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# State of Utah

## DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER  
*Executive Director*

### Division of Water Rights

KENT L. JONES  
*State Engineer Division Director*

## ORDER OF THE STATE ENGINEER

FOR STREAM ALTERATION APPLICATION NUMBER **16-81-21SA**  
IN THE NAME OF WASHINGTON COUNTY FOR ALTERATION TO  
AN UNNAMED CHANNEL IN WASHINGTON COUNTY, UTAH

This **ORDER** is issued pursuant to statute and in accord with the statutory criteria for approval of a stream alteration application that are described at UTAH CODE ANN. § 73-3-29. The State Engineer has determined that this application does meet the necessary legal criteria to **ORDER** the approval of the application based upon the following information and reasoning set forth in the Findings of Fact and Discussion.

### FINDINGS OF FACT

1. The application was received by the Division of Water Rights ("Division") on November 16, 2016, and made available for comment on the Division's webpage, provided to pertinent governmental agencies, and to other entities as warranted, for a period of 20 calendar days, said period concluding prior to December 8, 2016.
2. The application contains the following information:
  - The stated description of the proposed project is: To construct a flood retarding basin associated with an unnamed channel in Washington County.
  - The stated purpose of the proposed project is: To prevent debris flows from overtopping an adjacent road.
3. A site visit was not conducted by Division personnel.
4. The Division received comments or objections on the proposed project from:
  - Jon Boe – U.S. Army Corps of Engineers
  - Kathy Holder – Utah Division of Emergency Management

The comments or objections received by the Division are summarized as follows:

- The U.S. Army Corps of Engineers has reviewed the application and determined that the proposed project meets the terms and conditions of Programmatic General Permit 10.
- The applicant must be compliant with all rules and regulations of the Federal Floodplain Insurance Program as administered by the local city or county floodplain administrator.



## DISCUSSION

1. Based on a review of the Division's water rights records and/or a review of the application by personnel of the Division's regional office, it is the opinion of the State Engineer that the project will not impair vested water rights.
2. It is the opinion of the State Engineer that the project will not unreasonably or unnecessarily affect recreational use or the natural stream environment.
3. It is the opinion of the State Engineer that the project will not unreasonably or unnecessarily endanger aquatic wildlife.
4. It is the opinion of the State Engineer that the project will not unreasonably or unnecessarily diminish the natural channel's ability to conduct high flows.
5. Other comments or concerns submitted by interested persons or parties are not believed to be within the purview of the State Engineer in evaluating an Application to Alter a Natural Stream.

## ORDER

Stream Alteration Application No. **16-81-21SA**, submitted in the name of Washington County, applicant, in order to construct a flood retarding basin associated with an unnamed channel, a natural stream located in Washington County, Utah, is hereby APPROVED, contingent upon the conditions outlined in this **ORDER**. This approval also constitutes compliance with Section 404 (e) of the Clean Water Act (33 USC 1344) pursuant to Programmatic General Permit 10 issued to the State of Utah by the U.S. Army Corps of Engineers on February 22, 2016, and is subject to all conditions therein. Full text of Programmatic General Permit 10 can be found at the following link: [http://www.waterrights.utah.gov/strmalt/whitepapers/20160222\\_PGP10.pdf](http://www.waterrights.utah.gov/strmalt/whitepapers/20160222_PGP10.pdf). The applicant is hereby authorized to conduct the work detailed in the application and supporting documentation, as described in this **ORDER**. Any modification or addition to the work may require additional authorization and/or application resubmittal.

1. The expiration date of this order is **January 9, 2019**. Work affecting the bed and/or banks of the stream may not be conducted after this date. Extension of the order is subject to reverification by the U.S. Army Corps of Engineers and review by the Division. A request for extension must be submitted in writing to the Division and include an explanation for project delay. The request must be submitted at least 30 days prior to expiration of the order.
2. A copy of this order must be kept onsite at any time the work authorized under this order is in progress.

3. Work must be accomplished during a period of low flow. Sediment introduced into stream flows during construction must be controlled to prevent increases in turbidity downstream. Flows must be diverted away from the construction area using a non-erodible cofferdam or other means of bypass.
4. Impacts to the stream channel and surrounding environment must be minimized. Vegetation should not be destroyed, but if some disturbance is necessary, then revegetating with native species will be required, especially in the case of woody shrubs. The channel contours and configuration must not be changed except in the case of bank contouring for stabilization purposes.
5. The applicant must maintain existing stream shade on all Class 3 A streams. Destruction of any stream shade vegetation within the project area must be replaced at a 1:1 shade ratio at mature life stage with native vegetation along a Class 3 A stream. If stream shade vegetation is to be removed, the applicant must submit an estimate in their restoration plan of the portion of the water surface area within the project area that is shaded by estimating areas with no shade, poor shade, and shade prior to the commencement of work. Time of the year, time of the day, and weather can affect your observation of shading. Therefore, the relative amount of shade is a professional best-guess estimate. Ideally the applicant would be measuring when the sun is at an angle that provides maximum stream shade and the vegetation is in full leaf-out. As noted in General Condition #6 of PGP 10 the destruction of mature trees is to be avoided to the maximum extent possible and the permittee is ultimately responsible for revegetation success.
6. Riprap must consist of only clean, properly sized angular rock, which must be keyed deeply into the streambed to prevent undercutting. A filter must be placed behind if necessary (i.e., if soils are fine grained, non-cohesive, and/or erodible). Demolition debris or refuse will not be allowed, nor material such as bricks, concrete, asphaltic material [either natural (tar sand, oil shale, etc.) or man-made].
7. Fill materials should be free of fines, waste, pollutants, and noxious weeds/seeds.
8. Equipment should work from the top of the bank or from the channel to minimize disturbance to the riparian area and to protect the banks. Heavy equipment should avoid crossing and/or disturbing wetlands.
9. Machinery must be properly cleaned and fueled offsite.
10. Excavated material and construction debris may not be wasted in any stream channel or placed in flowing waters, this will include material such as grease, oil, joint coating, or any other possible pollutant. Excess materials must be wasted at an upland site well away from any channel. Construction materials, bedding material, excavated material, etc. may not be stockpiled in riparian or channel areas.



11. Best Management Practices should be implemented and maintained during any streamside or instream work to minimize sedimentation, temporary erosion of stream banks, and needless damage or alteration to the streambed.
12. Approval of this application does not authorize trespass, easements, rights-of-way, or any other access and land use permits. It is the responsibility of the applicant to obtain any such authorizations as may be necessary for this proposal.
13. Within 30 days after the completion of this project, a compliance certification form must be completed and returned to the U.S. Army Corps of Engineers. Failure to return this compliance certification form would invalidate U.S. Army Corps of Engineers General Permit 10, thereby placing the applicant in violation of Section 404 of the Clean Water Act. Form can be found at:  
<http://www.waterrights.utah.gov/strmalt/ComplianceCertification.pdf>

Your contact with the Division is Chuck Williamson, who can be reached at telephone number 801-538-7404.

This **ORDER** is subject to the provisions of UTAH ADMIN. CODE R. 655-6-17 of the Division of Water Rights and to UTAH CODE ANN. §§ 63G-4-302 and 73-3-14, which provide for persons or parties with legal standing to file 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 within 20 days after the Request is filed.

Dated this 9th day of January, 2017.



David K. Marble, P.E.  
Assistant State Engineer

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Enclosure

Mailed a copy of the foregoing Order this 9<sup>th</sup> day of January, 2017, to:

WASHINGTON COUNTY  
197 EAST TABERNACLE  
ST. GEORGE UT 84770

Corps of Engineers  
Nathan Moses - Regional Engineer  
Richard Clark - EPA  
Rhett Boswell - Wildlife Resources  
Kathy Holder - Utah Division of Emergency Management, [kcholder@utah.gov](mailto:kcholder@utah.gov)

By: Tiffany Gonzales  
Tiffany Gonzales  
Secretary