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

BRIAN C. STEED  
Executive Director

BOYD P. CLAYTON  
State Engineer/Division Director

**ORDER OF THE STATE ENGINEER**  
**For Permanent Change Application Number 35-1148 (a45040)**

JAN 30 2020

Permanent Change Application Number 35-1148 (a45040) in the name of Terakee Farms, Inc was filed on August 14, 2019, to change the point of diversion and place of use of 3.00 cubic foot per second (cfs) or 135.2 acre-feet of water as evidenced by Water Right Number 35-1148. Heretofore, the water has been diverted from a surface source located South 780 feet and West 1910 feet from the NE Corner of Section 9, T6N, R2W, SLB&M (Weber River). The water has been used for the irrigation of 33.8 acres from April 1 to October 31. The water has been used in all or portion(s) of Section 9, T6N, R2W, SLB&M.

Hereafter, it is proposed to divert 3.00 cfs or 135.2 acre-feet of water from a well located North 1063 feet and East 645 feet from the S $\frac{1}{4}$  Corner of Section 17, T6N, R2W, SLB&M (6-inch well, 100-500 feet deep). The nature of use of the water will remain the same as heretofore. The place of use of the water is being changed to all or portion(s) of Section 17, T6N, R2W, SLB&M.

Notice of the application was published in the Standard Examiner on September 5 and 12, 2019. No protests were received.

The State Engineer has two concerns with this change application. First, he is concerned that this change application may lead to enlargement of the underlying water right. Second, he is concerned that this change application may impair existing underground water rights. The following sections discuss these concerns:

***Discussion of Water Right Enlargement***

This water right was originally filed on December 17, 1959 to appropriate water from the Weber River.<sup>1</sup> A 1959 priority date makes this right junior to a majority of the water rights diverting water from the Weber River. When this water right was originally approved, the applicant was cautioned<sup>2</sup> about the reliability of water at this priority date. In 2007, the applicant filed a change application moving the point of diversion to another point on the Weber River. Again, the applicant was cautioned<sup>3</sup> regarding the reliability of this right. Now the applicant wishes to cease diverting from the Weber River, and instead divert water for these uses from an underground well, which is a more reliable source of water. This may result in water right enlargement.

<sup>1</sup> The original application to appropriate was issued a certificate of beneficial use on March 5, 1963.

<sup>2</sup> See Memorandum Decision for this right, dated July 11, 1960.

<sup>3</sup> See Order of the State Engineer for Permanent Change Application Number 35-1148 (a33728)

To evaluate whether these concerns were warranted, Division staff requested that the applicant provide all available diversion records for this right showing legal, in-priority diversion of water. The applicant was unable to provide any records of diversion. However, in response to this request, the applicant asserted, in a sworn affidavit<sup>4</sup>, that this right has always permitted the full irrigation of 33.8 acres. The applicant also stated that this right has never been restricted, by the Division of Water Rights (presumably meaning the regulation of the right by the Weber River commissioner).

Division staff consulted with the river commissioner regarding these claims. He verified that in the recent past, this right has not been cut or regulated. Additionally, he thought it possible that this right has legally diverted water from the Weber River. He noted that this section of the Weber River receives significant return flow from upstream water uses that permits late priority rights, such as this one, to continue diversion throughout the irrigation season. This supports the applicant's assertion that this right should be evaluated at its full beneficial use for 33.8 acres of irrigation.

#### ***Discussion of Impairment of Existing Underground Rights***

This change application proposes to move a surface right to a deep underground well<sup>5</sup>. The State Engineer considers changes such as this when a known hydraulic connection exists between heretofore and hereafter points of diversion.

The primary aquifers (known as Sunset and Delta aquifers) are recharged in the foothill areas adjacent to the Wasatch Mountain Range<sup>6</sup>. Contrarily, (given the late priority of this water right on the Weber River) this water has historically depended significantly on surface-based return flow from upstream users. As such, the State Engineer does not believe a hydraulic connection exists if the applicant is permitted to divert water from the deeper primary aquifers.

It is also noted that this area is subject to the *Ground-water Management Plan for the Weber Delta Sub-Area of the East Shore Area*. This plan states the following regarding change applications in this area:

*Applications will be critically reviewed if they seek to move a water right a large distance, into an area experiencing significant declines in water level, or propose to convert surface or shallow ground water right to a deep well (greater than 30 feet deep).*

The purpose of this provision is to prevent exceedance of the safe yield of the groundwater aquifer and to protect against the impairment of existing underground rights. If permitted to

<sup>4</sup> See Affidavit by Brad Blanch, dated November 14, 2019.

<sup>5</sup> The application describes the depth of the well as 100 to 500 feet, which would likely place the well into one or both of the primary aquifers in the area known as the Sunset and Delta aquifers.

<sup>6</sup> See Technical Publication No. 93, Utah Department of Natural Resources, 1990.

divert from the primary aquifers, the State Engineer believes this right will impair existing underground rights.

***State Engineer Decision***

The State Engineer does not believe this change application can be approved to divert from the primary aquifers. However, this application can be approved if diversion is limited to shallow groundwater only. The State Engineer believes water in this zone of the aquifer is hydraulically connected to this water right's historical source of supply, being heavily influenced by the Weber River and by return flow from upstream water users. This view is also in line with the groundwater management plan for the area, which limits new appropriations in the area "...from drains or shallow wells of 30 feet or less in depth." As such, the proposed well must be limited to no more than 30-feet in depth to prevent impairment of existing underground rights and to conform to the *Ground-water Management Plan for the Weber Delta Sub-Area of the East Shore Area*.

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

It is, therefore, **ORDERED** and Permanent Change Application Number 35-1148 (a45040) is hereby **APPROVED** subject to prior rights and the following condition(s):

1. Whereas this Change Application has been filed to entirely replace and supersede prior approved Change Application Number 35-1148 (a33728), with this approval that prior application is considered to have been **WITHDRAWN**.
2. The proposed well must be limited to no more than 30-feet in depth.
3. The applicant shall construct or install and maintain controlling works and a measuring device as required by Section 73-5-4 of Utah Code.
4. This change application is limited to the annual diversion of 135.2 acre-feet of water for the irrigation of 33.8 acres from April 1 to October 31.
5. To accommodate the approval of this permanent change application, the use of 3.00 cfs or 135.2 acre-feet of water to be used for irrigation of 33.8 acres from April 1 to October 31 at the historical point of diversion and place of use must cease.

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 applicant 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 applicant is strongly cautioned that other permits may be required before any development of this application can begin and it is the responsibility of the applicant 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 **January 31, 2025**, 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 applicant.

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 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.

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

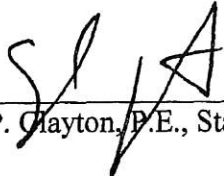
**It is the applicant's responsibility to maintain a current address with this office and to update ownership of their water right. Please notify this office immediately of any change of address or for assistance in updating ownership. Additionally, if ownership of this water right or the property with 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 Weber River/Western Regional Office. The telephone number is 801-538-7240.

ORDER OF THE STATE ENGINEER  
Permanent Change Application Number  
35-1148 (a45040)  
Page 5

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.

Dated this 30 day of January, 2020.

  
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Boyd P. Clayton, P.E., State Engineer

Mailed a copy of the foregoing Order this 30 day of January, 2020 to:

Terakee Farms, Inc  
PO Box 14016  
Ogden UT 84412

Cole Panter, River Commissioner  
PO Box 741  
Ogden, UT 84402

Division of Water Rights  
Distribution Section  
c/o Ben Anderson  
WEBER RIVER

BY:   
\_\_\_\_\_  
Doralee Cannon, Applications/Records Secretary