

# Permit Application

**A:** Cortney Barlow



**B:** Cluff Drilling & Pump

HC 65 BOX 455

Fredonia, AZ 86022

(928) 640-7656

**C:** SAME AS "A"

**D:** N 179' W 1931' from E4 Cor, S23, T43S, R 11W. SLB&M

**E:** This Application is based on existing water rights and is not a new application of water. It is merely changing the points of diversion and therefor should not deplete the District's water supply.

**F:** See Attached documents

**G:** See Attached Start Card

# STATEMENT OF A WATER RIGHT SEGREGATION STATE OF UTAH

For the purpose of informing the State Engineer of the segregation of a portion of a perfected or water right application consistent with section 73-3-27, this statement is hereby made, based upon the following showing of facts.

## Water Right:

(Document created on Mar 23, 2022 by SZUFELT)

Water Right Number: 81-5495  
(SZUFELT)

Application #: A43996a

Segregated From: 81-3011 (A43996a) on Mar 23, 2022  
Parent Water Right Type: Application To Appropriate  
Parent Water Right Status: Certificated

## Owners:

Name: Cortney Barlow

Address:

Interest:

Remarks:

## Dates:

Filed: May 04, 1987

Priority: Aug 15, 1974

## General:

Quantity of Water: 6.42 ACFT

Source: Underground Water Wells (8)

County: Washington

Common Description: West of Short Creek

Land Owned by Appl.:

County Tax Id#:

## Points of Diversion:

Points of Diversion - Underground:

- (1) N 735 ft. W 597 ft. from SE corner, Sec 29 T 43S R 11W SLBM

Well Diameter: 10 in. Depth: 150 to ft. Year Drilled: Well Log: No Well Id#: UTM: 312381.136, 4098352.839 (NAD83)

Elevation:

Source/Cmnt:

- (2) S 646 ft. E 743 ft. from N4 corner, Sec 31 T 43S R 11W SLBM

Well Diameter: 10 in. Depth: 165 to ft. Year Drilled: Well Log: No Well Id#: UTM: 310380.166, 4097984.657 (NAD83)

Elevation:

Source/Cmnt:

- (3) N 839 ft. E 150 ft. from W4 corner, Sec 31 T 43S R 11W SLBM

Well Diameter: 10 in. Depth: 145 to ft. Year Drilled: Well Log: No Well Id#: UTM: 309125.62, 4097658.533 (NAD83)

Elevation:

Source/Cmnt:

- (4) N 839 ft. E 1114 ft. from W4 corner, Sec 31 T 43S R 11W SLBM

Well Diameter: 10 in. Depth: 165 to ft. Year Drilled: Well Log: No Well Id#: UTM: 309419.447, 4097658.533 (NAD83)

Elevation:

Source/Cmnt:

**Points of Diversion - Underground:**

(5) S 1760 ft. W 110 ft. from N4 corner, Sec 31 T 43S R 11W SLBM

Well Diameter: 10 in. Depth: 160 to ft. Year Drilled: Well Log: No Well Id#:

Elevation: UTM: 310120.172, 4097645.11 (NAD83)

Source/Cmnt:

(6) S 1705 ft. W 330 ft. from N4 corner, Sec 31 T 43S R 11W SLBM

Well Diameter: 10 in. Depth: 180 to ft. Year Drilled: Well Log: No Well Id#:

Elevation: UTM: 310053.116, 4097661.874 (NAD83)

Source/Cmnt:

(7) S 1856 ft. W 798 ft. from NE corner, Sec 31 T 43S R 11W SLBM

Well Diameter: 10 in. Depth: 190 to ft. Year Drilled: Well Log: No Well Id#:

Elevation: UTM: 310711.797, 4097597.602 (NAD83)

Source/Cmnt:

(8) N 206 ft. W 440 ft. from W4 corner, Sec 32 T 43S R 11W SLBM

Well Diameter: 10 in. Depth: 155 to ft. Year Drilled: Well Log: No Well Id#:

Elevation: UTM: 310800.751, 4097422.861 (NAD83)

Source/Cmnt:

**Proposed Water Uses:**

Proposed Water Uses - Group Number: 633574

Water Rights Appurtenant to the following use(s):

81-3011(CERT), 81-4964(CERT), 81-5495(CERT),

Water Use Types:

Irrigation-Beneficial Use Amount: 1.284 acres Group Total: 70.19

Period of Use: 03/01 to 11/30

Place Of Use:

|                         | North West |    |    |    | North East |    |    |    | South West |    |    |    | South East |    |    |    | Section Totals |
|-------------------------|------------|----|----|----|------------|----|----|----|------------|----|----|----|------------|----|----|----|----------------|
|                         | NW         | NE | SW | SE | NW         | NE | SW | SE | NW         | NE | SW | SE | NW         | NE | SW | SE |                |
| Sec 31 T 43S R 11W SLBM |            |    | X  | X  |            |    |    |    |            |    |    |    |            |    |    |    |                |
| Sec 32 T 43S R 11W SLBM | X          | X  | X  | X  |            |    |    |    |            |    |    |    |            |    |    |    |                |
| Group Acreage Total :   |            |    |    |    |            |    |    |    |            |    |    |    |            |    |    |    |                |

**Use Totals:**

Irrigation sole-supply total: 1.284 acres

for a group total of: 70.19 acres





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 WILHELMSEN  
State Engineer/Division Director

## ORDER OF THE STATE ENGINEER

### For Permanent Change Application Number 81-5495 (a48670)

Permanent Change Application Number 81-5495 (a48670) in the name of Cortney Barlow was filed on March 31, 2022, to change the points of diversion, places of use, and uses of 6.42 acre-feet of water as evidenced by Water Right Number 81-5495. Heretofore, the water has been diverted from the following points located: (1) Well - North 839 feet and East 150 feet from the W $\frac{1}{4}$  Corner of Section 31, T43S, R11W, SLB&M (existing 10-inch well, 145 feet deep); (2) Well - North 839 feet and East 1114 feet from the W $\frac{1}{4}$  Corner of Section 31, T43S, R11W, SLB&M (existing 10-inch well, 165 feet deep); (3) Well - South 1760 feet and West 110 feet from the N $\frac{1}{4}$  Corner of Section 31, T43S, R11W, SLB&M (existing 10-inch well, 160 feet deep); (4) Well - South 1705 feet and West 330 feet from the N $\frac{1}{4}$  Corner of Section 31, T43S, R11W, SLB&M (existing 10-inch well, 180 feet deep); (5) Well - South 1856 feet and West 798 feet from the NE Corner of Section 31, T43S, R11W, SLB&M (existing 10-inch well, 190 feet deep); (6) Well - North 206 feet and West 440 feet from the W $\frac{1}{4}$  Corner of Section 32, T43S, R11W, SLB&M (existing 10-inch well, 155 feet deep); (7) Well - North 735 feet and West 597 feet from the SE Corner of Section 29, T43S, R11W, SLB&M (existing 10-inch well, 150 feet deep); (8) Well - South 646 feet and East 743 feet from the N $\frac{1}{4}$  Corner of Section 31, T43S, R11W, SLB&M (existing 10-inch well, 165 feet deep). The water has been used for the sole supply of 1.284 acres irrigation (group total of 70.19 acres) from March 1 to November 30. The water has been used in all or portion(s) of Sections 31 & 32, T43S, R11W, SLB&M.

Hereafter, it is proposed to divert 5.731 acre-feet of water from a well located North 179 feet and West 1931 feet from the E $\frac{1}{4}$  Corner of Section 23, T43S, R11W, SLB&M (8-inch well, 200-600 feet deep). The water is to be used for the irrigation of 0.9502 acre from March 1 to November 30; and year-round stockwatering of 35.0 equivalent livestock units (ELUs) in cattle, horses, or equivalent species. The place of use of the water is being changed to all or portion(s) of Section 23, T43S, R11W, SLB&M.

Notice of the application was published in The Spectrum on April 14 and 21, 2022, and a protest was received from Tom Brown. A hearing was not held.

The protestant is concerned about drought conditions in the region and the increased strain that additional water development will have on existing users.

The State Engineer notes that the application is based on existing water rights, and that this is not a new appropriation 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 assure 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 58.72% of the duty of 5.0 acre-feet per acre.<sup>1</sup> The calculated total amount of hydrologic depletion would thus have been approximately 3.77 acre-feet per year for the 6.42 acre-feet of diversion allowance.

The following diversion and depletion amounts are calculated for the water uses proposed under this application:

| <u>Proposed</u><br><u>Beneficial Use</u> | <u>Allowed</u><br><u>Diversion</u> | <u>Rate of</u><br><u>Depletion</u> | <u>Amount of</u><br><u>Depletion</u> |
|------------------------------------------|------------------------------------|------------------------------------|--------------------------------------|
| Irrigation 0.9502 acre                   | 4.751 acre-feet                    | 58.72% <sup>2</sup>                | 2.79 acre-feet                       |
| Stockwatering 35 ELUs                    | <u>0.98 acre-foot<sup>3</sup></u>  | 100.00%                            | <u>0.98 acre-foot</u>                |
| Totals:                                  | <u>5.731 acre-feet</u>             |                                    | <u>3.77 acre-feet</u>                |

Based on the above analysis, it appears that the proposed uses will not exceed the hydrologic diversion and depletion limitations associated with the historical uses.

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 81-5495 (a48670) is hereby **APPROVED** subject to prior rights and the following conditions:

1. This approval is limited to the rights to divert and beneficially use water and does not grant any rights of access to nor use of land or facilities not owned by the applicant.
2. 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 the parties or decreed by a court of competent jurisdiction.
3. Water use under this approval shall be limited to the irrigation of 0.9502 acre with a maximum annual diversion allowance of 4.751 acre-feet of water for this use, to the

---

<sup>1</sup>*Consumptive Use of Irrigated Crops in Utah*, Research Report 145, Utah Agricultural Experiment Station, Utah State University, Logan, Utah, October 1994, Table 25, Zion National Park Station.

<sup>2</sup>Ibid.

<sup>3</sup>Based on the standard of 25 gallons per day per head (cow or horse or equivalent in other animal species) which equates to 0.028 acre-foot per head annually.



stockwatering of 35.0 ELUs with a maximum annual diversion allowance of 0.98 acre-foot of water for this use.

4. To accommodate the approval of this permanent change application, the use of 6.42 acre-feet of water to be used for the irrigation of 1.284 acres from March 1 to November 30 at the historical point of diversion and place of use must cease.
5. The applicants shall construct or install and maintain controlling works and a measuring device as required by Section 73-5-4 of Utah Code.

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 (UCA 73-1-4).

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, 2029, or a request for extension of time must be acceptably filed and subsequently approved; otherwise, the application will be lapsed.

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 Southwestern Regional Office. The telephone number is 435-586-4231.

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 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](mailto: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 8 day of JULY, 2022.

  
Teresa Wilhelmsen, P.E., State Engineer

Mailed a copy of the foregoing Order this 8 day of JULY, 2022 to:

Cortney Barlow  


Tom Brown  


BY:   
for Doralee Cannon, Applications/Records Secretary



|                                                                                                                                                                       |                                      |                                                 |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------|-------------------------------------------------|
| <b>IMPORTANT: THIS CARD MUST BE RECEIVED BY THE DIVISION OF WATER RIGHTS PRIOR TO THE BEGINNING OF WELL CONSTRUCTION – REQUIRED FOR WELLS DEEPER THAN 30</b>          |                                      | <b>PROOF DUE/EXPIRATION DATE: July 31, 2029</b> |
| <b>START CARDS CAN BE SUBMITTED ONLINE WITH THE WATER RIGHT NUMBER OR NON-PRODUCTION WELL NUMBER AND THE PIN.</b>                                                     |                                      |                                                 |
| <b>ONLINE SUBMISSION WATER RIGHT: a48670</b>                                                                                                                          | <b>ONLINE SUBMISSION PIN: 523187</b> |                                                 |
| <b>ONLINE SUBMISSION URL: <a href="http://waterrights.utah.gov/welldrilling/startcardOnline.asp">http://waterrights.utah.gov/welldrilling/startcardOnline.asp</a></b> |                                      |                                                 |

LICENSE #: \_\_\_\_\_ LICENSEE/COMPANY: \_\_\_\_\_

Date \_\_\_\_\_

STATE OF UTAH DIVISION OF WATER RIGHTS Phone No. 801-538-7416 - FAX No. 801-538-7467

COMMENTS: \_\_\_\_\_

\*IF THE START CARD IS PHONED IN, THEN THE COMPLETED AND SIGNED START CARD MUST BE RETURNED TO THE DIVISION OF WATER RIGHTS BY FAX, EMAIL, OR MAIL.



PROOF OF  
PUBLICATION

STATE OF WISCONSIN  
COUNTY OF BROWN

STATE OF UT/ DIV WATER RIGHTS  
1594 W NORTH TEMPLE STE 330

SALT LAKE CITY UT 84116

I, being duly sworn, deposes and says that I  
am an employee of The Spectrum, a  
newspaper of general circulation published daily  
in Saint George, Washington County, State of  
Utah, also distributed in Iron County and also  
forwarded to Utahlegals.com, and that the  
notice is a true copy of which is here to  
attached, was published in said newspaper  
issues dated:

04/14/2022, 04/21/2022

for a total of 2 insertion(s) and per  
Utahlegals.com will remain on Utahlegals.com  
for 30 days.

  
\_\_\_\_\_  
Legal Clerk

Subscribed and sworn before me this  
21st of April 2022.

  
\_\_\_\_\_  
NOTARY PUBLIC RESIDING  
AT STATE OF WISCONSIN  
COUNTY OF BROWN

Notary Expires: 8-25-23

SHELLY HORA  
Notary Public  
State of Wisconsin

Ad#:0005211123  
P O:

This is not an invoice

# of Affidavits 1

RECEIVED

APR 27 2022 MS

WATER RIGHTS  
SALT LAKE

#### NOTICE TO WATER USERS

The applications below were filed with the Division of Water Rights in Iron/Washington County. These are informal proceedings per Rule 655-6-2. Protests concerning an application must be legibly written or typed, contain the name and mailing address of the protesting party, STATE THE APPLICATION NUMBER PROTESTED, CITE REASONS FOR THE PROTEST, and REQUEST A HEARING, if desired. Also, A \$15 FEE MUST BE INCLUDED FOR EACH APPLICATION PROTESTED. Protests must be filed with the Division of Water Rights on or before May 11, 2022 either electronically using the Division's on-line Protest of Application form, by hand delivery to a Division office, or by mail at PO Box 146300, Salt Lake City, UT 84114-6300. Please visit [waterrights.utah.gov](http://waterrights.utah.gov) or call (801)538-7240 for additional information.

#### IRON COUNTY

##### NEW APPLICATION(S)

- 19-471 (A83202): Jamie Anderson propose(s) using 0.25 ac-ft. from groundwater (Personal family well) for DOMESTIC.

##### CHANGE APPLICATION(S)

- 73-4485 (a48635): Pre Painted Desert LLC propose(s) using 10 ac-ft. from groundwater (CICWCD) for MUNICIPAL; In Central Iron County WCD.
- 71-5769 (a48644): Andy Korn propose(s) using 1 ac-ft. from groundwater (Northwest of Beryl Junction) for DOMESTIC; IRRIGATION.
- 73-2897 (a48655): Mark A. and Lesa A. Anders propose(s) using 1 ac-ft. from groundwater (West of Enoch) for IRRIGATION.
- 73-4476 (a48661): Kenneth N Orr and Patricia Kron Orr Family Trust propose(s) using 2 ac-ft. from groundwater (Cedar Valley Acres) for DOMESTIC; IRRIGATION; STOCKWATERING.
- 73-4054 (a48663): Terilyn Cooke, Virgel Nyborg propose(s) using 2 ac-ft. from groundwater (Cedar Valley Acres) for DOMESTIC; IRRIGATION; STOCKWATERING.
- 71-5560 (a48667): Stubborn C Ranch Inc, a Florida Corporation propose(s) using 1.9228 ac-ft. from groundwater (NW of Beryl Junction) for DOMESTIC; IRRIGATION; STOCKWATERING.
- 75-1183 (a48680): Randall Adams Land and Livestock propose(s) using 0.011 cfs OR 0.3912 ac-ft. from groundwater and spring (North of Cañon Valley Sink)

RECEIVED

APR 27 2022

WATER RIGHTS  
SALT LAKE

MS

STOCKWATERING.  
• 75-1171 (a48681): Randall Adams Land and Livestock propose(s) using 0.011 cfs OR 0.744 ac-ft. from groundwater and spring (North of Co-op Valley Sinks) for DOMESTIC; STOCKWATERING.  
• 75-1179 (a48682): Randall Adams Land and Livestock propose(s) using 0.011 cfs OR 0.3206 ac-ft. from groundwater and spring (North of Co-op Valley Sinks) for DOMESTIC; STOCKWATERING.  
EXTENSION(S)  
• 71-3631 (a27396): Kevin Lawrence McNulty and Carolyn Faye McNulty is/are filing an extension for 1 ac-ft. from groundwater (In Far West Subdivision) for DOMESTIC; IRRIGATION.  
WASHINGTON COUNTY  
CHANGE APPLICATION(S)  
• 81-5495 (a48670): Cortney Barlow propose(s) using 5.731 ac-ft. from groundwater (Northwest of Hildale) for IRRIGATION; STOCKWATERING.  
• 81-5019 (a48671): Calvin M. Jessop propose(s) using 1.98 ac-ft. from groundwater (Cannan Gap) for STOCKWATERING.  
NONUSE APPLICATION(S)  
• 81-4357 (A32318aaa): Lincoln Trust Company, is/are seeking a nonuse period for 1 ac-ft. from groundwater (East of Leeds) for IRRIGATION.  
Teresa Wilhelmsen, P.E.  
State Engineer

Pub#5211123  
Published  
April 14, 21, 2022  
The Spectrum  
UPAXLP

RECEIVED

APR 27 2022

WATER RIGHTS  
SALT LAKE

MS



# PROTEST

PROTEST FEE PAID

\$15.00 22-02158

Fee Rec'd BY: ONLINE

April 22, 2022

Protestant: Tom Brown



RE: Protest of Change Application a48670 (81-5495)

**RECEIVED**

**APR 22 2022**

**WATER RIGHTS**

**ONLINE**

A hearing is requested.

The whole of Southern Utah is thirsty. The drought and new growth are causing a lot of strain for the entire region. Existing water wells throughout southwest Utah are losing capacity to frightening levels. Every step one entity takes has a profound long-term consequence for their neighbors.

The issues involving developing limited water resources are far reaching and complicated. We recognize that Hurricane City has water rights and test wells that are planned to meet Hurricane City's water resource needs. Some of these well sites are located far beyond Hurricane's current service area and further are in close proximity to the Apple Valley/ Big Plains Water and Sewer Special Service District s (AV/BP) current service area. The fact that Hurricane City is much bigger and has resources to build the infrastructure cannot be the only consideration as to whether this is the right thing to do.

Apple Valley/ Big Plains is a "little David" in a field of Goliaths.

Based on a simplified Ground Water Study, the upper basin aquifer tilts to the southwest raising further concern about potential impacts on existing water service to existing service areas.

AV/BP protests Hurricane's application not to fight but rather to raise the discussion to a neighborhood, if not even a regional, level.

Tom Brown

# APPLICATION FOR PERMANENT CHANGE OF WATER

## STATE OF UTAH

Rec. By: KB VLSg

Fee Amt.: \$150.00

Receipt: # 22-01720

For the purpose of obtaining permission to make a permanent change of water in the State of Utah, application is hereby made to the State Engineer, based upon the following showing of facts, submitted in accordance with the requirements of Section 73-3-3 Utah Code Annotated 1953, as amended.

(Document created on Mar 25, 2022 by SZUFELT)

Change Application Number: 248670

Primary Water Right Number: 81-5495

(c94624, SZUFELT) County Tax Id: AV-1378-N

Right Evidenced By: 81-5495

This Change Application proposes to change: POINT(S) OF DIVERSION, PLACE OF USE, NATURE OF USE.

### 1. Owners

Name: Cortney Barlow

Address: 

Interest:

Remarks:

### 2. Dates

Filed: MARCH 31, 2022

Priority of Change: MARCH 31, 2022

--- Description Of Current Water Right (Heretofore) ---

### 3. General

Flow: 6.42 ACFT

Source: Underground Water Wells (8)

County: Washington

### 4. Points of Diversion

#### Underground POD

1: N 735 ft W 597 ft from SE corner, Sec 29 T 43S R 11W SLBM

Diameter: 10 ins. Depth: 150 to ft. Well ID#: 0

Source:

2: S 646 ft E 743 ft from N4 corner, Sec 31 T 43S R 11W SLBM

Diameter: 10 ins. Depth: 165 to ft. Well ID#: 0

Source:

3: N 839 ft E 150 ft from W4 corner, Sec 31 T 43S R 11W SLBM

Diameter: 10 ins. Depth: 145 to ft. Well ID#: 0

Source:

4: N 839 ft E 1114 ft from W4 corner, Sec 31 T 43S R 11W SLBM

Diameter: 10 ins. Depth: 165 to ft. Well ID#: 0

Source:

5: S 1760 ft W 110 ft from N4 corner, Sec 31 T 43S R 11W SLBM

Diameter: 10 ins. Depth: 160 to ft. Well ID#: 0

Source:

6: S 1705 ft W 330 ft from N4 corner, Sec 31 T 43S R 11W SLBM

Diameter: 10 ins. Depth: 180 to ft. Well ID#: 0

Source:

RECEIVED

MAR 31 2022

WATER RIGHTS  
CEDAR RIVER

## Underground POD

7: S 1856 ft W 798 ft from NE corner, Sec 31 T 43S R 11W SLBM

Diameter: 10 ins. Depth: 190 to ft. Well ID#: 0

Source:

8: N 206 ft W 440 ft from W4 corner, Sec 32 T 43S R 11W SLBM

Diameter: 10 ins. Depth: 155 to ft. Well ID#: 0

Source:

## 5. Water Uses

### Irrigation

1: Beneficial Use Amount: 1.284 acres and Group Total: 70.19 acres

used: 03/01-11/30

## 6. Place of Use

|                         | NW¼ |   |   |   | NE¼ |   |   |   | SW¼ |   |   |   | SE¼ |   |   |   |
|-------------------------|-----|---|---|---|-----|---|---|---|-----|---|---|---|-----|---|---|---|
|                         | N   | N | S | S | N   | N | S | S | N   | N | S | S | N   | N | S | S |
|                         | W   | E | W | E | W   | E | W | E | W   | E | W | E | W   | E | W | E |
| Sec 31 T 43S R 11W SLBM |     |   | X | X |     |   |   |   |     |   |   |   |     |   |   |   |
| Sec 32 T 43S R 11W SLBM | X   | X | X | X |     |   |   |   |     |   |   |   |     |   |   |   |

--- The Following Changes are Proposed (Hereafter) ---

## 7. General

Flow: 5.731 ACFT

Source: Underground Water Well

County: Washington

Common Description: Northwest of Hildale

## 8. Points of Diversion - Changed as Follows

### Underground POD

1: N 179 ft W 1931 ft from E4 corner, Sec 23 T 43S R 11W SLBM

Diameter: 8 ins. Depth: 200 to 600 ft. Well ID#: 0

Source:

## 9. Water Uses - Changed as Follows

### Irrigation

1: Beneficial Use Amount: 0.9502 acres and Group Total: 0.9502 acres

used: 03/01-11/30

### Stock Water

1: Beneficial Use Amount: 35 ELUs and Group Total: 35 ELUs

used: 01/01-12/31

## 10. Place of Use - Changed as Follows

|                         | NW¼ |   |   |   | NE¼ |   |   |   | SW¼ |   |   |   | SE¼ |   |   |   |
|-------------------------|-----|---|---|---|-----|---|---|---|-----|---|---|---|-----|---|---|---|
|                         | N   | N | S | S | N   | N | S | S | N   | N | S | S | N   | N | S | S |
|                         | W   | E | W | E | W   | E | W | E | W   | E | W | E | W   | E | W | E |
| Sec 23 T 43S R 11W SLBM |     |   | X | X | X   | X | X | X |     |   |   |   |     |   |   |   |

## 11. Explanatory

All change applications must be reviewed to ensure that the net depletion to the hydrologic system is not enlarged and that other water rights are not impaired. The following is a depletion analysis for this change application.

| Historic<br>Beneficial Use            | Allowed<br>Diversion    | Rate of<br>Depletion | Amount of<br>Depletion    |
|---------------------------------------|-------------------------|----------------------|---------------------------|
| -----<br>Irrigation of<br>1.284 acres | -----<br>6.42 acre-feet | -----<br>58.72%      | -----<br>3.7698 acre-feet |

To calculate the diversion limitation based on the depletion of the water



right, take the total amount of depletion (3.7698 AF) and subtract the depletion for stock watering (0.98 AF) to get the remaining for irrigation, which leaves 2.7898 AF. Then divide 2.7898 AF by 58.72% to get 4.751 AF then divide by 5.0 acre-feet per acre to get 0.9502 acres, which is the maximum that can be irrigated under this water right.

---

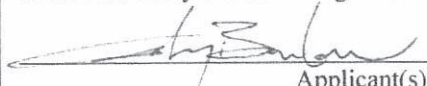
## 12. Signature of Applicant:

The undersigned hereby acknowledges that even though he/she may have been assisted in the preparation of the above-numbered application through the courtesy of the employees of the Division of Water Rights, all responsibility for the accuracy of the information contained herein including maps and other documents attached, at the time of filing, rests with the applicant.



---

Cortney Barlow

| Utah Water Right Change Map                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |      |                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                               |      |         |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|-------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|---------|
| SWSW                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | SESW | SWSE                                                                                | 14                                                                                                                                                                                                                                                                                                                                                                                            | SESE | 13 SWSW |
| NANW                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | NENW | NWNE                                                                                | 43S 11W                                                                                                                                                                                                                                                                                                                                                                                       |      | NWNW    |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |      | 23                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                               |      | 24      |
| SWNW                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | SENV | SWNE                                                                                | HA-1                                                                                                                                                                                                                                                                                                                                                                                          | SENE | SWNW    |
| NWSW                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | NESW | NWSE                                                                                | 0                                                                                                                                                                                                                                                                                                                                                                                             | NESE | NWSW    |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |      |  | <b>Legend</b><br><div style="display: flex; justify-content: space-around; align-items: center;"> <div style="border: 1px solid black; width: 20px; height: 10px; display: inline-block;"></div> Hereafter place of use           <div style="border: 1px solid black; width: 15px; height: 10px; background-color: #cccccc; display: inline-block;"></div> Point of diversion         </div> |      |         |
| <p>(HA-1) N 179 ft, W 1931 ft, from E4 cor, Sec 23, T 43S, R 11W, SL B&amp;M (UTM-83: 316871.5, 4100507.4)</p> <p>I/we _____, hereby acknowledge that this map was prepared in support of Application <u>2482070</u>. I/we hereby submit this map as a true representation of the facts shown thereon to the best of my/our knowledge and belief.</p> <div style="display: flex; justify-content: space-between; margin-top: 20px;"> <div style="width: 45%;"> <br/>           Applicant(s)         </div> <div style="width: 45%; text-align: center;"> <u>3-31-2022</u><br/>           Date         </div> </div> |      |                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                               |      |         |



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

July 21, 2022

CORTNEY BARLOW

RE: Reconsideration Request of Change Application Number: a48670 (81-5495)

Dear Applicant:

The Division of Water Rights received the document referenced above, which was filed on **July 20, 2022**. A copy of the document is enclosed. We will review the request and keep you informed of any further action regarding it. If no action is taken within 20 days of the date the request was received, the request, if appropriately filed, will be considered **DENIED**.

By accepting this document for filing, the Division of Water Rights takes no position on whether the party filing the document is qualified to do so or whether the document's content is appropriate.

If you have any questions, please contact our office at 801-538-7240.

Sincerely,

A handwritten signature in cursive script that reads "Teresa Wilhelmsen".

Teresa Wilhelmsen, P.E.  
State Engineer

Enclosure

cc: protestants:

Tom Brown



7/21/22, 8:54 AM

State of Utah Mail - Fwd: Water Right protests in Apple Valley (Big Plains Water & Sewer Special Service District)



Garrett Hayes <garrethayes@utah.gov>

## Fwd: Water Right protests in Apple Valley (Big Plains Water & Sewer Special Service District)

1 message

Teresa Wilhelmsen <teresawilhelmsen@utah.gov>

Thu, Jul 21, 2022 at 7:02 AM

To: Waterrights DNR <waterrights@utah.gov>

Cc: Garrett Hayes <garrethayes@utah.gov>, "Jones, Eric" <ericjones@utah.gov>, "Moses, Nathan" <nathanmoses@utah.gov>

### REQUEST FOR RECONSIDERATION

----- Forwarded message -----

From: Tom Brown <[REDACTED]>

Date: Wed, Jul 20, 2022 at 1:37 PM

Subject: Water Right protests in Apple Valley (Big Plains Water & Sewer Special Service District)

To: teresawilhelmsen@utah.gov <teresawilhelmsen@utah.gov>

Teresa,

I received two letters in the mail this month which show that change applications a48623 and a48670 were approved without a hearing. Must a hearing be requested when the protest is filed or does the State make that determination regardless if is check marked on the protest application?

I see that there's a possibility to put in a Request for Reconsideration within 20 days from the date of the letter. Is that so? I would like to formally request that this be done. Let me know if these change applications can be reconsidered.

While on the subject, we notice that there have been a lot of requests to transfer water rights away from the Canaan Gap to Apple Valley. Do you know what is driving this move?

The Town of Apple Valley would like to put a moratorium on any water right changes which will draw more water from the limited water supplies that currently feed in to the water system. They are experiencing a severe drought and quite frankly they can't move forward on any new residential or commercial developments until other water sources become available to supply the necessary water for future growth. Is there any way we can do this? Otherwise, you can expect us to protest every water right change that is happening in Apple Valley.

Regards,

**Galloway**

**Tom Brown** PE  
SR. CIVIL PROJECT ENGINEER

2015 W. Grove Parkway, Suite H, Pleasant Grove, UT 84062

O 385.248.0460

[TomBrown@GallowayUS.com](mailto:TomBrown@GallowayUS.com)

[GallowayUS.com](http://GallowayUS.com) | Celebrating 40 Years.

RECEIVED

JUL 20 2022

WATER RIGHTS  
SALT LAKE

GH

7/21/22, 8:54 AM

State of Utah Mail - Fwd: Water Right protests in Apple Valley (Big Plains Water & Sewer Special Service District)

--

**Teresa Wilhelmsen, P.E.**

State Engineer / Division Director

Department of Natural Resources

Division of Water Rights

1594 West North Temple, Suite 220

PO Box 146300

Salt Lake City, Utah 84114-6300

[www.waterrights.utah.gov](http://www.waterrights.utah.gov)

801-537-3119 office

[teresawilhelmsen@utah.gov](mailto:teresawilhelmsen@utah.gov)

*Emails to and from this email address may be considered public records and thus subject to Utah GRAMA requirements.*

SCANNED GH



October 21, 2022

Kimball A. Forbes, Esq.  
Jensen, Bagley, Sperry, PLLC

Re: Change Application Number 81-5447 (a48362)

Dear Mr. Forbes:

You have asked for my opinion on potential impact of the above cited change application on the water supply of Big Plains Water & Sewer Special Service District. The following are my observations and opinions:

1. Change Application Number 81-5447 (a48362) was filed on January 24, 2022. The application was advertised and no protests were received.
2. The nature of this change application is to allow 2 acre-feet of water to run down the natural channel from Canaan Springs and recharge the groundwater. This would allow 2 acre-feet of water to be diverted from a well located downgradient from the springs at a point located North 1190 feet and East 145 feet from the S1/4 Corner of Section 13, T43S, R11W, SLB&M.
3. The State Engineer approved Change Application Number 81-5447 (a48362) on June 24, 2022. The State Engineer in her decision made a finding that there is sufficient water in the groundwater to allow this change application to be approved.

721 North Main Street / Suite 209 / Layton, UT 84041  
c: 801.698.9920 / c: 801.589.4766



4. It appears that the direction of groundwater flow in this area is to the Southwest.
5. The water that is allowed to be left in the natural channel from the Canaan Springs will recharge the groundwater in the area where the well is to be located, thus minimizing the potential impact on other water rights. This recharge will replace the water diverted from the wells in this area.
6. The groundwater in the State of Utah is a public resource and all who utilize this resource should be aware that others will also be utilizing this resource. No strict guidelines have been developed to define what is impairment of one well to another, however, in some areas where interference has occurred, an agreement has been adopted that if one well causes a drawdown of more than 15 feet on another well, that would constitute interference and will not be allowed. It is always an estimation of the effect of any well on another until the well is drilled and an aquifer test is performed, however, it is reasonable to assume that an additional 2 acre-feet of water can be diverted from the proposed well with the recharge from Canaan Springs replacing the water diverted.
7. The closest wells owned by the Big Plains Water & Sewer Special Service District are located approximately 1 mile to the Northwest of the proposed wells under Change Application Number 81-5447 (a48362). The wells of the Big Plains Water & Sewer Special Service District should not be adversely impacted because they do not appear to be within the same flow path of the groundwater where the proposed well is to be located. This is based on the premise that the groundwater in the area will follow down the same drainages and generally the same direction as the surface water.
8. The "clear and convincing evidence that the application will not further deplete the District's water supply" is this, the State Engineer made a finding that there is adequate water in the area for this change application to occur, the applicant will allow 2 acre-feet from Canaan Springs to flow down the natural channel and recharge the groundwater, and the likelihood that there will be any impact to the wells of the District is highly unlikely.
9. There is no data in this area that would indicate that this change application will further deplete the Big Plains Water and Sewer

Special Service District's water supply especially since the same amount of water will be allowed to recharge the area from the Canaan Springs.

I hope this has covered your request. If you have further questions, do not hesitate to contact me. Attached is my resume.

Sincerely,

A handwritten signature in cursive script that reads "James E. Riley". The signature is fluid and stylized, with the first and last names being more prominent than the middle initial.

James E. Riley, P.E.



October 20, 2022

Kimball A. Forbes  
JENKINS BAGLEY SPERRY, PLLC

[REDACTED]  
kaf@jenkinsbagley.com

**RE: Legal Opinion on Well Regulations of the Big Plains Water and Sewer  
Special Service District**

Mr. Forbes:

I completed my review of Section 14 of the Rules and Regulations for Retail Water Service of the Big Plains Water and Sewer Special Service District (effective date, July 20, 2022) (the “District”). As currently drafted, the District’s regulations regarding well drilling exceed the District’s statutory authority. Any attempt to enforce such regulations would be an unlawful violation of private real property rights and, in the case of the noted criminal liabilities, a potential violation of property owner civil rights as well. Please let me explain.

The District is a limited purpose local service district which, like all local districts in the State of Utah, is formed pursuant to Title 17B of the Utah Code (the “Limited Purpose Local District Act”). The Utah Supreme Court held that the Limited Purpose Local District Act “necessarily limit[s]...the authority specifically granted to the local district by statute.” *Metro. Water Dist. of Salt Lake & Sandy v. SHCH Alaska Tr.*, 452 P.3d 1158, 1170 (Utah 2019). Such statutory authority does not extend to enacting land use regulations. *Id.* The provisions of Utah Code Ann. § 17B–1–301 do not extend authority to a local district to regulate the use of water rights within its service area, nor does it allow a district to regulate the drilling of wells. Moreover, it does not provide a district with the authority to levy criminal fines or penalties.



The Legislature granted the Utah State Engineer, not local districts, the statutory authority to regulate the drilling of wells and administer the application of water rights within the State of Utah. *See* Utah Code Ann. § 73–2–1; *see also* 73–3–3(3)(a). If the District desires to protect its existing water rights and groundwater sources, it should avail itself of the State Engineer’s administrative processes. In the event of demonstrable water impairment, the District can also seek redress with the State Engineer and local courts. *Id.* The District cannot establish its own water right regulatory scheme in lieu of, or in addition to, the State Engineer’s administrative process because it lacks the statutory authority to do so. Furthermore, the Legislature has already vested that authority in another governmental entity (i.e., the State Engineer and the Utah Division of Water Rights). *See Metro. Water Dist. of Salt Lake & Sandy v. SHCH Alaska Tr., 452 P.3d 1158, 1169 (Utah 2019).*

In your case, Water Right No. 81-5447 has been authorized by the State Engineer (under Change Application No. a48362) to pull groundwater from its designated point of diversion which you explained to me falls within the service area of the District. The owners of 81-5447 followed the State Engineer’s proscribed processes. *See* Utah Code Ann. § 73–3–1, et seq. The District was free to take part on those proceedings as a protestant but neglected to do so and the time to protest Change Application a48362, as well as the State Engineer’s decision on the same, has passed. *Id.* Accordingly, the owners of 81-5447 have the legal right to drill a well at their designated point of diversion so long as they comply with the terms of the State Engineer’s Memorandum Decision. Any attempt by the District to disrupt the lawful use of 81-5447 would constitute an unlawful infringement of property rights or (given the District’s public status) an unlawful taking of private property. Any attempt by the District to levy criminal penalties against the owners of 81-5447 could constitute a violation of the water right owners’ civil rights as the District also has no statutory authority to levy such fines and penalties in relation to land use restrictions.

I recommend you share this information with the District, so they can review and provide comment or additional information. My review was limited to the District’s existing rules and regulations and current Utah statutes and case law. However, unless a significant revision of Title 17B has occurred of which I am not aware, I cannot find a legal basis that would allow the District authority to promulgate or enforce Chapter 14 of their Rules

and Regulations. Thank you for this opportunity to assist you and please let me know if you have any questions.

Kindest Regards,

A handwritten signature in black ink, appearing to read "Riley S. Snow". The signature is fluid and cursive, with a long horizontal stroke at the end.

Riley S. Snow