed on this application raise issues consistent with those surrounding several earlier applications of this same type. Those same issues are pertinent and become more cogent as the demand for water on the Beaver Mountain increases. However, the State Engineer finds it reasonable to believe that this application can be approved without enlargement or undue impairment of prior rights if certain consequences of the change are properly addressed:

First, the proposed change in the nature of use will result in an alteration to the pattern of depletion of water. Historically, the rights were used for irrigation of 61.50 acres with a maximum diversion allowance of 246.0 acre-feet per year. Of the amount diverted, approximately 50% was consumed by the crop or evaporative losses and the remaining 50% remained in the hydrologic system as return flow or "tailwater". Thus, the estimated depletion to the hydrologic system would have been approximately 123.0 acre-feet. To prevent enlargement, the proposed municipal uses under this change cannot exceed either the historic diversion amount of 246.0 acre-feet nor the historic depletion amount of approximately 123.0 acre-feet. Under the current usage and wastewater disposal practices at the proposed place of use, it is estimated that less than 50% of the water diverted would be depleted. However, those practices are subject to change as development continues. Adjustments to the diversion amount will have to be made in response to future wastewater disposal technologies or practices which have the effect of increasing the rate of depletion.

Second, 61.5 acres of land historically irrigated must be permanently removed from irrigation and the water which has heretofore been diverted and used on that historically irrigated acreage must remain within the existing distribution system for the benefit of other users. The remaining acreage may continue to be irrigated under other supplemental rights (e.g., 77-504, 511, 512) to the extent that water is available under the priority dates associated with those rights.

Third, some water will now be diverted and depleted outside the normal irrigation season. To compensate those holding rights to the "winter water", a mechanism will be necessary to deliver some amount of water during the non-irrigation season. At present, it may be held that this area is only minimally accessible during the non-irrigation season and that water use during that period will be insignificant. However, under the municipal use proposed, this right could potentially be diverted and used in facilities that are operated year-around, including ski resort facilities that operate almost exclusively during the non-irrigation season. The winter depletion is estimated to be approximately 41.67% (5/12) of the total depletion of 123.0 acre-feet, or 51.25 acre-feet. Representatives of the Elk Meadows Special Service District, in seeking approval of a similar change application under 77-1768 (a20271), have proposed a plan

**MEMORANDUM DECISION**  
**CHANGE APPLICATION NUMBER**  
**77-503 (a23758)**  
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whereby this water, rather than being diverted into the municipal system, will be placed in a designated storage structure (typically during the months of September and October) and then released into the Beaver River during the period preceding the next irrigation season (typically November through March). This mechanism would minimize evaporation losses and minimize competition with other storage rights on the headwaters of the river. This proposal, as far as it has been detailed, appears satisfactory to the State Engineer. However, it shall be the responsibility of the applicant or successors to implement the proposal.

Fourth, water users under this right must be required to share water shortages on the system proportionately with others of equal or earlier priority. Enforcement of this condition will be difficult but should be achievable by assessing shortages to the water users under this right during the year following the shortage. When the annual report of the Distribution Commissioner for a given year shows that less than 100% of the 1870-priority rights were deliverable during that year, the rights under this application for the following year shall be limited to the percent deliverable the preceding year. This requirement may be waived if the water user under this application can document that water use during a particular year was less than or equal to that percentage delivered to other users with equal priority. The water user will be responsible to provide such documentation in the form of meter readings independently verified by the Distribution Commissioner.

Fifth, this application proposes to change the point of diversion for this right from a point which is below PacifiCorp's diversions on the Beaver River to a point which is tributary to the river above those diversions. It also proposes moving the point of diversion from below to above the diversions utilized by Beaver City for power generation. Although the quantity of water is relatively small in comparison to the annual flow of the Beaver River, this application represents one of a number of similar filings which may have a cumulative effect of significant magnitude. While statute bars the State Engineer from rejecting a change application solely on the basis of possible impairment, it is also provided that impaired parties must be protected or compensated in some manner.

Sixth, this application proposes a "municipal" beneficial use but is currently vested in individuals who do not appear to qualify to claim such use. The advantages and benefits of municipal use are reserved to political or quasi-political entities able to levy taxes or special assessments to provide and maintain services. Qualifying entities will generally have powers of eminent domain (condemnation), will have a defined service area, and must have a system (including any new wells, springs, or distribution works) designed, constructed and operated in compliance with the standards established by the Department of

**MEMORANDUM DECISION**

**CHANGE APPLICATION NUMBER**

**77-503 (a23758)**

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Environmental Quality, Division of Drinking Water, for a "public" water supply. Prior to terminating service, qualifying entities must comply with certain legal requirements. Such entities are also subject to the jurisdiction of the Public Service Commission in establishing fee schedules for services.

It is, therefore, **ORDERED** and Change Application Number 77-503 (a23758) is hereby **APPROVED** subject to prior rights and the following conditions:

- 1) An area of 61.5 acres of the historically irrigated 111.2 acres of land shall be permanently removed from irrigation to accommodate the new uses of water proposed under this application. Water historically diverted shall be left within the existing distribution system to supply the rights of others.
- 2) All water diverted under this application shall be metered using suitable equipment, properly installed and perpetually maintained. A permanent record of diversions shall be maintained and reported to the State Engineer or the Distribution Commissioner annually or more frequently upon request. The location(s) of the metering equipment shall be subject to the approval of the State Engineer and shall be reasonably accessible to the State Engineer's representatives.
- 3) The system to develop and divert the proposed spring source shall be designed such that flows in excess of the rights available for diversion shall be returned to the natural drainage as closely as practical to the historic point of discharge from the source and with no degradation in quality.
- 4) Maximum total annual diversion under this right shall be limited to 246 acre-feet. Depletions to the Beaver River system shall be limited to those historically incurred as described herein, including adjustments for shared shortages and shall not exceed a maximum of 123 acre-feet per year. Water diverted for storage and release to offset winter depletion shall be included in the total diversion allowance of 246.0 acre-feet.
- 5) The applicants or successors shall be responsible for all work, design and costs associated with the reconstruction of or adjustments to any existing structures for the diversion and distribution of water which may be made necessary by this change. The Distribution Commissioner, in conjunction with other personnel of the Division of Water Rights shall coordinate efforts with affected water users and determine the adjustments or construction required.

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CHANGE APPLICATION NUMBER  
77-503 (a23758)  
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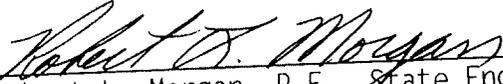
- 6) All storage and releases of stored water under this application, as set forth herein, shall be coordinated with or under the supervision of the Distribution Commissioner or other designated personnel of the Division of Water Rights.
- 7) The applicants or successors shall be responsible for obtaining any and all other permits, legal rights or clearances which are required, which may include but are not necessarily limited to a stream alteration permit per Section 404 of the federal Clean Water Act, permits related to the construction of a dam for water storage facilities, and permits related to wastewater disposal, source protection, and the design, construction and operation of a public water supply system.
- 8) These applicants or successors shall be liable to provide compensation to other water users whose prior rights are impaired by this change as may be agreed by the parties or decreed by a court of competent jurisdiction.
- 9) The proposed municipal use shall be authorized only upon the conveyance of this water right to a qualifying entity or upon provision of evidence that such entity has entered into an agreement with the applicants or successors such that the qualifying entity shall acquire full authority to utilize the water right in a manner consistent with its political or quasi-political charter and under the supervision of the appointed or elected officials of that entity.
- 10) Water users under this application are to share shortages with others of equal priority as set forth herein and diversions and depletions should be adjusted accordingly.
- 11) The proof documents to be filed on this application shall include a verification and certification of compliance with each of the foregoing conditions of approval.
- 12) If any of the conditions of approval set forth herein are found to be unlawful, infeasible or unacceptable to the applicants, it shall be the responsibility of the applicants or successors to propose an alternative condition in writing which satisfies the same requirements in a manner acceptable to and approved in writing by the State Engineer prior to instituting the alternative.

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.

**MEMORANDUM DECISION**  
**CHANGE APPLICATION NUMBER**  
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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 7<sup>th</sup> day of June, 2000.

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

RLM:KEC:et

Mailed a copy of the foregoing Memorandum Decision this 7<sup>th</sup> day of June, 2000,  
to:

Boyd and Norma Yardley  
Beaver, UT 84713

Beaver City Corporation  
c/o Steve Atkin, Beaver City Manager  
60 West Center Street  
Beaver, UT 84713-0271

Jeffrey M. Joseph  
Box 421  
Beaver, UT 84713

Minersville Reservoir and Irrigation Company  
c/o Marshall Hollingshead, Secretary  
P. O. Box 83  
Minersville, UT 84752

PacifiCorp  
c/o Jody L. Williams  
50 West Broadway, 8th Floor  
Salt Lake City, UT 84101

MEMORANDUM DECISION  
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Rocky Ford Irrigation Company  
c/o J. Bryan Jackson  
P. O. Box 519  
Cedar City, UT 84721-0519

Floyd, Calvin and Dale Yardley  
P. O. Box 107  
Beaver, UT 84713

Ray Yardley  
P.O. Box 108  
Beaver, UT 84713

Ronald Roberts - Distribution Commissioner  
110 North 500 East  
P. O. Box 605  
Beaver, Utah 84713

Scott Hacking, P.E. - District Engineer  
Department of Environmental Quality  
88 East Fiddlers Canyon Road, Suite H  
Cedar City, UT 84720

BY: Eileen Tooke  
Eileen Tooke, Secretary



## WUSEVIEW Water Records/Use Information Viewer

Version: 2018.10.11.00 Rupdate: 10/11/2018 04:01 PM

### Public Water Supplier Information

[View Reports](#)
[View Sources Map](#)
[Show Inactive Sources](#)
[View Blank Form](#)
[Quit System](#)

System Name: Elk Meadows Special Service District  
 Address: PO Box 1796  
 City: Beaver State: UT Zip: 84713  
 Business phone: (435) 310-0535 ext:  
 Supervisor: Jeremy Carroll  
 Title:  
 Entry Person: Jeremy Carroll Phone: (435) 438-5317 ext:  
 County: Beaver  
 Primary Use: Water Supplier  
 Standard Industrial Code: 4941 Dual Irrigation: N  
 Sewage Treatment Fac. ID: Hydro Unit Code: 16030007  
 Public Water System ID: 01002  
 DEQ System Category: Community

#### System Comments:

(2005) Mt. Holley Homeowners Association is now a part of Elk Meadows.  
2/11/05 js

LFQ: Elk Meadows SSD reported an overflow of 7271268 gallons, and a leak of 4 gpm during 2015.

Bmellor: 6/06/2017 Elk Meadows SSD reported an overflow estimation of 11,437,549 gallons 2016.

\*\*\*\* 2016 \*\*\*\* Annual Water Use Breakdown \*\*\*\*

\*\*\*\* 2016 \*\*\*\* Irrigation \*\*\*\*

#### General Annual Info

Year	Date Received	Population	Dual System Percentage	Storage 10 <sup>3</sup> Gal	Number Of Tanks
2017	02/23/2018	300	0	0	0
2016	06/06/2017	290	0	0	0
2015	05/03/2016	290	0	0	0
2014	03/18/2015	0	0	0	0
2013	03/13/2014	5	0	320	2
2005	06/02/2006	50	0	325	3
2003	04/15/2004	50	0	325	2
2002	05/27/2003	35	0	320	2
2001	03/13/2002	150	0	200	1
2000	05/22/2001	25	0	445	0
1999	07/14/2000	0	0	445	0

#### Annual Connection Info

Year	Domestic	Commercial	Industrial	Institutnln	Stock	Wholesale	Other	Unmetered	Total
2017	55	3	0	1	0	0	0	0	59
2016	54	3	0	1	0	0	0	0	48
2015	53	3	0	1	0	0	0	0	48
2014	0	0	0	0	0	0	0	0	0
2013	32	4	0	0	2	0	0	0	38
2005	96	2	0	0	0	0	0	0	116
2003	114	2	0	0	0	0	0	0	116
2002	148	2	0	0	0	0	0	0	150
2001	146	3	0	0	0	0	0	0	149

2000	140	3	0	0	0	0	0	21	0	164
1999	0	0	0	0	0	0	0	0	0	0

Annual Use Info (Acft)

Year	Domestic	Commercial	Industrial	Institutnl	Stock	Wholesale	Other	Unmetered	Total
2017	12.54	0.51	0.00	0.10	0.00	0.00	0.00	0.00	13.15
2016	12.37	0.05	0.00	0.09	0.00	0.00	0.00	0.00	12.52
2015	12.27	0.49	0.00	0.09	0.00	0.00	0.00	0.00	12.85
2014	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
2013	1.61	0.51	0.00	0.00	6.14	0.00	0.00	0.00	8.26
2005	1.55	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1.55
2003	6.36	0.00	0.00	0.00	0.00	0.00	0.00	0.00	6.36
2002	3.33	0.00	0.00	0.00	0.00	0.00	0.00	0.00	3.33
2001	4.42	0.74	0.00	0.00	0.00	0.00	0.00	0.00	5.16
2000	3.62	0.45	0.00	0.00	0.00	0.00	1.69	0.00	5.76
1999	8.86	0.00	0.00	0.00	0.00	0.00	0.00	0.00	8.86

Source Summary

Source Name: Forest Service Spring (WS005)  
 PLS Location: S 1155 ft E 991 ft from W4 Cor Section 30 T28S R4W SLB&M  
 Source Type: Spring  
 Primary Use: Water Supplier  
 Diversion Type: Withdrawal  
 Hydrologic Unit Code: 16030007  
 DEHN Source Code: 01002-05  
 Saline Water: N

Water Right Numbers: 77-1768

Source Comments:

\*\*\*\* 2016 \*\*\*\* Forest Service Spring (WS005) \*\*\*\*

Source Record (ACFT)

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Ann	Measuring Method
2017	0.1	0.5	0.7	0.7	8.7	4.3	3.8	14.4	4.4	11.9	14.3	5.4	69.2	meter
2016	0.1	0.6	0.7	0.7	8.6	4.2	3.9	11.5	5.9	11.3	14.1	5.2	67.0	Calculated
2015	0.1	0.6	0.7	0.7	5.2	4.0	4.0	13.8	4.8	11.0	10.8	6.2	62.0	Master Meter
2014	1.9	1.7	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	22.6	Weir
2013	3.3	3.3	3.3	3.3	3.3	3.3	3.3	3.3	3.3	3.3	3.3	3.3	39.8	Master Meter

Source Summary

Source Name: Puffer Lake Upper/Middle Springs Group  
 PLS Location: S 862 ft E 508 ft from W4 Cor Section 31 T28S R4W SLB&M  
 Source Type: Spring  
 Primary Use: Water Supplier  
 Diversion Type: Withdrawal  
 Hydrologic Unit Code: 16030007  
 DEHN Source Code: 01002  
 Record includes multiple Sources  
 Saline Water: N

Water Right Numbers: a25114 77-1768 a25450 a23758c

Source Comments:

(2001) Grouping springs Puffer Lake Middle Spring and Puffer Lake Upper Spring.  
 (2005) same comment as 2001.

\*\*\*\* 2016 \*\*\*\* Puffer Lake Upper/Middle Spring (WS007) \*\*\*\*

Puffer Lake Upper/Middle Spring is used from Dec to April for ski season.  
From April to November all water bypass to Puffer Lake.

Source Record (ACFT)

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Ann	Measuring Method
2017	2.0	2.3	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	1.6	5.9	meter
2016	1.4	1.5	1.1	1.1	0.0	0.0	0.0	0.0	0.0	0.0	0.9	1.2	7.2	Calculated
2015	1.5	1.7	1.4	0.0	0.0	0.0	0.0	0.0	0.0	0.0	1.5	0.9	7.0	Weir
2014	7.0	6.3	7.0	6.8	7.0	6.8	7.0	7.0	6.8	7.0	6.8	7.0	82.3	meter
2013	3.1	3.1	3.1	3.1	3.1	3.1	3.1	3.1	3.1	3.1	3.1	3.1	36.8	Weir
2005	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.7	2.0	2.8	Master Meter
2003	0.0	0.0	0.0	2.7	1.4	6.1	0.0	0.5	0.0	0.0	1.6	6.7	19.1	Master Meter
2002	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	5.6	5.6	Master Meter
2000	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	3.2	3.2	Master Meter

Utah Division of Water Rights | 1594 West North Temple Suite 220, P.O. Box 146300, Salt Lake City, Utah 84114-6300 | 801-538-7240  
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WUSE081455

# UTAH WATER USE DATA FORM

## DATA FOR 2015

Information jointly requested by:  
Utah Division of Water Rights, 801-538-7223  
Utah Division of Water Resources, 801-538-7264  
Utah Division of Drinking Water, 801-536-4200

Return completed form to:  
Utah Division of Water Rights  
PO Box 146300  
Salt Lake City, UT 84114-6300

**System Name:** Elk Meadows Special Service District

Public Water System ID: 01002

**Address:** PO Box 1796  
Beaver, UT 84713

Retail Population Served: 50 Aver. from Dec. 22. Through April 1 200 per week  
County: Beaver from April 2. Through Dec 22. 6 per week.

### I. SUMMARY INFORMATION:

**E-Mail Address:** orton\_ken@yahoo.com If different, please specify \_\_\_\_\_  
**Contact Person:** Ken Orton  
**Phone Number:** (435)-590-9650

To the best of my knowledge all information is accurate and complete:  
**Name:** Ken Orton **Signature** 

Drinking Water Operator Number: 1  
 Professional Engineer Number: 1  
 Water Manager

Data must be completed and signed by Drinking Water Qualified Operator, Professional Engineer or Water Manager.

RECEIVED  
MAY 02 2016  
WATER RIGHTS  
SALT LAKE  
JH

**II. SOURCE INVENTORY:**

Enter the volume of water diverted from each source by month

1 Source Name: **Forest Service Spring**

Type: Spring Location: Sec 36, T28S, R, B&M

WR Number(s):

Method of Measurement:  Master Meter,  Estimate,  Other - Specify \_\_\_\_\_

Units of Measurement:  Gallons,  Thousand Gallons,  Million Gallons,  Acre-feet,  Other - Specify \_\_\_\_\_

Are there any spills/overflow?  Yes,  No Are spills/overflow included in the quantities reported?  Yes,  No

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	ANNUAL
178,560	161,229	178,560	179,800	178,560	179,800	178,560	178,560	179,900	178,560	178,800	178,560	2,102,400

2 Source Name: **Puffer Lake Middle Sprg**

Type: Spring Location: Sec 36, T28S, R5W, SLB&M

WR Number(s): 77-194

Method of Measurement:  Master Meter,  Estimate,  Other - Specify weir

Units of Measurement:  Gallons,  Thousand Gallons,  Million Gallons,  Acre-feet,  Other - Specify \_\_\_\_\_

Are there any spills/overflow?  Yes,  No Are spills/overflow included in the quantities reported?  Yes,  No

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	ANNUAL
2230,000	2,014,000	2,232,000	2,160,000	2,232,000	2,160,000	2,230,000	2,230,000	2,169,000	2,289,000	2,169,000	2,232,000	21,730,000

3 Source Name: **Puffer Lake Upper Spring**

Type: Spring Location: Sec 36, T28S, R5W, SLB&M

WR Number(s): 77-194

Method of Measurement:  Master Meter,  Estimate,  Other - Specify Waters

Units of Measurement:  Gallons,  Thousand Gallons,  Million Gallons,  Acre-feet,  Other - Specify \_\_\_\_\_

Are there any spills/overflow?  Yes,  No Are spills/overflow included in the quantities reported?  Yes,  No

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	ANNUAL
<u>1316,000</u>	<u>1,000</u>	<u>500,000</u>	<u>1,000</u>	<u>13140,000</u>								

\*\* If you are using other sources which are not shown above, please enter the appropriate data in the space provided below. \*\*

4 Source Name: \_\_\_\_\_

Type: \_\_\_\_\_ Location: \_\_\_\_\_

WR Number(s): \_\_\_\_\_

Method of Measurement:  Master Meter,  Estimate,  Other - Specify \_\_\_\_\_

Units of Measurement:  Gallons,  Thousand Gallons,  Million Gallons,  Acre-feet,  Other - Specify \_\_\_\_\_

FOR SPRINGS, Are there any spills/overflow?  Yes,  No Are spills/overflow included in the quantities reported?  Yes,  No

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	ANNUAL

5 Source Name: \_\_\_\_\_

Type: \_\_\_\_\_ Location: \_\_\_\_\_

WR Number(s): \_\_\_\_\_

Method of Measurement:  Master Meter,  Estimate,  Other - Specify \_\_\_\_\_

Units of Measurement:  Gallons,  Thousand Gallons,  Million Gallons,  Acre-feet,  Other - Specify \_\_\_\_\_

FOR SPRINGS, Are there any spills/overflow?  Yes,  No Are spills/overflow included in the quantities reported?  Yes,  No

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	ANNUAL

Source Comments: Water supply conditions were:  Above normal,  Below normal

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**III. WHOLESALE DELIVERY:**

If you wholesale water please call Frank Quintana with the Division of Water Rights at 801-538-7223.

**IV. RETAIL CULINARY WATER USE BREAKDOWN: (Only retailers need to fill out this section)**

The Utah Division of Water Resources (DWR) needs each culinary water system to breakout customer level water use. This helps the DWR greatly in its missions to provide future water planning. This Section IV should be filled out by the person in your organization that is most familiar with customer level billing

This section filled out by: Ken Olson Phone Number: 1-435-590-9650

Method of Measurement:  Residential Meters,  Estimate,  Other - Specify \_\_\_\_\_

Units of Measurement:  Gallons,  Thousand Gallons,  Million Gallons,  Acre-feet,  Other - Specify \_\_\_\_\_

Culinary Water Use Category	Annual Quantity	Number of Active Connections
Residential Use	5,868,732	30
Commercial Use	0	
Institutional Use	0	
Industrial Use	0	
<b>TOTAL</b>	<b>5,868,732</b>	

- 1) Is there unmetered culinary institutional water use (churches, schools, city owned property including city office, parks, cemeteries, etc.)? YES  NO
- 2) If YES, please provide an estimate of total unmetered institutional acreage that is irrigated: \_\_\_\_\_ ACRES
- 3) Would you like to have DWR prepare a preliminary AWWA water system audit on the data submitted? YES  NO

We use 5,868,732 Gal. Through Residential meters we are show 727,268, and we have a 4 car minute leak. I can't find it

**V. UNTREATED OR SECONDARY WATER USE BREAKDOWN:**

The Urban Secondary Water use breakdown is equally important to the DWRe in its water planning efforts. Although this secondary water use is usually not delivered by your culinary water system, it does represent additional water use within your service area boundary. Although secondary water use is rarely metered at the customer level, it would be helpful if you could provide at least an estimate to some of the information requested below.

- 1) Do you provide separate urban secondary irrigation (untreated) water to your culinary customers? YES  NO
- 2) Do other secondary districts and/or irrigation companies provide urban secondary irrigation (untreated) water within the boundary of your culinary water service area? YES  NO  If YES, please provide the information below:
- 3) What percentage (%) of your culinary customers utilize a separate pressurized irrigation system for their landscapes? \_\_\_\_\_ %  
Please list the separate systems here:

Name of Separate Irrigation Company Providing Pressurized Secondary Water <small>(Please give the Name of Company, Contact Person &amp; Number)</small>	
1	
2	
3	
4	
5	

- 4) What percentage (%) of your culinary customers utilize a separate ditch irrigation system for their landscapes? \_\_\_\_\_ %  
Please list the separate systems here:

Name of Separate Irrigation Company Providing Ditch Secondary Water <small>(Please give the Name of Company, Contact Person &amp; Number)</small>	
1	
2	
3	
4	
5	