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**State of Utah**  
**DEPARTMENT OF NATURAL RESOURCES**  
**Division of Water Rights**

JOEL FERRY  
Executive Director

TERESA WILHELMSSEN  
State Engineer/Division Director

**JUL 14 2022**

**ORDER OF THE STATE ENGINEER**  
**For Permanent Change Application Number 57-8033 (a48752)**

Permanent Change Application Number 57-8033 (a48752) in the names of Courtney H. Crombie and Michael J. Jimenez was filed on April 13, 2022, to add a point of diversion of 0.00769 cubic foot per second (cfs) or 2.56 acre-feet of water as evidenced by Water Right Number 57-8033. Heretofore, the water has been diverted from a surface source located North 1804 feet and West 434 feet from the SE Corner of Section 16, T1N, R2E, SLB&M (Emigration Creek). The water has been used for the irrigation of 0.04 acre from April 1 to October 31; and year-round, indoor, domestic requirements of 1.00 equivalent domestic unit (EDU). The water has been used in all or portion(s) of Section 16, T1N, R2E, SLB&M.

Hereafter, it is proposed to divert 0.00769 cfs or 2.56 acre-feet of water from the same point as heretofore and from an additional a well located South 917 feet and West 785 feet from the E $\frac{1}{4}$  Corner of Section 16, T1N, R2E, SLB&M (existing 4-inch well, 127 feet deep). The nature of use of the water will remain the same as heretofore. The place of use of the water will remain the same as heretofore.

Notice of the application was published in the Deseret News on April 29 and May 6, 2022, and a protest was received from Emigration Canyon Home Owners Association (ECHO). A hearing was not held.

**Summary of Protests**

ECHO protested the application claiming it owns water Right Number 57-8947 which is from a surface source and surface sources in Emigration Canyon have been diminishing. ECHO also pointed to the fact that Change Application 57-8033 (a14831), filed in 1989, explained that the change was filed because the surface spring had diminished to the extent that only enough water existed for drinking. The State Engineer granted authorization for the applicant to drill a provisional well under Change Application a14831 but expressly forbade the use of water from the well. ECHO asserted that the applicants admitted to improperly extracting water from the provisional well since June of 2017 in their response to ECHO's protest. Lastly, ECHO asserted that records show over 40 private well owners in Emigration Canyon have reported quantity and quality impairment to the Division of Water Rights including the total depletion of the Emigration Canyon Stream less than two miles from Utah's Hogle Zoo. ECHO believes the approval of this application will further reduce stream flow and reduce water rights owned by ECHO.

*Applicant's Response*

The applicant responded to the protest claiming that they have lived at the property since June of 2017 and have used water from the spring and the well since then. The well was drilled by Mike Zimmerman under a provisional well but the applicant did not know the change application never received final approval. The applicant claims the well has been used as a supplemental source to the spring since the spring's flow has diminished.

The applicant also argued that the underlying water right was included in a Proposed Determination published by the State Engineer. Permanent Change Application 57-8033 (a14831) was filed in 1989 to change the point of diversion to a well. The applicant claims this change application is being filed to correct the previous change application to add the well and include the spring.

*State Engineer's Analysis*

The State Engineer has reviewed this change application and the underlying water right. It is noted that the water right was originally filed for use from a spring in Emigration Canyon. Permanent Change Application 57-8033 (a14831) was filed in 1989 to change the point of diversion to an underground well claiming the flow from the spring had diminished. The State Engineer believes the spring is directly connected to the underground aquifer and the flows from the spring likely diminished due to the decline of the static groundwater level. Therefore, the water pumped from a well can be considered as coming from the same source as the spring. The change application does not propose a change to the nature of use, place of use, or source of water and can be considered for approval if the historical limits of the water right are maintained.

In response to ECHO's claim of quantity impairment, the State Engineer points to Utah Code Section 73-3-3(1)(e)(ii) which states, "Quantity impairment' does not mean a decrease in the static level of water in an underground basin or aquifer that would result from an action proposed to be taken in a change application, if the volume of water necessary to satisfy an existing right otherwise remains reasonably available." As stated, the source of the water flowing from the spring is considered to be connected to the underground aquifer. The applicant is already approved to divert water from the underground aquifer via the spring, so it is believed this change will not adversely affect the underground or surface systems in Emigration Canyon.

It is noted that the State Engineer authorized a provisional well to be drilled under change application a14831 but never officially acted on the change application. That change application meets the criteria for approval and it is believed it would have been approved if acted on at the time of filing.

In evaluating the various elements of the underlying rights, it is not the intention of the State Engineer to adjudicate the extent of these rights, but rather to provide sufficient definition of the rights to ensure that other vested rights are not impaired by the change and/or no enlargement occurs.

It is, therefore, **ORDERED** and Permanent Change Application Number 57-8033 (a48752) is hereby **APPROVED** subject to prior rights and the following conditions:

- 1) This change application is limited to the annual diversion of 0.0769 cfs or 2.56 acre-feet of water to be used for the irrigation of 0.04 acre from April 1 to October 31 and year-round, indoor, domestic requirements of 1.00 EDU.
- 2) The applicant shall construct or install and maintain controlling works and a measuring device as required by Section 73-5-4 of Utah Code.
- 3) Whereas this change application has been filed to entirely replace and supersede prior approved Change Application Number 57-8033 (a14831), with this approval that prior application is considered to have been **WITHDRAWN**.

The State Engineer has statutory responsibility to create and maintain water right records based on an administrative process outlined in statute. The State Engineer is not authorized by statute to adjudicate water right title or the validity of established water rights. It is noted that failure to exercise a water right within the statutory period could render all or a portion of a water right invalid through forfeiture. Parties who wish to challenge the validity of a water right are advised that a declaration of forfeiture is a judicial action and the courts are available to pursue such suits (UCA 73-1-4).

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

The applicants are strongly cautioned that other permits may be required before any development of this application can begin and it is the responsibility of the applicants to determine the applicability of and acquisition of such permits. Once all other permits have been acquired, this is your authority to develop the water under the above referenced application which under Sections 73-3-10 and 73-3-12, Utah Code Annotated, 1953, as amended, must be diligently prosecuted to completion. The water must be put to beneficial use and proof must be filed on or before July 31, 2029, or a request for extension of time must be acceptably filed and subsequently approved; otherwise, the application will be lapsed. This approval is limited to the rights to divert and beneficially use water and does not grant any rights of access to, or use of land or facilities not owned by the applicants.

When the work is complete, an Affidavit of Beneficial Use may be submitted by an applicant without hiring a proof professional if it qualifies under statute. An affidavit qualifies if all of the following criteria are met:

- The water right is associated with a residence, either full- or part-time. (NOTE: Any irrigation or stock use on the affidavit must be associated with the residence.)

- The water use is for a quarter acre of irrigation or less.
- The water use is for the watering of ten head of livestock (or equivalent) or less.
- The water use does not include any uses in addition to the three listed above.

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

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

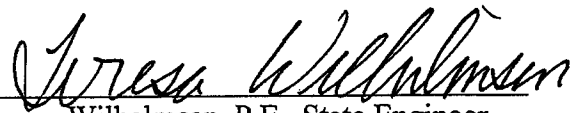
**It is the applicants' responsibility to maintain a current address with this office and to update ownership of their water right. Please notify this office immediately of any change of address or for assistance in updating ownership. Additionally, if ownership of this water right or the property with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

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

This Order is subject to the provisions of Administrative Rule R655-6-17 of the Division of Water Rights and to Sections 63G-4-302, 63G-4-402, and 73-3-14 of the Utah Code which provide for filing either a Request for Reconsideration with the State Engineer or for judicial review with the appropriate District Court. A Request for Reconsideration must be filed in writing with the State Engineer within 20 days of the date of this Order. The written request shall be filed in-person, by mail, or electronically. If the request is filed electronically it shall be submitted to: [waterrights@utah.gov](mailto:waterrights@utah.gov), which is the authorized general email for the Division. However, a Request for Reconsideration is not a prerequisite to filing for judicial review. A petition for judicial review must be filed within 30 days after the date of this Order or, if a Request for Reconsideration has been filed, within 30 days after the date the Request for Reconsideration is denied. A Request for Reconsideration is considered denied when no action is taken 20 days after the Request is filed.

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Dated this 14 day of July, 2022.

  
Teresa Wilhelmsen, P.E., State Engineer

Mailed a copy of the foregoing Order this 14 day of July, 2022 to:

Courtney H. Crombie  
1232 North Pinecrest Canyon Road  
Salt Lake City UT 84108

Michael J. Jimenez  
2124 N Pinecrest Canyon Rd  
Salt Lake City, UT 84108

Emigration Canyon Home Owners Association  
c/o Mark Christopher Tracy  
1160 E. Buchnell Dr.  
Sandy UT 84094

BY:   
Doralee Cannon, Applications/Records Secretary