

2001

Ladell C. Prisbrey, Appellant, vs. Bloomington Water Company, Inc., Robert L. Morgan, State Engineer, and Leucadia Financial Corporation, a Utah Corporation, Appellee: Brief of Appellant

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_sc2

Original Brief Submitted to the Utah Supreme Court; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Kendrick J. Hafen; Thomas Clawson; VanCott, Bagley, Cornwall & McCarthy; Michael M. Quealy; John H. Mabey, Jr.; Assistant Attorneys General; attorney for appellee.

Aaron J. Prisbrey; Attorney at Law; attorney for appellant.

Recommended Citation

Brief of Appellant, *Prisbrey v. Bloomington Water*, No. 20010465.00 (Utah Supreme Court, 2001).
https://digitalcommons.law.byu.edu/byu_sc2/1865

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

COPY

IN THE UTAH SUPREME COURT

LADELL C. PRISBREY,

Appellant,

vs.

BLOOMINGTON WATER
COMPANY, INC., ROBERT L.
MORGAN, STATE ENGINEER,
and LEUCADIA FINANCIAL
CORPORATION, a Utah
Corporation,,

Appellee.

Case No. 20010465 SC

Priority No. 15

BRIEF OF APPELLANT

Kendrick J. Hafen
Attorney at Law
PO Box 623
Santa Clara, UT 84765
Attorney for Appellee

Thomas Clawson
VanCott, Bagley, Cornwall & McCarthy
P.O. Box 45340
Salt Lake City, UT 84145-0340
Attorney for Appellee

Michael M. Quealy
John H. Mabey, Jr.
Assistant Attorneys General
1594 West North Temple, Suite 300
Salt Lake City, UT 84116
Attorney for Appellee

Aaron J. Prisbrey
Attorney at Law
1071 East 100 South, Bldg. D3
St. George, UT 84770
Attorney for Appellant

IN THE UTAH SUPREME COURT

LADELL C. PRISBREY,

Appellant,

vs.

BLOOMINGTON WATER
COMPANY, INC., ROBERT L.
MORGAN, STATE ENGINEER,
and LEUCADIA FINANCIAL
CORPORATION, a Utah
Corporation,,

Appellee.

Case No. 20010465 SC

Priority No. 15

BRIEF OF APPELLANT

Kendrick J. Hafen
Attorney at Law
PO Box 623
Santa Clara, UT 84765
Attorney for Appellee

Thomas Clawson
VanCott, Bagley, Cornwall & McCarthy
P.O. Box 45340
Salt Lake City, UT 84145-0340
Attorney for Appellee

Michael M. Quealy
John H. Mabey, Jr.
Assistant Attorneys General
1594 West North Temple, Suite 300
Salt Lake City, UT 84116
Attorney for Appellee

Aaron J. Prisbrey
Attorney at Law
1071 East 100 South, Bldg. D3
St. George, UT 84770
Attorney for Appellant

TABLE OF CONTENTS

	<u>Page</u>
APPELLATE JURISDICTION	1
STATEMENT OF ISSUES PRESENTED, STANDARD OF APPELLATE REVIEW AND PRESERVATION OF THE ISSUES IN THE TRIAL COURT	2
STATEMENT OF THE CASE	2
STATEMENT OF FACTS	4
SUMMARY OF THE ARGUMENT	7
ARGUMENT	7
A. The State Engineer Failed to List Leucadia as a Party to the Change Application to the Detriment of Prisbrey.	9
B. The Legal Descriptions Contained in the Published Notice Were Incorrect and Flawed	10
C. The Notice Which Was Published Was Misleading	12
CONCLUSION	13
ADDENDUM	16

TABLE OF AUTHORITIES

Cases

Page

Longley v. Leucadia Financial Corp., 9 P.3d 762 (Utah 2000) 2,3,7,11

Constitutions, Statutes, and Rules

UTAH CODE ANN. §73-3-3	2,3,7
UTAH CODE ANN. §73-3-3(2)(a)	9
UTAH CODE ANN. §73-3-3(4)(b)	8
UTAH CODE ANN. §73-3-6	2,3,7
UTAH CODE ANN. §73-3-6(1)(a)	8
UTAH CODE ANN. §78-2-2(3)(f)	1
UAR 655-3-2	9

IN THE UTAH SUPREME COURT

LADELL C. PRISBREY,

Appellant,

vs.

BLOOMINGTON WATER
COMPANY, INC., ROBERT L.
MORGAN, STATE ENGINEER,
and LEUCADIA FINANCIAL
CORPORATION, a Utah
Corporation,

Appellee.

Case No. 20010465 SC

Priority No. 15

BRIEF OF APPELLANT

APPELLATE JURISDICTION

This appeal arises from a determination of the Utah State Engineer, unfavorable to Appellant, in an informal proceeding regarding water rights. That determination was upheld by the Fifth District Court dismissing Appellant Ladell C. Prisbrey's lawsuit from an adverse ruling of the State Engineer. As such, the Utah Supreme Court has jurisdiction over this proceeding pursuant to UTAH CODE ANN. §78-2-2(3)(f).

**STATEMENT OF ISSUES PRESENTED, STANDARD OF APPELLATE
REVIEW AND PRESERVATION OF THE ISSUES IN THE TRIAL COURT**

Issue No. 1: Did Prisbrey have standing to challenge the State Engineer's approval of Bloomington's Application for Permanent Change of Water where Prisbrey did not protest the Application within 30 days of published notice, but where the notice did not strictly comply with UTAH CODE ANN. §73-3-3 and §73-3-6, pursuant to *Longley v. Leucadia Financial Corp.*, 9 P.3d 762 (Utah 2000)?

Standard of Appellate Review: Inasmuch as the issues presented in this case are questions of law related to the construction of statutes and rules, the Appellate Court accords no particular deference to the trial court; it is reviewed for correctness. *Longley v. Leucadia Fin. Corp.*, 9 P.3d 762, 69 (Utah 2000).

Preservation of the Issue in the trial court: Memorandum in Opposition to Respondent's Motion for Summary Judgement and oral arguments and transcript of February 28, 2001. (R.125).

STATEMENT OF THE CASE

Leucadia Financial Corporation leased from Bloomington Water Company 2.33 cubic feet per second of underground water right located in Washington County with a point of diversion in Bloomington, Utah. Even though Leucadia had leased the actual water rights, Leucadia requested that Bloomington file a change application with the State Engineer to divert the water some five miles to property owned by Leucadia in the Fort

Pearce basin area. Prisbrey owns two tracts of real property located adjacent to the Leucadia property at the new point of diversion.

At Bloomington's request, the State Engineer published in the Daily Spectrum the proposed change on April 26, 1999, and May 10, 1999. On September 10, 1999, Prisbrey objected to the proposed change of diversion to the Utah State Water Board. Prisbrey argued that there was insufficient water in the area where Leucadia intended to divert the water as the water in that area was already being "mined." Prisbrey also protested the fact that Bloomington Water Company had filed the change application when Leucadia was the real right holder of the water right.

On October 15, 1999, the State Engineer issued a memorandum decision approving the change application rejecting Prisbrey's contention that water would be mined in the new diversion area.

Prisbrey filed a Petition for Judicial Review of the Informal Adjudicative Decision on November 12, 1999, with the Fifth District Court in St. George, Utah. Thereafter, Leucadia was named as a party to the lawsuit. Bloomington, Leucadia, and the State Engineer subsequently filed a joint Motion for Summary Judgment alleging that Prisbrey had no standing to contest the determination of the State Engineer as he had not filed his protest within 30 days of the last publication in the Daily Spectrum. Prisbrey asserted that the notice was invalid as the State Engineer's office did not comply with the statutory notice provisions found in UTAH CODE ANN. §73-3-3 and §73-3-6 and as articulated by this Court in *Longley v. Leucadia Financial Corp.*, 9 P.3d 762 (Utah 2000).

The Fifth District Court granted Respondent's Motion for Summary Judgment and this appeal followed.

STATEMENT OF FACTS

1. Leucadia Financial Corporation leased water right 81-441, 2.33 cubic feet per second, from Bloomington Water Company. At Leucadia's request, Bloomington filed an application to permanently change the point of diversion with the State Engineer's office on April 16, 1999. (R. 95, Statement of Fact 1; R. 5-7).

2. On April 26, 1999, and May 6, 1999, the State Engineer caused to be published in the Daily Spectrum the information regarding the change application. The notice published in the Daily Spectrum read as follows:

81-441 (a23227): Bloomington Water Company Incorporated propose(s) to change the POD & POU of water as evidenced by Application A32568, as amended by a7973, Certificate 9629.

HERETOFORE: QUANTITY: 2.33 cfs. SOURCE: 14 in. well 67 ft. deep. POD: (1) N 2942 W 1951 from SE Cor, Sec 6, T43S, R15W. USE: Irrigation: total acreage 615.0000 acs, sole supply 138.6300acs. POU: SW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec 7; S $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ Sec 8, T43S, R15W; S $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ Sec 11; S $\frac{1}{2}$, S $\frac{1}{2}$ NE $\frac{1}{4}$ Sec 12; NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec 13; N $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$ Sec 14, T43S, R16W.

HEREAFTER: QUANTITY: 2.33 cfs. SOURCE: Underground Water Wells (5) POD: (1) N 250 E 300 from SW corn. Sec 24, 18 in. well 200 ft. to 600 ft. deep; (2) N 300 E 0, 18 in. well 200 ft. to 600 ft. deep; (3) N 250 E 400 from S $\frac{1}{4}$ Corn, Sec 25, 18 in. well 200 ft. to 600 ft. deep; (4) N 625 E 200 from S $\frac{1}{4}$ Cor, 18 in. well 200 ft. to 600 ft. deep; and (5) N 500 W 350 from SE Cor, Sec 26, T43S, R15W., 18 in. well 200 ft. to 600 ft. deep (SE of "Little Valley").

USE: Same as Heretofore. POU: S $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ Sec 25; W $\frac{1}{2}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec 26; SE $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$ Sec 27; E $\frac{1}{2}$, E $\frac{1}{2}$ W $\frac{1}{2}$ Sec 34l W $\frac{1}{2}$ Sec 35, T43S, R15W. (R. 110; Addendum 1).

3. Prisbrey is the owner of real property adjacent to the land owned by Leucadia where the proposed point of diversion is to take place. (R. 119).

4. If Leucadia had been listed in the change application, as opposed to Bloomington Water Company, Prisbrey would have recognized that the location of property listed in the notice could have a direct adverse impact on his water rights and would have resulted in him filing a protest to the change application in a timely fashion as Leucadia's property borders Prisbrey's. (R. 120, paragraph 6).

5. The point of the proposed diversion is actually in the Fort Pearce Basin and miles from Little Valley. (R. 120, paragraph 7).

6. On September 10, 1999, Prisbrey filed a protest to the permanent change application with the Utah State Water Board. In that protest, Prisbrey indicated that the application should have been listed in the name of Leucadia Financial, not Bloomington Water Company, as that was misleading. Prisbrey further indicated that the underground water at the proposed point of diversion was already being "mined" at the rate of 1 ½ feet per year. Prisbrey requested that the change application be denied. (Addendum 2).

7. On October 15, 1999, the State Engineer issued a Memorandum Decision denying the relief sought in Prisbrey's request. (R. 5; Addendum 3).

8. Prisbrey filed a Petition for Judicial Review of Informal Adjudicative Proceeding with the Fifth District Court on November 12, 1999, against the parties to the agency action, Bloomington Water Company and Robert L. Morgan, State Engineer. (R. 1-4).

9. As Leucadia held the water rights at issue, the parties stipulated to the filing of an amended complaint naming Leucadia as a party. An Amended Petition adding Leucadia Financial Corporation as a party was filed on April 20, 2000. (R. 56, 58-60).

10. On December 4, 2000, Respondents, Bloomington, Leucadia, and Robert L. Morgan filed a joint Motion for Summary Judgment. Respondents moved the Court for an order dismissing the lawsuit alleging that Prisbrey did not have standing to seek judicial review of the State Engineer's decision as a protest to the notice published in the Daily Spectrum was not filed within 30 days. (R. 96).

11. Prisbrey filed a Memorandum in Opposition to the Motion for Summary Judgment, arguing he had standing as the notice was inappropriate as it did not contain the information contained in the Application, specifically, it did not identify that Leucadia was the actual party in interest, that the legal descriptions in the published notice were incorrect and the notice was misleading as it indicated the diversion was to be Southeast of Little Valley, when, in actuality, the diversion was in the Fort Pearce Basin. (R. 128).

12. On April 25, 2001, the trial court issued its ruling on the Respondents' Motion for Summary Judgment dismissing Prisbrey's lawsuit. (R. 162-7; Addendum 4).

13. On May 14, 2001, the Court entered an order granting Respondents' Motion for Summary Judgment finding that Prisbrey does not have standing to object to the proceedings as he did not file protests within 30 days of the notice which was published in the Daily Spectrum. (R. 169-72; Addendum 5). It is from this order Prisbrey appeals to this Court.

SUMMARY OF THE ARGUMENT

Pursuant to *Longley v. Leucadia Financial Corp.*, 9 P.3d 762 (Utah 2000), Prisbrey has standing to challenge the determination of the State Engineer as the notice filed in the Daily Spectrum did not strictly comply with UTAH CODE ANN. §73-3-3 and §73-3-6. First, the notice listed Bloomington Water Company as the Applicant when Bloomington had leased all of its rights to Leucadia and Leucadia should have been the applicant listed in the published notice. Second, the “legal descriptions” contained in the published notice were invalid as they were virtually undecipherable. Third, the notice indicated that the point of diversion was Southeast of Little Valley, which was clearly misleading as the point of diversion was to be located in the Fort Pearce Basin, miles away.

ARGUMENT

The issue relative to notice regarding the changing of water rights was recently addressed by this Court in *Longley v. Leucadia Financial Corp.*, 9 P.3d 762 (Utah 2000). This Court ruled in *Longley* that there must be strict compliance with the statutory notice requirements regarding water rights. Failure to provide notice in accordance with the notice statute necessitates a finding that the notice is invalid as it abrogates one’s right to be heard regarding a change application. *See, Longley v. Leucadia Financial Corp.*, 9 P.3d 762 (Utah 2000). Here, as in *Longley*, the State Engineer failed to strictly comply with the notice statutes.

Utah Code Ann. §73-3-6(1)(a) provides, “[w]hen an application is filed in compliance with this title, the State Engineer shall publish, once a week for a period of two successive weeks, a notice of the application **informing the public of the contents of the application** and the proposed plan of development. (Emphasis added). Hence, the published notice must contain all information provided in the application.

Utah Code Ann. §73-3-3(4)(b) provides the information which must be in the application. The “application shall be made upon forms furnished by the State Engineer and shall set forth:

1. **the name of the applicant;**
2. **a description of the water right;**
3. **the quantity of water;**
4. **the stream or source;**
5. **the point on the stream or source where the water is diverted;**
6. **the point to which it is proposed to change the diversion of the water;**
7. **the place purpose and extent of the present use;**
8. **the place, purpose, and extent of the proposed use; and**
9. **any other information that the State Engineer requires.”**

Utah Code Ann. §73-3-3(4)(b). (Emphasis added).

The notice published in the Daily Spectrum was invalid for three reasons. Leucadia, which is the owner of the real property adjacent to Prisbrey’s and the lessee of the water right was never listed as the requestor of the Change Application. The metes and bounds descriptions contained in the published notice did not contain reference to the Township, Range, or Section of the areas where the water was to be diverted. One proposed well was not even on property owned by Leucadia. Further, there was a

reference to the proposed diversion being by Little Valley when the proposed point of diversion was miles from Little Valley in the Fort Pearce Basin. This was misleading to anyone who would have read the notice.

A. THE STATE ENGINEER FAILED TO LIST LEUCADIA AS A PARTY TO THE CHANGE APPLICATION TO THE DETRIMENT OF PRISBREY.

There is no question that Leucadia was the lessee of the water rights it had obtained from Bloomington. In fact, Leucadia had requested that Bloomington file the change application with the State Engineer. (R. 95).

Prisbrey, as indicated in his affidavit, was prejudiced by this fact as his parcels of property were surrounded by Leucadia, not Bloomington. The trial court ruled that Leucadia did not need to be listed as a party because “Leucadia *may* be an applicant.” (R. 166; Addendum 4). The trial court entirely misses the point. Utah Code Ann. §73-3-3(2)(a) provides that: “[a]ny person **entitled to the use of the water** may make permanent or temporary changes in the. . . (i) point of diversion;. . .” (Emphasis added). Further, UAR 655-3-2 entitled “Change Application” provides that, “any person **entitled to the use of the water** may make permanent or temporary changes in the point of diversion. . .” (Emphasis added).

The statute and rule are clear and unambiguous that “any person **entitled to the use of the water** may make permanent or temporary changes” in the point of diversion. (Emphasis added). It does not permit a party that has leased its rights to make the application. By its own admission, Bloomington, the applicant listed in the notice has no

right to the water as the water right was leased to Leucadia.

Leucadia, as the right holder, is the **only** party which is “entitled to use the water” and as such **must** be included on the change application and in the notice to be published. Bloomington does not have that right, the notice published in the Daily Spectrum was invalid.

B. THE LEGAL DESCRIPTIONS CONTAINED IN THE PUBLISHED NOTICE WERE INCORRECT AND FLAWED

In the published notice there are five wells which are to be the proposed point of diversion. The published notice indicates those points as follows:

- (1) N 250 E 300 from SW corn. Sec 24, 18 in. well 200 ft. to 600 ft. deep;
- (2) N 300 E 0, 18 in. well 200 ft. to 600 ft. deep;
- (3) N 250 E 400 from S¼ Corn, Sec 25, 18 in. well 200 ft. to 600 ft. deep;
- (4) N 625 E 200 from S¼ Cor, 18 in. well 200 ft. to 600 ft. deep; and
- (5) N 500 W 350 from SE Cor, Sec 26, T43S, R15W., 18 in. well 200 ft. to 600 ft. deep (SE of “Little Valley”).

(Addendum 1).

The well identified at paragraph 1 is incorrect. The State Engineer made the determination that, “the applicant has noted that the proposed point of diversion described as (1) one above, has been incorrectly described, is on property not belonging to the applicant, and will not be developed under this application.” (R. 5).

In a similar fashion, the legal description set forth for proposed point of diversions,

(2), (3), and (4) are fatally flawed. The point of diversion (2) gives a North and East coordinate with nothing more. There is no indication as to what Township, Range, or Section that well is proposed to be located. Additionally there are no minute or seconds or feet attached to any of the numbers given in the “legal description” leaving the reader in the dark as to whether the description is true North or magnetic North. Additionally, the reader doesn’t know if the numbers represent feet, yards, meters or some other measuring unit.

Proposed point of diversion number 3 is similarly flawed. The proposed point of diversion indicates a northerly direction and easterly direction from the Corner Section 25. However, again, there is absolutely no reference to the Township or the Range wherein the proposed point of diversion is to be, nor is there any reference to feet, minutes, or seconds.

Likewise, proposed point of diversion number 4 fails to provide a Township or Range where the proposed well is to be drilled nor does it refer to feet, minutes or seconds. That is inappropriate notice.

The trial court, while recognizing that the description was “somewhat cryptic” eventually determined that it would grant deference to the State Engineer on the manner in which to give notice. (R. 165; Addendum 4).

The trial court’s determination to grant deference to the administrative agency and how to give notice runs contrary to this court’s determination in *Longley*. This Court has required strict statutory compliance with the notice. The statute requires that there be

notice of the place, purpose and extent of the proposed use. Neither the trial court, nor this court, need to defer to a state agency to determine whether a **legal description** is valid. It is fairly apparent that the metes and bounds description set forth in the notice is deficient on its face.

C. THE NOTICE WHICH WAS PUBLISHED WAS MISLEADING

The notice which was published in *The Daily Spectrum* indicated that the proposed points of diversion were to be to the “SE of ‘Little Valley’”. In actuality, the proposed points of diversion were several miles from Little Valley. The reference to Little Valley was confusing. It would be much more appropriate for the notice to indicate the area where the wells were to be placed, in the Fort Pearce Basin. Then the landowners in the area would have recognized their water rights would be affected by the proposed diversion and could have filed a timely protest.

There is no legitimate purpose to list Little Valley as being in the area of the change application. It was miles away. The notice would have been factually correct if it would have stated that the point of diversion was Southeast of Carson City, Nevada. However, a reference to Carson City, Nevada, would lead the public to believe that the proposed change of diversion would take place in Nevada. In the same fashion, reference to Little Valley in this case led Prisbrey to believe that the proposed point of diversion was in Little Valley, not in the Fort Pearce Basin.

CONCLUSION

The actions of Leucadia in this case are deceptive.¹ Bloomington and Leucadia make the frank admission that Leucadia requested that Bloomington file the change application with the State Engineer's office. This was done even though Bloomington had already leased its entire right to Leucadia. Bloomington had no right to use the water yet the notice listed Bloomington as the applicant and the notice is invalid for that reason. The obvious purpose in having Bloomington apply for the change application was to ensure that property owners adjacent to Leucadia would not know who the real party in interest was.

Secondly, the cryptic description of the point of diversion is insufficient as a matter of law. This Court need not grant deference to the administrative agency on a legal issue.

Third, the reference to Little Valley which is miles from the point of diversion, is inappropriate and was done for the sole purpose of misleading land owners such as Prsbrey.

As a matter of public policy, a state agency should make every attempt to put land owners on notice as to whether their property rights are going to be affected by a change of diversion. Especially in a state such as Utah where adjacent land owners are not given

¹ The information contained in the Notice was received from the Application supplied by Bloomington Water Company and Leucadia. It was Leucadia's intent to be deceptive in providing this information. One would assume that the State Engineer's office was not aware of the deceptive conduct of Leucadia. However, it is unfortunate that the State Engineer, now that it is aware of Leucadia's deception, apparently condones it.

actual written notice of the proposed diversion. That was not done here.

WHEREFORE, Prisbrey respectfully requests this Court remand this case back to the district court for further proceedings to determine whether the approval of the change application by the State Engineer was improper.

DATED this _____ day of January, 2002.

COPY

Aaron J. Prisbrey
Attorney for Petitioner/Appellant

CERTIFICATE OF SERVICE

I hereby certify that on the _____ day of January, 2002, a copy of the foregoing BRIEF OF APPELLANT was mailed, postage prepaid, as follows:

Utah Supreme Court	(1) original
450 South State Street	(9) copies
P.O. Box 140230	
Salt Lake City, Utah 84111-0230	

Kendrick J. Hafen	(2) copies
Attorney at Law	
PO Box 623	
Santa Clara, UT 84765	

Thomas Clawson	(2) copies
VanCott, Bagley, Cornwall & McCarthy	
P.O. Box 45340	
Salt Lake City, UT 84145-0340	

Michael M. Quealy
John H. Mabey, Jr.
Assistant Attorneys General
1594 West North Temple, Suite 300
Salt Lake City, UT 84116

(2) copies

COPY

AARON J. PRISBREY
Attorney for Plaintiff/Appellant

ADDENDUM

- 1 “Notice to Water Users” published in the Daily Spectrum
- 2 Letter of September 10, 1999, from Prisbrey to Utah State Water Board
- 3 Memorandum decision of the State Engineer
- 4 Ruling on Motion for Summary Judgment
- 5 Order Granting Respondents’ Motion for Summary Judgment

Addendum 1
“Notice to Water Users” Published in the Daily Spectrum

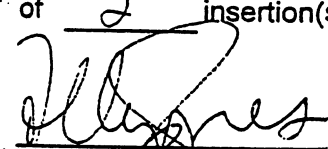
The Spectrum

PROOF
OF
PUBLICATION


STATE OF UTAH SS.
COUNTY OF WASHINGTON

I, _____, being duly sworn,
do hereby certify that the following is a true and correct copy of the original as the same appears in the files of the State Engineer, Washington County, Utah, also distributed in
this county, and that the notice:

L1153
copy of which is hereto
attached, was published in its
entirety on the 26 day
of April 1999
published again in the
said newspaper dated:

6 1999
of 2 insertion(s)

Molly Jones

I and sworn before me
on the 10 day of

May 1999

PUBLIC RESIDING
WASHINGTON COUNTY

NOTARY PUBLIC
SHAWNA BROOKS
275 E. St. George Blvd.
St. George, UT 84770
My Commission Expires
March 16th, 2001
STATE OF UTAH

NOTICE TO WATER USERS
The State Engineer, Washington County, Utah, has received applications for change of water rights, and has determined that the following applications are valid and should be granted. The State Engineer, Washington County, Utah, has determined that the following applications are valid and should be granted. The State Engineer, Washington County, Utah, has determined that the following applications are valid and should be granted.

Application No. 81-2306 (a23116): Clinton E. Lytle propose(s) to change the POD of water as evidenced by 81-2306 (NCF); 81-2307 (NCF); 81-4144 (segregated portion 81-2303, NCF); 81-4145 segregated portion 81-2304, NCF) and 81-4146 (segregated portion 81-2305, NCF).
HERETOFORE: QUANTITY: 0.267 cfs or 127.73 ac-ft. SOURCE: Magotsu Creek and four springs. POD: (1) S 800 E 400 from NW Cor, Sec 13, Source: Oak & Reservoir Hollow Springs (2) S 515 W 1040 from EX Cor, Source: Burgess Spring #1 (3) S 800 W 10 from NE Cor, Source: Dan Sill Spring (4) S 1070 W 1275 from EX Cor, Source: Burgess Spring #2 (5) N 1205 E 180 from SW Cor, Sec 15, T38S, R16W., Source: Magotsu Creek. USE: Irrigation: from Apr 1 to Nov 1, total acreage 25.4566 acs, sole supply 25.4566 acs; Domestic: 2 families.
POU: SWSW, NWSW, NWSE, SESE, Sec 15; SESE, Sec 16, T38S, R16W.
HEREAFTER: QUANTITY: 0.267 cfs or 127.73 ac-ft. SOURCE: Magotsu Creek and Six Springs. POD: (1) S 800 E 400 from NW Cor, Sec 13, Source: Oak and Reservoir Hollow Springs (2) S 1070 W 1275 from EX Cor, Source: Burgess Spring #2 (3) S 800 W 10 from NE Cor, Source: Dan Sill Spring (4) S 365 E 1465 from NW Cor, Source: Lytle Spring (5) S 500 E 1020 from EX Cor, Source: Lytle Spring #2 (6) N 1205 E 180 from SW Cor, Sec 15, Source: Magotsu Creek (7) S 735 W 410 from NE Cor, Sec 22, T38S, R16W., Source: Highway Spring (Mountain Meadows Area) USE: Same as Heretofore. POU: Same as Heretofore.

81-441 (a23227): Bloomington Water Company Incorporated propose(s) to change the POD & POU of water as evidenced by Application A32568, as amended by a7973, Certificate 9629.
HERETOFORE: QUANTITY: 2.33 cfs. SOURCE: 14 in. well 67 ft. deep. POD: (1) N 2942 W 1951 from SE Cor, Sec 6, T43S, R15W. USE: Irrigation: total acreage 615.0000 acs, sole supply 138.6300 acs. POU: SWSW, Sec 7; SWSW, SESE, NWSE, Sec 8, T43S, R15W; SWSW, SESE, Sec 11; SWSW, SESE, Sec 12; SWSW, SESE, NWSE, Sec 13; SWSW, SESE, NWSE, Sec 14, T43S, R16W.
HEREAFTER: QUANTITY: 2.33 cfs. SOURCE: Underground Water Wells (5). POD: (1) N 250 E 300 from SW Cor, Sec 24, 18 in. well 200 ft. to 600 ft. deep (2) N 300 E 0, 18 in. well 200 ft. to 600 ft. deep (3) N 250 E 400 from SW Cor, Sec 25, 18 in. well 200 ft. to 600 ft. deep (4) N 625 E 200 from SW Cor, 18 in. well 200 ft. to 600 ft. deep (5) N 500 W 350 from SE Cor, Sec 26, T43S, R15W., 18 in. well 200 ft. to 600 ft. deep (SE of "Little Valley") USE: Same as Heretofore. POU: SWSW, SESE, Sec 25; SWSW, SESE, NWSE, Sec 26; SWSW, SESE, Sec 27; EX, SESE, Sec 34; NW, Sec 35, T43S, R15W.

81-4269 (a23233): Grassy Meadows Ranch LLC propose(s) to change the POD, POU, & USE of water as evidenced by 81-4269 (Segregated Portion 81-2158, A38148c).
HERETOFORE: QUANTITY: 48.33 ac-ft. SOURCE: 14 in. well 510 ft. deep. POD: (1) S 629 W 693 from NE Cor, Sec 33, T42S, R13W. USE: Irrigation: from Mar 1 to Oct 31, total acreage 8.0550 acs, sole supply 8.0550 acs. POU: NWSE, Sec 33, T42S, R13W.
HEREAFTER: QUANTITY: 48.33 ac-ft. SOURCE: Underground Water Well (6). POD: (1) N 1210 E 270 from SW Cor, Sec 21, 18 in. well 500 ft. to 800 ft. deep (2) N 754 W 260 from SE Cor, 10 in. well 560 ft. deep (3) N 0 E 110 from NW Cor, 18 in. well 500 ft. to 800 ft. deep (4) S 10 E 110 from SW Cor, 18 in. well 500 ft. to 800 ft. deep (5) N 20 E 110 from NE Cor, Sec 28, 18 in. well 500 ft. to 800 ft. deep (6) S 629 W 693 from NE Cor, Sec 33, T42S, R13W., 14 in. well 510 ft. deep. (south of Hurricane, UT) USE: Irrigation:

Addendum 2

Letter of September 10, 1999, from Prisbrey to Utah State Water Board

AARON J. PRISBREY
ATTORNEY AT LAW
1071 EAST 100 SOUTH, BLDG. D, SUITE 3-S
ST. GEORGE, UT 84770
PHONE (435) 673-1661 FAX (435) 673-3561

September 10, 1999

Utah State Water Board
Division of Natural Resources, Southwest Region
PO Box 506
Cedar City, UT 84721-0506
via facsimile 586-2789

Re: Application for Permanent Change of Water Filed by Bloomington Water Co. for Water Right 81-441(A32568, cert. 9629)

To Whom It May Concern:

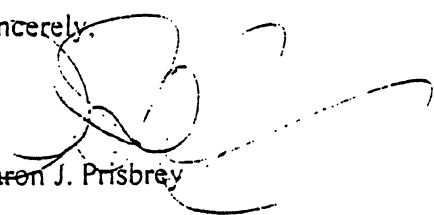
It is my understanding that the Bloomington Water Company has entered into some type of agreement with Leucadia Financial Corporation wherein Leucadia has secured an option to purchase the water rights from the Bloomington Water Company. It further appears that Leucadia intends to place some wells adjacent to property owned by LaDell Prisbrey, who I represent. The Application for Change of Diversion was apparently published in the Spectrum.

However, as the application for change of water was listed under Bloomington Water Company as opposed to Leucadia, my client was not aware that the proposed change had been published. Regardless, please consider this document as our protest to the proposed change of diversion.

In speaking with my client, it is my understanding that there is already insufficient water in the area where Leucadia intends to place their wells for a golf course. It appears that the water already appropriated in the basin of the proposed wells is being mined at a rate of one and a half feet per year. This will obviously impair the existing water rights of Mr. Prisbrey as well as the rights of other land owners in the area including the LDS Church, as Leucadia intends to pump 2.33 cubic feet per second from their wells year round.

Regardless of whether this protest is filed in a timely manner, I think it is incumbent upon your office pursuant to Utah Code Ann. § 73-3-8 to determine whether there is unappropriated water in the proposed source and that the proposed use will not impair existing water rights. Your attention to this matter is deeply appreciated.

Sincerely,


Aaron J. Prisbrey

AJP/js

cc: Mr. Ladell C. Prisbrey



Addendum 3
Memorandum Decision of the State Engineer

MEMORANDUM DECISION

The subject water right is within an area that is currently under an active adjudication order of the Fifth Judicial District Court. In evaluating the various elements of the underlying right it is not the intention of the State Engineer to adjudicate the extent of the right but rather to provide sufficient definition of the right to assure that other vested rights are not impaired by the change without compensation and that 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.

CHANGE APPLICATION NUMBER

81-441 (a23227)

PAGE 2-

The protestant is concerned that withdrawal of water from the proposed wells will impair and interfere with his rights and those of others in the area. It is contended that the groundwater levels in the vicinity are declining at present rates of withdrawal and the additional withdrawals will exacerbate this situation. It is the opinion of the protestant that there may be no unappropriated water available to be taken under this application.


The subject application proposes to change an existing water right. It does not seek to appropriate additional water. The points of diversion are being moved to new locations several miles distant from the historic source. Present information does not suggest that the proposed sources are hydrologically disconnected from the historic source. However, the proposed changes may introduce a situation of more direct influence with other existing sources that was not evident under the historic use. The State Engineer does not find it reasonable to reject a change application solely on the basis that it may result in possible interference with other rights. However, approval of any application is given upon conditions intended to provide reasonable protection for the prior rights of other water users.

It is, therefore, ORDERED and Application Number 81-441 (a23227) is hereby APPROVED subject the following conditions:

- 1) This approval is given subject to prior rights and the applicant shall be liable to compensate or replace water to any impaired parties as may be stipulated or decreed by a court of competent jurisdiction.
- 2) The subject water right is limited to irrigation requirements of 138.635 acres with a maximum diversion allowance of 831.81 acre-feet per year for this use. Neither the acreage nor diversion limit shall be exceeded under this approval.
- 3) Any wells drilled under this approval and found to be unsuitable for the proposed use shall be properly abandoned in accordance with Utah State Administrative Rules for Water Well Drillers, Section R655-4-12. Point Number (1) is deleted from the filing due to its unsuitability for development.
- 4) Now that the water right is moved out of the historic well, it shall be properly abandoned in accordance with Utah State Administrative Rules for Well Drillers, Section R655-4-2.

This Decision is subject to the provisions of Rule R655-6-17 of the Division of Water Rights and to Sections 63-46b-13 and 73-3-14 of the Utah Code Annotated, 1953, 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 Decision. 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 Decision, 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 15th day of October, 1999.


Robert L. Morgan, P.E., State Engineer

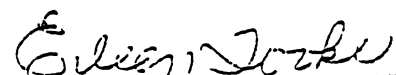
RLM:KEC:et

Mailed a copy of the foregoing Memorandum Decision this 15th day of October, 1999, to:

Bloomington Water Company Incorporated
144 West Bringham Rd., Suite 42
St. George, UT 84770

Kendrick J. Hafen
Attorney at Law
PO Box 623
Santa Clara UT 84765

Aaron J. Prisorey
Attorney at Law
1071 East 100 South - Bldg D, Ste 3-S
St. George UT 84770

BY: 
Eileen Tooke, Secretary

Addendum 4
Ruling on Motion for Summary Judgment

S-25-01
J8/cal.

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

LADELL C. PRISBREY,

Petitioner,

vs.

**BLOOMINGTON WATER COMPANY,
INC., ROBERT L. MORGAN, STATE
ENGINEER, and LEUCADIA FINANCIAL
CORPORATION, a Utah corporation,**

Respondents.

**RULING ON MOTION FOR
SUMMARY JUDGMENT**

Case No. 990502168

Judge James L. Shumate

This matter comes before the Court pursuant to Respondent's Motion for Summary Judgment, filed November 30, 2000. Petitioner responded on December 19, 2000, and Respondent replied on February 21, 2001. A hearing was held on the matter on February 28, 2001, at which time both sides presented argument to the Court.

Having heard the parties' arguments, having reviewed the parties' memoranda, having reviewed the relevant law on the matter, and being fully advised in the premises, the Court now rules as follows:

BACKGROUND

This matter involves a dispute over water rights, and notice provided by the State Engineer's office regarding an application to change the point of diversion of those rights.

Respondent Bloomington Water Company ("Bloomington") owns several water rights in Southern Utah. Defendant Leucadia Financial Corporation ("Leucadia") has leased water rights from Bloomington. Leucadia wanted to change the point of diversion of several of the water rights in which it held the beneficial interest. Therefore, Bloomington filed the appropriate change application, at Leucadia's request, with the State Water Engineer, pursuant to Utah Code Ann. 73-3-3.

Pursuant to Utah Code Ann. §73-3-6, the State Engineer published notice of the application for two successive weeks in a newspaper of general circulation in Washington County (the county where the subject water right are located). Under Utah Code Ann. §73-3-7, the time for filing a protest to the application expired May 26, 1999. Petitioner admits that he did not file his protest before this date, but asserts that he is properly a party to this case as the State Engineer allowed him to appear in the matter, despite the fact that his protest was untimely.

Petitioner asserts that the Notice published by the State Engineer was deficient for two reasons: First, Petitioner argues that the Notice published by the State Engineer was in the name of Bloomington, not Leucadia. Petitioner argues that, because Leucadia was the real party in interest, Leucadia should have been listed as such in the Notice. Petitioner argues that this was critical because he did not know that the water rights listed, with Bloomington as the owner, were the water rights that might affect his property. He asserts that as far as he knew the water rights which might impact his interest were held by Leucadia and, had Leucadia been listed in the Notice, he would have realized that the water rights in the Notice were those that were adjacent to his property.

Second, Petitioner asserts that the Notice contained a faulty description of the points of diversion in question.

Respondents argue that Leucadia is not the "applicant" in this case, and that the description given as to the points of diversion is in a commonly used format, and therefore does give proper notice as to location.

ANALYSIS

Because of the substance of this ruling, the Court does not reach the issue of whether Petitioner is a proper party to the action.

THE COURT GRANTS DEFERENCE TO THE STATE ENGINEER IN DETERMINING THE FORMAT IN WHICH LOCATIONS ARE LISTED IN A NOTICE.

Although the manner of describing the locations of the proposed points of diversion that is the subject of this case may not be clear to one who has no background whatsoever in the field of describing points of diversion, the Court will grant the State Engineer a certain latitude in determining how to publish the description of the location of the points of diversion.

The description in the Notice was as follows:

POD: (1) N 250 E 300 from SW Cor, Sec 24, 18 in. well 200 ft. deep (2) N 300 E 0, 18 in. well 200 ft. to 600 ft. deep (3) N 250 E 400 from S $\frac{1}{4}$ Cor, Sec 25, 18 in. well 200 ft. to 600 ft. deep (4) N 625 E 200 from S $\frac{1}{4}$ Cor, 18 in. well 200 ft. to 600 ft. deep (5) N 500 W 350 from SE Cor, Sec 26, T43S, R15W., 18 in. well 200 ft. to 600 ft. deep. (SE of "Little Valley")

Petitioner argues that this form of listing the points of diversion is fatally flawed in that each separate point does not have a complete description (some are without Township, Range

or Section), and therefore does not give an accurate description of the location of the proposed points of diversion.

Respondents argue that the location as listed is a run-on hybrid "sentence" that uses commas to indicate the omission of words understood by the context of the "sentence", or to separate elements of the sentence that grammatically "belong" to two or more wells, but were only expressed after the last well.¹

Thus, in this case, the "missing" Township, Range and Section coordinates are found at the end of the "sentence" and apply to the entire description.

The Court will grant deference on this issue to the State Engineer. Although the Court initially found the description as given to be somewhat cryptic, use of this type of notice is evidently common-place in the trade. A neighboring water rights holder, who is presumed to have a certain amount of expertise or experience in water rights description, should understand the location of the points of diversion as listed in the subject Notice.

By his status as a water-right owner, Petitioner is deemed to have sufficient expertise and/or experience in the area to understand this common, usual format for listing locations.

Therefore, the description as published in the Notice by the State Engineer was sufficient to give notice.

THERE IS NO STATUTORY REQUIREMENT THAT A "REAL PARTY IN INTEREST" BE IDENTIFIED IN A NOTICE.

¹Respondents use the following sentence as an example: "We approve of, and are willing to participate in, the 4-day work week." Respondents point out that the element "the 4-day work week" belongs to both of the preceding phrases.

There is no statutory requirement that a "real party in interest" must be identified in a notice on a change application.

Petitioner argues that if Leucadia had been listed in the Notice, that he would have recognized the rights in question as some proximity to his interests.

Respondents argue that the State Engineer only has the ability to act on change applications filed by the owner of a water right. They argue that because Bloomington is the owner of the rights in question, they are the only "applicant" under Utah Code Ann. §73-3-3 who can be recognized by the State Engineer. This assertion is incorrect. Utah Code Ann. 73-3-3(2)(a) reads:

- (2) (a) Any person *entitled to the use of water* may make permanent or temporary changes in the:
 - (i) point of diversion; . . .

UCA §73-3-3(2)(a) (1953, as amended) (emphasis added).

Here, Leucadia is a party entitled to the use of water. By this statutory language, Leucadia *may* be an applicant. However, the simple fact that Leucadia *may* be an applicant does not change the fact that there is no requirement that Leucadia, as the party in interest, be listed in the Notice. There is no rule that says that the notice is deficient if it does not list them.

Further, the Court finds compelling the Respondents' argument that the subject Notice advertised the exact locations of the proposed points of diversion, and that the failure to include Leucadia in the Notice does not change that fact. As stated above, as a water-right owner, Petitioner is deemed to have sufficient knowledge of this type of description and should have been able to recognize the points as relevant to his interest.

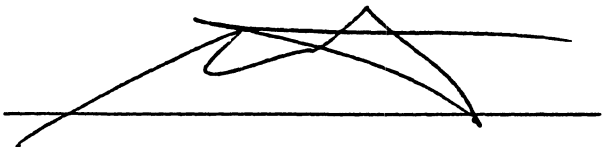
CONCLUSION

The location in the Notice was in the form of a run-on hybrid "sentence." Such format is common-place in the "water-right holding community". By virtue of his position as a water-right owner, Petitioner is deemed to have the knowledge and/or expertise necessary to understand this, and to decipher the location given in the Notice.

The fact that Leucadia *could* have been an applicant in this case is of no consequence. There is no rule that says that they must be listed in order for the Notice to be sufficient. Further, the Notice here gave the exact location of the proposed points of diversion. The fact that Leucadia was not listed in the Notice does not change this fact, or excuse Petitioner from not recognizing the locations in the Notice by virtue of his knowledge and/or expertise in this field.

Respondents' Motion for Summary Judgment is hereby granted.

DATED this 23 day of April, 2001.



JAMES L. SHUMATE District Court Judge

Certificate of Mailing

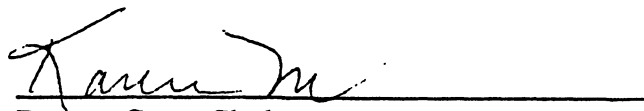
I hereby certify that on this 26 day of April 2001, I mailed true and correct copies of the above and foregoing document, first-class postage prepaid, to the following:

Aaron J. Prisbrey, Esq.
ATTORNEY AT LAW
1071 E. 100 South, Bldg. D, Suite 3
St. George, UT 84770

Thomas W. Clawson, Esq.
VAN COTT, BAGLEY, CORNWALL & McCARTHY
50 s. Main Street, Suite 1600
Salt Lake City, UT 84144

Heather Shilton, Esq.
Michael M. Quealy, Esq.
ASSISTANT ATTORNEYS GENERAL
1594 W. North Temple, Suite 300
Salt Lake City, UT 84116

Kendrick J. Hafen, Esq.
ATTORNEY AT LAW
P.O. Box 623
Santa Clara, UT 84765


Deputy Court Clerk

Addendum 5
Order Granting Respondents' Motion for Summary Judgment

RECEIVED
MAY 09 2001
hand delivered
3:03 p.m.

VAN COTT, BAGLEY, CORNWALL & McCARTHY
THOMAS W. CLAWSON, No. 5679
Attorneys for Leucadia Financial Corporation
50 South Main Street, Suite 1600
Salt Lake City, UT 84144
Telephone: (801) 532-3333

MICHAEL M. QUEALY, No. 2667
HEATHER SHILTON, No. 7819
ASSISTANT ATTORNEYS GENERAL
MARK SHURTLEFF, No. 4666
UTAH ATTORNEY GENERAL
Attorneys for Utah State Engineer
1594 West North Temple, Suite 300
Salt Lake City, UT 84116
Telephone: (801) 538-7227

KENDRICK J. HAFEN, No. 4217
Attorney for Bloomington Water Company, Inc.
P. O. Box 623
Santa Clara, UT 84765
Telephone: (435) 634-0244

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

LADELL C. PRISBREY,)	
)	
Petitioner,)	ORDER GRANTING RESPONDENTS'
)	MOTION FOR SUMMARY
v.)	JUDGMENT
)	
BLOOMINGTON WATER COMPANY,)	
INC., ROBERT L. MORGAN, STATE)	
ENGINEER, and LEUCADIA)	Civil No. 990502168
FINANCIAL CORPORATION, a Utah)	Judge James L. Shumate
corporation,)	
)	
Respondents.)	
)	

Respondents' Motion for Summary Judgment came before this Court for hearing on February 28, 2001. The Honorable James L. Shumate presided. Petitioner was present and represented by his counsel Arron J. Prisbrey. Respondent Leucadia Financial Corporation ("Leucadia") was represented by Thomas W. Clawson. Respondent Robert L. Morgan, State Engineer, was represented by Michael M. Quealy and Heather Shilton. Respondent Bloomington Water Company, Inc. ("Bloomington") was represented by Kendrick J. Hafen. Based on the Respondents' Motion for Summary Judgment, Memorandum in Support of Respondents' Motion for Summary Judgment, Memorandum in Opposition to Respondents' Motion for Summary Judgment, Respondents' Reply Memorandum (Motion for Summary Judgment), oral argument of counsel, a review of the relevant law on the matter, and for other good cause appearing thereon;

THE COURT HEREBY FINDS as follows:

1. Bloomington, as the owner of the water rights at issue in this matter, filed an appropriate change application, at Leucadia's request, with the State Engineer, pursuant to Utah Code Ann. § 73-3-3 ("Bloomington's Change Application").
2. On April 26, 1999, and May 6, 1999, the State Engineer published notice of Bloomington's Change Application in The Spectrum, a newspaper of general circulation in Washington County (the county in which the pertinent water rights are located), pursuant to Utah Code Ann. § 73-3-6.
3. Under Utah Code Ann. § 73-3-7, the time for filing a protest to Bloomington's Change Application expired on May 26, 1999. Petitioner admits that he did not file a protest with the State Engineer before this date.

4. The published notice of Bloomington's Change Application contained information that informed the public of the contents of the application and the proposed plan of development.

5. The published notice of Bloomington's Change Application provided the exact location of the proposed points of diversion and otherwise described the water rights at issue with sufficient detail to give notice of Bloomington's Change Application to other water users, including Petitioner.

WHEREFORE, THE COURT CONCLUDES as follows:

1. The State Engineer's published notice of Bloomington's Change Application was sufficient to comply with Utah law.

2. There is no statute or rule that required Leucadia to be listed as an "applicant" under Bloomington's Change Application.

3. Petitioner's protest of Bloomington's Change Application was untimely pursuant to Utah Code Ann. § 73-3-7 and Utah Admin. Code Rules R655-6-3(F), -3(K).

3. Interested persons must file protests with the State Engineer within twenty days after the notice of a change application is published in order to participate in the administrative proceedings as a party. Petitioner did not file a timely protest, and therefore, did not participate in the administrative proceedings as a party. Because Petitioner failed to exhaust his administrative remedies as required by Utah Code Ann. § 63-46b-14, Petitioner does not have standing to seek judicial review of the State Engineer's October 15, 1999 decision granting Bloomington's Change Application.

IT IS HEREBY ORDERED that Respondents' Motion for Summary Judgment is granted, and Petitioner's Amended Petition for Judicial Review of Informal Adjudicative Proceeding and Request for Trial De-Novo is dismissed.

DATED this ____ day of May, 2001.

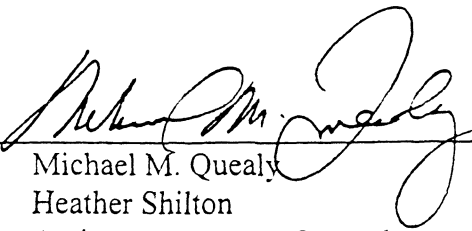
BY THE COURT


James L. Shumate
Fifth Judicial District Court Judge

APPROVED AS TO FORM:

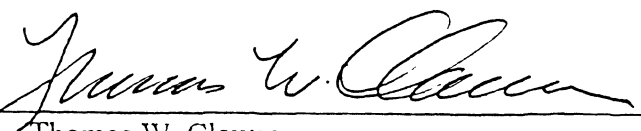
By _____
Arron J. Prisbrey
Attorney for Petitioner

MARK SHURTLEFF
UTAH ATTORNEY GENERAL

By:  _____
Michael M. Quealy
Heather Shilton
Assistant Attorneys General
Attorneys for Robert L. Morgan

By:  _____
Kendrick J. Hafen
Attorney for Bloomington Water Company, Inc.

VAN COTT, BAGLEY, CORNWALL & McCARTHY

By:  _____
Thomas W. Clawson
Attorneys for Leucadia Financial Corporation

CERTIFICATE OF SERVICE

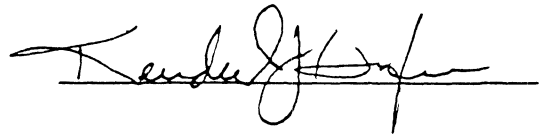
I hereby certify that I caused a true and correct copy of the (PROPOSED) ORDER GRANTING RESPONDENTS' MOTION FOR SUMMARY JUDGMENT, to be mailed first class, postage prepaid, on May 9, 2001, to the following:

Thomas W. Clawson, Esq.
Van Cott, Bagley, Cornwall & McCarthy
50 South Main Street, Ste 1600
Salt Lake City, UT 84144

Michael M. Quealy, Esq.
Heather Shilton, Esq.
Assistant Attorneys General
1594 West North Temple, #300
Salt Lake City, UT 84116

And, to be hand delivered, on May 9, 2001, to the following:

Aaron J. Prisbrey, Esq.
1071 East 100 South
Building D, Suite 3
St. George, UT 84770

A handwritten signature in black ink, appearing to read "Kender J. H. [unclear]", written over a horizontal line.