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Governor  
SPENCER J. COX  
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*

NOV 16 2016

## ORDER OF THE STATE ENGINEER

### For Permanent Change Application Number 49-2274 (a41138)

Permanent Change Application Number 49-2274 (a41138) in the names of Uintah Water Conservancy District, and US Oil Sands (Utah) Inc., was filed on October 7, 2015, to change the point of diversion and place of use of 360.00 acre-feet (af) of water as evidenced by Water Right Number 49-2274. Heretofore, the water has been diverted from a well located North 750 feet and East 500 feet from the SW Corner of Section 31, T15S, R24E, SLB&M (12-inch well, 1500-1900 feet deep). The water has been used for year-round mining purposes. The water has been used in all or portion(s) of Section 35, T15S, R23E, SLB&M.

Hereafter, it is proposed to divert 360.00 acre-feet of water from points of diversion changed to: (1) Well - South 303 feet and East 185 feet from the W $\frac{1}{4}$  Corner of Section 35, T15S, R23E, SLB&M (existing 6-inch well, 2200 feet deep); (2) Well - North 2030 feet and West 530 feet from the S $\frac{1}{4}$  Corner of Section 34, T15S, R23E, SLB&M (existing 10-inch well, 2550 feet deep). The nature of use of the water will remain the same as heretofore. The place of use of the water is being changed to all or portion(s) of Sections 35 & 36, T15S, R23E, SLB&M; and Sections 31 & 32, T15S, R24E, SLB&M.

Notice of the application was published in the Vernal Express on October 20 and 27, 2015, and protests were received from US Bureau of Reclamation (Reclamation), and Main Canyon Ranch. A hearing was held on September 8, 2016. Reclamation was not represented at the hearing. Their protest expressed in part, "Reclamation does not oppose the subject change application, but notes that the operations of Flaming Gorge Reservoir benefits the State of Utah in many ways including equalizing Green River Flows and provides water for the Endangered Species Act recovery program. Therefore, we feel the use of water under Water Right Number 49-2274 should be covered under a service contract between the State of Utah and Reclamation."

Doug Thornton representing the applicant gave an overview of the project, the water use and explained the static water level in the two wells is at about 6400 feet in elevation or about 1600 feet below the ground surface, which is 600-700 feet below the springs. He further expressed concern regarding Main Canyon Ranch and the reduction in spring flows. The water from the ridgetops does provide water to the springs and the gradient is basically South to North with the springs being on the other side of the canyon from the mine. They do not think the mining operation will impact the springs. There is a spring monitoring program in place as required by the Utah Division of Oil, Gas and Mining.

Gayle McKeachnie, representing Main Canyon Ranch, explained concerns of the protestant and asked questions of Bert Delambert, owner of Main Canyon Ranch, to help explain the situation both historical and present. The written protest explains the basic problems, and has extensive attachments. The ranch is at the bottom of the canyon with the mine hovering over the ranch. Mr.

Delambert has followed the applicant's progress from the beginning and although approached many times by those trying to stop the mine, he has not joined them in their efforts. He does not want to stop the project, but he is concerned regarding the impact he believes the operation is having on the flow of his springs.

Utah Code 73-3-3(5) states:

- (5) In a proceeding before the state engineer, the applicant has the burden of producing evidence sufficient to support a reasonable belief that the change can be made in compliance with this section and Section 73-3-8, including evidence:
- (a) that the change will not cause a specific existing right to experience quantity impairment; or
  - (b) if applicable, rebutting the presumption of quantity impairment described in Subsection 73-3-8(6)(c).

The question before the State Engineer is, will the approval of Change Application 49-2274 (a41138) or the withdrawal of water from the wells included in hereafter portion of this change application cause a reduction in flows to springs in Main Canyon for which there is an existing water right? The report titled "Potential impacts to perennial springs from tar sand mining, processing and disposal on the Tavaputs Plateau, Utah, USA, submitted by the protestant indicates the aquifer from which the wells in this application divert and the aquifer that feeds the springs in Main Canyon are distinct from each other (Paragraph 4.1). Also, Order of the State Engineer dated March 4, 2014 on Temporary Change Application Number 49-2274 (t39101) included the following paragraph:

A review of available information was made to determine if there may be a hydraulic connection between the applicant's wells and the protestant's spring, which went dry during the summer of 2013. Two test wells were drilled on a ridge directly north of Main Canyon. One well was drilled in Section 34 during the fall of 2011 and a second was drilled in Section 35 in August and September of 2012. Both wells were drilled to depths over 2500 feet and the elevation of the static water level in each well is about 6400 feet. The well log, for the second well, indicates there was a small amount of water encountered at a depth of 670 feet which corresponds with the bottom of the canyon according to elevations from the USGS quad map. That well was sealed with cement from the surface to a depth of 1457 feet which is 787 feet below the damp area. Evidently the spring which dried up is in the bottom of Main Canyon and located approximately three quarters of a mile directly south of the well in Section 34. The elevation of the spring is about 7440 feet. The static water elevation in the wells is therefore, about 1000 feet lower than the spring. Based upon this difference in water surface elevation, it is unreasonable to conclude the source for the spring is the same as for the wells.

The State Engineer is understanding of the plight Main Canyon Ranch faces regarding the significant reduction in flows that has occurred in the springs but does not believe the two deep wells included in this application are hydrologically connected to the springs.

One additional issue raised by Reclamation in its protest is that Water Right 49-2274 is a segregated portion of the original Flaming Gorge water right. The original appropriation included the storage of water in Flaming Gorge Reservoir for the Colorado River Storage Act purposes, including the Ultimate Phase of the Central Utah Project. On March 12, 1996, Reclamation assigned to the State of Utah Water Right 41-3479 (A30414d), which is a portion of the Flaming Gorge water right associated with the Ultimate Phase. The assignment states:

Upon release from Flaming Gorge Reservoir, said water right can be developed, diverted and perfected by the State of Utah as permitted by law. The State of Utah agrees that if it stores water in or benefits directly from Colorado River Storage Project facilities, the State of Utah will enter into a water service contract with the United States.

Permanent Change Application Number 49-2274 (a41138) is based upon segregations from Water Right 41-3479 (A30414d) and therefore, conditions established in the assignment of Water Right 41-3479 (A30414d) apply to Permanent Change Application Number 49-2274 (a41138).

The State Engineer believes a contract with the United States is needed. The State of Utah and Reclamation are in the process of discussing options to satisfy the water service contract provision listed in the water right transfer. If that process is successful the applicant may be able to secure a contract through the State of Utah. Otherwise, a contract directly with the United States for the use of project facilities will be required.

It is the opinion of the State Engineer that this change application can be approved without adversely affecting existing rights. The applicants are put on notice that diligence must be shown in pursuing the development of this application which can be demonstrated by the completion of the project as proposed in the change application.

It is, therefore, **ORDERED** and Permanent Change Application Number 49-2274 (a41138) is hereby **APPROVED** subject to prior rights and the following condition(s):

- 1) The diversion and depletion of water under this application is limited to 360 acre-feet annually.
- 2) A contract with the U.S. Bureau of Reclamation is required to divert water under this change application once the process for obtaining such contract is in place.

- 3) The applicant shall install and maintain measuring and totalizing recording devices to meter all water diverted from wells and shall annually report this data to the Division of Water Rights Water Use Program.

As noted, this approval is granted subject to prior rights. The applicants shall be liable to mitigate or provide compensation for any impairment of or interference with prior rights as such may be stipulated among parties or decreed by a court of competent jurisdiction.

This application is also approved according to the conditions of the current appropriation policy guidelines for the Colorado River Drainage, adopted March 7, 1990.

The applicants are strongly cautioned that other permits may be required before any development of this application can begin and it is the responsibility of the applicants to determine the applicability of and acquisition of such permits. Once all other permits have been acquired, this is your authority to develop the water under the above referenced application which under 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 **March 31, 2019, under Water Right Number 49-2274 (A30414doo) which is the parent water right**, or a request for extension of time must be acceptably filed and subsequently approved; otherwise the application will be lapsed. This approval is limited to the rights to divert and beneficially use water and does not grant any rights of access to, or use of land or facilities not owned by the applicants.

Proof of beneficial use is evidence to the State Engineer that the water has been fully placed to its intended beneficial use. By law, it must be prepared by a registered engineer or land surveyor, who will certify to the location, uses, and extent of your water right. Upon the submission of proof as required by Section 73-3-16, Utah Code, for this application, the applicants must identify every source of water used under this application and the amount of water used from that source. The proof must also show the capacity of the sources of supply and demonstrate that each source can provide the water claimed to be diverted under this right as well as all other water rights which may be approved to be diverted from those sources.

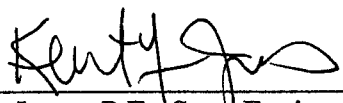
Failure on your part to comply with the requirements of the applicable statutes may result in the lapsing of this permanent change application and the underlying right.

**It is the applicants' responsibility to maintain a current address with this office and to update ownership of their water right. Please notify this office immediately of any change of address or for assistance in updating ownership. Additionally, if ownership of this water right or the property with which it is associated changes, the records of the Division of Water Rights should be updated. For assistance in updating title to the water right please contact the Division at the phone number below.**

Your contact with this office, should you need it, is with the Eastern Regional Office. The telephone number is 435-247-1514.

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 16<sup>th</sup> day of November, 2016.

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

Mailed a copy of the foregoing Order this 16<sup>th</sup> day of November, 2016 to:

Uintah Water Conservancy District  
78 West 3325 North  
Vernal, UT 84078

US Oil Sands (Utah) Inc.  
Suite 1600, 521-3rd Avenue SW  
Calgary, Alberta, Canada T2P 3T3

US Bureau of Reclamation  
c/o Wayne G. Pullan  
302 East 1860 South  
Provo, UT 84606-7317

Main Canyon Ranch  
c/o Gayle McKeachnie, Attorney  
PO Box 340  
Vernal, UT 84078

Division of Water Rights  
Water Use Program

BY: 

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Sonia R. Nava, Applications/Records Secretary