

2001

Ladell C. Prisbrey v. Bloomington Water, ROBERT  
L. MORGAN, STATE ENGINEER, and  
LEUCADIA FINANCIAL CORPORATION, a  
Utah corporation, : Brief of Appellee

Utah Supreme Court

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IN THE UTAH SUPREME COURT

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LADELL C. PRISBREY,

Appellant,

v.

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

Appellees.

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Case No. 20010465 SC

Priority No. 15

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UTAH SUPREME COURT

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PAT BARTHOLOMEW



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## **JURISDICTION OF UTAH SUPREME COURT**

The Utah Supreme Court has jurisdiction over this appeal pursuant to Utah Code Ann. § 78-2-2(3)(f) (Supp. 2001).

### **STATEMENT OF ISSUES AND STANDARDS OF REVIEW**

Whether the published notice of the Change Application strictly complied with the requirements of Utah Code Ann. § 73-3-6 and otherwise provided meaningful notice of the Change Application?

**Standard of Review:** This issue presents questions of law related to statutory construction. The Court therefore reviews the trial court's rulings for correctness. *Longley v. Leucadia Fin. Corp.*, 2000 UT 69 ¶13, 9 P.3d 762 (Utah 2000) (citing *Platts v. Parents Helping Parents*, 947 P.2d 658, 661 (Utah 1997)).

### **DETERMINATIVE STATUTES**

The full text is found in the Addendum. (None of the determinative statutes have been substantively amended since the Change Application was filed in 1999. Accordingly, citations are to the current versions of the pertinent statutes.)

Utah Code Ann. § 63-46b-14(2) (Repl. 1997).  
Utah Code Ann. § 73-3-2(2)(d)(i) (Supp. 2001).  
Utah Code Ann. § 73-3-3(4)(b) (Supp. 2001).  
Utah Code Ann. § 73-3-3(5)(a) (Supp. 2001).  
Utah Code Ann. § 73-3-6 (Supp. 2001).  
Utah Code Ann. § 73-3-7(1)(a) (Supp. 2001)  
Utah Code Ann. § 73-3-14(1)(a) (Repl. 1989).

### **STATEMENT OF CASE**

#### **Nature of the Case**

Appellant Ladell C. Prisbrey (hereinafter "Prisbrey") appeals from the district court's Order Granting Respondents' Motion for Summary Judgment entered on May

14, 2001 (the “District Court’s Order”). (For a copy of the District Court’s Order, see Addendum at A-7.) Prisbrey sought de novo review by the district court of the State Engineer’s October 15, 1999 Memorandum Decision (the “State Engineer’s Decision”) approving Bloomington Water Company, Inc.’s (“Bloomington”) Application for Permanent Change of Water (the “Change Application”). The district court granted summary judgment dismissing Prisbrey’s Amended Petition for Judicial Review of the Informal Adjudicative Proceedings and Request for Trial De Novo (the “Amended Petition”) on the basis that Prisbrey did not have standing to seek judicial review of the State Engineer’s Decision. The district court found that the published notice of the Change Application was sufficient to comply with Utah law and that Prisbrey did not timely protest the Change Application as required under Section 73-3-7(1)(a) of the Utah Code. Therefore, Prisbrey failed to exhaust his administrative remedies pursuant to Sections 73-3-14(1)(a) and 63-46b-14(2) of the Utah Code and dismissal of the Amended Petition was proper

### **Course of Proceedings and Disposition Below**

#### **Informal Adjudicative Proceeding Before the State Engineer**

Bloomington is the owner of Water Right No. 81-441 (the “Subject Water Rights”). Leucadia Financial Corporation (“Leucadia”) has leased the Subject Water Rights from Bloomington, including an option to purchase the water rights, provided that Leucadia can use the Subject Water Rights to develop certain real property in Washington County. That property is located near lands owned by Prisbrey. On or about April 16, 1999, Bloomington filed the Change Application to move the point of

diversion and place of use for the Subject Water Rights. In connection with the Change Application, on April 26, 1999, and again on May 6, 1999, the State Engineer published the statutorily required notice of the Change Application in *The Spectrum* newspaper in Washington County. The published notice stated that protests to the Change Application must be filed with the State Engineer by May 26, 1999. Prisbrey did not file a protest to the Change Application on or before May 26, 1999.

The State Engineer approved the Change Application by Memorandum Decision dated October 15, 1999.

#### Trial De Novo Before the District Court

On November 12, 1999, Prisbrey filed his Petition for Judicial Review of Informal Adjudicative Proceeding and Request for Trial De-Novo in the Fifth District Court in and for Washington County in St. George, Utah (the “Original Petition”). Prisbrey subsequently filed his Amended Petition adding Leucadia as a party. Respondents below, Appellees herein, subsequently filed a motion for summary judgment seeking dismissal of the Amended Petition. The basis for Appellees’ motion was that Prisbrey lacked standing to seek de novo review of the State Engineer’s Decision because Prisbrey failed to exhaust his administrative remedies as required by law by not filing a timely protest to the Change Application pursuant to Section 73-3-7(1)(a) of the Utah Code. Prisbrey opposed Appellees’ motion on the grounds that the published notice was invalid, and therefore, the period to protest the State Engineer’s Decision had not been triggered under this Court’s decision in *Longley v. Leucadia Fin. Corp.*, 2000 UT 69, 9 P.3d 762 (Utah 2000). The district

court granted Respondents'/Appellees' motion for summary judgment and Prisbrey has appealed that decision.

### STATEMENT OF FACTS

1. Bloomington is the record owner of the Subject Water Rights. Leucadia leased the Subject Water Rights, including an option to purchase, from Bloomington, and pursuant to that lease, requested Bloomington (as the record owner of the water rights) to file an application to permanently change the point of diversion and place of use for the Subject Water Rights. (R. 95.)

2. In connection with the Change Application and pursuant to Utah Code Ann. § 73-3-6, the State Engineer published notice of the Change Application on April 26, 1999, and again on May 6, 1999, in *The Spectrum* newspaper in Washington County, Utah. The May 6, 1999 notice stated that protests to the Change Application must be filed with the State Engineer by May 26, 1999. *The Spectrum* is a newspaper of general circulation in Washington County, the county in which the source of supply for the Subject Water Rights is located and where the water covered by the water right is to be used. (R. 95.)

3. The portion of the published notice pertaining exclusively to the Change Application states, in its entirety:

81-441 (a23227): Bloomington Water Company  
Incorporated propose(s) to change the POD [point of  
diversion] & POU [place of use] 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: SW1/4NW1/4 Sec 7; S1/2NE1/4, SE1/4NW1/4, N1/2SE1/4 Sec 8, T43S, R15W; S1/2NE1/4, SE1/4 Sec 11; S1/2, S1/2NE1/4 Sec 12; NE1/4, E1/2NW1/4, NE1/4SW1/4, NW1/4SE1/4 Sec 13; N1/2NE1/4, NE1/4NW1/4 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 S1/4 Cor, Sec 25, 18 in. well 200 ft. to 600 ft. deep (4) N 625 E 200 from S1/4 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") USE: Same as Heretofore. POU: S1/2SW1/4, SE1/4 Sec 25; W1/2NE1/4, E1/2NW1/4, SW1/4, S1/2SE1/4, NW1/4SE1/4 Sec 26; SE1/4SW1/4, S1/2SE1/4 Sec 27; E1/2, E1/2W1/2 Sec 34; W1/2 Sec 35, T43S, R15W.

(R. 109, 110.)

4. Prisbrey did not file a protest to the Change Application on or before May 26, 1999, as required under Utah Code Ann. § 73-3-7(1)(a) (Supp. 2001).

(R. 96.)

5. On October 15, 1999, the State Engineer issued the State Engineer's Decision approving the Change Application. (R. 96.) Prisbrey was not a party to the administrative proceeding having failed to file a timely protest. Therefore, the Memorandum Decision did not deny the relief sought by Prisbrey in his September 10, 1999 letter addressed to the Utah State Water Board<sup>1</sup> as claimed by Prisbrey. (See

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<sup>1</sup> The State Engineer is the Director of the Division of Water Rights and is charged with administering water rights. Prisbrey's protest letter was improperly addressed

Brief of Appellant at 5, Statement of Fact No. 7.) The effect of the State Engineer's Decision simply was to approve the Change Application.

6. On November 12, 1999, Prisbrey filed the Original Petition. (R. 1.) Prisbrey did not name Leucadia as a defendant. Bloomington, the State Engineer, and Leucadia subsequently stipulated that Prisbrey could file the Amended Petition, which added Leucadia as a party. (R. 35.) The parties did not stipulate that Leucadia "held" the Subject Water Rights. At all relevant times, Bloomington owned—and still does own—the Subject Water Rights.

### **SUMMARY OF ARGUMENT**

The published notice strictly complied with the statutory requirements regarding notice of change applications. It provided notice to the public of the contents of the application and the proposed plan of development. The notice contained exactly the information needed by interested parties to determine whether such a party should protest the Change Application. The published notice satisfied the purposes of the statutory scheme by satisfying Prisbrey's right to meaningful notice and protecting his right to protest the Change Application.

The published notice accurately located each point of diversion listed in the Change Application. Using commonly used punctuation and land survey conventions, each point of diversion was referenced to a land survey corner. As a water right holder, Prisbrey is deemed to be knowledgeable regarding how points of

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and the references in the Brief of Appellant to the Utah State Water Board are incorrect.

diversion are described in water rights matters. Accordingly, Prisbrey understood, or should have understood, the locations of the points of diversion as listed in the published notice. Moreover, the reference to “SE of ‘Little Valley’” in the notice was not misleading nor deceptive—it was intended merely to provide a common description of the general area involving the Change Application. It was not intended to be a specific description of a well location—those were already described in the notice in substantial detail. The common description accurately described the general area affected by the Change Application; the proposed points of diversion and places of use are located southeast of Little Valley.

Bloomington was the proper applicant under the Change Application. Bloomington is the record owner of the Subject Water Rights. Bloomington is the “appropriator” of the water rights pursuant to the statutory scheme, and therefore, Bloomington is the “person entitled to the use of water” for purposes of filing the Change Application. The State Engineer did not err by not listing Leucadia in the notice because no statute or rule required that Leucadia be listed as an applicant under Bloomington’s Change Application.

## **ARGUMENT**

### **I. THE NOTICE OF THE CHANGE APPLICATION STRICTLY COMPLIED WITH THE STATUTORY REQUIREMENTS.**

The published notice of the Change Application strictly complied with all of the statutory requirements under Section 73-3-6 of the Utah Code (hereinafter, the “Notice Provision”). Strict compliance is required under this Court’s recent decision

in *Longley v. Leucadia Fin. Corp.*, 2000 UT 69 ¶ 26, 9 P.3d 762.<sup>2</sup> The published notice fully informed the public of the contents of the Change Application and the proposed plan of development. The published notice, therefore, fulfilled the purpose of the statutory requirements—to provide meaningful notice to the public that will protect the right of interested parties to protest change applications. *See e.g., Longley*, 2000 UT 69 at ¶ 26, 9 P.3d 762; *see also Longley*, 2000 UT 69 at ¶ 29, 9 P.3d 762 (Howe, C.J., concurring).

The Notice Provision provides, in pertinent part:

(1)(a) When 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.

Utah Code Ann. § 73-3-6(1)(a) (Supp. 2001) (emphasis added).<sup>3</sup> The published notice stated (in its entirety):

81-441 (a23227): Bloomington Water Company Incorporated propose(s) to change the POD [point of diversion] & POU [place of use] 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

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<sup>2</sup> The notice provision at issue in the *Longley* decision involved a similar, albeit distinct, statutory notice provision regarding extension requests. The present matter involves a completely different statutory notice provision. For example, compare Section 73-3-6(1)(a) (notice of applications) with Section 73-3-12(2)(f)(ii) of the Utah Code (notice of extension requests).

<sup>3</sup> By way of comparison, the statutory notice provision at issue in *Longley* required that the published notice of an extension request inform the public regarding the diligence claimed and the reason for the extension request.

1951 from SE Cor, Sec 6, T43S, R15W. USE: Irrigation: total acreage 615.0000 acs, sole supply 138.6300 acs. POU: SW1/4NW1/4 Sec 7; S1/2NE1/4, SE1/4NW1/4, N1/2SE1/4 Sec 8, T43S, R15W; S1/2NE1/4, SE1/4 Sec 11; S1/2, S1/2NE1/4 Sec 12; NE1/4, E1/2NW1/4, NE1/4SW1/4, NW1/4SE1/4 Sec 13; N1/2NE1/4, NE1/4NW1/4 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 S1/4 Cor, Sec 25, 18 in. well 200 ft. to 600 ft. deep (4) N 625 E 200 from S1/4 Cor, 18 in. well 200 ft. to 600 ft. deep (5) N 500 W 350 from SE Co, Sec 26, T43S, R15W., 18 in. well 200 ft. to 600 ft. deep. (SE of "Little Valley") USE: Same as Heretofore. POU: S1/2SW1/4, SE1/4 Sec 25; W1/2NE1/4, E1/2NW1/4, SW1/4, S1/2SE1/4, NW1/4SE1/4 Sec 26; SE1/4SW1/4, S1/2SE1/4 Sec 27; E1/2, E1/2W1/2 Sec 34; W1/2 Sec 35, T43S, R15W.<sup>4</sup>

This was meaningful notice in the sense that it provided the information needed by an interested party to determine whether or not the party should protest the Change Application. The notice provided the name of the applicant; a description of the water right involved; the quantity of water involved; the source of the water right; the point at which the water is diverted; the points at which the applicant proposes to change the point of diversion; the place, purpose, and extent of the present use of the water; the place, purpose, and extent of the proposed use; and other information required by the State Engineer (*e.g.*, the diameter and depth of the proposed wells).

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<sup>4</sup> For a copy of the actual notice, see Addendum at A-13. The above-quoted notice is an accurate statement of the published notice. The published notice as quoted in Statement of Fact No. 2 in the Brief of Appellant contains numerous punctuation errors.

All of the listed items are required by statute to be included in a change application. Utah Code Ann. § 73-3-3(4)(b) (Supp. 2001) Thus, the published notice contained a description of all of the statutorily required information for the Change Application, including the proposed plan of development, which is contained in the “Hereafter” section of the published notice. Because the notice contained information that described the contents of the Change Application, thus informing the public of the contents of the application, including the proposed plan of development, it follows that it strictly complied with the statutory scheme.

The published notice satisfied Prisbrey’s right to meaningful notice of the Change Application and protected his right to protest the Change Application, and therefore, fulfilled the purpose of the statutory scheme. *Longley*, 2000 UT 69 at ¶¶ 22, 26, 29, 9 P.3d 762.

## **II. THE NOTICE CORRECTLY LOCATED EACH POINT OF DIVERSION.**

Prisbrey argues that the legal descriptions of the points of diversion in the Change Application were invalid because they were virtually undecipherable. (Brief of Appellant at 7.) Prisbrey also argues that the legal descriptions of the proposed points of diversion were flawed because the descriptions do not reference the “Township, Range, or Section of the areas where the water was to be diverted.” (*Id.* at 8.) Prisbrey’s arguments are without merit. The legal descriptions are readily decipherable using ordinary rules of grammar, punctuation, and a ruler and USGS topographic map. By using such rules and tools, it can be shown that each new point

of diversion was referenced to a corner, section number, township, and range, as required by statute.

Under Section 73-3-2(2)(d)(i) of the Utah Code, which governs applications to appropriate water, points of diversion must be designated with reference to United States land survey corners.<sup>5</sup> The published notice complies with this statutory mandate—all of the points of diversion were referenced to survey corners following a convention commonly used by the State Engineer to provide accurate but non-repetitive information in public notices.

The published notice accurately described the locations of the proposed points of diversion as follows:

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 S1/4 Cor, Sec 25, 18 in. well 200 ft. to 600 ft. deep (4) N 625 E 200 from S1/4 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”)<sup>6</sup>

The well locations were published in the form of a long run-on “sentence,” which used commas for several important and sometimes multiple purposes. This form of published legal descriptions is commonly used by the State Engineer. Commas were

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<sup>5</sup>The same requirement applies to change applications. Utah Code Ann. § 73-3-3(5)(a) requires that the State Engineer follow, with respect to change applications, the same procedures governing applications to appropriate water. *See East Jordan Irr. Co. v. Morgan*, 860 P.2d 310, 313 (Utah 1993).

<sup>6</sup> Following the publication of the notice, the parties realized that the description for the point of diversion for well number (1) was erroneous, and therefore, that point of diversion was not approved by the State Engineer. The erroneous description for well (1) has no effect on the legal descriptions of the remaining points of diversion.

used to separate the course and distance for the individual wells (indicated by serial numbers enclosed within parentheses) from the diameter and proposed depth of the wells.<sup>7</sup> Commas also were used to indicate the omission of repetitive words understood by the form of the “sentence.” Additionally, commas were used to separate elements of the “sentence” that belonged to two or more wells, but that were expressed only after the last well associated with such element. An example of this type of usage is the sentence: “We approve of, and are willing to participate in, the 4-day work week.” The element “the 4-day work week” belongs to both of the preceding phrases. *New York Public Library Writer’s Guide to Style and Usage* 255 (1994). These are all accepted usages of commas. *See e.g., id.; The Chicago Manual of Style* 173 (14th ed. 1993); *The Gregg Reference Manual* ¶ 172(a) (9th ed. 2001).

Moreover, such uses of commas is not unusual. Commas frequently are used deliberately in the publication of legal matters. *See e.g., State of Utah v. Tooele County*, 2002 UT 8, ¶ 13, 439 Utah Adv. Rep. 10 (applying elementary rules of punctuation and grammar to the interpretation of a statute—presence of a comma before last clause suggests limiting clause applies to entire series); *see also Elliot Coal Mining Co. v. Dir., Office of Worker’s Comp. Programs*, 17 F.3d 616, 630 (3d Cir. 1994) (also interpreting statute) (“This use of a comma to set off a modifying phrase from other clauses indicates that the qualifying language is to be applied to all of the previous phrases and not merely the immediate preceding phrase”).

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<sup>7</sup> The diameter and depths were given in English system measurements, *e.g.*, inches and feet, respectively. Obviously, all units of measurement in the notice were given in the English system.

Thus, the comma following the course and distance for well (2) replaces for that well the phrase “from S1/4 Cor, Sec 25” following the course and distance for well (3). Also, the comma following the indicated corner in the description for well (4) replaces “Sec 26,” which follows the corner indicator for well (5). Finally, the commas after the section number for each well also replace the township and range for each point of diversion, which follow at the end of the “sentence,” after the course and distance for well (5), and therefore, apply to each of the preceding section number(s). *See e.g., Tooele County*, 2002 UT 8 at ¶ 13, 439 Utah Adv. Rep. 10.

The legal descriptions of the proposed points of diversion, when read as a sentence consistent with the form in which they were published, were properly and accurately published, used conventional usage styles, and properly attributed each course and distance for the individual proposed wells to a land survey corner, section, township, and range. The legal descriptions in the notice were far from “undecipherable” and informed the public regarding the contents of the Change Application with respect to each proposed point of diversion. In fact, the only difference between the legal descriptions in the published notice and Change Application involves the removal of redundant information from the published notice.

The form of the legal description was left to the State Engineer’s discretion so long as it informed the public of the contents of the application and the proposed plan of development. *See e.g., Longley*, 2000 UT 69 ¶15, 9 P.3d 762 (the State Engineer has broad discretion to accomplish the legislative mandate to equitably apportion and distribute water according to the respective rights of appropriators). Certainly it was

not an abuse of that discretion to omit redundant information from the legal descriptions for the proposed points of diversion.

As a holder of a water right, Prisbrey must be knowledgeable regarding how points of diversion are described in water right applications. *See* Utah Code Ann. §§ 73-3-2(1)(b) (Supp. 2001) (applications to appropriate to be on forms furnished by the State Engineer); -2(2)(d)(i) (points of diversion must be referenced to land survey corners); -3(5)(a) (State Engineer is to follow the same procedures with change applications as for applications to appropriate water). As required by statute, points of diversion must be referenced to a land survey corner. Utah Code Ann.

§ 73-3-2(2)(d)(i) (Supp. 2001). Accordingly, Prisbrey is deemed to know that a point of diversion in a published notice of a change application will be referenced to a survey corner, particularly if other points of diversion in the same notice are referenced to survey corners. The district court properly observed that Prisbrey, as a member of the “water-right holding community,” understood, or should have understood, the locations of the points of diversion as listed in the published notice. Rather than assume that the omission of a corner reference following a well was an error, Prisbrey should have presumed the notice was correct and analyzed the notice further. If a point of diversion in a published notice is not immediately followed by a reference to a land survey corner, the presumption is that the omission was deliberate. *See Leonard v. Board of Dir., Prowers County Hosp. Dist.*, 673 P.2d 1019, 1022 (Colo. Ct. App. 1983) (strong presumption of regularity of administrative procedures).

Finally, the reference in the published notice to “SE of ‘Little Valley’” was not an error, nor was it misleading as contended by Prisbrey. (Brief of Appellant at 7, 9, 12.) The phrase “SE of ‘Little Valley’” was not meant to be a specific description of a well location—those were already described in the published notice in substantial detail. It is simply a common description of a general area such as the other common descriptions contained in the other notices of water applications published along with the notice for the Change Application—for example, “North of Irontown” or “Mountain Meadows Area” or “Pine Valley.” (See Addendum at A-13.) The labels “Little Valley” or “Little Valley Ditch” are commonly used on widely distributed government maps to describe topographic features in the relevant portion of southern Washington County. “Southeast of Little Valley” was a general reference to a general area—it provided a reference to a general area to allow interested readers to “screen” which notices they needed to focus on.

The phrase “SE of ‘Little Valley’” accurately describes the general area of the Change Application because the affected lands and proposed new points of diversion are, in fact, located southeast of Little Valley.<sup>8</sup> Moreover, Prisbrey’s claim to have been misled by the notice completely ignores that the legal description in the notice for the last point of diversion, well (5), reads as follows: “N 500 W 350 from SE Cor, Sec 26, T43S, R15W., 18 in. well 200 ft. to 600 ft. deep. (SE of ‘Little Valley’).”

This description accurately locates the well in Section 26, Township 43 South, Range

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<sup>8</sup> Prisbrey could not have reasonably believed that the points of diversion were to be located in Little Valley because the published notice stated that the points of diversion were southeast of Little Valley. (See Brief of Appellant at 12.) The difference in prepositions is significant.

15 West, in close proximity to Prisbrey's property. Prisbrey was provided clear notice that the well was located near to his lands. His claim that the reference to "SE of 'Little Valley'" was misleading is disingenuous at best. *See McGarry v. Thompson*, 201 P.2d 288, 293 (Utah 1948) ("When a person has sufficient information to lead him to a fact, he shall be deemed to be conversant of it.")

### **III. BLOOMINGTON WAS THE PROPER APPLICANT FOR THE CHANGE APPLICATION AND THE STATE ENGINEER DID NOT ERR BY NOT LISTING LEUCADIA IN THE NOTICE.**

In his Brief of Appellant, Prisbrey argues that Leucadia, as Bloomington's lessee, was the only party entitled to the use of the subject water, and therefore, Leucadia should have been included in the published notice of the Change Application. (Brief of Appellant at 7-9.) Not only is Prisbrey's argument without merit, he also raises this particular argument for the first time on appeal.

Before the district court Prisbrey argued that he was prejudiced because the State Engineer failed to list Leucadia in the notice as a real party in interest, and therefore, Prisbrey failed to realize that the Change Application involved lands in close proximity to his lands. (Memorandum in Opposition to Respondents' Motion for Summary Judgment at 5 (R. 129.) Below, Prisbrey only challenged the published notice of the Change Application. Now, on appeal, Prisbrey is arguing, in essence, that Leucadia, not Bloomington, was the only party that had standing before the State Engineer to file the Change Application, an entirely separate issue.

In response to Prisbrey's argument below, the district court held that "[t]here is no statute or rule that required Leucadia to be listed as an "applicant" under

Bloomington's Change Application." (District Court's Order at 4-5 (R. 165-66.)

Prisbrey could not have been prejudiced unless an error in the notice adversely affected his right to protest. The district court correctly held Prisbrey's rights were not adversely affected because the State Engineer did not err by not listing Leucadia in the published notice.

There is no statutory requirement that the published notice identify a party as an applicant or "requestor" other than as identified in the application. Further, there is no rule that the notice is deficient if it does not list a party in interest to a water right where that interest arises only under a contractual arrangement between the record owner of the water right and a third party and not by deed or assignment. Additionally, there is no requirement under either the Notice Provision or the change application statute that the name of the property owner of the land upon which the points of diversion are to be located be identified for purposes of notice of the Change Application.

The weakness of Prisbrey's argument that he was prejudiced by the published notice because it did not identify Leucadia as the applicant is demonstrated by the fact that the published notice advertised the exact locations of the proposed points of diversion, which are located on the property in close proximity to his. Prisbrey cannot complain that he was not apprised of the locations of the proposed points of diversion because Leucadia was not identified as the applicant in the published notice where, as here, the published notice specifically described the locations of the proposed points of diversion.

Prisbrey failed to raise the issue before the district court whether Bloomington did not have the right to seek the Change Application. The district court, however, raised a similar issue in response to Respondents' argument: Whether Leucadia was "a person entitled to the use of water" under the change application statute? (Ruling on Motion for Summary Judgment at 5 (R. 166.)) The issue whether Bloomington was not a person entitled to the use of water under Section 73-3-(2)(a) was never raised before nor addressed by the district court. Because Prisbrey failed to present the issue and his argument to the district court, he may not raise the issue on appeal. *See Mule-Hide Products Co. v. White*, 2002 UT App 1, n.5, 438 Utah Adv. Rpt. 5 ("Under ordinary circumstances, appellate courts will not consider an issue . . . raised for the first time on appeal unless the trial court committed plain error.") (quoting *State v. Helmick*, 2000 UT 70, ¶ 8, 9 P.3d 164).

If the Court determines that the issue was raised below by virtue of the district court's ruling that Leucadia "may" be an applicant under the change application statute, Appellees offer the following argument.

Prisbrey's argument that Leucadia is the only party entitled to the use of the Subject Water Rights is flawed. Prisbrey's argument ignores that Bloomington is the only record owner of the Subject Water Rights; Bloomington is the only "appropriator" of the water rights; and that Bloomington alone complied with the appropriation process as established by the Utah Legislature to obtain its right to the Subject Water Rights. Accordingly, only Bloomington is "a person entitled to the use of water" under the change application statute and only Bloomington has standing

before the State Engineer for purposes of filing the Change Application. *East Jordan Irr. Co. v. Morgan*, 860 P.2d 310, 313 (Utah 1993).

In *East Jordan* this Court held that shareholders in a mutual water corporation do not have standing to file a change application because such shareholders do not individually own the water held by the mutual water corporation. *Id.* In interpreting the language in Section 73-3-3(2)(a) regarding who is a “person entitled to the use of water” for purposes of filing change applications, the East Jordan Court held that persons who have appropriated water in accordance with the statutory scheme have standing before the State Engineer to seek a change application. The Court held that Section 73-3-1 directs how one becomes entitled to the use of water. *Id.* at 312. Because the shareholders had not filed an application to become an appropriator of the water rights at issue and because the mutual water corporation was the “appropriator” of record with the State Engineer for those water rights, only the mutual water corporation had standing before the State Engineer to seek a change to the water rights.

Leucadia has even less of an ownership interest in the Subject Water Rights than the shareholders in *East Jordan* had in the water rights held by the corporation for which they held shares. Not only did Leucadia not file an application to appropriate the Subject Water Rights, Leucadia holds no ownership rights in Bloomington. Leucadia merely holds a terminable possessory interest and an executory right to purchase the Subject Water Rights. Under its lease, Bloomington remains the record title owner of the Subject Water Rights. If the lease with Leucadia

terminates, Leucadia's possessory rights cease and Bloomington regains all of the possessory rights.

Importantly, the contractual arrangement between Leucadia and Bloomington did not change the relationship between Bloomington and the State Engineer—that relationship is set by statute. The lease between Leucadia and Bloomington is not an assignment nor a deed; it does not transfer record title. The parties' contract could not turn Leucadia into the "appropriator" of the Subject Water Rights without an actual transfer or assignment of the ownership of the water rights. Therefore, Bloomington is the only "applicant" under the change application statute who can be recognized as having standing before the State Engineer for purposes of filing the Change Application, which covers the Subject Water Rights.

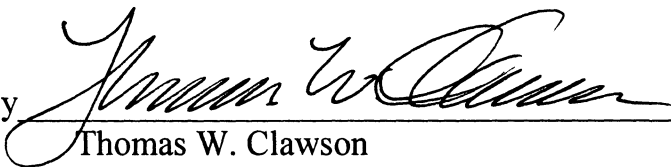
Neither Leucadia, Bloomington, nor the State Engineer has been in the least bit deceptive regarding either the Change Application or the published notice. By listing Bloomington as the applicant on the Change Application, Bloomington and Leucadia were not intending to mislead—they were intending to comply with existing law. The State Engineer properly listed Bloomington as the applicant in the published notice.

## CONCLUSION

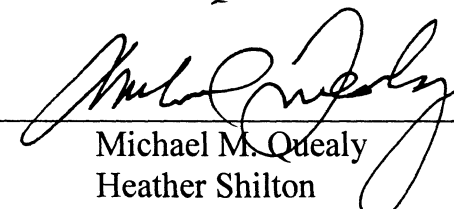
Bloomington was the proper applicant under the Change Application. The published notice properly listed Bloomington as the applicant and the State Engineer did not err by not listing Leucadia in the notice. The published notice accurately described the points of diversion contained in the Change Application and was not misleading nor deceptive. The notice strictly complied with the Notice Provision, provided meaningful notice of the Change Application, and protected Prisbrey's right to protest the Change Application. Prisbrey did not file a timely protest to the Change Application. The District Court's Order should be affirmed.

DATED this 18<sup>th</sup> day of March, 2002.

VAN COTT, BAGLEY, CORNWALL & McCARTHY

By   
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Leucadia Financial Corporation

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Assistant Attorneys General  
Attorneys for Appellee Utah State Engineer

DATED this 18<sup>th</sup> day of March, 2002.

A handwritten signature in black ink, appearing to read "Kendrick J. Hafen", is written over a horizontal line.

Kendrick J. Hafen  
Attorney for Appellee  
Bloomington Water Company, Inc.

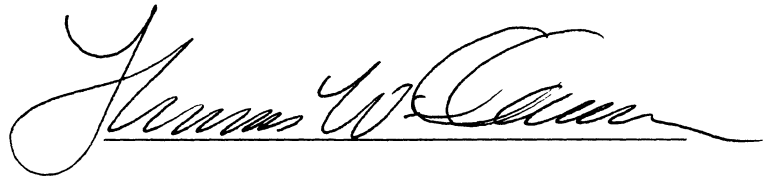
CERTIFICATE OF SERVICE

I hereby certify that I caused two true and correct copies of the foregoing  
BRIEF OF APPELLEES to be served, by mailing the same, postage prepaid, on March  
18<sup>th</sup>, 2002, addressed as follows:

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A handwritten signature in black ink, appearing to read "James W. Cannon", written over a horizontal line.

## **ADDENDUM**

#### **63-46b-14. Judicial review — Exhaustion of administrative remedies.**

(1) A party aggrieved may obtain judicial review of final agency action, except in actions where judicial review is expressly prohibited by statute.

(2) A party may seek judicial review only after exhausting all administrative remedies available, except that:

(a) a party seeking judicial review need not exhaust administrative remedies if this chapter or any other statute states that exhaustion is not required;

(b) the court may relieve a party seeking judicial review of the requirement to exhaust any or all administrative remedies if:

(i) the administrative remedies are inadequate; or

(ii) exhaustion of remedies would result in irreparable harm disproportionate to the public benefit derived from requiring exhaustion.

(3) (a) A party shall file a petition for judicial review of final agency action within 30 days after the date that the order constituting the final agency action is issued or is considered to have been issued under Subsection 63-46b-13(3)(b).

(b) The petition shall name the agency and all other appropriate parties as respondents and shall meet the form requirements specified in this chapter.

#### **73-3-2. Application for right to use unappropriated public water — Necessity — Form — Contents — Validation of prior applications by state or United States or officer or agency thereof.**

(1) (a) In order to acquire the right to use any unappropriated public water in this state, any person who is a citizen of the United States, or who has filed his declaration of intention to become a citizen as required by the naturalization laws, or any association of citizens or declarants, or any corporation, or the state of Utah by the directors of the divisions of travel development, business and economic development, wildlife resources, and state lands and forestry, or the executive director of the Department of Transportation for the use and benefit of the public, or the United States of America shall make an application in a form prescribed by the state engineer before commencing the construction, enlargement, extension, or structural alteration of any ditch, canal, well, tunnel, or other distributing works, or performing similar work tending to acquire such rights or appropriation, or enlargement of an existing right or appropriation.

(b) The application shall be upon a form to be furnished by the state engineer and shall set forth:

(i) the name and post office address of the person, corporation, or association making the application;

(ii) the nature of the proposed use for which the appropriation is intended;

(iii) the quantity of water in acre-feet or the flow of water in second-feet to be appropriated;

(iv) the time during which it is to be used each year;

(v) the name of the stream or other source from which the water is to be diverted;

(vi) the place on the stream or source where the water is to be diverted and the nature of the diverting works;

(vii) the dimensions, grade, shape, and nature of the proposed diverting channel; and

- (viii) other facts that clearly define the full purpose of the proposed appropriation.
- (2) (a) In addition to the information required in Subsection (1)(b), if the proposed use is for irrigation, the application shall show:
  - (i) the legal subdivisions of the land proposed to be irrigated, with the total acreage thereof; and
  - (ii) the character of the soil.
- (b) In addition to the information required in Subsection (1)(b), if the proposed use is for developing power, the application shall show:
  - (i) the number, size, and kind of water wheels to be employed and the head under which each wheel is to be operated;
  - (ii) the amount of power to be produced;
  - (iii) the purposes for which and the places where it is to be used; and
  - (iv) the point where the water is to be returned to the natural stream or source.
- (c) In addition to the information required in Subsection (1)(b), if the proposed use is for milling or mining, the application shall show:
  - (i) the name of the mill and its location or the name of the mine and the mining district in which it is situated;
  - (ii) its nature; and
  - (iii) the place where the water is to be returned to the natural stream or source.
- (d) (i) The point of diversion and point of return of the water shall be designated with reference to the United States land survey corners, mineral monuments or permanent federal triangulation or traverse monuments, when either the point of diversion or the point of return is situated within six miles of the corners and monuments.
- (ii) If the point of diversion or point of return is located in unsurveyed territory, the point may be designated with reference to a permanent, prominent natural object.
- (iii) The storage of water by means of a reservoir shall be regarded as a diversion, and the point of diversion in those cases is the point where the longitudinal axis of the dam crosses the center of the stream bed.
- (iv) The point where released storage water is taken from the stream shall be designated as the point of rediversion.
- (v) The lands to be inundated by any reservoir shall be described as nearly as may be, and by government subdivision if upon surveyed land. The height of the dam, the capacity of the reservoir, and the area of the surface when the reservoir is filled shall be given.
- (vi) If the water is to be stored in an underground area or basin, the applicant shall designate, with reference to the nearest United States land survey corner if situated within six miles of it, the point of area of intake, the location of the underground area or basin, and the points of collection.
- (e) Applications for the appropriation of water filed prior to the enactment of this title, by the United States of America, or any officer or agency of it, or the state of Utah, or any officer or agency of it, are validated, subject to any action by the state engineer.

**73-3-3. Permanent or temporary changes in point of diversion, place of use, or purpose of use.**

- (1) For purposes of this section:
  - (a) "Permanent changes" means changes for an indefinite length of time with an intent to relinquish the original point of diversion, place of use, or purpose of use.
  - (b) "Temporary changes" means changes for fixed periods not exceeding one year.
- (2) (a) Any person entitled to the use of water may make permanent or temporary changes in the:
  - (i) point of diversion;
  - (ii) place of use; or
  - (iii) purpose of use for which the water was originally appropriated.(b) A change may not be made if it impairs any vested right without just compensation.
- (3) Both permanent and temporary changes of point of diversion, place of use, or purpose of use of water, including water involved in general adjudication or other suits, shall be made in the manner provided in this section.
- (4) (a) A change may not be made unless the change application is approved by the state engineer.
  - (b) Applications shall be made upon forms furnished by the state engineer and shall set forth:
    - (i) the name of the applicant;
    - (ii) a description of the water right;
    - (iii) the quantity of water;
    - (iv) the stream or source;
    - (v) the point on the stream or source where the water is diverted;
    - (vi) the point to which it is proposed to change the diversion of the water;
    - (vii) the place, purpose, and extent of the present use;
    - (viii) the place, purpose, and extent of the proposed use; and
    - (ix) any other information that the state engineer requires.
- (5) (a) The state engineer shall follow the same procedures, and the rights and duties of the applicants with respect to applications for permanent changes of point of diversion, place of use, or purpose of use shall be the same, as provided in this title for applications to appropriate water.
  - (b) The state engineer may, in connection with applications for permanent change involving only a change in point of diversion of 660 feet or less, waive the necessity for publishing a notice of application.
- (6) (a) The state engineer shall investigate all temporary change applications.

- (b) If the state engineer finds that the temporary change will not impair any vested rights of others, he shall issue an order authorizing the change.
  - (c) If the state engineer finds that the change sought might impair vested rights, before authorizing the change, he shall give notice of the application to any person whose rights may be affected by the change.
  - (d) Before making an investigation or giving notice, the state engineer may require the applicant to deposit a sum of money sufficient to pay the expenses of the investigation and publication of notice.
- (7) (a) The state engineer may not reject applications for either permanent or temporary changes for the sole reason that the change would impair the vested rights of others.
- (b) If otherwise proper, permanent or temporary changes may be approved for part of the water involved or upon the condition that conflicting rights are acquired.
- (8) (a) Any person holding an approved application for the appropriation of water may either permanently or temporarily change the point of diversion, place of use, or purpose of use.
- (b) A change of an approved application does not:
    - (i) affect the priority of the original application; or
    - (ii) extend the time period within which the construction of work is to begin or be completed.
- (9) Any person who changes or who attempts to change a point of diversion, place of use, or purpose of use, either permanently or temporarily, without first applying to the state engineer in the manner provided in this section:
- (a) obtains no right; and
  - (b) is guilty of a class B misdemeanor, each day of the unlawful change constituting a separate offense, separately punishable.
- (10) (a) This section does not apply to the replacement of an existing well by a new well drilled within a radius of 150 feet from the point of diversion of the existing well.
- (b) Any replacement well must be drilled in accordance with the requirements of Section 73-3-28.
- (11) (a) In accordance with the requirements of this section, the Division of Wildlife Resources or Division of Parks and Recreation may file applications for permanent or temporary changes for the purpose of providing water for instream flows, within a designated section of a natural stream channel or altered natural stream channel, necessary within the state of Utah for:
- (i) the propagation of fish;
  - (ii) public recreation; or
  - (iii) the reasonable preservation or enhancement of the natural stream environment.
- (b) Applications may be filed for changes on:
    - (i) perfected water rights presently owned by the respective division;
    - (ii) perfected water rights purchased by the respective division for the purpose of providing water for instream flows, through funding provided for that purpose by legislative appropriation or acquired by lease, agreement, gift, exchange, or contribution; or
    - (iii) appurtenant water rights acquired with the acquisition of real property by either division.
  - (c) A physical structure or physical diversion from the stream is not required to implement a change for instream flow use.

(d) Subsection (11) does not allow enlargement of the water right sought to be changed nor may the change impair any vested water right.

(e) In addition to the other requirements of this section, an application filed by either division shall:

(i) set forth the legal description of the points on the stream between which the necessary instream flows will be provided by the change; and

(ii) include appropriate studies, reports, or other information required by the state engineer that demonstrate the necessity for the instream flows in the specified section of the stream and the projected benefits to the public that will result from the change.

(f) The Division of Wildlife Resources and Division of Parks and Recreation may:

(i) purchase water rights for the purposes provided in Subsection (11)(a) only with funds specifically appropriated by the Legislature for water rights purchases; or

(ii) accept a donated water right without legislative approval.

(g) Subsection (11) does not authorize either division to:

(i) appropriate unappropriated water under Section 73-3-2 for the purpose of providing instream flows; or

(ii) acquire water rights by eminent domain for instream flows or for any other purpose.

(h) Subsection (11) applies only to change applications filed on or after April 28, 1986.

(12) (a) Sixty days before the date on which proof of change for instream flows under Subsection (11) is due, the state engineer shall notify the applicant by registered mail or by any form of electronic communication through which receipt is verifiable of the date when proof of change is due.

(b) Before the date when proof of change is due, the applicant must either:

(i) file a verified statement with the state engineer that the instream flow uses have been perfected, which shall set forth:

(A) the legal description of the points on the natural stream channel or altered natural stream channel between which the necessary instream flows have been provided;

(B) detailed measurements of the flow of water in second feet changed;

(C) the period of use; and

(D) any additional information required by the state engineer;

or

(ii) apply for a further extension of time as provided for in Section 73-3-12.

(c) Upon approval of the verified statement required under Subsection (12)(b)(i), the state engineer shall issue a certificate of change for instream flow use.

**73-3-6. Publication of notice of application — Corrections or amendments of applications.**

- (1) (a) When 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.
  - (b) (i) The state engineer shall publish the notice in a newspaper of general circulation in the county in which the source of supply is located and where the water is to be used.
  - (ii) The notice may be published in more than one newspaper.
  - (c) Clerical errors, ambiguities, and mistakes that do not prejudice the rights of others may be corrected by order of the state engineer either before or after the publication of notice.
- (2) After publication of notice to water users, the state engineer may authorize amendments or corrections that involve a change of point of diversion, place, or purpose of use of water, only after republication of notice to water users.

**73-3-7. Protests.**

- (1) Any person interested may file a protest with the state engineer:
  - (a) within 20 days after the notice is published, if the adjudicative proceeding is informal; and
  - (b) within 30 days after the notice is published, if the adjudicative proceeding is formal.
- (2) The state engineer shall consider the protest and shall approve or reject the application.

**73-3-14. Judicial review — State engineer as defendant.**

- (1) (a) Any person aggrieved by an order of the state engineer may obtain judicial review by following the procedures and requirements of Chapter 46b, Title 63.
  - (b) Venue for judicial review of informal adjudicative proceedings shall be in the county in which the stream or water source, or some part of it, is located.
- (2) The state engineer shall be joined as a defendant in all suits to review his decisions, but no judgment for costs or expenses of the litigation may be rendered against him.

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

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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.	)	
	)	

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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 4 day of May, 2001.

BY THE COURT

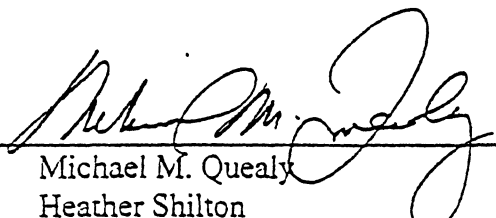
A handwritten signature in black ink, appearing to read 'James L. Shumate', is written over a horizontal line.

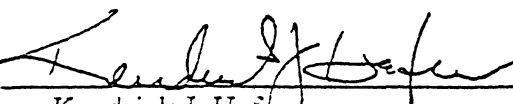
James L. Shumate  
Fifth Judicial District Court Judge

APPROVED AS TO FORM:

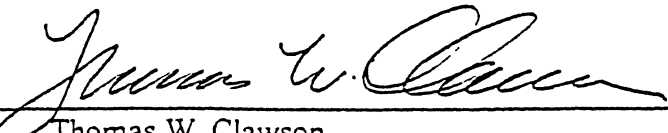
By: \_\_\_\_\_  
Arron J. Prisbrey  
Attorney for Petitioner

MARK SHURTLEFF  
UTAH ATTORNEY GENERAL

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

By:  \_\_\_\_\_  
Kendrick J. Haran  
Attorney for Bloomington Water Company, Inc.

VAN COTT, BAGLEY, CORNWALL & McCARTHY

By:  \_\_\_\_\_  
Thomas W. Clawson  
Attorneys for Leucadia Financial Corporation

CERTIFICATE OF SERVICE

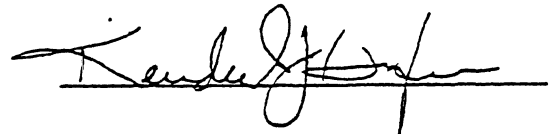
I hereby certify that I caused a true and correct copy of the (PROPOSED) ORDER GRANTING RESPONDENTS' MOTION FOR SUMMARY JUDGMENT, to be mailed first class, postage prepaid, on May 9, 2001, to the following:

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. Prsbrey, Esq.  
1071 East 100 South  
Building D, Suite 3  
St. George, UT 84770

A handwritten signature in black ink, appearing to read "Kander J. Hoyer", is written over a horizontal line.

# The Spectrum

## NOTICE TO WATER USERS

These are informal proceedings as per Rule 683, Utah Code of Civil Procedure, which require that a party who wishes to object to an application must file a CLEARLY READABLE PROTEST, stating the reasons for objection, the protestants' name and return address, and any request for a hearing. Protest must be filed with the State Engineer's Office, 100 West Lake City, UT 84143-6300 (801-538-7240) on or before the date of the hearing. These are informal proceedings as per Rule 683, Utah Code of Civil Procedure, which require that a party who wishes to object to an application must file a CLEARLY READABLE PROTEST, stating the reasons for objection, the protestants' name and return address, and any request for a hearing. Protest must be filed with the State Engineer's Office, 100 West Lake City, UT 84143-6300 (801-538-7240) on or before the date of the hearing.

LEGEND: Point (s) of diversion = POD; Place of Use = POU; Nature of Use = USE.

Heretofore, quantity: 10.0 ac-ft. SOURCE: 8 in. well 193 ft. deep. POD: (1) N 1569 W 75 from SE Cor, Sec 9, T35S, R14W. (Northwest of Cedar City) USE: Irrigation: from Mar 15 to Oct 31, total acreage 2.5000 acs, sole supply 2.5000 acs. POU: NWSEW Sec 9, T35S, R14W.

HEREAFTER, quantity: 1.0 ac-ft. SOURCE: 10 in. well 193 ft. deep. POD: (1) N 1569 W 75 from SE Cor, Sec 9, T35S, R14W. (Northwest of Cedar City) USE: Irrigation: from Mar 15 to Nov 1, total acreage 0.2500 acs, sole supply 0.2500 acs. POU: NWSEW Sec 9, T35S, R14W.

Heretofore, quantity: 1.0 ac-ft. SOURCE: 8 in. well 100 ft. to 500 ft. deep. POD: (1) N 1250 W 1730 from EX Cor, Sec 32, T36S, R14W. (North of Irontown) USE: Irrigation: from Mar 15 to Oct 31, total acreage 0.1305 acs, sole supply 0.1305 acs; Stockwatering: 1 head of livestock; Domestic: 1 family. POU: SWNEW Sec 32, T36S, R14W.

## WASHINGTON COUNTY

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 from 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: SWNW, NWSEW, NWSEW Sec 15; SESEW 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 W 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: SWNW Sec 7; SWNEW, SEWNW, NWSEW Sec 8, T43S, R15W; SWNEW, SEW Sec 11; SW, SWNEW Sec 12; NEX, EXNW, NEXSW, NWSEW Sec 13; NWNEW, NEXNW 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, SEW Sec 25; NWNEW, EXNW, SW, SWSEW, NWSEW Sec 26; SESEW, SWSEW Sec 27; EX, EXNW Sec 34; W 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: NWSEW 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 W 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 1320 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) USE: Irrigation.

Robert L. Morgan,  
STATE ENGINEER  
NOTICE TO WATER USERS

The State Engineer received a CLAIM FOR DILIGENCE in  
Iron/Washington County (Locations in SLB&M).

Persons challenging this CLAIM may file an action through the district court.  
Persons with information regarding this claim may file it with the State Engineer,  
Box 146300, Salt Lake City, UT 84114-6300 (801-538-7240) on or before  
MAY 26, 1999.

WASHINGTON COUNTY

81-4263 (D6921): Alan Dean Gardner, Larry H. Gardner, Dean C. Gardner, C. Judd  
Burgess, U.S. Forest Service, QUANTITY: 0.0143 acs, SOURCE: Unnamed Spring, POD: 11/1/78,  
4034 E 1198 from NW Cor, Sec 21, T15S, R15W, S4E, USE: Irrigation from Apr 1 to  
Oct 31, total acreage 4.2300 acs.

Robert L. Morgan, P  
STATE ENGINEER

Pub# L1183 published April 26, May 6, 1999  
The Spectrum