



JON M. HUNTSMAN, JR.  
Governor  
GARY R. HERBERT  
Lieutenant Governor

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

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

APR 23 2009

**RE-ISSUED ORDER OF THE STATE ENGINEER**  
**For Permanent Change Application Number 35-4514 (a33723)**

Permanent Change Application Number 35-4514 (a33723) in the names of Alvin F. Cobabe and Powder Mountain Water and Sewer District, was filed on November 13, 2007, to change the points of diversion, place of use, and nature of use of 0.045 cubic feet per second (cfs) or 13.55 acre-feet (af) of water as evidenced by Water Right Numbers 35-4514, 35-4515, and 35-4516. Heretofore, the water has been diverted from the following points located: (1) Surface - South 1400 feet and West 1750 feet from the NE Corner of Section 1, T7N, R1E, SLB&M (Pizzel Spring No.1); (2) Surface - South 400 feet and West 2550 feet from the NE Corner of Section 1, T7N, R1E, SLB&M (Pizzel Spring No.2); (3) Surface - South 4500 feet and West 1250 feet from the NE Corner of Section 1, T7N, R1E, SLB&M (Pizzel Spring No. 3). The water was to be used for the indoor domestic requirements of 200.8 equivalent domestic units, and the stockwatering requirements of 634 head of livestock (in cattle or horses or equivalent species) from January 1 to December 31, and for other purposes (operation of ski resort.). The water was used in all or portion(s) of Section 1, T7N, R1E, SLB&M.

Hereafter, it is proposed to divert 13.55 acre-feet of water from points of diversion changed to: (1) Spring - South 1360 feet and West 1740 feet from the NE Corner of Section 1, T7N, R1E, SLB&M (Pizzel Spring No. 1); (2) Spring - South 450 feet and West 60 feet from the N $\frac{1}{4}$  Corner of Section 1, T7N, R1E, SLB&M (Pizzel Spring No. 2); (3) Spring - North 1040 feet and West 1250 feet from the SE Corner of Section 1, T7N, R1E, SLB&M (Pizzel Spring No. 3). The nature of use of the water is being changed to municipal purposes within the service area of Powder Mountain Water and Sewer District.

Notice of the application was published in the Standard Examiner on December 6 and December 13, 2007. No protests were received.

Permanent Change Application Number 35-4514 (a33723) as approved on March 18, 2009. Subsequently, the applicant informed the State Engineer that the order contained an evaluation error. The State Engineer has agreed to correct the error and believes re-advertising is not necessary.

The State Engineer noted that the applicants had filed proof of beneficial use of water on prior Change Application Number 35-4516 (a6678), an application that lapsed on October 2, 2006. On November 10, 2008, a request for reconsideration was granted on a6678. Since the applicants have now filed Change Application Number 35-4514 (a33723) to supersede the prior application, the State Engineer is of the opinion that no further action is necessary on the prior application other than withdrawing it together with its proof of beneficial use.

To render a decision, the State Engineer believes that it is appropriate to examine the rates and amounts of hydrologic depletion associated with the historical water uses as compared to the proposed use to assure that there is no enlargement of the underlying water rights. In this Order of the State Engineer, the total historical diversion is calculated as the sum of the historical uses as reported in the applicant's Water Users Claim dated April 28, 1970. Using this claim of water use, the total diversion granted hereafter is a value less than noted in the heretofore of this application. In this case, it is believed that the historical water uses would have incurred the following historic rates and amounts of hydrologic depletion:

Prior Beneficial Use	Allowed Diversion	Rate of Depletion	Amount of Depletion
Domestic: 0.8 family <sup>1</sup>	0.360 acre-foot	20%	0.072 acre-foot
Stockwatering: 484 <sup>2</sup> heads <sup>3</sup>	13.552 acre-feet	100%	13.552 acre-feet
Total historical limitations:	13.912 acre-feet		13.624 acre-feet

It appears that the change was only filed on the stockwatering portion of the three underlying water rights and the 0.8 equivalent domestic unit was inadvertently left off. Because the hereafter uses did not include 0.8 equivalent domestic unit (0.36 acre-feet), the total quantity of water being changed is limited to 484 equivalent livestock units (13.55 acre-feet).

The State Engineer is of the opinion that this application can be approved without impairing prior rights if the application is limited to an annual diversion of 13.55 acre-feet and a depletion of 13.55 acre-feet of water.

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. If, in a subsequent action, the court adjudicates that this right is entitled to either more or less water, the State Engineer will adjust the figures accordingly.

It is, therefore, **ORDERED** and Permanent Change Application Number 35-4514 (a33723) is hereby **APPROVED** subject to prior rights and the following conditions:

<sup>1</sup> The applicant's Water User's Claim, dated April 28, 1970, states domestic use for 4.0 people. The State Engineer defines an equivalent domestic unit (EDU) to be 5.0 people and 1.0 EDU is evaluated at 0.45 acre-foot/year; therefore, the historical domestic use is quantified as 0.8 EDU ( $4/5 \text{ EDU} = 0.360 \text{ acre-foot/year}$ ). Domestic uses are assumed to have an associated depletion of 20% if wastewater is treated by a septic system.

<sup>2</sup> The heretofore of the change lists 634 head of livestock. The correct number is 484 head.

<sup>3</sup> The applicant's Water User's Claim, dated April 28, 1970, states stockwatering requirements of 900 sheep, 300 cattle, and 4 horses. The State Engineer defines "head of stock" as a cattle or horse; each head of stock is evaluated at 0.028 acre-foot/year while each sheep is evaluated at 0.0056 acre-foot/year. The stockwatering use of 484 head was calculated by taking the total diversion for all stockwatering and dividing by the acre-foot value for one head of stock, quantified as:  $[(900 \text{ sheep} \times 0.0056 \text{ af} + 304 \text{ head of stock} \times 0.028 \text{ af}) / 0.028 \text{ af}] = 484 \text{ head of stock}$ . Stockwatering uses are determined to have an associated depletion of 100%.

1. The applicants shall install and maintain measuring and totalizing recording devices to meter all water diverted from all sources pertaining to this application and shall annually report this data to the Division of Water Rights Water Use Program.
2. Municipal uses can only be authorized under the administration of a municipality or a quasi-municipality. Therefore, Powder Mountain Water and Sewer District, who is assumed to be a municipality or a quasi-municipality, must acquire sole ownership of Water Right Numbers 35-4514, 35-4515, and 35-4516, before putting the water to municipal use. The acquisition of the underlying rights must occur before the proof due date for this application to remain valid. The approval of this application does not authorize access to the water facilities of Powder Mountain Water and Sewer District by any other party.
3. This approval is limited to an annual diversion not to exceed 13.55 acre-feet of water for the municipal purposes within the service area of Powder Mountain Water and Sewer District. The depletion associated with the municipal use must not exceed 13.55 acre-feet.
4. Whereas this application has been filed to entirely replace and supersede prior approved Change Application Number **35-4516 (a6678)**, with this approval that prior application and its proof of beneficial use of water are considered to have been **WITHDRAWN**.
5. To accommodate the approval of this permanent change application, the use of 13.55 acre-feet of water for the indoor domestic requirements of 0.8 equivalent domestic units, and the stockwatering requirements of 484 head of livestock (in cattle or horses or equivalent species) at the historical point of diversion and place of use must cease.
6. Inasmuch as this application proposes to divert water from a surface source, the applicants are required to contact the Stream Alteration Section of the Division of Water Rights at 801-538-7240 to obtain a Stream Alteration permit in addition to this Permanent Change Application.

The 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 and acquisition of such permits. Once all other permits have been acquired, this is your authority to develop the water under the above referenced application which under Sections 73-3-10 and 73-3-12, Utah Code Annotated, 1953, as amended, must be diligently prosecuted to completion. The water must be put to beneficial use and proof must be filed on or before **March 31, 2014**, or a request for extension of time must be acceptably filed; otherwise the application will be lapsed. This approval is limited to the rights to divert and beneficially use water and does not grant any rights of access to, or use of land or facilities not owned by the applicants.

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

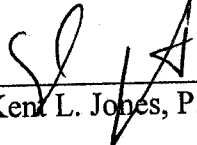
**It is the applicants' responsibility to maintain a current address with this office and to update ownership of their water right. Please notify this office immediately of any change of address or for assistance in updating ownership.**

Your contact with this office, should you need it, is with the Weber River/Western 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 an appeal with the appropriate District Court. A Request for Reconsideration must be filed with the State Engineer within 20 days of the date of this Order. However, a Request for Reconsideration is not a prerequisite to filing a court appeal. A court appeal must be filed within 30 days after the date of this Order, or if a Request for Reconsideration has been filed, within 30 days after the date the Request for Reconsideration is denied. A Request for Reconsideration is considered denied when no action is taken 20 days after the Request is filed.

RE-ISSUED ORDER OF THE STATE ENGINEER  
Permanent Change Application Number  
35-4514 (a33723)  
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Dated this 23 day of April, 2009.

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

Mailed a copy of the foregoing Order this 23 day of April, 2009 to:

Alvin F. Cobabe  
PO Box 65  
Eden, UT 84310

Powder Mountain Water and Sewer District  
P.O. Box 270  
Eden, UT 84310

Jim Wells, River Commissioner  
1627 East 1350 South  
Ogden, UT 84404

Utah Division of Drinking Water  
PO Box 144830  
Salt Lake City, UT 84114-4830

Utah Division of Water Quality  
PO Box 144870  
Salt Lake City, UT 84114-4870

Stream Alteration Section  
Division of Water Rights

Water Use Program  
Division of Water Rights

BY:   
Kelly K. Horne, Applications/Records Secretary

BEFORE THE STATE ENGINEER OF THE STATE OF UTAH

IN THE MATTER OF EXCHANGE )  
 )  
APPLICATION NO. 467 (35 Area) )

MEMORANDUM DECISION

Exchange Application No. 467 (35 Area) filed by Powder Mountain, Inc. of Ogden, Utah seeks the right to exchange a maximum of 4.0 ac. ft. of water obtained by Application No. 27608, U.S. Bureau of Reclamation and contract with Weber Basin Water Conservancy District, which has storage rights in Pineview Reservoir. The 4.0 ac. ft. of water will be released into the Ogden River and, in lieu thereof, 4.0 ac. ft. of water will be diverted from three springs at the following locations: (1) South 1400 feet and West 1750 feet; (2) South 400 feet and West 2550 feet; and (3) South 4500 feet and West 1250 feet; all from the NE Cor. Sec. 1, T7N, R1E, SLB&M; and used for the domestic purposes of 1000 people and for the stockwatering of ten horses within the NE  $\frac{1}{4}$ NE  $\frac{1}{4}$  Sec. 1, T7N, R1E, SLB&M.

This exchange was protested by Eden Waterworks Company and the Wolf Creek Irrigation Company and a hearing was held December 7, 1972 in the Ogden Municipal Building.

Eden Waterworks Company is concerned that the proposed development would interfere with the flow of the water from the spring which provides water for the Town of Eden and also that there might be possible pollution of the water by the sewage disposal system of the proposed development.

Wolf Creek Irrigation Company is concerned with possible interference with the flow of water in Wolf Creek.

The applicant claims he has no desire to infringe upon the rights of the protestants and feels that the flows of water at the protestants points of diversion will have increased because of less grazing on the lands of the applicant.

It appears that this exchange can be made subject to prior rights, especially those of the protestants, provided that certain precautions are taken.


It is, therefore, ordered and Exchange Application No. 467 (35 Area) is hereby APPROVED subject to prior rights, especially those of the protestants and the following conditions:

1. No more water may be diverted from the springs each year than the applicant is entitled to under the contract with Weber Basin Water Conservancy District.
2. The applicant shall install a permanent totalizing water meter to measure the water obtained and the meter shall be available for inspection by the river commissioner at all reasonable times as may be required by the river commissioner in regulating this exchange.
3. The water being exchanged shall be released into the Ogden River as called for by the river commissioner.

Exchange Appl. No. 467 (35 Area)  
June 6, 1973  
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This decision is subject to the provisions of Section 73-3-14, Utah Code Annotated, 1953, which provides for plenary review by the filing of a civil action in the appropriate district court within sixty days from the date hereof.

Dated this 6th day of June, 1973.

  
Dee C. Hansen, State Engineer

RAL: jh

- cc: Eden Waterworks Company  
c/o Ira A. Nuggins  
Suite 1101-09  
First Security Bank Building  
Ogden, Utah 84401
- cc: Wolf Creek Irrigation Company  
c/o Robert E. Froerer  
2610 Washington Boulevard  
Ogden, Utah 84401

BEFORE THE STATE ENGINEER OF THE STATE OF UTAH

IN THE MATTER OF EXCHANGE

APPL. NO. 1273 (35 Area)

MEMORANDUM DECISION

Exchange Application No. 1273 (35 Area) filed by Powder Mountain Inc., Box 110, Eden, Utah 84310, seeks the right to exchange a maximum of 30.0 acre-feet of water obtained by Appl. No. 27608 U.S. Bureau of Reclamation and contract with Weber Basin Water Conservancy District, which has storage rights in Pineview Reservoir. The 30.0 acre-feet of water will be released from Pineview Reservoir into the Ogden River and, in lieu thereof, 30.0 acre-feet of water will be diverted from an 8-inch well, 100-400 ft. deep, and from springs at the following points: (1) South 2800 ft. and West 1200 ft., (2) South 1400 ft. and West 1750 ft., (3) South 4500 ft. and West 1250 ft., and (4) South 400 ft. and West 2550 ft. from the NE Corner Section 1, T7N, R1E, SLB&M; and used for the domestic purposes connected with the operation of a ski resort in N½NE¼ Section 1, T7N, R1E; and S½SE¼ Section 36, T8N, R1E, SLB&M.

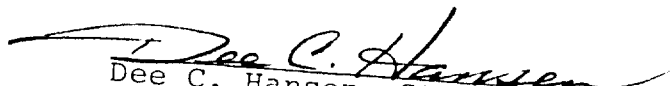
It appears that this exchange can be made provided certain precautions are taken.

It is, therefore, ordered and Exchange Appl. No. 1273 (35 Area) is hereby APPROVED subject to prior rights and the following conditions:

1. No more water may be diverted from the well each year than the applicant is entitled to under the contract with Weber Basin Water Conservancy District.
2. The applicant shall install a permanent totalizing water meter to measure the water obtained and the meter shall be available for inspection by the river commissioner at all reasonable times as may be required by the river commissioner in regulating this exchange.
3. The water being exchanged shall be released into the Ogden River as called for by the river commissioner.

This decision is subject to the provisions of Section 73-3-14, Utah Code Annotated, 1953, which provides for plenary review by the filing of a civil action in the appropriate district court within sixty days from the date hereof.

Dated this 21st day of July, 1978.

  
Dee C. Hansen, State Engineer

DCH:RAL:jj

cc: Weber Basin Water Conservancy District  
cc: J. Floyd Barnett





JON M. HUNTSMAN, JR.  
*Governor*  
GARY R. HERBERT  
*Lieutenant Governor*

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

MICHAEL R. STYLER      JERRY D. OLDS  
*Executive Director*      *State Engineer/Division Director*

JAN 27 2009

**ORDER OF THE STATE ENGINEER**  
**For Exchange Application Number 35-12099 (E4803)**

Exchange Application Number 35-12099 (E4803) in the name of Powder Mountain Water & Sewer Improvement District, was filed on January 4, 2007, to exchange 100.00 acre-feet of water as evidenced by Water Right Numbers 35-7397 (A10989) and 35-827 (A27608) owned by the U.S. Bureau of Reclamation and a contract (Number 58616) for its use with Weber Basin Water Conservancy District. The 100.00 acre-feet of water is to be released from Pineview Reservoir and, in lieu thereof, 100.00 acre-feet of water will be diverted from a well located South 2800 feet and West 1200 feet from the NE Corner of Section 1, T7N, R1E, SLB&M (existing well, depth unknown) and three springs located South 450 feet and West 60 feet from the N¼ Corner, South 1360 feet and West 1740 feet from the NE Corner and North 1040 feet and West 1250 feet from the SE Corner, all of Section 1, T7N, R1E, SLB&M. The water is to be used within the service area of Powder Mountain Water & Sewer Improvement District.

Notice of the exchange application was published in the Standard Examiner on January 18 and January 25, 2007. No protests were received.

The proposed well and springs may need to meet the requirements set forth by the Utah Drinking Water Board which is responsible for adopting and enforcing rules related to public drinking water systems. The applicant is therefore advised to contact the Utah Division of Drinking Water, the administrative arm of the Utah Drinking Water Board, to ensure that the well meets the requirements of a public drinking water system.

It is, therefore, **ORDERED** and Exchange Application Number 35-12099 (E4803) is hereby **APPROVED** subject to prior rights and the following conditions:

- 1) The basis for this exchange right is a contract between the applicant and Weber Basin Water Conservancy District. This contract must be maintained for this exchange to remain valid. No water may be withdrawn under this application if a contract is not in effect.
- 2) Total diversion under this exchange application is limited to 100.00 acre-feet of water per year for municipal purposes within the service area of Powder Mountain Water & Sewer Improvement District.
- 3) The water being exchanged shall be released from Pineview Reservoir into Ogden River as called for by the river commissioner.
- 4) Measuring devices shall be installed on all diversions, which are used under this application. All wells and springs shall have permanent totalizing meters

ORDER OF THE STATE ENGINEER

Exchange Application Number

35-12099 (E4803)

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installed, which shall be maintained in working order. These meters and measuring devices shall be available for inspection by representatives of the State Engineer at any reasonable time. The applicant shall maintain a permanent record of annual diversions of water from the point of diversion. Failure to comply could result in an order to cease the use of water and/or the revocation of this approval. The applicant is required to maintain and report on a yearly basis to for the Water Use Program of the Division of Water Rights all diversions from the source.

- 5) This approval does not grant any rights nor permits related to the design, construction or operation of a regulated public water system or related wastewater disposal facilities. Such permits or authorities as may be necessary for the proposed developments are to be acquired separately from this approval.
- 6) This approval is limited to the right to divert and beneficially use water and does not grant any rights of access to or use of land or facilities not owned by the applicant.
- 7) Exchange Application Number 35-6878 (E1482) is hereby withdrawn because Exchange Application Number 35-12099 (E4803) has been filed to replace it.

This is your authority to develop the water under the above referenced exchange 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 filed on or before **January 31, 2014**, or a request for extension of time must be acceptably filed; otherwise the application will be lapsed.

Under the authority of Section 73-3-20 of the Utah Code, the applicant is required to submit a proof of diversion and beneficial use of water upon 60 days notification by the State Engineer. The proof shall be in the same form and contain the same elements as required for appropriation or permanent change of water under Section 73-3-16 of the Utah Code Annotated.

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

Upon the submission of proof as required by Section 73-3-16, Utah Code, for this application, the applicant must identify every source of water used under this application and the amount of water used from that source. The proof must also show the capacity of the sources of supply and demonstrate that each source can provide the water claimed to be diverted under this right as well as all other water rights which may be approved to be diverted from those sources.

ORDER OF THE STATE ENGINEER

Exchange Application Number

35-12099 (E4803)

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Failure on your part to comply with the requirements of the applicable statutes may result in forfeiture of this exchange application.

The applicant is advised to contact the Stream Alteration Section of the Division of Water Rights to ascertain if a Stream Alteration permit is required for this Exchange Application.

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

Your contact with this office, should you need it, is with the Weber River/Western 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 63-46b-13 and 73-3-14 of the Utah Code which provide for filing either a Request for Reconsideration with the State Engineer or an appeal with the appropriate District Court. A Request for Reconsideration must be filed with the State Engineer within 20 days of the date of this Order. However, a Request for Reconsideration is not a prerequisite to filing a court appeal. A court appeal must be filed within 30 days after the date of this Order, or if a Request for Reconsideration has been filed, within 30 days after the date the Request for Reconsideration is denied. A Request for Reconsideration is considered denied when no action is taken 20 days after the Request is filed.

Dated this 27 day of January, 2009.

Y P A INTERIM  
Boyd Clayton, P.E., State Engineer

ORDER OF THE STATE ENGINEER

Exchange Application Number

35-12099 (E4803)

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Mailed a copy of the foregoing Order this 27 day of January, 2009 to:

Powder Mountain Water & Sewer Improvement Dist.  
c/o Chuck Panter  
P.O. Box 270  
Eden, UT 84310

Weber Basin Water Conservancy District  
2837 East Highway 193  
Layton, UT 84040

E. Blaine Johnson, River Commissioner  
1615 E. Shadow Valley Dr.  
Ogden, UT 84403

Utah Division of Water Quality  
288 North 1460 West  
Salt Lake City, UT 84116

Stream Alteration Section  
Division of Water Rights

Division of Water Rights  
Water Use Program

BY: Kelly K. Horne  
Kelly K. Horne, Appropriation Secretary