MEMORANDUM OF UNDERSTANDING
FOR SETTLEMENT OF PROTEST

THIS MEMORANDUM OF UNDERSTANDING ("*MOU*") is made and entered into as of this 23 day of June, 2011, by and between the **Cache Highline Water Users' Association**, a Utah nonprofit mutual water association ("*Cache Highline*"), whose sole shareholders include the Logan, Hyde Park & Smithfield Canal Company, a Utah nonprofit water company ("*LHPS*"), and the Logan & Northern Irrigation Company, a Utah nonprofit water company ("*L&N*") (collectively the "Company"), and **Logan City Corporation**, a Utah municipal corporation (the "*City*"). Cache Highline, LHPS, L&N and the City are sometime referred to herein individually as a "*Party*" and collectively as the "*Parties*."

WHEREAS, as a result of a landslide in the Logan Island area in the mouth of Logan Canyon, L&N's irrigation water canal was damaged, necessitating L&N to enter into a temporary agreement with LHPS and the City to facilitate the diversion and transportation of the water to the which L&N is entitled under its water rights in the Logan River from the points of diversion and through the irrigation water canal of LHPS ("*Canal*"); and

WHEREAS, Cache Highline was formed by LHPS and L&N for the purpose of pursuing a joint project through financing to be provided by the National Resources Conservation Service ("*NRCS*"), to rehabilitate and enlarge the Canal so as to fully accommodate the transportation and delivery of the total flow of water under the combined water rights of LHPS and L&N in the Logan River (the "*Canal Rehabilitation Project*"); and

WHEREAS, in order to obtain authority from the State Engineer pursuant to which water under the water rights of L&N may be permanently diverted upstream at the LHPS points of diversion in Logan Canyon, L&N has filed with the Division of Water Rights an Application for Permanent Change of Water, Application No. a36298 (the "*Change Application*"); and

WHEREAS, on March 25, 2010, the City filed a written protest with the Division of Water Rights (the "*Protest*"), claiming that the change as proposed by L&N under the Change Application will impair the City's vested right in and to its use of the water diverted by L&N at its historic point of diversion for power generation purposes, and that the City will be damaged thereby as stated in its Protest; and

WHEREAS, notwithstanding its Protest, the City acknowledges and recognizes, along with the Company, that the Canal Rehabilitation Project may result in long-term benefits for the residents of the City, the other residents of Cache County, and the shareholders of the Company, through improvements that will increase canal safety, conserve water and energy, and provide

the potential for additional hydroelectric power generation facilities to be installed within the rehabilitated Canal system (the "*Canal System*"); and

WHEREAS, pursuant to the provisions of Section 73-3-3(2)(b), Utah Code Annotated (the "*Change Application Statute*"), change applications may lawfully be approved by the State Engineer notwithstanding impairment of prior rights if the impaired water right holder is justly compensated for the impairment by the applicant; and

WHEREAS, the Change Application is currently pending, unapproved, before the State Engineer and the Parties are desirous of settling the concerns of the City whereby the City shall withdraw its Protest.

NOW, THEREFORE, in consideration of the terms and conditions set forth herein, and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Upon execution of this MOU by the Parties, the City shall immediately withdraw its Protest.

2. In consideration of the withdrawal of the Protest by the City, upon the final, non-appealable approval of the Change Application:

(a) Subject to Paragraph 2(c)(3), the Company shall annually compensate the City, as a Canal Rehabilitation Project expense, for any decrease in hydroelectric power generation replacement power in a given year that is attributable directly to the change in the point of diversion of water by L&N as authorized under the Change Application. The quantification of the actual decrease in hydroelectric power generation revenues in any given year shall initially be determined by the City, but such quantification shall be subject to review and approval by the Company and its consultant. In the event the Parties are unable to reach an agreement as to the quantification in a given year, the Parties agree to submit the issue to an independent, third party who will determine the quantification, and the Parties agree to be bound by such decision. Payment shall be due and payable as billed by the City;

(b) The Company shall allow the City access to the Canal System and shall cooperate with the City in studying, investigating, exploring, and determining the feasibility and viability of developing additional hydropower generation facilities or enhancements within the Canal System;

(c) Upon a determination of viability, the Company shall authorize the City, and grant to the City such licenses, easements and rights-of-way as shall be required for the City to

construct, install and own such hydroelectric power generation facilities as deemed feasible by the Company and the City, from which the City may generate power for introduction into the City's electric power system, subject to such terms and conditions therefore as shall be negotiated in good faith between the Parties, and subject to the following:

(1) All incremental costs incurred in the development of any additional hydropower generation facilities within the Canal System shall be borne by the City at its sole expense.

(2) All hydroelectric power generation facilities constructed and installed within the Canal System shall be operated so as to not interfere with the Company's ability and responsibility of providing irrigation water through the Canal System to its shareholders pursuant to its water rights;

(3) Compensation due and owing by the Company to the City in a given year pursuant to Paragraph 2(a) above, shall be offset by the revenues which the City receives from additional hydropower generation facilities to be constructed within the Canal System by the City pursuant to agreement with the Company. By way of example, if in a given year the amount of lost power revenues to the City as a result of the Change Application is determined to be $50,000, and City is able to generate power revenues in that year from its hydropower generation facilities within the Canal System in the amount of $30,000, the Company would owe the City as compensation the amount of $20,000; or by way of further example, if in a given year the amount of lost power revenues to the City as a result of the Change Application is determined to be $50,000, and City is able to generate power revenues in that year from its hydropower generation facilities within the Canal System in the amount of $70,000, the Company would owe the City no compensation. The purpose of this Paragraph 2 is to insure that the City is made whole by being fully compensated for legitimate decreases in power revenues as a result of the Change Application, but not over-compensated by obtaining replacement power and resulting revenues off of the Company's Canal System and at the same time receiving monetary compensation from the Company.

3. The Company agrees to continue, in good faith, to recognize, honor and maintain the water exchanges duly authorized by memorandum decision of the Utah State Engineer under approved Exchange Application No. 133 (25 Area) approved May 15, 1964, Exchange Application No. 1844 (25 Area) approved July 9, 1982, and in conformance with the terms and provisions of that certain Agreement by and among the Parties, and others, dated June 26, 1963, all of record in the office of the Utah Division of Water Rights and as identified in EXHIBIT "A" attached hereto and incorporated by reference herein, subject to and in conformance with the terms and conditions thereof, unless and until forfeited, or otherwise modified, withdrawn or terminated by mutual written agreement of the Parties.

4. The Parties hereby agree to negotiate in good faith, and resolve, the issues between them related to the development of additional hydropower generation facilities within the Canal System as provided in Paragraph 2, Canal System enhancements, including without limitation, a system of trails, and all other related issues including, without limitation, the City's acquisition of additional shares of LHPS and L&N stock, water right protection agreements pertaining to the excess water generated through the development of the Canal Rehabilitation Project, reciprocal easements, and relative values of water for power generation, municipal and other uses related to these issues, storm drainage, and the participation of other municipal entities in the Canal Rehabilitation Project and issues related thereto.

5. This MOU constitutes an expression of the mutual intent of the Parties to enter into definitive and binding agreements with respect to these issues which are to be negotiated on the basis of the concepts and conditions set forth herein to accomplish the purposes for which this MOU has been
executed.

6. The Parties hereby acknowledge that by executing this MOU:

(a) the City is not as of the date hereof endorsing any particular canal realignment option as described in the draft Environmental Impact Statement, dated March 17. 2011, prepared by the NRCS, and that the City is waiting for further information on the "Yellow Option" identified in the NRCS before endorsing any option; however, notwithstanding, the foregoing, the City agrees to cooperate with the Company in the endorsement of an Option under the EIS; and

(b) the City has not committed to any level of funding for the Canal Rehabilitation Project, and is conditioning its participation therein on the participation of all other benefitted entities, including Cache County.

7. This Agreement contains the entire agreement of the Parties with respect to the subject matter of this Agreement, and supersedes all other prior agreements, understandings, statements, representations and warranties, oral or written, express or implied, by and among the Parties and their respective affiliates, representatives and agents in respect of the subject matter hereof.

8. The Parties hereby agree to execute and deliver such additional documents and to take further action as may become necessary or desirable to fully carry out the provisions and intent of this Agreement.

9. This Agreement cannot be altered or amended except pursuant to an instrument in writing executed by the Parties.

10. Neither Party shall assign its interest in this Agreement without the written consent of the other Party.

11. The individuals executing this Agreement on behalf of the Parties hereby warrant that they have the requisite authority to execute this Agreement on behalf of the respective Parties and that the respective Parties have agreed to be and are bound hereby.

IN WITNESS WHEREOF the Parties have executed this MOU effective the date and year first set forth above.

CACHE HIGHLINE WATER USERS ASSOCIATION

By: _____
President, Logan Hyde Park & Smithfield Canal Company

By: _____
President, Logan & Northern Irrigation Company

LOGAN CITY CORPORATION

By: _____
Mayor

ATTEST:

_____
City Recorder

{00218728-1 }

EXHIBIT "A"

EXCHANGE AGREEMENTS

May 15, 1964

Logan City Corporation
Logan
Utah

Gentlemen:

RE: EXCHANGE APPLICATION NO. 133

Enclosed is a copy of Exchange Application 133 which has been approved by the State Engineer. You will note that no Proof of Exchange is required, and you should understand that no Certificate will be issued by this office. This exchange will be subject to regulation by the Logan River Water Commissioner.

All that will be necessary to maintain your right to exchange is to have available from the wells sufficient water to replace that diverted from DeWitt Spring.

Yours truly,

Wayne D. Criddle,
STATE ENGINEER

WDC:sb

cc: Utah Power & Light Company
P. O. Box 899
Salt Lake City, Utah

cc: Mr. Frank Haws
Logan River Water Commissioner
47 East 3rd South
Logan, Utah

Exchange Application No. 133

Application for the Right of Exchange of Water

STATE OF UTAH

Do not fill out this blank until you have read carefully and thoroughly understand the Rules and Regulations on the back hereof, also in the pamphlet prepared by state engineer and all the notes in this form.

For the purpose of obtaining permission to make an exchange of water, application is hereby made to State Engineer, based upon the following showing of facts submitted in accordance with the requirements of Sec. 100-3-20, Utah Code Annotated 1943.

NOTE.—The information given in the following blanks should be free from explanatory matter, but when necessary a complete supplementary statement should be made on the following page under the heading "Explanatory."

1. *The name of the applicant is* Logan City Corporation
2. *The post-office address of the applicant is* ~~Logan, Utah~~

The Following Water Right Is Now Owned or Will Be Acquired by Applicant

3. *The right was acquired by* Application 32883, 32884, 32885, 32886
(Give No. of Application, title and date of Decree or other identification)
4. *The right, if not now owned by applicant, will be acquired in the following manner*
(If by appropriation, purchase, or exchange, so state giving particulars)
5. *The flow of water in second feet is* 20.0
6. *The quantity of water in acre-feet is*
7. *The period of use each year is from* Jan. 1 (month) (day) *to* Dec. 31 (month) (day) *inc.*
8. *The period of storage each year is from* (month) (day) *to* (month) (day) *inc.*
9. *The drainage area to which source of supply belongs is* (Leave blank)
10. *The direct source of supply is* Ground Water *tributary to* Logan, River *tributary to* Bear River *in* Cache *County.* (*Strike tributary not needed*)
11. *The point of diversion is located at a point* (*See note below) (1) 2000' S and 325 E NW Cor. Sec 35; (2) 820' N, 1220 E SW Cor. Sec. 34; (3) 460' W, 350' N., SE Cor. Sec. 27; (4) 3660' W., 2220' N. SE Cor. Sec. 27 all in Twp 12 N. R. 1 E Salt Lake Base and M.
12. *The water involved is, or was to be, used for the following purposes:*
Municipal use by the City of Logan.
Total ..... *acres.*
(If for irrigation, give legal subdivision of land and total acreage which is or was to be irrigated. If for other purpose, give nature, place and extent of use.)
13. *The point at which water has been, or was to be, returned to the stream channel is located at a point* (*See note below)
(This space is to be filled in only when all, or part, of the water is returned.)

THE FOLLOWING EXCHANGE IS PROPOSED

14. 20.0 (strike words not needed) *second feet or* ..... *acre feet of water represented by the foregoing right will be delivered from* April 1 (month) (day) *to* Sept. 30 (month) (day) *incl. of each year into* Logan Northern and/or Logan and Hyde Park Canals. (Name of stream, canal, etc.) *at a point located* (*See note below) 1900' S and 310' E NW Cor Sec. 35; 1120 N, 1520' E SW Cor Sec. 34; 1480 W and 350' N SE Cor Sec. 27; 3610' W, 2220' N SE Cor Sec. 27 all in Twp 12 N., R 1 E, Salt Lake B ase and Meridian.

*NOTE.—The point of diversion, point of return or point of delivery must be located by course and distance or by rectangular distances with reference to some United States land survey corner or United States mineral monument if within a distance of six miles of either, or if a greater distance, to some prominent and permanent natural object.

WUC 25
BEAR RIVER-CACHE COUNTY ADJ.
133

15. *The water will be conveyed from the point described in Par. 11 to the point described in Par. 14, by canal, pipe, conduit, flume or natural stream (strike words not needed.) The cross-section, grade, length, etc. follows:* (1) Pipe 12" dia 100' long (2) Pipe 20" Dia 50' long; pipe 12" dia. 20' long; pipe 12" dia 60' long.

16. *In exchange for the water delivered and described in Par. 14, there will be* 20.0 *second feet or* ..... *acre feet of water diverted from* April 1 (month) (day) *to* Sept. 30 (month) (day) *incl. of each year from* Dewitt Spring of Logan River (Name of stream or channel) *a point located (See note bottom of Page 1)*

~~725' N. and 598' South~~

N 39° 22' E 890 Feet S¼ cor Sec. 22 T12N R2E SLB&M

Phone Logan city Eng. office 10-10-63

17. *The water referred to in Par. 16 will be conveyed by canal, pipe, conduit, flume or natural stream (strike words not needed). The cross-section, grade, length etc. follows:* 5900' 36" concrete pipe; 10,322' 24" concrete pipe; 6,770' 20" Steel pipe; 3,300' 24" steel pipe.

18. *The water referred to in Par. 16 and 17 will be used: (See note under Par. 12)* Within the limits of Logan City, Cache County, comprising all or part of Secs 25, 26, 27, 28, 33, 34, 35 Twp. 12 N. R 1 E and Secs 3, 4, 5 Twp 11 N., R 1 E, Salt Lake Base and Meridian.

Total ..... *Acres*

Exchg.

On Nov. 8, 1962, (Application No. 116), Logan City applied for an exchange of 10 second feet from wells 1 and 3 (item 11) to the Logan Northern Canal. That application is still pending and it is desired that its processing shall be continued since the City will need to operate on that exchange until the present application is in force. If and when, but not until, the present application is in full force, it would supercede the previous one.

It is proposed to exchange all or part of the 20 second feet covered in this application from any, each, or all of the wells at either or any of the points designated unter Item 11 and to divert an equal or a part of such 20 second feet at the point designated under Item 16 depending on the state of operation of the Bear River Decree and requirements of Logan City for municipal water. Such group exchange and alternate diversion points are herewith made a part of this application.

Thiel W. Bishop
*Signature of Applicant. Mayor

*If applicant is a corporation or other organization, signature must be in the name of such corporation or organization by its proper officer. If a corporation, the affidavit below need not be filled in. If there are more than one applicant, a power of attorney, authorizing one to act for all should accompany the Application.

STATE OF UTAH,
County of ..... } ss.

On the ..... day of ....., 19....., personally appeared before me, a notary public for the State of Utah, the above applicant who, on oath, declared that he is a citizen of the United States.

5-1-1965

My commission expires .....
(SEAL)

Fern Hawkins
Notary Public.

(This page is not to be filled in by applicant)

STATE ENGINEER'S ENDORSEMENTS

1. June 7, 1963 Exchange Application rec'd ~~over counter~~ by mail in State Engineer's office by Eca
2. ..... Priority of right to make exchange brought down to, on account of .....
3. June 7, 1963 Fee for filing application ~~$2.50~~ $1.30 received by Eca Rec. No. 069979
4. 6-7-63 Application copied in Exch. Book No. Eca, page ....., indexed by ....
5. June 10, 1963 Application platted by ....
6. Oct 10, 1963 Application examined by JAB
7. ..... Application returned, with letter to ..... for correction .....
8. ..... Corrected application resub. over counter by mail to State Engineer's office.
9. ..... Fee for publishing notice requested.
10. ..... Fee for publishing notice $....., Received by ..... Rec. No. .....
11. Oct. 14, 1963 Application approved for advertisement by JAB
12. Oct. 16, 1963 Notice to water users prepared by ....
13. Oct. 24, 1963 Publication began; was completed Nov. 7, 1963
Notice published in Herald Journal, Logan, Utah
14. Oct. 25, 1963 Proof slips checked by ....
15. ..... Exchange Application protested by .....

Nov. 21, 1963 Publisher paid mcu. 2-1598

16. ~~May 20, 1964~~ Application designated for approval ~~rejection~~ by ~~WDC~~ JAB mcu
17. ..... Fee for approving application requested .....
18. ..... Fee for approving application, $2.50, received by ..... Rec. No. .....
19. May 15, 1964 Exchange Application ~~proof read~~ photostated by dh
20. May 15, 1964 Exchange Application approved ~~rejected~~ and returned to applicant

THIS APPLICATION IS APPROVED ON THE FOLLOWING CONDITIONS:

1. *Actual construction work necessitated by proposed exchange shall be diligently prosecuted to completion.*
2. *Proof of exchange shall be submitted to the State Engineer's office by* NO PROOF REQUIRED
3. Subject to Agreement between Applicant and Utah Power & Light Company Dated July 23, 1963

Wayne D. Criddle
Wayne D. Criddle, State Engineer

21. ..... Time for making proof of exchange extended to .....
22. ..... Proof of exchange submitted .....
23. ..... Fee for filing proof of exchange, $1.00, received by ..... Rec. No. .....
24. ..... Fee for filing maps, profiles and drawings, $5.00, rec'd by ..... Rec. No. .....
25. ..... Fee for issuing certificate of exchange, $1.00, received by ..... Rec. No. .....
26. ..... Certificate of exchange, No. ....., issued.

I HEREBY CERTIFY that the foregoing is a true copy of the Application by ..... to exchange water and of the endorsements therein as shown by the records of my office on the date given below.

Salt Lake City, Utah, ..., 19..... State Engineer.

Exchange Application No. 133

BEFORE THE STATE ENGINEER OF THE STATE OF UTAH

IN THE MATTER OF EXCHANGE APPLI-	)	MEMORANDUM DECISION
CATION NUMBER 1844 (25 Area)	)	

Exchange Application Number 1844 (25 Area) was filed by the City of Logan to exchange 10.0 cfs. of water as evidenced by shares in the Logan-Hyde Park and Smithfield Canal Company. They seek the right to leave 10.0 cfs. of water in the Logan River at a point South 328 feet and West 702 feet from the NE Corner of Section 31, T12N, R2E, SLB&M to honor other rights out of the Logan River in exchange for taking 10.0 cfs. from DeWitt Springs at a point North 1725 feet and East 525 feet from the S¼ Corner of Section 22, T11N, R2E, SLB&M, to be used for municipal purposes within Logan City. The application was advertised in The Herald Journal beginning April 23, 1981 and ending May 7, 1981 and subsequently was protested by the Logan River Water Users Association.

A hearing was held in Logan, Utah, January 19, 1982. The applicant stated that the city had acquired more shares in the "Upper Canal" than they need to irrigate the Logan City Cemetary. They stated that they pump an average of 1.5 cfs. on the cemetery grounds and with a proportionate share of the seepage losses they needed only enough shares to represent 2.1 cfs.

Since 1961 the city has taken water in excess of their decreed rights from DeWitt Springs and has agreed to pay $4 an acre-foot for the excess. By the same agreement, the city, at the request of the Logan River Water Users, must replace the water from wells throughout the city at the same rate.

The protestant stated that the city does not own enough shares to represent 10.0 cfs. since they have already changed 100 shares to the spring in 1962 under Change Application Number a-4050. There was some discussion whether that change was made for the benefit of shares owned by Utah State University which are being transported through the Logan City line, or whether it was actually for city-owned shares.

The application has been held pending a determination of who's shares were actually transferred in 1962. The city has acknowledged that it was their shares that were changed, leaving them only 102.17 additional shares that can be transferred under this exchange.

Since 1962, Logan City has diverted 0.896% of the total divertable flow of Logan River with an upper limit of 2.0 cfs. based on Change Application Number a-4050. During most stages of the river flow, 100 shares would represent much more than the 2.0 cfs. The city sould now like this exchange to represent any additional flow that the original 100 shares represented, plus all of the flow that the 102.17 shares represents, less the 2.1 cfs. needed to irrigate the cemetery.

The State Engineer believes that this application should be approved; however, since the shares represent a lesser amount of water as the river declines through the summer, they will only be entitled to their proportionate share or 10.37% of the Logan-Hyde Park and Smithfield Canal water. The city has opted to divert from DeWitt Springs the 10.37%, less 2.1 cfs., only when the total divertable flow exceeds 270 cfs. This flow has existed through the summer in all but a few dry years. If the total divertable flow of the Logan River drops below 270 cfs. during the period when they still need to irrigate the cemetery, they wish then only to divert 6.93% of the Logan-Hyde Park and Smithfield allotment and leave the remainder in the canal for use on the cemetery.

It is, therefore, ordered and Exchange Application Number 1844 (25 Area) is hereby APPROVED, subject to prior rights, and the State Engineer has attached an Appendix to this Memorandum Decision showing the divertable amount by the city which includes that water changed in 1962. At no time shall the city divert from DeWitt Springs, or from the canal for cemetery use, more water than the 202.17 shares represent.

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

Dated this 9th day of July, 1982.

Dee C. Hansen

Dee C. Hansen, P.E., State Engineer

DCH:RMT:slf

Mailed a copy of the foregoing Memorandum Decision this 9th day of July, 1982, to:

City of Logan
P.O. Box 527
Logan, Utah 84321

Logan River Water Users Association
c/o Steve Olsen
2807 North Main
Logan, Utah 84321

By: Shawna L. Fernelius

Shawna L. Fernelius, Secretary

"APPENDIX - A"

Exchange Application No. 1844 (25-Area)

Total River Flow	Logan Hyde Park and Smithfield Award	10.37% of Award	For Cemetery Use	Diverted at DeWitt Spring
400	116	12.0	2.1	9.9
390	109.3	11.3	2.1	9.2
380	103.2	10.7	2.1	8.6
370	102.3	10.6	2.1	8.5
360	97.8	10.1	2.1	8.0
350	93.3	9.7	2.1	7.6
340	88.8	9.2	2.1	7.1
330	87.3	9.1	2.1	6.6
320	79.8	8.3	2.1	6.2
310	75.3	7.8	2.1	5.7
300	70.8	7.3	2.1	5.2
290	59.5	6.2	2.1	4.0
280	59.5	6.2	2.1	4.0
				6.93% of Award
270	57.3	5.9	1.9	4.0
260	56.0	5.8	1.9	3.9
250	53.7	5.6	1.9	3.7
240	51.5	5.3	1.8	3.6
230	49.4	5.1	1.7	3.4
220	47.0	4.9	1.6	3.3
210	44.8	4.6	1.5	3.1
200	42.6	4.4	1.5	2.9
190	40.3	4.2	1.4	2.8
180	38.1	4.0	1.3	2.6
170	35.8	3.7	1.2	2.5
160	33.6	3.5	1.2	2.3
150	31.4	3.3	1.1	2.2
140	29.1	3.0	1.0	2.0
130	26.9	2.8	0.9	1.9
120	24.6	2.6	0.8	1.7
110	22.4	2.3	0.8	1.6
100	20.2	2.1	0.7	1.4

FORM 108

Exchange Application No. 1844
Area 25

APPLICATION FOR THE RIGHT OF EXCHANGE OF WATER

STATE OF UTAH

RECEIVED
MAR 18 1981
WATER RIGHTS

For the purpose of obtaining permission to make an exchange of water, application is hereby made to State Engineer, based upon the following showing of facts submitted in accordance with the requirements of Sec. 73-3-20, Utah Code Annotated, 1953.

1. The name of the applicant is City of Logan
2. The post office address of the applicant is P. O. Box 527, Logan, Utah 84321
3. The right to be exchanged was acquired by Shares in Logan, Hyde Park, Smithfield Canal (25-3053,6145-6148)
   (Give application No., certificate No., Decree, stock purchase, or other identification.)
4. The quantity of water is 124.2 second-feet, or _____ acre-feet.
5. The period of use from April 1 *(Month)* *(Day)* to September 30 *(Month)* *(Day)*, inc.
6. The period of storage from _____ *(Month)* *(Day)* to _____ *(Month)* *(Day)*, inc.
7. The direct source of supply is Logan River tributary to Bear River in Cache county.
8. The point of diversion is* diverted through canal; point of diversion is 328' South and 702' West from the Northeast corner of Section 31 Township 12 North, Range 2 East
9. The water is, or was, to be used for the following purposes: Irrigation
   (SEE ATTACHED SHEET "A")
   _____, Total _____ acres.
   (Give place of use by legal subdivision of land)

THE FOLLOWING EXCHANGE IS PROPOSED

10. 10 second-feet or - acre-feet of water represented by the foregoing right will be delivered from April *(Month)* 1 *(Day)* to September *(Month)* 30 *(Day)* incl. of each year, to satisfy other rights, into Logan River at a point* Same as #8
11. In exchange for the water delivered and described in par. 10, there will be 10 second-feet or - acre-feet diverted from April *(Month)* 1 *(Day)* to September *(Month)* 30 *(Day)* incl., of each year from a well Dewitt Springs *(diameter and depth)* or stream _____, at a point* North 1725' East 528' from the South ¼ corner section 22 Township 11 North, Range 2 East of the Salt Lake Base and Meridian. (Cyril Thayer)
12. The water will be used for Municipal purposes in Logan City
    _____, Total _____ acres.

NOTE: *The point of diversion, point of return or point of delivery must be located by course and distance or by rectangular distances with reference to some United States land survey corner.*

EXPLANATORY

The following additional facts are set forth in order to define more clearly the full purpose of the proposed application:

The City wants to exchange rights it now has through the Logan, Hyde Park, and Smithfield canal (pt of diversion in canal above city golf course) to Dewitt Springs, and thus transport it to Logan in the present pipeline, where it can be used effectively. At present the rights in the Logan, Hyde Park and Smithfield canal owned by Logan City cannot be effectively used except for 1½ cf's at the cemetery. The city presently pays the Logan River Water User's Assoc. for water used above Logan's rights in Dewitt Springs, and by this change Logan will be able to use water it has right to, in order to reduce this compensation.

Walter Nichol
*Signature of Applicant**

**If applicant is a corporation or other organization, signature must be the name of such corporation or organization by its proper officer, or in the name of the partnership by one of the partners, and the names of the other partners shall be listed. If there is more than one applicant, a power of attorney, authorizing one to act for all should accompany the application.*

This section is not to be filled in by applicant

STATE ENGINEER'S ENDORSEMENTS

1. [illegible] Application received ~~by mail~~ over counter in State Engineer's office by [illegible]
2. Priority of Application brought down to, on account of
3. [illegible] Application fee, $ 112.50, received by [illegible] Rec. No. 09881
4. 3-30-81 Application microfilmed by 9W2-1, indexed by SW
5. 4-30-81 Application platted by A12N-2531aab
6. [illegible] Application examined by [illegible]
7. Application returned , or corrected by office
8. Corrected Application resubmitted by mail over counter to State Engineer's Office.
9. [illegible] Application approved for advertisement by [illegible]
10. APR 15 1981 Notice to water users prepared by [illegible]
11. APR 23 1981 Publication began; was completed MAY 7 1981
    Notice published in Herald Journal
12. 4/29/81 Proof slips checked by [illegible]
13. 4/23/81 Application protested by Logan River Water User Assoc.
14. 5/15-81 Publisher paid by M.E.V. No. 631425
15. Hearing held by
16. 4/13/82 Field examination by [illegible]
17. 4/13/82 Application designated for approval rejection [illegible] S.G.
18. 7/9/82 Application microfilmed and/or photostated by slf
19. 7/9/82 Application approved ~~rejected~~

THIS APPLICATION IS APPROVED ON THE FOLLOWING CONDITIONS:

By Memorandum Decision dated July 9, 1982.

Dee C. Hansen
Dee C. Hansen, P.E., *State Engineer*

Exchange Application No. 1844

A G R E E M E N T

THIS AGREEMENT, Made this 26th day of June, 1963, between the LOGAN, HYDE PARK AND SMITHFIELD CANAL COMPANY, THE LOGAN NORTHERN IRRIGATION COMPANY, THE LOGAN HOLLOW IRRIGATION COMPANY, THE PROVIDENCE-LOGAN IRRIGATION COMPANY, THE LOGAN ISLAND IRRIGATION COMPANY, THE SEVENTH WARD IRRIGATION COMPANY, THE THATCHER ASSOCIATION, THE LOGAN NORTHWEST IRRIGATION COMPANY, THE SOUTHWEST FIELD IRRIGATION COMPANY, THE PROVIDENCE PIONEER IRRIGATION COMPANY, THE HYDE PARK IRRIGATION COMPANY, THE LOGAN NORTH FIELD IRRIGATION COMPANY, THE BENSON IRRIGATION COMPANY and THE CENTRAL MILLING COMPANY, all of which shall hereinafter be called the COMPANIES, and LOGAN CITY, a Municipal Corporation, who shall hereinafter be referred to as the CITY.

WITNESSETH:

WHEREAS, All of the parties to this Agreement are owners of primary water rights in the Logan River as set out in Schedule A in the Decree of the District Court of Cache County, dated September 21, 1922, in the case of Utah Power & Light Company, Plaintiff, vs. Richmond Irrigation Company, et al., Defendants, which decree is commonly known as the Kimball Decree; and

WHEREAS, The District Court of the First Judicial District in and for Cache County has recently decided a case between the parties hereto which determines that said Schedule A shall be modified to provide that Logan City is entitled to 10 second feet of water from DeWitt Spring in Logan Canyon throughout the year and without regard to the flow of Logan River; and

WHEREAS, No Decree has been entered in said case but its entry has been temporarily suspended by agreement of the parties pending the negotiation of an agreement of settlement between the parties; and

WHEREAS, Logan City is the owner of diverting works and a 20.0 second foot capacity pipeline which conveys water from DeWitt Spring to Logan City, and it is practicable and economical for Logan City to divert through said pipeline more than 10 second feet of water for municipal purposes; and

WHEREAS, Logan City is the owner of three producing wells and is in the process of developing a fourth well, all of which are so located that water can be diverted from them into some of the canals of the Companies;

NOW, THEREFORE, The parties agree as follows:

1. Upon the execution of this Agreement, the parties shall forthwith request the District Court to enter a Decree in the case of Logan City, a Municipal Corporation, Plaintiff, vs. Logan, Hyde Park and Smithfield

Canal Company, et al., Defendants, in a form which is attached hereto and made a part hereof. No party will take an appeal from said Decree to the Supreme Court of Utah, nor will any party in any other manner contest or challenge such Decree.

2. The City will file in the State Engineer's Office an exchange application to enable it to take water during the irrigation season from April 1st to September 30th of each year from DeWitt Spring in excess of its direct flow rights. Such exchange application shall provide that well water will be delivered to the Companies in exchange for such excess water so taken from DeWitt Spring. The Companies will not oppose the City's application to the State Engineer, and if requested to do so, will, by letter or other appropriate method, request the approval of such application.

3. The exchange contemplated by this Agreement shall not require the simultaneous discharge of water from the City wells into the canals of the Companies but shall require the discharge of 1 acre-foot of water into such canals for every acre-foot of water diverted by Logan City from DeWitt Spring at some time during the same irrigation season in which the water is so diverted. The period of diversion and the flow diverted at DeWitt Spring shall be determined exclusively by the City, and the period of diversion and flow of water to be discharged from the City wells into the Companies' canals shall be determined exclusively by the Companies; provided, however, that the diversion from the wells shall be limited to the flow of water produced thereby in excess of the flow reserved to and used by the City. Requests for delivery of water from City wells and requests for shutoff shall be in writing and filed in duplicate with the City Engineer. Annually, on the 1st day of November of each year, there shall be an accounting between the City and the Companies to determine the quantity of water so diverted from DeWitt Spring and the City wells. After offsetting such diversions, either party shall pay the other for excess water diverted during the preceding year at the rate of $4.00 per acre-foot. Payments shall be made within sixty (60) days after said date. This rate is established solely for the purpose of this Agreement. The water rate shall be reviewed and renegotiated by the parties three years from date hereof.

4. The City agrees to maintain at its expense automatic measuring devices at DeWitt Spring and each City well used for water exchange at all times while this contract is in effect. Such measuring devices shall be approved by the State Engineer and shall, at all reasonable times, be made available for inspection by the Logan River Water Commissioner. The cost of operating and maintaining pumps on the City wells to effectuate the exchange shall be paid by the City.

5. The City shall make a separate agreement with the Utah Power & Light Company so that the Companies shall be protected from and held harmless against any claim by the Utah Power & Light Company for damages which might result from the exchange herein provided.

6. The Companies will not protest any application filed by the City for appropriation of additional water from DeWitt Spring or Logan River during the non-irrigation season or during the high water period within the irrigation season provided that any such application shall be subject to the prior rights of the Companies.

7. Nothing contained herein shall be construed to affect the City's water rights evidenced by water stock, or the right of the City to effect water exchanges.

IN WITNESS WHEREOF, The parties hereto have hereunto set their hands the day and year first above written.

LOGAN, HYDE PARK AND SMITHFIELD CANAL COMPANY

By Keith Meikle, President

LOGAN NORTHERN IRRIGATION COMPANY

By J. G. Plowman, President

LOGAN HOLLOW IRRIGATION COMPANY

By Alma W. Zbinden, President

PROVIDENCE LOGAN IRRIGATION COMPANY

By Heber L. Olson, President

LOGAN ISLAND IRRIGATION COMPANY

By Morris T. Hodges, President

SEVENTH WARD IRRIGATION COMPANY

By Russell V. Anderson, President

THATCHER ASSOCIATION

By W. H. Ewer, President

LOGAN NORTHWEST IRRIGATION COMPANY

By J. W. Quayle, President

SOUTHWEST FIELD IRRIGATION COMPANY

By Owen Jenson, President

PROVIDENCE PIONEER IRRIGATION COMPANY

By Mahlon F. Rice, President

HYDE PARK IRRIGATION COMPANY

By Niles Follett, President

LOGAN NORTH FIELD IRRIGATION COMPANY

By Alfred H. Gnehm, President

BENSON IRRIGATION COMPANY

By Parley A. Reese, President

CENTRAL MILLING COMPANY

By Todd G. Weston, Secretary

LOGAN CITY

By Theral V. Bishop, Mayor

Appendix 11 (a)

RELEASE AND AGREEMENT

The undersigned who constitute all of the defendants in the action entitled Logan City, a Corporation and Logan, Hyde Park and Smithfield Canal Company et al, No. 9370, who are owners of water rights sought to be condemned by Logan City, hereby agree that just compensation has been paid by Logan City for all water heretofore taken or used by Logan City, and hereby consent to the dismissal of the condemnation feature of said suit with prejudice. The undersigned further agree that all issues of every character involved in two additional suits pending in the District Court of Cache County Civil Nos. 1772 and 9307 are settled by the decree directed by the court in said cases the form of which has been agreed upon, and that said decree may be executed by the District Judge. The undersigned further agree that applications Nos. 116 and 133, filed with the State Engineer will not be protested by them, and that they will cooperate in an effort to get such exchange applications approved.

It is further agreed that all claims of every character arising or which may hereafter arise out of said litigation, by and among the parties to said suit are hereby settled and satisfied.

Dated June 26, 1963.

Logan, Hyde Park & Smithfield Canal Co.

By Keith Meikle, Pres.

Logan Northern Irrigation Company

By J. G. Plowman, Pres.

Logan Hollow Irrigation Company

By Alma W. Zbinden, Pres.

Providence Logan Irrigation Company

By Heber L. Olson, Pres.

Logan Island Irrigation Company

By Morris T. Hodges, Pres.

Seventh Ward Irrigation Company

By Russell V. Anderson, Pres.

Thatcher Association

By W. H. Ewer, Pres.

Logan Northwest Irrigation Company

By J. W. Quayle, Pres.

Southwest Field Irrigation Company

By Owen Jenson, Pres.

Providence Pioneer Irrigation Company

By Mahlon F. Rice, Pres.

Hyde Park Irrigation Company

By Niles Follett, Pres.

Logan North Field Irrigation Company

By Alfred H. Gnehm, Pres.

Benson Irrigation Company

By Parley A. Reese, Pres.

Central Milling Company

By Todd G. Weston, Sec.

Approved and accepted by

Logan City Corporation

By Theral V. Bishop, Mayor

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF UTAH,

IN AND FOR THE COUNTY OF CACHE.

LOGAN CITY, A Municipal Corporation, Plaintiff, -vs- LOGAN, HYDE PARK and SMITHFIELD CANAL COMPANY, et al., Defendants.	Civil No. 9370
LOGAN CITY, A Municipal Corporation, Plaintiff, -vs- LOGAN HYDE PARK and SMITHFIELD CANAL COMPANY, et al., Defendants.	DECREE Civil No. 9307
UTAH POWER AND LIGHT CO., a Corporation, Plaintiff, -vs- RICHMOND IRRIGATION CO., et al., Defendants.	Civil No. 1772

The parties having stipulated in open Court that the trials of the issues framed by the pleadings in the above causes be consolidated and that insofar as applicable, any evidence adduced could be considered by the Court in any and all cases; Logan City having appeared by its Attorneys,

Harvey Sjostrum, Leroy B. Young, George D. Preston, and H. Preston Thomas; the Utah Power & Light Company having appeared by its attorney, Robert D. Porter; Wayne D. Criddle, the State Engineer, having appeared by his attorney, Dallin W. Jensen, and the other parties hereto having appeared by E. J. Skeen, their attorney; the Court having heard the evidence and having made and entered the Findings of Fact and Conclusions of Law herein,

IT IS ORDERED, ADJUDGED, AND DECREED:

1. Schedule "A" of the final Decree, dated February 21, 1922, in the case of Utah Power and Light Company, a Corporation, vs. Richmond Irrigation Company, a Corporation, et al., Civil No 1772, commonly known as the Kimball Decree is modified by inserting therein the figures "10" in lieu of the present figures under each of the headings in said Schedule "A", 120, 130, 140, 150, 160, 170, 180, 190, 200, 210, and 220, opposite the award to Logan City. The awards to the parties to this suit who are named on said Schedule are proportionately decreased to make up for the increase in the award to Logan City. A tabulation of the awards of water rights, as modified by this Decree, and designated "modified Schedule 'A'" is attached hereto and made part of this Decree.

2. Logan City is perpetually restrained and enjoined from diverting from DeWitt Spring water in excess of that to which it is entitled under Schedule "A" of the Kimball Decree, as modified in accordance with the preceding paragraph of this Decree.

3. All of the parties to this action enjoined to maintain in good working order such measuring devices as are required by the said Kimball Decree and approved by the State Engineer of the State of Utah and all parties to this action are ordered to permit the State Engineer and the Commissioner appointed by this Court to have access to all weirs and measuring devices maintained by any and all of the parties.

4. That all parties to this action shall be ordered to comply with the Kimball Decree as it is herein modified and that all parties should be enjoined from interfering with each other's rights as set forth in the Kimball Decree as modified herein.

5. The action of Wayne D. Criddle, the State Engineer of the State of Utah, in rejecting application No. 32383 filed by Logan City, a Municipal Corporation, is hereby affirmed but nothing in this Decree shall be res adjudicata as to any future applications based on changed conditions or actions thereon.

Dated this 8 day of July, 1963.

/s/ Lewis Jones
DISTRICT JUDGE

interruption until September 9, 1963. Total water pumped by both wells was 1,562 acre feet.

Costs of Distribution

Water was distributed to all users on the basis of each established flow right and priority. All primary priority holders received water in accordance with a "modified" Schedule A, of the "Kimball" decree. The costs of distribution were shared by all users using the same cost formula derived in 1961. The financial statement for 1963 appears in the appendix of this report.

Water Use

A summary of monthly water use under this distribution system is shown in appendix 3. The amount of water used by each appropriator is given for each of the months April through September. A continuous recording system is now in use for about 95 percent of all the water diverted. Daily flow records, where available, are appended to this report.

Climatological Data

The flow of Logan River is shown by hydrograph in appendix 2. Shown graphically on the same chart is a record of precipitation and daily average temperatures for the same period. Also shown on this chart is the flow for 1961 and 1962.

Litigation

A decree in the case before the district court to determine the extent of Logan City's rights in Logan River was signed on July 8, 1963. The decree gives to Logan City a maximum flow right of 10 cfs and grants

to the City a first priority over all other users on the river. Schedule A of the Kimball decree has been modified to show this change in priority, and it is under this schedule that water was distributed during 1963.

Logan City compensated the other users for water used under its condemnation order of 1961; and after effecting an exchange agreement, Logan City dismissed the condemnation suit. A copy of the decree and the exchange agreement appear in the appendix to this report. Modified Schedule A is also appended.

Agreement to Exchange

An agreement between Logan City and the Logan River Water Users Association signed on June 26, 1963, permits Logan City to divert water from De Witt Springs in excess of its decreed rights. For this privilege Logan City agrees to pay to the Association $4.00 for each acre foot so diverted. Logan City also agrees to sell to the Association water diverted from underground storage through each, any, or all of its producing wells. The rate per acre foot for this water is also $4.00, so that an actual exchange of funds occurs only when the amount of water diverted from one source is greater than the amount diverted from the other source. In 1963 the amount of excess water diverted from De Witt Springs was 1,463 acre feet. The amount of water diverted from the wells was 1,562 acre feet. These figures are itemized in appendix 7. A copy of this agreement is also appended to this report.

Inasmuch as the power right of Utah Power and Light Company is adversely affected by this exchange agreement, Logan City has agreed to compensate the power company for any loss of revenue sustained when diverting water in excess of its decreed rights. A copy of this agreement

GARY R. HERBERT
Governor
GREG BELL
Lieutenant Governor

State of Utah
DEPARTMENT OF NATURAL RESOURCES
Division of Water Rights

MICHAEL R. STYLER
Executive Director

KENT L. JONES
State Engineer/Division Director

AUG 17 2011

ORDER OF THE STATE ENGINEER
For Permanent Change Application Number 25-3056 (a36298)

Permanent Change Application Number 25-3056 (a36298), in the name of Logan and Northern Irrigation Company, was filed on March 1, 2010, to add a point of diversion and place of use of 133.2 cubic feet per second (cfs) of water as evidenced by Water Right Numbers 25-3056, 25-6110, 25-6111, 25-6112, and 25-6113. Heretofore, the water has been diverted from a surface source located North 1080 feet and East 765 feet from the W¼ Corner of Section 36, T12N, R1E, SLB&M. The water has been used for the irrigation of 7427.4 acres from April 1 to October 31. The water was used in all or portion(s) of: Sections 2, 3, 4, 10, 11, 14, 15, 22, 23, 26, 27, 34, and 35, T12N, R1E, SLB&M; Sections 3, 4, 8, 9, 10, 15, 16, 17, 20, 21, 27, 28, 33, 34, and 35, T13N, R1E, SLB&M.

Hereafter, it is proposed to divert 133.2 cfs of water from the same point as heretofore and from an additional surface source located South 280 feet and West 715 feet from the NE Corner of Section 31, T12N, R2E, SLB&M (Logan River), and is to be rediverted: (1) Surface - South 2640 feet and East 1200 feet from the NW Corner of Section 27, T13N, R1E, SLB&M (Summit Creek). The nature of use of the water will remain the same as heretofore. The place and use of the water is to remain the same as heretofore, but adding all or portion(s) of: Sections 1, 2, 34, 35, and 36, T12N, R1E, SLB&M; Sections 6, 7, and 18, T12N, R2E, SLB&M; Sections 2, 3, 4, 8, 9, 10, 11, 15, 16, 17, 20, 21, 22, 23, 25, 26, 27, 28, 29, 32, 33, 34, 35, and 36, T13N, R1E, SLB&M; Sections 3, 4, 5, 10, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, and 27, T12N, R1E, SLB&M.

Notice of the application was published in The Herald Journal on March 18 and 25, 2010, and protests were received from Ray Pehrson, Smithfield Irrigation Company, Logan City Power and Light (withdrawn) and Utah State University (withdrawn). A hearing was held on May 4, 2010.

The applicant suffered an irreparable and catastrophic loss of a portion of its canal in July 2009. This change application was filed to add a point of diversion for the canal at the location of the diversion works of the Logan, Hyde Park, Smithfield Canal Company. The two companies have formed the Cache Highline Water Association to combine the canals at the diversion and transport the water to the two respective canal systems through an enlarged and reconstructed canal. There is support from the county and communities for the rebuilding project and an Environmental Impact Study (EIS) is being prepared.

Shareholder and protestant Ray Pehrson's written protest and representation at the hearing expressed disagreement with the management of the canal and a desire to receive his entitlement of water through the old diversion and canal since his use of water is above the failed section of the canal.

In considering the issues raised by the protestant, it should be noted that the State Engineer does not direct the internal activities of any irrigation company and Mr. Pehrson did not protest this application except as a shareholder in the company. In *Badger v. Brooklyn Canal Co.*, 922 P.2d 745 (1996), the Utah Supreme Court held that a shareholder in a company has no standing to protest a change application filed by the company unless the shareholder has another water right that would be impacted by the company's application. It is believed that the company has taken action to accommodate this shareholder and that the issues raised have been resolved.

Smithfield Irrigation Company protested the change because of potential impact to their rights to Summit Creek by reason of the release to and re-diversion of water from Summit Creek. Concerns about flooding along Summit Creek were also expressed with regard to a new diversion structure at the point of re-diversion. Smithfield Irrigation Company is also a shareholder in both the Logan, Hyde Park, Smithfield Canal Company and the Logan and Northern Irrigation Company and stated that the change should not be approved until those companies define how water diverted will be credited between the two companies' shareholders.

The rights of Smithfield Irrigation Company are a matter of record. In the *Summit Creek Distribution Order of the State Engineer*, dated June 14, 2011, the rights of the protestant and others were recognized. It directs the Summit Creek Commissioner in the distribution of Summit Creek, including the release to and re-diversion of water from Summit Creek by the applicant. The State Engineer does not direct the internal activities of any irrigation company or association of irrigation companies. It is also not within the jurisdiction of the State Engineer to distribute along a canal between shareholders. Concerns of Smithfield Irrigation Company regarding the joint use of the Logan, Hyde Park, Smithfield Canal diversion structure and canal by Logan and Northern are not within the purview of the State Engineer to address. The shared use of diversion structure(s) and distribution facilities of other companies are addressed in Utah Code Ann. § 73-1-7, which was substantially revised by the 2011 legislature. In regard to flooding along Summit Creek, it is the understanding of the State Engineer that modifications to the diversion structure have reduced concerns about potential flooding.

Logan City protested this change application on the basis that a loss of hydropower generation would result from the applicant diverting above Logan's historical point of return under Water Right Number 25-8218. This would reduce the water available for Logan to divert. By correspondence dated June 27, 2001, Logan City withdrew its protest stating that a Memorandum of Understanding with the applicant was executed to resolve their concerns.

In regard to the issues raised by Logan City and the Memorandum of Understanding, the state engineer does not enforce any provision of the agreement. However, to properly distribute water of Logan River, it is necessary that the parties provide sufficient information to the river commissioner to ensure that any provision of the agreement affecting the distribution of water by priority is accomplished.

Utah State University protested the change based on potential impairment to its water rights for the Utah Water Research Laboratory (Water Lab) and hydro-generating facilities at Logan River

1st Dam. Moving the historical Logan and Northern Irrigation Company diversion to the proposed point of diversion upstream will reduce the water available at Utah State's diversion, which is located above the old diversion but below the proposed new diversion.

Utah State University's rights to divert water from Logan River at Logan 1st Dam include Water Right Numbers 25-3511, 25-3512 and 25-9079. Water Right Number 25-3511 authorizes a diversion of up to 146 cfs for non-consumptive experimental research and power generation under a 1908 priority. Water Right Number 25-3512 authorizes a diversion of up to 84.0 acre-feet for non-consumptive research projects and power generation under a 1919 priority. Water Right Number 25-9079 is an approved but unperfected application to appropriate 1000 cfs for power generation. Currently, the University's hydro-generating facilities at 1st Dam can divert 125 cfs and return water immediately below 1st Dam, above the historic diversion of the applicant.

Depending on needs and available flow, the Water Lab either maintains the pool elevation of 1st Dam or draws upon the reservoir for periods of time to conduct experiments using water from Logan River. Water diverted at 1st Dam for experiments is returned to the Logan River below the diversion for Logan and Northern Canal Company. The Water Lab coordinates diversion with the University hydroelectric generation facilities, since the Water Lab is the University's primary concern, and foregoes power generation while conducting high flow experiments during low flow periods and times when it is refilling the reservoir.

One of the primary water right issues to be considered in this application is if junior priority water rights are impaired by a senior appropriator changing its point of diversion upstream. During shortages of water, junior rights for irrigation and those for non-consumptive uses that return water below the historical point of diversion of the applicant have been subject to a priority call on the water and required to pass water to Logan and Northern. Such calls have been made and the water distributed based on priority. Moving applicant's point of diversion upstream would not seem to additionally affect the junior right holders that have been required to pass water downstream as a result of priority distribution. However, non-consumptive uses such as power generation have been exempt from calls on the river to the extent that the water was returned and available for diversion by Logan and Northern without any reduction. Changing the point of diversion above Logan 1st dam and removing water from Logan River as proposed has the potential to impair those rights. The State Engineer is directed by statute (se Utah Code Ann. §73-3-3(7)(a)) to not reject a change application for the sole reason of impairment. If otherwise proper, the State Engineer is to approve the application for part of the water involved or upon the condition the applicant acquire the conflicting water rights.

The State Engineer is aware of the rights and operation of 1st Dam by the University and is of the opinion that the change will have no effect on operation of the Utah Water Research Laboratory. Inasmuch as the water diverted by the applicant prior to the change would have had to have been bypassed by the Water Lab diversion to satisfy the applicant's priority right, taking their right above 1st Dam would have the same effect.

However, for run of the river power generation that returns the water used to the river above the diversion of Logan and Northern without any reduction in flow, changing the point of diversion above Logan 1st dam and removing water from Logan River as proposed could create impairment issues during periods of low flow. If the applicant, under this application, impairs the rights of Utah State University or others, those impacted may issue a call for priority distribution or the issue could be resolved by agreement between the parties or by judicial action. By correspondence dated August 12, 2011, Utah State University withdrew its protest to this change application stating that it had entered into a Memorandum of Understanding with the applicant regarding future operation of diversions on the Logan River.

In regard to the issues raised by Utah State University and the Memorandum of Understanding, the state engineer does not enforce any provision of the agreement. However, to properly distribute water of Logan River, it is necessary that the parties provide sufficient information to the river commissioner to ensure that any provision of the agreement affecting the distribution of water by priority is accomplished.

In considering the natural stream environment of the Logan River, an Environmental Impact Statement is being prepared by the applicant to receive approval to relocate their diversion from the US Forest Service. To prevent de-watering of the river, the Draft EIS recommended that a minimum of 5 cfs remain in the river channel at all times. It states:

> "To meet the expected special-use permit conditions and to comply with the standards and guidelines in the *Revised Forest Plan*, USFS has recommended that an initial minimum flow of 5 cfs be allowed to pass the LHPS Canal POD to maintain in-stream flows. This amount is roughly equivalent to the amount of water that would not be lost to seepage from the LHPS Canal and that reaches the river on USFS-administered land. The intent of the in-stream flow, as measured immediately below the LHPS Canal POD, would be to provide water in the Logan River to fill pools to allow fish to move between pools and to provide enough water for good circulation to maintain cool temperatures and dissolved oxygen content in the stretch of the Logan River between the LHPS Canal POD and the National Forest boundary during low-flow periods (August through October). Ensuring that the in-stream flow is adequate would require observing the depth of pools in the Logan River below the LHPS Canal POD under various flow rates above and below 5 cfs."

It is anticipated that water necessary to bypass the applicant's proposed new diversion for an in-stream flow requirement will be established by the US Forest Service in its special-use permitting process. Establishing such requirement in the course of acting on this application would be redundant and perhaps contradict those set by USFS. Therefore, the State Engineer chooses to endorse the in-stream flow requirement of the USFS and considers that requirement sufficient to protect the natural stream environment of the Logan River from the new point of diversion to the historical diversion.

Within this change application, it is proposed to alter the place of use of the rights involved. The applicant should be aware that altering the place of use of a water right does not authorize any

enlargement of the right. The number of acres historically irrigated remains the limit of the water rights.

Also, the applicant filed prior Change Application a15108 on the underlying rights to change the place of use of 14 acres of irrigation to facilitate a pressurized irrigation system. The application was approved, development completed, and a proof was filed. The State Engineer has not yet issued a Certificate for this change application. Due to the failure of the canal, the use of water can no longer be made under a15108. In filing a36298, the place of use for a15108 was inadvertently not included. It is the opinion of the State Engineer that the place of use for a15108 can be included in a36298 without further administrative action or advertising. Change Application Number a15108 will be considered withdrawn upon approval of a36298. Proof under a36298 must include all uses of water including those approved under a15108.

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

It is, therefore, **ORDERED** and Permanent Change Application Number 25-3056 (a36298) is hereby **APPROVED** subject to prior rights and the following conditions.

1. The applicant is required to provide adequate measuring devices to measure the water diverted from Logan River at both the old diversion and the new diversion. Diversions from Logan River under its rights and its priorities are to be reported to and distributed by the Logan River Commissioner.

2. The applicant is required to measure the water released to and re-diverted from Summit Creek. Release and re-diversion from Summit Creek are to be reported by the Summit Creek River Commissioner.

3. The right will be assessed a distribution fee and will be included in the Summit Creek Distribution System. The release and re-diversion of water from Summit Creek under this right will be distributed by the Summit Creek Water Commissioner.

4. The approved place of use shall include the NE1/4NW1/4 of Section 10, T12N, R1E.

5. Logan City acknowledges in its protest withdrawal to the subject change application that it does so by agreement with Logan and Northern Canal Company dated June 23, 2011. Although no signed copy of the agreement is currently on records of the State Engineer, it is presumed that conditions of the agreement address potential impairment of Logan City's rights resulting from approval of

this change application. The agreement between the parties is a matter for them to abide and enforce in the court system if needed.

6. Utah State University acknowledges in its protest withdrawal to the subject change application that it does so by agreement with Logan and Northern Canal Company dated August 12, 2011. The agreement between the parties is a matter for them to abide and enforce as needed.

7. If the applicant, under this application, impairs the rights of Utah State University or others, those impacted may issue a call for priority distribution or the issue could be resolved by agreement between the parties or by judicial action.

8. The applicant is required to by-pass sufficient water to satisfy the in-stream flow requirement set by US Forest Service to maintain the fishery and natural stream environment of Logan River.

9. If historical resources such as human remains (skeletons), prehistoric arrowheads/spear points, waste flakes from stone tool production, pottery, ancient fire pits, historical building foundations/remains, artifacts (glass, ceramic, metal, etc.) are found during construction, call the Utah Division of State History at 801-533-3555.

The State Engineer has statutory responsibility to create and maintain water right records based on an administrative process outlined in statute. The State Engineer is not authorized by statute to adjudicate water right title or the validity of established water rights. It is noted that failure to exercise a water right within the statutory period could render all or a portion of a water right invalid through forfeiture. Parties who wish to challenge the validity of a water right are advised that a declaration of forfeiture is a judicial action and the courts are available to pursue such suits. (UCA 73-1-4).

As noted, this approval is granted subject to prior rights. The applicant shall be liable to mitigate or provide compensation for any impairment of or interference with prior rights as such may be stipulated among parties or decreed by a court of competent jurisdiction.

Inasmuch as this application proposes to divert water from a surface source, the applicant is required to contact the Stream Alteration Section of the Division of Water Rights at 801-538-7240 to obtain a Stream Alteration permit in addition to this Permanent Change Application.

The applicant is strongly cautioned that other permits may be required before any development of this application can begin and it is the responsibility of the applicant to determine the applicability of and acquisition of such permits. Once all other permits have been acquired, this is your authority to develop the water under the above referenced application which under Sections 73-3-10 and 73-3-12, Utah Code Annotated, 1953, as amended, must be diligently prosecuted to completion. The water must be put to beneficial use and proof must be filed on or

before **August 31, 2016**, or a request for extension of time must be acceptably filed; otherwise the application will be lapsed. This approval is limited to the rights to divert and beneficially use water and does not grant any rights of access to, or use of land or facilities not owned by the applicant.

Proof of beneficial use is evidence to the State Engineer that the water has been fully placed to its intended beneficial use. By law, it must be prepared by a registered engineer or land surveyor, who will certify to the location, uses, and extent of your water right. Upon the submission of proof as required by Section 73-3-16, Utah Code, for this application, the applicant must identify every source of water used under this application and the amount of water used from that source. The proof must also show the capacity of the sources of supply and demonstrate that each source can provide the water claimed to be diverted under this right as well as all other water rights which may be approved to be diverted from those sources.

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

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

Your contact with this office, should you need it, is with the Northern Regional Office. The telephone number is 435-752-8755.

This Order is subject to the provisions of Administrative Rule R655-6-17 of the Division of Water Rights and to Sections 63G-4-302, 63G-4-402, and 73-3-14 of the Utah Code which provide for filing either a Request for Reconsideration with the State Engineer or an appeal with the appropriate District Court. A Request for Reconsideration must be filed with the State Engineer within 20 days of the date of this Order. However, a Request for Reconsideration is not a prerequisite to filing a court appeal. A court appeal must be filed within 30 days after the date of this Order, or if a Request for Reconsideration has been filed, within 30 days after the date the Request for Reconsideration is denied. A Request for Reconsideration is considered denied when no action is taken 20 days after the Request is filed.

Dated this 17th day of August, 2011.

John R. Mann

Kent L. Jones, P.E., State Engineer
BY: John R. Mann, P.E., Assistant State Engineer

Mailed a copy of the foregoing Order this 17th day of August, 2011 to:

Logan and Northern Irrigation Company
c/o Lyle Thornley
3700 South 450 West
Nibley, UT 84321

Logan City Power and Light
c/o Jeff White
950 West 600 North
Logan, UT 84321

Ray Pehrson
1215 Canyon Road
Logan, UT 84321-4326

Utah State University
c/o Mac McKee, Water Research Lab
8200 Old Mail Hill
Logan, UT 84322-8200

Smithfield Irrigation Company
c/o Jeffry R. Gittins
215 South State Street, Suite 600
Salt Lake City, UT 84111

Division of Water Rights
Stream Alteration Section

Darin Evans, River Commissioner
236 South 200 West
Hyde Park, UT 84318

BY: _____
Sonia R. Nava, Applications/Records Secretary