

2006

William J. Tuttle, Charlene W. Tuttle, Kenton Tuttle,
Lori M. Tuttle v. Jerry D. Olds, Utah Department of
Natural Resources, Terry Monroe : Reply Brief

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

WILLIAM J. TUTTLE, CHARLENE W.
TUTTLE, KENTON TUTTLE and
LORI M. TUTTLE,

Plaintiffs/ Appellants,

vs.

JERRY D. OLDS Utah State Engineer,
UTAH DEPARTMENT OF NATURAL
RESOURCES and TERRY MONROE

Defendants / Appellees.

Case No. 20060364-CA

REPLY BRIEF OF APPELLANTS

THIS IS AN APPEAL FROM A JUDGMENT IN THE
THIRD JUDICIAL DISTRICT IN AND FOR SALT LAKE COUNTY,
STATE OF UTAH
THE HONORABLE JOHN PAUL KENNEDY

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FILED
UTAH APPELLATE COURTS

2006

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INTRODUCTION

In this matter, it is important to remember that the defendants filed a motion to dismiss under Rule 12(b)(6) of the Rules of Civil Procedure. Although the court converted this motion to a motion for judgment on the pleadings under Rule 12(c), the standard of review remains the same. “The grant of a motion for judgment on the pleadings is reviewed under the same standard as the grant of a motion to dismiss, i.e., we affirm the grant of such a motion only if, as a matter of law, the plaintiff could not recover under the facts alleged.” Miller v. Gastronomy, Inc., 2005 UT App. 80, ¶6, 110 P.3d 144 (quoting Thimmes v. Utah State Univ., 2001 UT App 93, ¶4, 22 P.3d 257).

Furthermore, in considering a motion to dismiss, the trial court must construe the complaint in the light most favorable to the plaintiff and indulge all reasonable inferences in his favor. Mounteer v. Utah Power & Light Co., 823 P.2d 1055, 1058 (Utah 1991); Russell v. Standard Corp., 898 P.2d 263 (Utah 1995).

Throughout the defendants’ brief they fail to admit the facts alleged in the complaint, particularly the facts relating to the certificates of the water shares in this matter.

In addition, on page 12 of their brief, the defendants claim that “the Tuttle had been irrigating their entire farmland of about 1700 acres, but held valid water rights for only 935.2 acres.” In support of this contention, defendants have cited to paragraph 89 of the complaint. This paragraph states, however, that Terry Monroe testified to this fact in the federal court. It does not allege that Mr. Monroe’s testimony was accurate—in fact, the

entire thrust of the complaint is that the defendants' actions after approximately 1998 were improper. Furthermore, although the Tuttle's owned approximately 1700 acres, they only irrigated about 1400 acres, and the only representation they made to the Ellsworths was that the Ellsworths could irrigate the property the Tuttle's had irrigated.

This court and the defendants must work from the assumption that everything in the complaint is true and that, with everything in the complaint being true, the Tuttle's are not entitled to relief. Using this standard, it is clear that the trial court's decision granting judgment on the pleadings is wrong and must be reversed.

ARGUMENT OF NEW MATTERS RAISED BY DEFENDANTS

I. THE STATUTE OF LIMITATIONS DID NOT BEGIN TO RUN UNTIL THE FEDERAL JURY REACHED ITS VERDICT AND DAMAGES WERE ASSESSED.

The defendants claim that the Tuttle's were placed on "inquiry notice" of the defendants' negligence no later than November 2001, when the Ellsworths filed their lawsuit. They claim that this "inquiry notice" was sufficient to start the running of the statute of limitations and require the Tuttle's to file a notice of claim within one year. This is simply untrue.

As stated in both parties' briefs, a claim under the Governmental Immunity Act "arises when the statute of limitations that would apply if the claim were against a private person begins to run." Utah Code Ann. §63-30-11(1). In addition, "It is generally accepted that a statute of limitations begins to run upon the occurrence of the last event

required to form the elements of the cause of action.” Williams v. Howard, 970 P.2d 1282, 1284 (Utah 1998).

Based on this statement from the Utah Supreme Court, the determinative question on this issue is: what is the last event required to form a cause of action against these defendants? The answer is that the Tuttles must have suffered damages before they had a cause of action.

A. Damages Are an Essential Element of Civil Causes of Action.

Civil causes of action require damages as one of the elements of the cause of action. This matter was addressed in the recent case of Eleopulos v. McFarland and Hullinger, LLC, 2006 UT App 352, ___ P.3d _____. In Eleopulos, the plaintiffs were the owners of a gravel pit which was leased to the defendant. The plaintiffs noticed that the defendant was dumping dark colored soil in the gravel pit. The plaintiffs suspected that the defendant was dumping toxic waste in the pit. The plaintiffs then hired experts to investigate the situation and eventually spent approximately \$45,000 in expert fees to investigate the gravel pit. The plaintiffs also sued the defendant for various causes of action involving the dumping of toxic waste. The defendant moved for summary judgment, which was granted partly because the plaintiffs had failed to show any damages. The plaintiffs appealed.

The Court of Appeals’ opinion deals almost exclusively with the claim that the plaintiffs had suffered no damages and therefore had no cause of action. The Court

concluded that the expert fees were expenses incurred in preparation for trial and not damages. Thus, the plaintiffs could not escape summary judgment on the basis of the expert fees they had incurred. Id. at ¶15.

The plaintiffs also claimed that they were potentially liable for up to \$1,500,000 in cleanup costs of the gravel pit. In response to this claim, the court stated:

“the law does not recognize an inchoate wrong, and therefore, until there is actual loss or damage resulting to the interests of another, a claim for negligence is not actionable.” . . . Thus, although, “there exists a possibility, even a probability, of future harm, it is not enough to sustain a claim, and a plaintiff must wait until some harm manifests itself.”

Id. at 16 (quoting Seale v. Gowans, 923 P.2d 1361, 1364 (Utah 1996)).

The Eleopulos court concluded:

without proof of actual damages, even in a nominal amount, an alleged claim that damages may occur in the future if Plaintiffs are liable for cleanup costs is not adequate to sustain a cause of action for breach of contract or waste.

Id. at ¶17. See also Doe v. Archdiocese of Washington, 689 A.2d 634, 638 (Md. App. 1997). (“The cause of action does not accrue until all elements are present, including damages, however trivial”); Smith v. Ogden & N.W.R.R., 33 Utah 129, 93 P. 185, 187 (Utah (1907) (plaintiff obliged to show that negligence caused an injury); Norse v. Henry Holt & Co., 991 F.2d 563, 568 (9th Cir. 1993) (plaintiff’s breach of contract claim fails because there are no damages); Joseph M. Perillo, *Corbin on Contracts* §55.10 (“Unintentional torts, such as negligence, require actual damage for the tort to exist. One

who drives at 100 mph down a city street is negligent in the lay person's sense of the word, but if no person or property is injured, no tort is committed.”)

B. The Tutties Had Suffered No Damages until the Jury in the Federal Court Proceeding Reached its Verdict.

Applying these principles to this matter, it is clear that the Ellsworths’ filing of the federal court action did not result in damages to the Tutties, merely a possibility, maybe even a probability, that the Tutties would suffer damages in the future. Pursuant to Eleopulos, the Tutties did not have a cause of action at the time the suit was filed, and the statute of limitations did not begin to run until the federal jury returned its verdict and the Tutties were assessed damages. Indeed, if the Tutties had prevailed in the federal court action, the cause of action would never have accrued, because the Tutties would never have suffered any damages.

It is also worth noting that, although the defendants’ actions might have put the Tutties on notice that the defendants claimed there was insufficient water to irrigate all of the property the Tutties had previously irrigated; the effect of this would be limited to a possible diminution of the value of the property. The Tutties did not own the property at that time, and any diminution in the value of the property by the recalculation of the water rights did not affect the Tutties directly.

In this context, the defendants’ reliance on Cedar Professional Plaza v. Cedar City Corp., 2006 UT App. 36, 131 P.3d 275 is misplaced. In Cedar Professional Plaza, the harm about which the Plaza was complaining was a burst pipe which flooded the Plaza’s

property. Id. at ¶2. The Plaza filed two notices of claim in a timely manner, but the notices were directed to the wrong officers of the City. Id. at ¶4. The Plaza filed suit against the City, but that suit was dismissed when the City pointed out that the notices were directed to the wrong officers. The Plaza then sent a notice to the correct officer and re-filed its suit. Id. That suit was dismissed because the third notice was not filed within one year as the Act requires. Id. at ¶5. The Plaza then attempted to apply the discovery rule to extend the time for filing the notice. Id. at ¶6. The issue in the case was therefore the application of the discovery rule, not the time that the cause of action accrued. The parties all agreed on the date that the cause of action accrued—the date of the flooding.

Because the Tuttles did not suffer any damages until the jury in the federal suit returned its verdict, the statute of limitations—and the time for filing a proof of claim—began to run on the date of the verdict. The notice of claim was filed within one year of that event and was timely.

II. THE TRIAL COURT ERRED IN CONSIDERING THE FACTS SUPPORTING THE FEDERAL COURT'S DECISION.

The defendants' next contention is that the Tuttles have waived any procedural challenge to the trial court's use of materials outside the pleadings by failing to develop the argument in the initial brief. The defendants's position on this issue is very confusing, however. On the one hand, they claim that the trial court did not rely on anything outside the pleadings, but they also claim that the trial court could have relied on the decision of the federal court in reaching its decision. To support this contention, the

defendants claim that the federal court's decision was a document which was central to the plaintiff's claim. Therefore the defendants both insist that there was no reliance on the federal court decision and that any reliance was not improper.

The fact of the matter, however, is that the trial court did rely on the federal court decision and that reliance was improper.

This matter was recently clarified in an opinion of the Federal 9th Circuit Court of Appeals. In Lee v. City of Los Angeles, 250 F.3d 668 (9th Cir. 2001), the court stated:

On a Rule 12(b)(6) motion to dismiss, when a court takes judicial notice of another court's opinion, it may do so "not for the truth of the facts recited therein, but for the existence of the opinion, which is not subject to reasonable dispute over its authenticity."

Id. at 690 (quoting Southern Cross Overseas Agencies, Inc. v. Wah Kwong Shipping Group Ltd., 181 F.3d 410, 426-27 (3rd Cir. 1999)); see also Gilchrist v. Citty, 71 Fed Appx. 1, 3 (10th Cir 2003).

In this case, the trial court did more than acknowledge that the federal court had made a decision. The trial court accepted the facts in the federal court decision as true. For instance, the court accepted as true the fact that the Tuttle's lied to the Ellsworths about the amount of water available. This was improper. The entire basis of the Tuttle's claims is that they did not lie to the Ellsworths—they gave the Ellsworths information regarding the amount of water available for the property based on the information the Tuttle's had received from these defendants. It was improper for the court to rely on the

facts found by the federal court and the court's reliance on those facts justifies a reversal of the court's decision.

III. THE DEFENDANTS HAD A DUTY TO CONDUCT THE GROUNDWATER SURVEY WITH REASONABLE CARE.

In their brief, the defendants admit that only a court can conduct a determination of water rights. They also claim that certificates of beneficial use are prima facie evidence of water rights, but they admit that those certificates can only be issued "at the conclusion of extensive administrative proceedings." They have not claimed that either of these procedures was followed in the groundwater survey in the Pahvant Valley. Nevertheless, the defendants claim that the State Engineer had the authority to conduct the groundwater survey.

The defendants also do not deny that if the State Engineer was operating outside his authority in conducting the groundwater survey, the State Engineer had a duty to perform the survey with reasonable care. Because the defendants have conceded this point, they need to find a basis for claiming that the State Engineer had authority to conduct the survey.

A. The State Engineer Had No Statutory Authority to Conduct the Groundwater Survey Without Complying with Existing Administrative Procedures or Filing an Action in Court.

In their search for authority for the State Engineer to conduct the groundwater survey, the defendants cite three subsections of Utah Code Ann. §73-2-1 and one subsection of §73-5-9. None of these subsections authorizes the groundwater survey and

the State Engineer was operating outside his authority and had a duty to the Tuttles to use reasonable care in conducting the survey.

The defendants first cite to 73-2-1(3)(a), which gives the State Engineer responsibility for the “general administrative supervision of the waters of the state and the measurement, appropriation, apportionment and distribution of those waters.” While it is true that this gives the State Engineer administrative authority to supervise the waters of the State, it does not give the State Engineer *carte blanche* to proceed in any manner he wishes. As the defendants have acknowledged, there are administrative procedures for making a determination of water rights, and the defendants did not follow those procedures in the groundwater survey in the Pahvant Valley.

Furthermore, even if the State Engineer had authority to make a groundwater survey under §73-2-1(3)(a), he could not do so without first promulgating rules for groundwater surveys under the Utah Administrative Rulemaking Act, Utah Code Ann. §63-46a-1 et. seq. Pursuant to §63-46a-3, a rule under the Act is required whenever an action “authorizes, requires or prohibits an action” or “applies to a class of persons.” The State Engineer clearly authorized, required or prohibited an action in the groundwater survey. He required all of the water users in the Pahvant Valley to cooperate with the survey and prohibited any water user from continuing to use water if the survey determined there were insufficient water rights to support the use. Furthermore, the survey applied to and was intended to be binding on a class of persons—the water users in the Pahvant Valley. Thus, even if the State Engineer had authority to conduct the

groundwater survey, he was required to follow existing administrative procedures or create new administrative procedures for the survey. He did not do so and the survey was unauthorized.

The defendants also rely on the State Engineer's authority in §73-2-1(3)(b)(ii) to "secure the equitable apportionment and distribution of the water according to the respective rights of the appropriators." Once again, this section does not give the State Engineer the right to proceed in any way it pleases. The Engineer must either follow established procedures or create new ones for groundwater surveys. The Engineer did neither. Furthermore, the word "secure" implies that the Engineer will seek assistance in taking these actions, either from the courts or from some other source. The State Engineer did neither of these.

The defendants next try to justify the survey under §73-2-1(3)(b)(iii), which gives the State Engineer authority to sue to "enjoin the unlawful appropriation, diversion and use of surface and underground water" and to "prevent water, loss, or pollution of those waters" This subsection clearly does not apply, because the State Engineer never brought suit in any court.

The defendants also rely on §73-5-9 and the State Engineer's authority to require repairs and construction to "prevent waste, loss, pollution or contamination of any waters." This subsection does not apply, because the point of the groundwater survey was not to require repairs or construction of improvements or fixtures to prevent waste, loss, pollution or contamination. The State Engineer determined which water users had

sufficient water rights and prohibited uses which he determined were not supported by sufficient water rights.

B. The Groundwater Survey Was a Determination of Water Rights in Everything but Name and must Have Been Conducted under the Appropriate Administrative Procedures.

In addition, the whole underlying assumption of the defendants in this matter is flawed. The defendants assume that the State Engineer has expansive rights which can be determined by the vague language of §73-2-1. This is incorrect. As the Tuttles pointed out in their original brief, the State Engineer has only the authority delegated to him in the statutes. Little Cottonwood Water Co. v. Kimball, 76 Utah 243, 289 P. 116 (1930).

In addition, the facts of this matter clearly demonstrate that the “groundwater survey” the State Engineer conducted in the Pahvant Valley from 1992 to 1996 was a determination of water rights in all significant aspects. The State Engineer reviewed all of the groundwater rights in the valley. The State Engineer determined whether the water users in the valley had sufficient water rights for the irrigation they were performing. The State Engineer notified water users who were determined to have insufficient water rights and forced many of them to stop irrigating. To claim that the State Engineer’s actions in the Pahvant Valley were not a determination of water rights is to elevate form over substance and to allow the State Engineer’s label—“groundwater survey”—to have greater weight than his actual actions.

Because the State Engineer had no authority to perform the groundwater survey, he had a duty to the Tuttles to use reasonable care in performing the survey. He did not use reasonable care and is liable for the damages which the Tuttles incurred as a result of his failure to use reasonable care.

IV. THE TUTTLES HAVE ESTABLISHED THAT ESTOPPEL IS PROPER IN THIS MATTER.

The defendants' also contend that the Tuttles have not satisfied the heightened standards to apply estoppel against a governmental agency. They do not disagree with the Tuttles' legal analysis of when it is proper to apply estoppel against a governmental entity; they simply claim that this is not an appropriate case to apply estoppel.

A. The 1996 Letter and the Water Certificates Were Specific Written Representations of the Tuttles' Water Rights.

The defendants first claim that there was no specific written representation that the water rights were sufficient. In making this claim, the defendants acknowledge the 1996 letter to the water users in the Pahvant Valley but ignore its plain meaning. The letter assured the water users in the Pahvant Valley that:

During the spring of 1994, the acreage survey was completed and all water users who were irrigating land without a water right were notified. As a result of this effort and with the cooperation of water users, all irrigated lands are now covered by valid water rights.

The plain language of this letter indicates to anyone who reads it that if the State Engineer believed that the Tuttles did not have sufficient water rights for the irrigation they were performing, he would have notified the Tuttles. Furthermore, the letter plainly

indicated that all of the land being irrigated in the Pahvant Valley at the time of the letter was covered by a valid water right. The Tuttle had received no notice that their valid water rights were insufficient or invalid and they had made no secret of their irrigation. Although the letter may not have specifically referred to the Tuttle's water rights, it was clearly specific as to the state of all of the water rights in the Pahvant Valley and the Tuttle were entitled to rely on the representations in this letter.

The defendants also ignore the State Engineer's previous issuance of water certificates to the Tuttle and their predecessors in interest. These actions are described in paragraphs 16 through 28 of the complaint (R. at 4-5) and should have been accepted by the trial court as true. These paragraphs described water certificates which were issued for water rights 67-137 and 67-286 to water 429 and 560 acres, respectively. In addition, paragraph 41 of the complaint (R. at 7) describes the certificate for water right 67-287, which provided for irrigation of 864.9 acres. These are clearly written representations about specific water rights made by the defendants. The defendants have since changed their position from that taken in these water certificates and estoppel is appropriate.

B. The Tuttle Could Reasonably Rely on the 1996 Letter and the Water Certificates, and the Defendants' Current Position Is Inconsistent with All of These Documents.

The defendants also claim that the Tuttle could not reasonably rely on the 1996 letters because they are presumed to know the extent of their water rights and their water rights are contained in their certificates. This argument assumes, however, that the Tuttle water certificates were correct. As described in the complaint, however, the State

Engineer has taken the position that the water certificates were incorrect. For instance, the certificate for water right 67-286 indicates that it is the sole supply for 305.6 acres. However, the defendants took the position that it was the sole supply for only 89.9 acres. Complaint at ¶¶82, 83, R. At 12.

As described above, the defendants have similarly changed their position on the other water certificates. Copies of the water certificates are attached in the Addendum.¹

Thus the defendants' position leaves the Tuttles with no way to determine their water rights. On the one hand, the defendants take the position that the Tuttles cannot rely on the 1996 letter—they must rely on their water certificates, which were consistent with having sufficient water rights to irrigate their farms. At the same time, the defendants have taken the position that the water certificates (which were issued by the defendants) overstated the amount of water available to the Tuttles. In spite of these mixed messages from the defendants, they blame the Tuttles for being unable to divine the correct amount of their water rights by simply stating that they are presumed to know how much water they had. This holds the Tuttles to an impossible standard—the Tuttles would have to determine their water rights not on the basis of their water certificates, but in spite of them. To add insult to injury, the defendants also claim that the Tuttles could not rely on the 1996 letter which was consistent with their water certificates. The court

¹Although only the water certificate for water right 67-286 was attached as an exhibit to the Tuttles' complaint, the court can take judicial notice of the other water certificates as matters of public record. Green River Canal Co. v. Thayn, 2003 UT 50, ¶30 fn8, 84 P.3d 1134 ("since the records of the State Engineer's office are public records, we [may] take judicial notice thereof").

should not allow the defendants to escape the clear meaning of the water certificates and the 1996 letter by simply saying that the Tuttlees were presumed to know the extent of their water rights.

C. Monroe's 1998 Letter Did Not Address Water Rights.

The defendants also claim that the Tuttlees should have been placed on notice that the water rights might have been invalid or inadequate based on Terry Monroe's letter to them in 1998 regarding the Diesel Well. It is important to remember what the 1998 letter said. It raised a doubt about the Diesel Well as a point of diversion. There is no mention that the water right being taken out of the Diesel Well is insufficient or invalid. In addition, Monroe never followed up on the 1998 letter in the two years that the Tuttlees and the Ellsworths were working out the details of the sale to the Ellsworths. This letter could not have put the Tuttlees on notice that the water rights were invalid or insufficient.

D. The Defendants' Change of Position Has Already Created Injustice to the Tuttlees.

The defendants also claim no injustice would be done to the Tuttlees if estoppel is not applied to the Tuttlees. Obvious injustice has already occurred by allowing the defendants to change their position.

In 2000, the Tuttlees believed, based on the representations the defendants made in the water rights certificates, the State Engineer's previous statements on the water rights, and the 1996 letter, that they had valid water rights to irrigate their property. They sold the farms to the Ellsworths at a price which was fair for land in the Pahvant Valley with

water rights. It was only after the sale was consummated that the defendants changed their position and notified the Ellsworths that there was insufficient water to irrigate all of the property the Ellsworths had purchased from the Tuttles. Based on this change of position, and with the defendants' cooperation and Terry Monroe's testimony, the Ellsworths eventually obtained a judgment against the Tuttles for over \$1,400,000. The injustice of allowing the defendants to change their position is clear—the only way to avoid the injustice is to apply the doctrine of estoppel against the defendants.

E. Requiring the State Engineer to Follow Statutes and Established Administrative Procedures Would Not Impair the Exercise of Legitimate Government Powers.

Finally, the defendants allege that applying estoppel in this matter would “unduly hamper the engineer’s ability to address other serious problems.” This is an unreasonable claim. The State Engineer has ample tools at his disposal to address any serious problems he may find. But he must follow the proper procedures—either filing an action in court or complying with the administrative procedures outlined for a determination of water rights. All the State Engineer would lose by the application of estoppel in this case is his claimed ability to proceed in any way he pleases in addressing perceived issues involving the waters of the State. He would simply be required to follow existing statutory or administrative procedures, or, if he chose to act outside those procedures, he would be required to compensate any person who suffered a loss through his actions. Requiring the defendants to adhere to established procedures and to provide due process to the Tuttles

and other holders of water rights cannot be considered an interference with governmental functions.

V. THERE WAS A TAKING OF THE TUTTLE'S WATER RIGHTS.

In the final section of their brief, the defendants acknowledge that water rights are a property interests and that, if a governmental agency takes those water rights, the owner will have a claim for inverse condemnation. In spite of this claim, the defendants claim that there can be no taking of the water rights in this matter, because the claimed water rights never existed. The defendants claim that they cannot take water rights which did not exist.

This is a circular argument, which ignores the practical import of the defendants' own actions. In 1961 and 1966 the State Engineer issued certificates that granted the holder of the certificate the right to water 725.6 acres on the 650 acre Main Farm. In August 1966, the State Engineer interpreted the certificates to allow the watering of 560 acres on the Main Farm. From 1992 through 1996, the defendants conducted a groundwater survey of the Pahvant Valley. At the end of that survey, they sent a letter to the Tuttlés which indicated that the initial stage of the survey was completed and that anyone who had not received a notice had valid water rights for their irrigation. At that time, therefore, the defendants took the position that the Tuttlés had water rights to irrigate their farms. On June 1, 1999, the State Engineer's computers confirmed that he interpreted the water right to include the water right to water 580 acres of the Main Farm.

Four years later, the same defendants—again without filing a court action or following the established administrative procedures—determined that half of the water rights the Tuttle had had in 1996 did not exist.

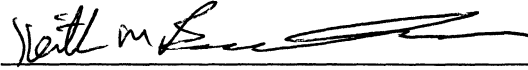
Clearly, between 1996 and 2000, the Tuttle lost a significant amount of water rights. That loss was occasioned by the actions of the defendants in taking one position in 1996 and an inconsistent position four years later. The change of the defendants' position is government action.

Thus, the Tuttle can establish that they lost property rights through government action. This is sufficient to establish a takings claim under View Condo. Assoc v. MSICO, LLC, 2005 UT 91, 127 P.3d 697.

CONCLUSION

The notice of claim in this matter was timely because the statute of limitations did not begin to run on the Tuttle's claims until the federal jury returned a verdict against the Tuttle and they could assert damages. The trial court improperly considered the facts supporting the decision in the federal court, instead of limiting itself to considering the fact that there had been a decision in the federal court. The State Engineer did not have authority to conduct the groundwater survey and therefore had a duty to the Tuttle to conduct that survey with reasonable care. The application of the doctrine of estoppel is proper in this case under the standards agreed to by the parties. Finally, there was a taking of the Tuttle's water rights. For all of these reasons, the decision of the trial court to grant the motion for judgment on the pleadings was incorrect and should be reversed.

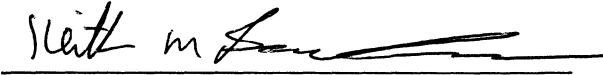
DATED this 20 day of September, 2006.



Keith M. Backman
Attorney for Appellant

Certificate of Mailing

I hereby certify that on this 20 day of September, 2006, I mailed a true and correct copy of the foregoing brief to Joel Ferre and Debra J. Moore, attorneys for defendants-appellees, at 160 E. 300 South, P.O. Box 140856, Salt Lake City, Utah 84414-0856.



Addendum

67-137

FORM C-1-A 8000

DUPLICATE

CERTIFICATE OF APPROPRIATION OF WATER STATE OF UTAH

APPLICATION NO. 21772 CERTIFICATE NO. 6032
 NAME AND ADDRESS OF APPROPRIATOR *Grassland Farms*
EUGENE H. STEPHENSON, HOLDEN, UTAH
 SOURCE OF SUPPLY UNDERGROUND WATER IN MILLARD COUNTY, UTAH; SEVIER RIVER DRAINAGE AREA.
 QUANTITY OF WATER FOUR AND SEVENTY-SIX/HUNDREDTHS (4.76) SECOND-FEET PRIORITY OF RIGHT JUNE 5, 1950
 PERIOD AND NATURE OF USE FROM MARCH 1 TO OCTOBER 31 INCLUSIVE OF EACH YEAR FOR IRRIGATION PURPOSES

Whereas, It has been made to appear to the satisfaction of the undersigned that the appropriation of water has been perfected in accordance with the Laws of Utah
 Therefore, Be it known that I, WAYNE D. CRIDDLE the duly appointed, qualified and acting State Engineer, by authority of the Laws of Utah, do hereby certify that said appropriator is entitled to the use of water as herein set out, subject to prior rights, if any, for diversion and use as follow to wit:

The water appropriated is yielded by a pump well 502 ft. deep, fully cased as follows: 153 ft. of 16-in. diameter pipe, 121 ft. of 12-in. diameter pipe, 66 ft. of 10-in. diameter pipe, 162 ft. of 8-in. diameter telescope joints, situated N 2631.4 ft. and E 3893.6 ft. from SW Cor. Sec. 30 T19S R4W S1E4. The water is diverted by means of an electrically-powered turbine pump, conveyed therefrom through 33 ft. of 8-in. diameter pipe to an equalizer having capacity of 6 ac.-ft. The water is released from the equalizer as needed by means of 46 ft. of 15-in. diameter pipe to a distribution box constructed of concrete, from which it is distributed for use. The water appropriated is, during the aforesaid period, intermittently used to irrigate land embraced within SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 30; NW $\frac{1}{4}$, NE $\frac{1}{4}$ Sec. 31 T19S R4W S1E4, more definitely described as follows: 37.4 acres in NE $\frac{1}{4}$ SW $\frac{1}{4}$, 37.6 acres in Lot 3, 37.4 acres in Lot 4, 39.3 acres in SE $\frac{1}{4}$ SW $\frac{1}{4}$, 36.3 acres in NW $\frac{1}{4}$ SE $\frac{1}{4}$, 39.3 acres in SW $\frac{1}{4}$ SE $\frac{1}{4}$ said Sec. 30; 35.0 acres in NW $\frac{1}{4}$ NE $\frac{1}{4}$, 37.2 acres in SW $\frac{1}{4}$ NE $\frac{1}{4}$, 23.4 acres in NE $\frac{1}{4}$ NW $\frac{1}{4}$, 31.3 acres in Lot 1, 35.9 acres in Lot 2, 38.9 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$ said Sec. 31. Total area irrigated is 429.0 acres.

This certificate entitles the holder to use only sufficient water from all rights combined to constitute an economic duty without waste, limited to the irrigation requirements of 429.0 acres.

220.0 ac. 67. FT

The works employed in this appropriation are to be operated and maintained in such manner and condition as will prevent waste of water.

In Witness Whereof, I have hereunto set my hand and affixed the seal of my office this 27th day of February, 1961

Hubert C. Lambert
 Hubert C. Lambert, Acting STATE ENGINEER

67-286

CERTIFICATE OF APPROPRIATION OF WATER STATE OF UTAH

 Application No. 31612 Certificate No. 7189

 1. Name and address of appropriator Eugene H. Stephenson and Marla J. Stephenson
Heiden, Utah

Whereas, it has been made to appear to the satisfaction of the undersigned that the appropriation of water has been perfected under the above numbered application in accordance with the Laws of Utah; Therefore, Be it known that the State Engineer hereby certifies that said appropriator is entitled to the use of water subject to prior rights, if any, as follows:

2. Period and nature of use:

Irrigation	from	<u>March 1</u>	to	<u>October 31</u>
Domestic	from		to	
Stock-watering	from		to	
Municipal	from		to	
Other	from		to	

 3. Source of supply Underground Water

 4. Drainage area Sevier River

 5. Quantity of water 5.98 c.f.s.

 6. Priority of right December 31, 1959

 7. Point of diversion South 1688.7 feet and East 5263.9 feet from the
NW Corner, Section 31, T19S, R4W, SLB6M,
Millard County, Utah.

 8. Method of diversion 16- and 12-inch well 545 feet deep.

9. Place and/or extent of use:

Irrigation for the following:

39.6 acres in the NE $\frac{1}{4}$ NE $\frac{1}{4}$
 37.6 acres in the NW $\frac{1}{4}$ NE $\frac{1}{4}$
 39.4 acres in the SW $\frac{1}{4}$ NE $\frac{1}{4}$
 40.0 acres in the SE $\frac{1}{4}$ NE $\frac{1}{4}$
 39.4 acres in the NE $\frac{1}{4}$ NW $\frac{1}{4}$
 34.3 acres in the NW $\frac{1}{4}$ NW $\frac{1}{4}$
 35.9 acres in the SW $\frac{1}{4}$ NW $\frac{1}{4}$
 39.4 acres in the SE $\frac{1}{4}$ NW $\frac{1}{4}$
305.6 acres in Section 31, T19S, R4W, SLB6M.

 10. Other rights appurtenant ----

The works employed in this appropriation are to be operated and maintained in such manner and condition as will prevent waste of water. This certificate entitles the holder to use only sufficient water from all rights combined to constitute an economic duty without waste.

The right evidenced by this certificate is subject to review by the courts in any adjudication proceeding.

In Witness Whereof, I have hereunto set my hand and affixed the seal of my office this

12th day of January, 1966

Hubert C. Lambert
 Hubert C. Lambert, State Engineer

DUPLICATE

CERTIFICATE OF APPROPRIATION OF WATER

STATE OF UTAH

APPLICATION NO. 21452CERTIFICATE NO. 4673

NAME AND ADDRESS OF APPROPRIATOR

JAY F. PASTRUP, MONROE, UTAH

SOURCE OF SUPPLY UNDERGROUND WATER IN MILLARD COUNTY, UTAH: SEVIER RIVER DRAINAGE AREAQUANTITY OF WATER THREE AND TWENTY-ONE/HUNDREDTHS (3.21) SEC.-FT. PRIORITY OF RIGHT MARCH 16, 1950PERIOD AND NATURE OF USE FROM MAY 1 TO OCTOBER 1 INCLUSIVE OF EACH YEAR FOR IRRIGATION PURPOSES

Whereas, It has been made to appear to the satisfaction of the undersigned that the appropriation of water has been perfected in accordance with the Laws of Utah
 Therefore, Be it known that I, JOSEPH M. TRACY the duly appointed, qualified and acting State Engineer, by authority of the Laws of Utah, do hereby certify that said appropriator is entitled to the use of water as herein set out, subject to prior rights, if any, for diversion and use as follows to wit:

The water appropriated is yielded by a pump well, fully cased with 12-in. diameter pipe driven to a depth of 500 ft. below ground surface, situated S 147.2 ft. and W 132.2 ft. from N $\frac{1}{2}$ Cor. Sec. 36 T19S R5W S1E4M. The water is diverted by means of a diesel motor operated deep well turbine pump discharging through 8-in. diameter pipe Easterly 8 ft. into a concrete division box, having inside plan dimensions of 4.0 ft. x 8.0 ft. and 1.5 ft. deep. The water appropriated leaves the north side of the division box through an 18-in. diameter metal pipe gate into an open ditch, having top width of 6.0 ft, bottom width of 2.0 ft. and side slopes 1 $\frac{1}{2}$:1, through which it is conveyed N 5.0 ft, N70°00'W 300.0 ft, S85°00'W 275.0 ft. where it is, during the period hereinabove mentioned, distributed and intermittently used to irrigate land hereinafter described. The water leaves the south side of the division box through an 18-in. diameter metal pipe gate into a semicircular concrete flume, having inside diameter of 1'-6", through which it is conveyed S45°00'E 15.0 ft, thence through an open ditch having the same dimensions as that hereinabove described, S12°10'E 535.0 ft. where it is distributed and intermittently used to irrigate land embraced within NE $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 36 T19S R5W S1E4M, more definitely described as follows: 29.2 acres in NE $\frac{1}{4}$ SW $\frac{1}{4}$, 39.0 acres in SW $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$ said Sec. 36. Total area irrigated is 148.2 acres.

This certificate entitles the holder to use only sufficient water from all rights combined to constitute an economic duty without

The works employed in this appropriation are to be operated and maintained in such manner and condition as will prevent waste of water

In Witness Whereof, I have hereunto set my hand and affixed the seal of my office this 21st day of April, 1953

Joseph M. Tracy
 Joseph M. Tracy,
 STATE ENGINEER

DUPLICATE

67-160

CERTIFICATE OF APPROPRIATION OF WATER

Merrill & Cynthia M. Stephenson
~~of Brian M. Stephenson J.T. 1/2 int~~ **STATE OF UTAH** *William J. and Charlene W. Tuttle*
Nalden, Utah 84636

APPLICATION NO. 22238 *Don & Karla Osting (42)* CERTIFICATE NO. 4674
 NAME AND ADDRESS OF APPROPRIATOR *Holder, Utah* JAY L. DASTRUP, MONROE, UTAH *Robert & Wesley R. Stephenson*
Holder, Utah (1/2)

SOURCE OF SUPPLY UNDERGROUND WATER IN MILLARD COUNTY, UTAH; SEVIER RIVER DRAINAGE AREA

QUANTITY OF WATER THREE AND TWENTY-ONE/HUNDREDTHS (3.21) SEC.-FT. PRIORITY OF RIGHT OCTOBER 10, 1950

PERIOD AND NATURE OF USE FROM MARCH 15 TO MAY 1 INCL., AND FROM OCTOBER 1 TO NOVEMBER 1 INCL. OF EACH YEAR FOR IRRIGATION PURPOSES

Whereas, It has been made to appear to the satisfaction of the undersigned that the appropriation of water has been perfected in accordance with the Laws of Utah; Therefore, Be it known that I, JOSEPH M. TRACY the duly appointed, qualified and acting State Engineer, by authority of the Laws of Utah, do hereby certify that said appropriator is entitled to the use of water as herein set out, subject to prior rights, if any, for diversion and use as follows, to wit:

The water appropriated is yielded by a pump well fully cased with 12-in. diameter pipe driven to a depth of 500 ft. below ground surface, situated S 147.2 ft. and W 132.2 ft. from N¹ Cor. Sec. 36 T19S R5W SLEEM. The water is diverted by means of a diesel motor operated, deep well turbine pump discharging through 8-in. diameter pipe Easterly 8 ft. into a concrete division box, having inside plan dimensions of 4.0 ft. x 8.0 ft. and 1.5 ft. deep. The water appropriated leaves the north side of the division box through an 18-in. diameter metal pipe gate into an open ditch, having top width of 6.0 ft., bottom width of 2.0 ft., and side slopes 1½:1, through which it is conveyed N 5.0 ft, N70°00'W 300.0 ft, S85°00'W 275.0 ft. where it is, during the period hereinabove mentioned, distributed and intermittently used to irrigate land hereinafter described. The water leaves the south side of the division box through an 18-in. diameter metal pipe gate into a semicircular concrete flume, having inside diameter of 1'-6", through which it is conveyed S45°00'E 15.0 ft, thence through an open ditch having the same dimensions as that hereinabove described, S12°10'E 535.0 ft. where it is distributed and intermittently used to irrigate land embraced within NE¼NW¼, S¼NW¼, NW¼SW¼ Sec. 36 T19S R5W SLEEM, more definitely described as follows: 29.2 acres in NE¼NW¼, 39.0 acres in SW¼NW¼, S¼NW¼, NW¼SW¼ said Sec. 36. Total area irrigated is 148.2 acres.

This certificate entitles the holder to use only sufficient water from all rights combined to constitute an economic duty without waste.

The works employed in this appropriation are to be operated and maintained in such manner and condition as will prevent waste of water.

In Witness Whereof, I have hereunto set my hand and affixed the seal of my office this 21st day of April, 19 53

Joseph M. Tracy
JOSEPH M. TRACY, STATE ENGINEER

67-304

CERTIFICATE OF APPROPRIATION OF WATER

STATE OF UTAH *William J. and Charlene K. Tuttle*
Holden, Utah 84636

Water User's Claim No. 67-304 Application No. 32363 Certificate No. 9414
~~Robert G. Wesley & Wesley R. Stephenson~~
 1. Name and address of appropriator: Don H. & Marie C. Dastrop *Robert G. Wesley & Wesley R. Stephenson*
Holden, Utah 84636 (1/2)

Whereas, it has been made to appear to the satisfaction of the undersigned that the appropriation of water has been perfected under the above numbered application in accordance with the Laws of Utah; Therefore, Be it known that the State Engineer hereby certifies that said appropriator is entitled to the use of water subject to prior rights, if any, as follows:

2. Period and nature of use:

Irrigation	from	<u>March 15</u>	to	<u>November 1</u>
Domestic	from	_____	to	_____
Stockwatering	from	_____	to	_____
Municipal	from	_____	to	_____
Other	from	_____	to	_____

TITLE CHANGE

3. Source of supply: Underground Water4. Drainage area: Sevier River5. Quantity of water: 1.48 c.f.s.6. Priority of right: September 26, 19607. Point of diversion: South 1269 feet and East 1223 feet fromthe NE $\frac{1}{4}$ Corner of Section 36, T19S, R5W, SLBM.Millard County, Utah8. Method of diversion: 16 inch well, 470 feet deep

9. Place and/or extent of use:

IRRIGATION: 33.0 acs. SE $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 35;
 24.3 acs. NW $\frac{1}{4}$ NE $\frac{1}{4}$, 39.8 acs. NW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec.
 36, T19S, R5W, SLBM. TOTAL of 97.1 acres.

This right is limited to the irrigation
 requirements of 51.8 acres.

10. Other rights appurtenant: Application 21452 (67-119) & 22238 (67-160)

The works employed in this appropriation are to be operated and maintained in such a manner and condition as will prevent waste of water. This certificate entitles the holder to use only sufficient water from all rights combined to constitute an economic duty without waste.

The right evidenced by this certificate is subject to review by the courts in any adjudication proceeding.

In Witness Whereof, I have hereunto set my hand and affixed the seal of my office this 31st day
 of October 19 73.

TITLE CHANGE

State Engineer
 Dee C. Hansen

67-287

67-1562

CERTIFICATE OF APPROPRIATION OF WATER STATE OF UTAH

Water User's Claim No. 67-287 Application No. 31647 Certificate No. 8190
8-5288

i. Name and address of appropriator State of Utah, Board of Water Resources
435 State Capitol, Salt Lake City, Utah 84114

Whereas, it has been made to appear to the satisfaction of the undersigned that the appropriation of water has been perfected under the above numbered application in accordance with the Laws of Utah; Therefore, Be it known that the State Engineer hereby certifies that said appropriator is entitled to the use of water subject to prior rights, if any, as follows.

2. Period and nature of use:

Irrigation	from <u>March 1</u> to <u>October 31</u>
Domestic	from _____ to _____
Stockwatering	from _____ to _____
Municipal	from _____ to _____
Other	from _____ to _____

3. Source of supply Underground water (well)
4. Drainage area Saviler River
5. Quantity of water 5.93 c.f.s.
6. Priority of right January 18, 1960
7. Point of diversion South 2950 feet East 360 feet from the NW Corner
Section 31, T19S, R4W, SLBM
Millard County, Utah.
8. Method of diversion 16-inch diameter well, 523 feet deep

9. Place and/or extent of use:

Irrigation: 40.00 acs. SE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 3; 10.81 acs. NW $\frac{1}{4}$ NW $\frac{1}{4}$, 40.00 acs. NE $\frac{1}{4}$ NW $\frac{1}{4}$, 40.00 acs. SW $\frac{1}{4}$ NE $\frac{1}{4}$, 13.33 acs. NW $\frac{1}{4}$ NE $\frac{1}{4}$, 39.55 acs. SE $\frac{1}{4}$ NE $\frac{1}{4}$, 39.00 acs. NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 2; 32.50 acs. SW $\frac{1}{4}$ NW $\frac{1}{4}$, 39.00 acs. NW $\frac{1}{4}$ NW $\frac{1}{4}$, 40.00 acs. SE $\frac{1}{4}$ NW $\frac{1}{4}$, 39.50 acs. NE $\frac{1}{4}$ NW $\frac{1}{4}$, 39.50 acs. NW $\frac{1}{4}$ NE $\frac{1}{4}$, 24.20 acs. NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 1, T20S, R5W, SLBM; 30.57 acs. NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 6, T20S, R4W, SLBM; 39.50 acs. SW $\frac{1}{4}$ SW $\frac{1}{4}$, 39.50 acs. SE $\frac{1}{4}$ SW $\frac{1}{4}$, 37.50 acs. NE $\frac{1}{4}$ SW $\frac{1}{4}$, 37.00 acs. SW $\frac{1}{4}$ SE $\frac{1}{4}$, 39.50 acs. NW $\frac{1}{4}$ SE $\frac{1}{4}$, 26.74 acs. SE $\frac{1}{4}$ SE $\frac{1}{4}$, 19.46 acs. NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 36, T19S, R5W, SLBM; 35.74 acs. SW $\frac{1}{4}$ SW $\frac{1}{4}$, 35.57 acs. NW $\frac{1}{4}$ SW $\frac{1}{4}$, 39.50 acs. SE $\frac{1}{4}$ SW $\frac{1}{4}$, 38.26 acs. NE $\frac{1}{4}$ SW $\frac{1}{4}$, 7.75 acs. NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 31, T19S, R4W, SLBM or a total of 863.98 acres.

This right is limited to the irrigation requirements of 700 acres.

10. Other rights appurtenant Central Utah (255 shares) and 2 c.f.s. from wells

The works employed in this appropriation are to be operated and maintained in such a manner and condition as will prevent waste of water. This certificate entitles the holder to use only sufficient water from all rights combined to constitute an economic duty without waste.

The right evidenced by this certificate is subject to review by the courts in any adjudication proceeding

In Witness Whereof, I have hereunto set my hand and affixed the seal of my office this 23rd day
of September, 19 68.


Hubert C. Lambert, State Engineer

(DUPLICATE)

CERTIFICATE OF APPROPRIATION FOR WATER

APPLICATION NO. 3033.

STATE OF UTAH

CERTIFICATE NO. 506.

SEVIER RIVER

SEE DECREE FOR
CORRECTIONS

Whereas, It has been made to appear to the satisfaction of the undersigned, State Engineer of the State of Utah, that the appropriation of water from the West Fork of Eight Mile Creek, in Millard County, made by Josie R. Greenwood and Jessie W. Ray, has been perfected in accordance with the application therefor, received in the office of the State Engineer on the 28th day of February, 1910, and recorded on page 154-156 in book I-9 of the record of applications to appropriate water; Therefore, Be it known that I, W. D. Beers, State Engineer of the State of Utah, under and by authority and direction of the provisions of the Compiled Laws of Utah, 1907, as amended by Chapter 62 of the Session Laws of Utah, 1909, and Chapters 3 and 103 of the Session Laws of Utah, 1911, on "Water Rights and Irrigation," do hereby certify that the said Josie R. Greenwood and Jessie W. Ray, of Salt Lake City, in Salt Lake County, State of Utah, is entitled to the use of - - - - Ten (10) - - - - cubic feet of water per second, subject to the following restrictions, to-wit:

The water is diverted from said creek at a point which bears north 68°46' west 897 ft. distant from the southeast corner of Section 27, Township 18 South, Range 4 West, Salt Lake base and meridian. The diverting works consist of a canal 42,349 ft. long, 6 ft. wide on top and 4 ft. wide in the bottom, having an effective depth of 2½ ft.

The water is used from January 1 to December 31, inclusive, of each year, as a supplementary supply, in connection with the right initiated by Application 3032, to irrigate 640 acres of land embraced in the south half(S½) of Section 30 and the north half(N½) of Section 31, Township 19 South, Range 4 West, Salt Lake base and meridian.

This certificate does not entitle the holder to use to exceed the equivalent of three acre-feet of water per acre of land irrigated per annum from all sources of supply.

The diverting works must be maintained in such condition as will prevent an unreasonable loss of water.

The date of the appropriation is February 28, 1910.

In Witness Whereof, I have hereunto set my hand and affixed the seal of my office this twenty-third day of February, A. D. 1917.

STATE ENGINEER

(DUPLICATE)

CERTIFICATE OF APPROPRIATION OF WATER

STATE OF UTAH

APPLICATION NO. **3032**

S E V I E R R I V E R

WATER DIVISION

CERTIFICATE NO. **505**

TITLE CHANGE-SEE ABSTRACT

Whereas, It has been made to appear to the satisfaction of the undersigned, State Engineer of the State of Utah, that the appropriation of water from **the West Fork of Right Mile Creek**, in **Millard** County, made by **Josie R. Greenwood and Jessie W. Ray**, has been perfected in accordance with the application therefor, received in the office of the State Engineer on the **28th** day of **February**, **1910**, and recorded on page **150-152** in book **I-9** of the record of applications to appropriate water; **Wherefore**, Be it known that I, **W. D. Beers**, State Engineer of the State of Utah, under and by authority and direction of the provisions of the Compiled Laws of Utah, 1907, as amended by Chapter 62 of the Session Laws of Utah, 1909, and Chapters 3 and 103 of the Session Laws of Utah, 1911, on "Water Rights and Irrigation," do hereby certify that the said **Josie R. Greenwood and Jessie W. Ray** of **Salt Lake City**, in **Salt Lake** County, State of **Utah**, is entitled to the use of **three(3)** cubic feet of water per second, subject to the following restrictions, to-wit:

The water is diverted from said creek at a point which bears north 68°46' west 897 ft. distant from the southeast corner of Section 27, Township 18 South, Range 4 West, Salt Lake base and meridian. The diverting works consist of a canal 42,349 ft. in length, 6 ft. wide on top and 4 ft. wide in the bottom, having an effective depth of 2½ ft.

The water is used from January 1 to December 31, inclusive, of each year, to irrigate 640 acres of land embraced in the south half(S½) of Section 30 and the north half(N½) of Section 31, Township 19 South, Range 4 West, Salt Lake base and meridian.

The diverting works must be maintained in such condition as will prevent an unreasonable loss of water.

The date of the appropriation is **February 28**, **1910**.

In witness whereof, I have hereunto set my hand and affixed the seal of my office this **twenty-third** day of **February**, **A. D. 1917**.

STATE ENGINEER

**CERTIFICATE OF PERMANENT CHANGE OF POINT OF
DIVERSION, PLACE, PURPOSE OR PERIOD OF USE
OF WATER**

STATE OF UTAH

Water Right No. 67-867

Change Application No. a-10629, a-12260Certificate No. a-1665

1. Nature of change: Point of diversion ☒ Place of use ☒ Purpose of use ☐ Period of use ☐
2. Name of applicant (#1) W. Kelly & Denise C. Tuttle, 1/2 interest
 (#2) Jay Kenton & Lori M. Tuttle, 1/2 interest
3. Address of applicant (#1) P.O. Box 36, Holden, UT 84636
 (#2) P.O. Box 99, Holden, UT 84636
4. Source of supply Underground Water Wells Drainage area Sevier River
a-10629 - March 2, 1979
a-12260 - April 28, 1982
5. Priority of original right June 5, 1950 Priority of change a-12260 - April 28, 1982
6. Right or rights upon which change was based A portion of 67-137(A-21772, Cert. #6032)
7. Quantity of water changed 2.25 c.f.s. _____ Acre-ft. _____
8. Nature and annual period of use: (both dates inclusive)
- | | | |
|---------------------|---------------------|----------------------|
| <u>X</u> Irrigation | from <u>March 1</u> | to <u>October 31</u> |
| _____ Stockwatering | from _____ | to _____ |
| _____ Domestic | from _____ | to _____ |
| _____ Municipal | from _____ | to _____ |
9. Point of diversion (1) S 5300 feet, W 5274 feet; (2) S 4936 feet, W 2653 feet; (3) S 4261 feet, W 5269 feet all from the NE Cor. Sec. 17, T19S, R4W, SLBM.
Millard County, Utah
10. Description of diverting works (1) 16 inch diameter well, 410 feet deep; (2) 16 inch diameter well, 450 feet deep; (3) 16 inch diameter well, 500 feet deep
11. Place and/or extent of use IRRIGATION: 31.40 acres NW1/4NW1/4, 31.40 acres NE1/4NW1/4, 31.40 acres NW1/4NE1/4, 31.40 acres NE1/4NE1/4, 31.40 acres SW1/4NW1/4, 31.40 acres SE1/4NW1/4, 31.40 acres SW1/4NE1/4, 31.40 acres SE1/4NE1/4, 31.40 acres NW1/4SW1/4, 31.40 acres NE1/4SW1/4, 31.40 acres NW1/4SE1/4, 31.40 acres NE1/4SE1/4, 31.40 acres SW1/4SW1/4, 31.40 acres SE1/4SW1/4, 31.40 acres SW1/4SE1/4, 31.40 acres SE1/4SE1/4 Sec. 17, T19S, R4W, SLBM or a total acreage of 502.40 acres.
Water Right No. 67-867 is limited to the irrigation requirements of 200.00 acres
12. Other rights appurtenant 67-692 (a-7328, a-1194)

This certificate entitles the holder to use only sufficient water from all rights combined to constitute an economic duty without waste.

The right evidenced by this certificate is restricted to the change described herein, and the certificate in no way establishes nor validates the water right claimed by the applicant, and the change is to in no way enlarge the original right or rights.

The works employed in this change are to be operated and maintained in such manner and condition as will prevent waste of water.

In Witness Whereof, I have hereunto set my hand and affixed the seal of my office this 19th day of February, 1987.

In the event the right evidenced by this certificate is transferred, a copy of such transfer should be furnished the State Engineer by the party acquiring the right.

Robert L. Morgan

State Engineer
Robert L. Morgan

MICROFILMED

CERTIFICATE OF APPROPRIATION OF WATER STATE OF UTAH

 Water User's Claim No. 67-692 Application No. 21613-a a-6180 Certificate No. 9303

1. Name and address of appropriator Stephenson's Inc. Greenwood Farms, Ltd.
 1/2 W Kelly Tuttle Box 36 Box 36
 1/2 Jay Kenton Tuttle Box 36 Holden, Utah 84636

Whereas, it has been made to appear to the satisfaction of the undersigned that the appropriation of water has been perfected under the above numbered application in accordance with the Laws of Utah. Therefore, Be it known that the State Engineer hereby certifies that said appropriator is entitled to the use of water subject to prior rights, if any, as follows:

2. Period and nature of use

Irrigation	from	<u>April 1</u>	to	<u>October 31</u>
Domestic	from	_____	to	_____
Stockwatering	from	_____	to	_____
Municipal	from	_____	to	_____
Other	from	_____	to	_____

3. Source of supply Underground Water (well)4. Drainage area Sevier River5. Quantity of water 2.66 c.f.s.6. Priority of right April 25, 19507. Point of diversion North 66 feet and East 66 feet from the SWCorner, Section 17, T19S, R4W, S16M.Millard County, Utah.8. Method of diversion 16 inch well, 410 feet deep

9. Place and/or extent of use

IRRIGATION:

31.4 acs. NW $\frac{1}{4}$ NW $\frac{1}{4}$, 31.4 acs. NE $\frac{1}{4}$ NW $\frac{1}{4}$,31.4 acs. SW $\frac{1}{4}$ NW $\frac{1}{4}$, 31.4 acs. SE $\frac{1}{4}$ NW $\frac{1}{4}$,31.4 acs. NW $\frac{1}{4}$ SW $\frac{1}{4}$, 31.4 acs. NE $\frac{1}{4}$ SW $\frac{1}{4}$,31.4 acs. SW $\frac{1}{4}$ SW $\frac{1}{4}$, 31.4 acs. SE $\frac{1}{4}$ SW $\frac{1}{4}$,

all Section 17, T19S, R4W, S16M.

TOTAL of 251.2 acres.

This right is limited to the irrigation
 requirements of 140 acres.

*Total flow of well is 2.66 c.f.s.

*Same well as Segregation 32363-a and a-6451,

10. Other rights appurtenant Seg. 32363-a (67-694), a-6451 (67-708)

The works employed in this appropriation are to be operated and maintained in such a manner and condition as will prevent waste of water. This certificate entitles the holder to use only sufficient water from all rights combined to constitute an economic duty without waste.

The right evidenced by this certificate is subject to review by the courts in any adjudication proceeding.

In Witness Whereof, I have hereunto set my hand and affixed the seal of my office this 30th day
 of March, 19 73.

TITLE CHANGE

8/23/77 JN

John Bene
 Deputy State Engineer
 John Bene

TITLE CHANGE

CERTIFICATE OF APPROPRIATION OF WATER

STATE OF UTAH

a-6226

Water User's Claim No 67-694 Application No 32363-a Certificate No 9326

1 Name and address of appropriator Stephenson's Inc. Greenwood Farms, Inc.
Box 36
Holden, Utah 84636

Whereas it has been made to appear to the satisfaction of the undersigned that the appropriation of water has been perfected under the above numbered application in accordance with the Laws of Utah Therefore Be it known that the State Engineer hereby certifies that said appropriator is entitled to the use of water subject to prior rights, if any as follows

2 Period and nature of use

Irrigation	from	<u>March 15</u>	to	<u>November 1</u>
Domestic	from		to	
Stockwatering	from		to	
Municipal	from		to	
Other	from		to	

3 Source of supply Underground Water

4 Drainage area Sevier River

5 Quantity of water 2.52 c.f.s.

6 Priority of right September 26, 1960

7 Point of diversion North 66 feet and East 66 feet from the

SW Corner, Section 17, T19S, R4W, SLBM.

Millard County Utah

8. Method of diversion 16 inch well, 410 feet deep*

9 Place and/or extent of use

IRRIGATION:

31.4 acs. NW $\frac{1}{4}$ SW $\frac{1}{4}$, 31.4 acs. NE $\frac{1}{4}$ SW $\frac{1}{4}$,

31.4 acs. SW $\frac{1}{4}$ SW $\frac{1}{4}$, 31.4 acs. SE $\frac{1}{4}$ SW $\frac{1}{4}$,

Sec. 17, T19S, R4W, SLBM.

TOTAL of 125.6 acres.

This right is limited to the irrigation requirements of 88.2 acres.

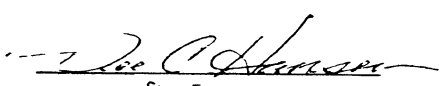
*Same well as Segregation 21613a and a-6451, total flow is 2.66 c.f.s.

10 Other rights appurtenant Seg. 21613a (67-692) a-6451 (67-708)

The works employed in this appropriation are to be operated and maintained in such a manner and condition as will prevent waste of water This certificate entitles the holder to use only sufficient water from all rights combined to constitute an economic duty without waste

The right evidenced by this certificate is subject to review by the courts in any adjudication proceeding

In Witness Whereof I have hereunto set my hand and affixed the seal of my office this 26th day of April, 19 73


 State Engineer
 Dee C. Hansen

TITLE 6

67-708

**CERTIFICATE OF PERMANENT CHANGE OF POINT OF
DIVERSION, PLACE, PURPOSE OR PERIOD OF USE
OF WATER**

STATE OF UTAH

Change Application No a-6451 (67-708)Certificate No a-775

1. Nature of change Point of diversion ☒ Place of use ☒ Purpose of use ☐ Period of use ☐
2. Name of applicant Stephenson's Inc. Greenwood Farms, Inc.
3. Address of applicant Box 36
Holden, Utah 84636
4. Source of supply Underground water Drainage area Sevier River
67-286 12/31/59
5. Priority of original right 67-137 6/5/50 Priority of change January 11, 1971
6. Right or rights upon which change was based a-4876 (67-137)
7. Quantity of water changed .88 c.f.s. Acre-ft
8. Nature and annual period of use (both dates inclusive)
- | | | |
|--|---------------------|----------------------|
| <input checked="" type="checkbox"/> Irrigation | from <u>March 1</u> | to <u>October 31</u> |
| <input type="checkbox"/> Stockwatering | from _____ | to _____ |
| <input type="checkbox"/> Domestic | from _____ | to _____ |
| <input type="checkbox"/> Municipal | from _____ | to _____ |
9. Point of diversion North 66 feet and East 66 feet from the
SW Corner, Sec. 17, T19S, R4W, SLBM.
Millard County, Utah
10. Description of diverting works 16 inch well, 410 feet deep *
11. Place and/or extent of use IRRIGATION:
31.4 acs. NW1/4, 31.4 acs. NE1/4,
31.4 acs. SW1/4, 31.4 acs. SE1/4,
31.4 acs. NW1/4, 31.4 acs. NE1/4,
31.4 acs. SW1/4, 31.4 acs. SE1/4,
all in Sec. 17, T19S, R4W, SLBM.
TOTAL of 251.2 acres.

This right is limited to the irrigation
requirements of 23.0 acres.

*Same well as Seq. 21613a and Seq. 32363a
total flow of well is 2.66 c.f.s.
12. Other rights appurtenant Seq. 21613a (67-692) & Seq. 32363a (67-694)

This certificate entitles the holder to use only sufficient water from all rights combined to constitute an economic duty without waste

The right evidenced by this certificate is restricted to the change described herein, and the certificate in no way establishes nor validates the water right claimed by the applicant, and the change is to in no way enlarge the original right or rights.

The works employed in this change are to be operated and maintained in such manner and condition as will prevent waste of water

In Witness Whereof, I have hereunto set my hand and affixed the seal of my office this 26th day of April, 1973


State Engineer
Dee C. Hansen