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State of Utah

DEPARTMENT OF NATURAL RESOURCES
Division of Water Rights

MICHAEL R. STYLER
Executive Director

KENT L. JONES
State Engineer/Division Director

ORDER OF THE STATE ENGINEER

For Permanent Change Application Number 51-8593 (a40263)

Permanent Change Application Number 51-8593 (a40263) in the names of East Jordan Irrigation Company, Elk Ridge City, and Ingram Barton Holdings was filed on November 7, 2014, to change the points of diversion, place of use, and uses of 108.9 acre-feet of water as evidenced by Water Right Number 51-8593. Heretofore, the water has been diverted from the following points located: (1) Surface - North 180 feet and East 1880 feet from the W¼ Corner of Section 26, T4S, R1W, SLB&M (Jordan River); (2) Surface - South 1000 feet and West 40 feet from the N¼ Corner of Section 25, T5S, R1W, SLB&M (Utah Lake). The water has been used for the irrigation of 21.78 acres from April 1 to October 31 within the service area of East Jordan Irrigation Company.

Hereafter, it is proposed to divert 108.9 acre-feet of water from points of diversion changed to: (1) Well - South 306 feet and East 386 feet from the NW Corner of Section 25, T9S, R2E, SLB&M (existing 8-inch well, 340 feet deep); (2) Well - South 288 feet and West 1032 feet from the E¼ Corner of Section 36, T9S, R2E, SLB&M (existing 12-inch well, 307 feet deep); (3) Well - South 79 feet and East 96 feet from the N¼ Corner of Section 23, T9S, R2E, SLB&M (existing 16-inch well, 928 feet deep). The water is to be used for year-round municipal purposes within the service area of Elk Ridge.

Notice of the application was published in The Daily Herald on December 4 and 11, 2014, and protests were received from US Bureau of Reclamation, Don Cole, Loafer Water Users Association, Salem Pond Company, Spencer Sheets, Ted Ross Family Trust, and George Woodruff. A late protest was filed by Salem City. A hearing was not held.

Bureau of Reclamation expresses general support of this application provided certain conditions and limitations are required to ensure no enlargement of the underlying water right and that metering and monitoring of the proposed use occurs.

Don Cole, Loafer Water Users Association, and Salem Pond Company (Salem Pond Company references several attached exhibits, but none were submitted with its written protest) express concern with the transfer of water rights from Utah Lake to ground water areas in Utah County. It is stated that no water use is reduced in Salt Lake Valley and the water is just instead stored in Jordanelle Reservoir. They believe ground water in the Southern Utah Valley area is over appropriated and no new water is available to divert under this change without adversely affecting other rights for both local surface and ground water diversions. Statements are made that local cities don't have enough secondary water to serve residents. Additional concern is expressed that the application does not meet the statutory criteria for approval and the current management plan adopted by the State Engineer is flawed on several aspects of water availability and hydrologic connectivity of surface and groundwater in Utah Valley. Allowing rights that

The East Jordan Irrigation Company holds a decreed right with a basin priority of 1877 to divert water from Utah Lake, which is the basis of this change. Loafer Water Users Association holds title to two water rights. Water Right 51-1499 is an application to appropriate filed December 2, 1960, to divert water from a spring area. Water Right 51-1700 is a diligence claim indicating the use of a spring and creek prior to 1890. The spring area is located above the city's Upper Loafer Canyon well. Under a change application filed March 1, 1979, Loafer Water Users Association filed to add an underground water well to Water Right 51-1700. This change has been certificated and indicates the well is located down gradient of the city's Upper Loafer Canyon well. Both wells are drilled in a perched aquifer that was not included in the previous studies. Loafer Water Users Association's well appears to be completed to a depth of 474 feet. The city's Upper Loafer Canyon well appears completed to a depth of 307 feet. Water Right 51-1700 is for the annual diversion of 119.21 acre-feet of water to be used for irrigation, stockwatering and domestic use.

Protestant Donald C. Cole holds Water Right 51-1363, which is an application to appropriate filed July 23, 1956. Portions of this application have been sold and moved to other uses within the basin. The remaining portion of this right allows for the domestic use of one family, water of eight cattle and irrigation of 0.55 acre of land. This well appears to be completed to a depth of 285 feet and is approximately 1.5 miles from the city's Highline well. The city's Highline well was completed to a depth of 928 feet.

Salem Pond Company filed a diligence claim, Water Right 51-4064, for the use of water from springs contributing to Salem Pond. The claim indicates to the use of water since prior to 1851 for irrigation and stockwatering. Flow records filed with the diligence claim indicate a total flow of 7.01 second-feet in 1973 with flows declining over time as indicated by a measurement performed in 1979 showing a flow rate of 5.77 second-feet. The company's protest indicates a corrected flow measurement was made by protestant Donald Cole on December 9, 2014, and the flow measured 5.87 cfs. No additional flow records have been provided to the State Engineer for this claim.

Elk Ridge City is a relatively young city located in southern Utah County in the foothills just above Salem City. Elk Ridge City relies on three main underground water wells for the city's water uses. The city primarily utilizes the Upper Loafer Canyon well (described as hereafter point number three on the signed change application) with some peak demand use from the Highline well (described as hereafter point number one on the signed change application). The Lower Loafer Canyon well has been used infrequently (described as hereafter point number two on the signed change application). These three wells are the subject of this change application.

USGS Technical Publication No. 111, "Hydrology and Simulation of Ground-Water Flow in Southern Utah and Goshen Valleys, Utah", analyzed the groundwater conditions for southern Utah Valley. The report indicates groundwater in southern Utah Valley occurs in confined and unconfined conditions and both are considered to be part of the ground water system. Page 27 of the report lists a discharge from Salem Lake in 1990 as 4,200 acre-feet (4,200 acre-feet per year

wide issues. The priority of a change application may affect the ability of a water right holder to divert water based on the change application if water is not available at the new diversion location without impairing existing rights. For localized interference, diversions under this change application could have a priority as late as November 7, 2014. Utah Code Ann. §73-3-3(3)(a) states an approved change may not be made if it impairs a vested water right without just compensation. If interference occurs from pumping the proposed wells, and the impaired party can demonstrate that the impact has occurred, the applicants may be required to replace the water impacted, limit pumping, or in some other way compensate the impaired party as determined by a court of competent jurisdiction.

Utah Code Ann. §73-3-3(3)(a), states that any person entitled to the use of water may, through the change application process, make a permanent change to an existing water right. Additionally, §73-3-8(5)(a)(i) directs the State Engineer to follow the same procedures for a permanent change application as provided by statute for applications to appropriate water. The wells under this project exist; therefore, the delivery of water under this application appears feasible provided certain conditions are observed.

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 assure that other vested rights are not impaired by the change and/or no enlargement occurs.

It is, therefore, **ORDERED** and Permanent Change Application Number 51-8593 (a40263) is hereby **APPROVED** subject to prior rights and the following conditions:

1) This change application is limited to the amount of water necessary to deplete 49.22 acre-feet of water annually up to a total diversion of 108.9 acre-feet. The change application is to be used for year-round municipal purposes within the service area of Elk Ridge. The applicant must maintain records sufficient to demonstrate that the depletion from its uses under this application do not exceed 49.22 acre-feet.

2) **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.**

3) To accommodate the approval of this permanent change application, the use of 108.9 acre-feet of water for irrigation of 21.78 acres from April 1 to October 31 at the historic points of diversion and place of use must cease.

4) The 22.5 shares of stock in the East Jordan Irrigation Company must remain dedicated to the use of water and maintained in good standing by the applicants under this application. If the stock is not held in the applicants' name, this application is invalid.

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 **August 31, 2020**, or a request for extension of time must be acceptably filed and subsequently approved; otherwise the application will expire. This approval is limited to the rights to divert and beneficially use water and does not grant any rights of access to, or use of land or facilities not owned by the applicants.

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

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

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.

Ted Ross Family Trust
c/o Donna F. Ross
11234 Elk Ridge Drive
Payson, UT 84651

Don Cole
PO Box 62
Salem, UT 84653

Salem City
c/o Randy Brailsford
PO Box 901
Salem, UT 84653

Salem Pond Company
c/o Kurt Christensen
23 South 500 West
Salem, UT 84653

George Woodruff
11206 South 1600 West
Payson, UT 84651

Loafer Water Users Association
c/o Paul Tervort
PO Box 422
Salem, UT 84653

John Larsen, River Commissioner
2399 East 10265 South
Sandy, UT 84092

Division of Water Rights
Distribution Section
c/o Ben Anderson
UTAH LAKE/JORDAN RIVER

Division of Water Rights
Water Use Program

BY: _____
Sonia R. Nava, Applications/Records Secretary