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July 8, 2024

Skyline Mountain Special Service District
Administrative Control Board
Craig Godwin, Chair
2201 SMR
Fairview, UT 84629

Via Email: craiggodwin99@gmail.com

Re: Evaluation of Water Rights Held by Skyline Mountain Special Service District

Dear Craig,

As counsel for Skyline Mountain Special Service District (“SMSSD”), I was asked to review and evaluate the water rights held by SMSSD, (“**Water Rights**”). This letter will communicate the results of my review and evaluation (“**Review**”) of SMSSD’s Water Rights. These Water Rights are critical to the core function of SMSSD, which is to serve the public with safe and sufficient culinary water within the boundaries of SMSSD.

Under Utah Code § 73-1-1 all water in Utah is property of the public subject to the rights held by individuals and entities, both public and private, to use a certain portion of water. Hence the term “water right.” Due to the laws found in Utah’s Water & Irrigation Code, Title 73 of the Utah Code, which governs the private use of public water, the right to use water, i.e., water rights, can be reduced or lost. Thus, all water right holders must be vigilant in managing their water rights. Periodic Reviews are key to avoiding loss or reduction of the Water Rights.

As to the condition and status of the Water Rights, the short answer is all of SMSSD’s Water Right are being well managed and are in excellent condition. None are facing any threat of being lost or reduced. I attribute this condition to the efforts of SMSSD Water Superintendent, Roy Fox, who has been proactive in caring for SMSSD’s Water Rights. When needed, he has involved water law practitioners – me and my firm – as well as water engineers, Hansen, Allen & Luce, to protect and care for SMSSD’s Water Rights. Roy should be commended for his continued efforts over many years.

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LAND WATER LIFE

I. SMSSD Water Rights¹

Currently, SMSSD owns the following water rights:

Water Right No.	Application/Diligence No.	Priority Date
65-368	A32616	1961
65-1712	A40954	1971
65-1713	D2510	1880
65-2887	A6786	1916
65-2928	A31189	1959
65-3413	A32616	1961
65-3434	A6786	1916

All SMSSD Water Rights are “**Perfected**”, meaning there are no further administrative steps which still must be taken to secure recognition of the Water Rights by the State Engineer of Utah, Teresa Wilhelmsen, P.E., or the Utah Division of Water Rights (“**DWRi**”).² The Water Rights are all in good standing and are approved for Municipal Use. This means the water can be used for domestic, irrigation, and other purposes, including all culinary uses. This is the best use classification possible for public water suppliers such as SMSSD.

All SMSSD Water Rights may be used within its service area, which coincides with SMSSD district boundaries. The only remaining outstanding administrative requirements for all SMSSD Water Rights is to complete the administrative process for approved Change Application a38502 (“**Application a38502**”), filed on the SMSSD Water Rights as explained below.

¹ A full description of SMSSD’s Water Rights is attached as **Exhibit A**.

² Prior to 1903 for surface water and 1935 for ground water, the right to use water was obtained by simply taking control of water and putting it to beneficial use. These early water rights are known as “**Diligence Rights**.” To acquire a water right after those dates, one must file an application with the State Engineer and successfully prosecute the application to conclusion. The final step in this administrative process is the issuance of a “**Certificate of Beneficial Use**” for the water right. Once the Certificate is issued the water right is “**Certificated**.” All of SMSSD Water Rights are Certificated except for Water Right No. 65-1713 which is a Diligence Right for which no Certificate need be issued.

A. Approved Application a38502

Change Applications are used to change the (1) place of use; (2) period of use; (3) nature of use; (4) season of use; or (5) point of diversion for a water right. The owner must file a change application (the official title is “Application for Permanent Change of Water”) with the Division of Water Rights.³

A copy of the Order of the State Engineer (“**OSE**”) approving Application a38502, dated January 9, 2013, is attached as **Exhibit B**. The total amount of diversion approved in the OSE for Application a38502 superseded an earlier Change Application, a37792. Much like an application to appropriate, after a change application has been filed with DWRi, there is a process the change application must go through before the State Engineer either approves or rejects it.⁴ The change application must first be advertised once a week for two successive weeks in a newspaper of general circulation in the county.

Interested parties in the area may file a Protest with the State Engineer protesting the change application.⁵ When protesting a change application, the protestant typically raises concerns about the impact of the approval on other water rights if the State Engineer approves the change application. By statute, the Protest period ends twenty days following the last day of advertisement of the change application in the local newspaper. A hearing may be held if a protestant requests a hearing or if the DWRi has other reasons or concerns for holding a hearing. Employees of the DWRi will preside at this administrative hearing and give both the applicant and the protestant(s) the opportunity to be heard.

The State Engineer will then issue an OSE either approving or rejecting the application. If the application is approved, the OSE will also generally contain limitations and conditions of approval. There is no timeline for when the OSE will be issued. Generally, it takes six to eight weeks from the date of the hearing, but on more complex applications, it may take several months or even years for the State Engineer to issue an OSE. After an OSE approving a change application is issued, the water user typically has five years to file a “Proof of Beneficial Use” (“**Proof**”) to demonstrate the use approved is actually taking place. Once a Proof is filed, DWRi

³ See Utah Code Ann. § 73-3-3; Utah Code Ann. § 73-3-3-5.

⁴ A flow chart demonstrating the process of a change application is attached as **Exhibit C**. The status of change applications after they are submitted can also be tracked online at: <https://www.waterrights.utah.gov/applicationsrecords/apptracker.asp>.

⁵ See Utah Code Ann. § 73-3-13.

investigates the Proof and if acceptable, a “Certificate of Beneficial Use” (“**Certificate**”) is issued, and the administrative process is complete. If the water user is not ready to file a Proof at the end of the five-year period, an Extension Request for additional time to file the Proof may be filed. Such Extension Requests are quite common. In fact, when the DWRi sends out the Notice of a Proof being due, 60 days prior to the due date, an Extension Request form is included with the Notice.

Application a36502 has successfully reached the point in the administrative process of an OSE approving Application a36502. All that is left is for SMSSD to file a Proof and the State Engineer to then issue a Certificate on a36502. Several Extension Requests have previously been filed and approved on Application a36502. The most recent approval is attached as **Exhibit D**. The Proof due date is **January 31, 2027**. SMSSD will need to file either another Extension Request or a Proof on or before that date. Even though a letter will be sent by the DWRi sixty days prior to the Proof due date, this date should also be calendared by SMSSD.

B. Protection of SMSSD’s Water Rights from Loss by Nonuse or Forfeiture

As mentioned above, SMSSD needs to be vigilant to avoid any reduction or loss of its Water Rights through forfeiture by nonuse. Lack of beneficial use of a water right—that is, failure to put the water right, or any portion of a water right, to its beneficial use for seven or more years—may result in its forfeiture.⁶ Non-use of a water right—that is, failure to put the water right, or any portion of a water right, to its beneficial use for seven or more years—may result in its forfeiture.⁷ The forfeiture statute, Utah Code Ann. § 73-1-4, specifies that “[w]hen an appropriator or the appropriator’s successor in interest abandons or ceases to use all or a portion of a water right for a period of seven years, the water right or the unused portion of that water right is subject to forfeiture.” Exceptions include (1) use of water under agreement or lease, (2) situations where land is under a federal or state fallowing program, (3) periods when water is not available from the natural system or due to priority, and (4) water that is held for reasonable future needs by a public water supplier.

Forfeiture actions are exclusively judicial.⁸ Only a court may declare a water right to be forfeited based on clear and convincing evidence of seven years of nonuse

⁶ Utah Code Ann. § 73-1-4(2). Conversely, prior to 1939, seven years of adverse use could bestow title on the user. *See* Utah Code Ann. § 73-1-4; Utah Code Ann. § 73-3-1; *see also Otter Creek Reservoir Co. v. New Escalante Irrigation Co.*, 2009 UT 16, 203 P.3d 1015.

⁷ Utah Code Ann. § 73-1-4(2).

⁸ *See Jensen v. Jones*, 270 P.3d 425 (Utah 2011)

not excused by an exception or nonuse approval. Accordingly, forfeiture actions are quite rare. First, to bring a forfeiture action, there must be standing as the Utah Supreme Court held it was a requirement in *Washington County Water Conservancy Dist. v. Morgan*, 2003 UT 58, 82 P.3d 1125. Second, often the benefit in successfully bringing and prosecuting a judicial forfeiture claim is indirect. The forfeited water right ceases to exist. All junior water rights in the same source benefit. You cannot gain a water right through a forfeiture claim. Third, while the State Engineer is authorized to bring forfeiture actions throughout the state, as a rule the State Engineer does not. Rather, the State Engineer employs her administrative powers to not approve or reduce the acre-feet approved when an application is filed on a water right which has not been beneficially used.⁹ The forfeiture statute applies a 15-year statute of repose for a judicial action declaring a forfeiture.¹⁰

An important protection from loss of SMSSD's Water Rights from a claim of nonuse causing forfeiture is the ability for a "**Public Water Supplier**" to hold water rights for reasonable future needs without fear of loss by nonuse. Changes to Utah's forfeiture statute Utah Code Ann. § 73-1-4 in 2008 enables SMSSD to take advantage of this protection. The first requirement is SMSSD must qualify as a Public Water Supplier. Utah Code Ann. § 73-1-4(1)(b) defines a Public Water Supplier as an entity which: (i) supplies water, directly or indirectly, to the public for municipal, domestic, or industrial use; and (ii) is: (A) a public entity. SMSSD qualifies as a Public Water Supplier. SMSSD serves municipal water to the public and is a "Public Entity" which is defined in Utah Code Ann. § 73-1-4(1)(a)(v) to include political subdivisions of the State of Utah. SMSSD is a Special Service District created by Sanpete County under Title 17D, Chapter 1 of the Utah Code. Utah Code § 17D-1-103(1)(a)(iii) specifies all Special Service Districts are a political subdivision of the state of Utah.

A second requirement to take advantage of the protection from forfeiture for Public Water Suppliers holding water rights for future use is to have and submit a "Forty Year Plan" to the DWRi which shows the water rights, or a portion of the water rights, being held for future use will be needed in the next forty years. Utah Code Ann. § 73-1-4(2)(e)(vii) indicates that the water right is protected from forfeiture if a water right is:

⁹ See Utah Code Ann. § 73-3-3 & 8.

¹⁰ Utah Code Ann. § 73-1-4(2)(c)(ii)(A).

- “(A) (I) owned by a public water supplier;
- (II) represented by a public water supplier's ownership interest in a water company;
or
- (III) to which a public water supplier owns the right of beneficial use; and
- (B) conserved or held for the reasonable future water requirement of the public, which is determined according to Subsection (2)(f);”

To prevent abuse of this protection, the DWRi has adopted Rule R655-18. This Rule requires the adoption of the Forty Year Plan and sets standards for the Plan. The Standards are:

R655-18-5. Plan Standards.

- (1) Each 40 Year Plan or supplement to an existing Plan submitted to the Division of Water Rights shall be signed and certified by a Professional Engineer with their respective professional seal affixed.
- (2) A 40 Year Plan must explicitly identify each specific water right or rights for which the Plan is being submitted.
- (3) A previously submitted Plan may be supplemented to address a specific water right or rights for which a Public Water Supplier includes as part of a previously submitted Plan.
- (4) When a Public Water Supplier submits a 40 Year Plan or a supplement to a Plan each part of the Plan must be up-to-date and current.
- (5) A Public Water Supplier may prepare multiple 40 Year Plans to address separate and distinct water systems, which may include areas to which the Public Water Supplier supplies or reasonably plans to supply water.
- (6) A 40 Year Plans shall include the following for a Public Water Supplier:
 - (a) amount of physical water currently diverted and used in the system;
 - (b) a description of the system and sources of water;
 - (c) the projected Future Water Requirements for the system;
 - (d) a comprehensive inventory list for the system of the Public Water Supplier's interest in either water rights, ownership shares in water companies, or any contracts or other documents evidencing its right to receive water from other entities; and
 - (e) an explanation of how each specific water right, for which the 40 Year Plan is being submitted, is needed to meet the projected Future Water Requirements of the system.
- (7) The projected population within the Public Water Supplier's Service Area shall be based upon population estimates prepared by the Utah Population Committee or a comparable estimate including estimates prepared by a state agency, political subdivision of the state, an association of governments, or an Interlocal Cooperation Act entity.
- (8) Projected water use per capita and other water use demand estimates shall be based upon established engineering principles, actual water use data, or other reliable measures.

In 2019, the engineering firm of Hansen, Allen & Luce created the current Forty Year Plan for the SMSSD Water Rights. A copy of this Forty Year Plan is attached as **Exhibit E**. This Plan has been submitted to the DWRi, as required in

the Rule, and can be found in the water right files kept by DWRI. In the Forty Year Plan, all of the Water Rights of SMSSD will be needed within the next forty years. Thus, the Water Rights meet all the requirements for this protection from loss through forfeiture under Utah Code § 73-1-4(2)(e)(vii).

II. Total Acre-Foot Discrepancy

Finally, if you compare the total acre-feet of each of the Water Rights it totals 263.9 acre-feet.¹¹ However, only 222.8 acre-feet are approved under Approved Application a38502. This discrepancy is explained in the OSE which approved a prior change application a26740 dated June 6, 2003:

Upon review of the underlying rights. and in quantifying these water rights. it was found that Water Right No. 65-1712 was approved for a flow rate of 0.015 cfs and limited by memorandum decision to 0.73 acre-foot. In a letter regarding Diligence Claim No. 65-1713 (02510), it was stated by Charley Riddle that Neil Jorgenson. who owns Skyline Sheep Co. runs 1000 ewes and 1000 lambs up in the spring and back in the fall. Therefore. assuming two weeks in the spring and two weeks in the fall the stockwater use would consume 0.86 acre-foot. Water Right No. 65-368 is certificated for 0.37 cfs or 70.45 acre-feet for six full-time and 271 part time domestic uses. Water Right No. 65-3413 (a25493) is approved for a flow rate of 0.63 cfs or 120.0 acre-feet for part-time domestic purposes of 480 families. It was originally filed for 40 acres of irrigation. Water Right No. 65-2887 (a25880) is approved for a flow rate of 0.0495 cfs or 12.0 acre-feet for part-time domestic purposes of 48 families. It was previously certificated for the irrigation of 4.0 acres of land. Water Right No. 65-2928 (a25610) is approved for a flow rate of 0.10 cfs or 18.31 acre-feet for part-time domestic purposes of 62 families. It was previously certificated for the irrigation of 6.1032 acres. The flow rate and acre-foot amount for these underlying rights total 1.1645 cfs or 222.35 acre-feet. The following is a summary of these rights as they originated. or as the have been certificated showing the diversion and depletion amounts:

¹¹ Water Right No. 65-1712 was originally approved for 0.015 cfs, which is equivalent to 10.86 acre-feet. When change application a26740 was submitted, the heretofore amount totaled 273.9 acre-feet. The reduction to 0.73 acre-feet outlined in the OSE brings the grand total of each of the Water Rights to 263.9 acre-feet.

USES						FLOW (cfs)	Diversion (acre-feet)	Depletion (acre-feet)
WATER RIGHT NUMBER	Irrigation (acres)	Domestic (Full-time)	Domestic (Part-time)	Livestock (# of head)	Other			
65-368		6	271			0.3700	70.45	14.090
65-1712					Clubhouse and pool	0.0150	0.73	0.146
65-1713				1510			0.86	0.860
65-2887	4.0000					0.0495	12.00	9.720
65-2928	6.1033					0.1000	18.31	14.830
65-3413	40.000					0.6300	120.0	97.200
TOTALS	50.1033	6	271	1510		1.1645	222.35	136.846

Thus, the total acre-feet was reduced from 263.9 to 222.8 acre-feet. A copy of the OSE for the Approved Application is attached as **Exhibit F**.

III. Conclusion

It is my hope that you and the Board of SMSSD find this information to be helpful. If you have any questions, please contact me. Thanks.

Yours Truly,
SMITH HARTVIGSEN, PLLC

J. Craig Smith
 Ethan M. Smith

cc: Beca Mark, Clerk
 Roy Fox, Water Superintendent
 SMSSD Board

EXHIBIT A

Summary of Water Rights -- Skyline Mountain Special Service District
Protected and Attorney Client Privileged

WR#	Owner	Application/Claim Number	Change	Status	Priority	Source	Diversion (cfs)	Diversion (acre-feet)	Irrigation (acres)	Stock (ELUs)	Municipal (acre-feet)	Domestic (EDUs)	Other (acre-feet)
65-368	Skyline Mountain SSD	A32616	a38502	Approved - proof due 1/31/2027	1961	Underground Well	0.37	70.45				271.0000	
65-1712	Skyline Mountain SSD	A40954	a8651 a38502	Approved - proof due 1/31/2027	1971	Underground Well	0.015	0.73					0.73
65-1713	Skyline Mountain SSD	D2510	a38502	Approved - proof due 1/31/2027	1880	8 Unnamed Springs	0.1381	42		1510.0			
65-2887	Skyline Mountain SSD	A6786	a38502	Approved - proof due 1/31/2027	1916	Archie's Hollow	0.0495	12	4.00				
65-2928	Skyline Mountain SSD	A31189	a38502	Approved - proof due 1/31/2027	1959	Underground Well	0.1	18.31	6.10				
65-3413	Skyline Mountain SSD	A32616	a38502	Approved - proof due 1/31/2027	1961	Underground Well	0.63	120	40.00				
65-3434	Skyline Mountain SSD	A6786	a38502	Approved - proof due 1/31/2027	1916	Archie's Hollow	0.002	0.5	0.17				
TOTAL							1.3046	263.9900	50.2703	1,510.0000	0.0000	271.0000	0.7300

EXHIBIT B



GARY R. HERBERT
Governor
GREG BELL
Lieutenant Governor

State of Utah

DEPARTMENT OF NATURAL RESOURCES

Division of Water Rights

MICHAEL R. STYLER KENT L. JONES
Executive Director State Engineer/Division Director

ORDER OF THE STATE ENGINEER

For Permanent Change Application Number 65-368 (a38502)

Permanent Change Application Number 65-368 (a38502), in the name of Skyline Mountain Special Service District, was filed on October 1, 2012, to change the points of diversion of 1.1665 cubic feet per second (cfs) or 222.85 acre-feet (af) of water as evidenced by Water Right Numbers 65-1712, 65-1713, 65-2887, 65-2928, 65-3413, 65-3434, and 65-368, as amended by prior approved Permanent Change Application a37792 (65-1712, 65-1713, 65-2887, 65-2928, 65-3413, 65-3434, and 65-368).

Heretofore, the water has been diverted from the following points located:

- (1) Surface - North 310 feet and East 292 feet from the W $\frac{1}{4}$ Corner of Section 17, T14S, R5E, SLB&M (Archies Hollow stream);
- (2) Well - South 150 feet and West 2490 feet from the W $\frac{1}{4}$ Corner of Section 13, T14S, R4E, SLB&M (potential well site # 1);
- (3) Well - North 587 feet and West 348 feet from the E $\frac{1}{4}$ Corner of Section 9, T14S, R5E, SLB&M (existing 10-inch well, 385 feet deep; "Thad Peak Well");
- (4) Well - South 690 feet and West 790 feet from the N $\frac{1}{4}$ Corner of Section 17, T14S, R5E, SLB&M (potential well site # 2);
- (5) Well - South 510 feet and East 775 feet from the NW Corner of Section 17, T14S, R5E, SLB&M (potential well site # 3);
- (6) Well - North 1311 feet and West 1245 feet from the SE Corner of Section 13, T14S, R4E, SLB&M (existing 12-inch well, 307 feet deep; "Club Well").

The water was stored in the following reservoir: Skyline Mountain Fish Pond - from January 1 to December 31, having a capacity of 4.8 acre-feet, a dam height of 12 feet, and inundating 0.4 acre in all or portion(s) of Section 18, T14S, R5E, SLB&M. The water was used for municipal purposes within the service area of Skyline Mountain Special Service District in all or portions of Section 13, T14S, R4E, SLB&M, and Sections 8, 9, 10, 15, 16, 17, 18, 20 and 21, T14S, R5E, SLB&M.

Hereafter, it is proposed to divert 1.1665 cfs or 222.85 acre-feet of water from points of diversion changed to:

- (1) Surface - North 310 feet and East 292 feet from the W $\frac{1}{4}$ Corner of Section 17, T14S, R5E, SLB&M (Archie's Hollow stream);
- (2) Well - South 377 feet and West 1110 feet from the E $\frac{1}{4}$ Corner of Section 13, T14S, R4E, SLB&M (10-inch well, 100-500 feet deep; "Potential Well Site # 1");
- (3) Well - North 1311 feet and West 1245 feet from the SE Corner of Section 13, T14S, R4E, SLB&M (existing 12-inch well, 307 feet deep; existing "Club Well");

(4) Well - North 587 feet and West 348 feet from the E $\frac{1}{4}$ Corner of Section 9, T14S, R5E, SLB&M (existing 10-inch well, 385 feet deep; corrected location of existing 'Thad's Peak Well').

The nature of use and place of use of the water will remain the same as heretofore.

Notice of the application was published in The Pyramid on October 11 and 18, 2012. No protests were received.

Upon review of the subject water rights, it has been determined that the maximum allowed flow rate and acre-foot amounts total 1.1665 cfs and 222.85 af under all rights combined. The maximum allowed depletion, based on the historic uses, is 137.25 af.¹

Although there are several issues that require consideration in this application, the primary issue appears to be the determination of an equitable distribution of the waters of the Archie's Hollow stream in accordance with the established rights therein and the potential impacts on other water users, especially those with rights in Birch Creek. Additionally, it is vital to assure that the developments contemplated under this application provide for proper distribution and measurement of the applicant's water diversions and to assure limitation of said diversions to the flows and volumes allowed under the applicant's water rights.

The State Engineer's evaluation of this application relies upon two evident characteristics of the local hydrology:

- First, it is evident that the Chicken Track Spring is located topographically within the natural drainage containing the defined point of diversion for the Archie's Hollow stream² and would naturally flow toward said point. As noted by the applicant, there is no record of established intervening water rights between said spring and the proposed diversion point. Thus, provided there is no enlargement of the underlying rights, moving the applicant's point of diversion from Chicken Track Spring to the proposed Archie's Hollow diversion site should not, in and of itself, create any impairment to other water rights
- Second, it is also evident that flows in the channel containing both the Chicken Track Spring and Archie's Hollow point of diversion are generally tributary to the

¹ The subject water rights, with the exception of 65-3434, were quantified in the State Engineer's Memorandum Decision on Change Application 65-368 (a26740) issued on June 6, 2003. The same quantification is employed in the current proceeding. Water Right 65-3434 is herein quantified as having an allowed flow of 0.002 cfs, an annual diversion allowance of 0.50 af and an annual depletion allowance of 0.405 af.

² Personnel of the Division of Water Rights, using a handheld GPS device, located the diversion works presently in use by the applicant on November 30, 2011. The location determined is approximately North 367 feet and East 583 feet from the West Quarter Corner of Section 17, T14S, R5E, SLB&M, being approximately 300 feet northeasterly from the described location of the Archie's Hollow diversion and about 980 feet southwesterly of the described location for Chicken Track Spring.

Birch Creek drainage. Thus, any increased diversions of water from that drainage will affect supplies to others with rights on the Birch Creek drainage below the area in which the Archie's Hollow channel may be tributary – either by seepage or by direct flow – to the Birch Creek drainage.

The primary decreed water right in Archie's Hollow allowed the diversion of a flow of 0.71 cfs during the period of April 1st through August 15th.³ As described in Certificate of Appropriation No. 933 (April 27, 1920) and in the State Engineer's Proposed Determination of Water Rights⁴, the diverted water was used for irrigation of 57.4 acres within Section 18, T14S, R5E, SLB&M. Subsequently, a number of segregations and approved change applications have substantially reduced the diversions and beneficial use allowed under this right.⁵

Segregated interests from the decreed right in Archie's Hollow have largely been moved to underground water sources, some of which are topographically located on subdrainages of the larger Sanpitch drainage other than Birch Creek (e.g., Spring Creek and North Creek). An implication of those approvals is the tacit assumption that the hydrologic connection between local deeper ground water aquifers and surface streams is sufficiently attenuated that the changes in water source do not have the effects of new appropriations of water in those surface sources or subdrainages which may otherwise be considered to be fully appropriated.

A second assumption of the prior approvals to move Archie's Hollow water to wells, although perhaps not explicitly stated in each case, is that the surface water to which those segregated interests would have been entitled must be allowed to flow unimpeded and undiminished into the natural channel to make whole the larger hydrologic system, either by seepage or by direct tributary flow.

The portion of the decreed water right in Archie's Hollow owned by the applicant (Water Rights 65-2887 and 65-3434) represents a right to divert a flow rate of 0.0515 cfs and an annual volume of 12.5 acre-feet of water for the irrigation of 3.167 acres. The applicant's rate of diversion is, therefore, limited to 0.0515 cfs or 7.25% of the flow (whichever is the lesser amount), up to an annual diversion volume of 12.5 af, said diversions to be made only during the period of April 1st to August 15th. All remaining flows in Archie's Hollow, unless diverted by others with proper rights and authority for beneficial use on the decreed acres, must be allowed to flow unimpeded and undiminished into the natural channel.

It is reported that water diverted from Archie's Hollow stream to the applicant's Fish Pond is thence conveyed to the Skyline Mountain golf course for irrigation. Said golf course, although within the place of use proposed under this application, is not within the decreed acreage for the

³ "Cox Decree", *Richlands Irrigation Co. v. West View Irrigation Co.*, Civil No. 843 (1936), page 84.

⁴ *Richlands v. West View*, *ibid.*, Proposed Determination of Water Rights, pages 135-136.

⁵ As of June 7, 2012, Water Right 65-23 is limited to the diversion of 0.4788 cfs and 109.72 af for the irrigation of 36.576 acres. However, personnel of the Division of Water Rights believe that at least one other owner in this right plans to request the segregation and change of an additional interest in the near future.

Archie's Hollow water right. Therefore, any use of Archie's Hollow water via the Fish Pond (other than that proposed under this application) – or otherwise on lands not within the place of use established by the decree – will require the approval of a change application designating the proposed diversion, place and nature of use.

The only other water right under this application originating in sources evidently tributary – at least in part – to the Chicken Track Spring / Archie's Hollow drainage is Water Right Number 65-1713, a Diligence Claim (D2510), filed in 1971, claiming a priority date of 1880. This unadjudicated claim asserts a right to divert 62 gallons per minute (0.1381 cfs) and 42.0 af annually from eight natural springs for seasonal stockwatering of 7,500 sheep (1,500 ELU). Based on evidence made available to the State Engineer pursuant to prior Change Application 65-368 (a26740), this right was evaluated to provide an annual diversion allowance of 0.86 acre-foot.⁶

One of the eight springs listed in the Diligence Claim for 65-1713 is, by location, the same as the Chicken Track Spring described in the present application. Of the eight springs listed in the diligence claim, it appears three are located generally on the Spring Creek drainage and five on the Birch Creek drainage. By flow, the Spring Creek springs were claimed to provide 26 gallons per minute (42% of the flow); the Birch Creek group to provide 36 gallons per minute (58% of the flow).

If it is allowed that the portion of 65-1713 tributary to Birch Creek (58%) could also be diverted from the Archie's Hollow channel, the applicant could divert an additional 0.0801 cfs and 0.50 af under this right, yielding total surface diversion allowances under 65-1713, 65-2887 and 65-3434 of a flow of 0.1316 cfs (59 gallons per minute) and an annual volume of 13.0 acre-feet. Such diversions would, of course, be subject to all other limitations of the rights as to period of use and priority.

The other rights proposed for change under this application (65-368, 65-1712, 65-2928, and 65-3413) all originated in applications to appropriate ground water and carry relatively late priority dates (1959, 1961 and 1971) as compared to other water rights established in surface streams and springs in the area.

Whereas the surface sources in the subject area are considered fully appropriated by prior rights, it is not equitable or feasible to allow the applicant to divert any water from the Archie's Hollow stream under the later-priority ground water rights subject to this application. Diversion of water under those rights would certainly violate the presumed attenuation between the local ground water aquifers and surface streams and would enable the diversion of water from fully appropriated surface sources under priority dates substantially later than those held by other water users with rights to the surface water. In sum, there is no unappropriated water in the Archie's Hollow stream that could be taken under the proposed change except under the applicant's rights already established in those surface supplies as quantified above.

⁶ The referenced quantification pursuant to a26740 (35-368) did not establish a flow limitation/allowance for Water Right 65-1713.

It is the conclusion of the State Engineer that this change application can be approved, but with the understanding that the applicant's diversions of water from the Archie's Hollow stream must be limited to a maximum flow rate of 0.1316 cfs and an annual diversion amount of 13.0 acre-feet. Said diversions can only be made during the period of April 1st to August 15th of each year. All seepage and evaporative losses due to storage in the Skyline Mountain Fish Pond will be borne by the applicant as a portion of the beneficial use allowed under the municipal right to be established under this application.

In evaluating the various elements of the underlying rights, it is not the intent of the State Engineer to adjudicate the extent of these rights, but rather to provide sufficient definition of the rights to assure that other vested rights are not impaired by the change and/or that no enlargement of the underlying water rights occurs. If, in a subsequent action, the court adjudicates that one or any of the rights under this application are entitled to either more or less water, the State Engineer will adjust the figures accordingly.

It is, therefore, **ORDERED** and Change Application Number 65-368 (a38502) is hereby **APPROVED** subject to prior rights and with the following conditions:

1. Under Water Rights 65-368, 65-1712, 65-2928, and 65-3413, the applicant shall be allowed to divert up to 209.49 af of water per year at a flow rate not to exceed 1.115 cfs (500.45 gallons per minute) from all proposed underground sources combined.
2. Under Water Rights 65-1713, 65-2887 and 65-3434, the applicant shall be allowed to divert up to 13.0 af of water per year at a flow rate not to exceed 0.1316 cfs (59 gallons per minute) from the Archie's Hollow stream.
3. Diversions from the Archie's Hollow stream may only be made during the period of April 1st through August 15th of each calendar year.⁷
4. During periods when Archie's Hollow stream shall flow an amount of less than 0.71 cfs (318.67 gallons per minute), the applicant's diversion shall be limited to no more than 7.25% of the total flow.
5. Any flow in Archie's Hollow stream not lawfully diverted by the applicant, or by another owner with a lawful right to same, shall be allowed to flow unimpeded and undiminished into the natural channel.
6. Under Water Rights 65-1713, 65-2887 and 65-3434, the applicant may divert up to 13.0 acre-feet of water from its underground sources, provided that its

⁷ Although the portion of the allowed diversion that may be taken under Water Right 65-1713 may be deemed to justify a different period of use, it is the opinion of the State Engineer that the diversion of said right from the historical Archie's Hollow point of diversion justifies limiting said diversion to the decreed period of use.

diversions from the Archie's Hollow stream during the same calendar year have been less than 13.0 acre-feet in the same quantity as to be taken from the wells.⁸

7. In no event shall the total amount of water diverted from all the applicant's sources under this application exceed the amount of 222.85 af during any calendar year.
 8. Prior to diverting any water from Archie's Hollow under the present application, the applicant shall be required to install and maintain adequate control and measuring devices to enable acceptably accurate measurement of:
 - a. The total flow in the Archie's Hollow stream;
 - b. The diverted flow into the applicant's system; and
 - c. The totalized volume of water diverted into the applicant's system.
- Said control and measuring devices shall be situated as close to the diversion point as practical. The measuring devices for diverted flow and totalized volume shall be located above the discharge into the Fish Pond and above any other outlet from the conduit delivering water to the applicant's water system.
9. The use of timers and estimates of sprinkler discharge or similar methods for estimating of diverted flow and/or volume shall not be acceptable.
 10. The proposed design and locations of the control and measurement devices shall be submitted to and approved by the State Engineer prior to installation.
 11. The installed control and measurement devices shall be perpetually maintained in good working order and shall be available for inspection and regulation by the State Engineer or his representative at all reasonable times.
 12. The applicant shall maintain complete, accurate, and permanent written records of all surface water diversions. Such records shall be reported annually to the State Engineer's Water Use Program and shall be made available for inspection by the State Engineer or authorized agent upon reasonable request.
 13. Any well drilled under this application and determined to be unsuitable for use shall be permanently abandoned under the supervision of a Utah-licensed water well driller in accordance with Utah Administrative Rule R655-4-14.

⁸ For example, if the applicant has diverted only 7.0 acre-feet from the Archie's Hollow point of diversion, an additional 6.0 acre-feet may be diverted from the underground sources under Water Rights 65-1713, 65-2887 and 65-3434.

14. Any well used to divert water under this application or any previously approved application for the subject water rights shall be equipped with a properly designed and installed accurate metering device with a non-resettable totalizer.
15. The applicant shall maintain complete, accurate, permanent written records of all ground water diversions. Such records shall be reported annually to the State Engineer's Water Use Program and shall be made available for inspection by the State Engineer or authorized agent upon reasonable request. Reports to the Water Use Program shall be completed and submitted each year no later than March 1, immediately following the year being reported (Example: Diversions for 2012 shall be reported no later than March 1, 2013).
16. Any and all costs incurred in implementing the developments approved under this application shall be borne by the applicant and/or by any other water user who may beneficially employ those developments, as may be agreed by the water users.
17. This approval is limited solely to the rights to the diversion, storage and beneficial use of water under the subject water rights as addressed herein. The acquisition of any other permits, licenses or authorities for rights-of-way, public drinking water or wastewater disposal requirements, public health regulations, zoning, etc. necessary to the proposed developments are the responsibility of the applicant.
18. Failure to comply with the conditions of this order and the limitations of the subject water rights as established herein may make the applicant subject to the commencement of an administrative enforcement action, including the imposition of fines and penalties as allowed under statute and administrative rule.
19. Whereas this application has been filed to entirely replace and supersede Change Application Number a37792 (65-368), which was approved on June 25, 2012, pursuant to approval of the present application, a37792 is considered to have been WITHDRAWN by the applicant. Likewise, Temporary Change Application Number t37499 (65-368) is superseded by this application and is considered withdrawn. Only the present application (a38502) is considered to be valid.

If historical resources such as human remains (skeletons), prehistoric arrowheads/spear points, waste flakes from stone tool production, pottery, ancient fire pits, historical building foundations/remains, artifacts (glass, ceramic, metal, etc.) are found during construction, call the Utah Division of State History at 801-533-3555.

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).

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 parties or decreed by a court of competent jurisdiction.

Inasmuch as this application proposes to divert water from a surface source, the applicant is required to contact the Stream Alteration Section of the Division of Water Rights at 801-538-7240 to obtain a Stream Alteration permit in addition to this Permanent Change Application.

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 **January 31, 2018**, or a request for extension of time must be acceptably filed; 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 applicant.

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.

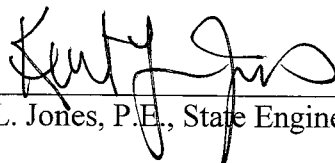
It is the applicant's responsibility to maintain a current address with this office and to update ownership of their water right. Please notify this office immediately of any change of address or for assistance in updating ownership.

Your contact with this office, should you need it, is with the Sevier River/Southern Regional Office. The telephone number is 435-896-4429.

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 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 Order. 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 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 9th day of January, 2013.



Kent L. Jones, P.E., State Engineer

Mailed a copy of the foregoing Order this 9th day of January, 2013 to:

Skyline Mountain Special Service District
2201 Skyline Mountain Resort
Fairview, UT 84629

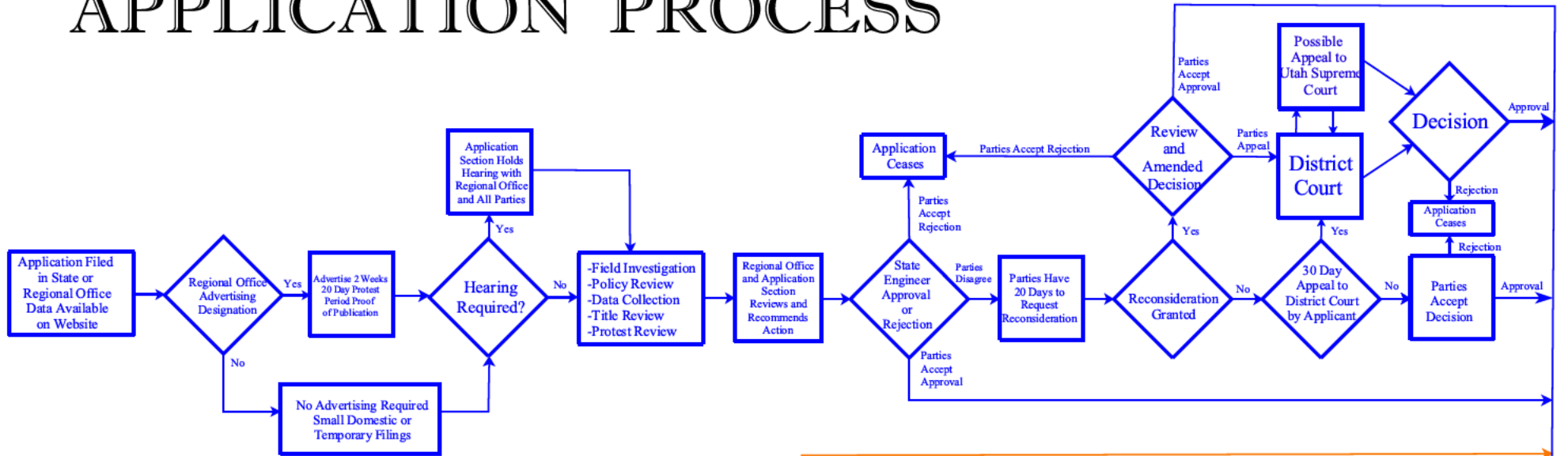
Division of Water Rights
Stream Alteration Section

Division of Water Rights
Water Use Program

BY: Judy Ansick For:
Sonia R. Nava, Applications/Records Secretary

EXHIBIT C

APPLICATION PROCESS



Explanation

Associated Form Color

- Application
- Proof
- Extension Request
- Certificate of Beneficial Use

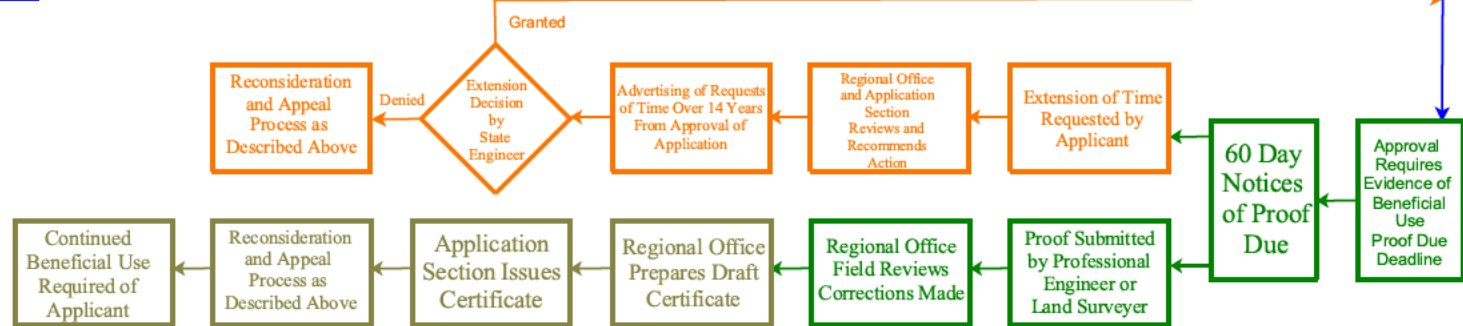


EXHIBIT D



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

MAR 07 2023

ORDER OF THE STATE ENGINEER

On Extension of Time Request

For Permanent Change Application Number 65-368 (a38502)

Permanent Change Application Number 65-368 (a38502), in the name of Skyline Mountain Special Service District, was filed on October 1, 2012, and approved on January 9, 2013, to divert 1.1665 cubic feet per second or 222.85 acre-feet of water as evidenced by Water Right Numbers 65-368, 65-1712, 65-1713, 65-2887, 65-2928, 65-3413, and 65-3434 from points located: (1) Surface - North 310 feet and East 292 feet from the W¹/₄ Corner of Section 17, T14S, R5E, SLB&M; (2) Well - South 377 feet and West 1110 feet from the E¹/₄ Corner of Section 13, T14S, R4E, SLB&M (originally proposed as a 10-inch, 100 -500 feet deep, but constructed in 2013 as a 10-inch, 330 feet deep); (3) Well - North 1311 feet and West 1245 feet from the SE Corner of Section 13, T14S, R4E, SLB&M (existing 12-inch, 307 feet deep, constructed in 2013); (4) Well - North 587 feet and West 348 feet from the E¹/₄ Corner of Section 9, T14S, R5E, SLB&M (existing 10-inch, 385 feet deep, constructed in 2013). The water will be stored in the following reservoir(s): (1) Skyline Mountain Fish Pond - from January 1 to December 31, having a capacity of 4.8 acre-feet and inundating 0.4 acre in all or portion(s) of Section 18, T14S, R5E, SLB&M. The water is to be used for municipal purposes within the service area of Skyline Mountain Special Service Dist.. Proof was last due on January 31, 2023.

The applicant has filed for an extension of time within which to file proof with the State Engineer stating that improvements are continuously being implemented as the demand on the Special Service District increases. This change application is being held to provide service to the future demands on Special Service District.

Under the provisions of Section 73-3-12, Utah Code Annotated, and in the case of extension requests for a "public water supplier," the State Engineer may grant extensions of time if ". . .the applicant shows reasonable and due diligence in completing the appropriation; or a reasonable cause for delay in completing the appropriation" and "[t]he state engineer shall consider the holding of an approved application by a public water supplier or a wholesale electrical cooperative to meet the reasonable future water or electricity requirements of the public to be reasonable and due diligence in completing the appropriation . . . for 50 years from the date on which the application is approved."

The applicant is a public water supplier and has indicated the water right is being held to meet the future needs of the public. The applicant has evidently satisfied the requirements of Section 73-3-12 and the extension request can be granted.

It is, therefore, **ORDERED** and an extension of time within which to submit proof is **GRANTED** on Permanent Change Application Number 65-368 (a38502) to and including **January 31, 2027,** **the end of the 14-year period.**

ORDER OF THE STATE ENGINEER
Extension of Time to Submit Proof
Permanent Change Application Number 65-368 (a38502)
Page 2


The applicant is advised that the Permanent Change Application was approved on January 9, 2013, subject to certain conditions. Careful review of the approval documents should be made to ensure development conforms to those conditions.

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 Sevier River/Southern Regional Office. The telephone number is 435-896-2557.

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 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 7 day of MARCH, 2023.



Teresa Wilhelmsen, P.E., State Engineer
BY: Eric Jones, P.E., Assistant State Engineer

ORDER OF THE STATE ENGINEER
Extension of Time to Submit Proof
Permanent Change Application Number 65-368 (a38502)
Page 3

Mailed a copy of the foregoing Order this 7 day of MARCH, 2023 to:

Skyline Mountain Special Service District
2201 Skyline Mountain Resort
Fairview, UT 84629

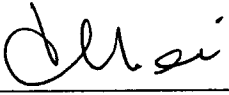
BY: 
Christie Moli
For Doralee Cannon, Applications/Records Secretary

EXHIBIT E



SALT LAKE AREA OFFICE
859 W South Jordan Pkwy – Ste 200
South Jordan, Utah 84095
Phone: (801) 566-5599
www.hansenallenluce.com

65-368

Mr. Kirk Forbush, P.E., Area Engineer
2031 South Industrial Park Road
Richfield, Utah 84701

September 19, 2019

Re: Skyline Mountain Special Service District
Projected Water Rights Use Analysis (40-Year Plan)

Scan to
65-368

Dear Mr. Forbush:

Enclosed for your records is a copy of the Skyline Mountain Special Service District (SMSSD) Projected Water Rights Use Analysis (40-Year Plan). SMSSD is a governmental entity and qualifies as a "public water supplier" under UCA 73-1-4(b).

Sincerely,

HANSEN, ALLEN & LUCE, INC.

A handwritten signature in black ink that reads "Richard M. Noble".

Richard M. Noble, P.E.
Principal

Enclosure

cc: each w/c enclosure

Roy Fox
Skyline Mountain Special Service District
SMR2201
Fairview, UT 84629

Craig Smith, Esq.
Smith Hartvigsen, PLLC
257 East 200 South, Suite 500
Salt Lake City, UT 84111

RECEIVED
SEP 23 2019 PM
WATER RIGHTS
RICHFIELD

SKYLINE MOUNTAIN SPECIAL SERVICE DISTRICT

PROJECTED WATER RIGHTS USE ANALYSIS (40-YEAR PLAN)

(HAL Project No.: 299.06.100)

September 2019

RECEIVED

SEP 23 2019 PM

WATER RIGHTS
RICHFIELD

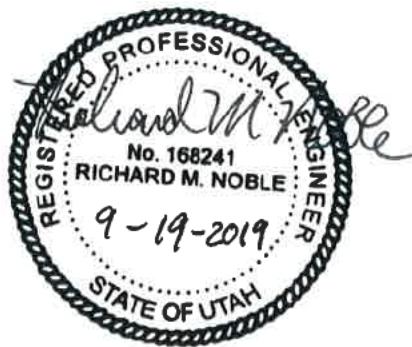
**HANSEN
ALLER
& LUCE**_{inc}
ENGINEERS

SCANNED

SKYLINE MOUNTAIN SPECIAL SERVICE DISTRICT

**PROJECTED WATER RIGHTS USE ANALYSIS
(40-YEAR PLAN)**

(HAL Project No.: 299.06.100)



Project Manager



September 2019

SCANNED

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SKYLINE MOUNTAIN SPECIAL SERVICE DISTRICT PROJECTED WATER RIGHTS USE ANALYSIS

EXECUTIVE SUMMARY

The purpose of this report is to provide a water rights use projection for the Skyline Mountain Special Service District (SMSSD) and to show the planned beneficial use of their currently owned water rights and additional water rights that may be obtained in accordance with the projection. This will be done by documenting the water rights currently owned by SMSSD the reasonable future water requirements of SMSSD through the year 2059.

In 2008, the General Session of the Utah State Legislature passed House Bill 51 amending Utah Code 73-1-4 dealing with the forfeiture of water rights. This legislation allows public water suppliers to protect and hold surplus water rights for their reasonable future needs to serve the public. The reasonable future water requirement of the public is defined by the statute as the amount of water needed in the next 40 years by the persons within the public water supplier's projected service area based on projected population growth or other water use demand.

WATER RIGHTS

SMSSD owns 222.85 acre-feet of water rights. Table E-1 summarizes SMSSD's base water rights along with their approved uses.

**TABLE E-1
WATER RIGHTS SUMMARY**

Water Right	Uses
65-368	Domestic – 271 EDUs
65-1712	Other – SMR clubhouse and swimming pool
65-1713	Stock water – 1,510 ELUs
65-2887	Irrigation – 4.0 acres
65-2928	Irrigation – 18.31 acres
65-3413	Irrigation – 120 acres
65-3434	Irrigation – 0.167 acres

On October 31, 2011, SMSSD filed Permanent Change Application Number 65-368 (a37792) to change the points of diversion, places of use, uses, and storage of the rights listed above. This application was subsequently amended by Permanent Change Application Number 65-368 (a38502). Diversion of water under the underlying base rights is now limited by Order of the State Engineer for Permanent Change Application Number 65-368 (a37792) dated June 25, 2012 and Order of the State Engineer for Permanent Change Application Number 65-368 (a38502) dated January 9, 2013 as follows.

**Table E-2
Allowable Diversion Under SMSSD Water Rights**

Water Rights	Flow Rate (cfs)	Volume (acre-feet)
65-368, 65-1712, 65-2928, 65-3413	1.115	209.49
65-1713, 65-2887, 65-3434 (when diverted from Archie's Hollow stream)	0.1316	13.0
Maximum Under all Rights	1.1665	222.85

FUTURE WATER REQUIREMENTS

SMSSD owns adequate water rights for the current number of connections. These rights should be sufficient for the next several years. However, 40 years from now (Year 2059) the demand will exceed the current rights. An additional 38 acre-feet of water rights will need to be acquired to meet Year 2059 needs.

CONCLUSIONS AND RECOMMENDATIONS

Future water demands, as calculated using projected growth rates are greater than the existing water rights owned by SMSSD. As such, it is recommended that as SMSSD expands their water system to serve additional connections within their service area they acquire more water rights to meet potential water demands.

CHAPTER I

INTRODUCTION

PURPOSE

The purpose of this report is to provide documentation of existing Skyline Mountain Special Service District (SMSSD) water rights and the reasonable future water requirements of the District.

BACKGROUND

In 2008, the General Session of the Utah State Legislature passed House Bill 51 amending Utah Code 73-1-4 (see Appendix A) dealing with the forfeiture of water rights. Water rights owned by SMSSD that were acquired prior to May 5, 2008, including shares of stock in other companies, that are held for the reasonable future water requirements of the public are protected from forfeiture for nonuse under the revised statute. Rights acquired after this date are also protected if the SMSSD submits a change application that is approved by the State Engineer. The reasonable future water requirement of the public is defined by the statute as the amount of water needed in the next 40 years by the persons within the public water supplier's projected service area based on projected population growth or other water use demands.

The Skyline Mountain Resort (SMR) is located about 1.25 miles southeast of Fairview in Sanpete County, Utah. SMR was incorporated on August 30, 1965, as a year-round residential and part-year cabin and recreational development. The development consists of approximately 1,500 acres divided into 945 lots with the remaining area held as common property for recreational use. The Skyline Mountain Special Service District (SMSSD) is a public entity that was formed to improve and maintain the water system within SMR. The SMSSD service area is subdivided into three areas. Area 1 is designated as the full-time area and includes 334 lots located on the foothills immediately east of the Mountainville Highway. Areas 2 and 3 are located higher on the mountain slope east of Area 1 and are designated for part-time use. Area 2 contains 443 lots and Area 3 contains 167 lots. In addition, SMSSD has commercial connections for SMR facilities and serve 13 equivalent residential connections (ERCs).

Future growth in the area serviced by SMSSD is generally limited to the boundaries of the SMR and is not expected to have significant growth beyond the total number of lots and commercial connections described above. However, SMSSD currently serves five residences outside the boundary of SMR that are adjacent to the service area.

CHAPTER II

EXISTING AND FUTURE WATER RIGHTS

EXISTING WATER RIGHTS

SMSSD owns 222.85 acre-feet of water rights. Table 2-1 summarizes SMSSD's base water rights along with their approved uses.

**TABLE 2-1
WATER RIGHTS SUMMARY**

Water Right	Uses
65-368	Domestic – 271 EDUs
65-1712	Other – SMR clubhouse and swimming pool
65-1713	Stock water – 1,510 ELUs
65-2887	Irrigation – 4.0 acres
65-2928	Irrigation – 18.31 acres
65-3413	Irrigation – 120 acres
65-3434	Irrigation – 0.167 acres

On October 31, 2011, SMSSD filed Permanent Change Application Number 65-368 (a37792) to change the points of diversion, places of use, uses, and storage of the rights listed above. This application was subsequently amended by Permanent Change Application Number 65-368 (a38502). Diversion of water under the underlying base rights is now limited by Order of the State Engineer for Permanent Change Application Number 65-368 (a37792) dated June 25, 2012 and Order of the State Engineer for Permanent Change Application Number 65-368 (a38502) dated January 9, 2013 as listed in Table 2-2.

**Table 2-2
Allowable Diversion Under SMSSD Water Rights**

Water Rights	Flow Rate (cfs)	Volume (acre-feet)
65-368, 65-1712, 65-2928, 65-3413	1.115	209.49
65-1713, 65-2887, 65-3434 (when diverted from Archie's Hollow stream)	0.1316	13.0
Maximum Under all Rights	1.1665	222.85

FUTURE WATER RIGHTS

SMSSD's current practice is to hold water rights to be prepared for continued growth within its service area until the area ultimately reaches buildout. In order to do so, SMSSD will need to acquire additional water rights and expand its drinking water system.

CHAPTER III

FUTURE DEVELOPMENT PROJECTIONS AND WATER REQUIREMENTS

40 YEAR PROJECTED DEVELOPMENT

SMSSD owns adequate water rights for the current number of connections. These rights should be sufficient for the next several years. However, as shown in Table 3-1, 40 years from now (Year 2059) the demand will exceed the current rights. An additional 38 acre-feet of water rights will need to be acquired to meet Year 2059 needs. Growth rates are based on the increase in number of connections over the past six years. Based on the observed trend of increasing demand for part-time residential properties in the area, the actual growth rate could be significantly higher. An additional 86 acre-feet will be needed to meet the buildout demand for the SMSSD service area.

**Table 3-1
SMSSD Current and Future Water Right Needs**

Area	Type of Use	Existing Requirement (a.f.)	Future Requirement (Year 2059) (a.f.)	Buildout Requirement (a.f.)
1	Full-Time Residential	105	151	151
2	Part-Time Residential	0	92	111
3	Part-Time Residential	0	12	42
Subtotal Residential		105	255	303
SMR	Commercial	6	6	6
Total		111	261	309

FUTURE WATER REQUIREMENT BASED ON EXISTING ASSUMPTIONS

Water rights described in Tables 2-1 and 2-2 provide for an annual diversion of 222.85 acre-feet. Water requirements are based on the following parameters.

- Indoor water demand is based on the state requirement of 0.45 acre-feet annually per lot for full-time residential use and 0.25 acre-feet annually per lot for part-time residential use.

- There is no water provided for outdoor use by SMSSD. Some lots within the SMSSD service area have access to a separate private system for outdoor water use.
- Skyline Mountain Resort has a number of commercial connections. These commercial connections have a water demand of 13 equivalent residential connections (ERCs).

Applying these parameters to the projected future (Year 2059) level of development yields a projected water demand requirement of 261 acre-feet (See Appendix B for calculations). The buildout demand requirement is 309 acre-feet.

CHAPTER IV

CONCLUSIONS

CONCLUSIONS AND RECOMMENDATIONS

Future water demands, as calculated using projected growth rates are greater than the existing water rights owned by SMSSD. As such, it is recommended that as SMSSD expands their water system to serve additional connections within their service area they acquire more water rights to meet potential water demands.

**TABLE IV-1
SUMMARY OF WATER FROM WATER RIGHTS
AVAILABLE VERSUS 40 YEAR PROJECTED WATER USE**

Description	Volume (acre-feet)
Existing Water Rights	222.85
Projected Water Demand	261.00
Additional Source Needed:	38.15

In addition to acquiring more water rights, SMSSD will likely need to develop additional water sources, such as drilling new wells. This analysis does not include the analysis of a potential scenario that one or more of the major water sources is rendered unusable. Individual water systems can be affected by external sources involving unauthorized activities, changes in water quality, accidental chemical spills, aquifer/stream contamination, forest fire impacts involving direct water contamination or stream turbidity, water treatment plant failures, earthquakes, etc. It is also important to note that an analysis of the reliability of the individual water supply sources of the system has not been analyzed, and could be reduced significantly during periods of drought.

Appendix A

Utah Code 73-1-4

Effective 5/9/2017

73-1-4 Reversion to the public by abandonment or forfeiture for nonuse within seven years -- Nonuse application.

(1) As used in this section:

(a) "Public entity" means:

- (i) the United States;
- (ii) an agency of the United States;
- (iii) the state;
- (iv) a state agency;
- (v) a political subdivision of the state; or
- (vi) an agency of a political subdivision of the state.

(b) "Public water supplier" means an entity that:

- (i) supplies water, directly or indirectly, to the public for municipal, domestic, or industrial use; and
- (ii) is:
 - (A) a public entity;
 - (B) a water corporation, as defined in Section 54-2-1, that is regulated by the Public Service Commission;
 - (C) a community water system:
 - (I) that:
 - (Aa) supplies water to at least 100 service connections used by year-round residents; or
 - (Bb) regularly serves at least 200 year-round residents; and
 - (II) whose voting members:
 - (Aa) own a share in the community water system;
 - (Bb) receive water from the community water system in proportion to the member's share in the community water system; and
 - (Cc) pay the rate set by the community water system based on the water the member receives; or
 - (D) a water users association:
 - (I) in which one or more public entities own at least 70% of the outstanding shares; and
 - (II) that is a local sponsor of a water project constructed by the United States Bureau of Reclamation.

(c) "Shareholder" means the same as that term is defined in Section 73-3-3.5.

(d) "Water company" means the same as that term is defined in Section 73-3-3.5.

(e) "Water supply entity" means an entity that supplies water as a utility service or for irrigation purposes and is also:

- (i) a municipality, water conservancy district, metropolitan water district, irrigation district, or other public agency;
- (ii) a water company regulated by the Public Service Commission; or
- (iii) any other owner of a community water system.

(2)

(a) Except as provided in Subsection (2)(b) or (e), when an appropriator or the appropriator's successor in interest abandons or ceases to beneficially use all or a portion of a water right for a period of at least seven years, the water right or the unused portion of that water right is subject to forfeiture in accordance with Subsection (2)(c).

(b)

(i) An appropriator or the appropriator's successor in interest may file an application for nonuse with the state engineer.

- (ii) A nonuse application may be filed on all or a portion of the water right, including water rights held by a water company.
- (iii) After giving written notice to the water company, a shareholder may file a nonuse application with the state engineer on the water represented by the stock.
- (iv)
 - (A) The approval of a nonuse application excuses the requirement of beneficial use of water from the date of filing.
 - (B) The time during which an approved nonuse application is in effect does not count toward the seven-year period described in Subsection (2)(a).
- (v) The filing or approval of a nonuse application or a series of nonuse applications under Subsection (3) does not:
 - (A) constitute beneficial use of a water right;
 - (B) protect a water right that is already subject to forfeiture under this section; or
 - (C) bar a water right owner from:
 - (I) using the water under the water right as permitted under the water right; or
 - (II) claiming the benefit of Subsection (2)(e) or any other forfeiture defense provided by law.
- (c)
 - (i) Except as provided in Subsection (2)(c)(ii), a water right or a portion of the water right may not be forfeited unless a judicial action to declare the right forfeited is commenced:
 - (A) within 15 years from the end of the latest period of nonuse of at least seven years; or
 - (B) within the combined time of 15 years from the end of the most recent period of nonuse of at least seven years and the time the water right was subject to one or more nonuse applications.
 - (ii)
 - (A) The state engineer, in a proposed determination of rights filed with the court and prepared in accordance with Section 73-4-11, may not assert that a water right was forfeited unless the most recent period of nonuse of seven years ends or occurs:
 - (I) during the 15 years immediately preceding the day on which the state engineer files the proposed determination of rights with the court; or
 - (II) during the combined time immediately preceding the day on which the state engineer files the proposed determination of rights consisting of 15 years and the time the water right was subject to one or more approved nonuse applications.
 - (B) After the day on which a proposed determination of rights is filed with the court a person may not assert that a water right subject to that determination was forfeited before the issuance of the proposed determination, unless the state engineer asserts forfeiture in the proposed determination, or a person, in accordance with Section 73-4-11, makes an objection to the proposed determination that asserts forfeiture.
 - (iii) A water right, found to be valid in a decree entered in an action for general determination of rights under Chapter 4, Determination of Water Rights, is subject to a claim of forfeiture based on a seven-year period of nonuse that begins after the day on which the state engineer filed the related proposed determination of rights with the court, unless the decree provides otherwise.
 - (iv) If in a judicial action a court declares a water right forfeited, on the date on which the water right is forfeited:
 - (A) the right to beneficially use the water reverts to the public; and
 - (B) the water made available by the forfeiture:
 - (I) first, satisfies other water rights in the hydrologic system in order of priority date; and
 - (II) second, may be appropriated as provided in this title.

- (d) Except as provided in Subsection (2)(e), this section applies whether the unused or abandoned water or a portion of the water is:
 - (i) permitted to run to waste; or
 - (ii) beneficially used by others without right with the knowledge of the water right holder.
- (e) This section does not apply to:
 - (i) the beneficial use of water according to a lease or other agreement with the appropriator or the appropriator's successor in interest;
 - (ii) a water right if its place of use is contracted under an approved state agreement or federal conservation following program;
 - (iii) those periods of time when a surface water or groundwater source fails to yield sufficient water to satisfy the water right;
 - (iv) a water right when water is unavailable because of the water right's priority date;
 - (v) a water right to store water in a surface reservoir or an aquifer, in accordance with Title 73, Chapter 3b, Groundwater Recharge and Recovery Act, if:
 - (A) the water is stored for present or future beneficial use; or
 - (B) storage is limited by a safety, regulatory, or engineering restraint that the appropriator or the appropriator's successor in interest cannot reasonably correct;
 - (vi) a water right if a water user has beneficially used substantially all of the water right within a seven-year period, provided that this exemption does not apply to the adjudication of a water right in a general determination of water rights under Chapter 4, Determination of Water Rights;
 - (vii) except as provided by Subsection (2)(g), a water right:
 - (A)
 - (I) owned by a public water supplier;
 - (II) represented by a public water supplier's ownership interest in a water company; or
 - (III) to which a public water supplier owns the right of beneficial use; and
 - (B) conserved or held for the reasonable future water requirement of the public, which is determined according to Subsection (2)(f);
 - (viii) a supplemental water right during a period of time when another water right available to the appropriator or the appropriator's successor in interest provides sufficient water so as to not require beneficial use of the supplemental water right; or
 - (ix) a period of nonuse of a water right during the time the water right is subject to an approved change application where the applicant is diligently pursuing certification.
- (f)
 - (i) The reasonable future water requirement of the public is the amount of water needed in the next 40 years by:
 - (A) the persons within the public water supplier's reasonably anticipated service area based on reasonably anticipated population growth; or
 - (B) other water use demand.
 - (ii) For purposes of Subsection (2)(f)(i), a community water system's reasonably anticipated service area:
 - (A) is the area served by the community water system's distribution facilities; and
 - (B) expands as the community water system expands the distribution facilities in accordance with Title 19, Chapter 4, Safe Drinking Water Act.
- (g) For a water right acquired by a public water supplier on or after May 5, 2008, Subsection (2)(e)(vii) applies if:
 - (i) the public water supplier submits a change application under Section 73-3-3; and
 - (ii) the state engineer approves the change application.

- (3)
- (a) The state engineer shall furnish a nonuse application form requiring the following information:
 - (i) the name and address of the applicant;
 - (ii) a description of the water right or a portion of the water right, including the point of diversion, place of use, and priority;
 - (iii) the quantity of water;
 - (iv) the period of use;
 - (v) the extension of time applied for;
 - (vi) a statement of the reason for the nonuse of the water; and
 - (vii) any other information that the state engineer requires.
 - (b)
 - (i) Upon receipt of the application, the state engineer shall publish a notice of the application once a week for two successive weeks:
 - (A) in a newspaper of general circulation in the county in which the source of the water supply is located and where the water is to be beneficially used; and
 - (B) as required in Section 45-1-101.
 - (ii) The notice shall:
 - (A) state that an application has been made; and
 - (B) specify where the interested party may obtain additional information relating to the application.
 - (c) Any interested person may file a written protest with the state engineer against the granting of the application:
 - (i) within 20 days after the notice is published, if the adjudicative proceeding is informal; and
 - (ii) within 30 days after the notice is published, if the adjudicative proceeding is formal.
 - (d) In any proceedings to determine whether the nonuse application should be approved or rejected, the state engineer shall follow the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act.
 - (e) After further investigation, the state engineer may approve or reject the application.
- (4)
- (a) The state engineer shall grant a nonuse application on all or a portion of a water right for a period of time not exceeding seven years if the applicant shows a reasonable cause for nonuse.
 - (b) A reasonable cause for nonuse includes:
 - (i) a demonstrable financial hardship or economic depression;
 - (ii) physical causes or changes that render use beyond the reasonable control of the water right owner so long as the water right owner acts with reasonable diligence to resume or restore the use;
 - (iii) the initiation of water conservation or efficiency practices, or the operation of a groundwater recharge recovery program approved by the state engineer;
 - (iv) operation of legal proceedings;
 - (v) the holding of a water right or stock in a mutual water company without use by any water supply entity to meet the reasonable future requirements of the public;
 - (vi) situations where, in the opinion of the state engineer, the nonuse would assist in implementing an existing, approved water management plan; or
 - (vii) the loss of capacity caused by deterioration of the water supply or delivery equipment if the applicant submits, with the application, a specific plan to resume full use of the water right by replacing, restoring, or improving the equipment.

(5)

- (a) Sixty days before the expiration of a nonuse application, the state engineer shall notify the applicant by mail or by any form of electronic communication through which receipt is verifiable, of the date when the nonuse application will expire.
- (b) An applicant may file a subsequent nonuse application in accordance with this section.

Amended by Chapter 132, 2017 General Session

Appendix B

HAL CALCULATIONS

Calculated Growth Rate and Projected Future Connections

Growth Rate (g) = calculated
 Number of Existing Connections (C_e) = 202
 Number of Future Connections (C_f) = 233
 Number of Years (n) = 5

$$g = (C_f/C_e)^{1/n} - 1$$

g = 2.90%

Year	Reported Residential Connections	Calculated Residential Connections	Reported Commercial ERCs	Assumed Future ERCs
2013	202	202	2	
2014	216	208	11	
2015		214		
2016	228	220	11	
2017	229	226	13	
2018	233	233	13	
2019		240		13
2020		247		13
2021		254		13
2022		261		13
2023		269		13
2024		277		13
2025		285		13
2026		293		13
2027		301		13
2028		310		13
2029		319		13
2030		328		13
2031		338		13
2032		348		13
2033		358		13
2034		368		13
2035		379		13
2036		390		13
2037		401		13
2038		412		13
2039		424		13
2040		437		13
2041		449		13
2042		462		13
2043		476		13
2044		490		13
2045		504		13
2046		518		13
2047		533		13
2048		549		13
2049		565		13
2050		581		13
2051		598		13
2052		615		13
2053		633		13
2054		651		13
2055		670		13
2056		690		13
2057		710		13
2058		730		13
2059		751		13

Estimated Future Water Use

Assumed Indoor Water Requirements:

Full-time residential = 0.45 a.f./connection

Part-time residential = 0.25 a.f./connection

Assument outdoor Water Requirements: N/A

Area	Type of Use	No. of Existing Connections or ERCs	Future Connections (Year 2059)	Buildout Connections	Existing Requirement (a.f.)	Future Requirment (Year 2059) (a.f.)	Buildout Requirement (a.f.)
1	Full-Time Residential	233	335	335	105	151	151
2	Part-Time Residential	0	367	443	0	92	111
3	Part-Time Residential	0	49	167	0	12	42
Subtotal Residential		233	751	945	105	255	303
SMR	Commercial	13	13	13	6	6	6
Total					111	261	309

EXHIBIT F

BEFORE THE STATE ENGINEER OF THE STATE OF UTAH

IN THE MATTER OF CHANGE APPLICATION)
)
NUMBER 65-368 (a26740))

MEMORANDUM DECISION

Change Application Number 65-368 (a26740), in the names of Skyline Mountain Resort, Skyline Mountain Special Service District, and Nielsen and Senior (interested party only), was filed on June 5, 2002, to change the point of diversion, place and nature of use of 273.9 acre-feet of water. Heretofore, the water has been diverted from Chicken Track Spring, eight unnamed springs, and a well, located: (1) North 1311 feet and West 1245 feet from the SE Corner of Section 13, T14S, R4E, SLB&M, (Club Well); (2) South 1750 feet and West 1350 feet from the NE Corner of Section 9, T14S, R5E, SLB&M, (unnamed spring); (3) South 1800 feet and West 1200 feet from the NE Corner of Section 9, T14S, R5E, SLB&M, (unnamed spring); (4) North 1650 feet and East 80 feet from the SW Corner of Section 16, T14S, R5E, SLB&M, (unnamed spring); (5) North 1950 feet and West 2350 feet from the SE Corner of Section 16, T14S, R5E, SLB&M, (unnamed spring); (6) North 1750 feet and West 2300 feet from the SE Corner of Section 16, T14S, R5E, SLB&M, (unnamed spring); (7) North 1750 feet and West 2350 feet from the SE Corner of Section 16, T14S, R5E, SLB&M, (unnamed spring); (8) South 330 feet and East 1500 feet from the NW Corner of Section 17, T14S, R5E, SLB&M, (unnamed spring); (9) South 1750 feet and East 1450 feet from the SE Corner of Section 16, T14S, R5E, SLB&M, (unnamed spring); (10) South 1750 feet and East 1450 feet from the SE Corner of Section 16, T14S, R5E, SLB&M, (Chicken Track Spring); and used for stockwatering of 1510 cattle or equivalent, the domestic purposes of 861 families, and for a clubhouse and swimming pool in the SE $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 13, T14S, R4E, SLB&M; SE $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 8; Section 9; W $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 15; Section 16; Section 17; S $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 18; N $\frac{1}{2}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 20; NE $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 21; all in T14S, R5E, SLB&M.

Hereafter, it is proposed to divert 273.9 acre-feet of water from two wells and Chicken Track Spring, located (1) North 1311 feet and West 1245 feet from the SE Corner of Section 13, T14S, R4E, SLB&M, (12-inch well, 422 feet deep); (2) North 820 feet from the E $\frac{1}{4}$ Corner of Section 9, Section 17, T14S, R5E, SLB&M, (10-inch well, 385 feet deep); (3) South 1750 feet and East 1450 feet from the NW Corner of Section 17, T14S, R5E, SLB&M, (Chicken Track Spring), to be used for municipal purposes in the Skyline Mountain Special Service District in the SE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 13, T14S, R4E, SLB&M; SE $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 8; E $\frac{1}{2}$, N $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 9; SW $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 10; W $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 15; S $\frac{1}{2}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 16; NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 17; S $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 18; N $\frac{1}{2}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 20; NE $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 21; all in T14S, R5E, SLB&M.

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The application was advertised in the Mt. Pleasant Pyramid on July 11, 2002, and July 18, 2002, and was not protested.

Upon review of the underlying rights, and in quantifying these water rights, it was found that Water Right No. 65-1712 was approved for a flow rate of 0.015 cfs and limited by memorandum decision to 0.73 acre-foot. In a letter regarding Diligence Claim No. 65-1713 (D2510), it was stated by Charley Riddle that Neil Jorgenson, who owns Skyline Sheep Co. runs 1000 ewes and 1000 lambs up in the spring and back in the fall. Therefore, assuming two weeks in the spring and two weeks in the fall the stockwater use would consume 0.86 acre-foot. Water Right No. 65-368 is certificated for 0.37 cfs or 70.45 acre-feet for six full-time and 271 part time domestic uses. Water Right No. 65-3413 (a25493) is approved for a flow rate of 0.63 cfs or 120.0 acre-feet for part-time domestic purposes of 480 families. It was originally filed for 40 acres of irrigation. Water Right No. 65-2887 (a25880) is approved for a flow rate of 0.0495 cfs or 12.0 acre-feet for part-time domestic purposes of 48 families. It was previously certificated for the irrigation of 4.0 acres of land. Water Right No. 65-2928 (a25610) is approved for a flow rate of 0.10 cfs or 18.31 acre-feet for part-time domestic purposes of 62 families. It was previously certificated for the irrigation of 6.1032 acres. The flow rate and acre-foot amount for these underlying rights total 1.1645 cfs or 222.35 acre-feet. The following is a summary of these rights as they originated , or as they have been certificated showing the diversion and depletion amounts:

WATER RIGHT NUMBER	USES					FLOW (cfs)	Diversion (acre-feet)	Depletion (acre-feet)
	Irrigation (acres)	Domestic (Full-time)	Domestic (Part-time)	livestock (# of head)	Other			
65-368		6	271			0.3700	70.45	14.090
65-1712					Clubhouse and pool	0.0150	0.73	0.146
65-1713				1510			0.86	0.860
65-2887	4.0000					0.0495	12.00	9.720
65-2928	6.1033					0.1000	18.31	14.830
65-3413	40.000					0.6300	120.0	97.200
TOTALS	50.1033	6	271	1510		1.1645	222.35	136.846

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In evaluating the various elements of the underlying rights, it is not the intent of the State Engineer to adjudicate the extent of these rights, but rather to provide sufficient definition of the rights to assure that other vested rights are not impaired by the change and / or no enlargement occurs. If, in a subsequent action, the court adjudicates that this right is entitled to either more or less water, the State Engineer will adjust the figures accordingly.

It is therefore, **ORDERED** and Change Application Number 65-368 (a26740) is hereby **APPROVED** subject to prior rights and with the following conditions:

- 1) Because this change application is based in part upon approved Change Application Number 65-3413 (a25494), proof of beneficial use shall be submitted under the established proof-due date of October 31, 2004.
- 2) The amount of water diverted by the applicant from the two wells and Chicken Track Spring shall be limited to 1.1645 cfs or 222.35 acre-feet annually. Depletion of this right is limited to 136.846 acre-feet.
- 3) The applicants shall be required to install, at their own expense permanent totalizing meters to measure the amount of water diverted and used. The meters shall be available for inspection and regulation by the State Engineer or his representative.
- 4) Any cost incurred in facilitating the administration of this change shall be the responsibility of the applicants.
- 5) This approval concerns only the diversion and use of water under the water right. Other permits concerning public drinking water requirements and other public health and zoning issues are the responsibility of the applicant to obtain.

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.

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Dated this 6th day of June, 2003.



Jerry D. Olds, P.E., State Engineer

JDO:KF:cr:kkh

Mailed a copy of the foregoing Memorandum Decision this 6th day of June, 2003,
to:

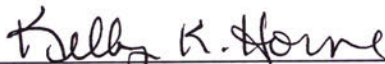
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BY: 

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