

BEFORE THE STATE ENGINEER OF THE STATE OF UTAH

NOV 04 1998

IN THE MATTER OF APPLICATION)

Department of Water Resources

NUMBER 11-1152 (A70221))

MEMORANDUM DECISION)

Application Number 11-1152 (A70221), in the name of Larry Kempton, was filed on July 8, 1996, to appropriate 60.0 acre-feet of water from overflow runoff located South 1600 feet and West 2300 feet from the NE Corner of Section 31, T15N, R12W, SLB&M, to be used for the irrigation of 120.00 acres from March 1 to October 31, and the stockwatering of 500 head of cattle or equivalent. The water will be stored in an unnamed reservoir.

The application was advertised in The Leader on August 14 and 21, 1996, and was protested by Arimo Corporation, Beth R. Jones, Harold Jones, Karen Jones, Ray Jones, James and Peggy Manriquez, Steve and Diane Scoffield, Reid S. Stewart, Reid S. Stewart, Reid S. Stewart, David Sundberg, and John A. Sundberg. A hearing was held on November 20, 1996, in Brigham City, Utah.

The applicants were represented by Marc Wangsgaard, attorney. Mr. Wangsgaard explained that the distribution issues on Clear Creek have little to do with Utah using its 43% of Clear Creek under the interstate decree. He feels the applications can be approved and excess water used without impairing existing rights. Mr. Kempton stated that during high flow periods, users on Clear Creek divert to alleviate flooding.

Protestants to the application want the water left on the decreed ground. Everyone agreed that additional water should be split on a percentage basis as it was historically.

The State Engineer has reviewed this application and finds that it is on Birch Creek tributary to Rice and Jim Canyon Creek. The State Engineer recognizes that distribution of rights on Clear Creek is an intrastate and interstate issue. Distribution systems are being established in Idaho and Utah and distribution practices refined to make an equitable distribution based on historic decrees and determinations. The State Engineer believes that the applicants and protestants agree that excess flows have always been apportioned to the respective right holders on a percentage split. Water rights need to be in place to cover the diversion and use of water in the state.

The applicants have indicated that in addition to the natural drainage of Rice and Jim and Birch Canyons, Clear Creek water is available to fill the proposed reservoir at times. Excess water use from Clear Creek is not defined as to place of use or extent of use. The State Engineer does not believe that return flow patterns would be altered and cause impairment the protestants' rights if conditions of diversion are imposed.

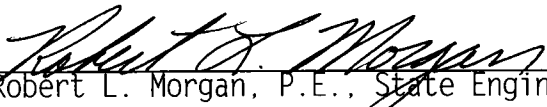
It is, therefore, **ORDERED** and Application to Appropriate Number 11-1152 (A70221) is hereby **APPROVED** subject to prior rights and the following condition:

The applicant may divert water from Clear Creek, Jim Canyon Creed, Rice Creek and Clear Canyon Creek under this right as authorized, but Clear Creek water may only be diverted to the reservoir during times when the Clear Creek commissioner determines that excess water is available, meaning all primary decreed and adjudicated water rights are being filled.

MEMORANDUM DECISION
APPLICATION NUMBER
11-1152 (A70221)
PAGE -2-

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 28th day of October, 1998.


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

RLM:RMF:lz

Mailed a copy of the foregoing Memorandum Decision this 28th day of October, 1998, to:

Larry Kempton
HC 72
Malta, ID 83342

Arimo Corporation
HC 72 Box 2256
Malta, ID 83342

Beth R. Jones
Sublett Route
Malta, ID 83342

Harold Jones
Sublett Route
Malta, ID 83342

Karen Jones
HC 72
Malta, ID 83342

Ray Jones
HC 72
Malta, ID 83342

James and Peggy Manriquez
195 Adams
Chubbuck, ID

Tim Luke
Let's discuss
neg

Per Norm

- Discuss w/ Allen Merrill, determine if we need to respond. Should probably review WJ memo - summary of correspondence prepared by Lee Simons '78

MEMORANDUM DECISION
APPLICATION NUMBER
11-1152 (A70221)
PAGE -3-

Steve and Diane Scoffield
1772 West 200 North
Kaysville, UT 84037

Reid S. Stewart
1655 Sunset Drive
Logan, UT 84321

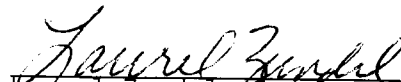
Reid S. Stewart
HC 72
Malta, ID 83342

Reid S. Stewart
c/o Barnett Intermountain Water Consulting
106 West 500 South, Suite 101
Bountiful, UT 84010

David Sundberg
Box #1
Malta, ID 83342

John A. Sundberg
200 Hill Creek Road
Horseshoebend, ID 83629

BY:



Laurel Zundel, Secretary