



GARY R. HERBERT
Governor
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State of Utah

DEPARTMENT OF NATURAL RESOURCES Division of Water Rights

MICHAEL R. STYLER KENT L. JONES
Executive Director State Engineer/Division Director

JAN 16 2019

ORDER OF THE STATE ENGINEER

For Permanent Change Application Number 57-7796 (a44045)

Permanent Change Application Number 57-7796 (a44045) in the name of Emigration Improvement District (EID) was filed on September 12, 2018, to add points of diversion of 28.00 cubic feet per second (cfs) or 600.00 acre-feet of water as evidenced by Water Right Number 57-7796. Heretofore, the water has been authorized to be diverted from the following points located: (1) Surface - South 3200 feet and East 1300 feet from the NW Corner of Section 14, T1N, R2E, SLB&M (Emigration Cr. springs, groundwater); (2) Surface - South 2900 feet and East 2200 feet from the NW Corner of Section 14, T1N, R2E, SLB&M (Emigration Cr., springs, groundwater); (3) Surface - South 1500 feet and West 1800 feet from the E $\frac{1}{4}$ Corner of Section 15, T1N, R2E, SLB&M (Emigration Cr., springs, groundwater); (4) Surface - North 500 feet and East 1200 feet from the SW Corner of Section 16, T1N, R2E, SLB&M (Emigration Cr., springs, groundwater); (5) Surface - North 4950 feet and West 2150 feet from the SE Corner of Section 16, T1N, R2E, SLB&M (Thomas Spring (Location corrected in hereafter)); (6) Well - South 300 feet and West 400 feet from the NE Corner of Section 33, T1N, R2E, SLB&M (20-inch well, 100-1000 feet deep); (7) Well - South 2200 feet and West 100 feet from the NE Corner of Section 33, T1N, R2E, SLB&M (20-inch well, 100-1000 feet deep); (8) Well - North 1450 feet and West 2250 feet from the SE Corner of Section 1, T1S, R1E, SLB&M (20-inch well, 100-1000 feet deep); (9) Well - North 1850 feet and West 2100 feet from the SE Corner of Section 1, T1S, R1E, SLB&M (20-inch well, 100-1000 feet deep); (10) Well - South 2000 feet and East 750 feet from the NW Corner of Section 6, T1S, R2E, SLB&M (20-inch well, 100-1000 feet deep); (11) Well - South 1750 feet and East 1600 feet from the NW Corner of Section 6, T1S, R2E, SLB&M (20-inch well, 100-1000 feet deep); (12) Well - North 1010 feet and East 2130 feet from the SW Corner of Section 6, T1S, R2E, SLB&M (20-inch well, 100-1000 feet deep); (13) Well - South 2400 feet and West 100 feet from the NE Corner of Section 21, T1N, R2E, SLB&M (20-inch well, 100-1000 feet deep); (14) Well - South 1250 feet and West 600 feet from the NE Corner of Section 21, T1N, R2E, SLB&M (20-inch well, 100-1000 feet deep); (15) Surface - North 300 feet and West 200 feet from the E $\frac{1}{4}$ Corner of Section 21, T1N, R2E, SLB&M (Emigration Cr., Springs, groundwater); (16) Surface - South 1850 feet and East 2400 feet from the NW Corner of Section 21, T1N, R2E, SLB&M (Emigration Cr., springs, groundwater); (17) Surface - North 2150 feet and West 300 feet from the SE Corner of Section 22, T1N, R2E, SLB&M (Emigration Cr., springs, groundwater); (18) Surface - South 1226 feet and West 2200 feet from the NW Corner of Section 22, T1N, R2E, SLB&M (Emigration Cr., springs, groundwater); (19) Well - North 750 feet and East 700 feet from the SW Corner of Section 22, T1N, R2E, SLB&M (20-inch well, 100-1000 feet deep); (20) Well - North 2050 feet and East 200 feet from the SW Corner of Section 22, T1N, R2E, SLB&M (20-inch well, 100-1000 feet deep); (21) Surface - North 1200 feet and East 1450 feet from the SW Corner of Section 27, T1N, R2E, SLB&M (Emigration Cr., springs, groundwater); (22) Well - North 1200 feet and East 800 feet from the SW Corner of Section 28, T1N, R2E, SLB&M (existing 8-inch well, 500 feet deep); (23) Well - North 1200 feet and West 850 feet from the SE Corner of

Section 29, T1N, R2E, SLB&M (existing 10-inch well, 792 feet deep); (24) Surface - North 1343 feet and West 708 feet from the SE Corner of Section 29, T1N, R2E, SLB&M (Emigration Cr., springs, groundwater); (25) Well - North 350 feet and West 800 feet from the SE Corner of Section 31, T1N, R2E, SLB&M (20-inch well, 100-1000 feet deep); (26) Well - South 2500 feet and East 1450 feet from the NE Corner of Section 32, T1N, R2E, SLB&M (20-inch well, 100-1000 feet deep); (27) Well - North 1100 feet and West 1150 feet from the SE Corner of Section 32, T1N, R2E, SLB&M (20-inch well, 100-1000 feet deep); (28) Well - North 2050 feet and East 1000 feet from the SW Corner of Section 33, T1N, R2E, SLB&M (20-inch well, 100-1000 feet deep); (29) Well - North 1950 feet and East 1500 feet from the SW Corner of Section 33, T1N, R2E, SLB&M (20-inch well, 100-1000 feet deep); (30) Well - South 750 feet and West 850 feet from the NE Corner of Section 33, T1N, R2E, SLB&M (20-inch well, 100-1000 feet deep); (31) Surface - North 4700 feet and West 1050 feet from the SE Corner of Section 16, T1N, R2E, SLB&M (Secret Spring (Location corrected in hereafter)); (32) Surface - South 670 feet and West 1710 feet from the E $\frac{1}{4}$ Corner of Section 16, T1N, R2E, SLB&M (Emigration Cr., springs, groundwater); (33) Surface - North 2500 feet and West 1750 feet from the SE Corner of Section 16, T1N, R2E, SLB&M (Emigration Cr., springs, groundwater); (34) Surface - North 1700 feet and West 1700 feet from the SE Corner of Section 16, T1N, R2E, SLB&M (Emigration Cr., springs, groundwater); (35) Surface - North 1850 feet and West 2580 feet from the SE Corner of Section 16, T1N, R2E, SLB&M (Emigration Cr., springs, groundwater); (36) Well - North 600 feet and West 1300 feet from the SE Corner of Section 16, T1N, R2E, SLB&M (20-inch well, 100-1000 feet deep); (37) Surface - North 400 feet and West 750 feet from the SE Corner of Section 20, T1N, R2E, SLB&M (Emigration Cr., springs, groundwater); (38) Surface - North 4600 feet and West 2200 feet from the SE Corner of Section 16, T1N, R2E, SLB&M (Emigration Cr., springs, groundwater); (39) Surface - North 4400 feet and West 2130 feet from the SE Corner of Section 16, T1N, R2E, SLB&M (Emigration Cr., Springs, groundwater); (40) Well - North 300 feet and West 900 feet from the SE Corner of Section 20, T1N, R2E, SLB&M (20-inch well, 100-1000 feet deep); (41) Well - North 1100 feet and West 1900 feet from the SE Corner of Section 21, T1N, R2E, SLB&M (20-inch well, 100-1000 feet deep). The water has been authorized to be used for year-round municipal purposes within the service area of Emigration Improvement District. The water has been used in all or portion(s) of Sections 14, 15, 16, 21, 22, 23, 27, 28, 29, 31, 32, 33, & 34, T1N, R2E, SLB&M; Sections 1, 2, 3, 10, & 11, T1S, R1E, SLB&M; and Sections 4, 5, 6, & 7, T1S, R2E, SLB&M.

Hereafter, it is proposed to divert 28.00 cfs or 600.00 acre-feet of water from the same points as heretofore and from additional points located: (1) Well - South 1840 feet and East 145 feet from the NW Corner of Section 28, T1N, R2E, SLB&M (existing 12-inch well, 1140 feet deep); (2) Well - North 1280 feet and West 2028 feet from the E $\frac{1}{4}$ Corner of Section 28, T1N, R2E, SLB&M (existing 10-inch well, 1200 feet deep); (3) Surface - North 735 feet and East 448 feet from the W $\frac{1}{4}$ Corner of Section 11, T1S, R1E, SLB&M (Emigration Creek (Corrected Location)); (4) Well - South 1330 feet and West 1245 feet from the NE Corner of Section 16, T1N, R2E, SLB&M (20-inch well, 800-1200 feet deep); (5) Surface - North 455 feet and West 2220 feet from the SE Corner of Section 9, T1N, R2E, SLB&M (Thomas Spring (Corrected Location)); (6) Well - South 2340 feet and West 190 feet from the NE Corner of Section 21, T1N, R2E, SLB&M (20-inch well, 800-1200 feet deep); (7) Well - North 2100 feet and West

1890 feet from the SE Corner of Section 21, T1N, R2E, SLB&M (20-inch well, 800-1200 feet deep); (8) Well - North 1460 feet and East 75 feet from the SW Corner of Section 22, T1N, R2E, SLB&M (20-inch well, 800-1200 feet deep); (9) Well - North 740 feet and West 1465 feet from the SE Corner of Section 21, T1N, R2E, SLB&M (20-inch well, 800-1200 feet deep); (10) Surface - North 850 feet and West 1535 feet from the SE Corner of Section 9, T1N, R2E, SLB&M (Secret Spring(Corrected Location)). 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 Deseret News on September 20 and 27, 2018, and protests were received from Margot McCallum, Eric M. Simon, Patricia [Pat] Sheya, Larry and Susan Henchel, Laura Gray, Daniel Walker, Brett Wheelock, Robert Jordan, Mary Jo Sweeney, Steve Pinecrest Pipeline Operating Company, Donald L. Clark, Melinda McIlwaine, John Porcher, Barbara Babson and Ben Dobbin, David L Phillips, Michael Martin, Jamie White, Jack Samuel Plumb, Emigration Canyon Home Owners Association, Jessica Lucas (late protest), Lowell Miyagi, Phil Davis (late protest), Dr. Jessica Kramer (late protest), Dr. Sarah K. and Mr. Jason P. Hall, Andrew B Walker (late protest), Stephen B and Michelle D Andersen, Ronald Hallett, Dinko Duheric, Caroline Biggs, Daniel Craig, Michael Terry, Robert J Reid IV, Chris and Kirtly Jones, Tierra Investments, LLC, Karen Penske, Kate and James Bert Bunnell, Gregory Palis, Salt Lake City, and Willy Stokman. A combined hearing was held for change application numbers a44045 (57-7796) and a44046 (57-10711) on December 19, 2018.

The protestants have expressed concern for a myriad of issues both in their written protests and at the hearing through oral presentations. These issues ranged from land planning concerns, wildfire, water quality, stream flows, and system construction standards, to concerns about sustainability given changing climatic conditions, conflicts in water right ownership, and potential for interference with existing water rights in streams, springs and wells. This order, however, only addresses those issues pertinent to the change application decision making criteria (Utah Code §73-3-3 and §73-3-8).

Utah Code Ann. §73-3-3(3)(a), states that a person entitled to the use of water may, through the change application process, make a permanent change to an existing water right. The State Engineer is to approve a change application if it meets the provisions of §73-3-3 and criteria listed in §73-3-8. A primary consideration for a change application to be approved is that it not impair an existing water right without just compensation or adequate mitigation.

The subject change application is based on existing water right 57-7796, which is a portion of a right to use water established prior to 1903 by diverting water from Emigration Creek to use for irrigation, domestic, and stockwatering purposes in the Salt Lake Valley. Change application a17521 (55-7796), approved December 31, 1996, authorizes the use of 33.0 cfs or 649.99 acre-feet of water from the same base water right to be diverted for municipal purposes inside the EID service area. Said change application grants EID the authorization to divert water from 19 surface sources and 22 wells located upstream from the historical point of diversion, which was located near the mouth of the canyon. This prior change application has been in place for twenty-two years. To accommodate additional well locations (including individual wells of homeowners

not presently connected to the EID water system), EID has filed temporary change applications most years from 1988 to 2017. These additional wells were to either be abandoned as EID's delivery system expanded, or permanently added as part of the EID water delivery system. No additional quantity of water beyond what has already been approved for diversion under a17521 is being contemplated under this application and change application a44046 (57-10711). This current change application proposes no additional change in place of use or nature of use.

The protestants' opposition to this application focuses on declining stream flows in Emigration Creek as an unreasonable affect on the natural stream environment or public recreation; along with concerns that development and use of the canyon are proving detrimental to the public welfare. Utah Code §73-3-8 directs the State Engineer to investigate such issues in connection with application approval. However, the State Engineer was unable to reasonably connect the concerns expressed with the proposal presented in the change application and therefore does not have reason to believe approving the application will interfere with the more beneficial use of water, unreasonably affect public recreation or the natural stream environment, or will prove detrimental to the public welfare. Changes in population density, climate, and land development choices may affect the environment and may at times be unpopular, but these changes are more connected to the protestants' opposition than the approval or rejection of a particular water right application. Nothing in the State Engineer's statutory authority allows him to construe an entity's desire to secure a water supply for future and current residents, such as the applicant here proposes, as detrimental to the public welfare. If the protestants believe as a matter of public policy it would be best to restrict further development in Emigration Canyon, they should work through other appropriate means to achieve that goal.

The State Engineer has evaluated the water right record with regard to the applicable statutory decision-making criteria for change applications and concludes the following:

- 1) From information provided by Salt Lake City representative Dr. David Hansen it is apparent that average late summer stream flows in Emigration Creek are declining. The applicant's representative and hydrogeologist, Mr. Don Barnett, rejects any assertion that EID's diversion of water is causing the flow reduction in Emigration Creek and points out that Red Butte Creek, located just North of Emigration Canyon, has also experienced a significant reduction in stream flow and attributes the flow reduction in both creeks to climatic changes, particularly the drought conditions currently encumbering this area of the state. Mr. Barnett describes the geology in the area as being a syncline which is directionally fractured and compartmentalized, and asserts the use of multiple underground diversion points as proposed in the application is designed to minimize impact to other rights. The applicant is also operating a groundwater monitoring network along the streambed which indicates no change in water levels due to the applicant's current pumping. Bearing in mind that no additional water diversion above the volume that has already been approved under previous change application a17521 is requested in this change application, the State Engineer believes that the incorporation of strategically located points of diversion

would allow for flexibility and can serve to reduce any future demonstrated localized interference issues due to the applicants current pumping.

- 2) Protestants have asserted climatic change is having an impact on the runoff characteristics of the Emigration Canyon drainage basin making it uncertain just what use of water may be sustainable. Utah's water laws anticipate changing climatic conditions and anticipate priority distribution as the solution to those issues rather than State Engineer approval/rejection of change applications. Should it prove necessary in the future, the State Engineer is authorized under statute to develop a groundwater management plan which would limit groundwater diversions in the canyon by priority to a scientifically established safe-yield notwithstanding the fact a right has been established.

- 3) Groundwater in the Emigration Canyon area would benefit from continued study to dispel fears over unknowns as uses approach the limits of the resource. While the State Engineer does not feel statutorily compelled to require the applicant undertake such a study as a condition of approval, all parties in this proceeding are urged to consider participating cooperatively in such a venture to better inform about the resource. The State Engineer signals his support by offering to contribute financially to any suitable cooperative study of the basin consistent with Utah Code Section 73-2-17.

Previous change application a17521 (55-7796) quantified the historical diversion quantities of the underlying right, but did not quantify the historical depletion limitations. The State Engineer believes it is appropriate to examine the rates and amounts of hydrologic diversion and depletion associated with the historical water use as compared to the proposed use to assure that there is no enlargement of the underlying water right. In this case, it is believed that the historical water uses would have incurred the following rates and amounts of hydrologic diversion and depletion:

<u>Prior Beneficial Use</u>	<u>Allowed Diversion</u>	<u>Rate of Depletion</u>	<u>Amount of Depletion</u>
Irrigation: 146.5025 acres	586.010 acre-feet	48.875% ¹	286.410 acre-feet
Domestic: 17.0 EDU	7.650 acre-feet	20.0%	1.530 acre-feet
<u>Stockwatering: 226.0 ELU</u>	<u>6.328 acre-feet</u>	100.0%	<u>6.328 acre-feet</u>
Total:	600.0 acre-feet		294.300 acre-feet

To ensure no enlargement of the underlying right occurs, this change can be made if certain conditions are observed.

¹ *Consumptive Use of Irrigated Crops in Utah*, Research Report 145, Utah Agricultural Experiment Station, Utah State University, Logan, Utah, October 1994, Table 25" University of Utah Station, p342. The benchmark crop for the referenced calculation is alfalfa, the most typical and consumptive crop evaluated in the study, (23.46-inches or 1.95 feet/5.0 feet duty = 48.875%.)

In evaluating the various elements of the underlying rights, it is not the intention of the State Engineer to adjudicate the extent of these rights, but rather to provide sufficient definition of the rights to assure that other vested rights are not impaired by the change and no enlargement occurs.

It is, therefore, **ORDERED** and Permanent Change Application Number 57-7796 (a44045) is hereby **APPROVED** subject to prior rights and the following conditions:

- 1) This change application is limited to the amount of water necessary to deplete no more than 294.3 acre-feet of water annually and to divert no more than 600.0 acre-feet annually for year-round municipal purposes within the service area Emigration Canyon Improvement District. The applicant shall maintain records to demonstrate the stated depletion and diversion limits are not exceeded.
- 2) Any new wells drilled by EID that were not approved under the prior permanent change application and any new wells approved under this application must include the implementation of a monitoring plan approved by the State Engineer which is intended to detect potential for interference with springs, the creek, and other wells in the canyon. Start cards to drill any new well will not be issued until a plan specific to the location of such well has been approved. No water may be withdrawn from any new well to be drilled unless a monitoring plan has been implemented and data required by the plan submitted to the State Engineer in accordance with the approved plan.
- 3) Approval of this permanent change application requires cessation of the use of 28.00 cfs or 600.00 acre-feet at the historical point of diversion and place of use.
- 4) The applicants shall install and maintain measuring and totalizing recording devices to meter all water diverted from all sources pertaining to this application and **shall annually report this data to the Division of Water Rights Water Use Program.**
- 5) Inasmuch as this application seeks to divert water from numerous points of diversion, it is necessary that detailed information be provided to the State Engineer to show which sources of supply are actually developed and used and the extent of their usage under this application. 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.

- 6) Whereas this change application has been filed to entirely replace and supercede prior approved Change Application Number 57-7796 (a17521), with this approval that prior application is AMENDED AND SUPERCEDED.

The State Engineer has statutory responsibility to create and maintain water right records based on an administrative process outlined in statute. The State Engineer is not authorized by statute to adjudicate water right title or the validity of established water rights. It is noted that failure to exercise a water right within the statutory period could render all or a portion of a water right invalid through forfeiture. Parties who wish to challenge the validity of a water right are advised that a declaration of forfeiture is a judicial action.

As noted, this approval is granted subject to prior rights. The applicant shall be liable to mitigate or provide compensation for any impairment of or interference with prior rights as such may be stipulated among parties or decreed by a court.

The applicant is strongly cautioned that other permits may be required before any development of this application can begin and it is the responsibility of the applicant to determine the applicability of and acquisition of such permits. Once all other permits have been acquired, this is your authority to develop the water under the above referenced 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 must be filed on or before **January 31, 2029**, or a request for extension of time must be acceptably filed and subsequently approved; otherwise the application will be lapsed. This approval is limited to the rights to divert and beneficially use water and does not grant any rights of access to, or use of land or facilities not owned by the applicant.

Proof of beneficial use is evidence to the State Engineer that the water has been fully placed to its intended beneficial use. By law, it must be prepared by a registered engineer or land surveyor, who will certify to the location, uses, and extent of your water right. 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.

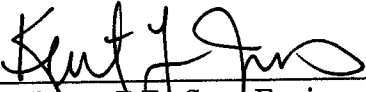
Failure on your part to comply with the requirements of the applicable statutes may result in the lapsing of this permanent change application.

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. Additionally, if ownership of this water right or the property with which it is associated changes, the records of the Division of Water Rights should be updated. For assistance in updating title to the water right please contact the Division at the phone number below.

Your contact with this office, should you need it, is with the Utah Lake/Jordan River Regional Office. The telephone number is 801-538-7240.

This Order is subject to the provisions of Administrative Rule R655-6-17 of the Division of Water Rights and to Sections 63G-4-302, 63G-4-402, and 73-3-14 of the Utah Code which provide for filing either a Request for Reconsideration with the State Engineer or for judicial review 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 for judicial review. A petition for judicial review 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 16th day of January, 2019.


Kent L. Jones, P.E., State Engineer

Mailed a copy of the foregoing Order this 16th day of January, 2019 to:

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ORDER OF THE STATE ENGINEER
Permanent Change Application Number
57-7796 (a44045)
Page 9

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ORDER OF THE STATE ENGINEER
Permanent Change Application Number
57-7796 (a44045)
Page 10

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Division of Water Rights
Water Use Reporting Program

BY: 
Doralee Cannon, Applications/Records Secretary