

ORDER OF THE STATE ENGINEER
Permanent Change Application Number
81-1579 (a49438)
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BIG PLAINS WATER SPECIAL SERVICE DISTRICT
C/O BEN RUESCH
86 N 3400 W
HURRICANE UT 84737

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SPENCER J. COX
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

For Permanent Change Application Number 81-1579 (a49438)

Permanent Change Application Number 81-1579 (a49438) in the names of Steve & Jana Smith Charitable Remainder Unitrust was filed on September 2, 2022, to change the point of diversion, places of use, and uses of 1.7589 cubic feet per second (cfs) or 353.9637 acre-feet of water as evidenced by Water Right Numbers 81-1579 and 81-5538. Heretofore, the water has been diverted from a well located South 117 feet and West 1039 feet from the NE Corner of Section 27, T42S, R12W, SLB&M (existing 12-inch well, 238 feet deep). The water has been used for the sole supply irrigation of 70.79 acres (group total of 94.15 acres) from March 1 to November 30. The water has been used in all or portion(s) of Sections 22, 23, 26, & 27, T42S, R12W, SLB&M.

Hereafter, it is proposed to divert 353.9637 acre-feet of water from points of diversion changed to: (1) Well - North 420 feet and West 102 feet from the SE Corner of Section 22, T42S, R12W, SLB&M (existing 10-inch well, 360 feet deep); (2) Well - North 1451 feet and West 137 feet from the E $\frac{1}{4}$ Corner of Section 27, T42S, R12W, SLB&M (existing well, 290 feet deep); (3) Well - North 821 feet and West 96 feet from the SE Corner of Section 22, T42S, R12W, SLB&M (existing well); (4) Well - South 117 feet and West 1034 feet from the NE Corner of Section 27, T42S, R12W, SLB&M (12-inch well, 100-800 feet deep); (5) Well - South 98 feet and West 1066 feet from the NE Corner of Section 27, T42S, R12W, SLB&M (existing 10-inch well, 294 feet deep); (6) Well - North 881 feet and West 127 feet from the SE Corner of Section 22, T42S, R12W, SLB&M (12-inch well, 100-800 feet deep); (7) Well - North 439 feet and West 120 feet from the SE Corner of Section 22, T42S, R12W, SLB&M (existing 12-inch well, 357 feet deep). The water is to be used for year-round municipal purposes within the service area of Tru South LLC.

Notice of the application was published in The Spectrum on September 15 and 22, 2022, and a protest was received from Big Plains Water Special Service District. A hearing was held on July 26, 2023.

Summary of Protestant's concerns:

1. Applicant fails to demonstrate that application is not made for speculative purposes.
2. District may experience quantity impairment of water rights if application is approved.
3. Applicant should demonstrate that the underlying rights have not lapsed in whole or part.
4. District may experience direct impairment or interference with more beneficial use of water.

Summary of Applicant's responses:

1. The Trust owns the property without financial encumbrances and has hired consultants and professionals to evaluate development of the property with the conclusion that the project

is physically and economically feasible. The Trust has significant assets and financial ability to complete the proposed project.

2. The water rights were previously used to the extent that they are not subject to forfeiture, utilizing the water rights under the current change application will not cause quantity impairment.
3. Water has been used for farming and the irrigation of a golf course.
4. It is intended to work with the district as the water is used for municipal use including to supply the needs of additional housing for the area.

State Engineer's analysis:

Evidence presented by the applicant appears to provide sufficient information to confirm that there has historically been some use of water. In evaluating applications, which propose to change the nature of use of a water right, the State Engineer believes it is appropriate to examine the rates and amounts of hydrologic depletion associated with the historical water use as compared to the proposed use to ensure that there is no enlargement of the underlying water right. In this case, it is believed that the historical irrigation water use would have incurred a rate of hydrologic depletion of approximately 63.92% of the duty of 5.0 acre-feet per acre.¹ The calculated total amount of hydrologic depletion would thus have been approximately 226.23 acre-feet per year for the 353.9637 acre-feet of diversion allowance.

It will be the responsibility of the applicant to ensure that the hydrologic depletion limitations associated with its various rights are not exceeded.

The subject water right is within an area that is currently under an active adjudication order of the Fifth Judicial District Court. 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 to ensure that other vested rights are not impaired by the change without compensation, that no enlargement of the underlying right occurs, and that the Permanent Change Application satisfies the current requirements of applicable statute and policy.

It is, therefore, **ORDERED** and Permanent Change Application Number 81-1579 (a49438) is hereby **APPROVED** subject to prior rights and the following conditions:

1. Proof of Beneficial Use may only be submitted by a qualified public water supplier. A Certificate of Beneficial Use will not be issued unless ownership of the right is in the name of a Public Water Supplier.
2. Water use under this approval shall be limited to the maximum annual diversion allowance of 353.9637 acre-feet of water for municipal use with an associated

¹Consumptive Use of Irrigated Crops in Utah, Research Report 145, Utah Agricultural Experiment Station, Utah State University, Logan, Utah, October 1994, Table 25, La Verkin Station. The benchmark crop for the referenced calculation is alfalfa, the most typical and consumptive crop evaluated in the study (38.35 inches or 3.1958 feet. 3.1958 feet / 5.0 acre-feet duty = 63.92%).

maximum annual depletion allowance of 226.23 acre-feet of water for this use. The applicant shall maintain records demonstrating the depletion allowance is not being exceeded.

3. To accommodate the approval of this permanent change application, the use of 1.7589 cfs or 353.9637 acre-feet of water to be used for the irrigation of 70.79 acres from March 1 to November 30 at the historical point of diversion and place of use must cease.
4. The applicant 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. The documents submitted as proof of beneficial use for this application, as required by statute at Utah Code § 73-3-16, shall include a full and correct copy of the metering record maintained as required herein.
6. 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 Utah Code § 73-3-16, 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.
7. Whereas this Change Application has been filed to entirely replace and supersede prior approved Change Application Number 81-1579 (a36648c) and 81-5538 (a36648d), with this approval those prior applications are considered to have been **WITHDRAWN.**

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 and the courts are available to pursue such suits (Utah Code § 73-1-4).

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 parties or decreed by a court of competent jurisdiction.

The applicants are strongly cautioned that other permits may be required before any development of this application can begin and it is the responsibility of the applicants 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 Utah Code §§ 73-3-10 and 73-3-12 must be diligently prosecuted to completion. The water must be put to beneficial use and proof must be filed on or before **September 30, 2030**, 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 applicants.

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 Utah Code § 73-3-16, for this application, the applicants 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 applicants' 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 Southwestern Regional Office. The telephone number is 435-586-4231.

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.

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Dated this 1 day of September, 2023.

for 
Teresa Wilhelmsen, P.E., State Engineer

Mailed a copy of the foregoing Order this 1 day of September, 2023 to:

Steve & Jana Smith Charitable Remainder Unitrust
Steven B. Smith and Jana Smith, Trustees
48 W 300 S, #2502
North Salt Lake City, UT 84101

Big Plains Water Special Service District
c/o Ben Ruesch
86 N 3400 W
Hurricane, UT 84737

Division of Water Rights
Water Use Program

BY: 
Doralee Cannon, Applications/Records Secretary