



14-118

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*Attorneys for Central Iron County Water Conservancy District*

**IN THE FIFTH JUDICIAL DISTRICT COURT**  
**IN AND FOR BEAVER COUNTY, STATE OF UTAH**

CENTRAL IRON COUNTY WATER  
CONSERVANCY DISTRICT, BEAVER  
COUNTY, UTAH ALUNITE CORP.,  
AND UTAH SCHOOL AND TRUST  
LANDS ADMINISTRATION,

Petitioners,

v.

KENT L. JONES, the Utah State  
Engineer, CENTRAL IRON COUNTY  
WATER CONSERVANCY DISTRICT,  
UTAH ALUNITE CORP., and UTAH  
SCHOOL AND TRUST LANDS  
ADMINISTRATION,

Respondents.

**STIPULATED JUDGMENT**

Case No.: 140500016

Judge: Keith C. Barnes

Pursuant to the Stipulated Motion for Judgment and Dismissal submitted by Central Iron County Water Conservancy District (the District), Utah Alunite Corp. (UAC), the Utah School and Institutional Trust Lands Administration (SITLA), Beaver County, and Kent L. Jones, the Utah State Engineer (collectively, the Parties), the Court enters this **STIPULATED JUDGMENT**, as outlined in the attached Orders, as follows:

1. The State Engineer's May 13, 2014, order approving in part and rejecting in part the District's Wah Wah Valley application, A76677 (69-101), is hereby replaced by this Judgment.

a. A76677 (69-101), as currently reflected in the records of the State Engineer, is **APPROVED** for the permanent appropriation of 6,525 AF (100% consumptive) of groundwater as set forth in Exhibit 1.

b. A76677a (69-118), a segregated portion of A76677 (69-101), is **APPROVED** for the permanent appropriation of 725 AF (100% consumptive) of groundwater as set forth in Exhibit 2.

c. A76677aa (69-120), a segregated portion of A76677 (69-101), is **APPROVED** for the permanent appropriation of 725 AF (100% consumptive) of groundwater as set forth in Exhibit 3.

d. A76677ab (69-121), a segregated portion of A76677 (69-101), is **APPROVED** for a 40-year fixed-time appropriation of 4,025 AF (100% consumptive) of groundwater as set forth in Exhibit 4.

2. The State Engineer's May 13, 2014, order approving in part and rejecting in part the District's Pine Valley application, A76676 (14-118), is hereby replaced by this Judgment.

A76676 (14-118) is **APPROVED** for the permanent appropriation of 15,000 AF (100% consumptive) of groundwater as set forth in Exhibit 5.

3. Each attached exhibit (Exhibits 1 through 5), rather than the forgoing paragraphs, is the Court's Order of approval on each application and shall be administered accordingly.

4. In this regard, this Stipulated Judgment and the attached Orders (Exhibits 1 through 5) are unique and are not intended to serve as precedent for any other situation, settlement, or basis for State Engineer evaluation of or decision on any other water right application or in any other matter.

5. All remaining claims in this case are **DISMISSED WITH PREJUDICE** with each party bearing its own costs and fees.

**THE COURT'S ELECTRONIC SIGNATURE APPEARS  
AT THE TOP OF THE FIRST PAGE OF THIS DOCUMENT**

**Approved as to form:**

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TRUST LANDS ADMINISTRATION

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(signed with permission given via 2/26/19 email)

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/s/ Richard R. Hall  
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Julie I. Valdes  
Norman K. Johnson  
Assistant Attorneys General  
*Attorneys for Respondent Utah State  
Engineer*  
(signed with permission given via 2/21/19 email)

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 27<sup>th</sup> day of February, 2019, I served the foregoing **STIPULATED JUDGMENT** via United States first-class mail to the following:

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# EXHIBIT 1

# AMENDED ORDER

For Application to Appropriate Water Number 69-101 (A76677)

## Background

Application to Appropriate Water Number 69-101 (A76677), in the name of Central Iron County Water Conservancy District (the District), was filed on October 17, 2006, to appropriate 6,525.0 acre-feet (af) of water from the groundwater in Wah Wah Valley. It is proposed to divert water from 16-inch wells drilled between 100 and 2000 feet in depth to be located: (1) North 1400 feet and West 2500 feet from the SE Corner of Section 36, T27S, R14W, SLB&M; (2) North 900 feet and West 2350 feet from the SE Corner of Section 31, T27S, R13W, SLB&M; (3) North 1200 feet and West 300 feet from the SE Corner of Section 6, T28S, R14W, SLB&M; (4) South 2100 feet and East 250 feet from the NW Corner of Section 4, T28S, R14W, SLB&M; (5) South 1600 feet and East 1500 feet from the NW Corner of Section 3, T28S, R14W, SLB&M; (6) South 550 feet and West 300 feet from the NE Corner of Section 2, T28S, R14W, SLB&M; (7) South 600 feet and West 250 feet from the NE Corner of Section 12, T28S, R14W, SLB&M; (8) South 300 feet and West 2300 feet from the NE Corner of Section 11, T28S, R14W, SLB&M; (9) North 2400 feet and East 650 feet from the SW Corner of Section 10, T28S, R14W, SLB&M; (10) South 2400 feet and West 2200 feet from the NE Corner of Section 35, T27S, R14W, SLB&M; (11) South 2300 feet and West 2500 feet from the NE Corner of Section 34, T27S, R14W, SLB&M; (12) North 2500 feet and West 700 feet from the SE Corner of Section 28, T27S, R14W, SLB&M; (13) South 1650 feet and East 550 feet from the NW Corner of Section 33, T27S, R14W, SLB&M; (14) South 300 feet and East 600 feet from the NW Corner of Section 32, T27S, R14W, SLB&M; (15) North 850 feet and East 400 feet from the SW Corner of Section 31, T27S, R14W, SLB&M; (16) South 750 feet and West 1900 feet from the NE Corner of Section 8, T28S, R14W, SLB&M; (17) South 2600 feet and East 2200 feet from the NW Corner of Section 16, T28S, R14W, SLB&M; (18) South 2650 feet and West 1900 feet from the NE Corner of Section 14, T28S, R14W, SLB&M; (19) North 900 feet and East 250 feet from the SW Corner of Section 15, T28S, R14W, SLB&M; and (20) South 1750 feet and West 1400 feet from the NE Corner of Section 27, T28S, R14W, SLB&M. The water is to be used for the year-round stockwatering of 2000.00 equivalent livestock units in cattle, horses, or equivalent species (elus) and year-round municipal purposes within the service area of the District.

Notice of the application was published in The Beaver Press on November 23 and 30, 2006, and in the Spectrum on November 23 and 29, 2006. Protests were received from: National Park Service; U.S. Department of the Interior (late protest); Marie Puffer and Duray G. Dalley (late protest); Lyle Wiseman (late protest); Dustin S. Wiseman (late protest); Steve Judd; Bruce P. Dalley (late protest); Beaver High School Students; Matthew Wood (late protest); Viola Reynolds (late protest); Shaun and Tammy Pearson (late protest); Minersville Town (late protest); Gary and Gina Mayer (late protest); Seth Davie (late protest); Carla and Dale Eyre (late protest); David Robinson (late protest); Jetta Robinson (late protest); Elsie Mayer (late protest); Ruby and D. Magnuson (late protest); Helena and W. Bartsch (late protest); Allan and Syble Smith (late protest); Stacy and Chris Barnes (late protest); Jodi Robinson (late protest); Jared Smith (late protest); Dixie (late protest); Dustin and Heidi Thomas (late protest); Ruth Carter (late protest); Barbara Farnsworth (late protest); Deyette and Gary Bradley (late protest); Louise and Darrell Alford (late protest); Natalie Rollins (late protest); Lisa Hendrickson (late protest); Norman and Virginia Bradshaw (late protest); John Carter; Wayne Burrows (late protest); Eric Jessup; Theron and Linda Jessup; Darlene Vaughn; Emma and Ray Davis; Michelle Smith; Steven Yardley; Jeannie Yardley; Lori Ann Hoffman; Board of County Commissioners of Millard County; K. Hussry; Kim Oakden; Crystal Bradshaw; Lisa and Brent Carter; Lynn and Phyllis Bradshaw; Jennie Smith; Resident; Jan and Miles Barney; Concerned Citizens of Beaver Co.; Bradshaw Farms & Equipment and Kents Lake Irrigation Co. and Harris Willis Irrigation Co.; Brady Bradshaw; Collette and Robbie Bradshaw; Jonney Quarnberg; Greg Gunderson and Residents; Max Carter; I. Linda and Lem Lucey; William and Betty Treder; Denise and Dwane Bradshaw; Harlon Thomas; R. Larson Sheep Co.; Green Diamond Ranch; Barry Thiriot; Lyle Wiseman; William Chad Dalton; Beaver County; Elk Meadows Special Service District; Southern Nevada Water Authority; Gilbert and Denise and Emily Yardley; Roger and Ronda Williams; Lisa Nielson; Seldon Nowers; Davis and Alisha Edwards; David and Susan Edwards; Lee Foster; United States Department of the Interior; Lary Carter; James Carter; Southern Utah Water Study, L.C.; Teresa and Michael Bradshaw; S & W Hall Co. Inc.; Robert Storey; James Williams; Mark Whitney; Tina and Tomas Smith; Ray and Shirley Morris; Carl Best; Sly Family; Nickole and Lou Montoya; Kaylene Eyre-Quarnberg; Warren Quarnberg; Sportsmen for Fish & Wildlife; Robert Christensen; Robert Christensen; Clinton Beaumont; Gene and Cerrie Gatz; Arlan Mayer; Jolene Mayer; Jace and Amy Lambeth; Second South Bench Reservoir & Irrigation Co.; Arlene

Edwards; Anne Swindlehurst; Ray Walbeck; John and Heather Gates; Kent and Mary Marshall; Eleana Marshall; Hinal and Shirley Wright; Dan Joseph; W. Neal Wood; Steve Becelleow; Bruce and Benaley Randall; Smith Family et al; Kelly CasMiller; F. Kelly Mortensen; Kim Wood; Rhonda McQuarrie; David Heshington; Joyce and Donald Pettit; Jeffrey Joseph; John Dee and Susan Smith; Julie Chatur; S. Noel; Terry and Penny Levering; Helen Murchie; Lana Reed; Kimberly Solberg; Raymond Benson and Betty Harwell; Thomas Bartts; Russell and Stephanie Helm; Michael and Barbara Robinson; David and Tina Robinson; Norma Thomas; Janet Oakden; Ray Alan and April R. and Kasey Yardley; L. Farnsworth; Reed Dalton; David and LaDona Reynolds; P. A. Duncan; Clyde D. Alford; Francis Bridges; Fern S. Wilber; Val and Ila Smith; Rachel Stewart; Madlyne and George M. Griffiths; Vernon A. and Carol J. Condie; Orson and JoAnn Blackner; Ronald and Vickie Turner; Chitt and Tina Pearsen; Sharen R. and Douglas E. Turner; Gerald W. Thomas; Connie Hudleston; Casidy Barnson; Neil Ammon Cadie; Eva Yardley; Janette Brannwell; Harold LaMorr Morris; ElRoy L. and Alda Stucki; Richard and Noreen Bradshaw; Ronald C. Beebe; Clark Grimshaw; Dennis Hardy; Minersville Land and Livestock; W. Kelly Wood; L. Ben and Melinda Dalton; Honey Low; Cheryl Low; Christine Clitso; Mitch and Rebecca Carter; Reed and Debra Carter; Daniel and Breezy Carter; Jay and Melissa Carter; Robert H. and Mary Helen Lee; Mark J. Yardley; Joseph R. and Penny Yardley; Robert J. Yardley; Kiley Eyre; Kellee and Mitchell Dalton; Mary J. and Ray Yardley; Richard M. Davis; William I. Bradshaw; Beverly C. Barek; Dean and Teri Eyre; Brad Eyre; Leeola G. and Burton R. Myers; Margaret Miller; William and Kathy Acklin; Delmont and Jolene Goff; Susan Maggard; Russ T. Bradshaw; Jeb, Christina, Blake and Todd Marshall; Harold W. and Marilyn Bradshaw; Wayne and Traci Bradshaw; Clarence D. Pope; Colleen Freeman; Charles S. Barnes; Deborah and Eddie Smith; Mary Jane and Max L. Thompson; Lee and Cynthia Hansen; Sandra and Tom Nickell; Blake Marshall; Terri Nelson; Dewey B. Hawkins; Leslie and Lynn Kitchen; Brent McCulley and Kathy Ryan; Sue Byers; Debora K. Nichols; Joanne Geotzelman; Gary W. and Carol G. Roberts; Allan and Christine McCulley; Wayne and Evelyn McCulley; Justin McCulley; Claude R. Fordham; Westside Irrigation Co.; Michael W. Smith; Clark Carter; Clark W. Smith; Duane and Maurine Yardley; Dale A. Yardley; Floyd Yardley; Concerned Citizens of Beaver County Utah; Fairview Land & Livestock Co., Inc.; Jane Scott; Thomas and Margorie McLaughlin; D. G. and Faye McShane; Hal D. Murdock; Millie Ritchie; Marjorie Staheli; Rebecca Hale; Gayle Cooney; Joyce M. Joseph; Yvonne E. Leilua; James E. Bohn; Ann Marshall; David Christensen; City of Milford; Dean Carter; Shanna and Lyle Carter; Joan Davis; Sheldon and Mary Albrecht; Karen and Arnell Gale; S. Edwards; Jennifer Cox; Jason L. Davis; Virginia Marshall; Idonna L. Doerig and Karma M. Mitchell; Robert Eyre; Dixie Power-Water-Light & Telephone, Inc.; LaMar J. and Pearl Briggs; Beverly R. and Rondo Farrer; Donald C. and Leah Glenn; Lynn B. and Melissa Yardley; Wm. E. and Georgean Warby; Beth Puffer; Paul and Marilyn Anderson; Leonard and Beryl Brown; Brent, Sandra and Bessie Edwards; Kristen Sisneros; Tina Harris; Joan Ruplinger; Sandra Lawsen; Marjorie S. Raddon; Gordon G. and Ann Eyre; Orvis and Ruby Bowers; Velby N. Ashworth; Beatrice Willden; Carol Crandy; Lucille P. Strong; Hal and Mary Christensen; Wayne A. Thompson; Peggy Blackner; Shirley M. Howard; Alan and Shaunna Mayer; J. Grant and Gayle L. Wood; Leslie and Nanette Davis; Milford Valley Water Users Board; Scott and Wilma Hansen; Chris L. Kesler; Al J. Boyt; Jennifer L. Brennan; Harold Deems; Alan Gale; Maureen Hodges; Ralph L. Smith; Bruce M. and Karen Marchant; Joyce D. Boyter; D. Carol McCulley; Donald P. and Julia M. Moore; M. P. Thompson; John and Carmen Caffrey; Lucille P. Strong; Frank H. Smith; Roy and Alvina M. Kramer; Delbert and Audrey Kent; Afton S. Kesler; Bryan D. Graham; and Frank and Janice Smith. A hearing was held on July 14, 2010.

On May 13, 2014 an Order of the State Engineer was issued under the signature of Kent L. Jones, P.E., State Engineer, partially approving the application for municipal use within the service area of the District. The order rejected the proposed use for stockwatering of 2,000 elus and approved the municipal use for 6,525.0 af. The District was allowed to segregate the unapproved portion of the application thereby creating water right 69-118 with a proposed use of 5,475.0 af for municipal use. The instant *de novo* judicial review action followed. All protestants were given notice and an opportunity to intervene. Aside from the parties to this action, no protestants did so. The parties to this action subsequently reached a settlement agreement (the Agreement) resolving all claims.

The Agreement contemplates the incorporation of the points of diversion, places of uses, and uses found under application to appropriate 69-115 (A79462), which was renumbered as a fixed time application numbered 69-115 (F79462) on June 19, 2014, by Order of the State Engineer. Notice of that application (69-115 (A79462)) was published in the Beaver County Journal on September 12 and 19, 2012. After protests were submitted, a hearing was held on November 20, 2013. To accommodate the Agreement, this Order fully integrates the points of diversion, places of uses, and uses found under application to appropriate 69-115 (F79462) as outlined in paragraph number 4 of the Conclusion. Upon execution of this Amended Order, Application Number 69-115 (F79462) will be withdrawn as per the Agreement.



### Legal Framework

For an application to be approved, the Utah Code Section 73-3-8 criteria must be met. The statute reads:

*(1)(a) It shall be the duty of the state engineer to approve an application if there is reason to believe that:*

*(i) for an application to appropriate, there is unappropriated water in the proposed source;*

*(ii) the proposed use will not impair existing rights or interfere with the more beneficial use of the water;*

*(iii) the proposed plan:*

*(A) is physically and economically feasible, unless the application is filed by the United States Bureau of Reclamation; and*

*(B) would not prove detrimental to the public welfare;*

*(iv) the applicant has the financial ability to complete the proposed works;*

*(v) the application was filed in good faith and not for purposes of speculation or monopoly; and*

*(vi) if applicable, the application complies with a groundwater management plan adopted under Section 73-5-15.*

*(b) If the state engineer, because of information in the state engineer's possession obtained either by the state engineer's own investigation or otherwise, has reason to believe that an application will interfere with the water's more beneficial use for irrigation, municipal and industrial, domestic or culinary, stock watering, power or mining development, or manufacturing, or will unreasonably affect public recreation or the natural stream environment, or will prove detrimental to the public welfare, the state engineer shall withhold approval or rejection of the application until the state engineer has investigated the matter.*

*(c) If an application does not meet the requirements of this section, it shall be rejected.*

### Analysis

1. Although the State Engineer is concerned that there is less water available in the Wah Wah Valley Aquifer than what is being proposed to be used under all applications to appropriate in the area, the State Engineer along with all signatories of the settlement agreement resolving this action have committed, among other things, to the following:

*The Parties acknowledge they have a difference of opinion regarding the amount of water available for development in the Wah Wah Valley and the Pine Valley – namely, the safe yield of the aquifers in those valleys. By way of this Agreement the State Engineer will allow the non-State Engineer Parties to proceed with plans to develop the amount of water stated herein with the understanding that the non-State Engineer Parties assume all risk and full responsibility for the possibility that the safe annual yield of the Wah Wah Valley aquifer and/or the Pine Valley aquifer is less than the amounts referenced in this Agreement. The non-State Engineer Parties expressly understand and acknowledge that the State Engineer is making no warranty or representation about the amount of water available for development in the Wah Wah Valley and the Pine Valley, and that approvals provided under this Agreement may be for more water than future facts demonstrate is actually available for long-term beneficial use. They further understand and acknowledge that under Utah Code Section 73-5-15, the State Engineer may regulate groundwater withdrawals within a specific groundwater basin by adopting a groundwater management plan in accordance with that section for any groundwater basin or aquifer or combination of hydrologically connected groundwater basins or aquifers. Nothing in this Agreement affects or is intended to affect the State Engineer's authority under that section as it presently exists and as it may change. The non-State Engineer Parties expressly understand and acknowledge that proper exercise of that authority may result in a reduction of the amount of water authorized for diversion under this Agreement.*

2. There are existing rights to use water in Wah Wah Valley. Utah Code Section 73-3-8(1)(a)(i) requires that unappropriated water be available for approval of an application to appropriate. The District proposes to divert and export a significant quantity of groundwater from the valley. This has raised concern among existing users. The most prominent existing use in the valley diverts water from Wah Wah Springs, which discharge at an elevation of approximately 5600 feet above mean sea level. All of the District's proposed wells are located on land below that elevation where known groundwater levels are several hundred feet below land surface. Groundwater flow in the valley is presumed to be primarily from South to North with East and West margins of the valley flowing toward the center (based on Technical Publication 47 and other more recent studies). Wah Wah Springs is located northwest of the District's proposed wells and is considered warm (15° higher than the mean annual air temperature, Tech Pub 47). Those factors taken together suggest a separation between the groundwater flow system supplying water to Wah Wah Springs and the system from which the District plans to divert water. It appears pumping the valley-fill aquifer as proposed will not likely diminish the yield of the springs. Other uses of water dependent on streamflow and springs along the margins of the valley are most likely similarly situated. There is reason to believe this application meets Section 73-3-8(1)(a)(i) criterion and there is limited unappropriated water available in Wah Wah Valley. Additionally, there is reason to believe that approval of this application will not impair prior rights and it therefore complies with Section 73-3-8(1)(a)(ii).
3. The District does not own land upon which to locate wells or other infrastructure necessary to implement this project and has not presented evidence that those property rights have been obtained or negotiations to obtain them have commenced. All land ownership, access, or use issues must be resolved by the District including obtaining authority from and conforming to the rules and regulations promulgated by agencies of the federal government for public land use. A critical element of this project is the District's ability to obtain authority to use federal land. Pending approval from land owners, there is reason to believe this application meets the criteria of Section 73-3-8(1)(a)(iii) in that it is feasible to divert water as proposed.
4. The District has the ability under Section 17B-1-103 to sell bonds, levy taxes, assess user fees, and obtain financing through other means within limits established by the legislature. There is reason to believe that the District meets the Section 73-3-8(1)(a)(iv) criterion.
5. There is reason to believe granting this application is consistent with Section 73-3-8(1)(a)(iii)(B) and the proposed plan would not prove detrimental to the public welfare.
6. There is reason to believe that this application was filed in good faith and not filed for purposes of speculation and monopoly.
7. There is reason to believe the application meets the criteria of Section 73-3-8, and should be approved.

#### Conclusion

It is, therefore, **ORDERED**: Application to Appropriate Water Number 69-101 (A76677) is hereby **APPROVED** subject to prior rights and the following conditions:

1. As noted, this approval is granted subject to prior rights. The District must, as necessary, mitigate or provide compensation for any impairment of prior rights such as may be stipulated among parties or decreed by a court of competent jurisdiction.
2. 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 District.
3. Water use under this approval is limited to a cumulative maximum annual diversion of 6,525 af for the stockwatering of 2,000 elus, municipal use within the service area of the District and Wah Wah

Valley, and for mining purposes from those points of diversion and within the places of use described under condition four. It is noted that the diversion of water from Wah Wah Valley is able to be fully consumed by the District for these uses. The priority of water right 69-101 is the same date of the filing of the underlying Application to Appropriate or October 17, 2006.

4. The application is modified to integrate and include the following points of diversion and places of use, in addition to those originally proposed, to accommodate the mining use detailed under condition 3:

Points of Diversion: (1) Well - South 200 feet and East 200 feet from the NW Corner of Section 16, T28S, R14W, SLB&M (16-inch, 1500 feet deep); (2) Well - North 980 feet and West 1550 feet from the SW Corner of Section 14, T29S, R15W, SLB&M (16-inch, 1500 feet deep); (3) Well - South 200 feet and West 200 feet from the NE Corner of Section 16, T28S, R14W, SLB&M (16-inch, 1500 feet deep); (4) Well - South 200 feet and West 200 feet from the NE Corner of Section 27, T28S, R14W, SLB&M (16-inch, 1500 feet deep); (5) Well - North 200 feet and West 200 feet from the SE Corner of Section 16, T28S, R14W, SLB&M (16-inch, 1500 feet deep); (6) Well - South 200 feet and East 200 feet from the NW Corner of Section 21, T28S, R14W, SLB&M (16-inch, 1500 feet deep); (7) Well - South 200 feet and West 200 feet from the NE Corner of Section 28, T28S, R14W, SLB&M (16-inch, 1500 feet deep); (8) Well - South 200 feet and West 200 feet from the NE Corner of Section 26, T28S, R14W, SLB&M (16-inch, 1500 feet deep); and (9) Well - South 200 feet and West 200 feet from the NE Corner of Section 22, T28S, R14W, SLB&M (16-inch, 1500 feet deep).

Places of Use: Sections 16, 21, 22, 26, 27, 28, 32, 33, 34, 35, & 36, T28S, R14W, SLB&M; Section 36, T28S, R15W, SLB&M; Sections 2, 3, 4, 5, 6, 7, 8, 9, 10, & 16, T29S, R14W, SLB&M; Sections 1, 2, 11, 12, 13, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 28, 29, 32, 33, 34, 35, & 36, T29S, R15W, SLB&M; and Section 2, T30S, R15W, SLB&M.

5. Each well under this application is to be individually metered and a permanent record of the water diverted from each well shall be maintained. The District shall make those records of the diversions made available for inspection by personnel of the Division of Water Rights upon reasonable request. **An annual report of all water diversions under this approval shall be submitted to the Division of Water Rights.**
6. The documents submitted as proof of beneficial use for this application, as required by statute at Section 73-3-16 shall include a full and correct copy of the metering record maintained as required herein.
7. All wells used as public water supply wells are regulated by the Utah Division of Drinking Water. Plans for the construction of new wells must be reviewed and approved by the Division of Drinking Water prior to any drilling or construction activity being commenced. The approval of this water right application does not constitute approval of the well for use as a public water supply by the Division of Drinking Water. The District is advised to contact the Division of Drinking Water at (801) 536-4200 to review applicable standards and for information about approval of a source of supply for public use.
8. Along with this approval, the District shall develop a monitoring program to ensure that no prior rights are being impaired. Plans for this monitoring program must be submitted to and approved by the State Engineer prior to diversion of any water from the proposed sources.

The District is strongly cautioned that other permits are required before any development of this application can begin and it is the responsibility of the District 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 **February 28, 2033** or a request for extension of time must be acceptably filed; otherwise the application will be lapsed.

Proof of beneficial use is evidence to the State Engineer that the water has been fully placed to its intended beneficial use. By law, it must be prepared by a registered engineer or land surveyor, who will certify to the location, uses and extent of your water right. Upon the submission of proof as required by Section 73-3-16, the District must identify every source of water used under this application and the amount of water diverted 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 Application to Appropriate Water.

The right to beneficially use water as described in this order shall be administered by the State Engineer the same as if this order had been issued by the State Engineer.

**THE COURT'S ELECTRONIC SIGNATURE APPEARS  
AT THE TOP OF THE FIRST PAGE OF THE JUDGMENT  
TO WHICH THIS ORDER IS ATTACHED**

# EXHIBIT 2

# ORDER

For Application to Appropriate Water Number 69-118 (A76677a)

## Background

Application to Appropriate Water Number 69-118 (A76677a) in the name of Central Iron County Water Conservancy District (the District), was filed on October 17, 2006, to appropriate 725.00 acre-feet (af) of water from the groundwater in Wah Wah Valley. It is proposed to divert water from 16-inch wells drilled between 100 and 2000 feet in depth to be located: (1) North 1400 feet and West 2500 feet from the SE Corner of Section 36, T27S, R14W, SLB&M; (2) North 900 feet and West 2350 feet from the SE Corner of Section 31, T27S, R13W, SLB&M; (3) North 1200 feet and West 300 feet from the SE Corner of Section 6, T28S, R14W, SLB&M; (4) South 2100 feet and East 250 feet from the NW Corner of Section 4, T28S, R14W, SLB&M; (5) South 1600 feet and East 1500 feet from the NW Corner of Section 3, T28S, R14W, SLB&M; (6) South 550 feet and West 300 feet from the NE Corner of Section 2, T28S, R14W, SLB&M; (7) South 600 feet and West 250 feet from the NE Corner of Section 12, T28S, R14W, SLB&M; (8) South 300 feet and West 2300 feet from the NE Corner of Section 11, T28S, R14W, SLB&M; (9) North 2400 feet and East 650 feet from the SW Corner of Section 10, T28S, R14W, SLB&M; (10) South 2400 feet and West 2200 feet from the NE Corner of Section 35, T27S, R14W, SLB&M; (11) South 2300 feet and West 2500 feet from the NE Corner of Section 34, T27S, R14W, SLB&M; (12) North 2500 feet and West 700 feet from the SE Corner of Section 28, T27S, R14W, SLB&M; (13) South 1650 feet and East 550 feet from the NW Corner of Section 33, T27S, R14W, SLB&M; (14) South 300 feet and East 600 feet from the NW Corner of Section 32, T27S, R14W, SLB&M; (15) North 850 feet and East 400 feet from the SW Corner of Section 31, T27S, R14W, SLB&M; (16) South 750 feet and West 1900 feet from the NE Corner of Section 8, T28S, R14W, SLB&M; (17) South 2600 feet and East 2200 feet from the NW Corner of Section 16, T28S, R14W, SLB&M; (18) South 2650 feet and West 1900 feet from the NE Corner of Section 14, T28S, R14W, SLB&M; (19) North 900 feet and East 250 feet from the SW Corner of Section 15, T28S, R14W, SLB&M; and (20) South 1750 feet and West 1400 feet from the NE Corner of Section 27, T28S, R14W, SLB&M. The water is to be used for year-round municipal purposes within the service area of the District.

Notice of the application was published in The Beaver Press on November 23 and 30, 2006, and in the Spectrum on November 23 and 29, 2006. Protests were received from: National Park Service; U.S. Department of the Interior (late protest); Marie Puffer and Duray G. Dalley (late protest); Lyle Wiseman (late protest); Dustin S. Wiseman (late protest); Steve Judd; Bruce P. Dalley (late protest); Beaver High School Students; Matthew Wood (late protest); Viola Reynolds (late protest); Shaun and Tammy Pearson (late protest); Minersville Town (late protest); Gary and Gina Mayer (late protest); Seth Davie (late protest); Carla and Dale Eyre (late protest); David Robinson (late protest); Jetta Robinson (late protest); Elsie Mayer (late protest); Ruby and D. Magnuson (late protest); Helena and W. Bartsch (late protest); Allan and Syble Smith (late protest); Stacy and Chris Barnes (late protest); Jodi Robinson (late protest); Jared Smith (late protest); Dixie (late protest); Dustin and Heidi Thomas (late protest); Ruth Carter (late protest); Barbara Farnsworth (late protest); Deyette and Gary Bradley (late protest); Louise and Darrell Alford (late protest); Natalie Rollins (late protest); Lisa Hendrickson (late protest); Norman and Virginia Bradshaw (late protest); John Carter; Wayne Burrows (late protest); Eric Jessup; Theron and Linda Jessup; Darlene Vaughn; Emma and Ray Davis; Michelle Smith; Steven Yardley; Jeannie Yardley; Lori Ann Hoffman; Board of County Commissioners of Millard County; K. Hussry; Kim Oakden; Crystal Bradshaw; Lisa and Brent Carter; Lynn and Phyllis Bradshaw; Jennie Smith; Resident; Jan and Miles Barney; Concerned Citizens of Beaver Co.; Bradshaw Farms & Equipment and Kents Lake Irrigation Co. and Harris Willis Irrigation Co.; Brady Bradshaw; Collette and Robbie Bradshaw; Jonney Quarnberg; Greg Gunderson and Residents; Max Carter; I. Linda and Lem Lucey; William and Betty Treder; Denise and Dwane Bradshaw; Harlon Thomas; R. Larson Sheep Co.; Green Diamond Ranch; Barry Thiriot; Lyle Wiseman; William Chad Dalton; Beaver County; Elk Meadows Special Service District; Southern Nevada Water Authority; Gilbert and Denise and Emily Yardley; Roger and Ronda Williams; Lisa Nielson; Seldon Nowers; Davis and Alisha Edwards; David and Susan Edwards; Lee Foster; United States Department of the Interior; Lary Carter; James Carter; Southern Utah Water Study, L.C.; Teresa and Michael Bradshaw; S & W Hall Co. Inc.; Robert Storey; James Williams; Mark Whitney; Tina and Tomas Smith; Ray and Shirley Morris; Carl Best; Sly Family; Nickole and Lou Montoya; Kaylene Eyre-Quarnberg; Warren Quarnberg; Sportsmen for Fish & Wildlife; Robert Christensen; Robert Christensen; Clinton Beaumont; Gene and Cerrie Gatz; Arlan Mayer; Jolene Mayer; Jace and Amy Lambeth; Second South Bench Reservoir & Irrigation Co.; Arlene Edwards; Anne Swindlehurst; Ray Walbeck; John and Heather Gates; Kent and Mary Marshall; Eleana Marshall;

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The State Engineer issued an order on May 13, 2014, approving in part and denying in part Application to Appropriate Water Number 69-101 (A76677), from which this application was segregated. The unapproved portion of 69-101 (A76677) was segregated and assigned Water Right No. 69-118 (Application to Appropriate No. A76677a). The instant *de novo* judicial review action followed. All protestants were given notice and an opportunity to intervene. Aside from the parties to this action, no protestants did so. The parties to this action subsequently reached an agreement resolving all claims. To accommodate the terms of that agreement, the District segregated 725 AF from A76677a to A76677aa (69-120) and 4,025 AF from A76677a to A76677ab (69-121) leaving 725 AF in this application (A7677a (69-118)).

### **Legal Framework**

For an application to be approved, the Utah Code Section 73-3-8 criteria must be met. The statute reads:

- (1)(a) It shall be the duty of the state engineer to approve an application if there is reason to believe that:*
  - (i) for an application to appropriate, there is unappropriated water in the proposed source;*

(ii) the proposed use will not impair existing rights or interfere with the more beneficial use of the water;

(iii) the proposed plan:

(A) is physically and economically feasible, unless the application is filed by the United States Bureau of Reclamation; and

(B) would not prove detrimental to the public welfare;

(iv) the applicant has the financial ability to complete the proposed works;

(v) the application was filed in good faith and not for purposes of speculation or monopoly; and

(vi) if applicable, the application complies with a groundwater management plan adopted under Section 73-5-15.

(b) If the state engineer, because of information in the state engineer's possession obtained either by the state engineer's own investigation or otherwise, has reason to believe that an application will interfere with the water's more beneficial use for irrigation, municipal and industrial, domestic or culinary, stock watering, power or mining development, or manufacturing, or will unreasonably affect public recreation or the natural stream environment, or will prove detrimental to the public welfare, the state engineer shall withhold approval or rejection of the application until the state engineer has investigated the matter.

(c) If an application does not meet the requirements of this section, it shall be rejected.

### Analysis

1. Although the State Engineer is concerned that there is less water available in the Wah Wah Valley Aquifer than what is being proposed to be used under all applications to appropriate in the area, the State Engineer along with all signatories of the settlement agreement resolving this action have committed, among other things, to the following:

*The Parties acknowledge they have a difference of opinion regarding the amount of water available for development in the Wah Wah Valley and the Pine Valley – namely, the safe yield of the aquifers in those valleys. By way of this Agreement the State Engineer will allow the non-State Engineer Parties to proceed with plans to develop the amount of water stated herein with the understanding that the non-State Engineer Parties assume all risk and full responsibility for the possibility that the safe annual yield of the Wah Wah Valley aquifer and/or the Pine Valley aquifer is less than the amounts referenced in this Agreement. The non-State Engineer Parties expressly understand and acknowledge that the State Engineer is making no warranty or representation about the amount of water available for development in the Wah Wah Valley and the Pine Valley, and that approvals provided under this Agreement may be for more water than future facts demonstrate is actually available for long-term beneficial use. They further understand and acknowledge that under Utah Code Section 73-5-15, the State Engineer may regulate groundwater withdrawals within a specific groundwater basin by adopting a groundwater management plan in accordance with that section for any groundwater basin or aquifer or combination of hydrologically connected groundwater basins or aquifers. Nothing in this Agreement affects or is intended to affect the State Engineer's authority under that section as it presently exists and as it may change. The non-State Engineer Parties expressly understand and acknowledge that proper exercise of that authority may result in a reduction of the amount of water authorized for diversion under this Agreement.*

2. There are existing rights to use water in Wah Wah Valley. Utah Code Section 73-3-8(1)(a)(i) requires that unappropriated water be available for approval of an application to appropriate. The District proposes to divert and export a significant quantity of groundwater from the valley. This has raised concern among existing users. The most prominent existing use in the valley diverts water from Wah Wah Springs, which discharge at an elevation of approximately 5600 feet above mean sea level. All of the District's proposed wells are located on land below that elevation where known groundwater levels are several hundred feet below land surface. Groundwater flow in the



valley is presumed to be primarily from South to North with East and West margins of the valley flowing toward the center (based on Technical Publication 47 and other more recent studies). Wah Wah Springs is located northwest of the District's proposed wells and is considered warm (15° higher than the mean annual air temperature, Tech Pub 47). Those factors taken together suggest a separation between the groundwater flow system supplying water to Wah Wah Springs and the system from which the District plans to divert water. It appears pumping the valley-fill aquifer as proposed will not likely diminish the yield of the springs. Other uses of water dependent on streamflow and springs along the margins of the valley are most likely similarly situated. There is reason to believe this application meets Section 73-3-8(1)(a)(i) criterion and there is limited unappropriated water available in Wah Wah Valley. Additionally, there is reason to believe that approval of this application will not impair prior rights and it therefore complies with Section 73-3-8(1)(a)(ii).

3. The District does not own land upon which to locate wells or other infrastructure necessary to implement this project and has not presented evidence that those property rights have been obtained or negotiations to obtain them have commenced. All land ownership, access, or use issues must be resolved by the District including obtaining authority from and conforming to the rules and regulations promulgated by agencies of the federal government for public land use. A critical element of this project is the District's ability to obtain authority to use federal land. Pending approval from land owners, there is reason to believe this application meets the criteria of Section 73-3-8(1)(a)(iii) in that it is feasible to divert water as proposed.
4. The District has the ability under Section 17B-1-103 to sell bonds, levy taxes, assess user fees, and obtain financing through other means within limits established by the legislature. There is reason to believe that the District meets the Section 73-3-8(1)(a)(iv) criterion.
5. There is reason to believe granting this application is consistent with Section 73-3-8(1)(a)(iii)(B) and the proposed plan would not prove detrimental to the public welfare.
6. There is reason to believe that this application was filed in good faith and not filed for purposes of speculation and monopoly.
7. There is reason to believe the application meets the criteria of Section 73-3-8, and should be approved.

#### **Conclusion**

It is, therefore, **ORDERED:** Application to Appropriate Water Number 69-118 (A76677a) is hereby **APPROVED** subject to prior rights and the following conditions:

1. As noted, this approval is granted subject to prior rights. The District must, as necessary, mitigate or provide compensation for any impairment of prior rights such as may be stipulated among parties or decreed by a court of competent jurisdiction.
2. 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 District.
3. Water use under this approval shall be limited to municipal use within the service area of District with a maximum annual diversion allowance of 725.0 af of water for this use all uses occurring within the District's service area. It is noted that the diversion of water from Wah Wah Valley is able to be fully consumed by the District for these uses. The priority of water right 69-118 is, by agreement, October 18, 2006.
4. Each well under this application is to be individually metered and a permanent record of the water diverted from each well shall be maintained. The District shall make those records of the diversions made available for inspection by personnel of the Division of Water Rights upon reasonable request. **An annual report of all water diversions under this approval shall be submitted to the Division**

**of Water Rights.**

5. The documents submitted as proof of beneficial use for this application, as required by statute at Section 73-3-16 shall include a full and correct copy of the metering record maintained as required herein.
6. All wells used as public water supply wells are regulated by the Utah Division of Drinking Water. Plans for the construction of new wells must be reviewed and approved by the Division of Drinking Water prior to any drilling or construction activity being commenced. The approval of this water right application does not constitute approval of the well for use as a public water supply by the Division of Drinking Water. The District is advised to contact the Division of Drinking Water at (801) 536-4200 to review applicable standards and for information about approval of a source of supply for public use.
7. Along with this approval, the District shall develop a monitoring program to ensure that no prior rights are being impaired. Plans for this monitoring program must be submitted to and approved by the State Engineer prior to diversion of any water from the proposed sources.

The District is strongly cautioned that other permits may be required before any development of this application can begin and it is the responsibility of the District 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 February 28, 2033, or a request for extension of time must be acceptably filed; otherwise the application will be lapsed.

Proof of beneficial use is evidence to the State Engineer that the water has been fully placed to its intended beneficial use. By law, it must be prepared by a registered engineer or land surveyor, who will certify to the location, uses and extent of your water right.

Upon the submission of proof as required by Section 73-3-16 for this application, the District 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 Application to Appropriate Water.

The right to beneficially use water as described in this order shall be administered by the State Engineer the same as if this order had been issued by the State Engineer.

**THE COURT'S ELECTRONIC SIGNATURE APPEARS  
AT THE TOP OF THE FIRST PAGE OF THE JUDGMENT  
TO WHICH THIS ORDER IS ATTACHED**

# EXHIBIT 3

# ORDER

For Application to Appropriate Water Number 69-120 (A76677aa)

## Background

Application to Appropriate Water Number 69-120 (A76677aa) in the name of Central Iron County Water Conservancy District (the District), was filed on October 17, 2006, to appropriate 725.00 acre-feet (af) of water from the groundwater in Wah Wah Valley. It is proposed to divert water from 16-inch wells drilled between 100 and 2000 feet in depth to be located: (1) North 1400 feet and West 2500 feet from the SE Corner of Section 36, T27S, R14W, SLB&M; (2) North 900 feet and West 2350 feet from the SE Corner of Section 31, T27S, R13W, SLB&M; (3) North 1200 feet and West 300 feet from the SE Corner of Section 6, T28S, R14W, SLB&M; (4) South 2100 feet and East 250 feet from the NW Corner of Section 4, T28S, R14W, SLB&M; (5) South 1600 feet and East 1500 feet from the NW Corner of Section 3, T28S, R14W, SLB&M; (6) South 550 feet and West 300 feet from the NE Corner of Section 2, T28S, R14W, SLB&M; (7) South 600 feet and West 250 feet from the NE Corner of Section 12, T28S, R14W, SLB&M; (8) South 300 feet and West 2300 feet from the NE Corner of Section 11, T28S, R14W, SLB&M; (9) North 2400 feet and East 650 feet from the SW Corner of Section 10, T28S, R14W, SLB&M; (10) South 2400 feet and West 2200 feet from the NE Corner of Section 35, T27S, R14W, SLB&M; (11) South 2300 feet and West 2500 feet from the NE Corner of Section 34, T27S, R14W, SLB&M; (12) North 2500 feet and West 700 feet from the SE Corner of Section 28, T27S, R14W, SLB&M; (13) South 1650 feet and East 550 feet from the NW Corner of Section 33, T27S, R14W, SLB&M; (14) South 300 feet and East 600 feet from the NW Corner of Section 32, T27S, R14W, SLB&M; (15) North 850 feet and East 400 feet from the SW Corner of Section 31, T27S, R14W, SLB&M; (16) South 750 feet and West 1900 feet from the NE Corner of Section 8, T28S, R14W, SLB&M; (17) South 2600 feet and East 2200 feet from the NW Corner of Section 16, T28S, R14W, SLB&M; (18) South 2650 feet and West 1900 feet from the NE Corner of Section 14, T28S, R14W, SLB&M; (19) North 900 feet and East 250 feet from the SW Corner of Section 15, T28S, R14W, SLB&M; and (20) South 1750 feet and West 1400 feet from the NE Corner of Section 27, T28S, R14W, SLB&M. The water is to be used for year-round municipal purposes within the service area of the District.

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- (1)(a) It shall be the duty of the state engineer to approve an application if there is reason to believe that:*
  - (i) for an application to appropriate, there is unappropriated water in the proposed source;*
  - (ii) the proposed use will not impair existing rights or interfere with the more beneficial use of the*

water;

(iii) the proposed plan:

(A) is physically and economically feasible, unless the application is filed by the United States Bureau of Reclamation; and

(B) would not prove detrimental to the public welfare;

(iv) the applicant has the financial ability to complete the proposed works;

(v) the application was filed in good faith and not for purposes of speculation or monopoly; and

(vi) if applicable, the application complies with a groundwater management plan adopted under Section 73-5-15.

(b) If the state engineer, because of information in the state engineer's possession obtained either by the state engineer's own investigation or otherwise, has reason to believe that an application will interfere with the water's more beneficial use for irrigation, municipal and industrial, domestic or culinary, stock watering, power or mining development, or manufacturing, or will unreasonably affect public recreation or the natural stream environment, or will prove detrimental to the public welfare, the state engineer shall withhold approval or rejection of the application until the state engineer has investigated the matter.

(c) If an application does not meet the requirements of this section, it shall be rejected.

### Analysis

1. Although the State Engineer is concerned that there is less water available in the Wah Wah Valley Aquifer than what is being proposed to be used under all applications to appropriate in the area, the State Engineer along with all signatories of the settlement agreement resolving this action have committed, among other things, to the following:

*The Parties acknowledge they have a difference of opinion regarding the amount of water available for development in the Wah Wah Valley and the Pine Valley – namely, the safe yield of the aquifers in those valleys. By way of this Agreement the State Engineer will allow the non-State Engineer Parties to proceed with plans to develop the amount of water stated herein with the understanding that the non-State Engineer Parties assume all risk and full responsibility for the possibility that the safe annual yield of the Wah Wah Valley aquifer and/or the Pine Valley aquifer is less than the amounts referenced in this Agreement. The non-State Engineer Parties expressly understand and acknowledge that the State Engineer is making no warranty or representation about the amount of water available for development in the Wah Wah Valley and the Pine Valley, and that approvals provided under this Agreement may be for more water than future facts demonstrate is actually available for long-term beneficial use. They further understand and acknowledge that under Utah Code Section 73-5-15, the State Engineer may regulate groundwater withdrawals within a specific groundwater basin by adopting a groundwater management plan in accordance with that section for any groundwater basin or aquifer or combination of hydrologically connected groundwater basins or aquifers. Nothing in this Agreement affects or is intended to affect the State Engineer's authority under that section as it presently exists and as it may change. The non-State Engineer Parties expressly understand and acknowledge that proper exercise of that authority may result in a reduction of the amount of water authorized for diversion under this Agreement.*

2. There are existing rights to use water in Wah Wah Valley. Utah Code Section 73-3-8(1)(a)(i) requires that unappropriated water be available for approval of an application to appropriate. The District proposes to divert and export a significant quantity of groundwater from the valley. This has raised concern among existing users. The most prominent existing use in the valley diverts water from Wah Wah Springs, which discharge at an elevation of approximately 5600 feet above mean sea level. All of the District's proposed wells are located on land below that elevation where known groundwater levels are several hundred feet below land surface. Groundwater flow in the valley is presumed to be primarily from South to North with East and West margins of the valley

flowing toward the center (based on Technical Publication 47 and other more recent studies). Wah Wah Springs is located northwest of the District's proposed wells and is considered warm (15° higher than the mean annual air temperature, Tech Pub 47). Those factors taken together suggest a separation between the groundwater flow system supplying water to Wah Wah Springs and the system from which the District plans to divert water. It appears pumping the valley-fill aquifer as proposed will not likely diminish the yield of the springs. Other uses of water dependent on streamflow and springs along the margins of the valley are most likely similarly situated. There is reason to believe this application meets Section 73-3-8(1)(a)(i) criterion and there is limited unappropriated water available in Wah Wah Valley. Additionally, there is reason to believe that approval of this application will not impair prior rights and it therefore complies with Section 73-3-8(1)(a)(ii).

3. The District does not own land upon which to locate wells or other infrastructure necessary to implement this project and has not presented evidence that those property rights have been obtained or negotiations to obtain them have commenced. All land ownership, access, or use issues must be resolved by the District including obtaining authority from and conforming to the rules and regulations promulgated by agencies of the federal government for public land use. A critical element of this project is the District's ability to obtain authority to use federal land. Pending approval from land owners, there is reason to believe this application meets the criteria of Section 73-3-8(1)(a)(iii) in that it is feasible to divert water as proposed.
4. The District has the ability under Section 17B-1-103 to sell bonds, levy taxes, assess user fees, and obtain financing through other means within limits established by the legislature. There is reason to believe that the District meets the Section 73-3-8(1)(a)(iv) criterion.
6. There is reason to believe granting this application is consistent with Section 73-3-8(1)(a)(iii)(B) and the proposed plan would not prove detrimental to the public welfare.
7. There is reason to believe that this application was filed in good faith and not filed for purposes of speculation and monopoly.
8. There is reason to believe the application meets the criteria of Section 73-3-8, and should be approved.

#### **Conclusion**

It is, therefore, **ORDERED:** Application to Appropriate Water Number 69-120 (A76677aa) is hereby **APPROVED** subject to prior rights and the following conditions:

1. As noted, this approval is granted subject to prior rights. The District must, as necessary, mitigate or provide compensation for any impairment of prior rights such as may be stipulated among parties or decreed by a court of competent jurisdiction.
2. 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 District.
3. Water use under this approval shall be limited to municipal use within the service area of the District with a maximum annual diversion allowance of 725.0 af of water for this use all uses occurring within the District's service area. It is noted that the diversion of water from Wah Wah Valley is able to be fully consumed by the District for these uses. The priority of water right 69-120 is, by agreement, October 19, 2006.
4. Each well under this application is to be individually metered and a permanent record of the water diverted from each well shall be maintained. The District shall make those records of the diversions made available for inspection by personnel of the Division of Water Rights upon reasonable request. **An annual report of all water diversions under this approval shall be submitted to the Division of Water Rights.**

5. The documents submitted as proof of beneficial use for this application, as required by statute at Section 73-3-16, shall include a full and correct copy of the metering record maintained as required herein.
6. All wells used as public water supply wells are regulated by the Utah Division of Drinking Water. Plans for the construction of new wells must be reviewed and approved by the Division of Drinking Water prior to any drilling or construction activity being commenced. The approval of this water right application does not constitute approval of the well for use as a public water supply by the Division of Drinking Water. The District is advised to contact the Division of Drinking Water at (801) 536-4200 to review applicable standards and for information about approval of a source of supply for public use.
7. Along with this approval, the District shall develop a monitoring program to ensure that no prior rights are being impaired. Plans for this monitoring program must be submitted to and approved by the State Engineer prior to diversion of any water from the proposed sources.

The District is strongly cautioned that other permits may be required before any development of this application can begin and it is the responsibility of the District 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 February 28, 2033, or a request for extension of time must be acceptably filed; otherwise the application will be lapsed.

Proof of beneficial use is evidence to the State Engineer that the water has been fully placed to its intended beneficial use. By law, it must be prepared by a registered engineer or land surveyor, who will certify to the location, uses and extent of your water right.

Upon the submission of proof as required by Section 73-3-16, for this application, the District 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 Application to Appropriate Water.

The right to beneficially use water as described in this order shall be administered by the State Engineer the same as if this order had been issued by the State Engineer.

**THE COURT'S ELECTRONIC SIGNATURE APPEARS  
AT THE TOP OF THE FIRST PAGE OF THE JUDGMENT  
TO WHICH THIS ORDER IS ATTACHED**



# EXHIBIT 4

# ORDER

For Application to Appropriate Water Number 69-121 (A76677ab)  
which herein becomes F76677ab

## Background

Application to Appropriate Water Number 69-121 (A76677ab) in the name of Central Iron County Water Conservancy District (the District) was filed on October 17, 2006, to appropriate 4025.00 acre-feet (af) of water from the groundwater in Wah Wah Valley. It is proposed to divert water from 16-inch wells drilled between 100 and 2000 feet in depth to be located: (1) North 1400 feet and West 2500 feet from the SE Corner of Section 36, T27S, R14W, SLB&M; (2) North 900 feet and West 2350 feet from the SE Corner of Section 31, T27S, R13W, SLB&M; (3) North 1200 feet and West 300 feet from the SE Corner of Section 6, T28S, R14W, SLB&M; (4) South 2100 feet and East 250 feet from the NW Corner of Section 4, T28S, R14W, SLB&M; (5) South 1600 feet and East 1500 feet from the NW Corner of Section 3, T28S, R14W, SLB&M; (6) South 550 feet and West 300 feet from the NE Corner of Section 2, T28S, R14W, SLB&M; (7) South 600 feet and West 250 feet from the NE Corner of Section 12, T28S, R14W, SLB&M; (8) South 300 feet and West 2300 feet from the NE Corner of Section 11, T28S, R14W, SLB&M; (9) North 2400 feet and East 650 feet from the SW Corner of Section 10, T28S, R14W, SLB&M; (10) South 2400 feet and West 2200 feet from the NE Corner of Section 35, T27S, R14W, SLB&M; (11) South 2300 feet and West 2500 feet from the NE Corner of Section 34, T27S, R14W, SLB&M; (12) North 2500 feet and West 700 feet from the SE Corner of Section 28, T27S, R14W, SLB&M; (13) South 1650 feet and East 550 feet from the NW Corner of Section 33, T27S, R14W, SLB&M; (14) South 300 feet and East 600 feet from the NW Corner of Section 32, T27S, R14W, SLB&M; (15) North 850 feet and East 400 feet from the SW Corner of Section 31, T27S, R14W, SLB&M; (16) South 750 feet and West 1900 feet from the NE Corner of Section 8, T28S, R14W, SLB&M; (17) South 2600 feet and East 2200 feet from the NW Corner of Section 16, T28S, R14W, SLB&M; (18) South 2650 feet and West 1900 feet from the NE Corner of Section 14, T28S, R14W, SLB&M; (19) North 900 feet and East 250 feet from the SW Corner of Section 15, T28S, R14W, SLB&M; and (20) South 1750 feet and West 1400 feet from the NE Corner of Section 27, T28S, R14W, SLB&M. The water is to be used for year-round municipal purposes within the service area of the District.

Notice of the application was published in The Beaver Press on November 23 and 30, 2006, and in the Spectrum on November 23 and 29, 2006. Protests were received from: National Park Service; U.S. Department of the Interior (late protest); Marie Puffer and Duray G. Dalley (late protest); Lyle Wiseman (late protest); Dustin S. Wiseman (late protest); Steve Judd; Bruce P. Dalley (late protest); Beaver High School Students; Matthew Wood (late protest); Viola Reynolds (late protest); Shaun and Tammy Pearson (late protest); Minersville Town (late protest); Gary and Gina Mayer (late protest); Seth Davie (late protest); Carla and Dale Eyre (late protest); David Robinson (late protest); Jetta Robinson (late protest); Elsie Mayer (late protest); Ruby and D. Magnuson (late protest); Helena and W. Bartsch (late protest); Allan and Syble Smith (late protest); Stacy and Chris Barnes (late protest); Jodi Robinson (late protest); Jared Smith (late protest); Dixie (late protest); Dustin and Heidi Thomas (late protest); Ruth Carter (late protest); Barbara Farnsworth (late protest); Deyette and Gary Bradley (late protest); Louise and Darrell Alford (late protest); Natalie Rollins (late protest); Lisa Hendrickson (late protest); Norman and Virginia Bradshaw (late protest); John Carter; Wayne Burrows (late protest); Eric Jessup; Theron and Linda Jessup, Darlene Vaughn; Emma and Ray Davis; Michelle Smith; Steven Yardley; Jeannie Yardley; Lori Ann Hoffman; Board of County Commissioners of Millard County; K. Hussry; Kim Oakden; Crystal Bradshaw; Lisa and Brent Carter; Lynn and Phyllis Bradshaw; Jennie Smith; Resident; Jan and Miles Barney; Concerned Citizens of Beaver Co.; Bradshaw Farms & Equipment and Kents Lake Irrigation Co. and Harris Willis Irrigation Co.; Brady Bradshaw; Collette and Robbie Bradshaw; Jonney Quarnberg; Greg Gunderson and Residents; Max Carter; I. Linda and Lem Lucey; William and Betty Treder; Denise and Dwane Bradshaw; Harlon Thomas; R. Larson Sheep Co.; Green Diamond Ranch; Barry Thiriot; Lyle Wiseman; William Chad Dalton; Beaver County; Elk Meadows Special Service District; Southern Nevada Water Authority; Gilbert and Denise and Emily Yardley; Roger and Ronda Williams; Lisa Nielson; Seldon Nowers; Davis and Alisha Edwards; David and Susan Edwards; Lee Foster; United States Department of the Interior; Lary Carter; James Carter; Southern Utah Water Study, L.C.; Teresa and Michael Bradshaw; S & W Hall Co. Inc.; Robert Storey; James Williams; Mark Whitney; Tina and Tomas Smith; Ray and Shirley Morris; Carl Best; Sly Family; Nickole and Lou Montoya; Kaylene Eyre-Quarnberg; Warren Quarnberg; Sportsmen for Fish & Wildlife; Robert Christensen; Robert Christensen; Clinton Beaumont; Gene and Cerrie Gatz; Arlan Mayer; Jolene Mayer; Jace and Amy Lambeth; Second South Bench Reservoir & Irrigation Co.; Arlene

Edwards; Anne Swindlehurst; Ray Walbeck; John and Heather Gates; Kent and Mary Marshall; Eleana Marshall; Hinal and Shirley Wright; Dan Joseph; W. Neal Wood; Steve Becelleow; Bruce and Benaley Randall; Smith Family et al; Kelly CasMiller; F. Kelly Mortensen; Kim Wood; Rhonda McQuarrie; David Heshington; Joyce and Donald Pettit; Jeffrey Joseph; John Dee and Susan Smith; Julie Chatur; S. Noel; Terry and Penny Levering; Helen Murchie; Lana Reed; Kimberly Solberg; Raymond Benson and Betty Harwell; Thomas Bartts; Russell and Stephanie Helm; Michael and Barbara Robinson; David and Tina Robinson; Norma Thomas; Janet Oakden; Ray Alan and April R. and Kasey Yardley; L. Farnsworth; Reed Dalton; David and LaDona Reynolds; P. A. Duncan; Clyde D. Alford; Francis Bridges; Fern S. Wilber; Val and Ila Smith; Rachel Stewart; Madlyne and George M. Griffiths; Vernon A. and Carol J. Condie; Orson and JoAnn Blackner; Ronald and Vickie Turner; Chitt and Tina Pearsen; Sharen R. and Douglas E. Turner; Gerald W. Thomas; Connie Hudleston; Casidy Barnson; Neil Ammon Cadie; Eva Yardley; Janette Brannwell; Harold LaMorr Morris; ElRoy L. and Alda Stucki; Richard and Noreen Bradshaw; Ronald C. Beebe; Clark Grimshaw; Dennis Hardy; Minersville Land and Livestock; W. Kelly Wood; L. Ben and Melinda Dalton; Honey Low; Cheryl Low; Christine Clitso; Mitch and Rebecca Carter; Reed and Debra Carter; Daniel and Breezy Carter; Jay and Melissa Carter; Robert H. and Mary Helen Lee; Mark J. Yardley; Joseph R. and Penny Yardley; Robert J. Yardley; Kiley Eyre; Kellee and Mitchell Dalton; Mary J. and Ray Yardley; Richard M. Davis; William I. Bradshaw; Beverly C. Barek; Dean and Teri Eyre; Brad Eyre; Leeola G. and Burton R. Myers; Margaret Miller; William and Kathy Acklin; Delmont and Jolene Goff; Susan Maggard; Russ T. Bradshaw; Jeb, Christina, Blake and Todd Marshall; Harold W. and Marilyn Bradshaw; Wayne and Traci Bradshaw; Clarence D. Pope; Colleen Freeman; Charles S. Barnes; Deborah and Eddie Smith; Mary Jane and Max L. Thompson; Lee and Cynthia Hansen; Sandra and Tom Nickell; Blake Marshall; Terri Nelson; Dewey B. Hawkins; Leslie and Lynn Kitchen; Brent McCulley and Kathy Ryan; Sue Byers; Debora K. Nichols; Joanne Geotzelman; Gary W. and Carol G. Roberts, Allan and Christine McCulley; Wayne and Evelyn McCulley; Justin McCulley; Claude R. Fordham; Westside Irrigation Co.; Michael W. Smith; Clark Carter; Clark W. Smith; Duane and Maurine Yardley; Dale A. Yardley; Floyd Yardley; Concerned Citizens of Beaver County Utah; Fairview Land & Livestock Co., Inc.; Jane Scott; Thomas and Margorie McLaughlin; D. G. and Faye McShane; Hal D. Murdock; Millie Ritchie; Marjorie Staheli; Rebecca Hale; Gayle Cooney; Joyce M. Joseph; Yvonne E. Leilua; James E. Bohn; Ann Marshall; David Christensen; City of Milford; Dean Carter; Shanna and Lyle Carter; Joan Davis; Sheldon and Mary Albrecht; Karen and Arnell Gale; S. Edwards; Jennifer Cox; Jason L. Davis; Virginia Marshall; Idonna L. Doerig and Karma M. Mitchell; Robert Eyre; Dixie Power-Water-Light & Telephone, Inc.; LaMar J. and Pearl Briggs; Beverly R. and Rondo Farrer; Donald C. and Leah Glenn; Lynn B. and Melissa Yardley; Wm. E. and Georgean Warby; Beth Puffer; Paul and Marilyn Anderson; Leonard and Beryl Brown; Brent, Sandra and Bessie Edwards; Kristen Sisneros; Tina Harris; Joan Ruplinger; Sandra Lawsen; Marjorie S. Raddon; Gordon G. and Ann Eyre; Orvis and Ruby Bowers; Velby N. Ashworth; Beatrice Willden; Carol Crandy; Lucille P. Strong; Hal and Mary Christensen; Wayne A. Thompson; Peggy Blackner; Shirley M. Howard; Alan and Shaunna Mayer; J. Grant and Gayle L. Wood; Leslie and Nanette Davis; Milford Valley Water Users Board; Scott and Wilma Hansen; Chris L. Kesler; Al J. Boyt; Jennifer L. Brennan; Harold Deems; Alan Gale; Maureen Hodges; Ralph L. Smith; Bruce M. and Karen Marchant; Joyce D. Boyter; D. Carol McCulley; Donald P. and Julia M. Moore; M. P. Thompson; John and Carmen Caffrey; Lucille P. Strong; Frank H. Smith; Roy and Alvina M. Kramer; Delbert and Audrey Kent; Afton S. Kesler; Bryan D. Graham; and Frank and Janice Smith. A hearing was held on July 14, 2010.

The State Engineer issued an order on May 13, 2014, approving in part and denying in part Application to Appropriate Water Number 69-101 (A76677), from which this application was segregated. The unapproved portion of 69-101 (A76677) was segregated and assigned Water Right No. 69-118 (Application to Appropriate No. A76677a). The instant *de novo* judicial review action followed. All protestants were given notice and an opportunity to intervene. Aside from the parties to this action, no protestants did so. The parties to this action subsequently reached an agreement resolving all claims. To accommodate the terms of that agreement, the District segregated 4,025 AF from A76677a to A76677ab (69-121).

#### Legal Framework

For an application to be approved, the Utah Code Section 73-3-8 criteria must be met. The statute reads:

- (1)(a) It shall be the duty of the state engineer to approve an application if there is reason to believe that:*
  - (i) for an application to appropriate, there is unappropriated water in the proposed source;*

(ii) the proposed use will not impair existing rights or interfere with the more beneficial use of the water;

(iii) the proposed plan:

(A) is physically and economically feasible, unless the application is filed by the United States Bureau of Reclamation; and

(B) would not prove detrimental to the public welfare;

(iv) the applicant has the financial ability to complete the proposed works;

(v) the application was filed in good faith and not for purposes of speculation or monopoly; and

(vi) if applicable, the application complies with a groundwater management plan adopted under Section 73-5-15.

(b) If the state engineer, because of information in the state engineer's possession obtained either by the state engineer's own investigation or otherwise, has reason to believe that an application will interfere with the water's more beneficial use for irrigation, municipal and industrial, domestic or culinary, stock watering, power or mining development, or manufacturing, or will unreasonably affect public recreation or the natural stream environment, or will prove detrimental to the public welfare, the state engineer shall withhold approval or rejection of the application until the state engineer has investigated the matter.

(c) If an application does not meet the requirements of this section, it shall be rejected.

#### Analysis

1. Although the State Engineer is concerned that there is less water available in the Wah Wah Valley Aquifer than what is being proposed to be used under all applications to appropriate in the area, the State Engineer along with all signatories of the settlement agreement resolving this action have committed, among other things, to the following:

*The Parties acknowledge they have a difference of opinion regarding the amount of water available for development in the Wah Wah Valley and the Pine Valley – namely, the safe yield of the aquifers in those valleys. By way of this Agreement the State Engineer will allow the non-State Engineer Parties to proceed with plans to develop the amount of water stated herein with the understanding that the non-State Engineer Parties assume all risk and full responsibility for the possibility that the safe annual yield of the Wah Wah Valley aquifer and/or the Pine Valley aquifer is less than the amounts referenced in this Agreement. The non-State Engineer Parties expressly understand and acknowledge that the State Engineer is making no warranty or representation about the amount of water available for development in the Wah Wah Valley and the Pine Valley, and that approvals provided under this Agreement may be for more water than future facts demonstrate is actually available for long-term beneficial use. They further understand and acknowledge that under Utah Code Section 73-5-15, the State Engineer may regulate groundwater withdrawals within a specific groundwater basin by adopting a groundwater management plan in accordance with that section for any groundwater basin or aquifer or combination of hydrologically connected groundwater basins or aquifers. Nothing in this Agreement affects or is intended to affect the State Engineer's authority under that section as it presently exists and as it may change. The non-State Engineer Parties expressly understand and acknowledge that proper exercise of that authority may result in a reduction of the amount of water authorized for diversion under this Agreement.*

2. There are existing rights to use water in Wah Wah Valley. Utah Code Section 73-3-8(1)(a)(i) requires that unappropriated water be available for approval of an application to appropriate. The District proposes to divert and export a significant quantity of groundwater from the valley. This has raised concern among existing users. The most prominent existing use in the valley diverts water from Wah Wah Springs, which discharge at an elevation of approximately 5600 feet above mean sea level. All of the District's proposed wells are located on land below that elevation where known groundwater levels are several hundred feet below land surface. Groundwater flow in the

valley is presumed to be primarily from South to North with East and West margins of the valley flowing toward the center (based on Technical Publication 47 and other more recent studies). Wah Wah Springs is located northwest of the District's proposed wells and is considered warm (15° higher than the mean annual air temperature, Tech Pub 47). Those factors taken together suggest a separation between the groundwater flow system supplying water to Wah Wah Springs and the system from which the District plans to divert water. It appears pumping the valley-fill aquifer as proposed will not likely diminish the yield of the springs. Other uses of water dependent on streamflow and springs along the margins of the valley are most likely similarly situated. There is reason to believe this application meets Section 73-3-8(1)(a)(i) criterion and there is limited unappropriated water available in Wah Wah Valley. Additionally, there is reason to believe that approval of this application will not impair prior rights and it therefore complies with Section 73-3-8(1)(a)(ii).

3. The District does not own land upon which to locate wells or other infrastructure necessary to implement this project and has not presented evidence that those property rights have been obtained or negotiations to obtain them have commenced. All land ownership, access, or use issues must be resolved by the District including obtaining authority from and conforming to the rules and regulations promulgated by agencies of the federal government for public land use. A critical element of this project is the District's ability to obtain authority to use federal land. Pending approval from land owners, there is reason to believe this application meets the criteria of Section 73-3-8(1)(a)(iii) in that it is feasible to divert water as proposed.
4. The District has the ability under Section 17B-1-103 to sell bonds, levy taxes, assess user fees, and obtain financing through other means within limits established by the legislature. There is reason to believe that the District meets the Section 73-3-8(1)(a)(iv) criterion.
5. There is reason to believe granting this application is consistent with Section 73-3-8(1)(a)(iii)(B) and the proposed plan would not prove detrimental to the public welfare.
6. There is reason to believe this application was filed in good faith and not filed for purposes of speculation and monopoly.
7. There is reason to believe the application meets the criteria of Section 73-3-8, and should be approved.
8. This application will be converted to a Fixed Time Application to Appropriate with associated conditions.

#### **Conclusion**

It is, therefore, **ORDERED**: Application to Appropriate Water Number 69-121 (A76677ab), which shall be administratively renumbered to 69-121 (F76677ab), is hereby **APPROVED** subject to prior rights and the following conditions:

1. As noted, this approval is granted subject to prior rights. The District must, as necessary, mitigate or provide compensation for any impairment of prior rights such as may be stipulated among parties or decreed by a court of competent jurisdiction.
2. 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 District.
3. Water use under this approval shall be limited to municipal use within the service area of the District with a maximum annual diversion allowance of 4,025 af of water for this use all uses occurring within the District's service area. It is noted that the diversion of water from Wah Wah Valley is able to be fully consumed by the District for these uses. The priority of this water right is, by agreement, October 19, 2006.

4. **The records of the State Engineer shall be modified to show the application number as 69-121 (F76677ab). This application is approved pursuant to 73-3-8(2), Utah Code Annotated, for an initial forty (40) year fixed-time period ending forty years after use of this water is initiated.** The initiation of use of water under this application shall be based on measurement records submitted to the Division as they relate to this water right diverted by the District or successor(s) from Wah Wah Valley. Current statutes state that fixed-time applications expire at the end of the fixed-time period but may be extended by the state engineer if the purpose of the original application has not been satisfied and the water is still available.
5. Each well under this application is to be individually metered and a permanent record of the water diverted from each well shall be maintained. The District shall make those records of the diversions made available for inspection by personnel of the Division of Water Rights upon reasonable request. **An annual report of all water diversions under this approval shall be submitted to the Division of Water Rights.**
6. All wells used as public water supply wells are regulated by the Utah Division of Drinking Water. Plans for the construction of new wells must be reviewed and approved by the Division of Drinking Water prior to any drilling or construction activity being commenced. The approval of this water right application does not constitute approval of the well for use as a public water supply by the Division of Drinking Water. The District is advised to contact the Division of Drinking Water at (801) 536-4200 to review applicable standards and for information about approval of a source of supply for public use.
7. Along with this approval, the District shall develop a monitoring program to ensure that no prior rights are being impaired. Plans for this monitoring program must be submitted to and approved by the State Engineer prior to diversion of any water from the proposed sources.

The District is strongly cautioned that other permits may be required before any development of this application can begin and it is the responsibility of the District 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.

Failure on your part to comply with the requirements of the applicable statutes may result in the lapsing of this Application to Appropriate Water.

The right to beneficially use water as described in this order shall be administered by the State Engineer the same as if this order had been issued by the State Engineer.

**THE COURT'S ELECTRONIC SIGNATURE APPEARS  
AT THE TOP OF THE FIRST PAGE OF THE JUDGMENT  
TO WHICH THIS ORDER IS ATTACHED**

# EXHIBIT 5

# AMENDED ORDER

For Application to Appropriate Water Number 14-118 (A76676)

## Background

Application to Appropriate Water Number 14-118 (A76676), in the name of Central Iron County Water Conservancy District (the District), was filed on October 17, 2006, to appropriate 15,000.00 acre-feet (af) of water from the groundwater in Pine Valley. It is proposed divert water from 16-inch wells drilled between 100 and 2000 feet in depth to be located: (1) North 1900 feet and East 1300 feet from the SW Corner of Section 17, T30S, R16W, SLB&M; (2) North 2300 feet and West 1650 feet from the SE Corner of Section 14, T28S, R17W, SLB&M; (3) South 1000 feet and East 1700 feet from the NW Corner of Section 24, T29S, R18W, SLB&M; (4) North 500 feet and East 500 feet from the SW Corner of Section 14, T29S, R17W, SLB&M; (5) South 400 feet and East 2200 feet from the NW Corner of Section 19, T29S, R16W, SLB&M; (6) South 1850 feet and West 2000 feet from the NE Corner of Section 25, T29S, R17W, SLB&M; (7) North 500 feet and East 350 feet from the SW Corner of Section 32, T29S, R16W, SLB&M; (8) South 2000 feet and East 2550 feet from the NW Corner of Section 2, T30S, R17W, SLB&M; (9) North 2250 feet and East 500 feet from the SW Corner of Section 15, T30S, R17W, SLB&M; and (10) South 300 feet and East 250 feet from the NW Corner of Section 36, T30S, R17W, SLB&M. The water is to be used for the year-round stockwatering of 2000.00 equivalent livestock units in cattle, horses, or equivalent species (elus); and year-round municipal purposes within the service area of Central Iron County Water Conservancy District.

Notice of the application was published in The Beaver Press on November 23 and 30, 2006, and the Spectrum on November 23 and 29, 2006. Protests were received from: National Park Service, U.S. Dept. of the Interior (late protest); Beaver High School Students; Marie Puffer and Duray G. Dalley (late protest); Bruce P. Dalley (late protest); Lyle Wiseman (late protest); Dustin S. Wiseman (late protest); Matthew Wood (late protest); Viola Reynolds (late protest); Shaun and Tammy Pearson (late protest); Minersville Town (late protest); Gary and Gina Mayer (late protest); Seth Davie (late protest); Carla and Dale Eyre (late protest); David Robinson (late protest); Jetta Robinson (late protest); Elsie Mayer (late protest); Ruby and D. Magnuson; Helena Bartsch (late protest); Allan and Syble Smith (late protest); Stacy and Chris Barnes (late protest); Jodi Robinson (late protest); Jared Smith (late protest); Dixie (late protest); Dustin and Heidi Thomas (late protest); Ruth Carter (late protest); Babara Farnsworth (late protest); Deyette and Gary Bradley (late protest); Louise and Darrell Alford (late protest); Resident; Natalie Rollins (late protest); Lisa Hendrickson (late protest); Norman and Virginia Bradshaw (late protest); John Carter (late protest); Wayne Burrows (late protest); Eric Jessup; Theron and Linda Jessup; Darlene Vaughn; Lori Ann Hoffman; Steven Yardley; Roger and Ronda Williams (protest withdrawn); Mark J. Wintch; Green Diamond Ranch; Lyle Wiseman; William Chad Dalton; Beaver County; Barry Thiriot; Gilbert and Denise and Emily Yardley; Elk Meadows Special Service District; Southern Nevada Water Authority; Lisa Nielson; Seldon Nowers; Davis and Alisha Edwards; David and Susan Edwards; Lee Foster; Resident; United States Department of the Interior; Lary Carter; James Carter; Southern Utah Water Study, L.C.; Michelle Smith; Jeannie Yardley; John Dee and Susan Smith; Julie Chatur; S. Noel; Terry and Penny Levering; David Heshington; Helen Murchie; Lana Reed; Kim Solberg; Raymond Benson and Betty Harwell; Thomas Bartts; Russell and Stephanie Helm; David and Tina Robinson; Norma Thomas; Janet Oakden; K. Hussry; Kim Oakden; Crystal Bradshaw; Jennie Smith; Concerned Citizens of Beaver Co.; Bradshaw Farms & Equipment & Kents Lake Irrigation Co. and Harris Willis Irrigation Co.; Brady Bradshaw; Collette and Robbie Bradshaw; Jonney Quarnberg; Greg Gunderson and Residents; Max Carter; I. Linda and Lem Lucey; William and Betty Treder; Denise and Dwane Bradshaw; Emma and Ray Davis; Harlon Thomas; S & W Hall Co. Inc.; Robert Storey; James Williams; Brent and Sandra and Bessie Edwards; Lisa and Brent Carter; Mark Whitney; Tina and Tomas Smith; Teresa and Michael Bradshaw; Ray and Shirley Morris; Carl Best; Sly Family; Nickole and Lou Montoya; Lynn Bradshaw; Kaylene Eyre-Quarnberg; Warren Quarnberg; Sportsmen for Fish & Wildlife; Robert Christensen; Clinton Baumont; Jan and Miles Barney; Gene and Cerrie Gatz; Arlan Mayer; Jolene Mayer; Jace and Amy Lambeth; Second South Bench Reservoir & Irrigation Co.; Anne Swindlehurst; Ray Walbeck; John and Heather Gates; Kent and Mary Marshall; Eleana Marshall; Hinal and Shirley Wright; Steve Judd; Scott Wiseman; Dan Joseph; W. Neal Wood; Steve Becelleow; Bruce and Benaley Randall; Smith Family et al; Kelly CasMiller; Michael and Barbara Robinson; F. Kelly Mortensen; Kim Wood; Rhonda McQuarrie; Jeffrey Joseph; Joyce and Donald Pettit; Ronald C. Beebe; Clark W. Grimshaw; Dennis Hardy; Minersville Land and Livestock; W. Kelly Wood; L. Ben and Melinda Dalton; Honey Low; Cheryl Low; Christine Clitso; Ray Alan and April R. and Kasey Yardley; L. Farnsworth; Reed Dalton; David and LaDona Reynolds; P. A.



Duncan, Clyde D. Alford; Francis Bridges; Fern S. Wilber; Val and Ila Smith; Racheal Stewart; Madlyne and George M. Griffiths; Vernon A. and Carol J. Condie; Orson and JoAnn Blackner; Ronald and Vickie Turner; Chitt and Tina Pearsen; Sharen R and Douglas E. Turner; Gerald W. Resident; Connie Huddleston; Casidy Barnson; Neil Ammon Cadie; Eva Yardley; Janette Brannwell; Harold LaMorr Morris; ElRoy L. and Alda Stucki; Richard and Noreen Bradshaw; Alan Gale; Ralph Smith; Joyce D. Boyter; Lynn B. and Melissa Yardley; Wm. E. and Georgean Warby; Beth Puffer; Paul and Marilyn Anderson; Leonard and Beryl Brown; Arlene Edwards; Kristen Sisneros; Tina Harris; Joan Ruplinger; Sandra Lawsen; Marjorie S. Raddon; Craig and Lois Willden; Gordon G. and Ann Eyre; Orvis and Ruby Bowers; Velby N. Ashworth; Beatrice Willden; Carol Crandy; Lucille P. Strong; Peggy Blackner; Hal and Mary Christensen; Shirley M. Howard; Scott and Wilma Hansen; Alan and Shaunna Mayer; Milford Valley Water Users Board; Leslie and Nanette Davis; J. Grant and Gayle L. Wood; Wayne A. Thompson; Alan and Vicki Gurney; Dale A Yardley; Mitch and Rebecca Carter; Reed and Debra Carter; Daniel and Breezy Carter; Jay and Meliss Carter Lane; Robert H. and Mary Helen Lee; Mark J. Yardley; Joseph R. and Penny Yardley; Robert J. Yardley; Kiley Eyre; Kellee and Mitchell Dalton; Mary J. and Ray Yardley; Richard M. Davis; William I. Bradshaw; Beverly C. Barek; Dean and Teri Eyre; Brad Eyre; Leeola G. and Burton R. Myers, Margaret Miller; William and Kathy Acklin; Delmont and Jolene Goff; Susan Maggard; Russ T. Bradshaw; Jeb, Christina, Blake and Todd Marshall; Harold W. and Marilyn Bradshaw; Wayne and Traci Bradshaw; Clarence D. Pope; Colleen Freeman; Charles S. Barnes; Tony Christensen; Deborah and Eddie Smith; Mary Jane and Max L. Thompson; Lee and Cynthia Hansen; Sandra and Tom Nickell; Blake Marshall; Terri Nelson; Leslie and Lynn Kitchen; Dewey B. Hawkins; Floyd Yardley; Concerned Citizens of Beaver County Utah; Brent McCulley and Kathy Ryan; Sue Byers; Debora K. Nichols; Joanne Geotzelman; Gary W. and Carol G. Roberts; Allan and Christine McCulley; Wayne and Evelyn McCulley; Justin McCulley; Claude R. Fordham; Westside Irrigation Co.; Michael Smith; Clark Carter; Clark W. Smith; Duane and Maurine Yardley; Joan Davis; Sheldon and Mary Albrecht; Karen and Arnell Gale; S. Edwards; Jennifer Cox; Virginia Marshall; Jason S. Davis; Idonna L. Doerig and Karma M. Mitchell; Robert Eyre; Dixie Power-Water-Light & Telephone, Inc.; Lucille P. Strong; Welby K. Aagard Family L.C.; Fairview Land & Livestock Co., Inc.; Jane Scott; Thomas and Margorie McLaughlin; Resident; D. G. and Faye McShane; Hal D. Murdock; Millie Ritchie; Marjorie Staheli; Rebecca Hale; Gayle Conney; Joyce M. Joseph; Yvonne E. Leilua; James E. Bohn; Ann Marshall, David Christensen; City of Milford; Dean Carter; Shanna and Lyle Carter; Bryan D. Graham; Al J. Boyt; D. Carol McCulley; LaMar J. and Pearl Briggs; Donald C. and Leah Glenn; Beverly R. and Rondo Farrer; Jennifer L. Brennan; Harold Deems; Maureen Hodges; Bruce M. and Karen Marchant; M. P. Thompson; John and Carmen Caffrey; Frank H. Smith; Roy Kramer; Delbert and Audrey Kent; Chris L. Kesler; Afton S. Kesler; Donald P. and Julia M. Moore; and Frank and Janice Smith. A hearing was held on July 14, 2010.

1. On May 13, 2014 an Order of the State Engineer was issued under the signature of Kent L. Jones, P.E., State Engineer, partially approving the application for municipal use within the service area of the District. The order rejected the proposed use for stockwatering of 2,000 elus approving the remainder for municipal use of 15,000 af. The instant *de novo* judicial review action followed. All protestants were given notice and an opportunity to intervene. Aside from the parties to this action, no protestants did so. The parties to this action subsequently reached an agreement resolving all claims.

#### **Legal Framework**

For an application to be approved, the Utah Code Section 73-3-8 criteria must be met. The statute reads:

- (1)(a) It shall be the duty of the state engineer to approve an application if there is reason to believe that:*
- (i) for an application to appropriate, there is unappropriated water in the proposed source;*
  - (ii) the proposed use will not impair existing rights or interfere with the more beneficial use of the water;*
  - (iii) the proposed plan:*
    - (A) is physically and economically feasible, unless the application is filed by the United States Bureau of Reclamation; and*
    - (B) would not prove detrimental to the public welfare;*
  - (iv) the applicant has the financial ability to complete the proposed works;*
  - (v) the application was filed in good faith and not for purposes of speculation or monopoly; and*
  - (vi) if applicable, the application complies with a groundwater management plan adopted under*

Section 73-5-15.

*(b) If the state engineer, because of information in the state engineer's possession obtained either by the state engineer's own investigation or otherwise, has reason to believe that an application will interfere with the water's more beneficial use for irrigation, municipal and industrial, domestic or culinary, stock watering, power or mining development, or manufacturing, or will unreasonably affect public recreation or the natural stream environment, or will prove detrimental to the public welfare, the state engineer shall withhold approval or rejection of the application until the state engineer has investigated the matter.*

*(c) If an application does not meet the requirements of this section, it shall be rejected.*

**Analysis**

Although the State Engineer is concerned that there is less water available in the Pine Valley Aquifer than what is being proposed to be used under all applications to appropriate in the area, the State Engineer along with all signatories of the settlement agreement resolving this action have committed, among other things, to the following:

*The Parties acknowledge they have a difference of opinion regarding the amount of water available for development in the Wah Wah Valley and the Pine Valley – namely, the safe yield of the aquifers in those valleys. By way of this Agreement the State Engineer will allow the non-State Engineer Parties to proceed with plans to develop the amount of water stated herein with the understanding that the non-State Engineer Parties assume all risk and full responsibility for the possibility that the safe annual yield of the Wah Wah Valley aquifer and/or the Pine Valley aquifer is less than the amounts referenced in this Agreement. The non-State Engineer Parties expressly understand and acknowledge that the State Engineer is making no warranty or representation about the amount of water available for development in the Wah Wah Valley and the Pine Valley, and that approvals provided under this Agreement may be for more water than future facts demonstrate is actually available for long-term beneficial use. They further understand and acknowledge that under Utah Code Section 73-5-15, the State Engineer may regulate groundwater withdrawals within a specific groundwater basin by adopting a groundwater management plan in accordance with that section for any groundwater basin or aquifer or combination of hydrologically connected groundwater basins or aquifers. Nothing in this Agreement affects or is intended to affect the State Engineer's authority under that section as it presently exists and as it may change. The non-State Engineer Parties expressly understand and acknowledge that proper exercise of that authority may result in a reduction of the amount of water authorized for diversion under this Agreement.*

1. USGS Technical Publication No. 51 indicates that precipitation within the Pine Valley surface drainage basin contributes 21,000 acre-feet per year of groundwater recharge to the groundwater system. The publication also indicates that 3,000 acre-feet per year of this recharge contributes to the groundwater of Wah Wah Valley by subsurface inflow leaving a total estimated annual recharge to the groundwater in Pine Valley of 18,000 acre-feet. A more recent study, USGS Scientific Investigations Report 2017-5072, estimates that recharge in Pine Valley is 11,000 acre-feet per year. There has been very little actual pumping of groundwater in Pine Valley to stress the groundwater system such that recharge estimates can be verified through a quantitative analysis. Although the State Engineer believes there is water available for appropriation, estimates of the amount of water should be considered preliminary at this time. The District should understand that this decision is based on the information and data currently available. Should the groundwater resource prove to be over appropriated as diversions under this and other applications are made, a groundwater management plan could be formulated in the future to address that issue.
2. There are existing rights to use water in Pine Valley. Utah Code Section 73-3-8(1)(a)(i) requires that unappropriated water be available. The District, based on currently available hydrologic data,

proposes to divert and export most or all of the unappropriated groundwater in the valley. This has raised concern among existing users. The District's proposed wells are located on land where known groundwater levels are more than two hundred feet, and exceeding in most locations several hundred feet, below land surface based on the well driller's reports for the area. It appears pumping the valley-fill aquifer within the limitations of the safe yield of the aquifer will not likely diminish the yield of springs located along the margins of the valley-fill. There is reason to believe this application meets Section 73-3-8(1)(a)(i) criterion and there is limited unappropriated water available in Pine Valley. Additionally, there is reason to believe that approval of this application will not impair prior rights and it therefore complies with Section 73-3-8(1)(a)(ii).

3. The District does not own land upon which to locate wells or other infrastructure necessary to implement this project and has not presented evidence that those property rights have been obtained or negotiations to obtain them have commenced. All land ownership, access, or use issues must be resolved by the District including obtaining authority from and conforming to the rules and regulations promulgated by agencies of the federal government for public land use. A critical element of this project is the District's ability to obtain authority to use federal land. Pending approval from land owners, there is reason to believe this application meets the criteria of Section 73-3-8(1)(a)(iii) in that it is feasible to divert water as proposed.
4. The District has the ability under Section 17B-1-103 to sell bonds, levy taxes, assess user fees, and obtain financing through other means within limits established by the legislature. There is reason to believe that the District meets the Section 73-3-8(1)(a)(iv) criterion.
5. There is reason to believe granting this application is consistent with Section 73-3-8(1)(a)(iii)(B) and the proposed plan would not prove detrimental to the public welfare.
6. There is reason to believe that this application was filed in good faith and not filed for purposes of speculation and monopoly.
7. There is reason to believe that the application meets the Section 73-3-8 criteria and should be approved.

#### **Conclusion**

It is, therefore, **ORDERED**: Application to Appropriate Water Number 14-118 (A76676) is hereby **APPROVED** subject to prior rights and the following conditions:

1. As noted, this approval is granted subject to prior rights. The District must, as necessary, mitigate or provide compensation for any impairment of prior rights such as may be stipulated among parties or decreed by a court of competent jurisdiction.
2. 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 District.
3. Water use under this approval shall be limited to a cumulative maximum annual diversion of 15,000 af for the stockwatering of 2,000 elus and municipal use within the service area of the District and Pine Valley. It is noted that the diversion of water from Pine Valley is able to be fully consumed by the District for these uses. The priority date of the underlying application is October 17, 2006.
4. Each well under this application is to be individually metered and a permanent record of the water diverted from each well shall be maintained. The District shall make those records of the diversions made available for inspection by personnel of the Division of Water Rights upon reasonable request. **An annual report of all water diversions under this approval shall be submitted to the Division of Water Rights.**
5. The documents submitted as proof of beneficial use for this application, as required by statute at

Section 73-3-16 shall include a full and correct copy of the metering record maintained as required herein.

6. All wells used as public water supply wells are regulated by the Utah Division of Drinking Water. Plans for the construction of new wells must be reviewed and approved by the Division of Drinking Water prior to any drilling or construction activity being commenced. The approval of this water right application does not constitute approval of the well for use as a public water supply by the Division of Drinking Water. The District is advised to contact the Division of Drinking Water at (801) 536-4200 to review applicable standards and for information about approval of a source of supply for public use.
7. Along with this approval, the District shall develop a monitoring program to ensure that no prior rights are being impaired and that the aquifer system is not exceeding safe yield. Plans for this monitoring program must be submitted to and approved by the State Engineer prior to diversion of any water from the proposed sources.

The District is strongly cautioned that other permits may be required before any development of this application can begin and it is the responsibility of the District 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 **February 28, 2033**, or a request for extension of time must be acceptably filed; otherwise the application will be lapsed.

Proof of beneficial use is evidence to the State Engineer that the water has been fully placed to its intended beneficial use. By law, it must be prepared by a registered engineer or land surveyor, who will certify to the location, uses and extent of your water right.

Upon the submission of proof as required by Section 73-3-16, for this application, the District 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 Application to Appropriate Water.

The right to beneficially use water as described in this order shall be administered by the State Engineer the same as if this order had been issued by the State Engineer.

**THE COURT'S ELECTRONIC SIGNATURE APPEARS  
AT THE TOP OF THE FIRST PAGE OF THE JUDGMENT  
TO WHICH THIS ORDER IS ATTACHED**