



GARY R. HERBERT
Governor
SPENCER J. COX
Lieutenant Governor

State of Utah

DEPARTMENT OF NATURAL RESOURCES

Division of Water Rights

BRIAN C. STEED
Executive Director

TERESA WILHELMSSEN
State Engineer/Division Director

ORDER OF THE STATE ENGINEER

For Permanent Change Application Number 55-12996 (a45441)

and

For Temporary Change Application Number 55-12996 (t45481)

Permanent Change Application Number 55-12996 (a45441) in the names of D Ray Hult Family LLC and North Fork Special Service District was filed on January 24, 2020, to change the point of diversion, places of use, and use of 2.00 acre-feet of water as evidenced by Water Right Number 55-12996. Heretofore, the water has been diverted from a surface source located North 1000 feet and East 150 feet from the SW Corner of Section 18, T3S, R5E, SLB&M. The water has been used for the irrigation sole supply of 0.6666 acre (group total of 90.00 acres) from April 1 to October 31. The water has been used in all or portion(s) of Sections 13 & 24, T3S, R4E, SLB&M; and Sections 18 & 19, T3S, R5E, SLB&M.

Hereafter, it is proposed to divert 2.00 acre-feet of water from points of diversion changed to: (1) Spring - South 950 feet and East 820 feet from the NW Corner of Section 10, T5S, R3E, SLB&M; (2) Spring - North 332 feet and West 3845 feet from the SE Corner of Section 4, T5S, R3E, SLB&M; (3) Spring - North 317 feet and West 3739 feet from the SE Corner of Section 4, T5S, R3E, SLB&M; (4) Spring - South 2859 feet and West 3821 feet from the NE Corner of Section 15, T5S, R3E, SLB&M; (5) Well - South 2848 feet and West 440 feet from the N $\frac{1}{4}$ Corner of Section 15, T5S, R3E, SLB&M (originally proposed as a 12-inch well, 1200-1800 feet deep, but constructed in 2017 as a 12.75-inch well, 1370 feet deep); (6) Well - South 808 feet and East 958 feet from the NW Corner of Section 10, T5S, R3E, SLB&M (-inch well, 1200-1500 feet deep); (7) Spring - North 291 feet and West 3848 feet from the SE Corner of Section 4, T5S, R3E, SLB&M; (8) Spring - North 229 feet and West 3745 feet from the SE Corner of Section 4, T5S, R3E, SLB&M; (9) Spring - South 3231 feet and West 4110 feet from the NE Corner of Section 15, T5S, R3E, SLB&M; (10) Spring - South 3304 feet and West 3988 feet from the NE Corner of Section 15, T5S, R3E, SLB&M; (11) Spring - South 2721 feet and West 3798 feet from the NE Corner of Section 15, T5S, R3E, SLB&M; (12) Well - South 1880 feet and West 705 feet from the N $\frac{1}{4}$ Corner of Section 15, T5S, R3E, SLB&M (-inch well, 1000-1600 feet deep); (13) Spring - South 3399 feet and West 4011 feet from the NE Corner of Section 15, T5S, R3E, SLB&M; (14) Spring - South 950 feet and East 690 feet from the NW Corner of Section 10, T5S, R3E, SLB&M. The water is to be used for year-round municipal purposes within the service area of North Fork Special Service District.

Temporary Change Application Number 55-12996 (t45481) in the names of D Ray Hult Family LLC and North Fork Special Service District was filed on January 24, 2020, and is identical to the above-described Permanent Change Application (a45441).

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Notice of the permanent change application was published in the Daily Herald on February 20 and 27, 2020, and a protest was received from Central Utah Water Conservancy District (CUWCD). A hearing was not held.

Notice of the temporary change application was not published in a newspaper.

In its written protest, CUWCD states that the underlying water right was established as a Wasatch Division 1st class right in the 1921 Provo River Decree (civil no. 2888) and changing water rights across boundaries into the Provo Division could result in distribution and administration issues. One such issue is the priority of the underlying right. Wasatch Division 1st class rights are authorized to take water before any user in the Provo Division. This constitutes quantity impairment for junior and senior rights in the Provo Division including CUWCD's Class A and Power Rights by creating a new demand senior in priority to these existing rights. Moreover, allowing this type of change would set precedent when considering future applications.

The State Engineer has reviewed the application, protest, underlying rights, and prior decisions. Utah Code Subsection 73-3-3(1)(e) defines quantity impairment as:

"...[A]ny reduction in the amount of water a person is able to receive in order to satisfy an existing right to the use of water that would result from an action proposed in a change application, including: ... a change in the timing of availability of water from the source of supply for the existing right;"

The underlying right, and its corresponding priority, is based on a historical decree that was carefully designed with consideration to the timing of diversions in the Heber Valley as they relate to water rights farther downstream. The proposed change applications would alter the timing of available water to those existing rights, resulting in quantity impairment. A plan to mitigate such impairment has not been presented by the applicant; consequently, these change applications do not meet the statutory criteria for approval under Utah Code Sections 73-3-3 or 73-3-8 and rejection is appropriate.

It is, therefore, **ORDERED** and Permanent Change Application 55-12996 (a45441) along with Temporary Change Application Number 55-12996 (t45481) are hereby **REJECTED**.

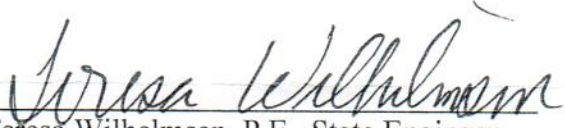
Your contact with this office, should you need it, is with the Utah Lake/Jordan River Regional Office. The telephone number is 801-538-7240.

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, which is the authorized general email for the Division. However, a Request

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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 30 day of June, 2020.


Teresa Wilhelmsen, P.E., State Engineer

Mailed a copy of the foregoing Order this 30 day of June, 2020 to:

D Ray Hult Family LLC
3600 South Redwood Road
Salt Lake City UT 84119

North Fork Special Service District
RR3 Box B1
Provo Canyon UT 84604

Central Utah Water Conservancy District
c/o Rachel Musil
1426 E 750 N Suite 400
Orem, Utah 84097

Scott Bergendorf, River Commissioner
584 E. Walnut Glen Dr.
Springville, UT 84663

Division of Water Rights
Distribution Section
c/o Susan Odekirk
PROVO RIVER

BY: 
Doralee Cannon, Applications/Records Secretary