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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

OCT 01 2010

**ORDER OF THE STATE ENGINEER**  
For Permanent Change Application Number 43-3819 (a36611)

Permanent Change Application Number 43-3819 (a36611), in the name of Whiterocks Irrigation Company, was filed on June 14, 2010, to change the nature of use and storage of 4,460.00 acre-foot (af) of water as evidenced by Water Right Number 43-3819. Heretofore, the water has been diverted from a surface source located South 247 feet and West 1449 feet from the N $\frac{1}{4}$  Corner of Section 17, T1N, R1E, USB&M (Whiterocks River). The water was to be stored in Merkley Drop Reservoir from January 1 to December 31, having a capacity of 2230.00 acre-feet, a dam height of 85 feet, and inundating 74.5 acres in all or portion(s) of Section 16, T1N, R1E, USB&M. The water has been used for the irrigation of 6203.8 acres from March 15 to November 1, and the indoor domestic requirements of 100 equivalent domestic units from January 1 to December 31, and the stockwatering requirements of 6000 head of livestock (in cattle or horses or equivalent species) from January 1 to December 31. The water was used in all or portion(s) of: Sections 9, 10, 14, 15, 16, 20, 21, 22, 28, and 29, T5S, R19E, SLB&M; Sections 14, 21, 22, 23, 24, 25, 26, 27, 34, 35, and 36, T1N, R1E, USB&M; Sections 19, 30, and 31, T1N, R2E, USB&M; Sections 1 and 2, T1S, R1E, USB&M; Sections 6, 7, 8, 16, 17, 18, 19, 20, 30, and 31, T1S, R2E, USB&M.

Hereafter, it is proposed to divert 4,460.00 acre-feet of water from the same point as heretofore. The water will be stored in the following reservoirs: (1) Lapoint Reservoir (an existing reservoir) - from January 1 to December 31, having a capacity of 1700.00 acre-feet, a dam height of 70 feet, and inundating 65.00 acres in all or portion(s) of Sections 24 and 25, T1N, R1E, USB&M; Sections 19 and 30, T1N, R2E, USB&M; Sections 5 and 6, T1S, R2E, USB&M; and (2) M&S Reservoir (a proposed new dam and reservoir) - from January 1 to December 31, having a capacity of 2800.00 acre-feet, a dam height of 70 feet, and inundating 100.00 acres in all or portion(s) of Sections 24 and 25, T1N, R1E, USB&M; Sections 19 and 30, T1N, R2E, USB&M; and Sections 5 and 6, T1S, R2E, USB&M. The water is to be used for the irrigation of 6203.8 acres from March 15 to November 1, and for municipal purposes by Lapoint/Tridell Water District. The place of use of the water is to remain the same as heretofore except that it will include the service area of Lapoint/Tridell Water District.

Notice of the application was published in the Uintah Basin Standard on July 6 and 13, 2010. A protest was received from US Department of the Interior, Fish and Wildlife. A hearing was not held.

The protestant expressed concern that the change application will enable new depletions from the system and may impact endangered fish in the Duchesne and Green Rivers. Concern was expressed that the Whiterocks River channel may be dried during the winter by diversions under this application. The protestant believes that the failure of the applicant to develop the water

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approved under Water Right Numbers 45-511 and 45-3819, which were approved nearly 50 years ago, shows that those applications were speculative.

Both this application and Change Application Number 43-511 (a33604), which was approved January 29, 2008, include storage in the proposed M&S Reservoir. This application seeks the diversion of up to 4460 acre-feet of water for storage in both M&S Reservoir and the existing Lapoint Reservoir without a maximum diversion rate. Change Application 43-511 (a33604) allows the diversion of 3000 acre-feet of water for storage at a maximum diversion rate of 5 cfs. Water Right Number 43-3720, upon which proof has been filed, allows the diversion of 3620 acre-feet of water for storage at a maximum diversion rate of 5 cfs. Although proof has been filed on Water Right 43-3720 and Change Application 43-511 (a33604) has been approved, it is the opinion of the State Engineer that, to address the concerns of the protestant and protect the rights of others, the aforementioned three applications need to be reviewed and quantified as three parts of one project rather than separately. Also, Water Right Numbers 43-503, 43-3042 and 43-3053 allow storage of a portion of the applicant's approximately 92 cfs for direct flow irrigation.

Two applications are limited to a 5 cfs diversion rate (43-511 and 43-3720) and have relatively junior priority dates, which as a rule preclude diversion of water based on those rights except during the non-irrigation season and sometimes during high water. Assuming the non-irrigation season (November 2 to March 31) to be 150 days and a diversion rate of 5 cfs, a maximum of  $(5 \text{ cfs} \times 2 \text{ ac-ft/day-cfs} \times 150 \text{ days}) = 1500$  acre-feet of water could be diverted under each application (43-511 and 43-3720) for a total diversion of 3000 acre-feet during the non-irrigation season. Lapoint Reservoir has a capacity of 1700 acre-feet and the design capacity of M&S reservoir is 2700 acre-feet, for a total combined capacity of 4400 acre-feet. With Water Rights 43-511 and 43-3720 being limited to 3000 acre-feet during the non-irrigation season, to fill the two reservoirs during the non-irrigation season 1400 ac-ft must be supplied by this application. The 1400 acre-feet can be supplied with a diversion limitation of 5.0 cfs applied to this right during the non-irrigation season also.

This application proposes to store 4460 acre-feet, an amount equivalent to twice the proposed capacity of 2230 acre-feet for Merkley Drop Reservoir. Based on a review of the River Commissioner's diversion records and USGS flow records for the *Uinta River at Randlett* gauging station, it appears that in a high water year like 2005 there would be about 45 days that the applicant would be entitled to store under the three storage applications (43-511, 43-3720 and 43-3819). The high water period for this area varies but generally would begin in May and end in June although in some extraordinary years it extends into July. Although higher maximum diversions have been recorded, in 2010 the maximum diversion rate for the Whiterocks Canal was 210 cfs. Based on a diversion of 210 cfs during high water, sufficient water would be available to supply 4400 acre-feet for storage during the high water period. Assuming a 45-day period of diversion at 5 cfs for Water Rights 43-511 and 43-3720, about  $(45 \text{ days} \times 5 \text{ cfs} \times 2 \text{ acre-feet / cfs-day}) = 450$  acre-feet per application could be stored under those applications and Water Right 43-3819 would need to supply  $(4400 - 900) = 3500$  acre-feet to supply 4400 acre-feet. Based on this analysis, the maximum that could be expected to be stored under the two 5

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cfs applications (43-511 and 43-3720) would be 3000 acre-feet during the non-irrigation season and 900 acre-feet during the high water period for a total of 3900 acre-feet. Even if the non-irrigation season diversion rate for this application is also limited to 5 cfs, the applicant could fill both reservoirs during the non-irrigation season and should satisfy the concerns of the protestant regarding drying the channel.

A concern of Ouray Park Irrigation Company is that during years with low non-irrigation season flows the applicant may fill the reservoirs out of priority impairing their senior rights. However, if the applicant is not allowed to store until Ouray Park's storage rights are satisfied they may not have sufficient time to fill the reservoirs. Since Ouray Park Irrigation Company has senior rights for storage and to facilitate optimizing water storage on the system, allowing the applicant to store during the non-irrigation season can be done, if the applicant is required to release to Ouray Park Irrigation Company sufficient water that has been stored during the preceding non-irrigation season to fill their rights. A determination of whether water needs to be released from the Uinta and Whiterocks Rivers out of storage in Lapoint or M&S Reservoirs by the applicant and the volume of water required to be released should be made by the river commissioner on or about March 31 of each year. Ouray Park Irrigation Company storage rights from the Uinta and Whiterocks Rivers are considered satisfied when the quantity of water stored in Lapoint and M&S Reservoirs during that non-irrigation season has been released or Ouray's reservoirs are filled.

It is the opinion of the State Engineer that this change application can be approved without adversely affecting existing rights if certain conditions are met. 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 proposed in the change application.

It is, therefore, **ORDERED** and Permanent Change Application Number 43-3819 (a36611) is hereby **APPROVED** subject to prior rights and the following conditions:

1. The diversion under Water Right Number 43-511 is limited to 1500 acre-feet during the non-irrigation season (from November 2 through March 31) and 450 acre-feet during the high water period for a total maximum amount of storage of 1950 ac-ft per water year.
2. The diversion under Water Right Number 43-3720 is limited to 1500 acre-feet during the non-irrigation season (from November 2 through March 31) and 450 acre-feet during the high water period for a total maximum amount of storage of 1950 ac-ft per water year.
3. The diversion rate for Change Application Number 43-3819 (a36611) is limited to 5 cfs during the non-irrigation season.

4. During the period April 1 through November 1 water may be diverted for storage under Water Rights Numbered 43-511, 43-3720 and 43-3819 only when senior water rights are being satisfied.
5. During the period November 2 through March 31, (non-irrigation season) water may be diverted under Water Rights Numbered 43-511, 43-3720 and 43-3819 out of priority based on the following stipulation: If after March 31, or if it is determined by the river commissioner prior to March 31, that the senior Ouray Park Irrigation Company storage rights from the Uinta and Whiterocks Rivers will not be filled, the applicant is required to release sufficient water stored during the non-irrigation season from M&S and/or Lapoint reservoirs (Water Rights 43-511, 43-3720 and 43-3819) until the senior Ouray Park Irrigation Company storage rights from the Uinta and Whiterocks Rivers are filled. The amount of water required to be released from M&S and Lapoint reservoirs for senior rights is limited to the amount of water stored in that water year that the release is called. All water stored by Ouray Park Irrigation Company and Whiterocks Irrigation Company is to be made under the direction of the river commissioner.
6. The applicant is cautioned that this water right was originally approved on July 2, 1965, and must be placed to beneficial use prior to the passing of 50 years from that date. If no works are constructed on M&S Reservoir prior to July 31, 2015, no additional extension of time will be granted on this application.

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 of competent jurisdiction.

Inasmuch as this application proposes to construct a dam and impound water in M&S Reservoir, the applicant is required to contact the Dam Safety Section of the Division of Water Rights at 801-538-7240 to obtain a permit to construct a dam in addition to this Permanent Change Application. Adequate engineered plans and specifications for the dam are required prior to any approval being issued by the Division to construct a dam.

This application is also approved according to the conditions of the current appropriation policy guidelines for the Colorado River Drainage, adopted March 7, 1990.

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 July 31, 2015, under Water Right Number 43-3819 (A36626) which is the parent

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water right. 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 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. 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 and the underlying right.

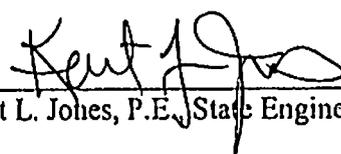
If historical resources such as human remains (skeletons), prehistoric arrowheads/spear points, waste flakes from stone tool production, pottery, ancient fire pits, historical building foundations/remains, artifacts (glass, ceramic, metal, etc.) are found during construction, call the Utah Division of State History at (801) 533-3555.

**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.**

Your contact with this office, should you need it, is with the Eastern Regional Office. The telephone number is 435-781-5327.

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 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 13 day of October, 2010.

  
Kent L. Jones, P.E. State Engineer

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Mailed a copy of the foregoing Order this 13 day of October, 2010 to:

Whiterocks Irrigation Company  
PO Box 301  
Lapoint, UT 84039

US Department of the Interior, Fish and Wildlife  
Post Office Box 25486  
Denver Federal Center  
Denver, CO 80225-0486

Shane F. Hamblin  
River Commissioner Uinta and Whiterocks Rivers  
Route 1 Box 1488  
Roosevelt, UT 84066

Ute Indian Tribe  
c/o Tod J. Smith  
1007 Pearl Street, Suite 220  
Boulder, CO 80302

Ouray Park Irrigation Company  
PO Box 395  
Roosevelt, UT 84066

BY:



Sonia R. Nava, Applications/Records Secretary