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Governor
DEIDRE M. HENDERSON
Lieutenant Governor

State of Utah

DEPARTMENT OF NATURAL RESOURCES Division of Water Rights

JOEL FERRY
Executive Director

TERESA WILHELMSSEN
State Engineer Division Director

ORDER OF THE STATE ENGINEER MAR 17 2025 For Exchange Application Number 35-14460 (E6596)

Exchange Application Number 35-14460 (E6596) in the name of Eden Crossing PWC was filed on May 7, 2024, to exchange 101.0 acre-feet of water as evidenced by Water Right Number 35-827 (A27608) owned by the U.S. Bureau of Reclamation and a contract (Number 18316 associated with Tax I.D. Number 22-006-0045) for its use with Weber Basin Water Conservancy District. The 101.0 acre-feet of water is to be released from Pineview Reservoir and, in lieu thereof, 101.0 acre-feet of water will be diverted from the following point:

- 1) Well - South 628 feet East 106 feet from the W¹/₄ Corner of Section 26, T7N, R1E, SLB&M (20-inch well, 1000-2000 feet deep)

The water is to be used for the following purpose:

- 1) Municipal - Eden Crossing PWC

Notice of the exchange application was published in the Standard Examiner on May 23 and 30, 2024, and protests were received from Heather Mercer, Jeffrey Owen, Stephanie Rochelemagne, Scott Bracken Bracken, Wolf Creek Irrigation Company, Janice B Campbell, Ogden City, Wolf Creek Water and Sewer Improvement Dist, Eden Water Works Co, Jan wight, Bill Green, Hugh Shaum, david carver, David Carver, Lauren Lockwood, trina white, Elisabeth Yost, and Shanna Francis. A hearing was held on August 21, 2024.

Application Background

This application was filed alongside Exchange Application Number 35-14459 (E6595). Both are intended for municipal uses associated with the development of 1,000 building entitlements over the next 10 to 15 years in the service area of Wolf Creek Water and Sewer Improvement District (WCWSID) and Eden Water Works Company (EWWC). Both applications were protested by many of the same protestants and the statements presented by both the applicants and the protestants at the hearing on August 21, 2024 were intended to apply to both applications. Both applications describe the same point of diversion, place of use, and municipal beneficial use; however, Exchange Application Number 35-14459 (E6595) is supported by Weber Basin Water Conservancy District (WBWCD) contract number 18315 and this application is supported by contract number 18316.

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On May 29, 2024, shortly after the filing of these applications, a technical memorandum outlining the construction of the well known as Eden Crossing Well Five (ECW5)¹ (the subject of these applications) and a monitoring plan was submitted by John Files, PG of Cascade Water Resources.

Summary of Protests

A majority of protestants' expressed general opposition to the applications in question. These protests include concerns of negative impacts to the general Ogden Valley aquifer as well as the local aquifers, and apprehension over the size of this appropriation. Protestants also requested the State Engineer not grant permission to drill any more wells or to extract any additional water referencing a report prepared by Bowen Collins & Associates. This report is not part of the record for this file. Many protestants had concerns that these exchanges would interfere with existing rights in the area. These sources include Warm Springs Springs (AKA Patio Springs, AKA Ferrin Warm Springs), Burnett Springs, and a variety of underground water wells. Protestant WCIC also claims that Warm Springs Springs is tributary to Wolf Creek and therefore, interference with Warm Springs Springs is interference with decreed Water Right Number 35-7188.

Protestants, Ogden City and WCWSID object to the fact that the exchange applications did not include the Weber Basin Conservancy District contracts to support the applications.

Ogden City and WCWSID also claim that as Eden Crossing PWC is not a public water company but an LLC, and therefore, they do not qualify to hold municipal rights.

Hearing Summary

During the hearing the geology of the area was discussed. It was generally agreed that ECW5 is pulling water from the Caddy Canyon quartzite formation. The same formation that Warm Springs Well and Warm Springs Springs are located in. During testing of the ECW5 well, direct impact to Warm Springs Springs and Warm Springs Well (collectively known as the Warm Springs Complex) was observed. A representative for the applicant agreed with this assessment and argued that as the water from the Warm Springs Complex is "wasted" by being allowed to flow into Wolf Creek, they don't see how the applications will harm anyone. Said representative also brought up Wayman v. Murray City and argued that "all users are required where necessary

¹ Non-Production Well Application Number 2335015M00, approved on December 27, 2023

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to employ reasonable and efficient means in taking their own waters... to the end that... the greatest amount of available water is put to beneficial use.”

Multiple experts weighed in on the hydrogeology and whether or not the aquifer could sustain the proposed withdrawal. Experts discussed potential impacts to Burnett Springs and other wells in the area, drawing various conclusions. Multiple experts also brought up *Wayman v. Murray* and discussed their opinions of “reasonable” as the phrase is used in the court’s decision. EWWC requested that monitoring of Burnett Springs and the Kemmeyer Well be included as a condition of approval. The aforementioned report by Bowen Collins & Associates was brought up by several protestants arguing against the application. Seasonal fluctuations were heavily debated. Other subjects such as the quality and temperature of the water and any that could hypothetically be used for mitigation was discussed. Further information is located on the file should more detail be required.

Following the hearing additional documents have been added to the file to rebut and support statements made during the hearing. Much of the information in the documents has subsequently been supported and rebutted as well. The State Engineer has reviewed the file for any details needed to arrive at a final determination.

State Engineer’s Review

It is the opinion of the State Engineer that evidence presented during the application process has sufficiently demonstrated that the point of diversion identified as Eden Crossing Well No. 5 directly interferes with other rights associated with the Warm Springs Springs. The applicant did not rebut this assertion. A sufficient mitigation plan has not been proposed by the applicants. Utah Code § 73-3-20 states “Any person having stored that person’s appropriated water in a reservoir for a beneficial purpose shall be permitted to withdraw the water at the times and in the quantities as the person’s necessities may require if the withdrawal does not interfere with the rights of others.” It is found by the State Engineer that the withdrawal of water for this exchange will interfere with the rights of others.

It is, therefore, **ORDERED**, and Exchange Application Number 35-14460 (E6596) is hereby **REJECTED**.

Your contact with this office, should you need it, is with the Weber River/Western Regional Office in Salt Lake City. The telephone number is (801) 538-7240.

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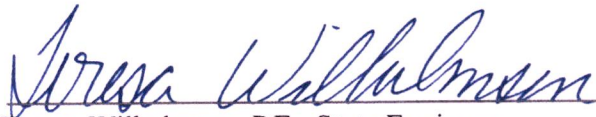
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This Order is subject to the provisions of Utah Admin. Code R655-6-17 of the Division of Water Rights and to Utah Code §§ 63G-4-302, 63G-4-402, and 73-3-14 which provide for filing either a Request for Reconsideration with the State Engineer or for judicial review with the appropriate District Court. A Request for Reconsideration must be filed in writing with the State Engineer within 20 days of the date of this Order. The written request shall be filed in-person, by mail, or electronically. If the request is filed electronically, it shall be submitted to: waterrights@utah.gov, which is the authorized general email for the Division. 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 17 day of MARCH, 2025


Teresa Wilhelmsen, P.E., State Engineer

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Mailed a copy of the foregoing Order this 17 day of MARCH, 2025 to:

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Scott Bracken Bracken
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c/o Fuller family (Curly Heads LLC)
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EDEN UT 84310

Weber Basin Water Conservancy District
Attn: Scott W. Paxman and Jon Parry
2837 East Highway 193
Layton, Utah 84040

BY: 

Garrett Hayes, Applications/Records Secretary